

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

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CHINO BASIN MUNICIPAL
WATER DISTRICT.

Plaintiff,

-vs-

CITY OF CHINO, et al.,

Defendants.

No. 164327

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE:

HONORABLE HOWARD BA WISNER, JUDGE,
SUPERIOR COURT, San Bernardino, California

Carolyn Kirkpatrick, C.S.B.
License No. 3745

C O P Y

APPEARANCES:

FOR THE PLAINTIFF:

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Irvine, California 92715
BY: Donald D. Stark and Guido R. Smith

FOR DEFENDANTS WESTERN MUNICIPAL WATER DISTRICT,
RIVERSIDE COUNTY AND CERTAIN INDIVIDUAL DEFENDANTS:

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BY: Arthur L. Littleworth

FOR DEFENDANTS DEPARTMENT OF CORRECTIONS, THE STATE OF
CALIFORNIA, YOUTH AUTHORITY AND DEPARTMENT OF FISH AND GAME:

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BY: Anita E. Ruud
Deputy Attorney General

FOR DEFENDANTS FELSPAR GARDEN MUTUAL WATER COMPANY AND SANTA
ANA RIVER WATER COMPANY AND MARYGOLD MUTUAL WATER COMPANY:

Stanford C. Shaw
47038 Mojave Trail
Newberry Springs, California 92365
BY: Stanford C. Shaw

FOR DEFENDANT MONTE VISTA COUNTY WATER DISTRICT:

Martin E. Wehland, Jr.

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I N D E X

WITNESS:

Page

William Jercme Carroll

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Francis Brommenschenkel

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1 SAN BERNARDINO, CALIFORNIA, MONDAY, DECEMBER 19, 1977

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3
4 THE COURT: Chino Basin Municipal Water District
5 versus the City of Chino.

6 MR. STARK: Donald Stark ready for the Plaintiff,
7 Chino Basin Municipal Water District, Your Honor.

8 MS. RUUD: Anita Ruud, R-U-U-D with the Deputy
9 Attorney General for the State of California.

10 MR. LITTLEWORTH: Arthur Littleworth of Best, Best
11 & Krieger, attorneys for Western Municipal Water District.

12 THE COURT: Off the record for a moment.

13 (Discussion held off the record.)

14 MR. STARK: The appearance for the Plaintiff should
15 also show Mr. Guido, G-U-I-D-O, Smith. And the record should
16 also perhaps show the presence of three parties who are here
17 in pro per, Sidney Goodman and Dorothy Goodman sitting in the
18 next to the back row and George Scaramella, S-C-A-R-A-M-E-L-L-A.

19 The Goodmans are defaulting parties. Mr. Scaramella
20 is a stipulating party but they are here in pro per and
21 the position of the Plaintiff is that without regard to the
22 stipulating or defaulting character that we have no objection
23 to their appearance of record at the trial.

24 THE COURT: I think we received a telephone call
25 from Mr. Mason that it would go by default.

26 MR. STARK: That was our understanding from our

1 telephone call with Mr. Mason is that he did not propose to
2 do other than let his go by default. The FDIC stipulation is

3 MR. SMITH: Should be arriving at our office this
4 morning, Your Honor.

5 MR. STARK: So I think we are essentially at a
6 default position and proof of the prima facie case as to the
7 defaulting defendants.

8 At this time, Your Honor, we would like to call
9 William Carroll for the purposes of opening the trial, taking
10 his initial statement of qualifications prior to the
11 contemplated continuance to 1:30 tomorrow afternoon.

12 THE COURT: Is there anything that the parties who
13 are present, Mr. and Mrs. Goodman or Mr. Scaramella, want to
14 resolve today so their inconvenience can be kept to a minimum?

15 MR. STARK: We talked briefly with them prior to
16 the trial. They have some questions about the language which
17 we've attempted to clarify and have indicated that the
18 actual hearing is tomorrow afternoon if they wish to come back
19 and hear the testimony. I don't know whether they are going
20 to desire to come back then or whether they wish to say
21 something today.

22 MRS. GOODMAN: We just wanted to know what it was
23 all about.

24 THE COURT: After I read the explanations to me,
25 ma'am, the explanation as to what it was about took 18 pages.
26 Then they referred me to the judgment which took 21 pages.

1 You ask a very good question.

2 Mr. Carroll, take the Witness Stand, please.

3
4 WILLIAM JEROME CARROLL,

5 called as a witness herein, having been first duly sworn, is
6 examined and testifies as follows:

7
8 THE CLERK: Thank you. Would you please be seated,
9 state your full name and spell your last name for the record.

10 THE WITNESS: My name is William Jerome Carroll,
11 C-A-R-R-O-L-L. My address is 342 West Starlight Crest Drive,
12 La Canada, California.

13 MR. STARK: At this time, Your Honor, I would ask
14 that the reporter copy into the record as though read a
15 statement of professional qualifications, copy of which has
16 been furnished to the reporter. Mr. Carroll could read
17 it but I have copies that the Goodmans and Mr. Scaramella
18 may have and if it is satisfactory with the Court, we would
19 simply suggest the reporter copy it into the record as though
20 testified to.

21 THE COURT: Will you do that?

22 THE REPORTER: Yes.

23 THE COURT: Thank you.

24 WILLIAM J. CARROLL, President, James Mr. Montgomery,
25 Consulting Engineers, Inc., Civil Engineer. Registered
26 in California, Nevada, Virginia. Diplomate - American Academy

1 of Environmental Engineers.

2 Education: B.S. Civil Engineering - California
3 Institute of Technology - 1948. M.S. Civil Engineering -
4 California Institute of Technology - 1949.

5 Positions: 1. Meteorologist - U.S. Air Force -
6 1943-46.

7 2. Industrial Waste Engineer - Los Angeles County -
8 Engineer 1949-51.

9 3. Civil Engineer - James M. Montgomery, Consulting
10 Engineers, Inc. - 1951 to present.

11 Specialization at JMM has been in the planning and
12 design of water and wastewater systems with particular emphasis
13 on water supply. Have participated in master planning of
14 supply facilities, which in a majority of cases involved
15 groundwater, for the cities of Beverly Hills, Torrance,
16 Monrovia, Sierra Madre, Pomona, Ventura, Santa Barbara, Arcadia,
17 Azusa, and Bellflower, and for the Cucamonga County Water
18 District, Rancho California Water District, Chino Basin
19 Municipal Water District, Palm Springs Water Company, Fallbrook
20 Public Utility District, Goleta County Water District and
21 Las Vegas Valley Water District.

22 Recently participated in the planning and has
23 conducted the review of water resource studies in numerous
24 cities in the Philippines, including Manila; 14 cities in
25 Indonesia; Guyana; and in the Yemen Arab Republic.

26 Does not make a practice of appearing as an expert

1 witness, but has served as such in several cases; two of
2 which involved water right matters (Cucamonga County Water
3 District, and the City of Riverside), one for the City of
4 San Diego on a pipeline problem, and another on behalf of
5 Callegues Municipal Water District on water system financing.

6 4. Organization Memberships: American Society of
7 Civil Engineers (President - Los Angeles Section - 1967,
8 National Director - 1976-79); American Academy of Environmental
9 Engineers (Director - 1974-77, Vice President - 1977-78);
10 Consulting Engineers Association of California (President -
11 1972, National Director - 1973); California Institute of
12 Technology (President - Alumni Association - 1976); American
13 Water Works Association; American Geophysical Union; Interna-
14 tional Water Resources Association; and U. S. Committee-
15 Internation Commission on Irrigation and Drainage.

16 MR. STARK: There will be, I might say, testimony
17 tomorrow as to his particular experience and qualifications
18 relevant to the subject matter of this case. These are the
19 general educational and background qualifications.

20 THE COURT: Thank you. Do you wish anything further
21 at this time?

22 MR. STARK: That's all at this time, Your Honor. I
23 would request that the matter be continued to 1:30 tomorrow.

24 THE COURT: How long will it take tomorrow afternoon?

25 MR. STARK: We anticipate two to three hours,
26 primarily devoted to, as the Court has indicated, an explanation

1 of the detail of the judgment.

2 THE COURT: The order will be that the matter will
3 continue tomorrow at the hour of 1:30 p.m. for further hearing
4 in this case. Thank you, Mr. Carroll.

5 MR. CARROLL: Thank you.

6 MR. STARK: Thank you very much, Your Honor.

7 THE COURT: Very well.

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9 (Proceedings conclude at 9:10 o'clock a.m.)

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1 SAN BERNARDINO, CALIFORNIA, TUESDAY, DECEMBER 20, 1977

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5 THE COURT: The matter of Chino Basin Municipal
6 Water District versus City of Chino. Has each counsel
7 given his or her appearance for the record?

8 MR. STARK: I believe the reporter has them.

9 THE COURT: You may proceed.

10 MR. STARK: Your Honor, I provided the Clerk for
11 identification the originals of 15 exhibits and also
12 provided the Clerk a Bench Book with index tabs with copies
13 for the Court's convenience in connection with the testimony.

14 I should say before we get under way that the
15 last item on the exhibit list and on the agenda is to review
16 the corrections in the stipulated form of judgment and
17 yesterday I promised the Court to give careful attention
18 to a comment that the Court made and I am pleased and
19 somewhat embarrassed to admit that in a quick perusal the
20 Court placed it's finger on a different problem so the
21 corrected copy will show that the descriptive circumstances
22 brand from the filing of the first amended complaint rather
23 than from the complaint. Despite the hours we put in and the
24 other counsel have put in, no one else had picked that up.
25 I will come to that in due course.

26 Mr. Carroll.

1 THE COURT: Would the Witness be seated, please,
2 and state his name for the record.

3 THE WITNESS: My name is William Carroll.

4 THE COURT: The record will indicate that this Witness
5 was sworn yesterday. Do you understand, sir, that oath
6 carries over to your testimony here today?

7 THE WITNESS: Yes, I do.

8 THE COURT: Off the record for a minute.

9 (Short discussion held off the record.)

10 THE COURT: Yesterday there was -- there were
11 Mr. and Mrs. Goodman and Mr. Scaramella. Have you talked
12 with them and are they going to appear again today?

13 MR. STARK: We had a discussion with them in the
14 corridor following the hearing and they gave no indication
15 as to whether they would be here today or not although I
16 think we had covered essentially what their concerns were.

17 THE COURT: I want the record to indicate that
18 yesterday I talked with a gentleman who was in the audience
19 from the Ontario newspaper and I furnished him a xeroxed
20 copy of the Plaintiff's pretrial Memorandum.

21 I know as a counsel that the public has a very
22 great interest in this matter. It's my view the newspaper
23 should have all information pertaining to the case that
24 may have any bearing on any rights or feelings that any of
25 the members of the community may have. In the spirit of that,
26 is it possible if you have an extra book so the reporter can

1 look at any exhibits?

2 MR. STARK: We have in cafeteria style a full set
3 of the 15 exhibits on the counsel table.

4 THE COURT: Mr. Wong, at a convenient time, if you
5 want any of these exhibits, Mr. Stark is making them available
6 to you.

7 MR. STARK: I should say in that context that
8 because this has been largely a negotiated action between
9 the parties it may be worth noting for the record that
10 throughout the negotiating sessions the press has been
11 informed and allowed to participate throughout. They have
12 attended some and not other meetings but have at all times
13 been invited to attend because of the public significance in
14 the case.

15 THE COURT: I appreciate that. I think as a
16 practical matter the press serves a necessary role in
17 dissemination of the information on a matter like this
18 where most of it obviously would end up being negotiated
19 amongst the parties.

20 There are other rights involved here other than
21 First Amendment rights so why don't you proceed.

22

23 WILLIAM JEROME CARROLL,
24 called as a witness herein, having been previously duly
25 sworn, is examined and further testifies as follows:

26

DIRECT EXAMINATION

1
2 BY MR. STARK:

3 Q Mr. Carroll, yesterday you provided your professional
4 and educational background. I wonder if you would state
5 briefly for the Court your experience particularly with regard
6 to the hydrology and related circumstances in the Chino
7 Basin.

8 A I've been involved in engineering matters in
9 geology and hydrology in Chino Basin since 1951. During the
10 period 1951 to present I have been involved in master plan
11 studies on water system development and with a lot of emphasis
12 on the ground water picture for the City of Upland, for the
13 Cucamonga County Water District, for the City of Chino, for
14 the City of Pomona. We have done some studying of the
15 Monte Vista County Water District system. We have done quite
16 a bit of the Fontana Union Water Company and that whole Lytle
17 Creek region and also we have served -- my firm has served
18 and I in particular have represented my firm in as the
19 consultant to the Chino Basin Municipal Water District. As
20 the consultant to the District, we have done a whole myriad
21 of different studies on both the water system and on the
22 waste water system.

23 In the beginning we did the study on the import
24 of Colorado River water to that particular area. This was
25 back in 1951 and since that time we have been involved in
26 the Orange County litigation. I represented the Chino Basin

1 Municipal Water District in the Orange County litigation
2 in which they -- about 700 other people were represented
3 by Mr. Stark as the lawyer and I was the engineer.

4 As one of the conclusions of that study, I am now
5 one of the water masters that looks after the physical
6 solution that resulted from the Orange County litigation. We
7 have a five member water --

8 Q By Orange County case, you are referring to the
9 action between the Orange County Water District and the
10 upper stream agencies on the river?"

11 A. Yes, I am.

12 Q And --

13 A. Another project that went on in some detail was
14 the Department of Water Resources study on the whole Chino-
15 Riverside area in which they developed a model of the
16 ground water basin and did some operational, economical
17 studies and I was on the technical advisory committee
18 representing Chino Basin Community Water District on that
19 particular study. That is relative to this particular
20 case. Over the last three years we've done considerable
21 work relative to the geology, hydrology and the total water
22 supply picture for Chino Basin.

23 Q Mr. Carroll, in connection with the studies
24 you have done on this case, are you generally familiar with
25 the stipulated form of judgment which is proposed and the
26 negotiations which lead to that form of judgment?

1 A Yes, I am.

2 Q And are you familiar with the defined terms
3 as they are contained in that judgment?

4 A Yes, I am and most of my -- all of my testimony
5 today in essence when I use these terms will be used in
6 context of those particular definitions.

7 Q I call your attention to Exhibit, Trial Exhibit
8 Number 1 for Identification and ask you if that map was
9 prepared by you or under your direction?

10 A Yes. This map was prepared under my direction.
11 As it's labeled, it says, "Location Map of Chino Basin,"
12 Trial Exhibit No. 1.

13 Q Would you indicate the nature of the underlying
14 brown base map and the major features reflected on that
15 Exhibit?

16 A Yes. The brown map is a photo reduction of the
17 U.S.G.S. or several U.S.G.S. sheets put together which
18 shows the culture of the area. By culture I mean the streets
19 and it shows the contours, shows the mountainous areas and
20 by the contours you are depicting the various types of
21 topography in the area.

22 The black line is an overlay and there are two
23 major black lines on the Exhibit. One of them is a line that
24 has courses on it and has numbers and this line defines the
25 Chino Basin which is a ground water basin.

26 The other black line is a solid black line but

1 interrupted occasionally by three dashes. That is the
2 boundary of Chino Basin Municipal Water District. At the
3 same time, however, that also depicts three other municipal
4 water districts. Over on the left side of the Exhibit which
5 is west is the City of Pomona and on that black line there it
6 shows a label Pomona Valley Municipal Water District. This
7 is another municipal water district that covers part of the
8 Chino Basin.

9 On the right side of the map which is to the east
10 over in the very corner you can see the City of San Bernardino
11 and that particular area is covered by San Bernardino
12 Valley Municipal Water District which lies contiguous to
13 the east of Chino Basin Municipal Water District.

14 To the south the water district shown is the
15 Western Municipal Water District and it covers the
16 Riverside-Arlington-Corona area. These areas were shown
17 on the map and are shown actually on the brown underlay.
18 The Chino Basin as depicted here, I'll describe in more
19 detail when I look at --

20 Q First, Mr. Carroll --

21 A Yes.

22 Q -- you have indicated that the numbers on the
23 boundary line of Chino Basin indicate courses. Do those
24 courses correspond to the legal description which is
25 contained in Exhibit 13 and which was attached to the les
26 sors in this action?

1 A. They do. This legal description was prepared
2 by my office and it does accurately describe as close as
3 we can determine the Chino Basin, the ground water basin.

4 Q. Would you describe in a circle from some
5 beginning point the boundary conditions of the Chino ground
6 water basin?

7 A. Yes. I can probably do that better, Mr. Stark,
8 if I refer to Exhibit Number 2 which actually shows the
9 boundary conditions in more detail.

10 Q. Then perhaps if you would first indicate was
11 Exhibit 2 also prepared under your direction?

12 A. Yes, it was.

13 Q. And would you describe just briefly what is
14 reflected on that map?

15 A. Exhibit 2 is labeled "Hydrologic Map of Chino
16 Basin, Trial Exhibit No. 2."

17 It again has the same U.S.G.S. base map colored in
18 brown and then it has certain geologic, hydrologic features
19 shown in black, in black lines and what this Exhibit depicts
20 is the Chino Basin together with other surrounding basins
21 on its perimeter.

22 The main basin, Chino Basin, covers an area of
23 148,000 acres and it really covers the whole central part of
24 this exhibit.

25 What I could -- what I'd like to do is go around
26 the perimeter and give you the boundary conditions and if

1 we could start in the upper left which is the northwest
2 portion of the map.

3 There is a fault shown as a San Jose Fault and this
4 is the northwesterly boundary of Chino Basin. This separates
5 Chino Basin from the Pomona area and the Claremont Heights
6 area. They are two separate ground water basins that are
7 to the northwest.

8 Then as you go to the north, you will see a label
9 called Cucamonga Ground Water Basin with the line around it.
10 This line is actually the Red Hill Fault and this is part
11 of the northerly boundary of the Chino Basin. This is a
12 rather tight fault. There is quite a difference of water
13 elevation across that fault and it's rather a distinct
14 boundary except over on the easterly side you will notice
15 that there's a strictly north-south boundary line on the
16 Cucamonga Ground Water Basin. That's our best interpretation
17 of a boundary but it's really indistinguishable and quite
18 difficult to find on the surface.

19 Q Are there any significant number of wells
20 in the area of that north-south line?

21 A There are not. It's a very sparse area. There
22 are quite a few wells in the Cucamonga Ground Water Basin
23 but most of them are over in the middle of the basin and
24 when you get to the easterly portion, that's very high up
25 on the alluvial fan and it's quite deep to ground water and
26 there are really no wells there to try to pick up the

1 underground trace of a fault. Then as you -- excuse me.

2 Q Excuse me, continue clockwise.

3 A As you proceed northerly, the northerly boundary
4 is the San Gabriel Mountain front until you get over to a
5 fault called the Rialto-Colton Fault. It's on the northeast
6 of the basin. That Rialto-Colton Fault is a rather tight
7 fault in the northerly part but as you get down southerly
8 along that fault to where you notice the Riverside Ground
9 Water Basin, there's actually a divide. There's a line and
10 that's really a ground water divide which we call the
11 Bloomington Divide and that strictly is just a high area
12 where the ground water on the northwest side runs to the
13 northwest and then on the southeast side it runs to the
14 southeast. So it's just -- it's not a fault. It's just a
15 divide.

16 Then when you get down into the Jurupa Hills, the
17 Jurupa hills serve as a bedrock boundary to Chino Basin
18 until you get down to the Santa Ana River.

19 The Santa Ana River forms, a very southerly end of
20 it and the reason it's the boundary is because that happened
21 to be a point where the ground water in essence interfaces
22 the ground so you have flow from the north from Chino Basin
23 to the River and theoretically you have flow and then from the
24 south you have flow from the Arlington-Corona area and you
25 follow down the river to the southwest until you get to the
26 Prado Dam. Prado Dam is a bedrock narrows that serves as

1 the very lowest extreme of Chino Basin.

2 Then as you proceed up to the northwest, the Chino
3 or the Puente Hills serve as the boundary. This is a
4 sandstone, shale type formation that does not contain
5 ground water basin type of water and you proceed up along
6 that line to the northwest until you get back up into the
7 Pomona area and then in the Pomona area the very westerly
8 boundary of the basin is a ground water divide between the
9 Chino Basin and the Spadra, S-P-A-D-R-A, Basin and it's
10 just shown by a little curve line there that's not labeled
11 and that just happened to be a ground water divide where
12 water on one side of it flows down through Spadra and out
13 through San Jose Creek area while the flow on the easterly
14 side flows down through Chino Basin and down through Prado
15 Dam.

16 Q Mr. Carroll, in looking at the metes and bounds
17 description on Exhibit 1, it appears to run point to point in
18 an angular fashion, presumably paralleling the basin boundary.

19 as any study made by you or under your direction to
20 determine whether those courses included all of the wells
21 which physically pump from the hydrologic unit?

22 A Yes. The study was conducted and to the best
23 of our opinion, that line contains all the wells that are
24 really extracting from the main Chino Basin. It has to,
25 just because you can't really with any degree of accuracy
26 depict the exact interface of the alluvial fan of the

1 basin with some of those, some of the mountains and some of
2 the faults by necessity has to be an approximate boundary
3 using straight lines as much as possible.

4 Q. Would you describe briefly the water supply
5 available to the Chino Basin; first the native water and
6 secondly the available imported waters indicating, if you
7 can, with relation to Exhibit A or B any particular locations
8 of significance?

9 THE COURT: Excuse me. You used the words A and B.

10 Q. (BY MR. STARK) I'm sorry, 1 and 2, Your Honor.

11 A. The Chino Basin as I indicated earlier is a
12 large ground water basin. It covers a 148,000 acres. The
13 major source of supply to it or in the past has been
14 precipitation, rainfall directly on the basin floor and
15 on runoff, surface runoff that comes from the various creeks
16 and from the various streams especially to the north.

17 Over a period of time, over centuries, the basin
18 has developed quite a store of water. There's about 13
19 million acre feet of storage capacity in Chino Basin and
20 this storage capacity over the past has been up as high as
21 11 million acre feet.

22 So this ground water basin has served as a supply
23 for that development in the area. However, because there are
24 other supplies available and a lot of the water companies
25 have developed supplies from other sources, one of the
26 major sources of import is the Lytle Creek region which is

1 up in the very northeast corner of the map, the upper
2 right, and the Fontana Union Water Company has a water right
3 in that area and they import quite a bit of that Lytle Creek
4 water and the Lytle Creek water is not a tributary to Chino
5 Basin. That Lytle Creek water goes around Chino Basin and
6 gets down into the Santa Ana River.

7 The San Antonio Water Company which is in the
8 Upland area also has quite an import of water in which they
9 bring water in from San Antonio Creek and have used this
10 water both in the Chino Basin and have put a lot of that
11 water over in Cucamonga Ground Water Basin.

12 THE COURT: Excuse me, just a moment. When you
13 make a statement of fact that Lytle Creek is not a tributary
14 in the Chino Basin, are there any persons in your field
15 who would disagree with that fact?

16 THE WITNESS: Not that I know of.

17 THE COURT: In other words, these kinds of facts
18 are just established by investigation and all persons in your
19 field to the best of your knowledge concur in your -- those
20 factual determinations?

21 THE WITNESS: I would believe so.

22 THE COURT: Okay. Thank you. You may continue.

23 THE WITNESS: Yes. There are some other major
24 sources of imported water. The Metropolitan Water District
25 of Southern California has two major pipelines through the
26 area. They have one right through the center of the district

1 which is called the upper feeder and this pipeline brings
2 water in from Lake Mathews and takes it over to the La Verne
3 filtration plant and that pipeline is available to Chino
4 Basin Municipal Water District which is a division of the
5 Metropolitan Water District.

6 That pipeline at this time carries Colorado River
7 water.

8 There is another major line that goes through the
9 very northern part of the district east-west, which is
10 called the Rialto feeder, the foothill feeding of
11 the Metropolitan Water District which carries northern
12 California water. It is also available to CBMWD in supply
13 of water.

14 At this time there's very minor use of that, if
15 any, because of the connections having all been -- have not
16 been completed at this time.

17 Q. Could you describe just briefly the location
18 and in general the ability of existing spreading grounds
19 to utilize imported water for recharge of the basin, just
20 in general terms?

21 A. Yes. There are some major spreading basins in
22 the area. In the northeasterly portion of the basin, San
23 Bernardino County Flood Control have developed quite a series
24 of spreading basins on a creek there labeled East Etiwanda
25 Creek. There also is a series of spreading basins on the Day
26 Creek and also some on Deer Creek. There are spreading basins,

1 of course, in the Cucamonga Basin, spreading basins in the
2 Claremont Heights Basin but they do not actually supply
3 Chino Basin.

4 There are just a number of small spreading basins
5 scattered throughout Chino Basin that have been constructed
6 for off-stream spreading of water during flood periods.

7 Q. Now, you've testified that upwards of 11
8 million acre feet of water have existed in storage in Chino
9 Basin. What is the current state of storage in the Basin
10 in your estimation?

11 A. Can we refer to the Exhibit?

12 Q. Yes. Would you like to refer to --

13 A. Exhibit 4.

14 MR. WEHLAND: Your Honor, just for clarification,
15 of the record, I don't have a question -- Martin Wehland for
16 the reporter -- I have a vague recollection that I'm not sure
17 that these Exhibits have actually been marked by the Clerk.

18 MR. STARK: Yes. They were presented to the Clerk
19 and were marked for identification.

20 MR. WEHLAND: Fine. And while I'm up, should
21 Exhibit 1 have a black, solid black line running next to --
22 under Legend, next to Chino Basin Boundary?

23 MR. STARK: Yes.

24 (BY MR. STARK) Mr. Carroll, that should, should
25 it not have in the legend in the lower right hand corner,
26 there should be a solid black line, should there not?

1 A. That's correct.

2 MR. STARK: May we at the recess have Mr. Carroll
3 interline the original Exhibit, Your Honor?

4 THE COURT: We will let him do it right now.

5 Thank you, sir.

6 THE WITNESS: You are welcome.

7 Q (BY MR. STARK) Now, Mr. Carroll, you had just
8 referred, I believe, to Exhibit 4. Was that Exhibit prepared
9 by you or under your direction?

10 A. Yes, it was.

11 Q Would you indicate briefly what it shows and
12 the source of the information depicted on the Exhibit?

13 A. That shows two lines. One line is labeled,
14 "Wet Storage" which means the amount of water in storage in
15 the sand and gravels within Chino Basin. There's another
16 line labeled "Precipitation" and that line shows the annual
17 inches of rainfall recorded in Ontario, precipitation
18 over the same period of time.

19 The period of time is from about 1932 up until 1974.
20 The Chino Basin is a ground water basin that's filled with
21 sand and gravels and clays and these sands, gravels contain
22 a considerable amount of water. They actually contain
23 quite a bit more water than what we have shown here but what
24 we as hydrologists usually show is how much water we can get
25 out of a ground water basin and this really then shows
26 usable wet storage, and I could get into the details of the

1 between usable and specific retention of water in some of the
2 gravels but it would just be a complication and I think for
3 all purposes what this does is show you just how much usable
4 water there is and what has happened to it over a period
5 of time.

6 Q All right. What is the source of the information
7 reflected by the solid black line, the Wet Storage line?
8 how do you derive that line?

9 A Most of this was developed by the Department of
10 Water Resources in this previous operation economic study
11 that I indicated was accomplished between the period of
12 1967 until about '69 and this was information they developed
13 by looking at small -- breaking Chino Basin up into rather
14 small areas, computing what we call specific yields and
15 specific yields are the amount of water in a cubic foot of
16 material that will drain by gravity, computing that specific
17 yield in these small areas and then determining the depth
18 of usable water. To do that development, you have to determine
19 the effective base of the ground water basin, that is what
20 is the basement of it, how deep it is to rock or to non-usable
21 water and then determining water elevation.

22 Q Excuse me.

23 A Sure.

24 Q In your opinion, do the DWR data which you base
25 this on, were they derived from reliable and recognized
26 principals of calculating ground water and storage?

1 A Yes, they are.

2 Q What about the -- you said the earlier years.

3 At what point?

4 A They developed the information up to the year
5 1965 and then my office developed the information between
6 1965 and 1974. We, only in this particular case, only
7 developed it for those two years and drew a straight line
8 between 1965 and 1974 on this particular graph. It may have
9 varied slightly and maybe we should have represented it as
10 a dashed line but that information is relatively accurate.
11 We have had the Department of Water Resources do the same
12 study at our request in parallel with us and we agree
13 completely with the information that's shown over those last
14 10 years.

15 Q So that you show a continual decline in water
16 and storage from the mid 40's to date regardless of wet or
17 dry years, is that correct?

18 A Yes. What this does show --

19 Q And the consequence of that withdrawal of water
20 from storage is to leave the emptied space. Is that usable?

21 A Yes, it is. It's usable to store other
22 waters or to allow the basin to recover plus the fact that
23 you can actually store more water than just the decline. There
24 is other dry area there, dry volume there that could be
25 filled.

26 Q Now, in this same context, Mr. Carroll, of the

1 general hydrologic condition, would you refer to Exhibit 3
2 and indicate first of all was that prepared by you or under
3 your direction?

4 A. Yes, it was.

5 Q. And would you indicate for the Court what is
6 reflected on that Exhibit and the source of the data represented
7 by the lines on the Exhibit?

8 A. Again this Exhibit shows two lines. The heavier
9 upper line is Subsurface Outflow and the bottom line again is
10 Precipitation at Ontario, California. The Subsurface
11 Outflow is that outflow that is flowing out of the Chino
12 Basin at the very bottom of the Chino Basin down at the
13 Santa Ana River. Most of the information depicted on this
14 particular Exhibit was developed by the U.S.G.S. up through
15 the year 1965. Then we used the same method that they
16 used and developed that portion between 1965 and 1974.

17 The method used was actually drawing a cross-section
18 across the very lowest part of the basin and calculating
19 outflow by using hydrologic guidelines and areas of sections
20 and it's a reasonably good estimate of outflow.

21 We've also done it several other ways and in the
22 Orange County suit that was previously mentioned, all of the
23 engineers there combined together to make a calculation and
24 their calculation approximated this same calculation shown
25 here.

26 Q. Could you comment on the relationship between

1 the declining line of Wet Storage in Exhibit 4 and the
2 declining line of Subsurface Outflow in Exhibit 3?

3 A. Yes. They are tied together in that as you
4 decrease storage in the basin, what is happening is your
5 water levels in the basin are falling. As a result of that
6 falling water table and a flattening out of the hydrologic
7 gradeline, you are actually getting less loss from the basin.

8 The cross-section itself, the wetted area and the
9 outflow cross section, has changed very little but the slope
10 across it has and therefore there's less pressure to drive
11 that water out of the basin and you are getting less loss
12 from the basin.

13 Q In gross terms, I take it, the two declining
14 lines would be an indication, when combined with the precipita-
15 tion lines, of the existence of overdrafts for production
16 in excess of the native supply?

17 A. Yes, they do. You have to really look at over-
18 draft on a basis of a mean period and by mean period I
19 mean a mean hydrologic period where you have average
20 precipitation and other supply factors. The Ontario
21 precipitation was put on here to show you that the
22 precipitation was relatively uniform through a lot of the
23 period yet we've had a steady decline in both of these items
24 which is indicative of overdraft.

25 Q From your knowledge of the available literature
26 on prior studies of the Chino Basin, are you familiar with

1 what the estimates are of the commencement of overdraft
2 in the Chino Basin?

3 A. The first real indication of overdraft in the
4 literature was published in bulletin 53 of the Department
5 of Water Resources. That bulletin was published and
6 showed conditions as of 1946 and at that time that bulletin
7 indicated that the overdraft of Chino Basin approximated
8 20,000 acre feet a year. So the overdraft probably commenced
9 sometime before 1946.

10 Q Mr. Carroll, when you speak of overdraft and in
11 the definitions in the proposed judgment, overdraft as a
12 term is correlated to the concept of safe yield. I would
13 call your attention to Exhibit 5 and ask you whether that
14 was prepared by you or under your direction?

15 A Yes, that was.

16 Q Would you indicate the purpose of that Exhibit
17 and explain the content of it?

18 A. The purpose of this Exhibit Number 5 is to
19 depict how we approached safe yield. There are a number
20 of different ways you can determine safe yield and in this
21 particular situation in Chino Basin we use the ground water
22 body as the independent body to work with.

23 If I can explain that, you can really look at the
24 total ground water basin in which you look at the ground
25 surface and everything in all surrounding areas and
26 determine safe yield by using quite a few different inputs

1 and outputs. We looked at that and determined that we did
2 not know enough about land use in the basin and we ran into
3 some contradictions in past land use where we decided that
4 the simplest way to approach safe yield was to just look at
5 the ground water body or that wetted portion of the ground
6 water area as the independent unit and that's depicted on
7 Exhibit 5 by the blue coloring plus it should also include
8 that slight area above that depicted as change in storage.

9 If you look at that representation of an independent
10 body, what you should do is balance inflow with outflow and
11 you will notice on the Exhibit there's a hydrologic equation
12 that says inflow has to equal outflow plus change in storage
13 and in this case change in storage can either be a plus or
14 minus quantity.

15 When you use just the ground water body, there are
16 only five elements of the equation. The sources of supply
17 are just deep percolation plus subsurface inflow. The outflow
18 is depicted just by extractions plus subsurface outflow
19 plus the change in storage and those elements have to balance
20 to really satisfy the hydrologic equation.

21 THE COURT: What would the source of change of
22 storage be other than extraction of subsurface outflow?

23 THE WITNESS: That would be the only source if
24 you had a decrease but if you had an increase in change in
25 storage it could be because your subsurface inflow and your
26 deep percolation of water exceeded what was flowing out or

1 exceeded what was being extracted or the combination of the
2 two.

3 Q (BY MR. STARK) The change of storage figure
4 then is really a residual to the balance of the equation?

5 A Right. Safe yield, you can look at this
6 and you don't need the hydrologic equation to compute safe
7 yield. If you look at just what you are extracting and look
8 at a mean period and then subtract what your average
9 extractions are, subtract from your average extractions over
10 that period, your change in storage, you have safe yield.

11 However, to make your -- to assure yourself that
12 you are about right in making that calculation, what you do
13 is you calculate the other side of the equation, the inflow
14 just to see if you get somewhere near a balance.

15 Q Did you cause a safe yield determination to be
16 made with regard to Chino Basin?

17 A Yes, I did and it's shown on Exhibit 6.

18 Q Would you explain briefly the material contained
19 on Exhibit 6?

20 A This is a table that shows all of the elements
21 or components of the hydrologic equation and sums up with a
22 resultant safe yield figure.

23 First you have to do this over a mean period and
24 we took the period 1964-65 through 1973-74 as the mean
25 period. The reason we accepted that as the mean period is
26 because we did check the rainfall at Ontario and under

1 paragraph 1 B you will notice that the average Ontario
2 rainfall during that period was 17.83 inches.

3 The Orange County suit previously mentioned used
4 1935 through '60 mean period and that had an Ontario rainfall
5 of 17.62. The difference between those two figures is
6 about one-half percent and so for purposes of this safe
7 yield analysis we considered that close enough.

8 Item two shows the components of the hydrologic
9 equation and you will notice there's deep percolation.
10 There is subsurface inflow. There is subsurface outflow and
11 extractions and change in storage. Then with the end result.

12 I should indicate the deep percolation is probably
13 the most difficult one of those four figures to get because
14 when you look at deep percolation you look at an item that
15 covers deep percolation of water from a number of different
16 sources.

17 As listed there, it's precipitation, surface inflow,
18 artificial recharge, imported water, the deep percolation return
19 from irrigation, both domestic and agriculture, and
20 then a recharge of sewage.

21 Q These are for the most part calculated or
22 estimated or engineering judgment figures, are they not?

23 A Yes. We have made a study of each one of these
24 and these figures as listed are the results of all of those
25 studies.

26 Q What degree of reliability or variability

1 would you say exists on the whole; that is how precise
2 do you believe the figures are that you are dealing with?

3 A. The different figures have different degrees of
4 preciseness. In discussing the whole approach to safe
5 yield with all the people on the advisory committee within
6 Chino Basin, we did go into some detail explaining what's
7 really involved in safe yield study and there are a number
8 of different types of safe yield studies. They can be very,
9 very detailed studies that require a lot of effort, a lot of
10 time and a lot of money or then there would be the cursory
11 judgment type that you really look at things and you make
12 your best judgment, estimates and place some degree of
13 reliability on them and then discuss them with the people
14 to see if they think these are good enough figures to use
15 in actually reaching some type of settlement.

16 The type of safe yield analysis we did was more of
17 the latter. It wasn't real cursory but we did not go into
18 a tremendous amount of detail and try to really reduce
19 everything to the very finite type of degree that maybe
20 some studies have done in the past.

21 Q. Well, with that qualification, what is your
22 best opinion at the present time as to the quantity of the
23 safe yield of the Chino Basin?

24 A. Under item 3 we list the safe yield at 140,000
25 acre feet a year. This is at this time under present cultural
26 conditions. I believe that figure is probably plus or minus

1 ten percent.

2 Q And to the extent that either cultural conditions
3 change or there is the safe yield is different from that
4 figure, with a basin the size of Chino Basin, what period of
5 time will it take to observe under-estimation or over-estimation
6 of safe yield reliability?

7 A I think it would take somewhere between five to
8 ten years to really utilize this concept now and try to
9 resign it and see how accurate it is.

10 Q Your Honor, before I get much further, I would
11 offer in evidence Exhibits 1, 2, 3, 4, 5 and 6.

12 THE COURT: They will be received.

13 Q (BY MR. STARK) Mr. Carroll, would you turn to
14 Exhibit 9 which is entitled "In Lieu Area Number 1" and was
15 that Exhibit prepared by you or under your direction?

16 A Yes, it was.

17 Q And would you explain briefly what the dark
18 line on that exhibit reflects?

19 THE COURT: Excuse me. On Exhibit 6 just for a
20 moment, if I heard you correctly before, Mr. Carroll, you
21 said there are a lot of ways of determining safe yield and
22 one way is by looking -- infer essentially, by looking at
23 surface conditions, what kinds of industry there is, how
24 the water is going to be used in the future. You didn't say
25 that but it was the inference that I got from your remarks
26 Am I right when I say that?

1 THE WITNESS: That's partly right. The other way
2 of looking at it is you look at surface inflow, you look at
3 direct precipitation. Now the difference here is you look
4 at total precipitation. Here we are only talking about deep
5 percolation of precipitation. There would be a difference. When
6 you look at industry and how it's developed and what the land
7 use is, what you use is a term called consumptive use. You
8 don't use extractions. You look at consumptive use of water
9 and this is a whole new different type of calculation and
10 you really have to know land use pretty well to be able to
11 determine consumptive use and what we have to know is land
12 use as of 1964 and then land use as of 1974 and get the difference
13 in consumption.

14 Q (BY MR. STARK) Could you describe briefly
15 what you found when you looked at the prior land use studies
16 as to their --

17 THE COURT: That's not necessary in my mind. I
18 assume that you made professional determination not to use
19 land use as a method of determining safe yield?

20 THE WITNESS: Yes, we did.

21 THE COURT: Why is it though that once you have
22 excluded that you can only look to the difference between
23 what goes in and what comes out? Doesn't that presuppose
24 that the future, what's going to come out to some extent is
25 the same as in the past?

26 THE WITNESS: If you were to extrapolate into the

1 future under different cultural conditions, that's true.

2 The safe yield does change under different cultural conditions.

3 What this answer is, Your Honor, is that under
4 present cultural conditions and without any changes in those
5 cultural conditions, the safe yield that ground water basin
6 will give you without any real change in storage is 140,000
7 acre feet a year.

8 Now in changing the cultural and for instance if you
9 put a lot of urban development in and do a lot of paving and
10 you change the deep percolation of precipitation, you're
11 actually changing one of the inputs to the supply picture and
12 therefore you can't use the same safe yield. So it's always
13 a static condition at a particular period in time and you
14 can make estimates of what's going to happen in the future
15 with it but that generally isn't done.

16 What you do is you determine what it is now and
17 then you keep studying it and you will revise it. I could use
18 an example and one of the first major adjudications when you
19 did a safe yield study on was the Raymond Basin case in
20 Pasadena. At that time they determined a safe yield of the
21 ground water basin and they adjudicated rights on the basis
22 of prescription among, mutual prescriptions among all the
23 parties and they said that this is what you are allowed to
24 extract from the basin. Well, then after a period of time
25 they went back and found the safe yield had actually increased
26 and the reason that it increased is because they found that

1 there was enough change in certain of the parameters they
2 used to actually increase the supply and one of the things
3 they found was that they started importing more Metropolitan
4 District Water. They began to get more deep percolation of
5 the imported supply and that changed one whole element of
6 that hydrologic equation and therefore gave that ground
7 water basin more water than it had in the past and as a
8 result they increased everybody's rights to extract a
9 little bit.

10 Q (BY MR. STARK) But in terms of a change
11 in conditions which would change safe yield, those would also
12 be reflected in change in storage, would they not, in the
13 future so you could use the same method to reflect the change
14 in safe yield?

15 A Oh, yes. There's nothing to preclude us from
16 using either method in the future. Both methods are good
17 methods.

18 Q Thank you.

19 A Exhibit 9 boundary. This is a boundary as you
20 can notice it covers a part of Upland, part of Ontario, part
21 of Montclair and this is a line that depicts a 50 milligram
22 per liter nitrate concentration where the concentration of
23 nitrates within that line are greater than 50 milligrams per
24 liter.

25 The basis of this is a study that was made by the
26 Pomona Valley Municipal Water District and they, in cooperation

1 with others in this particular area, sampled monthly a
2 number of different wells, ran the nitrates and determined
3 that we actually drew this line from their data but they had
4 a series of maps that depicted this 50 milligram and it
5 changed and it varied with time but this, I'd say in general,
6 is the -- encompasses all of the 50 milligram per liter nitrate.

7 Q What is the significance of 50 milligram per liter
8 nitrate?

9 A There's a potential health hazard to infants if
10 they ingest or drink water that has a higher than 45 milligram
11 per liter nitrate level. The reason it's 50 here instead
12 of 45 is because we had contours drawn of the nitrate levels
13 and we ran up to a 110 but we did it -- we didn't do the 45.

14 Q What does that mean with utilization of wells
15 in that area? Are they usable?

16 A They are usable if the water can be diluted
17 with other water that has a lower nitrate content so that
18 in essence what you are ending up with is a 45 milligram per
19 liter or less water. I didn't really fully explain that
20 problem with babies, but it's a medical term. I can only
21 tell you what the literature says about it but the United
22 States Public Health Service and the State of California
23 Department of Health does have recommended limit of 45
24 milligrams per liter on nitrates.

25 Q Now, are you familiar with the term in lieu
26 storage or the use of the in lieu area as outlined in the

1 proposed form of judgment?

2 A. Yes, I am.

3 Q. Would you describe just briefly the mechanics
4 of in lieu delivery of water and what it's functioning is?

5 A. Well, the function is to help, really effectively
6 manage the ground water basin both from a quantity point of
7 view and quality point of view, and if we can use that, this
8 in lieu area, number one, as an example, in this particular
9 area there is a water quality problem and it's a high nitrate
10 level.

11 Now, what we are trying to do in the judgment and
12 in this management plan is make provision that in this
13 particular case a person can leave their ground water
14 right in the ground and use surface water instead and as
15 a result of leaving the water in the ground, we therefore
16 do not have to purchase as much supplemental water and
17 recharge it to make up this, let's just use the figure 40,000
18 acre foot deficit per year. As a result of them leaving the
19 water in the ground and we don't have to buy it but they have
20 to possibly buy more expensive imported water, then the
21 water master in turn will compensate them for that water
22 that they leave in the ground in the amount of what the water
23 master would have to pay to buy imported water plus the cost
24 of recharging it.

25 Maybe just to give you a simple example, in one
26 of these entities there, say, didn't pump a thousand acre

1 feet of water and had a right to that more than that but left
2 that thousand acre feet in storage and instead used surface
3 water, some supplemental supply, then the water master
4 could say, well, instead of buying 40 thousand, I only have
5 to buy 39 thousand acre feet of water. Therefore I'm
6 saving the cost of buying that water and if that water were
7 to cost 50 dollars an acre foot plus my cost of recharging
8 it were to 5 dollars an acre foot, I in turn could pay
9 that to this particular entity that was using what we call
10 in lieu water. They could then use that water to help defray
11 the costs of the higher priced imported water.

12 Q Then basically from the standpoint of the
13 basin management, the water master would be buying the water
14 in storage?

15 A Correct.

16 Q Out of their safe yield, right?

17 A Right.

18 Q Mr. Carroll, you mentioned a moment ago that the
19 land use study has not been compatible. Did you attempt
20 to determine whether it was possible to verify the production
21 by individual farmers in the basin?

22 A It is possible but we do not do it.

23 Q What would be involved considering that there
24 are roughly eleven to 1200 individual farmers who are parties
25 to the case? how would you verify in a detailed --

26 A You would have to make a visit to each one of

1 these pumpers and determine what quantity of equipment
2 they have and whether or not they have actually metered
3 their production. If they have not metered their production,
4 do not have records of this, then you would have to make an
5 estimate of that production and that estimate can take many
6 months. You can get under under power records, you could look
7 at the land they have and the land that they have irrigated
8 and make a determination on the duty of water method. By
9 that I mean how much water per taker is used per year for
10 different types of crop and some how you could make an
11 estimate of each one of these pumpers but it would take a
12 tremendous amount of time.

13 Q What about the filing for the State Water
14 Rights Board on production of ground waters since 1953.
15 Are you familiar with those filings?

16 A Yes, I am.

17 Q And aren't those adequate for purposes of
18 determining the individual overlying farmers' production?

19 A They are approximations but they really are
20 not sufficient. The reason is because they are, many of the
21 farmers that have not filed and number two, a lot of them have
22 just -- they've just guessed at what their production is so
23 when you really look at the overlying agricultural filing,
24 some of them are good and some of them are not good.

25 Q What about the so-called appropriators, that
26 is the cities, districts, utilities who are listed in the

1 proposed judgment in the appropriative pool. Did you
2 undertake or under your direction was there undertaken a
3 verification of the historic production of the parties in
4 that pool?

5 A. There was.

6 Q. And in your opinion, first of all, I call your
7 attention to Exhibit 8 which is the table of appropriative
8 pool rights and ask you whether the figures shown on Exhibit
9 8 are in your opinion relatively representative of the
10 comparative production histories² of the parties listed there?

11 A. They are.

12 Q. And in your opinion was your verification of
13 production by the appropriators reasonably precise and
14 correct?

15 A. Yes, it was.

16 Q. Could you indicate to the Court again as much
17 as you did on the overlying users, the varying degrees of
18 verification which were available and that which was utilized
19 for purposes of this case by you?

20 A. In this particular case what we used, Your Honor,
21 was the State Water Rights filings that all of these different
22 entities have filed over the years since 1953. We happen
23 to be quite familiar with most of these entities and we have
24 actually studied most of these systems over the years and
25 have a very good feeling of the degree of reliability of
26 their metering devices and in our opinion what they filed with

1 certain modifications and certain things that we did look at
2 in detail. There were some discrepancies but they are
3 really quite representative in a relative fashion just
4 what their respective productions are. You could do a
5 detailed --

6 Q Excuse me, how are these filings for the
7 State Water Rights Board more reliable in your opinion than
8 the filing by individual overlying agricultural users?

9 A Well, number one, most of these are metered.
10 Number two, you can look at metered production records and
11 then also look at metered consumption records and compare
12 the two to determine that the production and the consumption
13 are relatively remote. There are always system losses and
14 unaccounted for water but there is that second line but
15 most of these companies are really rather sophisticated
16 water agencies and they are interested in metering their
17 production, they are interested in their costs, they are
18 interested in exactly knowing what's going on in their system.
19 So they pay attention to it.

20 Now there are some farmers who do the same thing
21 but then there are other farmers who don't. So you do have
22 a much greater degree of reliability when you look at this
23 type of agency that's keeping this type of records and making
24 this type of filing than you do when you just in general
25 talk about all these overlying users in the agricultural
26 field.

1 THE COURT: Mr. Stark, for semantic purposes, are
2 we saying that the only difference at least at the
3 beginning of our definitions between an appropriative right
4 and an overlying right is the fact that on the former we
5 are dealing with entities in which we are comfortable with
6 the amount of acre feet used because of the nature of the
7 role of the utility or the city as compared with a farmer?

8 MR. STARK: No, Your Honor. The classification
9 of use for pool purposes the overlying owners, the overlying
10 pool are all parties whether agricultural or non-agricultural
11 who are producing water from wells from the basin underlying
12 their lands for use on their overlying lands. Since the early
13 case of Riverside versus San Bernardino, use by a city,
14 district or utility is classified and categorized as an
15 appropriative use even though it is used on overlying lands
16 and that Orange County case, the City of San Bernardino
17 was urging the exercise on behalf of it's citizens of an over-
18 lying right in the San Bernardino Basin and the Court says,
19 no, you are an appropriator and because the Supreme Court
20 in L.A. versus San Fernando has in effect reestablished the
21 contrasting position between overlying and appropriative
22 rights, the two pools were categorized separately.

23 It happens in the appropriative pool you have the
24 type of agency that traditionally meters and measures and
25 resells and therefore keeps records but that is better records
26 Therefore that is the basis.

1 THE COURT: Thank you. Do you want to take a
2 break? We will continue for another --

3 MR. STARK: I have about two more questions and I
4 think we can let Mr. Carroll off and take a break before
5 the next witness.

6 THE COURT: Okay.

7 Q (BY MR. STARK) Mr. Carroll, are you familiar
8 with the operations of the State of California insofar as the
9 hydrology of the Chino Basin is concerned?

10 A Yes, I am.

11 Q What is the nature of their facilities that they
12 have that they produce water for?

13 A They have four different entities as I recall.
14 One is the Department of Fish and Game which has somewhat
15 of a small fisheries located down in the southwest portion
16 of the Chino Basin. Then there are two correction institutions
17 there, the Mens and Womens Prisons and then there's a Youth
18 Authority and what they do, of course, they do quite a bit
19 of farming but they also use a lot of water for domestic
20 purposes. They really have a mixed use of agricultural and
21 domestic.

22 Q But their use is all on their State owned lands
23 overlying the basin, is it not?

24 A Yes, it is.

25 Q Now, Mr. Carroll, in the judgment, there is a
26 provision for what is denominated plan overdraft in the

1 appropriate pool at a rate of 5,000 acre feet per year at
2 the outset but with a limitation of not to exceed an aggregate
3 250,000 acre feet in total?

4 A. Yes.

5 Q. Have you had occasion to study what the impact
6 of the extraction of 200,000 acre feet of water over and above
7 safe yield would be on well levels within the basin?

8 A. Yes, I have. Chino Basin if you take the entire
9 basin, there's a little over 15,000 acre feet of usable
10 water in storage for every foot of depth of the basin. So
11 if you were to take 200,000 acre feet and divide it by the
12 15,000 what you get is approximately 13 feet of draw down over
13 the entire basin. The basin really doesn't act that way,
14 however, because it doesn't all draw down uniformly and it's
15 really hinged along the Santa Ana River and when I say
16 hinged, I mean that regardless of the amount of extraction
17 from the Chino Basin for a long period of time, there would
18 really be no change down at the river. The river is just
19 sort of a zero point. So if you hinge it around the river
20 and then let it drop back, the depth of water drop would
21 probably be somewhere in the neighborhood of 30 feet back up
22 in the basin. We've done considerable amount of study on
23 this particular thing as we also, to qualify my answer a
24 little bit, have indicated that we don't think there would
25 be much change in storage in the northern part of the basin,
26 that most of the change would be in the middle and the lower

1 end even though it's zero at the very bottom. So I have to
2 qualify my answer and say that it would probably be from zero
3 at the lower end to 30 to 35 feet up towards the middle of
4 the basin.

5 Q The majority of the individual farmers, however,
6 are located, those using their independent wells are located
7 in the lower end of the basin, are they not?

8 A They are.

9 Q And for the most part the appropriators are in
10 the northerly portion of the basin where the greatest impact
11 of the land overdraft would be reflected, is that correct?

12 A That's correct.

13 MR. STARK: Your Honor, I'd like to offer in evidence
14 Exhibits 8, 9 and 13, all of which have been testified to.

15 THE COURT: They will be received.

16 MR. STARK: That's all of Mr. Carroll at this time,
17 Your Honor.

18) THE COURT: Any additional examination? I guess
19 in light of the fact that there are no persons appearing in
20 contest to this case, we don't have cross-examination. I
21 don't see any persons coming forward to question you, Mr.
22 Carroll. Thank you very much.

23 I appreciate your testimony. You may step down.

24 We will be in recess until 3:00.

25
26 (Proceedings recess at 2:50 o'clock p.m.)

1. IN OPEN COURT (3:02 p.m.):

2. THE COURT: You may proceed.

3. MR. STARK: Mr. Brommenschenkel.

4. FRANCIS BROMMENSCHENKEL, JR.

5. called as a witness herein, having been first duly sworn,
6. is examined and testifies as follows:
7.

8. THE CLERK: Please be seated, state your full
9. name and spell your last name for the record.
10.

11. THE WITNESS: My name is Francis Brommenschenkel.

12. THE COURT: Would you spell it?

13. THE WITNESS: Last name is spelled B-R-O-M-M-E-N-
14. S-C-H-E-N-K-E-L.

15. THE COURT: First name again was --

16. THE WITNESS: Francis.

17. THE COURT: I should know. Is that "i" or "e"?

18. THE WITNESS: That's with an "i", Your Honor.

19. MR. STARK: As a preliminary to Mr. Brommenschenkel's
20. testimony, Your Honor, I should note that there will probably
21. be references to SB222 which was a legislative designation
22. of a Senate Bill. It is the common parlance in the area
23. and everybody refers to it.

24. The Bill is technically the Chiro Basin
25. production assessment law and was Chapter 155, Statutes of
26. 1975 which had a water code sections 72140 to 72146. It is

1 a gross --

2 THE COURT: Can we give credit to the Legislator?
3 Whose Bill was that?

4 MR. STARK: It was Senator Ayala.

5 THE COURT: That should be in the record.

6 MR. STARK: Particularly since it was -- it is a
7 pump tax Bill which provided the funds for purposes of the
8 engineering investigations and negotiations in connection
9 with this proceeding but it is the reason I make this
10 introduction is that people in normal parlance still call
11 it SB222 and it's the only name we seem to know it by.

12 THE COURT: As a matter of curiosity, has this
13 kind of Bill been introduced in other areas for the same
14 purpose?

15 MR. STARK: Not really anything comparable. It
16 was a particular unique Bill because as the Exhibit 1 will
17 show there are three municipal water districts overlying the
18 basin and it provides for the common levy of a pump tax on
19 producers within this basin and in the case of Western
20 Municipal and Pomona, that was only a small part of this
21 area so it's a relatively unique funding Bill and was an
22 example of the reason that we use an adjudication to
23 develop a management plan is that we didn't have an overlying
24 political entity as such and even getting the limited funding
25 Bill on a three district basis was a monumental task for which
26 we do in fact owe a great deal to Senator Ayala.

1 THE COURT: That's what I was submitting. Thank
2 you, Mr. Stark.

3
4 DIRECT EXAMINATION

5 BY MR. STARK:

6 Q Mr. Bromenschenkel, would you and if I may,
7 Your Honor, for the ease of the reporter and myself, I would
8 like to adress Mr. Bromenschenkel as Fran which is what we
9 know him as it saves a great deal of transcript?

10 THE COURT: Certainly.

11 Q (BY MR. STARK) Fran, would you state your
12 educational and employment background briefly?

13 A Graduated from North Dakota State University
14 in Fargo, North Dakota with a degree in Agricultural Economics.

15 Q Pull the mike down. Pull it in a little
16 closer to you.

17 A And I continued my education at Cal Poly in
18 Pomona where I received a Master's Degree in Economics in
19 1974, that was completed.

20 I've been employed with the Chino Basin Municipal
21 Water District since 1971 working on the various programs
22 of the district up until early 1975 when Senate Bill 222
23 was instituted and since then I have been working full time
24 on the collection of the assessments and the adjudication of
25 the Chino Ground Water Basin.

26 Q Can you describe just briefly something of the

1 scope of the duties you've performed in connection with the
2 adjudication during the periods since 1975?

3 A. It has involved at the onset approximately
4 four to five months of telephoning potential parties within
5 the Chino Basin to determine if they were a current party
6 having an interest or a share in a water well or water
7 producing facility and the names and stuff that were at my
8 hand at that time were derived from the Orange County
9 settlement listing of dairymen and stuff within the area,
10 listings from the State Health Department of their monitoring,
11 the Santa Ana Region Water Quality Control Board also had
12 listings for dairies and this sort of thing and all these
13 were cross-referenced and compiled into a total listing and
14 if I remember right we started out with originally in the
15 neighborhood of 1300 potential parties in this adjudication
16 and since then it has built to a little better than 2600
17 parties of which nearly 1300 have been dismissed and a lot
18 of the dismissals and stuff through a -- especially through
19 the last three years have been primarily changes in ownership
20 of people holding properties that is now in the process
21 or has been developed in the last couple of years.

22 Q. And has this data with regard to parties been
23 reduced to computer form so it's easily dealt with at this
24 point?

25 A. Yes. Exhibit 14 is an example of the computer
26 work, Trial Exhibit 14, Chino Basin Municipal Water District

1 versus City of Chino, List of Active Parties.

2 Now, this is all of the active parties that we are
3 aware of at this time and there's a summary of the Codes
4 showing the status and everything of each. On the first
5 page there are, under Summary Codes, you've got the status
6 Code which indicates one of four different status codes, the
7 first being stipulated of which there are 1206 parties.
8 The second code, defaulted, 59 parties and the third code,
9 unanswered parties of which there are 5 and the total on the
10 active parties list is 1270.

11 The second coding there which indicates the pools,
12 the first pool being the overlying agricultural pools of which
13 there are 1236 parties. The second pool is the overlying
14 non-agricultural pool of which there are 12 parties and
15 the third pooling, the appropriative pool which there are
16 22 parties.

17 And the third breakdown of codes is to whether or
18 not they are a State of California, a water district, city,
19 corporation, water company, individual or San Bernardino
20 County or a school within the county.

21 Q This listing which is identified as Exhibit 14
22 was prepared under your direction, was it?

23 A Yes.

24 Q And as I understand it, it is the current list
25 of all active parties following dismissals and adjustments
26 in the party list?

1 A. Yes. The last corrections went into this
2 yesterday afternoon.

3 Q. I offer Exhibit 14 in evidence, Your Honor.

4 THE COURT: It will be received. Do you have your
5 own computer equipment or did you have to lease it?

6 THE WITNESS: Chino Basin has a computer available
7 to them and it has been utilized throughout.

8 THE COURT: Assuming it's permissible under the
9 law, you may end up with a new service for the water company
10 as computerizing lists for lawyers in litigation.

11 Q. (BY MR. STARK) Is it possible from your computer
12 list to provide mailing labels on all of these active
13 parties?

14 A. Yes.

15 Q. It is incidently, Your Honor, contemplated that
16 because of the enormous number and the burden of noticing
17 that any notices subsequent to judgment, the party seeking
18 to make the notice could obtain labels, address labels
19 off the water master's computer.

20 THE COURT: Is that in your judgment?

21 MR. STARK: It is in the rules and regulations.
22 I'm not sure whether the judgment provides it. The parties
23 have contemplated it and I'm not entirely sure that it's
24 spelled out in the judgment as such.

25 Q. (BY MR. STARK) In addition to the matter of
26 parties, Mr. Bromenschenkel, did you participate in the

1 negotiating sessions of the various committees and groups
2 who worked on the stipulated judgment?

3 A. Yes. I don't recall missing many, if any, of
4 the various subcommittee and advisory committee meetings
5 since the beginning of Senate Bill 222.

6 Q. And did your duties include work with Mr.
7 Carroll's people on verification of production by the parties?

8 A. Yes.

9 Q. Would you turn to Exhibit 10 which is entitled
10 Inter-pool Allocations of Safe Yield. Was this Exhibit
11 prepared by you or under your direction?

12 A. Yes.

13 Q. Would you explain briefly to the Court what
14 is reflected on that Exhibit?

15 A. Okay. After a safe yield figure was derived
16 and the various producers separated into the pools and every-
17 thing there had to be some sort of an allocation among those
18 pools and as a result the breakdown that you see in the first
19 column that's headed Acre Feet Total Production was the
20 result of quite extensive negotiations among the various
21 pools and the overlying agricultural pool in turn as a
22 result was allocated 96,206 acre feet.

23 Q. Was allocated or is the 96,000 an allocated
24 share or is that an actual production figure?

25 A. That 96,206 is the total production of the
26 agricultural pool for the --

1 Q Where was it derived?

2 A That was derived from fiscal year '74-'75
3 assessment production under Senate Bill 222 which was
4 thought to be the most accurate estimate of current production
5 on the part of the agricultural pool.

6 Q Are you familiar personally with how those
7 individual estimates of production were made, on what basis
8 they were made?

9 A Yes. In many cases the production was computed
10 with the parties and myself over the telephone if they had
11 questions. In the first assessment report that went out,
12 there was a land use estimator table that has been prepared
13 by the Division of Water Rights for purposes of estimating
14 production of agricultural lands in any particular section
15 of California and the one we were using was particular to the
16 Chino Basin area and from that agricultural producers could
17 estimate their own production and if they had any questions,
18 why they in turn would have called in.

19 Q To your recollection from the transmittal of
20 the request for estimates on the 222 assessment, were the
21 parties advised that this might not only relate to their
22 tax due under the Bill but might be utilized for purposes of
23 determining water rights?

24 A Yes. That was in the original cover letter
25 that went out to all parties.

26 Q All right. Now, what about the overlying

1 non-agricultural figure in the first column of 9,409 acre
2 feet, where did that come from?

3 A. That was derived from the pools base period
4 production which was 1965 through '74. It's an average
5 production for that 10 year time period and it was
6 considered the most typical of their production.

7 The non-agricultural pool is quite stable in their
8 production, that their water requirements over time have
9 been fairly consistent and taking an average it was thought
10 to be an equitable share towards that particular pool.

11 Q. And what about the figure 69,861 in the
12 appropriative pool?

13 A. It was derived also from the '74-'75 production
14 figures under Senate Bill 222. That was used due to the
15 fact it gives a current, most up-to-date figure as far as
16 the appropriators are concerned. The appropriative pooling,
17 the pool that is increasing demands greater than either of
18 the other pools and by taking their current demand, put
19 them into perspective with the other pools.

20 Q. So that the current estimated production
21 at 175,476 is roughly 35,000 acre feet in excess of Mr.
22 Carroll's estimated 140,000 acre safe yield, is that correct?

23 A. Yes.

24 Q. Now, you referred to allocating this shortage
25 and the figures in the second column would indicate an
26 allocation of 140. Was that done on some mathematical

1 formula or was that result strictly negotiated between the
2 parties?

3 A I think you would have to say it's the result
4 of strict negotiations among the parties. One of the
5 primary criteria that went into the overlying agricultural
6 pool's share was the fact that as that consideration to be
7 given to the agricultural pool as much as possible as far as not
8 wanting to drive agriculture out of the area or green belt
9 out of the area because of water pricing and as a result
10 it was, so to speak, an arbitrary figure of five dollars an
11 acre foot was picked as being this particular point in time
12 and everything, a figure that agriculture could cope with
13 and that five dollars an acre foot is not going to drive,
14 you know, the majority of agriculture out of the area.

15 Q Did you run economic or statistical analyses
16 to determine whether the result of this agreed cutback on
17 agriculture to 82,800 acre feet of rights would result in
18 an assessment under current conditions around five
19 dollars?

20 A Yes.

21 Q And were there independent economic studies
22 done at any time during the negotiations to confirm these
23 assumptions?

24 A Yes. There was a socio-economic study done at
25 South Bi-Ultra System (Phonetic) a separate engineering and
26 economic firm outside, that had no dealings with the

1 negotiations up that particular point in time to give an
2 outside view of the judgment as it stood approximately a
3 year ago and that study was completed, I believe, March
4 first of 1977.

5 Q And did it confirm the assumption of the
6 parties that the level of cutback would not in itself impair
7 continued agricultural operation in the basin?

8 A Right. There was only one crop that could
9 possibly be considered to have to be abandoned and it was
10 permanent pastures. Anyway that's the only crop that there
11 was a possibility of it having to be abandoned due to the
12 cost of water but the amounts of that are it's very minimal
13 and most of the permanent pasture is irrigated by various
14 washwater in the area. So it wasn't considered any problem
15 at all.

16 Q I notice, Fran, that the share of the cutback
17 that is the permanent cutback for the overlying non-agricultural
18 pool at 21.71 is roughly comparable to the appropriative
19 pool reduction of 21.51 in terms of operating safe yield.
20 That is with 5,000 acre feet of planned overdraft?

21 A Right. The overlying non-agricultural pool
22 and the appropriative pool have by agreement through
23 negotiations agreed to take an equal cutback and with the
24 5,000 acre feet of planned overdraft, each the appropriative
25 pool and the overlying agricultural pool did within just
26 a few percentage points realize the same cutback.

1 THE COURT: You mean non-agricultural?

2 THE WITNESS: Overlying non-agricultural pool,
3 right.

4 Q (BY MR. STARK) I would point out to Your Honor
5 that in the judgment provisions in connection with this
6 interpool allocation, the shares of safe yield which are
7 allocated by the judgment and to the physical solution to
8 the overlying pools are fixed quantities. Any changes in
9 safe yield will not affect those fixed quantities so the
10 major impact of changes in safe yield would fall upon the
11 appropriative pool and that constitutes one of the reasons
12 that the appropriative pool participates in the planned
13 overdraft quantities in order to bring the judgment into
14 check.

15 THE COURT: I assume that the cost to the
16 appropriative pool also is borne by those with that class,
17 i.e., home users, etc, so that the purpose of it is
18 spreading of a cost where the parties involved in this case
19 felt that it could properly be spread?

20 MR. STARK: Yes.

21 Q (BY MR. STARK) Would you comment on the
22 socio-economic study with regard to the impact of the
23 solution on the overlying non-agricultural pool and
24 the appropriative pool?

25 A The effect of water pricing on the overlying
26 non-agricultural pool which is basically the industries and

1 stuff within the area, the cost of water is a very minimal
2 amount of the total operating cost of the majority of the
3 industries operating today and the average industry in the
4 Southern California area. As a result, they are having to
5 take on the extra burden in the Chino Basin situation.
6 It's not felt that there's going to be any industries
7 that are going to refrain from locating within the area
8 and as far as the appropriative pool is concerned, there's
9 been several studies that have been done in addition to the
10 socio-economic study we had done by an outside firm that
11 indicate that the price of water as far as the individual
12 home owners and stuff can double without having any adverse
13 effects on the domestic users.

14 The cost of water to the home owner again is a
15 fairly minimal cost and the -- you know, it was taking into
16 consideration people of fixed incomes and this sort of thing
17 and the effects were thought to be minimal.

18 THE COURT: Do you know how much percentage-wise
19 the typical home owner is going to have to pay as a result
20 of this judgment?

21 THE WITNESS: Not precisely. It varies in between
22 the various appropriators right now in that you've got
23 appropriators that are in the northern portion of the basin
24 where they are pumping from water levels that are much
25 lower than what they are down in the middle or the southern
26 portion. So you've got the different cases there of current

1 water cost to the individual home owners within the basin
2 right now and the exact figures, the range there I'd say
3 was as far as a monthly billing would go or might go,
4 monthly billing would be approximately five to six dollars
5 difference and that would be like from 10 to 15 to 18 dollars
6 by monthly bill.

7 THE COURT: You indicated the study showed that
8 up to a 50 percent increase does not have a substantial
9 impact on a typical home owner. That testimony should not
10 be construed to mean that the cost will be increased by
11 50 percent, is it?

12 THE WITNESS: No.

13 MR. STARK: Although I should say in the industry
14 the presently projected power costs indicate that we are
15 going to be dealing in enormous increases in costs of water
16 which are unrelated to this judgment.

17 THE COURT: Yes. I have to assume that the entities
18 involved that distribute the water have not only -- that
19 have not only looked at this in a technical sense but have
20 looked at it in a sense of the costs that are going to be
21 borne by the consumer and that the interests of the consumer
22 have been protected in the course of this negotiation.

23 Q (BY MR. STARK) Yes. The socio-economic
24 study involved expenditure of roughly how much?

25 A. 30,000, I believe, total.

26 Q So far as I know, Your Honor, this is the only

1 lawsuit of its type that at least that I know where the
2 parties have stopped to study that precise thing. The study,
3 the socio-economic impact of the judgment and not merely
4 negotiated between the water purveyors.

5 Fran, would you turn to Exhibit 11 which is
6 entitled Summary of Calculations and Filings and up above,
7 Warren E. and Cheryl Bain.

8 Would you state just briefly what is contained
9 in that Exhibit?

10 A. Warren E. and Cheryl Bain are two of the four
11 agricultural pool -- well two of the five answering parties
12 and this is a summary of the production that I have been
13 able to put together on the Bains and in the first column
14 there you've got Senate Bill 222 Reports.

15 For 1974-74, they reported their production at
16 1.2 acre feet and in '75-76, probably as a result of their
17 not sending a report in, they were called over the telephone
18 and they and indicated that their production was zero and
19 in 1976-77, they indicated their production by report as
20 being five acre feet.

21 You see in the second column there's nothing
22 reported to the Division of Water Rights. I had contacted
23 the Division of Water Rights by telephone and had them
24 research the -- not only the names of the Bains but, if
25 I remember right, the former owners of the property and they
26 were not able to find any wells or well numbers that were --

1 that coincided with these parties and in the third
2 column there you see the land use estimate. That figure
3 was derived by using the land use estimator table that
4 was put out by the Division of Water Rights and it's a
5 figure taking their current use of their lands and the
6 number of animals and everything and just anticipating that.

7 Excuse me. That current use data was derived from
8 their depositions, was it?

9 A. Yes.

10 Q. And the Edison Records figure is what?

11 A. That was derived by the records that we had
12 subpoenaed from the Edison Company, taking their kilowatt
13 hours of use under the agricultural pumping records that
14 were supplied by the Edison Company and using the socio-
15 economic study of which had determined the approximate
16 pumping cost within the area and using the sum of kilowatt
17 hours against the socio-economic studies calculation of power
18 costs.

19 Q. The following pages are simply the backup data
20 for those summary sheets?

21 A. Right, from their files.

22 Q. Now, with regard to Exhibit 12 which appears to
23 be a similar calculation for Frank E. and Ruth Martin. The
24 same type of calculations are made there?

25 A. Yes.

26 MR. STARK: Your Honor, I would like to clarify

1 the purpose of this testimony and these Exhibits is not to
2 bind these parties. These four parties are answering parties
3 although their counsel has indicated that he would default
4 at the time of trial, because of that unique status I wanted
5 the record to show that in terms of their admissions and
6 their non-reporting to the State Water Rights Board a
7 determination of their rights in an adversary proceedings
8 would in all probability prejudice them compared to their
9 participation in the physical solution where they are
10 entitled to pump whatever they need and to pay on a gross
11 assessment basis and the purpose of introducing the testimony
12 is basically to show the fairness of a judgment which binds
13 them to a physical solution as distinct from the alternative
14 of determining their right in joining them in and requiring
15 them to pay 40 dollars an acre foot for the overage.

16 The substance of the deposition that we took
17 was in my opinion, this is essentially could determine if
18 they, like many individual producers, don't understand all
19 the implications of report filing. So far as the Plaintiff
20 is concerned, we would propose that they be included under
21 the physical solution with all other parties.

22 THE COURT: Thank you, Mr. Stark. Do you want
23 those Exhibits in evidence?

24 MR. STARK: I would offer Exhibits 11 and 12 and
25 Exhibit 10.

26 MR. WEHLAND: Could it be clarified by testimony,

1 Mr. Stark?

2 THE COURT: Those Exhibits will be received.

3 MR. WEHLAND: Excuse me.

4 Q (BY MR. STARK) These are producers in the
5 agricultural pool, are they not, Mr. Erommenschenkel?

6 A Which?

7 Q Bains.

8 A Bains and Martins. Right, those are agricultural
9 producers.

10 Q And they do appear on the active party list,
11 Exhibit 14?

12 A Yes.

13 Q Although they would appear there as answering
14 Defendants?

15 A Right.

16 Q I believe that's all the testimony that I
17 desire from Mr. Erommenschenkel.

18 THE COURT: Thank you very much, sir.

19 MR. WEHLAND: At this time, Mr. Stark, were you
20 going to listen to any testimony on Exhibit 7?

21 THE COURT: The Clerk advises me that Exhibit
22 13 and 15 are in.

23 MR. STARK: Yes. Thank you, Mr. Wehland. I was,
24 if I may, Fran, would you turn to Exhibit 7 and I'll ask you
25 whether that was prepared by you or under your direction?

26 A Yes, it was.

1 Q Would you describe how -- what the Exhibit
2 contains and how the figures shown there were calculated?

3 A As is labeled, Overlying Non-Agricultural
4 Rights of the overlying non-agricultural pool. It's the
5 listing of the 12 parties within that pool which are basically
6 the industries within the basin that are pumping from the
7 underground.

8 The total overlying rights in the first column,
9 they were determined as I may have explained before from the
10 1965 through '74 production as reported to the Division of
11 Water Rights and through the negotiations and discussions of
12 production and this sort of thing these production figures
13 were verified and checked over in that there were errors in
14 some producers not having production in a particular year
15 and in turn we went back to the division of water rights
16 and, you know, searched their records and searched the
17 records of producers themselves.

18 You will see Quaker Chemical Company being the 12th
19 party in this pool which was added just this last year as
20 a result of their activating a water well on their property.
21 It was an existing well. It may have been just covered over
22 and it was not in use but they after discovering it, decided
23 that they wanted to determine what the quality of the water
24 in this well was and as a result they found out that the
25 quality was much better than the water that they were getting
26 from their surface supplier and they have elected to go ahead

1 and activate this well. So they will be paying a straight
2 net assessment on the particular foot of water that they will
3 be producing out of their well and this has been acceptable
4 with them due to the fact water quality is -- it's very
5 important to them and that they in turn have to dispose of
6 the waste as it is leaving their plant and the cost of the
7 water going out and in many cases it's more expensive than
8 what it is coming in.

9 Q The second or the last column then is just a
10 mathematical professional prediction to the shares in the
11 agreed share of the safe yield?

12 A As far as the interpool allocations are concerned.

13 Q And as within this pool, all of these parties
14 have reviewed these various rights and have agreed to that
15 allocation?

16 A Yes.

17 Q I offer Exhibit 7, Your Honor.

18 THE COURT: It will be received.

19 MR. STARK: That's all of the testimony. As to
20 Exhibit 15, Your Honor, which is the correction draft of the
21 judgment annotated for certain minor changes, since the
22 draft which was submitted with the pretrial order I propose
23 to discuss those with the Court, I suggest that the document
24 be introduced or offered in evidence as an Exhibit in the
25 case and order to preserve a record as to what those
26 changes have been and to clarify my comments on those changes.

1 THE COURT: Thank you. It will be received.

2 You may step down.

3 MR. WEHLAND: For our own record, is that the same
4 as the copy attached to the Plaintiff's Pretrial Memorandum?

5 MR. STARK: No. I should explain that there are
6 six or eight copies which were circulated that have blue
7 covers on them and those have some changes in red which are --
8 I'll comment on. Those who did not have blue covers will not
9 have the red corrections. I'll have to read them in. We
10 simply didn't get enough copies with the red corrections.

11 THE COURT: Excuse me. Is there any more evidence
12 you wish to present?

13 MR. STARK: No more evidence.

14 THE COURT: Is there anyone here who has not had
15 copies of all the Exhibits so that administratively we can
16 deal with that?

17 MR. WEHLAND: Just Exhibit 15 as far as I'm
18 concerned, Your Honor.

19 THE COURT: And at this time then you plan to take
20 me and as I say this is the public forum in that context so
21 maybe as much as the judgment is some 81 pages maybe you
22 could take me through it in terms of theory and then take
23 me through it in terms of changes to assure us all that the
24 changes are not outside the Court's jurisdiction as to the
25 default as facts of this case.

26 MR. STARK: Very good, Your Honor.

1 First as to the basic concept of the judgment, the
2 purpose of the proceeding essentially is to utilize the
3 basin, that is to bring all the parties within a single
4 jurisdictional or judicial control so that a plan can be
5 adopted that has equity across the whole hydrologic unit.

6 Basically the problem that we are dealing with is
7 the difference between that 175,000 acre feet of current
8 production and the 140,000 acre feet of safe yield. That's
9 35,000 acre feet or adjusted with the temporary overdraft.
10 Planned overdraft is 30,000 acre feet of water which must
11 be spread and released in the basin if we were to acquire
12 balance in the basin.

13 That 30,000 acre feet at current prices is in
14 excess of a million and a quarter dollars per year and the
15 property --

16 THE COURT: Write that down for me so I don't have
17 to do it.

18 MR. STARK: 40 dollars an acre foot is roughly
19 the cost of replenishment water if it were available from the
20 Metropolitan Water District. At last prices it was
21 40 dollars.

22 THE COURT: If I recall litigation in which the
23 only time I was ever a lawyer in the case --

24 MR. STARK: It was 30 dollars.

25 THE COURT: I was going to say it was something
26 under 30 dollars.

1 MR. STARK: It was 30 or under. It's now slightly
2 over 40 because of the drought it is not currently available
3 and there is no assurance that the water will be 40. There
4 is assurance that the price is -- all prices will go up but
5 nonetheless, the magnitude of the problem lies in needing
6 to obtain at the outset 30,000 acre feet of water at roughly
7 a minimum of 40 dollars an acre foot and the function of
8 the case then was to determine a reasonable and equitable
9 method of allocating that cost among the current producers.

10 The unique feature of this basin compared to any
11 prior adjudications was the fact that roughly 60 percent of
12 the production lies in individual overlying agricultural
13 parties. Your Honor will recall that in the San Gabriel
14 adjudication where there were far fewer parties, substantially
15 all of them were what we here call appropriators. They were
16 major and aggressive parties.

17 Here we had this large group of parties with better
18 than half of production of the basin who had a type of use
19 highly sensitive to increased costs of water because water
20 is a major element of agricultural cost. It's for that reason
21 that the design of the judgment first of all is a determination
22 of rights, the issue of an injunction and then provisions
23 of a physical solution in lieu of restraint under the
24 injunction in order to assure that everyone upon paying
25 their fair share of the costs has all of the water that they
26 need.

1 Because of the complication of the agricultural
2 production and deriving in great part from some experience
3 which was developed in a political context in the Orange
4 County Water District where they have long had a pump tax and
5 have dealt with a large agricultural group, we undertook to
6 divide the parties into three pools. The additional
7 reason for the division of parties in the pools for the
8 physical solution are that under the San Fernando case the
9 appropriators are now determined to have -- now determined
10 to have always been exempt from prescription under Section
11 1007 of the Civil Code.

12 This meant that what we had come to was the
13 traditional neutral prescription rules could not apply
14 because without the concept of the appropriators, there
15 was no way to prescript against this. The Supreme Court in
16 making that decision in the San Fernando case appears to
17 some of us at least to have tried to soften the blow or to
18 offset it by a ruling confirming that the overlying
19 agricultural producers preserves his overlying right by
20 self help which appears to mean his maximum exercise that he
21 has not abandoned for a prescriptive period.

22 The Court also imposed more stringent rules on
23 notice of overdraft if anybody is to assert prescription.

24 Reading the rules on Notice and looking at
25 1200 Defendants and realizing that it would in all probability
26 require proof of notice to each of the 1200 parties which

1 almost by definition makes the suit uneconomic. The parties
2 entered into the case knowing that they had to develop
3 a plan and knowing as a practical matter that adversary
4 adjudication was not feasible in light of the San Fernando
5 case.

6 By putting the farmers in one pool -- I say farmers,
7 its farmers, small individual, domestic and so forth -- we
8 have in that grouping the parties who are most sensitive
9 to the cost of water and therefore it was possible to provide
10 for a what we call a gross pump tax, that is they pay as
11 they do in Orange County. Their assessment will be on
12 their total production regardless of what their right is.

13 Under that type of physical solution it makes
14 no difference what that right is because they get no advantage
15 out of it but the result is that it gives a low assessment
16 level.

17 Now, every producer in the basin was giving up
18 something in the greater allocation of water to the
19 agricultural pool, in order for, I suppose, social purposes
20 to retain the green belt and to retain agriculture. So
21 everyone had a concern with this gross assessment which
22 is as I say the solution in Orange County because there
23 is no economic benefit flowing from the ownership of a
24 particular overlying right in the agricultural pool. There
25 is simply a gross allocation of right to that pool and an
26 obligation for the pool on a gross assessment basis to make

1 up any deficiency.

2 The other thing it does is it allows land that's
3 not in agriculture to go out of agriculture and new land to
4 come in and participate in that gross allocation of overlying
5 water. I suppose the measure of it is there is common
6 interest in that pool and that it was possible in the mechanics
7 of it to come up with something that was acceptable to those
8 parties so that we do have the stipulation of 1200 parties.

9 In the overlying non-agricultural pool we had just
10 the reverse. So we had to split the overlying pool when
11 we recognized this difference, that the overlying industry
12 is not concerned basically with the cost of water but rather
13 with it's availability or it's water quality or something of
14 that nature and so they are on a straight, traditional net
15 basis. Their right was determined by their self help or
16 their exercise of their overlying right. It was determined
17 and they pay acre foot per acre foot what they overproduce.

18 There is provision in the judgment to encourage
19 those industries if they can to come into municipal systems
20 and to allow the municipal system to enter into an
21 agency contract to pump that overlying water because that
22 maybe to the benefit of the area as the cities and water
23 distribution agencies begin to expand throughout the area.
24 We still have a fair amount of unincorporated area in the
25 basin.

26 The appropriative pool was the place where the

1 majority of the classical negotiation and difficulty lay and
2 the pattern there is more complex as a result. That's where
3 the people with the sophisticated knowledge and water manage-
4 ment and taking the greatest risk under this judgment are
5 located.

6 In the area in the east end which is west San
7 Bernardino County, Marygold Mutual, they are within San
8 Bernardino Municipal Water District. They have a state water
9 contract which is paid for primarily on ad valorem tax base
10 so they have a completely different pricing structure. So
11 they are in a sort of sub-pool. Their replacement water
12 is purchased on a straight net basis because that's what
13 those two producers wanted, the way they wanted to handle it
14 and it wasn't feasible to mix it with the rest of the
15 appropriative pool because of the loss applicable to the
16 use of water -- cross-water service agency.

17 THE COURT: Where is that in the judgment?

18 MR. STARK: That is in the pooling plan which is
19 Exhibit H, page 66, starts on 68 and on the replenishment
20 assessment is on page 70 and you will see under C, "For
21 production within" San Bernardino Valley Municipal Water
22 District or Pomona Valley Municipal Water District, the
23 replenishment water will be acquired by an assessment on all
24 production in excess of an appropriator's share of operating
25 safe yield in an amount sufficient to purchase replenishment
26 water.

1 Now, that's the straight net formula which is
2 the pattern utilized in San Gabriel. Now, in the Pomona
3 Valley Municipal Water District and the only party in that
4 context is the City of Pomona. They will be paying in
5 rough terms 40 dollars an acre foot under current conditions
6 for any overproduction. In the San Bernardino Municipal
7 Water District, because they are in a different water
8 supply circumstances, they will be paying about 12 dollars
9 but they still have paid the balance in ad valorem taxes.

10 The majority of the appropriative pool was involved
11 in a compromise situation which again is unique but as a
12 result of negotiations to oversimplify, if you have a
13 longstanding stable water use and a right roughly equivalent
14 to that use a stable or declining water use, a net assessment
15 is most advantageous because you don't propose to
16 produce more than you historically produce.

17 So on a net assessment basis, if you just stay
18 within your rights, you don't pay anything. If you are in an
19 expanding situation where your demand is increasing as the
20 city that's growing, a net assessment is to your disadvantage
21 because at any point in time your right is less than what
22 it's going to be next year, the year after and so forth and
23 so a gross assessment that is an assessment paid by everybody
24 on all their production not recognizing rights is most favorable.

25 The parties as a result of negotiation in that
26 appropriative pool have developed a mixed formula where

1 the pool owes a makeup obligation for it's total over-
2 production, and 15 percent of that is recovered on a gross
3 assessment, 85 percent is recovered on a net assessment so it
4 leans toward the net formula to begin with and then the
5 are carried in the continuing jurisdiction provisions,
6 provision for possible review and change of that formula
7 after a 10 year period and based upon recommendation of
8 parties in that pool.

9 Now, what this formula comes down to is that in a
10 rather complex sense the parties have come to agreement on
11 methods by which each of these three segments of producers
12 are willing to repay the cost of their over-production.
13 First the way in which they allocated between the pools
14 and then how they allocated within each pool.

15 The determination of right as to the appropriative
16 pool is, we believe, first of all, it is a stipulated
17 determination but it is, we believe, consistent with the law
18 with the exception that appropriative rights are traditionally
19 first in time and first in right. So far as I know, there is
20 no ground water adjudication on a comparative appropriative
21 right.

22 For instance, if I make a stream diversion and I
23 have -- I file a notice of appropriation in the old days or
24 I make application with the Water Rights Board and it's
25 by the 10 CFS pipeline I have and then 20 years later I'm
26 still only running four CFS but I finally built the

1 facility to do it and increase from four to ten CFS, I
2 will have an appropriative right that dates back to the date
3 I filed. It's difficult and I know of no good law to help you,
4 first of all, as to what the appropriation back doctrine
5 means when you are putting wells into a basin but more
6 important, each producer may be increasing annually in
7 varying degrees.

8 The problem simply on its face was so complex
9 that the parties in that pool stipulated that all of their
10 appropriative rights were of equal priority. Now that is
11 a variance from what adjudication would give but it's
12 simply common sense and in the same way that we could have
13 spent 250,000 dollars verifying production in the basin but
14 when we got through it would not change the relative position
15 of the parties enough for anyone to desire that degree of
16 precision.

17 THE COURT: The tactical aspects of it certainly
18 make good sense in breaking it down into groups that have
19 compatible interests, looking for example, the agricultural,
20 overlying agricultural group because the water case you have
21 to use pools, I know that. But if I read the judgment
22 correctly, is that theoretically they become bound to the
23 mechanics of an inner group so to speak and they then
24 have to agree amongst themselves.

25 Is there any reservation in anyone's mind that
26 that system is consistent with the rights of each of the

1 individuals.

2 MR. STARK: Each of the individuals, if we were
3 to determine in adversary terms, each individual would
4 presumably be able to claim his maximum production for use
5 on his overlying land. That right would be appurtenant
6 to that land, and if he sold or subdivided the right would
7 basically disappear and that right would also be subject
8 to proof of prescription by the appropriators if they did
9 it on an individual basis.

10 In making the over-allocation or what the
11 appropriators considered to be the over-allocation
12 and you understand that the--

13 THE COURT: I understand.

14 MR. STARK: The agricultural people do not concede
15 any reduction in their production was necessary but they
16 were willing to negotiate this but in making that over
17 allocation as the appropriators view it, it was essentially
18 because of this public policy desire to retain agriculture
19 as a part of overlying economy.

20 THE COURT: I understand that. My question --

21 MR. STARK: There's a lot of undeveloped farm land
22 in the basin and as a practical matter if you went to a
23 classical determination and said the basin is overdrawn
24 and if you are going to farm, you've got to pay 40 dollars
25 an acre foot, you have effectively prevented any new
26 agriculture from coming in and as the old agriculture goes

1 out it would be lost. The farmer who has the overlying
2 agricultural right probably will not receive any more or
3 less money because he has an overlying right. It's appurtenant
4 to that land.

5 THE COURT: My question was, let's assume that the
6 agricultural group uses more than the allocation and that
7 at the time of assessment time they look to a specific
8 farmer and they say, you're going to owe us X dollars more
9 because you've used more than anybody else.

10 In terms of the physical solution, I see this being
11 handled in gross.

12 MR. STARK: Yes, it is.

13 THE COURT: And is anyone concerned that, well,
14 I guess my underlying question, what about the rights of
15 the individual in that group?

16 MR. STARK: There has been discussion and will be
17 continuing discussion in that pool. There are two projections
18 that seem possible other than stability which never seems
19 to occur. Most people, I think, looking at it, anticipate
20 that agriculture production in spite of everything will
21 fall off. The pool will decline and I would say that the
22 calculated guess in the agricultural pool is that their
23 production will drop below the use now and there will be
24 no assessment.

25 The other possibility is there. The assessment
26 at five dollars an acre foot is cheaper than most Southern

1 California areas and it is possible to hypothesize that
2 production goes from 95,000 to 120,000. Again there is
3 retained jurisdiction to modify that pool to make a
4 determination which is the equivalent of partial net
5 assessment.

6 In other words, instead of doing it on rights, they
7 could take a base year and assess on production increases
8 by individual producers over that base year. The people
9 in the pool have talked about the problem and they were
10 concerned to keep the continuing jurisdiction so they could
11 police their own house, essentially.

12 THE COURT: Assuming, for some reason or other we
13 had essentially increased production, would it be your
14 guess that the matter would be adjudicated in Court or that
15 the committee or that within the group they would resolve
16 it?

17 MR. STARK: The committee presumably would look
18 at it. If the problem was severe enough to seek a change
19 in their assessment formula, they would come back through
20 the advisory committee or in this case through the water
21 master to the Court under its continuing jurisdiction and
22 it would involve not an adjudication of rights technically
23 but a hearing on the reasonableness of modifying the
24 judgment to modify that formula and we had discussions in
25 that pool as to whether and to what extent we wanted to
26 anticipate that situation.

1 I would say the majority feeling in the pool is
2 the trend will be in the opposite direction and in fact there
3 are provisions in the appropriative pool to deal with this;
4 that is, when agriculture gets under 82,000 and they leave
5 water in the ground so to speak. Where does that water go,
6 who gets to produce it and it goes to the appropriative
7 pool and the appropriative pool itself has got a very
8 elaborate provision as to how that's going to be divided
9 up if it happens.

10 THE COURT: Without being facetious, is there one
11 person who actually understands the ramifications of these 81
12 pages? I would suspect that each pool, lawyers of each of
13 the groups understands how it works as to that group.

14 MR. STARK: We have been, I should say from the
15 outset, there has been in advisory committee, has met as a
16 full committee. We've had attendance of 30, 40 people
17 pretty regularly and it's run for good periods of time,
18 a meeting every two weeks. We've been through draft after
19 draft.

20 I don't know. In answer to your question, does
21 everybody understand everything. I wrote it and I'm sure
22 I don't understand everything, as Your Honor knows.

23 THE COURT: That's the headline in the morning
24 paper.

25 MR. STARK: But I think there has been substantial
26 participation by the agricultural group. It's been essentially

1 by the parties interests. The State of California was at
2 their request put in the agricultural pool because a large
3 part of their operation is agricultural but it has had the
4 additional advantage that the resources of the Attorney
5 General both legal and their engineering consultants have
6 been thrown in as assistants to the agricultural pool
7 in the negotiations on the judgment and I think has added
8 a balance to the entire thing.

9 THE COURT: For the Devil's Advocate only.
10 Is there any argument that can be made that the water master
11 should be an entity in the Chino Basin?

12 MR. STARK: There's not only an argument can be
13 made and there's been argument that can be made. The
14 judgment is defined that the water master can be changed
15 if it proves unsatisfactory. There is always a problem
16 with the public -- district represents the public as a
17 whole. It is the supplier to the water purveyors but it
18 also is or envisions itself to have a broad public purpose.

19 One of the critical ties here is that the entire
20 pricing structure of this plan depends upon the importation
21 of water and with the district as the water master, the
22 district is involved and committed to a delivery of that
23 water and has the resources to provide the capital facilities
24 which are not provided in this judgment, the capital
25 facilities for spreading water.

26 So the district in all probability has a function

1 in the normal course in this pattern. You will recall in
2 the San Gabriel case a committee was developed where the
3 districts were represented and the producers were
4 represented. This formula sounds different but it's
5 essentially the same. We have an advisory committee and
6 a water master and if they were to operate adversarially, it's
7 a Mexican Standoff. Things would be back in court.

8 Most everything the water master does requires
9 advisory committee approval. The advisory committee
10 in turn goes through the water master and all decisions
11 are referable to the court. My judgment is that we
12 won't be to court any more than San Gabriel has been to court
13 which essentially not at all except for pro forma changes but
14 there is not aonly a difference in approach. There's
15 a concern that always exists between the producers who are
16 in the buisness" and the public entity who are elected
17 officials who had whatever those concerns are. It's the
18 thing that did not allow delegation to Chino Basin as
19 water master free and clear nor did it indicate going to
20 a producer committee.

21 Beyond that, the other water master operation
22 such as West Basin, Central Basin, the water master does not
23 exercise discretion. So the State performs the function
24 But here the water master will have broad discretion
25 and so what we really have is a kind of a bicameral legislature.
26 The parties will be represented and in all discretionary

1 matters the advisory committee has to act ahead of the
2 water master.

3 Actually what's happened in the period of
4 negotiations is that we've gone through things without
5 any substantial disagreement. In fact I would say that the
6 relationships between the producers and the district are
7 better in the context of the adjudication than many of the
8 other relationship they have between one another simply
9 because they have sat down regularly and they do have to
10 agree and this is going to operate with a lot of meetings
11 and a lot of exchange of information.

12 THE COURT: Again, by way of just raising the
13 question, my questions are not meant to indicate a feeling
14 one way or the other, but in response to that question,
15 for example, you indicate that that is a serious matter that
16 was a matter of negotiation and the formula deals with the
17 problems that arise. Has any thought been given to and
18 again just a question, to having "referee" or whatever
19 named? We could give that person appointed by the Court to
20 be available on a monitoring basis in lieu of a judge,
21 perhaps someone who may have greater expertise and no
22 false modesty intended.

23 MR. STARK: I think, Your Honor, I think the
24 point is very good and I think when the occasion arises, the
25 Court has the power to do precisely that.

26 THE COURT: Okay.

1 MR. STARK: In fact, however, the San Gabriel
2 judgment which has a great deal of discretion in it has
3 operated now for what, four or five years and has not had
4 a contested matter before the Court. I suppose just be a
5 matter of experience whether there are going to be a lot of
6 contested matters.

7 This is designed mainly for the pool committees
8 in each pool to pretty much run their own affairs. It should
9 run smoothly. If it doesn't run smoothly, my suspicion
10 is the first contested matter will be a motion to remove
11 the water master and -- but it could be some other issue.
12 However, I think only experience will say whether it
13 burdens the court unduly. I rather doubt that it will.

14 THE COURT: Thank you.

15 MR. STARK: The judgment as stipulated to, Your
16 Honor, is set forth on the typed material on Exhibit 15 and
17 we have showed the changes which by subsequent stipulation
18 or by review by counsel for clarification have involved
19 changes.

20 I'd like to just run through them and to note
21 what those changes are and what their purpose was because
22 we would propose that the Court make a finding and/or
23 conclusion to the effect these do not constitute material
24 variations from the stipulated form.

25 MR. WEHLAND: Your Honor, before that starts, if
26 I could have about 10 seconds off the record with Mr. Stark

1 on one of the changes to the changes.

2 THE COURT: Surely.

3 MR. WEHLAND: Save some time.

4 THE COURT: Off the record.

5
6 (Discussion held off the record.)

7 MR. STARK: I think we can run through them relatively
8 quickly, Your Honor.

9 On the first page of the Exhibit, there is at the
10 bottom of the page and interlining section "Other than the
11 State of California." Now we have suggested striking that
12 language and also striking as shown in red on your copy
13 the language, "Of water rights." It was not necessary to
14 exempt the state of California. It's been reviewed with
15 the Attorney Generals Office and is acceptable to them.
16 They were the ones who had originally inserted it.

17 I won't mention the items which are quite obviously
18 typographical changes.

19 Now, page four. There is a new definition which
20 has been added as "Responsible Party" and that simply is
21 to facilitate the reporting provisions elsewhere where you
22 got multiple owners, you don't want to require a report
23 from each party. So we used the term Responsible Party
24 and defined it as one of the multiple owners.

25 If you go to page 6, as I indicated earlier we
26 have shown in red the amendment. I think it shows on all of

1 of these, should show on line 8 that on the prescriptive
2 circumstances, it's "five years prior to filing of the
3 First Amended Complaint" which we thank Your Honor.

4 On page 7, we reemphasized. "All overlying rights
5 are appurtenant to the land and cannot be assigned or
6 conveyed separate or apart therefrom." That was by way of
7 clarification.

8 On page 8, the Youth Authority is added as one of
9 the agencies of the State. The change in the middle of
10 the page deals only with clarification of language and it
11 has.

12 The changes in the Injunctive language on page 9,
13 we had used a defined term Basin Waters and it turned out to
14 be ill-conceived to describe what we wanted and so we
15 referred to it, "Restrained from producing ground water
16 from the Chino Basin"; "except pursuant to the Physical
17 Solution or a storage water agreement". We do have provision
18 here for injunctive use storage agreements; that is people
19 are just putting water in the bank and taking it out apart
20 from their rights in the basin.

21 The language in red on page 10, the "Injunction
22 Against Unauthorized Storage" again is seeking to clarify
23 the content which is to be sure that people don't store
24 water and take it out without having a storage agreement with
25 the watermaster so he can maintain regulation and as Mr.
26 Wehland suggested that language has been verified.

1 This paragraph has no application as such to supplemental
2 waters spread or provided in lieu by the watermaster pursuant
3 to the physical solution. Those are not changes in substance
4 but are clarification language.

5 On page 10-A, we have actually on page 10-A
6 in the judgment on continuing jurisdiction and in the
7 old paragraph 14 on page 77 at the end of the appropriative
8 pool, there was a restatement of the same provisions and
9 there was a redundancy that we eliminated in discussions
10 among the major appropriators consolidated in the provisions
11 on page 10 and 11 and on reviewing that language, we have
12 the change in the fourth handwritten line on page 10-A
13 which again seeks to simplify and clarify the language
14 in accordance with Mr. Wehland's suggestion which I think
15 now has gotten that.

16 Now, in the Court's copy, the phrase starting, "in
17 the event such exercise of continuing jurisdiction" and then
18 in red is put "but only" at the end of the line.

19 THE COURT: Yes.

20 MR. STARK: Then the first two words of the next
21 line, "jurisdiction is" should be stricken. I believe in
22 our making the copies we failed to catch that last item.
23 That's the point that Mr. Wehland was just calling to our
24 attention but what this does is confirm that for a 10 year
25 period the 1585 formula assessment in the main appropriative
26 pool is fixed; thereafter a recommendation of 67 percent of

1 the voting power will be followed by the Court in the absence
2 of the compelling circumstances to the contrary and
3 indicating the full change that may follow. This was a
4 fairly critically negotiated area. The reason that it
5 shows as a correction is that this was part of the key
6 negotiation leading to the supplemental stipulation in the
7 appropriative pool.

8 On page 11 --

9 MR. WEHLAND: Since this was so critical, Mr.
10 Stark, may I also note for the record it also requires
11 one-third of the number as well as the 67 percent?

12 MR. STARK: Yes. I takes 67 percent but not less
13 than one-third of the number because we have some smaller
14 parties in there as well as a few fairly large ones in the
15 pool.

16 On page 11 is where are are talking on the
17 appointment of watermaster and that language was tightened
18 to make it clear that the Court in the absence of compelling
19 reasons to the contrary would follow a majority vote of
20 the advisory committee to change in watermaster. That
21 matter was brought to the attention of the plaintiff
22 district and their board although failing to see the
23 necessity for it have agreed to it. That's perfectly
24 satisfactory with them.

25 On page 12, the prior draft had provision for
26 public hearing on rules and regulations. That had been

1 stricken and on reconsideration it was concluded that we
2 should retain hearing but make it a hearing notice to all
3 active parties. The concept of active parties, Your Honor,
4 is involved here because of the number of people and
5 their probable dislike for the amount of paper that will
6 come out, we will have a provision that, not as to court
7 proceedings, but as to any watermaster routine matters
8 if the parties desire to waive notice on those, and they
9 probably will where there are associations representing
10 them, then they may be relieved from the active parties list
11 and don't have to have copies of everything but that's in
12 their discretion.

13 On page 13, there is -- and this happens in a
14 number of points, it's not deemed substantial by the district
15 but on review there are a number of places where "subject
16 to prior recommendation or approval of the Advisory Committee"
17 is added. There are general provisions on any discretionary
18 matters being subject to that approval but the parties have
19 been concerned to be sure that that is clearly stated.

20 On page 14, there's a mechanical change on the
21 budgeting procedure which was the result of work on rules
22 and regulations and a determination that the way we had it
23 in the judgment wasn't very practical but it deals with how
24 the budget is generated and does not involve a change of
25 substance, I believe.

26 On page 15, again out of those discussion of the

1 operating mechanics, it was agreed that a budget transfer
2 not in excess of 20 percent of a budget category should not
3 require the formality of amending a budget and again at
4 Mr. Wehland's suggestion we have defined as I think was the
5 intent of the parties and the change that it's a 20 percent
6 of a budget category during any budget year. I'm sure that
7 was the intent and it's clearer so stated.

8 Now going quickly through the boiler plate, on
9 page 22 there is inserted a reference to supplemental
10 replenishment water. It was the County of San Bernardino
11 for the flood control district being concerned the judgment
12 not restrict it's operations in spreading local water which
13 was the intent of the parties but did not get into the
14 language of the judgment at the time of the stipulation.

15 Then on page 25, it is anticipated that supplemental
16 water replenishment for Chino Basin may be available at
17 different rates to the various pools to meet their
18 replenishment obligations. If such is the case, each pool
19 will be assessed only that amount necessary to the cost of
20 its replacement. That again was consistent with the dis-
21 cussions but was not explicitly stated. I think it is
22 an improvement in the judgment to have it in there.

23 For instance, it is possible that agricultural
24 water will continue to be available at a lower rate than
25 water for the other pools and they would only have to pay
26 an assessment to obtain water at their rates.

1 In the reporting section again this is where we
2 inject the responsible parties as the reporting party.

3 On page 31 we have the matter which Mr. Shaw
4 has raised and which has the concurrence of all parties
5 who have reviewed it and I think is consistent with this and
6 other judgments and that is I don't know if this is
7 expressed provision but I think this is the impact of
8 it. "Nothing in this judgment shall be deemed to preclude
9 or limit any party in the assertion against a neighboring
10 party of any cause of action now existing or hereafter arising
11 based upon injury, damage or depletion of water supply
12 available to such party, proximately caused by nearby
13 pumping which constitutes an unreasonable interference
14 with such complaining party's ability to extract ground
15 water.

16 What this judgment does is to allocate gross rights
17 or rights to produce out of the budget but it isn't
18 intended to cover interneighbor struggles. In fact, the
19 judgment may induce that sort of thing in the sense that
20 it may be possible for people having their rights
21 adjudicated to move elsewhere in the basin and this
22 provision makes them move their facilities at their own
23 peril and outside of the context of the judgment. I think
24 that effect would be there without the provisions but it
25 was called to your attention and I think it is a worthwhile
26 provision.

1 MR. WEHLAND: Mr. Stark, as far as the record is
2 concerned, I think it ought to be indicated though that,
3 well, the term neighboring might not be subject to exact
4 scientific measurement. That is what is intended and that
5 it is not intended to, by that provision to allow general
6 pumping patterns to come within that particular paragraph.

7 MR. STARK: That's correct. We are not talking
8 about generalized pumping patterns but we are talking
9 about -- on the other hand I don't think we are talking
10 about a contiguous property owner. It's a person in the
11 neighborhood or vicinity and there is in fact the thing
12 that gave rise to this is there has been one such lawsuit
13 during the pendency of this matter and that has been filed
14 and there will presumably potentially be others where parties
15 by their particular pumping practices injure or thought to
16 injure other parties.

17 On page 61 --

18 THE COURT: Excuse me. Mr. Shaw, if you want to
19 maybe there has been a memorandum someplace as to your views.
20 Is this also -- so that no misunderstanding what neighboring
21 means, at some other later date in case someone raises as a
22 defense to a lawsuit, are you comfortable with that language?

23 MR. SHAW: Yes. Mr. Stark has fairly indicated our
24 position on this point.

25 MR. STARK: On page 61, we added Quaker Chemical
26 Company with no rights which was -- the background of that
was indicated in the testimony of Mr. Brommenschenkel.

1 On 63 there's clarifying language in the agricultural
2 pool that it's a majority of the voting power of the
3 members.

4 Then on 66, there are several amendments in the
5 overlying non-agricultural pool which affect their voting
6 rights and as to which there is a separate stipulation filed
7 as to the parties within that pool approving the provision.
8 They simply changed their voting. In the original stipulated
9 form they voted in proportion to assessments paid.
10 Now they vote as the appropriative pool does, one-half
11 on the basis of assessments paid and one-half on the basis
12 of adjudicated rights. Those figures were agreed to. They
13 have been changed in red because I made the original
14 calculation and came out with a 141 doubled and it would be
15 142 doubled. Those provisions in the pooling plan affect
16 the individual pool basically.

17 On page 68 again we have the provision now in the
18 appropriative pool that where these vote requirements at
19 least one-third of the total number of members.

20 Then on page 70, in the original draft only the
21 San Bernardino Valley Municipal Water District's production
22 was on a straight net basis and all of the rest were on a
23 1585 formula. In the final analysis in order to reach
24 agreement, the parties agreed that the production in the
25 Pomona Valley Municipal Water District would be treated
26 on a net assessment basis and everybody else left on the 1585.

1 That was a negotiated change which recognizes the nature
2 of the production of the City of Pomona which was not deemed
3 by them to be compatible with the other provisions that the
4 parties were negotiating.

5 On page 71 and in a couple other places in the
6 judgment, there is inserted where they talk of investment
7 directly or indirectly that purported that "directly or
8 indirectly" language where it appears as additions to
9 cover the situation of the Fontana Union Water Company which
10 delivers the majority of its water to San Gabriel Valley
11 water Company doing business as Fontana Water Company.
12 That company as a utility makes much of the investment
13 and does quite a lot of the activity and directly or
14 indirectly language allows Fontana Union and San Gabriel
15 Water Companies' operations to be treated as a unit.

16 There are some clarifications such as on page 76
17 where there is provision for determining the cost of
18 replenishment water. It now says, "Whether or not replenishment
19 water is currently then obtainable." The longer we live
20 the more we learn. We always assume there was a replenish-
21 ment water but in the drought condition we don't have it.

22 Then, as I say, on 75 we have deleted paragraph
23 14 because it was redundant and somewhat inconsistent
24 with the language in the continuing jurisdiction paragraph
25 and those two were combined and reviewed to insure they were
26 compatible.

1 Then finally on page 80, there was simply an
2 erroneous figure, the 54,834 instead of 54,800. We would
3 submit, Your Honor, that those changes are within the purview
4 of a judgment substantially in the form of the judgment
5 stipulated to by the parties as they have proceeded and that
6 it would be appropriate for the Court upon entry of findings
7 and conclusions in support of the judgment to enter a judgment
8 substantially in the form presented in this Exhibit
9 with the corrections shown.

10 THE COURT: Clearly as to the defaulting parties,
11 it is within the purview of the -- within the notice of the
12 Complaint filed July 16, 1976. I'm satisfied that the changes
13 are such that they are -- that as to the stipulating parties
14 the Court finds that this does not affect any of their
15 substantial rights.

16 Is there anything in the initial stipulation,
17 however, that authorizes any modification whatsoever?

18 MR. STARK: With the stipulation is for Entry
19 of Judgment in substantially the form attached.

20 THE COURT: I want to check that language.

21 MR. STARK: Yes. That's on page one of the stipula-
22 tion, a judgemnt substantially in the form and substance
23 attached hereto maybe made and entered by the Court.

24 THE COURT: Yes. On that basis, the Court makes
25 an express finding that the Judgment as modified is
26 substantially in the form of a Stipulated Judgment on file

1 herein and presented to each of the stipulating parties.

2 Anything further at this time?

3 MR. STARK: Nothing further at this time, Your
4 Honor. We are prepared to submit findings and conclusions
5 and revised form of judgment within a week if the Court
6 finds this satisfactory.

7 THE COURT: Yes. I think one of you knows my
8 home address. I will be out of the office until after the
9 fourth and I can certainly give you -- do it at a convenient
10 time so you can direct it there or otherwise wait beyond
11 January, too, if that doesn't cause any inconvenience.

12 MR. STARK: I think probably there isn't that
13 urgency to the actual entry of judgment and I think I would
14 prefer -- We have had discussions of the findings and
15 conclusions but I think I would prefer to mail to the attorneys
16 the findings and conclusions even though we are stipulating
17 and allow everybody to have a crack at them and perhaps I
18 should say that we'll mail them at or after the first.

19 You indicated that you are going to be until the
20 first so we would undertake to mail them shortly after the
21 first in the hopes of finalizing the judgment by the end
22 of January.

23 THE COURT: Mr. Shaw.

24 MR. SHAW: May I inquire, Your Honor, if the way
25 this is shaping up at the moment, it appears that the case
26 will be submitted finally and subject to findings of facts

1 and so forth conclude the matter.

2 THE COURT: Yes. sir.

3 MR. SHAW: I'd like to be heard on another
4 discussion that, as anxious as I know the lead counsel and
5 others are to have this thing put to bed, goodness knows
6 we've labored long and hard now for years. It seems to me
7 that conservative approach to this dictates further
8 consideration in two areas. There's an awful lot of changes
9 here that are just flashed before us in a few seconds and
10 I have quite complete faith that Mr. Stark and other
11 contributors to these changes have made improvements as
12 well as clarifications but as a matter of fact, there's
13 a great deal of material here that neither I nor my clients
14 had occasion to peruse, more changes than I ever saw.

15 For example, at the relatively few meetings that
16 I attended --

17 THE COURT: What date do you suggest is convenient
18 to have them forward findings and judgment of the Court?

19 MR. SHAW: From my personal standpoint, most
20 anything is acceptable. I think something that needs to be
21 worked out as much as the date, we have -- the present
22 dates we have worked out.

23 THE COURT: Are you suggesting in any event I
24 hold the judgment here for 15 days to hear any objections
25 to it so I don't sign it on the day I receive it, I'll
26 certainly abide by that suggestion, if that's the kind of

1 thing you're looking for.

2 MR. SHAW: I had in mind another thing, too, that
3 we might be here to discuss the matter of restrictive aspects
4 of this judgment, restricting our continuing jurisdiction.
5 Seems to me that it's arguable and should be argued before
6 you as to whether or not you should retain a broader
7 jurisdiction at least for a matter of months or maybe a
8 year.

9 There may be errors to be corrected in these
10 rights attributed or signed by the parties. We noticed in
11 just a few pages ago correction of a figure. I don't
12 think any of us have a gift of prophesy to see what may
13 turn up that we would like to have the Court consider
14 changing.

15 One of my clients hasn't been awarded rights
16 commensurate with its needs and its had difficulty
17 establishing it as urged by one of the witnesses here due
18 to the records being destroyed but they might to the
19 satisfaction of the Court and this is only an example
20 to reconstruct what would work out to be more reasonable
21 figures than what they are going to be asked to live with
22 here.

23 We have some of the smaller entities in
24 particular that have felt impelled to sign the stipulation
25 and go ahead as to the big ballgame because they can't
26 afford being in the game. They do have some particular

1 problems that they would like to bring to you.

2 On a matter that I think should be spelled out and
3 I don't know if it is in the judgment that defaulted parties
4 are to be treated the same as those who have stipulated
5 although that's been in the literature that's accompanied
6 these various versions of the judgment and so those things
7 in my mind I throw out to discussion that we be given a day
8 to be heard at a final look to see at all this, that is
9 changes made today, the present structures on the Court's
10 continuing jurisdiction appropriate to the public welfare.

11 THE COURT: Mr. Littleworth.

12 MR. LITTLEWORTH: If I may be heard for just a
13 moment. I would think that none of us would have any
14 objection to Mr. Shaw's first judgment that the judgment
15 be held until he's had a chance to look at it carefully.
16 If there are problems, I think they could be brought to the
17 attention of the Court. So far as his suggestion that maybe
18 the numbers need to be looked at again, the one thing I
19 think he changed was four acre feet which is really insignificant
20 in this picture but the figures, the numbers determining
21 rights and so forth were some of the very first things
22 determined in this case a long time ago. A great deal of
23 work has gone into checking them, revising them, agreeing
24 to them and they have been settled for a long period and I
25 think that is one aspect of the Judgment that has to remain
26 settled if there is any security or certainty in the whole

1 picture.

2 Insofar as looking to the Court's continuing
3 jurisdiction, that also was a question which was negotiated
4 very carefully and I would think that it would be difficult
5 to make changes in that area without running a risk that in
6 fact you would have to submit the judgment again for review
7 and reaffirmation of the stipulations.

8 Basically we attempted in the negotiations to
9 allow full continuing jurisdiction in those areas of
10 administration but in the areas of basic rights, the basic
11 kinds of negotiated settlement that Mr. Stark talked
12 about in the early stages which last analysis were a
13 matter of negotiation, those are the things that are
14 frozen and I think that there would be a good deal of objection
15 if that kind of thing were again opened up to possible
16 modification at any later time.

17 THE COURT: Thank you, Mr. Littleworth.

18 MR. STARK: Your Honor.

19 THE COURT: Yes, sir.

20 MR. STARK: I would call the Court's attention
21 in support of what Mr. Littleworth has said that not only
22 have most of these things been the result of long negotiations
23 but the changes which are referred to in the Exhibit were
24 attached to the Pretrial Statements. I'm particularly
25 concerned -- I'm not concerned that we set a time and in
26 fact I would prefer to set a time if anyone has objections

1 on the findings or the stipulated form of judgment but --
2 and I am not attempting to take a technical position but Mr.
3 Shaw's clients have either defaulted or stipulated and have
4 not raised any issues so if he's urging a right to continue
5 keeping the case open to trial, I think that is inappropriate
6 at this late stage but I would suggest that the Court set
7 a date someplace in the, say the third week of January at
8 which time we could settle the findings and conclusions
9 and judgment presuming that copies of those documents have
10 been mailed to counsel of record by probably the end of the
11 first week which if we were to -- if we were to undertake
12 to mail the findings and conclusions and judgment by the 6th
13 of January and then schedule a hearing in the week of the
14 23rd, it should then be possible to finalize the matter in
15 January.

16 THE COURT: Friday, January 27th at 1:30.

17 MR. STARK: Fine, Your Honor.

18 MR. WEHLAND: What date was that, Your Honor?

19 THE COURT: Friday.

20 MR. SHAW: Once more, please, Your Honor.

21 THE COURT: January 27th at 1:30. That would be
22 for the purpose of signing the judgment and drawing to my
23 attention any -- basically be a hearing on the findings of
24 fact and conclusions of law and the judgment in the form
25 of the judgment in case there are any questions arising.

26 MR. SHAW: That happens to be a date where I have

1 a conflict. If another date is as acceptable to everyone
2 else.

3 THE COURT: February, I know is an institute
4 for superior court judges. It should go back to the 20th
5 unless you want to go to February 10 but I would prefer
6 the 20th.

7 MR. STARK: 20th would be satisfactory.

8 THE COURT: On the theory that finality has some
9 merit.

10 MR. SHAW: The 20th of February?

11 THE COURT: January.

12 MR. SHAW: I'm sorry. I don't have all that much
13 practice, Your Honor, but you are really picking them here.

14 THE COURT: Is there an inference that all of
15 your out-of-town appearances are on Friday afternoons?

16 MR. SHAW: It looks like good Friday means something.
17 If you go just a week further, nothing happening on that
18 Friday or after, it seems like.

19 THE COURT: If you were available we could do it
20 Friday the 13th. That maybe to --

21 MR. STARK: Friday the 13th I have difficulty
22 with San Fernando cases.

23 THE COURT: Why don't you gentlemen work it out
24 and pick a Friday generally with the trial calendar. It's
25 generally easier for you to pick a date and let me know.

26 MR. STARK: All right. What was the problem with

1 the 27th?

2 MR. SHAW: Just a minute. I'll tell you.

3 Part of the problem is there is a number of parties and some
4 of them don't have counsel and that sort of thing. I can
5 go around it and put that over at another time.

6 MR. STARK: What about Friday morning?

7 MR. SHAW: Well, I have a distance problem. My matter
8 at 10:30 takes the middle right out of a day.

9 THE COURT: Is it possible? The 27th at 2:30?

10 MR. SHAW: Certainly try.

11 THE COURT: If you could do it. I don't want
12 to have you travel from San Fernando Valley.

13 MR. SHAW: I assume that would be all right.

14 THE COURT: 2:30 on the 27th.

15 MR. STARK: Very good, Your Honor.

16 MR. SHAW: I would inquire finally of Your Honor's
17 decision as to whether at that time we may address ourselves
18 to this matter of your continuing jurisdiction?

19 I understand that this is agreed to by a number of parties
20 but you weren't privy to it and this is going by you for
21 the first and last time.

22 THE COURT: As I read the judgment, I have
23 continuing jurisdiction on everything say for certain matters
24 in which the parties are committed on and the Court's powers
25 are quite broad. If you are suggesting that I should
26 reserve jurisdiction on those matters which the parties

1 have agreed that I wouldn't have jurisdiction.

2 MR. SHAW: That's what I'm asking at least for a
3 limited period of time.

4 THE COURT: At first blush, it seems to me that
5 those are matters that are clearly within the rights of
6 the parties to negotiate on and which would represent a
7 material part of their bargain or their respective bargains
8 and that once you go juggle one, you juggle the whole scene
9 and that unless there were a reason why in the absence of
10 using the word Fraud in the legal context, somebody came
11 across some records that showed they had really 500 acre
12 feet and the couldn't find them before, all they thought
13 they were entitled to 200 acre feet in terms of equitable
14 power allow someone to enter their appearance but I think
15 the bargain here is such that the parties legitimately
16 can and should be foreclosed from those items that they've
17 bargained for and the Courts retain jurisdiction solely
18 on the path set out in the judgment.

19 So it is interpreted as a negative reaction to your
20 views.

21 MR. SHAW: That's the way I understood it.

22 THE COURT: I'm sorry.

23 MR. WEHLAND: Your Honor, may I simply state one
24 matter? I don't want to argue it with the Court over an
25 item but if a mistake is discovered later by the parties
26 it is my understanding that this isn't necessarily correctable

1 at a later date.

2 THE COURT: The judgment is improper as to that,
3 whatever the legal grounds are. I can't foreclose anybody
4 under Section 473.

5 MR. WEHLAND: Within six months of agreement and all
6 that sort of thing. I understand. I thought you were
7 speaking about 10, 15, 20 years down the lane some
8 party might come in.

9 THE COURT: Oh, no.

10 MR. WEHLAND: I didn't want that implication
11 at least in the record that that was the case.

12 THE COURT: Well, a couple things I would like to
13 say. I will try to say them in two minutes.

14 The matter is going over to January 27th at 2:30,
15 for the hearing on any findings of fact, conclusions of law
16 and any objections thereto that maybe stated by any party,
17 the signing and I suspect at that time I will in all
18 likelihood sign the judgment.

19 I think I would be remiss if I did not say that --
20 let me phrase it this way. Tomorrow I'm to speak to the
21 new lawyers that have been admitted. I don't know how many
22 are going to be sworn in in San Bernardino but give or
23 take the better part of 4,000 in the State, I think, and I've
24 always felt that the practice is a noble profession and to
25 see lawyers who have worked so diligently and created a
26 technique to deal with matters in litigation from the

1 computerization of lists to little booklets I think adds to
2 their desires and wishes to amicably resolve the matter.
3 I think that I should publicly indicate that it's a job
4 and lawyers who have been in courts know this, that it's a
5 job that was far better resolved by settlement than ever
6 could have been resolved by a trial and I do compliment
7 the lawyers and of course in complimenting the lawyers I,
8 of course, must compliment the respective clients who I
9 gather approached this matter in a very positive, public
10 interested fashion.

11 It seems that this case may represent the energetic
12 efforts of all concerns. We have the A.G.'s Office in this
13 context, branch of the executive in one sense. I trust
14 looking out for the public interest when it's representing
15 the various entities.

16 Senator Ayala from the legislative side was
17 certainly involved and frankly I think the Court was more
18 of a focal point as you phrased initially, Mr. Stark, to
19 impose its jurisdiction and in this regard, I again would
20 be remiss not stating that I understand our Clerk's Office
21 has been most cooperative in working with you to assure
22 that everyone's wishes would be carried out.

23 So I express my congratulation and I say that
24 sincerely.

25 I have a couple of thoughts that are only perhaps
26 wishes because I don't know how many households are affected

1 by this judgment. How many people are affected by this?
2 If I were to say hundreds of thousands, I don't think I'd
3 be exaggerating, would I, Mr. Stark, in terms of
4 individuals?

5 MR. STARK: Probably not far from that in the
6 entire basin. I'm not sure.

7 THE COURT: We are talking about an awful lot of
8 people and only a handful of people here, really and to the
9 extent that -- I'm not suggesting that this wouldn't be done
10 without my suggesting it but to the extent that the entities
11 involved can keep the public informed of what happens
12 in a courtroom or what happens with the watermaster by way
13 of information even when they get the water bill, if some kind
14 of information is on it. Just an advice so the public is
15 kept apprised of what's happening so that it doesn't look
16 like a dark conspiracy between those with vested interests,
17 the lawyers and the water districts and a court on a
18 Friday afternoon. I think the public should be advised
19 and it's a very, very complicated judgment.

20 For example, you have your advisory committee and
21 how it's set up, 10 persons from each pool, etc. You know,
22 if those meetings are -- if the public is notified in some
23 way. I'm not suggesting that there has to be a banner in
24 the local newspaper but the public could be advised and
25 informed of what the advisory committee is doing so they
26 feel some sense of participation. Any time we can remove the

1 mystery, I think people will feel more comfortable and
2 I think in that context if the parties can in the same
3 conscientious way they handled this matter be able to
4 communicate to the public as to what's happening on,
5 pardon the expression, down stream, I'd sure appreciate it.

6 But again my compliments to all and my personal
7 thanks for your dedication in this case and after the
8 holiday season which I'm sure you will all enjoy, I will
9 see you then on the 27th.

10 Thank you very much.

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12 (Proceedings conclude at 5:01 p.m.)
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CERTIFICATE OF REPORTER

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I, Carolyn Ann Kirkpatrick, Certified Shorthand Reporter License No. 3745, do hereby certify that at the time and place herein stated I reported in Stenotypy the proceedings in the hereinbefore named action and that the foregoing reporter's transcript, pages 1 through 107, inclusive, constitutes a full, true and correct report of the proceedings as transcribed from my stenotypy notes.

DATED at San Bernardino, California, this 23rd day of January, 1978.

Carolyn Ann Kirkpatrick
Court Reporter