

COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

DEPARTMENT NO. 2

HON. DON A. TURNER, JUDGE

CHINO BASIN MUNICIPAL	)
WATER DISTRICT	)
	)
PLAINTIFF,	)
	)
VS.	)
	)
CITY OF CHINO, ET AL,	)
	)
DEFENDANT.	)

NO. SCV-164327

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS  
MARCH 1, 1989

APPEARANCES:

FOR MOVING PARTY CITY OF  
CHINO:

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ATTORNEY AT LAW  
COLUMBIA LANDMARK BUILDING  
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FOR CBMWD:

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FOR MWD:

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APPEARANCES (CONTINUED):

FOR THE STATE OF CALIFORNIA:

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REPORTED BY:

KATHERINE A. JACOBSEN, C.S.R.  
OFFICIAL REPORTER, C-4012

1 SAN BERNARDINO, CALIFORNIA; THURSDAY, MARCH 1, 1989,  
2 DEPARTMENT NO. 2 HON. DON A. TURNER, JUDGE  
3 -- 10:00 A.M. --

4 APPEARANCES:

5 SUSAN M. TRAGER, ATTORNEY AT LAW, REPRESENTING  
6 THE PLAINTIFF, CITY OF CHINO, CITY OF NORCO, SAN  
7 BERNARDINO COUNTY WATER WORKS DISTRICT NO. 8;  
8 ROBERT E. DOUGHERTY, ATTORNEY AT LAW, REPRESENTING  
9 CITY OF ONTARIO; VICTOR E. GLEASON, SR. DEPUTY  
10 GENERAL COUNSEL, REPRESENTING METROPOLITAN WATER  
11 DISTRICT OF SOUTHERN CALIFORNIA; GUIDO R. SMITH,  
12 ATTORNEY AT LAW, REPRESENTING THE DEFENDANT, CHINO  
13 BASIN MUNICIPAL WATER DISTRICT, WATERMASTER; AND  
14 EDWIN J. DUBIEL, DEPUTY DISTRICT ATTORNEY OF STATE  
15 OF CALIFORNIA.

16  
17 (REPORTED BY KATHERINE A. JACOBSEN, CSR,  
18 OFFICIAL REPORTER, C-4012)

19  
20 THE COURT: GOOD MORNING.

21 MS. TRAGER: GOOD MORNING, YOUR HONOR.

22 MR. SMITH: GOOD MORNING, YOUR HONOR.

23 MR. GLEASON: GOOD MORNING.

24 THE COURT: THIS IS THE MATTER OF THE CHINO BASIN  
25 MUNICIPAL WATER DISTRICT.

26 THE ANNUAL REPORT OF THE WATERMASTER HAD BEEN  
27 FILED.

28 AND THE OBJECTIONS TO THAT REPORT AND PETITION FOR

1 VARIOUS RELIEF WAS FILED BY SUSAN TRAGER ON BEHALF OF THE CITY  
2 OF CHINO AND THE CITY OF NORCO AND SAN BERNARDINO COUNTY WATER  
3 WORKS DISTRICT NO. 8.

4 WE MET THE OTHER DAY AND IT WAS AGREED AND ORDERED  
5 THAT THE PARTIES WOULD GET TOGETHER AND SEE IF THEY COULD  
6 RESOLVE THEIR PROBLEMS.

7 AND TO THE EXTENT THEY COULDN'T RESOLVE THEIR  
8 PROBLEMS, THAT THEY WOULD DETERMINE EXACTLY WHAT THE PROBLEMS  
9 WERE AND WHEREIN THEIR DISAGREEMENTS LAY.

10 AND THAT THEY WOULD THEN FURNISH THE COURT WITH  
11 THEIR VERSION OF WHAT THE REMAINING ISSUES ACTUALLY WERE AND  
12 THAT THEIR -- THEIR POSITIONS ON THOSE ISSUES AND HOW THEY  
13 FELT THEY SHOULD BE RESOLVED.

14 WE CONTINUED THE MATTER TO THIS TIME TO HAVE ANY  
15 FURTHER ARGUMENT ON THOSE POINTS AND SEE IF THE MATTER WAS IN  
16 A POSITION TO BE SUBMITTED.

17 I HAVE RECEIVED THE OTHER DAY, ON FEBRUARY 24TH, I  
18 GOT MOST OF THEM, THE POSITION STATEMENTS FROM THE VARIOUS  
19 PEOPLE.

20 THERE ARE SEVERAL ISSUES RAISED BY THE PETITIONER  
21 HEREIN.

22 AND I SUPPOSE ONE OF THE FIRST ONES IS: HOW DOES  
23 METROPOLITAN WATER DISTRICT FIT INTO THIS SITUATION?

24 MS. TRAGER, ON BEHALF OF HER CLIENTS, TAKES THE  
25 POSITION THAT METROPOLITAN REALLY DOESN'T BELONG HERE AT ALL.

26 THAT THEIR -- THEIR ONLY RELATIONSHIP TO THIS  
27 WHOLE AFFAIR IS THE FACT THAT AN AGREEMENT HAS BEEN WORKED OUT  
28 WHEREBY THEY COULD STORE SOME WATER IN THIS BASIN, WHICH THE

1 MOVING PARTIES OBJECT TO ANYHOW.

2 AND THAT SINCE METROPOLITAN WAS NOT A PARTY TO THE  
3 JUDGMENT OR ANY OF THE ORIGINAL PROCEEDINGS IN THIS CASE, THAT  
4 THEY HAVE NO RIGHT TO APPEAR OR BE HEARD.

5 AND SO OPPOSITION TO THAT HAS BEEN FILED BY  
6 METROPOLITAN.

7 THE WATERMASTER HAS COMMENTED ON THIS SITUATION.

8 I'LL ADMIT I DO HAVE A LITTLE DIFFICULTY WITH THE  
9 IDEA OF, MUCH AS I WOULD LIKE TO HAVE METROPOLITAN IN HERE  
10 BECAUSE I THINK THEY CAN CONTRIBUTE A LOT OF WORK TOWARDS THE  
11 SOLUTION OF THE PROBLEM, BUT I AM A LITTLE CONCERNED ABOUT  
12 WHETHER THEY HAVE A RIGHT TO BE HERE OTHER THAN PERHAPS AS  
13 AMICUS CURIAE.

14 IF YOU DON'T MIND, I'D LIKE TO SEE IF METROPOLITAN  
15 HAS ANYTHING FURTHER TO ADD TO WHAT THEY HAVE ALREADY  
16 INDICATED.

17 MR. GLEASON: YES, YOUR HONOR, WE DO.

18 THE BOARD OF DIRECTORS OF THE DISTRICT HAS  
19 EVALUATED THIS ISSUE AT SOME LENGTH PRIOR TO AUTHORIZING OUR  
20 PARTICIPATION AND WE'VE EVALUATED THE FACTORS.

21 WE ARE IN ALL CANDOR RELUCTANT PARTICIPANTS IN  
22 THIS PROCEEDING.

23 NEVERTHELESS, ALL THE EARMARKS OF BEING A REAL  
24 PARTY IN INTEREST SEEM CLEAR ON THE RECORD AS IT'S BEEN  
25 PRESENTED.

26 THE MOVANTS, THE PETITIONERS, ARE ASKING THIS  
27 COURT TO INVALIDATE A TRUST STORAGE AGREEMENT THAT  
28 METROPOLITAN ENTERED INTO WITH THE WATERMASTER TWO AND A HALF

1 YEARS AGO.

2 ON THE BASIS OF THAT TRUST STORAGE AGREEMENT,  
3 METROPOLITAN HAS SUBSEQUENTLY ALSO CONTRACTED WITH TWO OTHER  
4 ENTITIES WHO ARE PARTIES TO THIS JUDGMENT, ONTARIO AND  
5 CUCAMONGA COUNTY WATER DISTRICT.

6 AND FURTHER, IN IMPLEMENTING THOSE OTHER  
7 AGREEMENTS WHICH ARE NOT BEFORE THE COURT IN THIS PROCEEDING  
8 AT THIS POINT, WE HAVE SUPPLIED THOSE TWO PARTIES A  
9 SUBSTANTIAL AMOUNT OF EXPENSIVE IMPORTED WATER IN EXCHANGE FOR  
10 THEIR ASSIGNING TO US, WITH THE WATERMASTER'S APPROVAL, THEIR  
11 UNPRODUCED GROUND WATER RIGHTS IN A LIKE AMOUNT PROVIDED.

12 CLEARLY IT SEEMS THAT WE HAVE AN INTEREST IN THE  
13 SUBJECT MATTER.

14 DETERMINATION OF THIS ISSUE, THE VALIDITY OF THIS  
15 TRUST STORAGE AGREEMENT IN OUR ABSENCE WOULD CERTAINLY AS A  
16 PRACTICAL MATTER IMPAIR OUR ABILITY TO PROTECT THAT INTEREST.

17 IT FALLS CLEARLY, YOUR HONOR, WE SUBMIT, WITHIN  
18 THE PHRASING OF THE INDISPENSABLE PARTIES' DEFINITION OF CCP  
19 SECTION 389(A), TO WANT PETITIONERS SUPPLEMENTAL POINTS AND  
20 AUTHORITIES THAT THEY FILED LAST FRIDAY CAREFULLY AVOIDED THAT  
21 PORTION OF CCP SECTION 389 IN THEIR ARGUMENT.

22 AS WE POINT OUT, THE LAW SEEMS CLEAR THAT BECAUSE  
23 OF THE FACT THAT WE ARE INTIMATELY INVOLVED, THERE WAS A  
24 RESPONSIBILITY ON THE MOVANTS TO HAVE NAMED US IN THE FIRST  
25 PLACE.

26 SINCE THEY HAVEN'T, WE FEEL IT IS INCUMBENT.

27 AND WE WOULD REQUEST THE COURT UNDER THE LAST  
28 SECTION OF SECTION CCP, SECTION 389(A), TO CONSIDER SERIOUSLY

1 JOINING US IF THERE IS A CONCERN AS TO OUR PARTICIPATION.

2 AND YOU'VE INDICATED THAT YOU DO HAVE A CONCERN.

3 THE PARTICIPATION -- I THINK, THIS IS ANOTHER  
4 IMPORTANT POINT -- THAT THE PARTICIPATION THAT WE ARE SEEKING,  
5 THAT WE FEEL WE ARE ENTITLED TO IN THE MANNER IN WHICH THE  
6 MOTION TO REVIEW THE WATERMASTER'S ACTIONS AND DECISION HAS  
7 BEEN COUCHED, REALLY GOES TO A LIMITED ASPECT OF THE JUDGMENT.

8 IT'S A MATTER OF THE FLEXIBILITY INHERENT IN THE  
9 COURT'S RESERVED JURISDICTION AND ADMINISTRATION OF THIS  
10 COMPLICATED WATER RESOURCE JUDGMENT.

11 THE MOVANTS APPEAR AT THIS POINT TO BE CHALLENGING  
12 OUR PARTICIPATION ONLY ON A PROCEDURAL ASPECT.

13 AND THEY ASSERT THAT WE SHOULD HAVE COME IN UNDER  
14 PARAGRAPH 60 OF THE JUDGMENT WHICH ALLOWS ASSIGNEE OF RIGHTS  
15 AND A PRODUCER OF WATER TO INTERVENE AS A PARTY FOR ALL  
16 PURPOSES ON A PERMANENT BASIS.

17 HOWEVER, THE JUDGMENT ALSO AUTHORIZES THE  
18 WATERMASTER AND THE COURT TO ALLOW THE STORAGE OF SUPPLEMENTAL  
19 WATER, IMPORTED WATER, IN THE BASIN BY NON-PARTIES TO THE  
20 JUDGMENT.

21 IT SEEMS THAT WHENEVER THE -- A QUESTION COMES UP  
22 WITH RESPECT TO A STORAGE AGREEMENT, THE KIND OF STORAGE  
23 AGREEMENTS THAT ARE AUTHORIZED BY THE JUDGMENT, THAT IT WOULD  
24 BE PRUDENT AND HELPFUL TO THE COURT AND THE PARTIES AND  
25 CERTAINLY EQUITABLE TO THE STORING ENTITY, NOT PARTY ENTITY,  
26 TO BE ABLE TO PARTICIPATE IN THE PROCEEDINGS RELATED TO THAT  
27 SPECIFIC ISSUE.

28 METROPOLITAN DOES NOT INTEND -- IS NOT SEEKING TO

1 BECOME A PARTY TO THE JUDGMENT FOR ALL PURPOSES.

2 OUR INTEREST IS TO UTILIZE -- TO -- TO WORK WITH  
3 THE WATERMASTER SO THAT WE CAN UTILIZE THE STORAGE CAPABILITY  
4 AGAIN THAT IS RECOGNIZED IN THE JUDGMENT ITSELF EXPLICITLY IN  
5 A MANNER THAT IS COMPATIBLE AND CONSISTENT WITH THE INTERESTS  
6 OF THE PARTIES.

7 CONSEQUENTIALLY -- AND ALSO, AN IMPORTANT FACTOR  
8 RELATED TO THAT, IS THAT A STORAGE AGREEMENT HAVE A SPECIFIC  
9 TERM.

10 ANY NON-PARTY WHO STORES WATER CAN STORE IT ONLY ON  
11 A LIMITED PERIOD OF TIME.

12 THERE'S GOING TO BE A TERM SET IN THE AGREEMENT.  
13 IT IS RENEWABLE, BUT STILL RENEWABLE AT THE OPTION OF THE  
14 WATERMASTER AND THE ADVISORY COMMITTEE AND THE COURT.

15 FOR THOSE REASONS, IT SEEMS IMMINENTLY HELPFUL  
16 THAT THE COURT AND THE WATERMASTER WOULD HAVE THE  
17 APPLICABILITY OF ALLOWING A STORAGE PARTY TO COME IN FOR A  
18 LIMITED PURPOSE WITHOUT HAVING TO GO THROUGH AN ANCILLARY --  
19 ESSENTIALLY AN ANCILLARY INTERVENTION PROCEEDING PROCESS.

20 THAT SEEMS EVEN MORE CLEAR WHEN THE PLEADINGS  
21 THEMSELVES HAVE RAISED THE ISSUE OF THE UNDERLYING VALIDITY OF  
22 THE STORAGE AGREEMENT THAT IS IN ISSUE HERE.

23 IF THE COURT IS CONCERNED AND FEELS THAT WE SHOULD  
24 BE GOING THROUGH THE INTERVENTION PROCESS, WE HAVE PREPARED AN  
25 ORDER AND WE WOULD MAKE AN ORAL MOTION AT THIS TIME TO  
26 INTERVENE UNDER SECTION 387.

27 BUT IN MAKING THAT, AGAIN WE MAKE THAT RELUCTANTLY  
28 ON THE BASIS THAT WE THINK THAT SINCE THIS IS THE FIRST TIME



1 WHERE A STORAGE PARTY HAS BEEN INVOLVED, THAT THE PRECEDENT OF  
2 FLEXIBILITY FOR THE ADMINISTRATION OF THE JUDGMENT, AS FAR AS  
3 STORING MATTERS ARE CONCERNED, WOULD BE IMPROVED IF THERE WAS  
4 THIS RECOGNITION THAT WHEN THE WATERMASTER IN ITS UNUSUAL  
5 STORAGE REGULATIONS IDENTIFIED STORING PARTY ENTITIES, WHETHER  
6 THEY ARE PARTIES OR NOT, AS A STORAGE PARTY. THAT THAT WOULD  
7 AUTOMATICALLY ALLOW THE STORAGE PARTY TO PARTICIPATE IN  
8 MATTERS RELATED ONLY TO THE STORAGE AGREEMENT IT HAS WITH THE  
9 WATERMASTER AND THE COURT.

10 THANK YOU, YOUR HONOR.

11 THE COURT: WATERMASTER WISH TO COMMENT?

12 MR. SMITH: WE WOULD, YOUR HONOR.

13 FIRST OF ALL WE WOULD LIKE TO ADVISE THE COURT OF  
14 THE POSITION TAKEN BY METROPOLITAN.

15 BUT THERE IS AN HISTORICAL BASIS FOR THE POSITION  
16 TAKEN BOTH BY WATERMASTER AND METROPOLITAN WHICH I THINK THE  
17 COURT OUGHT TO BE AWARE OF.

18 THE POSITION THAT HAS BEEN DISCUSSED IN THE  
19 ADVISEMENT COMMITTEE, IN THE APPROPRIATIVE POOL COMMITTEE AND  
20 BEFORE THE WATERMASTER, AND IS ONE THAT IS SPECIFICALLY ON  
21 POINT HERE IN THIS MOTION TODAY.

22 WHEN THIS ACTION WAS FIRST COMMENCED, METROPOLITAN  
23 WAS NAMED AS ONE OF THE DEFENDANTS IN THE ACTION.

24 AT THE TIME IT WAS THE AGREEMENT OF THE PARTIES  
25 THAT THEY WOULD RATHER NOT HAVE METROPOLITAN PARTICIPATE AS A  
26 FULL PARTY TO THE JUDGMENT.

27 BECAUSE OF THAT, METROPOLITAN AGREED TO BE  
28 DISMISSED IN 1975.

1                   THIS WAS SUBSEQUENTLY CONFIRMED BY A SECOND  
2 DISMISSAL FILED WITH THE COURT PRIOR TO THE ENTRY OF THE  
3 JUDGMENT IN 1978.

4                   A SECOND DISMISSAL WAS ACTUALLY FILED IN 1977  
5 CONFIRMING THAT THE PARTIES DID NOT WISH METROPOLITAN TO  
6 PARTICIPATE AS A FULL PARTY UNDER THE JUDGMENT.

7                   THEY WERE AT ALL TIMES AWARE OF THE ROLE THAT  
8 METROPOLITAN WOULD BE PLAYING AS THE MAJOR PURVEYOR OF  
9 IMPORTED WATER TO SOUTHERN CALIFORNIA.

10                   IT IS BECAUSE OF THAT THAT METROPOLITAN HAS AGREED  
11 AND HAS CONTINUED TO COOPERATE WITH ALL THE PARTIES TO TAKE  
12 THE POSITION THAT THEY WOULD NOT INTERVENE, THAT THEY WOULD  
13 NOT PARTICIPATE FULLY UNDER THE JUDGMENT AS A PARTY INTERVENER  
14 UNDER PARAGRAPH 60 OF THE JUDGMENT, AND WOULD RESERVE THEIR  
15 PARTICIPATION ONLY WITH RESPECT TO THE RIGHTS THAT THEY SEEK  
16 AS A STORAGE PARTY UNDER THE JUDGMENT.

17                   WE BELIEVE BECAUSE IT IS THE EXPRESSED DESIRE OF  
18 THE PARTIES FOR WELL OVER A DECADE THAT METROPOLITAN NOT  
19 PARTICIPATE AS A FULL PARTY, BUT THAT IT SHOULD BE HEARD.

20                   WE BELIEVE THAT IT IS IMPORTANT THAT THE COURT  
21 ALLOW METROPOLITAN TO MAKE A VERY LIMITED APPEARANCE ONLY WITH  
22 RESPECT TO ITS POSITION AS A STORAGE PARTY AND NOT REQUIRE  
23 INTERVENTION AS A COMPLETE PARTICIPATING PARTY UNDER PARAGRAPH  
24 60 OF THE JUDGMENT.

25                   THE COURT: OTHER THAN THE MOVING PARTIES, ANYONE  
26 ELSE HAVE ANY COMMENTS ON THE SUBJECT?

27                   MR. DUBIEL: NONE.

28                   THE COURT: THANK YOU.

1 MS. TRAGER: THANK YOU, YOUR HONOR.

2 LET ME SAY INITIALLY THAT THE MOVING PARTIES ARE  
3 NOT OPPOSED TO THE CONCEPT AT ALL, TO THE CONCEPT OF  
4 CONJUNCTIVE USE, WHICH IS WHAT THESE AGREEMENTS EMBODY.

5 THE COURT: LET ME WARN YOU. YOU ARE GOING TO  
6 HAVE KEEP YOUR VOICE UP.

7 WE HAVE -- THIS IS AN OLD COURTROOM AND WE LOVE IT  
8 AND ITS ACOUSTICS ARE SWELL.

9 BUT WE HAVE THIS AIR CONDITIONER MOUNTED UP HERE  
10 DURING THE SUMMER.

11 WE DON'T OBJECT TO THAT AT ALL, BUT IT DOES MAKE A  
12 HUM THAT MASKS VOICES RATHER NOTICEABLY. SO YOU HAVE TO KIND  
13 OF YELL AT ME.

14 MS. TRAGER: I HAD FORGOTTEN THAT.

15 THE COURT: YES.

16 MS. TRAGER: I WANTED TO SAY INITIALLY ON BEHALF  
17 OF THE MOVING PARTIES, YOUR HONOR, THAT THEY ARE NOT OPPOSED  
18 IN CONCEPT TO THE IDEA OF THE CONJUNCTIVE USE PROGRAM WHICH  
19 THESE AGREEMENTS EMBODIED.

20 THERE ARE SOME PARALLELS, HOWEVER, BETWEEN  
21 METROPOLITAN'S ENTRANCE INTO THESE PROCEEDINGS AND THE NORMAL  
22 MOTION PRACTICE THAT THEY HAVE AVOIDED BY SIMPLY COMING IN,  
23 FILING A RESPONSE, AND THE WATERMASTER'S SHORTCUT PROCEEDINGS  
24 IN APPROVING THOSE AGREEMENTS AND IMPLEMENTING THE AGREEMENTS  
25 WITHOUT THIS COURT'S APPROVAL OF THE FULL AGREEMENTS THAT HAD  
26 BEEN FILLED IN WITH THE FACTS AND FIGURES AND WITHOUT EVER  
27 HAVING HAD THOSE AGREEMENTS SUBMITTED TO THE FULL WATERMASTER  
28 COMMITTEE IN THEIR ENTIRETY.

1                    ONLY THE FORMS FOR THIS AGREEMENT HAD EVER BEEN  
2 SUBMITTED FOR APPROVAL.

3                    AND THAT'S THE UNDERLYING HEART OF THE PROBLEM  
4 HERE.

5                    FOR THE -- I THINK IT'S GOOD THAT METROPOLITAN IS  
6 COMING IN.

7                    IT WOULD HAVE BEEN MORE APPROPRIATE, I WOULD  
8 THINK, BEFORE ENTERING INTO THE FILING OF A RESPONSE, THAT THE  
9 WATERMASTER COME INTO THIS COURT TO OBTAIN SOME ADVICE OR A  
10 DECLARATION AS TO A PROCEDURE FOR THIS EVENTUAL ENTRY BY  
11 METROPOLITAN.

12                    IT HAD BEEN CONTEMPLATED AS EARLY AS 1978 AT THE  
13 TIME OF THE JUDGMENT THAT METROPOLITAN WOULD BE INVOLVED AT  
14 SOME POINT WITH THE CONJUNCTIVE USE PROGRAM.

15                    AND IT WOULD EITHER BE METROPOLITAN OR THE  
16 DEPARTMENT OF WATER RESOURCES THAT WOULD BE STORING WATER IN  
17 THE BASIN.

18                    THEY'RE EVIDENTLY COMMENCING THE PROJECT RIGHT NOW  
19 WITH THESE AGREEMENTS WITHOUT HAVING TAKEN THE FULL -- THE  
20 FULL VIEW PRIOR TO THE APPROVAL OF THOSE CONTRACTS.

21                    AND THAT'S THE PROCEDURE THAT THE MOVING PARTIES  
22 OBJECT TO.

23                    WE THINK IT'S GOOD THAT THERE IS SOME RECOGNITION  
24 ON METROPOLITAN'S PART THAT THE NORMAL INTERVENTION PROCEDURE  
25 THAT'S PROVIDED FOR IN PARAGRAPH 60 OF THIS AGREEMENT, THE  
26 JUDGMENT, MIGHT NOT BE THE BEST VEHICLE FOR THE APPROVAL --  
27 APPROVAL.

28                    HOWEVER, METROPOLITAN HAS HAD SINCE SHORTLY AFTER

1 NOVEMBER 8TH OF LAST YEAR TO APPEAR UPON A NOTICED MOTION.  
2 AND UNDER THE LOCAL COURT RULES AND UNDER THE STATE COURT  
3 RULES TO FULLY BRIEF THE ISSUES ABOUT WHETHER OR NOT IT SHOULD  
4 BE HERE AND ASK THIS COURT'S RELIEF AS TO SOME ALTERNATIVE  
5 PROCEDURE BY WHICH IT MIGHT BE BEFORE THE COURT.

6 AND FOR THOSE REASONS, WE FEEL THAT METROPOLITAN  
7 AT THIS TIME WOULD BE, WITH THESE PROCEEDINGS, NOT A PROPER  
8 PARTY.

9 AND THAT THE ISSUE OF THE WATERMASTER'S APPROVAL  
10 OF THIS AGREEMENT, WHICH IS A PROCEDURAL ONE THAT DOESN'T GO  
11 TO THE MERITS OF THE AGREEMENTS THEMSELVES, CAN BE HANDLED IN  
12 METROPOLITAN'S ABSENCE FROM THIS PROCEEDING.

13 THE COURT: IT WOULD SEEM, I SUPPOSE, LOGICAL THAT  
14 IF THE COURT IS GOING TO BE ASKED ULTIMATELY TO DECIDE WHETHER  
15 THE STORAGE AGREEMENT WAS APPROPRIATE UNDER THE JUDGMENT,  
16 WHETHER IT WAS ENTERED INTO APPROPRIATELY UNDER THE JUDGMENT,  
17 THAT THE COURT SHOULD HEAR FROM EVERYBODY WHO HAS AN INTEREST  
18 ONE WAY OR THE OTHER IN THAT AGREEMENT.

19 WHAT METROPOLITAN IS DOING IS TAKING THE SHORTEST  
20 DISTANCE BETWEEN THE TWO POINTS TO GET TO -- GET THEIR TWO  
21 CENTS IN ON THE VALIDITY OF THEIR STORAGE AGREEMENT AND THE  
22 -- THEREFORE THEIR RIGHT TO STORE UNDER THAT AGREEMENT.

23 THERE ARE OTHER WAYS THEY COULD GET BEFORE THE  
24 COURT, GET THE SAME INFORMATION BEFORE THE COURT.

25 WHAT DIFFERENCE DOES IT MAKE?

26 MS. TRAGER: THE DIFFERENCE, YOUR HONOR, I'VE  
27 TRIED TO ADDRESS IN THE PAPERS THAT WERE SUBMITTED ON FRIDAY  
28 OF LAST WEEK.

1           AND I HAVE COME TO AN OUT THAT I COULD PROPOSE IF  
2 THE COURT WOULD ENTERTAIN IT.

3           AND THAT IS, IF THE COURT IS ENTERTAINING THE  
4 CONCEPT OF GRANTING THE RELIEF IN PART OR IN WHOLE THAT THE  
5 MOVING PARTIES HAVE SOUGHT IN THIS MOTION, THEN ONE OF THE  
6 THINGS THAT WE ARE SUBMITTING IN THE SPIRIT OF COOPERATION AND  
7 IN AN EFFORT TO GET THE WATERMASTER MOVING AND EMBARKED ON  
8 WHAT NEEDS TO BE DONE UNDER THE JUDGMENT AND FOR THE BENEFIT  
9 OF EVERYBODY IN THE BASIN, WOULD BE TO -- WE WOULD WITHDRAW  
10 THE MOTION TO STRIKE.

11           WE WOULD OVERLOOK THE PROCEDURAL IRREGULARITIES  
12 AND SHORTCUTS WITHOUT METROPOLITAN BEING HERE AND ASK THE  
13 COURT TO ENTERTAIN BRINGING THOSE PARTIES BEFORE THE COURT TO  
14 ADJUST, TO ELIMINATE THE ECONOMIC INCENTIVE THAT WAS  
15 INTENTIONALLY CREATED TO ENCOURAGE THE PARTIES WHO HAVE  
16 ENTERED INTO THESE AGREEMENTS TO TAKE METROPOLITAN WATER IN  
17 LIEU OF USING THEIR STORAGE WATER.

18           AND THIS TOO, AGAIN, WAS A SHORTCUT PROCEDURE.  
19 AND I WOULD HOPE THAT THE COURT WOULD -- WOULD, IN  
20 CONSIDERING WHAT KIND OF RELIEF TO GRANT UNDER ITS INJUNCTIVE  
21 POWERS AND UNDER THE INJUNCTION THAT'S IN EFFECT TODAY BINDING  
22 ALL OF THE PARTIES, TO PUT A HOLD ON THE ACTIVITIES IN THE  
23 BASIN TO THE EXTENT POSSIBLE TO MAINTAIN A STATUS QUO FOR THE  
24 TIME THAT IT IS NEEDED UNTIL THE WATERMASTER HAS BEFORE IT  
25 OPTIONS THAT HAVE BEEN DEVELOPED BY A -- BY A CONSULTING  
26 ENGINEERING FIRM.

27           AND THAT HAD BEEN PROPOSED BY THE MOVING PARTY  
28 DURING THE ASSESSMENT NEGOTIATING PROCEDURE BY WHICH TO ENGAGE

1 AN OUTSIDE ENGINEERING FIRM TO COME IN AND PREPARE A REQUEST  
2 FOR PROPOSAL TO OTHER ENGINEERING FIRMS SO THAT THEY MIGHT  
3 SUBMIT PROPOSALS TO -- TO UNDERTAKE THE SURVEY THAT WOULD BE  
4 NEEDED TO BE DONE TO COME UP WITH AN OPTIMUM BASIN MANAGEMENT  
5 PROGRAM AND THE OPTIONS THAT WOULD BE AVAILABLE FOR REVIEW BY  
6 THE ADVISAL COMMITTEE.

7 WE WOULD LIKE, TO THE EXTENT POSSIBLE, TO FREEZE  
8 THE BASIN IN A STATUS QUO POSITION TO THE EXTENT THAT IT CAN  
9 BE DONE AND TO THE EXTENT THAT THINGS CAN BE UNDONE PENDING  
10 THE STEPS THAT WE FEEL THE WATERMASTER OUGHT TO BE TAKING AND  
11 THE INFORMATION GATHERED THAT OUGHT TO BE LOOKED AT BEFORE IT  
12 EMBARKS ON WHAT IS THE MAJOR AND THE BIGGEST PROGRAM THAT WILL  
13 EVER HAPPEN TO THIS BASIN, WHICH IS THE STORAGE OF --

14 THE COURT: LET ME STOP YOU FOR JUST A MINUTE.

15 I THOUGHT I HAD DETECTED TWO SEPARATE THINGS  
16 THERE.

17 ONE, I THOUGHT I HEARD YOU SAY THAT YOU WANTED IN  
18 EFFECT TO REDO THE JUDGMENT SO AS TO CHANGE THE METHOD OF  
19 CONTROL OF THE WATERMASTER TO ELIMINATE THE ECONOMIC  
20 INCENTIVES THAT KEEP THE MINORITIES FROM HAVING MUCH OF A SAY  
21 IN WHAT'S GOING ON.

22 AND THEN RIGHT AWAY WE SKIPPED OVER TO A STATUS  
23 QUO SITUATION.

24 MS. TRAGER: I MISSPOKE IF THAT'S -- IF THAT'S  
25 WHAT THE COURT HEARD.

26 NO. WE ARE NOT TRYING TO CHANGE THE JUDGMENT.

27 WHAT WE ARE TRYING TO DO IS TO UNRAVEL SOME OF THE  
28 RECENT ACTIVITIES THAT HAVE BEEN APPROVED BY THE WATERMASTER

1 ABSENT ITS COMPLIANCE WITH MANDATES UNDER THE JUDGMENT.

2 SO THAT THOSE DECISIONS SUCH AS THE ENTERING INTO  
3 THE EXCHANGE AGREEMENTS CAN BE REVIEWED IN LIGHT OF THE  
4 EVIDENCE AND THE DATA AND THE PLANNING THAT THE WATERMASTER IS  
5 SUPPOSED TO DO.

6 NONE OF THAT REQUIRES CHANGING THE JUDGMENT.

7 THE COURT: I GOT THE IMPRESSION EARLY ON IN THIS  
8 MATTER THAT -- THAT THE REPORT OF THE WATERMASTER AND THE  
9 ACTIVITIES OF THE WATERMASTER HAD BEEN APPROVED BY THE  
10 COMMITTEE PRETTY MUCH A HUNDRED PERCENT.

11 AND YOU HAD INDICATED THAT, SOMEWHAT WOEFULLY,  
12 THAT THAT MAY BE SO, BUT THAT THERE WERE ECONOMIC PRESSURES ON  
13 THE MEMBERS OF THE COMMITTEE THAT SORT OF CONTROLLED THESE  
14 ISSUES.

15 I DON'T UNDERSTAND THE JUDGMENT AS CONTEMPLATING  
16 THAT THE COURT IS GOING TO ATTEND THE MEETINGS AND TELL THE  
17 FOLKS WHAT TO DO.

18 THAT WOULD BE A DISASTER, AND I DON'T THINK  
19 ANYBODY CONTEMPLATES THAT.

20 I ULTIMATELY CANNOT SUBSTITUTE MY JUDGMENT FOR THE  
21 WATERMASTER AND THE COMMITTEE ON HOW TO RUN THIS WATER  
22 DISTRICT.

23 I CAN, OF COURSE, CONSIDER ANYTHING THAT'S  
24 PROPERLY BEFORE ME AS TO WHETHER OR NOT THEY ARE COMPLYING  
25 WITH THE BASIC RULES THAT WERE LAID DOWN IN THE JUDGMENT AND  
26 IN THE ORIGINAL AGREEMENTS.

27 AND SOMETHING PROPERLY BEFORE ME, I CAN ENFORCE  
28 THOSE -- THOSE AGREEMENTS. BUT I CAN'T ENFORCE THE DAY-TO-DAY



1 RUNNING.

2 IT SEEMS TO ME THAT YOU ARE GOING TO BE RIGHT BACK  
3 WHERE YOU WERE, IN THAT THE DECISIONS ARE GOING TO BE MADE BY  
4 THE COMMITTEE, REALLY.

5 AND THEY ARE STILL GOING TO HAVE THE ECONOMIC  
6 ADVANTAGE ON THE SIDE OF THE LARGE VOTING BLOCKS, SUCH AS  
7 ONTARIO.

8 MS. TRAGER: IN PREPARING THE PAPERS FOR YOU ON  
9 THE 24TH AND FOLLOWING THE SETTLEMENT NEGOTIATIONS, IT BECAME  
10 VERY APPARENT THAT WHAT WOULD HAPPEN WAS WHAT DID HAPPEN.

11 WHICH WAS, WE WERE -- IN REVIEWING THE  
12 WATERMASTER'S RESPONSE THAT WAS FILED ON THE 24TH, THE DEFENSE  
13 IS, GEE, YOU DIDN'T EXHAUST YOUR ADMINISTRATIVE REMEDIES, OF  
14 WHICH THERE ARE NONE UNDER THE JUDGMENT.

15 GEE, EVERYTHING THAT YOU'RE COMPLAINING ABOUT  
16 HAVING NOT BEEN DONE HAS BEEN APPROVED BY THE ADVISORY  
17 COMMITTEE.

18 AND AS TO THOSE THINGS THAT YOU'RE COMPLAINING  
19 HAVEN'T BEEN DONE BEFORE AND ARE DUE, WE HAVE ALREADY DONE OR  
20 WE DON'T KNOW WHAT THE JUDGMENT IS TALKING ABOUT.

21 THAT'S SORT OF THE GIST OF THE RESPONSE TO WHAT  
22 THE MOVING PARTIES HAVE SAID.

23 AND IT WILL -- IF YOU WILL BEAR WITH ME, IT TAKES  
24 A LITTLE WHILE TO TRY TO UNRAVEL THAT FROM MY EYES WHO DIDN'T  
25 ATTEND THE ADVISORY COMMITTEES. AND EITHER I HAVE BEEN ABLE TO  
26 HEAR IT THROUGH MY CLIENTS AND TO READ THE MINUTES.

27 I THINK WHAT THE PROBLEM IS HERE, THE BIGGEST  
28 PROBLEM, IS THAT A LOT OF THINGS THAT SHOULD HAVE BEEN DONE

1 WEREN'T.

2           THEY WEREN'T BROUGHT TO THE ATTENTION THE WAY IT  
3 WOULD HAPPEN IN A NORMAL WATER DISTRICT WITH STAFF REPORTS AND  
4 FULL DISCLOSURE AND A PRESENTATION OF OPTIONS AND OUTSIDE  
5 CONSULTING ENGINEERS COMING IN TO HANDLE IT BECAUSE OF  
6 MONETARY CONCERNS AND THE FEELING THAT, GEE, MAYBE WE ARE NOT  
7 A REAL WATER DISTRICT AND MAYBE WE CAN'T IMPOSE ALL OF THIS.

8           AND, YOU KNOW, WE DID THIS GREAT THING TEN YEARS  
9 AGO AND WE SHOULD BE SATISFIED WITH THAT.

10           AND, AFTER ALL, THE LEVEL OF THE WATER IN THE  
11 BASIN IS UP AND NOT DOWN AND WE HAVE COMPLIED WITH IT.

12           THE PROBLEM ABOUT THE VOTES IS ONE THAT REALLY  
13 DOES INQUIRE -- AND WHEN WE GOT THE PAPERS ON THE 24TH, I  
14 WENT BACK VERY CAREFULLY AND REVIEWED AGAIN THE JUDGMENT AND  
15 THE RULES AND REGULATIONS AND WHAT IT SEEMS TO ME.

16           AND I WOULD DRAW THE COURT'S ATTENTION TO A COUPLE  
17 OF PARAGRAPHS IN THE JUDGMENT THAT KIND OF STATE IT.

18           THE ADVISORY COMMITTEE'S ROLE IS TO ASSIST THE  
19 WATERMASTER ON DISCRETIONARY ACTIVITIES.

20           NOW, A MANDATORY ACTIVITY WOULD BE TO ADOPT AN  
21 OPTIMUM BASIN MANAGEMENT PROGRAM.

22           YOU HAVE AN APPROPRIATE OPERATIONAL PLAN TO THE  
23 BASIN WHICH TAKES INTO ACCOUNT WATER QUANTITY, WHICH THEY DO  
24 PRETTY MUCH; WATER QUALITY, THEY DON'T AT ALL; AND ECONOMICS,  
25 WHICH THEY HAVEN'T LOOKED AT YET.

26           THAT THOSE ARE NOT INTERRELATED. THERE ISN'T A  
27 PLAN. THEY CLAIM THAT THERE IS.

28           BUT IF THEY BROUGHT ONE BEFORE THE COURT FOR YOUR

1 HONOR TO REVIEW, THEN WE'D HAVE NOTHING TO TALK ABOUT.

2 BUT THEY DIDN'T.

3 AND THEY ARE CLAIMING IN THE ALTERNATIVE THAT THEY  
4 DON'T KNOW WHAT AN OPTIMUM PLAN IS.

5 WELL, IN ORDER TO SAY YOU DON'T KNOW WHAT IT IS,  
6 YOU OUGHT TO PAY SOMEBODY TO GO PRESENT YOU WITH SOME OPTIONS.

7 BUT GOING BACK TO THE ISSUES OF WHAT'S MANDATORY  
8 AND WHAT'S DISCRETIONARY UNDER PARAGRAPH 38, I THINK, OF THIS  
9 JUDGMENT, IT KIND OF BEST DESCRIBES WHAT THE PROBLEM IS.

10 THERE ARE SOME THINGS THAT A VOTE OF THE ADVISORY  
11 COMMITTEE SHOULD HAVE NO AFFECT ON.

12 AND ONE OF THE THEM IS WHETHER OR NOT THERE IS AN  
13 OPTIMUM BASIN MANAGEMENT PROGRAM.

14 ON THAT ISSUE, THE ADVISORY COMMITTEE CAN ONLY  
15 ADVISE AS TO WHAT SHOULD BE IN IT AND WHAT SHOULDN'T BE IN IT,  
16 OR WHEN IT SHOULD BE DONE, WHO TO HIRE AND HOW MUCH TO PAY.

17 NOT WHETHER OR NOT IT SHOULD BE DONE. THAT IS  
18 MANDATORY.

19 AND THAT'S WHY WE ARE HERE TODAY BECAUSE WE HAVE  
20 -- WE HAVE A WATERMASTER THAT KEEPS SUBMITTING IT IN FUNNY  
21 LITTLE WAYS TO THE ADVISORY COMMITTEE.

22 AND THE ADVISORY COMMITTEE SAYS NO, AND IT IS  
23 GOING TO CONTINUE TO SAY NO.

24 AND THE PROBLEM IS, IS THAT YOUR LEADERSHIP THERE  
25 THAT WILL DO THE STAFF REPORTS AND SAY WE ARE VOTING ON THIS,  
26 OR THIS IS WHAT THE OPTIONS ARE, THIS IS HOW WE SHOULD  
27 PROCEED, THIS IS WHERE WE'RE GOING TO BE IN FIVE YEARS, IN TWO  
28 YEARS, IN TEN YEARS.

1 THAT HASN'T HAPPENED.

2 THERE IS AN ABSENCE OF THAT KIND OF LEADERSHIP,  
3 SO THERE IS AN ABSENCE OF THAT KIND OF ACCOMPLISHMENT.

4 SO WE ARE NOT BOUND IN ANY WAY.

5 THERE'S NEVER EVEN BEEN A VOTE NOT TO DO IT  
6 EXCEPT IN THE SETTLEMENT NEGOTIATIONS.

7 THE COURT: NOW, IN GOING OVER YOUR -- THE  
8 DOCUMENTS YOU FILED, THE SUPPLEMENTAL MEMORANDUM OF POINTS AND  
9 AUTHORITIES --

10 MS. TRAGER: YES, YOUR HONOR.

11 THE COURT: -- I AM A LITTLE CRITICAL OF THEM IN  
12 THAT -- THEY'RE 45 PAGES.

13 AND I WENT THROUGH THEM. BUT I DID, AFTER A  
14 WHILE, FIND MYSELF SKIMMING.

15 IT WAS, I THINK, PROBABLY ABOUT THREE TIMES AS  
16 MANY PAGES AS NECESSARY.

17 AND WHAT I REALLY WAS INTERESTED IN WAS EXACTLY  
18 WHAT IT WAS THAT YOU FEEL HAS TO BE DONE TO COMPLY WITH THE  
19 JUDGMENT, TO BRING THE OPERATION OF THE WATER DISTRICT INTO  
20 COMPLIANCE WITH LAW.

21 MS. TRAGER: I'LL BE HAPPY TO.

22 THE COURT: AND IF I CAN GET VERY SPECIFICALLY  
23 WHAT YOU FEEL HAS TO BE DONE, NOT WHAT OPTIMALLY SHOULD BE  
24 DONE, ALTHOUGH THAT CAN BE ADDED LATER. BUT IMMEDIATELY WHAT  
25 HAS TO BE DONE TO BRING THEM INTO COMPLIANCE.

26 AND I -- I DO SUGGEST THAT EVERYONE HERE FROM THE  
27 OLD GUARDS, YOU MIGHT SAY, LISTEN VERY CAREFULLY.

28 AND IF THERE IS ANYTHING AT ALL THAT HAS ANY MERIT

1 TO IT FROM YOUR POINT OF VIEW, EVEN THOUGH IT WOULD HURT A  
2 LITTLE BIT, GIVE SOME SERIOUS THOUGHT TO, WELL, HOW CAN WE  
3 ELIMINATE THIS PARTICULAR POINT OF FRICTION WITH SOME OF THE  
4 OTHER TENANTS OF THE BASIN.

5 AND HOW CAN WE POSSIBLY NARROW DOWN AT LEAST THE  
6 AREAS OF DISAGREEMENT.

7 I DID GET THE IMPRESSION GOING THROUGH ALL OF  
8 THESE PAPERS THAT THERE WAS CONSIDERABLE SMOKE AND THAT THERE  
9 WAS A LITTLE BIT OF FIRE UNDERNEATH SOME OF THAT SMOKE.

10 AND IT MIGHT VERY WELL BE THAT THERE HAVE BEEN  
11 SOME THINGS THAT WERE REQUIRED TO BE DONE IN PROPERLY MANAGING  
12 THE BASIN THAT HAVEN'T BEEN DONE.

13 AND THAT SINCE YOU GOT THE VOTES TO GET AWAY WITH  
14 IT, WHY, IT IS SIMPLER TO JUST STONEWALL IT AND NOT DO IT.

15 SO WHAT I DO HOPE WE CAN GET OUT OF THIS THING  
16 BEFORE WE ARE ALL THROUGH IS SOME AGREEMENT THAT, WELL, YEAH,  
17 IT MAY NOT BE NECESSARY.

18 BUT THE JUDGMENT DOES REQUIRE IT.

19 AND WE PROBABLY OUGHT TO DO IT EVEN THOUGH WE  
20 THINK IT IS A LOT OF BALONEY.

21 AND SOME SERIOUS EFFORTS WILL BE MADE TO DO IT.

22 FOR INSTANCE, MISS TRAGER POINTED OUT IN HER  
23 SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES THAT --  
24 FORGET WHAT IT WAS NOW, BUT SOMETHING THAT WAS REQUIRED --  
25 SOME SORT OF A STUDY THAT WAS REQUIRED BY THE JUDGMENT.

26 AND THE AGREEMENT HAD NOT BEEN DONE, ALTHOUGH  
27 EVERY YEAR FOR FIVE YEARS THERE HAD BEEN A STATEMENT THAT IT  
28 WAS BEING COMMENCED. BUT IT NEVER DID GET COMMENCED.

1                   AND -- I KNOW NOTHING ABOUT THAT OTHER THAN THE  
2 FACT THAT MISS TRAGER ALLEGED THAT IN THE POINTS AND  
3 AUTHORITIES.

4                   BUT IF THERE ARE THINGS LIKE THAT, WHY, THEN  
5 PERHAPS WE OUGHT TO GET OFF THE STICK AND DO IT.

6                   IN THE MEANTIME, THOUGH, WOULD YOU GO ON NOW WITH  
7 WHAT YOU THINK SPECIFICALLY WOULD ABSOLUTELY BE REQUIRED BY  
8 LAW AND SHOULD BE DONE.

9                   NOT JUST THE THINGS THAT WOULD BE NICE IF THEY  
10 WERE DONE.

11                  MS. TRAGER: OKAY. GET TO THE FIRE AND I'LL  
12 EXPLAIN WHAT THE SMOKE IS.

13                  THE COURT: OKAY.

14                  MS. TRAGER: THE FIRE, THE KEY, THE BURNING  
15 ELEMENT.

16                  THE FLUORINE WOULD BE THE OPTIMUM BASIN MANAGEMENT  
17 PROGRAM WHICH IS MANDATED.

18                  THE COURT: BE THE WHAT?

19                  MS. TRAGER: THE OPTIMUM BASIN MANAGEMENT  
20 PROGRAM, WHICH IS MANDATED.

21                  THIS IS AN OPERATIONAL STUDY FOR THE BASIN THAT  
22 TAKES INTO ACCOUNT THE PUMPING OPERATIONS.

23                  AND WHEN YOU DO THAT, YOU HAVE TO TAKE INTO  
24 ACCOUNT THE STORAGE OPERATIONS.

25                  THE SMOKE ON THAT IS THIS WATERMASTER HAS FAILED  
26 TO, AS FAR AS WE CAN TELL, ADOPT A RESOLUTION BASED ON A  
27 STUDY THAT IT SHOULD HAVE DONE OF THE STORAGE NEEDS OF THE  
28 PARTIES.

1                    THAT HAS NOT BEEN DONE UNDER THE WATERMASTER  
2 GROUND WATER RULES AND REGULATIONS THAT WERE ADOPTED IN 1979.

3                    HAD THAT BEEN DONE, YOUR HONOR, WE THINK THAT THE  
4 SO-CALLED EXCHANGE AGREEMENTS WITH METROPOLITAN BETWEEN  
5 METROPOLITAN AND ONTARIO AND RANCHO CUCAMONGA COUNTY WATER  
6 DISTRICT WOULD HAVE BEEN CONDITIONED TO GIVE SOME -- TO MEET  
7 THE CONCERNS OF THE MOVING PARTIES AND OTHERS AS TO WATER  
8 QUALITY.

9                    NOW, WHAT NEEDS TO BE CONTAINED IN THE OPTIMUM  
10 BASIN MANAGEMENT PROGRAM UNDER THE JUDGMENT, THEY ONLY GIVE  
11 THE -- THE JUDGMENT ONLY PROVIDES PARAMETERS.

12                    AND THERE'S LANGUAGE IN THE JUDGMENT THAT SAYS,  
13 GEE, WE DON'T WANT TO GIVE YOU A RIGID PLAN FOR THIS BECAUSE  
14 TECHNOLOGIES ARE GOING TO CHANGE AS YOU NEED TO EMBARK ON  
15 THIS.

16                    AND THERE NEEDS TO BE APPLICABILITY IN THE  
17 JUDGMENT FOR THE WATERMASTER TO MEET THE PHYSICAL SOLUTIONS  
18 MANDATED UNDER ARTICLE 10, SECTION 2.

19                    SO THE WATERMASTER IS NOT BEING TOLD ABSOLUTELY  
20 WHAT IT MUST INCLUDE, BUT IT DOES SAY THERE ARE THREE BROAD  
21 AREAS.

22                    ONE OF THEM IS THE FIRST ONE I MENTIONED, WHICH IS  
23 PUMPING.

24                    THE SECOND ONE IS WATER QUALITY CONCERNS.

25                    AND THE THIRD ELEMENT OF THAT IS ECONOMIC  
26 CONCERNS.

27                    THOSE ITEMS ARE SET OUT IN MORE PARTICULAR CLARITY  
28 IN PARAGRAPHS 39 AND 41 OF THE JUDGMENT AND IN PARAGRAPH 1 OF

1 APPENDIX I, WHICH IS THE ENGINEERING APPENDIX TO THE JUDGMENT  
2 FOUND AT PAGE 79 WHERE IT TALKS ABOUT BASIN MANAGEMENT  
3 PARAMETERS.

4 AT A MINIMUM, THE WATERMASTER MUST DO THIS ON A  
5 TIME FRAME OF WHICH WE ARE ASKING, YOUR HONOR, TO IMPOSE SO  
6 THAT IT HAPPENS.

7 AND THIS IS SOMETHING THAT SHOULD HAVE BEEN  
8 BROUGHT TO THE COURT'S ATTENTION IN THE DRAFT -- DRAFT  
9 ELEVENTH ANNUAL REPORT AND THE TEN REPORTS THAT PRECEDED IT  
10 AS TO WHEN THE WATERMASTER WOULD GET AROUND TO TAKE THE STEPS  
11 TO DO THE STUDY, WHEN IT WOULD BE COMPLETED, HOW LONG IT WOULD  
12 TAKE, HOW THEY WERE GOING TO PAY FOR IT.

13 THAT'S THE HEART OF IT.

14 SOMETHING THAT THE WATERMASTER NEEDS TO BE DOING  
15 IN ORDER TO MAKE THAT PROGRAM A REALITY IS ITEM NO. 2 OF THE  
16 UNRESOLVED ISSUES, WHICH IS THE ADEQUACY OF THE DATA GATHERING  
17 BY THE WATERMASTER.

18 AND THIS -- THE LISTS OF THESE ITEMS IS SET FORTH  
19 VERY SIMPLY IN THE ATTORNEY GENERAL'S CONSOLIDATED STATEMENT  
20 OF ISSUES TO BE DETERMINED THAT WAS SIGNED BY ALL THE PARTIES.

21 IN TERMS OF DATA GATHERING, DURING THE SETTLEMENT  
22 NEGOTIATIONS THE WATERMASTER CONCEDED THAT NOT EVERYBODY'S  
23 METERS WERE IN PLACE AS THEY WERE SUPPOSED TO BE, SO THAT THE  
24 WATER WAS -- THAT WAS PRODUCED WAS NOT BEING MEASURED IN  
25 ACCORDANCE WITH THE JUDGMENT.

26 AND THAT SHOULD HAVE BEEN DONE ELEVEN YEARS AGO,  
27 BUT IT WASN'T.

28 IN ADDITION TO THAT APPOINTMENT WHICH WAS NOT



1 CONCEDED BY THE WATERMASTER, IS THAT IN ORDER TO DETERMINE --  
2 IN ORDER TO HAVE A MANAGEMENT PROGRAM TO DETERMINE HOW MUCH  
3 WATER SHOULD BE IN THE BASIN, YOU HAVE TO MEASURE THE GROUND  
4 WATER LEVEL IN THE BASIN.

5 AND THAT IS DONE CUSTOMARILY THROUGH STATIC WATER  
6 MEASUREMENTS WHICH CAN BE DONE WITH A WELL IN PLACE.

7 I DON'T KNOW WHAT THE PROCEDURE IS, BUT YOU HAVE  
8 TO MEASURE THE -- HOW FAST THE WATER RISES AFTER YOU TURN OFF  
9 THE PUMP SO THAT YOU KNOW WHERE YOUR GROUND WATER IS.

10 AND YOU DO THAT OVER A PERIOD OF TIME.

11 AND THE WATERMASTER HAS DISTRIBUTED FORMS TO THE  
12 PRODUCERS TO PROVIDE THAT INFORMATION.

13 AND SOME OF THE PRODUCERS AREN'T PROVIDING THAT  
14 INFORMATION.

15 AND IF THERE HAD BEEN ALL OF THAT INFORMATION, IT  
16 WOULD BE EASY TO GO FROM THAT POINT.

17 THAT'S ONE OF THE BITS OF DATA THAT -- THAT HASN'T  
18 BEEN COLLECTED.

19 I AGREE UNDER THE JUDGMENT THE COSTS OF KEEPING  
20 THOSE RECORDS IS PASSED ON TO THE PRODUCERS AND THAT THE  
21 INDIVIDUALS HAVE TO COMPLY WITH THAT.

22 THE WATERMASTER HAS MADE NO DETERMINATION AS  
23 REQUIRED UNDER THE RULES AND REGULATIONS AND UNDER THE  
24 JUDGMENT.

25 AND HASN'T PROVIDED TO YOUR HONOR IN THE ANNUAL  
26 REPORTS ANY MEASUREMENT OF LOSSES OF WATER IN STORAGE THAT FOR  
27 ANY REASON HAS NOT BEEN ACCOUNTED FOR.

28 I DON'T KNOW HOW YOU MEASURE THAT.

1                    THAT MAY BE SOMETHING THAT HAS TO BE ACCOMMODATED  
2                    IN THE OPTIMUM BASIN MANAGEMENT PROGRAM, BUT THAT'S NOT DONE.

3                    NOW, THE QUESTION OF THE EXCHANGE AGREEMENTS IS  
4                    TROUBLING.

5                    IT'S TROUBLING FOR A COUPLE DIFFERENT REASONS.

6                    AND I -- I DON'T KNOW WHAT THE ANSWER IS AS TO  
7                    HOW TO RESOLVE IT, OR WHETHER THEY NEED TO BE KEPT IN PLACE OR  
8                    WHETHER NOTHING SHOULD OCCUR FOR A PERIOD OF TIME.

9                    AND WE TOOK -- WE HAD A CONSULTANT WHICH WAS  
10                    INVITED TO COME TO THE SETTLEMENT NEGOTIATIONS TO GIVE AN  
11                    ESTIMATE AS TO HOW LONG IT WOULD TAKE TO PROPOSE AN OPTIMUM  
12                    BASIN MANAGEMENT PROGRAM WITH THE ELEMENTS OF IT THAT WOULD BE  
13                    ADVISABLE FOR MANAGING THE BASIN.

14                    AND HE SAID IT WOULD TAKE ABOUT A YEAR TO DEVELOP  
15                    THAT PROGRAM TO PRESENT TO THE WATERMASTER FOR THE ADVISORY  
16                    COMMITTEE'S REVIEW AND CONSIDERING AND ADOPTION.

17                    I DON'T KNOW THAT ANY REAL DAMAGE IS DONE TO THIS  
18                    BASIN BECAUSE IT'S NOT AN OVERDRAFT.

19                    AND THERE MAY NOT BE WATER AVAILABLE FOR  
20                    IMPORTATION THROUGH METROPOLITAN ANYWAY BECAUSE OF THE DROUGHT  
21                    CONDITIONS THAT ARE PREVAILING IN THE NORTHERN PART OF THE  
22                    STATE.

23                    THERE ARE SOME ELEMENTS OF THIS THAT ARE OF  
24                    CONCERN AND THEY OUGHT TO BE LOOKED AT BY THE WATERMASTER IN A  
25                    MORE OPEN FORUM AS TO WHAT THE ENVIRONMENTAL IMPACTS ARE.

26                    NOW, THERE ARE PAPERS AND DOCUMENTS THAT HAVE BEEN  
27                    SUBMITTED TO YOU THAT IT'S A MINIMAL IMPACT.

28                    WE THINK IT MAY NOT BE SO MINIMAL WHEN YOU COUPLE

1 THE ADDITIONAL STORAGE THAT OCCURS BECAUSE OF THE IMPORTATION  
2 OF WATER.

3 AND YOU KNOW PEOPLE WATER THEIR LAWNS, OBVIOUSLY,  
4 AND NOT ALL OF IT GETS IN THE SEWAGE PLANT DOWN TO THE RIVER.

5 ABOUT HALF OF IT GOES ONTO THEIR LAWN THEN  
6 PERCOLATES INTO THE BASIN.

7 SOME OF THAT WATER IS COLORADO RIVER WATER.

8 IT WAS ALSO CONTEMPLATED, YOUR HONOR, THAT THE  
9 CONJUNCTIVE USE STORAGE PROGRAM THAT METROPOLITAN WOULD  
10 UNDERTAKE WOULD BE WITH STATE PROJECT WATER, WHICH HAS A LOWER  
11 MINERAL CONTENT AND LESS OF AN ADVERSE IMPACT WHEN THAT IS  
12 INTRODUCED THAN WHEN YOU INTRODUCE COLORADO RIVER WATER.

13 IT'S INTERESTING THAT -- THAT THE STORAGE  
14 AGREEMENTS THAT WERE APPROVED BY THE WATERMASTER WERE DONE IN  
15 ACCORDANCE WITH A NOTICE OF EXEMPTION UNDER THE CALIFORNIA  
16 ENVIRONMENTAL WATER ACT.

17 METROPOLITAN SAID, GEE, EXISTING FACILITY IS IN  
18 PLACE. THIS ISN'T A PROJECT AND DOES NOT REQUIRE REVIEW.

19 BUT THEN LATER ON MITIGATED THE ADVERSE IMPACTS OF  
20 INTRODUCING COLORADO RIVER WATER TO THE SYSTEM FOR THE  
21 DOWNSTREAM USERS IN ORANGE COUNTY.

22 SO THERE EITHER IS OR IS NOT AN IMPACT.

23 AND SOME OF THAT WATER PERCOLATES THROUGH THE  
24 BASIN.

25 SO CUMULATIVELY THERE MAY BE AN IMPACT.

26 IN ANY EVENT, IT WASN'T LOOKED AT.

27 AND THOSE ARE THE SORTS OF THINGS THAT I THINK THE  
28 WATERMASTER OUGHT TO BE DOING AND COULD DO MORE EFFECTIVELY IF

1 IT HAD A PROGRAM AND COULD BALANCE IMPORTATION AND STORAGE  
2 RIGHTS OF INDIVIDUAL PARTIES AND STORAGE NEEDS OF PARTIES.

3 AND NONE OF THAT IS HAPPENING IN A COHESIVE WAY.

4 IT'S JUST --

5 THE COURT: THERE IS NOTHING IN THE JUDGMENT OR IN  
6 ANY OF THE PHYSICAL SOLUTION OR THE RULES AND REGULATIONS  
7 WHICH DESCRIBES WHERE WATER WOULD COME FROM, IS THERE?

8 THAT SAYS THAT IT WILL BE CALIFORNIA WATER AS  
9 DISTINGUISHED FROM COLORADO RIVER WATER.

10 MS. TRAGER: THERE IS NOTHING IN THE JUDGMENT,  
11 NOTHING IN THE RULES AND REGULATIONS.

12 BUT THERE WAS A -- A FORMAL CYCLIC STORAGE  
13 AGREEMENT THAT WAS PRESENTED TO YOUR HONOR IN 1978 WHICH  
14 REFERRED TO STATE PROJECT WATER.

15 THAT WAS THE LIMITATION.

16 AND NO, IT'S NOT -- IT'S NOT EVIDENT IN THE  
17 DOCUMENTS THAT ARE BEFORE THE COURT OTHER THAN IN CYCLIC.

18 THE COURT: YOUR CONCERN EXPRESSED IN YOUR MOTION  
19 IS THAT THE HIGHER REACHES OF THE SOIL HAVE BECOME IMPREGNATED  
20 WITH NITRATES, THINGS OF THIS SORT?

21 MS. TRAGER: YES.

22 THE COURT: THINGS GOING ON ON THE SURFACE.

23 AND THAT IS WHEN THE WATER BASIN RISES, WHY, IT  
24 LEACHES THAT OUT OF THE SOIL AND IT GETS INTO THE WATER AND  
25 CONTAMINATES THE WATER, IN EFFECT, REDUCES THE QUALITY OF THE  
26 WATER.

27 AND THAT DOES SEEM TO PRESENT SOMETHING WHICH IS  
28 SORT OF AN ANOMALY, BECAUSE I WOULD ASSUME THAT THE PURPOSE OF

1 THE WATER BASIN WAS TO BE SURE THAT THE WATER BASIN DOESN'T  
2 GET OVERDRAWN, THAT THERE IS A LOT OF WATER IN IT.

3 AND NORMALLY THEY WOULD BE APPLAUDED MIGHTILY FOR  
4 GETTING WATER INTO THE BASIN FROM ANY SOURCE.

5 MS. TRAGER: THAT'S CORRECT.

6 THE COURT: AND THEN ALL OF A SUDDEN, WE FIND OUT  
7 THAT WE HAVE TO KEEP THE WATER BASIN VERY LOW IN ORDER TO KEEP  
8 THE WATER FROM GETTING CONTAMINATED.

9 MS. TRAGER: THERE ARE OTHER THINGS THAT YOU CAN  
10 DO, YOUR HONOR, BESIDES KEEP THE WATER BASIN LOW.

11 WE ARE NOT ASKING TO KEEP THE WATER BASIN LOW.  
12 THAT'S PROBABLY NOT IN THE BEST INTERESTS OF ALL OF PEOPLE IN  
13 THE BASIN.

14 BUT THERE ARE OTHER MANAGEMENT TOOLS THAT ARE  
15 AVAILABLE TO MANAGE NITRATE PROBLEMS, TO MANAGE OTHER KINDS OF  
16 CONTAMINATION PROBLEMS, THAT ARE NORMALLY HANDLED ON A  
17 REGIONAL BASIS.

18 AND THAT'S WHY WE ARE ASKING THIS COURT'S  
19 INTERVENTION TO GET THE PROCESS MOVING OF STUDYING HOW BEST TO  
20 SOLVE THIS PROBLEM GIVEN ECONOMIC CONSIDERATIONS, GIVEN WATER  
21 QUALITY CONSIDERATIONS, WHICH ARE ONE OF THE MANDATES IN THE  
22 JUDGMENT. ALSO TO IMPROVE WATER QUALITY AND TO MEET THE  
23 REPLENISHMENT OBLIGATIONS OF THE WATERMASTER.

24 THOSE THREE THINGS CAN BE BALANCED AND THERE ARE  
25 WAYS TO DO THAT.

26 AND THE WATERMASTER NEEDS HELP FROM CONSULTING  
27 FIRMS THAT KNOW HOW TO DO THAT.

28 AND THAT'S WHAT WE WANT THEM TO DO AND THAT'S WHAT

1 THEY ARE NOT DOING.

2 THE COURT: ASIDE FROM THE LACK OF WHAT YOU  
3 CONSIDER AN OPTIMUM BASIN MANAGEMENT PROGRAM STUDY, WHAT ELSE  
4 HAS BEEN MANDATED THAT HAS NOT BEEN DONE?

5 MS. TRAGER: BASICALLY THE DATA GATHERING, OPTIMUM  
6 BASIN MANAGEMENT STUDY, THE SOCIO-ECONOMIC STUDY WHICH THE  
7 PARTIES -- THE WATERMASTER AGREED TO UNDERTAKE IN THE  
8 SETTLEMENT NEGOTIATIONS.

9 THE SCOPE OF THAT HAS NOT BEEN WORKED OUT; THE  
10 TIMING OF THAT HAS NOT BEEN WORKED OUT.

11 BUT THEY HAVE AGREED -- THEY HAVE AGREED TO DO IT  
12 AND IT IS ABSOLUTELY MANDATED UNDER THE JUDGMENT.

13 THE COURT: OKAY.

14 SO WHAT YOU'RE REALLY ASKING THEN IS THAT A FREEZE  
15 BE PUT ON THE BASIN UNTIL THE OPTIMUM MANAGEMENT STUDY CAN BE  
16 COMPLETED?

17 MS. TRAGER: I THINK THAT THERE WOULD BE MORE OF  
18 AN INCENTIVE, YOUR HONOR, IF THAT WERE THE DAGGER.

19 I DON'T KNOW WHAT ELSE WORKS AT THIS POINT.

20 THE COURT: EXPLAIN TO ME WHAT YOU MEAN BY  
21 FREEZING THE STATUS QUO.

22 MS. TRAGER: WELL, IF I WERE AN ENGINEER I COULD  
23 DO THIS BETTER.

24 THE COURT: YOU ARE STUCK WITH BEING A LAWYER.

25 MS. TRAGER: I'M STUCK. I'M STUCK. NO QUESTION  
26 THAT I'M STUCK.

27 IN TERMS OF THE AGRICULTURAL POOL TRANSFER, I  
28 THINK THE ANSWER TO THAT IS EASY.

1                   AND I THINK THE JUDGMENT IN NO WAY IS A CONFLICT  
2 WITH WHAT THE MOVING PARTIES ARE ASKING TO HAVE DONE.

3                   FIRST OF ALL, THE TRANSFER FROM THE AG POOL TO THE  
4 APPROPRIATIVE POOL HAS TAKEN PLACE.

5                   THAT CAN'T BE DONE.

6                   THAT'S A BOOKKEEPING FUNCTION AND IT DOESN'T  
7 MATTER THAT IT WAS TRANSFERRED FROM ONE POOL TO ANOTHER.

8                   THE MOVING PARTIES HAVE CONCEDED THAT IN AN  
9 AMENDED POINTS AND AUTHORITIES AND IN AN AMENDED PRAYER THAT  
10 WAS FILED BEFORE THE FIRST HEARING ON THE 8TH.

11                   THE QUESTION REMAINS AS TO HOW YOU TREAT THAT  
12 WATER NOW THAT IT'S IN THE APPROPRIATIVE POOL.

13                   WE SUGGEST THAT THE WATER BE HELD IN TRUST BY THE  
14 WATERMASTER TO MEET REPLENISHMENT OBLIGATIONS, IF FOR NOTHING  
15 ELSE OVER THE NEXT YEAR UNTIL A DECISION CAN BE MADE ABOUT THE  
16 OPTIMUM BASIN -- ABOUT THE MANAGEMENT PARAMETERS OF THE  
17 BASIN.

18                   AND THEN DECIDE HOW MUCH OF IT GETS TRANSFERRED TO  
19 OTHER PARTIES FOR STORAGE.

20                   IN THAT -- IN THAT AMOUNT OF WATER THAT HAS BEEN  
21 TRANSFERRED, TEN THOUSAND OF THAT HAS ALREADY BEEN ALLOCATED  
22 TO THE CITY OF ONTARIO.

23                   I DON'T KNOW THAT THAT CAN BE UNDONE AT THIS  
24 POINT. I MEAN, THEY HAVE IT.

25                   THERE ARE NOW PRESENTLY -- THERE ARE NO  
26 LIMITATIONS ON THE WATERMASTER'S ABILITY TO ENTER INTO  
27 CONTRACTS AND TO COLLECT THE ASSESSMENTS FOR WATER THAT IS  
28 DESIRED BY OTHER PARTIES AND STORAGE.

1 I DON'T THINK ANYTHING CAN BE DONE ABOUT THAT.

2 BUT I THINK, AS PART OF THE ORDER, YOU MIGHT WANT  
3 TO PREVENT THE ACQUISITION OF STORAGE BY OTHER PARTIES THROUGH  
4 THAT MEANS FROM THAT PARTICULAR POOL OF WATER PENDING A PLAN.

5 AND I THINK THAT THIS COURT HAS WELL WITHIN ITS  
6 POWER THE ABILITY TO DELAY FURTHER ACTIONS AS TO THAT WATER.

7 BUT WE RECOGNIZE THAT THE FACT THAT THE  
8 ALLOCATIONS FROM ONE POOL TO ANOTHER HAS OCCURRED, AND NO  
9 REASON TO UNDUE THAT. THAT WOULD HURT THE AGRICULTURAL POOL  
10 TO REVERSE THAT TRANSACTION.

11 IN TERMS OF THE TEN THOUSAND ACRE-FEET, THE WATER  
12 FOR ONTARIO, I DON'T KNOW WHAT YOU CAN DO WITH THAT.

13 IT'S BEEN DONE.

14 THE ASSESSMENTS HAVE BEEN MADE.

15 ONTARIO HAS THEREBY ACQUIRED GREATER VOTING POWER  
16 BECAUSE OF THE TRANSFER WHICH WAS BASED ON THE ASSESSMENTS  
17 THAT ARE PAID.

18 I DON'T KNOW WHAT TO PROPOSE TO THE COURT  
19 ABOUT THAT, EXCEPT THAT IF THERE IS AN ORDER FROM THIS  
20 COURT ADMONISHING THE WATERMASTER TO COMPLY WITH THE JUDGMENT  
21 AS TO THE OPTIMUM BASIN MANAGEMENT PROGRAM AND THE THREE BROAD  
22 ELEMENTS THAT ARE SUPPOSED TO BE INCLUDED IN IT, I WOULD THINK  
23 ONTARIO WOULD FEEL BOUND BY THIS COURT'S ORDER IN THAT REGARD.

24 IN TERMS OF THE SO-CALLED EXCHANGE AGREEMENTS,  
25 WHICH ARE REALLY NOT EXCHANGE AGREEMENTS BUT THE BEGINNING OF  
26 THE MAJOR CONJUNCTIVE USE PROGRAM, THAT IS THE SUBJECT OF THE  
27 EIR THAT WAS DISCUSSED, METROPOLITAN'S EIR IN WHICH THE  
28 NITRATE PROBLEM WAS IDENTIFIED.



1                   AND THAT WAS JUST ONE OF THE STUDIES THE COMMITTEE  
2 HAS IDENTIFIED.

3                   I THINK IT MAY BE WITHIN THIS COURT'S POWER UNDER  
4 THE JUDGMENT TO DIRECT THE PARTIES TO THOSE AGREEMENTS TO WORK  
5 OUT AMONG THEMSELVES SOME EQUALIZATION TO ELIMINATE THE  
6 SEVENTY-FIVE -- APPROXIMATELY SEVENTY-FIVE DOLLAR PER  
7 ACRE-FOOT INCENTIVE FOR THE PARTIES TO WANT TO ACQUIRE MORE  
8 STORAGE SO THAT THEY CAN HAVE AVAILABLE TO SELL LATER.

9                   BUT MORE IMPORTANTLY, TO ELIMINATE THE  
10 SEVENTY-FIVE DOLLAR PER ACRE INCENTIVE SO THAT MORE WATER  
11 COMES INTO THE BASIN.

12                   AND THAT THEN -- AND THAT THE WATER THAT'S  
13 ACQUIRED FOR STORAGE BY THE PARTIES BE GIVEN -- BE PAID IN  
14 THE FORM OF ASSESSMENTS ALLOWING THE WATERMASTER TO GO OUT AND  
15 BUY YET MORE WATER FOR A BASIN THAT IS NOT IN OVERDRAFT  
16 OVERALL.

17                   THAT CYCLE NEEDS TO STOP OR AT LEAST IT NEEDS TO  
18 BE SUSPENDED PENDING A REVIEW BY A FIRM THAT HAS MANAGEMENT  
19 CAPABILITY TO SHOW OTHER OPTIONS AS TO HOW TO DO THAT, WHERE  
20 TO STORE, WHEN TO STORE, WHEREIN NEW PROCEDURES SHOULD BE  
21 IMPLEMENTED TO BEST MANAGE THE WATER QUALITY IN THE BASIN.

22                   THERE ARE LOTS OF OPTIONS, YOUR HONOR.

23                   IT'S NOT JUST -- IT DOESN'T HAVE TO BE A PUT AND  
24 TAKE OPERATION THE WAY IT IS NOW.

25                   THERE IS MORE THAT WOULD BE -- WOULD BE DONE IN  
26 THAT LONG TERM THAT WOULD BENEFIT MANY OF THE -- MANY PARTIES  
27 TO THE PROCEEDING. AND PROBABLY ALL OF THEM NEED YOU TO DO  
28 THOSE THINGS IN ORDER TO PRESERVE THE RESOURCE FOR FUTURE

1 GENERATIONS.

2 AND IT'S NOT BEING DONE. AND WE ARE IN A STATUS  
3 QUO RIGHT NOW WHERE IT CAN'T BE DONE.

4 THE COURT: TELL ME ABOUT YOUR JOINT MEETING THAT  
5 YOU HAD.

6 THERE WERE SOME AGREEMENTS WORKED OUT AT THAT  
7 TIME, BUT A LOT OF THINGS WEREN'T WORKED OUT.

8 THE REPORT WHICH WAS FILED BY THE ATTORNEY GENERAL  
9 INDICATES SEVERAL ISSUES WHICH HAD BEEN SETTLED BETWEEN THE  
10 PARTIES AND A LOT MORE UNRESOLVED ISSUES.

11 AND I GATHER YOU SPENT QUITE A FEW HOURS TOGETHER.

12 WHAT WAS YOUR REACTION TO THAT MEETING, AND WHAT  
13 HOPES DO YOU SEE OF RESOLVING ANY OF THESE ISSUES?

14 MS. TRAGER: IT WAS INSTRUCTIVE FOR ME TO MEET THE  
15 PEOPLE AND THE PLAYERS AND TO HEAR -- IN A LOT OF WAYS THERE  
16 WERE EMOTIONAL RESPONSES TO WHAT HAS HAPPENED.

17 AND THAT'S DIFFICULT ALWAYS IN LITIGATION,  
18 PARTICULARLY AMONG WATER PEOPLE.

19 I SAW AND HEARD AN INTERESTING -- I MEAN, IF I  
20 MIGHT VIOLATE THE PROHIBITION ABOUT TALKING ABOUT WHAT  
21 HAPPENED IN MANDATED SETTLEMENT NEGOTIATIONS, THERE WAS AN  
22 INTERESTING DIVISION BETWEEN MR. TEAL AND HIS ATTORNEY AND THE  
23 CITY OF ONTARIO'S POSITION REGARDING ADOPTION OF AN OPTIMUM  
24 BASIN WATER MANAGEMENT PROGRAM AND I THINK SOME IN INTEREST  
25 DOING THAT.

26 I THINK THERE'S A LAWYER'S RELUCTANCE, AS THERE  
27 WOULD BE IN A LITIGATION PROCEDURE LIKE THIS, TO COMMIT  
28 ONTARIO TO A PROGRAM THAT THEY HAVEN'T SEEN THAT HASN'T BEEN

1 DEVELOPED YET.

2 AND I THINK THAT'S A RISK THAT WE HAVE TO FACE IN  
3 PROCEEDING DOWN THE WAY.

4 THERE WAS A GREATER RISK, I THINK, INITIALLY  
5 ELEVEN YEARS AGO WHEN THE PARTIES ENTERED INTO THIS COMMUNITY  
6 OF INTEREST THAT WAS -- THAT BECAME THE JUDGMENT.

7 AND IT'S TIME TO MAKE THAT LEAP AGAIN.

8 THE COURT: KEEP COMING BACK TO THE OPTIMUM BASIN  
9 MANAGEMENT STUDY --

10 MS. TRAGER: WE --

11 THE COURT: -- AS BEING SORT OF THE ONE THING  
12 WITHOUT WHICH NOTHING CAN BE DONE.

13 MS. TRAGER: I THINK THAT'S CORRECT, YOUR HONOR.

14 THE COURT: OKAY.

15 MS. TRAGER: IT PROVIDES A VEHICLE TO GET THE  
16 PARTIES TALKING TO ONE ANOTHER AND TO ALLOW THE PARTIES TO  
17 MOVE FORWARD FROM WHERE THEY ARE TO WHERE THEY NEED TO BE  
18 UNDER THE JUDGMENT.

19 THE COURT: OKAY.

20 NOW, ONE OF THE THINGS THAT'S BEFORE THE COURT IS  
21 THE ELEVENTH ANNUAL WATERMASTER REPORT, WHICH IS BEFORE THE  
22 COURT FOR APPROVAL.

23 MS. TRAGER: YOUR HONOR, WE HAVE BRIEFED THIS  
24 EXTENSIVELY IN THE PAPERS.

25 I BROUGHT THE MATTER TO THE COURT'S ATTENTION  
26 PRIMARILY TO RAISE THE CONSCIOUSNESS OF THE COURT THAT WHILE  
27 THE COURT WAS RECEIVING CERTAIN INFORMATION ABOUT THINGS THAT  
28 APPEARED TO INDICATE THAT THE WATERMASTER WAS MEETING IN

1 ACCORDANCE WITH THE REQUIREMENTS, THERE WERE CERTAIN KEY  
2 ELEMENTS THAT WERE NOT BEING REPORTED AT ALL.

3 MAINLY, THE PROGRESS ON MEETING THE OTHER  
4 REQUIREMENTS OF THE JUDGMENT.

5 AND I THINK THAT'S THE MOST IMPORTANT THING THAT,  
6 I WOULD THINK, WOULD BE THE COMMUNICATION BETWEEN THE -- THE  
7 ANNUAL ONE-TIME COMMUNICATION BETWEEN THE WATERMASTER AND THE  
8 COURT BEING FULLER AND MORE FULLY DEVELOPED INSTEAD OF JUST  
9 RECITING THE MINUTES OF THE MEETINGS AND THE BUDGET.

10 THAT -- AND THE PRODUCTION ACTIVITY, THAT THERE  
11 BE A FULLER AND FRANKER DISCUSSION ABOUT WHAT THE ISSUES ARE  
12 THAT ARE BEING LOOKED AT IN THE JUDGMENT.

13 FOR INSTANCE, THERE'S NO MENTION THAT -- THERE'S  
14 A MAJOR PROCEEDING GOING ON BEFORE THE STATE WATER RESOURCES  
15 CONTROL BOARD THAT HAPPENS ABOUT EVERY TEN YEARS AT WHICH TIME  
16 THAT BOARD TAKES A LOOK AT CONDITIONING THE STATE WATER  
17 PROJECT PERMITS WHICH HAS AN IMPACT, LONG TERM, OR COULD, ON  
18 THE AMOUNT OF STATE PROJECT WATER AVAILABLE FOR STORAGE IN  
19 THIS BASIN.

20 AND IT IMPACTS THE QUALITY.

21 NOW, I'M NOT SAYING THAT THE WATERMASTER HAS TO  
22 SEND SOMEBODY TO THE HEARINGS TO REVIEW IT.

23 BUT IT WOULD BE IMPORTANT FOR THE COURT TO BE  
24 APPRISED OF THOSE KINDS OF ISSUES SO THAT YOU WOULD KNOW WHAT  
25 TO WATCH FOR, WHAT TO ASK, HOW TO INQUIRE, HOW -- HOW TO  
26 ASSESS THE WATERMASTER, IF YOU WILL, IN PROVIDING GUIDANCE  
27 ABOUT DIRECTIONS THEY MIGHT GO IN.

28 NOT THAT YOU WOULD GIVE ENGINEERING ADVICE, BUT SO

1 THAT YOU WOULD KNOW THE STATUS OF THINGS IN THE BASIN.

2 AND THE REPORT THAT IS FILED ANNUALLY DOESN'T --  
3 JUST DOESN'T DO THAT.

4 IT DOESN'T TELL YOU.

5 THE COURT: MAYBE THERE SHOULD BE SOME PROVISION  
6 FOR A -- SORT OF A MINORITY REPORT TO COME ALONG WITH THE  
7 WATERMASTER.

8 MS. TRAGER: PERHAPS THERE SHOULD.

9 THAT MAY BE -- THAT MAY BE APPROPRIATE.

10 THE COURT: OKAY.

11 ONE OTHER THING IS ATTORNEY FEES.

12 MS. TRAGER: THE MOVING -- THE WATERMASTER  
13 INDICATES THAT THERE ARE TWO ISSUES OF ATTORNEY FEES.

14 I THINK THAT THERE ARE ABOUT FIVE.

15 THE MOVING PARTY HAD INITIALLY ASKED TO BE  
16 RELIEVED OF PAYING THEIR SHARE OF WHAT THE WATERMASTER'S COST  
17 -- COSTS WOULD BE IN THE DEFENSE OF THE MOTION.

18 OUR VIEW IS THAT IT SHOULDN'T HAVE BEEN NECESSARY  
19 TO BRING THE MOTION.

20 AND IT WAS WITH DIFFICULTY THAT WE THOUGHT OF THAT  
21 AND ARRIVED AT THIS DECISION.

22 BUT THERE ARE OTHER ISSUES, TOO.

23 THE WATERMASTER HAS ASKED FOR -- TO RECOVER ITS  
24 FEES FROM THE MOVING PARTIES IN THE MATTER OF THE RECOVERY OF  
25 THE NEARLY FIVE HUNDRED THOUSAND DOLLARS ON DEPOSIT WITH THIS  
26 COURT IN AN IMPOUND ACCOUNT.

27 OUR VIEW ON THAT IS THAT AT ANY TIME THE  
28 WATERMASTER COULD HAVE MADE A MOTION TO WITHDRAW THE MONEY

1 THAT HAS CERTAINLY BEEN SAFE IN THE COURT'S ACCOUNT.

2 THE MONEY IS AVAILABLE SHOULD THE WATERMASTER BE  
3 SHORT OF FUNDS OR RELUCTANT TO IMPACT UPON THE HIRING OF A  
4 CONSULTANT FOR AN OPTIMUM BASIN MANAGEMENT PROGRAM.

5 AND THE COURT'S AVAILABLE -- OR THE MONEY IS  
6 AVAILABLE TO THIS COURT AS A TOOL, IF IT SO CHOOSES.

7 THE COURT: WHAT IS IT GOING TO COST TO DO THAT  
8 STUDY?

9 MS. TRAGER: I DON'T KNOW -- REMEMBER.

10 WHAT THE -- I THINK THERE WAS A FIGURE QUOTED.

11 IT WILL BE A LOT. IT WILL BE A LOT.

12 IT WILL BE -- I WOULD THINK IN THE NEIGHBORHOOD  
13 OF THE AMOUNT OF THE MONEY ON DEPOSIT.

14 THIS IS -- THIS IS NOT A TEN THOUSAND DOLLAR  
15 STUDY.

16 THE COURT: IF YOU REVEALED HOW MUCH IS IN  
17 DEPOSIT, WHY, IT PROBABLY WILL BE THAT AMOUNT, YES. OKAY.

18 MS. TRAGER: IT IS A SIGNIFICANT SUM.

19 THE COURT: OKAY.

20 GO AHEAD ON THE ATTORNEY FEES.

21 MS. TRAGER: WE -- THE MOVING PARTIES FEEL THAT  
22 IN AS MUCH AS THEY ARE REPRESENTING A HUNDRED THOUSAND WATER  
23 USERS IN THE BASIN, THAT THERE ARE PROVISIONS FOR THE AWARD OF  
24 FEES UNDER THE ATTORNEY GENERAL PRINCIPLE AND ASK PERMISSION  
25 OF THE COURT TO BRIEF THAT MORE FULLY BECAUSE IT APPEARS TO ME  
26 THAT ONTARIO WOULD BE SEEKING THE SAME SORT OF ATTORNEY FEES.

27 THAT IS NOT BRIEFED IN THE PAPERS.

28 WE WOULD LIKE TO MAKE THE MOTION FOR THOSE FEES

1 AND ASK LEAVE OF THE COURT TO FILE SUCH A MOTION FOLLOWING THE  
2 DETERMINATION TODAY.

3 THE COURT: OKAY.

4 MS. TRAGER: THERE WERE A COUPLE -- THERE'S SOME  
5 MINOR ATTORNEY FEES REQUESTS THAT WERE MADE, I BELIEVE, BY THE  
6 WATERMASTER.

7 IN FACT, I THINK WE'RE MAKING THE SAME REQUEST  
8 THAT -- BECAUSE THE PAPERS THAT WERE FILED AS RESPONSIVE  
9 PLEADINGS EXCEEDED THE LIMITATIONS THAT'S IMPOSED BY THE STATE  
10 RULES.

11 THE RESPONSE IN ANSWERING THOSE GENERATED  
12 ADDITIONAL ATTORNEY FEES.

13 HOW ONE MEASURES THAT I DON'T KNOW, YOUR HONOR.

14 THE COURT: LET ME BACK UP NOW.

15 AS TO METROPOLITAN'S AGREEMENT, DO I INTERPRET  
16 WHAT YOU'RE SAYING TO MEAN THAT YOU ARE NOT ATTACKING THE  
17 VALIDITY OF THAT?

18 YOU ARE RATHER STATING THAT WE SHOULD NOT DO  
19 ANYMORE THINGS LIKE THAT UNTIL WE GET THE OPTIMUM OPEN BASIN  
20 MANAGEMENT STUDY DONE?

21 MS. TRAGER: AT A MINIMUM I WOULD HOPE THAT NO  
22 MORE EXCHANGE AGREEMENTS ARE ENTERED INTO, NO MORE TRUST  
23 STORAGE AGREEMENTS, NO MORE STORAGE -- INDIVIDUAL STORAGE  
24 ACCOUNTS AUGMENT, PENDING THE OPTIMUM BASIN MANAGEMENT  
25 PROGRAM.

26 THE COURT: OKAY.

27 MS. TRAGER: AND THEN THAT WOULD LEAVE THE ISSUES  
28 AS TO WHETHER OR NOT METROPOLITAN IS ACTUALLY APPROVED AS AN

1 INDISPENSABLE PARTY IN LIMBO, BECAUSE I THINK THAT ALREADY IS  
2 THE RAMIFICATION OF DOING THAT.

3 I THINK METROPOLITAN WILL BE WITH US AS A PARTY  
4 FOREVER WHETHER IT LIKES IT OR NOT, IF THE COURT DETERMINES  
5 THAT IT WAS INDISPENSABLE TO THE PROCEEDINGS.

6 PERHAPS THE MATTER CAN BE RESOLVED.

7 THE COURT: I UNDERSTAND THEIR POSITION TO BE THAT  
8 THEY ARE ONLY CONSIDERING THEMSELVES AN INDISPENSABLE PARTY TO  
9 ANY ATTACK ON THEIR AGREEMENT.

10 AND THEY DON'T WANT TO GET INVOLVED IN ANYTHING  
11 ELSE INVOLVED IN THE BASIN MANAGEMENT.

12 BUT THEY DO WANT TO BE ALLOWED TO COME IN HERE AND  
13 SCREAM IF SOMEBODY STARTS ATTACKING THEIR AGREEMENT WHICH THEY  
14 HAVE BEEN ACTING ON THESE YEARS.

15 MR. DOUGHERTY: MAY I ASK FOR CLARIFICATION ON THE  
16 MOVING PARTY'S POSITION, YOUR HONOR, ON THE EXCHANGE  
17 AGREEMENTS?

18 I'M NOT QUITE SURE WHAT SHE MEANS WHEN SHE SAYS NO  
19 MORE.

20 ONTARIO'S SITUATION IS SUCH THAT WE ARE  
21 ESSENTIALLY IN A THREE-YEAR EXCHANGE PROCESS.

22 A MAXIMUM, IF I RECALL CORRECTLY, OF TWENTY  
23 THOUSAND ACRE-FEET WITH APPROXIMATELY SIX THOUSAND ACRE-FEET  
24 EACH YEAR.

25 SIX THOUSAND WAS TRANSFERRED LAST YEAR,  
26 CONTEMPLATING SIX THOUSAND WOULD BE TRANSFERRED CURRENTLY,  
27 WITH SIX THOUSAND NEXT YEAR.

28 NOW, I'M WONDERING IF SHE MEANS TO INCLUDE IN NO



1 MORE CONTEMPLATED TRANSFERRED NEXT YEAR.

2 IF SHE IS, OBVIOUSLY WE HAVE A LOT TO SAY ABOUT  
3 THAT.

4 THE COURT: I HAD ASSUMED THAT SHE MEANT NO FUTURE  
5 -- NO FUTURE AGREEMENTS, BUT NOT STOPPING ANY AGREEMENTS WHICH  
6 HAVE ALREADY BEEN ENTERED INTO; IS THAT CORRECT?

7 MS. TRAGER: THE MOVING PARTIES HAVE GIVEN ME  
8 PERMISSION TO MAKE THAT CONCESSION, YOUR HONOR.

9 THE COURT: NO, MEANING NO RENEWALS ON THAT --  
10 THOSE AGREEMENTS AND NO ADDITIONAL EXCHANGE AGREEMENTS TO BE  
11 ENTERED INTO WITH ANY OTHER PARTIES.

12 FOR INSTANCE, ON THE SPECIFIC THING THAT ONTARIO'S  
13 WORRIED ABOUT, THEY ALREADY HAVE THIS AGREEMENT FOR A  
14 THREE-YEAR TRANSFER OF APPROXIMATELY SIX THOUSAND PER YEAR.

15 THEY'RE IN THE MIDDLE OF THAT NOW.

16 MS. TRAGER: THAT'S CORRECT.

17 THE COURT: SO YOU ARE NOT ASKING THAT THAT BE  
18 RESCINDED OR STOPPED IN MIDSTREAM. BUT THAT NO RENEWALS BE  
19 MADE OF IT AND NO FURTHER AGREEMENTS BE MADE SIMILAR TO THAT;  
20 IS THAT CORRECT?

21 MS. TRAGER: YES, YOUR HONOR.

22 THE COURT: OKAY. ALL RIGHT.

23 MS. TRAGER: WE WOULD PREFER IT WOULD NEVER HAVE  
24 TAKEN PLACE IN THE MANNER THAT IT WAS DONE.

25 THE COURT: PRACTICALITY --

26 MS. TRAGER: PRACTICALITIES ARE VERY DIFFICULT.

27 THE COURT: ALL RIGHT.

28 THANK YOU VERY MUCH.

1 MS. TRAGER: THANK YOU, YOUR HONOR.

2 THE COURT: DO YOU NEED A RECESS OR WOULD YOU LIKE  
3 TO GO AHEAD AND --

4 MR. SMITH: I'M PREPARED TO GO FORWARD, YOUR  
5 HONOR.

6 THE COURT: GO AHEAD.

7 WHAT DOES THE WATERMASTER HAVE TO SAY TO THESE?

8 MR. SMITH: THANK YOU, YOUR HONOR.

9 THERE ARE QUITE A NUMBER OF ITEMS THAT I WISH TO  
10 ADDRESS.

11 THE FIRST THING I WOULD LIKE TO NOTE, THOUGH, IS  
12 THAT AT THE OUTSET OF THE DISCUSSION, THE COURT POSED THE  
13 QUESTION, "WHAT DIFFERENCE DOES METROPOLITAN'S PARTICIPATION  
14 MAKE TO THE PARTIES?"

15 AND THE RESPONSE WAS THAT, "WELL, IF THE COURT  
16 WILL GIVE US WHAT WE WANT, WE WILL WITHDRAW OUR OBJECTION TO  
17 THAT PARTICIPATION."

18 THAT IS INDICATIVE OF THE POSITION THAT THE  
19 PARTIES HAVE HAD ALL ALONG AND NEVER REALLY ANSWERED THE  
20 QUESTION.

21 AND IS AGAIN THE TYPE OF PROBLEM THAT WE HAVE COME  
22 ACROSS THROUGHOUT THESE PROCEEDINGS.

23 THE COURT: I THINK YOU ARE FIGHTING AN  
24 UNNECESSARY BATTLE.

25 I INTERPRETED THE REMARKS OF BOTH THE METROPOLITAN  
26 REPRESENTATIVE AND THE MOVING PARTY REPRESENTATIVE TO SAY THAT  
27 WE HAVE NO PROBLEMS SO FAR AS METROPOLITAN'S BEING HERE.

28 MR. SMITH: I UNDERSTAND THAT, YOUR HONOR. BUT

1 THERE IS A POINT IN THERE THAT I DO WISH TO FOLLOW UP ON AND  
2 EXPAND UPON IN THE ARGUMENT THAT I AM ABOUT TO EMBARK ON WITH  
3 RESPECT TO THE MONETARY CONSIDERATIONS THAT THEY ARE ASKING.

4 AND SPECIFICALLY, THE REQUEST THAT THEY HAD MADE  
5 REFERENCE TO THE ECONOMIC INCENTIVE OF A SAVINGS OF  
6 APPROXIMATELY SEVENTY-FIVE DOLLARS PER ACRE-FOOT IN PUMPING  
7 COST.

8 AND THAT THEY WOULD LIKE TO HAVE THE COURT ENTER  
9 INTO SOME KIND OF ORDER WHEREBY THAT SAVINGS MIGHT BE  
10 ALLOCATED MORE EQUITABLY AMONG THE PARTIES.

11 AND IT IS EXACTLY THAT POINT THAT I WISH TO FOCUS  
12 UPON IN PART DURING THE DISCUSSION THAT I AM ABOUT TO ENGAGE  
13 IN.

14 THROUGHOUT THE PROCEEDINGS HERE, THE PARTIES HAVE  
15 TAKEN VERY DIFFERENT POSITIONS AT DIFFERENT TIMES IN THE  
16 ACTION.

17 THEY FIRST CAME IN AND SAID THIS IS A WATER RIGHTS  
18 CASE.

19 THE WATER RIGHTS OF ALL THE PARTIES ARE IN  
20 JEOPARDY BECAUSE THE WATERMASTER IS NOT DOING THIS, IT'S NOT  
21 DOING THAT.

22 AND BASICALLY, THE BASIN IS GOING TO HELL IN A  
23 BUCKET BECAUSE WATERMASTER ISN'T DO ALL THE THINGS, THAT WE  
24 CAN'T GET OUR WATER.

25 THEY HAVE ALSO SAID SPECIFICALLY THIS IS NOT A  
26 CASE ABOUT MONEY.

27 BUT JUST THE OPPOSITE IS TRUE, YOUR HONOR.

28 THIS IS NOT A CASE ABOUT WATER RIGHTS. AND THIS

1 IS A CASE ABOUT MONEY.

2 PURE AND SIMPLE.

3 AT THE OUTSET OF THE PROCEEDINGS ON FEBRUARY THE  
4 8TH, COUNSEL HAD ASKED OUR -- THE COURT HAD ASKED THAT COUNSEL  
5 SET THE STAGE FOR THE MOTIONS NOW BEFORE THE COURT.

6 AND IN THE PROCESS, THE MOVING PARTIES HAD SOUGHT  
7 THE PICTURE OF THEMSELVES AS THE PROVERBIAL WHITE KNIGHT IN  
8 SHINING ARMOR WHO CAME INTO COURT TO RID THE WATERMASTER  
9 PROGRAM OF THE EVIL THAT'S INFESTED IT FOR THE LAST TEN YEARS  
10 AND SET THE PROGRAM BACK ON THE STRAIGHT AND NARROW.

11 I SUBMIT, YOUR HONOR, THAT WHEN THESE HEARINGS ARE  
12 COMPLETED, THE MOVING PARTIES WILL APPEAR TO BE A KNIGHT OF A  
13 VERY DIFFERENT COLOR.

14 I WOULD ALSO LIKE TO ADDRESS THE FACTUAL SITUATION  
15 THAT EXISTED PRIOR TO THE ENTRY OF THE JUDGMENT IN THIS  
16 ACTION, AS WELL AS THE FACTUAL SITUATION LEADING TO THE FILING  
17 OF THIS MOTION.

18 FOR MANY YEARS, CHINO BASIN WAS PLAGUED WITH THE  
19 PROBLEM OF SEVERE OVERDRAFTING AND DETERIORATION OF THE WATER  
20 QUALITY.

21 THOSE PROBLEMS WERE WELL RECOGNIZED.

22 AND MANY FORWARD-THINKING INDIVIDUALS BEGAN  
23 CIRCULATING THE IDEA THAT MAYBE WHAT SHOULD BE DONE ABOUT IT  
24 IS THAT A BASIN-WIDE ADJUDICATION SHOULD BE HAD.

25 BUT WHILE THE NEED FOR A BASIN-WIDE ADJUDICATION  
26 WAS RECOGNIZED, IT WAS ALSO FEARED BY MANY OF THESE PEOPLE.

27 BECAUSE MANY OF THOSE PEOPLE HAD BEEN INVOLVED IN  
28 SEVENTY-EIGHT OTHER BASIN-WIDE ADJUDICATIONS THROUGHOUT

1 CALIFORNIA AND WERE AWARE OF THE PROBLEMS THAT ARE ATTENDANT  
2 IN THESE KINDS OF LITIGATION, EVEN IN MUCH SMALLER -- MUCH  
3 SMALLER SCALES OF LITIGATION IN ADJUDICATION OF MUCH SMALLER  
4 BASINS.

5 CHINO BASIN IS THE LARGEST BASIN IN SOUTHERN  
6 CALIFORNIA.

7 AND THE SHEER MAGNITUDE OF THE PARTIES INVOLVED  
8 AND THE ISSUES IN THE ADJUDICATION OF THAT BASIN MADE THE  
9 UNDERTAKING LITERALLY STAGGERING.

10 WELL OVER TWENTY-FIVE HUNDRED INDIVIDUALS WOULD  
11 HAVE TO BE NAMED.

12 THEIR RIGHTS TO HAVE -- WOULD HAVE TO BE  
13 DETERMINED.

14 THIS WOULD HAVE TO BE QUANTIFIED AND A PHYSICAL  
15 SOLUTION WOULD HAVE TO BE EMBARKED UPON THAT WOULD TAKE CARE  
16 OF ALL THE NEEDS.

17 AND THE EXPERIENCE AFTER THAT TIME OF THE MOST  
18 RECENT LITIGATION WHICH IS -- WHICH WAS THE MOJAVE BASIN  
19 ADJUDICATION, TAUGHT THEM THAT SUCH LITIGATIONS WOULD LIKELY  
20 BE DOOMED TO FAILURE.

21 SO THEY HAVE TO FASHION A DIFFERENT APPROACH TO  
22 THE PROBLEM OF THE OVERDRAFTING OF CHINO BASIN.

23 FOR MORE THAN FIVE YEARS, BEFORE THE ACTUAL FILING  
24 OF THIS ACTION, MANY PARTIES, MANY INFLUENTIAL PEOPLE, MANY  
25 ATTORNEYS, MET IN MANY, MANY MEETINGS FOR HUNDREDS AND  
26 HUNDREDS OF HOURS REPRESENTING LITERALLY THOUSANDS AND  
27 THOUSANDS OF MAN-HOURS OF WORK TO COME UP WITH WHAT BECAME THE  
28 JUDGMENT THAT WAS STIPULATED TO BY THE VAST MAJORITY OF THE

1 PARTIES.

2 IN THE PROCESS, SPECIAL LEGISLATION HAD TO BE  
3 ADOPTED SO THAT THE FUNDING MECHANISM COULD BE PUT IN PLACE SO  
4 THAT THE FUNDS OF OVER SIX HUNDRED THOUSAND DOLLARS AT THE  
5 TIME COULD BE RAISED TO EMBARK ON THE PROGRAM.

6 EDUCATIONAL PROGRAMS WERE EMBARKED UPON FOR ALL OF  
7 THE PEOPLE THAT WOULD BE INVOLVED.

8 THE AGRARIAN, THE FARMERS, THE VINTNERS, THE  
9 DAIRYMEN AND THE SMALL EVERY MAN THAT WAS DEPENDENT UPON THE  
10 WATER SUPPLY OF CHINO BASIN.

11 THE PARTIES KNEW THAT THAT KIND OF A PROGRAM COULD  
12 ONLY BE ACHIEVED THROUGH COOPERATION.

13 AND, MOST OF ALL, IT WAS DETERMINED THAT THE FINAL  
14 DRAFT OF THE JUDGMENT AS CIRCULATED WAS, BY ALL STANDARDS,  
15 FAIR AND EQUITABLE, AND I USE THOSE TERMS IN GREAT BIG CAPITAL  
16 LETTERS.

17 IN THE COURSE OF FORGING THIS DOCUMENT, THE CHINO  
18 BASIN MANAGEMENT PLAN AND PHYSICAL SOLUTION BROKE MUCH NEW  
19 GROUND.

20 ONE OF THE KEY CONCEPTS THAT HAD NEVER BEEN DONE  
21 BEFORE WAS THE IDEA OF HAVING THREE SEPARATE INTERESTS  
22 RECOGNIZED BY THE COURT AND HAVING THEM PLACED IN POOLS.

23 THESE WERE LATER TO BECOME -- OR THESE CAME TO BE  
24 KNOWN AS THE OVERLYING AGRICULTURAL POOL, OVERLYING  
25 NON-AGRICULTURAL POOL AND THE APPROPRIATIVE POOL.

26 NOW, ONE OF THE TWO TRADITIONAL NOTIONS OF WATER  
27 RIGHTS ADJUDICATION LAW THAT WAS NOT ABANDONED IS THE CONCEPT  
28 OF QUANTIFYING THE RIGHTS THAT WERE TO BE QUANTIFIED.

1 THE WAY THAT THOSE RIGHTS WOULD BE QUANTIFIED IS  
2 TO LOOK AT THE HISTORIC USE OF THE WATER BY THAT PARTY IN THE  
3 FIVE YEARS IMMEDIATELY PRECEDING THE FILING OF THE JUDGMENT.

4 IN THAT CASE, THE PARTIES IN THE APPROPRIATIVE  
5 POOL AND THE NON-AG HAD THEIR RIGHTS QUANTIFIED BASED UPON  
6 THEIR VERIFIED PRODUCTION IN THE FIVE YEARS IMMEDIATELY  
7 PRECEDING THE FILING OF THE ADJUDICATION WHICH WERE THE  
8 PRESCRIPTIVE YEARS.

9 IT WAS EASY TO DEAL WITH THE PEOPLE IN THESE TWO  
10 POOLS BECAUSE THEY WERE RELATIVELY SMALL IN NUMBER AND THEY  
11 WERE RELATIVELY SOPHISTICATED.

12 THEY -- THAT'S BASICALLY CITIES, PUBLIC ENTITIES  
13 OR LARGE CORPORATIONS THAT WERE USED TO KEEPING FAIRLY CAREFUL  
14 RECORDS OF THEIR WATER PRODUCTION AND THEIR USE.

15 IN THAT MANNER, IT WAS DETERMINED THAT THE CITY  
16 OF CHINO HAD ESTABLISHED PRODUCTION RIGHTS OF APPROXIMATELY  
17 FIFTY-THREE HUNDRED SEVENTY-ONE ACRE-FEET ANNUALLY.

18 AND THE CITY OF NORCO WAS DETERMINED TO HAVE  
19 ESTABLISHED RIGHTS OF WATER 289 AND A HALF ACRE-FEET.

20 AND AGAIN, THE SIGNIFICANCE OF THESE FIGURES WILL  
21 BECOME MORE APPARENT AS I GO ON IN MY ARGUMENT.

22 THE THIRD GROUP OF PEOPLE, HOWEVER, WERE MORE  
23 DIFFICULT TO DEAL WITH.

24 IN PART BECAUSE THEY WERE SO NUMEROUS, AND IN PART  
25 BECAUSE THEY ARE RELATIVELY UNSOPHISTICATED AND DON'T WANT TO  
26 BE INVOLVED IN THE ACTUAL LITIGATION OF WATER RIGHTS.

27 AND THESE WERE THE AGRARIAN INTERESTS, THE  
28 OVERLYING AGRICULTURAL POOL.

1                    THAT GROUP ALONE HAD OVER TWENTY-FIVE HUNDRED  
2 INDIVIDUALLY NAMED DEFENDANTS.

3                    IT WAS RECOGNIZED, HOWEVER, BY ALL OF THE PARTIES  
4 THAT PEOPLE WITHIN THAT GROUP WOULD BE REDUCED IN NUMBER AS  
5 WOULD THEIR WATER USAGE IN TIME BECAUSE OF THE URBANIZATION  
6 THAT WAS GOING TO OCCUR IN THE AREA.

7                    SO TO MEET THIS PROBLEM, A WHOLE NEW CONCEPT OF  
8 WATER LAW WAS DEVELOPED.

9                    AND THAT WAS THE CONCEPT, THAT THE AGRICULTURAL  
10 POOL AS A GROUP WOULD HAVE GUARANTEED TO THEM A CERTAIN AMOUNT  
11 OF WATER ANNUALLY.

12                    ACTUALLY TO PROVIDE FLEXIBILITY, THE JUDGMENT  
13 DETERMINED THAT THE AGRICULTURAL POOL WOULD HAVE FOUR HUNDRED  
14 FOURTEEN THOUSAND ACRE-FEET OF WATER RIGHTS IN ANY FIVE-YEAR  
15 PERIOD, WHICH AVERAGES OUT TO EIGHTY-TWO THOUSAND EIGHT  
16 HUNDRED ACRE-FEET OF WATER PER YEAR.

17                    NOW, THE GUARANTORS OF THAT RIGHT WERE THE MEMBERS  
18 OF THE APPROPRIATIVE POOL.

19                    AND AGAIN, THAT WILL BECOME SIGNIFICANT IN THE  
20 COURSE OF MY ARGUMENT.

21                    AND THE WHY'S AND THE WHAT FOR'S FOR ENTERING INTO  
22 THAT AGREEMENT ALSO BECOMES VERY SIGNIFICANT.

23                    NOW, WHEN CHINO -- THE BASIN -- OR WHEN THE  
24 COMPLAINT FOR ADJUDICATION WAS FILED, CHINO BASIN WAS BEING  
25 OVERDRAFTED AT A RATE OF WELL OVER THIRTY THOUSAND ACRE-FEET  
26 PER YEAR.

27                    BUT BECAUSE SECTION 1007 OF THE CIVIL CODE  
28 PROVIDES ANY WATER THAT'S DEDICATED TO A PUBLIC USE CANNOT BE



1     PRESCRIBED AGAINST, THE ONLY WAY THAT YOU WOULD HAVE SAFE  
2     YIELD OPERATIONS WOULD BE FOR THE REDUCTION TO SAFE YIELD TO  
3     COME OUT OF AGRICULTURAL INTERESTS.

4             AND THAT WOULD JUST NOT FLY BECAUSE THE REDUCTION  
5     IN AGRICULTURAL WATER WOULD WREAK HAVOC WITH THE ECONOMY.

6             AND ALL THE PARTIES WOULD NEVER BE MADE TO AGREE  
7     TO THE STIPULATED JUDGMENT.

8             AND IT IS FOR THIS REASON THAT THE PARTIES  
9     DETERMINED TO QUANTIFY THE RIGHTS OF THE APPROPRIATIVE POOL  
10    AND THE NON-AG, AND TO DETERMINE PROPORTIONATELY WHAT THEIR  
11    RIGHTS WOULD BE.

12            AND IT IS ALSO FOR THAT REASON WHY EXHIBITS "D"  
13    AND "E" OF THE JUDGMENT CONTAINED SHARES OF SAFE YIELD AND  
14    SAFE -- OPERATING SAFE YIELD.

15            AND AGAIN, THOSE CONCEPTS BECOME VERY IMPORTANT.

16            WHAT DID THEY DO TO REALLY MAKE THIS PROJECT WORK?

17            WELL, THE MEMBERS OF THE APPROPRIATIVE POOL AGREED  
18    IN THE FIRST YEAR TO GIVE UP THEIR RIGHTS TO PRODUCE OVER  
19    TWENTY-FOUR THOUSAND ACRE-FEET LESS THAN THEY WOULD HAVE HAD  
20    THE RIGHT TO HAD THEY INSISTED ON PRODUCING PURSUANT TO THEIR  
21    RIGHTS AS ESTABLISHED BY THE PRIOR FIVE YEARS PRODUCTION AND  
22    THEIR RIGHT TO NOT HAVE THEIR PRODUCTION DIMINISHED PURSUANT  
23    TO SECTION 1007 OF THE CIVIL CODE.

24            THEY AGREED THAT IN EXCHANGE FOR GIVING UP THAT  
25    RIGHT FOR A CERTAIN PERIOD OF TIME, THAT WHEN THE WATER USAGE  
26    WITHIN THE AGRICULTURAL POOL FELL BELOW THAT AMOUNT WHICH WAS  
27    GUARANTEED TO THE AGRICULTURAL POOL, THAT THAT WATER -- WHICH  
28    HAS BEEN REFERRED TO AS THE TRANSFER WATER FROM THE AG POOL,

1 THE AG WATER OR THE JUDGMENT TERM, THE UNALLOCATED SAFE YIELD  
2 WATER -- THAT THAT WATER WOULD BE TURNED OVER TO THE  
3 APPROPRIATIVE POOL AS A SUPPLEMENT TO OPERATING SAFE YIELD IN  
4 THE YEAR IN WHICH IT BE MADE AVAILABLE.

5 THE APPROPRIATORS WOULD NOT HAVE AGREED TO LIMIT  
6 OR CUT BACK ON THEIR PRODUCTION HAD IT NOT BEEN FOR THEIR  
7 AGREEMENT TO BE ALLOWED TO SHARE PROPORTIONATELY FROM THE AG  
8 WATER THAT WOULD BE MADE AVAILABLE AS A RESULT OF THE REDUCED  
9 PRODUCTION BY THE MEMBERS OF THE AG POOL.

10 NOW, JUST SO HAPPENED THAT URBANIZATION OCCURRED  
11 AT A MUCH FASTER RATE THAN WAS ANTICIPATED. BUT THE JUDGMENT  
12 WAS PUT TOGETHER AND THE PEOPLE STIPULATED TO THE JUDGMENT.

13 AND AS RESULT OF THAT, THE AG POOL'S PRODUCTION  
14 HAS DECLINED AT A MUCH FASTER RATE AND THE AG TRANSFER WATER  
15 HAS BEEN MADE AVAILABLE AT A MUCH FASTER RATE THAN ANTICIPATED  
16 BY THE AG POOL OR WHEN THE JUDGMENT WAS FIRST ENTERED INTO.

17 WHEN THE FIRST WATER WAS MADE AVAILABLE FOR  
18 TRANSFER TO THE APPROPRIATIVE POOL, THE MATTER WAS DISCUSSED  
19 WITH THE APPROPRIATIVE POOL AND THE ADVISORY COMMITTEE.

20 AND IT WAS DETERMINED THAT A CONSERVATIVE APPROACH  
21 WOULD BE ADOPTED IN TERMS OF TRANSFERRING THAT WATER FOR  
22 RE-ALLOCATION TO THE APPROPRIATIVE POOL.

23 THE MEMBERS OF THE APPROPRIATIVE POOL UNANIMOUSLY  
24 AGREED.

25 AND AGAIN, IT WAS CONFIRMED BOTH BY THE ADVISORY  
26 COMMITTEE AND THE WATERMASTER UNANIMOUSLY AGREED THAT THE  
27 FORMULA THEN ADOPTED WOULD BE USED TO DISTRIBUTE THAT WATER  
28 AMONG THE MEMBERS OF THE APPROPRIATIVE POOL.

1 BUT THIS CONSERVATIVE APPROACH AND THE  
2 EVER-DECREASING USE OF AG POOL WATER BY THE AG POOL MEMBERS  
3 CAUSED A BUILD-UP OF TRANSFER WATER TO THE POINT WHERE, AFTER  
4 APPROXIMATELY FIVE YEARS OF AVAILABLE TRANSFERS, ABOUT  
5 SEVENTY-EIGHT THOUSAND FIVE HUNDRED ACRE-FEET WAS AVAILABLE  
6 FOR TRANSFER TO THE APPROPRIATIVE POOL.

7 DURING THIS PERIOD OF TIME, THAT IS IN THE LAST  
8 TEN YEARS OR SO, THE MORE SIGNIFICANT CHANGES PROBABLY  
9 APPEARED IN THE LOWER HALF OF THE CHINO BASIN.

10 THAT IS WHERE THE AGRICULTURAL INTERESTS LIE, THAT  
11 IS ON THE SHALLOW END OF THE BASIN, BECAUSE -- WELL, SIMPLY  
12 BECAUSE OF NATURAL HYDROLOGIC AND GEOLOGIC CONDITIONS.

13 THAT IS WHERE THE CITY OF NORCO AND THE CITY OF  
14 CHINO ARE LOCATED.

15 AND THAT IS WHERE, BECAUSE OF THE EXISTING AND  
16 HISTORIC LAND USES AND BECAUSE OF THE NATURAL CONDITIONS, THAT  
17 WATER QUALITY PROBLEMS WOULD INTENSIFY.

18 IT WAS NOT THAT THEY WERE NEVER RECOGNIZED, THEY  
19 HADN'T BEEN RECOGNIZED FOR DECADES.

20 IN FACT, THEY WERE RECOGNIZED AT THE -- AT THE  
21 TIME THAT THE JUDGMENT WAS ENTERED INTO.

22 IT WAS JUST UNDERSTOOD THAT THAT WAS SOMETHING  
23 THAT WOULD HAVE TO BE DEALT WITH AT A LATER TIME.

24 AND THAT THE IMPORTANT THING NOW IS TO PROVIDE A  
25 MEANS THAT THE PARTIES WOULD HAVE WATER FROM WHICH TO DRAW.

26 THE COURT: GO AHEAD.

27 MR. SMITH: THANK YOU.

28 NOW, AT THE COMMENCEMENT OF THE WATERMASTER

1 PROGRAM IN 1978, THE CITY OF NORCO HAD TWO WELLS THAT HAD  
2 PRODUCED AN AVERAGE OF 289.5 ACRE-FEET OF WATER PER YEAR.

3 THE WATER QUALITY PROBLEMS, BOTH KNOWN AND  
4 ANTICIPATED, WERE WELL-KNOWN TO THE PARTIES AT THAT TIME.

5 BUT THE CITY OF NORCO NEEDED MORE WATER TO SERVE  
6 ITS CITIZENS.

7 AND HOW DID THE CITY OF NORCO DEAL WITH THAT  
8 PROBLEM?

9 RATHER THAN PAY FOR THE COST OF A PIPELINE TO  
10 IMPORT WATER, THEY DETERMINED TO EXPAND THEIR WELL FIELDS.

11 SO IN THE TEN YEARS THAT HAVE TRANSPIRED SINCE THE  
12 OPERATION OF THE JUDGMENT, THEY HAVE DUG THREE NEW WELLS AND  
13 HAVE INCREASED THEIR PRODUCTION TO THE POINT WHERE THEY TOOK  
14 ABOVE THIRTY-SIX HUNDRED ACRE-FEET OF WATER FROM THE BASIN  
15 LAST YEAR.

16 THIS IS AN INCREASE OF MORE THAN TWELVE AND A HALF  
17 TIMES THEIR ESTABLISHED WATER RIGHTS OF 289.5 ACRE-FEET AND  
18 AN INCREASE OF MORE THAN EIGHTEEN AND A THIRD TIMES THEIR  
19 RIGHTS TO PRODUCE WATER UNDER THE OPERATIONAL SAFE YIELD  
20 PROGRAM.

21 BUT -- BUT THE KEY NOTE HERE IS THAT THEY CHOSE TO  
22 EMBARK UPON A CERTAIN COURSE OF CONDUCT, AND THAT WAS THE  
23 EXPANSION OF THE WELL FIELD AND TO NOT INCUR THE COST OF  
24 ACCUMULATING PIPELINES THROUGH OTHER PLANTS OR FACILITIES.

25 THAT WOULD ALLOW THEM TO PARTICIPATE IN SOME OF  
26 THE OTHER PROGRAMS THAT SOME OF THE OTHER PARTIES ARE ABLE TO  
27 PARTICIPATE IN.

28 THE CITY OF CHINO, WHICH IS ALSO IN THE LOWER END

1 OF THE BASIN, ESTABLISHED APPROPRIATIVE RIGHTS OF  
2 APPROXIMATELY FIFTY-SEVEN HUNDRED -- FIFTY-TWO HUNDRED SEVENTY  
3 ACRE-FEET.

4 WHICH AFTER REDUCTION TO ALLOW FOR THE GUARANTEE  
5 TO THE AG POOL, GAVE THEM AN INITIAL OPERATING SAFE YIELD  
6 SHARE OF THIRTY-SIX HUNDRED SEVENTY ACRE-FEET.

7 NOW, LAST YEAR THE CITY OF CHINO PRODUCED ALMOST  
8 EIGHT THOUSAND ACRE-FEET, AND IT OVER-PRODUCED THE BASIN BY  
9 SOME FOUR THOUSAND TWO HUNDRED SEVENTY ACRE-FEET.

10 THE CURRENT COST OF WATER, THAT IS, THE LEAST  
11 EXPENSIVE AVAILABLE REPLENISHMENT WATER, IS ONE HUNDRED  
12 FIFTY-THREE DOLLARS PER ACRE-FOOT FOR THE INTERRUPTABLE SUPPLY  
13 OF WATER AVAILABLE FROM THE METROPOLITAN WATER DISTRICT OF  
14 SOUTHERN CALIFORNIA.

15 YOU ADD TO THAT THE COST OF SPREADING OF WATER,  
16 WHICH IS ABOUT TWO DOLLARS AND FORTY-TWO CENTS PER ACRE-FOOT,  
17 AND YOU HAVE A MINIMUM COST OF REPLENISHMENT WATER OF ONE  
18 HUNDRED FIFTY-FIVE DOLLARS AND FORTY-TWO CENTS. BUT WE CAN  
19 SAY -- MAKE IT SIMPLE AND SAY ONE HUNDRED FIFTY DOLLARS EVEN.

20 NOW, IF ONE HAD TO BUY THIRTY-FOUR HUNDRED SEVEN  
21 ACRE-FEET TO OFFSET CITY OF NORCO'S OVERPRODUCTION LAST YEAR,  
22 ONE WOULD HAVE TO SPEND OVER HALF A MILLION DOLLARS TO  
23 PURCHASE THAT WATER.

24 AND IF ONE HAD TO BUY AN ADDITIONAL FORTY-TWO  
25 HUNDRED SEVENTY ACRE-FEET OF WATER TO MAKE UP FOR THE CITY OF  
26 CHINO'S OVERPRODUCTION LAST YEAR, ONE WOULD HAVE TO SPEND  
27 ANOTHER SIX HUNDRED FORTY SOME THOUSAND DOLLARS FOR  
28 REPLENISHMENT WATER.

1                   AND A TOTAL FOR THOSE TWO PARTIES ALONE COMES TO  
2 OVER 1.15 MILLION DOLLARS IN COST OF REPLENISHMENT FOR 1988  
3 OVERPRODUCTION.

4                   SO WHAT DO YOU DO WHEN YOU'RE IN THAT POSITION?  
5                   YOU LOOK AROUND AND YOU SEE WHAT YOU CAN POSSIBLY  
6 FIND AND HOW YOU CAN CUT YOUR COSTS.

7                   AND YOU LOOK AND YOU LOOK, AND LO AND BEHOLD YOU  
8 FIND THIS WONDERFUL SOURCE OF WATER, SEVENTY-EIGHT THOUSAND  
9 FIVE HUNDRED ACRE-FEET OF WATER JUST WAITING TO BE USED.

10                  THAT WATER AT AN EVEN ONE HUNDRED FIFTY DOLLARS AN  
11 ACRE-FOOT REPRESENTING APPROXIMATELY TWELVE MILLION DOLLARS IN  
12 VALUE TO SOMEONE.

13                  THE QUESTION IS HOW DO YOU GET AT THAT WATER AND  
14 HOW DO YOU GET MORE THAN YOUR FAIR SHARE OF THAT WATER?

15                  THE ANSWER APPEARED VERY SIMPLE. YOU ASK FOR IT.  
16                  AND THAT IS EXACTLY WHAT THE CITY OF NORCO DID.

17                  MR. ASHCRAFT MADE A REPRESENTATION AT THE  
18 APPROPRIATIVE POOL COMMITTEE IN MARCH OF 1988 PROPOSING THAT  
19 RATHER THAN BE DISTRIBUTED AMONG THE APPROPRIATORS PURSUANT TO  
20 THE DECREED SHARE OF THE THEN SAFE YIELD AS SET FORTH IN  
21 EXHIBIT "E" TO THE JUDGMENT, THAT THE AG TRANSFER WATER SHOULD  
22 BE DISTRIBUTED BASED UPON THE IMMEDIATE SUPPLY PRECEDING PRIOR  
23 YEARS' PRODUCTION.

24                  NOW, CITY OF NORCO AND CITY OF CHINO CHOSE -- OR  
25 WOULD SIGNIFICANTLY BENEFIT FROM THAT BECAUSE OF THEIR  
26 OVERPRODUCTION IN THE PRECEDING YEAR.

27                  BUT THAT WATER AND THOSE COSTS WOULD HAVE TO COME  
28 FROM SOMEONE AND THOSE SOMEONES WERE THE OTHER MEMBERS OF THE

1 APPROPRIATIVE POOL.

2 SO THAT PROPOSAL WAS REJECTED BY THE MEMBERS OF  
3 THE APPROPRIATIVE POOL IN MARCH OF 1988.

4 WELL, UNDAUNTED, MR. ASHCRAFT CAME BACK IN THE  
5 JUNE OF 1988 MEETING AND MADE A SECOND PROPOSAL WHICH WAS  
6 COUCHED IN VERY DIFFERENT TERMS, BUT THAT APPROXIMATES THAT  
7 WHICH THE MOVING PARTIES NOW ASK THE COURT TO IMPOSE.

8 AND THAT IS, THEY ASK THAT A PORTION OF THAT  
9 SEVENTY-EIGHT THOUSAND FIVE HUNDRED ACRE-FEET BE USED TO  
10 OFFSET THE PRIOR YEARS' OVERPRODUCTION AND THAT THE REMAINDER  
11 BE PUT IN A SUSPENSE ACCOUNT.

12 AND THE PURPOSE OF THAT OSTENSIBLY WAS BECAUSE  
13 THERE WAS NO OPTIMUM BASIN MANAGEMENT PLAN IN PLACE AND  
14 CERTAIN WATER QUALITY ISSUES HAD TO BE DETERMINED.

15 AGAIN, THIS BENEFITED THE CITY OF NORCO AND THE  
16 CITY OF CHINO SUBSTANTIALLY.

17 AND IT WOULD HAVE BENEFITED THEM EVEN MORE.

18 AND IF THE COURT WERE TO ENTER THE RELIEF THAT THE  
19 MOVING PARTIES REQUEST, IT WOULD GIVE THEM APPROXIMATELY SEVEN  
20 THOUSAND -- OR OVER SEVEN THOUSAND ACRE-FEET OUT OF  
21 TWENTY-EIGHT THOUSAND ACRE-FEET THAT THEY ARE ASKING THE COURT  
22 TO ALLOCATE TO LAST YEARS' OVERPRODUCTION.

23 AND IT WOULD ALSO ALLOW THEM TO SHARE IN THE  
24 ADDITIONAL FIFTY THOUSAND DOLLARS, THEREBY EVEN FURTHER  
25 INCREASING THEIR ABILITY TO SHARE IN THAT TRANSFER WATER WHICH  
26 THE JUDGMENT SAYS SHOULD ONLY BE TRANSFERRED PURSUANT TO  
27 EXHIBIT "E" TO THE JUDGMENT.

28 NOW, IT IS IMPORTANT TO NOTE THAT THAT IS A KEY

1 CONCEPT.

2 AND AS PART OF THE TERMS OF THE JUDGMENT,  
3 PARAGRAPH 15 STATES THAT WHAT IS SPECIFICALLY EXEMPTED FROM  
4 THE COURT'S JURISDICTION IS THE ABILITY TO REALLOCATE WATER  
5 AMONGST THE SAFE YIELDS OR MAKE REDETERMINATIONS OF RIGHTS AS  
6 SET FORTH IN EXHIBITS "D" AND "E" TO THE JUDGMENT.

7 AND EXHIBIT "D" AND "E", AND SPECIFICALLY EXHIBIT  
8 "E" FOR THE APPROPRIATORS, IS WHERE THE SHARE OF OPERATING  
9 SAFE YIELD IS SET FORTH.

10 WELL, NEEDLESS TO SAY, THIS PLAN ALSO WAS REJECTED  
11 BY THE MEMBERS OF THE APPROPRIATIVE POOL.

12 DURING ALL THIS TIME, MOST OF THE PARTS OF THE  
13 WATERMASTER PROGRAM CONTINUED TO FUNCTION.

14 BUDGETS WERE PASSED.

15 THE ELEVENTH ANNUAL REPORT WAS CIRCULATED TO ALL  
16 THE POOLS. EVERYBODY APPROVED IT.

17 AND CONTRACTS WERE ENTERED INTO, WERE CARRIED OUT,  
18 ET CETERA, ET CETERA.

19 NOW, IN DECEMBER OF 1987, WHICH IS THE TENTH YEAR  
20 OF THE OPERATION OF THE WATERMASTER PROGRAM, WATERMASTER STAFF  
21 MADE A REPRESENTATION TO THE PARTIES THAT THE SOCIO-ECONOMIC  
22 STUDY SHOULD BE MENTIONED BECAUSE THE JUDGMENT STATED THAT THE  
23 SOCIO-ECONOMIC STUDY SHOULD BE DONE AFTER THE TENTH YEAR OF  
24 OPERATION.

25 AT THAT DECEMBER 1987 MEETING -- AND THE MINUTES  
26 OF THOSE MEETINGS HAVE BEEN PRESENTED TO THE COURT IN THE  
27 WATERMASTER APPENDIX OF DOCUMENTS -- IT WAS SUGGESTED BY ONE  
28 OF THE PARTIES -- AND I WOULD NOTE IT WAS NOT WATERMASTER



1 STAFF AS SUGGESTED BY COUNSEL IN THE LAST HEARING. IT WAS  
2 SUGGESTED BY ONE OF THE PARTIES AND AGREED TO UNANIMOUSLY BY  
3 ALL OF THE PARTIES THAT THE SOCIO-ECONOMIC STUDY SHOULD BE  
4 DEFERRED UNTIL THE ANTICIPATED COMPLETION OF THE METROPOLITAN  
5 CONJUNCTIVE USE STUDY.

6 AND THE REASON FOR THIS IS THAT MUCH OF THE WORK  
7 THAT WAS BEING DONE FOR THE MET EIR WOULD BENEFIT THE PARTIES  
8 IN DOING THE SOCIO-ECONOMIC STUDY AND WOULD SAVE THEM A LOT OF  
9 MONEY.

10 SO IT WAS AGREED BY ALL OF THE PARTIES TO DEFER  
11 THAT.

12 NOW AGAIN, DURING ALL THIS TIME, THE MOVING  
13 PARTIES ARE LOOKING AROUND AND SEEING WHAT THE OTHER PARTIES  
14 ARE DOING, SUCH AS TAKING IN LIEU WATER AND TAKING IT ON THE  
15 SURFACE, EFFECTING NOT ONLY A SAVINGS DUE TO ELIMINATION OF  
16 PUMPING COST, BUT ALSO GETTING BETTER QUALITY WATER.

17 HOWEVER, YOU -- THEY CAN'T TAKE ADVANTAGE OF  
18 THOSE ARRANGEMENTS BECAUSE THEY CHOSE NOT TO EVEN INVESTIGATE  
19 THE HARD ASSETS, THE PIPELINES, THE TREATMENT PLANTS, THE  
20 DISTRIBUTION POINTS, THAT WOULD ALLOW THEM TO PARTICIPATE IN  
21 THOSE KINDS OF PROGRAMS.

22 THESE ARE CONSEQUENCES OF HISTORIC DECISIONS MADE  
23 BY THE MOVING PARTIES.

24 THE JUDGMENT IN THE VERY INCEPTION RECOGNIZED THAT  
25 THOSE INCENTIVES WOULD BE THERE AND SHOULD BE TAKEN ADVANTAGE  
26 OF.

27 IN FACT, THE JUDGMENT RECOGNIZES IN LIEU AREAS,  
28 IDENTIFIES IN LIEU AREA NO. 1 IN ONE OF THE EXHIBITS, AND

1 STATES THAT ADDITIONAL IN LIEU AREAS MAY BE DETERMINED AND  
2 ADOPTED BY WATERMASTER.

3 ON TOP OF THAT, IF YOU ARE AT THE BOTTOM END OF  
4 BASIN AND YOU FEEL THAT YOU HAVE -- CAN'T TAKE CARE OF SOME  
5 -- OR TAKE ADVANTAGE OF SOME OF THESE PROGRAMS, YOU'RE  
6 CONCERNED BECAUSE YOUR ACTUAL PUMPING RIGHTS ARE SMALLER THAN  
7 YOU FEEL THEY SHOULD BE.

8 AND YOU ASK OTHER PARTIES TO HAVE, QUOTE, ACCESS,  
9 CLOSE QUOTE, WATER, WHICH IS TO SAY THEY -- THAT THEY DON'T  
10 PRODUCE ALL OF THEIR WATER THAT THEY ARE ENTITLED TO.

11 YOU'VE ASKED THEM NICELY IF THEY WILL GIVE YOU  
12 THAT WATER AND THEY HAVE TURNED YOU DOWN.

13 SO NOW WHAT DO YOU DO?

14 YOU FILE A LAWSUIT.

15 AND THAT'S EXACTLY WHAT THE MOVING PARTIES HAVE  
16 DONE.

17 TO SUPPORT THEIR LAWSUIT THEY HAVE LOOKED INTO  
18 EVERY NOOK AND CRANNY OF THE WATERMASTER PROGRAM TO SEE  
19 WHETHER OR NOT SOMETHING SLIPPED THROUGH THE CRACKS.

20 AND YOU MAKE A BIG ISSUE OUT OF IT.

21 YOU IGNORE THE FACT THAT WHATEVER WAS DONE WAS  
22 DONE WITH YOUR INPUT AND WITH YOUR CONSENT.

23 YOU IGNORE THE FACT THAT WHATEVER WAS WRONG OR  
24 THAT YOU FOUND OUT MAY HAVE BEEN WRONG WAS NOT BROUGHT TO THE  
25 ATTENTION OF THE PARTIES OR THE WATERMASTER BEFORE YOU FILED  
26 THE LAWSUIT.

27 AND YOU DON'T BOTHER TO ASK THEM TO CORRECT IT  
28 BEFORE YOU GO INTO COURT.

1           AND IF YOU YELL LOUD ENOUGH AND IF YOU USE BUZZ  
2       WORDS LIKE "WATER QUALITY CONCERNS" AND IF YOU PUT THE OTHER  
3       PARTIES ON THE DEFENSIVE, YOU MIGHT JUST GET THEM TO AGREE TO  
4       GIVE YOU WHAT YOU WANT.

5           AND AS A FINAL COUP-DE-GRACE, YOU PAY WATERMASTER  
6       ASSESSMENTS INTO THE COURT.

7           AND WOULD I NOTE, YOUR HONOR, THAT THEY ARE  
8       OBJECTING, AT LEAST OSTENSIBLY OBJECTING, TO THE USE OF THEIR  
9       WATER OR TO THE USE OF THOSE FUNDS FOR THE PURPOSE OF BUYING  
10      REPLENISHMENT WATER.

11          BUT THEY DIDN'T SEPARATE OUT, AS THEIR BILL DOES,  
12      WATER REPLENISHMENT FUNDS AND GENERAL WATERMASTER ASSESSMENT,  
13      ALSO FORCE OPERATION OF THE WATERMASTER PROGRAM.

14          THEY PUT IT ALL INTO AN IMPOUND ACCOUNT.

15          AND THESE AFFECT PROGRAMS THAT ARE TOTALLY  
16      UNRELATED TO THE ALLEGED CONCERNS THAT THEY HAVE EXPRESSED IN  
17      THE BRIEFS.

18          AND AS I SAID, YOU DO ALL OF THAT WITHOUT PRIOR  
19      NOTICE TO ANY OF THE PARTIES.

20          YOUR HONOR, I SUGGEST THAT THESE ARE THE FACTS  
21      THAT SET THE STAGE FOR THE MOTIONS AS WE -- AS ARE BEFORE THE  
22      COURT TODAY.

23          I WOULD LIKE TO ADDRESS NOW SOME OF THE SPECIFIC  
24      ISSUES THAT THE COURT DISCUSSED DURING YOUR -- THIS MORNING  
25      WITH COUNSEL FOR THE MOVING PARTIES.

26          BUT BEFORE I DO THAT, YOUR HONOR, I WOULD LIKE TO  
27      MAKE A DISTINCTION WHICH I FEEL IS CRITICAL AND WHICH MANY  
28      COURTS AND THE STATE ATTORNEY GENERAL HAS SOUGHT TO MAKE ON

1 MANY OCCASIONS.

2 AND THAT IS, THAT WE ARE THE WATERMASTER. WE ARE  
3 NOT A WATER DISTRICT.

4 THERE IS A VERY DISTINCT DIFFERENCE.

5 WE ARE NOT A PUBLIC ENTITY.

6 OUR OPERATIONS ARE VERY SIMILAR TO THOSE  
7 OPERATIONS OF A PUBLIC ENTITY.

8 BUT WE ARE AN ENTIRELY SEPARATE ENTITY.

9 WHEN CHINO BASIN MUNICIPAL WATER DISTRICT BOARD OF  
10 DIRECTORS ACTS AS A WATERMASTER, THEY ACT IN A TOTALLY  
11 SEPARATE CAPACITY, WEARING A DIFFERENT HAT FROM THEIR POSITION  
12 AS DIRECTORS OF THE WATER DISTRICT.

13 IT'S A KEY CONCEPT THAT OTHER COURTS HAVE SOUGHT  
14 TO MAKE, THAT THE ATTORNEY GENERAL'S OFFICE HAS OFTEN  
15 ADMONISHED THE PARTIES TO RECOGNIZE.

16 AND WE FEEL IT'S IMPORTANT THAT THAT DISTINCTION  
17 BE MADE HERE.

18 NOW, WHAT IS REQUIRED BY THE LAW AND WHAT IS THIS  
19 OPTIMUM OPEN BASIN MANAGEMENT PLAN THAT EVERYBODY KEEPS  
20 TALKING ABOUT?

21 THROUGHOUT THE DISCUSSIONS, BOTH IN THE  
22 APPROPRIATIVE POOL COMMITTEE MEETINGS, IN THE ADVISORY  
23 COMMITTEE MEETINGS AND IN THE PLEADINGS, WATERMASTER HAS TAKEN  
24 THE POSITION, NOT THAT THERE IS NO OBLIGATION TO DEVELOP THE  
25 BEST PROGRAM THAT MAY BE POSSIBLE GIVEN THE CIRCUMSTANCES AND  
26 THE TIME.

27 AND WHETHER YOU WANT TO TERM THAT AN OPTIMUM BASIN  
28 MANAGEMENT PROGRAM, THEN FINE.

1 WE HAVE SIMPLY STATED THAT WE CANNOT DEFINE THE  
2 TERM "OPTIMUM" BECAUSE THAT MAY CHANGE.

3 OPTIMUM IS A SUBJECTIVE DETERMINATION, WHETHER  
4 SOMETHING IS OPTIMUM OR NOT.

5 WE HAVE STATED, HOWEVER, THAT ALL OF THE ELEMENTS  
6 REQUIRED TO BE ADDRESSED BY THE JUDGMENT ARE ADDRESSED BY THE  
7 CURRENT WATERMASTER PROGRAM.

8 SPECIFICALLY, WE TALKED ABOUT THE PUMPING  
9 OPERATIONS.

10 WATERMASTER HAS COLLECTED THE PRODUCTION DATA AND  
11 THE PUMPING DATA SINCE THE INCEPTION OF THE PROGRAM, AND  
12 INDEED HAS RECORDS PRECEDING THE INCEPTION OF THE PROGRAM,  
13 BECAUSE THOSE RECORDS WERE REQUIRED TO BE COLLECTED FOR A  
14 DETERMINATION OF RIGHTS NECESSARY TO ENTER INTO THE STIPULATED  
15 JUDGMENT.

16 THE PARTIES MAKE SIGNIFICANT -- OR TRY TO MAKE A  
17 SIGNIFICANT POINT OF FACT THAT THE WATERMASTER MAY NOT HAVE  
18 ENFORCED THE METERING REQUIREMENTS AS DUTIFULLY AS IT SHOULD  
19 HAVE.

20 THAT MAY BE SO.

21 BUT I WOULD LIKE TO POINT OUT TWO THINGS.

22 NUMBER ONE, THE WATERMASTER RULES AND REGULATIONS  
23 AND THE CURRENT WATERMASTER PROGRAM PROVIDE FOR THE  
24 WATERMASTER ENTERING INTO A CONTRACT WITH AN OUTSIDE PARTY BY  
25 COMPETITIVE BID WHICH THE AIM OF THIS PROGRAM IS TO HAVE EVERY  
26 WATER METER TESTED EVERY TWO YEARS.

27 THAT WAS A DETERMINATION THAT WAS MADE AFTER MUCH  
28 DISCUSSION AMONG ALL THE PARTIES.

1                   IT WAS A DETERMINATION THAT LOOKED INTO THE COST  
2 EFFECTIVENESS AND THE ABILITY TO COMPLY WITH THESE AND TO  
3 ENFORCE THESE.

4                   SO THE GOAL IS TESTING OF WATER METERS EVERY TWO  
5 YEARS.

6                   SINCE 1980, WATERMASTER HAS DONE JUST THAT.

7                   WE HAVE HAD A METER TESTING PROGRAM IN PLACE THAT  
8 PROVIDES FOR TESTING OF ALL THE METERS EVERY TWO YEARS.

9                   IN FACT, I BELIEVE THAT THE CURRENT COST FOR THIS  
10 YEAR FOR THE WATERMASTER METERING PROGRAM ALONE IS OVER  
11 EIGHTEEN THOUSAND DOLLARS.

12                   IN 1984, THERE WAS A STUDY DONE TO -- OR A SURVEY  
13 DONE TO INSURE COMPLIANCE WITH THE METERING REQUIREMENTS.

14                   PURSUANT TO THAT STUDY, CERTAIN MEMBERS WERE ASKED  
15 TO MAKE REPAIRS.

16                   MOST OF THEM MADE THE REPAIRS.

17                   BUT WHEN SEVERAL OF THOSE MEMBERS REFUSED TO MAKE  
18 THE REPAIRS AFTER THE REQUEST BY WATERMASTER, AFTER THE  
19 REQUEST BY WATERMASTER ATTORNEY, AFTER THE REQUEST BY THE  
20 STATE ATTORNEY GENERAL'S OFFICE, WE DID COME INTO COURT AND  
21 SOUGHT AND RECEIVED AN ORDER TO SHOW CAUSE.

22                   AND WERE SUCCESSFUL IN INITIATING SOME SETTLEMENT  
23 PROCEEDINGS AGAINST THESE PARTIES TO ASSURE COMPLIANCE WITH  
24 THE METERING REQUIREMENTS.

25                   SINCE THAT TIME, THERE HAS BEEN NOTHING BEFORE THE  
26 WATERMASTER TO INDICATE THAT THE PARTIES ARE EITHER NEGLIGENT  
27 IN MAKING THE METER REPAIRS, OR THAT THE WATERMASTER IS  
28 REQUESTED TO ENFORCE THAT PROVISION AGAINST THOSE CERTAIN

1 PARTIES WHO REFUSED TO MAKE THOSE REPAIRS.

2 WATERMASTER CAN PROVE FROM THE RECORDS THAT IT HAS  
3 NEVER REFUSED TO ACT PURSUANT TO A REQUEST PROPERLY BROUGHT  
4 BEFORE IT BY THE SEPARATE COMMITTEES.

5 SO WHAT WE HAVE HERE IS A QUESTION OF WHETHER OR  
6 NOT THE PARTIES AGREE WITH THE SCOPE OF THE WATERMASTER METER  
7 PROGRAM.

8 AND I WOULD NOTE, YOUR HONOR, THAT THE JUDGMENT  
9 SPECIFICALLY REFERS TO FLOW METERING.

10 IT DOESN'T REFER TO THE INSTALLATION OF DEPTH  
11 METERS IN WELLS.

12 IT ONLY TALKS ABOUT FLOW DEVICES.

13 AND THAT IS PRECISELY WHAT WE ARE ADDRESSING HERE.

14 NOW, I ALSO WOULD LIKE THE COURT TO NOTE THAT IT  
15 IS INTERESTING THAT THE MOVING PARTIES WHO HAVE SCREAMED SO  
16 HARD ABOUT PARTIES NOT WILLING TO MAKE REPAIRS TO THEIR METERS  
17 HAVE FAILED TO BRING TO THE ATTENTION OF EITHER THE  
18 WATERMASTER OR TO THE COURT THAT SAN BERNARDINO WATER WORKS  
19 DISTRICT NO. 8 HAS HAD, AS A RECENT SURVEY REVEALED, TWO WELLS  
20 WITH INOPERATIVE METERS FOR MORE THAN A YEAR THAT THEY'VE  
21 REFUSED TO REPAIR OR CANNOT REPAIR.

22 AND THAT THEY HAVE NOT REPORTED IT TO EITHER  
23 WATERMASTER, THE COMMITTEE, OR BROUGHT TO THE ATTENTION OF THE  
24 COURT.

25 AND I WOULD ASK THE COURT TO AGAIN NOTE THE  
26 EQUITIES OF THE SITUATION AND THE CLEAN HANDS OF THE PARTIES.

27 THE SECOND POINT THAT WAS RAISED WAS THE STORAGE  
28 OPERATIONS, THE NEED TO DO A STORAGE STUDY.

1 THE STORAGE MATTERS WERE DISCUSSED AMONG THE  
2 PARTIES IN THE VARIOUS POOLS.

3 I WILL ADMIT THAT THE RULES AND REGULATIONS DIRECT  
4 THAT THE WATERMASTER DETERMINE BY RESOLUTION WHAT THE TERM --  
5 OR WHAT THE ANTICIPATED STORAGE REQUIREMENTS MIGHT BE.

6 THAT WAS NOT DONE.

7 HOWEVER, THE FACTS THAT WERE PRESENTED AT THE TIME  
8 INDICATED THAT THERE WAS WELL IN EXCESS OF -- I BELIEVE IT  
9 WAS FOUR MILLION ACRE-FEET OF STORAGE.

10 AND THAT THE UNANTICIPATED STORAGE USE INFORMALLY  
11 WAS MAYBE IN THE ORDER OF FIFTY THOUSAND ACRE-FEET.

12 SO NOBODY EVEN QUESTIONED THAT.

13 NOW, THE PARTIES NOW SEEK TO MAKE AN ISSUE OF THAT  
14 FAILURE TO ADOPT THAT RESOLUTION.

15 I WOULD NOTE, YOUR HONOR, THAT THOSE SAME PARTIES  
16 THAT NOW COME BEFORE THE COURT, THAT IS THE CITY OF CHINO AND  
17 SAN BERNARDINO WATER WORKS DISTRICT 8, IN 1985, IN 1986 AND IN  
18 1988, MADE A REQUEST FOR AND RECEIVED A RIGHT TO STORE WATER  
19 IN AN AMOUNT OF UP TO THIRTY-FOUR THOUSAND FOUR HUNDRED  
20 ACRE-FEET.

21 OF COURSE AT THAT TIME, THE FAILURE OF THE  
22 WATERMASTER TO HAVE COMPLIED WITH THAT PROVISION DID NOT  
23 BOTHER THEM SINCE THEY WERE ASKING THAT THE WATERMASTER ENTER  
24 INTO A STORAGE AGREEMENT FOR THEIR BEHALF.

25 BUT HERE, SINCE THE CITY OF CHINO AND SEVERAL OF  
26 THE OTHER PARTIES WHO REFUSE TO TURN OVER THEIR WATER TO  
27 THEM HAS ASKED THAT THEY BE ACCORDED THE SAME RIGHTS PURSUANT  
28 TO UNIFORMLY APPLIED RULES AND REGULATIONS, THEY COME IN AND



1 SCREAM BECAUSE THE WATERMASTER FAILED TO UNDERTAKE THAT  
2 STUDY.

3 THE SECOND POINT, THE ADEQUACY OF THE DATA  
4 GATHERING.

5 AGAIN, YOUR HONOR, WE NOTE THAT THE DATA GATHERING  
6 SCOPE AND THE ADEQUACY -- AND I STRESS THE WORD ADEQUACY --  
7 NOT THE NEED TO GATHER DATA, BUT ADEQUACY OF THAT DATA  
8 GATHERING, IS A DISCRETIONARY FUNCTION.

9 AND BASICALLY WHAT WE HAVE HERE IS THAT THE  
10 PARTIES ARE UNHAPPY WITH THE SCOPE OF THAT DATA GATHERING  
11 FUNCTION.

12 IN THE COMPUTER MODEL THAT FORMED THE BASIS OF THE  
13 MET EIR, WHICH IS SO KEY TO THE BASIS OF MOVING PARTIES'  
14 MOTION HERE IN CHINO BASIN, IS BROKEN INTO TWO HUNDRED SEVENTY  
15 NODES.

16 THAT IS, THE WHOLE BASIN IS BROKEN UP INTO TWO  
17 HUNDRED SEVENTY SMALL PARTS, EACH OF WHICH IS STUDIED AS A  
18 SEPARATE NODE.

19 KIND OF LIKE A BEEHIVE EFFECT THAT EACH ONE OF  
20 THOSE IS STUDIED.

21 UNDER THE CURRENT METERING PROGRAM AND THE CURRENT  
22 WATER QUALITY TESTING PROGRAM, IT IS ANTICIPATED THAT  
23 APPROXIMATELY ONE HUNDRED WELLS IN THE -- IN THE BASIN WILL  
24 BE TESTED, WILL BE SOUNDED FOR DEPTH SOUNDINGS. AND THE WATER  
25 QUALITY OF THOSE -- PRODUCED BY THOSE WELLS WILL BE MEASURED.

26 THERE ARE IN EXCESS OF SIXTEEN HUNDRED WELLS IN  
27 THE BASIN.

28 SO THE QUESTION HERE IS, WHAT IS ADEQUATE IN TERMS

1 OF WATER GATHERING ACTIVITIES?

2 IS IT THAT ALL SIXTEEN HUNDRED WELLS HAVE TO BE  
3 TESTED FOR WATER QUALITY AND FOR DEPTH SOUNDINGS?

4 I THINK THAT -- I THINK THE JUDGMENT NEVER  
5 REQUIRED THAT.

6 AND IT IS IMPOSSIBLE TO FIT SOME OF THE WELLS WITH  
7 THE KIND OF EQUIPMENT THAT WOULD BE REQUIRED TO DO THAT KIND  
8 OF TESTING.

9 AND THE COST EFFECTIVENESS WOULD HAVE TO BE  
10 QUESTIONED.

11 THESE KINDS OF THINGS WERE ITEMS THAT WERE  
12 DISCUSSED BY ALL OF THE PARTIES WHEN THE SCOPE OF THE WATER  
13 TESTING PROGRAM AND THE WATER GATHERING PROGRAM WAS EMBARKED  
14 UPON.

15 AND AGAIN, I WOULD POINT OUT THAT THE SCOPE OF THE  
16 PROGRAM AND THE COST OF THE PROGRAM WAS UNANIMOUSLY APPROVED  
17 BY ALL OF THE PARTIES.

18 SO IT IS THE ADEQUACY OF THE WATER GATHERING DATA  
19 THAT IS BEING PLACED IN ISSUE.

20 COUNSEL MISCHARACTERIZES THE STATIC WATER LEVEL  
21 TEST AND THE PURPOSE.

22 THERE ARE LIMITATIONS ON THE ABILITY TO PERFORM  
23 THOSE KINDS OF TESTS.

24 THE LIMITATIONS HAVE BEEN DISCUSSED IN MEETINGS OF  
25 THE WATERMASTER, OF THE ADVISORY COMMITTEE, OF THE  
26 APPROPRIATIVE POOL, AND OF THE AGRICULTURAL AND  
27 NONAGRICULTURAL POOL.

28 IT WAS DETERMINED THAT FOR A COST -- BECAUSE OF

1 THE COST EFFECTIVENESS AND BECAUSE THOSE SMALL PRODUCERS WHOSE  
2 WELLS COULD NOT ACCOMMODATE THAT FUNCTION, THEY SHOULD NOT BE  
3 REQUIRED TO TRY TO RETROFIT THOSE WELLS TO ALLOW FOR THAT.

4 THERE ARE OTHER LIMITATIONS.

5 FOR EXAMPLE, TO GET A TRUE READING ON A STATIC  
6 WATER LEVEL, THE PUMP HAS TO BE SHUT DOWN FOR A MINIMUM PERIOD  
7 OF TIME.

8 THERE IS DISAGREEMENT AMONG THE EXPERTS, BUT  
9 GENERALLY IT IS AGREED THAT SOMEWHERE BETWEEN TWENTY-FOUR  
10 HOURS TO FORTY-EIGHT HOURS IS THE TIME REQUIRED TO ALLOW THE  
11 WATER TO COME BACK UP TO THE WATER LEVEL.

12 AND MANY OF THE PARTIES ARE SO DEPENDENT UPON THE  
13 WATER SUPPLY FROM THEIR PUMPS AT ANY GIVEN TIME, THAT THEY  
14 ARE UNABLE TO SHUT DOWN THEIR -- SHUT DOWN THEIR PUMPS FOR A  
15 LONG ENOUGH PERIOD OF TIME TO GET AN ACCURATE WATER LEVEL  
16 READING.

17 IN THESE SITUATIONS, AGAIN, IT WAS DETERMINED NOT  
18 TO TRY TO INSIST ON WATER LEVEL READINGS.

19 THE RULES AND REGULATIONS PROVIDE THAT THE PARTIES  
20 MUST REQUIRE OR MUST TURN IN SUCH DATA AS IS REQUIRED OF THEM  
21 BY THE WATERMASTER FOR THE VARIOUS POOLS.

22 WE WOULD NOTE THAT NOWHERE HAVE THE PARTIES SHOWN  
23 WHAT THOSE REQUIREMENTS ARE.

24 WATERMASTER STAFF HAS DEVELOPED CERTAIN FORMS.

25 SOME OF THOSE FORMS AS THE RESULT, OR THE NEW  
26 FORMS AS A RESULT OF THOSE DISCUSSIONS CONTAINED REQUESTS FOR  
27 INFORMATION SUCH AS STATIC WATER LEVELS, BECAUSE IT WAS  
28 DETERMINED THAT IT WOULD BE GOOD IF WE COULD HAVE THOSE.

1 BUT IT WOULD BE IMPRACTICAL TO ENFORCE THE  
2 COLLECTION OF THAT DATA BECAUSE OF THE PROBLEMS THAT I  
3 MENTIONED.

4 SO THAT THE NEW FORMS REQUEST THAT INFORMATION.

5 BUT I WOULD NOTE THAT ALL OF THE DATA REQUIRED TO  
6 BE GATHERED BY THE WATERMASTER PURSUANT TO THE JUDGMENT OR  
7 PURSUANT TO ANY OF THE DIRECTORS OF ANY OF THE POOLS IS BEING  
8 GATHERED, HAS BEEN GATHERED, IS AVAILABLE FOR REVIEW BY ANY OF  
9 THE PARTIES.

10 AND MUCH OF THAT HAS BEEN REPORTED TO THE COURT.

11 AS TO THE LOSS OF WATER IN STORAGE, COUNSEL DOES  
12 POINT OUT THAT THERE IS A MAJOR PROBLEM WITH THAT.

13 THAT IS, HOW DO YOU MEASURE THAT LOSS?

14 WHEN THE WATERMASTER RULES AND REGULATIONS AND, IN  
15 PARTICULAR, THE UNIFORM GROUND WATER RULES AND REGULATIONS  
16 WERE ADOPTED, THAT PARTICULAR ITEM WAS WRESTLED WITH AT LENGTH  
17 BY ALL OF THE PARTIES.

18 THEY RECOGNIZED THE DIFFICULTY IN COMING UP WITH A  
19 RULE FOR THAT.

20 THEY ALSO RECOGNIZED THAT THERE WAS NO NEED TO  
21 CONCERN THEMSELVES WITH THAT IMMEDIATELY BECAUSE OF THE VAST  
22 AMOUNT OF STORAGE AVAILABLE AND THE ANTICIPATED USE OF THAT  
23 STORAGE BY SUPPLEMENTAL WATER.

24 IT IS FOR THAT REASON THAT THAT RULE WAS NEVER  
25 ADOPTED OR THAT DETERMINATION WAS NEVER MADE.

26 IF IT BECOMES IMPORTANT THAT THAT DETERMINATION BE  
27 MADE, IT WILL BECOME EXPENSIVE TO MAKE THAT DETERMINATION.

28 AND WATERMASTER WOULD CERTAINLY BE HAPPY TO COMPLY

1 WITH ANY DETERMINATION AND MAKE THE PROPER CALCULATIONS  
2 PURSUANT TO THAT RULE.

3 THE PARTIES UNANIMOUSLY AGREED THAT THAT OUGHT NOT  
4 BE AN INTEREST AT THIS POINT.

5 SO AGAIN, THE OBJECTIONS BY THE PARTIES JUST HAVE  
6 NO BASIS IN FACT.

7 REFERENCE WAS MADE TO THE NOTICE OF EXEMPTION THAT  
8 WAS FILED BY THE METROPOLITAN WATER DISTRICT IN CONNECTION  
9 WITH THE ALLEGED EXCHANGE AGREEMENTS.

10 AND THIS WAS RAISED IN CONNECTION WITH THE WATER  
11 QUALITY ISSUE.

12 COUPLE OF THINGS ARE VERY IMPORTANT TO NOTE HERE.

13 NUMBER ONE, THE NOTICE OF EXEMPTION WAS FILED WITH  
14 THE ORANGE COUNTY BOARD OF SUPERVISORS.

15 AND THAT IS BECAUSE THERE WAS AN ANTICIPATED OR  
16 POTENTIALLY ANTICIPATED DOWNSTREAM EFFECT OF THE EXCHANGE OF  
17 WATER BECAUSE OF THE FAILURE TO PRODUCE SOME OF THE WATER  
18 PURSUANT TO THOSE EXCHANGE AGREEMENTS.

19 IT IS A SIMPLE PHYSICAL FACT THAT BECAUSE OF THE  
20 HISTORIC AND CURRENT LAND USE ON THE BASIN, A CERTAIN MASS OF  
21 UNDESIRABLE ELEMENTS ARE IN THE BASIN.

22 PRIMARILY NITRATES.

23 THOSE ARE THERE.

24 WATERMASTER CANNOT CHANGE THAT FACT.

25 THEY ARE THERE BECAUSE THEY WERE PUT THERE OVER A  
26 PERIOD OF TIME OR THEY OCCUR THERE NATURALLY.

27 BUT THE ONLY WAY THAT THE NITRATES OR THOSE  
28 UNDESIRABLE ELEMENTS THAT ARE NOW IN THE BASIN CAN BE REMOVED

1 FROM THE BASIN IS IF THEY ARE TAKEN OUT AS PART OF THE WATER  
2 THAT IS PRODUCED BY PUMPING, OR IF THEY FLOW OUT OF THE BASIN  
3 IN THE LOWER END AS THE RESULT OF RISING WATER OUTFLOW.

4 AND AS THESE NITRATES OR THE -- THIS MASS OF  
5 UNDESIRABLE ELEMENTS, TDS, FLOWS OUT OF THE BASIN OR IS TAKEN  
6 OUT OF THE BASIN AS PART OF THE PUMPED WATER, THE QUALITY OF  
7 THE BASIN WATER WILL INCREASE.

8 NOW, THE MOVING PARTIES STATE THAT THERE IS NO  
9 THOUGHT GIVEN TO THE WATER QUALITY ASPECT OF THE BASIN  
10 MANAGEMENT PROGRAM.

11 AGAIN, NOTHING IS FURTHER FROM THE TRUTH.

12 THE DECLARATIONS BEFORE THE COURT ARE THAT THE  
13 WATER THAT IS BEING PLACED IN -- IN THE BASIN -- SUPPLEMENTAL  
14 WATER THAT'S BEING PLACED IN THE BASIN, BY AND LARGE IS OF  
15 BETTER QUALITY THAN THE WATER IN THE BASIN NOW.

16 IN SIMPLISTIC TERMS, IT MEANS THIS:

17 IF THE WATER IN THE BASIN ON THE WHOLE HAS AN  
18 AVERAGE TDS, A HUNDRED PARTS, THE WATER THAT'S BEING PUT INTO  
19 THE BASIN HAS FEWER TDS. SAY NINETY.

20 AND THE LONG TERM NET EFFECT OF THAT IS A  
21 REDUCTION IN THE TOTAL TDS IN THE WATER -- IN THE WATER IN  
22 THE BASIN.

23 AND IT WILL HELP REDUCE THE TOTAL MASS OF  
24 UNDESIRABLE ELEMENTS IN THE BASIN BECAUSE IT HELPS SPEED UP  
25 THE DILUTION BECAUSE OF THE RISE OF WATER OUTFLOW OR THE  
26 PRODUCTION BY THE PARTIES.

27 SO THAT THERE IS A KNOWLEDGEABLE AND ACKNOWLEDGED  
28 WATER QUALITY ELEMENT IN PLACE FOR THE WATERMASTER PROGRAM.

1           THERE IS ANOTHER POINT TO CONSIDER.

2           AND THAT IS THE WATERMASTER PROGRAM DOES NOT  
3 OPERATE IN A VACUUM, AND WE HAVE POINTED THIS OUT IN OUR  
4 PAPERS FILED WITH THE COURT.

5           PARTICULARLY, THE SANTA ANA REGIONAL WATER QUALITY  
6 CONTROL BOARD HAS JURISDICTION OVER POINT DISCHARGE AND THE  
7 WATER THAT IS BEING PLACED IN THE BASINS WITHIN ITS  
8 JURISDICTIONAL AREA.

9           THERE ARE VERY SPECIFIC GUIDELINES FOR THAT BODY  
10 TO MEET.

11           AND THERE ARE CERTAIN ITEMS THAT THAT BODY CAN  
12 CONSIDER, INCLUDING THE FACT THAT AS A RESULT OF NEEDS FOR  
13 HOUSING OR WHATEVER NEEDS, ATTENDANT TO WHATEVER PLANNING IS  
14 ADOPTED BY THEM, THAT CERTAIN AREAS OF THE BASIN OR CERTAIN  
15 PARTIES MAY HAVE A -- OR MAY EXPERIENCE A DETERIORATION OF THE  
16 WATER SUPPLY.

17           WATERMASTER HAS BEEN IN COMPLIANCE WITH THAT  
18 REQUIREMENT.

19           IN ADDITION, YOUR HONOR, AS WE NOTE, WE DO BELIEVE  
20 THAT THERE IS AN ADMINISTRATION REQUIREMENT TO GO TO THAT BODY  
21 IN THE FIRST INSTANCE, BUT WE WILL LEAVE THAT THERE.

22           THE COURT: LET ME ASK YOU A QUESTION, ALL OF YOU.  
23 WE HAD JUST INDICATED TO YOU IT WOULD BE HERE THIS  
24 MORNING.

25           CAN YOU COME BACK AFTER LUNCH SO I CAN HEAR  
26 REBUTTAL?

27           MR. DUBIEL?

28           MR. DUBIEL: YES.

1 MR. DOUGHERTY: YES, YOUR HONOR.

2 ONTARIO HAS APPROXIMATELY TEN OR FIFTEEN MINUTES  
3 OF ARGUMENT WE WOULD LIKE TO PRESENT.

4 MR. DUBIEL: YOUR HONOR, THE STATE OF CALIFORNIA  
5 WILL GIVE YOU A FIVE-MINUTE SUMMATION.

6 THE COURT: OKAY.

7 WHY DON'T WE THEN RECESS UNTIL -- HOW MUCH LONGER  
8 DO YOU THINK WE NEED?

9 HOW MUCH LONGER WILL YOU BE, MR. SMITH?

10 MR. SMITH: TWENTY MINUTES.

11 THE COURT: AND YOU WANT ABOUT?

12 MR. DOUGHERTY: APPROXIMATELY FIFTEEN MINUTES,  
13 YOUR HONOR.

14 MR. DUBIEL: ABOUT FIVE.

15 THE COURT: AND THEN HOW LONG DO YOU THINK YOU'D  
16 NEED IN REBUTTAL?

17 MS. TRAGER: I CAN'T TELL, YOUR HONOR.

18 THE COURT: I'M NOT GOING TO LIMIT YOU, JUST --

19 MS. TRAGER: TEN MINUTES, MAYBE FIFTEEN.

20 THE COURT: OKAY. WANT TO COME BACK AT TWO  
21 O'CLOCK THEN?

22 MR. SMITH: THAT WOULD BE FINE, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 SEE YOU AT TWO O'CLOCK.

25 MS. TRAGER: THANK YOU.

26 MR. SMITH: THANK YOU.

27 THE BAILIFF: COURT IS NOW IN RECESS UNTIL 2:00  
28 P.M.



1 SAN BERNARDINO, CALIFORNIA; THURSDAY, MARCH 2, 1989  
2 DEPARTMENT NO. 2 HON. DON A. TURNER, JUDGE  
3 -- 2:00 P.M. --

4 APPEARANCES:

5 (AS HERETOFORE NOTED.)

6 (REPORTED BY KATHERINE A. JACOBSEN, CSR,  
7 OFFICIAL REPORTER, C-4012)

8 THE COURT: I TRUST YOU ALL FOUND A PLACE TO HAVE  
9 LUNCH.

10 A LITTLE RESPITE.

11 MR. SMITH: THANK YOU, YOUR HONOR.

12 I BELIEVE THE LAST POINT THAT I HAD COVERED WAS  
13 THE FACT THAT A NOTICE OF EXEMPTION HAD BEEN FILED WITH THE  
14 ORANGE COUNTY BOARD OF SUPERVISORS WITH REGARD TO THE  
15 POTENTIAL DEGRADATION OF WATER FOR THE DOWNSTREAM USERS THAT  
16 WOULD RESULT FROM THE STORAGE OF ADDITIONAL WATER IN THE  
17 BASIN.

18 AND THE POINT WAS THAT THAT ACTUALLY HAS A  
19 BENEFICIAL AFFECT UPON THE WATER QUALITY OF THE BASIN.

20 AND THAT THE FILING OF THE NOTICE OF EXEMPTION  
21 SHOULD IN NO WAY BE READ AS AN INDICATION OR AN ADMISSION THAT  
22 THERE IS SOME KIND OF WATER QUALITY DEGRADATION THAT WILL  
23 OCCUR AS A RESULT OF THAT STORAGE ACTIVITY.

24 THERE ARE REALLY TWO THINGS THAT STILL HAVE TO BE  
25 COVERED.

26 AND THAT IS, WHAT IS IT THAT THE COURT CAN DO NOW  
27 AT THIS POINT WITH REGARD TO THE FREEZE THAT WAS REQUESTED.

28 AND THEN, OF COURSE, THE ATTORNEYS' FEES, WHICH I

1 WOULD LIKE TO ADD BRIEFLY AT THE END.

2 THE MOVING PARTIES HAVE ASKED THE COURT TO DIVIDE  
3 UP THE SEVENTY-EIGHT THOUSAND FIVE HUNDRED ACRE-FEET AND  
4 DISTRIBUTE IT IN A MANNER OTHER THAN THAT WHICH IS SET FORTH  
5 IN EXHIBIT "E" TO THE JUDGMENT.

6 I SUBMIT, YOUR HONOR, THAT PURSUANT TO THE VARIOUS  
7 TERMS OF THE JUDGMENT, THE COURT HAS NO RIGHT TO DO SO  
8 BECAUSE THAT IS SPECIFICALLY EXEMPTED FROM THE COURT'S  
9 JURISDICTION.

10 AND AS I NOTED EARLIER IN MY ARGUMENT THIS  
11 MORNING, IT IS PRECISELY BECAUSE OF THE GUARANTEES AFFORDED BY  
12 THE APPROPRIATORS TO THE AG POOL THAT THAT PROVISION WAS  
13 INCLUDED.

14 THE MOVING PARTIES SUGGEST THAT THAT WATER CAN BE  
15 USED TO REPLENISH OVERPRODUCTION.

16 THAT, AGAIN, IS PRECLUDED BY THE TERMS OF THE  
17 JUDGMENT.

18 THE TERMS OF JUDGMENT ARE SUCH THAT REPLENISHMENT  
19 WATER IS A TERM OF ART DEFINED AS SUPPLEMENTAL WATER.

20 SUPPLEMENTAL WATER, AGAIN, IS DEFINED AS IMPORTED  
21 WATER OR RECLAIMED WATER.

22 THE WATER THAT IS BEING TAKEN FROM THE AG POOL IS  
23 NEITHER OF THOSE.

24 THEY ARE NATIVE WATERS OF THE BASIN.

25 AS SUCH, YOU CANNOT USE NATIVE WATERS FOR  
26 REPLENISHMENT PURPOSES.

27 YOU CANNOT ROB PETER TO PAY PAUL, AS IT WERE.

28 SO THAT OPTION IS NOT AVAILABLE TO THE COURT OR TO

1 THE PARTIES.

2 THE MOVING PARTIES HAVE SOMEHOW SOUGHT TO HAVE THE  
3 COURT ENTER AN ORDER THAT WOULD PROVIDE FOR SOME KIND OF  
4 ECONOMIC EQUITY.

5 IN ESSENCE, WHAT THEY ARE ASKING FOR IS SOME KIND  
6 OF SOCIALIZATION OF THE WATER COSTS OF PRODUCTION WITHIN THE  
7 BASIN.

8 THE JUDGMENT WAS NEVER MEANT TO OPERATE THAT WAY.

9 THE JUDGMENT BY ITS VERY TERMS RECOGNIZES THAT  
10 THERE ARE THOSE PARTIES THAT HAVE SOME ABILITIES AND OTHERS  
11 THAT DO NOT.

12 THE STATE OF CALIFORNIA HAS KNOWN THAT IT NEEDED  
13 TO ENTER INTO A DENITRIFICATION OF THE PROGRAM FOR THE LOWER  
14 END OF THE PROGRAM FOR SOME TIME NOW AND HAS OFFERED TO ENTER  
15 INTO A PROGRAM WITH THE PARTIES TOWARD THAT END.

16 THAT OVERTURE HAS BEEN REJECTED SO FAR BY THE  
17 MOVING PARTIES.

18 MS. TRAGER: I'LL ENTER AN OBJECTION ON THAT, YOUR  
19 HONOR.

20 MY INFORMATION ON THE STATUS OF THE NEGOTIATIONS  
21 REGARDING WHAT THE STATE OF CALIFORNIA AT THE PRISON WILL DO  
22 AND WILL NOT DO WITH RESPECT TO NITRIFICATION IS THAT  
23 CONTRACTS HAVE NOT BEEN ENTERED INTO.

24 THERE IS NO PROPER EVIDENCE BEFORE THIS COURT  
25 RIGHT NOW TO EVALUATE WHERE THOSE PARTIES STAND OR WHETHER THE  
26 -- WHETHER THE STATE OF CALIFORNIA WILL PROCEED IN ACCORDANCE  
27 WITH SOME OF THE STUDIES THAT ARE BEING DONE RIGHT NOW.

28 IF THE COURT WOULD LIKE TO HAVE THE MATTER EITHER

1 BRIEFED OR WITNESSES CALLED TO TESTIFY ON THAT POINT, I THINK  
2 IT WOULD BE HELPFUL TO DO THAT.

3 BUT GIVEN THE STATEMENT OF COUNSEL RIGHT NOW AND  
4 THE FACT THAT THERE HAVE BEEN NO DECLARATIONS SUBMITTED ON THAT  
5 AND NO EVIDENCE THAT IS COMPETENT ON THE POINT, I WOULD ASK  
6 YOU TO DISREGARD IT.

7 THE COURT: THAT DOES SEEM TO BE BEYOND THE AREA  
8 THAT WE'VE TALKED ABOUT.

9 I -- I TAKE IT AS SORT OF AN ASIDE BY SMITH TO  
10 JUST INDICATE THE POSITION OF THE MOVING PARTIES.

11 IT'S NOT SOMETHING THAT --

12 MS. TRAGER: I DON'T KNOW THAT IT ACTUALLY  
13 REFLECTS THE POSITION OF THE MOVING PARTIES AT THIS TIME.

14 THE COURT: OKAY.

15 I DON'T WANT TO GET INTO THAT ISSUE UNLESS IT'S  
16 SOMETHING THAT EVERYBODY AGREES THAT I HAVE TO GET INTO IT.

17 MR. SMITH: NO, YOUR HONOR.

18 IT WAS NOT AN ISSUE TECHNICALLY RAISED BY THE  
19 PLEADINGS AND CERTAINLY WE DO NOT WISH TO MAKE IT AN ISSUE  
20 BEFORE THE COURT.

21 THE COURT: OKAY.

22 MR. SMITH: I THINK I WOULD JUST AS SOON THEN  
23 ADDRESS THE ISSUE OF ATTORNEYS' FEES.

24 COUNSEL EARLIER TODAY NOTED THAT SHE IS PROCEEDING  
25 AS A PRIVATE ATTORNEY GENERAL AND WOULD SEEK ATTORNEY'S FEES  
26 UNDER THAT THEORY.

27 THAT ISSUE HAS BEEN LAID TO REST BY THE  
28 LEGISLATURE AND THE COURTS.

1 THE LEGISLATURE ADOPTED SOMETIME AGO CODE OF CIVIL  
2 PROCEDURE SECTION 1021.5, WHICH SPECIFICALLY STATES THAT  
3 ATTORNEY'S FEES IN PRIVATE ATTORNEY GENERAL ACTIONS CAN BE  
4 GRANTED AGAINST BUT NOT IN FAVOR OF PUBLIC ENTITIES SUCH AS  
5 THE CITY OR THE COUNTY.

6 AND THIS WAS INTERPRETED BY THE COURT OF APPEAL  
7 IN CITY OF CARMEL BY THE SEA VERSUS BOARD OF SUPERVISORS.

8 AND THAT'S FOUND IN 183 CAL.APP 3RD 229,  
9 SPECIFICALLY AT PAGES 255 AND 256.

10 SO THAT THE QUESTION OF ATTORNEY'S FEES ON THE  
11 PRIVATE ATTORNEY GENERAL THEORY ARE NOT AVAILABLE TO THE  
12 MOVING PARTIES.

13 AND IT IS FOR THAT REASON, ALSO, YOUR HONOR, WHY I  
14 MADE THE DISTINCTION AT THE BEGINNING OF MY ORATORY WITH  
15 REGARD TO THE WATERMASTER NOT BEING A WATER DISTRICT AND BEING  
16 A PRIVATE ENTITY.

17 THE WATERMASTER PROGRAM IS NOT SUPPORTED BY PUBLIC  
18 FUNDS SUCH AS TAXES OR AD VALOREM TAXES.

19 AND THEY HAVE NO ABILITY TO VOTE FOR THE MEMBERS  
20 OF THE BOARD OF DIRECTORS OR WHATEVER.

21 IT IS A BOARD THAT IS APPOINTED BY THE COURT AND  
22 IT IS NOT A PUBLIC ENTITY.

23 AND THEREFORE, WATERMASTER IS AUTHORIZED TO MAKE  
24 THE MOTION ON THE 1021.5 FOR ATTORNEY'S FEES ON THE PRIVATE  
25 ATTORNEY GENERAL THEORY, AS WELL AS FOR SANCTIONS FOR MAKING  
26 THE MOTION THAT IS NOW BEFORE THE COURT.

27 FINALLY, WE NOTE THAT THE PARTIES HAVE SIMPLY  
28 STATED THAT THE WATERMASTER ASSESSMENTS WERE SUBMITTED TO THE

1 CLERK OF THE COURT.

2 AND IF THE WATERMASTER REALLY HAD WANTED TO HAVE  
3 THOSE FEES, THEY COULD -- WATERMASTER COULD HAVE GONE INTO  
4 COURT AND REQUESTED AN ORDER THAT THEY BE TURNED OVER TO THE  
5 WATERMASTER.

6 THERE ARE TWO ANSWERS TO THAT.

7 FIRST OF ALL, YOUR HONOR, THE JUDGMENT, AGAIN, IS  
8 CLEAR THAT WATERMASTER ASSESSMENTS ARE PAYABLE TO THE  
9 WATERMASTER AS AND WHEN THEY BECOME DUE, NOT TO SOME OTHER  
10 PARTY SUCH AS THE CLERK OF THE COURT.

11 SECONDLY, EVEN IF THAT WERE AVAILABLE TO THE  
12 WATERMASTER, THE WATERMASTER WOULD STILL HAVE TO INCUR LEGAL  
13 FEES TO GET THE ORDER AND TO NOTICE ALL THE PARTIES THAT HE IS  
14 GOING INTO COURT TO REQUEST SUCH RELIEF.

15 SO THAT THE ACTS OF THE PARTIES STILL CAUSED THE  
16 WATERMASTER TO INCUR LEGAL COSTS TO COLLECT THAT MONEY.

17 THE -- AS WE STATED, THE IMPOUNDMENTS WERE  
18 UNWARRANTED.

19 THE ACTS OF THE PARTIES HAVE BEEN DEVISIVE, HAVE  
20 NOT BEEN SUPPORTED BY ANY OF THE FACTS.

21 AND WE BELIEVE, YOUR HONOR, THAT THEIR REQUEST FOR  
22 THE KIND OF RELIEF THAT THEY ARE MAKING IS PRECLUDED UNDER THE  
23 SPECIFIC TERMS OF THE JUDGMENT.

24 WE WOULD REQUEST THAT THEIR MOTIONS BE DENIED AND  
25 THAT THE COURT ISSUE ITS ORDER OF ADDITIONAL COSTS WITH REGARD  
26 TO THE ATTORNEY'S FEES.

27 THE COURT: OKAY. THANK YOU.

28 MR. SMITH: THANK YOU.

1 MR. DOUGHERTY: THANK YOU, YOUR HONOR.

2 ONE OF THE DIFFICULTIES OF SPEAKING LAST IS ONE  
3 FINDS LARGE PORTIONS OF ONE'S PREPARED SPEECH ALREADY  
4 ADDRESSED BY THE OTHER PARTIES.

5 AND I DON'T WISH TO BE REPETITIVE, SO BEAR WITH  
6 ME.

7 I'LL TRY TO SKIP AROUND AND TOUCH ON THOSE THINGS  
8 THAT I FEEL HAVE NOT BEEN COVERED AND WHICH ARE IMPORTANT TO  
9 ONTARIO, AND I'LL TRY NOT TO BE TOO REDUNDANT.

10 I'D LIKE TO FIRST TOUCH ON THE LAST MATTER THAT  
11 MR. SMITH BROUGHT UP, AND THAT IS THE FACT THAT THE MOVING  
12 PARTIES HAVE PAID THEIR ASSESSMENTS INTO AN IMPOUND ACCOUNT  
13 AND NOT TO THE WATERMASTER FOR THE PURPOSE WHICH IS -- WHICH  
14 THEY ARE INTENDED.

15 AND THAT IS, IN LARGE PART, FOR THE PURCHASE OF  
16 SUPPLEMENTAL WATER, SUPPLEMENTAL WATER WHICH MUST, UNDER THE  
17 TERMS OF THE JUDGMENT, BE BROUGHT INTO THE BASIN BECAUSE OF  
18 THE OVERDRAFT CAUSED BY THE MOVING PARTIES.

19 IT HAS BEEN MENTIONED THAT THE -- IN THE CASE OF  
20 NORCO, THIS OVERDRAFT DURING THE LAST YEAR WAS APPROXIMATELY  
21 THIRTY-SIX HUNDRED SQUARE FEET.

22 AND LOOKING AT NORCO'S WATER RIGHT AND LOOKING AT  
23 THE FIGURE IN EXHIBIT "E" TO THE JUDGMENT, THAT IS, THAT IT'S  
24 NOT THE SAFE YIELD FIGURE, BUT THE -- THE TERM OF ART,  
25 OPERATING SAFE YIELD -- I COULDN'T THINK OF THAT TERM FOR A  
26 SECOND -- THEIR SHARE OF OPERATING SAFE YIELD IS 201.545  
27 ACRE-FEET.

28 SO ONE COULD ARGUE THAT IF NORCO'S MONEY THAT

1 THEY ARE REQUIRED TO PAY BY WAY OF ASSESSMENT SHOULD -- DOES  
2 NOT GO INTO PURCHASING REPLENISHMENT WATER, THEN THE JUDGMENT  
3 SHOULD OPERATE TO ENJOIN OR GO FROM PUMPING MORE THAN  
4 THEIR OPERATING SHARE OF SAFE YIELD, WHICH IS 201.545  
5 ACRE-FEET.

6 AND I SUBMIT NORCO WOULD BE IN A WORLD OF HURT,  
7 BECAUSE, AS I UNDERSTAND IT, THEY HAVE NO ABILITY TO TAKE  
8 SURFACE WATERS FROM ANY SOURCE.

9 GETTING AWAY FROM THAT, GETTING BACK TO THE  
10 ISSUES, IT WAS MENTIONED AT THE OUTSET THAT ESSENTIALLY THREE  
11 ISSUES HAD BEEN SETTLED AMONG THE PARTIES.

12 AND ONE ISSUE WAS SUPPOSEDLY THE FACT THAT THE  
13 MOVING PARTIES NO LONGER WERE INCLINED TO INVALIDATE AS SUCH  
14 AGRICULTURAL TRANSFER TO THE APPROPRIATIVE POOL.

15 I SUBMIT THAT THAT WAS REALLY NOT A SETTLEMENT.  
16 ALL THEY HAVE DONE IS, IN EFFECT, SWITCHED THEIR  
17 TUNE.

18 THEY ARE SAYING NOW THAT THE TRANSFER CAN BE MADE,  
19 BUT WE WANT THIS WATER PUT INTO A HOLDING ACCOUNT OR IN SOME  
20 WAY KEPT AWAY FROM THE PARTIES UNTIL THIS OPERATING -- UNTIL  
21 THE SO-CALLED OPTIMUM BASIN MANAGEMENT PLAN AND SOCIO-ECONOMIC  
22 STUDY ARE COMPLETED.

23 WELL, I SUBMIT, YOUR HONOR, THAT I AGREE WITH MR.  
24 SMITH.

25 THAT WATER IS WATER THAT HAS BEEN DETERMINED AS A  
26 MATTER OF RIGHT TO BELONG TO THE APPROPRIATORS IN THE BASIN,  
27 PRO RATA BASED UPON THEIR SHARE OF OPERATING SAFE YIELD.

28 AND IT WOULD BE UNFAIR AND, I THINK, NOT WITHIN



1 THE COURSE OF THE COURT'S JURISDICTION TO ALLOCATE THAT WATER  
2 TO ANY OTHER FASHION OTHER THAN PRO RATA BASED ON SAFE YIELD.

3 THE OTHER TWO ITEMS REGARDING -- WHICH ARE ALLEGED  
4 TO HAVE BEEN SETTLED -- I DON'T THINK WERE REALLY EVER IN  
5 DISPUTE TO BEGIN WITH.

6 I THINK WE ALL RECOGNIZED WATERMASTER NEEDS AN  
7 ADEQUATE PROGRAM TO MONITOR, SUPERVISE THE INSTALLATION AND  
8 TESTING OF WATER MEASURING DEVICES.

9 AND SO THERE IS NO ARGUMENT THERE.

10 AS FAR AS THE ISSUE OF THE SOCIO-ECONOMIC STUDY IS  
11 CONCERNED, I THINK WE ALL AGREE THAT THE JUDGMENT CALLS FOR  
12 THE SOCIO-ECONOMIC STUDY TO BE DONE.

13 AND IT SHOULD BE DONE, AND IT'S A MATTER OF  
14 GETTING IT DONE.

15 BUT I WOULD LIKE TO POINT OUT, AGAIN, THAT THE  
16 SOCIO-ECONOMIC STUDY WAS, ONCE IT IS COMPLETE, ONLY HAS  
17 APPLICATION TO WHETHER THERE SHOULD BE ANY CHANGE IN THE  
18 ASSESSMENT FORMULA UNDER THE JUDGMENT.

19 RIGHT NOW, THE ASSESSMENT FORMULA IS EIGHTY-FIVE  
20 PERCENT NET FIFTEEN PERCENT GROSS.

21 AND ONCE THE SOCIO-ECONOMIC STUDY IS DONE, THEN  
22 THE PARTIES MAY RECOMMEND CHANGE IN THAT FORMULA.

23 BUT I MUST POINT OUT THAT THE JUDGMENT AGAIN SAYS  
24 THAT THE COURT ONLY HAS RESERVE JURISDICTION OVER THAT  
25 ASSESSMENT FORMULA IF SIXTY-SEVEN PERCENT OF THE APPROPRIATIVE  
26 POOL AFFIRMATIVELY RECOMMEND THE CHANGE.

27 NOW, I'D LIKE TO POINT OUT THE FACT THAT THE  
28 MOVING PARTIES HAVE MADE SOME FACTUAL ASSUMPTIONS IN THEIR

1 MOST RECENTLY FILED SUPPLEMENTAL POINTS AND AUTHORITIES THAT  
2 ARE CORRECT, AND ARE VERY DEROGATORY AND DAMAGING OF ONTARIO,  
3 WE BELIEVE.

4 FIRST OFF, THEY ASSERT THAT ONTARIO -- THAT THE  
5 WATERMASTER DOES NOT HAVE INFORMATION WHEREBY THE WATERMASTER  
6 CAN DETERMINE ONTARIO'S STATIC WATER LEVELS.

7 AND THEY SAY THIS IS THE CASE, BECAUSE THEN I SAY  
8 AT PAGE 9 AT THEIR POINTS AND AUTHORITIES, THAT ONTARIO HAS  
9 NOT BEEN REPORTING STATIC WATER LEVELS ON FORMS PROVIDED BY  
10 THE WATERMASTER.

11 NOW, IF WE WERE CALLED TO TESTIFY, I'M SURE MR.  
12 DON PETERS, CHIEF OF WATERMASTER SERVICES, WOULD TESTIFY THAT  
13 ONTARIO HAS BEEN REPORTING ITS STATIC WATER LEVELS ON ITS  
14 OWN FORMS, THAT MR. PETERS HAS SUFFICIENT INFORMATION  
15 AVAILABLE TO HIM TO DETERMINE WHAT ONTARIO'S STATIC WATER  
16 LEVELS ARE, AND THAT, IN MR. PETERS'S OPINION, THAT A  
17 DUPLICATION OF EVIDENCE USING THE WATERMASTER FORMS WOULD BE  
18 UNPRODUCTIVE.

19 I'M SURE THAT MR. PETERS WOULD ALSO TESTIFY THAT  
20 ONE OF THE MOVING PARTIES, THE CITY OF CHINO, ALSO USES ITS  
21 OWN REPORTS, SUBMITS THOSE REPORTS TO THE WATERMASTER SHOWING  
22 STATIC WATER LEVELS, AND DOES NOT USE THE WATERMASTER FORMS.

23 AND I ALSO BELIEF THAT MR. PETERS WILL TESTIFY  
24 THE CITY OF NORCO HAS NOT BEEN REPORTING STATIC WATER LEVELS.

25 THE NEXT MISSTATEMENT OF FACT IS THE ASSERTION BY  
26 THE MOVING PARTIES -- AND THIS IS FOUND INITIALLY AT LINE 20  
27 OF PAGE 5 OF THEIR SUPPLEMENTAL POINTS AND AUTHORITIES, THAT  
28 IF ONTARIO IS ALLOWED TO STORE TEN THOUSAND ACRE-FEET IN WHAT

1 I CALL INDIRECT STORAGE -- GETTING BACK TO THAT IN A MINUTE --  
2 THAT ONTARIO'S WEIGHTED VOTE FOR THE YEAR 1989-1990 WOULD BE  
3 FORTY-EIGHT PERCENT ON THE ADVISORY COMMITTEE.

4 THAT'S TOTAL FABRICATION.

5 I HAVE NO IDEA WHERE THAT FIGURE COMES FROM.

6 AS A RESULT OF RECEIVING THE SUPPLEMENTAL POINTS  
7 AND AUTHORITIES, I DID ASK MR. PETERS TO CALCULATE WHAT THE  
8 WEIGHTED VOTE WOULD BE, ASSUMING, OF COURSE, THE STORAGE OF  
9 TEN THOUSAND ACRE-FEET BY ONTARIO.

10 MR. PETERS DID CALCULATE THAT.

11 MR. SMITH HAS A DECLARATION WHICH CAN BE  
12 SUBMITTED.

13 AND I'D LIKE TO PROVIDE MS. TRAGER WITH A COPY OF  
14 THAT.

15 AND THIS IS THE ORIGINAL DECLARATION.

16 AND AS THE COURT WILL SEE, YES, THERE WOULD BE AN  
17 INCREASE IN ONTARIO'S VOTE.

18 BUT THE INCREASE FOR THAT ONE YEAR WOULD BE  
19 TWENTY-EIGHT THOUSAND -- TO BE -- IT WOULD BE A TOTAL OF  
20 28.27 AS A WEIGHTED VOTE AND NOT FORTY-EIGHT PERCENT, AS THE  
21 MOVING PARTIES INSIST.

22 AND AGAIN, THIS WOULD BE A ONE YEAR SITUATION  
23 BASED UPON THIS ONE TIME STORAGE OF TEN THOUSAND ACRE-FEET.

24 AND AS I HAVE INDICATED IN OUR RESPONDING POINTS  
25 AND AUTHORITIES PREVIOUSLY, THIS IS THE FIRST TIME ONTARIO HAS  
26 BEEN UNABLE TO -- EVEN BEEN ABLE TO STORE WATER IN THE  
27 BASIN.

28 AND IT'S ONLY BECAUSE OF THIS AG POOL TRANSFER

1 THAT HAS MADE THAT WATER AVAILABLE TO US.

2 AND WE DON'T KNOW WHEN WE WILL EVER BE ABLE TO  
3 STORE IN THE BASIN AGAIN, BASED UPON THE EXTENT OF OUR USE.

4 NOW, IF YOU WILL BEAR WITH ME A MOMENT, I'LL TRY  
5 TO SKIP OVER SOME OF WHAT I HAD.

6 I DON'T THINK I'LL ADDRESS THE ISSUE OF MET'S  
7 STANDING OR THE ISSUE OF THE WATER MEASUREMENT DEVICES.

8 I THINK THOSE WERE COVERED BY THE ATTORNEY FOR THE  
9 WATERMASTER.

10 AS FAR AS THIS OPTIMUM BASIN MANAGEMENT PROGRAM IS  
11 CONCERNED, I'D -- I'D LIKE THE COURT TO BE MADE AWARE OF THE  
12 FACT THAT ONTARIO HAS ABSOLUTELY NO INTENT OF BEING AN  
13 OBSTRUCTIONIST.

14 ONTARIO STANDS READY AND WILLING TO PARTICIPATE IN  
15 ANY REASONABLE EFFORT DIRECTLY IDENTIFYING STUDY AND PROPOSING  
16 SOLUTIONS FOR ANY REFERENCED WATER QUALITY OR QUANTITY  
17 PROBLEMS IN THE CHINO BASIN.

18 HOWEVER, WHAT THE MOVING PARTIES SEEM TO WANT, AT  
19 LEAST WHAT WE PERCEIVE, IS A COMMITMENT IN ADVANCE TO APPROVE  
20 WHATEVER PLANNING CONSULTANT OR SOME GROUP OF CONSULTANTS COME  
21 UP WITH AND INDICATE THAT AT LEAST IN THEIR OPINION IS  
22 OPTIMUM.

23 AND I DON'T BELIEVE THAT ONTARIO, OR ANY OTHER  
24 PUBLIC AGENCY EITHER, COULD OR SHOULD BE IN A POSITION WHERE  
25 THEY WOULD SAY WE WILL IN ADVANCE APPROVE OF SOME PLAN SOME  
26 CONSULTANT WILL COME UP WITH IN THE FUTURE.

27 THAT'S LIKE BUYING A PIG IN A POKE.

28 AND ONTARIO, FOR ITS PART, IS UNWILLING TO DO SO.

1 MOVING PARTIES DEVOTED OVER TWELVE PAGES OF THEIR  
2 SUPPLEMENTAL POINTS AND AUTHORITIES TO THE ISSUE OF THE  
3 VALIDITY OF THE EXCHANGE AGREEMENTS BETWEEN ONTARIO AND MWD  
4 AND BETWEEN THE CUCAMONGA WATER DISTRICT.

5 AND EARLIER TODAY, I HEARD THE ATTORNEY FOR THE  
6 MOVING PARTIES INDICATE THAT THE MOVING PARTIES WERE WILLING  
7 TO ALLOW THE AGREEMENTS IN -- TO REMAIN IN PLACE THAT WERE IN  
8 PLACE, BUT SHE DID NOT WANT FUTURE AGREEMENTS TO BE ENTERED  
9 INTO, I ASSUME PENDING COMPLETION OF THIS OPTIMUM BASIN  
10 MANAGEMENT STUDY.

11 THEY HAVE ALSO, THE MOVING PARTIES, HAVE  
12 CHARACTERIZED EXCHANGE AGREEMENTS OR TRUST STORAGE  
13 AGREEMENTS, IF YOU WILL, AS CONJUNCTIVE USE AGREEMENTS.

14 AND I SUBMIT THAT THAT CLASSIFICATION IS  
15 COMPLETELY IN ERROR.

16 WHAT WE HAVE INSTEAD IS A SITUATION WHERE NATIVE  
17 GROUND WATER IS BEING LET IN THE BASIN BY ONTARIO AND BY  
18 CUCAMONGA COUNTY WATER DISTRICT BECAUSE WE ARE NOT PUMPING  
19 THAT WATER.

20 INSTEAD WE ARE TAKING SURFACE DELIVERIES OF MWD  
21 WATER FOR DIRECT USE TREATMENT AND DISTRIBUTION THROUGH OUR  
22 RESPECTIVE WATER SYSTEMS TO OUR WATER CUSTOMERS.

23 NOW, THAT IS CLASSIFIED UNDER THE UNIFORM GROUND  
24 WATER POOLS AND REGULATIONS THAT LEAVING OF WATER IN THE  
25 GROUND AS INDIRECT STORAGE, NOT AS CONJUNCTIVE USE STORAGE AND  
26 NOT AS CYCLIC STORAGE, IN TURN, UNDER THE ELEVENTH ANNUAL  
27 REPORT OF THE WATERMASTER, AN ORDER APPROVING THAT, IT WAS  
28 RECOGNIZED THAT A PARTY WHO LEFT WATER IN INDIRECT STORAGE

1 AND WHO TOOK WATER ON SURFACE FROM MWD COULD AFFECT THIS  
2 EXCHANGE.

3 AND THE EXCHANGE ITSELF DOES NOT REQUIRE COURT  
4 APPROVAL.

5 UNDER THE UNIFORM GROUND WATER RULES AND  
6 REGULATIONS, ALL THAT IS REQUIRED IS THAT THE WATERMASTER BE  
7 NOTIFIED IN WRITING OF THE FACT THAT THE EXCHANGE IS TAKING  
8 PLACE.

9 ALSO, UNDER THE UNIFORM GROUND WATER RULES AND  
10 REGULATIONS, THE LIMITS UPON INDIRECT STORAGE ARE ESTABLISHED.

11 AND THE LIMIT THERE IS THAT IN ANY ONE YEAR, A  
12 PARTY MAY NOT STORE MORE THAN ITS SHARE OF OPERATING SAFE  
13 YIELD.

14 AND IN THIS PARTICULAR CASE, ONTARIO'S SHARE OF  
15 OPERATING SAFE YIELD IS IN EXCESS OF TEN THOUSAND ACRE-FEET.

16 SO WE ARE NOT DEALING WITH A SITUATION WHERE WE  
17 HAVE A CONJUNCTIVE USE STORAGE, WHICH IS DEFINED AS THE  
18 STORAGE OF SUPPLEMENTAL WATER, WHICH IS EITHER IMPORTED WATER  
19 OR RECLAIMED WATER FOR LATER EXTRACTION AND EXPORTATION FROM  
20 THE BASIN.

21 AND WE ARE ALSO NOT DEALING WITH CYCLIC STORAGE,  
22 CYCLIC STORAGE BEING WATER WHICH IS PURCHASED BY THE  
23 WATERMASTER AND STORED IN THE BASIN FOR LATER REPLENISHMENT  
24 ACTIVITIES BY THE WATERMASTER.

25 WHEN IT COMES TO SURFACE WATER WHICH ONTARIO TAKES  
26 AND WHICH THE OTHER ENTITIES WHO ARE ABLE TO TAKE SURFACE  
27 WATER TAKE AND USE THIS WATER ON THE SURFACE, I SUBMIT THAT  
28 THE JUDGMENT ITSELF HAS NO APPLICATION.

1 IF ONTARIO, IF CHINO, IF WATER WORKS DISTRICT NO.  
2 8 OR ANY OTHER APPROPRIATER IS ABLE TO TAKE SURFACE WATER  
3 DIRECTLY FROM MWD, IMPORT IT FROM ANOTHER BASIN OR FROM ANY  
4 OTHER SOURCE, AND IF THAT WATER IS PUT THROUGH THEIR OWN  
5 TREATMENT SYSTEMS AND SENT DIRECTLY OUT TO WATER CUSTOMERS FOR  
6 USAGE, THE JUDGMENT DOES NOT IN ANY WAY PERTAIN TO THAT TYPE  
7 OF ACTIVITY.

8 THE JUDGMENT ONLY PERTAINS TO WATER IN THE GROUND  
9 WHICH IS EITHER EXTRACTED, PLACED IN STORAGE OR TAKEN FROM  
10 STORAGE.

11 IN FACT, WHEN IT COMES TO WHAT'S HAPPENED  
12 RECENTLY, AS FAR AS THE ABILITY OF THE PARTIES TO TAKE SURFACE  
13 WATER, IN 1985 THE CITIES OF CHINO, ONTARIO, UPLAND, SAN  
14 BERNARDINO COUNTY WATER WORKS DISTRICT NO. 8, AND THE MONTE  
15 VISTA WATER DISTRICT ENTERED INTO A JOINT AGREEMENT AND FORMED  
16 A JOINT POWERS AGENCY THAT IS CALLED THE WATER FACILITIES  
17 AUTHORITY.

18 AND WE ISSUED OVER THIRTY-FOUR MILLION DOLLARS'  
19 WORTH OF CERTIFICATES OF PARTICIPATION TO RAISE MONEY FOR THE  
20 PURPOSE OF CONSTRUCTING A TREATMENT FACILITY IN NORTH UPLAND  
21 TO ALLOW THE MEMBER AGENCIES OF THAT JOINT POWERS AUTHORITY TO  
22 RECEIVE MWD SURFACE WATER AND TREAT AND DELIVER THAT WATER  
23 DIRECTLY TO THEIR CUSTOMERS.

24 NOW, THOSE CERTIFICATES OF PARTICIPATION WERE  
25 ISSUED.

26 MONEY WAS RAISED.

27 AND THAT TREATMENT PLANT WAS BUILT.

28 AND IT'S MY UNDERSTANDING THAT THE TREATMENT PLANT

1 IS NOW ON LINE FURNISHING MWD WATER, BY REASON OF THAT PLANT,  
2 TO THE MEMBER AGENCIES, INCLUDING THE CITY OF CHINO AND WATER  
3 WORKS DISTRICT NO. 8.

4 NOW, OVER THE COURSE OF THE YEAR SINCE THE  
5 JUDGMENT, THAT IS THE TYPE OF ACTIVITY THAT SOME MEMBER  
6 AGENCIES HAVE ENTERED INTO TO ASSURE THAT THEIR CITIZENS WILL  
7 HAVE A REASONABLE SUPPLY OF GROUND WATER -- OF WATER, AND TO  
8 HELP ALLEVIATE THE EFFECTS OF OVERDRAFTING THE GROUND WATER  
9 BASIN.

10 NOW, COUNSEL FOR THE MOVING PARTY HAS BEEN TALKING  
11 ABOUT ECONOMIC INCENTIVES, AND REALLY, I THINK WHAT SHE HAS  
12 BEEN TALKING ABOUT IS ECONOMIC DISINCENTIVES, AT LEAST IN  
13 TERMS OF WHAT THE JUDGMENT ORIGINALLY CONTEMPLATED.

14 THE JUDGMENT ORIGINALLY CONTEMPLATED THAT IT WOULD  
15 BE IN THE BEST INTEREST OF ALL CONCERNED TO CONSERVE GROUND  
16 WATER.

17 SO INSTEAD OF THERE BEING A POTENTIAL FOR ECONOMIC  
18 INCENTIVE TO USE GROUND WATER, SUCH AS ELIMINATING THE BENEFIT  
19 THAT ONTARIO WOULD RECEIVE BY NOT HAVING TO PAY PUMPING COSTS  
20 AT SEVENTY-FIVE DOLLARS AN ACRE-FOOT, IN FACT THERE IS A  
21 PROCEDURE IN THE JUDGMENT FOR AN ECONOMIC INCENTIVE FOR  
22 CONSTRUCTING THE FACILITIES TO TAKE AND TREAT AND USE SURFACE  
23 WATER FOR THOSE ENTITIES THAT CAN DO THAT, AND IT'S CALLED THE  
24 FACILITIES ASSESSMENT.

25 AND THAT IS FOUND AT PAGE 72 -- I'M SORRY PAGE 71  
26 OF THE JUDGMENT.

27 AND IT'S PARAGRAPH 9, AND THE IMPLEMENTING  
28 CIRCUMSTANCES ARE IN SUBPARAGRAPH A.



1 AND I WON'T READ THAT NOW.

2 EVERYONE HAS A COPY OF THE JUDGMENT, AS DOES THE  
3 COURT.

4 BUT ESSENTIALLY WHAT IT DOES IS IT PROVIDES  
5 INCENTIVE OR THE POTENTIAL FOR INCENTIVE FOR AGENCIES, SUCH AS  
6 THE WATER FACILITIES AUTHORITY JOINT POWERS AGENCY, TO DO WHAT  
7 IT HAS DONE.

8 WHAT HAS NORCO DONE, I MIGHT ADD?

9 WELL, I UNDERSTAND THAT THEY HAVE NOT DONE  
10 ANYTHING TO TAKE SURFACE WATER, OR FOR THAT MATTER, AT LEAST  
11 AS OF NOW, TO DESALINATE THEIR EXISTING GROUND WATER SUPPLY.

12 A RATHER RECENT ATTACK WAS MADE ON THE WHOLE ISSUE  
13 OF STORAGE, BOTH THE EXCHANGE STORAGE AGREEMENTS AND ONTARIO'S  
14 STORING TEN THOUSAND ACRE-FEET.

15 IN STORAGE, WAS THIS ASSERTION BY THE MOVING  
16 PARTIES THAT THE ISSUE PRIORITIES OF THE GROUND WATER STORAGE  
17 HAD NOT BEEN ADDRESSED.

18 AND THERE MAY BE SOME CONCERN ABOUT THERE BEING  
19 ENOUGH CAPACITY FOR STORAGE BY ALL PERSONS IN THE BASIN BEFORE  
20 WE ALLOW OUTSIDE PARTIES TO STORE.

21 THIS ISSUE, TO MY KNOWLEDGE, HAS NEVER BEEN RAISED  
22 BEFORE.

23 AND I SUBMIT THAT REALLY, IN THE CONTEXT OF WHAT  
24 WE ARE TALKING ABOUT, IT'S KIND OF A -- A PHONY ISSUE.

25 AS FAR AS EVERYONE HAS INDICATED, THERE IS PLENTY  
26 OF STORAGE IN THE BASIN TO ACCOMMODATE THE LIMITED STORAGE  
27 THAT WE ARE DEALING WITH IN THE CONTEXT OF THE PRESENT  
28 MOTION.

1 I'VE TOUCHED ON THE AG POOL TRANSFER.

2 IT IS OUR POSITION THAT THERE ARE VESTED RIGHTS  
3 THERE THAT CANNOT BE DISTURBED.

4 AND AT THIS POINT, YOUR HONOR, I WON'T TAKE UP  
5 ANYMORE OF THE COURT'S TIME, EXCEPT TO SAY THAT ON THE OTHER  
6 ISSUES, WE ARE IN ACCORD WITH THE POSITION TAKEN BY THE  
7 WATERMASTER.

8 AND WE FEEL THAT IT'S IN THE BEST INTERESTS OF ALL  
9 CONCERNED THAT THE COURT DENY THE MOTION IN ITS ENTIRETY.

10 THE COURT: THANK YOU.

11 STATE OF CALIFORNIA?

12 MR. DUBIEL: YES, YOUR HONOR.

13 JUST LIKE TO RECAP A FEW ITEMS.

14 WE LOOK AT THE JUDGMENT AS HAVING THREE ASPECTS:  
15 MANDATORY, WHICH ARE DUTIES THAT HAVE TO BE  
16 PREFERRED; DISCRETIONARY, WHICH CAN BE PERFORMED; AND  
17 UNAUTHORIZED.

18 AND WHEN YOU LOOK THROUGH THE TEN ITEMS SET FORTH  
19 IN THE CONSOLIDATED STATEMENT, WE WOULD PICK TWO ITEMS IN  
20 WHICH WE WOULD SAY ARE UNAUTHORIZED.

21 THAT WOULD BE ATTORNEY FEES AND COMMENTS ON THE  
22 EIR.

23 NOW, WE BASICALLY WANT TO REITERATE THESE POINTS  
24 FOR THIS REASON:

25 WATERMASTER IS ACTUALLY AN ADMINISTRATIVE ARM OF  
26 THIS COURT. IT IS ACTUALLY THIS COURT.

27 IN THE ENVIRONMENTAL IMPACT REPORT SYSTEM, AS SET  
28 FORTH BY THE CALIFORNIA ENVIRONMENTAL IMPACT ACT, THE COURT

1 ONLY GETS INTO AN ENVIRONMENTAL STATEMENT BY WAY OF A MANDATE  
2 ACTION BY SOMEBODY, AND AS A DECIDER.

3 YOU WOULD -- IT SHOULD NOT PARTICIPATE IN AN  
4 ENVIRONMENTAL STATEMENT ACTION.

5 NOW, THE WATERMASTER IS GOING TO APPROVE WHATEVER  
6 AGREEMENTS WITH MET BEFORE MET CAN DO ANYTHING.

7 SO HE'LL BE IN AN APPROVING SITUATION, BUT IT WILL  
8 BE AS A COURT.

9 AND THEREFORE, IF THERE IS ANY DIRECTION OF THE  
10 COURT TO ENTER INTO A ENVIRONMENTAL IMPACT COMMENT AT THIS  
11 TIME BY ONE OF ITS ADMINISTRATIVE ARMS, WE HAVE A NOVEL  
12 QUESTION OF LAW THAT'S GOING TO CAUSE CONSIDERABLE AMOUNT OF  
13 TROUBLE.

14 NUMBER TWO, ON ATTORNEY FEES.

15 WE BELIEVE THAT THERE IS NO PROVISION FOR ATTORNEY  
16 FEES FOR ATTORNEY GENERAL -- ON AN ATTORNEY GENERAL DOCTRINE  
17 BECAUSE ALL PARTIES TO THE JUDGMENT ARE EITHER REPRESENTED  
18 HERE OR COULD BE REPRESENTED HERE IF THEY CHOSE TO.

19 BASICALLY, THE AG POOL -- STATE OF CALIFORNIA'S A  
20 MEMBER OF THE AG POOL. WE ARE REPRESENTED.

21 THE AG POOL VOTED NOT TO BE REPRESENTED BECAUSE WE  
22 WERE IN AND WE GENERALLY REPRESENT THE AG POOL INTERESTS.

23 NUMBER TWO. THE PRODUCERS ARE INDIVIDUALLY  
24 REPRESENTED BY ONTARIO, PLUS THEY HAD AN ABILITY TO COME IN  
25 INDIVIDUALLY.

26 AND THE MOVING PARTIES, THE THREE MORE PRODUCERS  
27 ARE IN HERE INDIVIDUALLY.

28 THE INDUSTRIAL POOL, OR THE GROUP THAT REPRESENTS

1 THE INDUSTRIAL POOL, HAD AN ABILITY TO COME IN. SO THEY ALL  
2 HAD AN ABILITY TO COME IN.

3 THERE IS NO PUBLIC REPRESENTATION.

4 IN OTHER WORDS, IT'S ALL THE PARTIES HERE TO  
5 DETERMINE THE JUDGMENT.

6 THEY ARE ALL REPRESENTED.

7 THERE IS NO ATTORNEY GENERAL TYPE OF SITUATION IN  
8 EXISTENCE.

9 NOW, WHEN WE COME TO THE PORTION THAT IS  
10 MANDATORY, WE LOOK AT THE JUDGMENT WITH WHAT IS REQUIRED.

11 BASICALLY, THERE IS A MANAGEMENT PLAN REQUIREMENT.

12 NOW, IT IS REQUESTED THAT THE COURT -- WE LOOK AT  
13 ALL OTHER ISSUES THAT ARE LISTED HERE AS DISCRETIONARY.

14 NOW, DISCRETIONARY ACTION BY THE ADMINISTRATIVE ARM  
15 OF THIS COURT IS DONE BY WAY OF VOTE, BY A -- BY THE WAY,  
16 EXHIBIT "A" SHOWS AS A VOTE.

17 I DON'T BELIEVE THAT THE COURT WANTS TO COME IN  
18 AND IMPOSE ITS WILL ON THE DISCRETIONARY ACT OF THE GROUP THAT  
19 IS INVOLVED AND SUBSTITUTE THAT DISCRETIONARY ACT.

20 THEREFORE, ANY ORDER THAT THE COURT SHOULD ISSUE  
21 WILL SAY IN -- IN DETERMINING A MANDATORY ACT UNDER THE  
22 JUDGMENT SHOULD NOT HAVE WITHIN IT ANOTHER ORDER SAYING YOU --  
23 YOU CANNOT DO THIS UNTIL YOU DO THIS MANDATORY ACT.

24 BECAUSE BASICALLY THEY HAVE TO OPERATE ON A  
25 DAY-TO-DAY BASIS.

26 THEY HAVE TO MANAGE THE BASIN.

27 AND THE COURT SHOULD NOT PUT ANY KIND OF A PUSH ON  
28 ITS OWN ADMINISTRATION TO SAY YOU'VE GOT TO DO THAT WITHIN ONE

1 YEAR OR TWO YEARS OR THREE YEARS, OR ANYTHING OF THAT NATURE,  
2 BECAUSE IT'S ACTUALLY ORDERING YOUR OWN ADMINISTRATIVE ARM TO  
3 DO SOMETHING.

4 AND THERE'S NO NEED FOR AN ADDITIONAL PENALTY THAT  
5 MIGHT INTERFERE WITH AN EVERYDAY OPERATION OF A BASIN THAT IS  
6 NECESSARY FOR ALL PRODUCERS AND IS DETERMINED BY A DIFFERENT  
7 METHODOLOGY, WHICH IS A VOTE METHODOLOGY.

8 NOW, WHAT WE BASICALLY THINK THEN, AND WE HAVE  
9 BEEN TOLD THIS, THAT A BASIN MANAGEMENT PLAN WILL TAKE ONE,  
10 TWO YEARS OR MAYBE MORE BEFORE IT CAN BE -- AN OUTCOME CAN BE  
11 DETERMINED.

12 WE ARE ALSO TOLD THAT IT MAY BE ONE HUNDRED OR TWO  
13 HUNDRED THOUSAND DOLLARS.

14 WE'RE TALKING ABOUT A LENGTH OF TIME, AND WE ARE  
15 TALKING ABOUT AN EXPENDITURE OF MONEY.

16 I WOULD BELIEVE THAT THE COURT WOULD BE BETTER OFF  
17 IN SAYING THAT ON A YEARLY BASIS WHEN IT HAS AN ANNUAL REPORT,  
18 AT THIS TIME DOES ISSUE SUCH AN ORDER THAT IT HAS -- THAT AS A  
19 MANDATORY PART OF THAT REPORT FROM ITS ADMINISTRATIVE ARM, TO  
20 DETERMINE HOW THEY ARE PROGRESSING.

21 THAT ALSO WILL THEN ADVISE ALL THE PARTIES THAT IF  
22 THEY ARE DISSATISFIED WITH THAT PROGRESSION, THEY CAN COME  
23 INTO THE COURT ON A MOTION OR PARTICIPATE IN THE ADOPTION OF  
24 THAT NEXT ANNUAL REPORT TO DETERMINE WHETHER THAT IS PROPER  
25 MOVEMENT OR NOT OF THE WATERMASTER.

26 THANK YOU, YOUR HONOR.

27 THE COURT: THANK YOU.

28 YOU'RE BACK UP TO BAT.

1 MS. TRAGER: THANK YOU, YOUR HONOR.

2 THIS MAY TAKE A LITTLE LONGER THAN THE FIFTEEN  
3 MINUTES I HAD PROPOSED BECAUSE THERE'S A LOT OF GROUND TO  
4 COVER AND I'M GOING TO TRY TO DO IT QUICKLY.

5 AND I GUESS I'LL HANDLE IT CHRONOLOGICALLY AS I  
6 WROTE DOWN THE POINTS.

7 THE MOVING PARTIES HAVE BEEN CONSISTENT FROM THE  
8 FILING OF THE MOTION UNTIL TODAY AND THROUGH TODAY THAT THIS  
9 IS A WATER RIGHTS CASE.

10 AND THE WATER RIGHTS ASPECT IS THAT THERE HAS BEEN  
11 AN ALLOCATION OF WATER MADE UNDER THE JUDGMENT WHICH IS  
12 JEOPARDIZED BY THE CONTINUED DEGRADATION OF THE WATER WHICH,  
13 IF LEFT UNMANAGED, WILL NOT BE AVAILABLE FOR FUTURE  
14 GENERATIONS WHO USE THE WATER NOW FROM CHINO BASIN.

15 NOW, THAT'S A CONCERN NOT JUST FROM THE MOVING  
16 PARTIES, BUT FOR FUTURE GENERATIONS.

17 THERE IS A CONVERSION OF LAND FROM AGRICULTURAL  
18 USERS, AND THOSE PEOPLE ARE NOT FILLING YOUR COURTROOM HERE  
19 TODAY.

20 BUT WHEN THAT LAND BEGINS TO BE CONVERTED MORE AND  
21 MORE RIGOROUSLY, AND THE TREND IS UPON US OF -- INTO DOMESTIC  
22 USE, YOU ARE GOING TO SEE MORE PEOPLE CONCERNED ABOUT WATER  
23 QUALITY.

24 AND THIS IS THE AREA WHERE THE PROBLEM IS.

25 IN TERMS OF THE ISSUE ABOUT MONEY AND WHETHER THIS  
26 IS A LAWSUIT ABOUT MONEY OR WHETHER A MOTION NOT ABOUT MONEY,  
27 THE THRUST OF THE RELIEF THAT WE REQUEST IS NOT -- IT ISN'T  
28 ABOUT MONEY.

1 WE ARE ASKING -- ASKING TO HAVE THE JUDGMENT  
2 ENFORCED.

3 THERE'S NO WAY TO TRANSLATE THAT INTO MONEY,  
4 EXCEPT THAT IF THE JUDGMENT ISN'T ENFORCED, THERE WILL NOT BE  
5 A POTABLE WATER SUPPLY AVAILABLE TO PEOPLE, FIRST IN THE SOUTH  
6 END OF THE BASIN AND THEN IN OTHER AREAS OF THE BASIN.

7 IF IT WERE A QUESTION ABOUT MONEY THE WAY IT HAS  
8 BEEN CHARACTERIZED BY THE WATERMASTER, I THINK YOU WOULD SEE  
9 THAT WATER WORKS NO. 8, WHICH HAS ACCESS TO A METROPOLITAN  
10 LINE, AND THE CITY OF CHINO, WHICH ALSO HAS ACCESS TO A  
11 METROPOLITAN LINE, AND HAS BEEN OFFERED THOSE SO-CALLED  
12 EXCHANGE AGREEMENT OPPORTUNITIES WITH METROPOLITAN WATER  
13 DISTRICT, THEY WOULD HAVE TAKEN -- THEY WOULD HAVE TAKEN THOSE  
14 OPPORTUNITIES, AND THEY ELECTED TO FOREGO THAT.

15 THAT ISSUE IS BRIEFED IN THE PAPERS THAT WERE  
16 SUBMITTED LAST FRIDAY.

17 SO I THINK THE MOTIVATION HERE IS NOT SO MUCH  
18 MONEY.

19 IN TERMS OF THE KIND OF HINT THAT I PICKED UP IN  
20 THE PRESENTATIONS THIS MORNING AND EARLIER THIS AFTERNOON,  
21 THAT SOMEHOW NORCO WAS BEHAVING IMPROPERLY AND OUT OF  
22 CONFORMITY WITH THE JUDGMENT BECAUSE IT WAS PUMPING MORE THAN  
23 ITS ALLOCATED SAFE YIELD, THAT ISSUE WAS RESOLVED IN THE  
24 JUDGMENT ITSELF IN THE PRACTICES PERMISSIBLE.

25 IF IT WERE NOT, I THINK THE JUDGMENT WOULD STATE  
26 OTHERWISE AND WE WOULD HAVE HEARD PROBABLY BY NOW FROM THE  
27 WATERMASTER ABOUT ILLEGAL AND UNAUTHORIZED PUMPING.

28 THAT IS NOT THE CASE, AND I WANTED TO CORRECT THAT

1 MISINTERPRETATION.

2 THE COURT: EXCUSE ME.

3 IT IS PERMISSIBLE, BUT YOU HAVE TO PAY FOR IT,  
4 ISN'T IT?

5 MS. TRAGER: YOU HAVE TO PAY FOR IT, YOUR HONOR.  
6 YOU PAY FOR IT BY WAY OF ASSESSMENTS.

7 IN TERMS OF -- AND I JUST HATE TO BELABOR THE  
8 POINT -- ON THE MANDATORY ITEMS, THE SOCIO-ECONOMIC STUDY  
9 WHICH THE WATERMASTER HAS AGREED TO DO IN THE SETTLEMENT --  
10 WITH THE ONE THING THAT CAME OUT OF THE SETTLEMENT  
11 NEGOTIATIONS, IT TOOK BRINGING A MOTION TO HAVE AN AGREEMENT  
12 SO THAT THEY WOULD PERFORM THE CLEAREST AND MANDATORY STUDY  
13 UNDER THE JUDGMENT WHICH IN -- WHICH A TIME LIMIT WAS  
14 SPECIFIED.

15 THE FACT THAT THE WATERMASTER'S STAFF WAITED UNTIL  
16 THE VERY LAST MEETING OF THE WATERMASTER ADVISORY COMMITTEES  
17 IN THE VERY LAST YEAR IN WHICH THIS SOCIO-ECONOMIC STUDY WAS  
18 TO HAVE BEEN COMPLETED, TO APPRISE THE PARTIES OF THE FACT  
19 THAT IT HADN'T BEEN DONE AND WHAT ARE YOU GOING TO DO ABOUT  
20 IT, IS AN INDICATION OF HOW --

21 THE COURT: EXCUSE ME.

22 DOES THE JUDGMENT SAY IT HAS TO BE COMPLETED IN  
23 TEN YEARS OR THAT IT MUST BE DONE FOLLOWING TEN YEARS?

24 MS. TRAGER: WITHIN TEN YEARS.

25 IT'S JUST AN INDICATION OF HOW CERTAIN THINGS ARE  
26 DONE AND NOT DONE.

27 AND THE IDEA THAT SUCH A SOCIO-ECONOMIC STUDY  
28 COULD BE DEFERRED PENDING COMPLETION OF METROPOLITAN --



1 APPROVAL OF METROPOLITAN'S EIR, WHICH IS NOT APPROVED TO THIS  
2 DAY. THAT'S A CONTINGENCY THAT MIGHT NOT EVER HAVE BEEN MET.

3 SO THAT IT WAS AN IMPROPER DIRECTION UPON WHICH  
4 THE ADVISORY COMMITTEE SHOULD NEVER HAVE BEEN -- HAVE BEGUN A  
5 VOTE. BECAUSE IT WAS A MANDATORY DUTY, NOT SOMETHING THAT  
6 WAS DISCRETIONARY, AND THE TIMING WAS NOT DISCRETIONARY.

7 THAT'S A SMALL POINT, YOUR HONOR, BUT WE WANTED TO  
8 CALL IT TO YOUR ATTENTION.

9 IN TERMS OF WHAT WE HEARD FOR -- FOR A LONG TIME  
10 THIS MORNING ABOUT DATA GATHERING OF THE WATERMASTER, THERE'S  
11 THE MATTER OF THE MEASURING OF THE WATER THAT'S PRODUCED.

12 AND THERE'S A DECLARATION ON FILE WITH THE COURT  
13 ENTITLED "SUPPLEMENTAL DECLARATION OF JIM ASHCRAFT," WHO WAS  
14 THE DIRECTOR OF PUBLIC WORKS AT THE CITY OF NORCO.

15 THAT WAS FILED FEBRUARY 7TH, 1989.

16 AND IT'S GIVEN UNDER OATH AND IT TALKS ABOUT  
17 INFORMATION THAT WAS PRESENTED DURING A STAFF MEETING ON PAGE  
18 -- PARAGRAPH 3 ON PAGE 2 OF THE DECLARATION BY THE CHIEF OF  
19 THE WATERMASTER SERVICES, IN WHICH HE INFORMED THE COMMITTEE  
20 THAT ONLY APPROXIMATELY FORTY PERCENT OF THE VARIOUS POOL  
21 MEMBERS REQUIRED TO REPORT QUARTERLY THEIR WATER PRODUCTION  
22 AND STATIC WELL MEASUREMENTS HAVE ACTUALLY REPORTED THE STATIC  
23 WELL MEASUREMENTS FOR THE PAST SEVERAL YEARS.

24 THAT'S A SIGNIFICANT DEVIATION FROM WHAT THE  
25 JUDGMENT REQUIRES AND WHAT THE RULES AND REGULATIONS REQUIRE  
26 IN TERMS OF THE INFORMATION THAT IS TO BE GENERATED AND  
27 COLLECTED.

28 WE HEARD THIS MORNING ABOUT HOW PERHAPS THE MOVING

1 PARTIES WERE REQUIRING THAT STATIC WELL MEASUREMENTS BE DONE  
2 ON SIXTEEN HUNDRED WELLS.

3 I DIDN'T KNOW THERE WAS SIXTEEN HUNDRED WELLS.

4 WE HAVEN'T MADE THAT REQUEST.

5 THERE IS A SAMPLING MACHINE THAT WATERMASTERS IN  
6 OTHER BASINS FOLLOW IN TERMS OF DETERMINING WHICH WELLS WOULD  
7 BE INDICATORS FOR TAKING THOSE KINDS OF MEASUREMENTS.

8 THAT KIND OF SURVEY AND THAT KIND OF INDICATION  
9 ABOUT WHICH WELLS SHOULD BE MEASURED AND WHICH WELLS SHOULD  
10 NOT BE MEASURED HAS NOT BEEN MADE HERE.

11 THERE'S BEEN AN OFFER OF HAVING A DECLARATION BY  
12 MR. PETERS INTRODUCED TODAY.

13 THE DECLARATION WAS NOT SIGNED.

14 IT CONTRADICTS SWORN TESTIMONY THAT'S ALREADY BEEN  
15 INTRODUCED BY THE TWO DECLARATIONS OF MR. ASHCRAFT.

16 THE COURT: LET ME GO BACK TO MR. ASHCRAFT'S  
17 SUPPLEMENTAL DECLARATION.

18 WHERE IS THE THING THAT YOU TOLD ME ABOUT THE --

19 MS. TRAGER: PAGE 2, PARAGRAPH 3.

20 THE COURT: -- WHICH SAYS I HAVE REVIEWED THE  
21 UNSIGNED DECLARATION OF --

22 MS. TRAGER: NO. THEIR EARLIER SUPPLEMENTAL  
23 DECLARATION.

24 THE ONE THAT WAS FILED IN SUPPORT OF THE REPLY  
25 MEMORANDUM, AND IT'S DATED FEBRUARY 8.

26 THE COURT: OKAY. ALL RIGHT.

27 GO AHEAD.

28 MS. TRAGER: IN TERMS OF THE ASSIDUOUSNESS OF THE

1 MEASUREMENTS OF THE ACTUAL PRODUCTION, MR. PETERS ALSO  
2 REPORTED AT ONE OF THE WATERMASTER'S COMMITTEES, AND THIS IS  
3 RECOUNTED IN THE SWORN TESTIMONY OF MR. ASHCRAFT, THAT A LARGE  
4 NUMBER, IN EXCESS OF A HUNDRED, IN FACT, AGRICULTURAL WELLS  
5 WERE NOT METERED, EVEN THOUGH THE JUDGMENT WAS ENTERED MORE  
6 THAN TEN YEARS AGO.

7 IT ALSO TURNED OUT THAT SOME -- A NUMBER, A LARGE  
8 NUMBER -- OF UNMETERED PRODUCERS WERE PRODUCING IN EXCESS OF  
9 FIVE ACRE-FEET, WHICH IS THE MINIMAL CUTOFF POINT THAT HAS  
10 BEEN DETERMINED BY -- AS A DISCRETIONARY POINT AS TO WHEN TO  
11 MEASURE AND WHEN NOT.

12 SO THINGS ARE NOT AS WELL TAKEN CARE OF AS HAS  
13 BEEN PRESENTED.

14 IN TERMS OF THE DATA SHEETS THAT HAVE BEEN  
15 SUBMITTED BY THE WATERMASTER TO PRESENT INFORMATION, THEY ARE  
16 UNIFORM COMPUTERIZED FORMS THAT CONTAIN SPACES FOR ENTERING  
17 STATIC WATER LEVELS, PRODUCTION LEVELS.

18 THOSE FORMS HAVE NOT BEEN COMPLETED BY SOME OF THE  
19 PARTIES.

20 THE INFORMATION THAT I HAD AND WHICH WAS PRESENTED  
21 TO MR. ASHCRAFT, WHICH IS IN ONE OF THE TWO OF THE  
22 SUPPLEMENTAL DECLARATIONS WHICH CONTRADICT THE UNSIGNED  
23 DECLARATION THAT HAS BEEN OFFERED TODAY FROM MR. PETERS,  
24 INDICATES THAT THE CITY OF ONTARIO WAS ONE OF THE PRODUCERS  
25 WHO WAS FILLING OUT THE FORMS THAT DID NOT PRODUCE THAT  
26 INFORMATION AND IT -- SINCE --

27 THE COURT: INCIDENTALLY, PETERS'S THING IS  
28 SIGNED.

1 MS. TRAGER: THE COPY THAT WAS PRESENTED TO ME WAS  
2 NOT.

3 THE COURT: THE ORIGINAL IS.

4 MS. TRAGER: ALL RIGHT.

5 THE COURT: OKAY.

6 MS. TRAGER: INASMUCH AS THAT TESTIMONY HAS BEEN  
7 OFFERED, AND I DON'T THINK IT'S IN THERE, I THINK THE  
8 DECLARATION THAT YOU WERE REFERRING TO JUST TALKS ABOUT THE  
9 PERCENTAGE OF VOTES THAT ONTARIO HAS.

10 IT WAS ONLY OFFERED THAT HE WOULD TESTIFY.

11 IF THAT'S OF CONCERN TO THE COURT, THEN PERHAPS WE  
12 OUGHT TO TAKE LIVE TESTIMONY INASMUCH AS MR. PETERS IS HERE  
13 AND MR. ASHCRAFT.

14 THEY ARE BOTH PRESENT IN THE COURTROOM.

15 THERE IS A -- THERE IS A MENTION IN THE  
16 WATERMASTER'S REPLY PAPERS THAT ARE -- OR THE SUPPLEMENTARY  
17 PAPERS THAT WERE SUBMITTED ON FRIDAY THAT -- AND IT IS NOT  
18 QUITE CLEAR WHAT WAS SAID.

19 IT WASN'T CLEAR TO ME, THAT PERHAPS THE REGIONAL  
20 WATER QUALITY CONTROL BOARD SOMEHOW HAS JURISDICTION OVER  
21 WATER QUALITY IN THE BASIN.

22 THE REGIONAL BOARD DOES NOT HAVE THE POWER OR THE  
23 AUTHORITY TO IMPLEMENT THE PHYSICAL SOLUTION THAT THE JUDGMENT  
24 REQUIRES.

25 ALL THEY CAN DO IS REGULATE THE QUALITY OF THE  
26 DISCHARGE TO THE LAND.

27 AND IT HAS NEVER BEEN ASSERTED BY THE MOVING  
28 PARTIES OR OTHERS THAT THE INTRODUCTION OF EVEN COLORADO RIVER

1 WATER TO THE BASIN WOULD VIOLATE THE DISCHARGE REQUIREMENTS OF  
2 THE REGIONAL BOARD.

3 SO THAT IS A NON-ISSUE.

4 THE COURT: YOUR ONLY CONTENTION SO FAR AS QUALITY  
5 AS I UNDERSTAND IT, IS THAT THE INTRODUCTION OF THESE WATERS  
6 RAISES THE WATER LEVEL, THE NITRATE LEVEL?

7 MS. TRAGER: IT IS A LITTLE MORE COMPLICATED THAN  
8 THAT.

9 THAT'S THE PRIMARY DEGRADATION --

10 THE COURT: IN WHAT WAY IS WHAT THEY ARE DOING  
11 DEGRADING THE QUALITY?

12 MS. TRAGER: IT PUSHES WATER THROUGH AND IT  
13 ACCELERATES.

14 IT MAKES THE DEGRADATION OF THE WATER HAPPEN  
15 FASTER, AND IT MAKES, IN EFFECT, THE FLUME OR THE BODY OF THE  
16 CONTAMINATED WATER MOVE FASTER WHEN YOU MOVE WATER AROUND.

17 AND THAT CAN BE CORRECTED NOT BY -- NOT SPREADING  
18 OF THE WATER COMPLETELY, BUT BY SPREADING IT IN DIFFERENT  
19 AREAS TO OFFSET CONTAMINATION AT PARTICULAR WELLHEADS.

20 THAT'S ONE OF THE WATER MANAGEMENT OPTIONS, IF YOU  
21 WILL, THAT IS AVAILABLE TO CORRECT THE PROGRAM.

22 THE COURT: THE CONTAMINATION YOU ARE TALKING  
23 ABOUT IS FROM WHAT'S ALREADY IN THE SOIL IN THE BASIN?

24 MS. TRAGER: YES, YOUR HONOR.

25 THE COURT: OKAY.

26 MS. TRAGER: AND WE ARE NOT -- WE HAVEN'T  
27 ADDRESSED OR RAISED STRINGFELLOW ISSUES OR AIRPORT RUNOFF  
28 ISSUES OR THAT SORT OF THING.

1                   THERE ARE OTHER PROBLEMS THAT COME WITH ELEVATING  
2 THE GROUND WATER TABLE.

3                   WE ARE OVER -- WE ARE SITTING ON THE BUNKERHILL  
4 BASIN RIGHT NOW.

5                   THAT HAS CREATED PROBLEMS BECAUSE IT'S UNREGULATED  
6 IN TERMS OF AMOUNT OF STORAGE BASINS AND THE WATER TABLE  
7 ELEVATIONS.

8                   AND WHAT YOU HAVE HERE IS CERTAIN LIQUEFACTION  
9 PROBLEMS AND BASIN FLOODING.

10                   WE ARE NOT RAISING THOSE CONCERNS HERE BECAUSE WE  
11 WANT TO LIMIT THE SCOPE OF THE INQUIRY TO WATER QUALITY.

12                   IN TERMS OF THE ISSUE OF THE AGRICULTURAL  
13 TRANSFER, IT IS NOT THE INTENT -- IT HAS NOT BEEN THE INTENT  
14 OF THE MOVING PARTIES TO REQUEST AN AMENDMENT TO THIS JUDGMENT  
15 OR TO INVITE THIS COURT TO ERR IN CHANGING THE JUDGMENT OR  
16 VIOLATING THE JUDGMENT IN SOME WAY.

17                   THAT ISN'T IT.

18                   THE JUDGMENT IS SILENT AS TO THE TIMING OF THE  
19 DISTRIBUTION OF THIS ONE-TIME MAJOR, MAJOR TRANSFER FROM ONE  
20 POOL TO ANOTHER.

21                   YOU COULD SUSPEND FURTHER DECISION-MAKING  
22 PROCESSES AS TO THE INDIVIDUAL INDICATION AMONGST AG POOL  
23 MEMBERS OR AMONG APPROPRIATIVE POOL MEMBERS.

24                   PENDING COMPLETION OF AN OPTIMUM BASIN MANAGEMENT  
25 PROGRAM, WHICH MAY RECOMMEND -- WE DON'T KNOW THAT IT WILL,  
26 BUT IT MIGHT RECOMMEND A DIFFERENTIAL LOCATION FORMULA FOR  
27 ADOPTION BY THE PARTIES WHICH WOULD HAVE OTHER BENEFITS.

28                   THERE IS NO HARM IN SUSPENDING THAT DISTRIBUTION

1 OF WATER.

2 THERE HAS BEEN NO EVIDENCE PRESENTED THAT THERE  
3 WOULD BE HARM.

4 THERE'S NO EVIDENCE PRESENTED THAT THERE IS A  
5 SHORTAGE OF WATER OR THAT THE PARTIES WOULD BE JEOPARDIZED IN  
6 ANY WAY PENDING THE COMPLETION OF THAT STUDY SO THAT MORE  
7 COULD BE KNOWN ABOUT WHAT SHOULD BE DONE IN THE BASIN FOR  
8 MANAGEMENT.

9 THERE'S NO RISK INHERENT WITH THAT.

10 THERE'S NO VIOLATION OF THE JUDGMENT.

11 AND IT MAY BE RECOMMENDED THAT INDEED THE WATER  
12 DOES GET DISTRIBUTED AMONG THE EXISTING PARTIES AND IN THE  
13 PROPORTIONS THAT ARE ALLOCATED.

14 THERE'S NOT A PROBLEM WITH IT.

15 IT IS NOT THE PROBLEM AS HAS BEEN PORTRAYED BY THE  
16 WATERMASTER ON THAT ISSUE.

17 IT REQUIRES SOME STUDY BECAUSE OF THE MAGNITUDE OF  
18 THE WATER -- THE AMOUNT OF THE WATER INVOLVED.

19 THE VOLUME, IT'S A LITTLE BIT MORE THAN HALF OF  
20 ONE THAT ANNUAL SAFE YIELD IS.

21 AND IT DOES, THEN, HAPPEN A LOT OF TIMES.

22 THAT THIS HAS OCCURED, IT'S A ONE-TIME AG  
23 TRANSFER.

24 IT MAY NOT HAPPEN AGAIN EVER IN THAT MAGNITUDE.

25 AND IT REQUIRES SOME THOUGHT AND THAT -- IT HAS  
26 NOT BEEN GIVEN.

27 WE ARE NOT -- THE MOVING PARTIES ARE NOT AT THIS  
28 TIME ASKING FOR A RE-ALLOCATION OF THE WATER UNDER THE

1 JUDGMENT.

2 THAT REMAINS THE SAME.

3 WE DON'T VIEW IT AS A ROB PETER TO PAY PAUL.

4 WE THINK -- WE THINK THAT THAT TRANSACTION CAN BE  
5 SUSPENDED PENDING RESOLUTION OF THE MATTER.

6 IN TERMS OF THE -- IN -- I REITERATE MY REQUEST  
7 THAT I BELIEVE THE ISSUE OF ATTORNEY'S FEES.

8 I THINK THE FEES THAT ARE REQUESTED HAS NOT BEEN  
9 SUFFICIENTLY ARTICULATED.

10 I WOULD RATHER DO THAT AFTER WE HAVE AN INDICATION  
11 OF WHAT THE RELIEF MIGHT BE THAT THIS COURT GRANTS.

12 AND I WOULD ASK THAT WE PROCEED ON MOTION TO ARGUE  
13 THE ATTORNEY'S FEES MATTER.

14 I AM NOT PREPARED TO DO THAT RIGHT NOW.

15 IN TERMS OF THE WITHHOLDING OF THE ASSESSMENTS,  
16 IT'S AKIN TO A TENANT WITHHOLDING THE PAYMENT OF RENT AND  
17 PUTTING IT INTO AN ACCOUNT.

18 THE GOOD FAITH IS THERE IN THE PAYMENT OF THE  
19 ASSESSMENTS.

20 WE ARE NOT TRYING TO THWART THE OBLIGATION.

21 WHAT WE ARE TRYING TO DO IS TO PREVENT THE  
22 ACQUISITION OR THE PURCHASE OF ADDITIONAL WATER, WHICH  
23 COMPOUNDED WITH THE FACT THAT THERE IS NO PROGRAM ABOUT  
24 STORAGE ALLOCATIONS OR SOME --

25 THE COURT: BUT IF YOUR CLIENTS ARE OVERDRAFTING  
26 THE BASIN, DON'T WE NEED TO PURCHASE ADDITIONAL WATER TO  
27 REPLACE THAT OVERDRAFT?

28 MS. TRAGER: THE BASIN IS NOT IN OVERDRAFT, YOUR



1 HONOR.

2 MR. DOUGHERTY: THERE'S BEEN NO EVIDENCE OF THAT.

3 MS. TRAGER: THE DECLARATION OF ONE --

4 THE COURT: BUT ISN'T THE REASON IT'S NOT IN  
5 OVERDRAFT IS BECAUSE WATER HAS BEEN PURCHASED TO MAKE UP FOR  
6 INDIVIDUAL OVERDRAFTS AS THEY OCCUR?

7 MS. TRAGER: THAT'S CORRECT.

8 AND THERE IS MORE WATER -- THERE IS ENOUGH WATER  
9 IN THE BASIN TO COVER THE NEEDS AND REQUIREMENTS OF THE  
10 PARTIES' CONSUMPTION PROBABLY FOR SEVERAL YEARS, AND MAYBE  
11 MORE THAN THAT.

12 SO THAT THERE'S NO URGENCY IN PURCHASING  
13 REPLENISHMENT WATER THIS YEAR OR NEXT.

14 THE BASIN HAS BEEN UNDERPRODUCED.

15 AND REPLENISHMENTS HAVE EXCEEDED THE NEED NOW  
16 EVERY YEAR FOR MORE THAN FIVE YEARS.

17 THERE'S MORE WATER IN THE BASIN THAN WE ACTUALLY  
18 NEED.

19 THERE'S NO SHORTAGE.

20 AND SO THE MOVING PARTIES REQUEST THAT THE COURT  
21 ENTER OR FASHION SOME REMEDY THAT MAINTAINS THE STATUS QUO,  
22 ISN'T GOING TO HARM ANYBODY.

23 WHAT IT WILL DO IS TO PREVENT --

24 THE COURT: I TAKE IT --

25 MS. TRAGER: -- FURTHER DECLARATION.

26 THE COURT: -- IF YOU COULD GET AN ORDER WHICH  
27 WOULD SOMEHOW PROHIBIT THE PURCHASE OF ANY MORE WATER,  
28 TRANSFERRING OF ANY MORE WATER INTO THE BASIN, THEN YOU WOULD

1 RESUME MAKING YOUR PAYMENTS DIRECTLY TO THE WATERMASTER AND  
2 RELEASE THE --

3 MS. TRAGER: CERTAINLY.

4 THE COURT: -- MONEY IMPOUNDED?

5 MS. TRAGER: NO QUESTION ABOUT THAT, YOUR HONOR.

6 THE COURT: OKAY.

7 JUST WANT TO BE SURE WHAT YOUR POSITION WAS ON  
8 THAT.

9 GO AHEAD.

10 MS. TRAGER: ON THE OTHER HAND, IF YOUR HONOR  
11 WOULD FASHION -- IF YOUR HONOR DESIRED TO FASHION SOME  
12 EQUITABLE RELIEF THAT WOULD REQUIRE THE PAYMENT OF MONEY  
13 IMMEDIATELY, LET THE WATERMASTER SAY THAT THERE IS NO FUNDS  
14 AVAILABLE FOR THAT OR NO FUNDS BUDGETED, AS THERE MAY OR MAY  
15 NOT BE.

16 THERE IS THAT MONEY AVAILABLE AND PERHAPS IT COULD  
17 BE ALLOCATED TOWARDS THAT GOAL.

18 BUT THE INTEREST OF THE MOVING PARTIES IS TO  
19 FURTHER THE DEVELOPMENT OF AN OPTIMUM BASIN MANAGEMENT  
20 PROGRAM.

21 THAT'S FIRST AND FOREMOST WHAT IT IS THAT WE SEEK.

22 TO -- TO GO BACK TO THE ISSUE OF THE COST, THERE  
23 WAS A REPRESENTATION MADE THIS MORNING THAT IT WOULD BE VERY  
24 COSTLY TO UNDERTAKE STATIC WATER LEVEL MEASUREMENTS IN  
25 WELLS.

26 I WAS INFORMED OVER THE NOON RECESS THAT --

27 THE COURT: WELL, LET ME BACK UP ON THAT.

28 WHAT IS YOUR REQUEST?

1 DO YOU WANT TO HAVE STATIC LEVEL MEASUREMENTS ON  
2 ALL WELLS?

3 MS. TRAGER: NO, YOUR HONOR. I DON'T THINK IT'S  
4 NECESSARY.

5 I THINK THE WELLS THAT -- I THINK THAT THERE ARE  
6 KEY WELLS IN THE BASIN THAT CAN BE IDENTIFIED BY PEOPLE  
7 COMPETENT --

8 THE COURT: THEY TELL ME THAT THEY, THE KEY WELLS,  
9 ARE BEING TESTED.

10 THAT THERE'S ABOUT A HUNDRED THAT ARE BEING  
11 TESTED.

12 MS. TRAGER: I WOULD -- I WOULD REQUEST THEN THAT  
13 A COMPETENT OUTSIDE HYDROLOGIST BE ENGAGED TO CONSULT ON THAT  
14 POINT.

15 THE COURT: WELL, DON'T YOU THINK IF YOU DISAGREE  
16 WITH THEIR CHOICE OF WELLS THAT IT'S UP TO YOU TO COME  
17 FORWARD WITH A SUGGESTION OF ALTERNATIVE WELLS THAT SHOULD BE  
18 TESTED?

19 MS. TRAGER: WE DON'T KNOW -- OUR INDICATION RIGHT  
20 NOW IS THAT THE CITY OF ONTARIO IS NOT PRESENTING THAT DATA,  
21 IF IT HAS IT.

22 WE THINK AND HAVE STATED THAT WE -- THAT THE  
23 LEVELS IN ONTARIO ARE AREAS -- THAT THERE ARE KEY AREAS THAT  
24 NEED TO HAVE THOSE MEASUREMENTS TAKEN.

25 THAT DATA IS NOT AVAILABLE TO US, WHEN IT WAS  
26 REQUESTED.

27 IN ANSWER TO YOUR -- MORE SPECIFICALLY TO YOUR  
28 QUESTION, I AM UNAWARE AS TO WHICH KEY WATER WELLS HAVE BEEN

1 IDENTIFIED AND WHICH ARE SUBMITTING.

2 AND I WOULD LIKE THE OPPORTUNITY TO REVIEW THAT  
3 AND TO HAVE SOMEBODY COMPETENT TO REVIEW THAT.

4 THE COURT: OKAY. GO AHEAD.

5 MS. TRAGER: TO REITERATE WHAT THE MOVING PARTIES  
6 ARE SEEKING BY THEIR MOTION, IT'S COMPLIANCE WITH THE  
7 JUDGMENT.

8 THE WATERMASTER HAS NOT COME TO THE COURT IN THE  
9 THIS PROCEEDING -- WHICH IS AKIN TO AN ORDER TO SHOW CAUSE.

10 THIS IS NOT A MANDATE PROCEEDING.

11 THIS IS MORE AKIN TO AN ORDER TO SHOW CAUSE.

12 AND IT HAS NOT COME FORWARD WITH A SOCIO-ECONOMIC  
13 STUDY IN HAND.

14 IT HAS COME FORWARD WITH NO MOVEMENT TOWARDS  
15 DEVELOPING AND IMPLEMENTING AN OPTIMUM BASIN MANAGEMENT  
16 PROGRAM THAT INCLUDES THE THREE MANDATED ELEMENTS OF A PUMPING  
17 COMPONENT, A WATER QUALITY COMPONENT, OR AN ECONOMIC  
18 COMPONENT, AS SET FORTH IN THE ENGINEERING APPENDIX.

19 THERE'S NO EVIDENCE THAT THAT'S BEEN INITIATED.

20 WE HAVE BEEN TOLD THAT THERE ARE SO-CALLED  
21 ELEMENTS OF THE PROGRAM.

22 BUT IF THERE WERE, YOUR HONOR, THEY COULD BE  
23 PRINTED AND REDUCED TO DOCUMENTS THAT COULD BE SUBMITTED FOR  
24 REVIEW.

25 AND THEY DON'T EXIST. THERE IS NO SUCH DOCUMENT.

26 THERE ISN'T SUCH A PROGRAM AND IT HASN'T BEEN  
27 EMBARKED UPON.

28 I DON'T KNOW IF IT'S BEEN BUDGETED FOR.

1                   DURING THE NEGOTIATING SESSION, YOU HAD ASKED WHAT  
2 MY IMPRESSIONS WERE FOR THE SECOND NEGOTIATING SESSION BECAUSE  
3 VERY LITTLE PROGRESS WAS MADE ON THE FIRST NEGOTIATING  
4 SESSION.

5                   THE MOVING PARTIES PRESENTED A TEN-PAGE,  
6 SINGLE-SPACED OFFER DETAILING WHAT WOULD BE ACCEPTABLE.

7                   MANY OF THE PROVISIONS ARE THOSE THAT WE HAVE  
8 TALKED ABOUT TODAY.

9                   WE WENT SO FAR AS TO OUTLINE WHAT WE WOULD HOPE  
10 THE WATERMASTER WOULD COMMIT TO AS PART OF THE SETTLEMENT  
11 NEGOTIATIONS IN TERMS OF ACHIEVING AN OPTIMUM BASIN MANAGEMENT  
12 PROGRAM.

13                   WE ASKED THAT THE WATERMASTER COMMIT TO PREPARE --  
14 TO ADOPT AN OPTIMUM BASIN MANAGEMENT PROGRAM AND TO DEVELOP A  
15 SCHEDULE FOR ITS PREPARATION AND FOR ITS IMPLEMENTATION  
16 SUITABLE FOR SUBMISSION TODAY TO THE COURT, SO THAT THEY COULD  
17 SHOW SOME COMPLIANCE WITH THE JUDGMENT.

18                   THEY WOULDN'T COMMIT, YOUR HONOR.

19                   AND INSTEAD, WE WERE TOLD THE MOVING PARTIES WERE  
20 TOLD DURING THE SETTLEMENT NEGOTIATIONS THAT IT WAS INCOMBANT  
21 ON THE MOVING PARTIES TO DEMONSTRATE WHAT ELEMENTS WERE TO BE  
22 INCLUDED IN THE OPTIMUM BASIN MANAGEMENT PROGRAM.

23                   WHAT WOULD -- WHAT WOULD SATISFY THE MOVING  
24 PARTIES?

25                   THE MOVING PARTIES REFRAINED FROM PRESENTING A  
26 REQUEST FOR A PROPOSAL OR OUTLINE OF A PROPOSAL OR OUTLINE OF  
27 THAT PLAN.

28                   BECAUSE THE MOVING PARTIES BELIEVE IT IS A PROCESS

1 THAT THE ELEMENTS -- SOME KEY ELEMENTS MANDATED.

2 AND THOSE ARE NON-NEGOTIABLE BECAUSE THE  
3 JUDGMENT MANDATES IT.

4 THERE ARE DISCRETIONARY PIECES WHICH ARE BETTER  
5 LEFT TO, INITIALLY, TO THE DELEGATION OF A COMPETENT  
6 ENGINEERING FIRM TO COME IN AND DO THAT ASSESSMENT.

7 SO THAT ALL OF THE PARTIES TO THE JUDGMENT WOULD  
8 HAVE A MAIN MENU FROM WHICH TO SELECT A MENU, IF YOU WILL, TO  
9 DETERMINE AMONG THEMSELVES WHICH TO INCORPORATE AND WHAT  
10 SHOULD BE PROPER AND WHAT SHOULD FOLLOW AND HOW MUCH TO SPEND,  
11 AND TO TAKE INTO ACCOUNT THE THINGS THAT ARE TO BE TAKEN INTO  
12 ACCOUNT.

13 WE HAVEN'T GOTTEN TO FIRST BASE ON THAT ISSUE.

14 WE SUGGEST -- WE -- WE MET WITH THE WATER  
15 DISTRICT.

16 AND THE STATE OF CALIFORNIA INVITED A  
17 REPRESENTATIVE FROM THE ENGINEERING FIRM THAT DID THE ORIGINAL  
18 WORK THAT LED UP TO THE STIPULATED JUDGMENT.

19 A REPRESENTATIVE OF THAT FIRM CAME.

20 HE SAID TO THE GROUP THAT IT WOULD TAKE ABOUT A  
21 YEAR TO COMPLETE A STUDY, AND THAT -- AND I COULDN'T REMEMBER  
22 THE AMOUNT OF MONEY.

23 I THINK HE -- HE SAID EITHER A HUNDRED THOUSAND  
24 DOLLARS OR TWO HUNDRED THOUSAND DOLLARS.

25 I CAN'T -- CANNOT RECALL THAT DETAIL.

26 WHAT WE HAD ASKED SPECIFICALLY WAS THAT THE STUDY  
27 -- THAT AS AN EXAMPLE, A STUDY THAT'S NOW BEING UNDERTAKEN BY  
28 ANOTHER AGENCY, SANTA ANA WATER AUTHORITY, OF WHICH CHINO

1 BASIN WATER DISTRICT IS A MEMBER. AND WHO HAS GONE OUT AND  
2 IDENTIFIED FUNDS TO PAY FOR SUCH A STUDY AND WHO HAD ENGAGED  
3 THE CONSULTING ENGINEER WHO CAME -- OR THE GEOLOGIST WHO CAME  
4 TO PRESENT HIS -- MAKE HIS PRESENTATION TO THE SETTLEMENT  
5 GROUP.

6 HE HAD BEEN ENGAGED BY SAWPA TO DO A SO-CALLED  
7 WHITE PAPER, LISTING THE ELEMENTS OF WHAT MIGHT BE INCLUDED IN  
8 AN OPTIMUM BASIN MANAGEMENT PROGRAM.

9 AND IT WAS HIS TASK TO INTERVIEW PARTIES TO THE  
10 JUDGMENT AND PARTIES TO THE THESE INSTANT PROCEEDINGS.

11 AND HE IS IN THE PROCESS OF DOING THAT.

12 HE WAS UNABLE TO COMPLETE THAT TODAY.

13 WE THINK THAT -- I HAVEN'T SEEN WHAT THE WHITE  
14 PAPER IS, AND IT HASN'T BEEN PRESENTED OR CIRCULATED TO MY  
15 KNOWLEDGE.

16 I SUSPECT THAT WITH SAWPA'S BASIN MANAGEMENT  
17 CAPABILITIES AND MONTGOMERY ENGINEERING'S BASIN MANAGEMENT  
18 CAPABILITIES, THEY WOULD BE IN A BETTER POSITION THAN THE  
19 MOVING PARTIES, AND ACTUALLY A MORE NEUTRAL PARTY, TO COME IN  
20 AND OUTLINE WHAT SHOULD BE INCLUDED IN SUCH A TASK.

21 WE -- AND ALONG THOSE LINES AND IN THE SPIRIT OF  
22 A SETTLEMENT, WE PROPOSED TO THE MOVING -- WE PROPOSED TO THE  
23 SETTLEMENT GROUP THAT MONTGOMERY BE ENGAGED TO ADOPT SAWPA'S  
24 WHITE PAPER AS THE BASIS FOR REQUEST FOR PROPOSAL.

25 AND THEN HAVE THE WATERMASTER ADVISORY GROUP  
26 REVIEW THOSE PROPOSALS AND SELECT AND INTERVIEW ENGINEERING  
27 FIRMS SO THAT THE WORK COULD BE DONE.

28 THAT WAS REJECTED.

1 I DON'T FEEL THAT IT IS APPROPRIATE TO GO FURTHER  
2 TO OUTLINE MORE THAN JUST MINIMALLY WHAT THE ELEMENTS OF SUCH  
3 A PROGRAM SHOULD BE.

4 I THINK IT WOULD BE INAPPROPRIATE FOR THE MOVING  
5 PARTIES TO COMMIT THE ENTIRE WATERMASTER TO SPECIFICS.

6 I THINK IT'S SOMETHING THAT THE GROUP HAS TO  
7 ARRIVE AT IN A PROCESS WITH THIS COURT'S GUIDANCE.

8 AND THAT'S WHAT WE SEEK.

9 AND THAT'S WHY WE ARE HERE, BECAUSE THERE IS AN  
10 IMPASSE.

11 IN TERMS OF THAT -- THE DECLARATION THAT HAS BEEN  
12 SUBMITTED TO YOU, I NOTE THAT ONTARIO HAS TWENTY-EIGHT PERCENT  
13 OF -- AT LEAST ACCORDING TO THE WATERMASTER CALCULATIONS,  
14 TWENTY-EIGHT PERCENT OF THE VOTE OF THE ADVISORY COMMITTEE,  
15 WHICH IS STILL FAR AND AWAY MORE THAN ANYONE ELSE.

16 I AM AT A LOSS TO EXPLAIN THE DISCREPANCY BETWEEN  
17 THE TWENTY-EIGHT PERCENT AND THE FORTY-EIGHT PERCENT, WHICH  
18 CALCULATION WAS DONE FOR ME.

19 ALTHOUGH I'D BE PLEASED TO CALL THE PERSON WHO DID  
20 THE CALCULATION AND LET HIM EXPLAIN, IF THAT'S A CONCERN TO  
21 THE COURT.

22 THE ISSUE IS WATER QUALITY.

23 THE WATER IS BAD.

24 THE WATER IS GOING TO GET WORSE IF THERE IS NO  
25 AGGRESSIVE MANAGEMENT FOR WATER QUALITY.

26 THERE HAS BEEN NO MANAGEMENT TO DATE FOR WATER  
27 QUALITY BY THIS BODY.

28 ONE OF THE REASONS THAT THERE'S A PROBLEM WITH



1 WATER QUALITY IS THAT THERE'S, SO FAR, UNREGULATED STORAGE OF  
2 WATER IN CHINO BASIN.

3 WE THINK THAT THERE NEEDS TO BE A PROGRAM FOR HOW  
4 STORAGE NEEDS ARE MANAGED.

5 THE RULES AND REGULATIONS ARE NOT BEING ENFORCED,  
6 THE EXISTING ONES.

7 THERE NEEDS TO BE AN ASSESSMENT DONE OF THE  
8 INDIVIDUAL STORAGE NEEDS OF THE PARTY.

9 IT NEEDS TO BE DONE IN THE CONTEXT OF A PROGRAM  
10 FOR MANAGEMENT OF THE BASIN.

11 AND THE FLIP SIDE OF PUMPING IS STORAGE.

12 AND THOSE ITEMS HAVE TO BE -- THEY HAVE TO BE  
13 WEIGHED AND BALANCED AND PLANNED.

14 AND I DON'T THINK IT'S -- IT'S APPROPRIATE AMONG  
15 LAWYERS FOR US TO DO THAT.

16 I THINK --

17 THE COURT: UNDER THE PRESENT PRACTICAL SITUATION,  
18 WATER WHICH IS PURCHASED OR STORED UNDER CONTRACT OR WHATEVER,  
19 WHERE IS IT PUT INTO THE GROUND?

20 MS. TRAGER: THERE'S AN IN LIEU AREA THAT'S BEEN  
21 DESIGNATED IN THE JUDGMENT.

22 THERE -- IT'S PUT IN AT FLOOD CONTROL CHANNELS.

23 IT'S PUT IN AVAILABLE PERMEABLE AREAS SO THAT IT  
24 CAN GO DOWN INTO THE BASIN.

25 THERE ARE OTHER PLACES THAT -- THE SPECIFIC PLACES  
26 I -- I AM NOT IN A POSITION TO TELL YOU, YOUR HONOR.

27 THE COURT: HOW DOES IT GET THERE?

28 MS. TRAGER: SINKS IN THE GROUND.

1 THE COURT: BUT HOW DOES IT GET INTO THE PLACE  
2 WHERE IT SINKS?

3 MS. TRAGER: IT EITHER FLOWS DOWN A CHANNEL  
4 BECAUSE SOMEONE DISCHARGES IT AT ANOTHER PLACE.

5 IT GENERALLY COMES IN FROM METROPOLITAN -- IT IS  
6 DELIVERED FROM METROPOLITAN WATER DISTRICT FROM TWO DIFFERENT  
7 SOURCES.

8 THE COURT: YOU ARE SUGGESTING THE POSSIBILITY  
9 THAT IF IT WERE DISPERSED OVER THE BASIN BEFORE IT WAS  
10 ALLOWED TO SOAK IN, THAT IT WOULD NOT CREATE A FLUME OF THE  
11 NITRATES?

12 MS. TRAGER: YOU COULD CONTROL THE FLUME AND THE  
13 MIGRATION.

14 THE COURT: HOW ARE YOU GOING TO GET TO IT THESE  
15 VARIOUS AREAS?

16 MS. TRAGER: IN SOME INSTANCES, PIPELINES WOULD  
17 HAVE TO BE BUILT OR EXTENDED FROM THE MAIN FEEDERS.

18 AND THE FACT THAT THERE ARE FEEDERS, THERE  
19 SOMETIMES IS, BECAUSE OF THE EFFORTS OF THE PARTIES. AND  
20 SOMETIMES BECAUSE IT'S A QUIRK OF THE RIGHT-OF-WAY OF THE  
21 METROPOLITAN FEEDER LINE.

22 THE COURT: PRETTY EXPENSIVE PROPOSITION.

23 MS. TRAGER: IT CAN BE, YOUR HONOR. BUT ALSO A  
24 VERY EXPENSIVE PROPOSITION TO HAVE YOUR GROUND WATER DEGRADE  
25 AND BECAUSE IT'S VERY, VERY DIFFICULT --

26 THE COURT: THEY ARE COMPLAINING ABOUT NORCO, THAT  
27 NORCO CHOSE NOT TO PAY FOR SOME PIPES TO GET SOME WATER OVER  
28 TO NORCO.

1 MS. TRAGER: NORCO IS FAR AWAY FROM THE  
2 PIPELINES.

3 AT SOME POINT, NORCO MAY HAVE TO DEVELOP  
4 PIPELINES.

5 BUT IT'S BEEN NORCO'S POSITION THAT IT DOESN'T  
6 WANT TO GIVE UP ACCESS TO THE BASIN.

7 BECAUSE IT'S AVAILABLE, IT'S THERE -- IT'S THERE.  
8 IF THERE IS AN EARTHQUAKE AND AVAILABLE AQUEDUCTS YOU WANT TO  
9 HAVE --

10 THE COURT: I SHOULD THINK YOU WOULD BE PECULIARLY  
11 AWARE THEN OF THE COSTS OF PIPING WATER TO VARIOUS SPOTS  
12 AROUND THE BASIN TO SINK IT INTO THE GROUND.

13 MS. TRAGER: YOUR HONOR, THIS IS GOING TO BE VERY  
14 EXPENSIVE.

15 MANAGING A BASIN IS NOT INEXPENSIVE AND IT DOES  
16 REQUIRE FACILITIES.

17 THERE ARE RULINGS IN THE JUDGMENT.

18 THERE WAS ONE MENTIONED BY ONTARIO'S COUNSEL ABOUT  
19 FACILITIES EQUITY ASSESSMENT.

20 THOSE THINGS, METHODS OF MANAGEMENT PROGRAMS, NEED  
21 TO BE IDENTIFIED SO THAT YOU CAN BEST TELL WHERE TO EXTEND THE  
22 PIPES AND IN WHAT COURSE AND IN WHAT PHASE.

23 THAT'S THE SORT OF THINKING THAT WE -- WE WOULD  
24 LIKE TO IMPLEMENT SO THAT THERE'S AN OVERALL SYSTEM SO THAT  
25 THINGS CAN BE DONE BENEFICIALLY AND IN THE LEAST COST AND TO  
26 DO -- THAT YOU NEED TO LOOK AT IT AS A WHOLE.

27 THE COURT: YOU WERE GOING DOWN A LIST OF THINGS  
28 THAT HAD TO BE DONE.

1 MS. TRAGER: IT'S BEEN THE MOVING PARTIES'  
2 POSITION THAT THERE IS A BETTER EXPERT THAN THE WATERMASTER  
3 STAFF RIGHT NOW THAT OUGHT TO BE ENGAGED IN -- THE JUDGMENT  
4 PROVIDES THE AUTHORITY FOR THE ENGAGEMENT OF AN OUTSIDE  
5 CONSULTANT TO COME IN TO DO SOME OF THE STUDIES AND SOME OF  
6 THE PLANNING.

7 THAT WOULD BE ESSENTIAL TO EMBARK ON, BASED  
8 ON A -- WHAT WILL BE A MAJOR EFFORT OVER TIME TO PRESERVE  
9 THE RESOURCES OF THE BASIN AND TO USE CONJUNCTIVELY, AND  
10 MORE EFFICIENTLY AND WITHOUT HARM TO THIRD PARTIES, GROUND  
11 AND SURFACE WATER, WHICH IS THE ESSENCE OF CONJUNCTIVE  
12 USES, THE ESSENCE OF GROUND WATER RESOURCES MANAGEMENT  
13 PRACTICE.

14 THAT'S WHY THE MOTION IS BROUGHT.

15 AND WE NEED THIS COURT'S ASSISTANCE IN URGING THE  
16 WATERMASTER TO EMBARK ON THAT PROGRAM.

17 WE HAVE FAILED, WHICH IS WHY WE ARE BEFORE THE  
18 COURT.

19 AND THIS IS THE RECOURSE.

20 WE DON'T KNOW OF ANY OTHER FORUM IN WHICH THIS CAN  
21 BE HANDLED OTHER THAN THIS COURT, AND THIS IS THE PLACE TO  
22 BEGIN.

23 WE THINK THAT -- WE THINK THAT A DIRECTION FROM  
24 THIS COURT ORDERING THE WATERMASTER WITHIN A TIME FRAME TO  
25 ACCOMPLISH THOSE ACTIVITIES THAT ARE MANDATED WITH GUIDANCE  
26 WILL HELP BRING THE OTHER ISSUES INTO THE FOCUS THAT THEY  
27 DIRECT -- THAT THEY REQUIRE.

28 IT'S GOING TO REQUIRE A LOT OF EFFORTS ON THE PART

1 OF THE MOVING PARTIES AND OTHER PARTIES TO THE JUDGMENT.

2 WE THINK IT CAN BE BENEFICIAL.

3 WE DO NEED THE ASSISTANCE OF OUTSIDE CONSULTING  
4 ENGINEERING TO DO THIS.

5 THE COURT: I'M CURIOUS.

6 AT THE MEETINGS OF THE COMMITTEE, OF WHICH YOUR  
7 CLIENTS ARE MEMBERS, HAVE ANY REQUESTS FOR THESE THINGS BEEN  
8 MADE BY YOUR PEOPLE TO THE COMMITTEE?

9 MS. TRAGER: YES. YES, YOUR HONOR.

10 THE REQUESTS HAVE BEEN MADE.

11 THE WATER --

12 THE COURT: THE REASON I ASK THE QUESTION IS THAT  
13 I HAVE BEEN TOLD IN SOME OF THE PLEADINGS FILED THAT THE  
14 VARIOUS THINGS THAT HAVE BEEN DONE THAT YOU'RE OBJECTING TO  
15 WERE APPROVED UNANIMOUSLY BY THE COMMITTEE.

16 AND THAT DIDN'T SOUND AS THOUGH THERE HAD BEEN ANY  
17 SPEECHES MADE IN OPPOSITION TO THEM.

18 MS. TRAGER: YOUR HONOR, ONE OF THE THINGS THAT WE  
19 THOUGHT ABOUT ASKING FOR WERE -- WHEN WE FILED THE PAPER, WAS  
20 THAT MINUTE TAKING AT THE DISTRICT WHICH REFLECTS WHO WAS  
21 PRESENT, WHO WAS ABSENT, WHO ABSTAINED, AND WHO WASN'T  
22 THERE.

23 SO AT TIMES A UNANIMOUS VOTE MEANS THAT THE  
24 PARTIES WHO WERE THERE VOTED UNANIMOUSLY, AND NOT ALL OF THE  
25 PARTIES THAT COULD HAVE BEEN REPRESENTED, WHICH IS A DIFFERENT  
26 SORT OF THING.

27 AND VERY OFTEN THESE ARE SHORT MEETINGS,  
28 USUALLY.

1           THERE'S NOT A LOT OF STAFF REPORT THAT GOES OUT.  
2           THE TOPICS ARE NOT RAISED AND RERAISED AND  
3 RERAISED BY THE WATERMASTER FOR STUDY AND DELIBERATION IN THE  
4 MANNER OF WATER DISTRICTS.

5           THE COURT:   OKAY.

6           MS. TRAGER:   AND THERE ARE A LOT OF PROBLEMS ABOUT  
7 THAT.

8           THERE HAVE BEEN LETTERS WRITTEN.

9           SOME OF THEM ARE IN THE VOLUMINOUS FILE THAT HAS  
10 BEEN PRESENTED TO YOU ASKING FOR THE WATERMASTER TO PUT ON ITS  
11 AGENDA FOR THE POOL COMMITTEES, CERTAIN QUESTIONS.

12           AND IT IS -- IT HAS AND IT'S ALWAYS BEEN JUST THE  
13 MOVING PARTIES WHO HAVE RAISED THOSE ISSUES.

14           AND I WOULD REMIND THE COURT THE COMMUNITY  
15 SERVICES DISTRICT ALSO PAID IT'S ASSESMENTS, IT'S NOVEMBER  
16 ASSESMENTS UNDER PROTEST, AND ACCOMPANIED BY A LETTER THAT  
17 RAISES MANY OF THE SAME CONCERNS THAT HAVE BEEN RAISED BY THE  
18 MOVING PARTIES IN THIS LITIGATION.

19           SO BECAUSE THEY ARE NOT BEFORE YOUR HONOR, THERE  
20 ARE -- VERY OFTEN ARE THE OTHER REASONS WHY PEOPLE DO NOT  
21 CHOOSE TO LITIGATE.

22           THE COURT:   SURE.   ALL RIGHT.   EXCUSE ME.   GO  
23 AHEAD.

24           MS. TRAGER:   IN TERMS OF THE MATTER, I DON'T KNOW  
25 WHETHER TO ADDRESS AT THIS TIME THE QUESTION OF THE PROPRIETY,  
26 THE WATERMASTER'S APPROVAL OF THE SO-CALLED EXCHANGE  
27 AGREEMENTS, BECAUSE I SUSPECT THAT MAY HAVE BEEN RESOLVED.

28           BUT WHAT'S HAPPENED OVER THE YEARS IF YOU FOLLOW

1 IT THROUGH, AND WE HAVE DETAILED IT IN THE PAPERS FILED ON  
2 FRIDAY, THE DEFINITION OF CONJUNCTIVE USE HAS CHANGED OVER THE  
3 YEARS.

4 BUT WHEN YOU LOOK AT WHAT THE AGREEMENTS PROVIDE  
5 FOR, THERE ISN'T ANY QUESTION THAT FUNDAMENTALLY THEY PROVIDE  
6 FOR THE CONJOINED USE OF GROUND WATER AND SURFACE WATER. AND  
7 THERE ARE NO RESTRICTIONS ON METROPOLITAN WATER DISTRICT AS TO  
8 WHERE THAT WATER GOES WHEN IT COMES OUT.

9 THERE'S NO -- IT COULD VERY WELL BE SHIPPED  
10 OUTSIDE OF THE BASIN.

11 AND THAT'S -- THAT'S REALLY NOT OPPOSED BY THE  
12 MOVING PARTIES.

13 IT'S JUST THAT IT SHOULD HAVE BEEN DONE SO THAT  
14 EVERYONE KNEW WHAT IT WAS AND THAT IMPACTS ON THIRD PARTIES BE  
15 EXAMINED.

16 AND IT SEEMS TO MOVING PARTIES THAT METROPOLITAN  
17 WAS JUMPING THE GUN ON ITS MAIN STORAGE PROGRAM WITHOUT, IF  
18 YOU WILL, COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL  
19 QUALITY ACT AND WITHOUT MEETING THE VERY DEGRADATIONS THAT  
20 WERE IN -- WERE IDENTIFIED IN ITS REPORT ON THE LARGER  
21 STORAGE PROGRAM.

22 THAT'S STILL OF SOME CONCERN.

23 IN THE INTERESTS OF WORKING WITH THE MEMBERS OF  
24 THE ADVISORY COMMITTEE AND WITH THE WATERMASTER, AND IN  
25 FASHIONING OR ATTEMPTING TO GIVE SOME IDEAS AND PARAMATERS AS  
26 TO HOW TO FASHION A REMEDY, WE HAVE TO LET THAT GO BY THE  
27 WAYSIDE, I WOULD THINK.

28 IT'S TOO COMPLICATED TO TRY TO UNDUE THAT.

1 THE COURT: OKAY.

2 MS. TRAGER: IN TERMS OF THE ISSUE OF RESPONDING  
3 TO THE EIR AND THE PROPRIETY OF THE COURT RESPONDING OR  
4 COMMENTING ON AN EIR, I WOULD SAY THAT THERE ARE OTHER  
5 WATERMASTERS, COURT APPOINTED -- COURT-ADMINISTERED  
6 WATERMASTERS, TO -- WHO DO ENGAGE IN RESPONSIBILITIES TO  
7 PROCEEDINGS.

8 AND THAT IS GOING ON NOW IN THE SAN GABRIEL BASIN  
9 WITH SOME VIGOR.

10 SO IT'S NOT A -- IT'S NOT AN UNHEARD OF PRACTICE,  
11 AND IT IS ENGAGED IN.

12 IN TERMS OF THIS PARTICULAR EIR OR THE EIR'S THAT  
13 WE ANTICIPATE WILL COME BECAUSE OF THE CURRENT EIR THAT WAS  
14 THE SUBJECT OF THE MOTION OR WAS -- AT PRESENT AND BEFORE  
15 US WHEN THE MOTION WAS BROUGHT, THERE WILL PROBABLY BE  
16 OTHERS.

17 AND BECAUSE WHAT IS BEING PROPOSED IS OF SUCH  
18 IMPORTANCE TO THE WATERMASTER AS A WHOLE, THERE IS CERTAINLY  
19 STUDY THAT SHOULD BE UNDERTAKEN.

20 THE WATERMASTER COULD CONTRACT WITH CHINO BASIN  
21 MUNICIPAL WATER DISTRICT OR OTHERS TO EVALUATE THE EIR SO THAT  
22 THE WATERMASTER UNDERSTOOD WHETHER OR NOT AND COULD LEARN  
23 WHETHER OR NOT THE ENVIRONMENTAL COVERAGE IN THE INVESTIGATION  
24 WAS OR WAS NOT ADEQUATE.

25 AND THAT IS OF SOME CONCERN.

26 WE WOULD LIKE IT IF THE WATERMASTER TOOK ANOTHER  
27 LOOK AT THAT ISSUE, KNOWING THAT THE STATE HAS A GREAT NUMBER  
28 OF CONCERNS ABOUT ESTABLISHING THAT AS A POLICY, SIMPLY



1 BECAUSE OF ITS ROLE IN SO MANY PROJECTS.

2 THE COURT: OFFICIALLY, WHO IS THEIR EIR PRESENTED  
3 TO?

4 MS. TRAGER: IT WAS PRESENTED -- IT IS AVAILABLE  
5 FOR ALL INTERESTED PARTIES TO COMMENT ON.

6 IT'S PRESENTED TO THE PUBLIC AT LARGE AND IT'S  
7 FILED WITH THE DIRECTOR OF RESOURCES IN SACRAMENTO.

8 THE COURT: OKAY.

9 MR. GLEASON: YOUR HONOR, IF I MIGHT BE HEARD ON  
10 THAT.

11 THE COURT: YES.

12 MR. GLEASON: AND I DO THINK THAT RECORD OUGHT TO  
13 BE CORRECTED TO INDICATE THAT METROPOLITAN'S BEEN VERY  
14 CONSCIENTIOUSLY PURSUING A DRAFT ENVIRONMENTAL IMPACT REPORT  
15 FOR SEVERAL YEARS WORKING CAREFULLY WITH THE PARTIES.

16 THE STATUS, AS WE HAVE INDICATED IN OUR SUMMARY  
17 STATEMENT, IS THAT WE ARE GOING BACK AND REFORMULATING A  
18 PROGRAM TO SEE IF WE CAN EVEN WORK OUT A PROGRAM THAT WILL BE  
19 ACCEPTABLE TO THE PARTIES.

20 BEFORE WE GO BACK AND RETURN TO THE ENVIRONMENTAL  
21 DOCUMENTATION, WE DO TAKE UMBRAGE INDEED AT THE SUGGESTION  
22 THAT OUR PRESENT STORAGE PROGRAMS IS -- ARE JUMPING THE GUN.

23 THEY ARE NOT AN IRREVERSIBLE COMMITMENT OF  
24 RESOURCES.

25 WE ARE --

26 THE COURT: I DON'T WANT YOU TO ARGUE HER POINTS  
27 RIGHT NOW.

28 BUT I -- I WAS JUST WONDERING TO WHOM THE EIR WAS

1 PRESENTED AND I HAVE --

2 MR. GLEASON: IT HAS BEEN PRESENTED TO ALL PUBLIC  
3 ENTITIES.

4 IT'S BEING MADE SPECIFICALLY FOR METROPOLITAN'S  
5 BOARD OF DIRECTORS AT THE TIME, THAT THEY HAVE TO ACT ON AN  
6 ACTION BY METROPOLITAN ADOPTING PROJECTS FOR STORING.

7 THE COURT: OKAY. THANK YOU.

8 MS. TRAGER: AND THE BOARD HAS NOT HAD IT  
9 PRESENTED TO THEM FOR CERTIFICATION, SO THERE IS NO FINAL  
10 ENVIRONMENTAL IMPACT REPORT.

11 I DON'T HAVE ANY FURTHER POINTS AT THIS TIME.

12 THE COURT: THANK YOU.

13 MR. DOUGHERTY: COULD I JUST ADDRESS ONE OR TWO  
14 ITEMS SHORTLY.

15 THE COURT: MAKE IT BRIEF. WE HAVE PRETTY WELL --

16 MR. DOUGHERTY: I WILL TRY.

17 I'VE ALREADY GOT ONE PARKING TICKET TODAY. DON'T  
18 WANT TO TRY FOR ANOTHER.

19 FIRST THING I'D LIKE TO POINT OUT ON THE  
20 SOCIO-ECONOMIC STUDY, PAGE 70 OF THE JUDGMENT, SPECIFICALLY  
21 DOES NOT REQUIRE THAT IT BE COMPLETED WITHIN TEN YEARS.

22 IT SAYS THAT I HAD -- UNDERTAKEN WITHIN TEN  
23 YEARS.

24 NOW ON THE REQUEST BY MOVING PARTIES THAT THE AG  
25 POOL TRANSFER BE SUSPENDED, THAT, I WOULD THINK, EVEN IF THE  
26 COURT HAD THE POWER TO DO THAT, WOULD BE CONTRARY TO WHAT THEY  
27 ARE COMPLAINING ABOUT, AND THAT IS A RISE OF STATIC WATER  
28 LEVELS BECAUSE IT WOULD LEAVE WATER --

1 THE COURT: BEFORE YOU GET TOO EXERCISED, LET ME  
2 -- I'M GOING TO GO OVER ALL OF THIS BEFORE I DO ANYTHING  
3 FINAL.

4 BUT LET ME TELL YOU THE TREND OF MY THINKING AND  
5 THEN YOU CAN ADDRESS YOURSELF MORE APPROPRIATELY.

6 I AM CONCERNED THAT THIS DISTRICT HAS BEEN IN  
7 OPERATION, THIS BASIN, WATERMASTER HAS BEEN IN OPERATION FOR  
8 AS LONG AS IT HAS AND THERE IS NO SOCIO-ECONOMIC STUDY AND  
9 THERE IS NO OBMP. THERE SHOULD BE.

10 I'M NOT AT ALL IMPRESSED WITH MR. SMITH'S  
11 STATEMENT THAT HE DOESN'T KNOW WHAT OPTIMUM MEANS.

12 AND THAT THE WORD OPTIMUM CHANGES FROM TIME TO  
13 TIME.

14 OF COURSE IT DOES.

15 BUT YOU GOT TO START SOME PLACE.

16 AND AS OF THE TIME OF WRITING SUCH A STUDY OR  
17 SUCH A REPORT, WHY, IT WOULD BE -- WHAT WOULD APPEAR TO BE  
18 OPTIMUM TO THE EXPERTS STUDYING THE THING AT THAT PARTICULAR  
19 TIME.

20 OBVIOUSLY SUBJECT TO CHANGE OF IF CIRCUMSTANCES  
21 CHANGE.

22 BUT THERE HAS TO BE SOME SORT OF STUDY DONE AND  
23 THE JUDGMENT REQUIRES IT.

24 WHICH WOULD GIVE SOME GUIDANCE TO THE WATERMASTER  
25 AND TO THE COMMITTEE ON HOW BEST TO GOVERN THE POOL FOR THE  
26 BEST INTERESTS OF ALL CONCERNED, SO FAR AS QUANTITY AND  
27 QUALITY, ET CETERA.

28 FROM ALL THAT I HAVE HEARD, IN SPITE OF ALL THE

1 FUSS AND FURY AND FIRE AND SMOKE AND STUFF, AND TAKING IT AT  
2 FACE VALUE, THE FACT THAT THIS IS A WATER PROBLEM AND NOT AN  
3 ECONOMIC PROBLEM.

4 AND I THINK THAT IT MAY BE A LITTLE BIT OF BOTH.  
5 ALL THAT SEEMS TO REALLY BE ASKED IS THE OBMP BE DONE AND THE  
6 SOCIO-ECONOMIC STUDY BE DONE.

7 I THINK BEHIND ALL THAT, OF COURSE, IS THE THEORY  
8 THAT AFTER THOSE ARE DONE, THERE'LL BE A SPRINGBOARD FOR  
9 FURTHER ACTION.

10 BUT FOR THE MOMENT, ANYHOW, THAT'S BASICALLY WHAT  
11 IS ASKED.

12 THERE'S SOME TALK ABOUT WELLS AREN'T BEING TESTED  
13 FOR STATIC LEVEL.

14 BUT NOTHING HAS BEEN PRESENTED TO ME TO INDICATE  
15 THAT SOMETHING DIFFERENT SHOULD BE DONE.

16 AND I'M SURE AS HECK NOT GOING TO GO OUT AND  
17 EXAMINE THE WELLS.

18 THERE'S A SUGGESTION THAT REAL EXPERTS NEED TO BE  
19 HIRED TO DO THE STUDIES.

20 THAT'S USUALLY THE WAY IT'S DONE. MAKES A LOT OF  
21 SENSE.

22 HOWEVER, THAT'S NOT A TERRIBLY BIG ISSUE BEFORE  
23 THE COURT.

24 I WOULD ASSUME THAT WOULD BE DONE, BUT THE -- BUT  
25 I'M NOT SURE I'M IN A POSITION TO, AT THE MOMENT, TELL YOU HOW  
26 TO DO IT.

27 THE ONLY OTHER THING THAT'S REALLY REQUESTED IS A  
28 FREEZE ON ALL TRANSFERS OF WATER OR WATER RIGHTS PENDING ALL

1 OF THESE OTHER THINGS BEING DONE.

2 AND THE ONLY SENSE I CAN MAKE OUT OF THAT REALLY  
3 IS THERE NEEDS TO BE SOME SORT OF A CLUB OR CARROT, WHICHEVER  
4 WAY YOU WANT TO LOOK AT IT, WHICH WOULD ENCOURAGE THE  
5 WATERMASTER TO GO AHEAD AND GET THESE THINGS DONE.

6 THE THEORY BEING THAT IF THERE ISN'T SOME HURTING  
7 THAT'S GOING ON, AS LONG AS IT'S NOT DONE, THAT IT PROBABLY  
8 WOULD NEVER BE DONE.

9 AND I UNDERSTAND THE MOTIVATION BEHIND THAT.

10 BUT I'M NOT AT ALL SURE THAT THAT IS SOMETHING  
11 THAT I AM INCLINED TO DO.

12 MY TENTATIVE THOUGHT -- AND THIS IS BY NO MEANS A  
13 DECISION I'M GIVING YOU.

14 BUT MY TENTATIVE THOUGHT WOULD BE TO REQUIRE THAT  
15 A SOCIO-ECONOMIC STUDY BE DONE, IF IT'S TRUE THAT THAT'S BEEN  
16 HELD OFF PENDING THE METROPOLITAN'S EIR, BECAUSE THERE WOULD  
17 BE A LOT OF DUPLICATION OF EFFORT.

18 THE EIR HAS BEEN PREPARED TENTATIVELY.

19 THERE'S -- I DON'T SEE ANY GREAT NEED FOR MUCH  
20 MORE WAIT.

21 AT LEAST I WOULD PUT A LIMIT, BECAUSE THE EIR MAY  
22 NEVER BE DONE.

23 AND I THINK THERE SHOULD BE SOME SORT OF A LIMIT  
24 ON HOW LONG THE WATERMASTER WAITS BEFORE HE GETS THE  
25 SOCIO-ECONOMIC STUDY DONE.

26 I LIKE THE -- YOUR IDEA OF USING THE INFORMATION  
27 AND THE WORK THAT'S DONE IN CONNECTION WITH THE EIR SO AS NOT  
28 TO DUPLICATE IT.

1 BUT ONLY SO MUCH TIME CAN GO BY.

2 THE OPTIMUM MANAGEMENT STUDY SHOULD BE DONE RIGHT  
3 AWAY.

4 THERE'S NO QUESTION ABOUT THAT.

5 IT JUST OPENS YOU UP TO TOO MUCH CRISICISM TO NOT  
6 HAVE IT DONE, WHETHER IT DOES ANY GOOD OR NOT.

7 OPENS YOU UP TO -- OPENS YOU UP TO TOO MUCH  
8 CRITICISM TO NOT HAVE IT DONE.

9 WHAT I WOULD LIKE TO HEAR WOULD BE IF WATERMASTER  
10 OR ANYONE ELSE HAS ANY FURTHER COMMENTS ON THE NEED FOR AND  
11 TIMING OF THOSE TWO ITEMS.

12 AND THEN WE CAN CALL IT QUILTS, MR. SMITH.

13 MR. SMITH: THANK YOU, YOUR HONOR.

14 AS I INDICATED, WATERMASTER CERTAINLY HAS NO  
15 OBJECTIONS. AND, IN FACT, ASKS AT THE COMPLETION OF TEN YEARS  
16 OF THE OPERATION OF THE JUDGMENT, IN DECEMBER OF 1987,  
17 WATERMASTER STAFF RECOMMENDED THAT THE SOCIO-ECONOMIC STUDY BE  
18 DONE.

19 AND IT IS NOW SCHEDULED FOR CONSIDERATION BY THE  
20 APPROPRIATIVE POOL AT ITS NEXT MEETING, WHICH IS, I BELIEVE,  
21 SET FOR THE 8TH OF MARCH.

22 SO THAT CERTAINLY WE ANTICIPATED THAT IT WILL BE  
23 DONE RELATIVELY SOON.

24 THE COURT: BY WHEN DO YOU THINK IT CAN BE  
25 COMPLETED?

26 MR. SMITH: WE HAVE HAD VARIOUS ESTIMATES. FROM  
27 SIX MONTHS TO A YEAR.

28 WITH RESPECT TO THE ESTIMATES ON STUDIES AND THE

1 HIRING OF EXPERTS AND THE OPTIMUM BASIN MANAGEMENT PLAN, YOUR  
2 HONOR, I DO WANT TO GET SPECIFIC FOR JUST A FEW MOMENTS NAMING  
3 SOME NAMES. AND THAT IS AT THE MEETINGS, MR. NEAL CLINE WAS  
4 BROUGHT IN ON BEHALF OF WORKING AT J.M. MONTGOMERY  
5 ENGINEERING.

6 MONTGOMERY ENGINEERS WAS INVOLVED IN PUTTING THE  
7 JUDGMENT TOGETHER, WITH RESPECT TO THE IDENTIFICATION OF THE  
8 WELLS THAT OUGHT TO BE MONITORED.

9 I NOTED EARLIER THAT APPROXIMATELY ONE HUNDRED  
10 WELLS ARE TO BE IDENTIFIED.

11 J.M. MONTGOMERY HAS BEEN HIRED AND IS WORKING WITH  
12 MR. PETERS AS CHIEF OF THE WATERMASTER SERVICES, SERVICES IN  
13 AN ATTEMPT TO IDENTIFY THOSE WELLS.

14 SO THAT J.M. MONTGOMERY HAS BEEN HIRED FOR THAT  
15 PURPOSE, THE VERY COMPANY THAT THE MOVING PARTIES SUGGESTS.

16 WITH RESPECT TO THAT ITEM ALSO AND THE OBMP, AGAIN  
17 WE HAVE HAD DIFFERENT ESTIMATES OF HOW BEST TO PROCEED AND  
18 WHAT THE COST WILL BE AND HOW LONG IT WILL TAKE.

19 MR. CLINE INDICATED IT MAY BE A YEAR OR TWO, AND  
20 IT MAY BE DONE FOR AS LITTLE AS A HUNDRED OR TWO HUNDRED  
21 THOUSAND DOLLARS. IF WE HAVE THE J.M. MONTGOMERY PEOPLE SAY  
22 -- COME OUT AND SAY IT MAY TAKE EIGHT OR TEN YEARS AND MAY  
23 COST A MILLION DOLLARS.

24 AND J.M.MONTGOMERY, THE SAME FIRM THAT IS BEING  
25 SUGGESTED, IN FACT, RECOMMENDED THAT ONE OF THE WAYS THAT THEY  
26 PROCEED WITH PREPARING THE OPTIMUM BASIN MANAGEMENT PROGRAM IS  
27 TO START THE SAMPLING PROGRAM THAT IS NOW BEING FOLLOWED UP  
28 ON.

1 SO IN TERMS OF HOW LONG IT WILL TAKE TO DO THAT,  
2 ALL I COULD SAY IS THAT THE EXPERTS HAVE BEEN WIDE RANGING IN  
3 THEIR ESTIMATES IN TERMS OF COSTS AND TIME.

4 THE COURT: HAS THERE BEEN SOME DEFINITE DECISION  
5 MADE AS TO WHO TO GET TO DO IT?

6 MR. SMITH: NO, YOUR HONOR.

7 WE HAVE A REQUEST FOR PROPOSAL ON AT LEAST THE  
8 SAMPLING PROGRAM AND THE WORK THAT'S BEING DONE.

9 AND I BELIEVE ITS J.M. MONTGOMERY THAT IS DOING  
10 THAT WORK.

11 AND IT WAS ANTICIPATED THAT THAT WOULD LEAD TO  
12 FURTHER RFP'S LEADING TO SPECIFIC ASPECTS OF THAT BASIN  
13 MANAGEMENT PLAN.

14 THE COURT: DO YOU THINK IT WOULD BE POSSIBLE  
15 SOMETIME WITHIN THE NEXT SIX MONTHS TO PREPARE A TIMETABLE  
16 WHICH WOULD SET FORTH THE SCHEDULE BY WHICH THINGS WOULD  
17 BE DONE WHICH WOULD END UP WITH THE OPTIMUM MANAGEMENT  
18 STUDY?

19 AND THEN ONCE SUCH A TIMETABLE WERE PROPOSED AND  
20 ON THE BOOKS, THEN AT EACH ANNUAL REPORT I COULD GET A  
21 DETAILED REPORT AS TO HOW WE ARE DOING ON THAT TIMETABLE AND  
22 WHAT HAS BEEN DONE AND ARE WE AHEAD OF SCHEDULE OR BEHIND  
23 SCHEDULE, AND IF WE ARE BEHIND, WHY?

24 MR. SMITH: WE COULD CERTAINLY TRY TO PUT ONE OF  
25 THOSE TOGETHER, YOUR HONOR, WITHIN THE NEXT SIX MONTHS.

26 THE COURT: OKAY.

27 AND THE SAME THING AS TO THE SOCIO-ECONOMIC STUDY.

28 MR. SMITH: CERTAINLY.



1 I BELIEVE, IN FACT, THAT THAT IS TO BE CONSIDERED  
2 -- THAT'S AT NEXT WEEK'S MEETING.

3 THE COURT: OKAY. OKAY.

4 IS THERE ANYTHING ELSE THAT ANYBODY FEELS THAT HAS  
5 NOT BEEN COVERED THAT THEY -- YOU NEED TO COVER BEFORE WE -- I  
6 TAKE THE MATTER UNDER SUBMISSION?

7 WHAT ARE MY TIME LIMITS ON APPROVAL OF YOUR  
8 REPORT?

9 MR. SMITH: THERE IS NO TIME LIMIT IN THE JUDGMENT  
10 AS TO APPROVAL OF THE REPORT, YOUR HONOR.

11 IT DOES HAVE TO BE CIRCULATED TO THE PARTIES ONCE  
12 IT IS APPROVED.

13 IT HAS BEEN PRESENTED TO ALL OF THE PARTIES IN THE  
14 COMMITTEE MEETINGS. BUT THE JUDGMENT ITSELF DOES NOT PRESENT  
15 A TIME FRAME IN WHICH THE COURT MUST APPROVE IT.

16 MUST ONLY BE PRESENTED TO THE COURT WITHIN A  
17 CERTAIN TIME.

18 THE COURT: MY REAL PROBLEM WAS THE REAPPOINTMENT  
19 OF THE WATERMASTER. AND WE DID THAT, I BELIEVE, THE LAST  
20 TIME.

21 MR. SMITH: YES.

22 THE COURT: I WANT TO BE SURE THE WHEELS ARE GOING  
23 TO CONTINUE ROLLING.

24 OKAY. ALL RIGHT.

25 THEN THE MATTER WILL BE SUBMITTED.

26 MR. DUBIEL: THANK YOU, YOUR HONOR.

27 MS. TRAGER: THANK YOU, YOUR HONOR.

28 MR. GLEASON: THANK YOU, YOUR HONOR.

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THE COURT: THANK YOU VERY MUCH.

(WHEREUPON THESE PROCEEDINGS WERE CONCLUDED.)