

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY

**CERTIFIED
TRANSCRIPT**

CALIFORNIA AMERICAN WATER,

Plaintiff,

vs.

Case No. M66343

CITY OF SEASIDE, et al.,

Defendants.

MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT,

Intervenor.

MONTEREY COUNTY WATER RESOURCES
AGENCY,

Intervenor.

AND RELATED CROSS-ACTIONS

BEFORE THE HONORABLE LESLIE C. NICHOLS

DEPARTMENT 13

JUNE 17, 2016

9:40 A.M.

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1 MONTEREY, CALIFORNIA, JUNE 17, 2016

2 9:39 A.M.

3 MR. McGLOTHLIN: Your Honor, again, Russell
4 McGlothlin on behalf of the Watermaster. It's -- we're
5 very pleased to have you with us and as a partner in
6 managing this essential resource.

7 If I may say a couple of high level comments
8 about the process. As for myself, an admission, I am
9 not a day-to-day litigator, my expertise is in
10 California water resource management, and particularly
11 ground water.

12 I have been involved in this adjudication since
13 the filing of the complaint. I've worn different hats.
14 I've represented the City of Seaside, and, with the
15 permission of the city, appropriate conflict waivers,
16 I'm now representing the Watermaster.

17 I am pleased, and I am hopeful to say that they
18 will maintain that there is a very significant degree of
19 cooperation -- cooperative enterprise is the word you
20 used -- and that is the case, I think much to the wise
21 judgment of Judge Randall, to appoint the Watermaster as
22 he did.

23 There is -- I am not aware of any active
24 conflict presently with respect to the management of the
25 groundwater basin. Rather, the Watermaster is acting

1 cooperatively among the members of the Board of
2 Directors, and we are hopeful that we will work
3 cooperatively with the Court.

4 THE COURT: That's what I concluded. It seemed
5 apparent to me that it is a public -- we have an open
6 courtroom. It happens that the only people that are
7 here are related in some way to the parties, but this is
8 different than a legislative hearing room or passing a
9 huge federal law, just -- nobody -- public doesn't know
10 about all these amendments, it's very transparent, and
11 that's the purpose of this meeting. I appreciate your
12 inviting me.

13 MR. McGLOTHLIN: Certainly, Your Honor, and I
14 will acknowledge, as a principal of water law generally,
15 that conflicts and judicial actions concerning water
16 have both the interest of the parties at stake in
17 adjudicating the rights of the party. They also are
18 impregnated with an extensive public interest that stems
19 from our California Constitution, Article 10, Section 2.

20 THE COURT: Right.

21 MR. McGLOTHLIN: I think, as an overarching
22 principal, we acknowledge that there are issues. There
23 are, directly, problems that need to be addressed over
24 time in both of the active sub-basins in the -- in the
25 groundwater basin.

1 THE COURT: Again, those two sub-basins are?

2 MR. McGLOTHLIN: The coastal sub area -- I may
3 have misspoke mistake, they should be referred to
4 sub-areas to be distinguished from sub-basins.

5 THE COURT: Sub-basins.

6 MR. McGLOTHLIN: And, if I may, Seaside
7 Groundwater Basin is technically a sub-basin of the
8 greater Salinas Valley Ground Water Basin, but it is
9 separately managed and often referred to generally as
10 just the basin. Technically speaking, it is a
11 sub-basin.

12 Within that sub-basin there are four sub-areas,
13 but only two are the ones that are really active where
14 there's pumping, and that is the coastal sub-area, and
15 what is referred to as the Laguna Seca sub-area.

16 THE COURT: Right.

17 MR. McGLOTHLIN: They have different challenges
18 going forward. Related, there's hydrogeologic
19 connectivity between them, the coastal sub-area being
20 next to the coast.

21 The concern is sea water intrusion, as is the
22 case occurring -- it has been occurring for decades --
23 to the north within the other sub-basins -- coastal
24 sub-basins of the Salinas Valley.

25 THE COURT: Laguna Seca extends beyond the

1 direct jurisdiction of this order, doesn't it?

2 MR. McGLOTHLIN: The groundwater stratigraphy
3 does continue beyond the adjudicated boundaries, and
4 what the implication of that is that groundwater
5 production and activities to the east of the adjudicated
6 boundaries has an influence within the adjudicated
7 boundaries, and that's why you've seen the intention to
8 work cooperatively with the stakeholders and the
9 regulatory overlap there to address the problem.

10 THE COURT: And I think that's the Monterey
11 County Water Resources Agency?

12 MR. McGLOTHLIN: Your Honor, it is the Monterey
13 County Water Resources Agency, but more specifically it
14 will be an entity that will be formed within the next
15 year, referred to as a Groundwater Sustainability
16 Agency.

17 THE COURT: That's under the 2014 law?

18 MR. McGLOTHLIN: That's correct, that comes
19 under what is the Sustainable Water Management Act, and,
20 if you may, I will probably refer to it as SWMA.

21 THE COURT: I'd like a glossary so --

22 MR. McGLOTHLIN: So you have the issues of the
23 potential sea water intrusion in the costal sub-area,
24 you have the issues of a gradual decline, but,
25 nonetheless, a continuing decline of groundwater levels

1 in the east Laguna Seca area. These are issues that
2 must be addressed over time.

3 The Watermaster is acutely aware of what the
4 issues are and is doing its very best and hopes to work
5 cooperatively, of course, with the Court to address
6 these, but the good thing is that these are not issues
7 that are likely to develop into an acute problem in the
8 near future. They are gradual and long-term problems
9 and --

10 THE COURT: At some point I'd very much
11 appreciate understanding a little bit about how the
12 Watermaster works. You have a staff, it's funded, and
13 the staff interacts with voting members, and so at some
14 point it would be helpful to me to see how the players
15 come together and reach this cooperation, but I don't
16 want to disturb the order of your presentation.

17 MR. McGLOTHLIN: Absolutely, and we can address
18 that in Item 2 in the agenda with respect to the basin
19 management structure.

20 I'm pretty much finished with the overarching
21 perspectives.

22 THE COURT: Is -- is the whole issue of county
23 compliance with the order something you're going to get
24 to?

25 MR. McGLOTHLIN: I was just going to get to

1 that.

2 The management of the Seaside basin, of course,
3 is not in a vacuum, and, as you read in our report, the
4 community of the Monterey Peninsula has been dealing
5 with a water supply challenge for decades which has
6 become more acute beginning in 1995 with the first order
7 from the State Water Resource Control Board and then
8 again in 2009 with the Cease and Desist Order which was,
9 frankly, the State saying time is up, we really need and
10 mean for you to find new water supplies.

11 And as I think -- I don't have to elaborate,
12 the issues concern diversion from the Carmel River, the
13 other primary source of water supply for the peninsula,
14 which is having a deleterious effect on riparian
15 habitat, and specifically the threatened species of the
16 coastal steelhead population.

17 THE COURT: Again, because you had a nice
18 synopsis there of the several efforts that the county
19 has made, one to work towards the dam and certain other
20 things, finally into desalinization.

21 Could you recap that?

22 MR. McGLOTHLIN: Certainly. In 1995, the State
23 issued Order 9510, State Water Resources Control Board,
24 that said you must, Cal Am, move with diligent efforts
25 to obtain a new water supply.

1 First efforts were with cooperation with the
2 Water Management District to put a storage -- new dam on
3 the Carmel River that would legalize the diversions,
4 and, unfortunately, that effort failed for -- on a vote
5 concerning bonding for the dam.

6 And, if I may, we have some individuals here,
7 particularly my good friend Mr. Laredo to my left, who
8 is -- has been general counsel to the Water Management
9 District since 1979, and he could tell you the very
10 sordid details of water politics on the peninsula better
11 than I could.

12 THE COURT: I want to keep this uplifting. You
13 know --

14 MR. McGLOTHLIN: Well, it's interesting.
15 There's nothing more interesting than social dynamics.

16 MR. LAREDO: Mr. McGlothin is doing a wonderful
17 job.

18 MR. McCLOTHLIN: I'm doing my very best, Your
19 Honor.

20 So, following that, Cal Am itself tried for a
21 dam project and had an application before the California
22 Public Utilities Commission which, of course, asserts
23 jurisdiction, and is the gatekeeper for anything that
24 the utility does, and the utility is the service
25 provider to probably well over 95 percent of the

1 municipal and urban use on the peninsula.

2 And during that process, Senator Keeley --
3 State Senator Keeley, I believe, brought a legislative
4 effort and ultimately legislation to require the
5 Commission to look at all alternatives to a dam on the
6 river.

7 I may be out of line here, but I think the
8 premise was new dams on the Carmel River weren't very
9 popular and we needed to find another alternative.

10 May I just pause and say it's a unique
11 situation you find yourself here on the Monterey
12 Peninsula compared to the rest of the state. There is
13 no state plumbing to the peninsula. We cannot reach out
14 to the Central Valley or any other distant locations for
15 a new water supply, that much of the other -- rest of
16 the state, including Southern California and Central
17 Valley, et cetera, the Bay area, all have their sources
18 of imported water, whether it's from the Sierras, the
19 Delta, the Colorado River, the Owens Aqueduct, et
20 cetera.

21 THE COURT: I worked my way partly through
22 Stanford working five summers at Yosemite, so I was a
23 firefighter, and I worked across Hetchy, up to Miguel
24 Meadows, out there, and -- so, of course, I noticed the
25 anomaly that San Francisco has said on their sign that

1 they're progressive, but when they got to the question
2 of whether or not to -- let's get rid of the dams, they
3 were quite resolute in opposing that.

4 MR. McGLOTHLIN: Very good quality to get
5 something through --

6 THE COURT: I don't smile at this. It's --
7 it's not a matter of politics, people look for an
8 interest, and they can sometimes conflict with the most
9 robust public decisions, just life.

10 MR. McGLOTHLIN: We'd agree, for better or not,
11 we are a locally sustained community here for water
12 supply.

13 THE COURT: That is a big challenge.

14 MR. McGLOTHLIN: It's a very big challenge. As
15 the population has grown and the like, the limited water
16 supply from the river -- and when I say the river, it's
17 actually a subterranean take, but it's directly
18 affecting the river.

19 THE COURT: What is your sense of -- of course,
20 my daughter, who is a high school teacher, used to laugh
21 when I had friends of more than 25 years standing, but
22 now she has a daughter who's a college graduate,
23 25 years doesn't look quite so long to her.

24 I, of course, note that -- the Water Resources
25 Board made that order 21 years ago, and, you know, you

1 have to -- you have challenges and you do get a sense of
2 urgency from the water board that their -- they're
3 looking at this more closely, and if so, that
4 implication is there.

5 MR. McGLOTHLIN: It does, Your Honor, and very
6 closely. I wouldn't guess where this stacks in their
7 agenda, but I know it's towards the top of the list.

8 THE COURT: That means we get close attention
9 because we want to be in compliance.

10 MR. LAREDO: Your Honor, if I can comment. We
11 know that the State Water Resources Control Board's most
12 recent order was in 2009. That is time limited in terms
13 of when it has to be performed and the parties to that
14 proceeding have a pending application to the State Water
15 Resources Control Board to revisit its order and to
16 extend and modify the limits, and that's on the State
17 Water Resources Control Board calendar for July 19th of
18 this year.

19 THE COURT: Was that the 2020?

20 MR. LAREDO: That's correct.

21 THE COURT: 2020, 2022, or is it just --

22 MR. McGLOTHLIN: No, your Honor, 2020 moving
23 around in different places.

24 THE COURT: Right.

25 MR. McGLOTHLIN: That is the -- that's the

1 compliance deadline under SGMA, but under this -- what
2 we call the CDO, the Cease and Desist Order -- add that
3 to the glossary -- the CDO had a deadline of the end of
4 this year to get off the -- to cease illegal diversions
5 or unauthorized diversions from the Carmel River.

6 Because of constraints at the California Public
7 Utilities Commission that all interests acknowledged are
8 beyond the effect of the parties here and California
9 American, they are a big concern.

10 The California Environmental Quality Act,
11 National Environmental Policy Act compliance that has
12 taken some time, that process has been delayed for
13 upwards of four to five years, and so there is now an
14 application that is going before the state board to
15 extend that time period now until 2021.

16 THE COURT: So if I understand it --
17 Mr. Laredo?

18 MR. LAREDO: Yes.

19 THE COURT: It sounds like an impossibility in
20 the sense that there are multiple procedures that you
21 must comply with, and going through the federal and
22 state regulations has created, from your perspective,
23 and you hope this is convincing with the board, not
24 recalcitrance or delay, but necessarily, by virtue of
25 those timelines, has extended compliance and you need

1 relief.

2 MR. LAREDO: That's correct, when we talk about
3 community itself. Technically the order is against Cal
4 Am. My client is the Monterey Peninsula Water
5 Management District. We are a party to that proceeding,
6 but I believe that you are correct that many, many
7 factors have caused the delay for which there is no
8 particular party at blame.

9 The Public Utilities Commission recognized that
10 and passed a resolution directing that its Executive
11 Director communicate the position of the Public
12 Utilities Commission that the amendment to the State
13 Board Order was appropriate, and the State Board is
14 poised to consider that matter on July 19th.

15 THE COURT: And you are in harmony with Cal Am
16 on that application?

17 MR. LAREDO: That's correct.

18 THE COURT: And who is Cal Am's counsel?

19 MS. GERARD: Lori Gerard, and also on the
20 phone we have Mr. Donlan.

21 THE COURT: Yes, thank you.

22 The interruptions are not to interrupt, I'm
23 just trying to follow along.

24 MR. MCGLOTHLIN: Entirely understandable.

25 The takeaway from this, the high level

1 perspective, is that the State understands where -- or I
2 believe they understand -- and I believe we will likely
3 see some form of favorable action next month on that
4 application because we are -- we, as a community, Cal Am
5 specifically, as a company, have been diligently making
6 efforts to complete a new water supply project.

7 If I may, there are different braids of that
8 water supply project, it's not just desalination,
9 although desalination it a meaningful -- probably is the
10 largest -- what's sometimes referred to as a
11 three-legged stool.

12 THE COURT: That's what stuck in my mind. I
13 knew it was broader in scope, but I wasn't sure what it
14 was.

15 MR. McGLOTHLIN: Great.

16 And, if you will, I will explain. There are --
17 two other braids of the collective new water supply will
18 be not only the desalination project that California
19 American is developing -- we can talk about the details
20 at your request -- as well as an advanced recycled water
21 project that involves the Seaside Basin in that it will
22 inject highly treated -- advanced treated, going through
23 reverse osmosis, micro filtration, ultraviolet,
24 et cetera, before being injected into the Seaside Basin.
25 This is -- by the way, this is extraordinarily high

1 quality water.

2 THE COURT: I think the science is away ahead
3 of public opinion.

4 MR. McGLOTHLIN: Perfectly stated.

5 And that is a project that is being undertaken
6 jointly by Mr. Laredo's client, the Monterey Peninsula
7 Water Management District and the Monterey Regional
8 Water Pollution Control Agency with a Water Purchase
9 Agreement from California American. That allows the
10 downsizing of the desalination project and some of the
11 environmental effects there, and also diversifies the
12 portfolio of water, and is supported by the community at
13 large to date.

14 MR. LAREDO: For the purposes of your glossary,
15 that is commonly referred to as the Groundwater
16 Replenishment Project.

17 THE COURT: Oh, yes, I saw the -- is it the
18 case that you're developing some plans for desalination,
19 but trying to ramp up on the replenishment so as to
20 diminish the reliance on desalinization?

21 MR. McGLOTHLIN: Yes, Your Honor. The
22 intention is a hybrid of -- portfolio hybrid approach.

23 THE COURT: So desalination will remain in the
24 mix.

25 MR. McGLOTHLIN: Desalinization -- they are not

1 complimentary, and the only competition is the size of
2 the desalinization project.

3 MR. LAREDO: Yes, and also one advantage of the
4 ground water replenishment project is that it that
5 appears that will be able to come on line and deliver
6 water faster than the desal plan.

7 THE COURT: And the third?

8 MR. MCGLOTHLIN: The third is referred to as
9 aquifer storage and recovery water.

10 What that is is diversions from the Carmel
11 River during the winter, during periods of excess flows
12 when it's not necessary or critical for riparian
13 habitat, all authorized by permit from the State Water
14 Resources Record Board, that water taken over the hills
15 and injected -- just like the ground water replenishment
16 water, injected through aquifer storage and recovery
17 wells, wells that go both ways, into the Seaside
18 Basin for recovery when -- during dryer or other periods
19 when were necessary.

20 And Cal Am has a very sophisticated procedure
21 for managing its apply to supply to lessen its draw from
22 the Carmel River during dry months when it's most
23 critical to the riparian habitat during this interim
24 period.

25 So what we --

1 THE COURT: Will that require CEQA review?

2 MR. McGLOTHLIN: The CEQA review has already
3 been done for that and is already occurring. The ASR is
4 already on line, with the exception it will be
5 augmented, provided that infrastructure that we are
6 presently -- I should say Cal Am is presently seeking
7 permission from the California Public Utilities
8 Commission to add in an booster pump and an essential
9 pipeline that will add to our ability to do aquifer
10 storage and recovery, sometimes referred to as ASR.

11 And the future, post 2021, should look like a
12 combination of five sources of water for the peninsula
13 largely, which include the desalination, the GWR,
14 Groundwater Replenishment, also known formally as the
15 Pure Water Monterey Project, aquifer storage and
16 recovery water, the native Seaside groundwater basin
17 water consistent and within the confines of the basin
18 safe yield, and some continuing diversions from the
19 Carmel River within the legal authorized diversions
20 under state law.

21 Those are the five large sources of water for
22 the peninsula. The three new ones are the -- are the
23 desal, GWR and ASR, and the next five years is the
24 critical --

25 THE COURT: And the ASR is, again, what?

1 MR. McGLOTHLIN: Aquifer storage and recovery.
2 That's the Carmel River reversion to injections into the
3 Seaside basin.

4 THE COURT: The diversion and the Seaside basin
5 are existing?

6 MR. McGLOTHLIN: The existing -- yeah, the
7 fourth and fifth, which are not new supplies, are the
8 safe quantity of water from the Seaside basin, within
9 the safe yield, and the safe or authorized legal
10 diversions from the Carmel River underflow.

11 THE COURT: Part of this -- you're going to get
12 to it, I think -- is that you anticipate it may -- there
13 may be a petition to the court because the express terms
14 of Judge Randall's order dealing with the triennial
15 drawdown; is that correct?

16 MR. McGLOTHLIN: That's correct.

17 THE COURT: Under those express terms,
18 that's -- that's felt to comply with.

19 MR. McGLOTHLIN: Yes, we don't have a project
20 that match the words of the judgment, that's correct.

21 THE COURT: And so you're anticipating working.

22 A. What regard.

23 MR. McGLOTHLIN: If I --

24 THE COURT: Continue with --

25 MR. McGLOTHLIN: No, I think this is fine, and

1 I think we put the items here and at the end we can go
2 down the agenda --

3 THE COURT: I'm getting the cart before the
4 horse, but these are just the things that are pressing.

5 MR. McGLOTHLIN: I'm fine working that way,
6 Your Honor, and I think it's constructive for you to ask
7 questions as they come up.

8 The subject you just raised was the potential
9 request for relief from the next scheduled tri-annual
10 ramp down of the judgment, which would go into the
11 effect for the 2018 water year through 2021, and that
12 would be -- what that is is a 560 acre feed, ten percent
13 of the original combined safe yield of 5,600, reduction
14 in allowed diversions under the safe yield, and the
15 judgment has parameters in it which said -- and if I may
16 be colloquial for a moment -- you will either bring in
17 new water of equivalent quantity or you will suffer --
18 not suffer, that's probably a wrong word -- you will
19 implement a ten percent reduction on a gradual -- every
20 third year rampdown.

21 THE COURT: Because we need to maintain a
22 perpetual supply --

23 MR. McGLOTHLIN: Because we need to maintain a
24 perpetual supply, and this is your -- this is the judge
25 that -- Your Honor's staircase, not a cliff, a

1 staircase, a potential staircase, is to say, again, the
2 problems are long-term, they don't demand an immediate
3 knee jerk reaction, they deserve long-term proceedings.

4 THE COURT: And there are procedures for
5 amendment of the judgment, and we can go very cautious
6 about that because we don't want to defeat the purpose
7 of perpetual surprise.

8 MR. MCGLOTHLIN: Certainly, and the -- so what
9 we brought to your attention, we wanted -- we wanted to
10 bring it to your attention, since you are new to this
11 case -- had Judge Randall been here we were intending to
12 bring the same subjects so that there was advance
13 notice.

14 We don't know where the demand and -- will
15 stack up on the peninsula in the next couple years. We
16 are not certain yet how -- what form of revised cease
17 and desist order from the State Water Resource Control
18 Board we will get in July or -- this year, and,
19 importantly, we don't know yet where we will be with the
20 water supply projects, including the GWR and
21 desalination projects and augmented ASR for storage and
22 recovery.

23 We don't then, sitting here in June of 2016,
24 next year -- better part of next year we will have a
25 better grasp on that.

1 THE COURT: I have a question at this point,
2 before I forget it.

3 MR. McGLOTHLIN: Certainly.

4 THE COURT: One of the portions of the report
5 it talks about the -- the -- tread cautiously because of
6 deleterious economic impacts.

7 Having been a mayor of a city and recognizing
8 that developer will come in and say, "Look, there's a
9 housing imbalance, there's a need for affordable
10 housing, there's a need for high end housing, these are
11 pressing needs. We need to find new business
12 opportunities."

13 What is the nature of the public information so
14 that those elected officials carrying out their
15 responsibilities always have clearly in their mind that
16 there's ongoing supervision of the water supply and that
17 the -- so they -- in effect, someone is not claiming
18 foul later and saying, my goodness, the Watermaster and
19 the Court is shutting down our water for the 250 new
20 units which we just created, when, if they had advance
21 notice, of course, responsibilities fall upon many
22 officials and participants, they might have said we need
23 to go slower on these new opportunities for development
24 because these new opportunities for development,
25 although attractive, may impact the water supply unduly.

1 I'm not pointing fingers at anybody, I'm saying
2 this is a highly calibrated process.

3 MR. McGLOTHLIN: I have a couple thoughts, if I
4 may, on that, and I think there are others in the room
5 that should be heard on that subject.

6 THE COURT: Sure.

7 MR. McGLOTHLIN: A couple observations.

8 First, that there are many different actors
9 that need to coordinate for proper public policy here.
10 We are balancing environmental needs together with
11 economic and consumptive use needs.

12 THE COURT: It's an everyday decision at City
13 Hall.

14 MR. McGLOTHLIN: Understood.

15 On the subject of water management and
16 particular development, one aspect of the cease and
17 desist order issued in 2009 was a moratorium on new
18 water connections, so the prospect of new water
19 connections, until we have complied with the order, can
20 remove the unauthorized diversions from the river, are
21 really not a viable prospect.

22 MR. LAREDO: And the Water Management District
23 has an active permitting program so it examines any
24 expansion of use down to the fixture level, or existing
25 structures, so if you wanted to add a bathroom to your

1 home, you would have to show that you have an on-site
2 water credit for that.

3 The District regulates expansions of seats in a
4 restaurant, bars, stools in a restaurant, so it is a
5 very highly regulated matter. There is very little
6 water that would be available for that new development,
7 so the economic impact comment would be if there is this
8 ramp down, or the state board cliff, that -- the means
9 to meet that water supply that's available would have to
10 come from reducing those people who are presently using
11 water.

12 THE COURT: And, of course, the serious impacts
13 that would flow from that.

14 MR. McGLOTHLIN: And this community is highly
15 dependent economically on its tourism and transient
16 occupancy.

17 THE COURT: Come and visit.

18 MR. McGLOTHLIN: And so -- there is obvious
19 concern if there was an acute water shortage, that would
20 have ripple effects into the economics, for not just the
21 Peninsula but the entire region, so -- I don't think
22 anybody has intentions of making that into more than it
23 is. It is -- it is just what it is.

24 THE COURT: Right.

25 MR. McGLOTHLIN: And I want to -- the other

1 aspect of balancing the water supply is we anticipate
2 that this revised CDO will have parameters --

3 THE COURT: For which there's a hearing
4 scheduled in July?

5 MR. LAREDO: That's correct.

6 MR. McGLOTHLIN: Correct. We anticipate that
7 it will have conditional permission for continuing
8 diversions at levels that they presently are.

9 If milestones are not met for various reasons,
10 we may be facing reduced water, even under our existing
11 CDOs. It's not an all or nothing type situation.

12 The obvious intention of the State is to
13 tighten screws where appropriate and leave them
14 tightened as they are, where they are equally
15 appropriate.

16 We are trying to balance the CDO situation, the
17 development of new water supplies, when I say we, the
18 community, Cal Am, together with the Water Management
19 District. Another hat I wear is for the local Monterey
20 Peninsula Regional Water Authority, which is sometimes
21 referred as the Mayor's authority, which is an entity --
22 a joint powers authority created to cooperate, and, if
23 you will, birddog the process to ensure consistency with
24 the public interest as we develop these new water
25 supplies.

1 All three of those entities, along with many
2 stakeholders, some behind me, and in this water
3 community here in Monterey, are jointly working through
4 this process. We need to balance between interest in
5 the Seaside basin, interest on the Carmel River, the
6 economy, the response to the state, response to the
7 Public Utilities Commission, so you are a very important
8 piece of a constellation of actors.

9 THE COURT: I don't have any false pride over
10 this, but there are many responsible players. The
11 court's supervision is important here.

12 Are you involved as counsel in any -- I read
13 from the reports that -- there are about a dozen
14 instances with the new law does not specifically usurp
15 the authority of ongoing judicial supervision.

16 I thought I read about a dozen.

17 MR. McGLOTHLIN: Two dozen.

18 THE COURT: Are you involved in any of those?

19 MR. McGLOTHLIN: I am, Your Honor, in several
20 of them.

21 THE COURT: So they have these similar type
22 issues that occur.

23 MR. McGLOTHLIN: They do.

24 A broader picture is we do not have ubiquitous
25 one size fits all side groundwater management in

1 California.

2 The most challenged groundwater basins, of
3 which the Seaside Basin is one, either because of
4 overdraft or because of high social quorums, have gone
5 through the adjudicatory process.

6 Until now, outside of the adjudicatory process,
7 there's been loose to no groundwater management.

8 THE COURT: That led to the 2014 Act.

9 MR. McGLOTHLIN: As it did. As the Act was
10 passed, there was recognition that it had to be
11 coordinated with management under -- in those basins
12 where the judiciary is already managing it.

13 There also needs to be acknowledgement that
14 groundwater is highly interdependent and interrelated
15 both between other groundwater supplies and between the
16 surface water, and so we will manage discreet uses, with
17 the understanding that there is impacts both from other
18 areas to the area of interest and vice versa. That is
19 the case here, for example, with the Coral de Tierra
20 Area to the east of Laguna Seca sub-area, and vice
21 versa, so there is -- needs to be coordination between
22 existing management, both institutionally and
23 hydrogeologically, to manufacture a word there, to
24 achieve sustainable groundwater water management.

25 THE COURT: Does the failure -- I want to

1 forbid that possibility -- but does the failure of
2 cooperation have implications for court here?

3 MR. McGLOTHLIN: Yes, it does.

4 THE COURT: How would that develop?

5 MR. McGLOTHLIN: I'm glad you asked, and it
6 reminds me of you asking for and anticipate questions
7 and what the devil's arguments are.

8 THE COURT: I found that's a sound practice.

9 MR. McGLOTHLIN: Understood.

10 I'll give you some of the nightmares that we
11 might face and we will try to avoid.

12 Both sea water intrusion in the costal
13 sub-area, that's a real problem. That doesn't
14 necessarily involve cooperation with outsiders, but it
15 will -- if that were to occur, I have impacts that
16 insiders within the basin have to cooperate.

17 THE COURT: Nobody wants that. It would spoil
18 the supply, wouldn't it?

19 MR. McGLOTHLIN: It would spoil the supply, it
20 would reduce the storage, you know, for the better part
21 of our live times at least, and it would also, under the
22 intentional plan that's already in effect, immediately
23 reduce water withdrawals from the coastal sub-area.

24 THE COURT: How is that -- who goes out to make
25 whatever inspections are appropriate to make the best

1 judgment as to whether there is intrusion?

2 MR. McGLOTHLIN: My good friend Bob Jake and
3 his staff are, every year, monitoring those wells that
4 --

5 THE COURT: Is that within the Watermaster.

6 MR. McGLOTHLIN: Watermaster, your special
7 master.

8 THE COURT: Thank you.

9 MR. McGLOTHLIN: And the County Water Resources
10 Agency and the Water Management District also have staff
11 and responsibilities on various areas of groundwater as
12 well.

13 THE COURT: Sounds to me like generally there's
14 been a high level of vigilance. You certainly explained
15 the response to my questions about no new hookups and --
16 because if you didn't have it managed to the -- right
17 down to the lowest level, you'd have all sorts of excess
18 usage.

19 MR. LAREDO: It could be a runaway freight
20 train, and I don't believe that exists, and there is a
21 tremendous level of cooperation and trust among the
22 parties.

23 MR. McGLOTHLIN: The only thing I would mention
24 in brief, the Laguna Seca sub-area --

25 THE COURT: You were going to talk about Corral

1 de Tierra.

2 MR. McGLOTHLIN: Yeah, you asked what happens
3 if there's not cooperation. I interpret that as to, you
4 know, "What are the potential conflicts, be honest with
5 me."

6 THE COURT: That's right, just the kind of
7 things so I wouldn't be totally blindsided if something
8 came up.

9 MR. McGLOTHLIN: So that could come in two
10 forms. We are hopeful that we -- well, if I may, the --
11 the SGMA, Sustainable Groundwater Management Act
12 framework is that local agencies and the critical basins
13 as designated by the state must develop and appoint a
14 groundwater sustainability agency, which is either an
15 agency with groundwater or water management functions
16 and/or the cities and counties with general police
17 powers, or some combination of various overlapping
18 stakeholders which is most likely to be the case for the
19 Corral de Tierra sub area and the Salinas Valley proper,
20 so you have a GSA which needs to be developed by next
21 year, June of 2017.

22 THE COURT: Is that under the state law?

23 MR. McGLOTHLIN: That's under the state law.
24 And that agency, the GSA, has either until 2020 or 2022,
25 depending on the status of the basin. It's somewhat

1 confusing. The intention was two years shorter if the
2 basin is critical overdraft.

3 The Corral de Tierra is not designated as
4 critically overdrafted. The 180 foot 400 foot aquifer
5 which is highly treated with sea water has been
6 designated as critically overdrafted.

7 The plan needs to come into fruition by
8 2020-2022 time frame. In that process, Watermaster
9 intends to collaborate, cooperate, negotiate with the
10 GSA for the Corral de Tierra sub-area, which may be the
11 GSA for the broader Salinas Valley. As things are
12 looking, that's probably going to be the case, but not
13 necessarily, it could be a single GSA for just that sub
14 basin -- cooperate and negotiate with that entity and
15 all of the other stakeholders that are in the Laguna
16 Seca sub-area, which include a golf course.

17 California American has its satellite system
18 there, as well as some mutual water companies, rural
19 domestic users, and cooperate and discuss what
20 management looks like there together with what
21 management looks like in the Laguna Seca sub-area, with
22 the acknowledgement we all have to be cognizant that
23 over time we have to cure the collective overdraft that
24 is lowering the water tables, particularly in the
25 eastern portion of the sub area.

1 If we do not, the first thing that will occur
2 is that it's unlikely the Department of Water Resources
3 will approve the groundwater sustainability plan
4 promulgated for the Corral de Tierra. Moreover, you
5 have continuing jurisdiction -- the court has continuing
6 jurisdiction and a responsibility to correct that
7 overdraft.

8 In that process, just to be transparent,
9 there's going to have to be a discussion about either
10 reducing production in likely both locations, inside and
11 outside of the basin, and/or bringing in new water,
12 which is expensive and that expense has to be allocated.

13 THE COURT: You mean new water, not through
14 desalination. In other words, find a way to have it
15 trucked in or something like that?

16 MR. McGLOTHLIN: The beauty of it is we have
17 time. It won't be trucked in, that's very inefficient.
18 That's the call of last resort.

19 THE COURT: You said there's no pipeline.

20 MR. McGLOTHLIN: There's no pipeline.

21 THE COURT: So what do you mean when you say
22 "bring in water?"

23 MR. McGLOTHLIN: I'm ducking underneath the
24 table right now because I don't want to be shot by
25 anybody here.

1 It could be -- it could be desalination. It
2 could be water done in cooperation with the Salinas
3 Valley proper. There are a variety of different
4 sources.

5 THE COURT: I'm not writing a book. One of the
6 CEQA cases I had involved of the City of San Jose and
7 several contiguous counties to the north, and it
8 involved traffic cooperation, and the city was taking
9 the position that it was entirely within their domain,
10 and I said, well, yes, but the law of CEQA requires you
11 to proceed in good faith, and they came to the table.

12 You know, it's -- people don't want decisions
13 made for them, but we know in the system of law that if
14 people fail or refuse, that there has to be procedures
15 to break the deadlock. Often people -- as we know, the
16 best negotiated solution is one that everybody grumbles
17 at a little bit, assuming it is a rational and
18 reasonable position.

19 I won't require you to go further on that
20 because I don't want anybody to think, oh, the judge has
21 already made up his mind, I'm just trying to broadly
22 inform myself.

23 MR. MCGLOTHLIN: I think we all appreciate the
24 push/pull relationship between the regulatory overlay
25 and stakeholder cooperative, which is where we want to

1 be. The State's obviously been doing that in some parts
2 here, tightening the screws here, and Judge Randall did
3 that with his order, which has driven and -- you know,
4 birthed the cooperation that you see at Watermaster's.

5 THE COURT: Your job as special master, though,
6 is if you feel there is a lack of fruitful interchange
7 and the judge's orders, you know, are -- you don't want
8 to wait five years if they're not being reasonably
9 addressed, then, to bring recommendations to the court;
10 is that right?

11 MR. McGLOTHLIN: Yes, Your Honor, and that
12 process starts -- you asked about the Watermaster
13 structure. The intention, as I understand it from the
14 Watermaster designed by Judge Randall, is for the
15 parties themselves to meet, to discuss, if necessary to
16 ultimately vote, but it's really an advisory decision
17 and advisory role to the court, so any party can bring a
18 challenge to a Watermaster decision.

19 THE COURT: It's a de novo review.

20 MR. McGLOTHLIN: It is de novo review, and,
21 furthermore, the Watermaster, as it is here today, will
22 seek the court's intervention and cooperation and
23 oversight on a regular basis, so -- and more promptly
24 when necessary.

25 So what you asked about what conflicts would

1 becoming down the line, those issues of combination
2 or -- either/or of reduced production and/or new water
3 supplies to the collective Laguna Seca-Corral de Tierra,
4 hopefully the parties will negotiate in good faith and
5 come to stipulations that the Court can support, or the
6 Court is independent to make the decision whether or not
7 the stipulation is in the public interest and consistent
8 with law.

9 THE COURT: If those stipulations do not
10 require the amendment of Judge Randall's in any respect,
11 has it been the practice or consequence that they would
12 nonetheless, because they are policy changes, be
13 submitted to the court for review?

14 MR. McGLOTHLIN: It is my counsel to
15 Watermaster that they do, that the management is
16 something -- the management structure, the physical
17 management structure is something that the court should
18 be in depth aware of and approve and be marching hand in
19 hand. I do not think it is proper for the court to be,
20 you know, off to the side.

21 And if I may digress, that is the case in some
22 other basins where the court is not aware that it still
23 has these cases.

24 THE COURT: No, I'm very much attuned for so
25 long as I'm active, so I would like to -- and, you know,

1 it's really for the protection of all. If a
2 recommendation is made to the Court for a signature,
3 there should be a sufficient basis that any critical
4 person could look at it and say yes, it's substantiated,
5 so if someone -- if it goes through that rigorous level
6 of analysis and recommendation, it may deter adversarial
7 proceedings because it's well founded, all things
8 considered, and if it's deficient in some way, a party
9 might petition the court and say we want you to hear
10 this.

11 MR. McGLOTHLIN: I would make one observation
12 that Watermaster is comprised of interested
13 stakeholders, but, as a collection, the intention is to
14 act not disinterested but in the collective interests.

15 THE COURT: Correct, I understand that. And
16 it's not just a cumbia moment, each party is looking to
17 the interest of their constituents and so forth, but in
18 the aggregate we can't have it all.

19 Are there any other -- so I think you indicated
20 in the report that later you'd be filing a report, and
21 even earlier if you anticipated a need to calendar
22 something, otherwise it would come up on an annual
23 report, because didn't you determine that sometime after
24 the water resources board makes a determination you'll
25 be in a better position by later in the year to

1 determine whether you're likely to have to petition to
2 amend any part of Judge Randall's decision.

3 MR. McGLOTHLIN: Yes. What is proposed as next
4 steps, Your Honor, is that we proceed through this year,
5 gather more information; we produce the annual report at
6 the end of the year, which the judgment requires that we
7 do.

8 We think it is --

9 THE COURT: And what's the date for that?

10 MR. McGLOTHLIN: Mid-December.

11 MR. LAREDO: December 15th.

12 THE COURT: Thank you.

13 MR. McGLOTHLIN: And we think it would be
14 prudent during this -- particularly during this, you
15 know, challenging time or important time of water
16 development on the peninsula, that we meet with you, you
17 know, annually following the annual report to receive
18 your questions, input, conversation like we're having
19 today.

20 We would propose that we set a calendar, a
21 status conference first quarter of 2017, and that at
22 that time we would provide you an update on developments
23 with respect to Laguna Seca sub-area and the GSA
24 composition for the Corral de Tierra sub-area, and also
25 discuss with you the need and prudence of making an

1 application for relief from the ramp down.

2 You've referred to that as an amendment of the
3 judgment. How we engage semantically, it's not
4 important. The key there, Your Honor, is that the
5 judgment specifically says that we can relieve ourselves
6 in ramp down if we were bringing in comparable quantity
7 each and every year during that three-year period.

8 The difference here is we brought in more than
9 that quantity previously which I can elaborate on how we
10 did that if you're interested. And since we've
11 effectively brought in and stored 2,500 acre feet, we
12 would be asking for a 1,680 -- 1,680-acre foot relief,
13 so it would not be, per se, per the terms of the
14 judgment, but certainly consistent with the spirit of
15 the judgment and consistent with potential need during
16 these later years, these crunch years, as we finalize
17 the water supply projects.

18 THE COURT: Any brief elaboration that you can
19 give me now would be fine.

20 MR. McGLOTHLIN: Certainly.

21 Your Honor, one of the producers from the is
22 the City of Seaside. Counsel sitting to my left for the
23 City of Seaside today operates two 18-hole golf courses.
24 They produce water as an alternative producer, and they
25 have a 540-acre foot allocation.

1 The City of Seaside, by contract, made an
2 arrangement with the water purveyor to the north and the
3 water purveyor that serves the former Fort Ord area by
4 designation by the Fort Ord Use Authority, that is the
5 Marina Coast Water District. The City exchanged
6 property that the Marina Coast Water District wanted in
7 exchange for 2,500 acre feet, not annually, in total,
8 2,500 acre feet of wet molecules of water supply that it
9 delivered to the golf course --

10 THE COURT: Is wet molecules a term of art?

11 MR. McGLOTHLIN: It's distinguishing between an
12 annual acre feet, as in an allocation.

13 THE COURT: Thank you.

14 MR. McGLOTHLIN: 2,500 acre feet of water.

15 It doled that out to the golf course as needed
16 for a course of many years in lieu of the golf course
17 producing its up to 540 acre feet of production right.

18 Judge Randall approved of a memorandum of
19 understanding between the Watermaster and the City of
20 Seaside, whereby the Watermaster said bring that water
21 in, do not produce your groundwater, that will augment
22 the ground water supply. In exchange, they have
23 provided a credit to the City of Seaside -- they, the
24 Watermaster, to the City of Seaside against financial
25 responsibilities that the city has accrued and will be

1 accruing for replenishment assessments associated with
2 its municipal system, which is a separate water demand
3 at the City of Seaside, which operates as a standard
4 allocation, hence why it's incurring the replenishment
5 assessment.

6 So, if I may -- and fundamentally, the
7 Watermaster has purchased through this credit program
8 2,500 acre feet of water that has now been, in lieu,
9 replenished into the basin and would not otherwise be
10 there but for that arrangement, and it's effectively
11 stored in the basin, and, if necessary, and the
12 Watermaster decides and the community decides it's
13 necessary, the hope was Your Honor would recognize that
14 that is a good faith effort to replenish some 2,500 acre
15 feet in exchange for a 1,680 foot relief during this
16 critical period towards the end of this extension while
17 the groundwater replenishment program is coming on line,
18 the desalination is finalized and in completion, if
19 necessary.

20 THE COURT: We'll complete here before too
21 long.

22 There are many -- I've written lengthy
23 decisions, but I certainly believe that Judge Randall's
24 giving terms of art, definition, and the like must have
25 been collaborative.

1 Did he ask for -- is this an adversarial
2 proceeding, but I'm sure many terms were agreed to; is
3 that right?

4 MR. McGLOTHLIN: The judgment is a product of
5 stipulation amongst the parties, with the good judge's
6 interlineations, things he wanted and did not want.

7 THE COURT: Generally what I try to do is find
8 out what are the decisions that an informed layperson
9 needs to make and set up the skeleton and then let the
10 experts put it all together, and that proceeding a
11 different way is not a very comfortable approach,
12 because my view is within the confines of the
13 jurisdiction that the law confers upon a judge, we have
14 a lot of muscle and it should be used carefully, and
15 when it has to be, used with full vigor, there's no way
16 around that, but other times it's best I think to
17 receive -- best input, especially when the parties seem
18 to be reasonably aligned, at coming to a good
19 operational decision.

20 That would be my opinion.

21 MR. McGLOTHLIN: If you read the judgment in
22 comparison to judgments that have been written in other
23 basins, mostly in Southern California over the last
24 forty years, you would see very similar terminology,
25 verbatim in some places. The judgment was not -- we

1 didn't reinvent the wheel. It was written by the
2 parties taking advantage of the good thought of other
3 judges and other judgements previously.

4 THE COURT: Sure.

5 MR. McGLOTHLIN: And Judge Randall was not
6 asleep, by any means, at the wheel. He took his pen and
7 scratched out, and we rewrote it as he desired.

8 THE COURT: I understand.

9 I'm looking at Friday, March 17th.

10 Do you want to set a date now?

11 MR. McGLOTHLIN: Yes, Your Honor.

12 THE COURT: I'll put that date down. It's in
13 the first quarter.

14 MR. McGLOTHLIN: To repeat, Friday, March 17th.

15 THE COURT: Yes.

16 If you could prepare notice on that.

17 MR. McGLOTHLIN: Absolutely.

18 THE COURT: The outstanding agreement is that I
19 can either call you or email you if, for example, I
20 found that my own schedule required modifying that, I'd
21 tell you and you'd handle that?

22 MR. McGLOTHLIN: Yes, Your Honor, absolutely.

23 THE COURT: Is that all right?

24 And that would be for the -- I certainly accept
25 the invitation to -- because the tenor of a couple

1 letters, I didn't misunderstand it, it was simply
2 respectful letter saying we don't know of any new facts.
3 There's not been not adversarial proceedings. We'll
4 certainly be attentive, but we don't -- you know,
5 they're not inviting new information, but I'm very
6 grateful for the chance to meet with the stakeholders,
7 to receive information, not only in text form but
8 through updates, to satisfy myself that the parties are
9 working diligently and for the parties to be satisfied
10 that they don't have a cold bench, they have a hot
11 bench, and I have been active in my work.

12 Is there any other input that anyone would like
13 to provide at this time?

14 MR. LAREDO: Your Honor, if I may, between now
15 and March, there will be significant development and
16 information on the other aspects of the three-legged
17 stool.

18 THE COURT: Right.

19 MR. LAREDO: Which is the ultimate answer.

20 THE COURT: Part of it is the State Water
21 Resources Control Board, part of it is the desalination
22 efforts.

23 MR. LAREDO: That's correct. The desalination
24 effort has been the focus of a hearing that just
25 concluded before the CPUC for significant bays and the

1 promised draft EIR on the desal plant is scheduled to
2 come out this year, at least the Public Utilities
3 Commission has set a public participation hearing in, I
4 believe, September on that.

5 The groundwater replenishment also is actively
6 proceeding. The MRWPC, Monterey Regional Water
7 Pollution Control Agency, has already certified the EIR
8 on its aspect of that project, and the Water Management
9 District has, this coming Monday, the 20th, its action
10 as a responsible agency to certify that, so we
11 anticipate that there will be significant development to
12 report at the next status conference.

13 THE COURT: Is there a regular calendar of
14 meetings for the Watermaster Board?

15 MR. McGLOTHLIN: The Watermaster Board is
16 calendared to meet monthly, unless there's no relative
17 substantive agenda items.

18 THE COURT: So those meetings have occurred?

19 MR. McGLOTHLIN: They occur regularly.

20 THE COURT: And are there staff reports in
21 advance?

22 MR. McGLOTHLIN: There are, and if Your Honor
23 would like, we certainly be willing to provide you with
24 the agenda and staff reports for -- there are not only
25 board meetings, there are also technical advisory --

1 technical committee --

2 THE COURT: I don't think I require that at
3 this time. I don't want to put my nose too far under
4 the tent, as if I'm an expert on that.

5 I assume that the Watermaster will draw that
6 together in good, intelligible form and give me all the
7 details that you think I need.

8 Also, accept my invitation to present all the
9 questions that you would anticipate that an informed
10 judge would.

11 MR. McGLOTHLIN: And we would always welcome
12 Your Honor to ask to see any materials, any underlying
13 materials, agendas, as necessary.

14 THE COURT: I will say to the Watermaster, if
15 you see that a particular report is particularly
16 illuminating on an issue, feel free to send it to me.

17 I think you have an email address for me.

18 MR. McGLOTHLIN: I do, Your Honor.

19 THE COURT: And you're free to do that, without
20 me requesting each and every communication be sent out
21 to me.

22 MR. LAREDO: I have a question for the court.
23 Would you like that Watermaster glossary in
24 advance of March 17th?

25 THE COURT: I think it would be helpful. If

1 you could just prepare it, maybe file it, and email it
2 to me.

3 MR. McGLOTHLIN: Maybe we could do that and
4 file that with the annual report.

5 THE COURT: That's okay too.

6 Actually, with the annual report is fine.

7 MS. GERARD: On the events that Mr. Laredo was
8 describing, we can include that in the annual report.

9 THE COURT: Oh, yes, I would expect that --
10 because you're talking about the three-legged stool,
11 and all of these things need to come together, and I
12 need to be well informed on those developments and how
13 they impact any judicial involvement.

14 MR. McGLOTHLIN: Your Honor, the only other
15 matter -- I'm looking through the agenda -- that we
16 didn't really touch on is the basin boundary
17 modification.

18 THE COURT: Why don't we just ask, because I
19 may ask for a transcript, let's say we're going off the
20 record and the only main thing you'll be reporting on
21 is --

22 MR. McGLOTHLIN: The basin boundary
23 modification.

24 THE COURT: That's fine, that will be covered
25 in the next annual report.

1 And we thank the court reporter, and I'm sure
2 they'll be asking for a transcript.

3 (The matter was adjourned at 10:38 a.m.)
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1 STATE OF CALIFORNIA)

2 COUNTY OF MONTEREY)

3

4 I JUDIE A. NICHOLAS, Certified Shorthand
5 Reporter, License 12229, in and for the State of
6 California, do here by certify:

7 That said proceedings were reported at the time
8 and place stated herein, and thereafter transcribed by
9 computer-aided transcription.

10 I further certify that I am not interested in
11 the outcome of this action, nor connected with, nor
12 related to any of the parties of said action.

13

14 Dated this 21st day of September, 2016.

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19 JUDIE A. NICHOLAS, CSR 12229

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF MONTEREY
3
4 CALIFORNIA AMERICAN WATER,
5 Plaintiff,
6 vs. Case No. M66343
7 CITY OF SEASIDE, et al.,
8 Defendants.
9
10 MONTEREY PENINSULA WATER
11 MANAGEMENT DISTRICT,
12 Intervenor.
13
14 MONTEREY COUNTY WATER RESOURCES
15 AGENCY,
16 Intervenor.
17
18 AND RELATED CROSS-ACTIONS
19
20
21
22
23
24
25
BEFORE THE HONORABLE LESLIE C. NICHOLS
DEPARTMENT 13
JUNE 17, 2016
9:40 A.M.
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1 MONTEREY, CALIFORNIA, JUNE 17, 2016
2 9:39 A.M.
3 MR. MCGLOTHLIN: Your Honor, again, Russell
4 McGlothlin on behalf of the Watermaster. It's -- we're
5 very pleased to have you with us and as a partner in
6 managing this essential resource.
7 If I may say a couple of high level comments
8 about the process. As for myself, an admission, I am
9 not a day-to-day litigator, my expertise is in
10 California water resource management, and particularly
11 ground water.
12 I have been involved in this adjudication since
13 the filing of the complaint. I've worn different hats.
14 I've represented the City of Seaside, and, with the
15 permission of the city, appropriate conflict waivers,
16 I'm now representing the Watermaster.
17 I am pleased, and I am hopeful to say that they
18 will maintain that there is a very significant degree of
19 cooperation -- cooperative enterprise is the word you
20 used -- and that is the case, I think much to the wise
21 judgment of Judge Randall, to appoint the Watermaster as
22 he did.
23 There is -- I am not aware of any active
24 conflict presently with respect to the management of the
25 groundwater basin. Rather, the Watermaster is acting

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09:40:55 1 cooperatively among the members of the Board of
09:40:59 2 Directors, and we are hopeful that we will work
09:41:02 3 cooperatively with the Court.
09:41:03 4 THE COURT: That's what I concluded. It seemed
09:41:06 5 apparent to me that it is a public -- we have an open
09:41:10 6 courtroom. It happens that the only people that are
09:41:11 7 here are related in some way to the parties, but this is
09:41:14 8 different than a legislative hearing room or passing a
09:41:19 9 huge federal law, just -- nobody -- public doesn't know
09:41:22 10 about all these amendments, it's very transparent, and
09:41:25 11 that's the purpose of this meeting. I appreciate your
09:41:29 12 inviting me.
09:41:32 13 MR. McGLOTHLIN: Certainly, Your Honor, and I
09:41:33 14 will acknowledge, as a principal of water law generally,
09:41:36 15 that conflicts and judicial actions concerning water
09:41:40 16 have both the interest of the parties at stake in
09:41:42 17 adjudicating the rights of the party. They also are
09:41:46 18 impregnated with an extensive public interest that stems
09:41:49 19 from our California Constitution, Article 10, Section 2.
09:41:53 20 THE COURT: Right.
09:41:54 21 MR. McGLOTHLIN: I think, as an overarching
09:41:58 22 principal, we acknowledge that there are issues. There
09:42:04 23 are, directly, problems that need to be addressed over
09:42:09 24 time in both of the active sub-basins in the -- in the
09:42:16 25 groundwater basin.

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09:42:18 1 THE COURT: Again, those two sub-basins are?
09:42:22 2 MR. McGLOTHLIN: The coastal sub area -- I may
09:42:24 3 have misspoke mistake, they should be referred to
09:42:28 4 sub-areas to be distinguished from sub-basins.
09:42:30 5 THE COURT: Sub-basins.
09:42:32 6 MR. McGLOTHLIN: And, if I may, Seaside
09:42:35 7 Groundwater Basin is technically a sub-basin of the
09:42:38 8 greater Salinas Valley Ground Water Basin, but it is
09:42:41 9 separately managed and often referred to generally as
09:42:45 10 just the basin. Technically speaking, it is a
09:42:46 11 sub-basin.
09:42:46 12 Within that sub-basin there are four sub-areas,
09:42:48 13 but only two are the ones that are really active where
09:42:51 14 there's pumping, and that is the coastal sub-area, and
09:42:55 15 what is referred to as the Laguna Seca sub-area.
09:42:59 16 THE COURT: Right.
09:43:00 17 MR. McGLOTHLIN: They have different challenges
09:43:02 18 going forward. Related, there's hydrogeologic
09:43:07 19 connectivity between them, the coastal sub-area being
09:43:09 20 next to the coast.
09:43:12 21 The concern is sea water intrusion, as is the
09:43:15 22 case occurring -- it has been occurring for decades --
09:43:16 23 to the north within the other sub-basins -- coastal
09:43:21 24 sub-basins of the Salinas Valley.
09:43:23 25 THE COURT: Laguna Seca extends beyond the

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09:43:26 1 direct jurisdiction of this order, doesn't it?
09:43:30 2 MR. McGLOTHLIN: The groundwater stratigraphy
09:43:35 3 does continue beyond the adjudicated boundaries, and
09:43:41 4 what the implication of that is that groundwater
09:43:44 5 production and activities to the east of the adjudicated
09:43:47 6 boundaries has an influence within the adjudicated
09:43:51 7 boundaries, and that's why you've seen the intention to
09:43:56 8 work cooperatively with the stakeholders and the
09:43:56 9 regulatory overlap there to address the problem.
09:44:00 10 THE COURT: And I think that's the Monterey
09:44:03 11 County Water Resources Agency?
09:44:05 12 MR. McGLOTHLIN: Your Honor, it is the Monterey
09:44:06 13 County Water Resources Agency, but more specifically it
09:44:08 14 will be an entity that will be formed within the next
09:44:11 15 year, referred to as a Groundwater Sustainability
09:44:15 16 Agency.
09:44:15 17 THE COURT: That's under the 2014 law?
09:44:19 18 MR. McGLOTHLIN: That's correct, that comes
09:44:20 19 under what is the Sustainable Water Management Act, and,
09:44:24 20 if you may, I will probably refer to it as SWMA.
09:44:26 21 THE COURT: I'd like a glossary so --
09:44:31 22 MR. McGLOTHLIN: So you have the issues of the
09:44:34 23 potential sea water intrusion in the costal sub-area,
09:44:41 24 you have the issues of a gradual decline, but,
09:44:43 25 nonetheless, a continuing decline of groundwater levels

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09:44:48 1 in the east Laguna Seca area. These are issues that
09:44:52 2 must be addressed over time.
09:44:55 3 The Watermaster is acutely aware of what the
09:44:59 4 issues are and is doing its very best and hopes to work
09:45:02 5 cooperatively, of course, with the Court to address
09:45:05 6 these, but the good thing is that these are not issues
09:45:11 7 that are likely to develop into an acute problem in the
09:45:14 8 near future. They are gradual and long-term problems
09:45:17 9 and --
09:45:31 10 THE COURT: At some point I'd very much
09:45:45 11 appreciate understanding a little bit about how the
09:45:49 12 Watermaster works. You have a staff, it's funded, and
09:45:53 13 the staff interacts with voting members, and so at some
09:45:59 14 point it would be helpful to me to see how the players
09:46:02 15 come together and reach this cooperation, but I don't
09:46:05 16 want to disturb the order of your presentation.
09:46:09 17 MR. McGLOTHLIN: Absolutely, and we can address
09:46:11 18 that in Item 2 in the agenda with respect to the basin
09:46:16 19 management structure.
09:46:18 20 I'm pretty much finished with the overarching
09:46:23 21 perspectives.
09:46:25 22 THE COURT: Is -- is the whole issue of county
09:46:32 23 compliance with the order something you're going to get
09:46:35 24 to?
09:46:35 25 MR. McGLOTHLIN: I was just going to get to

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09:46:38 1 that.

09:46:38 2 The management of the Seaside basin, of course,

09:46:40 3 is not in a vacuum, and, as you read in our report, the

09:46:47 4 community of the Monterey Peninsula has been dealing

09:46:49 5 with a water supply challenge for decades which has

09:46:53 6 become more acute beginning in 1995 with the first order

09:46:57 7 from the State Water Resource Control Board and then

09:47:01 8 again in 2009 with the Cease and Desist Order which was,

09:47:04 9 frankly, the State saying time is up, we really need and

09:47:08 10 mean for you to find new water supplies.

09:47:12 11 And as I think -- I don't have to elaborate,

09:47:15 12 the issues concern diversion from the Carmel River, the

09:47:20 13 other primary source of water supply for the peninsula,

09:47:23 14 which is having a deleterious effect on riparian

09:47:29 15 habitat, and specifically the threatened species of the

09:47:34 16 coastal steelhead population.

09:47:36 17 THE COURT: Again, because you had a nice

09:47:40 18 synopsis there of the several efforts that the county

09:47:42 19 has made, one to work towards the dam and certain other

09:47:46 20 things, finally into desalinization.

09:47:49 21 Could you recap that?

09:47:50 22 MR. McGLOTHLIN: Certainly. In 1995, the State

09:47:57 23 issued Order 9510, State Water Resources Control Board,

09:48:01 24 that said you must, Cal Am, move with diligent efforts

09:48:06 25 to obtain a new water supply.

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09:49:30 1 municipal and urban use on the peninsula.

09:49:32 2 And during that process, Senator Keeley --

09:49:39 3 State Senator Keeley, I believe, brought a legislative

09:49:45 4 effort and ultimately legislation to require the

09:49:52 5 Commission to look at all alternatives to a damn on the

09:49:54 6 river.

09:49:55 7 I may be out of line here, but I think the

09:49:58 8 premise was new dams on the Carmel River weren't very

09:50:02 9 popular and we needed to find another alternative.

09:50:06 10 May I just pause and say it's a unique

09:50:07 11 situation you find yourself here on the Monterey

09:50:10 12 Peninsula compared to the rest of the state. There is

09:50:11 13 no state plumbing to the peninsula. We cannot reach out

09:50:16 14 to the Central Valley or any other distant locations for

09:50:20 15 a new water supply, that much of the other -- rest of

09:50:25 16 the state, including Southern California and Central

09:50:27 17 Valley, et cetera, the Bay area, all have their sources

09:50:30 18 of imported water, whether it's from the Sierras, the

09:50:34 19 Delta, the Colorado River, the Owens Aqueduct, et

09:50:36 20 cetera.

09:50:36 21 THE COURT: I worked my way partly through

09:50:39 22 Stanford working five summers at Yosemite, so I was a

09:50:42 23 firefighter, and I worked across Hetchy, up to Miguel

09:50:44 24 Meadows, out there, and -- so, of course, I noticed the

09:50:48 25 anomaly that San Francisco has said on their sign that

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09:48:08 1 First efforts were with cooperation with the

09:48:11 2 Water Management District to put a storage -- new dam on

09:48:18 3 the Carmel River that would legalize the diversions,

09:48:22 4 and, unfortunately, that effort failed for -- on a vote

09:48:27 5 concerning bonding for the dam.

09:48:30 6 And, if I may, we have some individuals here,

09:48:34 7 particularly my good friend Mr. Laredo to my left, who

09:48:38 8 is -- has been general counsel to the Water Management

09:48:42 9 District since 1979, and he could tell you the very

09:48:45 10 sordid details of water politics on the peninsula better

09:48:50 11 than I could.

09:48:51 12 THE COURT: I want to keep this uplifting. You

09:48:56 13 know --

09:48:56 14 MR. McGLOTHLIN: Well, it's interesting.

09:49:00 15 There's nothing more interesting than social dynamics.

09:49:06 16 MR. LAREDO: Mr. McGlothlin is doing a wonderful

09:49:08 17 job.

09:49:08 18 MR. McCLOTHLIN: I'm doing my very best, Your

09:49:08 19 Honor.

09:49:08 20 So, following that, Cal Am itself tried for a

09:49:13 21 dam project and had an application before the California

09:49:16 22 Public Utilities Commission which, of course, asserts

09:49:22 23 jurisdiction, and is the gatekeeper for anything that

09:49:22 24 the utility does, and the utility is the service

09:49:25 25 provider to probably well over 95 percent of the

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09:50:54 1 they're progressive, but when they got to the question

09:50:57 2 of whether or not to -- let's get rid of the dams, they

09:51:00 3 were quite resolute in opposing that.

09:51:01 4 MR. McGLOTHLIN: Very good quality to get

09:51:04 5 something through --

09:51:04 6 THE COURT: I don't smile at this. It's --

09:51:07 7 it's not a matter of politics, people look for an

09:51:12 8 interest, and they can sometimes conflict with the most

09:51:14 9 robust public decisions, just life.

09:51:21 10 MR. McGLOTHLIN: We'd agree, for better or not,

09:51:23 11 we are a locally sustained community here for water

09:51:26 12 supply.

09:51:27 13 THE COURT: That is a big challenge.

09:51:30 14 MR. McGLOTHLIN: It's a very big challenge. As

09:51:33 15 the population has grown and the like, the limited water

09:51:37 16 supply from the river -- and when I say the river, it's

09:51:40 17 actually a subterranean take, but it's directly

09:51:44 18 affecting the river.

09:51:46 19 THE COURT: What is your sense of -- of course,

09:51:48 20 my daughter, who is a high school teacher, used to laugh

09:51:53 21 when I had friends of more than 25 years standing, but

09:51:57 22 now she has a daughter who's a college graduate,

09:51:57 23 25 years doesn't look quite so long to her.

09:52:02 24 I, of course, note that -- the Water Resources

09:52:09 25 Board made that order 21 years ago, and, you know, you

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09:52:14 1 have to -- you have challenges and you do get a sense of
09:52:19 2 urgency from the water board that their -- they're
09:52:24 3 looking at this more closely, and if so, that
09:52:27 4 implication is there.
09:52:27 5 MR. McGLOTHLIN: It does, Your Honor, and very
09:52:30 6 closely. I wouldn't guess where this stacks in their
09:52:35 7 agenda, but I know it's towards the top of the list.
09:52:37 8 THE COURT: That means we get close attention
09:52:40 9 because we want to be in compliance.
09:52:44 10 MR. LAREDO: Your Honor, if I can comment. We
09:52:46 11 know that the State Water Resources Control Board's most
09:52:48 12 recent order was in 2009. That is time limited in terms
09:52:55 13 of when it has to be performed and the parties to that
09:52:58 14 proceeding have a pending application to the State Water
09:53:04 15 Resources Control Board to revisit its order and to
09:53:10 16 extend and modify the limits, and that's on the State
09:53:13 17 Water Resources Control Board calendar for July 19th of
09:53:17 18 this year.
09:53:17 19 THE COURT: Was that the 2020?
09:53:22 20 MR. LAREDO: That's correct.
09:53:23 21 THE COURT: 2020, 2022, or is it just --
09:53:28 22 MR. McGLOTHLIN: No, your Honor, 2020 moving
09:53:31 23 around in different places.
09:53:31 24 THE COURT: Right.
09:53:32 25 MR. McGLOTHLIN: That is the -- that's the

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09:53:34 1 compliance deadline under SGMA, but under this -- what
09:53:38 2 we call the CDO, the Cease and Desist Order -- add that
09:53:44 3 to the glossary -- the CDO had a deadline of the end of
09:53:49 4 this year to get off the -- to cease illegal diversions
09:53:53 5 or unauthorized diversions from the Carmel River.
09:53:57 6 Because of constraints at the California Public
09:54:01 7 Utilities Commission that all interests acknowledged are
09:54:05 8 beyond the effect of the parties here and California
09:54:08 9 American, they are a big concern.
09:54:12 10 The California Environmental Quality Act,
09:54:14 11 National Environmental Policy Act compliance that has
09:54:18 12 taken some time, that process has been delayed for
09:54:21 13 upwards of four to five years, and so there is now an
09:54:26 14 application that is going before the state board to
09:54:29 15 extend that time period now until 2021.
09:54:33 16 THE COURT: So if I understand it --
09:54:37 17 Mr. Laredo?
09:54:37 18 MR. LAREDO: Yes.
09:54:38 19 THE COURT: It sounds like an impossibility in
09:54:41 20 the sense that there are multiple procedures that you
09:54:46 21 must comply with, and going through the federal and
09:54:49 22 state regulations has created, from your perspective,
09:54:51 23 and you hope this is convincing with the board, not
09:54:55 24 recalcitrance or delay, but necessarily, by virtue of
09:55:00 25 those timelines, has extended compliance and you need

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09:55:04 1 relief.
09:55:05 2 MR. LAREDO: That's correct, when we talk about
09:55:07 3 community itself. Technically the order is against Cal
09:55:08 4 Am. My client is the Monterey Peninsula Water
09:55:12 5 Management District. We are a party to that proceeding,
09:55:13 6 but I believe that you are correct that many, many
09:55:16 7 factors have caused the delay for which there is no
09:55:21 8 particular party at blame.
09:55:23 9 The Public Utilities Commission recognized that
09:55:26 10 and passed a resolution directing that its Executive
09:55:26 11 Director communicate the position of the Public
09:55:36 12 Utilities Commission that the amendment to the State
09:55:38 13 Board Order was appropriate, and the State Board is
09:55:41 14 poised to consider that matter on July 19th.
09:55:44 15 THE COURT: And you are in harmony with Cal Am
09:55:44 16 on that application?
09:55:44 17 MR. LAREDO: That's correct.
09:55:48 18 THE COURT: And who is Cal Am's counsel?
09:55:49 19 MS. GERARD: Lori Gerard, and also on the
09:55:52 20 phone we have Mr. Donlan.
09:55:57 21 THE COURT: Yes, thank you.
09:55:57 22 The interruptions are not to interrupt, I'm
09:56:00 23 just trying to follow along.
09:56:03 24 MR. McGLOTHLIN: Entirely understandable.
09:56:04 25 The takeaway from this, the high level

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09:56:08 1 perspective, is that the State understands where -- or I
09:56:14 2 believe they understand -- and I believe we will likely
09:56:16 3 see some form of favorable action next month on that
09:56:21 4 application because we are -- we, as a community, Cal Am
09:56:27 5 specifically, as a company, have been diligently making
09:56:30 6 efforts to complete a new water supply project.
09:56:32 7 If I may, there are different braids of that
09:56:37 8 water supply project, it's not just desalination,
09:56:41 9 although desalination it a meaningful -- probably is the
09:56:43 10 largest -- what's sometimes referred to as a
09:56:46 11 three-legged stool.
09:56:48 12 THE COURT: That's what stuck in my mind. I
09:56:49 13 knew it was broader in scope, but I wasn't sure what it
09:56:51 14 was.
09:56:51 15 MR. McGLOTHLIN: Great.
09:56:52 16 And, if you will, I will explain. There are --
09:56:54 17 two other braids of the collective new water supply will
09:56:58 18 be not only the desalination project that California
09:57:03 19 American is developing -- we can talk about the details
09:57:07 20 at your request -- as well as an advanced recycled water
09:57:11 21 project that involves the Seaside Basin in that it will
09:57:15 22 inject highly treated -- advanced treated, going through
09:57:19 23 reverse osmosis, micro filtration, ultraviolet,
09:57:23 24 et cetera, before being injected into the Seaside Basin.
09:57:27 25 This is -- by the way, this is extraordinarily high

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09:57:30 1 quality water.

09:57:32 2 THE COURT: I think the science is away ahead

09:57:34 3 of public opinion.

09:57:37 4 MR. McGLOTHLIN: Perfectly stated.

09:58:06 5 And that is a project that is being undertaken

09:58:06 6 jointly by Mr. Laredo's client, the Monterey Peninsula

09:57:47 7 Water Management District and the Monterey Regional

09:57:48 8 Water Pollution Control Agency with a Water Purchase

09:57:51 9 Agreement from California American. That allows the

09:57:56 10 downsizing of the desalination project and some of the

09:57:58 11 environmental effects there, and also diversifies the

09:58:03 12 portfolio of water, and is supported by the community at

09:58:06 13 large to date.

09:58:07 14 MR. LAREDO: For the purposes of your glossary,

09:58:09 15 that is commonly referred to as the Groundwater

09:58:12 16 Replenishment Project.

09:58:15 17 THE COURT: Oh, yes, I saw the -- is it the

09:58:17 18 case that you're developing some plans for desalination,

09:58:22 19 but trying to ramp up on the replenishment so as to

09:58:27 20 diminish the reliance on desalinization?

09:58:28 21 MR. McGLOTHLIN: Yes, Your Honor. The

09:58:30 22 intention is a hybrid of -- portfolio hybrid approach.

09:58:35 23 THE COURT: So desalination will remain in the

09:58:38 24 mix.

09:58:39 25 MR. McGLOTHLIN: Desalinization -- they are not

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09:58:40 1 complimentary, and the only competition is the size of

09:58:44 2 the desalinization project.

09:58:44 3 MR. LAREDO: Yes, and also one advantage of the

09:58:47 4 ground water replenishment project is that it that

09:58:47 5 appears that will be able to come on line and deliver

09:58:50 6 water faster than the desal plan.

09:58:53 7 THE COURT: And the third?

09:58:55 8 MR. McGLOTHLIN: The third is referred to as

09:58:59 9 aquifer storage and recovery water.

09:59:01 10 What that is is diversions from the Carmel

09:59:03 11 River during the winter, during periods of excess flows

09:59:07 12 when it's not necessary or critical for riparian

09:59:13 13 habitat, all authorized by permit from the State Water

09:59:15 14 Resources Record Board, that water taken over the hills

09:59:17 15 and injected -- just like the ground water replenishment

09:59:23 16 water, injected through aquifer storage and recovery

09:59:27 17 wells, wells that go both ways, into the Seaside

09:59:31 18 Basin for recovery when -- during dryer or other periods

09:59:33 19 when were necessary.

09:59:35 20 And Cal Am has a very sophisticated procedure

09:59:39 21 for managing its apply to supply to lessen its draw from

09:59:45 22 the Carmel River during dry months when it's most

09:59:48 23 critical to the riparian habitat during this interim

09:59:48 24 period.

09:59:50 25 So what we --

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09:59:50 1 THE COURT: Will that require CEQA review?

09:59:56 2 MR. McGLOTHLIN: The CEQA review has already

09:59:58 3 been done for that and is already occurring. The ASR is

10:00:00 4 already on line, with the exception it will be

10:00:03 5 augmented, provided that infrastructure that we are

10:00:08 6 presently -- I should say Cal Am is presently seeking

10:00:11 7 permission from the California Public Utilities

10:00:15 8 Commission to add in an booster pump and an essential

10:00:17 9 pipeline that will add to our ability to do aquifer

10:00:20 10 storage and recovery, sometimes referred to as ASR.

10:00:23 11 And the future, post 2021, should look like a

10:00:34 12 combination of five sources of water for the peninsula

10:00:38 13 largely, which include the desalination, the GWR,

10:00:38 14 Groundwater Replenishment, also known formally as the

10:00:47 15 Pure Water Monterey Project, aquifer storage and

10:00:48 16 recovery water, the native Seaside groundwater basin

10:00:52 17 water consistent and within the confines of the basin

10:00:55 18 safe yield, and some continuing diversions from the

10:00:58 19 Carmel River within the legal authorized diversions

10:01:05 20 under state law.

10:01:06 21 Those are the five large sources of water for

10:01:10 22 the peninsula. The three new ones are the -- are the

10:01:14 23 desal, GWR and ASR, and the next five years is the

10:01:14 24 critical --

10:01:14 25 THE COURT: And the ASR is, again, what?

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10:01:26 1 MR. McGLOTHLIN: Aquifer storage and recovery.

10:01:26 2 That's the Carmel River reversion to injections into the

10:01:28 3 Seaside basin.

10:01:28 4 THE COURT: The diversion and the Seaside basin

10:01:32 5 are existing?

10:01:34 6 MR. McGLOTHLIN: The existing -- yeah, the

10:01:37 7 fourth and fifth, which are not new supplies, are the

10:01:41 8 safe quantity of water from the Seaside basin, within

10:01:45 9 the safe yield, and the safe or authorized legal

10:01:50 10 diversions from the Carmel River underflow.

10:01:54 11 THE COURT: Part of this -- you're going to get

10:01:55 12 to it, I think -- is that you anticipate it may -- there

10:02:01 13 may be a petition to the court because the express terms

10:02:05 14 of Judge Randall's order dealing with the triennial

10:02:12 15 drawdown; is that correct?

10:02:13 16 MR. McGLOTHLIN: That's correct.

10:02:15 17 THE COURT: Under those express terms,

10:02:20 18 that's -- that's felt to comply with.

10:02:25 19 MR. McGLOTHLIN: Yes, we don't have a project

10:02:28 20 that match the words of the judgment, that's correct.

10:02:30 21 THE COURT: And so you're anticipating working.

10:02:34 22 **A. What regard.**

10:02:35 23 MR. McGLOTHLIN: If I --

10:02:36 24 THE COURT: Continue with --

10:02:38 25 MR. McGLOTHLIN: No, I think this is fine, and

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10:02:41 1 I think we put the items here and at the end we can go
10:02:43 2 down the agenda --
10:02:45 3 THE COURT: I'm getting the cart before the
10:02:46 4 horse, but these are just the things that are pressing.
50 5 MR. McGLOTHLIN: I'm fine working that way,
2:53 6 Your Honor, and I think it's constructive for you to ask
10:02:54 7 questions as they come up.
10:02:56 8 The subject you just raised was the potential
10:02:58 9 request for relief from the next scheduled tri-annual
10:03:04 10 ramp down of the judgment, which would go into the
10:03:07 11 effect for the 2018 water year through 2021, and that
10:03:12 12 would be -- what that is is a 560 acre feed, ten percent
10:03:16 13 of the original combined safe yield of 5,600, reduction
10:03:21 14 in allowed diversions under the safe yield, and the
10:03:25 15 judgment has parameters in it which said -- and if I may
10:03:30 16 be colloquial for a moment -- you will either bring in
10:03:34 17 new water of equivalent quantity or you will suffer --
10:03:37 18 not suffer, that's probably a wrong word -- you will
10:03:41 19 implement a ten percent reduction on a gradual -- every
10:03:44 20 third year rampdown.
10:03:45 21 THE COURT: Because we need to maintain a
10:03:47 22 perpetual supply --
10:03:49 23 MR. McGLOTHLIN: Because we need to maintain a
10:03:47 24 perpetual supply, and this is your -- this is the judge
10:03:54 25 that -- Your Honor's staircase, not a cliff, a

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10:04:00 1 staircase, a potential staircase, is to say, again, the
10:04:01 2 problems are long-term, they don't demand an immediate
10:04:04 3 knee jerk reaction, they deserve long-term proceedings.
10:04:09 4 THE COURT: And there are procedures for
10:04:11 5 amendment of the judgment, and we can go very cautious
10:04:15 6 about that because we don't want to defeat the purpose
10:04:15 7 of perpetual surprise.
10:04:17 8 MR. McGLOTHLIN: Certainly, and the -- so what
10:04:19 9 we brought to your attention, we wanted -- we wanted to
10:04:25 10 bring it to your attention, since you are new to this
10:04:28 11 case -- had Judge Randall been here we were intending to
10:04:33 12 bring the same subjects so that there was advance
10:04:35 13 notice.
10:04:35 14 We don't know where the demand and -- will
10:04:40 15 stack up on the peninsula in the next couple years. We
10:04:43 16 are not certain yet how -- what form of revised cease
10:04:43 17 and desist order from the State Water Resource Control
10:04:52 18 Board we will get in July or -- this year, and,
10:04:55 19 importantly, we don't know yet where we will be with the
10:04:59 20 water supply projects, including the GWR and
10:05:03 21 desalination projects and augmented ASR for storage and
10:05:08 22 recovery.

23 We don't then, sitting here in June of 2016,
10:05:12 24 next year -- better part of next year we will have a
10:05:17 25 better grasp on that.

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10:05:19 1 THE COURT: I have a question at this point,
10:05:21 2 before I forget it.
10:05:24 3 MR. McGLOTHLIN: Certainly.
10:05:24 4 THE COURT: One of the portions of the report
10:05:26 5 it talks about the -- the -- tread cautiously because of
10:05:31 6 deleterious economic impacts.
10:05:35 7 Having been a mayor of a city and recognizing
10:05:40 8 that developer will come in and say, "Look, there's a
10:05:41 9 housing imbalance, there's a need for affordable
10:05:45 10 housing, there's a need for high end housing, these are
10:05:45 11 pressing needs. We need to find new business
10:05:48 12 opportunities."
10:05:50 13 What is the nature of the public information so
10:05:53 14 that those elected officials carrying out their
10:05:57 15 responsibilities always have clearly in their mind that
10:06:00 16 there's ongoing supervision of the water supply and that
10:06:05 17 the -- so they -- in effect, someone is not claiming
10:06:10 18 foul later and saying, my goodness, the Watermaster and
10:06:15 19 the Court is shutting down our water for the 250 new
10:06:19 20 units which we just created, when, if they had advance
10:06:22 21 notice, of course, responsibilities fall upon many
10:06:25 22 officials and participants, they might have said we need
10:06:28 23 to go slower on these new opportunities for development
10:06:32 24 because these new opportunities for development,
10:06:34 25 although attractive, may impact the water supply unduly.

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10:06:41 1 I'm not pointing fingers at anybody, I'm saying
10:06:43 2 this is a highly calibrated process.
10:06:46 3 MR. McGLOTHLIN: I have a couple thoughts, if I
10:06:48 4 may, on that, and I think there are others in the room
10:06:50 5 that should be heard on that subject.
10:06:52 6 THE COURT: Sure.
10:06:53 7 MR. McGLOTHLIN: A couple observations.
10:06:55 8 First, that there are many different actors
10:06:57 9 that need to coordinate for proper public policy here.
10:07:01 10 We are balancing environmental needs together with
10:07:05 11 economic and consumptive use needs.
10:07:08 12 THE COURT: It's an everyday decision at City
10:07:11 13 Hall.
10:07:11 14 MR. McGLOTHLIN: Understood.
10:07:13 15 On the subject of water management and
10:07:15 16 particular development, one aspect of the cease and
10:07:20 17 desist order issued in 2009 was a moratorium on new
10:07:23 18 water connections, so the prospect of new water
10:07:27 19 connections, until we have complied with the order, can
10:07:30 20 remove the unauthorized diversions from the river, are
10:07:33 21 really not a viable prospect.
10:07:37 22 MR. LAREDO: And the Water Management District
10:07:39 23 has an active permitting program so it examines any
10:07:43 24 expansion of use down to the fixture level, or existing
10:07:49 25 structures, so if you wanted to add a bathroom to your

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10:07:53 1 home, you would have to show that you have an on-site
 10:07:56 2 water credit for that.
 10:07:57 3 The District regulates expansions of seats in a
 10:08:04 4 restaurant, bars, stools in a restaurant, so it is a
 10:08:09 5 very highly regulated matter. There is very little
 10:08:13 6 water that would be available for that new development,
 10:08:14 7 so the economic impact comment would be if there is this
 10:08:18 8 ramp down, or the state board cliff, that -- the means
 10:08:22 9 to meet that water supply that's available would have to
 10:08:25 10 come from reducing those people who are presently using
 10:08:29 11 water.
 10:08:30 12 THE COURT: And, of course, the serious impacts
 10:08:34 13 that would flow from that.
 10:08:36 14 MR. McGLOTHLIN: And this community is highly
 10:08:40 15 dependent economically on its tourism and transient
 10:08:43 16 occupancy.
 10:08:43 17 THE COURT: Come and visit.
 10:08:47 18 MR. McGLOTHLIN: And so -- there is obvious
 10:08:54 19 concern if there was an acute water shortage, that would
 10:08:59 20 have ripple effects into the economics, for not just the
 10:09:02 21 Peninsula but the entire region, so -- I don't think
 10:09:06 22 anybody has intentions of making that into more than it
 10:09:11 23 is. It is -- it is just what it is.
 10:09:14 24 THE COURT: Right.
 10:09:15 25 MR. McGLOTHLIN: And I want to -- the other

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10:09:18 1 aspect of balancing the water supply is we anticipate
 10:09:20 2 that this revised CDO will have parameters --
 10:09:24 3 THE COURT: For which there's a hearing
 10:09:26 4 scheduled in July?
 10:09:28 5 MR. LAREDO: That's correct.
 10:09:30 6 MR. McGLOTHLIN: Correct. We anticipate that
 10:09:32 7 it will have conditional permission for continuing
 10:09:36 8 diversions at levels that they presently are.
 10:09:38 9 If milestones are not met for various reasons,
 10:09:45 10 we may be facing reduced water, even under our existing
 10:09:50 11 CDOs. It's not an all or nothing type situation.
 10:09:53 12 The obvious intention of the State is to
 10:09:58 13 tighten screws where appropriate and leave them
 10:10:03 14 tightened as they are, where they are equally
 10:10:03 15 appropriate.
 10:10:04 16 We are trying to balance the CDO situation, the
 10:10:07 17 development of new water supplies, when I say we, the
 10:10:11 18 community, Cal Am, together with the Water Management
 10:10:14 19 District. Another hat I wear is for the local Monterey
 10:10:19 20 Peninsula Regional Water Authority, which is sometimes
 10:10:21 21 referred as the Mayor's authority, which is an entity --
 10:10:24 22 a joint powers authority created to cooperate, and, if
 10:10:29 23 you will, birddog the process to ensure consistency with
 10:10:32 24 the public interest as we develop these new water
 10:10:36 25 supplies.

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10:10:36 1 All three of those entities, along with many
 10:10:39 2 stakeholders, some behind me, and in this water
 10:10:43 3 community here in Monterey, are jointly working through
 10:10:45 4 this process. We need to balance between interest in
 10:10:48 5 the Seaside basin, interest on the Carmel River, the
 10:10:54 6 economy, the response to the state, response to the
 10:10:57 7 Public Utilities Commission, so you are a very important
 10:11:00 8 piece of a constellation of actors.
 10:11:04 9 THE COURT: I don't have any false pride over
 10:11:08 10 this, but there are many responsible players. The
 10:11:11 11 court's supervision is important here.
 10:11:13 12 Are you involved as counsel in any -- I read
 10:11:16 13 from the reports that -- there are about a dozen
 10:11:21 14 instances with the new law does not specifically usurp
 10:11:25 15 the authority of ongoing judicial supervision.
 10:11:28 16 I thought I read about a dozen.
 10:11:32 17 MR. McGLOTHLIN: Two dozen.
 10:11:33 18 THE COURT: Are you involved in any of those?
 10:11:35 19 MR. McGLOTHLIN: I am, Your Honor, in several
 10:11:37 20 of them.
 10:11:37 21 THE COURT: So they have these similar type
 10:11:40 22 issues that occur.
 10:11:43 23 MR. McGLOTHLIN: They do.
 10:11:44 24 A broader picture is we do not have ubiquitous
 10:11:44 25 one size fits all side groundwater management in

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10:11:44 1 California.
 10:11:47 2 The most challenged groundwater basins, of
 10:11:52 3 which the Seaside Basin is one, either because of
 10:11:54 4 overdraft or because of high social quorums, have gone
 10:11:56 5 through the adjudicatory process.
 10:11:59 6 Until now, outside of the adjudicatory process,
 10:12:01 7 there's been loose to no groundwater management.
 10:12:05 8 THE COURT: That led to the 2014 Act.
 10:12:08 9 MR. McGLOTHLIN: As it did. As the Act was
 10:12:10 10 passed, there was recognition that it had to be
 10:12:13 11 coordinated with management under -- in those basins
 10:12:17 12 where the judiciary is already managing it.
 10:12:19 13 There also needs to be acknowledgement that
 10:12:26 14 groundwater is highly interdependent and interrelated
 10:12:28 15 both between other groundwater supplies and between the
 10:12:31 16 surface water, and so we will manage discreet uses, with
 10:12:34 17 the understanding that there is impacts both from other
 10:12:37 18 areas to the area of interest and vice versa. That is
 10:12:41 19 the case here, for example, with the Coral de Tierra
 10:12:47 20 Area to the east of Laguna Seca sub-area, and vice
 10:12:51 21 versa, so there is -- needs to be coordination between
 10:12:54 22 existing management, both institutionally and
 10:13:00 23 hydrogeologically, to manufacture a word there, to
 10:13:05 24 achieve sustainable groundwater water management.
 10:13:08 25 THE COURT: Does the failure -- I want to

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10:13:12 1 forbid that possibility -- but does the failure of
10:13:15 2 cooperation have implications for court here?
10:13:23 3 MR. McGLOTHLIN: Yes, it does.
10:13:25 4 THE COURT: How would that develop?
10:13:30 5 MR. McGLOTHLIN: I'm glad you asked, and it
10:13:32 6 reminds me of you asking for and anticipate questions
10:13:36 7 and what the devil's arguments are.
10:13:37 8 THE COURT: I found that's a sound practice.
10:13:41 9 MR. McGLOTHLIN: Understood.
10:13:42 10 I'll give you some of the nightmares that we
10:13:46 11 might face and we will try to avoid.
10:13:51 12 Both sea water intrusion in the costal
10:13:54 13 sub-area, that's a real problem. That doesn't
10:13:57 14 necessarily involve cooperation with outsiders, but it
10:14:01 15 will -- if that were to occur, I have impacts that
10:14:05 16 insiders within the basin have to cooperate.
10:14:08 17 THE COURT: Nobody wants that. It would spoil
10:14:12 18 the supply, wouldn't it?
10:14:12 19 MR. McGLOTHLIN: It would spoil the supply, it
10:14:17 20 would reduce the storage, you know, for the better part
10:14:19 21 of our live times at least, and it would also, under the
10:14:22 22 intentional plan that's already in effect, immediately
10:14:24 23 reduce water withdrawals from the coastal sub-area.
10:14:30 24 THE COURT: How is that -- who goes out to make
10:14:34 25 whatever inspections are appropriate to make the best

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10:14:37 1 judgment as to whether there is intrusion?
10:14:40 2 MR. McGLOTHLIN: My good friend Bob Jake and
10:14:43 3 his staff are, every year, monitoring those wells that
10:14:48 4 --
10:14:48 5 THE COURT: Is that within the Watermaster.
10:14:51 6 MR. McGLOTHLIN: Watermaster, your special
10:14:54 7 master.
10:14:55 8 THE COURT: Thank you.
10:14:56 9 MR. McGLOTHLIN: And the County Water Resources
10:14:58 10 Agency and the Water Management District also have staff
10:15:01 11 and responsibilities on various areas of groundwater as
10:15:05 12 well.
10:15:06 13 THE COURT: Sounds to me like generally there's
10:15:08 14 been a high level of vigilance. You certainly explained
10:15:12 15 the response to my questions about no new hookups and --
10:15:14 16 because if you didn't have it managed to the -- right
10:15:18 17 down to the lowest level, you'd have all sorts of excess
10:15:24 18 usage.
10:15:26 19 MR. LAREDO: It could be a runaway freight
10:15:29 20 train, and I don't believe that exists, and there is a
10:15:30 21 tremendous level of cooperation and trust among the
10:15:33 22 parties.
10:15:38 23 MR. McGLOTHLIN: The only thing I would mention
10:15:38 24 in brief, the Laguna Seca sub-area --
10:15:39 25 THE COURT: You were going to talk about Corral

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10:15:42 1 de Tierra.
10:15:43 2 MR. McGLOTHLIN: Yeah, you asked what happens
10:15:46 3 if there's not cooperation. I interpret that as to, you
10:15:47 4 know, "What are the potential conflicts, be honest with
10:15:50 5 me."
10:15:50 6 THE COURT: That's right, just the kind of
10:15:52 7 things so I wouldn't be totally blindsided if something
10:15:55 8 came up.
10:15:56 9 MR. McGLOTHLIN: So that could come in two
10:15:58 10 forms. We are hopeful that we -- well, if I may, the --
10:16:04 11 the SGMA, Sustainable Groundwater Management Act
10:16:08 12 framework is that local agencies and the critical basins
10:16:13 13 as designated by the state must develop and appoint a
10:16:17 14 groundwater sustainability agency, which is either an
10:16:21 15 agency with groundwater or water management functions
10:16:24 16 and/or the cities and counties with general police
10:16:31 17 powers, or some combination of various overlapping
10:16:34 18 stakeholders which is most likely to be the case for the
10:16:38 19 Corral de Tierra sub area and the Salinas Valley proper,
10:16:41 20 so you have a GSA which needs to be developed by next
10:16:45 21 year, June of 2017.
10:16:47 22 THE COURT: Is that under the state law?
10:16:49 23 MR. McGLOTHLIN: That's under the state law.
10:16:51 24 And that agency, the GSA, has either until 2020 or 2022,
10:16:57 25 depending on the status of the basin. It's somewhat

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10:17:02 1 confusing. The intention was two years shorter if the
10:17:06 2 basin is critical overdraft.
10:17:06 3 The Corral de Tierra is not designated as
10:17:10 4 critically overdrafted. The 180 foot 400 foot aquifer
10:17:13 5 which is highly treated with sea water has been
10:17:17 6 designated as critically overdrafted.
10:17:18 7 The plan needs to come into fruition by
10:17:23 8 2020-2022 time frame. In that process, Watermaster
10:17:27 9 intends to collaborate, cooperate, negotiate with the
10:17:31 10 GSA for the Corral de Tierra sub-area, which may be the
10:17:35 11 GSA for the broader Salinas Valley. As things are
10:17:41 12 looking, that's probably going to be the case, but not
10:17:44 13 necessarily, it could be a single GSA for just that sub
10:17:48 14 basin -- cooperate and negotiate with that entity and
10:17:49 15 all of the other stakeholders that are in the Laguna
10:17:53 16 Seca sub-area, which include a golf course.
10:17:53 17 California American has its satellite system
10:17:58 18 there, as well as some mutual water companies, rural
10:18:03 19 domestic users, and cooperate and discuss what
10:18:07 20 management looks like there together with what
10:18:09 21 management looks like in the Laguna Seca sub-area, with
10:18:14 22 the acknowledgement we all have to be cognizant that
10:18:17 23 over time we have to cure the collective overdraft that
10:18:22 24 is lowering the water tables, particularly in the
10:18:25 25 eastern portion of the sub area.

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10:18:26 1 If we do not, the first thing that will occur
10:18:29 2 is that it's unlikely the Department of Water Resources
10:18:32 3 will approve the groundwater sustainability plan
10:18:37 4 promulgated for the Corral de Tierra. Moreover, you
11 5 have continuing jurisdiction -- the court has continuing
10:18:42 6 jurisdiction and a responsibility to correct that
10:18:45 7 overdraft.
10:18:47 8 In that process, just to be transparent,
10:18:50 9 there's going to have to be a discussion about either
10:18:52 10 reducing production in likely both locations, inside and
10:18:59 11 outside of the basin, and/or bringing in new water,
10:19:01 12 which is expensive and that expense has to be allocated.
10:19:06 13 THE COURT: You mean new water, not through
10:19:08 14 desalination. In other words, find a way to have it
10:19:11 15 trucked in or something like that?
10:19:13 16 MR. McGLOTHLIN: The beauty of it is we have
10:19:17 17 time. It won't be trucked in, that's very inefficient.
10:19:17 18 That's the call of last resort.
10:19:18 19 THE COURT: You said there's no pipeline.
10:19:18 20 MR. McGLOTHLIN: There's no pipeline.
10:19:20 21 THE COURT: So what do you mean when you say
10:19:23 22 "bring in water?"
10:19:24 23 MR. McGLOTHLIN: I'm ducking underneath the
10:19:26 24 table right now because I don't want to be shot by
10:19:29 25 anybody here.

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10:19:30 1 It could be -- it could be desalination. It
10:19:34 2 could be water done in cooperation with the Salinas
10:19:38 3 Valley proper. There are a variety of different
10:19:39 4 sources.
10:19:40 5 THE COURT: I'm not writing a book. One of the
10:19:45 6 CEQA cases I had involved of the City of San Jose and
10:19:48 7 several contiguous counties to the north, and it
10:19:52 8 involved traffic cooperation, and the city was taking
10:19:56 9 the position that it was entirely within their domain,
10:19:59 10 and I said, well, yes, but the law of CEQA requires you
10:20:06 11 to proceed in good faith, and they came to the table.
10:20:12 12 You know, it's -- people don't want decisions
10:20:18 13 made for them, but we know in the system of law that if
10:20:21 14 people fail or refuse, that there has to be procedures
10:20:25 15 to break the deadlock. Often people -- as we know, the
10:20:29 16 best negotiated solution is one that everybody grumbles
10:20:34 17 at a little bit, assuming it is a rational and
10:20:40 18 reasonable position.
10:20:41 19 I won't require you to go further on that
10:20:43 20 because I don't want anybody to think, oh, the judge has
10:20:46 21 already made up his mind, I'm just trying to broadly
10:20:48 22 inform myself.
10:20:53 23 MR. McGLOTHLIN: I think we all appreciate the
10:20:53 24 push/pull relationship between the regulatory overlay
10:20:58 25 and stakeholder cooperative, which is where we want to

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10:21:02 1 be. The State's obviously been doing that in some parts
10:21:06 2 here, tightening the screws here, and Judge Randall did
10:21:09 3 that with his order, which has driven and -- you know,
10:21:15 4 birthed the cooperation that you see at Watermaster's.
10:21:18 5 THE COURT: Your job as special master, though,
10:21:20 6 is if you feel there is a lack of fruitful interchange
10:21:27 7 and the judge's orders, you know, are -- you don't want
10:21:32 8 to wait five years if they're not being reasonably
10:21:36 9 addressed, then, to bring recommendations to the court;
10:21:38 10 is that right?
10:21:39 11 MR. McGLOTHLIN: Yes, Your Honor, and that
10:21:41 12 process starts -- you asked about the Watermaster
10:21:43 13 structure. The intention, as I understand it from the
10:21:47 14 Watermaster designed by Judge Randall, is for the
10:21:50 15 parties themselves to meet, to discuss, if necessary to
10:21:56 16 ultimately vote, but it's really an advisory decision
10:21:59 17 and advisory role to the court, so any party can bring a
10:22:07 18 challenge to a Watermaster decision.
10:22:10 19 THE COURT: It's a de novo review.
10:22:13 20 MR. McGLOTHLIN: It is de novo review, and,
10:22:15 21 furthermore, the Watermaster, as it is here today, will
10:22:20 22 seek the court's intervention and cooperation and
10:22:23 23 oversight on a regular basis, so -- and more promptly
10:22:28 24 when necessary.
10:22:30 25 So what you asked about what conflicts would

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10:22:35 1 becoming down the line, those issues of combination
10:22:40 2 or -- either/or of reduced production and/or new water
10:22:43 3 supplies to the collective Laguna Seca-Corral de Tierra,
10:22:52 4 hopefully the parties will negotiate in good faith and
10:22:55 5 come to stipulations that the Court can support, or the
10:22:59 6 Court is independent to make the decision whether or not
10:22:59 7 the stipulation is in the public interest and consistent
10:23:01 8 with law.
10:23:02 9 THE COURT: If those stipulations do not
10:23:05 10 require the amendment of Judge Randall's in any respect,
10:23:12 11 has it been the practice or consequence that they would
10:23:14 12 nonetheless, because they are policy changes, be
10:23:17 13 submitted to the court for review?
10:23:19 14 MR. McGLOTHLIN: It is my counsel to
10:23:22 15 Watermaster that they do, that the management is
10:23:27 16 something -- the management structure, the physical
10:23:31 17 management structure is something that the court should
10:23:35 18 be in depth aware of and approve and be marching hand in
10:23:40 19 hand. I do not think it is proper for the court to be,
10:23:46 20 you know, off to the side.
10:23:48 21 And if I may digress, that is the case in some
10:23:51 22 other basins where the court is not aware that it still
10:23:54 23 has these cases.
10:23:55 24 THE COURT: No, I'm very much attuned for so
10:23:58 25 long as I'm active, so I would like to -- and, you know,

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10:24:06 1 it's really for the protection of all. If a
10:24:10 2 recommendation is made to the Court for a signature,
10:24:13 3 there should be a sufficient basis that any critical
10:24:21 4 person could look at it and say yes, it's substantiated,
72 5 so if someone -- if it goes through that rigorous level
4:26 6 of analysis and recommendation, it may deter adversarial
10:24:35 7 proceedings because it's well founded, all things
10:24:38 8 considered, and if it's deficient in some way, a party
10:24:42 9 might petition the court and say we want you to hear
10:24:46 10 this.
10:24:46 11 MR. McGLOTHLIN: I would make one observation
10:24:46 12 that Watermaster is comprised of interested
10:24:49 13 stakeholders, but, as a collection, the intention is to
10:24:52 14 act not disinterested but in the collective interests.
10:24:56 15 THE COURT: Correct, I understand that. And
10:24:58 16 it's not just a cumbia moment, each party is looking to
10:25:03 17 the interest of their constituents and so forth, but in
10:25:06 18 the aggregate we can't have it all.
10:25:11 19 Are there any other -- so I think you indicated
10:25:15 20 in the report that later you'd be filing a report, and
10:25:18 21 even earlier if you anticipated a need to calendar
10:25:23 22 something, otherwise it would come up on an annual
10:25:24 23 report, because didn't you determine that sometime after
10:25:26 24 the water resources board makes a determination you'll
10:25:30 25 be in a better position by later in the year to

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10:25:33 1 determine whether you're likely to have to petition to
10:25:37 2 amend any part of Judge Randall's decision.
10:25:40 3 MR. McGLOTHLIN: Yes. What is proposed as next
10:25:44 4 steps, Your Honor, is that we proceed through this year,
10:25:47 5 gather more information; we produce the annual report at
10:25:51 6 the end of the year, which the judgment requires that we
10:25:53 7 do.
10:25:54 8 We think it is --
10:25:55 9 THE COURT: And what's the date for that?
10:25:58 10 MR. McGLOTHLIN: Mid-December.
10:26:00 11 MR. LAREDO: December 15th.
10:26:01 12 THE COURT: Thank you.
10:26:02 13 MR. McGLOTHLIN: And we think it would be
10:26:04 14 prudent during this -- particularly during this, you
10:26:08 15 know, challenging time or important time of water
10:26:13 16 development on the peninsula, that we meet with you, you
10:26:15 17 know, annually following the annual report to receive
10:26:19 18 your questions, input, conversation like we're having
10:26:21 19 today.
10:26:22 20 We would propose that we set a calendar, a
10:26:25 21 status conference first quarter of 2017, and that at
10:26:29 22 that time we would provide you an update on developments
23 with respect to Laguna Seca sub-area and the GSA
10:26:39 24 composition for the Corral de Tierra sub-area, and also
10:26:42 25 discuss with you the need and prudence of making an

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10:26:48 1 application for relief from the ramp down.
10:26:51 2 You've referred to that as an amendment of the
10:26:59 3 judgment. How we engage semantically, it's not
10:27:02 4 important. The key there, Your Honor, is that the
10:27:04 5 judgment specifically says that we can relieve ourselves
10:27:07 6 in ramp down if we were bringing in comparable quantity
10:27:11 7 each and every year during that three-year period.
10:27:14 8 The difference here is we brought in more than
10:27:16 9 that quantity previously which I can elaborate on how we
10:27:23 10 did that if you're interested. And since we've
10:27:26 11 effectively brought in and stored 2,500 acre feet, we
10:27:31 12 would be asking for a 1,680 -- 1,680-acre foot relief,
10:27:39 13 so it would not be, per se, per the terms of the
10:27:42 14 judgment, but certainly consistent with the spirit of
10:27:46 15 the judgment and consistent with potential need during
10:27:48 16 these later years, these crunch years, as we finalize
10:27:51 17 the water supply projects.
10:27:53 18 THE COURT: Any brief elaboration that you can
10:27:55 19 give me now would be fine.
10:27:58 20 MR. McGLOTHLIN: Certainly.
10:28:00 21 Your Honor, one of the producers from the is
10:28:03 22 the City of Seaside. Counsel sitting to my left for the
10:28:07 23 City of Seaside today operates two 18-hole golf courses.
10:28:12 24 They produce water as an alternative producer, and they
10:28:15 25 have a 540-acre foot allocation.

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10:28:18 1 The City of Seaside, by contract, made an
10:28:21 2 arrangement with the water purveyor to the north and the
10:28:24 3 water purveyor that serves the former Fort Ord area by
10:28:31 4 designation by the Fort Ord Use Authority, that is the
10:28:34 5 Marina Coast Water District. The City exchanged
10:28:37 6 property that the Marina Coast Water District wanted in
10:28:42 7 exchange for 2,500 acre feet, not annually, in total,
10:28:46 8 2,500 acre feet of wet molecules of water supply that it
10:28:50 9 delivered to the golf course --
10:28:50 10 THE COURT: Is wet molecules a term of art?
10:28:58 11 MR. McGLOTHLIN: It's distinguishing between an
10:28:58 12 annual acre feet, as in an allocation.
10:28:58 13 THE COURT: Thank you.
10:28:58 14 MR. McGLOTHLIN: 2,500 acre feet of water.
10:29:01 15 It doled that out to the golf course as needed
10:29:05 16 for a course of many years in lieu of the golf course
10:29:09 17 producing its up to 540 acre feet of production right.
10:29:15 18 Judge Randall approved of a memorandum of
10:29:18 19 understanding between the Watermaster and the City of
10:29:21 20 Seaside, whereby the Watermaster said bring that water
10:29:27 21 in, do not produce your groundwater, that will augment
10:29:32 22 the ground water supply. In exchange, they have
10:29:35 23 provided a credit to the City of Seaside -- they, the
10:29:39 24 Watermaster, to the City of Seaside against financial
10:29:44 25 responsibilities that the city has accrued and will be

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10:29:45 1 accruing for replenishment assessments associated with
10:29:48 2 its municipal system, which is a separate water demand
10:29:52 3 at the City of Seaside, which operates as a standard
10:29:56 4 allocation, hence why it's incurring the replenishment
56 5 assessment.
57 6 So, if I may -- and fundamentally, the
10:30:00 7 Watermaster has purchased through this credit program
10:30:05 8 2,500 acre feet of water that has now been, in lieu,
10:30:05 9 replenished into the basin and would not otherwise be
10:30:10 10 there but for that arrangement, and it's effectively
10:30:13 11 stored in the basin, and, if necessary, and the
10:30:17 12 Watermaster decides and the community decides it's
10:30:20 13 necessary, the hope was Your Honor would recognize that
10:30:23 14 that is a good faith effort to replenish some 2,500 acre
10:30:29 15 feet in exchange for a 1,680 foot relief during this
10:30:34 16 critical period towards the end of this extension while
10:30:37 17 the groundwater replenishment program is coming on line,
10:30:42 18 the desalination is finalized and in completion, if
10:30:45 19 necessary.
10:30:45 20 THE COURT: We'll complete here before too
10:30:50 21 long.
10:30:51 22 There are many -- I've written lengthy
10:30:53 23 decisions, but I certainly believe that Judge Randall's
10:30:59 24 giving terms of art, definition, and the like must have
10:31:03 25 been collaborative.

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.04 1 Did he ask for -- is this an adversarial
10:31:07 2 proceeding, but I'm sure many terms were agreed to; is
10:31:12 3 that right?
10:31:13 4 MR. McGLOTHLIN: The judgment is a product of
10:31:15 5 stipulation amongst the parties, with the good judge's
10:31:18 6 interlineations, things he wanted and did not want.
10:31:21 7 THE COURT: Generally what I try to do is find
10:31:24 8 out what are the decisions that an informed layperson
10:31:28 9 needs to make and set up the skeleton and then let the
10:31:34 10 experts put it all together, and that proceeding a
10:31:40 11 different way is not a very comfortable approach,
10:31:43 12 because my view is within the confines of the
10:31:45 13 jurisdiction that the law confers upon a judge, we have
10:31:50 14 a lot of muscle and it should be used carefully, and
10:31:54 15 when it has to be, used with full vigor, there's no way
10:31:58 16 around that, but other times it's best I think to
10:32:00 17 receive -- best input, especially when the parties seem
10:32:03 18 to be reasonably aligned, at coming to a good
10:32:06 19 operational decision.
10:32:07 20 That would be my opinion.
10:32:09 21 MR. McGLOTHLIN: If you read the judgment in
10:32:11 22 comparison to judgments that have been written in other
10:32:17 23 basins, mostly in Southern California over the last
10:32:21 24 forty years, you would see very similar terminology,
10:32:21 25 verbatim in some places. The judgment was not -- we

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10:32:25 1 didn't reinvent the wheel. It was written by the
10:32:29 2 parties taking advantage of the good thought of other
10:32:31 3 judges and other judgements previously.
10:32:32 4 THE COURT: Sure.
10:32:34 5 MR. McGLOTHLIN: And Judge Randall was not
10:32:37 6 asleep, by any means, at the wheel. He took his pen and
10:32:42 7 scratched out, and we rewrote it as he desired.
10:32:46 8 THE COURT: I understand.
10:32:47 9 I'm looking at Friday, March 17th.
10:32:49 10 Do you want to set a date now?
10:32:51 11 MR. McGLOTHLIN: Yes, Your Honor.
10:32:54 12 THE COURT: I'll put that date down. It's in
10:32:57 13 the first quarter.
10:33:00 14 MR. McGLOTHLIN: To repeat, Friday, March 17th.
10:33:00 15 THE COURT: Yes.
10:33:03 16 If you could prepare notice on that.
10:33:06 17 MR. McGLOTHLIN: Absolutely.
10:33:10 18 THE COURT: The outstanding agreement is that I
10:33:12 19 can either call you or email you if, for example, I
10:33:14 20 found that my own schedule required modifying that, I'd
10:33:18 21 tell you and you'd handle that?
10:33:20 22 MR. McGLOTHLIN: Yes, Your Honor, absolutely.
10:33:22 23 THE COURT: Is that all right?
10:33:23 24 And that would be for the -- I certainly accept
10:33:27 25 the invitation to -- because the tenor of a couple

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10:33:31 1 letters, I didn't misunderstand it, it was simply
10:33:34 2 respectful letter saying we don't know of any new facts.
10:33:37 3 There's not been not adversarial proceedings. We'll
10:33:37 4 certainly be attentive, but we don't -- you know,
10:33:40 5 they're not inviting new information, but I'm very
10:33:43 6 grateful for the chance to meet with the stakeholders,
10:33:47 7 to receive information, not only in text form but
10:33:50 8 through updates, to satisfy myself that the parties are
10:33:53 9 working diligently and for the parties to be satisfied
10:33:56 10 that they don't have a cold bench, they have a hot
10:34:00 11 bench, and I have been active in my work.
10:34:05 12 Is there any other input that anyone would like
10:34:08 13 to provide at this time?
10:34:12 14 MR. LAREDO: Your Honor, if I may, between now
10:34:13 15 and March, there will be significant development and
10:34:17 16 information on the other aspects of the three-legged
10:34:20 17 stool.
10:34:21 18 THE COURT: Right.
10:34:22 19 MR. LAREDO: Which is the ultimate answer.
10:34:24 20 THE COURT: Part of it is the State Water
10:34:27 21 Resources Control Board, part of it is the desalination
10:34:28 22 efforts.
10:34:29 23 MR. LAREDO: That's correct. The desalination
10:34:31 24 effort has been the focus of a hearing that just
10:34:34 25 concluded before the CPUC for significant bays and the

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10:34:39 1 promised draft EIR on the desal plant is scheduled to
 10:34:44 2 come out this year, at least the Public Utilities
 10:34:48 3 Commission has set a public participation hearing in, I
 10:34:52 4 believe, September on that.
 56 5 The groundwater replenishment also is actively
 10:35:06 6 proceeding. The MRWPC, Monterey Regional Water
 10:35:08 7 Pollution Control Agency, has already certified the EIR
 10:35:10 8 on its aspect of that project, and the Water Management
 10:35:14 9 District has, this coming Monday, the 20th, its action
 10:35:17 10 as a responsible agency to certify that, so we
 10:35:20 11 anticipate that there will be significant development to
 10:35:23 12 report at the next status conference.
 10:35:26 13 THE COURT: Is there a regular calendar of
 10:35:29 14 meetings for the Watermaster Board?
 10:35:31 15 MR. McGLOTHLIN: The Watermaster Board is
 10:35:36 16 calendared to meet monthly, unless there's no relative
 10:35:38 17 substantive agenda items.
 10:35:38 18 THE COURT: So those meetings have occurred?
 10:35:38 19 MR. McGLOTHLIN: They occur regularly.
 10:35:38 20 THE COURT: And are there staff reports in
 10:35:41 21 advance?
 10:35:42 22 MR. McGLOTHLIN: There are, and if Your Honor
 10:35:43 23 would like, we certainly be willing to provide you with
 10:35:49 24 the agenda and staff reports for -- there are not only
 10:35:51 25 board meetings, there are also technical advisory --

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51 1 technical committee --
 10:35:56 2 THE COURT: I don't think I require that at
 10:35:57 3 this time. I don't want to put my nose too far under
 10:36:00 4 the tent, as if I'm an expert on that.
 10:36:05 5 I assume that the Watermaster will draw that
 10:36:07 6 together in good, intelligible form and give me all the
 10:36:13 7 details that you think I need.
 10:36:14 8 Also, accept my invitation to present all the
 10:36:16 9 questions that you would anticipate that an informed
 10:36:21 10 judge would.
 10:36:23 11 MR. McGLOTHLIN: And we would always welcome
 10:36:26 12 Your Honor to ask to see any materials, any underlying
 10:36:29 13 materials, agendas, as necessary.
 10:36:30 14 THE COURT: I will say to the Watermaster, if
 10:36:33 15 you see that a particular report is particularly
 10:36:36 16 illuminating on an issue, feel free to send it to me.
 10:36:38 17 I think you have an email address for me.
 10:36:40 18 MR. McGLOTHLIN: I do, Your Honor.
 10:36:41 19 THE COURT: And you're free to do that, without
 10:36:41 20 me requesting each and every communication be sent out
 10:36:46 21 to me.
 10:36:46 22 MR. LAREDO: I have a question for the court.
 10:36:50 23 Would you like that Watermaster glossary in
 10:36:50 24 advance of March 17th?
 10:36:52 25 THE COURT: I think it would be helpful. If

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10:36:54 1 you could just prepare it, maybe file it, and email it
 10:36:57 2 to me.
 10:36:58 3 MR. McGLOTHLIN: Maybe we could do that and
 10:37:00 4 file that with the annual report.
 10:37:02 5 THE COURT: That's okay too.
 10:37:04 6 Actually, with the annual report is fine.
 10:37:13 7 MS. GERARD: On the events that Mr. Laredo was
 10:37:15 8 describing, we can include that in the annual report.
 10:37:18 9 THE COURT: Oh, yes, I would expect that --
 10:37:21 10 because you're talking about the three-legged stool,
 10:37:23 11 and all of these things need to come together, and I
 10:37:26 12 need to be well informed on those developments and how
 10:37:30 13 they impact any judicial involvement.
 10:37:32 14 MR. McGLOTHLIN: Your Honor, the only other
 10:37:33 15 matter -- I'm looking through the agenda -- that we
 10:37:35 16 didn't really touch on is the basin boundary
 10:37:39 17 modification.
 10:37:40 18 THE COURT: Why don't we just ask, because I
 10:37:59 19 may ask for a transcript, let's say we're going off the
 10:38:02 20 record and the only main thing you'll be reporting on
 10:38:06 21 is --
 10:38:06 22 MR. McGLOTHLIN: The basin boundary
 10:38:08 23 modification.
 10:38:09 24 THE COURT: That's fine, that will be covered
 10:38:10 25 in the next annual report.

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1 And we thank the court reporter, and I'm sure
 2 they'll be asking for a transcript.
 3 (The matter was adjourned at 10:38 a.m.)
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1 STATE OF CALIFORNIA)

2 COUNTY OF MONTEREY)

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4 I JUDIE A. NICHOLAS, Certified Shorthand

5 Reporter, License 12229, in and for the State of

6 California, do here by certify:

7 That said proceedings were reported at the time

8 and place stated herein, and thereafter transcribed by

9 computer-aided transcription.

10 I further certify that I am not interested in

11 the outcome of this action, nor connected with, nor

12 related to any of the parties of said action.

13

14 Dated this ____ day of _____, 2016.

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19 JUDIE A. NICHOLAS, CSR 12229

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