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SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF MONTEREY
MONTEREY DIVISION

HON. LESLIE C. NICHOLS, JUDGE

DEPARTMENT 16

CALIFORNIA AMERICAN WATER)
)
Plaintiff,)
)
VS.)
)
CITY OF SEASIDE, et al.,)
)
Defendant.)
)
MONTEREY PENINSULA WATER)
MANAGEMENT DISTRICT,)
)
Intervenor.)
)
MONTEREY COUNTY WATER RESOURCES)
AGENCY,)
)
Intervenor.)
)
AND RELATED RECROSS-ACTIONS.)

NO. M127696

REPORTER'S TRANSCRIPT OF PROCEEDINGS
March 17, 2017

APPEARANCES:

For the Plaintiff: RUSSELL M. MCGLOTHLIN
ATTORNEY AT LAW

1 For the California-American: ROBERT DONLAN,
Water Company ATTORNEY AT LAW
2
3 For the City of Monterey: ALEX LORCA,
ATTORNEY AT LAW
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5 For the California-American: LORI GIRARD,
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7 For the City of Sand City: JAMES G. HEISINGER, JR.,
ATTORNEY AT LAW
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9 For the County of Monterey: IRVEN L. GRANT,
ATTORNEY AT LAW
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11 For Cypress Pacific: PAUL BRUNO,
Investors, et al. Member
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13 For Pasadera and Laguna: KELLY SUTHERLAND,
Seca Resort, Inc. ATTORNEY AT LAW
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15 For Monterey County Water: JESSE J. AVILA,
Resources Agency ATTORNEY AT LAW
16
17 For D.B.O. Development: ELI SALAMEH,
Company No. 30 ATTORNEY AT LAW
18
19 For Seaside Groundwater: LAURA DADIW
Basin Watermaster ADMINISTRATIVE OFFICER
20
21 For Monterey Peninsula: DAVID LAREDO,
Management District ATTORNEY AT LAW
22
23 For California: ERIC J. SABOLSICE, JR.
American Water GENERAL MANAGER
24
25 LISA R. CRAFT, CSR 7631, Official Pro-Tem Reporter

1 MONTEREY, CALIFORNIA

APRIL 17, 2017

2
3 PROCEEDINGS
4

09:03:17 5 THE COURT: Morning everyone. This -- can you
6 hear me okay?

7 This is the matter of the California American
8 Water, Plaintiff -- California American Water, Plaintiff
9 versus City of Seaside and other parties, also intervenors
09:03:54 10 in this matter, Monterey Peninsula Water Management
11 District and Monterey County Resources Agency. It's
12 pending in the Superior Court of California, County of
13 Monterey, Case Number M66343. And we're together for an
14 annual report which we'll discuss.

09:04:19 15 And I'd appreciate it if each counsel would state their
16 appearance and thank you for providing your cards.

17 MR. MCGLOTHLIN: Good morning, Russell
18 McGlothlin, counsel for the Seaside Basin Watermaster.

19 MR. DONLAN: Robert Donlan, Ellison Schneider,
09:04:38 20 outside counsel Cal American Water Company.

21 MR. LAREDO: Good morning, your Honor, David
22 Laredo, general counsel for the Monterey Peninsula Water
23 Management District.

24 MR. LORCA: Alex Lorca, especially appearing for
09:04:53 25 the City of Monterey.

1 MR. HEISINGER: Good morning, your Honor, James
2 Heisinger, City Attorney for Sand City.

3 MR. BRUNO: Paul Bruno, private member on my
4 behalf.

09:05:05 5 MS. GIRARD: Lori Girard, corporate counsel for
6 California American Water.

7 MR. SABOLSICE: Eric Sabolsice, General Manager
8 for California American Water.

9 MR. GRANT: Morning, your Honor, Irven Grant on
09:05:16 10 behalf of the County of Monterey.

11 MR. AVILA: Jesse Avila, on the behalf of the
12 Monterey County Resources Agency.

13 MR. SALAMEH. Good morning, your Honor, Eli
14 Salameh for Development Company Number 30.

09:05:27 15 THE COURT: Is there any general interested
16 member of the public who is not directly related to one of
17 the parties?

18 MS. SUTHERLAND: Your Honor, this is Kelly
19 Sutherland on court call. I'm here on behalf of Laguna
09:05:42 20 Seca and Pasadera.

21 THE COURT: Ma'am, I'm not going to require you
22 identify yourself but my clerk needs to join if some
23 member of the public wants to join.

24 MS. DADIW: I'm Laura Dadiw, I'm the
09:05:52 25 administrative officer for the Seaside Groundwater Basin

1 Watermaster.

2 MR. JAQUES: Bob Jaques, the technical program
3 manager for the watermaster.

4 THE COURT: Yes, I've read your material. I'll
09:06:05 5 make a preliminary comment here that these annual
6 face-to-face conferences do not appear to be required; but
7 as this is my second year on the case, I thought it would
8 be helpful.

9 Also decades ago I was on the City Council for
09:06:26 10 Mountain View; and of course, we hoped there would be
11 broad public interest referring to their welfare, and I
12 have nothing but joy in my heart as I recall interacting
13 with constituents but very often it seems we made every
14 good faith effort to provide access to information that
09:06:43 15 people would offer their pungent criticism sometimes after
16 the fact. In this case, I was hopeful it might be picked
17 up by the press in some manner so there could be at least
18 something in the paper explaining things that are
19 important to people's lives like water. That may not be
09:07:04 20 the case today, but I appreciate every one's presence here
21 today.

22 Just again by brief overview, you've all been
23 engaged in this matter for many years and primarily with a
24 very able judge, Judge Randall who adjudicated this case.
09:07:25 25 He -- all things in life ultimately retired from service

1 from the chief justice. This was the Honorable Roger D.
2 Randall who I conferred briefly when I was first assigned.
3 Thereafter when he retired with nothing actually pending
4 at that time, I think, there might have been annual
09:07:47 5 reports not set for a hearing. The chief assistants
6 reached out to me. I've now sat on 29 out of 58 counties
7 after 25 years as a Superior Court Judge in Santa Clara
8 County, and I was very happy to accept this assignment.

9 I appreciate that we were here something less
09:08:09 10 than a year ago for the annual report and that was my
11 opportunity to sort of get my feet on the ground in this
12 issue. Since then I've read more widely on general water
13 and California issues than I had earlier, and I've had
14 some unrelated to aquifers independent water law cases
09:08:32 15 over my career in trial courts and appellate courts. I
16 appreciate the submission of this report, and I'm
17 especially grateful for the very prompt response to the
18 inquiries which I addressed to counsel within just the
19 last week or so. I've been pretty much full-time trial
09:09:00 20 assignment, and we all have things to do, and I tried to
21 get close attention to this pretty massive submission.

22 Sometimes when I read these things and I felt
23 humbled as I do daily when I read the responses and
24 questions that are put forth; and for example, my very
09:09:32 25 first question to the master was, is the capacity of

1 aquifers underlying the Seaside Groundwater Basin known or
2 estimated? The short answer is yes, your Honor, please
3 look at pages X and Y of the massive report. I sometimes
4 feel like the great tenth justice of the United States
09:09:55 5 Supreme Court, Judge Learned Hand in the Second Circuit
6 Governing New York with his cousin Augustus came forward
7 with many decisions so much so that by universal acclaim
8 it was thought he should be in the United States Supreme
9 Court hence justice who never was and just an anecdotal
09:10:19 10 here having fun with you for a moment. Felix Frankfurter
11 in General Gunther's massive biography of the Great One
12 called Learned Hand, back in a gentler times wrote notes
13 to Franklin Delano Roosevelt. Franklin, he really wanted
14 to appoint Learned to the Supreme Court. He's written
09:10:47 15 great decisions from Patton, Faith March, Civil Liberties,
16 the Acme of an Independent Jurist and finally Franklin
17 Roosevelt in the archives wrote back and said, Felix, you
18 must stop writing to me because you know I've been giving
19 these fireside chats about the nine old men on the supreme
09:11:04 20 court. I'm trying to pack the supreme court because
21 they're striking down my New Deal Legislation, and I must
22 appoint a young and vibrant [young man] in brackets to the
23 Supreme Court who will long outlive us. And that ended
24 that dialogue, he did appoint a dynamic young man at 48
09:11:26 25 who died of a heart attack at 54, whereas Learned Hand was

1 this fellow who made decisions and succumb to his death at
2 90 or 91. Learned Hand wrote quote, "Even for me late at
3 night when writing decisions the words of the internal
4 revenue code fairly dance before my eyes." That's kind of
09:11:49 5 the impression I have when meeting all the data and
6 technical reports and I confess I'm a generalist, but you
7 can tell I'm getting up to speed.

8 I'd like to turn to Mr. McGlothlin and be very
9 pleased to hear any oral presentations you'd like to make
09:12:06 10 if you choice to do so.

11 MR. MCGLOTHLIN: Certainly, your Honor. Thank
12 you very much. A pleasure to be here. I think, for all
13 of us, it's levels of understanding and you're never at
14 the complete depth and just this morning someone said,
09:12:19 15 well, isn't the capacity in some of that voodoo, it's
16 pseudo voodoo science we learn every year.

17 THE COURT: That's why I said estimated.

18 MR. MCGLOTHLIN: Estimated, exactly. We do the
19 best we can with the science we have.

09:12:33 20 I thought in preparing just a few brief comments
21 for you this morning. I thought I would break things down
22 into the good news and I won't call it the bad news but
23 the challenges.

24 The good news, you may have noticed it's been
09:12:45 25 raining quite a bit and that's been a pleasure for all of

1 us. That has certainly natural --

2 THE COURT: Except if you live down by Nepente.

3 MR. MCGLOTHLIN: Exactly, a few places, of
4 course, Big Sur has its challenges. Hopefully we're
09:13:01 5 getting some very good natural percolation replenishment
6 to the basin, and we also have substantial ASR, that's
7 aquifer, storage and recovery as you may recall that's
8 water being diverted from the Carmel River, comes over the
9 hills and injected into the basin and to date we have over
09:13:21 10 1100. As of the 14th of the month, there was 1,177 acre
11 feet so far replenished into the basin this year. That's
12 taken out during the summer to the benefit of the Carmel
13 River system so that California American can reduce its
14 production during the summer. But it's a good thing and a
09:13:44 15 nice sign for getting us out of this drought situation
16 presently.

17 The other thing that I think should be noted is
18 because of the extensive conservation employed by
19 California American, City of Seaside Municipal system and
09:14:01 20 the other pumpers collective, the groundwater use was both
21 beneath the current operating safe yield of 3,920 and also
22 this year beneath the native safe yield that is in 2016 I
23 should say of 3,000 acre feet. And so we're moving --

24 THE COURT: And that later term again means what?

09:14:21 25 MR. MCGLOTHLIN: So as you may recall, the way

1 the judgment was structured by Judge Randall was if we set
2 a native safe yield which is the quantity of estimated
3 annual sustainable or safe replenishment, roughly 3,000
4 acre feet a year.

09:14:38 5 But knowing under the water circumstances on the
6 Peninsula, it would not make economic or practical sense
7 to immediately require the producers to produce to that
8 3,000 acre feet. We started at 5,600 acre feet and every
9 third year there is a ten percent ramp down until we reach
09:14:58 10 the 3,000. We have three or four of those. Three ramp
11 downs in and we have two more to go, I believe.

12 THE COURT: And it's now at 3,920.

13 MR. MCGLOTHLIN: 3,920. Production was beneath
14 the 3,920 and just so happens was also beneath 3,000 for
09:15:17 15 the first time last year.

16 The other very good news the Pure Water Monterey,
17 this is advanced treated recycle water project that is
18 being implemented by the Monterey Peninsula Water
19 Management District and the Monterey Regional Pollution
09:15:36 20 Control Agency is well on its way to producing a new
21 source of water that will be available next year as -- as
22 anticipated and that will produce 3,500 acre feet per year
23 on average of new water supply for the Peninsula. Very
24 large step towards solving the larger Peninsula water
09:15:59 25 supply problem.

1 Another positive development is that there was a
2 new draft Environment Impact Report Slash Draft
3 Environmental Impact Statement issued for the desalination
4 of the Monterey Peninsula Water Supply Project just in
09:16:22 5 this past January, we are still in the comment period. If
6 things go on schedule, we anticipate that the Public
7 Utilities Commission will be issuing a certificate of
8 public convenience and the approvals required from the
9 commission to move the desalination project forward in
09:16:44 10 early 2018 or sometime in the early half of 2018.

11 THE COURT: I read that attachment, some of my
12 questions related to that. What are the described
13 environmental detriments, if any, to desalination? I take
14 it in bulk the reports are saying that we passed the
09:17:08 15 environmental reviews and go forward be a good thing. But
16 I've read at least sometimes desalination has considerable
17 environmental challenges.

18 MR. MCGLOTHLIN: So the environmental challenges
19 generally for desalination, the big high level one are,
09:17:27 20 one, in the source water supply there is concern in the
21 state if we are doing open ocean intake, entrainment and
22 impingement of marine life, primarily planktonic life, and
23 there is that concern. The California American project
24 avoid that concern by putting in slant wells underneath
09:17:53 25 the beach and protruding into the ocean below the high

1 tide mark. So it is pooling that seawater through the
2 subsurface and we avoid that concern.

3 The other two major concerns are the discharge of
4 the brine, and you have to ensure that is defused properly
09:18:13 5 so it doesn't create dead pools on the ocean floor.

6 And then lastly, the energy requirements of the
7 desalination are significant. They're comparable to
8 importing water from Northern California into Southern
9 California, for instance. So the brine in this case is
09:18:33 10 being --

11 THE COURT: Where does that energy supply come
12 from?

13 MR. MCGLOTHLIN: It comes from local power
14 supplier, but there are hopeful science for this project
09:18:42 15 both that there may be a landfill gas energy from the
16 landfill which is closely circulated. I'll let my
17 colleague here speak to it in a moment but further the
18 entire regional community of Monterey and its neighbors
19 are actively pursuing community choice energy which may
09:19:04 20 result in higher -- the intention is to result in higher
21 renewable energy to reduce the carbon footprint, if you
22 will.

23 THE COURT: I think where I live in Mountain View
24 about 11 cities are getting notices you have to opt out
09:19:20 25 otherwise P G & E billings or a lot of detail there. I

1 notice in checking the box and signing up to be as energy
2 efficient and there are those efforts and I think improve
3 --

4 MR. MCGLOTHLIN: I'm not certain of Mountain View
09:19:36 5 and their energy -- choice of energy. I think Sonoma and
6 Marin have implemented and many others are pursuing that.
7 It's an alternative. The simple point is if the energy is
8 coming it may transition to a lower carbon footprint, a
9 lower concern.

09:19:53 10 Do you want to say anything about the product?

11 So if I may continue. The other couple good
12 things that have occurred since we last saw you is that we
13 successfully petitioned collectively, I should say,
14 California American Water Company, the Monterey Peninsula
09:20:15 15 Regional Water Authority, Water Management District, we
16 all approached and others approached the State Water
17 Resource Control Board and requested some amendments to
18 the timing and operations of the cease and desist order on
19 the Carmel River and we were granted that last summer.

09:20:37 20 THE COURT: Was that -- let me interrupt in aid
21 of my own comprehension. First of all, my sense to the
22 large part the judgment that was entered except for legal
23 issues relating to intervention, separation of powers,
24 those kind of things that were worked out and went through
09:20:55 25 the appellate process. Did Judge Randall preside over a

1 contested trial in which he made all these findings about
2 storage and so forth? I thought I read to a large degree
3 the judgment was a result of a stipulation.

4 MR. MCGLOTHLIN: So the judgment and I welcome
09:21:13 5 other comments from other counsel that participated in the
6 adjudication, your Honor, but the judgment was partially
7 stipulated and partially contested. There was a total of
8 about a three week trial.

9 THE COURT: I see.

09:21:25 10 MR. MCGLOTHLIN: Which believe it or not that is
11 rocket speed for a groundwater adjudication. They
12 typically take some 15 years. So the contested issues
13 primarily were about the starting point for the ramp down
14 I referred to earlier and the governance structure and
09:21:47 15 that was resolved that Judge Randall made his decision on
16 that. He looked very carefully at the stipulated judgment
17 on the, you know, presumption of safe yield and the like.

18 THE COURT: And ultimately, you find in the
19 report the allocation of voters and so forth used in the
09:22:10 20 water board has been meeting and giving directions through
21 that process.

22 MR. MCGLOTHLIN: So the water board is a
23 different issue with respect to the Carmel River. You
24 know, in the Peninsula we have two challenged water
09:22:22 25 sources, the Carmel River Valley and that is the taking of

1 subsurface groundwater but very closely related to the
2 river which has impact on the river particularly in the
3 drier months of the year.

4 The other issue, of course, the Seaside basin and
09:22:40 5 obviously it's your jurisdiction over the Seaside basin.
6 It's the state water board's jurisdiction over the Carmel
7 River. In 1995, they ordered California American Water
8 Company to eliminate their unauthorized diversions from
9 the river. They have -- California American has been
09:23:00 10 diligently pursuing projects to do so. We could go
11 through the litany in challenges and hiccups that is
12 spelled out in detail in the 2016 report to you.

13 THE COURT: That is not necessary. Was that the
14 cease and desist order emphasis for California American
09:23:19 15 Water initiated this lawsuit to deal with this --

16 MR. MCGLOTHLIN: No. The timing -- 1995 original
17 order from the state board. This lawsuit filed in 2003,
18 decision was -- in early 2006, amendment in 2007. In 2009
19 is when the state board issued a new cease and desist
09:23:47 20 order effective, if you will, time is up on our order of
21 1995 and last year 2016 amended the cease and desist order
22 because of the challenges in bringing on a complete
23 substitute water supply project.

24 So we have time. The state board has continued
09:24:06 25 to keep the water pressure on the community but arguably

1 at a tolerable level so long as we keep making progress on
2 the water supply project component. The pure water coming
3 on 3500 acre feet of advanced treated recycled water is a
4 significant step towards that of the issuance of the DEIR,
09:24:32 5 DEIS on the desalination is a significant step. We still
6 have a way to go with respect to the desal project.

7 The other good news and progress is that with respect
8 to the broader Salinas basin, there was just recently
9 formed a large joint powers authority to ultimately act as
09:24:55 10 the groundwater sustainable agency for the Salinas basin
11 which we report on in our case management conference
12 statement. And that will be the GSA for a portion of the
13 Monterey sub-basin which adjoins the Seaside basin. One
14 of your questions was let me get this straight between the
09:25:17 15 new designated neighboring basin versus the old designated
16 basin. We're happy to take further questions on that if
17 there's any clarity needed but the summation is that GSA
18 will be formed, will be operating and we anticipate in the
19 later part of 2017, and into 2018 things will be getting
09:25:36 20 underway for developing a groundwater sustainability plan
21 that must be done for the Monterey sub-basin by 2022. So
22 there's some time, but there will be discussions and
23 negotiations.

24 Another one of your questions, how does the
09:25:48 25 watermaster intend to engage? That GSA, we will be

1 effectively representing the interest of the Seaside basin
2 constructively and collaboratively, of course, but to say
3 pumping in both sides of the boundary, if you will, in the
4 Corral De Tierra area which is part of the New Monterey
09:26:05 5 sub-basin as well within the Laguna Seca sub area of the
6 Seaside basin both need to be managed and coordinated to
7 avoid long term, gradual, eventual significant problems
8 that will develop if we don't address this situation.

9 THE COURT: And that's -- my question, of course,
09:26:22 10 one of the first things you learn in the job is
11 responsibility is the limitation of the writ, your
12 authority and within the range of your authority to act
13 appropriately. So it seems to me that the ability to
14 comply with the terms of the amended decision to some
09:26:44 15 considerable degree depends on progress in some of these
16 contiguous areas which are outside our authority but to an
17 increasing degree now with the Sustainable Groundwater Act
18 and so forth under the egises of other regulatory
19 boundaries.

09:27:00 20 MR. MCGLOTHLIN: That is correct.

21 THE COURT: Any amendment, I don't want to
22 misstate anything.

23 MR. MCGLOTHLIN: You're not misstating anything.
24 I do want to emphasize a point that I tried to bring forth
09:27:10 25 in my response to your question -- our response to your

1 question earlier this week is that dictates of the
2 Sustainable Groundwater Management Act in the regulation
3 promulgated by the Department of Water Resource, require
4 that the Groundwater sustainability plan developed and
09:27:29 5 ultimately adopted and implemented for this Corral De
6 Tierra area, part of the Monterey sub-basin must be
7 developed in a manner that allows sustainable management
8 in its neighboring areas.

9 THE COURT: Including.

09:27:44 10 MR. MCGLOTHLIN: Including the Seaside basin and
11 so if -- we don't in any capacity anticipate; but if there
12 was an action that effectively said we don't care and
13 we're going to develop our plan separately, we would have
14 as the watermaster ample opportunity to state to the
09:28:04 15 Department of Water Resources this does not comport with
16 your regulations and you cannot approve this plan. And I
17 won't get into the litany of legal back and forth. It
18 could follow from there. We don't anticipate that there
19 is a mandate that needs to be coordinated.

09:28:23 20 THE COURT: That is always the way to go. I
21 recall many years ago when I was on the city council we
22 were trying to develop a gateway to Mountain View. It's
23 become quite the community now. Back then it was sort of
24 four sister cities, and we're trying to upgrade community
09:28:40 25 standards and so forth and built Shoreline Park and by the

1 way you mentioned gas extraction that is a source we made
2 a fair amount of money because of course the park was
3 built on San Francisco garbage. People didn't know that.
4 San Francisco desperately needed a place to put its
09:29:02 5 garbage. The history tells us negotiated with Mountain
6 View and Mountain View accepted, that was the hydrologist,
7 landfill issues and extraction of methane gas, all that
8 complicated process and I sit in San Francisco all the
9 time and love them dearly. I think they might have
09:29:21 10 underestimated the acuity of some of our good staff people
11 because the contract came up for renewal and reportedly
12 said your costs are only a few bucks more per county.
13 Well, we have to deal with all these issues and community
14 development and so forth and ultimately I was chatting
09:29:40 15 with a fellow in his eighties who is a Stanford law
16 graduate, the city attorney, later the manager and
17 history, you know, it's not precise there suggest that he
18 might have reported to the council there are more than one
19 way to look at pricing and one is the function of our
09:29:59 20 costs, but the other is the function of their need. And
21 so apparently they were playing hardball and so our demand
22 went way up. Certainly if Saucilito would like the
23 garbage, Hillsborough or Atherton and so that largely
24 built the park. We were building maybe housing and we
09:30:22 25 always worked cooperatively with the federal government

1 NASA Ames and Naval Air Station at that time but we asked
2 the Navy if they would cooperate with our zoning
3 administrator and planning folks because that -- all
4 Moffett Boulevard was a great entrance to the city, and
09:30:42 5 this was going to be right there. Could they agree
6 working on berming and setback like a car lot there and
7 the big night came and the admiral was there and honored
8 him greatly and cooperative agreement. The bottom line
9 I'm telling you, it's good to cooperate. And after all
09:31:04 10 was said and done, we tried to press and say would you
11 agree to work with our zoning administrator.

12 After all when McDonald's came to town we didn't
13 like those huge arches. They toned it down. Wanted to
14 sell their burgers here and so forth. All aided community
09:31:24 15 improvement and the answer was respectfully, no, the
16 federal manual, you know, tells us how to build these
17 housing projects and parking lots. So we really bowed
18 down to the supremacy club. We fully understood it and
19 appreciated it and so forth and said we were sad to have
09:31:45 20 anticipated that possible response because it turned out
21 being a problem for the federal government but we
22 controlled the water spigot, a matter of local land use
23 and I'm sure trucked in the water for a number of years
24 and for an instant everything was cooperative. It all
09:32:06 25 worked out to everyone's satisfaction. It's a matter of

1 not pushing authority to the total strain. When the City
2 of San Jose was developing its traffic plan for the
3 adjoining cities of Sunnyvale and Milpitas and so forth
4 and the claim was that the city -- that the mayors of the
09:32:28 5 city come to offer input and San Jose at that time
6 responded, we'll take care of that later. It's within our
7 authority and my ruling was that they had to make feasible
8 -- feasible alternatives and that required at least
9 sitting at the table and discussing it. Surely they could
09:32:50 10 do that and once that threshold issue was decided, they
11 came to the table and came up with a master plan. I pull
12 on this thread because I see as always the sources of
13 potential conflict but more than that I see the
14 development in law and policies increasingly on a
09:33:12 15 cooperative basis on the what is best for all of us is
16 best for the future.

17 MR. MCGLOTHLIN: They are -- I think it's fair to
18 emphasize that we're not -- we, watermasters, are not
19 naive to the potential challenges. I don't want to
09:33:29 20 prejudge the solutions to the Corral De Tierra, Laguna
21 Seca issues but they will practicality dictate that
22 they're going to require either some reduction in
23 groundwater production or importation slash other physical
24 solutions for -- arrange it for resolving this long-term
09:33:51 25 problem. Those cost money and, you know, engage

1 significant land use questions. So there will be -- no
2 naivety here that there may be -- that there may be issues
3 that arise. And we may need to bring those back to you
4 for discussion and for further input and instruction from
09:34:15 5 you with respect to that.

6 THE COURT: Have those areas been under basically
7 except for the possibility of independent adding to the
8 list of judicial action, court proceedings, have they been
9 under no real regulatory scheme until the Sustainable
09:34:38 10 Groundwater Act began to setup a regime for these
11 agencies?

12 MR. MCGLOTHLIN: Your Honor, in groundwater there
13 are levels of management. The Monterey County Water
14 Resource Agency, their counsel is here today had been
09:34:51 15 actively managing the larger Salinas basin for decades and
16 they have a significant challenge to overcome but they've
17 been doing a Yeoman's job. But there have not been
18 restrictions on the quantity ultimately that can be
19 withdrawn from the Laguna Seca -- excuse me, from the
09:35:12 20 Corral De Tierra area as there are under the Laguna Seca
21 area under the judgment. The way groundwater management
22 predating Sustainable Groundwater Management Act has
23 happened when things get so challenged and contested we
24 come to the court and we adjudicate them. Until that
09:35:29 25 time, it is management light, if you will, and so that has

1 been the progress and now Sustainable Groundwater
2 Management Act is revolutionary in terms of California
3 water law, in terms of the requirements for management.

4 THE COURT: And are those GSAs and so forth
09:35:44 5 largely under the Department of Water Resources. In other
6 words, they're not exempt from that kind of state
7 regulations.

8 MR. MCGLOTHLIN: The structure of, if I may,
9 Sustainable Groundwater Management Act, that's GMA, is
09:36:00 10 opportunity for local management that is the new joint
11 powers of authority, performing, acting as the Groundwater
12 Sustainable Agency. With time, develop a groundwater
13 sustainability plan that then must be approved as
14 sufficient by the Department of Water Resources, compliant
09:36:17 15 with the regulation promulgated by the department. If no
16 GSA is developed, if no plan is developed in time or if
17 the plan is insufficient or is not implemented as drafted
18 and approved, the basin or sub-basin moves into
19 probationary status and the State Water Resources control
09:36:41 20 board, not the Department of Water Resources, State Water
21 Resources control board steps in to promulgate an interim
22 plan and said turn the screws if you will.

23 THE COURT: That's sort of just like most things
24 in law you don't have a terminating sanction grading the
09:37:00 25 program to gain compliance with reasonable regulations.

1 MR. MCGLOTHLIN: And those consequences and
2 structure compel cooperation and efforts to reach a
3 management plan for both the Seaside basin and the
4 Monterey sub-basin that works intergistically that is
09:37:22 5 going to garner the approval of the Department of Water
6 Resources and not have to face base sheering status from
7 the state. So those are the good news.

8 If I will, I have the three obvious challenges
9 that we have observed this since we last saw you or are
09:37:39 10 ongoing. The one we just mentioned, the long-term decline
11 from the Laguna Seca subarea which we'll address over the
12 next few years with the GSA, GSP for that area.

13 The other is for the first time saw chloride
14 readings in some of the sentinel wells on the coast. The
09:37:59 15 coastal subareas that were above normal, to address that
16 watermaster commission --

17 THE COURT: Is that for saltwater intrusion?

18 MR. MCGLOTHLIN: That was the question, your
19 Honor. We weren't clear whether or not that was saltwater
09:38:13 20 intrusion or something else. I'll hit the punch line.
21 The conclusion to date it's something else. It's not --
22 the watermaster had one of their principal hydrogeologist,
23 hydrometrics, water resources investigate, did new testing
24 and the preliminary findings and I'd like to defer to Mr.
09:38:35 25 Jaques here to fill you in further if there's questions

1 but the preliminary findings and probably relating to up
2 coning of deeper saline water from beneath the wells. Not
3 coming, if you will, laterally from the bay but the -- it
4 demands more aggressive monitoring over time which the
09:39:00 5 watermaster intends to do.

6 THE COURT: Are the implications the same for a
7 person who wants a cup of drinking water?

8 MR. MCGLOTHLIN: The two things that need to be
9 emphasized, these are the sentinel wells that are out
09:39:13 10 adjacent to the beach.

11 Second point is these chloride levels are not of
12 the levels that would at this point make the water non
13 potable. They are a very small, correct me if I'm wrong
14 here Bob, but very small quantities of chloride. Just
09:39:31 15 noting that doesn't look like what we've seen over time.

16 THE COURT: But they're signals.

17 MR. MCGLOTHLIN: They're signals and what the
18 seawater intrusion monitoring response program that we
19 discussed in depth in the 2016 report was done, was
09:39:47 20 implemented just for the purpose of seeing those signals
21 early so things could be done inland if necessary. We
22 believe at this time and maybe next year we'll know more.
23 At this time it appears it's not related to seawater
24 intrusion from the bay, but probably something with
09:40:04 25 respect to the draught conditions, lower water levels

1 particularly in the drier months of the year. Did I say
2 that correctly?

3 MR. JAQUES: Yes.

4 MR. MCGLOTHLIN: It's a segue to emphasize is the
09:40:19 5 watermaster is abundantly cognizant that we have a problem
6 in the coastal subarea over a long period of time which is
7 that there are areas of the basin and the two major water
8 producing. Aquifers that are below particularly the Santa
9 Margarita that is the deeper aquifer that is below
09:40:40 10 seawater levels. Those conditions --

11 THE COURT: Is the Santa Margarita within the
12 jurisdiction of this?

13 MR. MCGLOTHLIN: Yes, they're pancakes, your
14 Honor. The lower pancake, if you will. Paso Robles is
09:40:53 15 the other producing thing -- the aquifer production has
16 been taken off of that to some degree, still used and
17 there are -- in your materials we submitted, you can see
18 groundwater level maps of those two areas, particularly
19 just comes to mind the EIR, EIS from the desal project,
09:41:17 20 the chapter four I sent to you, there are groundwater
21 elevation maps that show the different elevations in the
22 basin. I think that's tab four, something like that. Tab
23 four of the case management statement; and if you look,
24 for example, at page 4.4-17.

09:41:38 25 THE COURT: One second, please. The one in

1 January, I think.

2 MR. MCGLOTHLIN: On 4.4-17 is the water level in
3 the shallow zone which would correlate to the Paso Robles
4 sub-basin -- aquifer, excuse me. The next page 4.418 is
09:42:10 5 the desal and I'm looking at Mr. Jaques says that would
6 correlate with the Santa Margareta correlation. Yep. So
7 you can see particularly in the Santa Margarita aquifer.
8 You can see that pumping impression where it says negative
9 50 if you're looking at 4.4-18.

09:42:30 10 THE COURT: And the one on the left, what do you
11 call that?

12 MR. MCGLOTHLIN: Paso Robles aquifer.

13 THE COURT: Santa Margarita on 4.-18?

14 MR. MCGLOTHLIN: Correct, your Honor.

09:42:46 15 THE COURT: Santa Margarita.

16 MR. MCGLOTHLIN: Santa Margarita.

17 THE COURT: And I'm looking at that 50 negative.

18 MR. MCGLOTHLIN: Uh-huh.

19 THE COURT: And that says what?

09:42:59 20 MR. MCGLOTHLIN: That is telling you that the
21 Groundwater levels, the static water levels in that area
22 -- in that circle there are projected as approximately 50
23 feet beneath sea level.

24 THE COURT: I see.

09:43:13 25 MR. MCGLOTHLIN: And so I hope I'm not going to

1 mistakenly state this; but as I was brought to understand
2 by the hydrogeologist during adjudication somewhere
3 offshore whether a hundred feet or three miles is an
4 interface between portable or I should say non-relatively
09:43:37 5 non saline groundwater and seawater.

6 To the north, as you move towards Marina and in
7 towards the mouth of the Salinas basin, there's
8 significant seawater intrusion that goes just about inland
9 almost as far as the City of Salinas in places and has for
09:43:55 10 decades. That's in part because the trench, I believe,
11 it's Monterey trench offshore that comes off the Salinas
12 River creates basically immediate outcropping or day
13 lighting of the aquifers to the ocean there. So very easy
14 to pull in seawater. See similar affects in other areas
09:44:20 15 where you have those immediate offshore trenches Oxnard
16 Plains, for example, in Ventura County seawater intrusions
17 same sort of situation. We don't have that further south
18 here in the Seaside basin, but we don't know where that
19 interface is, so it's an open question when we might see
09:44:37 20 seawater intrusion hence why the sentinel well program and
21 monitoring program was implemented so we would have the
22 advanced warning of something happening.

23 Very long term over time, we will need to
24 continue to monitor and address this situation of having
09:44:55 25 lower water levels. It's not something to be alarmed at

1 right now.

2 THE COURT: I understand.

3 MR. MCGLOTHLIN: May I pause and ask Mr. Jaques
4 is there anything you would add to that?

09:45:11 5 MR. JAQUES: No, I think the only thing to think
6 of when you mentioned the interface, the interface is not
7 a vertical curtain wall, that's good and bad. It will be
8 spread out, and there's been some work done through
9 Stanford University in recent years trying to look for
09:45:27 10 interfaces offshore with high tech imaging, and they
11 haven't succeeded in getting out in the ocean where they
12 could help define. I was hoping maybe they would and
13 maybe get a clue that's miles away or --

14 THE COURT: Wasn't that reference in the January
09:45:47 15 Environmental Impact Statement.

16 MR. MCGLOTHLIN: Yeah, God, I hope I don't
17 misstate this electroresistance mammography.

18 THE COURT: Yes, I asked the question. It sounds
19 all quite space aged. I'm sure it is, but the testing
09:46:01 20 that has been done up until these bright people came up
21 with that has been some less advanced testing. Is that
22 what you're saying?

23 MR. MCGLOTHLIN: It's well testing and testing
24 for chloride levels in wells and that's how we know
09:46:20 25 seawater intrusion is miles inland in the Salinas basin.

1 THE COURT: But the possible benefit of this new
2 procedure is what?

3 MR. JAQUES: Well, it would be try to identify
4 the location of the seawater intrusion, how far offshore
09:46:32 5 it is. They haven't been able to perfect it.

6 MR. MCGLOTHLIN: Your Honor, that technology has
7 been around for a while, not a long time but doing it on a
8 surface level. It's now moved to aerial surveying which
9 is fascinating they can fly a plane or helicopter over a
09:46:51 10 basin and see where pockets within the groundwater are
11 saline versus potable which is fascinating moving offshore
12 hopefully the next step. But the issue for our purposes
13 today is we are aware of the problem. We're monitoring
14 for that problem. There doesn't appear to be any
09:47:12 15 conclusive evidence of seawater intrusion at our doorstep.
16 How far off the doorstep it remains, we don't know. These
17 elevated chloride of last year, again, they do not appear
18 to be related to seawater intrusion but they are always
19 something that's going to immediately perk watermaster's
09:47:29 20 interest. The board has been very proactive in let's get
21 to the bottom of this now in commissioning their
22 hydrogeologist and paying for that research to figure out
23 what is happening.

24 So the other -- the only other challenge that is
09:47:43 25 a broader challenge is the desalination project is still

1 in the permitting phase before the CPUC, California Public
2 Utilities Commission. It will then presuming we get a
3 certificate of public convenience necessity move to the
4 Coastal Act permitting through the local coastal
09:48:04 5 permitting through the City of Marina or to the Coastal
6 Commission on appeal. And then there is always the
7 concern of potential lawsuit either on the environmental
8 CEQA NEPA issues or on water right issues. I think those
9 that follow it believe that those issues are on substance
09:48:25 10 sustainable and all issues can be overcome but as things
11 are in water policy extends water law there are always
12 obstacles and people hold vetoes and they can delay
13 projects. I say that to emphasize that we may need you,
14 we as the water using community and representatives, may
09:48:47 15 need to work more constructively or make -- come with
16 requests for the Court to help us with respect to the
17 Seaside component of the water picture. We don't have any
18 request of today. But we're mindful of that.

19 THE COURT: Okay. I appreciate. I wanted to go
09:49:06 20 through some of the tabs I had on these.

21 MR. MCGLOTHLIN: Certainly.

22 THE COURT: Follow up a little. First looking at
23 I had a question before I got into that. And I have
24 learned over the years not to be bashful about asking
09:49:29 25 questions that's when I was presiding judge I wouldn't

1 allow the criminal division to be occupied by people just
2 their whole career we moved people from civil litigation
3 and so forth they would ask questions. And sometimes
4 result in change of practice. We've been talking here
09:49:53 5 about the constraints on water supply, safe water,
6 groundwater -- ground subsidence, many fascinating,
7 challenging issues that require the best thinking from
8 lots of different people. Of course -- and of course,
9 water conservation is often said that perhaps that's one
09:50:16 10 of the greatest ways to protect our water supplies is to
11 conserve.

12 And so that leads to something I'm sure is
13 thoroughly regulated but somebody could give me the
14 broader overview. Here within the basin and the area, we
09:50:32 15 have people flushing toilets and taking showers and
16 drinking water or washing their car with a hose and
17 forgetting to turn it off and so forth. Can anybody give
18 me the big picture, refresh my recollection on the
19 governmental structure for monitoring and permitting that
09:50:52 20 because, of course, every person who moves into the area
21 is -- now I have a background as a municipal person, but I
22 really appreciate and I think it's helpful to all.

23 All right, sir, would you tell me --

24 MR. LAREDO: David Laredo, general counsel to the
09:51:08 25 Monterey Peninsula Water Management District.

1 There's two dimensions to your question. There's
2 the water use, the water waste. And then there's the
3 question of permitting and expansion and extensions of
4 use.

09:51:22 5 THE COURT: Right.

6 MR. LAREDO: But in terms of water use and water
7 waste, the California American Water Company and the
8 Monterey Peninsula Management District has a very
9 cooperative program that has been vetted through the
09:51:33 10 public utilities commission that uses a variety of
11 mechanisms to minimize water use. One of the most
12 effective is we have inclining block rate structure, five
13 tiers and water use becomes extraordinarily expensive if
14 one is using more than their share.

09:51:56 15 Water waste is also recognized and regulated.
16 The water management district has a conservation division
17 and does cite water -- those who are using water
18 inappropriately and that would be outdoor irrigation in
19 permissible ways, leaks that are uncorrected, water
09:52:19 20 service in restaurants not upon request. There are a
21 whole litany of water use restrictions that have
22 collectively shown that are -- to be effective because the
23 communities water use is dramatically reduced. We are one
24 of the least water consuming areas in the state, if not
09:52:41 25 the least.

1 THE COURT: Yeah, I've seen great -- I mean my
2 thoughts are nothing but complimentary in that regard. As
3 it relates to the means of what I used to be involved in
4 the policy level, city pipes and connections, and I
09:52:58 5 remember we went through a political storm, but we brought
6 all of our area over time up to compliance because the old
7 standards have been such among other things other cities
8 were talking about issues in China and so forth and we
9 were talking about streets, gutters, sidewalks, storm
09:53:22 10 drains and that type of thing and forming assessment,
11 meeting with property owners, see if there was a majority
12 of protest and improving community and among those would
13 be junctures so we wouldn't as a city be wasting a lot of
14 water.

09:53:34 15 What is going on?

16 MR. LAREDO: California American operates and
17 controls the pipes and the mains. They have a very
18 aggressive main replacement program. Of course, any
19 investment has to be authorized by the public utility
09:53:50 20 commission has authorized at Cal Am, has brought their
21 unaccounted water use down to a remarkably low level. Mr.
22 Sabolsice?

23
24 MR. SABOLSICE: Three percent.

09:54:03 25 MR. LAREDO: Compared to one historically seven,

1 nine and upwards from there. So there has been a dramatic
2 reduction and that's unaccounted for water or non-revenue
3 water to tell the truth. There is a lot of uses like line
4 flushing, construction water fire flow that is within that
09:54:20 5 three percent. There is a very low level for unaccounted
6 for water.

7 Now, on the expansion of use side, the water
8 management district has a very aggressively regulatory
9 structure, the legislature when it created the district
09:54:37 10 required that any extension or expansion of a water
11 distribution system that includes Cal Am be done pursuant
12 to permit. So the district permits both commercial and
13 residential expansions of use. What does that mean in
14 terms of a commercial structure, that means if you want to
09:54:53 15 add a seat to a restaurant --

16 THE COURT: I'm sorry, you are counsel for the
17 Monterey Peninsula Water Management District?

18 MR. LAREDO: Special act district.

19 THE COURT: Thank you.

09:55:02 20 MR. LAREDO: So if you have a commercial, if you
21 want to add a hundred square feet to your garage, you need
22 a permit, and there's a water duty that goes with that.

23 If you want to add to a seat in a restaurant,
24 there is a water duty attached to that.

09:55:15 25 If you want to add -- expand your hotel or motel

1 by adding beds, you need a permit and the water duty that
2 is with that.

3 On the residential side, the district regulates
4 on a fixture unit basis. So all water using fixtures are
09:55:33 5 assigned a water duty; and if you want to add a bathroom
6 or a laundry sink, you need to come to the district. You
7 need to get a permit. The district will only permit if
8 there's available water through an allocation system. At
9 the moment, there are very few cities have any allocation
09:55:51 10 left. So in effect, we have a moratorium on even those
11 expansions of use.

12 THE COURT: Water duty is probably a term of art,
13 what does that mean, just a shorthand?

14 MR. LAREDO: By water duty, fixtures are assigned
09:56:05 15 a demand in terms of acre feet. So when you add a
16 bathroom, we know that you're going to be using a certain
17 quantity of acre feet on average and so the water duties
18 were assigned by analyzing water use for different types
19 of fixtures.

09:56:23 20 THE COURT: Is that a fee structure?

21 MR. LAREDO: It's both a fee structure, a
22 regulatory structure.

23 THE COURT: I see.

24 MR. LAREDO: The gate keepers for allowing that
09:56:31 25 are the land use jurisdiction, but the gate keeper for the

1 water is the water management district.

2 And then finally I'd like to add that California
3 American Water Company itself is under a moratorium set by
4 the public utilities commission. California Cal Am will
09:56:51 5 not set any new meters. So what we're talking about is
6 the increase and intensification of water use through
7 existing meters, we're regulating that. So collectively
8 with our water waste and water use tools and our
9 monitoring of regulation of new uses, intensified uses we
09:57:12 10 have a tight control over expanded water use.

11 THE COURT: And when people get their water bill,
12 do they have a report card to tell them how they stand
13 with their neighbors and so forth?

14 MR. LAREDO: I'll let Mr. Sabolsice respond.

09:57:25 15 MR. SABOLSICE: Your Honor, the water bill does
16 display their historical water use for a customer so they
17 can look back. They can see how much they've used for the
18 previous 12 months.

19 The water bills do not at this time compare their
09:57:40 20 water use to others in the community on a similar parcel.
21 That is something that as a company we're working towards
22 where we can provide customers their water use on a daily
23 basis through an automated meter reading system. We've
24 proposed that in our most recent rate case to the
09:58:04 25 commission, and we're hopeful that that technology is

1 approved because we do feel that comparison between your
2 home, your water use to those in the community is helpful
3 to drive further conservation beyond this tiered pricing
4 structure that has been effective so far.

09:58:24 5 THE COURT: That is helpful. I know when we did
6 a landscaping a few years ago, of course, we were mindful
7 of that and got into all the -- took out the grass and all
8 those things.

9 MR. LAREDO: Your Honor, the one additional area
09:58:37 10 and it's a cooperative effort between Cal Am and the water
11 management district, we have a very aggressive education
12 effort. There are workshops for landscape irrigators.
13 Replacement devices are available. We will encourage
14 individuals to replace their plumbing fixtures, install
09:59:02 15 ultra low flow waters, and there are rebates available for
16 that so that individuals can come in and receive, I
17 believe, as much as \$500.00 for a rebate for their washer
18 if they swap to a lower, but there's a very extensive
19 conservation at any of the street fairs. The Cal Am and
09:59:22 20 the water management district staff cooperatively man
21 those and get that information out.

22 THE COURT: Thank you very much, Mr. Laredo. I
23 think we may be talking among ourselves, but I think this
24 is a good way to touch basis on all these developments and
09:59:40 25 form all those.

1 Let me take one moment, please. I did want to
2 refer to the annual report, December 9th, 2016, and read
3 the total pumping for water year 2016 did not exceed the
4 operating yield or the natural safe yield of the basin.
10:00:05 5 This is a significant accomplishment. First time this has
6 been achieved since the creation of the watermaster
7 request for the beneficial affects of the conservation
8 efforts within the basin, and I wanted to acknowledge that
9 and read that and that's a very positive development.

10:00:22 10 As it relates to the water administrator,
11 watermaster administrative costs, in no way was a
12 criticism just understanding here. That budget was
13 attached. I really was referring to tab four,
14 Replenishment Assessment Unit Cost in the binder and truly
10:01:23 15 a clarifying question because I'm sure those who
16 implemented anything you gain familiarity how you compute
17 these matters. But I'm looking at the memo that says from
18 Mr. Jaques of October 15th, 2016, and it was the technical
19 program director's report to the board just in October
10:01:47 20 approval of unit cost for the water year 2016, 2017, and I
21 think I follow that but then I turn -- I turn to the graph
22 or chart attached, anticipated unit costs for the solar
23 coding potential sources and replenishment water and I
24 generally follow that but I wonder if you could explain
10:02:17 25 basically, for example, take any one that you like,

1 Seaside basin, ASR Expansion and potential replenishment
2 water could become available and that's -- that's derived
3 from the report and all the various sources of
4 replenishment; is that right, Mr. McGlothlin?

10:02:44 5 MR. JAQUES: That's correct.

6 THE COURT: And then potential buying of water
7 that could be supplied by project. Is that the pure water
8 project?

9 MR. MCGLOTHLIN: Your Honor, that's for each of
10:02:51 10 these in the left-hand column, you have five different
11 projects identified from desalination to the pure water
12 project and so on.

13 THE COURT: Right.

14 MR. MCGLOTHLIN: And then you're looking at the
10:03:09 15 water supply available and the base unit cost on a per
16 acre foot basis for each of those projects and when it is
17 anticipated it could be online.

18 THE COURT: Is that a function of market forces?

19 MR. MCGLOTHLIN: That is a function of cost
10:03:30 20 structure.

21 THE COURT: Cost for doing what?

22 MR. MCGLOTHLIN: Well, what each of them are, for
23 example, the desalination we're talking about pumping
24 water from beneath the ocean as we were talking about it
10:03:40 25 before and putting it through reverse osmosis and

1 delivering water to the Peninsula.

2 THE COURT: I see, to supply that extra 6,250
3 very substantial contribution of regional desalination
4 present ballpark estimate, is that going to be about
10:04:03 5 \$6,100.00 per acre foot to accomplish that? Is that what
6 you're looking at?

7 MR. MCGLOTHLIN: Yes. Yes, your Honor.

8 THE COURT: It's clear once you go through it.
9 Thank you.

10:04:21 10 MR. MCGLOTHLIN: I think it is a good time to
11 clarify the replenishment assessment and what is
12 happening.

13 THE COURT: Yes.

14 MR. MCGLOTHLIN: So the judgment is drafted such
10:04:32 15 production in excess of each party's share of the native
16 safe yield which again emphasizing that didn't occur last
17 year for the first time. But it has historically occurred
18 in the past up to their operating yield, that quantity
19 that you're allowed to, remember, we started at 5600
10:04:52 20 accumulatively and ramping down to 3,000. That delta is
21 assessed to the replenishment assessment with the -- the
22 way the design was assess the replenishment assessment
23 with the premise that the watermaster would then purchase
24 that water in the future to replenish the basin. Because
10:05:13 25 of the cost and because of lack of water to purchase, we,

1 with the Court's -- Judge Randall's consent, the
2 watermaster entered into a couple different agreements
3 which are consistent with the goal but change the
4 dexterity a little bit. With respect to the City of
10:05:36 5 Seaside, in particular, the City of Seaside imported water
6 to use on its golf course in lieu of pumping groundwater,
7 which is effective in lieu replenishment. You don't pump
8 it, it's just the same as if you injected it and
9 replenished, right? That established a credit against
10:05:54 10 their production in excess of their share of safe yield
11 for their municipal system, and they still have a bank --
12 the City of Seaside has a bank of credits for -- with
13 respect to their production for their municipal system.

14 California American likewise has been developing
10:06:12 15 these projects and putting significant financial resources
16 toward that development, and it was acknowledged in both
17 the judgment and through a separate subsequent MOU with
18 the watermaster that Cal Am would pay toward the
19 development of the project and at such time the
10:06:30 20 desalination project comes online, Cal Am is going to
21 effectively repay that quantity that it otherwise would
22 pay monetary dollar for an assessment in actual wet water.
23 So part of the sizing and component of the desalination
24 project is for Cal Am to produce an extra 700 acre feet of
10:06:55 25 water a year on average that it will deliver into its

1 system in lieu of producing 700 acre feet on average from
2 the groundwater basin. So, in other words, for a period
3 of 25 plus years, I say plus because it's going to be a
4 few more because of delays in getting this project going,
10:07:17 5 but for 25 plus years, Cal Am's intension is in lieu
6 replenishment -- in lieu replenish the basin at 700 acre
7 feet a year to repay that portion for which it would
8 otherwise since the entry of the decision has been hanging
9 this replenishment. So in summation, no party is
10:07:42 10 presently writing a check for this replenishment
11 assessment, but it is important as a number so we know how
12 to balance the bank accounts and the credit systems and
13 ensure that the basin is made whole in the future for
14 water that would have been purchased through those
10:07:59 15 payments. In the future once we do have a desalination
16 project online and things change, that replenishment
17 that's been actually made to function more elementary as
18 it was proposed if you exceed, you pay, but at some point
19 here we're going to be limited to native safe yield and
10:08:17 20 you don't pay on the quantity you produce of your share of
21 the native safe yield and that interim. Interim I mean
22 ramping down from the ten percent ramp down, that
23 operating yield, opening safe yield element.

24 THE COURT: My sense is that, although it might
10:08:34 25 have been the subject of some dispute and naturally who

1 comes to the table and how many votes there are, that to
2 me being a water board system it brings together people
3 with diverse interests and it sounds to me like you're
4 saying these various agreements have been fashioned and
10:08:52 5 you're speaking because they've passed mustard with the
6 water board and MOUs and so forth?

7 MR. MCGLOTHLIN: Not only that they found favor
8 with Judge Randall, your predecessor.

9 THE COURT: Yes.

10:09:07 10 MR. MCGLOTHLIN: The basic design is that the
11 watermaster board is a composition of all the diverse
12 stakeholders in the basin that pump water. You know, we
13 self police because we are stewards of the different
14 members all angling toward a long-term sustainable
10:09:27 15 groundwater basin, but we also have the overlay of the
16 court to resolve disputes should we have them since we
17 have had them in the past or to ensure that the -- whether
18 or not you want to call it the fox or a hen that we are
19 properly watching the hen house.

10:09:45 20 THE COURT: It's so fundamental. I've been doing
21 this for 50 years it's often been said to arrive at an
22 agreement when there is a disagreement, you need several
23 things. You need rational actors. Of course, a lot of
24 what we do is bring people to the table, and I don't care
10:10:00 25 high-tech litigation, you've got a captain of industry and

1 he's mad at the other CEO, you've got to get people down
2 to rational evaluation. You have to have as close to a
3 good exchange of information that's why we have pretrial
4 discovery and sanctions and sanctions if you don't cough
10:10:18 5 up. And you have the relevant information so that
6 rational actors can evaluate relevant information and the
7 capacity to look in a rational way to risk some benefits
8 and that's sometimes other interests trump, we get in
9 contested litigation and simply a good-faith litigation.

10:10:39 10 MR. MCGLOTHLIN: I will say that I'm happy to
11 report at large by volume of decisions of the watermaster
12 certainly within recent history, decisions are frequently
13 almost unanimous. There's broad support. The technical
14 needs are, you know, typically not debated, and I think
10:10:59 15 we're working very cooperatively as a group and pleased to
16 have you as a partner in the process.

17 THE COURT: That's my sense of everything. And
18 there may be a time when I would -- were there annual
19 reports that Judge Randall received may have had questions
10:11:18 20 about and then did not schedule a conference or did he do
21 that annually?

22 MR. MCGLOTHLIN: We weren't scheduling a
23 conference. Actually, I'm glad you bring that up in part
24 because things were going on, the watermaster, in the
10:11:30 25 first couple years there were ad hoc hearings,

1 postjudgment proceedings before Judge Randall.

2 THE COURT: How were they occasioned?

3 MR. MCGLOTHLIN: When they were necessary.

4 THE COURT: Did he schedule them in court?

10:11:43 5 MR. MCGLOTHLIN: He did. I'm glad you asked. I
6 was going to lead to a suggestion. They were both. But
7 in the later hearings we had with the judge, we had them
8 telephonically, and I wanted to suggest that might be an
9 appropriate in the interest of costs for all concerned.

10:12:00 10 THE COURT: I'm certainly willing to consider
11 that. I manage litigation, you know, coal mine,
12 cattlemen, I manage litigation and help with settlements
13 and things like that telephonically. I have a case way up
14 in Del Mar County. It's a secret hearing. Well, a
10:12:22 15 community involvement, I could go eight hours and come
16 back eight hours and be in trial the next day because the
17 public has a right to know what's going on. The annual
18 review other matters that can be done telephonically,
19 schedule sufficient time to do it. I'm not here to break
10:12:37 20 anybody's back financially and happy to entertain that
21 possibility. I thought for a couple years it would be
22 helpful to show my interest and also you can -- people can
23 judge have they read this stuff. Get some level of
24 confidence mutually or not that that's a good thing. I
10:13:01 25 think we have a stipulation that I can communicate with

1 the watermaster. I've done that by email, help everybody.
2 It is not an ex parte hearing where if I have a question,
3 put it forward and send it around, if there is a cause for
4 concern, we can schedule a court conference.

10:13:20 5 MR. MCGLOTHLIN: So if I may suggest an approach
6 for the 2018 case management conference that we in the
7 annual report or in a case management statement in advance
8 of whatever date we state for that, watermaster make a
9 recommendation to you. It's your decision, of course,
10:13:39 10 whether or not we do that telephonically or in person.

11 THE COURT: I think that's great. And frankly
12 schedules may pop up so tentatively set date might have to
13 be reconsidered.

14 MR. MCGLOTHLIN: And something may happen in
10:13:52 15 between, of course, anything that demands immediate
16 attention and instruction from, your Honor, we would
17 schedule a case management conference.

18 THE COURT: Let me know what the need is in a
19 brief synopsis of what we're talking about papers, email
10:14:03 20 if not voluminous mail, you have my home address.

21 MR. MCGLOTHLIN: Yes, your Honor.

22 THE COURT: Let me just continue here. Won't
23 keep you forever.

24 In the annual report at page nine and this may be
10:14:31 25 covered elsewhere, but it says task, prepared documents

1 for Sustainable Groundwater Management Act reporting.
2 This task is new this year and is the result of the
3 implementation of the state of the Sustainable Groundwater
4 Management Act and I have note when next anticipated and
10:14:54 5 what is the reporting schedule there?

6 MR. JAQUES: They are due by April 1st of each
7 year.

8 MR. MCGLOTHLIN: Let's explain what they are.

9 THE COURT: Yes, please.

10:15:03 10 MR. MCGLOTHLIN: I'm glad you mentioned that. As
11 a general matter for -- remember the grand scheme of
12 SIGMA, GSA, GST, DWR approval, that process is not
13 required for adjudicated groundwater basin.

14 THE COURT: Yes, I do understand.

10:15:20 15 MR. MCGLOTHLIN: Right. However, to ensure that
16 the adjudicated basins are matching to the same
17 sustainable standard and generally just to have
18 information which we've recognized in the state, we need
19 much better groundwater use and conditions information.

10:15:39 20 SIGMA requires that adjudicated basins report annually to
21 the Department of Water Resources certain groundwater
22 conditions, groundwater use, surface water use, a copy of
23 the annual report and a few other bells and whistles that
24 are required to be reported and we're doing that.

10:15:59 25 THE COURT: And that duty is discharged through

1 the watermaster.

2 MR. MCGLOTHLIN: That is done, correct. Anything
3 else done to that?

4 MR. JAQUES: I did it yesterday.

10:16:08 5 MR. MCGLOTHLIN: It's what keeps my friend here
6 busy in part.

7 THE COURT: Also on page 11 same task I.3AI.
8 That's Roman numeral one period or 3 period small A period
9 arabic one. Update the existing model groundwater model
10:16:32 10 of the Seaside basin. Updating of the watermaster's
11 groundwater model of the Seaside basin not expected to be
12 necessary in 2017. Is that because of the sufficiency of
13 earlier reports? Is that the gist of that or can you tell
14 me?

10:16:46 15 MR. JAQUES: That's correct. The hydrometrics,
16 the consultant that developed the model for the
17 watermaster and use the model for the various studies that
18 we've conducted, and so forth and so on. Periodically
19 they would want us to update that by putting in more
10:17:03 20 recent production data and climalogical data and any other
21 things that might have changed it but in their view at
22 this point the amount of change that occurred since the
23 model was initially developed doesn't warrant the effort
24 and expense of doing that, your Honor.

10:17:19 25 THE COURT: Very good. Also the budget, is that

1 function, I think, Mr. Jaques or someone else has taken on
2 extra duties to do -- have some contraction of support
3 staff, Mr. McGlothlin?

4 MR. JAQUES: I'd have to look back through the
10:17:37 5 details.

6 THE COURT: I thought there was a staff reduction
7 there.

8 MR. MCGLOTHLIN: Well, there have been a
9 consolidation of staff members, that's correct.

10:17:50 10 THE COURT: And that had money implications.

11 MR. JAQUES: It's the overall budget.

12 THE COURT: And generally when you set your
13 budget, where is the budget -- what tab is that? Is that
14 the administrative costs on tab three there?

10:18:08 15 MR. MCGLOTHLIN: So there --

16 THE COURT: Budget versus actual administrative
17 funds is attachment three to the annual report.

18 MR. MCGLOTHLIN: Right.

19 THE COURT: Is that the budget for the year?

10:18:24 20 MR. MCGLOTHLIN: That is reporting the actual
21 balance, that's the accounting.

22 THE COURT: For example, if --

23 MS. DADIW: Reported separately and
24 administrative.

10:18:41 25 THE COURT: For example, I'm not promoting this

1 one way or the other but compared to what I see on fee
2 applications says legal advisor 25,000. Does that account
3 for all of your services for a year?

4 MR. MCGLOTHLIN: It does, your Honor.

10:18:53 5 THE COURT: Thank you. Try not to have you down
6 here too often.

7 MR. MCGLOTHLIN: We try to be as efficient as
8 possible and give you as much appropriate information as
9 you need.

10:19:08 10 THE COURT: I try to do that for the chiefs to
11 not break the budget.

12 Just going through some questions.

13 MR. MCGLOTHLIN: Your Honor, I may direct you to
14 the extent interested attachment six has the two
10:19:30 15 components of the budget, the administrative fund budget
16 and the operating and management plan operating budget,
17 pages 33 and 34.

18 THE COURT: Thank you. I've had enough cases
19 over the years where I've got a case and the person sticks
10:19:58 20 out their chest and says has your Honor read the papers?
21 I have to redirect people's energies to tell them to
22 proceed and I do read this carefully.

23 MR. MCGLOTHLIN: I bite my tongue on that
24 comment, your Honor.

10:20:22 25 THE COURT: It's a matter of getting along. It's

1 just a Higung (phonetic) under motion, Judge, just move it
2 along. All very good. Give me the holding and the
3 decision. Precise holding and its application to the fact
4 grumble, grumble, trying to blow me away. Calm down and
10:20:40 5 go through this step by step.

6 It's true not all the judges read the papers in
7 advance. I understand that.

8 MR. MCGLOTHLIN: No, your Honor's, plural defense
9 in many of these groundwater cases the papers are in
10:21:03 10 Banker's boxes.

11 THE COURT: I got a break. Go off record.

12 (Off-the-record discussion.)

13 THE COURT: Continue back on the record. Again,
14 I think you've emphasized at several places in the report
10:31:30 15 I see the water year 2016, seawater intrusion analysis
16 report December 2016 at page four, again, emphasizes the
17 need continuing document declining groundwater levels in
18 the Laguna Seca subarea and the challenges and
19 opportunities you'll have there.

10:32:02 20 Also I noticed in tab ten in the discussion paper
21 on the City of Sand City Public Works, it's a challenge
22 going back historically to get accurate recordation of
23 detailed information of groundwater quality data, but I
24 think science is helping us out a lot these days.

10:32:35 25 Again, the tab number 12, the technical

1 memorandum dated January 22nd, 2016 is it Jack or Jock?

2 MR. JAQUES: It's Jaques.

3 THE COURT: Mr. Jaques, thank you, sir.

4 MR. JAQUES: I should respell my name.

10:32:48 5 THE COURT: I don't want to be Nuckles. Again,
6 emphasizing that the watermaster has no control or
7 influence over pumping outside the Seaside basin
8 boundaries. Effectively unable to prevent declining
9 groundwater elevations and a portion that was Laguna Seca
10:33:11 10 subarea but the positives are these GSAs.

11 MR. JAQUES: Yes.

12 THE COURT: Going forward you typically don't
13 have a defeat and establishment to that.

14 And now turning to the case management statement.
10:33:28 15 I think I have fewer questions. I think the environmental
16 -- turning to tab four of your statement that's -- I think
17 very current January 2017 environmental setting grant
18 affective close impact mitigation and measures. It's a
19 section of the environmental impact report for the
10:34:11 20 Monterey Peninsula water supply project or proposed
21 project and it just as your earlier statement, Mr.
22 McGlothlin, really for anyone who wants to pull this
23 online and look at it to become informed would find very
24 extensive reporting on all the issues here but when I --
10:34:39 25 the challenges and opportunities are set forth in among

1 other places just a reference to the regulatory framework.

2 MR. MCGLOTHLIN: Uh-huh.

3 THE COURT: We have the federal anti-degradation
4 policy. The state water resources control board

10:34:57 5 resolution 68-16, anti-degradation policy. The Porter
6 Cologne, C-o-l-o-g-n-e Water Quality Control Act. The
7 Central Coast Water Quality Control Plan. It goes on and
8 on and then we go to the actual parties to this litigation
9 happily that's been moving along very cooperatively and
10:35:22 10 successfully and then we get the non-party stakeholders
11 and no end of challenge.

12 Is there any one who has attended to represent
13 your various diverse interest who would like to share
14 anything with me before I again wind down and draw this
10:35:41 15 meeting to a conclusion? Invite any comment if anyone has
16 anything to say. No one does. Thank you for being here
17 to participate.

18 And to you, Mr. McGlothlin, do you have anything
19 else?

10:35:56 20 MR. MCGLOTHLIN: I have one matter of
21 housekeeping. You asked to bring the letter that you
22 submitted to us.

23 THE COURT: Oh, yes.

24 MR. MCGLOTHLIN: On Friday for signature.

10:36:04 25 THE COURT: Yes, I'll sign it and place in the

1 court records.

2 MR. MCGLOTHLIN: May I approach?

3 THE COURT: Yes, please do.

4 And may I contact you by email concerning

10:36:12 5 interchange on possible tentative dates for further
6 hearing?

7 MR. MCGLOTHLIN: Absolutely.

8 THE COURT: And then you can notify the court
9 here.

10:36:19 10 MR. MCGLOTHLIN: So we'll wait to set a tentative
11 date.

12 THE COURT: Yeah, I think I need to frankly check
13 with my wife who is saying I worked over a hundred and 60
14 days all over the state.

10:36:32 15 MR. MCGLOTHLIN: Nice to be retired.

16 THE COURT: Hasn't been retired, but I bought my
17 western collective ski pants, tour all over the western
18 states. Go off east. My 81 year old brother said "Life
19 is a wasting asset. You never know when something could
10:36:50 20 happen."

21 MR. MCGLOTHLIN: Certainly, your Honor.

22 THE COURT: I may want to take some of the
23 springtime off. But when the chief calls, I'm sort of
24 like the Dalmatian dog at the firehouse, I go arf, arf.

10:37:09 25 I'm on my way.

1 You intend to fill that?

2 MR. MCGLOTHLIN: I certainly will, your honor.

3 THE COURT: So we'll close this off. I

4 anticipate some kind of review telephonically very

10:37:22 5 possibly or appropriate here in the courthouse. I'm

6 certainly inclined to not burden the parties financially,

7 especially in light of the fact that no single member of

8 the public has come here to take advantage of the

9 opportunity to see justice. I don't criticize them.

10:37:42 10 Schedule something a year in advance may not be posted or

11 widely known. I think this information concerning the

12 fact that we would have this open court session was

13 available to all. Probably be in the springtime.

14 Sometime in the March period, February to April, something

10:38:00 15 like that, Mr. McGlothlin?

16 MR. MCGLOTHLIN: (Nodding.)

17 THE COURT: The order, however, provides for --

18 sets the date for you to file your annual report.

19 MR. MCGLOTHLIN: Yes, it does.

10:38:12 20 THE COURT: The amended decision.

21 MR. MCGLOTHLIN: December 15th.

22 THE COURT: And also follow it up with a case

23 management statement?

24 MR. MCGLOTHLIN: Yes, your Honor, we would.

10:38:23 25 THE COURT: I think one of the things I tried to

1 do and again I can't thank you all enough for providing
2 timely information in response to my many questions. I
3 think I said at the beginning that some of those questions
4 might appear to be ill-formed but I don't -- I didn't
10:38:40 5 think so but more than that I think it's just my modus
6 operandi sit here like I know it all, bang a gavel and
7 I've never used a gavel, but I think it's a real exchange
8 of information and ordinarily most matters can be arrived
9 at cooperatively; and if not, we'll determine -- one thing
10:39:03 10 in the -- at any time during the year, Mr. McGlothlin, you
11 anticipate issues that you think might implicate the
12 Court's involvement by way of a possible contested hearing
13 without violating any communications that are tentative,
14 you know, you want to come to an agreement if you can. If
10:39:25 15 you can let me know if you anticipate the possible
16 calendaring of matters for resolution or tentatively what
17 the general nature of them would be that would be helpful.

18 MR. MCGLOTHLIN: I don't think -- welcome
19 comments from my colleagues, but I don't anticipate any
10:39:42 20 conflicts this year that are on the insight. If we did
21 have something significant, like, a definitive seawater
22 intrusion occurring at the coast, we would think that
23 would be -- I would think that would be something we would
24 want to report to you immediately.

10:39:59 25 THE COURT: I would like to know that without

1 reference to the annual report. Wake me up at 3:00 in the
2 morning, that kind of thing.

3 MR. MCGLOTHLIN: Even then I have to say the
4 groundwater moves slowly. It's not something alarming,
10:40:12 5 but we would, of course, if there was a dramatic change in
6 physical conditions not wait until the annual report to
7 apprise you of that.

8 THE COURT: I think this whole -- you know the
9 legislature has taken care to say look if the matter is
10:40:27 10 under judicial management, we assume all the relevant
11 players are there. The system has provided a jurist who
12 is going to get in and try to do his or her best, and
13 we're willing subject to then view all of that trust that
14 system trustworthy and I think everyone's acted to a high
10:40:47 15 standard. I'm very grateful for the time you've taken out
16 of your day to be here and show that interest. I'm
17 certainly open to scheduling, you know, a morning as far
18 as telephonic conference and who is our participant on
19 conference call here today?

10:41:06 20 THE CLERK: Kelly Sutherland, your Honor.

21 THE COURT: Has she dropped off or do you know?

22 THE CLERK: Miss Sutherland, are you still on the
23 line?

24 MS. SUTHERLAND: Yes, your Honor. I'm still
10:41:19 25 here.

1 THE COURT: And you represent who again?

2 MS. SUTHERLAND: Laguna Seca and Pasadera.

3 THE COURT: You heard meeting the convenience of
4 all by doing this by telephone conference in the future
10:41:33 5 court call and I'm certainly open to this possibility.
6 Thank you very much.

7 Shall we adjourn?

8 MR. MCGLOTHLIN: Thank you, your Honor.

9 MS. SUTHERLAND: Thank you, your Honor.

10:41:41 10 THE COURT: Thank you all.

11 (Whereupon proceedings adjourned at 10:41 a.m.)

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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF MONTEREY)

4 I, LISA R. CRAFT, Official Pro-Tem Reporter of the
5 County of Monterey, State of California, do hereby certify
6 that the foregoing pages, 1 through 60, comprise a full,
7 true and correct transcription of my stenographic notes in
8 the aforementioned case of the proceedings held on March
9 17, 2017.

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Dated this 2nd day of May, 2017

LISA R. CRAFT, CSR 7631

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