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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

-000-

HONORABLE DAVID O. CARTER, UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA and  
STATE OF CALIFORNIA, on behalf  
of CALIFORNIA DEPARTMENT OF  
TOXIC SUBSTANCES CONTROL,

Plaintiffs,

v.

No. 2:90-cv-03122-DOC

MONTROSE CHEMICAL CORP. OF  
CALIFORNIA, et al.,

Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

JANUARY 22, 2024

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SUZANNE M. MCKENNON, CRR, RMR  
UNITED STATES COURT REPORTER

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1 (Proceedings commenced on January 22, 2024, at 10:03 a.m.)

2 THE COURT: Counsel, let me call the United States  
3 versus Montrose Chemical. It's 90-03122.

4 MS. HURST: Good morning, Your Honor. Patricia Hurst  
5 for the United States of America.

6 THE COURT: Pleasure. Where are your offices  
7 located?

8 MS. HURST: Washington, D.C., sir.

9 THE COURT: Okay. And once again, if I know that in  
10 the future, I'm more than happy to have this at 1:00 or 1:30.  
11 Because if you fly out here, sometimes you leave in the  
12 morning, and it's not two nights away from home.

13 MS. HURST: Sounds good.

14 THE COURT: Let me know that. If you got children or  
15 family matters, please.

16 MS. HURST: No. And no trouble at all, Your Honor.

17 THE COURT: Okay.

18 MS. WIEMAN: Good morning, Your Honor. Catherine  
19 Wieman for the State of California, on behalf of the Department  
20 of Toxic Substances --

21 THE COURT: Pleasure. Nice seeing ya.

22 MR. RICHARDSON: Good morning, Your Honor. Kelly  
23 Richardson with Latham and Watkins for Montrose Chemical.

24 THE COURT: Pleasure.

25 MR. GIBSON: Good morning, Your Honor. Ben Gibson

1 with Latham and Watkins, also for Montrose.

2 THE COURT: Pleasure.

3 MR. HUGHES: Good morning, Your Honor. Kevin Hughes  
4 with Foundation Law Group for defendant Stauffer Management  
5 Company.

6 THE COURT: Nice seeing you.

7 MR. ALLEN: Good morning, Your Honor. Jose Allen on  
8 behalf of TFCF America, Inc.

9 THE COURT: Nice seeing you all. So please.

10 There may be a few interruptions today, but I promise you  
11 you're going to get out of here. And I promise you I'm going  
12 to try to do that before lunch. Okay? which is why I have  
13 called you, hopefully, promptly at 10:00.

14 I'd like to hear a summation of -- regardless of this, you  
15 know, excellent status report. Don't get me wrong. Trust me,  
16 read it. All of that yellow underlining is mine.

17 why don't you tell me how we're doing?

18 MS. HURST: Would you like me at the podium?

19 THE COURT: Well, you can be seated if -- just as  
20 long as the microphone's closer. If you want to use your  
21 computer and you're more comfortable, that's fine.

22 MS. HURST: Thank you. Your Honor, I believe from  
23 the United States of America's perspective, everything is going  
24 smoothly. We are two years in, I think, a little more than two  
25 years in to the entry of the three consent decrees that you are

1 overseeing. And the work is getting done. It is by and large  
2 getting done on time. And I can report that the parties are  
3 working cooperatively together. I think we can all agree on  
4 that.

5 The report summarizes the specifics of how the work is  
6 proceeding. If you have any questions about what work has been  
7 done and what the results are, I'm happy to answer those. The  
8 few things I'll highlight are that the sampling has been done  
9 in the lower portion of the southern pathway. That was the  
10 major issue in the litigation that you oversaw. And the  
11 results were very favorable.

12 THE COURT: Were those the -- I sometimes refer to  
13 those as the commercial and residential, but primarily the  
14 residential areas --

15 MS. HURST: The residential areas.

16 THE COURT: -- for the boring samples, because some  
17 of the folks were very concerned out there.

18 MS. HURST: Yes, exactly. And by the lower portion  
19 of historic southern pathway, I mean the area that had not  
20 previously been sampled by EPA. So that was a big question  
21 mark for all of us. And what the results showed was that there  
22 is no concern above the what we called the step-out criteria,  
23 that the parties agreed on in the settlement that you approved,  
24 within, you know, zero to ten feet below the surface.

25 THE COURT: I thought the bore end -- go slowly with

1 me. Remember, you both are really the experts. Okay? So I  
2 need your help. You've been at this a long time, I think,  
3 especially, the other Counsel. And so be patient with me.

4 But I thought that the boring went down 15 feet. I  
5 thought that our native soil was about 15 feet down. And I'm  
6 not smart enough to understand the reading, which is on page --  
7 I didn't get a special master involved. I almost got Judge  
8 Smith involved to meet with you, but thought to save you some  
9 money save some time, that the -- page 8, line 17.

10 MS. HURST: Yes.

11 THE COURT: The end point criteria for the remedial  
12 investigation sampling, including 10mg/kg for total DDT. The  
13 sampling results revealed only isolated instances of DDT above  
14 10mg/kg, and these occurred only at the depth of the native  
15 soil interface approximately 15 feet below ground.

16 Translate that for me. What are we saying?

17 MS. HURST: Well, the United States thinks that, from  
18 a liability perspective, those are very important results  
19 because they do show that the historic southern pathway was a  
20 conduit for Montrose's DDT. So for liability purposes, those  
21 are very important data points. However --

22 THE COURT: Was the historic pathway 15 feet?

23 MS. HURST: That is the native interface.

24 THE COURT: And what I don't understand, because  
25 Judge Real had this case for 30 years or so, was how we got

1 15 feet on top of that historic pathway. Was that fill?

2 MS. HURST: Fill, correct.

3 THE COURT: Fill.

4 MS. HURST: From --

5 THE COURT: That was my memory, also, but I want to  
6 make sure.

7 Now, you've taken 30 or 32 or 34, I forget, borings.

8 MS. HURST: Uh-huh.

9 THE COURT: And of those, you've got, what I'm going  
10 to say is good health results, or better health results than I  
11 expected. But it goes on to say that there is only isolated  
12 instances of DDT. Help me with that.

13 where are those occurring? Are they commercial? Are they  
14 residential?

15 MS. HURST: There were three.

16 THE COURT: Okay. Three.

17 MS. HURST: And they were at the historic surface of  
18 this pathway, 15 --

19 THE COURT: Which is 15 feet below?

20 MS. HURST: -- below the surface of the residential  
21 community there. And they were scattered. They were not  
22 clustered. And so we believe they are not a reason for  
23 significant concern.

24 THE COURT: Are these in residential properties? Are  
25 they on -- where are they?

1 MS. HURST: They are within the neighborhoods, but I  
2 do not believe they are --

3 Does someone have a map? We should produce a map.

4 THE COURT: That's okay. We've got time today.  
5 Okay.

6 MS. HURST: We'll produce a map.

7 THE COURT: You don't have to have all the answers  
8 today. Okay?

9 All right. Now, when we first came into court, I don't  
10 think you were the initial Counsel, were you, that appeared?

11 MS. HURST: Before you, Your Honor?

12 THE COURT: Yes.

13 MS. HURST: I was not the initial Counsel but  
14 probably the one that succeeded initial Counsel.

15 THE COURT: Yeah. There was an article in the  
16 Los Angeles Times in 2020 or thereabouts, and I hadn't -- I  
17 don't think I even received the case. I may have by that time.  
18 Judge Real had passed away. And then it went on the wheel, and  
19 here it came.

20 And I had raised at that time the historical significance  
21 of this settlement initially. Apparently, this was quite a  
22 case back in the 1990s. But there was a front page article.

23 And could you pull up that article for me for just a  
24 moment?

25 I never got clarity, and I didn't press at that time, so



1 it's nobody's fault. But this involved Montrose as potentially  
2 one of the distributors in an area -- and I want to make sure  
3 it's the 2020, not the '24.

4 THE LAW CLERK: Karlen, can you switch the screens?

5 THE COURT: We want to make sure that they see. And  
6 let me do this.

7 And I understand that this doesn't have anything to do  
8 with -- well, strike that.

9 It's not our settlement. Okay? And what I could get in  
10 reading this historical record -- and I'm really subject to  
11 correction by all of you. Remember that. You've been living  
12 with this case -- was that this settlement involved three  
13 locations, from my perspective. One was the actual Montrose  
14 site.

15 MS. HURST: Uh-huh.

16 THE COURT: One would be the -- I'm going to call it  
17 the waterway egresses, for want of a better term, and  
18 residential and commercial.

19 MS. HURST: Uh-huh.

20 THE COURT: And part of it the shelf, if you will,  
21 which I took from this reading to be about 200 feet, give or  
22 take. And along comes this article in 2020 that, quite  
23 frankly, I didn't pay much attention to at the time. I don't  
24 think I had the case, but there's been another article  
25 recently, and I promise you I'm not doing any investigative

1 work. I just take the L.A. Times. And on the front page, I  
2 see an article about, once again, DDT, Montrose, and munitions,  
3 all mixed together. Okay.

4 Do you have those articles, by the way? Do you? Do you  
5 have those articles?

6 MS. HURST: I have seen the reporting on that issue  
7 and the script study that came out at the end of 2023 about the  
8 munitions, Your Honor.

9 THE COURT: I'm going to take a recess. Okay? I  
10 want everybody current. Because the questions I might ask, you  
11 might not have answers to, but I want a fair shot.

12 MS. HURST: Okay.

13 THE COURT: And I'm eventually going to come back and  
14 ask simply one question related or not to the specifics of our  
15 settlement, of which you all have my compliments, -- and I'll  
16 put that on the record -- what's happening with these  
17 potentially hundreds of thousands of barrels, somewhere on some  
18 site, in or around San Clemente? Is the Superfund getting  
19 involved in this? If so, what's the status of that? Do we  
20 have technology available?

21 I'm a humble trial court, but by the same token, when you  
22 see this, you have to wonder if the senators for the state are  
23 even aware. You have to wonder if the mayor is even aware.  
24 And regardless of Montrose's involvement or non-involvement or  
25 multiple group, not inviting litigation -- but what I'm saying

1 is what's the duty of at least inquiring about where we are?

2 Because I could have remedial work being done on the  
3 Montrose facility, the waterways and the shelf, and have a,  
4 literally, an environmental nuclear time bomb going off. If  
5 that's the case, I really would like to know what's being done,  
6 because that case could become part and parcel of this case.

7 So I'm going to take a recess. I took the liberty --  
8 these are my copies. You both can share co-equally.

9 Karlen, would you give this to the government to read?

10 And it caught my eye, I think in early January, with  
11 another article, and I said, "wait a minute. That's the case  
12 that Judge Real had. What's the status? Are we all involved  
13 now in the ostrich-in-the-sand approach, or do we have some  
14 kind of ability to resolve this? Or if Montrose isn't involved  
15 or is involved, you know, where is that money coming from, and  
16 where is the Legislative Branch involved in this?"

17 Because I promise you, Mayor Garcetti, when he was here,  
18 had no idea of this. I'm not sure that Karen Bass has any idea  
19 of this. I'm not sure if the Board of Supervisors has any idea  
20 of this, but it dramatically affects Los Angeles. And I don't  
21 know if anybody is going to want to buy any fish in this area  
22 for a long time, if the Los Angeles Times is interested.

23 The article in 2020 was written by Rosanna Xia.

24 Could you help me with the article in 2024? who were the  
25 authors of that article?

1 No, that's okay. They'll tell me.

2 MS. HURST: The staff writer, Your Honor.

3 THE COURT: Pardon?

4 MS. HURST: Rosanna Xia, the same staff writer.

5 THE COURT: Oh, the same staff writer?

6 MS. HURST: Yes.

7 THE COURT: I'm going to ask because it seems to be  
8 such common knowledge to the Los Angeles Times, and I don't  
9 think that I'm as knowledgeable. I'm getting my information,  
10 you know, which is hearsay, out of a newspaper article. You're  
11 going to answer those questions for me. Okay?

12 Okay. I'm going to take a recess. Read those articles,  
13 and we'll be back.

14 MS. HURST: Okay. Thank you, Your Honor.

15 (Recess taken.)

16 (Other matters were heard.)

17 THE COURT: Counsel, we'll go back to the matter that  
18 we were previously engaged in. And if you could come forward,  
19 then, on the matter concerning United States versus Montrose  
20 Chemical.

21 (Other matter was heard.)

22 THE COURT: I need a copy. And I want to put  
23 back up the October 25, 2020, article.

24 Okay. I want to go to page 1. And, Wil, you can help me  
25 with this, scrolling through. If you want to get a chair and

1 make sure this is up on the screen. Bring a chair up here if  
2 you want to. Yeah, but grab a chair. I'm going to have you  
3 operate it. I thought we could operate it from over there.

4 And what I'm concerned with is that, if Judge Real did an  
5 excellent job. John, I think, was his mediator at the time.  
6 You don't remember. I remember John. All of you did an  
7 excellent job as far as you could get. Lo and behold, when we  
8 settled with exemplary efforts, I'll put on the record, by  
9 Counsel in this matter, the Montrose site, which seems from  
10 this report to be going very well.

11 The water pathways with the DDT and the Palos Verdes  
12 Peninsula shelf, along comes something that I had inquired  
13 about but didn't know a lot about until recently.

14 So is this up on the screen?

15 THE LAW CLERK: Yeah, Judge, it's on the screen.

16 THE COURT: So scroll down for a moment. Okay. I'm  
17 not that good. I want you to go right here.

18 Okay. So apparently we have a --

19 THE LAW CLERK: Wait. Is this the 2024 article --

20 THE COURT: No, I want the 2020.

21 THE LAW CLERK: This is the 2020. Okay.

22 THE COURT: So some robot goes down 3,000 feet and  
23 uses a camera. And the article states, "As many as a half  
24 million of these barrels could still be underwater right now,  
25 according to interviews. And a Times review of historical

1 records manifest an undigitized research."

2 "From 1947 to 1982, the nation's largest manufacturer of  
3 DDT, a pesticide so powerful that it poisoned birds and fish,  
4 was based in Los Angeles. An epic Superfund battle," which I  
5 think at least one Counsel was present at the time when it was  
6 in Judge Real's court for these 30 years, "later exposed the  
7 company's disposal of toxic waste through sewage pipes that  
8 poured into the ocean, but all the DDT that was barged out to  
9 sea drew comparatively little attention."

10 "Shipping logs show that every month in the years after  
11 World War II, thousands of barrels of acid sludge laced with  
12 this synthetic chemical were boated out to a site near Catalina  
13 and dumped into the deep ocean so vast that, according to  
14 common wisdom at the time, it would dilute even the most  
15 dangerous poisons."

16 So you have to wonder what were by now as you're going  
17 through nuclear waste right now. Maybe some of the same debate  
18 is taking place where we think it's safe, and we find out later  
19 on, oh, my goodness.

20 "The ocean buried the evidence for generations, but modern  
21 technology could take scientists to new depths. In 2011 and  
22 2013, Valentine and his research team were able to identify  
23 about 60 barrels and collect a few samples during brief forays  
24 at the end of other research missions."

25 "One settlement sample showed DDT concentrations 40 times

1 greater than the highest contamination recorded at the  
2 Superfund site."

3         So I'm assuming our Superfund site, when I'm using this  
4 hearsay to make some inquiry, it's going to be Montrose  
5 facility, which, by the way, speaks well for the cleanup taking  
6 place in our present case. Okay.

7         So what caught my eye in rereading this was decades of  
8 bureaucracy, and I don't know if this is true, and competing  
9 environmental issues had diverted the public's attention. So  
10 when I read this way back when I didn't pay much attention to  
11 it. But now, I have to wonder what is the public's attention.  
12 By the public, I mean, the senators' attention in this state or  
13 EPA or the government's attention.

14         Now, relying for the -- rallying for the deep ocean is not  
15 easy. And later go on -- it goes on to mention on page 3,  
16 "Manufacturers rush to supply post-war demand, including -- not  
17 solely, but including Montrose Chemical Corporation of  
18 California, which opens its plant near Torrance in 1947," which  
19 is what Judge Real was dealing with.

20         "The chemical industry was celebrated at the time for  
21 boosting the nation into greater prosperity and preventing crop  
22 failures across the globe. The United States uses as much as  
23 80 million pounds of DDT in one year."

24         Now, you're not as old as I am, but I remember. I grew up  
25 with this stuff. DDT was going to be the miracle that

1 apparently cured -- and I'm not being facetious -- but so many  
2 things back in the 1950's and even 1960's.

3 But later on, there was a lot of controversy, without  
4 going into the depth of Paul Herman and the marine biologist,  
5 Rachel Carson.

6 And it goes on to state something that we all know now is  
7 that, "The DDT is so stable it can take generations to break  
8 down. It doesn't really dissolve in water, but stores easily  
9 in fat, compounding these problems in what scientists today  
10 call biomagnification, the toxins accumulating in tissues of  
11 animals in greater and greater concentration, as it moves up  
12 the food chain."

13 Now, I'm dealing with some of these same issues, I will  
14 say to you, in Saipan. Basically, I have what's called an  
15 EEMC. It's basically receivership that I've declared over all  
16 the facilities there. Partially, quite frankly, because of  
17 past corruption. And so we're really running the facilities  
18 right now, both in terms of power and water on Saipan.

19 And, "But after years of intense inquires" -- and I'm  
20 skipping parts of this -- "the government official said they  
21 were convinced that the chemical posed unacceptable risk to the  
22 environment and potential harm to human health. And by 1972,  
23 the U.S. finally band use of DDT."

24 Now, apparently in the 1980's, there is scientist named  
25 Allan Chartrand, and at least according to this hearsay, this



1 article, he starts to undertake his own inquiry. And he's able  
2 to pull out files, and he comes through various shipping logs  
3 which showed more than 2,000 barrels of DDT were dumped each  
4 month. So the math that was done was 1947 to 1961, as much as  
5 767 tons.

6 And I somewhat tried to calculate that and came out with  
7 about 300 to 400,000 barrels. Allegedly.

8 "What we found actual photos of the workers at 2:00 in the  
9 morning dumping -- not only dumping barrels off the barges in  
10 the middle of the Santa Monica Basin, but before they would  
11 dump the barrels, they would take a big ax or hatchet to them  
12 and cut them open on purpose so they would sink."

13 Now, remember where we are. In 2020, it's got our  
14 attention. Back in the 1940's and '50s, munitions were being  
15 dumped. Oil was being dumped on runways. DDT was being  
16 dumped. The ocean was a big place. We didn't have this kind  
17 of wisdom. And apparently, it's got a picture of Mr. Chartrand  
18 here in this article.

19 "Federal ocean dumping laws allegedly dated back to 1886,  
20 but the rules were focused on clearing the way for ship  
21 navigation. It wasn't until the Marine Protection Research and  
22 Sanctuary Act of 1972, known as the Ocean Dumping Act, that  
23 environmental impacts were considered."

24 And so we're going through some of those same  
25 controversies right now with burn pits in Iraq, et cetera.

1           Now, there is an insinuation that this has to do with the  
2 disappearance of bald eagles from Catalina, et cetera. I'm not  
3 wise enough to know that. But then there is this statement,  
4 quote, "They were supposed to take it out to sea, I think,  
5 beyond the Continental shelf, but there was a common joke among  
6 people that they only took it as far as they needed to, just  
7 out of sight, and started dumping it right there. Deposition  
8 of Ferdinand Suhrer, Montrose employee, July 30, 1996."

9           Mark this question down so I don't ask it right now. But  
10 if that was taking place, hopefully, the Continental shelf that  
11 got cleaned up is that Palos Verdes 200 feet down. So at least  
12 we've been successful with that.

13           Now, they allege that the hundreds of tons of DDT and PCPs  
14 that had been released two miles off the coast of Palos Verdes.  
15 So the next question is: Does the Continental shelf extend all  
16 the way to two miles, and have we at least gotten that,  
17 regardless of our capability or inability to go down 3,000  
18 feet, if this sludge is that deep?

19           And the site is supposed to be spread across 17 miles and  
20 was declared a Superfund cleanup in 1996. So obviously the  
21 question I'm going to ask: If it was declared a Superfund  
22 site, did that site include this alleged 300 to 500,000 barrels  
23 of DDT, or was this site just limited to the Palos Verdes  
24 shelf, and everybody is the ostrich-in-the-sand approach?

25           So this site is three times deeper than the similar

1 Superfund sites in Boston and New York. So that alerts me  
2 we've got a real problem getting this off the bottom. And  
3 apparently we're going to find out that Scripps eventually  
4 sends a vehicle down of some kind, does an amazing amount of  
5 work, and is able to identify this site.

6 Now, there is a decree that talks about negotiated at  
7 arm's length without admitting a default in 2000. This is the  
8 settlement for the \$140 million to begin with that Judge Real  
9 and John were involved in, to be paid by Montrose. At the  
10 time, if not the largest, certainly the second largest  
11 settlement in environmental settlement in the country's  
12 history. So at the time this had to be a huge, in a sense, and  
13 well-received settlement.

14 Now, what's astounding to me is, we have a Superfund site  
15 in 2010. The next question I'm going to have you respond to  
16 is: If we've got a Superfund site is that so much of this data  
17 collected in 2011 and then again in 2013 came down to timing  
18 and good luck. The underwater robots had been on loan for a  
19 different project, but that research crew was ahead of schedule  
20 so they had a window of extra time to explore. So I'm  
21 wondering what we were doing in 2011 that we got so lucky and  
22 what we're doing today.

23 And then on page 12 of this article, well, page 12 of 18  
24 when I Xerox it. Each barrel seemed to contain, when they  
25 locate these barrels, acid waste of about .5 percent to

1 2 percent of technical grade DDT, which at half the million  
2 barrels would amount to a total of 384 to 1,535 tons of DDT on  
3 the sea floor. The distribution was patchy. One hot spot had  
4 a concentration of DDT that was 40 times higher than the  
5 highest level of surface sediment contained at the Superfund  
6 site. And there, I assume, that they're referring to the  
7 Montrose plant again. And I wouldn't expect that. I would  
8 expect that the Montrose site would have, you know, the higher  
9 reading.

10 So wisely the article says, "These are all extrapolations.  
11 We don't know how much is actually down there." And then it  
12 goes on to say, "The EPA, which has been in charge of cleaning  
13 up the Superfund site, but the EPA turns out hasn't even  
14 figured out what to do with the DDT problem that got all of  
15 this attention and millions of dollars settlement dollars."

16 Well, now you have. You've entered into a settlement.  
17 Okay. So it's a little outdated. But more than 20 years of  
18 meetings and high-level studies to decide on the Palos Verdes  
19 shores become it's own controversial saga.

20 Then there is somewhat of a disappearance of this reading,  
21 in 2009. And then a statement, quote, "Mark Gold, who had  
22 championed the DDT problem, as a marine scientist since the  
23 1970's, could barely find the words to describe how he felt  
24 about the attempted cleanup off of the Palos Verdes Shelf."  
25 Quote, "To have the EPA say 25 years later that maybe the best

1 thing to do is just to let nature take its course is, frankly,  
2 nothing short of nauseating."

3 Then Mark Gold, who was at the time of the writing of this  
4 article -- and I don't even know what he is today. Now,  
5 Governor Newsom's Deputy Secretary for Coast and Ocean Policy  
6 said he'd heard stories about illegal dumping back when he was  
7 helping state and federal official build a case against  
8 Montrose. But there is no first-hand evidence in the 1990's,  
9 he said, nor a sense of whether it was 5 barrels, 10, or 20.

10 Okay. Now, let's put that article away for just a moment.  
11 So Judge Real passes away. This Court comes to this Court. I,  
12 in good faith, ask naively, at that time back in -- when I  
13 first got it, "What's happening?" And I forget the  
14 explanation, but nobody is hiding the ball on me. I make that  
15 record. Okay? There is no subterfuge here.

16 Now, we pick up the Los Angeles Times in January 5th. And  
17 here this is a combined article. It's munitions, but it's DDT  
18 again. And here, though, we have hedgehogs and Mark 9 depth  
19 chargers that get dumped off the coast.

20 But the second page of this article, which retraces a lot  
21 of the first article, I'm reading from a paragraph that begin,  
22 "Dozens of marine scientists and ectotoxicologists have since  
23 convened regularly" -- I want to ask who they are and when they  
24 convened -- "to discuss the data gaps in our understanding of  
25 DDT pesticide that was largely manufactured in Los Angeles. It

1 was so powerful it poisoned birds and fish."

2 "Congress, at the urging of U.S. Senator Alex Padilla and  
3 the late Senator Feinstein, allocated more than \$11 million to  
4 work on the issue and Governor Newsom boosted further research  
5 with an additional \$5.6 million."

6 "Another recent plot in exhaustive historical  
7 investigation by the U.S. Environmental Protection Agency  
8 concluded that the pesticide waste had not actually been  
9 contained in barrels. Rather the chemicals were poured  
10 straight into the ocean from massive tank barges."

11 "In the process of digging up old records, the EPA also  
12 discovered that, from the 1930's to the early 1970's, 13 other  
13 areas off the southern California coast had also been approved  
14 for dumping of military explosives, radioactive waste, and  
15 various refinery byproducts, including three million metric  
16 tons of petroleum waste."

17 well, we've got enough problems. Let me just focus on DDT  
18 for a moment. Okay? Because it involves you two folks, you  
19 parties. You're not responsible for munitions.

20 And here's Mark Gold again, "when the deep water dumping  
21 was first uncovered in more detail by the team at UCI Santa  
22 Barbara, the response was, 'Oh, my gosh. This is the tip of  
23 the iceberg.' And now we're seeing just how big this iceberg  
24 is. We still don't even know how big it is, said Mark Gold, an  
25 environmental scientist at Natural Resources Defense, counsel

1 who's worked on the DDT problem since the 1990's."

2 Summarizing, is that we're now up to more than 100 square  
3 miles of contamination from the dump site with high DDT  
4 concentration. A depth that nobody's even ever looked before,  
5 and we're seeing all the other stuff that was dumped as well.  
6 And it's only what we see.

7 And then we're back to David Valentine and a lot of other  
8 statements.

9 Senator Feinstein passed away. We've got a new senator  
10 right now, who I'm not certain, you know, how long will be in  
11 power because we're going to have an election. Probably in a  
12 limited time, who's going to have very limited interest or  
13 input.

14 But Alex Padilla is in place, who's allegedly aware of  
15 this.

16 But during the homeless negotiations with Eric Garcetti,  
17 the mayor at the time, we were just chatting about Los Angeles  
18 in general. And I think he said, "What are some of the  
19 interesting things you have on your card?"

20 I said, "We've got a potential problem, Mayor, in your  
21 city and the L.A. County off the coast. It seems to be,  
22 through no fault of the present parties involved, although they  
23 may be involved with Montrose in the past, I have no idea what  
24 the status of this, do you?"

25 And he said, "I never even heard of this." wasn't even

1 aware.

2 well, if the mayor of the city is not aware and the  
3 county's not aware, then where is the push to do something  
4 about this?

5 So now, I'm going to turn this back over to you. I'm just  
6 going to kickback and listen to whatever input, and I'm going  
7 to start with EPA. Okay?

8 MS. HURST: Thank you, Your Honor.

9 THE COURT: And, by the way, you are old enough to  
10 have been there when this occurred, and I'm joking with you.  
11 And neither are you, Counsel, on the other side. But guess  
12 which generation that inherits this problem? We do.

13 MS. HURST: Yeah.

14 THE COURT: So help me. Where do we get the push?  
15 And, by the way, I really weighed if the Court should even  
16 bring this up because, in a sense, we've got a settlement of  
17 what you brought to me.

18 Do you understand that?

19 But I don't want to be complicit, have this knowledge,  
20 digging into this case after 30 years and have us cure the tail  
21 but the whole dog is left.

22 So, EPA, your turn.

23 MS. HURST: The buck has to stop somewhere.

24 THE COURT: I know.

25 MS. HURST: And I think the United States recognizes



1 that --

2 THE COURT: I know you do.

3 MS. HURST: -- we are the ones.

4 THE COURT: Now, I know you recognize that, but I  
5 want to hear what is being done, if anything.

6 MS. HURST: Sure. So as you recounted in great  
7 depth, in 2020, the Scripps Institute went down with some sonar  
8 technology.

9 THE COURT: Deep didn't it?

10 MS. HURST: Yeah.

11 THE COURT: 3,000 feet.

12 MS. HURST: Yes. Lots of -- yes, at depth, and took  
13 good pictures for the time. The most technologically advanced  
14 photos that science could take.

15 THE COURT: Right.

16 MS. HURST: And they appeared --

17 THE COURT: Help me. What year was that again?

18 MS. HURST: 2020.

19 THE COURT: 2020, yeah.

20 MS. HURST: And those photos, that they brought back  
21 up, appeared to show that there were barrels down there. Some  
22 of which, as the newspaper article depicted, had been, you  
23 know, opened with a hatchet. Who knows whether or not that  
24 gash in the side of that object was a hatchet gash? And who  
25 knows whether it really a barrel? It appears to be so.

1           In 2021, those photos and the work of the Scripps  
2 Institute were the instigation for the formation of a work  
3 group. EPA, NOAA, and several of the California state agencies  
4 were the agencies that formed the work group. The participants  
5 on the work group include all of --

6           THE COURT: I'm going to slow you down.

7           MS. HURST: Okay.

8           THE COURT: We've got lots of time.

9           MS. HURST: Sure.

10          THE COURT: So this is a cooperative effort between  
11 California and the federal government?

12          MS. HURST: Correct. As well as active munitions --

13          THE COURT: Excellent.

14          MS. HURST: -- who are with the Scripps Institute,  
15 with the NRDC.

16          THE COURT: Great.

17          MS. HURST: I mean, many -- we're bringing in many,  
18 many disciplines here.

19          THE COURT: Excellent. Who is in the work group?  
20 Tell me who the people are.

21          If I don't know, don't be embarrassed about that.

22          MS. HURST: I am not embarrassed to say that I do not  
23 know --

24          THE COURT: Okay.

25          MS. HURST: -- who the individuals are.

1 THE COURT: I'd like to get a list of --

2 MS. HURST: I do know that they do rotate, and I do  
3 know that John Chestnut, from Region 9 of EPA, is one of the  
4 two people who is heading the effort for EPA.

5 THE COURT: Is Gold one of those people? Mark Gold?

6 MS. HURST: I don't know whether or not -- I mean, I  
7 know you read in the paper, the newspaper articles that he has  
8 shifted positions as his work has continued with this effort.  
9 So I'm not sure whether over time he has --

10 THE COURT: So we've got a work group?

11 MS. HURST: Yes, we do.

12 THE COURT: What are they --

13 MS. HURST: -- and it's been working since 2021.

14 THE COURT: What are they doing?

15 MS. HURST: Since 2021, they have been developing a  
16 sampling plan, which hasn't been an easy task. I mean, no one  
17 has ever tried to think about how to meaningfully sample that  
18 far down.

19 THE COURT: I see.

20 MS. HURST: And --

21 THE COURT: How far down was that Russian sub that  
22 the Glomar Express was able to take off the bottom?

23 MS. HURST: That's a really good question. I have no  
24 idea.

25 THE COURT: Deeper than 3,000 feet.

1 MS. HURST: Is that right?

2 THE COURT: Yes.

3 MS. HURST: Yeah. So in the meantime, this new  
4 research came out recently from Scripps, showing through better  
5 technology, which, you know, is evolving as we speak, in  
6 real-time. It's kind of exciting in a way. They used a  
7 remotely-operated vehicle to take high-definition video of the  
8 surface of this area of the ocean floor, which, as I  
9 understand, was much better pictures than the sonar previously  
10 revealed but also was much, much narrower in the scope of the  
11 view that they could get a picture of. And, of course, found  
12 what appeared to be munitions in their field of view.

13 But the scientists who took those pictures are very candid  
14 in their assessment that they were looking at a really small  
15 area of the ocean floor. And it's entirely possible that those  
16 barrels they saw the first time are still there. Or the  
17 objects that appeared to be barrels, when they did the sonar  
18 work two years earlier, could still be barrels, and they could  
19 be right next to and out of frame of the later high-definition  
20 video technology that they just revealed in their recent  
21 article.

22 So long story short, I mean, I think that the committee,  
23 the work group that was formed, is now looking at that recent  
24 data that the Scripps Institute has reported and trying to  
25 figure out how their sampling plan should change in light of

1 that data. And they've also brought the Navy into the work  
2 group because, obviously, the DOD is going to have to take a  
3 look at what munitions are down there. And it does appear that  
4 they are munitions and what type of response, you know, may  
5 have to be included in the work that this work group is working  
6 on.

7 As you said, I mean, there are -- it's not just DDT.  
8 There's a lot of stuff down there. The buck stops here. We  
9 have to deal with all of it. But in terms of this case, in  
10 this courtroom, you're right, we need to focus on the DDT. And  
11 the newspaper article was correct that EPA's main focus, with  
12 respect to these particular defendants, is on disposal site  
13 number two, where EPA has determined that Montrose contracted  
14 for ocean disposal of DDT liquid waste.

15 THE COURT: Say that again just a little bit more  
16 slowly. And I apologize.

17 MS. HURST: Okay. EPA has determined that Montrose  
18 contracted for ocean disposal of DDT liquid waste in bulk from  
19 barges and not in barrels.

20 THE COURT: Now, that's not any part of our  
21 settlement so far. In other words, with the three areas that  
22 we've dealt with --

23 MS. HURST: It is not part of our settlement. At  
24 least that's our position. The other side will vehemently  
25 disagree with me on that. I think I should represent that for

1 them.

2 THE COURT: That may be presumptuous on my part.  
3 Just one moment. Okay?

4 MS. HURST: And none of us wants to get there yet. I  
5 think we're all very much in agreement that we need to get our  
6 arms around the issue.

7 THE COURT: Just one moment. We can't. As Counsel,  
8 it's going to take somebody with real power. And I'm not  
9 saying you're not powerful, each of you. But it's going to  
10 have to take a senator or a governor or a people coming  
11 together to want to push this because a court can't.

12 But what I'm afraid of is that, not that it's getting  
13 swept, but there are so many issues on the table worldwide or  
14 domestically that the end result is I would hate to see us in  
15 the position where we're having to clean up an awful mess, if  
16 we had any opportunity not to have that mess be created. And  
17 we may not. It may be too deep. It may just have to be an  
18 environmental whatever.

19 But, by the same token, this is America. I think somebody  
20 once said, "We can do anything." We can do anything. If we  
21 can get us up off the bottom with enough resources, by God, we  
22 can get barrels off the bottom, too. It's a matter some type  
23 of focusing.

24 And we have so many catastrophes in our country that we  
25 potentially knew about, but we waited, and then everybody

1 finger pointed, and then we finally got busy and cleaned up a  
2 mess. I don't know. I'm naive. I don't have any idea of our  
3 capability right now. But maybe a United States senator does,  
4 And maybe the governor does.

5 And I'm not astounded I don't even think the Los Angeles  
6 City Council, the President, the mayor has any idea that this  
7 is there. And I don't think the Board of Supervisors does.  
8 Okay.

9 California, how are we doing? It's your state. It's your  
10 coast. Do you want to buy the fish?

11 MS. WIEMAN: I think the U.S. gave a good overview,  
12 Your Honor, of what's been going on. There are some state  
13 agencies that are part of the --

14 THE COURT: Does the governor know about this? Does  
15 Newsom know about this?

16 MS. WIEMAN: I don't have his personal phone number,  
17 but --

18 THE COURT: How would he -- no. Just a moment.  
19 How would he get this in front of him?

20 MS. WIEMAN: well, I do know --

21 THE COURT: Later on, we can't claim oblivion. How  
22 would we get this in front of Padilla? I'm not satisfied that,  
23 you know, based upon some working committee, with as busy as  
24 our senators are, that he's focused. And I'm not sure where he  
25 would prioritize, but I sure don't want to be complicit, and I

1 don't want you folks complicit in not knowing -- you know,  
2 knowledgeable leaders if they choose to take something.

3 MS. WIEMAN: What I can say, Your Honor, is, you  
4 know, I'm here today wearing a more limited hat than, I think,  
5 you'd probably want me to be wearing, because I'm really  
6 representing DTSC. But I do know, especially as, I think, the  
7 article cited -- you know, at least based on the article and  
8 what little information I've been able to try and dig up since  
9 the recess this morning that the state has allocated some  
10 money. You know, Governor Newsom has allocated some money  
11 since 2020 to the investigation efforts.

12 So while I don't know personally that it is on his radar,  
13 I think it is definitely on the state's radar. And there are  
14 four or five agencies, I believe, who are, you know, part of  
15 the working group. It's not just DTSC, but also the Water  
16 Board. There's the California Ocean Protection Council and the  
17 Department of Fish and Wildlife. So they are all part of  
18 collaborating with the federal government on this  
19 investigation.

20 THE COURT: But it's not fair to you. You wouldn't  
21 know what they're doing. I mean, you know those boards exist,  
22 but you're not part of that board; correct?

23 MS. WIEMAN: I am not part of it.

24 THE COURT: Okay. I don't want to put you in that  
25 position professionally.



1           Let me turn to the defense for just a moment.

2           And, first of all, I now understand that you must believe  
3 that this is part of the settlement; correct?

4           MR. RICHARDSON: Yes, Your Honor.

5           THE COURT: Okay. And before we get into that,  
6 because I would never decide that at this point -- okay. It's  
7 not even before the Court in a sense. And I know that you have  
8 to be concerned, you know, just for the name Montrose coming up  
9 again, when you believe that this settlement encompasses all of  
10 this.

11           But usually in these cases, an individual company doesn't  
12 have enough resource. So we have a Superfund. The government  
13 creates that money to solve the problem and then can come back  
14 to the company or not.

15           What's happening here?

16           MR. RICHARDSON: Your Honor, that's a good question.  
17 So the -- I guess as a starting point, you mentioned John  
18 Francis earlier.

19           THE COURT: Yeah.

20           MR. RICHARDSON: And we were sorry to hear about his  
21 loss, you know, his passing last month. He did a fantastic  
22 job. Shortly before trial, actually working through all of  
23 these same issues, you know, how do you allocate? How do you  
24 generate enough money to address these issues? And that  
25 effort, with John Francis's work, ultimately resulted in

1 \$140-plus million that was put towards this problem.

2 THE COURT: Which in 1990 was a huge sum.

3 MR. RICHARDSON: Enormous. Enormous settlement, Your  
4 Honor.

5 After that point, after we -- all the defendants wrote  
6 their checks, we don't know how the money was spent after that.  
7 We didn't have a seat at that table. We have, from time to  
8 time, attempted to get information about how the cleanup's  
9 going, the investigation is going, and so on. But we're just  
10 not party to this.

11 THE COURT: That was over on the government side.

12 MR. RICHARDSON: Correct, Your Honor.

13 THE COURT: Now, without answering for both of you,  
14 if you entered into a settlement and you knew about the  
15 Montrose site and I'm going to call it the egress -- the  
16 waterways, the stream, et cetera -- and you knew about  
17 residential and commercial along the way and you knew about the  
18 shelf at 200 feet but we didn't know anything about 3,000 feet  
19 and maybe 300 to 500,000 barrels, then how could your  
20 settlement encompass those toxic sites that you didn't even  
21 know about when you entered into a settlement agreement?

22 MR. RICHARDSON: I think the answer, Your Honor, is  
23 everyone did know about it. So it was in the 1985 study by the  
24 Regional Water Board. It was actually presented at trial, in  
25 the 2000 trial.

1 THE COURT: We can dig that out. I can take a look  
2 at that, if we ever get that far.

3 MR. RICHARDSON: Yes. I'm happy to give that to you.  
4 It was part of discovery. It was actually in the third -- the  
5 operable complaint alleges this off-shore disposal. The  
6 settlement agreement in the consent decree describes this  
7 off-shore disposal operation.

8 So this was heavily debated in the settlement  
9 negotiations, and it was heavily litigated in the case in the  
10 1990's. So this was not an unknown --

11 (The Court Reporter interrupted.)

12 MR. RICHARDSON: Oh, I'm so sorry. Thank you.

13 So this was not an unknown issue at the time. It was very  
14 well-known.

15 THE COURT: Let me repeat back to you what I'm  
16 hearing. Let me repeat back to you what I'm absorbing.

17 MR. RICHARDSON: Yeah.

18 THE COURT: Judge, we not only knew about the  
19 Continental Shelf, the 200 feet down, approximately, off the  
20 Palos Verdes Peninsula but we also knew about deeper dump  
21 sites.

22 MR. RICHARDSON: Correct.

23 THE COURT: How was that?

24 MR. RICHARDSON: And California salvage was the  
25 contractor that did a lot of the off-shore dumping operations.

1 And it was a permitted operation with the Regional Board. It  
2 was all known at the time.

3 THE COURT: Now, I want to get really practical for  
4 just a moment. I just want to assume that there was a lawsuit,  
5 and they had filed against Montrose again. And I want to  
6 assume that a court had ruled opposite, hypothetically. This  
7 would bankrupt Montrose. In other words, the cost involved no  
8 individual company could undertake. That's why we have a  
9 Superfund.

10 So the end result is, if we take away all of the  
11 litigation that might potentially go on in the future, it  
12 doesn't solve the problem. So the end result is it's right  
13 back to the Senate or to Congress or the Superfund to decide  
14 what they're going to do about this because, first of all, you  
15 haven't been sued. It may be part of this settlement when you  
16 dig out the record. And even if you were liable, you don't  
17 have the resources for this kind of cleanup. It's going to  
18 break any company. It's 3,000 feet down and Scripps, I mean,  
19 your company's bankrupt.

20 So the end result is this is eventually going to fall on  
21 the government to decide if they want to do anything, and  
22 uniquely that lies with the Congress and the agencies of which  
23 you're at a disadvantage. And there is no reason coming in and  
24 representing California or the EPA at this time that you would  
25 expect me to be asking these questions today.

1           So I don't think I'm going to go any further with it  
2 today. I'm just, frankly, -- and I'm transparent -- in a  
3 quandary about what a court would do because now I'm becoming  
4 much more knowledgeable. After 30 years with one judge, I'm  
5 starting to read more and more -- I mean, with 400 other cases,  
6 of course. But I'm starting to read more and more about this  
7 over 30 years.

8           And let's just all pray that it diffuses nonharmful  
9 munitions at a great depth aren't going to cause, you know, any  
10 significant harm going off. But if not, you've got a nuclear  
11 environmental explosion sitting under your feet. I mean, it  
12 goes all the way from the benign to a catastrophe. And if we  
13 have a catastrophe and we know about it, I'm just asking these  
14 humble questions because I, quite frankly, don't know what to  
15 do.

16           So what do I do? I've got options. Nothing. We raised  
17 it. That's option one. Two, call Senator Padilla. Option  
18 two. And Newsom. And I don't see any in between that, quite  
19 frankly. I just want to be satisfied that the Court, becoming  
20 so knowledgeable now, has told the government in no uncertain  
21 terms, "You have a potential problem. We're not an ostrich in  
22 the sand."

23           And if you don't want to do anything, great. But I don't  
24 want to see in the future that you, as esteemed Counsel, and  
25 this Court, or Judge Real, or anybody else who has been

1 involved in this and later on say, if a catastrophe occurred,  
2 "And, oh, the Court knew," or "Oh, the governor knew," or we  
3 had a working task force, and maybe you just don't have any  
4 capability right now to go down 3,000 feet, or it's just too  
5 costly. And you make a valid choice, from your perspective, to  
6 let it go.

7 Or that the working group's actually doing something, and  
8 you've got a plan that we're not aware of, and I don't expect  
9 you to even know that coming into my court today. But  
10 something has to make -- give me some confidence that at least  
11 the right branch of government understands the problem. Then,  
12 when I talk to your local officials -- and I talk to one other  
13 after Mayor Garcetti at the time. He had no idea. That's not  
14 his fault. He had no idea that we had this problem.

15 Okay. Now, you're going to go to lunch, and so is my  
16 staff. How's that? Okay? You're going to come back at 1:15.  
17 All right? And we're going to continue on. You won't be here  
18 much longer. I promise you. So we'll see you at 1:15.

19 (A lunch recess was taken and resumed at 1:16 p.m.)

20 THE COURT: Montrose case. Why don't you folks come  
21 on back, and we'll finish our conversation.

22 All right. In summary, quickly, and I'll have you on your  
23 way with a couple of comments and then getting your input.

24 On page 4, of the O&M consent decree, which is the  
25 commitment to perform the long-term operation and maintenance

1 of the coral benzene plume groundwater remedy at the dual site  
2 operable unit of the Montrose site, the groundwater treatment  
3 system operated continuously except for plan maintenance and  
4 other necessary shutdown from the entry of the O&M consent  
5 decree until September 2022.

6 The system was taken off-line with EPA's approval in  
7 preparation for the transition of long-term operations and  
8 maintenance. And there were going to be modifications and an  
9 upgrade to existing equipment and the installing of a permanent  
10 piping redundant technology so that your -- our reliability  
11 went up, which we started in August of 2022 and has been  
12 treating groundwater contaminants consistent with EPA's record  
13 of decision and has already treated 257 million gallons of  
14 groundwater and removed 62,000 pounds of contaminants as of  
15 January 1, 2024.

16 So on December 15, about a month ago, Montrose notified  
17 EPA that all work required under the construction consent  
18 decree had been completed. The full operation of the treatment  
19 system will begin under the O&M consent decree on or about  
20 March 1, 2024, that there is a submission on the work plan  
21 documents, and these are all the remaining deliverables to  
22 transition into this operation of this new, what I'm going to  
23 call, upgraded system.

24 It sounds like, from this report that things are going  
25 very well. Do you have any additional input? Otherwise, I'll

1 just pass onto the next.

2 So hearing none, the EPA is satisfied, and Montrose is  
3 satisfied?

4 MR. RICHARDSON: Yes, Your Honor.

5 THE COURT: The DNAPL consent decree has two active  
6 components, the electrical resistance heating, ERH, and soil  
7 vapor extraction, SVE, on the former Montrose property.

8 In the documents submitted to the Court, more than 34,000  
9 gallons of DNAPL and 325,000 pounds of organic compounds have  
10 been removed thus far.

11 And in the submitted construction report in October 2023,  
12 EPA has completed your review and the system is fully  
13 operational while EPA's final approval is pending.

14 Just give me an estimate of when that final approval would  
15 take place.

16 MS. HURST: Let's see. I'm reading the full  
17 paragraph here. Okay. So this is SVE construction. Right. I  
18 believe that that is a couple of months away, Your Honor. It  
19 is staggered because its approval is not critical to the  
20 operation of the SVE construction system. It is focusing on  
21 the ERH component of the system, which is discussed in the next  
22 paragraph, which is -- yeah, under construction at the moment.

23 THE COURT: One of the needs was the Los Angeles  
24 Department of Water and Power re-energize -- or energizing the  
25 ERH system.



1 Do we know if that's been done?

2 MR. RICHARDSON: Your Honor, I can weigh in on that.

3 THE COURT: Please.

4 MR. RICHARDSON: We're still waiting on the part from  
5 the supplier to energize the ERH system. We have several  
6 solutions that we presented to LADWP, and we're waiting to hear  
7 back from them on those. But it's not holding up removal of  
8 mass through the sole vapor extraction system. And I think  
9 we've fully onboard with EPA. I think we've been lockstep with  
10 their technical people on ways to solve that.

11 THE COURT: But what is the part that we're waiting  
12 for?

13 MR. RICHARDSON: It's a current transformer. It  
14 transforms currents -- the current -- the electrical resistance  
15 heating system uses a massive amount of electricity and  
16 essentially boils the contaminants on the subsurface to remove  
17 them. And so it's a very rare part for this level of --

18 THE COURT: We just had, what I'm going to call  
19 incinerators, shipped out of Sweden to Saipan, burning at 2,000  
20 degrees. I mean, phenomenal.

21 what is this? So I fully understand, when we say  
22 "energizing," is this basically a incinerator?

23 MR. RICHARDSON: No, it's less than that, Your Honor.  
24 It's a high-temperature heater. So if you think about sort of  
25 your typical electric space heater in a room.

1 THE COURT: Uh-huh.

2 MR. RICHARDSON: It's just a very deep, very large  
3 version of that. These electrodes are place underground. They  
4 use the electrical resistance to heat the subsurface.

5 THE COURT: Who is the manufacturer?

6 MR. RICHARDSON: General Electric.

7 There are other manufacturers of equivalent parts, Your  
8 Honor, and we've asked LA DWP to allow us to use the equivalent  
9 parts. They have not yet approved that request. If we get the  
10 approved equivalent parts approved by LA DWP, then we could  
11 start up in a few months.

12 THE COURT: But the system is operational at the  
13 present time?

14 MR. RICHARDSON: The sole vapor extraction component  
15 is, but the electricity is not energized yet, until we get this  
16 part. So we're moving a lot of mass currently.

17 THE COURT: Are you satisfied from EPA's perspective?

18 MS. WIEMAN: Yes, Your Honor.

19 THE COURT: Counsel, are you satisfied from the  
20 defense's perspective?

21 MR. RICHARDSON: Yes, Your Honor.

22 THE COURT: Okay. Then the third, or last, is this  
23 southern pathway consent decree. And I think I received just  
24 wonderful news today about that.

25 Once again, you've got 29 out of 34 boring locations that

1 you targeted. Some of those you stated were the 24 residential  
2 properties which there was some opposition to, historically,  
3 and the rights of way. You've had 169 samples taken, and here,  
4 we have those three locations.

5 But in all other indications, to the Court at least,  
6 you've seemed to have made not only phenomenal progress but  
7 really good news about the lack of contamination, at least what  
8 could have been.

9 The only question I had was on page 9, and on line 2, "EPA  
10 plans to submit comments to settling defendants on the adequacy  
11 of the remedial investigation report in January 2024. The  
12 final remedial investigation report will be due 45 days after  
13 the EPA comments are provided to Montrose."

14 Help me. I don't understand.

15 MS. WIEMAN: We're on target. We have their draft  
16 remedial investigation report in hand. Our comments are nearly  
17 final, and we plan to have them in their hands by the end of  
18 this month.

19 THE COURT: Okay.

20 MS. WIEMAN: And then they'll have 45 days to adopt  
21 our comments, and the report will be final. From that point,  
22 they'll move on to the next stages that are in the consent  
23 decree, and that is to prepare a feasibility study which  
24 analyzes the potential remedial alternatives, their feasibility  
25 and their costs. And from there, EPA will select one of those

1 remedial alternatives.

2 THE COURT: And that's that revised feasibility study  
3 that you referred to on page 9, line 23?

4 MS. WIEMAN: Let me see. Page 9. No, Your Honor.  
5 That is another portion of the site. I was referring to a  
6 feasibility study for the southern pathway in particular. And,  
7 in particular, it's referenced on line 9, lines 8 and 9 of  
8 page 9.

9 THE COURT: So it says, "Montrose is currently" -- go  
10 back to other issues, paragraph 4, and go down to lines 20  
11 through 28, roughly. And the second sentence reads, "Montrose  
12 is currently revising a draft feasibility study incorporating  
13 EPA and DTSC comments on previous preliminary draft.  
14 Anticipates submitting a revised draft feasibility study for  
15 EPA review shortly."

16 Explain that to me. I don't understand.

17 MS. WIEMAN: So that is for the soils at the Montrose  
18 facility, not in the neighborhood or in the pathway.

19 THE COURT: Okay. So that doesn't relate to number 3  
20 then?

21 MS. WIEMAN: Correct.

22 THE COURT: Okay. And that facility, the actual  
23 Montrose plant facility, summarize that for me.

24 How are we doing once again?

25 MS. WIEMAN: Work is proceeding. And this particular

1 part of the remedy is a necessary conclusion, but it can't be  
2 done until the DNAPL remedy is in place. And so the  
3 fact -- I mean, it is a little behind schedule, but that  
4 doesn't really make any difference, because we need the DNAPL  
5 remedy in place, and this one can afford to fall a little  
6 behind.

7 THE COURT: Okay. All right. Then, lastly, how am I  
8 assured that the Governor and our senators know about these  
9 issues, now with Senator Feinstein deceased?

10 what would you do? what would you recommend? Because I'm  
11 going to do something, but I'd like to consult with you first  
12 so, hopefully, it's semi-appropriate.

13 what is your recommendation? Or do you have one?

14 In other words, I want the Governor to know. I want the  
15 senators to know. Then if they decide to do nothing, that's a  
16 value choice. If it's impossible to do, we know that. But  
17 right now, I'm just not satisfied that I have the answers to  
18 that, after all of these years. And so I'm seeking any wisdom  
19 the EPA has or the state has.

20 MS. WIEMAN: I'm afraid I'm not authorized to make a  
21 recommendation --

22 THE COURT: Sure.

23 MS. WIEMAN: -- to the Judicial Branch on behalf of  
24 the Executive Branch.

25 THE COURT: Do you mind if I call the Governor?

1 You're Counsel for the state.

2 MS. WIEMAN: Well, I am Counsel for the state, but  
3 I'm Counsel for the Department for Toxic Substances Control.

4 THE COURT: Is that part of the state?

5 MS. WIEMAN: It is part of the state, Your Honor, but  
6 I'm not Counsel for Governor Newsom, for example. I think any  
7 person has the authority to contact Governor Newsom.

8 THE COURT: Do you feel comfortable contacting him?

9 MS. WIEMAN:: Do I personally feel comfortable?

10 THE COURT: Yeah. Or your office, so I don't put you  
11 on the spot, because you're Counsel.

12 In other words, who, without me, being too aggressive in  
13 this matter -- I'm trying to drawback and make certain that I  
14 just have the security of knowing that the Governor knows about  
15 this problem, because I was shocked the local officials don't.  
16 I was shocked that the mayor of his city, and through no fault  
17 of his own -- and I can guarantee you I don't think that the  
18 Board of Supervisors does.

19 It's going to take all of those entities -- the city, the  
20 county, the state and the federal government -- getting  
21 together in some way to get this solved. Because even,  
22 hypothetically, if Montrose was liable, there's not enough  
23 funding, probably, from any individual company, other than the  
24 Superfund, to undertake this, and that has to come from the  
25 federal government.

1           And the problem is I'm not certain that we have  
2 coordination out there or even a discussion amongst them. And  
3 if they decide not to, that's fine, but at least they should be  
4 aware of it. And I think that's our duty to inform them.

5           And I'm not sure our level, as Counsel, that we really  
6 have that gravitas, you know, to call a senator, from your  
7 perspective, and it's got to make you feel uncomfortable. Or  
8 you to call the governor.

9           But somehow do I invite him to come here?

10          I could request, not order. But that's embarrassing if  
11 they don't come. You see what I mean? And so I'm really  
12 seeking your advice because something is going to have to occur  
13 so the Court is assured that they know about this problem on  
14 the executive and legislative side, and then it's up to them.

15          MS. WIEMAN: Right. Your Honor, I think that the  
16 cart may be before the horse, in the sense that this working  
17 group, that is already composed, consists of the best and the  
18 brightest from federal, state agencies, and academia. That  
19 don't even really have --

20          THE COURT: No, no, I'm not ever concerned about how  
21 intelligent these folks are. I'm concerned about the  
22 bureaucracy.

23          MS. WIEMAN: I know. But what do we ask them to do?

24          THE COURT: I'm concerned about the feds talking to  
25 the state, the state talking to local government, and everybody

1 well-intentioned. And then if something goes on wrong, we have  
2 what I call the finger pointing going on.

3 MS. WIEMAN: Sure.

4 THE COURT: And I don't want to wait for that. This  
5 is either an environmental issue that will simply pass, but  
6 from all indications, at least on this hearsay, it's pretty  
7 significant.

8 MS. WIEMAN: I don't think anyone is saying it's  
9 insignificant. And I think high-level executive officials are  
10 aware.

11 THE COURT: Okay. I may do this.

12 MS. WIEMAN: But the question is --

13 THE COURT: I may simply invite them to come to the  
14 next hearing. And if I do that, then this blows up. Okay.  
15 Because they're not coming is significant politically, and I  
16 don't want an embarrassment to the legislative or the executive  
17 branch. But I don't think I'm willing just to sit here  
18 docilely having this kind of information and not make certain  
19 that our senators don't know and our state government doesn't  
20 know.

21 Because then if a catastrophe hit, I think a lot of finger  
22 pointing belongs right in this room. Okay?

23 Now, I'm going to turn to Montrose. Counsel, any  
24 suggestions? I'm not trying -- by the way, I'm not trying to  
25 cause embarrassment to Montrose. I represent that to you. But



1 I'm getting very, very uncomfortable the more I dig into this  
2 case with the potential environmental hazard, and I just don't  
3 have the confidence, not in the capability or competency, but  
4 in the coordination between federal, state, and local  
5 government.

6 MR. RICHARDSON: Yeah, I understand, Your Honor. As  
7 I said before, we have settled this issue. We have paid our  
8 \$140 million. We don't have control over how EPA spends the  
9 money or the reviews they do. That being said, it seems to us  
10 that plaintiffs could reach out to their --

11 THE COURT: They could.

12 MR. RICHARDSON: They could. And report back to this  
13 Court on whether they're informed of the status.

14 THE COURT: Yeah. But if you noticed, they didn't  
15 volunteer that, and there's a couple reasons. First of all,  
16 Counsel has to feel very uncomfortable doing that sitting here  
17 in court today. Number two, I'm not going to order them to do  
18 that. I think it's inappropriate.

19 So I think my best solution is simply to have another  
20 status conference in some period of time, which is why I've  
21 been suggesting it, and invite them to come. That way, I have  
22 a very clear record that both senators have been invited and  
23 the Governor. And if they don't respond, I've got a clear  
24 record.

25 If they do respond, they may decide not to come but send

1 somebody, you know, knowledgeable and not in your position  
2 because you can't make a representation, maybe an aide to say,  
3 "The Governor is aware of it." There'd be no inconvenience.

4 Okay. So that is why I've looking at the time, and I'm  
5 thinking May. Okay? That you gives a chance for the rest of  
6 the permitting to take place, see how far along we are without  
7 bringing you back in a couple weeks.

8 So why don't you pick a time that might be convenient for  
9 all of you folks in May. And just get together one moment.  
10 And then I'm going to let you go. Give me a date in May that  
11 all of you might agree on.

12 MS. WIEMAN: We can do that, Your Honor. With all  
13 due respect --

14 THE COURT: Which means?

15 MS. HURST: -- one suggestion I might have for you,  
16 if you're open to it is something that I am doing and that I  
17 know all of us are doing. We are tracking the research that's  
18 coming out of the Scripps Institute, which is being housed on a  
19 website in real time. They have got 20 studies published there  
20 now.

21 would you be interested in seeing that link to the  
22 website? It would be a way for the Court to inform itself as  
23 well.

24 THE COURT: I would love that if both of you consent.

25 MS. HURST: Okay.

1 THE COURT: I don't want to go outside the record  
2 other than, obviously, having read these articles.

3 MS. HURST: Sure.

4 THE COURT: And, number two, I keep reiterating that  
5 I'm not concerned about the competency. I believe you have  
6 probably very competent people. I'm concerned about the  
7 coordination. I'm concerned about that old problem that we've  
8 always had getting local together with state, getting together  
9 with federal, and then something happens, and everybody points  
10 the finger. This is too dangerous, too explosive, potentially,  
11 to let that happen.

12 MS. HURST: Yeah.

13 THE COURT: Okay. So --

14 MS. HURST: You're very --

15 THE COURT: Here's what I'm going to do. I think  
16 we're done with the discussion. We've reached an impasse.  
17 Unless I've got, you know, something that gives me absolute  
18 confidence that the Governor and the senator -- and I'm going  
19 to invite both of them. Okay.

20 If they come, that's fine. If they don't, I've got a  
21 clear record of the invitation.

22 So for my law clerks, we'll help draft that in the next  
23 week or so. And it's an invitation. It's not an order. Okay?

24 MS. HURST: And, Your Honor, --

25 THE COURT: Pick a date -- no, no, Counsel, we're

1 done now. Pick a date in May. I have other cases now.

2 That means get up out of your seats, move towards each  
3 other, get out a calendar, and tell me the best dates. So I  
4 apply to you. Otherwise, I'm just going to dictate the date,  
5 and there won't be a change.

6 Don't go too far. This isn't rocket science, Counsel.

7 And, Counsel, try to make that on a Monday, but I can take  
8 that another day of the week, but I'm usually in trial, so --

9 MR. ALLEN: Monday would be your preference?

10 THE COURT: Sure.

11 MR. ALLEN: Monday would be your preference, Your  
12 Honor?

13 THE COURT: Monday, yeah, is a preference, if I can.  
14 And this time I'll try to get you first thing in the morning so  
15 you're not waiting. In other words, we had a full calendar  
16 today, but I prefer to call you like at 8:00, the first case in  
17 the morning.

18 MR. ALLEN: Okay. Thank you.

19 THE COURT: Remember, all of you folks asked for  
20 10:00 o'clock today. I wanted to call you first at  
21 8:00 o'clock. That's why you're still here this afternoon.

22 And, Counsel, whatever time -- I'd just suggest, whatever  
23 date we set, make it 8:00 o'clock. Because on calendars, I  
24 can't gauge the time. That's why you're here after lunch.

25 MS. WIEMAN: 8:00 o'clock --

1 THE COURT: 8:00 o'clock.

2 MS. WIEMAN: -- Monday, May 6th, Your Honor.

3 THE COURT: Perfect.

4 MS. WIEMAN: See you then.

5 THE COURT: Good for everybody?

6 Okay. Order the parties back May 6th, 8:00 o'clock, here  
7 in Los Angeles. I'll come to L.A. so you're not  
8 inconvenienced.

9 MS. WIEMAN: Thank you, Your Honor.

10 THE COURT: Probably most easier for you to get here  
11 out of LAX rather than Santa Ana, and I'll call you first that  
12 day. Okay?

13 We'll extend an invitation to both the Governor, and we'll  
14 extend an invitation. We'll put it on the docket, but when you  
15 see that, it's incumbent upon you, then, to start notifying  
16 those offices because that's an official invitation from me.  
17 It's not an order but -- and I'll attach these two articles to  
18 the docket so everybody knows what we're talking about. Okay?

19 I want to thank you all for your courtesy in coming back  
20 this afternoon.

21 And, by the way, my compliments to you thus far. Okay?

22 Thank you. Bye-bye now.

23 (Adjourned at 1:39 p.m.)

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REPORTER'S CERTIFICATE

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I certify that the foregoing is a correct transcript of proceedings in the above-entitled matter.

/s/ Suzanne M. McKennon, CSR, CRR, RMR  
United States Court Reporter

Date: 01/30/2024