

Exhibit 22

Reporter's Transcripts of
Proceedings,
March 8, 2001
pp.11-12

1 Watermaster rules and regs, and certain portions of those
2 old rules dealing with water measuring devices and
3 reporting were relocated.

4 We've got some of the significant changes listed
5 there. First off, the principal office, it used to be
6 that they had to be changed by rules amendment; now it
7 could be done by resolution.

8 Records. Now that we're in the information age,
9 minutes and other records deemed to be of general
10 interest are to be posted to the Watermaster website.
11 And unfortunately when I printed this thing out using my
12 little color thing on my -- I never figured we might not
13 have a color printer here. So the website address is
14 www.cbmw -- I'm sorry -- cbwm.org.

15 Regular meetings. Generally as a matter of
16 policy, the Ralph M. Brown Act will be followed. That
17 was not in the prior rules.

18 Special meetings. We also have given in to the
19 information age and have provided for notice by fax and
20 e-mail in addition to regular mail and personal service.

21 Public hearings and meetings. What we have now
22 done is carved out an exception for confidential
23 sessions, and those exceptions, as far as the
24 confidential sessions, are detailed in Section 2.6.

25 Notice. Again, Article 2 -- Section 2.7, we can

1 give notice by fax, by e-mail, and then copies of all
2 notices are also to be posted to the Watermaster website.
3 May we have the next slide, please.

4 Conflict of interest. This was a brand-new
5 section. And keeping in mind that we are an
6 interest-based body, both in the Watermaster Board and
7 the advisory committee, the conflict of interest
8 provisions were narrowly drawn. So essentially somebody
9 has to add a peculiar-to-themselves, pecuniary interest
10 before they would be disqualified from voting on the
11 matter.

12 Again, minutes, posted to the website.

13 Compensation used to be a fixed amount for
14 meetings. Now the compensation of the board members are
15 to be determined by the Court.

16 And now we get down to 23, 24, 25, and 26.
17 These are all brand-new sections relating to -- first one
18 is CEQA 2.23. A project must complete CEQA and must
19 demonstrate CEQA compliance before it can be approved.

20 Then the last three deal with -- next two deal
21 with litigation. And then, of course, the last one just
22 clarifies that all reports need to be written.

23 MR. SLATER: If there are no questions, we'll go
24 on to Article 3. Any questions?

25 MS. SCHNEIDER: We have one question about the

Exhibit 23

July 19, 2001

Court Order

FILED - West District
San Bernardino County Clerk

JUL 19 2001

By Susan King Deputy

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010

ORDER GRANTING FINAL
APPROVAL OF WATERMASTER
RULES AND REGULATIONS;
APPROVING INTERVENTION OF
CCG ONTARIO, LLC; CONTINUANCE
OF HEARING RE STATUS REPORT;
FILING OF MOTIONS TO AMEND
JUDGMENT

Date: July 19, 2001

Dept: 8

Time: 2:00 p.m.

On July 19, 2001, a hearing was held in San Bernardino County Superior Court ("Court") on Watermaster's "Transmittal of Revised Rules and Regulations; Explanation of Revisions" and "Joinder to Petition in Intervention by CCG Ontario, LLC." Satisfactory proof having been made and good cause appearing, IT IS HEREBY ORDERED AND DECREED:

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I.

CHINO BASIN WATERMASTER RULES AND REGULATIONS

A hearing was held on Watermaster's "Motion to Approve Chino Basin Watermaster Rules and Regulations" ("Rules"), on April 19, 2001. The Court granted tentative approval of the Rules, provided that certain changes and clarifications were subsequently adopted. The Court set the July 19, 2001, hearing date to consider final approval of the Rules.

The Court has received and considered Watermaster's Transmittal of Revised Rules and Regulations; Explanations of Revisions. The Court also has received and considered Special Referee's Report and Comments Concerning Watermaster's Transmittal of Revised Rules and Regulations. The Court accepts Watermaster's explanations and Special Referee's comments, which are incorporated herein by this reference. The Court adopts the Special Referee's recommendation to give final approval to the Rules, *subject to*: 1) Watermaster's commitment to revise the definition of "Minimal Producer" to be consistent with the Judgment; and 2) providing Appendix 1 forms consistent with the Special Referee's earlier "Report on Workshop and Comments Regarding Watermaster's Revised Rules and Regulations." IT IS SO ORDERED.

II.

APPROVAL OF INTERVENTION

Under the Court's July 14, 1978, "Order Re Intervention Procedures," Watermaster is authorized to accept petitions in intervention and accumulate them for filing from time to time. On June 29, 2001, Watermaster filed its "Joinder to Petition in Intervention by CCG Ontario, LLC." Watermaster requests that the Court approve the intervention of CCG Ontario, LLC as specified in its Petition in Intervention. No opposition has been filed. Good Cause appearing, IT IS HEREBY ORDERED that the Petition be and hereby is granted as follows:

1 1. CCG Ontario, LLC is granted leave to intervene and become a Party to
2 the Judgment herein;

3 2. CCG Ontario, LLC shall hereafter be a Party bound by the Judgment
4 herein entitled to all the rights and privileges accorded under the Physical Solution in
5 the Judgment through the Overlying Non-Agricultural Rights Pool shown on Exhibit D
6 to the Judgment in place of Kaiser Steel Corporation;

7 3. CCG Ontario, LLC's Overlying Non-Agricultural Rights are:

8 (a) 525 annual acre-feet;

9 (b) 475 annual acre-feet as tenants in common with the California
10 Speedway Corporation ("TCS") with TCS having the right of first use;

11 (c) 630.274 acre-feet as tenants in common with California Steel
12 Industries, Inc. ("CSI"), with CSI having the right of use, with payment to
13 CCG Ontario, LLC, through June 30, 2004, and CCG Ontario, LLC
14 having the right of first use thereafter; and

15 4. CCG Ontario, LLC shall become the successor in interest to the local
16 storage agreements with Chino Basin Watermaster now held by Kaiser Steel
17 Corporation and Kaiser Ventures, Inc., and all amounts in storage thereunder, which
18 amount was 4,547.044 acre feet as of June 30, 2000.

19
20 III.

21 OBMP IMPLEMENTATION

22 In the Court's order of April 19, 2001, the Court set September 20, 2001, as the
23 date for filing a status report from Watermaster on (1) the adoption and execution of
24 formal Term Sheet and Desalter Agreements, (2) the initiation of the plans for design
25 and construction of Desalter 2, and (3) a report on the status of funding for the desalter
26 component of the OBMP. The Court set a hearing on October 4, 2001, to receive the
27 status report from Watermaster.

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However, in order to allow sufficient time for the Court to consider the status report, the Court hereby continues the October 4 hearing to November 15, 2001, at 2:00 p.m. to receive the status report. The Court emphasizes that the filing date for the status report remains September 20, 2001.

IV.

UPDATED JUDGMENT

In Watermaster's transmittal of Appendix 1 (Forms) to Rules and Regulations, Watermaster indicates that it is currently in the process of updating the judgment and that the updated judgment will be presented to the court for adoption.

The Court orders that the motion to approve the updated judgment, and any motion to amend the judgment, including an amendment with respect to the definition of minimal producer, be filed not later than October 15, 2001.

The Court will hear these motions also at the hearing scheduled for November 15, 2001.

Dated: July 19, 2001

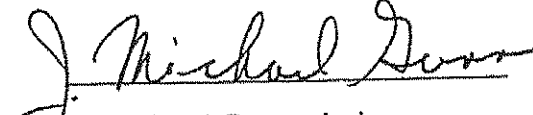

J. Michael Gunn, Judge

Exhibit 24

Reporter's Transcripts of
Proceedings,
October 17, 2002

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

DEPARTMENT R-8

HON. J. MICHAEL GUNN, JUDGE

CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
Plaintiff,)
vs.)
THE CITY OF CHINO,)
Defendants.)
_____)

Case No. RCV 51010

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

Thursday, October 17, 2002

APPEARANCES:

For Watermaster:

HATCH AND PARENT
By: MR. MICHAEL T. FIFE
Attorney at Law

For the State of
California:

OFFICE OF THE ATTORNEY GENERAL
By: MS. MARILYN H. LEVIN
Deputy Attorney General

For Inland
Empire Utilities:

CIHIGOYENETCHE, GROSSBERG
& CLOUSE
By: MR. JEAN CIHIGOYENETCHE
Attorney at Law

COPY

Reported by:

HEATHER R. PFUTZENREUTER, CSR
Official Reporter, C-10294

1 (Appearances: Continued)

2 For Three Valleys
3 Municipal Water
4 District:

BRUNICK, ALVAREZ & BATTERSBY
By: MR. STEVEN M. KENNEDY
Attorney at Law

4 For the City of
5 Chino Hills:

BURKE, WILLIAMS & SORENSEN
By: MS. GERALYN L. SKAPIK
Attorney at Law

6
7 For the City of
8 Chino:

MR. JIMMY L. GUTIERREZ
Attorney at Law

9 For the Agricultural
10 Pool:

REID & HELLYER
By: DAN G. MCKINNEY
Attorney at Law

11 For the Monte
12 Vista Water
13 District:

MC CORMICK, KIDMAN & BEHRENS
By: MR. BOYD L. HILL
Attorney at Law

14 For Fontana &
15 San Antonio
16 Water Districts:

MC PETERS, MC ALEARNEY
SHIMOFF & HATT
By: MR. THOMAS H. MCPETERS
Attorney at Law

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1 RANCHO CUCAMONGA, CALIFORNIA; THURSDAY, OCTOBER 17, 2002

2 DEPARTMENT R-8 HON. J. MICHAEL GUNN, JUDGE

3 (APPEARANCES AS LISTED ON THE COVER PAGE.)

4 (Heather R. Pfutzenreuter, Official Reporter, CSR #10294)

5 THE COURT: Let's go on the record then in the
6 case of the Chino Basin Municipal Water District versus
7 the City of Chino, et al., RCV 51010.

8 UNIDENTIFIED SPEAKER: I am sorry, your Honor,
9 if we could have five more minutes. The attorney for
10 Chino Hills isn't here.

11 THE COURT: Mr. Hensley or Ms. Skapik. You
12 believe we will need them? All right.

13 (Brief pause.)

14 MS. SKAPIK: Geralyn Skapik, City of Chino
15 Hills.

16 THE COURT: We'll start here and work our way
17 around, and we'll pick up the Watermaster referee and her
18 staff.

19 MR. CIHIGOYENETCHE: Jean Cihigoyenette for
20 Inland Empire.

21 MR. GUTIERREZ: Jimmy Gutierrez on behalf of the
22 City of Chino.

23 MR. MC KINNEY: Dan McKinney, Reid & Hellyer for
24 the Agricultural Committee.

25 MS. LEVIN: Marilyn Levin for the Department of
26 Corrections.

1 MR. MC PETERS: Tom McPeters here for Fontana
2 Union Water Company and San Antonio Water Company.

3 MR. KENNEDY: Good afternoon. Steve Kennedy on
4 behalf of Three Vallies.

5 MR. FIFE: Michael Fife for the Chino Basin
6 Watermaster. And Scott Slater sends his regrets. He's
7 been trying to conclude the Colorado River negotiations
8 and was not able to be here.

9 MR. HILL: Boyd Hill for Monte Vista Water
10 District from McCormick, Kidman & Behrens.

11 THE COURT: Why don't we start off in the
12 audience, I guess.

13 MR. ROSSI: John Rossi, your Honor, Chino Basin
14 Watermaster.

15 MS. STEWART: Traci Stewart, Chino Basin
16 Watermaster.

17 MR. WELLINGTON: Ray Wellington, San Antonio
18 Water Company.

19 MR. PEPPER: Henry Pepper, City of Pomona.

20 MR. GLOVER: Pat Glover, City of Chino.

21 MR. CROSLY: David Crosley, City of Chino.

22 MR. RODRIGUEZ: Arnold Rodriguez, Santa Ana
23 River Water Company.

24 MR. MAESTAS: Michael Maestas, City of Chino
25 Hills.

26 THE COURT: And back there?

1 MR. FERKOWSKI: Joe Ferkowski, *Daily Bulletin*.

2 THE COURT: I have seen your name in there quite
3 a bit.

4 MS. SANCHEZ: Diane Sanchez, Department of Water
5 Resources.

6 THE COURT: A couple of housekeeping matters
7 first.

8 Mr. Gutierrez, since you're right over there --
9 Oops, we didn't list the people from
10 Watermaster. Judy Schurr, research attorney. Joe
11 Scalminini, consulting engineer. And Anne Schneider,
12 special referee.

13 Mr. Gutierrez, you had a motion regarding
14 Paragraph 15. And I assume from reading Mr. Slater's
15 report, who is not here, that you're going to move to
16 continue; and is that still the case?

17 MR. GUTIERREZ: Yes. As indicated in the order,
18 based upon prior discussions, yes, we will move to
19 continue the Paragraph 15 motion to August 15th, 2003.

20 Also, the City of Chino Hills wanted to make a
21 report with respect to authorization on the notice of
22 forbearance that they have now filed.

23 THE COURT: Okay.

24 MS. SKAPIK: Good afternoon. GERALYN Skapik on
25 behalf of the City of Chino Hills. The City of Chino
26 Hills has now executed the forbearance agreement. It was

1 executed and prepared by staff, myself, and executed by
2 the city manager, Mr. Labelle {phonetic spelling}. City
3 manager for the City of Chino Hills had the authorization,
4 was given that authorization pursuant to city council
5 during a closed session hearing.

6 And once this whole matter has been approved by
7 the court and agreed upon by the court, it will be
8 announced at the -- after the next city council meeting.

9 THE COURT: Very good.

10 Mr. Gutierrez, your motion to continue to August
11 15th is granted without objection from any attorney.

12 Are there any comments on the orders?

13 MR. HILL: Just briefly, your Honor. I believe
14 the portion of Chino's motion that dealt with Monte Vista
15 was already previously withdrawn. And I don't think the
16 referee report or the court order noted that. It was
17 withdrawn in open court here. And I have got the portion
18 of the transcript, so if that can be so noted.

19 THE COURT: Okay. Anything else?

20 Mr. Hill's brought up something in his papers
21 that concerns the court. And in looking at 644(b) of the
22 CCP, I want to assure everybody the court would
23 independently consider the referee's report. And even
24 though I may adopt it in whole or part, I would only do
25 that after considering both the findings and the
26 objections. However, I think that the subject has been

1 raised, and I think we need to discuss it. I have assumed
2 in the past we're operating under a stipulation that I
3 have the special referee give input to the court, and
4 Mr. Scalminini and Ms. Schurr.

5 And in the order we have July the 17th, 2003, as
6 the date for a workshop. I would feel more comfortable if
7 you guys would discuss the process that we have involved
8 in this proceeding and all proceedings dealing with
9 RCV 51010. Specifically, I have made the special
10 reference for Ms. Schneider. We have Mr. Scalminini
11 involved and Ms. Schurr involved. I think Mr. Kidman made
12 reference to it one time that Mr. Boyd, under the
13 letterhead of Mr. Kidman's firm, has also filed a document
14 for this proceeding reminding the court of his obligations
15 under 644(b) of the CCP.

16 There have been workshops when there has been no
17 adjudication. And the special referee's input to the
18 court has been invaluable to the court. I am not there.
19 She writes the report up and various other things. There
20 has not been an adjudication.

21 We changed the composition of the nine-member --
22 well, of the Watermaster Board to a nine-member board.
23 But as far as any fact-finding goes, there hasn't been any
24 adjudication. If there is, then I think we all assume, at
25 least from the discussions that I have had with
26 Ms. Schneider, that should there be an adjudication

1 necessary, and there might be in the future, then
2 Mr. Scalminini would be subject to cross-examination and
3 Ms. Schneider would be subject to cross-examination at any
4 hearing, if there would be a hearing. And the way things
5 have been going, and it's been that way for years, that
6 encouraged the people involved in this court proceeding to
7 solve matters by means of consensus. And I mentioned
8 that. You can look at your prior transcripts. I have
9 mentioned that.

10 Basically, things have been done that way. But
11 if there is even the appearance of impropriety, I want it
12 to surface and be discussed before we have another hearing
13 in this matter. The next time you guys will assemble
14 would be July the 17th. And I want that to be one of the
15 subjects that you discuss in your workshop. What
16 parameters are appropriate under the circumstances.

17 I don't know how many thousands of cases I do a
18 year. I can't even imagine to do this case by myself.
19 Well, first of all, I don't have the experience in the
20 Watermasters that Mr. Scalminini has. There are certain
21 technical aspects, and the Code of Civil Procedure takes
22 that into consideration. The judge is not an expert in
23 everything, so the judge can rely on experts.
24 Mrs. Schneider is the same reason.

25 So what I propose is everything is on the table
26 when you guys discuss this. And I won't be there on July

1 17th. Discuss the propriety of the procedures that we
2 have been employing with respect to this case and what
3 course the court should follow on this. And I mean,
4 everything is on the table.

5 The next matter I would like to discuss is I
6 have a question I need to ask. Living in this community
7 as many of us do, you can't help but pick up the paper and
8 read about The Colonies. So I am glad that there are
9 people that -- Mr. McPeters from San Antonio Water Company
10 and other people from San Antonio Water Company are here.
11 In looking at one of Mr. Wildermuth's -- he bedazzled me
12 with all of his nice little graphs and diagrams -- but, if
13 we look at diagram 6-1, it looks like The Colonies are
14 right in the Cucamonga spreading grounds; am I correct on
15 that?

16 MR. WELLINGTON: Yes. Completely.

17 THE COURT: In reading the newspaper, nobody put
18 this in their pleadings. I am the one that read the
19 newspaper, so nobody has been planting a seed in my mind.
20 I planted it myself. I just wondered. The first thing I
21 noticed is, conspicuous in their absence is the Water
22 Master's involvement in these things. Cucamonga County
23 Water has been involved.

24 Is it something that's been addressed by the
25 Watermaster at all?

26 MS. LEVIN: I just have a question for some of

1 us who don't live in the local area. Could you just
2 explain a little bit more about what you --

3 THE COURT: There is a large development --
4 apparently, like me and Will Rogers, we only know what we
5 read in the newspaper. But from reading in the newspaper,
6 apparently, there was some land that was owned by the City
7 of Rancho Cucamonga that was given to the City of Chino.
8 Chino has proposed building a large -- a builder, is it
9 K.B. Builders, is building --

10 MR. MC KINNEY: In light, since I am intimately
11 familiar, I will be happy to give something not much
12 broader than what is in the newspaper. The Colonies is a
13 project that is before the City of Upland Planning
14 Commission; and it is basically a housing development,
15 plus a commercial development that is spawned by the new
16 210 Freeway, you know, being in proximity. And the
17 project is squarely on what has historically been, you
18 know, the Cucamonga basin spreading grounds. And that
19 has -- the City of Chino is not involved. This is
20 strictly San Antonio Water Company which spreads water in
21 that area, and Cucamonga County Water District who also
22 pumps, you know, out of that basin; those are the two
23 primary entities.

24 There is some tangential involvement of Chino
25 Basin. And we have made Chino Basin, Mr. Rossi in
26 particular, aware of potential, you know, impacts on Chino

1 Basin. Chino Basin has not been involved in it. What's
2 at issue is therefore the developer and others and that
3 they're building on the traditional spreading grounds, so
4 there is a need to build a new detention basin or flood
5 control basin. And there is a question of the propriety
6 of the design of that basin whether it is of sufficient
7 size and design to permit the historical recharge in that
8 area, the natural recharge from rain water, you know, just
9 running downhill into the basin and then the import of
10 water from Santa Ana Canyon by pipeline and discharge into
11 that basin by San Antonio Water Company.

12 And the ultimate issue is the amount of water
13 that goes into the Cucamonga basin with the two producers,
14 Cucamonga County Water District and San Antonio Water
15 Company. Those are the only two producers in that basin.
16 But the Chino Basin abuts the Cucamonga basin, and there
17 is some hydrologic connection between the two basins. It
18 is not altogether clear. And it is not directly involved
19 in the litigation and land use planning process.

20 It is a complex matter. The Colonies have filed
21 a lawsuit against the Flood Control District seeking to
22 invalidate all of their easements, and that is an ongoing
23 matter and won't be resolved for several more months. The
24 intent -- obviously, the project has to have flood control
25 protection, so invalidating the easements doesn't
26 accomplish anything. What it does accomplish is it puts

1 The Colonies in a position to lay claim for money against
2 the Flood Control District for having detention basins on
3 their property without proper easements. That's the basic
4 point of all of this.

5 When it is built, there will be a basin. There
6 will be recharge. And somebody will pay for it. But will
7 there be adequate recharge? Will it be more or less than
8 what's accomplished now? That is at the City of Upland in
9 its planning department for development of the project
10 adopted the Cucamonga County Water District and San
11 Antonio Water Company conditions. And that was to design
12 a basin that met with historic recharge. There will be no
13 building permit issued unless that occurs.

14 THE COURT: Who is going to monitor that?

15 MR. MC KINNEY: Well, we hired a -- we meaning
16 the city -- Cucamonga County Water District and San
17 Antonio jointly hired a good environmental engineering
18 firm to do the work, Wildermuth Engineering, who is
19 producing a report due -- I won't hold him to it exactly,
20 but it is due sometime next week. And the report will be
21 that -- that is -- that report will assess the design and
22 whether it is adequate recharge and will be used as a
23 basis for negotiation between the parties. At the bottom
24 line of all of this is who is going to pay for that
25 expensive new basin? That's the issue.

26 THE COURT: Okay. And I must have old news,

1 then, because I thought the size of the recharge facility
2 was in play also.

3 MR. MC KINNEY: Well, the size of the recharge
4 facility is in play. It is a question -- it will be a
5 basin of less size than is there now, but whether that
6 will be adequate to produce the historical recharge is the
7 question.

8 THE COURT: And any water --

9 Mr. Rossi has got his hand up.

10 MR. ROSSI: I wanted to speak briefly as to
11 your -- I did prepare a letter at the time of the hearing
12 at Upland City Council along with several others and
13 presented our concerns about the indirect relationship
14 that Mr. McPeters, we're all pleased. In addition to
15 ours, the Flood Control District and the two water
16 companies, we all spoke about the concerns. We're very
17 pleased to have the council consider it and then put in
18 these stops that Mr. McPeters mentioned so this doesn't
19 get away from us.

20 THE COURT: Okay. Maybe, Mr. Rossi, you could
21 talk with Mr. Scalminini and bring him up to speed with
22 what's going on then.

23 The mailing list? I noticed -- everybody is
24 entitled to notice by mail of the proceedings and any
25 other matters with which notice is required. I notice
26 that a lot of you -- and I was pleased to notice -- the

1 internet is being used and e-mail. Internet being that
2 the Watermaster sight seems to have exploded. It is a lot
3 bigger and there is a lot of information on there. E-mail
4 in that notice -- I notice a large list.

5 I noticed that certain people were both on the
6 mailing list and the e-mail list, like Jean Cihigoyenetcche
7 is on both. And I presume he has got his reasons for
8 both. Maybe he wants a hard copy -- if the word can be
9 put forward to all concerned, if they want to be taken off
10 the mailing list and left on the e-mail list, it would
11 probably save a lot of money, not a whole lot, but money
12 is money. There could be very good reasons for wanting to
13 receive a hard copy, and I understand it.

14 MR. CIHIGOYENETCHE: Well, it was a computer
15 glitch, a breakdown. They just couldn't get the e-mail to
16 me. I think that is a one-time event, and I am certain
17 that that is.

18 THE COURT: Let's see. I had circled a bunch of
19 people. I singled you out. There are other people, even
20 Judy Schurr. She expressed the desire to receive a hard
21 copy. I don't know which one it was. I went through, and
22 there were various people. Well, if they really don't
23 need a hard copy, since the e-mail list is growing
24 rapidly, it would save somebody some money, the taxpayers.

25 UNIDENTIFIED SPEAKER: Your Honor, this is
26 something you have been recommending to us for several

1 years now. And you may have noticed on the last
2 transmittal of the status report, number four, and the
3 final ISOB. We have started to try to work slowly into a
4 process where materials are available electronically to
5 people who have volunteered to receive them as such. And
6 I think a lot of people on this last filing did receive
7 both their service copy of the pleading and the status
8 report. And I asked about ISOB via electronic service.
9 We're working into it slowly because we don't want anybody
10 to not get materials that they wanted to get. And so
11 we're letting the people who have opted in for this kind
12 of service trickle in, and soon we hope to have most
13 people served this way.

14 THE COURT: Quite frankly, the only reason I
15 mentioned it is maybe that, I was very pleased that you
16 were making headway in that area. It is going to save
17 some paper, maybe, but I was pleased. And you're right,
18 it has been something I have been recommending for a long
19 time and was kind of trying to push you in that direction.
20 Then again, that's Mr. Rosi that is in charge of that. I
21 am not going to micro-manage him and tell him what he has
22 to do. I was pleased. But then again, it is not a court
23 order, right?

24 Is there anything else? Okay. The hearing is
25 over.

26 (Proceedings in the above-entitled matter

were concluded.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

DEPARTMENT R-8

HON. J. MICHAEL GUNN, JUDGE

CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
 Plaintiff,)
))
 vs.)
))
THE CITY OF CHINO,)
 Defendants.)
))
))

Case No. RCV 51010

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

I, Heather R. Pfitzenreuter, Official Reporter of the Superior Court of the State of California, for the County of San Bernardino, Rancho Cucamonga Division, do hereby certify under penalty of perjury that the foregoing pages numbered 1 through 14, comprise a full, true and correct computer-aided transcription of the proceedings held in the above-entitled matter on Thursday, October 17, 2002.

Dated this 9th day of June, 2003.

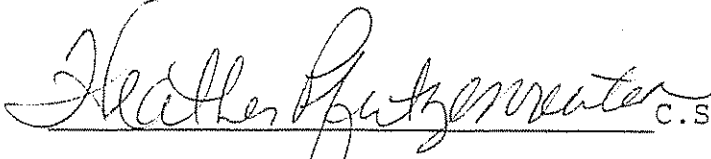
 C.S.R.
Official Reporter, C-10294

Exhibit 25

Reporter's Transcripts of
Proceedings,
February 2, 2009
pp.21-39

1 Q In your opinion, what is important about the
2 relationship between the judgment and the governance
3 structure of the Watermaster?

4 A The relationship between the judgment and the
5 governance structure is important, but in order to
6 understand that, I think we have to kind of back up to why
7 there's a judgment.

8 And as I understand it, what you had in the Chino
9 Basin is an area that has been intensively farmed and
10 occupied for -- since the late 1800's. And what became
11 clear as time passed, by the 1960's and early seventies, was
12 that more water was being extracted out of the Chino Basin
13 ground water basin than was being replenished. And the
14 evidence for that was dropping in water levels, and it was
15 beginning to be a major concern and something needed to be
16 done about that.

17 The folks that were impacted by that, which was
18 everyone, decided to use a legal tool to get a handle on
19 this problem and took the form of a lawsuit. And all of the
20 producers of water in that basin were a party to that
21 lawsuit.

22 And what emerged out of that was a judgment. And in
23 that judgment, all of those folks who had rights to produce
24 water were accounted for in that judgment. They were
25 grouped into three broad categories based on similarity of
26 use.

1 You had agricultural producers who had an overlying
2 right that was tied to their land. You had some industrial
3 users that had wells, and they had overlying rights but they
4 were not ag, and so that was a group. And then you had
5 appropriators who basically pump water out of the ground to
6 sell it.

7 And so the governance structure of Watermaster that
8 emerged from the judgment was one that organized the
9 producers into these three broad categories: the overlying
10 non-ag pool for the industrial folks, the overlying ag pool
11 and then the appropriators.

12 And within those pools, each one of those pools has a
13 certain amount of autonomy. They meet -- and this has
14 continued to this day -- they meet and they decide the
15 affairs of their pool. And then to do the business of
16 Watermaster, these pools feed into an Advisory Committee,
17 which is really the policy-making body of the Watermaster.

18 The Advisory Committee has representatives on it from
19 the ag pool, from the overlying non-ag and from the
20 appropriators. And there was a division of the political
21 weight of the Advisory Committee, based to some extent on
22 rights but not completely.

23 The agricultural pool, as a pool, was granted 20
24 percent of the vote in the Advisory Committee. The
25 overlying non-ag was granted five percent of the vote, and
26 the remaining 75 of the voting power on the Advisory

1 Committee was allocated out to the various appropriators
2 based on their share of the safe yield.

3 And so the Advisory Committee -- so really where the
4 Watermaster governance structure is a bottom-up structure,
5 ideas, concern originate in the pools, and if it needs
6 Watermaster to make a decision, that flows then to the
7 Advisory Committee, the Advisory Committee handles the issue
8 and, hopefully, produces a consensus.

9 But if there's a vote, there's a way to appropriate
10 that vote, apportion that vote. And then the Watermaster
11 Board is actually over the Advisory Committee but not in a
12 sense that most people would understand a board to be. The
13 power -- the actual power of the board is very limited. If
14 a measure passes the Advisory Committee with a 50 percent
15 plus one vote, but something less than 80 percent, that is
16 when the board has some ability to make a decision.

17 If a motion passes the Advisory Committee with an 80
18 percent or more vote, it becomes a mandate on the
19 Watermaster Board, and they really don't have discretion to
20 turn it down. They can send it back to the Advisory
21 Committee if they don't agree with it and they'd like them
22 to consider some other things, but it becomes a mandate to
23 them.

24 So there is -- so this governance structure was set
25 up to meet the needs of all of the producers who were going
26 to be bound by this judgment.

1 Q Thank you, Mr. VandenHeuvel.

2 Are you familiar with the details of the transition
3 of the board from the Chino Basin Municipal Water District
4 to the current nine-member board?

5 A I have an understanding, and there's no doubt others
6 who would have a different perspective or a more detailed
7 understanding. But as Mr. Slater said in his opening, the
8 judgment was entered into in, I believe, around 1977, and
9 the immediate concern of the parties and the Watermaster was
10 overdraft. And the Watermaster did a very effective job of
11 arresting or stopping overdraft by keeping very good tabs on
12 what everyone was producing and buying replenishment water
13 when production exceeded the safe yield. And for 20 years,
14 that -- the Watermaster did a pretty able job of addressing
15 that one concern.

16 But with regards to the development of an Optimum
17 Basin Management Plan -- and you've got this marvelous
18 resource here in the Chino Basin with all this potential.
19 In terms of actually taking advantage of this potential,
20 beyond just stopping overdraft, there was very little
21 progress that was made. And some of the -- and I think
22 there was a general sense the Watermaster Board, in the
23 first 20 years of the judgment, was the Chino Basin Water
24 District Board.

25 Chino Basin is now called the Inland Empire Utilities
26 Agency. But it was assigned to be the Watermaster Board for

1 that period of time. And as I understand it, they did not,
2 in terms of oversight policy, there was not a lot of energy
3 put in by the Chino Basin Water District Board in terms of
4 Watermaster efforts. They had their responsibilities to
5 deal with all of the things that were part of their
6 jurisdiction. The Watermaster stuff, as I understand it,
7 typically happened at the end of the meeting. It was pretty
8 pro forma. Whatever the Advisory Committee brought to them
9 to be essentially rubber stamped was done and there was not
10 a lot of energy put behind Watermaster stuff.

11 Now, there was some controversy. Some folks at Chino
12 Basin Water District did play a very important role in the
13 first desalter, and there were -- and my knowledge of this
14 is more general than specific -- but suffice it to say there
15 were folks that were upset about the way some of those
16 things were handled, and we got to a point in time toward
17 the late 1990's where the Advisory Committee actually
18 exercised their discretion and voted to change who was the
19 Watermaster Board and to take it away from Chino Basin.

20 And as I understand it -- and then I was not
21 appointed at that time, but I was, you know, familiar with
22 the people who were involved -- there was a lot of back and
23 forth what should replace the Chino Basin Board and there
24 were a lot of various ideas and nobody could really agree.
25 And my memory is we beat up that issue for almost a couple
26 of years with different ideas, lots of fighting and

1 bickering and not any progress being made.

2 And then finally, an agreement was put together to
3 form the nine-member board with more of a broader
4 representation of various stakeholders and a separate
5 office. That happened, too. The Watermaster staff actually
6 physically moved out of the building of the Chino Basin
7 Water District, created their own identity, a nine-member
8 board was established, and that's really when I came on
9 board as a representative of agriculture. I don't know what
10 more I can say on that.

11 Q Now, there's one point of view that the reason for
12 the transition from Chino Basin Municipal Water District to
13 the current nine-member board is that the water district
14 ignored the policy mandates of the Advisory Committee and
15 that in recommending the nine-member board, the producers
16 were actually seeking greater control over the Watermaster.
17 Could you comment on that?

18 A Yeah. You know, there's a lot of different opinions
19 about history and, you know, I don't doubt that there are
20 folks that have that opinion. I think the facts speak for
21 themselves.

22 The fact of the matter was we didn't make much
23 progress. We had a lot of potential, and certainly, the
24 mandates were -- you know, the opportunity to do it -- that
25 were in the documents, they weren't carried out so we needed
26 to do something different. And, you know, how that

1 transpired was, you know, was difficult but, you know, the
2 folks on the Chino Basin Water District Board were elected
3 primarily by their constituents to deal with the water and
4 sewer issues that they ran on. The Watermaster was not
5 their primary function. And so consequently, there was not
6 much progress that was made.

7 Q And so then can you explain how, in your view, the
8 Watermaster reconciles its duties to fulfilling the
9 instructions from the judge and the judgment with its duty
10 to carry out the will of the producers as expressed through
11 the pools and the Advisory Committee?

12 A Well, there's always attention -- and I might add
13 that, you know, when the nine-member board was constituted,
14 Judge Gunn gave this nine-member board a very short leash.
15 He appointed the nine-member board, and I believe he gave us
16 26 months to produce an Optimum Basin Management Plan. And
17 he said, "If you don't, I'm going to take authority -- I'm
18 going to take the Watermaster Board function away from you
19 and I'm going to give it to the State Department of Water
20 Resources." So he put some teeth in that order and so that
21 was an important measure to focus our thoughts on what could
22 be done.

23 In terms of the tension between the producers and the
24 judgment, you know, I think it's important to remember that
25 while the Watermaster process uses democratic principles,
26 it's not a democracy as much as we think of like, for

1 example, the other type of agencies that we have in society.

2 When a person votes for a city council member, they
3 basically execute their right as a citizen and they've
4 delegated this person to represent their interest on the
5 city council.

6 In the Watermaster, nobody's really given up their
7 rights. And so the structure that's been created is one
8 that has -- I mean it really is a beast when you look at all
9 of the various moving pieces. But it requires a high level
10 of consensus to get anything done, and that's probably
11 appropriate because everyone in that process continues to
12 have rights. And so you're trying to find solutions to
13 problems that -- where you have to respect everyone's rights
14 and so there's a tension.

15 Folks who are large in this process tend to think
16 that maybe they should have more weight. Those who perceive
17 themselves to be less large in terms of share of water
18 rights, really still have rights, and those rights can't be
19 ignored, so there's always a tension.

20 And in this process that's been created with a
21 nine-member board, really the large producers have the major
22 part of the weight in the Advisory Committee. The
23 Watermaster Board is a much broader representative group.
24 But as I described earlier, the Watermaster Board actually
25 doesn't have a whole lot of authority to independently act
26 on its own. So there's a tension between producers and the

1 board.

2 Q So you've touched on this a little bit but could you
3 explain in more detail how the political process of
4 developing consensus serves to protect everyone's rights and
5 how this relates to a majority rule situation?

6 A Well, because of the -- you know, it's a grass roots
7 kind of bottom up structure, everything has to start in the
8 pools, and in the pools is where you have the broadest
9 participation. Any producer can show up at a pool meeting
10 and can participate in that pool process. And then those
11 pools, what flows out of the pools goes to the Advisory
12 Committee, and then the Advisory Committee has to produce a
13 motion.

14 And what they tend to want to do is to work out their
15 issues there so that they could express a unified front to
16 the Watermaster Board. So there's a large insight of trying
17 to work this all out in this process. There's lots of
18 opportunity to do that. But ultimately, you do need people
19 that are interested in get -- in cooperating and trying to
20 make progress.

21 And when -- the rest of today we're going to hear
22 about the tremendous amount of progress that's been made
23 over the last 10 years. And I don't think it's necessarily
24 the system that produced that but the system didn't stand in
25 the way of producing that. We've had a pretty remarkable
26 group of people from a broad diversity of backgrounds and

1 interests who have been pretty ably lead. Watermaster staff
2 and consultants and legal provided some real good
3 leadership. And so I mean it does come down to people, in
4 terms of being able to make progress, and we've been blessed
5 with some great folks, and the process itself hasn't stood
6 in the way.

7 And because there's a lot of ways to block things,
8 you know, you can't just pass something with a four to three
9 vote. It just doesn't work at Watermaster. That will work
10 on a city council. That will not work in Watermaster. The
11 structure won't allow for that type of a situation. And so
12 yeah, it's a different model from what we're conventionally
13 used to and what we think of as a democratic process.
14 Watermaster really is not a true democratic process.

15 Q And so then -- Strike. How do the producer parties
16 then maintain the necessary independence to carry out the
17 judgment? Can a majority change the rights of a dissenting
18 party?

19 A I don't believe the majority can ever change the
20 rights of the minority party. I mean if someone ends up not
21 believing that they've been treated fairly or that their
22 rights are being impinged, they always have that opportunity
23 to come to the board. The judges may take continuing
24 jurisdiction.

25 It's in everyone else's interests, knowing that, to
26 try to resolve all legitimate concerns of any party. So

1 there's a high degree of incentive to try to produce a, you
2 know, win-win situation. And there's a lot of moving pieces
3 in Watermaster so, you know, while one particular area may
4 favor -- be more beneficial for one party than another,
5 there are other areas where that can be compensated.

6 And when you look at the last 10 years of history and
7 the pretty elaborate plans that have been in place between
8 the OBMP and Peace I and Peace II, you see that there has
9 been a lot of that kind of trading that has gone on. And at
10 the end of the day, we've been able to produce stuff that's
11 really positive for everyone.

12 But the process really demands that because a
13 minority party cannot be run over illegitimately. If that
14 party has a legitimate grievance, you know, everybody knows
15 it and they may very well find a sympathetic ear in the
16 judge. So you need to take care of those concerns.

17 Q Were you on the board in 2005 when the board
18 authorized legal counsel to request a five-year extension of
19 the term of the board?

20 A Yes, I was.

21 Q And are you familiar with the commitments made by the
22 board with regard to governance at that time?

23 A You know, probably not as familiar as I should have
24 been. I am now familiar with those, yes.

25 Q And are you aware that the commitment of the board to
26 form a governance committee was conveyed to the Court and

1 became a part of the rationale for the Court's extension of
2 the term of the board?

3 A I'm now aware of that.

4 Q And in your view, has the board satisfied its
5 commitments?

6 A Well, I think it's technically satisfied that
7 commitment. As I remember that whole governance issue, when
8 we kicked off the discussions for Peace II, Peace I had been
9 accomplished in about 2000. There were a number of issues
10 that were left to be resolved later because, for one reason
11 or another, they were -- we were going to learn more or
12 whatever over time. And so there were some fairly
13 significant -- when the Peace Agreement was implemented, the
14 OBMP and the Peace Agreement in 2000, we began to carry that
15 out, but we knew that in about 2005, we would need to
16 revisit some issues.

17 Leading up to the discussion that we were going to
18 have as the parties in 2005, there was some grumbling about
19 the governance structure. As I recall, the Watermaster
20 Board did not want to get involved in those discussions. We
21 had a lot of issues and we essentially instructed our
22 counsel, which was facilitating the discussions between the
23 stakeholders, to leave that issue out in terms of
24 governance. "Let's see if we can resolve everyone's
25 concerns without addressing that."

26 We were able to do that. It took quite a while. We

1 produced the Peace II Agreement, very aggressive part of the
2 physical solution. A lot of infrastructure has to be built
3 or was going to be built and contemplated a lot of different
4 things. And the governance issue, it seemed like just
5 sitting as a board member, I didn't really hear that that
6 was still an issue.

7 Then subsequently at that same time we filed that
8 Peace II document with the Court, we also needed to get
9 reauthorized because our authority as a board was for five
10 years, and that was expiring. And as part of the
11 reappointment motion, there was that commitment to do a
12 committee on governance.

13 Frankly, you know, when -- once the Court approved
14 the Peace II, we got busy working on hydraulic control and
15 there was an enormous amount of work that needed to go into
16 how to build the third desalter, where to go, how to finance
17 it, all that, and it slipped through, at least my mind, that
18 we had an obligation out there to do something about
19 governance.

20 That got brought to our attention, frankly, mid-2008
21 in some other correspondence that that was a commitment that
22 we had made that hadn't really been fulfilled. And we
23 realized that yes, that had slipped through our fingers.
24 And so we sent the issue back to the pools and asked for
25 advice.

26 And the pools discussed this as part of their meeting

1 agendas and had no specific advice for Watermaster. And
2 then that went to the Advisory Committee, and the Advisory
3 Committee took action to take no action. They brought it to
4 the Watermaster Board without any advice on what to do with
5 governance.

6 So as a board member, receiving this report that this
7 issue had been at the pools and at the Advisory Committee
8 and had not produced any advice to us at all, I made a
9 motion at the board, because I felt that we did make -- we
10 did make a commitment to form a committee to do something on
11 governance, and so I made a motion at the board that as a
12 board, we would appoint ourselves as the committee and then
13 we would simultaneously report out that no change to the
14 status quo was necessary because we got no advice from
15 anyone on that. And so there really wasn't any point in --
16 you know, we're driven by our constituents. If there's no
17 issue amongst our constituents, we really don't have a
18 reason to go do something different.

19 So we passed that motion as a board. We basically
20 appointed ourselves as the committee and immediately
21 reported out that there would be no change.

22 So technically, I think we have complied with that
23 provision. You know, there doesn't seem to be any
24 interest -- there wasn't any interest. If there is
25 interest, the one thing about the Watermaster process, it's
26 very transparent. Anybody can play. And those who have

1 ideas on this always have the opportunity to bring them
2 forward through the process and have them discussed and
3 considered. So that opportunity still exists.

4 Q Now, one point of view is that the motion you made
5 which you've just described to us was more of a repudiation
6 rather than a fulfillment of the commitment the Watermaster
7 made to the Court. How do you explain that?

8 A I just described what my thinking was and how I view
9 the issue. I don't think it's a repudiation at all. I
10 think it's a demonstration that the process that we have,
11 while not perfect, has produced results that we could be
12 proud of. So I think there's a really, really high bar for
13 anybody who proposes changes to this governance structure to
14 demonstrate that whatever they're proposing is going to
15 produce better results.

16 THE COURT: Sir, Mr. Slater, in your opinion,
17 now, just your opinion, what did Judge Gunn want from the
18 Governance Committee and what was he seeking to accomplish
19 by that requirement?

20 MR. SLATER: Your Honor, my opinion is, to have
21 my recollection refreshed by reviewing your order, is that
22 the Court has distinguished between rationale in describing
23 what the Watermaster Board had committed to and the ordering
24 provisions. There was no requirement from the Court in the
25 order that a committee be established.

26 The second thing, your Honor, is that again, my

1 opinion is that being the general counsel for Watermaster,
2 that Mr. VandenHeuvel describes the motion that came to the
3 Watermaster Board by action of the Advisory Committee. The
4 commitment that was made by the board in this instance to
5 examine the governance question came to them on an 80
6 percent mandate from the Advisory Committee. So it was --
7 the board was prepared to transmit the recommendation to the
8 Court to reestablish the nine-member board.

9 The Advisory Committee sent a mandate to the board.
10 So it was our view that counsel and staff's view both that
11 having had the issue identified by some of the moving
12 parties, that we referred the matter back to the individual
13 pools for their input and for input from the Advisory
14 Committee.

15 Recognizing that the matter had come to the board by
16 action of the Advisory Committee and this time the Advisory
17 Committee making no recommendation, the board properly
18 looked at the matter and said that the recommending body was
19 no longer requesting any specific action. And so
20 consequently, it is my view that the board had complied with
21 the Court's order.

22 THE COURT: Do you think that Judge Gunn was
23 seeking to just put this up for people to put their input in
24 to see if someone wanted to desire a change in the way that
25 the governance worked for the Watermaster Board and the
26 advisory pools? Do you think that that was his motivation?

1 MR. SLATER: I believe, your Honor, that Judge
2 Gunn and the parties have a specific process to address
3 governance on a five-year basis. The stipulation among the
4 parties makes reference to that in paragraph nine. Your
5 Honor's appointment of the nine-member board historically
6 has been for a five-year period.

7 So it was my understanding that the parties would
8 contribute to a process where Watermaster would take input
9 and then ultimately a recommendation would be made in
10 connection with the reappointment of the nine-member board.
11 As director, VandenHeuvel has stated the parties are welcome
12 at any time to bring to the Court's attention or to the
13 Watermaster Board the desire to pursue a different approach
14 to governance.

15 THE COURT: Do you remember concerns, prior to
16 the appointment of the -- the reappointment of the board for
17 the next five-year term, do you remember people bringing up
18 concerns about the governance process of the board itself?

19 MR. SLATER: Yes, your Honor, and I'd like to --
20 if I might, the word governance to the Watermaster family
21 means different things. And as I was mentioning in
22 my opening remarks, you have Watermaster, which is really
23 taking on responsibilities to do three different things:
24 Quasi legislative, the adjudicatory responsibility and then
25 administration.

26 And so for some, it is the Byzantine process that Mr.

1 VandenHeuvel has described, that is, that needs to be
2 corrected. For some, and I believe it is my opinion that
3 the root of the suggestions at that time were grounded in
4 the makeup of the nine-member board and whether a specific
5 interest should be more heavily weighted.

6 And lastly, there's a view that Watermaster's
7 administration should be more customized to specific
8 programs. So how Watermaster deploys resources to carry
9 things out has been an issue. But to the best of my
10 knowledge, none of that was ultimately articulated in any of
11 the processes.

12 THE COURT: All right. That answers my question.
13 How about that?

14 Go ahead, Mr. Fife.

15 Q (BY MR. FIFE:) So we just have one more question,
16 Mr. VandenHeuvel. In general then, do you think the
17 governance needs to be addressed at this time? Even if the
18 Watermaster process isn't broken, do you think it could
19 function better?

20 A You know, I'm a pragmatic person, and the system
21 works and we've produced a lot of good stuff. We've got a
22 lot of things to do to serve our constituents, and I don't
23 think, you know, changing seats around or whatever in the
24 governance structure is going to make, you know, make it
25 better. So no, I think we've got other things to do with
26 our time and leave that issue be.

1 MR. FIFE: Your Honor, that's all the questions
2 that we have for this witness.

3 THE COURT: Any other attorneys wish to ask any
4 questions of this witness?

5 Okay. Seeing no hands, you may step down, sir.

6 We'll be in recess, ladies and gentlemen, until 10
7 minutes to 11.

8 (Recess.)

9 THE COURT: Mr. Fife, call another witness,
10 please.

11 MR. FIFE: Mr. Manning, if you could come to the
12 witness stand, please.

13 Your Honor, while he's taking the stand, these next
14 three witnesses are intended to give an overview and context
15 both of the physical Chino Basin and institutionally, and
16 then we'll also provide just a few minutes of basic detail
17 about how Watermaster administers things, its budget, its
18 assessments, just to give you an overview of things.

19 THE COURT: All right.

20 THE COURT ATTENDANT: Face the clerk, raise your
21 right hand.

22 KENNETH R. MANNING,
23 called as a witness by the Watermaster, was sworn and
24 testified as follows:

25

26 THE CLERK: You do solemnly state the testimony

Exhibit 26

July 31, 1989

Court Order

1 GUIDO R. SMITH, ESQ.
2 505 City Parkway West
3 Suite 1000
4 Orange, CA 92668-2958
5 Tel.: (714) 978-6781
6 State Bar No. 75055

FILED - Central District
San Bernardino County Clerk

FILED - West District
San Bernardino County Clerk JUL 31 1989

5 Attorney for Chino Basin M.W. DIST 12 1989
6 as CHINO BASIN WATERMASTER

By Cynthia C. Pope
Deputy

Edwin M. Skilton

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN BERNARDINO

51010

Reel

10
11 CHINO BASIN MUNICIPAL WATER)
12 DISTRICT,)
13)
14)
15)
16)

Plaintiff,

vs.

14 CITY OF CHINO, et al.,)
15)
16)
Defendants.)

Case No. 164327

STATEMENT OF DECISION AND
ORDER RE MOTION FOR REVIEW
OF WATERMASTER ACTIONS AND
DECISIONS FILED BY CITIES
OF CHINO AND NORCO AND
SAN BERNARDINO COUNTY
WATERWORKS DISTRICT NO. 8

17 Prior to 1978, various parties dependent upon the
18 Chino Basin for water were engaged in litigation concerning
19 their respective water rights and obligations. This litigation
20 resulted in a judgment filed in this action on January 30, 1978
21 (Judgment). The Judgment defined the Chino Groundwater Basin
22 and, pursuant to the authority of the California Constitution,
23 put into effect a program for administration of the water rights
24 within the basin under the Court's authority. The
25 administration of the water rights included the imposition of a
26 physical solution and delegated the administration of the
27 program to the Chino Basin Watermaster with continuing
28 jurisdiction and supervision of the Court. By agreement of the

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1 parties, the Chino Basin Municipal Water District Board of
2 Directors was appointed to act as Watermaster. Watermaster
3 appointments are for a period of five (5) years, unless sooner
4 changed by order of the Court. Any party may request, by
5 motion, that the Watermaster be changed, and should be changed
6 if the request is supported by a majority of the voting power of
7 the Advisory Committee.

8 The Judgment declared the Safe Yield to be 140,000
9 acre feet per year. This was allocated as follows:

- 10 -- To the Overlying (Agricultural) Pool, an aggregate
11 of 414,000 acre feet in any consecutive five (5)
12 years;
13 -- To the Overlying (Non-Agricultural) Pool, 7,366
14 acre feet per year; and
15 -- To the Appropriative Pool, 49,834 acre feet per
16 year.

17 The Appropriative Pool is made up of primarily cities and water
18 districts and consists of 22 producers, each of which has
19 assigned specific rights which may be transferred. Each of the
20 three pools is represented by a committee, members of which are
21 elected on a yearly basis. All decisions are first submitted to
22 the various pool committees. After they have acted on a matter,
23 the matter is referred to the Advisory Committee which is
24 basically made up of almost all of the members of the
25 Appropriative Pool and elected representatives of the Overlying
26 (Agricultural) Pool and Overlying (Non-Agricultural) Pool. At
27 the present time, there are 100 votes in the Advisory Committee
28 of which 20 belong to the Overlying (Agricultural) Pool, 5

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1 belong to the Overlying (Non-Agricultural) Pool, and 75 are
2 allotted to the members of the Advisory Committee from the
3 Appropriative Pool.

4 The Advisory Committee takes actions on all matters
5 considered by the various pools and submits its recommendations
6 to the Watermaster. The Advisory Committee is the policymaking
7 group for the Basin. Any action approved by 80 percent or more
8 of the Advisory Committee constitutes a mandate for action by
9 the Watermaster consistent therewith.

10 On February 8 of this year, there was calendared for
11 hearing a motion for review of Watermaster actions and
12 decisions. This motion was filed by the City of Chino, City of
13 Norco and San Bernardino County Water Works District No. 8
14 (Moving Parties). The Moving Parties are members of the
15 Appropriative Pool and are members of the Advisory Committee.

16 The Moving Parties pointed out a great many areas in
17 which they considered the activities of the Watermaster less
18 than perfect. The matter was continued until March 1, and the
19 Court ordered the parties to meet and confer in order to narrow
20 the issues. They did this, and the Court received a
21 Consolidated Statement of Issues to be Determined by the Court.
22 Although prepared by the Office of the Attorney General of the
23 State of California, all parties stipulated to the definition of
24 remaining issues as therein stated. The Consolidated Statement
25 of Issues served as the pre-hearing Order of the Court.

26 Before addressing each of the unresolved issues as set
27 forth in the Consolidated Statement of Issues, the Court wishes
28 to observe that it is quite aware of the fact that we are

003647

1 dealing with a problem of enormous proportions. The Chino Basin
2 is a huge ground water basin which, although primarily in San
3 Bernardino County, extends partially into or impinges upon the
4 rights of several neighboring counties. The Moving Parties are
5 located in the lower end of the basin. They are the recipients
6 of all problems which have accumulated in the course of the
7 circulation of water down to their end. They are particularly
8 subject to the excess of nitrates in the substrata occasioned
9 partly because of their location in the lower end of the basin
10 and partly because of the concentration of dairy and
11 agricultural activities in their part of the territory.

12 The fundamental idea behind the Judgment was to
13 guarantee, especially in times of drought, that there would be
14 sufficient water for all legitimate users of the basin and that
15 the water be of good quality. There was great concern that
16 water of inferior quality (i.e., of high mineral content) would
17 be imported into the basin and dilute the quality of water in
18 storage. The basin constitutes a huge natural reservoir in
19 which excess water may be stored during wetter years for
20 withdrawal during the drier years. This, of course, would
21 contemplate that the groundwater would rise and fall depending
22 upon the input and outtake of water. Unfortunately, this
23 affects the Moving Parties somewhat adversely. When the water
24 level rises, it apparently intercepts higher levels of the
25 substrata which contain the nitrates which are being leached
26 down into the basin. It dissolves these nitrates and produces
27 an unsatisfactory level of nitrate for the pumpers at the lower
28 end of the basin. This leaves them with the necessity of

003648

1 removing the nitrates at their pumping stations or building
2 pipelines to bring water in from another area. The Moving
3 Parties feel that this is an expense which should be borne by
4 the entire basin, not just those at the lower end of the basin.
5 The members of the basin who do not have this problem feel that
6 they have their own problems to meet and that the Moving Parties
7 should resolve their problems in whatever way they can. In any
8 event, the rest of the basin has resisted the efforts to have
9 them contribute to the cost of purifying water produced at the
10 lower end of the basin by removing nitrates.

11 This nitrate problem is not one of easy solution. We
12 cannot waste the great part of the storage capacity of the basin
13 because to use it would dissolve more nitrates. And yet to use
14 the storage capacity does affect the quality of the water.
15 There is at the present time in progress the "Santa Ana River
16 Nitrate Management Study" which is to be completed later this
17 year and which, it is hoped, will provide assistance in
18 evaluating the problem.

19 The Court has been the beneficiary of the arguments in
20 this case which were heard on March 1 and a large quantity of
21 briefs supplied by the various interested parties. Having
22 carefully considered and reconsidered the points and authorities
23 and other arguments submitted, the Court rules on the unresolved
24 issues as set forth in the Consolidated Statement of Issues to
25 be Determined by the Court as follows:

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ISSUE NO. 1.: "The standing of The Metropolitan Water District to respond to the Moving Parties' motion and the Moving Parties' motion to strike."

The Metropolitan Water District is not a party to the Judgment. Metropolitan has entered into a Cyclic Storage Agreement and a Trust Storage Agreement with the Watermaster and exchange agreements with certain of the parties. The Cyclic Storage Agreement and Trust Storage Agreement were entered into with full approval of the Advisory Committee. The Moving Parties are attacking the Trust Storage and related exchange agreements. Metropolitan only claims the right to be heard on Issues 1 and 4 which significantly affect its agreements.

The Moving Parties' contention that Metropolitan either must intervene as a full-fledged, active party to the Judgment or not at all is neither sound nor just. Metropolitan does have standing and, in fact, is an indispensable party to the proper determination of Issue No. 4 which relates to the validity of the aforementioned agreements. The Court finds that Metropolitan may intervene in connection with any motion hearing or other form of litigation to the extent that it affects Metropolitan's real and substantive interests. Therefore, the motion of the Moving Parties to strike Metropolitan's response to the motion for review is denied.

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1 ISSUE NO. 2.: "Adequacy of data gathering
2 by Watermaster."
3

4 The Moving Parties have failed to demonstrate by a
5 preponderance of the evidence, or indeed by any substantial
6 evidence, that the Watermaster has not fully complied with all
7 requirements of the pool committees or of the Advisory Committee
8 or that its data gathering is not reasonable in view of the
9 intent of the Judgment. The Court finds that there is no basis
10 for its intervention in this area.

11 This brings up a matter of some concern to the Court.
12 The Moving Parties are members of the Advisory Committee which
13 under the Judgment is the controlling body of the ground water
14 basin. The Moving Parties between them have slightly more than
15 20 percent of the voting power of that body. The evidence
16 before the Court seems to indicate that most of the actions of
17 the Watermaster have been done with the unanimous approval of
18 the Advisory Committee and nowhere have the Moving Parties
19 indicated to the Court that they have requested the Advisory
20 Committee to vote to instruct the Watermaster to do the things
21 they are now urging the Court to order the Watermaster to do.

22 The purpose of having the pool committees and the
23 Advisory Committee is to have a representative assembly where
24 the parties most interested can discuss the needs of the basin
25 and vote on the best way of meeting those needs. This motion
26 comes before the Court without any apparent previous efforts of
27 the Moving Parties to accomplish their purposes by convincing
28 the Advisory Committee of the wisdom of their requests. This is

1 somewhat akin to resorting to the Court without having first
2 exhausted one's administrative remedies and should be frowned
3 upon. The Court particularly feels that Issue No. 2 could well
4 have been resolved by discussion at the level of the Advisory
5 Committee rather than by coming to Court. In making the Motion
6 for Review, the Moving Parties failed to provide the Court with
7 any record of proceedings of any of the meetings or activities
8 of the Watermaster, the Advisory Committee, or any of the pool
9 committees, i.e., of any of the administrative record of the
10 Watermaster and its component pools and committees. It was only
11 through the efforts of the Watermaster in providing such record
12 that the Court was able to review the actions and decisions
13 brought before the Court for its review.

14 The Court's ruling against the Moving Parties in
15 connection with Issue No. 2 should not be taken to mean that the
16 Advisory Committee and the Watermaster should not be constantly
17 considering the adequacy of its data gathering procedures as
18 needs and conditions change.

19
20 ISSUE NO. 3.: "The Optimum Basin Management
21 Program."

22
23 The Moving Parties contend that the Watermaster has
24 failed to develop an adequate Optimum Basin Management Plan
25 (OBMP). The Watermaster, on the other hand, says that it has an
26 excellent working OBMP although it has not been reduced to a
27 single document. In any event, the Moving Parties feel that the
28 OBMP needs to include the basis for greater flexibility in the

1 use of waters of varying qualities and that it must provide
2 necessary safeguards to assure equity and water quality
3 protection throughout the basin.

4 Long before the Judgment was entered, it was
5 recognized that water quality problems were present in the
6 basin; however, no one could agree on exactly which problems to
7 tackle and what to do about them. Where a point source has been
8 located and identified there has been some mobilization to try
9 to cure it, but the pervasive nature of nitrate build-up from
10 dairy farms and agricultural activities has not been adequately
11 recognized until recently. The Moving Parties have not
12 suggested any solution to this problem other than to keep the
13 water level in the basin low so that it will not meet the
14 descending nitrates and dissolve them and get them into
15 circulation. The Moving Parties apparently feel that if we are
16 going to raise the water level in the basin and thus aggravate
17 the nitrate problem, that the entire basin should be responsible
18 for curing that nitrate problem which apparently can only be
19 done by proper treatment at the pump. Of course, long range the
20 introduction of the nitrates can be reduced, and the nitrates in
21 the soil will ultimately be leached out. But that will not be
22 of much help to this generation or the next. The nitrate
23 problem has its source primarily in the territory of the Moving
24 Parties, particularly Chino. Whether or not the Judgment had
25 ever been entered, the nitrate problem would be a problem to the
26 Moving Parties. However, there is some justification to the
27 concept put forward by the Moving Parties that the problems of
28 the lower end of the basin should be the problem of the entire

1 basin.

2 As to the immediate problem of the OBMP, it must be
3 borne in mind that the primary goal of the Watermaster under the
4 Judgment is to guarantee an adequate water supply in dry years
5 as well as wet years for all users and to do everything it can
6 to improve, or at least not to degrade, the quality of that
7 water. There is no claim that the Watermaster has not provided
8 an adequate supply of water, and there is no claim that the
9 Watermaster has done anything to degrade the quality of the
10 water. In other words, the Watermaster has not added poor
11 quality water to the basin. The only contention is that by
12 adding water at all, the Watermaster is dissolving more nitrates
13 and getting them into circulation more quickly than nature would
14 normally do it.

15 As indicated above, there are studies under way trying
16 to at least define the problem and work out possible solutions.
17 The Court finds no defect in the OBMP, although the Court does
18 recommend that within two years the OBMP be reduced to a single
19 integrated document approved by the Advisory Committee.

20
21 ISSUE NO. 4.: "Validity of the Exchange
22 Agreements."

23
24 The Exchange Agreements and the Trust Storage
25 Agreement were specifically anticipated in the Judgment
26 (Paragraphs 12 and 28).

27 The agreements were considered and unanimously
28 approved by the Advisory Committee (including the

1 representatives of the Moving Parties). These agreements were
2 approved by the Court without challenge. The time for
3 challenging the approval of these contracts has long since
4 expired.

5 However, on the merits, the agreements fully comply
6 with the letter and spirit of the Judgment, and provide proper
7 and adequate safeguards to the rights of the parties.

8 The request of the Moving Parties that these
9 agreements be declared invalid and void is denied.

10
11 ISSUE NO. 5.: "The method and timing of the
12 distribution of the Agricultural Pool transfer."

13
14 The parties have agreed that the one-time 1988
15 transfer of approximately 78,000 acre feet, or at least 28,000
16 acre feet, from the Agricultural Pool to the Appropriative Pool
17 was valid. However, the Moving Parties ask that 50,000 acre
18 feet be placed in an Appropriative Pool holding account pending
19 completion of an OBMP and a socio-economic study.

20 The Court finds no illegality or inequity in this
21 transfer. Procedurally, it complied with the requirements of
22 the Judgment. The Judgment sets forth a scheme for the
23 distribution of transferred waters and excludes this question
24 from the continuing jurisdiction of the court.

25 The request of the Moving Parties is denied.

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ISSUE NO. 6.: "Ontario's storage of 10,000
acre feet of water."

The Moving Parties request that Ontario's recent agreement to store 10,000 acre feet be nullified. The Moving Parties seem to agree that this agreement was proper and legal under the Judgment, but only because the Judgment was defective in some way as to provide a "loophole".

The Minutes of the Advisory Committee meeting of September 15, 1988, show approval of this agreement with the City of Chino and Water Works District No. 8 (moving parties herein) voting for approval!

The Moving Parties claim to be entitled to an order nullifying this agreement because the Watermaster has not prepared a proper OBMP or a socio-economic study, and has not commented on Metropolitan's draft EIR. None of these claims would justify bringing the operations of the Watermaster to a halt by voiding contracts properly and lawfully entered into .

The motion is denied.

ISSUE NO. 7.: "Is there a mandatory duty of the Watermaster to comment on Metropolitan's conjunctive use draft environmental impact report and, if so, to what extent?"

The Watermaster is the Board of Directors of the Chino Basin Municipal Water District which acts under the policy direction of the Advisory Committee. Unless there is a clear

1 consensus of opinion as to a particular draft EIR among members
2 of the Advisory Committee, there is no obligation to comment.
3 In fact, to do so would be divisive and destructive to the
4 primary function of the Watermaster and the Advisory Committee.
5 It would be quite appropriate for the various parties to the
6 Judgment to make their own comments. In this way, the divergent
7 interests and views could be considered.

8 The Court finds there is no duty on the part of the
9 Watermaster to comment on the Metropolitan draft EIR.

10
11 ISSUE NO. 8.: "The adequacy of the
12 Eleventh Annual Watermaster Report."

13
14 The Moving Parties complain of the Eleventh Annual
15 Watermaster Report primarily because the socio-economic study
16 has not been done and the Moving Parties are not satisfied with
17 the OBMP. There is perhaps also a complaint that it does not
18 contain a minority point of view.

19 It is difficult for the Court to fault the report for
20 not containing a minority point of view when there was no
21 minority point of view. The report was unanimously approved by
22 all parties prior to submission to the Court. This includes
23 approval by each of the Moving Parties. The report seems to
24 fairly and accurately set forth what was done by the Watermaster
25 during the period of the report.

26 The report is approved.

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1 ISSUE NO. 9.: "Whether the impoundments of
2 the '88-89 annual assessments with interest, costs,
3 and penalties should be transferred to the
4 Watermaster, and how the transfer should be
5 accomplished."
6

7 The Judgment provides for assessments to be made by
8 the Watermaster and further provides that challenges to the
9 validity of the Watermaster's assessments must be made within 60
10 days. In this case, certain assessments were made, and the
11 Moving Parties paid their assessments into an impound account
12 withholding them from use by the Watermaster for which the
13 assessments were intended until determination of this action.
14 No challenge to the Watermaster's assessments was ever made by
15 the Moving Parties, and the time for such challenges has long
16 since expired. It is clear -- in fact, the Moving Parties agree
17 -- that the withholding of the assessments was intended as a
18 political statement, a means of protest.

19 The Judgment provides legitimate avenues for protest,
20 as does the general law. Withholding payment of proper
21 assessments is a form of political blackmail which is not
22 contemplated by the Judgment and which leads to the inevitable
23 frustration and breakdown of the purposes of the Judgment.
24 Under the facts of this case, such withholding of legitimate
25 assessments was without any legal justification.

26 Paragraph 55 of the Judgment mandates a late payment
27 penalty of ten percent per annum from 30 days after the date of
28 billing.

003658

1 The impounded assessments together with all interest
2 earned thereon (Metropolitan Water District v. Adams [1948] 32
3 Cal.2d 620) and the ten percent per annum penalty required by
4 Paragraph 55 of the Judgment are to be paid forthwith by the
5 Moving Parties to the Watermaster. Interest and penalty
6 assessments shall accrue until actually paid to the Watermaster.

7 The Judgment also provides that the Watermaster may
8 recover attorney fees and other costs of collection in
9 recovering assessments which have been withheld. In recognition
10 of the good, if misguided, intentions of the Moving Parties, the
11 Court orders that no costs of collection or attorney fees in
12 connection therewith shall be paid.

13
14 ISSUE NO. 10.: "Attorney fees."

15
16 There are two issues in connection with attorney fees.
17 The first relates to whether the Moving Parties must share in
18 the cost of defense of their own motion; and the second is
19 whether the Moving Parties should be required to pay the entire
20 cost of the defense, including attorney fees.

21 The Court is convinced that there are some legitimate
22 concerns in the way of long-range planning for improved quality
23 of the water of the basin and for an equitable method of
24 spreading the costs of improving the quality. The motion filed
25 by the Moving Parties has served to point out these problems and
26 bring them to the surface. On the other hand, the Court is
27 satisfied that the motion was improvidently filed in that there
28 was apparently no efforts made by the Moving Parties to

1 accomplish their purposes through the procedures set up in the
2 Judgment before bringing this lawsuit. They may have been
3 convinced that with only 20 percent of the vote they had no
4 chance of getting the Advisory Committee to adopt their
5 position, but that is no excuse for not presenting the issues
6 properly and fairly to the Advisory Committee and trying to
7 persuade all or some of the members of the Advisory Committee to
8 agree with them on some issues. By filing this action and
9 particularly by almost burying the legitimate concerns amidst a
10 myriad of lesser concerns, they have cost the Basin a great deal
11 of money and, of course, taken considerable court time.
12 Although the Watermaster is the prevailing party, the Court does
13 not award attorney fees to the Watermaster. The Watermaster's
14 legal expenses are a proper expense of the entire Basin, and the
15 Moving Parties, along with all other parties, will have to pay
16 their proportional share of the costs of defending this action,
17 but the Court will not require them to shoulder the entire
18 expense.

19 A suggestion -- if not a warning -- will be made,
20 however, that in the future, before any such motion be made, all
21 reasonable efforts should be made to resolve the issue within
22 the administrative set-up provided by the Judgment. Any motion
23 filed should recite in detail what efforts have been made to
24 achieve the desired results short of filing a motion in court,
25 and such motion should be supported with copies of the agenda
26 for and Minutes of the meetings at which the matter brought
27 before the Court for review has first been calendared for
28 discussion in the appropriate pool committee, before the

1 Advisory Committee and before the Watermaster.

2 Dated: 7-31-89

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DON A. TURNER
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

NAME OF MUNICIPAL OR JUSTICE COURT DISTRICT OR OF BRANCH COURT, IF ANY

CENTRAL DISTRICT

OF CASE (ABBREVIATED)

CHINO BASIN MUNICIPAL WATER DISTRICT

v. CITY OF CHINO, et al

Case No. SCV-164327

DECLARATION OF SERVICE BY MAIL

My (business/residence) address is Office of the County Clerk, Courthouse Annex,
351 North Arrowhead Avenue, San Bernardino, California 92415-0210.

I hereby declare that I am a citizen of the United States, over the age of 18, a resident of/employed
in/the above named County, and not a party to nor interested in this proceeding. On the date shown
below, I deposited in the United States mail at San Bernardino

California, a sealed envelope (postage prepaid) which contained a true
copy of the attached:

(NAME OF DOCUMENT) Statement of Decision and Order re Motion for Review
of Watermaster Actions and Decisions Filed by Cities of Chino and Norco
and San Bernardino County Waterworks District No. 8
which was addressed as follows: Date of Mailing: July 31, 1989.

Name and Address of Persons Served:

(Please see attached mailing list.)

At the time of mailing this notice there was regular communication between the place of mailing and
the place(s) to which this notice was addressed.

I declare under penalty of perjury the foregoing to be true and correct.

Dated July 31, 1989

by

Anna Marie Felton
Anna Marie Felton

Title

Secretary

003662

CHINO BASIN MUNICIPAL WATER DISTRICT
vs. CITY OF CHINO, et al
Case No. SCV-164327

Statement of Decision, etc.
July 31, 1989

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