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

CHINO BASIN MUNICIPAL WATER
DISTRICT, a municipal water
district,

Plaintiffs,

vs.

CITY OF CHINO, et al.,

Defendants.

NO. 164327

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

BEFORE HON. HOWARD B. WIENER, JUDGE

Department 7: Tuesday, January 18, 1977

San Bernardino, California

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APPEARANCES:

For the Plaintiffs: DONALD D. STARK, ESQ.
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N. JAMES COSMAN, C.S.R.
Official Reporter (C 2168)

1 SAN BERNARDINO, CALIFORNIA; MONDAY, JANUARY 17, 1977

2 Afternoon Session

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5 THE COURT: Good afternoon. Indeed a
6 pleasure, after starting off the day as an expert
7 in family law matters moving gracefully to criminal
8 matters, I now become the house expert on water law.
9 I know that will be very comforting to all concerned.

10 Mr. Stark?

11 MR. STARK: Your Honor, for the record,
12 Donald Stark, attorney for the plaintiff.

13 The purpose of setting this status conference
14 was basically that we had previously requested the
15 assignment of a Judge for all purposes in this case
16 because of the nature of it and your Honor has been
17 assigned for a period of time without any comment,
18 notice or information as to how the case was proceed-
19 ing.

20 We are in the peculiar position that because
21 the Complaint and Amended Complaint have been filed
22 and we have been in two years, or better, of continu-
23 ous negotiation, using an attorneys' committee, but
24 not encouraging the filing of responsive pleadings,
25 I and my associate, Mr. Kranz, are the only attorneys
26 of record, although we have had active participation

1 by other counsel; they have not as yet appeared
2 and are, in part, present today as guests of the
3 proceedings, I gather, to the extent they don't
4 desire to appear at this point; but, basically, to
5 explain to the Court who the attorneys are that
6 have been participating in the matter to date and,
7 presumably, will be counsel of record at the time
8 that pleadings are filed.

9 From the affidavit of mailing, you will
10 note: Surr & Hellyer by James Edwards, who represents
11 the Cucamonga County Water District. And Arthur
12 Littleworth from Best, Best & Krieger; and from that
13 firm today, Richard Anderson, who represents Western
14 Municipal Water District of Riverside County, and
15 Fontana Union Water Company.

16 Adolph Moskovitz, representing the City of
17 Upland.

18 Harold Landis of Higgs, Fletcher & Mack in
19 San Diego, who's representing the City of Chino.

20 Samuel Crowe and, here today, Bob Dougherty,
21 representing the City of Ontario.

22 And the State of California, which has a
23 substantial operating interest in the basin through
24 the correctional facilities, by Ed Dubiel and a
25 Emil Stipanovich. Mr. Dubiel is here today.

26 THE COURT: Who is Mr. Dubiel?

1 Thank you.

2 MR. STARK: Martin Whelan representing
3 Monte Vista County Water District. And Mr. Eric
4 Bathen.

5 THE COURT: Thank you, sir.

6 MR. STARK: His firm is here today.

7 Maurice Sherrill of Redwine & Sherrill,
8 representing West San Bernardino County Water
9 District.

10 Stanford Shaw, who is here today representing
11 Marigold Mutual Water Company.

12 And Rodger Howell of Rutan & Tucker for
13 the Pomona Valley Municipal Water District.

14 Crane Kitchel, County Counsel, and Alan
15 Marks for the County of San Bernardino.

16 James Good for Kaiser Steel. And Tom
17 Gilfoy for Southern California Edison.

18 And then Mr. Stanley Lagerlof, who is here
19 and has been representative of the Milk Producers
20 Council, which is an accumulation of a cooperative
21 of milk producers in the area who have been active
22 in the negotiations.

23 The case involves some thousand to twelve-
24 hundred parties, most of whom are individual farmers
25 in the Chino Basin, there are twenty-two city
26 utilities and mutual water companies, and then there

1 are about thirteen overlying commercial or
2 industrial water users in the basin.

3 At the present time, we have filed
4 acknowledgment of service -- that is of completed
5 service by mail -- on 1186 parties. Those returns
6 of service were filed this week or the end of
7 last week. We have identified approximately 131 Doe
8 defendants who will be served shortly, and there
9 remains another approximately 70 individual defendants
10 who had not as yet responded by mail and, presumably,
11 will take personal service.

12 There are also another 111 parties who will
13 be dismissed, in addition to the 200 parties pre-
14 viously dismissed from the original listing.

15 This is merely to say that the formal
16 proceedings, in terms of jurisdiction, are proceeding
17 and we would appear to be within two months of having
18 jurisdiction over the parties, having sorted out the
19 bad parties, that is, those who should not have been
20 named, and picking up what new parties are required.

21 In the meantime, primarily to give the Court
22 a feeling of the calendar of events: After two
23 years of negotiation, working through an advisory
24 committee and its subcommittees, we've arrived at
25 a form of proposed stipulated judgment, which has
26 the concurrence of the committees, but does not

1 have the formal approval of any party to the action.
2 That is, the committees are composed of negotiating
3 representatives, and none of them are in a position
4 to bind their parties.

5 We are now finalizing that draft, stipulation
6 for judgment and judgment. We propose to have it
7 printed by about the first of February and then will
8 send it out to determine whether, in fact, it is a
9 consensus form of judgment, because at the present
10 it's a negotiated document and does not have approval.

11 I did not file it or suggest its contents
12 in connection with the status record.

13 We are concerned that the Court be aware of
14 where we stand, but we want to avoid the pitfalls
15 of getting the Court involved in the merits of the
16 case before we really know whether we've got any
17 merits in the case.

18 There is a unique collateral problem that
19 we're working with, which relates to the question
20 of whether the public agencies are required in this
21 type of proceeding to prepare an environmental
22 assessment for purposes of the stipulation for
23 judgment.

24 The Municipal District has, without conceding
25 the applicability of sequa, undertaken an environ-
26 mental assessment, which should be completed by the

1 first of March.

2 It's anticipating that we will be moving
3 with approval of stipulations for the private parties
4 by February, hopefully by the end of March, when we
5 have sufficient stipulations to proceed. With nearly
6 1200 parties, it seems apparent we, in no event,
7 will have a unanimous stipulation; that is, there
8 will undoubtedly among individual farmers, particular-
9 ly, the people who may not oppose the judgment, but
10 who may not wish to sign it.

11 So, we would contemplate, absent major
12 problems, that we would be prepared to set the matter
13 for pretrial and trial some place in the May to June
14 period, hopefully looking to a July 1 date for
15 effective operation of the judgment.

16 Now, that assumes that we do not encounter
17 major procedural problems.

18 As I say, no party has as yet signed the
19 stipulation or authorized it, other than the Plaintiff
20 District, who has authorized signing the stipulation.

21 We will have a better handle on where we
22 stand, I would think, in late February, which is
23 the reason that we suggested in the written status
24 report that perhaps an additional status hearing
25 might be helpful at that time. Whether a hearing
26 on whether a written report is sufficient, it seems

1 to me the Court should be advised as we're
2 proceeding with the case what sort of progress is
3 going forward.

4 The judgment which has been developed, the
5 format is quite complex compared to any of the
6 prior judgments, in part because subsequent to
7 the San Gabriel judgment which was the last major
8 groundwater adjudication, the Supreme Court decided
9 Los Angeles-San Fernando decision, which essentially
10 upset many of the premises on which the San Gabriel
11 and earlier cases had been decided, so we have been
12 back on our own working to develop a satisfactory
13 and appropriate pattern of physical solution.

14 That, essentially, is the extent, other
15 than what appears in the written report, is what
16 seemed to me that should be reported to the Court,
17 so you know where we stand and where we're going
18 and, if there are any questions, and there may be
19 of the counsel present; we have parties who still
20 have significant reservations about the judgment
21 and whether they want to state anything today or
22 any other time is constituted an opportunity for
23 that.

24 THE COURT: Thank you very much, Mr. Stark.

25 As you do know, I was an attorney involved
26 in the San Gabriel water case and I think you'll

1 recall that I came in late on a tag end issue
2 after Judge Shay had been dealing with it for
3 months -- years, probably -- and everything had
4 been worked out. The courtroom was filled with
5 people and I recall saying to him that I just got
6 involved in the case and I didn't understand much
7 of it, I was not an expert on water law. And he
8 said, without any hesitation to everyone present,
9 "That's okay. Nobody else does, either."

10 So, I'm sensitive to the complexities of
11 the case. Frankly, I'm not knowledgeable enough
12 at this time to ask any intelligent questions,
13 which probably doesn't stop me or anybody else
14 most of the time, but in this case I'm sufficiently
15 anxious about the complexities, that I would not
16 go to any of the issues.

17 I guess I only have a couple of broad areas.
18 Number one: Is there some formal methodology that
19 we would adopt comparable to a class action kind
20 of thing to make sure everybody gets notice and
21 to the extent decisions are reached they could have
22 some binding effect upon other persons? Is there
23 any kind of technique which we could use other
24 than merely agreements?

25 MR. STARK: Well, I think when we get into
26 matters requiring court action, as distinct from

1 simply reporting the matter, although we're
2 dealing with twelve hundred parties, we have all
3 the names and addresses on computer runs and we
4 can run off labels and we have as the matter has
5 proceeded kept fairly regular mailings for one
6 purpose or another to all of the parties.

7 The other thing is that as the status
8 report shows, there was a three-year pump tax
9 authorized by the Legislature, which means that
10 these same producers have been notified, assessed
11 and participated in the production assessment;
12 that is, all of them except in San Bernardino Valley
13 Municipal Water District, which was not covered by
14 the Legislation.

15 So, we have the mechanics to give actual
16 notice to parties not represented by counsel and
17 then we'd have parties represented by counsel. If
18 we have any formal proceedings in the court, even
19 this sort of a status report, I was particularly
20 concerned that we do it in a formal court hearing
21 with notice at least to the attorneys we knew, so
22 that we could maintain a record on the proceedings,
23 because I am concerned that if we have contested
24 issues the Court be informed as to what's going on,
25 but not as to the merits of the issues until some-
26 thing arises.

1 I don't think the class action technique
2 really is needed here. We know and are able to
3 define all of the producers. We have the names and
4 addresses and it's really a matter of the United
5 States mails and the computer.

6 THE COURT: The other broad area is
7 educating me on some of the subject matter. I
8 confess readily that I don't hold myself out to be
9 an expert in water rights and that probably some
10 education should be starting now in terms of leading
11 authority, et cetera. Other than reading the San
12 Fernando case and reading through the literature
13 here, if you have any suggestions as to any kind of
14 reading that would be helpful so I get educated as
15 we go along, so if the matter is contested I don't
16 find myself completely confused, I think that may be
17 helpful.

18 And I guess the third broad area is, assuming
19 that all the entire program works out as you opti-
20 mistically anticipate, I should be indicating to
21 the Presiding Judge what my schedule is going to be
22 like, which, of course, would depend upon your
23 schedule.

24 How long do you think the matter will take,
25 assuming there's a contested trial on certain issues,
26 putting to rest all the things you think you can put

1 to rest? What are you looking at in contested trial,
2 or is this far too premature now to even speculate?

3 MR. STARK: Yes. At present I don't see
4 any major contested issues. There is one party
5 who has been reserved -- has substantial reservation
6 and when we define those issues, we'd have a better
7 opportunity.

8 I would anticipate, first of all, if we
9 have no substantial opposition, that we would still
10 have perhaps two to three days of trial in order to
11 put in the case as to nonconsenting parties.

12 I don't think at this point it's possible to
13 define the scope of objections, if we get them.

14 First of all, in terms of reading, it's not
15 particularly helpful to say to someone the L.A.
16 case is a good starting point. But the L.A.-San
17 Fernando case, excluding its discussion of public
18 priorities, which is not applicable, is probably the
19 key current case to understanding the problems that
20 we're dealing with, that relating back to the Pasadena-
21 Alhambra case, with which the Court is familiar, I'm
22 sure.

23 But in the Los Angeles case, one of the
24 specific problems raised is that the court holds
25 that prescription does not run as against a city
26 or a public district under Section 1007 of the Civil

1 Code and, consequently, we have a problem which
2 relates to the stipulation process that we're going
3 to have to at first find out whether we have a
4 stipulated judgment among these major public enti-
5 ties, any one of whom may, because of that provision,
6 be able to essentially make the stipulated progress
7 impossible.

8 If one of those parties were to determine
9 not to stipulate, then we have an entirely different
10 case.

11 THE COURT: I see.

12 MR. STARK: But I think that would move us
13 back a year or so before we were ready for any kind
14 of trial. We may well have minor problems as to
15 individual parties, as your Honor is aware was
16 involved in the San Gabriel, where the disputes
17 were not really with the principal judgment, but
18 were the rights between individual parties.

19 I don't at this point have any handle on how
20 much time might be involved in such trial.

21 THE COURT: Any other counsel who have been
22 gracious enough to come out here at 4:00 o'clock
23 on an afternoon have any comments or suggestions?

24 MR. DOUGHERTY: Yes, your Honor.

25 I'm Robert Dougherty representing the City
26 of Ontario.

1 I would just like to state -- again not
2 appearing for the record, but "for the record" --
3 that the City of Ontario is one of the entities
4 that does have serious reservations. I feel
5 Mr. Stark's time estimates, unless we can solve
6 these reservations, of course, they're overly
7 optimistic. I could anticipate that the matter
8 could be a full-blown trial, possibly six months to
9 a year, because there are certain underlying
10 questions which we might be inclined to go along
11 with, which we do not necessarily think conform to
12 current law, if our other problems can be worked
13 out.

14 But I just did not want my sitting here in
15 silence to be deemed as sort of an acquiescence
16 that there were no major problems.

17 THE COURT: Perhaps the committee and lawyers
18 could concurrently with going down the path of
19 optimism consider the selection of an individual,
20 perhaps a retired judge, or a master in this case.
21 I don't know how one would -- I would suspect that
22 it would probably have to be a retired judge, other-
23 wise, state courts don't have the same rights as
24 federal courts in appointing masters.

25 Taking the pessimistic view, I would think
26 that there would be a greater likelihood of

1 approaching it through a retired judge or individual
2 who, perhaps, would be a commissioner for the purpose
3 of this case and make findings, rather than the
4 likelihood of a judge taking six months out to hear
5 a case. This is not to suggest that I wouldn't be
6 delighted to do it. I just think the realities are
7 such that that may be a route.

8 MR. STARK: I think there is the further
9 reality, which we have recognized from the beginning,
10 and that is that I don't think anybody is going to
11 finance one of those lawsuits.

12 If, in fact, we are looking at a six-month
13 trial, we probably will have failed to solve the
14 problem, because I doubt that there is that much
15 belief that a six-month or a year trial would do
16 other than lead to a reversal. The City of Los
17 Angeles case is still pending; no final judgment has
18 been entered. Twenty years have passed and several
19 million dollars gone.

20 I think most of the parties recognize and
21 this is -- I certainly agree with what Mr. Dougherty
22 said. And it's important that my optimism, which is
23 the schedule I feel will be followed if we succeed,
24 may not be the schedule, but I'm not sure from the
25 Court's standpoint if we don't make a schedule of
26 that general character, chances are that we would

1 have failed to solve the problem and that the
2 relief to be sought will either be legislation or
3 continued overdrafting of the Basin, unregulated.

4 THE COURT: I'm sure you know, Mr. Stark,
5 and others, to the extent that I can make myself
6 available, I'll certainly do so. And I have
7 indicated to the Presiding Judge I appreciated the
8 assignment; it's an interesting matter and certainly
9 hope we can address it in a way that, quote, everyone
10 is pleased, close quote. Anything else we should
11 attempt to do this afternoon, other than to thank
12 you all again and who are all here "not for the
13 record, but for the record," however it is phrased?

14 MR. SHAW: I would have a word, if you
15 please, your Honor.

16 I'm Stan Shaw, representing Marigold Mutual
17 Water Company, one of the defendants, and I want
18 to address myself to the problem of these sort of
19 preliminary hearings, presentations to your Honor.

20 I happened to have occasion to observe this
21 process with the consolidated cases of Mojave Water
22 Agency versus Abbey and Allison, involving some
23 perhaps fewer defendants, but still too many, and
24 I want to caution that in my observation these
25 situations can seem to have the purpose of winning
26 you to be supportive of the proposed judgment because

1 of the considerable time that went into and
2 expense heretofore, and also to prematurely receive
3 your approval of the proposition that somehow the
4 judgment is to be imposed upon dissenting parties
5 if a vast majority approve it, even though it not
6 conform to law admittedly under any case. And I
7 want to caution that besides objecting to these
8 preliminary hearings, before we even have any answers,
9 that the end result may well be that your Honor has
10 been imposed upon enormously. And I've seen this
11 happen by reading and preparation and then a liti-
12 gant decides to file an affidavit of prejudice and
13 it's down the tube.

14 If you'll read this material, I think it's --
15 I assign no bad motives, but so much has been
16 invested, that sometimes in a subtle way there are
17 many supportive things about this judgment that might
18 win your approval in the matters that have been
19 submitted to you today, so I have these reservations
20 about these preliminary hearings.

21 THE COURT: I must say, Mr. Shaw, that I
22 don't think you could have touched upon that issue
23 in any more diplomatic or tactful way.

24 I assume that you know my response to
25 Mr. Stark and Mr. Dougherty and to all of you in
26 terms of interest, good humor and good manners, I

1 trust should not be construed as being a pushover
2 for any side. It is an adversary proceeding, like
3 any lawsuit, and parties have rights, including the
4 filing of affidavits, and I would assume that with
5 all the parties in this lawsuit that should not be
6 an unexpected turn of events. It's a reality that
7 I'll live with and if one or more of the parties
8 don't agree, we'll certainly litigate it. You don't
9 have to have any hesitancy at all about that, either
10 as to the imposing upon me as to time or the state
11 of mind. In that San Gabriel case, we litigated it.
12 We tried the tag end, quote, nothing issue, and we
13 were there trying our case for a couple of days.
14 And I smiled when Mr. Stark referred to it before,
15 because maybe one of the motivations in taking the
16 Bench is the case is still pending. The case is
17 still going on. (Laughter.) But I can appreciate
18 the fact that these things go on and people should
19 not have to agree and we'll resolve it if necessary.

20 I do appreciate your comments and the spirit
21 in which they were conveyed.

22 MR. STARK: I might say, your Honor, that
23 I agree with what Mr. Shaw has said about the risk
24 of lobbying, as it were, or have informal contact
25 with a case where we've got a great many problems.
26 It's extremely difficult in a cost sense for

1 everybody to participate in everything, and it is
2 for that reason that we have not submitted anything
3 as to the merits of the proposed judgment, no
4 language or description of what is under considera-
5 tion, and the reason that I think it is appropriate
6 and we would propose always to proceed only in
7 noticed open court hearings where we have a record
8 or pleadings on file, because I think it is subject
9 to abuse and has been abused in many similar cases,
10 the ease of conferences in Chambers among a half
11 dozen of the principal lawyers involved. And we do
12 not propose to proceed that way in this Court. To
13 the extent we have any attorneys, whether of record
14 or known to us, we propose to notice in all cases.

15 THE COURT: Thank you very much.

16 (ADJOURNMENT.)

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CERTIFICATE OF REPORTER

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

I, N. JAMES COSMAN, a Certified Shorthand Reporter, hereby certify that I am the Official Reporter duly appointed by the Court to take down the proceedings had in the foregoing matter and that the 18 foregoing pages are a true and correct transcript of the proceedings had at the within-stated time and place.

15TH DATED at San Bernardino, California, this day of February, 1977.

N. James Cosman

Official Reporter