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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

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CHINO BASIN MUNICIPAL WATER )  
DISTRICT, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
CITY OF CHINO, et al., )  
 )  
Defendants. )

No. 164327

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

BEFORE HONORABLE HOWARD B. WIENER, JUDGE DEPARTMENT 1 (ONT)

Ontario, California

June 23, 1977  
1:30 p.m.

APPEARANCES:

For Plaintiff: DONALD D. STARK  
Attorney at Law  
Airport Plaza, Suite 201  
2061 Business Center Drive  
Irvine, California 92715

For the State of California EDWIN DUBIEL  
Deputy Attorney General  
State of California

For Bains and Martins: C. LLOYD MASON  
Attorney at Law

For Southern California Edison JOHN R. BURRIE  
Attorney at Law

Reported by: NORETA VAN BUSKIRK  
Official Reporter  
C.S.R. No. 2116

**ORIGINAL**

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ONTARIO, CALIFORNIA, THURSDAY, JUNE 23, 1977, 1:30 P.M.

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THE COURT: In the matter of Chino Basin Municipal Water District, Plaintiff, versus Chino, et al.

The motion for order authorizing temporary mining of Chino Basin has been calendared for this date and time. The record should indicate that Donald D. Stark and Frederick H. Kranz, Jr. are appearing on behalf of plaintiff herein and could each counsel who is appearing here for any defendant announce his appearance, please.

MR. DUBIEL: Edwin Dubiel, Deputy Attorney General for the State of California.

MR. BURRIE: John R. Burrie, counsel for defendant Southern California Edison Company.

THE COURT: Any other counsel?

MR. MASON: C. L. Mason for two miner owners, Warren A. Bain and Cheryl L. Bain and Ruth C. Martin and Frank E. Martin.

MR. DOUGHERTY: Robert Dougherty, Assistant City Attorney for the City of Ontario.

THE COURT: I have read the motion and without trying to suggest any lack of expertise in this matter, if you would care to educate me further, I would not be offended, Mr. Stark.

MR. STARK: Your Honor, this is, I might say, one of a series of comparable orders that are being entered or

1 sought in all of these Southern California ground water  
2 basins within the Metropolitan Water District where there  
3 is court involvement. Basically, with the drought condi-  
4 tions, the Metropolitan Water District terminated on March 1  
5 its deliveries of water from the state project just short  
6 of a half million acre feet. At that time it was believed  
7 that their Colorado River supplies were sufficient to  
8 meet the supplemental requirements in Southern California  
9 in this drought year. Unfortunately, the timing was such  
10 that the Third District Court of Appeal in Sacramento  
11 entered an order restraining ground water pumping by the  
12 City of Los Angeles in the Owens Valley at the same time.  
13 The City of Los Angeles, about 80 per cent of its water  
14 comes from the Owens Valley and they have -- although they  
15 have paid half of the bill to Metropolitan over the years  
16 or thereabouts, they have taken very little Colorado River  
17 water. With the injunction in the Owens Valley, Los  
18 Angeles had to put its demand on the Colorado supplies at  
19 the same time that the impact of drought in Southern  
20 California was developing. The end result was that by  
21 mid-April when the storage in Lake Matthews should have  
22 been going up in preparation for the summer, the water in  
23 storage was going down and it became apparent that we could  
24 have a very substantial crisis later in the summer in terms  
25 of Metropolitan Water District's ability to deliver supple-  
26 mental water; so, the District -- and most of this is

1 reflected in the Kennedy Declaration which is attached --  
2 the district undertook to do one thing which was to provide  
3 an economic incentive, that is, a hundred per cent penalty  
4 on water in excess of 90 per cent of water taken last year  
5 and a bonus for people who took less than 90 per cent of  
6 last year.

7 In addition, the District sought to get volun-  
8 tary compliance from those member agencies who could get  
9 off their system, that is, the import system and go to the  
10 ground water system. That meant in Central Basin and in  
11 West Basin in the Los Angeles County area and in the San  
12 Fernando Basin, all of which are under injunctive orders  
13 to restrict them to save yield, that there had to be requests  
14 made to the court for a special order relieving those par-  
15 ties of the injunction so that they could over pump, each  
16 time recognizing that what they were doing was mining  
17 water, not taking save yield water, but mining water in  
18 storage and then with an order to replace that water. Those  
19 orders have been entered in the West Basin case and the  
20 Central Basin case and last week in the San Fernando case.

21 THE COURT: What order is there existing now en-  
22 joining you from doing what it is you seek to do?

23 MR. STARK: There is no order in this basin. And in  
24 fact to a limited extent, what we are seeking here may be  
25 being accomplished by some of the producers who have supple-  
26 mental water here.

1           For instance, a city such as the City of Chino  
2           or the City of Ontario who take Metropolitan water are in a  
3           position this year to increase their production since there  
4           is no injunction restraining them. One of the major pro-  
5           ducers -- I mean one of the major users of supplemental  
6           water in this basin always has been Southern California  
7           Edison Company for its steam plant and it has traditionally  
8           maintained a fairly constant low percentage of demand on  
9           the local ground water basin. This was apparently a matter  
10          of policy and has a long background. Their maximum prior  
11          year of production was approximately 1,900 acre feet. The  
12          Chino Basin Municipal Water District transmitted Metropolitan's  
13          request to all of its water users and the request that went  
14          to the Edison Company sought to have them go to the ground  
15          water. They had a serious concern that they did not have  
16          or assert a claim to produce more than 1,900 acre feet and  
17          because I would assume in part because of their utility  
18          character and because of the pendency of this action and  
19          the fact that they knew roughly what their rights would be,  
20          they indicated that they had capacity to pump substantial  
21          amounts more water, but that they did not plan as a matter  
22          of policy to exceed their historic production because they  
23          had no claim of right to do so, but indicated that they  
24          would have no objection to pumping for Chino Basin and  
25          buying the water at M.W.D. prices. And so in part, because  
26          of their voluntary determination not to exceed their

1 historic production, we were able to focus on doing what's  
2 been done in the regulated basin. Chino Basin does not  
3 claim or assert any right to produce water.

4 The water that would be produced under this  
5 order would really be a physical solution water. It would  
6 be telling Chino Basin you can pump it, using Edison as  
7 your agent, sell it to Edison and we now have the executed  
8 agreement with Edison whereby -- and for the Court's infor-  
9 mation I might lodge a Xerox copy of the executed copy of  
10 the agreement with Edison. Basically, it provides that  
11 when Edison has reached the amount that it is prepared to  
12 pump in its own right, then it will continue to pump for  
13 its use, but will buy that water from Chino Basin at its  
14 imminent prices. Chino Basin will then put that money in  
15 a special fund to be used to purchase replenishment water  
16 when that is available. It's estimated that replenishment  
17 water may not be available until after 1980.

18 The only other impact that we could find is  
19 that on the best engineering advice we can get there may  
20 be some measurable reduction in water tables to two wells  
21 immediately adjacent to the Edison plant and as to those  
22 we provide for compensation for the increased energy costs.

23 The affidavit of Mr. Carroll indicates that the  
24 impact on water tables will not be sufficient to go below  
25 the wells or to deprive those producers of water although  
26 they could have a measurable difference in their pumping

1 cost. It would be a matter of cents per acre foot, but we  
2 have provided in the order for that compensation in order  
3 not to disturb any equity.

4 This entire program was first reviewed with  
5 the advisory committee of producers who have been negotiat-  
6 ing on the judgment and then by the Chino Basin board, the  
7 contract negotiated with Edison and it was executed yester-  
8 day. We have had two refinements in the order which are  
9 reflected in the new paragraphs five and six. The first  
10 one is comparable to a provision which was appended to the  
11 orders in the other basins and that reads,

12 "In any further or other legal  
13 proceedings, whether in this or another action,  
14 this order shall not be res judicata or con-  
15 stitute a collateral estoppel as to any matter  
16 of fact or law expressly or impliedly found  
17 or decided herein." This is only to say that everyone  
18 here and others in the other basins as well as where I have  
19 been involved in the orders, everyone recognizes the current  
20 emergency and is willing to adopt this procedure and that  
21 nobody wants it to apply to next year without another full  
22 and careful look at it. And so the boiler plate is designed  
23 so that the failure to oppose or any implications to come  
24 from this order for future purposes, nobody is bound by  
25 them.

26 Then finally, there is a sixth paragraph:

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"No continuing right to produce water from Chino Basin shall be derived from or based upon production by Chino Basin Municipal or any agent thereof pursuant to this order," and in the Edison contract it is provided that Edison will file a recordation with the State Water Resources Control Board, but that they will endorse on that filing that the agency water was produced as an agent and that the principal, Chino Basin Municipal, does not claim any right predicated on that production; so, the matter is designed strictly as an emergency to handle this short term problem.

If we have another year of drought it will be something of this character that people may have to come back to, but it will after I expect considerable more deliberation, but your Honor's inquiry is correct, the order would not be required in the current state of this case but for the fact that Edison was reluctant to over pump what they figured to be their maximum claim and I think that is to be commended in that they did not desire -- they could have had a windfall essentially by over pumping. They could do that in any year, but now that we are in the lawsuit and they know the magnitude of the right, they are going to have -- they said we will stick with what we are pumping and, as I say, other producers may be able to increase their production a little bit. Edison will be



1 able to add upwards of another 5,000 acre feet of production  
2 from the basin compared to a normal production of 1,900.

3 THE COURT: If I see this correctly then and I gather  
4 from what you say that other judges have signed a comparable  
5 order where in fact there has been conjunctive relief when  
6 an order was essential. I confess that I get a little  
7 uncomfortable when I don't fully appreciate the niceties  
8 of all legal issues and I think it's probably fair to say  
9 that I haven't achieved the status of expertise of most  
10 of the lawyers, I am sure all of the lawyers in this case,  
11 so when I am doing something in a pro forma way, I want  
12 to admit it or understand it, but one of the things that --  
13 with that as an explanation that I think I recognize what  
14 it is that I am doing. Let us assume for the purpose of  
15 discussion that no order was made herein. As a legal matter  
16 other than the discomfort of the Edison Company there is  
17 no legal effect by my refusing to make an order?

18 MR. STARK: I believe that's true, your Honor. The  
19 District, for instance, under its agreement -- at this time  
20 there is a hold harmless provision in the agreement and  
21 the District could simply announce that it's going to have  
22 Edison pump as its agent, sell the water to Edison and in  
23 this sense I suppose it is a matter of credibility. We are  
24 in the middle of an adjudication where a district not  
25 claiming rights in the basin is trying to get them deter-  
26 mined and if the District begins to pump on its own

1 initiative, there is a question of credibility as to what  
2 they are doing, therefore, these boiler plate provisions  
3 about no rights being acquired are helpful in the relations  
4 with other parties.

5 I should mention that the Central Basin and  
6 West Basin cases are under injunction and so those orders  
7 do release people of the injunction. The San Fernando  
8 Basin, there was an injunction, an appeal, and the Supreme  
9 Court reversed the case. It is down on remand and is in  
10 a state of limbo. There is no valid injunction pending and  
11 we are still negotiating over that so that order is perhaps  
12 more comparable to this situation. The court entered an  
13 order authorizing the mining without prejudice to the parties'  
14 rights in the case because they had some disputes otherwise.

15 THE COURT: If one of the issues and perhaps the major  
16 issue was one of credibility, is there any significance to  
17 the fact that the notice of the motion did not disclose  
18 that it wasn't merely to mine the water but it was also  
19 to enter into an agreement with the Edison Company whereby  
20 it would be the primary beneficiary of the mining and it  
21 was going to be the agent of the Chino Water. Why isn't  
22 all that set out in the motion?

23 MR. STARK: The reason is the order would authorize  
24 the same arrangement with others other than Edison if there  
25 was any way to do it. First of all, Edison is not a bene-  
26 ficiary of the transaction. See, if Edison pumped, it

1 would be paying, say, \$25 an acre foot for the water.  
2 Under that arrangement they will pay \$65 an acre foot. They  
3 will use their facilities to buy water at the M.W.D., M  
4 and I price. They will pay \$65 less their actual cost of  
5 production which allows the District to buy replenishment  
6 water and the whole transaction washes out. The difference  
7 between the replenishment price and the M and I price is  
8 just about the cost of production; so what the District is  
9 doing is preselling Metropolitan Water, taking it out of  
10 the ground and preselling it to be replaced. In the normal  
11 so-called conjunctive operations that have been talked  
12 about a great deal and hasn't been implemented, but will  
13 be in the next five years, Chino Basin or Metropolitan  
14 would normally have water in the Basin and then when they  
15 got to this situation they would order Edison or anybody  
16 else taking water from them to get off the pipeline and  
17 take it off the ground. It would be Metropolitan water  
18 in the ground if they had put it in storage. We are not  
19 at that stage so we are borrowing it and the court order  
20 has the advantage -- under the jurisdiction of the court,  
21 assuring that the water will be replaced. In other words,  
22 if Chino Basin said I am going to pump it and replace it,  
23 it's their credibility. With this order Chino Basin is  
24 going to pump it but the court has an enforceable direction  
25 to them to replace it and that's the credibility factor  
26 that I refer to.

1 THE COURT: But for that aspect of it, and I am  
2 looking at this from a jurisprudence standpoint, we have  
3 a matter which does not require court action which is not  
4 going to be used either as res judicata or collateral  
5 estoppel so it has no binding effect vis-a-vis rights  
6 accruing under it. It's only to end up with an enforceable  
7 right as to enforcement so that is justification for it?

8 MR. STARK: It's really the other way. It could  
9 have come up if Chino Basin announcing we are going to mine,  
10 the State of California suing to enjoin Chino Basin from  
11 mining because they don't claim a right and Chino Basin  
12 saying we offer a physical solution to wit we will replace  
13 the water but we need it for emergencies. In fact, we  
14 discussed whether the niceties of the esthetics of the  
15 form would be better if somebody -- if Chino Basin made  
16 the announcement, somebody moved to enjoin them, Chino  
17 Basin offered to do the physical solution but because it  
18 had been exposed to all of the people and they were in  
19 agreement and what we were seeking was to be sure that  
20 Chino Basin by the pumping was not acquiring rights and  
21 the water would be replaced. We went to this form of order  
22 authorizing subject to the obligation to replace.

23 MR. DUBIEL: That is what I was going to mention.  
24 There is no interim order here and if this would not tran-  
25 spire, then it would be necessary for the State of California  
26 to come in and offer an interim order to stop all pumpers

1 either to 90 per cent or 80 per cent and it would be a  
2 tremendous litigative effort and since everybody is in  
3 agreement that would be the reason for it.

4 MR. BURRIE : One brief point, the reason we support  
5 proceeding in this manner was that if we do not and proceed  
6 to initiate this practice of mining, any party is free to  
7 come in and seek to enjoin that operation. While this type  
8 of solution might be worked out eventually, it's quite  
9 important that we know now and have some certainty so that  
10 we can plan our operations for the balance of the year.  
11 For a practical reason we need to know what sources of  
12 water we are going to rely on for the balance of the year,  
13 how much from the surface deliveries and how much from  
14 ground water, so we support the order.

15 MR. STARK: In terms of understanding the real bene-  
16 fits from the program, the real benefits derive to all  
17 parties buying Metropolitan water because our projections  
18 were, that is Chino Basin projections were rather than  
19 living within the 90 per cent they would be up into a  
20 substantial amount of overproduction with, as I recall,  
21 about \$150,000 in penalties to be paid to Metropolitan  
22 Water District. By using this technique we will be able  
23 to comply with Metropolitan's regulations and -- it's one  
24 of these roundabout things. Probably the largest single  
25 beneficiary will be the Pomona Valley Water Company which  
26 is a water company that in good faith has developed its

1 system in the hills outside of Chino based up  
2 water and with their expansion there was no  
3 to meet the 90 per cent requirement and w  
4 else who is taking Metropolitan Water abso.  
5 burden falls to the basin and it falls unequal.  
6 think the equity has been quite good and reviewed by all  
7 the major producers.

8 THE COURT: Knowing your intellectual talents, Mr.  
9 Stark, if you were called upon to make any argument as to  
10 why I shouldn't sign the order, is there any such argument?

11 MR. STARK: I don't know of any argument. I should  
12 say that Mr. Kranz and I in our office went through the  
13 argument that you just indicated, the question of is this  
14 order really necessary.

15 THE COURT: I will pass that.

16 MR. STARK: I know of no reason not and in fact I  
17 think as a ground water adjudication you are dealing with  
18 the save yield to the basin and the water in storage and  
19 the order is an interlocutory order protecting and pre-  
20 serving the integrity of that water supply. I think both  
21 statute and under the Constitutional provisions it is  
22 consistent and authorized.

23 THE COURT: So that I am not going to face 1,160  
24 people some day who say there are 1,160 arguments why I  
25 was wrong?

26 MR. STARK: I trust not. I should state perhaps the

1 Court having been assigned to this case for all purposes  
2 and heard very little, if any, of its purposes, we do  
3 anticipate that within a matter of two to three months we  
4 should have a clearer statement for the Court. We have  
5 been quite active in negotiations. We have as many as  
6 three major parties still concerned with some aspects of  
7 the judgment, but at the same time we have an agreement on  
8 the form from substantially -- well, some place 80 to 90  
9 per cent of the parties and so we anticipate one way or  
10 another a clearer explanation to the Court, but I think the  
11 result of the negotiations is that you won't have 1,200  
12 parties here for any given matter.

13 MR. DUBIEL: Your Honor, I think it should be brought  
14 to the Court's attention the State of California had a lot  
15 of questions concerning mining and the way it sort of un-  
16 folded, the Central Basin happens to be progressing further  
17 and they are starting meetings Tuesday with us and that may  
18 be the test basin as far as mining is concerned, but it  
19 just is a happenstance and whatever occurs there probably  
20 will be reflected over here in six months or a year or so  
21 as these basins sort of maneuver into this position which  
22 has been brought to everybody's attention. That is why  
23 one of those paragraphs on that res judicata.

24 THE COURT: Anyone else wish to add to the clarity  
25 of the situation?

26 MR. MASON: If your Honor please, I am C. Lloyd

1 Mason representing four of the miner parties in this action  
2 and you can hear our objections now so you don't have to  
3 face it sometime in the future. I didn't have time to pre-  
4 pare any written objection to the motion but what appears  
5 to me as soon as I looked at it is that the action was  
6 filed with Chino Water Basin or Municipal Water Basin  
7 claiming that they are not a producer in the Chino Basin  
8 and do not use the Chino Basin water. As soon as the action  
9 is filed they come in and ask the court of equity to sign  
10 an order giving them the right to start being a producer.  
11 Now, after the water is taken out of the basin the money  
12 may not be able to compensate the people that are losing  
13 the right to pump that water during any period and especially  
14 during a period of extreme drought as they have now. I  
15 don't think that the plaintiff should be able to come in  
16 and ask the court of equity to sign an order that is  
17 questionable giving them a right to produce water. They  
18 call it mining, but it's probably to stay away from the  
19 San Fernando case and take it out of the basin where it's  
20 obviously needed. We may not be able to get the water back.  
21 If they can do that under the laws that exist now, let them  
22 go ahead and do it and take their chance, but it puts them  
23 in a different position immediately when they filed the  
24 action of a nonuser of water in the area. The plaintiff  
25 neither owns nor claims any right to produce ground water  
26 from the Chino Basin. They are asking you to sign an order



1 giving them permission to do that.

2 MR. STARK: Your Honor, both the order and the peti-  
3 tion recognizes that the District neither has nor seeks  
4 the right to produce the native waters for their beneficial  
5 use, that is, take them and consume them. This request is  
6 not an isolated request. It is made in connection with  
7 everything from the Marin County rationing to the farmers  
8 in the San Joaquin getting only 50 per cent of their water.  
9 The total water resource of the State of California is  
10 being required this year to meet the demands of the state.  
11 Chino Basin Municipal Water District operating as an agency  
12 within the supplemental supplier and they are the only  
13 source of supplemental water for this area, that is, to  
14 the area affected by this motion, is simply seeking to  
15 borrow out of storage not to exceed 7,000 acre feet. The  
16 affidavit of Mr. Carroll indicates there are some 8,000,000  
17 acre feet in storage in the basin. The 7,000 acre feet  
18 will have no measurable impact on any place beyond a matter  
19 or a few hundred yards from these wells because of the  
20 magnitude and characteristics of the basin. We are pro-  
21 viding an obligation for the District to compensate in  
22 dollars any party who has an increased pump lift. That  
23 increased pump lift would be in a magnitude, as I say, of  
24 something 25 to 30 cents an acre foot for the two wells in  
25 close. None of the agricultural wells of the individual  
26 parties are within an area where any appreciable or

1 measurable difference in water table would result.

2 If the mining went on in an open end basin  
3 we have a different problem and that is the reason that  
4 this is a one year, one time order. But it is a matter of  
5 some considerable urgency and will not have any impact on  
6 any third parties. The water resources of the state are  
7 available to anybody in the state to meet its reasonable  
8 beneficial needs.

9 THE COURT: Does this order terminate as you under-  
10 stand it on 12-31-77?

11 MR. STARK: This is strictly for this calendar year.

12 THE COURT: Let's assume that at a convenient time  
13 counsel for another owner were to come in and let's just  
14 assume that allegations to the effect they didn't understand  
15 fully the impact of the order and wish to be heard. Would  
16 the court have the power to terminate the rights under this  
17 order?

18 MR. STARK: I would assume the court had inherent  
19 power to terminate the order at any time, yes. There is  
20 not vested year long right as there are mechanical problems  
21 within the Edison operation if that is the particular thing  
22 that we are dealing with that would require some notice.  
23 But I see no reason that the court is doing other than  
24 entering an interlocutory order which is an equitable order.

25 THE COURT: That to some extent is at odds with your  
26 comments, Mr. Burrie. There is no evidentiary matter to

1 the contrary, no declaration, no other engineering facts  
2 for me to consider other than the declarations that have  
3 been filed by the moving party? I don't want to terminate  
4 someone's rights because of a failure to file some decla-  
5 ration. On the other hand, I don't want to hold up matters  
6 which have been looked at I gather closely by the plaintiff  
7 and other vitally interested persons; so, I am inclined  
8 to sign the order and the record will contain all of these  
9 remarks and I trust, sir, that if you are or others feel  
10 that the order is inappropriate that you would have status  
11 to bring the matter to my attention and proper documentation  
12 to allow me to consider it and I would do so at that time.

13 MR. MASON: I would agree with the last statement  
14 that this could be brought before your Honor again and is  
15 not res judicata against anybody.

16 THE COURT: Any other matters at this time?

17 MR. STARK: That's all.

18 THE COURT: Any other counsel that should have their  
19 appearance noted for this case?

20 The Court does find that the facts as set out  
21 in the declarations are true and based upon the statements  
22 of counsel herein will sign the order in the form submitted.

23 I will specifically indicate for the record  
24 that I think that the nature of the issues are such that  
25 for all practical purposes this is the type of matter that  
26 wants the court's involvement. I don't view this as a

1 collusive effort to grant the court jurisdiction to make  
2 an order that is not otherwise necessary. In light of the  
3 comment made by the Deputy Attorney General and by Mr. Stark  
4 I am satisfied as to the approach of bringing the matter in  
5 this fashion. Otherwise, the costs in time and expense  
6 and inconvenience would be so great that would not warrant  
7 it and it's on that basis that I feel that the court does  
8 have the power to act and I will sign the order in the form  
9 submitted.

10 You will give notice then to some 1,200 people?

11 MR. STARK: I am afraid we have no choice.  
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CERTIFICATE OF REPORTER

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

I, NORETA VAN BUSKIRK, C.S.R., a reporter of the Superior Court of the State of California, in and for the County of San Bernardino, do hereby certify:

That the foregoing 19 pages comprise a true and correct transcript of the proceedings had and the testimony taken in the matter.

Dated at Ontario, California, this 16<sup>th</sup> day of August, 1977.

Noreta Van Buskirk  
Official Reporter  
Certificate No. C-2116