

1 APPEARANCES

2 THE COURT: HOWARD B. WIENER

3 For Plaintiff:

4 LAW OFFICES OF DONALD D. STARK
5 BY: DONALD D. STARK and GUIDO SMITH
6 2061 Business Center Drive, Suite 201
7 Irvine, California 92715

8 For Defendant State of California:

9 EVELLE J. YOUNGER, Attorney General
10 BY: EDWIN J. DUBIEL, Deputy Attorney General
11 3580 Wilshire Boulevard, 6th Floor
12 Los Angeles, California 90010

13 For Defendant Monte Vista County Water District:

14 WHELAN & MARKMAN
15 BY: MARTIN E. WHELAN, JR.
16 7915 South Painter Avenue
17 Whittier, California 90607

18 For Defendants Western Municipal Water District, et al.:

19 BEST, BEST & KRIEGER
20 BY: RICHARD T. ANDERSON
21 4200 Orange Street
22 Riverside, California 92502

23 For Defendants Marygold Mutual Water Company, et al.:

24 STANFORD C. SHAW
25 Attorney at Law
26 47038 Mojave Trail
27 Newberry Springs, California 92365

28 For Defendant Pomona Valley Municipal Water District:

RUTAN & TUCKER
BY: ARTHUR G. KIDMAN
401 Civic Center Drive West
Santa Ana, California 92702

For Defendants Cheryl L. Bain, Warren Bain, Frank E. Martin, and Ruth E. Martin:

C. LOY MASON
Attorney at Law
417 South Hill Street
Los Angeles, California 90013

1 ALSO PRESENT

2 KENNETH DeMENT

3 HOOITE RUGGE

4 FRAN BROMMENSCHENKEL

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Los Angeles, California, Monday, November 21, 1977

2 3:04 P.M.

3
4 THE COURT: In the matter of Chino Basin Municipal
5 Water District versus City of Chino, Case Number 164326.

6 I do wish the record to indicate that we are gathered in the
7 offices of the Attorney General at 3580 Wilshire Boulevard
8 for the purpose of the Pre-Trial Conference.

9 There is no clerk, as such. The reporter is
10 present to take down these proceedings. I do want the record
11 to indicate that Donald D. Stark, a professional corporation,
12 is present through Donald D. Stark and Guido Smith. They
13 are appearing on behalf of Donald D. Stark and Cochran,
14 Rothrock and Mann.

15 If we may go from my right around the room, if
16 each person could announce his appearance for the record,
17 I would appreciate it.

18 MR. DUBIEL: Edwin Dubiel, Deputy Attorney General,
19 State of California.

20 MR. WHELAN: Martin E. Whelan, Jr. of the firm
21 Whelan & Markman, a professional law corporation, attorneys
22 for Monte, M-o-n-t-e, Vista County Water District.

23 MR. ANDERSON: Richard T. Anderson, of Best, Best &
24 Krieger, attorneys for Western Municipal Water District and
25 several other Defendants.

26 THE COURT: Excuse me. Your name again, please?

27 MR. ANDERSON: Anderson. Richard T. Anderson.

28 THE COURT: Thank you.

1 MR. SHAW: Stanford Shaw, counsel for Marygold Mutual
2 Water Company, Santa Ana River Water Company, and Felspar
3 Mutual.

4 MR. KIDMAN: I am Arthur Kidman with the law firm of
5 Rutan & Tucker, attorneys for Pomona Valley Municipal Water
6 District.

7 MR. MASON: C. Loy Mason, attorney for Mr. and Mrs.
8 Bain and Mr. and Mrs. Martin.

9 MR. DeMENT: Ken DeMent, Manger of the Fontana Union
10 Water Company.

11 MR. RUGGE: Hooite Rugge, Research Engineer at
12 Kaiser Steel Corporation.

13 MR. BROMMENSCHENKEL: Fran Brommenschenkel, Chino
14 Basin Water District.

15 THE COURT: I am sorry. I did not get your name.

16 MR. BROMMENSCHENKEL: Fran Brommenschenkel, Chino
17 Basin Municipal Water District.

18 MR. STARK: Mr. Brommenschenkel is not an attorney.
19 He is the water master representative.

20 THE COURT: He is it?

21 MR. STARK: He is it.

22 THE COURT: I have been handed a pre-trial statement
23 of Plaintiff Chino Basin Municipal Water District which I
24 will have caused to be filed herein, as each counsel will have
25 a copy of the statement.

26 Does each counsel have a copy of the statement?

27 MR. STARK: Yes.

28 MR. DUBIEL: Yes.

1 THE COURT: Are there any other pre-trial statements
2 that you wish to file? Do you wish any further explanation
3 of your written statement, Mr. Stark?

4 MR. STARK: Yes, Your Honor. I might say that
5 subsequent to the court accommodating counsel as a result of
6 the last hearing and scheduling this pre-trial conference in
7 Los Angeles, although on our research, we confirmed that the
8 court has jurisdiction to proceed in any matter which could
9 be handled in chambers at any place in the State.

10 In our last attorneys' conference, it was
11 suggested and concurred in by all of the attorneys present,
12 that is, an informal conference of counsel for interested
13 parties, that we would suggest that the court treat this
14 hearing today as a pre-trial conference to be followed by a
15 minute order confirming the trial date so that the Notice of
16 Trial may be sent, but keeping the pre-trial proceedings open
17 so that the formal pre-trial order can be entered on the
18 morning of the trial when we will be in San Bernardino so that
19 we incur no procedural risk with regard to the finalization
20 of pre-trial outside the County.

21 I am not sure that there is any, in any event,
22 but it seemed appropriate because of the number of parties
23 and our desire to allow parties to raise issues, if necessary,
24 that we suggest for the court's consideration that the actual
25 final pre-trial order be kept open until the morning of the
26 16th so that any party wishing to come in that late, if there
27 are new issues injected, they can certainly be handled by
28 continuance after commencement of the trial, and it seemed in

1 fairness to the number of parties that perhaps that would be
2 a better procedure.

3 Basically, the pre-trial statement indicates
4 and attaches lists. We have in total 1,235 stipulating
5 parties, of which 30 are in the so-called appropriate pool,
6 which contains cities, districts, and public utilities. The
7 remaining 1,185 are in the two overlying pools; that is,
8 parties asserting or decreed to have overlying rights.

9 There are 63 defaults which have been entered.
10 In some of those instances, by the time of trial, it is
11 possible the defaults will be by stipulation removed and the
12 parties stipulate to judgment. There are some indications
13 in that regard.

14 We have only five answering Defendants. The
15 four Defendants represented by Mr. Mason and the Federal
16 Deposit Insurance Corporation. We have been in communication
17 with Bronson, Bronson & McKinnon in San Francisco, who
18 represent the F.D.I.C. They have had now three different
19 attorneys handling the F.D.I.C. matter, and we get to the
20 verge of the stipulation each time and somehow it doesn't get
21 back out of Washington.

22 The latest representation was that it was on
23 an urgency calendar on the Board agenda for the F.D.I.C., and
24 we were authorized to represent to the court that on
25 recommendation of counsel, the stipulation will be filed,
26 which means that as of this date, we have four answering
27 Defendants.

28 We anticipate introducing, in any event, the

1 prima facie case as to all hydrologic facts and dates in
2 order to cover the defaulted Defendants and to provide the
3 record.

4 We have not had any clarification of issues
5 beyond answers which are essentially a general denial by the
6 Bains and Martin Defendants.

7 The stipulation itself provides that the
8 stipulation and the stipulated form of judgment shall constitute
9 the pre-trial order.

10 There are, Your Honor, probably -- well, I will
11 not attempt numerically -- there are a number of what we have
12 called fine tuning or language changes, detailed corrections
13 which we do not believe to be of a substantive nature, which
14 we propose to present at the time of trial and to review for
15 determination that they do not constitute material variances.
16 Matters such as scheduling dates that appear in the stipulated
17 form of judgment that turn out on close examination to not
18 be practical, so dates have been moved one way or another for
19 reports and that sort of thing, but the form of judgment as
20 stipulated is essentially the form that we would present at
21 the time of trial.

22 We did take, pursuant to the court's order,
23 the depositions of clients represented by Mr. Mason, and as
24 far as I know, they constitute the only parties contesting
25 the issue at the trial.

26 We have had, as I say, discussions with some
27 other Defendants, particularly with Mr. Shaw, with regard to
28 two of his clients where we are trying to work out some

1 satisfactory language so that their defaults can be vacated
2 and stipulations signed. Whether that would be possible. I
3 am not sure, but at present, those Defendants have been
4 defaulted, although we find no problem with the particular
5 language they have suggested and I hope we will have that
6 worked out.

7 But I see no reason that the matter cannot be
8 brought to trial on the 16th.

9 The other item that we mentioned at the last
10 hearing was that among the stipulating parties, we had by
11 inadvertence filed a number of stipulations for corporations
12 where they had been negotiated for former corporations, in
13 particular without counsel executing, and, as Mr. Whelan
14 pointed out, that was an inappropriate appearance. Not having
15 counsel, we are in the process of curing that, and we have
16 roughly how many?

17 MR. SMITH: 32 out of 45.

18 MR. STARK: What?

19 MR. SMITH: 32 out of 45.

20 MR. STARK: We have 32 out of the 45 corporate
21 stipulations cleared at this point and have had telephone
22 communications indicating that we will have all of those
23 clarified prior to trial.

24 THE COURT: Do you have anything further, Mr. Stark?

25 MR. STARK: That is all, Your Honor.

26 THE COURT: If we may then proceed around the room
27 and any comments initially to augment Mr. Stark's comments or
28 any other matters we might as well place on the record.

1 MR. DUBIEL: Mr. Dubiel for the State of California.

2 No comments.

3 THE COURT: Mr. Whelan?

4 MR. WHELAN: Yes, Your Honor. I guess I have been
5 kind of the procedural watchdog, and I don't want to necessarily
6 mention all the problems that Mr. Stark and I have discussed,
7 but I think the reason for the continuance of the pre-trial
8 in view of limited notice to the number of parties involved,
9 which I understand will be cured as well as notice of trial
10 and waiver by any of these corporate counsel of any problems
11 in connection therewith.

12 Without emphasizing the procedural problems
13 that I think still exist, I will again simply state for the
14 record that my client is most concerned with the judgment by
15 and all, and we are stipulating, subject to certain matters I
16 state here today. But if the procedural matters are not
17 taken care of, I do want it made clear that we reserve the
18 right at that time to contest that further.

19 My client's stipulation was one of them that
20 was filed without my signature, and I do have it here today.
21 However, I understand that while most of the amendments to
22 the stipulation that Mr. Stark has talked about are clarifying
23 only, there is one that is of particular importance to our
24 client, and I understand he is willing to acknowledge that that
25 is the understanding.

26 MR. STARK: That is right.

27 MR. WHELAN: That relates to attachment to and
28 constituting, I believe, a part of supplemental stipulation

1 Exhibit E, which has a summary statement in Paragraph 15 of
2 the judgment. It is not the booklet, Your Honor, but the
3 matter behind the booklet, so to speak. I think it is the
4 last set of pages in the entire packet.

5 It is my understanding that under 15D, in
6 referring to what is formerly described in Paragraph 3 of
7 Exhibit H, that that is intended to pick up in this case in
8 addition to the 67 percent of the voting power, one-third of
9 the appropriated pool committed representatives of parties who
10 produce water within C.B.M.W.D. and W.M.M.D. as a dual
11 requirement.

12 MR. STARK: Yes. If I may comment?

13 THE COURT: Yes.

14 MR. STARK: This point was raised at the discussion
15 session last week, and it potentially was a problem of
16 significance among the appropriator group, and it has been
17 cleared by telephone and we have represented to Mr. Whelan
18 that it has, insofar as we can determine, the concurrence of
19 all stipulating parties in that pool who would be effected by
20 the change. And we would propose to submit it at the time of
21 trial and are willing to accept Mr. Whelan's stipulation upon
22 the condition that that clarifying amendment is made.

23 I think it merely clarifies an ambiguity, but
24 in any event, we have checked with all of the principal parties
25 concerned to be sure that they so view it and have been
26 informed that that's correct.

27 So, I would assume that Mr. Whelan's concurring
28 in the stipulation was on the condition that the court could

1 could make that change at the time of trial.

2 MR. WHELAN: There are other changes, but I am willing
3 to rely on Mr. Stark's representations that he doesn't view
4 those as having any problem.

5 On that basis, I do have an appearance of
6 counsel and an approval of the stipulation filed on behalf
7 of my client, which I will hand to Mr. Stark and assume he
8 will cause the original to be filed in the court files, Your
9 Honor.

10 Those were the only points that I had.

11 THE COURT: Thank you.

12 MR. STARK: I might say, Your Honor, we have a
13 complete set on these special appearances by counsel to
14 essentially validate the stipulations. We propose to file
15 them later this week in San Bernardino.

16 THE COURT: Thank you.

17 Any further comments by any gentlemen?

18 MR. ANDERSON: Richard Anderson. I have no comments,
19 Your Honor.

20 MR. SHAW: Mr. Justice, I on behalf of the companies
21 I represent are relying on counsel's assurance that we will be
22 able to work out our differences in language and that they
23 will not substantially effect the judgment.

24 MR. STARK: Now, we haven't had any discussion as to
25 Marigold Mutual.

26 MR. SHAW: There is no problem with respect to that.

27 MR. STARK: The other one, we have discussed language,
28 and Mr. Shaw and I will go over it this afternoon to see if we

1 can refine it further.

2 MR. WHELAN: May I clarify something for the record,
3 Mr. Stark? I understood your statement initially to be that
4 defaults would be set aside only if you arrived at
5 satisfactory language with Mr. Shaw.

6 MR. STARK: That is correct.

7 MR. WHELAN: My understanding of his statement was he
8 was relying on your representation that satisfactory language
9 would be worked out. I think for the record, I would like to
10 know where the matter stands.

11 MR. STARK: All right. My understanding is Mr. Shaw
12 has raised a particular point, Your Honor. We are adjudicating
13 the water rights of the parties. He has expressed concern
14 that nothing in this judgment be construed to preclude actions
15 between individual defendants for interference with their
16 wells, basically pumping pattern objections.

17 It is contemplated that that type of action is
18 outside the scope of the lawsuit. We proposed language to in
19 general terms declare that that was so. I would anticipate
20 after this pre-trial that we would spend a few moments with
21 whatever counsel could stay here to see if we could finalize
22 that language.

23 However, what I am saying is that to the extent
24 generalized language of that character will cure the problem,
25 we are prepared to add it to the judgment, although it is not
26 contained in the present judgment.

27 I am not representing that we will agree to
28 whatever develops, as I understand the language which Mr. Shaw

1 and reviewed on the phone was generally acceptable. But in
2 the interim, his clients have defaulted. It is only that if
3 we can reach agreement on language that I am prepared to
4 stipulate to vacate the default.

5 MR. WHELAN: For the record, it is my understanding
6 also that that language relates to what I might call neighbor-
7 hood interference problems as distinguished from ones that
8 may result from basin-wide or a large area of interference.

9 MR. STARK: Right. Now, Mr. Shaw had concern with the
10 particular language, and I indicated to him that we would
11 attempt to work it out. If we can't work out that language,
12 then we are in no position to stipulate to vacating the
13 defaults.

14 MR. SHAW: But a motion to do so will, of course, be
15 submitted if we can't work it out.

16 THE COURT: There has to be some rational explanation
17 why you insist upon calling me Justice.

18 MR. SHAW: I assume that you haven't been discharged,
19 sir, at this early date.

20 THE COURT: Is there anything further?

21 The preliminary hearing will be adjourned. I
22 think I prefer --

23 MR. STARK: Your Honor, I am sorry.

24 THE COURT: I am assuming that silence indicates no
25 wish to be heard.

26 MR. KIDMAN: That is correct, Your Honor, on my part.
27 I am Arthur Kidman. We have no comment.

28 MR. MASON: No comment at this point.

1 THE COURT: If it is your judgment, Mr. Stark, and
2 others that you wish to keep the pre-trial conference open
3 through December 15, I will sign an order to that effect and
4 recognizing that that may create more problems than you wish
5 to have. You may prefer to have it through December 10, but
6 on the theory that it would be concluded, and then on the
7 date of trial, we would have a trial. I will leave that to
8 you.

9 MR. STARK: What our contemplation had been, Your
10 Honor, was that is we finalized that order on the 16th, even
11 if we were to have motions and so forth, it should still be
12 possible to set the matter down and at that time testimony or
13 qualifications on one witness; that is, open the trial and
14 then adjourn the trial for purposes of any further pre-trial
15 clarification. In other words, if we have no significant
16 opposition, we would be able to complete the trial on the 16th.
17 If we have a problem, I had assumed that the court did not --
18 was contemplating that if we had major issues that we would
19 probably open the trial and adjourn it to a subsequent date
20 for clarification on those issues.

21 I realize there is some risk that we come up
22 on the 16th, and at that point, we have motions to vacate
23 defaults and motions to do this, that, and the other thing.

24 THE COURT: That is fine with me.

25 MR. STARK: Is the court going to be available, as I
26 recall, you were in San Bernardino on just Fridays?

27 THE COURT: No. I am back there commencing December
28 1.

1 MR. STARK: Oh. Could we then continue the pre-trial,
2 we will say, for final pre-trial on the 14th, which would be
3 two days prior to the trial time?

4 MR. WHELAN: Excuse me. Does that give us adequate
5 time for getting our notices timely?

6 MR. STARK: That will give time for the notice of trial
7 and the pre-trial. We will have those in the mail tomorrow.

8 THE COURT: On the assumption that the pre-trial
9 conference would be proforma --

10 MR. STARK: Yes.

11 THE COURT: -- and nothing dramatic occurring, I will
12 set that -- what day of the week is the 14th?

13 MR. STARK: That is a Wednesday.

14 THE COURT: I will set that Wednesday, the 14th of
15 December, at 9:00 A.M., and the trial of this case on the
16 16th at -- was it 9:30 last time?

17 MR. STARK: I believe the court indicated 10:00
18 because we have people coming out of Los Angeles.

19 THE COURT: The 16th at 10:00 A.M.

20 Unless someone intends to change any of the
21 terms of the pre-trial statement, it is not necessary to make
22 an appearance on it, so I am assuming that it will just be for
23 the purpose of those who want to suggest that things are not
24 so much in accord as we may have thought.

25 MR. STARK: One of our concerns that Mr. Whelan
26 alluded to is that we noticed all of the attorneys of record
27 and involved in the case on the pre-trial. We did not notice
28 the 1200 individuals who stipulated.

1 THE COURT: I see.

2 MR. STARK: We would like to send the notice of
3 trial and final pre-trial in the same document and notice all
4 1200 parties, and we would have those in the mail tomorrow
5 so that we would have the full notice prior to the final
6 pre-trial and trial.

7 THE COURT: So there is no misunderstanding on this
8 issue or this aspect of it, I will confess publicly and for
9 the record as follows: I think it is fair to say that the
10 entire litigation has been handled by your office, Mr. Stark,
11 and with the assistance of others who have been intimately
12 involved.

13 Although the case has been assigned to me for
14 all purposes, the court to some great extent has been
15 primarily a forum for communication. I have not, nor has
16 any judge that I am aware of, exercised any judgmental
17 functions on any of the matters submitted.

18 I think it is incumbent on me at the time I
19 sign a judgment to be something other than a scrivener,
20 and without confessing knowledge on the subject matter, I
21 would appreciate a brief, and I stress the word brief, not
22 in the context of Appellate Courts but in terms of a short
23 statement or short review of the law, because if a judge's
24 signature to a judgment is to be meaningful, for example, the
25 issue of matters outside the scope of the judgment, that may
26 not be a valid kind of stipulation, so to speak. There may
27 be legal repercussions arising from it. You cannot stipulate
28 to take something outside the scope of the pleadings, and if

1 I feel that it can be done, I certainly do not want to
2 create problems in this litigation.

3 On the other hand, if it can't be done, maybe
4 a judgment as to these issues but preserving the rights that
5 Mr. Shaw wishes to keep as against other defendants, maybe he
6 can draw them into this litigation and try those issues under
7 this case number. You do not lose rights.

8 In any event, all I'm really saying is that I
9 would like to exercise my own judgment because if something
10 goes awry and is either reversed or affirmed or whatever, I
11 would think I should fully understand what is happening.

12 So, if you can get something to me setting out
13 some of the cases that I should read and if there is any
14 question as to the validity of anything here, if you could
15 draw it to my attention, I would really appreciate it and at
16 least pursue it and at least perhaps express myself on the
17 record as to those matters which there may be some doubts, or
18 at least if there were to be an appeal, maybe the record would
19 be protected in that regard.

20 MR. STARK: We will attempt, Your Honor, to submit by
21 the 3th or 9th a brief trial memo, essentially, that would
22 accomplish, I believe, what you are referring to.

23 We would also at that time submit a preliminary
24 draft, which we have promised to all counsel, of all changes
25 as to which we propose testimony from the stipulated form of
26 judgment so that the court in reviewing the stipulated form
27 will have an interlying copy indicating the changes which will
28 allow that to be.

1 We appreciate the fact that as this matter has
2 proceeded essentially on a stipulation basis, it leaves the
3 court a last minute rush of reading. We will try to get you
4 what you need for it.

5 THE COURT: Thank you. We will be in recess.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

