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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.	)	Case No. RCV 51010
	)	
THE CITY OF CHINO,	)	
	)	
Defendants.	)	
	)	
	)	

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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
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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

12 For the Monte  
13 Vista Water  
14 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. Pfitzenreuter, 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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CHINO BASIN MUNICIPAL WATER )  
DISTRICT, )  
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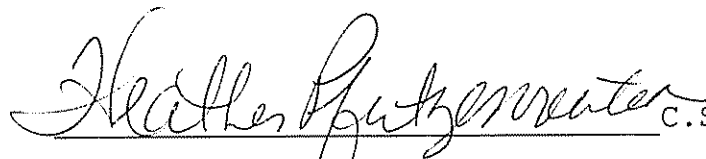
Case No. RCV 51010

STATE OF CALIFORNIA )  
COUNTY OF SAN BERNARDINO )

ss

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