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

DEPARTMENT NO. S-32

HON. JOHN P. WADE, JUDGE

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

NO. RCVRS 51010

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

November 13, 2008

APPEARANCES:

(See next page)

REPORTED BY:

BETTY J. KELLEY, C.S.R.
Official Reporter, C-3981

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APPEARANCES :

FOR THE WATERMASTER: BROWNSTEIN, HYATT, FARBER &
SCHRECK
BY: SCOTT S. SLATER
BY: MICHAEL FIFE

FOR CITY OF CHINO: JAMES E. ERICKSON
Of Counsel to City Attorney

FOR CITY OF CHINO HILLS: JENKINS & HOGIN
BY: JOHN C. COTTI
BY: MARK HENSLEY

FOR CITY OF POMONA: LAGERLOF, SENEAL, GOSNEY &
KRUSE
BY: THOMAS S. BUNN III

FOR AGRICULTURAL POOL OF REID & HELLYER
THE CHINO BASIN: BY: STEVEN G. LEE

FOR MONTE VISTA WATER MC CORMICK, KIDMAN & BEHRENS
DISTRICT: BY: ARTHUR G. KIDMAN
BY: TRAM T. TRAN

FOR CUCAMONGA VALLEY WATER BEST, BEST, & KRIEGER
DISTRICT: BY: JILL N. WILLIS

FOR THREE VALLEYS MUNICIPAL BRUNICK, MC ELHANEY & BECKETT
WATER DISTRICT: BY: STEVEN M KENNEDY

FOR CHINO BASIN WATER BRUNICK, MC ELHANEY & BECKETT
CONSERVATION DISTRICT: BY: STEVEN K. BECKETT

FOR CITY OF ONTARIO: NOSSAMAN LLP
BY: FREDERIC A. FUDACZ

FOR CITY OF UPLAND AND RICHARDS, WATSON, GERSHON
WEST END CONSOLIDATED BY: STEVEN R. ORR
WATER COMPANY:

FOR INLAND EMPIRE CIHIGOYENETCHE, GROSSBERG &
UTILITIES DISTRICT: CLOUSE
BY: JEAN CIHIGOYENETCHE

REPORTED BY: BETTY KELLEY, C.S.R.
Official Reporter, C-3981

1 SAN BERNARDINO, CALIFORNIA, THURSDAY, NOVEMBER 13, 2008

2 8:30 a.m.

3 DEPARTMENT NO. S-32

HON. JOHN P. WADE, JUDGE

4 (Betty J. Kelley, C.S.R., Official Reporter, C-3981.)

5
6 THE COURT: Okay. For the edification of all the
7 rest of you, Chino Basin Municipal Water District versus
8 City of Chino.

9 Okay, gentlemen, ladies, a couple rules. We're going
10 to start over here with the gentleman beside the post.
11 We're going to work our way this way with you giving your
12 appearance. Please give your appearance loudly so the court
13 reporter can take it down. And at any time you address the
14 Court, give your last name and the person -- just your last
15 name again so that the court reporter will know who she's
16 taking down.

17 Go ahead, sir.

18 MR. ERICKSON: Jim Erickson representing the City
19 of Chino.

20 MR. SLATER: Scott Slater on behalf of the Chino
21 Basin Watermaster.

22 MR. FIFE: Michael Fife, Chino Basin Watermaster.

23 MR. FUDACZ: Fred Fudacz on behalf of the City of
24 Ontario.

25 MR. KENNEDY: Steve Kennedy on behalf of Three
26 Valleys Municipal Water District.

1 MR. CIHIGOYENETCHE: Jean Cihigoyenette on
2 behalf of Inland Empire Utilities Agency.

3 MS. WILLIS: Jill Willis on behalf of Cucamonga
4 Valley Water District.

5 MR. ORR: Steven Orr on behalf of the City of
6 Upland and West End Consolidated Water Company.

7 MR. BUNN: Thomas Bunn for the City of Pomona.

8 MR. HENSLEY: Mark Hensley on behalf of the City
9 of Chino Hills.

10 MR. COTT: John Cotti for the City of Chino
11 Hills.

12 MS. TRAN: Tram Tran on behalf of Monte Vista
13 Water District.

14 MR. KIDMAN: Art Kidman on behalf of Monte Vista
15 Water District.

16 MR. BECKETT: Steven Beckett for Chino Basin
17 Water Conservation District.

18 MR. LEE: Steven Lee of Reid & Hellyer on behalf
19 of the Agricultural Pool of the Chino Basin.

20 THE COURT: We've got a few things to discuss
21 here. Let's take the easy ones first.

22 There's a motion brought by the Watermaster to -- for
23 a court order in compliance with the mandates of the order
24 made by Judge Gunn on December 21st of '07. Does anyone
25 want to address that?

26 MR. SLATER: Your Honor, if I might on behalf of

1 Watermaster? If I might, there are 10 items that have been
2 filed with the Court, seven of which are received and filed,
3 three are up for approval under the December 21st order.
4 None of those items are contested by any party. And the
5 referee who has commented on them had no issues with any of
6 those subjects.

7 So to list them in order, for the benefit of the
8 Court, they involve the brief related to the completeness of
9 the record related to the transferability of non-ag
10 overlying rights.

11 Secondly, a corrected initial schedule.

12 Third, a new technical report to address the basin
13 equilibrium and decline in projected safe yields, CEQA
14 documentation, recharge master planning documentation, a
15 report on criteria for hydraulic control. Those were the
16 conditions subsequent. Again, there's no opposition on any
17 of those items.

18 As it relates to the two status reports for 2007-1,
19 2007-2 and the annual reports 29 and 30, there's no
20 opposition.

21 Item two, related to the corrected initial schedule,
22 item three regarding the new tech report, and item five,
23 recharge master plan, are approval items. So they do
24 require Court approval to complete the record. There,
25 again, was no objection to any item.

26 Item four, for the Court's benefit, the referee --

1 this is the item related to CEQA documentation. The referee
2 suggested an outcome with regard to Watermaster supervision
3 of the CEQA process that was different than as presented by
4 Watermaster and the parties. We're happy to respond to any
5 item, but there was no objection to that item.

6 And without objection, your Honor, we'd ask for
7 acknowledgment of receipt and approval of the items.

8 THE COURT: Does anyone have anything they want
9 to say about that?

10 All right. They're approved, sir.

11 MR. SLATER: Thank you, your Honor.

12 THE COURT: I have an aside comment concerning
13 this concern about CEQA. Having been a designated CEQA
14 judge for several years and just recently off that calendar,
15 I'm quite familiar with the processes involved in CEQA. I
16 don't believe this Court -- it's necessary for this Court to
17 be monitoring what's going on with CEQA. So in the future,
18 that's not going to be an issue that's going to arise.
19 There's a regular cottage industry of people out there
20 challenging CEQA decisions, so I don't think the Court has
21 to be involved in that.

22 MR. SLATER: Thank you, your Honor.

23 THE COURT: All right. We already took care of
24 the interventions that were done.

25 I'm going through my notes here to see if I needed to
26 make any comments concerning these approvals. For the

1 benefit of all counsel, I'm going to change the procedures
2 that have been going on before Judge Gunn. I'm not going to
3 make any formal orders about that now. I intend to tell you
4 some more about that later.

5 But to give you some idea, I don't believe this
6 reporting process is doing us much good. I think it takes a
7 lot of time and effort, costs a lot of money, and I don't
8 think we're getting anywhere with it.

9 My intention is to monitor this -- the progress of
10 the Watermaster by a series of hearings, which I'll conduct
11 in Court before me, so questions can be answered by people,
12 if I have them, about what's going on. I think that's a
13 better way to approach this problem. I don't think the
14 process of having reports prepared, reviewed by the referee
15 and the referee's technical assistant and then responded to
16 and recommendations made and then response come back, it
17 seems to me a huge waste of time and money. So I'm going to
18 do it more directly.

19 MR. KIDMAN: Your Honor -- Kidman -- just one
20 point of clarification. We received notice yesterday that
21 the special referee was going to be on call.

22 THE COURT: I don't think she checked in.

23 THE CLERK: She did not.

24 MS. SCHNEIDER: This is Anne Schneider on the
25 phone.

26 THE COURT: So have you been able to hear so far,

1 Miss Schneider?

2 MS. SCHNEIDER: Yes. I couldn't tell when the
3 other appearances were through so I didn't say anything in
4 time.

5 THE COURT: Okay. Well, thank you, ma'am. I
6 didn't know that you were on call. All right. Thank you.

7 Concerning Miss Schneider, a couple of things I want
8 to say. I have had no conversations with Miss Schneider
9 since being made this assignment, so I want you to know
10 that.

11 I did have a conversation with Miss Schurr, who
12 worked -- right now still works for the Court and did work
13 for Miss Schneider for some period of time. And the only
14 matters we discussed at that time were what procedures Judge
15 Gunn used in his contacts with Miss Schneider. Other than
16 that, we didn't discuss anything.

17 Okay. I'm granting your request to have all the
18 reports designated as filed. That includes the 29th annual
19 report and the 30th annual report.

20 MR. SLATER: Thank you, your Honor.

21 THE COURT: All right.

22 Okay. All right. That leaves us with this request
23 by Cucamonga Valley Water District to discontinue the
24 appointment of the special referee, and that's your client,
25 Miss Willis, is it?

26 MS. WILLIS: That's correct. Willis.

1 THE COURT: Miss Willis, anything you want to add
2 to your voluminous filings?

3 MS. WILLIS: No, your Honor. We're prepared to
4 address any questions you may have. But otherwise, we're
5 prepared to rest on the pleadings.

6 THE COURT: Miss Schneider, do you want to say
7 anything else?

8 MS. SNYDER: No, your Honor. Thank you.

9 THE COURT: Okay. All right. There are several
10 reasons that I'm not going to grant this motion at this
11 time.

12 First, I am, as you all know, new to the case,
13 although I have spent hours and hours reading in the last --
14 since my appointment. I'm going to need time and assistance
15 to become familiar with the history of the case. I expect
16 that if I need particular answers, that the most expeditious
17 way for me to get those answers is to have Miss Schneider
18 answer those questions.

19 Secondly, it appears that the Watermaster's presently
20 not in compliance with certain conditions and deadlines.
21 For instance, I'll give you this instance. There's a
22 question as to what progress has been made by the
23 Watermaster to form a separate committee to review and make
24 recommendations regarding the Watermaster's governing
25 structure, which it resolved in December of 2005 to have
26 done by January of 2008, nearly a year ago. So I'm going to

1 have to have a hearing on what's going on in that regard,
2 and I want some testimony in that regard.

3 Furthermore, this matter is now in a transitional
4 phase with conditions of approval to be monitored and
5 enforced. The Court needs assistance during this
6 transitional period, so I'm not granting the motion to
7 terminate.

8 But as I said earlier, I'm going to change the way
9 things have been done.

10 Miss Schneider, it's been my impression that whenever
11 anything was put before the Court, it was your understanding
12 that you were to automatically review and make
13 recommendations to the Court. Am I correct about that?

14 MS. SCHNEIDER: Not automatically, your Honor.
15 It depended on if there were issues that needed more
16 information in order to give the Court an idea of what the
17 question was that had been worked on by the parties or the
18 Watermaster, so not in every case.

19 THE COURT: All right. Well, from this point on,
20 my procedure will be that I will specifically refer
21 questions and assistance in written orders to you before
22 taking any action. Is that understood?

23 MS. SCHNEIDER: Yes.

24 THE COURT: Okay. There's something else I
25 want -- Mr. -- it's Mr. Slater and Mr. Fife; correct?

26 MR. SLATER: Yes, your Honor.

1 MR. FIFE: Yes, your Honor.

2 THE COURT: Okay. And you are the attorneys for
3 the Watermaster?

4 MR. SLATER: Yes, your Honor.

5 THE COURT: All right. Now, the previous way of
6 doing things, as I understand it, is that the Watermaster
7 would take care of service on all the parties.

8 MR. SLATER: Correct, your Honor.

9 THE COURT: And I want that to continue because
10 that seems expeditious to me.

11 What I'm going to do is I'm going to set a hearing
12 for February 2nd, maybe February 3rd. I'll set it for a
13 two-day possible hearing, a date certain. I want the
14 Watermaster to present testimony to me on a couple of
15 issues:

16 I want to know what is being done to implement and
17 guarantee and assure that the physical solution is going to
18 be accomplished.

19 And I also want that -- I want testimony as to -- and
20 I don't want some sort of scanning report. I want numbers,
21 and I want you to present me with the plan with all the
22 parties who are going to participate and how we're going to
23 get that water back into that basin.

24 I also want an explanation by somebody who can put it
25 in language I can understand -- I'm looking for the right
26 words here -- the optimum --

1 MR. SLATER: Optimum basin management plan, your
2 Honor.

3 THE COURT: That's it, yes. I want an
4 explanation of that from a historical standpoint and present
5 day. And I want a report on the -- not a report. I want
6 someone to testify what the Watermaster's doing to comply
7 with this resolution concerning the change in governance or
8 the committee to create a better review of governance that I
9 discussed earlier.

10 Do you understand?

11 MR. SLATER: Yes, we do, your Honor. I would
12 like your Honor to know that the issue of the special
13 referee was of great concern to the board, and Watermaster
14 counsel was directed to remain neutral in the discussion;
15 that as it relates to the subject of governance, the
16 Watermaster board does believe it has complied with the
17 resolution and will present our position at that hearing.

18 THE COURT: Okay, that's fine. I don't have any
19 reason to doubt that that's true. I just want to hear it,
20 okay? And I've read a number of orders made by Judge Gunn,
21 which indicated to me that his way of going about monitoring
22 is different from my own. I prefer a more direct approach.
23 I want people answerable to me. If I have to enforce it, I
24 want to know who is going to suffer. So that's what's going
25 to happen in the future.

26 The bills to Miss Schneider, which are a concern to

1 everyone, I think, are going to be reduced, probably,
2 because of the methods that I'm going to employ. That
3 doesn't mean that she won't get work from me in the future,
4 but it does mean there will be a different way of going
5 about it. I think it will save attorneys fees. It will
6 save referee's fees, and I think it will save attorneys fees
7 in the long run. But we'll see that as it moves along.
8 Okay?

9 MR. SLATER: Thank you, your Honor.

10 MR. HENSLEY: Your Honor -- Mr. Hensley -- with
11 respect to the hearing on the OBMP, there may be differences
12 of opinion among the parties as to the compliance. I would
13 assume that we can get the parties to agree to subpoena the
14 witnesses they need to call to put on the evidence they
15 would like the Court to see.

16 THE COURT: Yes. If you believe -- That's a good
17 thing. If you're going to submit witnesses, please send me
18 a list of witnesses that you intend to submit. I want to
19 hear from everyone, all right? This is an educational
20 experience for me, so this is not going to end up as an
21 adversary situation. I just want to get facts. Okay? No
22 winners or losers in this hearing.

23 MR. SLATER: Your Honor, to assist the Court and
24 the parties, I think Watermaster would offer to prepare an
25 outline of our proposed testimony in response to the issues
26 that have been identified by the Court so that the parties

1 may know what, with some definiteness, what we intend to
2 present and thereby prepare as well.

3 THE COURT: That sounds like a good way to go
4 about it, Mr. Slater.

5 All right. Unless further disputes arise, I'll see
6 you back here then.

7 And, Mr. Slater, you're obligated to give notice of
8 what's taken place today.

9 MR. SLATER: Yes, your Honor, thank you.

10 (Proceedings concluded.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT NO. S-32

HON. JOHN P. WADE, JUDGE

CHINO BASIN MUNICIPAL WATER)
DISTRICT, et al.,)
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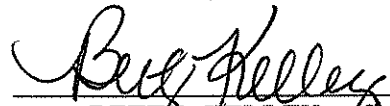
NO. RCVRS 51010

REPORTER'S CERTIFICATE

COUNTY OF SAN BERNARDINO)
)
STATE OF CALIFORNIA) ss

I, BETTY J. KELLEY, C.S.R., Official Reporter
of the Superior Court of the State of California, for
the County of San Bernardino, do hereby certify that the
foregoing pages 1 through 12, inclusive, comprise
a full, true and correct transcript of the proceedings
held in the above-entitled matter reported by me on
November 13, 2008.

DATED this 14th day of November, 2008.



BETTY KELLEY, C.S.R.
Official Reporter, C-3981