

1 CHINO, CALIFORNIA, FRIDAY, APRIL 2, 2010
2 A.M. SESSION
3 DEPARTMENT NO. C1 HON. STANFORD E. REICHERT, JUDGE
4 APPEARANCES: SET FORTH ON APPEARANCE PAGES
5 (MICHELLE M. PARSONS, Official Court Reporter, CSR No. 12235.)

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7 THE COURT: Good morning, everybody. We're on the
8 record in our Watermaster case. What we have is an ex-parte
9 application regarding a case management order for the motion
10 that the non-agricultural pool committee has brought currently
11 scheduled for April 16th. So, who do we have here on behalf
12 of the Watermaster?

13 MR. FIFE: Good morning, your Honor. Michael Fife
14 for Chino Basin Watermaster.

15 THE COURT: Thank you. Mr. Fife, let me start with
16 you then. I read your paperwork. It boils down to
17 essentially a request that the opposition be filed by
18 April the 5th --

19 MR. FIFE: Yes, sir.

20 THE COURT: -- and a couple of options proposed to
21 the Court. First, that at the hearing scheduled for
22 April 16th if the Court decides additional information is
23 needed to schedule a second hearing following the completion
24 of the limited discovery with two options for that order: A
25 meet and confer with respect to stipulating to a discovery
26 plan and allow live testimony at a second hearing, and if that
27 was not acceptable a second proposal to the Court to allow a
28 30 day continuance of the hearing on the motion to allow

1 watermaster to advise relevant parties.

2 Did I essentially summarize the proposal that you
3 made?

4 MR. FIFE: Yes, your Honor. That's correct.

5 THE COURT: Thank you. Do you have anything else to
6 add with respect to that motion?

7 MR. FIFE: Your Honor, when we submitted the motion,
8 we did so simply in order to clarify the procedures that we
9 would use going forward for this motion. As you know, this
10 case has been around for, I believe, 32 years now and the
11 first judge we had on it, Judge Turner, had the case for well
12 over a decade. The second judge, Judge Gunn, also had it for
13 well over a decade and in that time we were able to develop
14 procedures for motions and the like as we went forward and a
15 rapport developed between the Court and parties so that the
16 parties knew how to conduct themselves.

17 when Judge Wade took over, we had a series of four
18 informational hearings with quite a bit of time in front of
19 the Court. One of the purposes of that was to develop that
20 rapport. We have not had an opportunity to do anything in
21 front of your Honor so far and so the purpose of submitting
22 the motion was to prompt some kind of clarification about how
23 the Court would like us to proceed handling the Paragraph 31
24 motion.

25 We didn't believe when we filed it that there would
26 be any controversy surrounding it. We had anticipated that
27 today would be an informal discussion about what kind of
28 procedure you hoped to use. We have been informed that the

1 non-agricultural pool does intend to object to our proposal.

2 Because of that, it does seem appropriate to provide
3 some background to you and some explanation for why we have
4 proposed what we proposed. I don't know if you want to hear
5 that or whether you would like to hear their objections first.
6 We'll proceed as you please.

7 THE COURT: Let me stop you just for a moment. I'll
8 come back to you and do you first but let me get the
9 appearances of all the rest of the attorneys here. Let me
10 start here on my left, counsel, please state your appearance
11 for the record.

12 MR. SCHATZ: Good morning, your Honor. John Schatz
13 attorney for the appropriate pool.

14 THE COURT: Okay. Thank you.

15 MS. WILLIS: Good morning, your Honor. Jill Willis
16 here on behalf of --

17 THE COURT: Hold on one second. I got it. I'm
18 sorry. Ma'am?

19 MS. WILLIS: Sure. Jill Willis on behalf of
20 Cucamonga Valley Water District which is a member of the
21 appropriative pool.

22 THE COURT: Okay.

23 MS. TRAN: Good morning, your Honor. Tram Tran on
24 behalf of Monte Vista Water District which is also a member of
25 the appropriative pool.

26 THE COURT: Okay. Thank you.

27 MR. ERICKSON: Good morning, your Honor.
28 Jim Erickson representing the city of Chino also in the

1 appropriate pool.

2 THE COURT: Thank you.

3 MS. BATTERSBY: Good morning, your Honor.
4 Marguerite Battersby of Sheppard Mullin representing
5 California Steel Industries also a member of the
6 non-agricultural pool.

7 MR. HUBSCH: Allen Hubsch of Hogan and Hartson
8 counsel for the non-agricultural pool.

9 MS. NOVAK: Good morning, your Honor. Jennifer Novak
10 deputy attorney general. I'm representing the state of
11 California which is here with the California Department of
12 Corrections and Rehabilitation and we are part of the
13 agricultural pool.

14 THE COURT: All right. Please be seated. Mr. Fife,
15 go ahead, please.

16 MR. FIFE: Yes. So I want to give a little bit of
17 context for why we proposed what we proposed in the way that
18 we proposed it both in terms of the sequence of the hearing
19 and then we also asked for some clarification about logistical
20 matters concerning the filings in particular page limits.

21 THE COURT: Okay.

22 MR. FIFE: The reason we did this is what you have in
23 front of you is a Paragraph 31 motion and though a
24 Paragraph 31 motion is titled a motion it's really more like a
25 miniature lawsuit under the judgement.

26 THE COURT: It's really -- I looked at the motion
27 initially. It's really in a sense -- it's almost like a
28 declaratory judgement because you're asking for a declaration

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1 with respect to certain activities on -- with respect to the

2 sale of shares, as I understand it, an option with respect to
3 sale of water shares. Do I understand that correctly?

4 MR. FIFE: Correct. Yes. In general yes. It's --
5 in terms of characterizing it as a declaratory relief action I
6 think that's a correct way of thinking about what's going on.

7 If you look at Paragraph 31 the procedures associated
8 with this there will be an evidentiary hearing and any order
9 that is made based on the Paragraph 31 motion is an appealable
10 order. So you are correct that this is more like a
11 declaratory relief action than a simple motion that you would
12 have on your law and motion calendar or something of the like.

13 It appears that we have a Paragraph 31 motion about
14 every ten years. The last one that we had was in the '97/'98
15 time frame. That came up because of an audit that Watermaster
16 performed and there was a motion from a select group of
17 appropriators to review whether that audit was a Watermaster
18 expense. That blossomed into a much larger procedure that
19 ended up with the appointment of the nine member board in
20 1998.

21 THE COURT: Okay.

22 MR. FIFE: The previous Paragraph 31 motion was in
23 1989 and this was brought again by a group of appropriators
24 and is the action that eventually led to the initiation of the
25 OBMP. So they seem to come about once every ten years.

26 We submitted our case management conference statement
27 because a Paragraph 31 motion, because it is like a little
28 lawsuit, a declaratory relief action because any order is

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1 appealable it's important that we be given the opportunity to
2 fully develop the record. This is especially true because the

3 Court is new to this case, doesn't necessarily have all of the
4 background, and so we wanted the opportunity to present to you
5 the first -- our first response and sort of craft it in the
6 way of a summary judgement motion. So, we present to you the
7 documents, the rules, and see if the case -- the Paragraph 31
8 motion could be disposed simply on the papers like that.

9 The reason for that is because of the declarations
10 that were submitted with the Paragraph 31 motion we feel that
11 there is a great deal of discovery that could and should be
12 done to fully develop the record. We need the opportunity to
13 clarify some of the statements that were made in the
14 declaration and test the veracity of some of the statements
15 that were made. That would all be through a process of
16 depositions. That would be an extended process and would
17 frankly cost a lot of money. If we don't have to do that, we
18 would prefer not to.

19 So, we have proposed coming to you on what could be
20 called a summary judgement motion. If that is not sufficient,
21 then we would go into a discovery process. The alternative
22 that we laid out if you didn't want to go through that
23 two-step process is to continue the hearing and we would do
24 the discovery before we file our response.

25 THE COURT: Okay. I think I got it.

26 MR. FIFE: The other requests we made with regard to
27 the page limitations there has never been in this case a
28 limitation on the number of pages to papers that are filed,

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1 and in particular for the last at least ten years we have had
2 a special referee and typically when a motion or something got
3 filed the special referee would write a special referee's

4 report and that would go through the background and provide an
5 initial read on what was going on for the Court's benefit.
6 Those were typically on the order of 35 to 40 pages.

7 What happened when Judge Wade took over the case is
8 that the parties had a desire that Watermaster step up and
9 fulfill its role as the liaison with the Court and really the
10 arm of the Court and perform the duties that the referee had
11 been performing itself, and since 2008 when Judge Wade took
12 over we hoped we'd been doing a good job of that, but in the
13 context of a motion that would mean that all of the factual
14 development, the background, et cetera that would have been
15 provided by a referee's report really needs to be provided by
16 us or even the other parties.

17 So, that in combination with the need to really
18 develop a full record for a Paragraph 31 motion, since this
19 will be an appealable order, leads us to propose that the
20 Court continue the practice that has really been in effect for
21 the last 30 years in this case of waiving any kind of page
22 limits, and I'll state just so that you know Watermaster is
23 contemplating that our response would be on the order of about
24 40 pages similar to the way the referee's reports were
25 typically in that length.

26 THE COURT: All right. Is that it for now?

27 MR. FIFE: That's it for me.

28 THE COURT: Let me turn now to Mr. Hubsch. Go ahead,

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1 please.

2 MR. HUBSCH: Thank you, your Honor. Allen Hubsch for
3 the non-agricultural pool. Your Honor, the substantive motion
4 that is at issue here is about a contract that requires

5 written notice to be provided to members of the
6 non-agricultural pool and about whether the written notice was
7 or was not provided. Watermaster staff has transferred water
8 belonging to the non-agricultural pool as if the notice has
9 been given. In the motion the non-agricultural pool contends
10 that the written notice was not given.

11 Section 31 of the judgement authorizes review of any
12 watermaster action. The non-agricultural pool filed a 15 page
13 motion. Watermaster's board now proposes to file what I've
14 been told is a 42 opposition brief and to conduct depositions.
15 There is something wrong if watermaster's board can't explain
16 within 15 pages when and how written notice was provided to
17 the members of the non-agricultural pool and there is
18 something wrong if the watermaster board has to take the
19 depositions of the members of the non-agricultural pool to
20 show how and when the notice was given by the watermaster.

21 Rather than concede that this is a simple case, which
22 it is, the watermaster board would like to make this complex
23 and expensive. By doing so, they're going to discourage the
24 pools and the parties from making Section 31 motions.

25 Section 31 was designed to provide access to this
26 Court for a review of any watermaster action, complex or
27 simple, and those motions shouldn't be discouraged.

28 If the watermaster board files a 42 page brief, the

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1 pool will be compelled to respond in kind which will drive up
2 the legal cost. The pool filed a 15 page motion. The
3 watermaster Board should show good cause for why they need
4 more than 15 pages to respond to a 15 page motion. The Court
5 rules state that application for additional pages must state

6 reasons why the argument cannot be made within the page limit.
7 Saying that there has never been a page limit before is not
8 stating why the argument cannot be made within the page
9 limits.

10 The non-ag pool's motion is simple and
11 straightforward. The non-ag pool is confident that the Court
12 can resolve the matter on the basis of the pleadings and the
13 declarations within the page limits at the scheduled hearing
14 without further fanfare. Thank you, your Honor.

15 THE COURT: Thank you. I'll come back to you.
16 Mr. Fife, any rebuttal? Let me start with the page
17 limitations then please respond to that.

18 MR. FIFE: The previous Paragraph 31 motion that has
19 been filed in this case back in 1997 was also a simple
20 Paragraph 31 motion. There had been an audit performed by
21 Chino Basin Municipal water District and a group of
22 appropriators wanted to know whether that was a proper
23 watermaster expense. The end result was the appointment of
24 the nine member board which entirely changed the government
25 structure of Chino Basin Watermaster.

26 Paragraph 31 motions are never simple, ever, that's
27 why they only happen about once every ten years. This issue
28 in front of you really is not simple in that there are many,

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1 many nuisances to it.

2 THE COURT: Can you give me an example?

3 MR. FIFE: Certainly. The Paragraph 31 motion -- the
4 notice of the Paragraph 31 motion asked for a declaration that
5 watermaster did not deliver notice to the members of the
6 non-agricultural pool. The purchase and sale agreement does

7 not say that watermaster is to provide -- to deliver notice to
8 the members of the non-agricultural pool. The purchase and
9 sale agreement simply says notice will be provided.

10 we have to get into why the purchase and sale
11 agreement says that. why doesn't it say that notice is to be
12 provided to members of the non-agricultural pool when, in
13 fact, it does say what are the purposes behind that? How does
14 it fit into the purchase and sale agreement which is just one
15 agreement within the overall context of the Piece 2 Measures,
16 which was a very long and complicated process, because they're
17 all interrelated pieces and they all make sense only when you
18 put them all together.

19 In addition, another example is that the proceeds of
20 the sale of the water purchased through the purchase and sale
21 agreement are the funding mechanism for the recharge master
22 plan. The recharge master plan, as you know, is the final
23 condition subsequent -- from the Court's December, 2007, order
24 in order to make the entire approval of the Piece 2 Measures
25 valid. we have a hearing scheduled for September 24th to
26 consider the finalization of the recharge master plan.

27 well, this purchase and sale agreement and the option
28 that was to follow from it that's the funding mechanism for

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1 the recharge master plan. So -- so none of these pieces are
2 separable from one another and to understand what's going on
3 with the notice and how it works into the overall structure
4 and why -- what watermaster did was, in fact, appropriate and
5 did, in fact, satisfy the terms of the purchase and sale
6 agreement you need to understand that full context.

7 The 15 page motion doesn't explain any of that and

8 for that reason it's able to be characterized as a simple real
9 estate transaction; the purchase of a piece of property and
10 whether an option was properly exercised, but that's not
11 actually what it is. In fact, we're going to argue that it's
12 not even an option agreement because it really isn't.

13 So, there are more complex issues. They're not
14 simple.

15 THE COURT: All right. I take your points. Okay.
16 Thank you.

17 Anything further, Mr. Fife?

18 MR. FIFE: Not unless you have questions.

19 THE COURT: Ordinarily I do not go back and forth,
20 but given the complexities that I foresee arising both
21 procedurally and substantively let me come back to you,
22 Mr. Hubsch, to see if you have something to add.

23 MR. HUBSCH: Well, your Honor, I wasn't around in
24 1997 when the last Paragraph 31 motion was heard. It sounds
25 like that motion started out as something simple and got out
26 of control and it started apparently as whether or not an
27 expense was -- should be a watermaster expense and apparently
28 ended up being something that dragged on for years and

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1 resulted in a regovernance of watermaster. It's not what we
2 want. We would like the quickest possible resolution of the
3 simple issue. We do not want this to get out of control.

4 We want a decision essentially whether the written
5 notice was or was not provided. As to all of the ramification
6 of that, that may be for another day. We have not -- we're
7 asking for resolution of whether the notice was given or was
8 it not given.

9 If this is allowed to turn into something that could
10 result in a change in the government of Watermaster, we will
11 not get the proper resolution and it will be another ten years
12 before someone brings another Section 31 motion. Whether it's
13 a small item or a big item, the Watermaster Board is allowed
14 to turn anything into a major controversy and you will
15 discourage parties from seeking review of Watermaster action.

16 THE COURT: I take your point. Ma'am?

17 MS. WILLIS: Your Honor, may I be heard?

18 THE COURT: Your name for the record?

19 MS. WILLIS: Jill Willis on behalf of
20 Cucamonga Valley Water District one of the members of the
21 appropriative pool.

22 THE COURT: Give me just one moment. Thank you. Go
23 ahead.

24 MS. WILLIS: Thank you. I just wanted to make a
25 couple of points because the appropriative pool, as you may
26 have gathered from the filing of the motion, is actually the
27 beneficiary in one sense of the contract because it was they
28 that purchased the water pursuant to the purchase and sale

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1 agreement through this mechanism with Watermaster and it is
2 the appropriative pool that is charged with funding the
3 recharge master plan that is to be funded from the proceeds
4 related to the sale of the water, and so I just wanted to not
5 argue the motion here but just wanted to make a couple of
6 points.

7 One, I actually agree with Mr. Hubsch that to a
8 certain extent I think the legal issues before the Court are
9 probably relatively simple and relate primarily to a pretty

10 straightforward contractual argument. However, what
11 Mr. Hubsch did not mention and as your Honor is aware that
12 along with the 15 page motion that Mr. Hubsch filed, 14 and a
13 half pages of which was all factual in nature, that there was
14 also a lengthy declaration of more than 300 pages of exhibits
15 and so by its very nature, even though the motion itself is I
16 think from a legal standpoint relatively simple, as Mr. Fife
17 explained I think very accurate there are many, many factual
18 under pendings that are extremely important to gather the full
19 context of this case and that may become relevant depending
20 upon how your Honor decides to proceed on the contractual
21 arguments.

22 I think to say that is somehow different from the
23 prior Paragraph 31 motion and is not quote unquote a big deal
24 really misses the fundamental point that what this motion is
25 seeking is the final disposition of a contract where millions
26 and millions of dollars is at stake. The amount of money here
27 is outstanding and we in the appropriative pool are all public
28 agencies. All of the money related to the recharge master

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1 plan and to all of our efforts to improve the Basin really
2 comes down to our constituents and the rate payers and so to
3 say that it's not a big deal to us as public agencies really
4 misses the point. Thank you.

5 THE COURT: I got it. Mr. Hubsch, it looks like
6 you're leading the opposition so I'll come back to you for
7 reply and rebuttal every time. I will get to you, counsel.
8 we'll get to everybody, but I will keep coming back to you
9 because it looks like you're the lead opposition.

10 If anybody else wants to be heard, I'll certainly

11 hear and I'll turn to you first.

12 MR. HUBSCH: Thank you, your Honor. In terms of the
13 declaration, we had one declaration to which documents were
14 attached for authentication purposes. Those documents were
15 100 percent downloaded from the Watermaster's website. They
16 were the agendas, the minutes, the agenda packages, and other
17 items that were downloaded from the Watermaster website. I
18 believe there were three pages that were downloaded from the
19 Metropolitan Water District website which were the rate
20 schedules for the water in question and even the newspaper
21 articles that we included as part of the declaration were
22 downloaded from the Watermaster website.

23 There are no secrets here for which discovery is
24 needed. Everything that is in dispute, as far as we're aware,
25 is in the public record. There is nothing new that needs to
26 be discovered to resolve whether or not the written notice was
27 given. It is the contention from Monte Vista Water District
28 that there is a lot of money at stake and that is true.

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1 There --

2 THE COURT: Around 25 million is the figure I saw.

3 MR. HUBSCH: That's correct. But when you get to
4 reading the motion in preparation for the hearing itself,
5 you'll see that it's not -- that all of that money is
6 forfeited. There is a secondary option.

7 THE COURT: I have started reading it. I have not
8 made any conclusions, but I started to read and I saw there
9 was a plan B.

10 MR. HUBSCH: There's a second -- what we call a
11 secondary option in our motion that allows the water to be

12 purchased for the recharge master plan. So, there's a lot of
13 money at stake, but there's an increment that is really at
14 stake here.

15 THE COURT: Counsel, could I have your appearance.

16 MR. SCHATZ: Yes. John Schatz counsel for the
17 appropriative pool.

18 THE COURT: Go ahead, please.

19 MR. SCHATZ: With respect to the 15 page limit
20 proposed by the moving parties here, we want to point out that
21 you have essentially the allegations in a vacuum and what I
22 mean by that is the prior judges frequently heard or received
23 informational hearings just to receive information about the
24 general -- what was occurring with the OBMP in the background
25 and I can tell you that the response that will be provided by
26 the appropriative pool I think is largely for purposes of
27 providing context that we think would be helpful to you
28 because all these things are interlocking as has been pointed

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1 out and it's very difficult, I believe, to look at this
2 without looking at entire contents of what's occurred
3 particularly over the last ten years.

4 So, in lieu of having those types of -- and you may
5 have those at some point in the future, but I believe it to be
6 very helpful for the Court for purposes of considering the
7 motion.

8 THE COURT: Thank you. Mr. Fife, you want to add
9 something?

10 MR. FIFE: Yes. Just to respond to a couple of
11 things that the non-agricultural pool said it is our desire to
12 keep this simple and that's why along with the request to

13 clarify that there won't be page limitations we also propose
14 the structure of the hearings the way that we did.

15 We don't want to have to go through the discovery
16 process. We think we are entitled to in order to conduct the
17 evidentiary hearing under the Paragraph 31 motion and
18 especially to develop the record in case there is an appeal of
19 whatever decision the Court makes, but we also want to keep
20 this simple and we want to see if we can resolve the motion
21 quickly on the 16th.

22 The reason we proposed the structure that we proposed
23 for the hearing is so that we can see if we can do that. If
24 we can submit our papers, provide a full record in the papers,
25 also indicate in the papers where we think further discovery
26 is warranted, have the hearing on the 16th, and if we can be
27 done with the motion on the 16th then that's great. We saved
28 a lot of money and saved a lot of time, but we want to reserve

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1 our rights to conduct that fuller discovery process if we need
2 to and we would rather do it this way then go through all
3 those depositions and collect all that information if we
4 really don't need to.

5 THE COURT: I understand. Thank you. Someone else
6 wanted to add something? Ma'am, your appearance.

7 MS. TRAN: Tram Tran on behalf of Monte Vista
8 Water District.

9 THE COURT: Thank you.

10 MS. TRAN: I just wanted to respond to one thing that
11 Mr. Hubsch said which was that the -- he asserted that the
12 declaration that was failed along with the Motion 31 was
13 basically authenticating documents but really there were other

14 assertions made in the declaration that we believe may require
15 some discovery or clarification as to what was said and so it
16 wasn't just limited to the authentication of documents. It
17 was actually other statements about conduct that was not in
18 the meeting minutes of the Watermaster and so we wanted
19 clarification and an opportunity at least if need be to get
20 discovery on those issues.

21 THE COURT: All right. Thank you. Mr. Hubsch, I'll
22 come back to you again.

23 MR. HUBSCH: Thank you, your Honor. In terms of
24 simplicity, you know, the non-ag pool volume of water produced
25 is by far the smallest pool. On an assessment pay basis the
26 non-ag pool pays two percent of the assessment. The entire
27 assessment for the year is \$155,000 this past year. The
28 Watermaster Board has at its disposal the entire resources of

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1 the Watermaster.

2 It's our interest generally to keep this simple to
3 allow us to come in and have a review of what the Watermaster
4 staff has done on behalf of the Goliath in the Watermaster
5 which is the appropriate pool. If we can't do that without
6 being inundated with briefs of 42 pages and proposed
7 depositions of the members of the non-ag pool, then access to
8 this Court is clearly discouraged.

9 THE COURT: I take your point. All right. Anyone
10 else? No further argument? All right.

11 I have one more question which is if we have the
12 hearing on the 16th, Mr. Fife, you're going to be prepared to
13 file your opposition next Monday?

14 MR. FIFE: We have tried to comply with the schedule

15 as set out by the non-agricultural pool. Obviously more time
16 would be good to help us develop it and we certainly wouldn't
17 fight against that, but we have tried to comply with the
18 schedule that they set. But, yes, there is a lot to put in
19 there. There's a lot that we need to explain and more time
20 certainly would not be -- we would certainly appreciate it.

21 THE COURT: All right. Another question is there a
22 particular hurry in terms of getting this matter resolved? In
23 other words, if I were to grant a continuance to the 16th for
24 the hearing on the motion would there be a detriment to any
25 party --

26 MR. HUBSCH: Well, your Honor --

27 THE COURT: -- and if so how serious?

28 MR. HUBSCH: Yeah. It's a complicated issue.

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1 Honestly our pool feels like it is being frowned upon.
2 Members of the pool are being impressed how unwise it was for
3 them to make this motion. We are losing the benefit of staff
4 essentially being on our side and helping us accomplish the
5 things that our pool would like to accomplish. It's hard to
6 quantify that honestly, but our pool feels that during the
7 pendency of this motion until it is resolved we are in a very
8 difficult position with watermaster.

9 So, uniformly the members of this pool would like
10 this to be resolved as soon as possible.

11 THE COURT: Thank you. Mr. Fife?

12 MR. FIFE: I won't comment on everything that was
13 just said except to say staff does not play favorites in any
14 degree. The non-agricultural pool is one of three pools in
15 this adjudication and they are treated with the same respect

16 as all other pools at all times no matter what is in front of
17 the Court. Though I do agree that it would be our desire to
18 have this resolved as quickly as possible and in that respect
19 I would discourage any kind of continuances on the order of
20 like two, three, four months, but if we were talking about
21 matters of weeks simply to allow the paperwork to get done in
22 the appropriate matter I think that would actually be
23 appropriate.

24 THE COURT: All right. Thank you. Anything further
25 from any counsel before I start making rulings? Nothing
26 further? Okay.

27 First, I am going to continue the motion for a period
28 of time. I'll come back to that in a moment. Second, I'm not

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1 going to impose page limitations; in return I'm not going to
2 allow discovery either at this time. We're not -- I'm not
3 going to open discovery on this matter. I believe at this
4 time that the proposal for the ruling based on the papers
5 filed with the Court is the proper way to go, the simplest way
6 to go, the most expeditious way to go, and I will not preclude
7 considering some limited discovery as ordered by the Court
8 after the hearing -- at the hearing on the motion if I'm
9 unable to make a decision based on the information that I have
10 at that time.

11 But I think a page limitation in a motion of this
12 complexity with overlying issues is not -- would not serve
13 justice. It would not serve my ability to make a fair
14 decision on both sides and so the page limits are coming off.

15 In view of that -- and that's all for everybody. So,
16 in your opposition or reply I should say, Mr. Hubsch, it's

17 off. We're going to have a full hearing on the paperwork at
18 this time without worrying about page limits. And the Court
19 does recognize that there were a lot of exhibits filed and it
20 may take a certain amount of paperwork in opposition or reply
21 to discuss all of those exhibits even though they may be in
22 the public record. The sheer volume of them leads the Court
23 to believe that it cannot be discussed in the ordinary page
24 limitations.

25 Next, I'm going to schedule a new date for the
26 hearing and set a briefing schedule so that everybody with the
27 input from counsel in terms of setting an appropriate briefing
28 schedule to give everyone enough time to digest the moving

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1 papers, the opposition papers, and the reply papers so that --
2 and give me some time to do my own research, review the papers
3 appropriately, and be prepared myself for the hearing on the
4 date scheduled.

5 So, what I'm going to do right now is go off the
6 record for a few minutes so we can discuss dates convenient to
7 counsel, timing, and if I need to summarize our discussion
8 back on the record I will do so. So, off the record at this
9 time.

10 (Discussions were held off the record.)

11 THE COURT: we're back on --

12 MR. FIFE: Oh, one more thing off the record.

13 THE COURT: Okay. Off the record.

14 (Discussions were held off the record.)

15 THE COURT: Let's go back on the record. We're back
16 on the record in the watermaster case. The Court having
17 discussed some housekeeping issues and some -- and dates with

18 respect to counsel off the record in terms of arriving at a
19 feasible schedule for parties and the Court to have the
20 hearing on this motion, the Court and counsel have agreed that
21 the opposition -- any opposition by the watermaster is to be
22 served and filed no later than April the 12th.

23 Any opposition from the appropriative pool members or
24 counsel or any members of the appropriative pool is to be
25 served and filed no later than April the 19th.

26 Any supplemental positions or oppositions are to be
27 served and filed -- and I'll add, for example, from the
28 attorney general's office or on behalf of the agricultural

22

1 pool are to be served and filed no later than April the 26th,
2 and any reply then is to be served and filed no later than
3 May the 10th, and the hearing then will be scheduled on this
4 matter at 8 -- sorry 10:30 a.m. May the 14th in this
5 courtroom.

6 The Court also discussed a couple of housekeeping
7 matters with respect to the papers to be submitted by the
8 Court. The Court has ruled that -- and is ruling that any
9 document that is not part of the Court file needs to be
10 authenticated. If there are authenticated documents filed by
11 other parties, they do not need to be reauthenticated by a
12 party filing an opposition or reply. Subsequent to the
13 authenticated document, the Court will allow them to be cross
14 referenced.

15 I think that takes care of all of the summary and
16 conclusions of all the discussions that we had off the record.
17 Let me turn first to Mr. Hubsch because I look at him first.
18 Anything further, Mr. Hubsch?

19 MR. HUBSCH: I think we also agreed that documents
20 that have been filed with the Court would be -- would -- have
21 previously been filed with the Court and are referenced in the
22 opposition they will be resubmitted so that the Court and
23 other parties will have them available.

24 THE COURT: That is correct. Thank you. Yes. That
25 was an additional order made by the discussion that I'm so
26 ordering at this time so the Court will not have to search
27 through the court file looking for those documents which I
28 appreciate the parties supplying to me. They don't need to be

23

1 authenticated. They need to be attached.

2 MR. HUBSCH: And they will be served on the other
3 parties.

4 THE COURT: Complete paperwork served on everybody.
5 It almost goes without saying, but I'll say it anyway.

6 Mr. Hubsch, anything further?

7 MR. HUBSCH: I would like to clarify that the reply
8 which is due on the 10th is only the reply by the non-ag pool
9 and not by others.

10 THE COURT: That's correct and anybody else who is
11 replying who joined in the motion.

12 MR. HUBSCH: And members of the non-ag pool.

13 THE COURT: And members of the non-ag pool. Correct.
14 I will state the theory of the Court and the hearing on this
15 motion is that there is a motion, there will be opposition by
16 the parties, a reply, and then that's it. There will be no
17 further paperwork filed to the Court after the reply is filed
18 by the non -- I can't keep the names straight -- the
19 non-agricultural pool committee or members thereof.

20 MS. BATTERSBY: Can we also discuss, your Honor,
21 briefly how the opposition will be served?

22 THE COURT: We will but we'll do that off the record
23 in just a moment. Before I get to that last housekeeping
24 matter, Mr. Fife, is there anything further you would like to
25 put on the record with respect to our off the record
26 discussions on timing, filing, authentication of documents,
27 and the other matters that I listed so far?

28 MR. FIFE: Nothing further.

24

1 THE COURT: All right. Let's go off the record for a
2 moment.

3 (Discussions were held off the record.)

4 THE COURT: Let me go on the record. Let's go back
5 on the -- off the record.

6 (Discussions were held off the record.)

7 THE COURT: Let's go back on the record. The Court
8 has had further discussions with counsel with respect to the
9 logistics of actually filing the motions, oppositions,
10 replies, and so forth with the Court and at this time the
11 Court is going to make the following orders with respect to
12 how paperwork on this particular motion is to be handled:

13 All originals are to be filed directly in this
14 courtroom and a duplicate is to be filed with the watermaster
15 offices and then the watermaster office will take the
16 responsibility of serving all the rest of the parties with the
17 paperwork. If there is a problem it can be raised by an
18 ex-parte application to the Court, but I think this should
19 satisfy all the parties with respect to logistically handling
20 the paperwork in this motion -- for this motion -- in and for

21 this motion.

22 The Court will also state on the record that at some
23 point in the future after the hearing of this motion it will
24 take up in a more formal way a hearing and order with respect
25 of service to finalize in writing explicitly for the Court and
26 counsel, parties, new counsel, new parties as they enter the
27 case how service is to be affected given the list of people
28 that need to be served and the complexity of this case.

25

1 So, having said that, let me turn to Mr. Hubsch to
2 see if there is anything else I need to cover with respect to
3 the logistics of filing the paperwork and having it served?

4 MR. HUBSCH: I would just like to note that the
5 interim service process is without prejudice or predisposition
6 of the issue of service and notice which --

7 THE COURT: That's correct. It's a completely
8 separate issue with respect to the substantive issues that may
9 be raised in the motion itself. This is strictly limited for
10 the logistics of handling the paperwork and serving and filing
11 the paperwork for the motion itself. It doesn't have anything
12 to do with any substantive service issue raised in the motion.
13 I hope that is good.

14 MR. HUBSCH: Thank you, your Honor.

15 THE COURT: You're welcome. That overstates it.
16 Anything further, Mr. Hubsch, at this time?

17 MR. HUBSCH: No thank you.

18 THE COURT: Mr. Fife?

19 MR. FIFE: No, your Honor.

20 THE COURT: Anything further that the Court needs to
21 address with counsel with respect to the motion at this time

22 or case management at this time? All right. That will
23 conclude the hearing. Thank you very much.

24 MR. HUBSCH: Uh --

25 THE COURT: One more thing?

26 MR. HUBSCH: Yes. How are we going to give notice of
27 the rulings at this hearing?

28 THE COURT: There is always one more thing. Back on

26

1 the record. Mr. Fife, I'm going to turn to you and
2 Watermaster if you would -- let me go off the record again.

3 (Discussions were held off the record.)

4 THE COURT: Let's go back on the record then with
5 respect to the rulings made at this hearing. The Court is
6 going to request Mr. Fife to prepare an order with the rulings
7 made by the Court at this hearing so that all parties can be
8 notified. The Court is also going to order Mr. Fife to obtain
9 Mr. Hubsch's approval as to form and content on the order.
10 Once both parties, that is Mr. Fife and Mr. Hubsch, has signed
11 off on it, I will sign it and then return it to Mr. Fife for
12 service pursuant to his standard operating procedures for
13 service and I think that's all I need to say at this time with
14 respect to that problem.

15 Anything further, Mr. Hubsch?

16 MR. HUBSCH: No, your Honor.

17 THE COURT: Mr. Fife?

18 MR. FIFE: No, your Honor.

19 THE COURT: Thank you. We have concluded that part
20 of the hearing. One more question I have -- off the record.

21 (Discussions were held off the record.)

22 THE COURT: Let me go back on the record. I wanted

23 to state on the record that the Court greatly appreciates the
24 excellent arguments made by all the counsel here today. It
25 has been a real pleasure to hear the arguments from all sides.
26 It's been very enlightening and helpful to the record. Thank
27 you, counsel.

28 MR. HUBSCH: Thank you.

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1 MR. FIFE: Thank you.

2 (whereupon the proceeding is continued for further
3 hearing to May 14, 2010, at 10:30 a.m.)

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SAN BERNARDINO
3 --oOo--

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5 CHINO BASIN MUNICIPAL)
6 WATER DISTRICT,)
7 plaintiff,)
8 -vs-) No. RCV 51010
9 THE CITY OF CHINO,)
10 Defendants.)

11 REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS
12 BEFORE HON. STANFORD E. REICHERT, DEPARTMENT C1
13 CHINO, CALIFORNIA
14 FRIDAY, APRIL 2, 2010

15
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18 REPORTED BY: MICHELLE M. PARSONS
19 Official Court Reporter
CSR No. 12235

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN BERNARDINO)

I, MICHELLE M. PARSONS, C.S.R., Official Court Reporter of the above-entitled court, do hereby certify:

That I am a Certified Shorthand Reporter of the State of California, duly licensed to practice; that I did report in Stenotype oral proceedings had upon hearing of the aforementioned cause at the time and place herein before set forth; that the foregoing pages numbered 1 to 27, inclusive, constitute to the best of my knowledge and belief a full, true, and correct transcription from my said shorthand notes so taken for the date of APRIL 2, 2010.

Dated at Chino, California, this 7th day of April, 2010.

Official Court Reporter, C.S.R. No. 12235

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WATERMASTER REQ.txt

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