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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT R6

HON. STANFORD E. REICHERT, JUDGE

CHINO BASIN MUNICIPAL WATER )  
DISTRICT, )

Plaintiff, )

vs. )

CASE NO. RCVRS51010

CITY OF CHINO, )

Defendant. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

FRIDAY, AUGUST 30, 2013

APPEARANCES:

For CCG ONTARIO, LLC: BAKER MANOCK & JENSEN  
PETER G. FASHING

For CHINO BASIN WATERMASTER: BROWNSTEIN HYATT FARBER SCHRECK  
BRADLEY J. HERREMA  
SCOTT S. SLATER

For MONTE VISTA WATER DISTRICT: KIDMAN LAW, LLP  
ARTHUR KIDMAN

For OVERLYING AGRICULTURAL POOL: EGOSCUE LAW GROUP  
TRACY J. EGOSCUE

For CITY OF CHINO: TERESA CHEN

Reported by: LAURA SANDERS  
Official Reporter  
CSR No. 12273

1 RANCHO CUCAMONGA, CALIFORNIA; FRIDAY, AUGUST 30, 2013

2 P.M. SESSION

3 DEPARTMENT R6

HON. STANFORD E. REICHERT, JUDGE

4  
5 APPEARANCES:

6 Appearing for CCG Ontario, LLC, PETER G. FASHING,  
7 Attorney at Law; appearing for Chino Basin  
8 Watermaster, BRADLEY J. HERREMA and SCOTT S.  
9 SLATER, Attorneys at Law; appearing for Monte  
10 Vista Water, ARTHUR KIDMAN, Attorney at Law;  
11 appearing for Overlying Agricultural Pool,  
12 TRACY J. EGOSCUE, Attorney at Law; appearing  
13 for City of Chino, TERESA CHEN, Attorney at Law.  
14 (Laura Sanders, CSR, Official Reporter C-12273.)

15 -oOo-

16 THE COURT: Good afternoon, everybody. I thought  
17 -- I didn't know if we were going to have a large group this  
18 afternoon or not. I'll wait a few more minutes and see if  
19 somebody else shows up and give you a chance to read the  
20 tentative, and then I'll come out in about five minutes and  
21 see where we are. Okay. Thanks.

22 (Brief recess.)

23 THE COURT: Let's go on the record then in the  
24 Watermaster case. And so before we proceed, let me get  
25 everybody's appearances. We'll start here on my right.

26 MR. FASHING: Thank you, your Honor. Good

1 afternoon. Peter Fashing appearing for the moving party,  
2 CCG Ontario, LLC.

3 THE COURT: Okay. Thank you.

4 MR. KIDMAN: Good afternoon, your Honor. Arthur  
5 Kidman for the defendant Monte Vista Water District.

6 THE COURT: Thank you.

7 MS. EGOSCUE: Good afternoon, your Honor. Tracy  
8 Egoscue for the Overline Agricultural Pool.

9 THE COURT: Got it.

10 MS. EGOSCUE: Thank you.

11 MR. HERREMA: Good afternoon, your Honor. Brad  
12 Herrema on behalf of Chino Basin Watermaster.

13 MR. SLATER: Also, your Honor, Scott Slater,  
14 S-l-a-t-e-r, on half of Watermaster.

15 THE COURT: Got it.

16 MS. CHEN: Good afternoon, your Honor. Teresa Chen  
17 on behalf of the City of Pomona.

18 THE COURT: Okay. Thank you. All right. That's  
19 everybody. Please be seated.

20 There is actually three motions on calendar today.  
21 The first two that I'll address don't have any opposition.  
22 So, let me move through those right now.

23 The first one is -- that the Court will address is  
24 the motion for Approval of Amendments to the Cyclic Storage  
25 Agreement and to Receive and File the OBMP Semiannual  
26 Report.

1           The Court will note that there has been no  
2           opposition received, and I take it that none of the counsel  
3           appearing today has any further opposition or comment or --

4           MR. HERREMA: Your Honor, Watermaster would like to  
5           withdraw its request as to the amendments to the Cyclic  
6           Storage Agreement.

7           THE COURT: Okay.

8           MR. HERREMA: But maintain its request for an order  
9           granting the motion to Receive and File the OBMP Semiannual  
10          Status Reports.

11          THE COURT: All right. Thank you. So the motion  
12          -- just a moment then -- to Approve the 8th and 9th  
13          Amendments to the Cyclic Storage Agreement is withdrawn?

14          MR. HERREMA: Yes, your Honor.

15          THE COURT: But you're continuing with the motion  
16          to Receive and File the Semiannual Optimum Basin Management  
17          Program Status Reports; is that correct?

18          MR. HERREMA: Yes. And I brought a revised  
19          proposed order for the Court.

20          THE COURT: Excellent. Thank you.

21          MR. HERREMA: May I approach?

22          THE COURT: Yes. Deputy, that's fine. Thank you.  
23          Let the record reflect I've been presented with an order  
24          granting the motion to Receive and File the OBMP Semiannual  
25          Reports, and the order matches the current motion pending  
26          before the Court, which there is no opposition, so the

1 Court's going to go ahead and sign the order at this time as  
2 requested by Mr. Herrema.

3 MR. HERREMA: Herrema.

4 THE COURT: Herrema. Thank you.

5 MR. HERREMA: Thank you.

6 THE COURT: Okay. So that's done.

7 Let me turn now to a second motion, which is for a  
8 revision of the February 19, 1998 ruling appointing the  
9 nine-member Watermaster Board. Now, this also had a motion  
10 for Approval of Amendments to Cyclic Storage Agreement. So  
11 I take it that part of the motion is withdrawn? I'm reading  
12 the title; is that correct?

13 MR. HERREMA: I don't believe they were joined,  
14 your Honor, but --

15 THE COURT: It was just -- I'm reading off the  
16 notice of hearing. Thank you. Not the motion itself.  
17 Thank you.

18 So let me go back, all right, thank you, and read  
19 from the motion itself this time, not just the notice of the  
20 hearing, which is to revise the Court's prior February 19,  
21 1998 order appointing the nine-member Watermaster Board in  
22 order to allow for members of the Overline Agricultural Pool  
23 serving as members of the Overline Agricultural Pool  
24 Committee, or the advisory committee, to serve currently.  
25 And the basis of the motion was that there are just getting  
26 to be so few members of the Overline Agricultural Pool that

1 they now have to serve double duty; is that correct?

2 MS. EGOSCUE: That's correct, your Honor.

3 THE COURT: Thank you. Can I get your appearance?

4 MS. EGOSCUE: Tracy Egoscue.

5 THE COURT: Got it. For the Overline Pool,  
6 Egoscue.

7 MS. EGOSCUE: Egoscue.

8 THE COURT: Thank you. E-g-o-s-c-u-e. It's on  
9 your sheet too. All right. That motion is granted.

10 MS. EGOSCUE: Thank you, your Honor.

11 THE COURT: And if you have a proposed order, I  
12 will sign it. If you don't, if you'll submit one.

13 MS. EGOSCUE: May I approach?

14 THE COURT: Yes, you may. Thank you.

15 MS. EGOSCUE: Thank you.

16 THE COURT: All right. Let the record reflect that  
17 I have an order which sets forth the motion and the basis  
18 and the ruling. And the Court will go ahead and sign that  
19 order at this time. Okay. That takes care of the two  
20 unopposed motions.

21 All right. Let's move then to the motion for which  
22 there was opposition, and that's for leave to sue  
23 Watermaster. And the Court has prepared a tentative on  
24 this. And give me just one more moment.

25 The Court, again, put in hours, not as many as on  
26 the first highly contested motion a couple of years ago, but

1 still a number of hours on this to work this up, review all  
2 the documents in detail, review the motion, the moving  
3 papers, the opposition, the reply, joinders, and come up  
4 with a tentative, which the Court has provided today.

5 So, Mr. Fashing, it's your motion. The tentative  
6 is against you. The Court will certainly hear oral  
7 argument. I'll just request that you not repeat the  
8 arguments that you set forth in the moving papers because I  
9 did consider them in the moving papers and the reply very  
10 carefully before I actually prepared the tentative.

11 Mr. Fashing, go ahead.

12 MR. FASHING: Thank you, your Honor. And first let  
13 me thank the Court for taking special time and effort to  
14 review these matters. I know that it was quite a large  
15 motion, so I appreciate that.

16 As the Court knows, we're seeking leave to file  
17 suit against the Watermaster in a separately pending  
18 litigation in Department R-8 in this very court before Judge  
19 Ochoa. And as the Court is aware, it's essentially our  
20 position that the Watermaster is a receiver. And if the  
21 Watermaster is a receiver, then case law is pretty clear  
22 that we need to obtain leave of the Court to bring suit  
23 against the Watermaster in a separate litigation. And if  
24 that's the -- if the Watermaster is, in fact, a receiver,  
25 your Honor, then the proper inquiry I would respectfully  
26 submit for the Court, is whether or not the relief sought by

1 the moving party in the other litigation is also available  
2 to that moving party by intervention in this matter. And if  
3 the answer to that question is no, then under *Ostrowski*,  
4 case cited in our papers, then the Court is required to  
5 grant leave to sue the Watermaster in the other litigation.

6 And we submit that the answer to that question is  
7 actually no, that the same relief is not available, and I'll  
8 discuss that briefly in a moment.

9 THE COURT: So far I really have heard what's been  
10 in your moving papers, in your reply. Is there something  
11 new?

12 MR. FASHING: I'm sorry, your Honor. It's hard to  
13 set up the context without at least giving some brief  
14 overview. I'll try not to be repetitive.

15 THE COURT: Please, go ahead.

16 MR. FASHING: Thank you.

17 Your Honor, we have set forth -- and I won't --  
18 we've set forth the definition of a public entity. There is  
19 a dispute, obviously, as to whether the Watermaster is a  
20 receiver or whether it's a public entity. And the Court  
21 appears, by it's tentative, that it's ruled or prepared to  
22 rule that it's a public entity.

23 In fact, Government Code Section 811.2 defines a  
24 public entity, and the Watermaster fits none of these  
25 particular elements. It's not a UC Regent. It's not the  
26 State. The only arguable basis for finding that the



1 Watermaster is a public entity entitled to governmental  
2 immunity would potentially be that it's a public agency  
3 under the definition provided by the code.

4 THE COURT: What about -- let me stop you. What  
5 about the definition that it's a servant and, as I said in  
6 the tentative, it serves the court.

7 MR. FASHING: Yes, your Honor. A servant, under  
8 that statute, is generally interpreted to mean an employee,  
9 and it does include an employee who perhaps does not receive  
10 compensation, for instance, an intern or someone of that  
11 nature. But by that same, if we were to extend the Court's  
12 reasoning as to it being a servant, then a receiver is also  
13 a servant, but a receiver has no governmental immunity to  
14 which it's entitled.

15 And we -- so the Watermaster is in no more way a  
16 servant of the Court than a receiver.

17 THE COURT: What about a special master, which is  
18 really, in the Court's opinion, what Watermaster is?

19 MR. FASHING: Well, your Honor, a special master is  
20 typically appointed to adjudicate matters during the  
21 pendency of the litigation, your Honor, and they perform a  
22 judicial function in that regard. I don't believe that's  
23 what the Watermaster is doing here. The Watermaster is  
24 acting as a receiver acts.

25 A receiver basically does everything that the  
26 Watermaster is empowered to do. In fact, the receivership

1 statute 564(b)(3) specifically authorizes the court to  
2 appoint a receiver to enforce and carry out the terms of the  
3 judgment. That's exactly what the judgment states that the  
4 Watermaster's function is, to administer and enforce this  
5 judgment, your Honor. And it's --

6 THE COURT: What about the definition that I've got  
7 in the tentative that the purpose of a receivership is the  
8 preservation of property, which is the subject of the  
9 litigation pending its disposition according to the  
10 judgment? There is no property that which Watermaster  
11 disposes.

12 MR. FASHING: Well, your Honor, that's only one  
13 possible definition of a receiver. If the Court considers  
14 CCP 564, there is several different functions of a receiver,  
15 not all of which occur pending litigation, your Honor. Some  
16 of which occur, in fact, after judgments, in fact, when a  
17 judgment is issued and a receiver is appointed to enforce  
18 the judgment, then that is a receiver who is not, in fact,  
19 preserving property pending litigation -- pending the  
20 outcome of litigation. So, that is one potential, and  
21 probably the most common, example of when a receiver is  
22 appointed. It's not all that often that you see a receiver  
23 being appointed to enforce a judgment. Most judgments don't  
24 require that sort of oversight. But, of course, in this  
25 matter, the judgment is quite detailed and does require that  
26 level of oversight.

1           And so the quotation that the judge is referring  
2 to, your Honor, is only one of many possibilities in terms  
3 of the function of a receiver.

4           THE COURT: Well, receivers are authorized in  
5 criminal cases, Penal Code Sections 186.11, fraud or  
6 embezzlement; 186.6, criminal profiteering activities, to  
7 aid in the execution of a judgment, particularly where  
8 assets cannot be reached against property disposal -- by  
9 writ of execution, CCP 708.620, to preserve the value of  
10 attached property, CCP Section 488.700, to preserve real or  
11 personal property pending determination of ownership. There  
12 is no question that Watermaster doesn't have anything to do  
13 with ownership. That's CCP 699.070. Enforcement of family  
14 law orders, that's Family Code section 290, where a general  
15 equity receiver is warranted for the purpose of restitution.  
16 That's Government Code Sections 12527, 13975.1. And to  
17 remedy substandard building conditions, Health and Safety  
18 Code Section 179 -- I'm sorry, 17980.7.

19           And everything you've told me still doesn't lead me  
20 to the conclusion that Watermaster is anything like a  
21 receiver. Go ahead, please.

22           MR. FASHING: Yes, your Honor. Well, I would just  
23 say those are all perfectly fine examples of potential  
24 functions of a receiver, but the Court has not looked or  
25 read from CCP 564(b)(3), which specifically authorizes the  
26 appointment of a receiver to enforce a judgment.

1 THE COURT: But Watermaster doesn't enforce this  
2 judgment. It assists the Court.

3 MR. FASHING: Your Honor, I would respectfully  
4 disagree. The judgment itself specifically says that the  
5 Watermaster is -- expressly says that the Watermaster is  
6 appointed to administer and enforce the judgment. That's a  
7 quote.

8 THE COURT: Well, this is -- the Watermaster is in  
9 a, in my opinion, a unique situation where the enforcement  
10 of whatever aspects of the judgment Watermaster enforces  
11 don't have anything to do with the disposition of property,  
12 which is really what a receiver does.

13 MR. FASHING: Well, the Watermaster does, in  
14 fact -- does in effect preserve and protect property, your  
15 Honor, and that is a function of the receiver under 564  
16 under other sections.

17 THE COURT: But that's for ultimate disposition.  
18 That's for ultimate sale in a situation, not in an ongoing  
19 judgment like this one.

20 MR. FASHING: Respectfully, your Honor, 564 does  
21 not distinguish between those two events whether it's prior  
22 to disposition or after disposition. But 564(b)(3), again,  
23 I'll repeat it, your Honor, at the sake of -- at the risk of  
24 repeating it, does authorize specifically a receiver to  
25 carry out the terms of judgment, 564(b)(3). And that is  
26 exactly what the judgment itself provides.

1           And I would come about this at a -- from a  
2 different angle, your Honor, and also note that public  
3 agencies aren't creatures of -- they aren't created by the  
4 judiciary. They are created by the legislature, they are  
5 created by initiative or they are created by constitutional  
6 provisions. It's -- it's that branch's function to create  
7 and the constitution to create public agencies.

8           The judiciary does not create public agencies. And  
9 this is -- I've seen no authority from opposing counsel that  
10 the judiciary is, in fact, has that power, your Honor. And  
11 I would submit that it does not. That's a function of law,  
12 of the legislative law or the initiative law or  
13 constitutional law.

14           THE COURT: So you're saying that the Watermaster  
15 should never have been instituted in the first place?

16           MR. FASHING: No, your Honor, I'm not. I'm saying  
17 the Watermaster was properly instituted, but he was  
18 authorized to do so specifically because the receivership  
19 statutes at 564(b) (3) authorize the appointment of a  
20 receiver to -- to carry out the terms of a judgment.

21           THE COURT: I see.

22           MR. FASHING: Express.

23           THE COURT: I understand what you're telling me,  
24 but, Counsel, you really don't need to argue that further  
25 because, in my view, the Court has not appointed the  
26 Watermaster to -- after judgment, carry that judgment into

1 effect in the context and meaning of 564, that definition of  
2 receivers, for the reasons I've already stated in my  
3 tentative. And so far, you haven't told me anything that  
4 would cause me to diverge from my tentative. Go ahead.

5 MR. FASHING: I'll move on to another aspect.

6 THE COURT: If you have something more to tell me,  
7 please feel free to do so, but so far I haven't heard  
8 anything that would give me a reason to diverge from my  
9 tentative.

10 MR. FASHING: I appreciate that, your Honor.

11 THE COURT: Okay.

12 MR. FASHING: I would respectfully submit, your  
13 Honor, that -- and it's clear that opposing counsel wants  
14 the Court to decide this case on its merits and --

15 THE COURT: Which case is that?

16 MR. FASHING: The case that we are attempting to  
17 bring against the Watermaster.

18 THE COURT: No, I'm not deciding it on the merits.  
19 I'm looking at the procedures of immunity. And I don't -- I  
20 should point out really specifically, I don't have any  
21 comment on the merits whatsoever. I'm looking at whether  
22 there is an immunity and whether there is a duty. And in my  
23 view, there is neither. I should say in my view there is an  
24 immunity and there is no duty. I need to be specific. I  
25 don't make comment on what the merits of the suit are. I  
26 have no insight to that. All I have are some allegations

1 that are really -- the Court considered in terms of trying  
2 to figure out whether Watermaster has a duty or not. The  
3 merits of those allegations I have no comment on.

4 MR. FASHING: Okay. Well, respectfully, your  
5 Honor, I would say that by opining or making a determination  
6 as to either immunity or the existence of a duty, in effect,  
7 is a decision on the merits it seems.

8 THE COURT: It's a question of law. Duty is always  
9 a question of law.

10 MR. FASHING: Still a decision on the merits.

11 THE COURT: I disagree. It's a legal decision  
12 under the -- without respect to the merits.

13 MR. FASHING: And I would propose, your Honor, that  
14 that would be a consideration that would be more appropriate  
15 in -- in the context of the separately pending lawsuit. And  
16 the reason I say that, your Honor, is because if there is a  
17 defect in the pleadings, as the Court seems to suggest that  
18 there is, then opposing counsel will have several  
19 opportunities pretrial to fully brief that. We can fully  
20 respond to it by full and complete briefing. And that can  
21 be done by demurrer. It can be done by judgment on the  
22 pleadings. It can be done by summary judgement motion.

23 But the -- the key factor is, your Honor, in the  
24 event -- well, two key factors. One, we'd have an  
25 opportunity to actually brief that matter at an appropriate  
26 time and an appropriate place. And this is our motion just

1 simply seeking leave to serve -- to sue the Watermaster  
2 where the inquiry is really just whether or not we can  
3 receive the same -- receive the same relief by intervention  
4 as we can in a separately pending lawsuit.

5 THE COURT: Since the question of duty is a matter  
6 of -- since duty is a question of law, the scope of the  
7 duties is appropriate for this Court for the reasons I've  
8 set forth in the tentative and should not be referred to  
9 another judge for the purpose -- for the reasons I set forth  
10 in the tentative.

11 And, again, I'm not commenting on the merits of the  
12 case. I'm commenting on whether there is a legal duty,  
13 again, question of law, which the Court is -- which is  
14 appropriate for this Court with respect to Watermaster.

15 MR. FASHING: May I inquire, your Honor, if it's  
16 the Court's intent for the finding on the question of duty  
17 to be binding against the parties?

18 THE COURT: It's binding with respect to suing  
19 Watermaster. That's the subject -- that's the question for  
20 me to decide.

21 MR. FASHING: I would respectfully differ on that,  
22 your Honor, that under *Ostrowski*, that's not the relevant  
23 inquiry. And at least if we were to pursue this matter in a  
24 typical litigation context, we'd have a chance to amend our  
25 pleadings, amend our complaint, and to argue fully and  
26 appropriately that very issue, which is not the subject of



1 the motion here today.

2 THE COURT: I disagree it is, and I made my ruling  
3 on it in the tentative and I have not heard a reason to  
4 diverge from it. Go ahead, please.

5 MR. FASHING: I would -- in that event, your Honor,  
6 then I would simply ask whether your Honor would be willing  
7 to add the -- add the caveat to the tentative that in the  
8 event a later determination is made that the Watermaster is  
9 actually a receiver, that then leave under those  
10 circumstances would be appropriate and that we would be able  
11 to sue in the other matter.

12 THE COURT: No, because that determination, in my  
13 view, would have to come from the Court of Appeal. Of  
14 course, if the Court of Appeal rules, I'll follow whatever  
15 rules the Court of Appeal makes.

16 MR. FASHING: I understand.

17 THE COURT: Not another trial court. So I'm not  
18 going to add that, as you characterized it, caveat, or I'll  
19 call it qualification.

20 MR. FASHING: Yes. The reason I ask that, your  
21 Honor, is because it puts us in a catch-22 of sorts.

22 THE COURT: I don't see it. You've asked for leave  
23 -- for the Court to consider whether you have leave to sue  
24 Watermaster. The Court has determined that you don't for  
25 the reasons I've already stated in open court here and in  
26 the tentative itself.

1 Anything further?

2 MR. FASHING: That's it, your Honor. Thank you.

3 THE COURT: All right. Thank you.

4 Mr. Slater or Mr. Herrema?

5 MR. HERREMA: Your Honor, we've read your tentative  
6 and appreciate it. As you've indicated, the Court has found  
7 that Watermaster is not a receiver and the denial of the  
8 motion is appropriate; therefore, moreover, the Court has  
9 found that Watermaster is a special master. We agree with  
10 that based on the February 1998 order that was referenced  
11 earlier in this hearing that Watermaster was appointed as a  
12 special master based on the special expertise, and that is  
13 appropriate to continue as the Court's jurisdiction in this  
14 matter continues. The litigation effectively is ongoing.  
15 We agree with the Court's -- Court's tentative and  
16 appreciate it. Thank you.

17 THE COURT: Submit then?

18 MR. HERREMA: Yes, your Honor.

19 THE COURT: Anything further, Mr. Fashing?

20 MR. FASHING: Submit, your Honor.

21 THE COURT: Pardon?

22 MR. FASHING: Mr. Fashing.

23 THE COURT: Fashing. I'm sorry. Thank you. I'm  
24 sorry I mispronounced your name.

25 The Court then will, for the reasons expressed here  
26 in court and for the reasons expressed on the tentative, the

1 Court finds that there is not a basis for the Court to grant  
2 leave to sue Watermaster. So the tentative will become the  
3 order in this matter. I'm going to go ahead and sign the  
4 order at this time.

5 MR. FASHING: Thank you, your Honor.

6 THE COURT: Thank you.

7 Anything further for the Court to consider at this  
8 time, Mr. Fashing?

9 MR. FASHING: Nothing, your Honor.

10 THE COURT: Mr. Herrema?

11 MR. FASHING: Nothing.

12 THE COURT: Thank you.

13 MR. HERREMA: No, nothing, your Honor.

14 MR. SLATER: Nothing.

15 THE COURT: Thank you. That will complete the  
16 hearing for today.

17 **(Proceedings concluded.)**

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT R6

HON. STANFORD E. REICHERT, JUDGE

CHINO BASIN MUNICIPAL WATER )  
DISTRICT, )

Plaintiff, )

vs. )

CASE NO. RCVRS51010

CITY OF CHINO, )

Defendant. )

\_\_\_\_\_  
STATE OF CALIFORNIA )

) ss

COUNTY OF SAN BERNARDINO )

I, Laura Sanders, Official Reporter for the Superior Court of San Bernardino, do hereby certify that to the best of my ability, the foregoing pages, 1 through 18, comprise a full, true, and correct transcript of the proceedings held in the above-entitled matter on Friday, August 30, 2013.

Dated this 20th day of September, 2013.

\_\_\_\_\_

LAURA SANDERS, C-12273