

IN THE SAN BERNARDINO COUNTY SUPERIOR COURT DISTRICT
COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DISTRICT
DEPARTMENT R-6 HON. STANFORD E. REICHERT, JUDGE

CHINO BASIN MUNICIPAL WATER DISTRICT,)

Plaintiff,)

-vs-)

CITY OF CHINO)

Respondent.)

Case No. RCVRS51010

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE HONORABLE STANFORD E. REICHERT

FRIDAY, APRIL 25, 2014

ORIGINAL

APPEARANCES:

FOR CITY OF FONTANA:

NICHOLAS A. JACOBS
ATTORNEY AT LAW

FOR CHINO BASIN WATERMASTER:

SCOTT S. SLATER
BRADLEY J. HERREMA
ATTORNEYS AT LAW

FOR MONTE VISTA WATER DISTRICT:

ARTHUR G. KIDMAN
ATTORNEY AT LAW

FOR CITY OF UPLAND:

ROBERT KHUU
ATTORNEY AT LAW

FOR INLAND EMPIRE UTILITIES:

JEAN CIHIGOYENETCHE
ATTORNEY AT LAW

REPORTED BY:

NANCY C. HERALDEZ
Official Reporter
CSR No. 8191

1 RANCHO CUCAMONGA, CALIFORNIA; FRIDAY, APRIL 25, 2014
2 DEPARTMENT R-6 HON. STANFORD E. REICHERT, JUDGE
3 A.M. SESSION
4

5 APPEARANCES:

6 FOR CITY OF FONTANA, NICHOLAS A. JACOBS,
7 ATTORNEY AT LAW; FOR CHINO BASIN
8 WATERMASTER, SCOTT S. SLATER,
9 ATTORNEY AT LAW; FOR WATERMASTER,
10 BRADLEY J. HERREMA, ATTORNEY AT LAW;
11 FOR MONTE VISTA WATER DISTRICT,
12 ARTHUR G. KIDMAN, ATTORNEY AT LAW;
13 FOR CITY OF UPLAND, ROBERT KHUU,
14 ATTORNEY AT LAW; FOR INLAND EMPIRE
15 UTILITIES, JEAN CIHIGOYENETCHE,
16 ATTORNEY AT LAW.
17

18 (NANCY C. HERALDEZ, Official Reporter, CSR No. 8191)

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21 THE COURT: Let me go on the record, then, on the
22 Watermaster case.

23 I'd like the record to reflect the Court prepared
24 an extensive tentative which I handed out. And ordinarily,
25 when I have an extensive tentative like the one I did today
26 for today's hearing, I take a recess so everybody has a

1 chance to read it and digest it.

2 It's now 1:41 and in my view, ten minutes -- these
3 gentlemen showed up at 1:30 for the hearing -- would not be
4 enough time to read it and grasp the length of the
5 tentative, which was twelve pages.

6 So if you're ready to go forward, that's great. If
7 you're not, that's great, too. I'll take an additional
8 recess to give you some more time to read through the
9 tentative.

10 Mr. Jacobs, the tentative is against you, so if you
11 want to recess, I can recess until 2:00.

12 MR. JACOBS: Yes, Your Honor. That would be great.
13 Thank you.

14 THE COURT: Okay. Let's do that. So before I take
15 appearances and everything, we'll take a recess until
16 2:00. That will give you a chance to read through the
17 tentative.

18 MR. JACOBS: Thank you.

19 THE COURT: Okay. Thank you.

20 (CONTINUED TO SECOND CALL.)

21 THE COURT: Okay. Let's return to the Watermaster
22 case then.

23 All right. Welcome again. We're on the record.

24 Before I do anything further, let me turn to
25 Mr. Jacobs and inquire, have you had enough time to read the
26 tentative and digest it?

1 MR. JACOBS: Your Honor, I have read the tentative.
2 I have not had enough time to digest it. I've had half
3 hour. I appreciate that time. But to be honest, there's 30
4 directives in the tentative. And the answer is no. The --

5 THE COURT: Well, how much more time do you need?

6 MR. JACOBS: I need several hours.

7 THE COURT: No, you will not get several hours.

8 MR. JACOBS: I understand that, Your Honor.

9 THE COURT: I'll give you another half hour.

10 MR. JACOBS: I don't think I can do it in half
11 hour. Is there a possibility of a letter brief or
12 something?

13 THE COURT: No. Today's the date for the hearing.
14 All I've done is review and digested the arguments that
15 you've made and ruled on them.

16 There are three basic rulings in the Court's
17 tentative. The first is that the judgment doesn't support
18 your request, your motion. The second is that there's no
19 other legal basis to support your request. And the third is
20 that it's premature and it's just speculative. Those are
21 all issues that were briefed and digested in your moving
22 papers and the tentative, is not that complicated in the
23 Court's view. So I don't think you need hours to review it.
24 I think an hour is more than enough. So I'm going to recall
25 the case at 2:30 and we're going to proceed.

26 MR. JACOBS: Yes, Your Honor. I'm ready to proceed

1 now.

2 THE COURT: Good. Okay.

3 so let's get everyone's appearance, please. I'll
4 start here on my far left.

5 MR. CIHIGOYENETCHE: Thank you, Your Honor. Jean
6 Cihigoyenetché on behalf of Inland Empire Utilities Agency.

7 THE COURT: Thank you.

8 MR. KHUU: Good afternoon, Your Honor. Robert Khuu
9 for the City of Upland.

10 THE COURT: Thank you.

11 MR. SLATER: Good afternoon, Your Honor. Scott
12 Slater, S-l-a-t-e-r, on behalf of Watermaster.

13 THE COURT: Thank you.

14 MR. HERREMA: Good afternoon, Your Honor. Brad
15 Herrema, H-e-r-r-e-m-a, on behalf of Chino Basin
16 Watermaster.

17 THE COURT: Thank you.

18 MR. KIDMAN: Good afternoon, Your Honor. Art
19 Kidman on behalf of the Monte Vista Water District and
20 several others.

21 THE COURT: Okay.

22 MR. JACOBS: Good afternoon, Your Honor. Nick
23 Jacobs with Somach Simmons & Dunn on behalf of the City of
24 Fontana.

25 THE COURT: All right. Thank you.

26 As the Court indicated, the Court has read and

1 considered all the moving papers and opposing papers; has
2 issued a tentative. It was twelve pages long. I don't
3 think hours is required to read something that's very, in
4 the Court's view, straightforward. An hour was more than
5 sufficient.

6 Mr. Jacobs said he was ready to proceed at this
7 time, so we're going to proceed, even though the Court
8 offered an additional half hour for him to read through the
9 tentative.

10 As usual, on a situation where the Court has made a
11 detailed tentative, although not in my view a complicated
12 tentative, the Court will request counsel not to repeat the
13 arguments that they've made in the paperwork, because I
14 would hope it would be clear from the tentative, the Court
15 has already considered those.

16 So having said that, Mr. Jacobs, will you go ahead,
17 please.

18 MR. JACOBS: Okay. Thank you, Your Honor. I just
19 have a couple of points to make.

20 From my brief review of the tentative ruling, it
21 seems to suggest that the Court believed it lacks
22 jurisdiction to review fundamental watermaster decisions
23 and --

24 THE COURT: No. That's not what I said. Go ahead,
25 please.

26 MR. JACOBS: Okay.

1 I just wanted to make the point that the Recharge
2 Master Plan Update is vague and absolutely and fundamental
3 Watermaster decision, and something that should be subject
4 to the Court's jurisdiction to review. And I also note that
5 this order, in fact, does approve the Recharge Master Plan
6 Update. So I'm confused about why our motion is not --
7 isn't in the Court's jurisdiction.

8 THE COURT: You didn't understand from the
9 tentative?

10 MR. JACOBS: No, Your Honor.

11 THE COURT: Then what didn't you understand from
12 the tentative, sir?

13 MR. JACOBS: I'm looking at page three.

14 THE COURT: Okay. Give me just a moment.

15 MR. JACOBS: Sure. Section B.

16 THE COURT: Page three, paragraph B?

17 MR. JACOBS: Yes.

18 THE COURT: "Fontana motion is outside the Court's
19 jurisdiction under paragraph 15 because Fontana has failed
20 to identify any specific incentives regarding storm water
21 recharge that are required to promote the physical solution.
22 Fontana seeks the general policy statement concerning ground
23 water recharge which is outside the judgment."

24 what part of that don't you understand?

25 MR. JACOBS: I don't understand why the Court
26 believes it lacks jurisdiction to order specific policies

1 for the Watermaster to follow.

2 THE COURT: Because I don't make policy decisions.
3 I rule on decisions in controversies and you haven't
4 presented one.

5 MR. JACOBS: Okay.

6 The tentative ruling seems to be premature in some
7 regards regarding the legality and factual issues regarding
8 the Bulk and Pit Project, which was argued extensively in
9 Monte Vista's brief, but really was not central to our
10 motion which focused on section five of the Recharge Master
11 Plan Update.

12 I just submit to the Court that although there is
13 an application for the Vulcan Pit Project that is eminent
14 that contains lots of information from the Bulk and Pit
15 Project, I don't believe we've adequately presented the
16 Court with information about what this project is to have
17 some of the definitive rulings in this ruling.

18 THE COURT: You asked for the ruling that you got.
19 And the point that you've made exactly points out the
20 problem with your motion, which is there are innumerable
21 facts unknown, speculative, undetermined and to be decided
22 in the future through the process of Watermaster that makes
23 your motion premature and not able -- not subject to the
24 Court's ruling as a perspective policy statement. The Court
25 doesn't make policy statements. The Court rules on
26 controversies and issues pursuant to the judgment and you

1 haven't presented one.

2 MR. JACOBS: Last point, Your Honor, that I would
3 like to make is that the judgment and the Peace Agreement
4 allow literally any party to store supplemental water in the
5 basin, subject to an agreement with watermaster, of course.
6 Currently there are 40,000 acres feed of storm water leaving
7 the Chino Basin down Ventura River essentially wasted to
8 Chino Basin.

9 In that context, I submit that the projects that
10 capture and recharge storm water that but for those
11 projects, that storm water would leave the Chino Basin.
12 That is supplemental water. And so --

13 THE COURT: How are you going to deliver to your
14 citizens?

15 MR. JACOBS: We're going to deliver it by an in
16 lieu assisted sales of the credits to Fontana Water Company.

17 THE COURT: That's exactly Monte Vista's point;
18 that you're going to take the water and sell it back to the
19 people who actually own it. You're going to be dumping
20 water in at one point and taking out from the other. That,
21 in the Court's view, is not proper. And you don't have --
22 even if you could do it, the fact of the matter is, you
23 can't. You don't have any water treatment facilities.
24 Monte Vista has all -- I'm sorry. Not Monte Vista -- the
25 Fontana water companies have those, not you.

26 And so, I don't know how you plan to deliver on

1 your promises. And that, again, makes the controversy
2 nonviable for the Court's determination.

3 MR. JACOBS: Well, Your Honor, we don't need the --
4 we don't need facilities to bring the ground water up in
5 order to have a ground water right. We can have agreements.
6 In fact, there are --

7 THE COURT: Let me stop you there. You can and
8 could have agreements. Where are -- you don't have them
9 yet. There's nothing for me to rule on. Apparently, you
10 don't understand the basis of the Court's ruling that it's a
11 three-prong basis. It's not pursuant to the judgment --
12 I'll repeat myself, which I've tried to avoid doing but I
13 will do it this time.

14 You haven't asked for something I can do pursuant
15 to the judgment. You haven't asked for something I can do
16 on any other basis. What you've asked for is for me to make
17 some guesses as to what may future controversy be. And
18 every time you talk about perspective agreements, things
19 that may happen in the future, it just brings my point out
20 again and again.

21 MR. JACOBS: Okay. Thank you, Your Honor.

22 THE COURT: Thank you.

23 Mr. Slater?

24 MR. SLATER: Yes, Your Honor. Thank you.

25 We appreciate the tentative and your comments here
26 today. On that basis, we're prepared to submit.

1 I offer only one point for -- to validate
2 Watermaster's good faith efforts to continue to grapple with
3 important policy issues, including the organization and
4 architecture of a financing plan, which may include
5 incentive, and which is under deliberation by Watermaster as
6 we speak.

7 I have with me today, Peter Kavounas, who is a
8 general manager of Watermaster. And we have an ongoing
9 process. The Board was advised of this ongoing process.
10 And we do not contend -- or do not intend to abate or shy
11 away from that important responsibility in this calendar
12 year.

13 THE COURT: And there's nothing in the Court's
14 ruling to prevent you or stop from you doing that, but
15 rather to encourage you to do that, because that is the
16 process the Court has set up. Not for the Court to
17 perspective jump into something that is premature and
18 unspecified way, and start speculating and making rules for
19 which the Court has no basis and no facts.

20 MR. SLATER: Thank you, Your Honor.

21 THE COURT: Thank you.

22 Yes. Mr. Kidman, right? Mr. Kidman.

23 MR. KIDMAN: Yes. Thank you, Your Honor.

24 Monte Vista and its associated parties would rest
25 on the tentative.

26 I'm actually a little more concerned about what was

1 just said by watermaster.

2 THE COURT: Okay. Go ahead.

3 MR. KIDMAN: But the tentative is -- I think we're
4 very happy with it. Thank you, Your Honor.

5 THE COURT: All right. Thank you.
6 Anything further?

7 MR. JACOBS: No, Your Honor.

8 THE COURT: All right.

9 Mr. Slater, anything further?

10 MR. SLATER: No, Your Honor.

11 THE COURT: Mr. Kidman?

12 All right. The tentative will become the ruling,
13 then. I'll go ahead and sign the order.

14 The order in the tentative is exactly the order
15 that is part of the proposed order that was submitted in
16 February for the -- it was actually the initial hearing set
17 for this April the 4th. So that was a proposed order. And
18 the Court intends to sign that order at this time as well.

19 And I just wanted to point out that the order in
20 the tentative for today is exactly the order from that
21 proposed order as well, so that it will match up complete
22 leading word for word.

23 MR. SLATER: We thank you, Your Honor.

24 THE COURT: All right. Thank you.

25 All right. That will complete the hearing.

26 Oh, there is one more thing we need to do. We

1 received a request from Mr. Hubsch with respect to a
2 briefing schedule on another issue. And that had to do
3 with -- I'll have to turn to my judicial assistant who took
4 the message.

5 (Discussion held off the record.)

6 THE COURT: Okay. Mr. Hubsch had requested the
7 Court set a briefing schedule with respect to a motion to
8 amend the judgment relating to the forum and voting for the
9 non-agriculture pool. And I gave Mr. Hubsch a tentative
10 hearing date for that of July 11th.

11 And so, given that today's the 25th of April, I'm
12 going to require that his moving papers be served and filed
13 no later than four weeks from today, May the 23rd. Any
14 opposition papers be filed two weeks later on or before the
15 6th -- on or before the 6th of June. Any reply papers filed
16 and served no later than June the 13th. And then the
17 hearing will --

18 I'm doing it this way because I'm going to be gone
19 the last week in June and try to make clear before, the
20 Court reviews every piece of paper itself filed in this
21 case. And in order for me to have enough time to prepare a
22 tentative, if necessary, since I'm going to be gone the last
23 week of June, that's why the long delay between the time the
24 reply papers and the date of hearing.

25 So we'll put that in the minute order and the
26 served and filed times for each date indicated would be

1 4:00 p.m. so that's clear now that everyone knows what they
2 need to do when.

3 Any discussion or comment on the briefing schedule
4 the Court set for that motion? That may be news to counsel.
5 I don't know. But that's what Mr. Hubsch asked me to do
6 today, so I'm doing it.

7 MR. SLATER: No concern on that, Your Honor.

8 THE COURT: Mr. Herrema?

9 MR. HERREMA: Your Honor, Watermaster, also on
10 April the 11th, filed a status report as to the progress of
11 its take-over calculation.

12 THE COURT: which I have read and considered and
13 approve. So, yes. Thank you, very much for reminding me.
14 I have it here.

15 And so -- give me just a moment on that as well.

16 Yes. There's a proposed order for that as well
17 which the court will sign today. Thank you for reminding
18 me. I have read and considered. There was no opposition.

19 So anything further, Mr. Herrema?

20 MR. HERREMA: No. Thank you, Your Honor.

21 THE COURT: Mr. Kidman?

22 MR. KIDMAN: No.

23 THE COURT: Mr. Jacobs.

24 MR. JACOBS: No. Thank you.

25 THE COURT: All right. Thank you, very much. That
26 will conclude the hearing today. Thank you.

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(Proceedings in the above-entitled matter
were concluded.)

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REPORTER'S CERTIFICATE

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

-vs-

CITY OF CHINO,

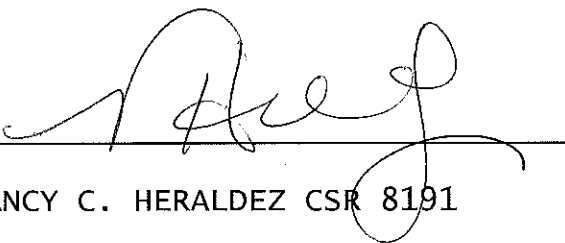
Respondent.

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I, NANCY C. HERALDEZ, CSR 8191, official 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 hereinbefore set forth; that the foregoing pages numbered 1 through 14, inclusive, constitute to the best of my knowledge and belief a full, true, and correct computer-aided transcription from my said shorthand notes so taken for the date of FRIDAY, APRIL 25, 2014.

Dated at Rancho Cucamonga, California, this 30TH day of April, 2014.



NANCY C. HERALDEZ CSR 8191
Official Reporter