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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 21, 2015

APPEARANCES:

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:

GUTIERREZ, FIERRO & ERICKSON
JIMMY GUTIERREZ

FOR INLAND EMPIRE UTILITIES
AGENCY:

CGC LAW
MARTIN CIHIGOYENETCHE
JEAN CIHIGOYENETCHE

Reported by:

LAURA SANDERS
Official Reporter
CSR No. 12273

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APPEARANCES CONTINUED:

FOR CITY OF POMONA: LANGERLOF SENEAL GOSNEY & KRUSE
THOMAS S. BUNN

FOR THE APPROPRIATIVE POOL: JOHN J. SCHATZ

FOR STATE OF CALIFORNIA: CAROL A. Z. BOYD

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

FOR CUCAMONGA WATER BEST BEST & KRIEGER
DISTRICT: PAETER E. GARCIA

1 RANCHO CUCAMONGA, CALIFORNIA; FRIDAY, AUGUST 21, 2015

2 P.M. SESSION

3 DEPARTMENT R6

HON. STANFORD E. REICHERT, JUDGE

4
5 APPEARANCES:

6 Appearing for Chino Basin Watermaster,
7 BRADLEY J. HERREMA and SCOTT S. SLATER,
8 Attorneys at Law; appearing for Monte
9 Vista Water, ARTHUR KIDMAN, Attorney at Law;
10 appearing for Overlying Agricultural Pool,
11 TRACY J. EGOSCUE, Attorney at Law; appearing
12 for City of Chino, JIMMY GUTIERREZ, Attorney
13 at Law; appearing for Inland Empire Utilities
14 Agency, MARTIN CIHIGOYENETCHE and JEAN
15 CIHIGOYENETCHE, Attorneys at Law; appearing
16 for City of Pomona, THOMAS S. BUNN, Attorney at
17 Law; appearing for the Appropriative pool,
18 JOHN J. SCHATZ, Attorney at Law; appearing State
19 of California, CAROL A. Z. BOYD, Attorney at Law;
20 appearing for Three Valleys Municipal Water
21 District, STEVEN M. KENNEDY, Attorney at Law;
22 appearing for Cucamonga Water District,
23 PAETER E. GARCIA, Attorney at Law.

24 (Laura Sanders, CSR, Official Reporter C-12273.)

25 -oOo-

26 THE COURT: We're on the record in our Watermaster

1 case and I have copies of the cards here, but let's get
2 everyone's appearance on the record, please. Let's start
3 with counsel for the Watermaster, please.

4 MR. SLATER: Good afternoon, your Honor. Scott
5 Slater on behalf of Watermaster.

6 THE COURT: Thank you.

7 MR. HERREMA: Good afternoon. Brad Herrema on
8 behalf of Watermaster.

9 THE COURT: Thank you. Also at counsel table.

10 MR. GUTIERREZ: Your Honor, Jimmy Gutierrez for the
11 City of Chino.

12 THE COURT: Thank you very much. And working back
13 along the rail here.

14 MR. BUNN: Good afternoon, your Honor. Thomas Bunn
15 for the City of Pomona.

16 THE COURT: Okay. Thank you.

17 MR. KIDMAN: Good afternoon, your Honor. Art
18 Kidman, Monte Vista Water District.

19 THE COURT: Thank you.

20 MS. EGOSCUE: Your Honor, Tracy Egoscue. I'm
21 counsel for the Ag Pool.

22 THE COURT: Okay.

23 MR. GARCIA: Your Honor, Paeter Garcia representing
24 Cucamonga Valley Water District.

25 MR. KENNEDY: Good afternoon, your Honor. Steve
26 Kennedy on behalf of Three Valleys Municipal Water District.

1 MR. CIHIGOYENETCHE: Your Honor, Martin
2 Cihigoyenetze on behalf of Inland Empire Utilities Agency.

3 MR. CIHIGOYENETCHE: Good afternoon, your Honor.
4 Jean Cihigoyenetze on behalf of Inland Empire Utilities
5 Agency.

6 THE COURT: Okay. And then moving into our
7 audience, do we have counsel here in our audience who need
8 to be identified for the record, please.

9 MS. BOYD: Carol Boyd for the State of California,
10 member of the Agricultural Pool.

11 THE COURT: I'm sorry.

12 THE CLERK: I didn't get her name.

13 THE COURT: Ms. Boyd, correct?

14 MS. BOYD: Yes, thank you.

15 THE COURT: Anyone else in the audience? Yes, sir.

16 MR. SCHATZ: John Schatz, counsel for the
17 Appropriative Pool.

18 THE COURT: Thank you. Going to pick up a couple
19 more business cards I think. Anyone else that needs to
20 identified on the record at this time? No one else. All
21 right. Thank you.

22 There are a few matters for the Court's
23 consideration this afternoon. Let me start with probably
24 the simplest one, which is a request for the Approval of the
25 Intervention of the Water District, Monte Vista Water
26 District. And I take it there is no objection to their

1 intervention, and so that request will be granted.

2 Yes, Mr. Herrema.

3 MR. HERREMA: Your Honor, I brought with me a copy
4 of the proposed order. If you'd like, I can have that
5 brought up to you.

6 THE COURT: That's great. I'll do that, I'll sign
7 the order forthwith.

8 The second matter on I think for the Court's
9 consideration today is the Status Report on the Watermaster
10 Safe Yield Redetermination and Reset. And there was a
11 response filed to that by the City of Chino represented by
12 Mr. Gutierrez, and a reply, I'll call it. It is designated
13 in the caption as a response. I would actually characterize
14 it as a reply by Watermaster to the response of the City of
15 Chino.

16 The way I'm going to address this is first to say
17 that the Court actually agreed with the Watermaster that the
18 City of Chino's supplement, was the way it was designated on
19 the title, is in the nature of an objection, which the Court
20 does not need to consider at this time, does not need to
21 rule on at this time. It has to do with the negotiations
22 going on with respect to several aspects of the
23 determination of safe yield, but those determinations have
24 not actually been -- I should say the negotiations have not
25 actually been completed. And it was in the nature of, it
26 being the City of Chino's response supplement -- I should

1 say City of Chino's supplement was really in the nature of a
2 statement of concerns in negotiations that the Court needed
3 to be aware of, but did not require a ruling at this time.
4 So that's how I saw it.

5 Mr. Gutierrez, do you have some additional
6 argument or input on this?

7 MR. GUTIERREZ: Yes, I do, your Honor.

8 THE COURT: Go ahead.

9 MR. GUTIERREZ: I appreciate your comments. And
10 let me start by saying very, very simply that what is
11 occurring and what is proposed to be before you represents a
12 substantial harm to the City of Chino. It has already been
13 laid out in the terms of the key principals. There is
14 already an agreement that's been prepared. The Watermaster
15 Board has actually also authorized it to go forward and it
16 represents a highly unfair procedure to the City of Chino.

17 Substantively I think you'll understand what you
18 read from us in the report in that the proposals propose to
19 take water the City of Chino has earned from its storage
20 account and to reallocate the way water is distributed
21 according to the judgment, and it's been reallocated -- it's
22 been allocated that way for 50 years.

23 I've calculated that the net economic loss to the
24 City of Chino conservatively over the 15-year period would
25 be \$45 million. And the reason I wanted to bring it to the
26 Court's attention was that the Court understand the severity

1 of it and help the City of Chino in the following respect:

2 First of all, while the report that was filed by
3 Watermaster talks about a safe yield redetermination, the
4 reality is that 90 percent of what Watermaster and parties
5 propose to do is reallocate the way water is allocated under
6 the judgment in the Chino Basin to the detriment of the City
7 of Chino. And to say that it's covered by existing orders
8 is highly incorrect because there is nothing in the orders
9 that Judge Gunn has made and there is nothing in the
10 judgment and there is nothing in the Peace Agreement and
11 there is nothing in the OBMP Implementation Plan that
12 authorized this Court's Special Master to take sides on
13 behalf of a majority of the parties and against a few,
14 including the City of Chino. It's totally uncalled for.

15 And here's the other problem, your Honor, for us is
16 that we have a dilemma because on the one hand we're a
17 party. We're supposed to be afforded certain rights. And
18 when we come to court before you sometime in the future,
19 you'll be the judge that's going to hear this. But to my
20 left advocating for this taking of water against the City of
21 Chino is a court special referee. So that puts us in a
22 highly difficult position. And because Watermaster and
23 their counsel are moving forward in that direction, I
24 request some relief, including telling Watermaster to stay
25 out of the process.

26 At this time what you can do, you have independent

1 authority under Paragraph 31 of the Judgment to do whatever
2 you want on your own motion as to Watermaster actions. And
3 we know there is already Watermaster actions. The Board
4 acted on May 25th of this year to authorize Watermaster
5 counsel and staff to proceed with the preparing of an
6 agreement after they knew all the elements of that
7 agreement, and after they had heard my judgment.

8 MR. KIDMAN: Your Honor --

9 THE COURT: Okay. I'll hear from you.

10 MR. KIDMAN: I'd like to place an objection.

11 THE COURT: Okay. Go ahead please.

12 MR. KIDMAN: Counsel is making a speaking motion
13 now for some relief that wasn't noticed to any of the other
14 parties, the only object of which is to prejudice the Court.

15 THE COURT: Okay. This is argument and ordinarily
16 everyone will have their turn to speak. And so ordinarily I
17 don't entertain objections to argument, but rather to
18 evidence, and this is argument which I'm hearing now. So
19 you'll have your turn now to state your position in
20 response. Everyone will have a chance to speak, but I
21 really prefer to get everyone's position out in one
22 straightforward session first before I go on.

23 MR. KIDMAN: Sorry to be argumentative, but --

24 THE COURT: That's okay.

25 MR. KIDMAN: -- in this instance you're being
26 pressed with argument that has allegations that are laced

1 within what counsel is saying. Parties are not prepared to
2 respond today to that.

3 THE COURT: And believe me, I should also state
4 then because I started to jump the gun a little bit. I'm
5 not going to make a ruling today because, as I started out,
6 so far what I've heard has not prompted me to change what I
7 essentially indicated was a tentative on the record, which
8 is I'm going to -- I'm not going to make a ruling today. I
9 should have been more specific because the way I see this is
10 as a developing process involving the City of Chino. And as
11 part of this process, the City of Chino wanted me to be
12 aware of their position, but I'm not going to make any
13 rulings on their position at this time because of the
14 process. In order for me to make a ruling, there needs to
15 be something definite and I'm not prepared at this time to
16 intervene in any process. But I did want to fully hear
17 Mr. Gutierrez's position because the Court had a few
18 questions based on the position that the City of Chino had
19 taken with respect to the process.

20 So, Counsel, you're Mr. Kidman, correct?

21 MR. KIDMAN: Yes, your Honor.

22 THE COURT: Thank you. Just wanted to get that for
23 the record.

24 Okay. So, if everyone could just wait, everyone
25 will get a chance to speak. Everyone will get a chance to
26 state their objections, but I need to hear each -- in order

1 for me to be clear and get a full hearing this afternoon, if
2 you could hold the objections and responses until everyone
3 is done or until it's your turn to speak, I would really
4 appreciate it. I'm not meaning that as a criticism,
5 Mr. Kidman, just a request.

6 Mr. Gutierrez, go ahead, please.

7 MR. GUTIERREZ: Yes. The point I was making was
8 that we're highly disadvantaged in that the court special
9 referee and their lawyer will be representing the parties in
10 a position against the City of Chino in this matter when it
11 comes forward.

12 THE COURT: I'm going to disobey my own order and
13 interrupt you and ask, could you be more specific. It
14 wasn't exactly clear to me what you thought Watermaster was
15 doing.

16 MR. GUTIERREZ: Sure.

17 THE COURT: Go ahead, please.

18 MR. GUTIERREZ: The Watermaster counsel presented
19 to the Watermaster Board on May 25th of this year a
20 statement that the parties had come to an agreement with
21 respect to dealing with the Safe Yield Reset itself as well
22 as other matters that are referred to as accounting issues
23 but are really reallocation of water issues.

24 At that meeting I informed the Board of the City of
25 Chino 's position, much like I'm telling you here today, and
26 I asked them to stay out of the fray. The response was to

1 direct Watermaster counsel to proceed with the agreement and
2 file a motion. And that creates the problem that
3 Watermaster is, in fact, engaged with the parties in a
4 position that's non-neutral.

5 I'd like to refer you to Judge Gunn's 2007 order
6 when he specified the role for Watermaster to not be an
7 advocate for or against any party, but to be neutral. And
8 that neutrality is false and it puts us in a difficult
9 position.

10 Let me move on to another very important point. In
11 reality, what is being proposed is the taking of the City's
12 water rights.

13 THE COURT: I got that.

14 MR. GUTIERREZ: And the proposal before the Court
15 now in the Watermaster Status Report is that Watermaster
16 will file a motion. I suggest to you that that motion
17 really is in the nature of a lawsuit, and most of the
18 plaintiffs that are in this room, the public entities. And
19 they are moving forward with a request to take water from
20 the City of Chino without going through all the procedural
21 processes required for an eminent domain action. And one of
22 the things I would request if that's what the parties are
23 going to do, is that instead of a motion, let them file
24 their complaint. Let them proceed on their own and prove
25 their right to take -- provide an appraisal so that we can
26 discuss the payment to the City of Chino and also go through

1 the rest of the process that are required in an eminent
2 domain action because that's what's going on. That will
3 then afford the City of Chino an opportunity to defend
4 itself appropriately by filing demurrers, filing answers,
5 filing cross-complaints and doing discovery.

6 And if you're not prepared to do that here today, I
7 would like to set a date where we can perhaps brief that
8 issue and have that before the Court to make that
9 determination because it's clear that this is what the
10 Watermaster and the parties here are trying to do.

11 I'll end there, your Honor.

12 THE COURT: I've got a few questions.

13 MR. GUTIERREZ: Sure.

14 THE COURT: Who do you think is taking your water?

15 MR. GUTIERREZ: Well, okay, virtually all the
16 parties to the judgment, and they are taking it in two ways.
17 First of all, the City of Chino has 65,000 acre feet of
18 water in storage that's been approved by the Watermaster and
19 submitted to the court annually, and they are proposing to
20 take about 37,000 acre feet of that that has a value of
21 about \$18 million.

22 THE COURT: Right.

23 MR. GUTIERREZ: In one of their plants called a
24 Safe Storage Management Plant. It's very clear that's what
25 the plan is.

26 THE COURT: And that's -- is that a result of the

1 negotiations that are ongoing?

2 MR. GUTIERREZ: Well, it was part of the
3 negotiations. Obviously, the City of Chino didn't agree
4 with that.

5 THE COURT: I understand that part, but is this a
6 result of -- this is what I couldn't -- I need some help in
7 elimination on. Is this a result of all the parties'
8 negotiations or is this Watermaster itself, or some
9 combination of the above? And, if so, how is the
10 combination working?

11 MR. GUTIERREZ: Well, in my view, it's the
12 responsibility of the appropriators. So that's -- that's
13 the first -- that's the first taking. There is a second
14 taking.

15 THE COURT: By?

16 MR. GUTIERREZ: By the appropriators again. This
17 is for a different purpose.

18 THE COURT: Okay.

19 MR. GUTIERREZ: What they want to do is they want
20 to reallocate the way water is allocated under the judgment
21 in such a way that the City of Chino is deprived of its full
22 right to receive what's called conversion claims. And the
23 reason they want to do that is because they want to use it
24 to offset their obligations to provide replenishment water
25 for the desalters. Under the Peace Agreement that led to
26 the desalters, there is a provision as to how the water will

1 be provided to the desalters because the desalters and the
2 desalter authority don't have any water rights to the basin
3 so they can't actually take the water, but they are taking
4 it under these various agreements whereby the Court at one
5 point in time approved just taking water from the basin and
6 also approved other ways to replenish that water. And
7 finally, when there is no other way to replenish water, all
8 the appropriators and the members of the Non-Ag Overlying
9 Pool are to be assessed to purchase water to replenish that
10 water that the desalters take. And that, the method that's
11 being proposed would, in effect, take water from the City of
12 Chino so that the other appropriators can satisfy part of
13 their obligation for that replenishment water. And the fact
14 of the matter is that that obligation is already in the
15 agreements. It was in the Peace I Agreement in 2000 and it
16 was in the Peace II Agreement in 2007. And they are seeking
17 to change that and they are seeking to change it at the
18 expense of the City of Chino.

19 THE COURT: They being the appropriators?

20 MR. GUTIERREZ: The appropriators.

21 THE COURT: Okay.

22 MR. GUTIERREZ: And actually, while the Overlying
23 Non-Ag Pool hasn't been actively involved in that, if these
24 provisions are changed, they too would get the benefit of
25 that because they have an obligation to repay replenishment
26 money in order to buy the water to offset what water the

1 desalters are taking from the basin.

2 THE COURT: I understand that. I had one other
3 question. In your paperwork you referred to the Santa Ana
4 River Underflow Plan. And I'm probably going to embarrass
5 myself, but that is news to me.

6 MR. GUTIERREZ: It's all Greek, your Honor.

7 THE COURT: Well, this was something I was not
8 aware of until I read it here.

9 What is the Santa Ana River Underflow Plan?

10 MR. GUTIERREZ: It's what I just finished
11 describing as the plan to take water from the safe yield in
12 order to reduce the appropriators' obligation to provide
13 replenishment water under the Peace Agreements. That's how
14 it's referred to. Their key principle document is called
15 Santa Ana River Underflow and I just shortened it to SARU.
16 I call it "The Plan" because that's the best thing I can do
17 with what I had at the time I prepared this document.

18 THE COURT: Thanks. I understand better now.
19 Thank you.

20 Anything further at this time, Mr. Gutierrez?

21 MR. GUTIERREZ: No, your Honor.

22 THE COURT: All right. We'll come back to you, if
23 necessary. All right.

24 Mr. Kidman, did you want to be heard next or
25 Watermaster?

26 MR. SLATER: Thank you.

1 THE COURT: Okay. Thank you. Go ahead, please.

2 MR. SLATER: Your Honor, Scott Slater on behalf of
3 Watermaster. So if I can to establish a context here.

4 THE COURT: Yes, please.

5 MR. SLATER: As your referee, Watermaster has for
6 at least 15 years served a role as trying to facilitate
7 agreements among the parties to bring them to your Honor so
8 that the Court can issue efficient orders that lead to
9 continuing, sustainable water management practices within
10 the basin.

11 I'm sure it does not escape the Court that the
12 State of California is in the midst of a pretty draconian
13 drought and the issue and the importance of water has
14 probably never been more important than it is today.

15 In almost a prescient fashion, Judge Gunn, back in
16 2000 and with a recommendation by the parties and an
17 endorsement by Watermaster, embarked on a path to manage the
18 Chino Basin and there has been constant, continuous check-in
19 and supervision beginning with Judge Gunn and now continuing
20 with you, your Honor. And one of the more recent agreements
21 and, in fact, going back to all the way to 2000, there was
22 the notion that the long-term safe or sustainable yield of
23 the basin was to be redetermined and reevaluated and reset
24 as authorized and envisioned by the judgment when there had
25 been adequate data that had been developed and analyzed by
26 the parties. And way back in 2000, you're predecessor,

1 Judge Gunn, pursuant to an agreement by all of the parties,
2 said that at least a ten-year period should go by where this
3 data could be collected, corroborated, analyzed before a
4 Safe Yield Reset could proceed.

5 Following 2010, Watermaster, with input from the
6 parties and at great expense, reviewed and analyzed data,
7 modeled that data and reached certain projections regarding
8 whether the long-term safe yield was flat, whether it was
9 declining and whether it was increasing, consistent with its
10 obligation, and then set upon a course to try to reach out
11 to the parties, the stakeholders, and come up with a plan on
12 how to move forward.

13 Over the past 24 months, the parties first amongst
14 themselves and then with facilitation by Watermaster through
15 myself, Mr. Herrema, and the Watermaster staff, divorced
16 from the Board, met with the parties since, really
17 effectively this
18 began -- was authorized in November and it began being
19 facilitated in earnest really in January. The parties met
20 constantly weekly, sometimes bi-weekly, in person,
21 telephonically, and there was an agreement that was reached
22 among many of the parties which established a
23 confidentiality which would be customary for similar
24 facilitation or mediation efforts. And I am bound as the
25 facilitator for that effort to honor the confidentiality of
26 the negotiations. Those negotiations continued with

1 deliberation, with great effort.

2 In fact, having done this job as a mediator in many
3 different contexts and in particular here on several
4 occasions, the parties really were grappling with difficult
5 issues. And then at the end of May, emerging from that
6 process was a set of key principles that was supported by a
7 substantial consensus of the parties to the judgment, by my
8 count approximately 90 percent of the production rights, and
9 by head count vastly greater. But not in the conclusion of
10 an agreement, your Honor, but in a set of key principles
11 that could lead to an agreement. Those key principles were
12 presented to the Board as principles, and all of the
13 undersigning parties agreed that they would exercise good
14 faith and best efforts to proceed to take those key
15 principles and reduce them to an agreement, very similar in
16 context to the agreements that have been presented to the
17 Court in the past.

18 But, your Honor, what you have to remember is
19 Watermaster itself is never party to the agreements among
20 the parties. As Mr. Gutierrez points out, Watermaster's job
21 is to the extension of the Court and a referee and to enable
22 the administration of the decree.

23 So in this instance, Watermaster is attempting to
24 facilitate through a separate settlement privilege, the
25 drafting of an agreement among the parties to present
26 initially to the Watermaster Board. There is no agreement,

1 no ink dry, no ink at all in a form of a signature block
2 that has been produced.

3 Now, I am confident and hopeful and bullish on our
4 prospects that as soon as this Thursday we will have an
5 opportunity to present a draft, a draft agreement to our
6 board. And the expected recommendation based upon my prior
7 reports to the Board is that the Board would then initiate a
8 process for review and consideration by all of the parties
9 to the judgment, by the pools independently and
10 collectively, by the advisory committee, and then based upon
11 their input and staff reports and technical reports, the
12 Board would then be able to fairly deliberate as to the
13 content, as to the wisdom of measures, as to any objections
14 that might be raised by City of Chino or any other party who
15 has not directly participated. Then and only then can the
16 Watermaster Board express its view as to the wisdom and
17 whether it chooses to endorse the agreement by the parties
18 to you. And in the end, you, your Honor, will be the final
19 arbiter of whether we should be ordered to proceed in
20 accordance with the terms that the parties are recommending.

21 So first the parties must sign an agreement, agree
22 to it, Watermaster would endorse it and bring it to you for
23 consideration. If and only if it is satisfied that the
24 concerns of the City of Chino and others have been addressed
25 or do not need to be for some reason, or are considered, but
26 the elements of why certain provisions are the way they may

1 be, I am precluded from discussing as the facilitator and
2 bound by the settlement and facilitation privileges. So
3 that's the background.

4 Second, the key point, no action by Watermaster
5 Board, it hasn't even been referred to the Watermaster Board
6 so it could be referred to the parties for input before it
7 can find its way back to you.

8 And I would say that I'm happy to answer any
9 questions, but I think I would make two points: The
10 judgment on its face, paragraph -- sorry I don't remember
11 the exact number.

12 THE COURT: That's okay.

13 MR. SLATER: The judgment itself reserves to
14 Watermaster the duty to permit, control, regulate, the
15 storage water in the basin. How Watermaster goes about that
16 is a subject of input, advice, counsel, from the parties,
17 the pools. And, of course, any storage management plan is
18 approved by you, your Honor, after you have an opportunity
19 to review whatever that may be. It's Paragraph 11.

20 THE COURT: Thanks.

21 MR. SLATER: The last point I would make is that
22 the subject of Santa Ana River Underflow and Santa Ana River
23 Underflow New Yield, it's not a new concept. It harkens
24 back to the Court's original approval of the Optimal Basin
25 Management Program, the OBMP, and the expenditure of
26 hundreds of millions of dollars and reliance on

1 infrastructure to be constructed by the parties. And the
2 intention of that program was to construct 40 MGD, million
3 gallons a day, of desalting capacity at the lower end of the
4 basin and to minimize loss or outflow from the basin into
5 the Santa Ana River on one hand, and to expand or induce
6 recharge from the Santa Ana River into the basin.

7 And why did we do that, your Honor? This Court
8 approved that because it was a strategy that would sustain
9 the long-term productivity of the basin for all of the
10 parties in the basin in the face of agriculture leaving the
11 southwesterly portion of the basin and replacing the leaving
12 departing agriculture with these new desalters.

13 The rights to those desalters have been
14 apportioned, allocated, provided for agreement. Many have
15 been in front of your Honor over the last -- and your
16 predecessor over the last 15 years.

17 So these are subjects that must be addressed by an
18 agreement that is, as I said, about to be referred to the
19 Board, to be referred to the parties before it can come back
20 to you. And that is a more robust context, and I am happy
21 to respond to any specific questions that you may have.

22 THE COURT: Actually, I don't have any for you at
23 this time, Mr. Slater. Thank you.

24 All right. Mr. Kidman, your turn.

25 MR. KIDMAN: Thank you, your Honor. I would like
26 to first state that what I have to say is said with great

1 respect to Mr. Gutierrez. We have been on the same side in
2 this case and numerous other instances before the Court, and
3 in this instance we happen to disagree.

4 I do agree with him on one thing, that it would be
5 improper for the Watermaster or Watermaster counsel to be
6 before the Court as an advocate for any particular position.
7 I believe that Mr. Slater has properly stated the context
8 that the Watermaster may endorse an agreement. But if there
9 is going to be a fight, that fight needs to be among the
10 parties before the Court. And in this instance, I'm afraid
11 I have to say and I feel like the City of Chino has taken,
12 let's just call it a very cheap shot here both at the
13 process that is still ongoing. The Safe Yield Reset is
14 still a work in progress and the issues that have been
15 created by it, even today, this morning, were under very
16 heavy discussion among the parties.

17 I would also like to also say that I feel that, and
18 this again, Mr. Gutierrez and I did agree on at the outset
19 of the current, quote, "facilitated process," that we needed
20 to try to provide a way that the facilitator, the mediator
21 if you will, would be independent and neutral.

22 And I would go on to add that I feel that
23 Mr. Gutierrez was the principal architect of an agreement
24 that we prepared that we refer to as the FANDA, and I can't
25 even tell you what that stands for. But that had allowed
26 this facilitation to move forward with the Watermaster's

1 counsel acting as the facilitator, but without the
2 involvement of the Watermaster Board because of the threat
3 that that tended to pose to his role as the facilitator.

4 THE COURT: Could FANDA be --

5 MR. KIDMAN: So, and he's done a very good job, I
6 might add.

7 THE COURT: Facilitation and Non-Disclosure
8 Agreement, something like that?

9 MR. KIDMAN: Yes, that's what it is.

10 THE COURT: Thank you.

11 MR. KIDMAN: And so we're not free to talk about
12 what the positions of the parties have been, any of us, and
13 certainly the facilitator is not. And neither is
14 Mr. Gutierrez because the City of Chino also signed that
15 agreement and the City of Chino has participated in all, or
16 certainly most of all of the negotiations that has gone on
17 to date, including the one this morning. So it's a work in
18 process now.

19 It's not fair for Mr. Gutierrez or the City of
20 Chino to bring its complaints, its interpretations of what
21 might come out of this agreement before the Court tempting
22 to prejudice the Court. None of the rest of us have the
23 opportunity at this point in time to fairly respond.

24 And consequently, I'd like to go back to the
25 Court's tentative. This needs to be put over until you have
26 a completely baked cake in front of you that the parties can

1 really address along with the Court. Thank you.

2 THE COURT: Thank you, Mr. Kidman.

3 Further argument or input? Yes, go ahead, please.

4 MS. EGOSCUE: Your Honor, briefly. Tracy Egoscue,
5 counsel for the Ag Pool.

6 THE COURT: Yes.

7 MS. EGOSCUE: What is before you today is a status
8 report filed by Watermaster counsel. You do not have the
9 complete record as both Mr. Kidman and Mr. Slater indicated
10 at this time. And, therefore, the Ag Pool represents to you
11 that the filing by the City of Chino is not appropriate at
12 this time, is not right for your review, and to that end, we
13 very much appreciate you indicating at the outset that you
14 will not be ruling today. Thank you.

15 THE COURT: Thank you, ma'am.

16 Any other argument, input from counsel? Let me
17 come back to you. Let me just get the second round
18 completed. Anything further before I come back to
19 Mr. Gutierrez? No other hands.

20 Mr. Gutierrez, go ahead please then.

21 MR. GUTIERREZ: Yes, your Honor. My focus is what
22 has been made public. It was made public on May the 25th to
23 the Watermaster Board by Mr. Slater and by myself. You
24 know, my objections that I'm saying today I stated then.
25 And one of my objections was that this process is much more
26 than just determining what the safe yield is. And what I'd

1 like you to keep in mind is that what is being talked about
2 now has nothing to do with the safe yield, for the most part
3 has to do with allocation of water rights among the parties.

4 While Mr. Slater made reference to Paragraph 11 of
5 the judgment, Paragraph 11 talks about the storage capacity
6 of the basin. It doesn't talk about the water in storage.
7 So there is a fundamental difference when we're talking
8 about whether or not Watermaster itself can be involved in
9 seeking to taking water from one of the parties.

10 Let me just go full circle then to one of the
11 things that Mr. Slater said, which is Watermaster is not a
12 party. That's true, it's not a party. And because it's not
13 a party, it's my belief and my request of the Court that the
14 parties bring their own issues to the Court in a proper
15 fashion because what is being done here is far, far greater
16 than what is being talked about. And I would leave it at
17 that but also seek an opportunity to have another matter
18 set. If you'd like me to file a formal motion, I will do
19 so.

20 THE COURT: Thank you. I have a question for
21 Mr. Slater if you can answer the question, and that would be
22 if a determination -- does a determination of safe yield
23 affect allocation?

24 MR. SLATER: Your Honor, the answer to that
25 question is, without invading the privilege --

26 THE COURT: Yes, if you can. That's why I said if

1 you can answer the question. If not, that's okay too.

2 MR. SLATER: I think as expressed openly in
3 countless public sessions, there is the viewpoint that
4 resetting the safe yield is a -- is a stewardship function
5 that the Watermaster broadly defined would undertake
6 pursuant to the OBMP, but there are implications when that
7 safe yield is reset if the yield is going to go down. And
8 to avoid the situation that your Honor sees in the NASA
9 photographs of what's happening in the Central Valley with
10 groundwater declines, this basin, we hope, is properly
11 managed and one that is being managed on a safe and
12 sustainable basis. If there is a decline in the safe yield,
13 there is an allocation and accounting financial consequence
14 to that, and one that I think would be best brought to the
15 Court's attention in the form of a complete record that goes
16 through what the -- what the elements and the financial and
17 the water consequences are of that safe yield decline, and
18 then the associated accounting questions.

19 I would finish with, as always, Watermaster's duty
20 is to administer the decree for the benefit of the Court and
21 to bring final decisions to you. The parties have
22 repeatedly told Watermaster that these issues are
23 inextricably intertwined with the Safe Yield Reset. And the
24 process was designed to redress all of the issues that the
25 parties believed required were required to be resolved
26 concurrent with the reset, and no more, no less.

1 THE COURT: All right. Thank you, Mr. Slater.

2 Okay.

3 MR. GUTIERREZ: May I respond just briefly?

4 THE COURT: Of course. Let me just hit this side
5 of the room again. Any further input?

6 MR. KIDMAN: Nothing further, your Honor.

7 THE COURT: Thank you, Mr. Kidman.

8 MS. EGOSCUE: Nothing further, your Honor.

9 THE COURT: Okay. Thank you. No one else.
10 You're turn, Mr. Gutierrez.

11 MR. GUTIERREZ: Let me answer your question you put
12 to Mr. Slater. Yes, if there is a Safe Yield Reset, that
13 has consequences to the allocation. Those consequences are
14 already spelled out in the judgment. Regardless of what the
15 amount is -- and there is a proposal to reduce the safe
16 yield number from 140 to something less than that -- but
17 regardless of what that number is, the judgment says how to
18 do it. There is no need to deal with any other allocation
19 issues because it's already in the judgment. But what is
20 going to be before you goes far beyond merely making the
21 allocation necessary for the reduction in the safe yield
22 that is going to be proposed. Thank you, your Honor.

23 THE COURT: Thank you. Any further argument,
24 input, questions from anyone who's a party to the lawsuit?
25 None.

26 Okay. Couple of things. The Court is not going to

1 make a ruling today. That's definite. The Court has not
2 been prejudiced by anything filed by any of the parties,
3 including the City of Chino.

4 The Court is not going to set a further briefing
5 schedule at this time and here's why: The Court is in a
6 position of ruling on final determinations, not interim
7 determinations. And the Court is not going to insert itself
8 into the negotiations conducted by Watermaster as an arm of
9 the court.

10 The Court finds that Mr. Slater and the Watermaster
11 are facilitating those negotiations and is in a much better
12 position to facilitate those negotiations than the Court
13 because Mr. Slater and Watermaster are much more intimately
14 involved with the details of negotiations among the parties
15 and the inner workings of how the parties produce and use
16 water in the Chino Valley.

17 Having said that, the Court's not prohibiting
18 anyone from bringing any further motions to the Court. I'm
19 not making -- I'm not prejudging or pre-ruling on anything.
20 But I don't see anything that requires the Court's rulings
21 today and I don't see any final situations requiring the
22 Court to set a briefing schedule.

23 Let me talk one step back. I don't see any final
24 situations, negotiations or agreements that require the
25 Court to make a ruling today or set up a briefing schedule
26 today, and so that's where I'm going to leave it.

1 MR. SLATER: Your Honor, I have one question then.

2 THE COURT: Sure.

3 MR. SLATER: So in the anticipation, and optimistic
4 anticipation that there were ultimately an agreement that
5 was referred out to the parties and that Watermaster is in
6 the position to endorse an agreement perhaps including the
7 City of Chino, we would then turn to you at that moment and
8 request a schedule for hearing to evaluate the proposal.

9 THE COURT: That's correct.

10 MR. SLATER: Thank you, your Honor.

11 THE COURT: That's where I am. And if someone,
12 again, wants to approach the Court with a motion, I'll
13 always deal with whatever is presented to me. I'm not
14 prohibiting anyone from doing anything. I'm expressing my
15 position based on what I've heard today and my position as a
16 legal philosophy that I prefer to have issues presented to
17 me that are right for a decision, not interim processes
18 requiring me to insert myself in a situation that I don't
19 think is appropriate. And not only is not appropriate, but
20 also mechanisms have been set up, namely through the
21 Watermaster and the Watermaster Board to resolve them before
22 they require judicial determination or help.

23 So is there any further questions or anything
24 counsel would like to address to the Court at this time?

25 MR. SLATER: No, your Honor.

26 THE COURT: Nothing further. Thank you. Thank you

1 everyone for your willingness to, again, assist the Court
2 and the time you've taken to come here. I know some of you
3 come from distances to participate in the hearing today. I
4 greatly appreciate counsels' assistance, all counsels'
5 assistance with respect to making determinations in this
6 very high-complex case.

7 MR. HERREMA: Thank you, your Honor.

8 (Counsel thank the Court collectively.)

9 THE COURT: And I'll sign your order, Mr. Herrema.

10 MR. HERREMA: Thank you.

11 MR. GUTIERREZ: Excuse me. Did you sign an order
12 for this case or not?

13 THE COURT: I signed an order with respect to the
14 intervention of --

15 MR. GUTIERREZ: Monte Vista --

16 THE COURT: Monte Vista Water.

17 MR. GUTIERREZ: Thank you.

18 THE COURT: Okay.

19 **(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 29, comprise a full, true, and correct transcript of the proceedings held in the above-entitled matter on Friday, August 21, 2015.

Dated this 11th day of September, 2015.

LAURA SANDERS, C-12273