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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. )  
CITY OF CHINO, )  
Defendant. )  
\_\_\_\_\_ )

CASE NO. RCVRS51010

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

FRIDAY, JANUARY 22, 2016

APPEARANCES:

FOR CHINO BASIN WATERMASTER: BROWNSTEIN HYATT FARBER SCHRECK  
BRADLEY J. HERREMA

FOR CHINO BASIN WATERMASTER: PETER KAVOUNAS, P.E.  
GENERAL MANAGER

FOR MONTE VISTA WATER DISTRICT: KIDMAN LAW, LLP  
STEVEN R. GUESS

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

FOR CITY OF CHINO: GUTIERREZ, FIERRO & ERICKSON  
ARTURO FIERRO

FOR THE APPROPRIATIVE POOL: JOHN J. SCHATZ

Reported by: LAURA SANDERS  
Official Reporter  
CSR No. 12273

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**APPEARANCES CONTINUED:**

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

FOR SAN ANTONIO WATER TERI LAYTON  
COMPANY:

1 RANCHO CUCAMONGA, CALIFORNIA; FRIDAY, JANUARY 22, 2016

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, Attorney at Law; appearing  
8 for Monte Vista Water, STEVEN GUESS, Attorney  
9 at Law; appearing for City of Chino, ARTURO  
10 FIERRO, Attorney at Law. Also present, PETER  
11 KAVOUNAS, Chino Basin Watermaster General Manager;  
12 TRACY J. EGOSCUE for Overlying Agricultural Pool,  
13 Attorney at Law; JOHN J. SCHATZ for the  
14 Appropriative pool, Attorney at Law; STEVEN M.  
15 KENNEDY for Three Valleys Municipal Water  
16 District, Attorney at Law; TERI LAYTON for San  
17 Antonio Water Company, Assistant Manager.

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

19 -oOo-

20 THE COURT: Hi, everybody. Please remain seated.  
21 Come to order. Okay.

22 So the first matter -- we're on the record and I do  
23 have your appearances, but if you wouldn't mind restating  
24 them for the record. Let's start with Mr. Herrema, please.

25 MR. HERREMA: Good afternoon, your Honor. Brad  
26 Herrema

1 from Brownstein, Hyatt, Farber, Schreck on behalf of Chino  
2 Basin Watermaster.

3 THE COURT: Thank you.

4 MR. FIERRO: Your Honor, Arturo Fierro on behalf of  
5 the City of Chino.

6 THE COURT: Good afternoon, Mr. Fierro.

7 MR. GUESS: Afternoon, your Honor. Steven Guess on  
8 behalf of defendant, Monte Vista Water District.

9 THE COURT: Good afternoon. Please be seated,  
10 everybody.

11 We also have present in the courtroom, make sure  
12 I've got everyone, Tracy Egoscue.

13 MS. EGOSCUE: Good afternoon, your Honor. Tracy  
14 Egoscue. I'm general counsel for the Ag Pool.

15 THE COURT: Thank you. E-g-o-s-c-u-e.

16 MS. EGOSCUE: Correct.

17 THE COURT: Pronounce your last name for me one  
18 more time.

19 MS. EGOSCUE: It's Egoscue, your Honor.

20 THE COURT: Egoscue. Thanks.

21 And Teri Layton.

22 MS. LAYTON: Good afternoon, your Honor. Teri  
23 Layton for the San Antonio Water Company. I'm a  
24 representative for the Chino Basin Watermaster Pool. I'm  
25 just here to observe.

26 THE COURT: Okay. Thank you. And let's see, we've

1 got Steven Kennedy.

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

4 THE COURT: Thank you. And, Mr. Kavounas.

5 MR. KAVOUNAS: Good afternoon, your Honor. Peter  
6 Kavounas. I'm the General Manager for Watermaster.

7 THE COURT: Thank you. And I think I got  
8 everybody. Did I miss anyone? Oh, yes, sir.

9 MR. SCHATZ: John Schatz, counsel for the  
10 Appropriative Pool.

11 THE COURT: We do not have a card for you and  
12 that's why I missed you.

13 MR. SCHATZ: I did hand one to somebody.

14 THE COURT: That's why I always try to double  
15 check. All right.

16 THE CLERK: I got it. Sorry.

17 THE COURT: No problem. That's why I always double  
18 check. Thanks, everybody.

19 And it's J-o-h-n, S-c-h-a-t-z. And Mr. Schatz,  
20 again, for whom are you appearing?

21 MR. SCHATZ: Yes, it's the Appropriative Pool.

22 THE COURT: Appropriative Pool. Okay.

23 MR. SCHATZ: Yes.

24 THE COURT: Thanks. The first matter the Court  
25 will take up this afternoon is the motion to reappoint the  
26 nine member Watermaster Board for a further three-year term.

1           As the Court mentioned in its memorandum that I got  
2 out Tuesday, the Court has not received any opposition from  
3 this, or for this I should say.

4           Mr. Herrema, did you receive any opposition?

5           MR. HERREMA: We did not, your Honor.

6           THE COURT: Anybody here present an opposition that  
7 I need to consider at this moment? No. Okay. All right.

8           There has been no opposition and the Court finds  
9 the motion is well-taken and justified under the law. So  
10 the Court's going to go ahead and sign the order at this  
11 time appointing the nine member -- reappointing the  
12 nine-member Watermaster Board for a further three-year term  
13 expiring February 10th, 2019. So, as I mentioned, I'm going  
14 to go ahead and sign that order now.

15           So, Mr. Herrema, that's completed.

16           MR. HERREMA: Thank you, your Honor.

17           THE COURT: And from your point of view, is there  
18 anything else the Court needs to do today?

19           MR. HERREMA: No, your Honor.

20           THE COURT: Okay. Thank you very much.

21           MR. HERREMA: And we will serve that order as we  
22 customarily do.

23           THE COURT: Correct. It almost goes without  
24 saying, but I appreciate you saying it.

25           MR. HERREMA: Thank you.

26           THE COURT: Sure. In fact, I think you have a

1 conformed copy there. Thank you very much.

2 All right. The other matter that the Court  
3 scheduled for hearing this afternoon is the notice of  
4 related case issue filed by the Kidman Law Group on behalf  
5 of Monte Vista Water District.

6 Mr. Guess, I got your name correct, right?

7 MR. GUESS: Yes, your Honor.

8 THE COURT: Yes, G-u-e-s-s, is appearing on behalf  
9 of Monte Vista Water District. Mr. Fierro is here on behalf  
10 of the City of Chino who filed an opposition, a response in  
11 opposition to the notice of related case.

12 The Court read and considered both the notice and  
13 the opposition. And before the Court made a ruling, the  
14 Court wanted to have a hearing on this so the Court could be  
15 fully advised before it made a final decision. And here's  
16 how the Court sees this so counsel can have some basis to  
17 make their argument. And here's the issue that the Court  
18 saw raised by the notice and the opposition:

19 The notice of related case has to do with the fact  
20 that these are both parties to the Watermaster Judgment of  
21 1978, and that this has to do with the notice of Safe Yield  
22 Reset Motion, I should say for Safe Yield Reset, which is  
23 currently under consideration by the Court.

24 The opposition of the City of Chino was based on  
25 the principle that the issues are really separate that the  
26 procedure that the Court -- excuse me -- the procedure that

1 the City of Monte Vista used with respect to the approval of  
2 its -- I should say the approval of the Safe Yield Reset as  
3 proposed by Watermaster and under consideration by the Court  
4 is different. It doesn't involve any of the similar issues  
5 and, therefore, the Court should not take jurisdiction of  
6 the case *City of Chino versus Monte Vista Water District, et*  
7 *al*, CIVDS1518055.

8 So first, before I proceed any further, let me turn  
9 to counsel first, Mr. Guess, and inquire if I summarized  
10 your position correctly. Is there something you'd like to  
11 add at this time?

12 MR. GUESS: Yes, your Honor.

13 THE COURT: And having said that, let me tell you  
14 how I -- based on the paperwork, this is how I see it. And  
15 the way I see it is to accept the jurisdiction, and here's  
16 why: The procedure that the City of Monte Vista used in  
17 reaching a result cannot be separated from the result  
18 itself. And although they do involve separate issues, they  
19 are part and parcel of the same transaction and same  
20 proceeding and an integral part of the motion for Safe Yield  
21 Reset, which is currently under consideration by the Court.  
22 And for those reasons, the tentative is to grant the related  
23 case notice, accept jurisdiction, and proceed on that basis.

24 Now having said that, and I always want to give  
25 counsel time to respond, if having heard that, Mr. Fierro,  
26 since the tentative is against you, if you need time to

1 consider, reformulate an argument, contact anybody, you're  
2 more than welcome to take some time. I can take a recess.  
3 We're in no particular hurry.

4 MR. FIERRO: No, your Honor. I think that the  
5 arguments are set out in our opposition to the notice. But  
6 I would point out further, your Honor, that --

7 THE COURT: Please.

8 MR. FIERRO: -- contrary to counsel's statement in  
9 the notice, these really are not the same parties. Our  
10 case, *Chino versus MVWD*, has two parties in it, the City of  
11 Chino, the Water District. The other case, the case that is  
12 before your Honor in this courtroom is the Chino Basin  
13 Municipal Water District which is now, obviously it's  
14 different, the *Watermaster versus the City of Chino*. And  
15 that case was resolved decades ago, as has been repeatedly  
16 pointed out to the Court and to us, 1978, the judgment.

17 THE COURT: Right.

18 MR. FIERRO: The only matter that is pending before  
19 the Court is Watermaster's motion regarding the approval of  
20 the Safe Yield Reset Agreement. That matter does not  
21 involve Monte Vista Water District. They are not a party to  
22 that pleading, that proceeding before this Court.

23 THE COURT: They are not a party?

24 MR. FIERRO: They are not, your Honor.

25 THE COURT: To the Watermaster case?

26 MR. FIERRO: To the specific motion that is before

1 the Court, which is the only matter that is pending.

2 THE COURT: Okay.

3 MR. FIERRO: So, I think we don't even meet the  
4 first step under Rule 3.300. They have to be the same  
5 parties in both actions. Monte Vista Water District is not  
6 a party to the present proceeding on Watermaster's motion.  
7 The motion was brought only by Watermaster against the City.

8 THE COURT: I'm with you now. Took me a minute to  
9 catch up. I'm with you now.

10 MR. FIERRO: Yes.

11 THE COURT: All right. I didn't mean to interrupt  
12 you, Mr. Fierro. Go ahead, please.

13 MR. FIERRO: And the approval of the -- well, the  
14 Safe Yield Reset Agreement by Monte Vista Water District, as  
15 the Court pointed out, our issue is with how they approved  
16 it in closed session we believe in violation of the Brown  
17 Act. That has nothing to do with the issues that are being  
18 litigated in the motion by Watermaster. It is the same  
19 agreement, but whether or not or how the agreement was  
20 approved by Monte Vista Water District does not affect --  
21 will not affect the ultimate result on the motion filed by  
22 Watermaster, your Honor.

23 So while it is the same agreement, it could have  
24 been any action that Monte Vista took. Our issue is with  
25 the procedure, not the substance of the agreement.

26 THE COURT: Okay. Thank you. Thank you,

1 Mr. Fierro.

2 Mr. Guess.

3 MR. GUESS: Your Honor, I don't want to argue  
4 against a favorable tentative so I will only respond if the  
5 Court is inclined to change its tentative.

6 THE COURT: Give me just one more minute. Give me  
7 a couple minutes and I'll be right back.

8 MR. GUESS: Okay. Thank you.

9 (Brief pause.)

10 THE COURT: Mr. Guess, I do have a question for  
11 you.

12 MR. GUESS: Yes, your Honor.

13 THE COURT: And that is, there are parties in the  
14 motion, or I should say in the case CID -- CIVDS1518055,  
15 namely, Sandra Rose, Tony Lopez, Phillip Irwin, Michael  
16 Milhiser, M-i-l-h-i-s-e-r, and Manny Martinez, who don't  
17 have anything to do and are not parties at all to anything  
18 having to do with the Watermaster case. Because it involves  
19 so many other parties other than the party Monte Vista Water  
20 District, who is involved in the Watermaster case although  
21 not technically a party, wouldn't that be a reason for the  
22 Court to not find that this is a related case because there  
23 are so many other parties that the Court is now going to be  
24 involved with that have nothing to do with the -- or not  
25 parties to the Watermaster case itself, the case being  
26 RCVRS51010, Mr. Guess?

1 MR. GUESS: No, your Honor. And I would make two  
2 points. The first is the other named defendants in the  
3 Brown Act lawsuit are all being sued essentially in a  
4 representative capacity as members of the board of the Monte  
5 Vista Water District. That's point number one.

6 Point number two, these cases should be deemed  
7 related for a number of different reasons, not just the  
8 common parties and the fact that both the Safe Yield Reset  
9 Agreement is a subject of a pending motion before this Court  
10 as well as the substance of it's the agreement that is the  
11 subject of the Brown Act lawsuit.

12 The fourth factor on the notice of related case  
13 talks about the substantial duplication of judicial  
14 resources. And I agree with one point made in the  
15 opposition, which is this case has been going on for decades  
16 and the Safe Yield Reset Agreement is a very complicated  
17 agreement. The proceedings before this Court are  
18 complicated and it would save substantial amount of judicial  
19 resources to have both the same judge consider the Safe  
20 Yield Reset Agreement in both cases.

21 The Brown Act case is not simply a question of  
22 procedure as has been argued here. The Brown Act case is a  
23 question of what may be approved in closed session. Now, I  
24 would submit to the Court that if a stipulation that was  
25 pending before this Court were considered in closed session,  
26 there would certainly be no question that the Monte Vista

1 Water District can approve a stipulation that would be  
2 submitted in court. It's clearly a litigation oriented  
3 decision and they need to be able to consult legal counsel  
4 privately.

5 So, the issue of what is the Safe Yield Reset  
6 Agreement is one of the fundamental questions in the Brown  
7 Act lawsuit. And this Court understands better than any  
8 other court what the Safe Yield Reset Agreement is and what  
9 its substance and content says. Now certainly, you know, we  
10 can make the same argument to multiple courtrooms, but it  
11 will save substantial resources for the same judge to  
12 consider those facts.

13 I also want to point to another issue which was  
14 raised in the opposition which I'd like to reply to, which  
15 is this idea that these two cases will be entangled and, you  
16 know, essentially trying to convert the standard for  
17 consolidation to the standard for what is a notice of  
18 related case. I would point the Court's attention to their  
19 prayer for relief, which is they want a temporary  
20 restraining order. So what affect would it have on this  
21 proceeding if another judge suddenly issued provisional  
22 relief affecting the Safe Yield Reset Agreement which is the  
23 subject of a pending motion before this Court? It isn't a  
24 question of entanglement. It's a question of can the Court  
25 preserve its jurisdiction in part over the Safe Yield Reset  
26 Agreement if there is another judge out there who could

1 issue a provisional remedy which would interfere with our  
2 ability to get the Safe Yield Reset Agreement approved. So  
3 in that respect, I think it's broader than just the common  
4 parties. And to the extent it is about the parties, the  
5 other named defendants are really being named in the  
6 representative capacities.

7 THE COURT: Thank you, Mr. Guess.

8 Mr. Fierro.

9 MR. FIERRO: Briefly, your Honor. The approval of  
10 the Safe Yield Reset Agreement is separate from what's going  
11 in this case before your Honor. And whether or not, or how  
12 Monte Vista Water District's board approved it will have  
13 nothing to do with what happens in this case on the  
14 hearing -- on the hearing on the motion by Watermaster. The  
15 board members used a certain procedure. We objected to it.

16 And counsel talks about request for relief. The  
17 relief we request is an injunction so that the board of  
18 Monte Vista Water District will follow the proper procedure  
19 under the Brown Act and possibly that future meetings be  
20 recorded, which we would be entitled to under the proper  
21 appropriate statutes, your Honor. That doesn't affect this  
22 Court's decision on the Safe Yield Reset Agreement at all.  
23 That can happen before. That can happen after. Monte Vista  
24 Water District's approval of the agreement will not affect  
25 this Court's decision on the motion.

26 MR. GUESS: Your Honor, if I may respond to that.

1 THE COURT: Yes, of course.

2 MR. GUESS: So, I'm looking at paragraph 22 of the  
3 Brown Act Complaint and it says, quote: "Petitioner's  
4 entitled to a writ of mandate demanding respondent to vacate  
5 and rescind the approval of the Safe Yield Reset Agreement."

6 If another judge has a situation like this before  
7 it and a temporary restraining order were requested, one of  
8 the things they could say is we need to delay the final  
9 approval of the Safe Yield Reset Agreement to the extent it  
10 is based upon the closed session approval from the Safe  
11 Yield Reset Agreement before the Monte Vista Water District,  
12 because if the Safe Yield Reset Agreement is approved based  
13 even in part on what is later determined by another judge to  
14 be an improperly approved agreement, it would be mooted. So  
15 you could see an argument by another judge who might want to  
16 intervene, essentially issue provisional relief in order to  
17 preserve the ability to get the relief they are asking for  
18 in their complaint.

19 And I am in no way suggesting there is any merit to  
20 their claims. I'm simply arguing that from a question of  
21 jurisdiction, another court would potentially have the  
22 ability to interfere with the motion that is pending before  
23 this Court.

24 And regardless of the representations of counsel,  
25 who I respect enormously, what the issue is is a question of  
26 whether or not it's related. And it's not about promising

1 what we will seek or not seek. It's simply are these cases  
2 related. The subject of the Brown Act lawsuit is the same  
3 agreement which is subject of a pending motion before this  
4 Court and, therefore, in an opinion of the Monte Vista Water  
5 District, the cases should be deemed related.

6 THE COURT: You get the last word, Mr. Fierro.

7 MR. FIERRO: Nothing further, your Honor.

8 THE COURT: Okay. Thank you. All right. The  
9 Court's going to grant the related case motion for the  
10 following reasons. Give me just one more moment.

11 The Court finds that the procedure for the  
12 determination of an agreement, the City of Monte Vista's  
13 agreement for the Safe Yield Reset is inseparably entangled  
14 with the result of that determination. That inseparable  
15 entanglement makes these cases sufficiently related for the  
16 Court to take jurisdiction of case CIVDS1518055. That's the  
17 first reason.

18 The second reason is the Court is concerned that  
19 with another judge becoming involved in this inseparable  
20 entanglement would be a problem with respect to inconsistent  
21 rulings in one case that would affect the rulings of the  
22 other case and interfere then with the prompt disposition of  
23 both the petition and complaint in the CIVDS1518055 case and  
24 the motion for Safe Yield Reset, which is pending before  
25 this Court.

26 Third, the Court finds that for economy of judicial

1 resources, one judge should be -- should handle both cases.  
2 And because I've got the lower number case, that would be my  
3 case here in Watermaster under Rule 3.300. And the  
4 exceptional complexity of the Watermaster case with the  
5 judgment having been filed in 1978, many motions having been  
6 filed over the years, and motions in which this Court has  
7 already been involved with so far make the efforts of  
8 another judicial officer coming up to speed and  
9 understanding the breadth, scope and nature of the  
10 underlying issues is just too difficult and too duplicative  
11 for another judicial officer to undertake.

12 So for those reasons, the cases are deemed related.  
13 The Court's going to take jurisdiction of the CIVDS1518055  
14 case. And that will be the order of the Court.

15 MR. FIERRO: Thank you, your Honor.

16 THE COURT: Thank you very much.

17 MR. GUESS: Thank you, your Honor.

18 THE COURT: Mr. Guess, would you prepare an  
19 order --

20 MR. GUESS: Yes, your Honor.

21 THE COURT: -- of the Court's rulings, please.  
22 Present it to Mr. Fierro for approval and if there is a  
23 dispute, I'll set a hearing. If there is no dispute, I'll  
24 go ahead and sign it and that will become part of the  
25 Court's record.

26 MR. GUESS: Yes, your honor.

1 THE COURT: Served on all parties.

2 MR. GUESS: Thank you, your Honor.

3 MR. FIERRO: Thank you, your Honor.

4 MR. HERREMA: Thank you, your Honor.

5 THE COURT: Thank you.

6 **(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 16, comprise a full, true, and correct transcript of the proceedings held in the above-entitled matter on Friday, January 22, 2016.

Dated this 26th day of January, 2016.

\_\_\_\_\_  
LAURA SANDERS, C-12273