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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, et al.,)

Defendants.)

CASE NOS. RCVRS51010
CIVDS1518945

CITY OF CHINO,)
Plaintiff,)

vs.)

CUCAMONGA VALLEY WATER)
DISTRICT, et al.,)

Defendants.)

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

FRIDAY, FEBRUARY 26, 2016

APPEARANCES:

FOR CITY OF CHINO:

GUTIERREZ, FIERRO & ERICKSON
ARTURO FIERRO
JIMMY L. GUTIERREZ

CUCAMONGA VALLEY WATER
DISTRICT:

BEST BEST & KRIEGER
PAETER GARCIA
CHARITY SCHILLER

JURUPA COMMUNITY SERVICES
DISTRICT:

ELLISON SCHNEIDER & HARRIS
ROBERT DONLAN

Reported by:

LAURA SANDERS
Official Reporter
CSR No. 12273

1 RANCHO CUCAMONGA, CALIFORNIA; FRIDAY, FEBRUARY 26, 2016

2 P.M. SESSION

3 DEPARTMENT R6

HON. STANFORD E. REICHERT, JUDGE

4 APPEARANCES:

5 Appearing for City of Chino, ARTURO FIERRO and
6 JIMMY L. GUTIERREZ; appearing for Cucamonga
7 Valley Water District, PAETER GARCIA and
8 CHARITY SCHILLER; also present for Jurupa
9 Community Services District, ROBERT DONLAN.

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

11 -oOo-

12 THE COURT: Let's turn to our civil matter on
13 calendar today, and that is the notice of related case
14 hearing the Court scheduled with respect to the *City of*
15 *Chino versus Cucamonga Valley Water District*, two cases, one
16 from Watermaster and one for the case which is the related
17 case, CIVDS1518945.

18 And, Counsel, could I get your appearances, please.

19 MR. FIERRO: Your Honor, Arturo Fierro for
20 plaintiff, City of Chino.

21 THE COURT: Good morning, Mr. Fierro. Afternoon
22 Mr. Fierro. And?

23 MS. SCHILLER: Good afternoon, your Honor. Charity
24 Schiller, Best Best and Krieger, on behalf of respondent,
25 Cucamonga Valley Water District.

26 THE COURT: Last name Schiller?

1 MS. SCHILLER: Schiller, that's S-c-h-i-l-l-e-r.

2 THE COURT: Schiller as in the poet.

3 MS. SCHILLER: Yes.

4 THE COURT: Thank you.

5 MR. GARCIA: Good afternoon, your Honor. Paeter

6 Garcia, P-a-e-t-e-r, Best Best and Krieger, appearing on

7 behalf of Cucamonga Valley Water District.

8 THE COURT: I've got two lawyers then for Cucamonga
9 Valley?

10 MR. GARCIA: Yes.

11 THE COURT: Thanks, everybody. Please be seated.

12 The Court scheduled this hearing as it did -- thank
13 you. Now I have everybody's cards. Thanks.

14 Mr. Gutierrez is also present in the court.

15 Mr. Gutierrez.

16 MR. GUTIERREZ: Yes, your Honor.

17 THE COURT: Good afternoon. Just wanted to say
18 hello, Mr. Gutierrez.

19 MR. GUTIERREZ: Thank you. Good afternoon.

20 THE COURT: And we've got a general manager here
21 from Jurupa Community Services District, JCSD. Good
22 afternoon, sir. That's Mr. Corbin, C-o-r-b-i-n. And
23 Mr. Donlan from Ellison, Schneider and Harris.

24 MR. DONLAN: Yes.

25 THE COURT: Good afternoon.

26 MR. DONLAN: Good afternoon.

1 THE COURT: All right. The Court scheduled this
2 hearing as it did with respect to a previous related case
3 issue having to do with Monte Vista Water District. And
4 before I took any further action with respect to the notice
5 of related case, I wanted to hear from counsel. The Court
6 has been -- will state for the record that the Court has
7 been working through a very extensive motion having to do
8 with the reset of the Safe Yield from the Chino Basin
9 reducing it from 140,000 acre feet per year to 135,000 acre
10 feet per year. And there are ancillary issues with respect
11 to the motion having to do with -- there are two other
12 issues, which I was not -- I thought I had memorized, but I
13 don't. One having to do with safe measures, I'll call it,
14 and water accounts, and the other having to do with --
15 Counsel, could you remind me? There were three issues in
16 the motion.

17 MR. GARCIA: Storage, your Honor. Storage, housing
18 and desalter replenishment.

19 THE COURT: Yes, desalter replenishment. That was
20 the other one.

21 Before I go on, if I could just, on the same
22 motion -- and this is off topic. I'll admit it right now.
23 But as I was working through the motion, the Court was
24 having some difficulty understanding the nature of what
25 reoperation water was.

26 Could either counsel at the table, since this is

1 off topic and outside the issue of the motion, or counsel in
2 the audience help the Court understand this concept a little
3 better? I see Mr. Gutierrez coming up.

4 MR. GUTIERREZ: I can give you a brief comment on
5 it, I think. Mr. Garcia may want to offer something too.

6 THE COURT: Thank you.

7 MR. GUTIERREZ: The reoperation refers to the
8 extraction of water from the safe -- from the basin in the
9 sum of 400,000 acre feet without a replenishment obligation.
10 In other words, under the judgment, when water is taken out
11 in excess of the Safe Yield, there is no obligation that
12 that water be replenished. The Court made a ruling -- I
13 don't remember. It was in the 2000 order by Judge Gunn --
14 that in order to operate the desalters, the parties needed
15 help, and that help came in the form of being able to
16 extract 400,000 acre feet of water from the basin.

17 THE COURT: It went up from like 200,000 to
18 600,000?

19 MR. GUTIERREZ: The judgment originally provided
20 for 200,000, but that was back in '77 and that water was
21 already used.

22 THE COURT: Okay.

23 MR. GUTIERREZ: So the reoperation water was
24 400,000 acre feet.

25 THE COURT: Okay.

26 MR. GUTIERREZ: And there is no obligation to

1 replenish that. Some of that has been utilized but there is
2 still some leftover or that hasn't been utilized yet. And
3 the idea was -- the reason this was authorized, your Honor,
4 was so that the water level in the south end of the basin
5 could be depressed and thereby create a gradient which would
6 draw water from the Santa Ana River back into the basin, as
7 had occurred when there was a full amount of agricultural
8 production. When the agricultural people stopped producing,
9 then that raised the basin and water was leaving the basin
10 into the river and down to Orange County.

11 The idea of the desalters was to -- was to -- the
12 terminology for that is hydraulic control.

13 THE COURT: Yes.

14 MR. GUTIERREZ: Meaning that the level of water in
15 the south end of the basin would be reduced so that water
16 from the basin wasn't lost into the river, and secondly, the
17 water from the river would come back in the basin.

18 Now, in order to accomplish that, we needed to take
19 more water out and 400,000 acre feet was authorized for that
20 purpose. And that whole concept is referred to both as
21 reoperation or reoperation water and hydraulic control.
22 It's all related.

23 THE COURT: Is it essentially the same concept?

24 MR. GUTIERREZ: Yes, it's all related, your Honor.

25 THE COURT: Okay.

26 MR. GUTIERREZ: So the concept is to keep water

1 from the basin from going into the river and drawing river
2 water back in the basin. To do that, we needed to lower the
3 water level and there was an authorization to take the
4 400,000 acre feet.

5 THE COURT: I'm good on the concept of hydraulic
6 control. I was a little fuzzy on the idea of reoperation
7 water.

8 So after the water is extracted by the desalters,
9 is it desalted and then produced by the Appropriative Pool?
10 Is that what happens to the water after it's extracted by
11 the desalters?

12 MR. GUTIERREZ: Generally, yes, but it's extracted
13 by the desalters by wells and cleaned by the desalters.

14 THE COURT: Right.

15 MR. GUTIERREZ: But it's done by another agency.
16 The agency is the Chino Basin Desalter Authority, which is a
17 joint powers authority between five public entities that are
18 members that are appropriators as well.

19 THE COURT: Right. The City of Chino is one those,
20 isn't it?

21 MR. GUTIERREZ: Yeah. The agencies are the City of
22 Chino Hills, the City of Chino, the City of Ontario, The
23 city of Norco, Jurupa Community Services District and a
24 private water company called the Santa Ana River Water
25 Company, which is a mutual water company. And then now
26 Western Municipal Water District has become a party of that

1 too, so it's a member of the desalter authority. The
2 desalter authority actually operates the wells and the
3 desalters. And the original financing of \$105,000,000 came
4 by the selling of bonds, which the desalter authority must
5 repay and it repays them by the contracts that it has with
6 the various agencies I mentioned, each of which has pledged
7 an annual amount of money in exchange for that water to pay
8 for the capital cost of installing and operating the
9 desalters.

10 THE COURT: Okay. Thank you for the explanation.
11 I think I got it.

12 MR. GUTIERREZ: So the reoperation water refers to
13 the 400,000 acre feet, and it's there in order to achieve
14 hydraulic control.

15 THE COURT: Got it. Okay. Thanks.

16 Mr. Garcia, did you want to add something?

17 MR. GARCIA: I'd only add, your Honor, that I
18 appreciate Mr. Gutierrez keeping it pretty factual.
19 Frankly, I feel uncomfortable without the other parties
20 present to talk about the issue, particularly without
21 Watermaster counsel being present.

22 THE COURT: I understand that, too, and I just
23 thought it was a pretty factual definition. If it would
24 have turned into argument, I would have stopped him.

25 MR. GARCIA: Thank you.

26 THE COURT: I just needed just a little insight,

1 which I appreciate Mr. Gutierrez giving. Thank you.

2 And I'll just state for the record that I'm working
3 on this almost daily. Even though I keep postponing the
4 hearing, it's not for lack of effort. On the weekends and
5 in the evenings, which is when I'm working on it mostly
6 because I'm very busy in trial ordinarily during court
7 hours. But I'm making good progress on it and I appreciate
8 the briefing all the counsel have done and I'm working my
9 way through it.

10 Part of that briefing leads me to the notice of
11 related case issues because the CEQA case, which the City of
12 Chino filed against the Cucamonga Valley Water District,
13 case number CIVDS1518945, in the Court's view, and I'll
14 state this right at the beginning as an indicated, is
15 related to the Chino Valley Watermaster case because, in
16 fact, it's raised as an opposition to the Safe Yield Reset
17 Agreement and is argued extensively, both in the opposition
18 of the City of Chino and in the reply of Watermaster. So
19 one of the reasons I called this hearing is -- the main
20 reason I called this hearing is to see if I was missing
21 anything because it looked to me like these were definitely
22 related cases. And there was no objection filed as well.

23 So, Mr. Fierro, you're on the receiving end, so to
24 speak, on the notice of related case so I'll hear from you
25 first.

26 MR. FIERRO: Your Honor, we went through this

1 exercise as your Honor pointed out with the Monte Vista
2 Water District case. We lost there and we believe there
3 wasn't any good point -- good reason to object to this one.
4 We believe it's a different case, closer call, so we didn't
5 see any point in objecting.

6 THE COURT: Okay. Thank you. All right.

7 And Ms. Schiller.

8 MS. SCHILLER: Your Honor, if the Court wishes to
9 hear more details, we're happy to submit them, but we agree
10 with the Court's analysis that the two cases are inseparably
11 intertwined.

12 THE COURT: Okay. That's the conclusion the
13 Court's drawn then. They really are. So the Court's going
14 to go ahead and find that the Chino Valley Water case, which
15 is the -- give me just a moment -- RCVRS515 -- I knew I was
16 going to get the number wrong. The RCVRS51010 case is
17 related to the City of Chino, *City of Chino versus Cucamonga*
18 *Valley Water District* in case CIVDS1518945 and I'm going to
19 -- and because the Watermaster case is the lower number, I'm
20 going to order the, call it the CEQA case as a shorthand
21 way, the Chino Valley Watermaster CEQA case to be assigned
22 to me for all purposes forthwith, and I'll be issuing an
23 order to that effect essentially with very similar findings
24 to the ones that I did with respect to Monte Vista's
25 hearing.

26 So unless there is something further I need to

1 address or if you'd like me to schedule a status conference,
2 I can do that.

3 MR. FIERRO: Your Honor, it's my understanding that
4 today was --

5 THE COURT: Excuse me. Counsel in the box, can we
6 just hold it down a little. Thanks. Go ahead.

7 MR. FIERRO: It was my understanding that today was
8 for a status hearing on this matter.

9 THE COURT: Yes. Thank you. There was. The Court
10 was aware that there was a status hearing set yesterday in
11 Judge Alvarez's courtroom and I'm glad he continued it to
12 today.

13 What's the status, Mr. Fierro?

14 MR. FIERRO: Yes, your Honor. We have recently
15 filed or served on opposing counsel a notice of election to
16 prepare the record, so we are working on that. We will
17 expect that we will have it done fairly soon. It's not a
18 complicated matter so we're working on that and sent it to
19 counsel for review and approval. And then really it's just
20 a question of a briefing schedule and a hearing date, your
21 Honor.

22 THE COURT: I don't mean to make light of the case,
23 but I thought it was -- I remember the word oxymoron, but I
24 thought it was an oxymoron, but also heard it pronounced
25 that way, to refer to a CEQA case as relatively simple.
26 There is no such thing as a relatively simple CEQA case.

1 MR. FIERRO: That may be true, your Honor.

2 THE COURT: We'll need to address that.

3 Ms. Schiller, do you want to add something at this
4 point?

5 MS. SCHILLER: Yes, your Honor, just two brief
6 updates. First, we did have the CEQA settlement meeting as
7 is required under the statute. At this point we don't -- we
8 have not set another settlement meeting. It's unclear if
9 the parties will be able to reach settlement.

10 THE COURT: Okay.

11 MS. SCHILLER: The other update I would provide the
12 Court is that we have been meeting and conferring with
13 Mr. Fierro's office regarding Cucamonga Valley Water
14 District's potential intent to file a demurrer and we are
15 complying with the new CCP rules, your Honor, so we are
16 going through the meet and confer process now and we'll see
17 how that goes before making a final determination whether to
18 file a demurrer.

19 THE COURT: Thank you. Off the record.

20 (Court makes a comment off the record.)

21 THE COURT: Back on the record.

22 So I appreciate counsels' willingness and
23 professionalism with respect to meeting and conferring to
24 comply with the new CCP requirements of meeting and
25 conferring before filing the demurrer.

26 The Court also would request as counsel is

1 preparing the record on this matter, if they would -- when
2 it finally is ready to submit, if they would also give me a
3 disk.

4 MR. FIERRO: Yes.

5 THE COURT: I understand that makes things much
6 easier for everyone involved with respect to the analysis of
7 the record and the preparation of the rulings. So if you'd
8 keep that in mind as you're working through it, I'd greatly
9 appreciate it.

10 MR. FIERRO: And if I may, your Honor, since we're
11 on that topic. Our practice has been to prepare a hard copy
12 record as well as a disk, and I wanted to ask if whether
13 this Court has any preference as to whether you need the
14 hard copy.

15 THE COURT: That's a good question. Yes, and I'll
16 tell you why. I actually am going to get a little research
17 assistance on this case, which is, in my experience on the
18 Watermaster case, a first. I've done everything on the case
19 all the time myself. But for the CEQA matters, I have some
20 judicial help, judicial trial attorney help and I believe
21 that they would like to have it on a disk as well as the
22 hard copy. So if you would prepare that, I'd appreciate it.

23 MR. FIERRO: I'd be happy to.

24 THE COURT: All right. Do we need to set up a
25 briefing schedule then or do we need to dispose of the
26 demurrer issue first?

1 MS. SCHILLER: Your Honor, if it meets with the
2 Court's approval and if Mr. Fierro agrees, it might be
3 appropriate to set a follow-up status hearing maybe 60 days
4 out. If we do end up demurring, we can do that by that
5 time. If not, I imagine -- our offices have been working
6 together very well, your Honor. We can perhaps submit a
7 stipulated briefing schedule.

8 THE COURT: Sounds good. Mr. Fierro.

9 MR. FIERRO: That's fine, your Honor, but I kind of
10 would rather move it along a little bit faster, so if we can
11 do it 30 days instead.

12 MS. SCHILLER: That would be fine, your Honor.

13 THE COURT: Okay. You want me to set it 30 days.
14 How about this? Right now, I think I've got April 8 for the
15 -- yes, I hear some chuckles from the audience which is well
16 taken I must say, for D Day, MW day, when all of the
17 hearings are going to be for the motions that have been
18 filed, briefed and on which the Court is working diligently.
19 How about setting that for a status conference date too
20 then?

21 MS. SCHILLER: Your Honor, I will be out of the
22 country that day, but one of my colleagues actually will be
23 able to cover.

24 THE COURT: Last time I checked, Best Best and
25 Krieger had a quite a few.

26 MS. SCHILLER: We do, your Honor.

1 THE COURT: Somebody may be able to cover that for
2 you, perhaps Mr. Garcia.

3 So, I'll go ahead and prepare the ruling myself on
4 this one. It will be in a minute order then filed in both
5 cases, both the Watermaster case and what I call the CEQA
6 case now. And that's a little different than the last time,
7 but I think it's just easier for me to do it this time,
8 which is what I'll do.

9 And so is there anything else I should cover at
10 this time, Mr. Fierro?

11 MR. FIERRO: No, your Honor, I can't think of
12 anything.

13 THE COURT: Ms. Schiller?

14 MS. SCHILLER: No, your Honor. Thank you.

15 THE COURT: Mr. Garcia?

16 MR. GARCIA: No, your Honor. Thank you.

17 THE COURT: Thanks, everybody, for coming. I
18 appreciate your willingness to give the Court just a little
19 bit of insight. Thank you, Mr. Gutierrez, for the
20 additional insight.

21 MR. GUTIERREZ: You're welcome, your Honor.

22 THE COURT: I did not consider it argument. If I
23 did, I would have stopped it, as I mentioned.

24 And, of course, with respect to the Court's
25 rulings, I hope to have -- I will certainly have a tentative
26 ruling as I did I think it was a number of years ago, an

1 extensive tentative ruling which I certainly will have at
2 the time of the hearing on the afternoon of April the 8th.
3 My goal is to have it out a day or two ahead of time to give
4 counsel a chance to look at it because it's going to be -- I
5 can tell right now it's going to be extensive. But I might
6 not make that goal. I'm working on it as hard as I can
7 given the amount of time that I've got.

8 So if there is anything else counsel want to
9 address with the Court, now is the time to do it.

10 Mr. Fierro? Mr. Gutierrez?

11 MR. FIERRO: No, your Honor, we're fine.

12 THE COURT: Thanks, everybody.

13 MR. GARCIA: Thanks, your Honor.

14 MS. SCHILLER: Thank you, your Honor.

15 THE COURT: In the notice of related case, I will
16 also notice the status conference then for the hearing so
17 counsel doesn't have to worry about that either.

18 MS. SCHILLER: Thank you, your Honor.

19 THE COURT: Yes, for April the 8th at 1:30 as well.
20 I'll put that in as well.

21 Thanks, everybody, for coming.

22 MR. FIERRO: Thank you, your Honor.

23 MR. GARCIA: Thanks, your Honor.

24 THE COURT: See you in April. Thanks.

25 **(Proceedings concluded.)**

26 --oOo--