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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

DEPARTMENT S35

HON. STANFORD REICHERT, JUDGE

CHINO BASIN MUNICIPAL)
WATER DISTRICT,)

Plaintiff,)

-vs-

CITY OF CHINO, et al.,)

Defendants.)
-----)

Case No. RCVRS51010

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

FRIDAY, APRIL 28, 2017

APPEARANCES:

FOR CHINO BASIN WATERMASTER:	SCOTT SLATER Attorney at Law BRADLEY HERREMA Attorney at Law
FOR JURUPA COMMUNITY SERVICES DISTRICT:	ROBERT E. DONLAN Attorney at Law
FOR WESTERN MUNICIPAL WATER DISTRICT:	DAVID ALADJEM Attorney at Law
FOR CCG ONTARIO, LLC:	FREDERIC A. FUDACZ Attorney at Law GINA NICHOLLS Attorney at Law
FOR CUCAMONGA VALLEY WATER DISTRICT:	PAETER E. GARCIA Attorney at Law

APPEARANCES CONTINUED

1		
2	FOR JURUPA COMMUNITY SERVICES DISTRICT:	CHRISTOPHER M. SANDERS Attorney at Law
3		
4	FOR POMONA CITY:	THOMAS S. BUNN, III Attorney at Law
5		
6	FOR OVERLYING AG POOL:	TRACY J. EGOSCUE Attorney at Law
7		
8	FOR STATE OF CA, DOJ, OFFICE OF THE ATTORNEY GENERAL:	CAROL A.Z. BOYD Attorney at Law MARILYN H. LEVIN Attorney at Law
9		
10	FOR CITY OF CHINO:	JIMMY GUTIERREZ Attorney at Law
11		
12	FOR THREE VALLEYS MUNICIPAL WATER DISTRICT:	STEVEN M. KENNEDY Attorney at Law
13		
14	FOR INLAND EMPIRE UTILITIES:	JEAN CIHIGOYENETCHE Attorney at Law MARTIN CIHIGOYENETCHE Attorney at Law GREGORY D. TROSS Attorney at Law
15		
16	FOR MONTE VISTA WATER DISTRICT:	ARTHUR KIDMAN Attorney at Law ANDREW GAGEN Attorney at Law
17		
18	FOR APPROPRIATIVE POOL COMMITTEE:	JOHN J. SCHATZ Attorney at Law
19		
20		
21	REPORTED BY:	LINDY J. CASTRO Official Court Reporter CSR No. 13180
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1 SAN BERNARDINO, CALIFORNIA, FRIDAY, APRIL 28, 2017

2 P.M. SESSION

3 DEPARTMENT S35

HON. STANFORD REICHERT, JUDGE

4 APPEARANCES:

5 (Appearances as heretofore noted.)

6 -oOo-

7 THE COURT: Good afternoon, everybody. So the
8 first thing I need to do is take some appearances. I've
9 got a big group here this afternoon. So let me just
10 start here with Mr. Slater here on behalf of
11 Watermaster.

12 MR. SLATER: I am.

13 THE COURT: I'm going to work down the cards that
14 I've got and make sure that I got all the appearances
15 from the cards. I've got Marilyn Levin here.

16 MS. LEVIN: Yes.

17 THE COURT: State of California, Department of
18 Justice.

19 I've got David Aladjem.

20 MR. ALADJEM: Aladjem, your Honor. Good
21 afternoon.

22 THE COURT: On behalf of Western Municipal Water
23 district.

24 I also have Bradley Herrema here.

25 MR. HERREMA: Good afternoon, your Honor.

26 THE COURT: Good afternoon. I won't forget you,

1 of course, next to Mr. Slater.

2 Then Thomas Bunn for the City of Pomona.

3 MR. BUNN: Here, your Honor.

4 THE COURT: Good afternoon, sir.

5 And Andrew Gagen from Kidman Law Group, Monte
6 Vista Water District.

7 MR. GAGEN: Good morning.

8 THE COURT: And we've got Carol Boyd, State of
9 California, again, for California Department of
10 Corrections.

11 MS. BOYD: That's correct, your Honor.

12 THE COURT: And rehabilitations.

13 We've got Mr. Donlan here, Robert Donlan on
14 behalf of Jurupa Community Services.

15 MR. DONLAN: Here, your Honor.

16 THE COURT: Good afternoon, Mr. Donlan.

17 And we've got Mr. Schatz here for the
18 Appropriative Pool.

19 MR. SCHATZ: Good afternoon.

20 THE COURT: We've got Peter Garcia here for
21 Cucamonga Water District.

22 MR. GARCIA: Good afternoon, your Honor.

23 THE COURT: Afternoon, sir.

24 And then Gregory Tross here on behalf of Inland
25 Empire Utilities Agency.

26 MR. TROSS: Good afternoon, your Honor.

1 THE COURT: Thank you, sir.

2 And we've got Tracy Egoscue on behalf of the
3 Overlying Agricultural Pool.

4 MS. EGOSCUE: Good afternoon, your Honor.

5 THE COURT: Good afternoon.

6 And we've got Martin Cihigoyenetché.

7 MR. MARTIN CIHIGOYENETCHE: Good afternoon, your
8 Honor.

9 THE COURT: Okay. On behalf of Inland Empire
10 Utilities Agency.

11 And Mr. Gutierrez is here.

12 MR. GUTIERREZ: Present. Good afternoon, your
13 Honor.

14 THE COURT: On behalf of the City of Chino.

15 And Jean Cihigoyenetché.

16 MR. JEAN CIHIGOYENETCHE: Good afternoon, your
17 Honor.

18 THE COURT: A father/son on behalf of IEUA, thank
19 you, Inland Empire Utilities Agency. And I identified
20 Mr. Herrema already.

21 And we've got Steven Kennedy on behalf of Three
22 Valleys Municipal Water District.

23 MR. KENNEDY: Good afternoon, your Honor.

24 THE COURT: Good afternoon, sir.

25 And Christopher Sanders on behalf of Jurupa
26 Community Services District.

1 MR. SANDERS: Good afternoon, your Honor.

2 THE COURT: Good afternoon, sir.

3 And we've got two lawyers here for the City of
4 Ontario. Frederic Fudacz.

5 MR. FUDACZ: Here, your Honor. Good afternoon.

6 THE COURT: And Gina Nicholls.

7 MS. NICHOLLS: Good afternoon, your Honor.

8 THE COURT: Good afternoon.

9 And Mr. Kidman on behalf of Monte Visits Water
10 District.

11 MR. KIDMAN: Good afternoon, your Honor.

12 THE COURT: Good afternoon, sir.

13 Are there any attorneys or appearances that I
14 didn't call that I need to identify here in the audience
15 in the courtroom? Anyone? By show of hands. It's like
16 picking a jury. No hands. So we've identified all the
17 people who are here for the hearing.

18 Let me start with a couple of things right from
19 the get-go. And the first item for the Court to address
20 is Mr. Fudacz's -- where are you Mr. Fudacz? There you
21 are -- and Ms. Nicholls's filing that came in yesterday
22 on the request by the Chino Basin Desalter Authority
23 Member Agencies regarding Desalter pumping. That
24 request is granted forthwith, and I prepared an
25 additional order, which I identified on the board and
26 the screen -- the overhead projector -- and in a

1 supplemental cover memorandum with respect to revised
2 orders with my explanation as to why that is granted.

3 And the Court is actually not going to take any
4 argument on that issue, because in the Court's view, it
5 was simply erroneous. And I was wrong. And so it is
6 not going to be addressed any further than it's already
7 been addressed in the revised order, which the Court
8 provided all counsel copies on the counsel table -- a
9 number of copies of the cover memo which identified the
10 specific lines in the proposed orders that were deleted,
11 and additional complete orders, three copies, in the
12 courtroom earlier before the hearing which reflected the
13 deletions. In case anyone had a question with respect
14 to the context of what was deleted and what remains.

15 So I've addressed -- I wanted to address that
16 immediately.

17 Next, this has been quite a road that we've
18 covered. And the Court, after careful consideration of
19 all of the briefing, has come down to one issue. And
20 that is the recalculation. And so there was additional
21 briefing from the parties with respect to whether the
22 Court should define this as a reset. The tentative
23 order indicates that the Court is not going to identify
24 or define it as a reset but a recalculation for the
25 reasons set forth in the tentative order.

26 Let me turn to you first, Mr. Slater.

1 MR. SLATER: Thank you, your Honor. Let me
2 start, if I can, with a thank you. And I think I'm
3 hopefully going to make your day a little easier because
4 I'm prepared to present a common position from all
5 parties on this point for you.

6 THE COURT: Okay.

7 MR. SLATER: But I'd like to start with just a
8 thank you from Watermaster, all of the parties who have
9 been here, been in front of you, and we realize the
10 great burden that this matter has placed upon the Court.
11 The extensive pleadings, the countless hours that your
12 Honor has had to spend evaluating this, and we
13 appreciate that you were aware of the importance of the
14 Basin and managing it correctly. We have profound
15 respect for your willingness to entertain us and give us
16 your full attention and support the matter.

17 THE COURT: Let me stop you there and say the
18 respect is mutual for all the counsel and their hard
19 work and briefing. Court really appreciates it. It is
20 a matter of patience and persistence on all sides. And
21 the Court really appreciates the patience and
22 persistence with respect to advising and briefing the
23 Court through this process.

24 Let me express my own gratitude to everyone who
25 is here. You, Mr. Herrema, the people who have taken
26 the lead; Mr. Kidman, the new briefing I got from

1 Mr. Fudacz, and the additional briefing that was filed
2 City of Chino. Of course, Mr. Gutierrez, the responding
3 AP members, Jurupa Community Services. Thank you.
4 Thank you, Jurupa City Community Services, in particular
5 who have -- I hope I haven't missed someone. Sounds
6 like an Academy Awards speech. Thanking the people for
7 helping the Court resolve these issues. Which in the
8 Court's view, are complicated. So, thank you. Respect
9 is mutual.

10 MR. SLATER: So, your Honor, I also didn't point
11 out with us today we have four of our board members here
12 today from Watermaster. They have worked tirelessly
13 along with the parties and the staff. Of course we have
14 our staff here today. Maybe I should introduce the
15 board members. Stand up, please.

16 Mr. Curatalo.

17 THE COURT: I'm sorry. Wait. If you start
18 again, maybe. We'll need the spelling of your name.

19 MR. CURATALO: James Curatalo, C-u-r-a-t-a-l-o.
20 I have the honor of servicing as board chair of Chino
21 Basin.

22 THE COURT: Thank you, Mr. Curatalo. Please be
23 seated.

24 MR. VANDEN HEUVEL: Geoffrey, G-e-o-f-f-r-e-y,
25 Vanden Heuvel, V-a-n-d-e-n H-e-u-v-e-l. I represent the
26 Agricultural Pool and have from the beginning.

1 THE COURT: Thank you very much. Please be
2 seated. Next.

3 MR. KUHN: Bob Kuhn, K-u-h-n, representing Three
4 Valleys Municipal Water District on the board.

5 THE COURT: Thank you very much, Mr. Kuhn.

6 MR. FILIPPI: Gino Filippi, F-i-l-i-p-p-i. Chino
7 Basin Watermaster Board.

8 THE COURT: Thank you, Mr. Filippi.

9 MR. GEYE: And Brian Geye, B-r-i-a-n G-e-y-e.

10 THE COURT: Thank you, Mr. Slater, for making
11 those introductions.

12 MR. SLATER: And also, I know you see his
13 declarations from time to time. This is the famous
14 Mr. Wildermuth.

15 THE COURT: Mr. Wildermuth, I recognize your
16 name. I don't even need the spelling of it.

17 MR. SLATER: Our general manager, Peter Kavounas.

18 THE COURT: Mr. Kavounas, don't need your
19 spelling either. Thank you so much.

20 MR. SLATER: And Ed Edgar.

21 MR. EDGAR: Good afternoon.

22 MR. SLATER: So my point would be behind this,
23 it's our intention as the servant of the court to
24 implement your order consistent with our best good faith
25 understanding of it. And from this moment forward, we
26 hope to continue to make progress on implementing the

1 OBMP.

2 I think which brings us to -- other than there
3 might be a comment from counsel on another matter on the
4 issue that you've reserved -- I believe we have a common
5 position.

6 THE COURT: Okay.

7 MR. SLATER: And in all of this paper, I hope
8 your Honor will be forgiving and appreciate that
9 nomenclature can be mixed and sometimes confusing. We
10 don't -- no party, to the best of our knowledge,
11 actually intended to argue to you that a recalculation
12 was somewhat different than a redetermination or a
13 reset. So we are uniform in our resolve and in our
14 position that, indeed, a recalculation as you've
15 suggested will occur or has occurred.

16 THE COURT: Okay.

17 MR. SLATER: Concurrent with your order. So
18 that's the first point. And so in setting at 135, that
19 is a reduction. So the second point is that there will
20 be a 5,000 acre-foot reduction. And that will be
21 applied consistent with the first priority, which is in
22 Exhibit H, paragraph 10A.

23 THE COURT: Exhibit H, paragraph 10A is, just so
24 we're absolutely clear on this.

25 MR. SLATER: This would be on page 66 of the
26 restated judgment. Paragraph dealing with unallocated

1 safe yield water. Paragraph A being priorities.

2 THE COURT: Is that the one with the red line
3 order.

4 MR. SLATER: No. Sorry. This is the judgment.

5 THE COURT: The judgment itself.

6 MR. SLATER: Yeah.

7 THE COURT: Of course.

8 MR. SLATER: The retained judgment. Again the
9 first priority.

10 THE COURT: Thank you.

11 MR. SLATER: And then subject to that, as you can
12 appreciate, your Honor, that the parties want to be
13 clear, that they're reserving their rights to appeal to
14 the extent that they wish to pursue that to the entire
15 matter.

16 THE COURT: That goes without saying, but I'll
17 state it affirmatively. Yes, of course.

18 MR. SLATER: With that, we don't believe we have
19 anything else to cover with you. I think all the
20 parties have indicated through their counsel that they
21 are in concurrence with that resolution. And we
22 couldn't be more appreciative.

23 I think Tracy Egoscue has one additional point to
24 make.

25 THE COURT: Thank you. Ms. Egoscue.

26 MS. EGOSCUE: Your Honor, may I approach just to

1 use that as a prop for my binder?

2 THE COURT: Sure.

3 MS. EGOSCUE: So turning your Honor's attention
4 to the order, page 27 of the order.

5 THE COURT: Okay. This is the clean one, so to
6 speak.

7 MS. EGOSCUE: This is your revised proposed.

8 THE COURT: Not the one lined out but --

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

10 THE COURT: What page again?

11 MS. EGOSCUE: 27.

12 THE COURT: Coming up.

13 MS. EGOSCUE: So --

14 THE COURT: Hang on. I'm with you now.

15 MS. EGOSCUE: On behalf of the Ag Pool, we
16 believe that the language of your order is clear that
17 you do not intend to subvert or change the Ag Pool's
18 priority right to the 82,800, which is the allocation
19 under the judgment. However, if you look at some of
20 your tables that illustrate your point, including this
21 is as the first one. I will walk your Honor through the
22 page number, and all counsel and parties. You start
23 here on this page with 82,800 of the Ag Pool's water
24 available to the Appropriative Pool.

25 And we would like to clarify with your Honor on
26 the record that that is not intended to subvert the Ag

1 Pool's first priority right to produce the water.

2 THE COURT: That's correct.

3 MS. EGOSCUE: Thank you, your Honor. Also on
4 page 38, it's a similar language. Again, at the top of
5 that table.

6 THE COURT: Yes.

7 MS. EGOSCUE: 82,800 available to the
8 Appropriative Pool.

9 THE COURT: Yes. And I'll just add, that was the
10 figure that time. If you look at page 7, the Court
11 notes that the Ag Pool actually gets 414,000 acre-feet
12 in any five consecutive years. But for purposes of
13 calculation and convenience, I use the 82,800, because,
14 in general, that's what the parties use too.

15 But the Court is not contradicting or changing
16 the 414,000 acre-feet in any five consecutive years
17 attributed to the Ag Pool in the judgment. If anything,
18 I think everyone knows that what I'm trying to do, and
19 my objective has been throughout all of these hearings
20 and briefings, is to confirm the terms of the judgment.

21 MS. EGOSCUE: Respectfully, your Honor, we agree
22 in terms of how you presented this. However, the Ag
23 Pool believes that tables taken out of context may cause
24 some mischief that we're trying to avoid here.

25 THE COURT: I appreciate that too.

26 MS. EGOSCUE: Two last -- the next page 39 at the

1 top, leaving 50,000 acre-feet to the Ag Pool.

2 THE COURT: Yes.

3 MS. EGOSCUE: That we'd like to clarify, they
4 actually have first call to the 82,800.

5 THE COURT: Absolutely. Actually not only that,
6 but also the 414,000 in any five consecutive years.
7 That is the basic. People have divided it up for that
8 purpose.

9 MS. EGOSCUE: Thank you, your Honor. Just
10 because I'm trying to be complete and did not file
11 anything and would like to do this here on the record.
12 Page 64, again in that table, it notes the Ag Pool
13 production/pumping is minus 33. And we realize that it
14 does say the initial Ag Pool allocation. But for
15 purposes of my client, your clarifications on the record
16 this afternoon are sufficient. Agree.

17 THE COURT: Any objections, comments, suggestions
18 input, argument?

19 MR. SLATER: No objection, your Honor.

20 MS. EGOSCUE: To the extent your Honor would like
21 suggested clarifications in writing, I can work with all
22 counsel and submit them later. But right now, we are
23 sufficiently satisfied. Thank you.

24 THE COURT: All right. Thank you. I agree with
25 what you said.

26 MS. EGOSCUE: Thank you very much, your Honor.

1 THE COURT: You're welcome. Next, Mr. Herrema?

2 MR. HERREMA: Nothing, your Honor.

3 THE COURT: Off the record.

4 (Off the record.)

5 THE COURT: All right. Is there anything
6 further?

7 MR. SLATER: Just our profound thank you, your
8 Honor.

9 THE COURT: Thank you. Let me go off the record
10 for a moment again.

11 (Off the record.)

12 THE COURT: Let me go back on the record. Off
13 the record, the Court has had a discussion with counsel
14 with respect to a further plan, which the Court would
15 like to summarize on the record and encourage. And that
16 is as we progress into the 2020 evaluation and then the
17 2030 evaluation, which would conclude the peace
18 agreement. Mr. Slater suggested that the parties bring
19 matters to the court periodically and individually as
20 the issues arise.

21 If I summarized your position correctly,
22 Mr. Slater.

23 MR. SLATER: Just to apprise the Court on the
24 progress we're making, and the Court is aware as we make
25 that progress what we're trying to work on and resolve.

26 THE COURT: Let me not only request that, but

1 encouraged that.

2 MR. SLATER: Thank you, your Honor.

3 THE COURT: You're welcome. This is a big
4 project that started out with the statement of key
5 principals, the agreement itself, and then the Court's
6 review, which took a year and a half. I'm shocked to
7 say that, but it did. I'm only stating the obvious.
8 This is how long we've all been working on this. So,

9 again, I have to express my patience -- my gratitude --

10 MR. SLATER: We appreciate your patience, your
11 Honor.

12 THE COURT: Your patience too with me in
13 resolving these issues -- they were very complicated --
14 and your persistence. And the Court wants to thank you
15 all again. As things come up, bring them to me.

16 MR. SLATER: Best stated, one bite at a time.

17 THE COURT: That sounds like an excellent plan.
18 There have been some additional things submitted to the
19 Court that the Court wanted to address today on the
20 record.

21 Let me start, this was a filing from last October
22 16, the Court mentioned when I was discussing a
23 continuance that we are in geological time. But even
24 geological time passes. And, it has. This was from
25 last October, six months ago. October -- exactly six
26 months ago, October 28, 2016. Motion for the Court to

1 approve temporary substitute rate for physical solution
2 transfers under Exhibit G to the judgment with the
3 declaration of Mr. Herrema in support.

4 The Court has not received any opposition to this
5 motion, and since I would like to add it to the hearing
6 today and make a ruling, is there any objection to the
7 Court approving the temporary substitute rate as
8 proposed in this motion filed last October?

9 Hearing none, the Court is going to accept and
10 approve the temporary substitute rate then, retroactive
11 for filing of the motion.

12 MR. SLATER: Thank you, your Honor.

13 THE COURT: Thank you. And then the Court had
14 also received -- this is from a little later, December
15 13 of last year -- a filing from the Court to receive
16 and file the 38th Watermaster Annual Report. The Court
17 had not received any objection to this request. And I'm
18 ready to add it to the calendar and proceed today. Any
19 objection from anyone in the courtroom?

20 No objection. Thank you. The Court will grant
21 the request and receive and file the 38th Watermaster
22 Annual Report.

23 The last matter for additional review today is a
24 filing March 24, 2017, we're actually working up to the
25 current date. A request for the Court to receive and
26 file Watermaster's semiannual OBMP status report. The

1 Court did not receive any objection to this request, and
2 the Court is prepared to put it on the calendar for
3 today and rule on it. Any objection from any of the
4 parties?

5 No objection. Thank you. The court will grant
6 the request and receive and follow Watermaster's semi
7 annual OBMP status report.

8 So I think that takes care of all the matters
9 that have been filed while the SYRA motion has been
10 pending. And the last thing the Court is going to do
11 today, again, expressing my sincere appreciation with
12 all counsel for helping the Court through this and
13 actually sign the order itself. I feel like we ought to
14 have a real estate closing where people all sit around
15 the table and review and sign the documents. But it's
16 really just for me. I'm signing it for today's date,
17 which is 4/28/17. Signing the order.

18 And this is the order distributed today with the
19 notations and changes indicated today. And it is going
20 to be the final order for today as previously
21 distributed and argued. So I'm thrilled to have worked
22 with you all. I'm looking forward to working with you
23 more as time progresses and seeing you soon as the
24 relevant and important dates come up through the time
25 that the peace agreement is in effect, 13 more years.

26 I will state on the record, since you can't get

1 the tone of voice on the record, that we probably ought
2 to start now working out what we're going to do after
3 the end of 2030. Because, as I mentioned, even though
4 it is geological time, that time has a way of passing.

5 And I was around as a research attorney, some of
6 you may have known, when Judge Gunn signed the original
7 orders on the peace agreement in 2000. And that was a
8 huge effort and huge accomplishment of all parties, and
9 I hope everyone can work together and resolve the issues
10 that are coming up at the end of 2030. Thank you,
11 again, everyone. And I believe that will conclude the
12 hearing for today.

13 MR. SLATER: Thank you, your Honor.

14 (Whereupon, the proceedings in the
15 above-entitled matter concluded for the day.)
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

DEPARTMENT S35 HON. STANFORD REICHERT, JUDGE

CHINO BASIN MUNICIPAL)
WATER DISTRICT,)
)
Plaintiff,)
)
-vs-)
)
CITY OF CHINO, et al.,)
)
Defendants.)

Case No. RCVRS51010
Reporter's Certificate

-----)
STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I, Lindy J. Castro, Official Court Reporter for
the Superior Court of the State of California, for the
County of San Bernardino, do hereby certify that the
foregoing pages, 1 through 18, to the best of my
knowledge and belief, comprise a full, true, and correct
computer-aided transcript of the proceedings taken in
the matter of the above-entitled cause held on Friday,
April 28, 2017.

Dated this 29th day of May, 2017.

Lindy J. Castro
C.S.R. 13180