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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT S35 HONORABLE STANFORD REICHERT, JUDGE

CHINO BASIN MUNICIPAL WATER) CASE NO. RCVRS 51010
DISTRICT)
)
) Petitioner,)
))
CITY OF CHINO, et al.,))
))
) Defendants.)
_____)

REPORTER'S TRANSCRIPT OF EX PARTE HEARING

WEDNESDAY, DECEMBER 5, 2018

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1 SAN BERNARDINO, CALIFORNIA, WEDNESDAY, DECEMBER 5, 2018

2 A.M. SESSION

3 MR. DONLAN: Good morning. Robert Donlan,
4 Ellison, Schneider on behalf of Jurupa Community Services
5 District.

6 THE COURT: Okay. Thank you, Mr. Donlan. And
7 that's Jurupa. Okay. Got that.

8 And I think I have at least one other person on
9 court call?

10 THE CLERK: And Allen Hubsch for --

11 THE COURT: Oh, Mr. --

12 MR. HUBSCH: Actually, I'm present in person.

13 THE COURT: Oh, okay. Good morning, Mr. Hubsch.
14 Nice to see you.

15 Okay. Let me just confirm one more time.
16 Anybody else on court call? Going once. Going twice.
17 Nobody else on court call. Okay.

18 Let me start finding out whom I have here in the
19 courtroom starting here on my far left.

20 Could I get your appearance, please?

21 MR. GAGEN: Good morning, your Honor. Andrew
22 Gagen on behalf of Monte Vista Water District.

23 THE COURT: Okay. Andrew -- I'm sorry, Andrew?

24 MR. GAGEN: Gagen.

25 THE COURT: Gagen, thank you, for Monte Vista.

26 MR. GUTIERREZ: Good morning, your Honor. Jimmy
27 Gutierrez appearing for the City of Chino.

28 THE COURT: Good morning, Mr. Gutierrez.

1 And?

2 MR. TANAKA: Good morning, your Honor. Gene
3 Tanaka on behalf of Cucamonga Valley Water District. We
4 are one of the applying parties.

5 THE COURT: Oh, okay. All right. Thanks. Hang
6 on a second. That's Mr. Tanaka.

7 Let me go to the back. Mr. Herrema.

8 MR. HERREMA: Good morning, your Honor. Brad
9 Herrema on behalf of Chino Basin Watermaster.

10 THE COURT: Okay. And let me work in the back
11 then coming -- oh, Mr. Hubsch. Good morning, Mr. Hubsch.

12 MR. HUBSCH: Yeah, Allen Hubsch on behalf of the
13 Non-Agricultural Pool Committee.

14 THE COURT: Okay. And then next to you is?

15 MR. SCHATZ: Good morning. John Schatz for the
16 Appropriative Pool.

17 THE COURT: John?

18 MR. SCHATZ: John Schatz for the Appropriative
19 Pool.

20 THE COURT: Thanks.

21 We have that spelling? Okay. Thanks.

22 And in the back again?

23 MS. EGOSCUE: Good morning, your Honor. Tracy
24 Egoscue for the Ag Pool.

25 THE COURT: Okay. Miss Egoscue, good morning.

26 MS. EGOSCUE: Good morning.

27 THE COURT: And then at counsel table then?

28 MR. BUNN: Good morning, your Honor. Thomas Bunn

1 for the City of Pomona, one of the applying parties.

2 THE COURT: Okay. And --

3 MR. FUDACZ: -- last but not least. Good
4 morning, your Honor. Fred Fudacz for the City of Ontario.

5 THE COURT: Do you have the spelling? Okay.
6 Okay.

7 All right. Well, what we have here this morning
8 is an ex parte application to set a briefing schedule.
9 The court's going to grant that.

10 Is there any objection? Didn't think so. Okay.
11 Just thought I'd ask.

12 And so, as the saying goes, the underlying motion
13 is Miss Egoscue's petition for a Writ of Mandate. As the
14 saying goes, there's something you don't see every day.

15 And so, Miss Egoscue, would you like to address
16 that for a moment or add something?

17 MS. EGOSCUE: Your Honor, I would like to clarify
18 that the actual subject of the Notice is not the Writ of
19 Mandate. It is another motion. And the Writ of Mandate
20 is currently scheduled for the 28th and is not the subject
21 of this current Notice.

22 THE COURT: Oh, hang on just a second. I guess
23 I -- give me just a moment then because when I looked
24 through this --

25 MS. EGOSCUE: There are a number of items on the
26 calendar, your Honor.

27 THE COURT: Okay. Hang on just a second because
28 I skipped kind of to the end. Bear with me for one more

1 moment here. Yes, there we go. Okay. All right. Give
2 me just a second.

3 All right. Yes. Okay. Sorry. I kind of jumped
4 to the bottom line. I see in your motion that the Court
5 of Appeal has temporarily remanded this case to hear this
6 motion as soon as possible.

7 MR. TANAKA: Your Honor, if perhaps I can help
8 provide --

9 THE COURT: Yes, please.

10 MR. TANAKA: We, the parties to the appeal,
11 respondents and appellants, have reached a settlement with
12 respect to the appeal, but there's two things that -- that
13 we need to do: One, we're trying to -- to talk to as many
14 parties as possible to the judgment who are not part of
15 the appeal to get their support, if possible; and,
16 secondly, we'd like to bring a motion for this Court to
17 approve our settlement.

18 Because the Court of Appeal has jurisdiction, we
19 requested and the Court of Appeal gave us a temporary
20 remand to have a motion to approve the settlement
21 considered by your Honor.

22 THE COURT: Okay. Let me stop you for a minute.
23 This is embarrassing, but this is news to me. I haven't
24 seen anything from the Court of Appeal unless it's
25 attached.

26 MR. DONLAN: It's attached.

27 THE COURT: It's attached? I'm sorry, we may be
28 a day late and a dollar short on this one. Give me just a

1 moment.

2 MR. TANAKA: It's attached to the declaration of
3 Sarah Foley.

4 THE COURT: Okay. Hang on. I see this
5 declaration. I expected to see something -- okay. Hang
6 on. Oh, my goodness. I'm embarrassed, I must say.

7 Yes, here it is, an order.

8 "The Superior Court is directed" -- yes -- "to
9 decide the parties' motion as soon as possible."

10 This is also something you don't see every day,
11 a temporary remand. Yes.

12 "Pursuant to the parties' joint stipulation, an
13 application for unlimited remand to the Superior Court
14 filed July 16, 2018, and while the appeal is still pending
15 in this court, Superior Court Case No. RCVRS51010" -- five
16 one zero one zero -- "is temporarily remanded to the
17 Superior Court for the limited purpose of and for the
18 limited time necessary for the consideration and decision
19 of the parties' motion to approve the 2018 amendments to
20 the restated judgment."

21 MR. BUNN: Yes. Your Honor, if I may?

22 THE COURT: Yes.

23 MR. BUNN: Tom Bunn for the City of Pomona.

24 The reason that we went through this fairly
25 convoluted process is that the settlement does involve
26 amendments to the judgment and to the Piece 1 and Piece
27 2 --

28 THE COURT: Oh, my goodness.

1 MR. BUNN: -- documents.

2 THE COURT: Okay.

3 MR. BUNN: So we figured that that was best and
4 necessarily considered by your Honor, by the trial court.

5 THE COURT: Well, thanks.

6 MR. BUNN: And so -- but --

7 THE COURT: Sorry, I couldn't resist. Thanks.

8 MR. BUNN: So while we don't think there's -- as
9 Mr. Tanaka mentioned, we've done a lot of shopping around
10 of this settlement, and the opposition, if any, is gonna
11 be on limited grounds, and -- and we're still hoping for
12 no opposition.

13 THE COURT: Okay.

14 MR. BUNN: So that's how that's going to work.

15 I'd also point out that if these changes are
16 granted by this Court, the appeal will be dismissed. So
17 that's why the Court of Appeal was just as happy to -- to
18 send it back to your Honor.

19 THE COURT: Well, on a temporarily -- and I tell
20 you this without a hint of reproof or reproach, after the
21 70-plus-page ruling that I issued on this, I'm not
22 surprised that the Court of Appeal would prefer to resolve
23 it here in -- here in my court, if possible, through a
24 settlement. So now I'm really caught flatfooted.

25 Has the settlement motion been filed?

26 MR. TANAKA: Your Honor --

27 THE COURT: Am I missing something else?

28 MR. TANAKA: -- so let me -- let me back up a

1 second.

2 THE COURT: Okay.

3 MR. TANAKA: So there's two things that we, the
4 settling parties to the appeal, need to do: One, we are
5 working our way through the Watermaster process to try and
6 get approvals from the different groups involved --

7 THE COURT: Okay.

8 MR. TANAKA: -- first of all, and we need time to
9 finish that up; and, secondly, your Honor, we also --
10 let's see. We also needed to get this matter set and
11 report the progress we've made on it.

12 THE COURT: Got it.

13 MR. TANAKA: So that's the reason why we're here,
14 and we will file the motion as soon as we get through the
15 process of talking to the different parties.

16 THE COURT: Okay. Got it. Thanks for the
17 explanation and the background. This is something truly
18 out of the ordinary -- extraordinary, unique.

19 And so how about this? How about I go off the
20 record for a minute and we talk about some dates and how
21 long it's gonna take to get the motion prepared. And then
22 we can talk about some dates for the -- for the motion and
23 the opposition and the reply and the hearing. And we can
24 do this all off the record, so I'm gonna go off the record
25 for a few minutes.

26 (Discussion was held off the record.)

27 THE COURT: So let's go back on the record.

28 So off the record the Court had a discussion with

1 counsel with respect to setting up a briefing schedule for
2 the motion to approve the settlement that is part -- part,
3 and I would call it, underlying the appeal.

4 And the parties and the Court have agreed on the
5 following briefing schedule: That the motion itself --
6 the motion itself must be served and filed in the usual
7 way through Watermaster no later than January 15, 2019, at
8 noon.

9 And then any opposition to the motion has to be
10 served and filed in the usual way through Watermaster by
11 February 13, 2019, at noon.

12 And any reply to the opposition needs to be
13 served and filed in the usual way through the Watermaster
14 February 28, 2019, at noon.

15 And the Court has set the hearing on the motion
16 then for March 15, 2019, at 1:30 p.m. in this courtroom.

17 And the Court's going to go forward with that
18 schedule as agreed unless there is someone who's had
19 second thoughts or wishes to add something with respect to
20 that particular aspect of the Court's calendar.

21 Any objections? The Court hears none, so that
22 will be the briefing schedule on the settlement motion
23 underlying the appeal.

24 Next, the Court needs to address the motions --
25 the writ motion that Miss Egoscue has filed and the stay
26 motion that Miss Egoscue has filed which are currently set
27 for December 28, 2018.

28 MS. EGOSCUE: Your Honor, if I may clarify?

1 THE COURT: Yes, thanks.

2 MS. EGOSCUE: The motion for the stay was filed
3 by Mr. Tanaka and the parties to the appeal.

4 THE COURT: That's right. Thank you. All right.
5 Thank you.

6 And so, Ms. -- let me start with Mr. Bunn, then,
7 because I think Mr. Bunn's position on setting up a -- or
8 dealing with the briefing schedule on the stay motion and
9 the writ motion was to have it heard after the hearing on
10 the settlement motion because the -- if the Court grants
11 the settlement motion, the appeal is going to be
12 dismissed.

13 Did I get that correct so far, Mr. Bunn?

14 MR. BUNN: Yes, sir.

15 THE COURT: What would you like to add on the
16 record then, please?

17 MR. BUNN: Just that that will -- will be
18 conducive to judicial economy in that the Court only will
19 need to work up one motion at a time, that being the
20 motion to approve the settlement. It's also, of course,
21 conducive to the parties' efforts. And I'll point out
22 that despite it being a somewhat dysfunctional family, as
23 you heard last night, we do get along with each other.

24 THE COURT: Yes.

25 MR. BUNN: And we have been trying our best to
26 work things out together. And, frankly, I'd personally
27 rather not have a fight with the Ag Pool that I don't have
28 to have. And it's my position that we won't have to have

1 that fight if the appeal is dismissed because at that
2 point any alleged stay will go away. There'll be no
3 dispute about that.

4 There's no stay once -- once the appeal is
5 dismissed, and at that point the Watermaster will, I
6 presume, implement the Court's order from 2017 to adjust
7 the safe yield, which is what the writ is asking for.

8 THE COURT: And I will just mention, since
9 Mr. Bunn referred to an event last night, last night there
10 was a -- I'll call it a celebration for lack of a better
11 word, of the 40th anniversary of the judgment at which
12 there was an excellent panel discussion and a dinner of
13 which the Court attended with all parties. And it was --
14 and I got to see Judge Gunn again, who had this case when
15 I was a research attorney back in 2000, 2001, working for
16 Judge Gunn, and it was an excellent event and informative
17 in general through the panel discussion for the Court.

18 So that's just for the record what Mr. Bunn was
19 talking about.

20 So I think it's your turn, Miss Egoscue. Please
21 go ahead.

22 MS. EGOSCUE: Thank you. Tracy Egoscue for the
23 Ag Pool.

24 Your Honor, I'd like to first point out that the
25 notice for this morning's hearing did not include the
26 Ag Pool's writ, so I just wanted to start with that
27 notation.

28 THE COURT: Okay.

1 MS. EGOSCUE: Secondly, I'd like to note that a
2 Writ of Mandate takes precedence over the other motions.
3 And although we are amenable to a briefing schedule that
4 encompasses the Code of Civil Procedure, we in no way
5 would agree to having the writ hearing go beyond this --
6 these other motions referenced by the parties to the
7 appeal.

8 The Ag Pool has repeatedly requested
9 clarification in these amendments regarding the safe yield
10 reset, and in particular, your Honor's order regarding
11 methodology. And that request has been denied.

12 These requests are reflected in the minutes of
13 two of the Ag Pool's meetings. These requests have
14 continually been denied through the Watermaster process,
15 and the Ag Pool had no other recourse but to file this
16 writ with your Honor.

17 Now, going to your Honor's economy, if there is
18 some way through our Watermaster process to resolve the
19 issues that the Ag Pool has raised, meaning the Basin's
20 health and your Honor's order, then Mr. Bunn is correct,
21 the writ will no longer be necessary. But as we stand
22 here this morning that is not the case.

23 THE COURT: I understand that. Thank you, Miss
24 Egoscue.

25 MS. EGOSCUE: Thank you.

26 THE COURT: And reply, Mr. Bunn, or anyone? I
27 see Mr. Gutierrez reaching for the microphone.

28 Go ahead, please.

1 MR. GUTIERREZ: Yes, Jimmy Gutierrez for the City
2 of Chino.

3 Your Honor, I have some concerns with this writ
4 proposal. First of all, the writ merely asks the Court to
5 order Watermaster what the Court ordered Watermaster to do
6 in its April 28th, 2017, motion. That order is on appeal,
7 and as indicated by the Court's remand letter, the case on
8 that order was remanded only for the specific purpose of
9 hearing the settlement agreement.

10 So the Court, I don't think, has jurisdiction to
11 hear that; furthermore, we know that the Court's order may
12 be amended if our settlement is approved. And if our
13 settlement isn't approved, appellants and the respondents
14 will go forward with their appeal.

15 And based on the appeal before the Court of
16 Appeal, that order may be amended including on the issue
17 that the Ag Pool is seeking to raise.

18 Also, your Honor, to my knowledge, there hasn't
19 been a direct application to the Watermaster that's gone
20 through the whole Watermaster process to consider whatever
21 it is that the Ag Pool is seeking.

22 And, finally, I think the judgment has exclusive
23 jurisdiction as to the issues that are involved in the
24 judgment as well as the procedure. The procedure is under
25 Paragraph 31 to file a noticed motion after Watermaster
26 has taken action.

27 So for all those reasons I do not believe that
28 that writ is appropriate. I don't think we have to rule

1 on it now, but I think it should be stayed or pushed back
2 until after our motion is heard. And if not, we should be
3 given an opportunity to brief the issue of whether or not
4 the writ is even appropriate.

5 THE COURT: I understand.

6 Anyone else? You get the last word, Miss
7 Egoscue, but I'll turn it to anyone else who wants to add
8 something before I turn to Miss Egoscue for the last word.

9 Nothing? Go ahead, please, Miss Egoscue.

10 MS. EGOSCUE: Thank you, your Honor. Tracy
11 Egoscue for the Ag Pool.

12 Paragraph 31 is in no way exclusive. It's not
13 the exclusive remedy, and the Ag Pool is prepared to brief
14 that. We are also prepared to brief, your Honor, using
15 citations to the record regarding the fact that this
16 appeal has dragged on for almost two years, and any
17 documents that are publicly available reflect that the --
18 that the settlement agreement indeed does not even address
19 the safe yield reset itself or the methodology,
20 which is why the Ag Pool seeks to have that clarified
21 through this process.

22 Having said all that, and, again, in the
23 interest of being reasonable and understanding the needs
24 of the Court, the Ag Pool would be agreeable to having the
25 exact same briefing schedule as the current motions from
26 the settling party in an effort to assume that we can
27 resolve these differences and therefore have a return to
28 the writ or resolution to the writ that makes it

1 essentially go away with the filings that we may be
2 assuming are forthcoming.

3 THE COURT: Got it.

4 Miss Egoscue, I'm sorry, but I am going to
5 postpone the hearing on the writ until I rule on this
6 settlement motion, and the reasons are as follows: First,
7 on the urgency issue, Miss Egoscue, you're correct to
8 point out that this appeal has been going on for more than
9 two years. Regrettably every appeal seems to go on for at
10 least two years and -- at least that's what I see
11 anecdotally, and the adage is if you put enough anec- --
12 anecdotes together, you have data. And the data that I've
13 got now is that it takes at least two years on -- on
14 appeal.

15 Second, there are two logical conclusions that
16 can be drawn from something that has been dragging on for
17 a long time. Conclusion No. 1 is, this has been dragging
18 on for a long time, we need to do it immediately;
19 Conclusion 2 is, this has been dragging on for so long, a
20 few months isn't going to make any difference.

21 And in the Court's view Conclusion 2 is the
22 appropriate one in this situation. This has been dragging
23 on for so long, a few more months isn't going to make a
24 difference.

25 I always refer to Watermaster as dealing with
26 geological times rather than court times because -- and
27 I'll also point out that floating around in the back of
28 the Court's mind is the fact that the 2020 evaluation of

1 the yield is going to be due in about 13 months, and I
2 haven't even finished the 2010 evaluation because of
3 various aspects of the case. And I again say that without
4 hint of reproof or reproach to anyone. It's just what
5 happened.

6 And so -- and there's also a question -- a
7 serious question in the Court's mind with respect to how
8 this writ would fit in with the Court of Appeal decisions
9 and jurisdiction. Even though you're willing to brief
10 that, I would prefer to see that briefing after we figure
11 out what's going on with the appeal itself.

12 And if the Court approves the settlement, the
13 appeal is dismissed, as Mr. Bunn has pointed out, and I
14 think Mr. Tanaka, too, and we can go forward on other
15 issues at that point including your stay -- or your stay
16 would not be necessary at that point -- or the writ would
17 not be necessary at that point and the evaluation of the
18 stay would not be necessary at that point because there's
19 no more appeal.

20 So what I'm going to do is set for the date that
21 I've got for the hearing on the settlement, which is March
22 15 at 1:30 p.m., a hearing on briefing, if necessary.

23 The Court denies the motion hearing on briefing
24 of writ procedure and the stay motion so that we'll go
25 forward immediately to set that up, if necessary.

26 And there's -- of course, there's also then the
27 contingency that if the Court grants the motion for the
28 settlement, that could go up on appeal too. So there's so

1 many contingencies here, and a lack of urgency from the
2 Court's point of view, that I'm going to deny your request
3 to set a briefing schedule for your writ motion and also
4 with respect to the related stay motion until we get a
5 resolution -- at least a trial court decision with respect
6 to the settlement agreement.

7 So for all those reasons I'm going to have to
8 deny your request.

9 MS. EGOSCUE: Very well, your Honor. We very
10 much appreciate your thoughtful consideration of our
11 request, and just to clarify, will you be also issuing an
12 order today that moves the motion that was not filed by
13 the Ag Pool on the stay and also the writ?

14 THE COURT: Wait a minute. I couldn't quite
15 follow that.

16 MS. EGOSCUE: So there's a stay --

17 THE COURT: Right.

18 MS. EGOSCUE: -- there's a motion to confirm the
19 stay --

20 THE COURT: Right.

21 MS. EGOSCUE: -- pending appeal that was not
22 filed by the Ag Pool.

23 THE COURT: Yeah, that's right. Oh, sorry, yes.

24 MS. EGOSCUE: Yes. So both of those motions will
25 then move? Is that what your Honor -- I just need
26 clarification.

27 THE COURT: Correct. Technically, yes, both
28 motions, the stay and the writ motion, both, a writ

1 hearing, so to speak, and the stay motion are getting
2 moved to 1:30 p.m. on March 15 for a briefing schedule,
3 not for a hearing, but to clarify, for a briefing
4 schedule.

5 So both motions will be -- the hearing on both
6 motions will be set at a future date. All we will deal
7 with on the 15th of March with respect to those two
8 motions is setting a briefing schedule if the Court denies
9 the approval of the settlement.

10 MS. EGOSCUE: Thank you for that. Thank you.

11 THE COURT: Okay. Thank you for clarifying that.

12 MR. TANAKA: Your Honor, Gene Tanaka.

13 THE COURT: Yes, Mr. Tanaka.

14 MR. TANAKA: If I may, I'm happy to prepare an
15 order if it assists the Court, which would set forth the
16 briefing schedule and the hearing for motion to approve
17 the settlement, and further indicating both the writ
18 petition and the Motion to Stay will be continued with a
19 briefing schedule, if necessary, set on the hearing date.

20 THE COURT: I would greatly appreciate that,
21 Mr. Tanaka. Thank you very much.

22 MR. TANAKA: I will do so, your Honor.

23 THE COURT: Thank you.

24 And there was one more thing -- one more
25 question. I think Mr. -- I didn't get your name right.

26 MR. GAGEN: Gagen.

27 THE COURT: Monte Vista, though; right?

28 MR. GAGEN: Correct.

1 THE COURT: Okay.

2 MR. GAGEN: Andrew Gagen for Monte Vista, your
3 Honor.

4 THE COURT: Thank you, Mr. Andrew -- Mr. Gagen.

5 MR. GAGEN: Thank you for the opportunity.

6 There's one other substantive motion that's on
7 the calendar for December 28th. It was filed by the
8 Non-Agricultural Pool. That motion is perceived by Monte
9 Vista Water District as well as maybe some of the other
10 appealing parties as part of the grand bargain that is
11 going into the motion to settle the appeal --

12 THE COURT: What motion is that? This is
13 embarrassing. What motion is that?

14 MR. GAGEN: That's the motion filed by the
15 Non-Agricultural Pool to Amend their Pooling Plan.

16 THE COURT: Oh, the amended? Okay. All right.

17 MR. GAGEN: So that -- Monte Vista is in a
18 position right now where that motion -- because the way
19 the Court has scheduled and sequenced these motions, is
20 now on calendar for the 28th and could be heard and
21 granted and then later the motion to approve the
22 Appropriative Pooling Plan and Amendments to the CAMA --

23 THE REPORTER: To the?

24 MR. GAGEN: To the CAMA.

25 THE COURT: Court Approved Management Agreements.

26 MR. GAGEN: Thank you.

27 THE COURT: Welcome.

28 MR. GAGEN: -- that --

1 THE COURT: Off the record.

2 (Discussion was held off the record.)

3 THE COURT: All right. So go ahead, please.

4 MR. GAGEN: Okay. Sure. So the concern on
5 behalf of Monte Vista and some of the other appeal parties
6 is that the Court grants that motion but then denies
7 our -- our motion to settle the appeal when it's our view
8 that these -- that these two motions are together.
9 They're all part of one agreement amongst the
10 Appropriative Pool settling parties.

11 THE COURT: Okay. So would you like your motion
12 heard then on the same -- excuse me, on March 15 with the
13 same briefing schedule that I set for the -- what I'll
14 call the underlying settlement motion?

15 MR. GAGEN: At a minimum, yes, please.

16 MR. HUBSCH: Your Honor, I'd like to clarify.
17 It's not his motion. It's my motion.

18 THE COURT: Your motion, Mr. Hubsch. Thank you.

19 MR. GAGEN: I didn't mean to misrepresent that.

20 THE COURT: Okay. I'm sorry. I got confused as
21 to who's -- who's doing what.

22 Go ahead, please.

23 MR. HUBSCH: All right. Allen Hubsch, Counsel
24 for the Non-Agricultural Pool Committee.

25 We don't view the -- our motion as part and
26 parcel with their motion. It stands on its own. It is
27 scheduled for the 28th. We have received -- we filed it
28 on October 4 after months of discussions, including with

1 members of the Appropriative Pool. We incorporated their
2 comments. We incorporated every comment that we received
3 from the Appropriative Pool members, individually and
4 collectively.

5 THE COURT: Okay.

6 MR. HUBSCH: We filed a motion on October 4. We
7 were told on October 4th they had settled and they were
8 going to be filing their motion at the same time.

9 THE COURT: Okay.

10 MR. HUBSCH: We filed our motion. We don't think
11 they're tied together. We believe that our motion stands
12 on its own.

13 THE COURT: Okay.

14 MR. HUBSCH: And we've received, since October 4
15 when we filed our motion, mixed messages. The
16 Appropriative Pool -- Pool counsel and others have told us
17 they have no objection to our motion except maybe the
18 timing.

19 This morning Mr. Gutierrez just walked over and
20 threatened me with an opposition to the motion if we don't
21 extend the time. Apparently he thinks that he has grounds
22 for opposition to our motion.

23 THE COURT: Right.

24 MR. HUBSCH: We are entitled to notice of their
25 opposition. We filed the motion, we put it on calendar,
26 we gave three months' notice -- just shy of three months'
27 notice, we're entitled to opposition -- to notice of what
28 their opposition is. If it's timing, it's one thing. If

1 it's substance, it's entirely different.

2 And we don't know the answer to that today so
3 we're not willing to voluntarily move our motion to the
4 same date as theirs because we don't know where our motion
5 stands with them --

6 THE COURT: All right.

7 MR. HUBSCH: -- despite a lot of effort to find
8 out.

9 THE COURT: I appreciate that. So I think --
10 I -- I -- Mr. Hubsch, I appreciate your argument. I'm
11 going to move it to the same day, the 15th, and set the
12 briefing -- the same briefing schedule so at least you'll
13 have some certainty if there's an opposition.

14 And the opposition I'm gonna make due earlier,
15 though, to your motion because it's been on file for so
16 long. So I'm going to use the January 15 date at noon.
17 This is with respect to the Non-Agricultural Pool's motion
18 to Amend the Pooling Plan.

19 Any opposition to that motion needs to be served
20 and filed by January 15 through the Watermaster at noon,
21 any opposition. And your -- any reply I'm gonna use the
22 opposition date from the other -- February 13, 2019, but
23 the hearing date is going to be March 15, 2019, at the
24 same time so I can get both -- both hearings resolved at
25 the same time.

26 But that will give you an earlier date so you'll
27 know earlier what your status is going to be because I --
28 you make an excellent point that it's been on file for a

1 long time, and you should know what's going on. And the
2 mixed messages will either be confirmed one way or the
3 other.

4 MR. HUBSCH: I appreciate that, your Honor.

5 THE COURT: Thank you, Mr. Hubsch.

6 MR. TANAKA: Your Honor, Gene Tanaka. Again,
7 I'll put that in the order as well.

8 THE COURT: Thank you, Mr. Tanaka. I'm afraid to
9 ask, but I will. Anything else?

10 MR. HERREMA: Your Honor, Brad Herrema on behalf
11 of Watermaster.

12 THE COURT: Oh, Mr. Herrema, we still have yours
13 floating around. That's correct.

14 So we've got these -- it's one document but three
15 motions filed November 28. That's the reappointment nine
16 matter -- nine-member Watermaster Board, approve the
17 temporary substitute rate for physical solution,
18 et cetera, and receive and file the 2017/'18 annual report
19 of the Ground Level Monitoring Committee.

20 Now, let me go on for just a moment, Mr. Herrema.
21 In the Court's experience ordinarily this doesn't draw an
22 opposition. Is there going to be one issued? Do we know?

23 MR. HERREMA: Your Honor, these motions went
24 through the Watermaster process with unanimous approval
25 through all the Pool Committees, Advisory Committee, and
26 the Board. We don't expect an opposition.

27 THE COURT: Okay. What I'm gonna do to get this
28 at least resolved -- one thing off my desk, so to speak --

1 is leave the hearing for December 28th at 1:30, and you
2 can all appear by Court Call if there's a problem.

3 And the briefing schedule will be pursuant to
4 CCP1005 and 1013, or whatever, I -- I can never -- I can
5 never keep the numbers straight. But it's the briefing
6 schedule in the CCP opposition reply hearing based --
7 opposition reply hearing date based on the hearing date
8 December 28th so we can at least get this one done.

9 MR. HERREMA: Thank you, your Honor.

10 THE COURT: Thank you, Mr. Herrema.

11 MR. HERREMA: We do have two other motions
12 pending for that day. They are a motion for the Court to
13 receive and file two semiannual OBMP status reports, as
14 well as a joint motion from Watermaster and IEUA for
15 approval of the 2018 RMPU, and those should similarly be
16 unopposed. They were unanimously approved through the
17 Watermaster process.

18 THE COURT: How about if I just leave those on
19 calendar for the 28th also then?

20 Does anyone -- comments? Suggestion? Argument?
21 Input?

22 Off the record.

23 (Discussion was held off the record.)

24 THE COURT: Back on the record.

25 Anything else? I'm gonna leave those on for the
26 28th then.

27 MR. HERREMA: Thank you, your Honor.

28 THE COURT: Thank you.

1 And, Mr. Tanaka?

2 MR. TANAKA: Your Honor, Gene Tanaka.

3 Do you need me to put that into the order? I'd
4 be happy to.

5 THE COURT: Yes, please. Let's have one
6 comprehensive global, you name it, dates, times, places
7 included order that the Court will assign. And I greatly
8 appreciate your willingness to do that.

9 MR. TANAKA: Happy to do so, your Honor.

10 THE COURT: Thank you.

11 Okay. I'm gonna ask one more time for -- for --
12 off the record.

13 (Discussion was held off the record.)

14 THE COURT: Back on the record.

15 Thank you, everyone. Excellent hearing.
16 Excellent argument on all sides. Regrettably I have to
17 make a decision one way or the other. I can't always
18 agree with everyone, but I really appreciate the
19 incredible professionalism of this group of lawyers that
20 appear regularly in front of me, not only your incredible
21 professionalism, but your insight, intellect, and
22 excellent written work, I just can't thank you enough.

23 So I wanted to make sure you all got my sincere
24 appreciation stated on the record for how well you helped
25 the Court try to resolve these issues.

26 Thank you very much, everyone.

27 MS. EGOSCUE: Thank you, your Honor.

28 UNIDENTIFIED SPEAKER: Thank you, your Honor.

1 UNIDENTIFIED SPEAKER: Thank you, your Honor.

2 UNIDENTIFIED SPEAKER: Thank you, your Honor.

3 UNIDENTIFIED SPEAKER: Thank you, your Honor.

4 UNIDENTIFIED SPEAKER: Thank you, your Honor.

5 UNIDENTIFIED SPEAKER: Thank you, your Honor:

6 UNIDENTIFIED SPEAKER: Happy holidays.

7 THE COURT: You too.

8 MR. DONLAN: Thank you, your Honor.

9 THE COURT: Thank you.

10 (End of proceedings at 9:33 a.m.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT S35 HONORABLE STANFORD REICHERT, JUDGE

CHINO BASIN MUNICIPAL WATER) CASE NO. RCVRS 51010
DISTRICT)
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STATE OF CALIFORNIA))
)) ss.
COUNTY OF SAN BERNARDINO)

I, Kerry K. Montuori, Pro Tem Reporter of the Superior Court of California, County of San Bernardino, do hereby certify that the foregoing pages, 1 through 25, 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 December 5, 2018.

Dated this 1st day of January, 2019.

Pro Tem Reporter, CSR-11516