

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: 190842 NAME: Tracy J. Egoscue FIRM NAME: Egoscue Law Group, Inc. STREET ADDRESS: 3834 Pine Street CITY: Long Beach STATE: CA ZIP CODE: 90807 TELEPHONE NO.: 562-988-5978 FAX NO.: E-MAIL ADDRESS: tracy@egoscuelaw.com ATTORNEY FOR (name): Overlying (Agricultural) Pool	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: San Bernardino Justice Center	
PLAINTIFF/PETITIONER: Chino Basin Municipal Water District DEFENDANT/RESPONDENT: City of Chino, et al. OTHER PARENT/PARTY:	
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	
SUPERIOR COURT CASE NUMBER: RCVRS51010	
RE: Appeal filed on (date): January 4, 2022	
COURT OF APPEAL CASE NUMBER (if known):	
Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I choose to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, or d, and fill in any required information):

- a. A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section (item 4) on pages 2 and 3 of this form.)
 - (1) I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
 - (2) I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
 (a) An order granting a waiver of court fees and costs under rules 3.50–3.58; or
 (b) An application for a waiver of court fees and costs under rules 3.50–3.58. (Use *Request to Waive Court Fees* (form FW-001) to prepare and file this application.)
- b. An appendix under rule 8.124.
- c. The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, and Fourth Appellate Districts, permit parties to stipulate (agree) to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I choose to proceed (you must check a or b below):

- a. WITHOUT a record of the oral proceedings (what was said at the hearing or trial) in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in deciding whether an error was made in the superior court proceedings.

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2. b. WITH the following record of the oral proceedings in the superior court (*you must check (1), (2), or (3) below*):
- (1) A reporter's transcript under rule 8.130. (*You must fill out the reporter's transcript section (item 5) on pages 3 and 4 of this form.*) I have (*check all that apply*):
 - (a) Deposited with the superior court clerk the approximate cost of preparing the transcript by including the deposit with this notice as provided in rule 8.130(b)(1).
 - (b) Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
 - (c) Attached the reporter's written waiver of a deposit under rule 8.130(b)(3)(A) for (*check either (i) or (ii)*):
 - (i) all of the designated proceedings.
 - (ii) part of the designated proceedings.
 - (d) Attached a certified transcript under rule 8.130(b)(3)(C).
 - (2) An agreed statement. (*Check and complete either (a) or (b) below.*)
 - (a) I have attached an agreed statement to this notice.
 - (b) All the parties have stipulated (agreed) in writing to try to agree on a statement. (*You must attach a copy of this stipulation to this notice.*) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
 - (3) A settled statement under rule 8.137. (*You must check (a), (b), or (c) below, and fill out the settled statement section (item 6) on page 4.*)
 - (a) The oral proceedings in the superior court were not reported by a court reporter.
 - (b) The oral proceedings in the superior court were reported by a court reporter, but I have an order waiving fees and costs.
 - (c) I am asking to use a settled statement for reasons other than those listed in (a) or (b). (*You must serve and file the motion required under rule 8.137(b) at the same time that you file this form. You may use form APP-025 to prepare the motion.*)

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE COURT OF APPEAL

I request that the clerk transmit to the Court of Appeal under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (*give the title and date or dates of the administrative proceeding*):

Title of Administrative Proceeding	Date or Dates
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4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a above indicating that you choose to use a clerk's transcript as the record of the documents filed in the superior court.)

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed, or if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
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- (1) Notice of appeal
- (2) Notice designating record on appeal (*this document*)
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment (*if any*)
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (*if any*)
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket (*if any*)

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4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

b. **Additional documents.** *(If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)*

I request that the clerk include in the transcript the following documents that were filed in the superior court proceeding. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		

See additional pages. *(Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 4b," and start with number (12).)*

c. **Exhibits to be included in clerk's transcript**

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. *(For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after service of this notice designating the record. (Rule 8.122(a)(3).))*

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			

See additional pages. *(Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 4c," and start with number (5).)*

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

You must complete both a and b in this section if you checked item 2b(1) above indicating that you choose to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.

a. **Format of the reporter's transcript**

I request that the reporters provide *(check one)*:

- (1) My copy of the reporter's transcript in electronic format.
- (2) My copy of the reporter's transcript in paper format.
- (3) My copy of the reporter's transcript in electronic format and a second copy in paper format.

(Code Civ. Proc., § 271.)

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5. b. **Proceedings**

I request that the following proceedings in the superior court be included in the reporter's transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known), and whether a certified transcript of the designated proceeding was previously prepared.)*

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1) 11/5/21			Hearing Re: Ag Pool Motion for Attorney's fees	Cathy A. Alberitton	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2) 5/28/21			Entry of order re: Appropriative Pool motion	Cathy A. Alberitton	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(3) 4/30/21			Hearing re: Appropriative Pool motion	Cathy A. Alberitton	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(4)				C	<input type="checkbox"/> Yes <input type="checkbox"/> No

See additional pages. *(Check here if you need more space to list additional proceedings. List these exhibits on a separate page or pages labeled "Attachment 5b," and start with number (5).)*

6. **NOTICE DESIGNATING PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT**

(You must complete this section if you checked item 2b(3) above indicating you choose to use a settled statement.) I request that the following proceedings in the superior court be included in the settled statement. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known), and whether a certified transcript of the designated proceeding was previously prepared.)*

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

See additional pages. *(Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 6," and start with number (5).)*

7. a. The proceedings designated in 5b or 6 include do not include all of the testimony in the superior court.

b. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. *(Rule 8.130(a)(2) and rule 8.137(d)(1) provide that your appeal will be limited to these points unless the Court of Appeal permits otherwise.)* Points are set forth: Below On a separate page labeled "Attachment 7."

Date: January 14, 2022

Tracy J. Egoscue
(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

1 SAN BERNARDINO, CALIFORNIA, FRIDAY, NOVEMBER 5, 2021

2 PM SESSION

3 DEPARTMENT S-35 HONORABLE STANFORD REICHERT, JUDGE

4
5 APPEARANCES:

6 For the Chino Basin Watermaster, SCOTT SLATER,
7 Attorney at Law, and BRADLEY HERREMA,
8 Attorney at Law; for the Agricultural Pool,
9 TRACY EGOSCUE, Attorney at Law; for the City
10 of Ontario, FREDERIC FUDACZ, Attorney at Law;
11 for the State of California Department of
12 Justice and Agricultural Pool, MARILYN LEVIN,
13 Deputy Attorney General and CAROL BOYD,
14 Deputy Attorney General; for the Cucamonga
15 Valley Water District, STEVEN ANDERSON,
16 Attorney at Law; for the Jurupa Community
17 Services District, ROBERT DONLAN, Attorney
18 at Law, and SHAWNDA GRADY, Attorney at Law;
19 for the City of Pomona, THOMAS BUNN, Attorney
20 at Law; for the City of Ontario, SCOTT BURTON,
21 Attorney at Law; GINA NICHOLLS, Attorney at Law,
22 and CHRIS QUACH, Attorney at Law and
23 COURTNEY JONES, Attorney at Law; for the Inland
24 Empire Utilities Agency, JEAN CIHIGOYENETCHE,
25 Attorney at Law; ELIZABETH CALCIANO, Attorney
26 at Law, for the City of Chino Hills; for the
27 Monte Vista Water District and Monte Vista Water
28 District Irrigation Company, ANDREW GAGEN, Attorney

1 at Law; for the Three Valleys Municipal
2 Water District, STEVEN KENNEDY, Attorney at Law;
3 JOHN SCHATZ, Attorney at Law, for the Appropriative
4 Pool; JIMMY GUTIERREZ, Attorney at Law, for the
5 City of Chino; for the City of San Bernardino,
6 STEPHANIE GUTIERREZ, Attorney at Law.

7 Also present are interested parties.

8 (Cathy Albritton, C.S.R., Official Reporter, C-7137)

9 THE COURT: Okay, so this is Judge Reichert. I'm
10 on the record now on the Watermaster case. So let me go
11 through the appearances on the record.

12 So let's start with Steven Anderson on behalf of
13 Cucamonga Valley Water District?

14 MR. ANDERSON: Present. Thank you, your Honor.

15 THE COURT: Thank you.

16 Chris Berch?

17 MR. BERCH: Present, your Honor, for the Jurupa
18 Community Services District.

19 THE COURT: Thank you.

20 Okay. Bob Bowcock?

21 MR. BOWCOCK: Present, your Honor.

22 THE COURT: Thank you.

23 Carol Boyd on behalf of the State of California?

24 MS. BOYD: Present, your Honor. Thank you.

25 THE COURT: Thank you.

26 Thomas Bunn on behalf of the City of Pomona?

27 Present, your Honor. Good afternoon.

28 THE COURT: Good afternoon.

1 Elizabeth Calciano on behalf of the City of Chino
2 Hills?

3 MS. CALCIANO: Present, your Honor.

4 THE COURT: Thank you.

5 Jean Cihigoyenetché on behalf of the Inland Empire
6 Utilities?

7 MR. CIHIGOYENETCHE: Present, your Honor. Thank
8 you.

9 THE COURT: Thank you.

10 Ron Craig on behalf of the City of Chino Hills?

11 MR. CRAIG: Present, your Honor.

12 THE COURT: Thank you.

13 James Curatalo from Watermaster?

14 MR. CURATALO: Present, your Honor. Thank you.

15 THE COURT: Thank you.

16 Robert Donlan on behalf of Jurupa Community
17 Services?

18 MR. DONLAN: Present, your Honor. Thank you.

19 THE COURT: Ms. Egoscue?

20 MS. EGOSCUE: Present, your Honor. Thank you.

21 THE COURT: On behalf of the Overlying Agricultural
22 Pool -- that would be Agricultural Pool actually.

23 And Eduardo Espinoza on behalf of Cucamonga Valley
24 Water District?

25 MR. ESPINOZA: I'm present, your Honor. Thank you.

26 THE COURT: Thank you.

27 Mr. Fred Fudacz on behalf of the City of Ontario?

28 MR. FUDACZ: Present, your Honor. Good afternoon.

1 THE COURT: Good afternoon.
2 Andrew Gagen from Monte Vista Water District?
3 MR. GAGEN: I'm here, your Honor. Thank you.
4 THE COURT: Thank you.
5 Mike Gardner from Chino Basin Watermaster?
6 MR. GARDNER: Thank you, your Honor. I am present.
7 THE COURT: Thank you.
8 Brian Geye on behalf of the Chair of the Non Ag
9 Pool?
10 Mr. Brian? Geye?
11 THE JUDICIAL ASSISTANT: No check in.
12 THE COURT: Not here. Okay.
13 Mr. Gutierrez from the City of Chino?
14 MR. GUTIERREZ: Good afternoon, your Honor.
15 Present in the courtroom.
16 THE COURT: Thank you. Thank you very much.
17 Shawnda Grady from Jurupa Community Services?
18 MS. GRADY: Present, your Honor.
19 THE COURT: Thank you.
20 Alan Hubsch on behalf of the Non Ag Pool?
21 MR. HUBSCH: Alan Hubsch is present. Thank you.
22 THE COURT: Thank you.
23 David Jesus on behalf of the Watermaster?
24 Not present. Okay.
25 Courtney Jones on behalf of the City of Ontario?
26 MS. JONES: Present, your Honor. Thank you.
27 THE COURT: Thank you.
28 And Steven Kennedy on behalf of the Three Valley

1 Municipal Water District?

2 MR. KENNEDY: Good afternoon, your Honor. Present.

3 THE COURT: Thank you.

4 Marilyn Levin on behalf of the State of California?

5 MS. LEVIN: Good afternoon, your Honor. Present.

6 Thank you.

7 Gina Nicholls on behalf of the City of Ontario?

8 MS. NICHOLLS: Present, your Honor.

9 THE COURT: Thank you.

10 Jeff Pierson from Watermaster?

11 MR. PIERSON: Good afternoon, your Honor. Present.

12 And I'm Vice Chair of your board and Chairman of the

13 Advisory Committee and Vice Chair of the Overlying

14 Agricultural Pool. Thank you.

15 THE COURT: All right. Thank you, sir.

16 And Chris Quach on behalf of the City of Ontario?

17 MR. QUACH: Present, your Honor. Thank you.

18 THE COURT: Justin Scott-Coe from Monte Vista Water
19 District?

20 MR. SCOTT-COE: Present, your Honor. Thank you.

21 THE COURT: And Janine Wilson from Watermaster?

22 MS. WILSON: Present, your Honor.

23 THE COURT: Thank you.

24 Kyle Brochard on behalf of the City of Upland?

25 MR. BROCHARD: Present, your Honor.

26 THE COURT: And Scott Burton on behalf of the City
27 of Ontario?

28 MR. BURTON: Present, your Honor.

1 THE COURT: Okay. And I will just ask, Steve Elie
2 from Watermaster?

3 No response.

4 And Betty Folsom? Representing herself apparently.
5 No answer. Okay.

6 Edgar Foster from Watermaster?

7 MR. FOSTER: Present, your Honor.

8 THE COURT: Thank you.

9 Mr. Herrema representing Watermaster?

10 MR. HERREMA: Good afternoon, your Honor.

11 THE COURT: Good afternoon.

12 Pete Kavounas from Watermaster?

13 MR. KAVOUNAS: Good afternoon, your Honor. Peter
14 Kavounas present. Thank you.

15 THE COURT: Bob Kuhn from Chino Basin Watermaster?

16 MR. KUHN: Present, your Honor.

17 THE COURT: Thank you.

18 And let me keep rolling down here just to make sure
19 I got everybody.

20 Dawn Martin, County of San Bernardino present or
21 not? Any response? No response.

22 Stephanie Reimer from Monte Vista Water?

23 No response.

24 Christina Robb from City of Chino?

25 No response.

26 Mr. Schatz on behalf of the Appropriative Pool?

27 MR. SCHATZ: Good afternoon, your Honor.

28 THE COURT: Thank you. Okay.

1 And Mr. Schwartz from Monte Vista? Any response?

2 No.

3 And Elsa Sham from City of Pomona, any response?

4 No.

5 And Mr. Slater on behalf of Watermaster?

6 MR. SLATER: Yes, your Honor.

7 THE COURT: Afternoon.

8 Mr. Tanaka on behalf of the Cucamonga Valley Water
9 District?

10 No response.

11 Anna Truong from -- actually a party? Ms. Truong?
12 Any response?

13 Your Honor, that's Anna Truong Nelson from
14 Watermaster.

15 THE COURT: Okay. Thank you. Got it.

16 And Mr. Wildermuth, is he here today? No? Okay.

17 All right. And then I've got Stephanie Gutierrez
18 for the City of San Bernardino?

19 MS. GUTIERREZ: Yes. Present, your Honor. Thank
20 you.

21 THE COURT: Thank you.

22 Anybody on the phone that -- for whom I need to
23 take an appearance? Going once? Going twice? That's it.

24 Anybody in the courtroom from whom I need to take
25 an appearance but whom I've missed? Going once? Going
26 twice? That's everybody. Okay.

27 So we are here today on the motion for the attorney
28 fees by the Ag Pool and The Court has read and considered

1 the paperwork, briefing, and so forth.

2 It's your motion, Ms. Egoscue. Anything you want
3 to add to the paperwork?

4 MS. EGOSCUE: Your Honor, it appears that you have
5 quite a full docket this afternoon. I just briefly would
6 like to address The Court with going to your order issued in
7 May of this year, briefly. Your order indicated that the
8 two sides, the two pools could meet to attempt to deal with
9 the issue, and unfortunately that was unsuccessful.

10 I'd like The Court to understand on behalf of the
11 Agricultural Pool that the Pool is ready and willing to
12 adhere to the order of May, and in so doing did endeavor to
13 enter into good faith negotiations with the Appropriative
14 Pool before the motion was filed. Subsequent to the motion
15 being filed, there were again attempts to settle this
16 matter, and those were also unsuccessful. And this
17 happened, Your Honor, all up until very recently attempts
18 were made. So there were numerous attempts.

19 Pursuant to your order, the Agricultural Pool filed
20 the Motion for Attorney Fees. The motion is fairly straight
21 forward. We believe it adheres to not only your order but
22 also the Code, and indicates that the construction of the
23 contractual agreement, that you have further clarified with
24 your order, has been adhered to. The contest that was filed
25 and has not yet been adjudicated, the subject of that
26 contest that was filed with Watermaster because as Your
27 Honor is very aware, only Watermaster can adjudicate so to
28 speak storage agreements.

1 The Agricultural Pool filed the contest. The
2 Agricultural Pool was subject to a motion that in effect cut
3 off the contest by the certain member agencies of the
4 Appropriative Pool. However, the contest itself, as the
5 papers reflect, was not adverse to the Appropriative Pool.
6 So in following your order, Your Honor, we filed a motion on
7 behalf of the Agricultural Pool with the -- not only the
8 invoices properly redacted to protect attorney/client
9 privilege, but also supported by a declaration filed by the
10 attorney for the Agricultural Pool which is myself and the
11 chair of the Agricultural Pool who testified on the record,
12 your Honor, that the work that was performed was to the
13 benefit of the Agricultural Pool.

14 In closing, Your Honor, I'd like to reflect that to
15 render an opinion contrary to what the Agricultural Pool is
16 advocating would essentially take the Agricultural Pool out
17 of a process of overseeing and providing input on storage
18 agreements. This input and its oversight which is
19 guaranteed not only by the judgment that indicated that
20 storage agreements could be disputed, but also, your Honor,
21 by the Peace Agreement and the Watermaster rules and
22 regulations. Again, to reiterate, the contest was filed to
23 the Watermaster in response to the Watermaster making an
24 assignment of storage agreements that the Agricultural Pool
25 contested. The expenses that were incurred as a result were
26 appropriate. They were proper. They were for the benefit
27 of the Agricultural Pool and we believe that the papers
28 reflect that and provide more than sufficient evidence both

1 under your order and pursuant to the Code. Thank you, your
2 Honor.

3 THE COURT: Thank you.

4 Who would like to speak on behalf of the
5 Appropriate Pool?

6 MR. FUDACZ: Maybe I can lead off, your Honor, if
7 you would.

8 THE COURT: Yes.

9 MR. FUDACZ: Fred Fudacz on behalf of the City of
10 Ontario.

11 THE COURT: Go ahead, please.

12 MR. FUDACZ: Your Honor, I think it's abundantly
13 clear that notwithstanding Ms. Egoscue's statement, the Ag
14 Pool hasn't complied with your May 28th court order.

15 That court order required in Paragraph 7 to provide
16 the attorney fee bills to the Appropriative Pool before
17 filing this motion. That was not done. And under
18 Paragraph 8 of your order, your May 28 order, they were
19 supposed to provide meaningful input as to the attorney's
20 fees and provide the bills themselves minimally redacted so
21 that both the Appropriative Pool and your Honor could review
22 them in a meaningful way. That clearly wasn't done. For
23 the two fiscal years in contention here, the 2019-2020
24 fiscal year, no fees at all, no legal bills at all were
25 provided for the first six months.

26 For the rest of that fiscal year and the following
27 fiscal year redactions were extensive. It just takes a
28 quick glance at the bills to understand that, your Honor.

1 They're just blacked out. And we calculated that some 90
2 percent of the work that was presented at those bills was
3 essentially redacted. So we don't know what was done. We
4 don't know if what was done complies with your court order.
5 We don't know how many hours were spent on tasks that worked
6 in compliance with your court order. And, frankly, the Ag
7 Pool acknowledges that they don't have to give us the bills
8 in a meaningful way.

9 They cite the Syers case which obviously has
10 nothing to do with the situation which we're faced with when
11 The Court ordered the Ag Pool to present these legal bills
12 in a meaningful way. That didn't happen. And we have a
13 court order that excludes certain expenses which certainly
14 wasn't the case of the Syers case. And on top of that,
15 Syers involved extensive declarations where tasks were
16 broken down into minute elements and specific times
17 allocated to each such task.

18 Beyond that, perhaps most falling, the Ag Pool
19 challenges the need to demonstrate that these legal fees
20 were reasonable and necessary. Apparently they're arguing
21 that we are supposed to pay for unreasonable and unnecessary
22 legal expense. That isn't consistent with Civil Code 1770
23 which your court adopted as part of your May 28th order.

24 The Ag Pool was presented the straw man argument
25 that somehow the Appropriative Pool is designed to preclude
26 the Ag Pool from participating meaningfully in the Basin.
27 That simply isn't true. All we're saying is that as a
28 matter of public policy, we need to know what they're doing.

1 As this court rightly pointed out, asking the Appropriative
2 Pool to pay for these expenses without seeing the bills is a
3 violation of due process and fundamental fairness. And
4 these are public dollars we're talking about. We have a
5 responsibility to the public to account for them. To do
6 that without meaningful documentation flies in the face of
7 public policy considerations.

8 And we're not saying they can't participate. All
9 we're saying is "Give us the bills. Let us review them."
10 If you want to do something in secret and not provide the
11 bills to us, you can go ahead and do that, but you got to do
12 that on your own nickel. You've got to pay for it like the
13 other pools do. This is a special circumstance where Your
14 Honor's interpreted Section 5.4. And it's just a matter of
15 who pays, not what the Pool can do.

16 And I should point out that in the last fiscal
17 year -- excuse me while I catch a breath --

18 THE COURT: Sure.

19 MR. FUDACZ: -- the last fiscal year, we paid 1.8
20 million dollars in non legal expenses to support the
21 operation of Watermaster that would have been assessed
22 normally to the Ag Pool but for 5.4. That was done with no
23 real commotion. Those expenses went through the extensive
24 Watermaster review process and, you know, the public policy
25 concerns about paying those expenses were met, but here we
26 have a very different situation where we get no legal bills
27 or bills that are redacted to the point of it's just not
28 being intelligible.

1 So the time I think Your Honor is to bring this
2 matter to a conclusion. The history of this controversy, I
3 think, demands that. We filed this motion -- filed our own
4 motion seeking clarification of 5.4 and what attorney's fees
5 were to be paid or not way back in September of 2020. Prior
6 to that we sent a letter. A number of -- Appropriative Pool
7 members sent a letter to the Ag Pool requesting these very
8 invoices. That request was refused. We met with Ag Pool
9 representatives prior to filing our motion. We asked for
10 the invoices. The invoices were not produced. Only then
11 did we file our motion. And in opposition to that motion,
12 there was no attempt on the Ag Pool to produce the invoices
13 that are predicate under any rational understanding of 5.4
14 to pay that.

15 Your Honor sent us to mediation before
16 Judge Lichtman. The invoices were not presented at that
17 time. And finally The Court came out with an order in
18 May of 2021 that basically told the Ag Pool, you folks have
19 got to produce these invoices. You can redact them, but you
20 can't redact them to the point you can't understand what's
21 going on and that is what happened.

22 Thereafter, we engaged in good faith settlement
23 talks with the Ag Pool. Again, requesting in those meetings
24 the invoices. They weren't forthcoming. We sent a letter
25 following onto that, again requesting the invoices in some
26 meaningful way where we could evaluate what was done and
27 what was appropriate and what might not be appropriate. We
28 even offered to provide a continuance of the hearing which

1 was then set for October to allow that to happen. That was
2 rebuffed.

3 As far as the storage contest not being adversarial
4 is just kind of untenable. This is an independent
5 proceeding. We have a hearing officer presented --
6 appointed, Mr. Buchholz (phonetic), who used to be the
7 executive officer of the regional board. He is in position
8 as a hearing officer for the contest between the Ag Pool and
9 members of the Appropriative Pool. And the whole intent of
10 that contest is to deprive Appropriative Pool members of
11 their water. Water that is in storage or stored water that
12 is sought to be transferred. We're talking about hundreds,
13 if not millions -- hundreds of thousands if not millions of
14 dollars of public monies.

15 This is certainly adversarial in a way that
16 violates your court order. So what we're left with is an
17 Ag Pool motion that seeks payment of all of the attorney
18 fees for two fiscal years without presenting any substantial
19 evidence, sufficient evidence, to support that payment. And
20 what we'd ask The Court to do is in accordance with your
21 order, Section 8, to render a decision effecting that order
22 that was issued in May that the Ag Pool isn't entitled to
23 payment for any of those fees for the reason they haven't
24 supplied sufficient evidence, haven't provided the bills
25 that back up the obligation to pay. Thank you.

26 THE COURT: Thank you.

27 Anyone else on the Appropriative Pool?

28 MR. GUTIERREZ: Yes, your Honor. Jimmy Gutierrez

1 from the City of Chino. I'd like to discuss benefit and
2 detriment for a minute. Your court order highlights it, and
3 I think it's important in this context because one issue of
4 course is what Mr. Fudacz raised which is the invoices
5 themselves. I think the more fundamental basic matter here
6 is the services that the Ag Pool wants us to pay. Now it's
7 clear that the Ag Pool can hire their lawyer, pay the lawyer
8 whatever they want, ask the lawyer to do whatever they want.
9 We have no desire or intent to interfere with that right.
10 But it's a different story when we're being asked to pay for
11 that. And I want to start off by talking just a minute
12 about the judgment as the basis for the framework for
13 understanding that none of these services that the Ag Pool
14 requested benefitted the Ag Pool. Let me explain why.

15 Under the judgment, the Ag Pool has the absolute
16 first right to the water in the basin to the tune of 82,000
17 acre feet a year. There's an assessment to that allocation
18 to the Non Overlying Ag Pool. There's an allocation to the
19 Appropriators. But because the Ag Pool has diminished due
20 to the conversion of land for agricultural purposes to urban
21 purposes which the Appropriators then hold the
22 responsibility for serving. Because of that change, the Ag
23 Pool produces less and less water. And what they don't
24 produce under the judgment goes to the Appropriators. I
25 think you know that. But the point here is that the Ag Pool
26 gets all the water it needs. It gets all the water first.
27 It suffers no detriment if there's a reduction in the Safe
28 Yield because as you know the judgment requires the

1 Appropriative Pool to reduce its allocation if there's a
2 reduction of Safe Yield. The Ag Pool does not suffer any
3 loss if the safe yield is reduced unless of course the safe
4 yield goes below 82,000 acre feet. But because they're
5 producing so much less, it may not have a practical effect.

6 So with that in mind, your Honor, let's talk about
7 the contest. They're seeking services for -- excuse me --
8 they're seeking payment for services to fund the contest and
9 they state that the contest is not adverse to the
10 Appropriators. In the declaration that Ms. Egoscue filed
11 she attached as Exhibit A to her declaration the contest
12 that was filed by the Ag Pool in May of 2017.

13 And I want to read one sentence from that letter.

14 (Reading:)

15 It's page 2, under the topic, Basis for Contest and
16 it reads:

17 The Ag Pool contests the
18 application for storage of excess
19 carryover water by members of the
20 Appropriative Pool in amounts as shown
21 in the assessment package approved
22 November 17 2016.

23 (End of reading.)

24 They're challenging the right of the Appropriators
25 to have an agreement with Watermaster that's required under
26 the judgment in order to be able to store the water that
27 they don't use, use it for a future date or even selling it.
28 That's the essence of the contest. And that's certainly

1 adverse to the Appropriators. But more than that, there is
2 no need for the Agricultural Pool to contest it, and there
3 is no benefit that the Agricultural Pool would get. And I
4 will tell you why, because that first sentence says that
5 they're contesting the amount that had already been approved
6 in the assessment package of the prior year.

7 What happened was in November of 2016, as usual,
8 the Watermaster adopts what's called an assessment package.
9 That assessment package deals with all of the amount of
10 water in storage and it deals with all of the finances of
11 the pools. And in that assessment package, there was a
12 description of the amount of water that every Appropriator
13 had in storage, either as excess carryover water or as
14 supplemental water. An Exhibit C to -- excuse me --
15 Attachment C to Exhibit A contains the Watermaster staff
16 report. And what's clear from reading the documents is that
17 the amount of water that each Appropriator had carried over
18 and that each Appropriator had acquired supplemental water
19 was tracked carefully by Watermaster every year even though
20 they didn't enter into an agreement. But it was tracked
21 every year and it was described in the assessment package.
22 And that assessment package really was the final
23 determination of what storage rights every party had then.

24 Now what's also interesting is that the members of
25 the Appropriative Pool -- excuse me -- the Ag Pool who sat
26 on the advisory committee voted to approve that assessment
27 package and the amount of water in storage. And they did
28 not oppose it within the time permitted for them to do under

1 the judgment. Therefore, the determination of the amount of
2 water that every Appropriator had in storage had become
3 final. And I say that because the contest could not go
4 forward for the simple reason that it already been
5 determined, and that the Ag Pool had waived its right to
6 contest it.

7 Now, one thing further, in May 2017, I filed a
8 letter with the Watermaster Board asking them to make this
9 determination. The Watermaster Board did not act on it, and
10 it hasn't been acted on since. But the point here, your
11 Honor, is that there wasn't any need to challenge it because
12 they couldn't win. They already approved it. They already
13 waived their right. So all of this money that they've
14 expended and they want us to pay challenging these
15 agreements would not have produced anything of benefit to
16 them and it would absolutely have been detrimental to the
17 Appropriators. Conceivably the Appropriators would not have
18 been able to store that water, would not be able to use it,
19 would not be able to sell it. And the Ag Pool didn't have a
20 right to that water. It could have benefitted from it
21 because of what I said about their rights under the
22 judgment.

23 Now let me go to the services for the 2020 lease
24 calculation. That's another area of legal services that the
25 Ag Pool requests the Appropriative Pool to pay. They've
26 hired consultants. They did a lot of legal work, and I
27 don't know if you recall, but Watermaster filed a motion to
28 set the Safe Yield for 2020 and after. And the Ag Pool

1 filed a response, but in effect the Ag Pool had asked for a
2 retroactive determination that the Safe Yield for the period
3 of 2010 through 2020 should be set at 125,000 acre feet
4 versus the 135 acre feet that this court had already
5 established. The City of Chino opposed that on the basis of
6 collateral estoppel. The Ag Pool had argued that there was
7 an over production. The Court found there was no over
8 production. Why am I raising this? I'm raising it because
9 that effort on the Safe Yield Reset, if successful, would
10 have produced a deficit for each Appropriator because if the
11 Safe Yield had been reduced from 125 to 135 after the
12 Appropriators for ten years had relied 135,000 allocation
13 every Appropriator would have owed back the water to the
14 tune of 125,000 acre feet total to the basin. So that act
15 was adverse and potentially detrimental to the
16 Appropriators. And, again, it would not have benefitted the
17 Ag Pool because of what I said earlier. The Ag Pool gets
18 all the water it needs first. It suffers no loss unless the
19 Safe Yield goes below 82,000 acre feet. And perhaps that's
20 not that clear to The Court from the papers, but I think if
21 you read Exhibit A, they're fairly short documents, you'll
22 clearly see that what I've stated about the contest does not
23 benefit the Ag Pool and would be detrimental to the
24 Appropriators as well as the efforts they made on the 2020
25 Safe Yield Reset. Their challenge to Watermaster was not
26 only should you deal with the 2020 Reset, but you should go
27 back and redo the 2010 Reset. That's all I have to add,
28 your Honor.

1 THE COURT: Thank you.

2 Any further argument in opposition of the motion?

3 None.

4 Okay, let me go back to Ms. Egoscue. It's your
5 motion. You get the last word.

6 MS. EGOSCUE: Thank you, your Honor. I go to your
7 order. Your order specifically says, on Page 8, that the
8 discussion that we are having today, the subject of the
9 pending motion is the special assessment of \$165,000. As
10 the papers reflect, the Appropriative Pool has withheld
11 payment post this dispute that you clearly directed us to
12 bring to your attention. So they have refused to pay and
13 they're here before you saying that your order precludes
14 them or allows them to ignore that the 5.4 contractual
15 obligation that you clearly ruled they could not ignore.

16 I will call your attention to page 4 of your order
17 where you clearly say in Paragraph 5 that the ruling of the
18 court is for the specific attorney fee dispute between the
19 two pools. It is not intended to have any general effect on
20 any other party or pool and does not give the Appropriative
21 Pool any legal basis to object to any asked effect or any
22 other budget items. So all these other issues are noise.
23 They are supposed to attest to the \$165,000 which was the
24 subject of the motion. The Agricultural Pool provided the
25 invoices subsequent to that, properly redacted to protect
26 attorney/ client privilege. However, also providing a
27 declaration of support.

28 Moving forward, your Honor. Should the

1 Appropriative Pool actually follow your order and begin to
2 pay for the 5.4 contractual obligation, then the
3 Agricultural Pool is prepared to provide invoices that are
4 completely unredacted which has been expressed on numerous
5 times to the Appropriative Pool. So I will ask The Court to
6 ignore the rest of this that has to do with the Safe Yield
7 whether or not the Agricultural Pool is acting to the
8 benefit of the pool.

9 If Your Honor would like to have a subsequent
10 hearing regarding the contest and regarding why the
11 Agricultural Pool not only filed a contest that hasn't been
12 adjudicated so all of the issues that were brought up by
13 opposing counsel are relevant. The evidence is not before
14 Your Honor. It's not part of the record, and it is
15 completely irrelevant. And quite frankly their
16 characterization of the contest is offensive. If, Your
17 Honor would like to have an evidentiary hearing regarding
18 both the contest, what is happening with storage, and the
19 Safe Yield Reset which as Your Honor understands was as a
20 result of the massive epic drought the basin is undergoing,
21 the Agricultural Pool would be more than happy to have that
22 hearing.

23 Regardless of all of the noise, the motion
24 regarding the 165,000 and some change that has been properly
25 supported, it is not about the subsequent years that they
26 have refused to pay in violation of the court order. And
27 the Agricultural Pool requests relief for this quite frankly
28 blatant attempt to shut down the Agricultural Pool. These

1 arguments should be obvious, Your Honor.

2 In conclusion, if you order anything to the
3 contrary as to what the Agricultural Pool is requesting,
4 anything that the Agricultural Pool does moving forward will
5 be considered adverse to the Appropriative Pool and
6 therefore you've effectively rendered the Agricultural Pool
7 and its right pursuant to the judgment and the Peace
8 Agreement irrelevant. Thank you very much, your Honor.

9 THE COURT: Any further argument?

10 Going once? Going twice? Submitted. Give me a
11 short recess. I'll be right back.

12 (A short recess was held.)

13 THE COURT: Back on the record. The Court rules as
14 follows:

15 The Court denies the motion in -- almost in its
16 entirety because the fees and costs claimed in the billing
17 were either completely adverse or The Court did -- could not
18 determine the meaning because of the heavy redaction or they
19 do not -- for that reason. The Court was quite clear in its
20 order that the redactions not deny due process insofar as
21 forcing the party to pay a bill it has not seen. And the
22 redactions in the bills as set forth in my order on page 7,
23 The Court found redactions to be so extensive to make most
24 of the bills meaningless for review by the opposing counsel
25 and a determination by The Court. The Court only found the
26 billing for which The Court could make a determination that
27 they were not adverse or as follows -- or so heavily
28 redacted as to be meaningless or as follows: Give me just a

1 moment.

2 It is a total of \$10,149.50, and I will list them
3 out. This has to do with the mediation. On October -- I'm
4 sorry -- December 3, there was a charge for researching a
5 list of mediators, \$687. On December 4, there was a
6 preparation of the mediation brief, \$750. On December 7 --
7 these are all 2020 -- there was a review of the mediation
8 e-mail for mediation review of the e-mail from the mediator
9 and scheduling a teleconference, \$1375.

10 On December 7, there was a review and edits to the
11 mediation brief, \$525. On December 9, there was updates to
12 the proposed mediator list, \$75. On December 10, there was
13 a teleconference with the mediator, the mediation case
14 manager, \$1375. Then on December 11, the mediation hearing
15 itself, \$3712.50. Then December 15, a draft mediation
16 statement to the court, \$825. And December 28, a review of
17 the draft mediation fees briefed to the court, another \$825.
18 When I add those all up, it's \$10,149.50.

19 Yes, Ms. Egoscue?

20 MS. EGOSCUE: Your Honor, you had ordered
21 previously that the Agricultural Pool would have to assume
22 its own costs of mediation. Therefore, the papers did not
23 request reimbursement from those costs. And that's also why
24 Your Honor, that was clearly reflected in the papers.

25 THE COURT: Thank you. Actually, I'd forgotten
26 that.

27 MS. EGOSCUE: Yes. As much as I hate to point out
28 further defeat on behalf of the part of my client, I did not

1 want you to make that clear error based upon a previous
2 ruling.

3 THE COURT: Thank you. I do remember that now. I
4 confess among all my other activities, that aspect of the
5 Court's previous rulings, I'd simply forgotten. I
6 appreciate your highly credible and professional response,
7 Ms. Egoscue. Thank you very much. So the motion is denied
8 in its entirety.

9 That's it for today. Thank you.

10 MS. EGOSCUE: Thank you, your Honor.

11 MR. SLATER: Your Honor, if I might just, as a
12 matter of scheduling, making sure we get on your calendar,
13 we have a piece of -- hopefully, it will be --

14 MS. EGOSCUE: Why don't you come use this
15 microphone.

16 THE COURT: Oh, yes. Thanks, Ms. Egoscue.

17 MR. SLATER: Thank you, your Honor. It's unusual
18 we don't have anything to say. So just on the item of
19 calendaring, as you'll remember from the Skinny Storage
20 discussion, we were going to have some rules and regulations
21 which were necessary to implement the Skinny Storage
22 provision, those are -- have -- an internal draft has been
23 prepared and is in the midst of being circulated to the
24 parties and so I would expect given the time frame of where
25 we are, that a -- perhaps a January or February time frame
26 for us to be able to bring those back to you, if that were
27 acceptable. And then I have one other thing to tell you
28 about.

1 THE COURT: Okay. I have something to tell you
2 about as well. Let's go off the record for a minute.

3 (A discussion was held off the record.)

4 THE COURT: Let's go back on the record and see how
5 my Friday afternoons in January look.

6 Is that what we are looking at, Mr. Slater?

7 MR. SLATER: Yes, your Honor.

8 THE COURT: Okay.

9 MR. SLATER: Later in the month probably would be
10 better.

11 THE COURT: Same here.

12 Ms. Kim?

13 THE JUDICIAL ASSISTANT: The 28th is already
14 booked.

15 THE COURT: I'm gone the 21st.

16 THE JUDICIAL ASSISTANT: Right.

17 THE COURT: How about February 4th?

18 MR. SLATER: Yes, your Honor. That would be
19 perfect.

20 THE COURT: Are we okay February 4 or have I
21 already booked that up?

22 THE JUDICIAL ASSISTANT: We are open.

23 THE COURT: How about February 4?

24 MR. SLATER: Sold, your Honor.

25 THE COURT: So what I should put on calendar then
26 is a hearing re status report. I would say, let's go
27 broader, status report, Skinny Storage, which would be that
28 and whatever else.

1 THE COURT: Status report, "Skinny" storage and I
2 will know what that means.

3 MR. SLATER: I think our General Manager may like
4 local storage limitation solution, but skinny storage --

5 THE COURT: We all know what we mean.

6 MR. SLATER: We do.

7 THE COURT: Yes.

8 MR. SLATER: And if that's okay, then I have just a
9 sort of reckoning with the fact that it has been ten years
10 and in reality it's been 21 for me now. And I think, your
11 Honor, is aware of this. There's a -- the Dean of
12 Humanities from the Indiana University is a guy named Bill
13 Blomquist. Dr. Bill, as we call him. He wrote a book
14 famously cited about ground water management in California
15 called "Dividing the Waters." And in the spring of this
16 year, he published an update called "The Realities of
17 Adaptive Management of Ground Water." And it's a study on
18 the Chino Basin in its entirety and brings us through the
19 current time. And we were going to be -- we will be
20 arranging for Bill to make some form of a presentation where
21 we sure will invite your Honor to that, and, regardless, we
22 will plan to lodge a copy with you and then provide you with
23 an opportunity to get highlights of that and maybe some
24 discussion, if you have any. And it may be that the
25 February 4 time frame works for doing that, too.

26 THE COURT: That would be great. You're very kind.
27 Thank you very much. I will read it with great interest.

28 MR. SLATER: Thank you, your Honor.

1 MR. FUDACZ: Your Honor?

2 THE COURT: Yes.

3 MR. FUDACZ: If I may, before you go onto the next
4 matter.

5 In your May 28th order, you indicated that if the
6 motion was not filed by the Ag Pool by a certain date in
7 accordance with your May 28th order, that The Court will
8 order vacated the assessments subject to the current
9 dispute. And the parties' payment of the assessments,
10 subject to the current dispute, reimburse to the paying
11 party.

12 I guess the question is, is that something Your
13 Honor is going to effect on your own? Do we need to file
14 something to effect that? We have a bunch of money sitting
15 in escrows. I think some clarity on that may be required.

16 THE COURT: I agree, but I'm not sure that I want
17 to start clarifying things that I'm not prepared to clarify
18 today.

19 MR. FUDACZ: Okay.

20 THE COURT: For fear I may cause more problems than
21 I solve.

22 Does somebody want to propose something or put this
23 on the February 4 calendar or something else?

24 MR. SLATER: If that's okay, we're soon to have
25 holidays here, if that's all right.

26 THE COURT: Yes. And so if you would like to put
27 on calendar also on February 4 is this reimbursement plan?

28 MR. FUDACZ: Exactly. Now I don't know, this could

1 be handled by, you know, credits or payments. Or, you know,
2 there might be a number of ways to accomplish it. But I
3 didn't know if Your Honor intended to effect that on your
4 own, and I'm hearing no. So it sounds like we need a date
5 to effect that.

6 MS. EGOSCUE: Your Honor?

7 THE COURT: Ms. Egoscue?

8 MS. EGOSCUE: Your Honor, my client is going to
9 have to appeal this decision today.

10 THE COURT: Of course.

11 MS. EGOSCUE: So I would like to just clarify that
12 whatever you do, we have a firm date as to when we should
13 seek appeal. So if you are going to have a subsequent
14 hearing in February, especially considering that my client
15 is almost out of funds, we would like to know if we should
16 start the appeal clock today or --

17 THE COURT: I would start it today. As far as I'm
18 concerned, my order is final and everyone heard it. The
19 motion is denied.

20 If you want it reduced to writing, Mr. Slater and
21 Mr. Herrema usually do that right away.

22 MR. SLATER: We will be happy to do that Your
23 Honor.

24 MS. EGOSCUE: Thank you, your Honor. So this is
25 just some subsequent motion that the members of the
26 Appropriative Pool will be filing then?

27 THE COURT: Yes, I think.

28 MS. EGOSCUE: Thank you, your Honor.

1 THE COURT: Let me make sure I'm not again saying
2 something that will cause more problems than it solves.

3 MR. GUTIERREZ: Yes, your Honor, we would like to
4 have this matter clarified so reserving February 4th for a
5 motion for that clarification would be appropriate.

6 THE COURT: The motion for clarification is just
7 how to reimburse or how to pay the money back. Right?

8 MR. SLATER: Yes.

9 THE COURT: So I don't think that needs to be part
10 of your appeal, Ms. Egoscue. You're actually appealing the
11 actual ruling of denial if I've got that correct?

12 MS. EGOSCUE: That is correct, Your Honor.

13 THE COURT: So what I would suggest to do, unless
14 someone has a better suggestion, is ask Mr. Slater to
15 prepare an order. I'll sign it immediately. I will send it
16 straight back to Watermaster, so -- with a Notice of Entry
17 of Order so everyone knows exactly when the time starts
18 running and it will be in the next week. Before a week from
19 today.

20 MS. EGOSCUE: Thank you, Your Honor.

21 THE COURT: Thank you for making the request for
22 clarification.

23 MS. EGOSCUE: Thank you.

24 THE COURT: So get the order done. I will sign it,
25 send it back. I'm not -- The order is on the denial. The
26 appeal will be on the denial, not the reimbursement
27 technicalities. And so we can talk about those on the 4th,
28 but let's get Ms. Egoscue's going -- Ms. Egoscue's appeal

1 going as soon as possible for the obvious reasons as she
2 stated. So how does that sound?

3 MR. SLATER: Understood, Your Honor.

4 MR. FUDACZ: I think I would reiterate
5 Mr. Gutierrez' request for a date particularly if your Honor
6 is talking about retirement in May. It would be nice to at
7 least have a date so Your Honor is around so we could talk
8 to you about this in case it's necessary.

9 THE COURT: I will put on February 4 an additional
10 hearing regarding procedures for reimbursement. How is
11 that? Is that adequately descriptive?

12 MR. FUDACZ: Okay.

13 THE COURT: Because if you want to brief it or
14 something, I will read the briefs or -- I'm not going to set
15 a date. We can talk about it. It sounds like it needs to
16 run on a parallel track but not an immediate track unless
17 I'm missing something, Ms. Egoscue?

18 Am I missing something?

19 MS. EGOSCUE: Your Honor, the interesting
20 reimbursement, it's actually regarding funds held in escrow.
21 There is no harm to the Appropriative Pool for the
22 subsequent payment because they have not made it.

23 THE COURT: Okay.

24 MS. EGOSCUE: So in my opinion, unless I can be
25 shown otherwise, this would just be a motion that the
26 Appropriative Pool member agencies file regarding the escrow
27 agreement that quite frankly the Watermaster holds. But
28 Mr. Slater if you have -- the only issue I could see is, how

1 do you stay any kind of decision pending the appeal?

2 But, Mr. Slater, I will --

3 MR. SLATER: Conferring with Mr. Kavounas, we
4 believe the 165--- was never transmitted, and so it is
5 sitting in escrow.

6 MS. NICHOLLS: While we are waiting for that,
7 please. This is Gina Nicholls on behalf of the City of
8 Ontario. May I speak, your Honor?

9 THE COURT: Sure.

10 MS. NICHOLLS: I just want to clarify. I think
11 your original suggestion, the purpose of the hearing, the
12 procedure for reimbursements is more appropriate than
13 focusing on the escrow because there are more funds at issue
14 than just the escrow. I can enumerate that. But for
15 simplicity here, I would just request that the hearing be
16 more broadly stated than the procedure for reimbursement and
17 then we can, you know if necessary brief what the elements
18 of that are. But it is more than just the escrow.

19 THE COURT: Mr. Slater?

20 MR. SLATER: Your Honor, here's what we propose to
21 do. We will validate the fact that the 165,000 is held in
22 escrow and has not been released. If Your Honor wants to
23 reserve time on the calendar to consider the subject
24 generally, we always welcome a visit with Your Honor. But
25 the 165 is in escrow.

26 THE COURT: Got it.

27 How about this, how about if someone wants to file
28 a motion with a proposal for how this money gets -- from

1 escrow gets returned, and then someone -- if there is some
2 opposition, someone can voice it. And I'll put it on
3 calendar for February 4th?

4 How does that sound?

5 MR. GUTIERREZ: That's sound fine, your Honor. The
6 City of Chino would be willing to file such a motion.

7 THE COURT: Okay.

8 MR. SLATER: Your Honor, if we -- I'm just going
9 to offer this to counsel here. According to Mr. Kavounas,
10 the money was assessed among the members of the
11 Appropriative Pool. We have records of that, and it can be
12 released back from escrow to the parties in the precise
13 amount that they contributed. So insofar as the 165, we
14 have the payment track that goes from the Appropriators to
15 escrow and it would be released from escrow back to the
16 parties. If there's something else that they would like to
17 discuss, that's fine. But insofar as the escrow 165, no
18 question. Watermaster can release the funds from escrow.

19 THE COURT: Forthwith.

20 MR. SLATER: Forthwith. How about that?

21 MR. FUDACZ: Your Honor, in addition, I think as
22 Ms. Nicholls pointed out, there are funds that some people
23 paid without putting the money into escrow. There's other
24 monies at issue at stake as you pointed out. So I think in
25 addition to that, a motion would be appropriate.

26 THE COURT: Okay.

27 Mr. Gutierrez, thank you for volunteering to make
28 that motion.

1 How about this? How about, unless I hear an
2 objection, for the money in escrow, I order it be returned
3 forthwith. And then Mr. Gutierrez can address in his motion
4 any money that's somehow got paid that isn't in escrow. So
5 at least we can get some money returned to the parties
6 immediately.

7 MR. FUDACZ: Sounds like a good plan.

8 THE COURT: I thought you would like that one.

9 Mr. Slater?

10 MR. SLATER: Your Honor, again, the administrative
11 part of this, when your Honor says "forthwith," indeed we
12 can release forthwith. And with the normal functionality of
13 Watermaster, if we could say within this calendar month?

14 THE COURT: 30 days.

15 MR. SLATER: 30 days. Thank you, your Honor.

16 And so forthwith we can release the money that is
17 in escrow. Anything that goes above and beyond that would
18 require a bit of an exercise on the part of Watermaster.

19 So the 165, we can release. If there's something
20 different, something trailing, probably a little hair on it,
21 we are going to have to figure that out.

22 MS. EGOSCUE: Isn't that the subject of the
23 subsequent motion, your Honor?

24 THE COURT: Yes, that would be Mr. Gutierrez'
25 motion.

26 MR. SLATER: Thank you.

27 THE COURT: So here's what I'm going to propose
28 that should also get an order, that within the next 30 days

1 from today, calendar days, I'm ordering Watermaster to
2 release the funds in escrow back to the paying parties, and
3 ask Mr. Gutierrez then within the next 30 days to file a
4 motion to address any parties' payment that did not go into
5 the escrow. How does that sound? Is that clear enough?

6 MR. SLATER: Yes. It's clear to us, Your Honor.

7 THE COURT: Well, if it's clear to you then, it's
8 clear to me then. So that's what I'm going to order. I
9 will propose that unless I hear an objection.

10 Do I hear any objections? Going once? Going
11 twice? No objections.

12 Okay, I think we have a plan at least going forward
13 to get things moving on the appeal; to get things moving
14 with the money, and to figure out if there are any loose
15 ends that need to be tied together.

16 Thank you, everyone.

17 MR. FUDACZ: Thank you, your Honor.

18 MR. SLATER: Thank you, your Honor.

19 (At which time the foregoing proceedings were concluded.)

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

CHINO BASIN MUNICIPAL)
WATER DISTRICT,)
)
Plaintiff,) RCVRS 51010
)
vs.)
)
CITY OF CHINO, et.al.,)
)
Defendants.)
)
_____)

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS
BEFORE HONORABLE STANFORD REICHERT, JUDGE
November 5, 2021

APPEARANCES:

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(Appearances continued on next page.)

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

CHINO BASIN MUNICIPAL)
WATER DISTRICT,)
)
Plaintiff,) RCVRS 51010
)
vs.)
)
CITY OF CHINO, et.al.,) REPORTER'S
) CERTIFICATE
Defendants.)
)
)
)

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN BERNARDINO)

I, CATHY A. ALBRITTON, C.S.R., Official Reporter of
the above-entitled court, do hereby certify:

That I am a Certified Shorthand Reporter of the
State of California, duly licensed to practice; that I did
report in Stenotype oral proceedings had upon hearing of the
aforementioned cause at the time and place herein before set
forth; that the foregoing pages numbered 1 to 34, inclusive,
constitute to the best of my knowledge and belief a full,
true, and correct transcription from my said shorthand notes
so taken for the date of November 5, 2021.

Dated at San Bernardino, California, this 12th day
of November, 2021.



Official Reporter, C.S.R. No. 7137

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I N D E X

<u>PROCEEDINGS</u>	<u>PAGE</u>
Argument and Ruling on Motion for Attorney Fees.....	1

1 SAN BERNARDINO, CALIFORNIA; FRIDAY, MAY 28, 2021
2 PM SESSION

3 DEPARTMENT S-35 HONORABLE STANFORD REICHERT, JUDGE

4
5 APPEARANCES:

6 For the Chino Basin Watermaster, SCOTT SLATER,
7 Attorney at Law, and BRADLEY HERREMA,
8 Attorney at Law; for the Agricultural Pool,
9 TRACY EGOSCUE, Attorney at Law; for the City
10 of Ontario, FREDERIC FUDACZ, Attorney at Law;
11 for the State of California Department of
12 Justice and Agricultural Pool, MARILYN LEVIN,
13 Deputy Attorney General and CAROL BOYD,
14 Deputy Attorney General; for the Cucamonga
15 Valley Water District, STEVEN ANDERSON,
16 Attorney at Law; and for the Jurupa Community
17 Services District, ROBERT DONLAN, Attorney
18 at Law, and SHAWNDA GRADY, Attorney at Law;
19 for the City of Pomona, THOMAS BUNN, Attorney
20 at Law; for the City of Ontario, SCOTT BURTON,
21 Attorney at Law and COURTNEY JONES, Attorney at
22 Law; for the Inland Empire Utilities Agency,
23 JEAN CIHIGOYENETCHE, Attorney at Law; KYLE
24 BROCHARD, Attorney at Law, for the City of
25 Upland; ELIZABETH CALCIANO, Attorney at Law,
26 for the City of Chino Hills; STEVEN ELIE,
27 Attorney at Law, for the Chino Basin
28 Watermaster; ANDREW GAGEN, Attorney at Law,

1 for the Monte Vista Water District and Monte Vista
2 Water District Irrigation Company, ANDREW GAGEN,
3 Attorney at Law, for the Cucamonga Valley Water
4 District, GENE TANAKA, Attorney at Law for the
5 Three Valleys Municipal Water District,
6 STEVE KENNEDY, Attorney at Law; JOHN SCHATZ,
7 Attorney at Law, for the Appropriative Pool.

8 Also present are interested parties.

9 (Cathy Albritton, C.S.R., Official Reporter, C-7137)

10 THE COURT: Okay, Hi everybody. This is
11 Judge Reichert.

12 We've got just three people here in the courtroom
13 right now. Let me get their appearance, please.

14 First starting with you Ms. Egoscue.

15 MS. EGOSCUE: Good afternoon, your Honor. Tracy
16 Egoscue on behalf of the Agricultural Pool.

17 THE COURT: Okay.

18 And?

19 MR. SCHATZ: Good afternoon, your Honor. John
20 Schatz on behalf of the Appropriative pool.

21 THE COURT: Okay. And?

22 MR. FUDACZ: Good afternoon, your Honor. Fred
23 Fudacz for the City of Ontario.

24 THE COURT: Okay. And let me go through the phone
25 list.

26 So how about Steven Anderson on behalf of the
27 Cucamonga Valley Water District?

28 MR. ANDERSON: Yes. Present, your Honor.

1 Thank you.

2 THE COURT: Thank you.

3 Chris Burch, client.

4 MR. BURCH: Present, your Honor. From Jurupa
5 Community Services District.

6 THE COURT: Thank you.

7 Okay. And Bob Bowcock from Chino Basin
8 Watermaster?

9 MR. BOWCOCK: Present, your Honor.

10 THE COURT: Thank you.

11 And Carol Boyd on behalf of the State of
12 California?

13 MS. BOYD: Here, your Honor. Thank you.

14 THE COURT: Kyle Brochard on behalf of the City of
15 Upland?

16 MR. BROCHARD: Present, your Honor. Thank you.

17 THE COURT: I will call again.

18 Thomas Bunn on behalf of the City of Pomona?

19 No response. Okay.

20 Scott Burton on behalf of the City of Ontario?

21 MR. BURTON: Present, your Honor.

22 THE COURT: Elizabeth Calciano on behalf of the
23 City of Chino Hills?

24 MS. CALCIANO: Present, your Honor.

25 THE COURT: Jean Cihigoyenetche on behalf of the
26 City of Chino?

27 MR. CIHIGOYENETCHE: That should be IEUA again,
28 your Honor. I'm here.

1 THE COURT: Okay. We will get that right one of
2 these days. Thanks.

3 MR. CIHIGOYENETCHE: No problem.

4 THE COURT: Okay, thanks.

5 And then Ron Craig on behalf of the City of Chino
6 Hills?

7 MR. CRAIG: Present, your Honor.

8 THE COURT: Robert Donlan on behalf of Jurupa
9 Community Services?

10 MR. DONLAN: Present, your Honor. Thank you.

11 THE COURT: You're welcome.

12 Okay. Steve Elie from Chino Basin Watermaster?

13 MR. ELIE: It's Steve Elie, IEUA Board and
14 Watermaster. Thank you, your Honor.

15 THE COURT: Thank you.

16 Okay. And Eduardo Espinoza on behalf of the
17 Cucamonga Valley Water District?

18 MR. ESPINOZA: Yes, I'm present, your Honor. Thank
19 you.

20 THE COURT: Thank you.

21 Betty Folsom?

22 No response. Okay.

23 Andrew Gagen from Monte Vista Water District?

24 MR. GAGEN: Here, your Honor, also on behalf of the
25 Monte Vista Irrigation Company.

26 THE COURT: Okay. And Brian Geye, Chair of
27 Nonagricultural Pool?

28 MR. GEYE: I'm here, your Honor. Thank you.

1 THE COURT: Mr. Gutierrez on behalf of City of
2 Chino?

3 MR. GUTIERREZ: Yes, I'm present, your Honor.

4 THE COURT: Thank you.

5 Shawnda Grady on behalf of Jurupa Community
6 Services?

7 MS. GRADY: Present, your Honor.

8 THE COURT: Thank you.

9 Mr. Bradley Herrema on behalf of Watermaster?

10 MR. HERREMA: Good afternoon, your Honor.

11 THE COURT: Thank you.

12 And Mr. Hubsch on behalf of the Nonagricultural
13 Pool?

14 MR. HUBSCH: Allen Hubsch present, your Honor.
15 Thank you.

16 THE COURT: Thank you.

17 Courtney Jones on behalf of the City of Ontario

18 MS. JONES: Present, your Honor.

19 THE COURT: There you are. Okay, thank you.

20 MS. JONES: Yes, present.

21 THE COURT: Okay.

22 And Steven Kennedy on behalf of the Three Valley
23 Municipal Water District.

24 MR. KENNEDY: Present, your Honor. Thank you.

25 THE COURT: You're welcome.

26 Bob Cannon from the Chino Basin Watermaster?

27 MR. CANNON: Thank you, your Honor. I am present.

28 THE COURT: Thank you.

1 Marilyn Levin on behalf of the State of California?
2 MS. LEVIN: Thank you, your Honor. I'm present.
3 THE COURT: Thank you.
4 Gina Nicholls on behalf of the City of Ontario?
5 MS. NICHOLLS: Present, your Honor. Thank you.
6 THE COURT: Thank you.
7 Jeff Pierson from the Watermaster?
8 MR. PIERSON: Yes, your Honor, representing your
9 Board as Vice Chairman and Chairman of the Advisory
10 Committee. Thank you.
11 THE COURT: Thank you.
12 All right.
13 And then Chris Quach on behalf of the City of
14 Ontario?
15 MR. QUACH: Present, your Honor, thank you.
16 THE COURT: Justin Scott-Coe from the Water
17 District?
18 MR. SCOTT-COE: Present, your Honor. Thank you.
19 THE COURT: Mr. Slater, on the behalf of the
20 Watermaster?
21 MR. SLATER: Good afternoon, your Honor.
22 THE COURT: Okay, thank you.
23 And Mr. Tanaka on behalf of Cucamonga Valley Water
24 District?
25 MR. TANAKA: Present, your Honor. Thank you.
26 THE COURT: And Mr. Wildermuth from the
27 Watermaster?
28 MR. WILDERMUTH: Present, your Honor.

1 THE COURT: And Ms. Wilson from the Watermaster.

2 MS. WILSON: Present, your Honor.

3 THE COURT: Okay. Is there anybody else on the
4 phone?

5 Is there anybody else on the phone whose name I
6 didn't get? Going once?

7 MR. CROSLY: Yes, your Honor. David Crosley,
8 C-r-o-s-l-e-y, Water Manager for the City of Chino.

9 THE COURT: Okay. Thank you, Mr. Crosley.
10 Anybody else? Going once? Going twice?

11 I've got everyone, okay.

12 All right, we've got two matters to discuss today.

13 One of which is the motion by the Appropriative
14 Pool, and I'm going to have to start with that because
15 yesterday I formulated a brand new extensive tentative
16 ruling which I tried to get out yesterday around noon to
17 everyone.

18 So let me ask this, is there -- I got it sent over
19 to Watermaster. I hope they got it out the everybody.

20 Let me ask this question, is there anybody who
21 didn't get that?

22 Going once. Going twice?

23 Everybody got it. Okay.

24 The Court will point out it is completely
25 different or almost completely different than the previous
26 tentative ruling, and it was on the basis that no one had
27 really argued or briefed.

28 So, since it was -- the tentative was really

1 against Ms. Egoscue, I'm going to turn to Ms. Egoscue and
2 ask how would you like to handle this or proceed?

3 MS. EGOSCUE: Thank you, your Honor. Tracy Egoscue
4 on behalf of the Agricultural Pool. On behalf of my client
5 the Agricultural Pool, I have been instructed to profess
6 their profound gratitude for the time that you have spent
7 and the care and thoughtful approach with this tentative
8 decision.

9 I've also been instructed to inform the Court and
10 the parties that the Agricultural Pool has informed me that
11 we will proceed under your Paragraph 7 and attempt to meet
12 with the parties and come to an agreement as instructed by
13 the Court. To the extent that that is not possible, I have
14 also been instructed to rely upon your Paragraph 8, which
15 would be a subsequent filing which the Agricultural Pool
16 hopes and endeavors is not ultimately necessary.

17 Two final notes, your Honor, and then I will be
18 very happy to be quiet.

19 THE COURT: Please go ahead.

20 It is always a pleasure to hear from you,
21 Ms. Egoscue.

22 MS. EGOSCUE: Thank you, your Honor.

23 THE COURT: You're welcome.

24 MS. EGOSCUE: In Paragraph 7, line 23, I believe
25 there is an extra word. I think we can remove the word
26 "make." And then on Paragraph 8, page 7, line 15, this Rule
27 of Court referenced by your Honor --

28 THE COURT: Wait. Wait. Hang on just a second.

1 Line 8, page 6. Did I get that right?

2 MS. EGOSCUE: No, I'm sorry, your Honor. One more
3 time, Page 7, line 15.

4 THE COURT: Page 7, line 15. Got it.

5 MS. EGOSCUE: This is regarding if the Agricultural
6 Pool does not file the motion that I just referenced, it
7 will have been considered waived.

8 THE COURT: Yes.

9 MS. EGOSCUE: That reference to California Rule of
10 Court is the Probate chapter, which I believe is -- sounds
11 appropriate since you are normally a probate judge. But I
12 would offer that we either strike that reference or
13 reference the Chapter 3 Rules of Court. However the judge
14 would like to proceed on the parties. I am fine either way
15 in just striking it and having the Ag Pool have been
16 considered waived without reference to the Rule of Court.
17 Other than that, again, we very much appreciate your Honor.
18 And I will defer the rest of my comments.

19 THE COURT: Okay. I will just add when I looked at
20 this rule again, day before yesterday, it looked -- it is in
21 the Probate Section, but it also looked like it might have
22 some general application and that's why I cited it. But I
23 accept your argument that it's probably not -- that it's not
24 appropriate here. And so let me --

25 I will strike then the phrase in line 15, "Pursuant
26 to California Rules of Court, Rule 7.108." So the paragraph
27 will then read:

28 If the Ag Pool does not file its motion,

1 on or before July 25, 2021 as ordered,
2 then The Court will consider the Ag Pool
3 to have waived its current claim for
4 attorney fees and expenses.

5 The Court will order vacated the
6 assessments subject to the current dispute
7 and any party's payment of the assessments
8 subject to the current dispute reimbursed
9 on the paying party.

10 Is that acceptable to you then,
11 Ms. Egoscue?

12 MS. EGOSCUE: Very good, your Honor. Thank you.

13 THE COURT: Thank you. I will make that change.

14 MS. EGOSCUE: Thank you.

15 THE COURT: So thank you very much for your -- you
16 and the Agricultural Pool on behalf of accepting The Court's
17 current tentative and that will be the order then. It's
18 been a road and I appreciate your briefing, as I mentioned
19 in the tentative. Especially the Shakespeare quotes and
20 especially the Theory of the commons which I found very
21 interesting but not helpful for this particular motion.
22 Always a pleasure and your insight is very useful to The
23 Court. I appreciate that Ms. Egoscue.

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

25 THE COURT: You're welcome.

26 Does anybody else -- Since we've got the
27 Agricultural Pool agreeing to the tentative with the
28 modifications that we made this afternoon, does anybody else

1 want to be heard on that?

2 Going once? Go ahead.

3 MR. FUDACZ: Your Honor, Fred Fudacz, on behalf of
4 the City of Ontario. Pleased to have gotten this far.
5 Thank you, your Honor, for all of your effort and crafting
6 probably what's a pragmatic solution to a difficult problem.

7 THE COURT: Oh, thank you.

8 MR. FUDACZ: We are very hopeful that we can work
9 something out and avoid another battle in court. This has
10 been going on for -- since September. So I -- we will make
11 a good faith effort to try to work things out in accordance
12 with the parameters you set and take it from there and
13 hopefully we won't be back before you on this issue.

14 THE COURT: If you are, that's fine. The Court
15 believes everyone has made a good faith effort in the
16 dispute in this situation. It was unique.

17 When The Court finally delved into it at length --
18 and I must say, Ms. Egoscue, your briefing prompted The
19 Court to go back and delve into it in a much more thorough
20 way after citing the judgment or the order by Judge Gunn
21 back in 1998. And the report by Ms. Snyder in 1997 really
22 prompted The Court to look back even a little bit farther
23 into the judgment and the Peace Agreement itself to make its
24 decision. So it might not have had the result that you
25 would have desired but it was your prompt briefing that
26 prompted the process and I wanted to thank you for that.

27 So Mr. Fudacz --

28 MR. SLATER: Your Honor?

1 THE COURT: Yes, go ahead.

2 MR. SLATER: Yes, this is Scott Slater. As your
3 Honor is well aware, these orders take on a certain
4 importance. They'll be read for a very long time. And we'd
5 like to just take a moment and identify very simple
6 typographical errors that you may want to fix in the final.

7 THE COURT: Please.

8 MR. SLATER: So if I can, and they're very minor,
9 but just protecting the record for posterity here.

10 So page 2, line 20. There is I believe Santa Anna
11 River, "R" in river should be capped.

12 THE COURT: Oh, you're right. Got it.

13 MR. SLATER: Page 2, line 27, following the 1998,
14 we think you meant to insert "order."

15 THE COURT: Yes. Thank you. Done.

16 MR. SLATER: Then following on Page 5, line 25.

17 THE COURT: Got it.

18 MR. SLATER: That now does dispute -- I guess
19 that's fine, your Honor. I'm sorry. We'll just leave it as
20 it is.

21 THE COURT: Okay. And that is it, along with the
22 change that you've made in response to Ms. Egoscue.

23 All right. Thank you, Mr. Slater.

24 I missed you today Mr. Slater, as well as
25 Mr. Herrema.

26 MR. SLATER: The Memorial weekend Friday traffic
27 was a little longer than I expected, but glad to hear the
28 result of the first matter, your Honor.

1 THE COURT: Okay. Thank you.

2 I will just ask anyone else? Comments,
3 suggestions, input, argument before I -- I'll call it,
4 finalize the ruling that will -- I will actually finalize it
5 in proper form with the proper caption then and sign it and
6 get it out today.

7 So we can go forward. I will ask Ms. Egoscue, is
8 the date that I gave you for the filing, July 25, enough
9 time? Or do you need some more time for me -- I wanted to
10 bring it to a conclusion and I thought four weeks from today
11 would be enough. But if it's not, I will be happy to give
12 you more time.

13 MS. EGOSCUE: July is more than four weeks by my
14 calendar. It is plenty of time.

15 THE COURT: It is more than four weeks, correct.
16 Thank you. Thanks. I have trouble counting the weeks now
17 obviously. Okay.

18 MS. EGOSCUE: I think we all do, your Honor.

19 THE COURT: Thanks again. I appreciate that.

20 So I'm going to conclude the hearing on the
21 Appropriative Pool motion and the order will go out with the
22 modifications we've discussed this afternoon and that will
23 be it. At least for now. That will be it for now.

24 (Brief pause.)

25 THE COURT: I just need to confer with my judicial
26 assistant for a moment about the practicalities of how the
27 order is going to go out.

28 I will just mention partly because we have a new

1 computer system that went into effect.

2 Was it a week ago Monday? It seems like forever.

3 It was a week ago Monday. And it's created certain
4 logistical problems for the bench that I had to clarify with
5 my judicial assistant. Okay. So, done with that issue at
6 least for now.

7 Good luck, Everybody. And I'd offer to be of help.
8 It's a little tough. But if you'd like -- if you'd like me
9 to suggest another mediator, I can do that. I will leave
10 that up to you at this time for everybody.

11 So moving on then. I see, Ms. Egoscue, nodding in
12 agreement, so I'm going to move on.

13 I just received Mr. Slater, your motion that is set
14 for the 25th of June.

15 MR. SLATER: Yes, your Honor.

16 THE COURT: And it indicated that you had a
17 meeting. I managed to leave it up in my chambers. I think
18 it with the 21st of May. And there was a motion authorizing
19 you to go forward -- there was a motion approved by the
20 Board for you to go forward with the motion.

21 Did I get that correct?

22 MR. SLATER: Yes, your Honor. If you'll allow me,
23 let me also say, we will be happy to give notice of the
24 Court's ruling on the first matter.

25 Insofar as this item, I'm really happy that we can
26 do what we say we are going to do, when we say we are going
27 to do it. And it was a collaborative effort, lots of input.
28 But I'm very pleased to inform you that as promised -- as

1 promised on April 30th, the Watermaster Board met yesterday,
2 and by a unanimous vote of 9 to Zero, and without objection
3 from the floor, they adopted a proposed order to submit to
4 The Court that, in the opinion of Watermaster, will resolve
5 the temporal issue that is in front of your Honor and
6 establish a rule to manage the storage from quantities in
7 excess of 500,000 to a maximum of 700,000 as reflected in
8 the addendum previously adopted by IEUA. So this is a
9 significant accomplishment on our part, and we are happy to
10 be able to report that this has been done. We have served
11 the motion in accordance with your instruction last night,
12 and we have filed it as your Honor is noting with The Court
13 pursuant to your instruction today.

14 Now, the motion itself is not an elaborate
15 recitation of all points and the authorities, but provides a
16 good contextual carriage foundation for the Court to be able
17 to understand with some precision what your authority is to
18 do what we are asking you to do, and why it doesn't violate
19 any existing agreements or orders for you to do it. And it
20 is consistent with your overall duties within your
21 continuing jurisdiction. Parties will be free to file their
22 paperwork on either side of this if they should choose to do
23 so, but Watermaster will be before you on the 25th and
24 urging you to adopt this order.

25 THE COURT: Got it.

26 MR. SLATER: And that is the -- that is my report.

27 THE COURT: Thank you very much.

28 At this time, does anyone else want to chime in,

1 add something, comment, suggestions, argument?

2 I see Ms. Egoscue shaking her head, "no."

3 Mr. Schatz, Mr. Fudacz here in the courtroom also
4 shaking their heads "no."

5 Mr. Schatz?

6 MR. SCHATZ: Thank you, your Honor. I just want to
7 note that this order doesn't preclude the parties, because
8 this has come up, from negotiating a revision to the Peace
9 Agreement?

10 THE COURT: No, I tried to make sure it was limited
11 to the specific dispute under 5.4a. Wait a minute. Am I
12 answering your question?

13 MR. SCHATZ: Actually, I'm just noting that. We
14 understand that. I think we understand you understand. I
15 just wanted to confirm that.

16 THE COURT: It's confirmed.

17 Okay, thank you.

18 MR. SLATER: Judge Reichert, maybe I can help
19 Mr. Schatz there, and for all the people who are listening
20 in trying to make sure that we are not doing more than we
21 are on the storage fees.

22 The intention here is for -- to offer the Judge a
23 way pursuant to the judge's authority under the decree to
24 order a solution. It is not preclusive or preemptive of
25 developing a better mouse trap on a forward basis if there's
26 a better idea that the parties come to an agreement on. In
27 fact, the proposed order that you will see filed with you
28 expressly includes and provides for that opportunity.

1 THE COURT: Oh, okay. Got it, then. Thank you.
2 That was Mr. Slater then talking, right?

3 MR. SLATER: That is correct, your Honor.

4 THE COURT: Okay, thanks. I just wanted to make
5 sure.

6 I'm a little speechless. Because I'm going to ask
7 is there anything else we need to do today?

8 MR. SLATER: There is not, your Honor.

9 THE COURT: Okay.

10 Mr. Fudacz?

11 MR. FUDACZ: Yes, your Honor. Maybe the lesson to
12 be learned here is we should have more hearings on the eve
13 of the 3-day weekend.

14 (Laughter.)

15 THE COURT: Oh, Mr. Fudacz.

16 Thank you, everyone then. Thank you for your
17 willingness, your ability to negotiate, cooperate, insights.

18 Again, I just have to say, I've got some of the
19 best lawyers in the State in my courtroom here and on the
20 phone, and I really appreciate everyone's insight, argument,
21 help, points, legal memoranda. It is a pleasure to work
22 with you all, I want to say. Just to point that out again.

23 So, I think we are done. I will say "done." Going
24 once?

25 MR. SLATER: Indeed we are, your Honor. Thank you
26 very much.

27 THE COURT: Thank you. We are done.

28 MS. EGOSCUE: Thank you, your Honor.

1 MR. FUDACZ: Thank you, your Honor.

2 (At which time the foregoing
3 proceedings were concluded.)

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

CHINO BASIN MUNICIPAL)
WATER DISTRICT,)
)
Plaintiff,) RCVRS 51010
)
vs.)
)
CITY OF CHINO, et.al.,)
)
Defendants.)
)
_____)

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS
BEFORE HONORABLE STANFORD REICHERT, JUDGE
May 28, 2021

APPEARANCES:

FOR THE CHINO BASIN WATERMASTER: BROWNSTEIN HYATT FARBER
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(Appearances continued on next page.)

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Official Reporter, C-7137

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN BERNARDINO
3

4 CHINO BASIN MUNICIPAL)
WATER DISTRICT,)
5)
Plaintiff,) RCVRS 51010
6)
vs.)
7)
CITY OF CHINO, et.al.,) REPORTER'S
8) CERTIFICATE
Defendants.)
9)
_____)
10)

11 STATE OF CALIFORNIA)
12) SS
COUNTY OF SAN BERNARDINO)
13

14 I, CATHY A. ALBRITTON, C.S.R., Official Reporter of
15 the above-entitled court, do hereby certify:

16 That I am a Certified Shorthand Reporter of the
17 State of California, duly licensed to practice; that I did
18 report in Stenotype oral proceedings had upon hearing of the
19 aforementioned cause at the time and place herein before set
20 forth; that the foregoing pages numbered 1 to 18, inclusive,
21 constitute to the best of my knowledge and belief a full,
22 true, and correct transcription from my said shorthand notes
23 so taken for the date of May 28, 2021.

24 Dated at San Bernardino, California, this 24th day
25 of June, 2021.
26

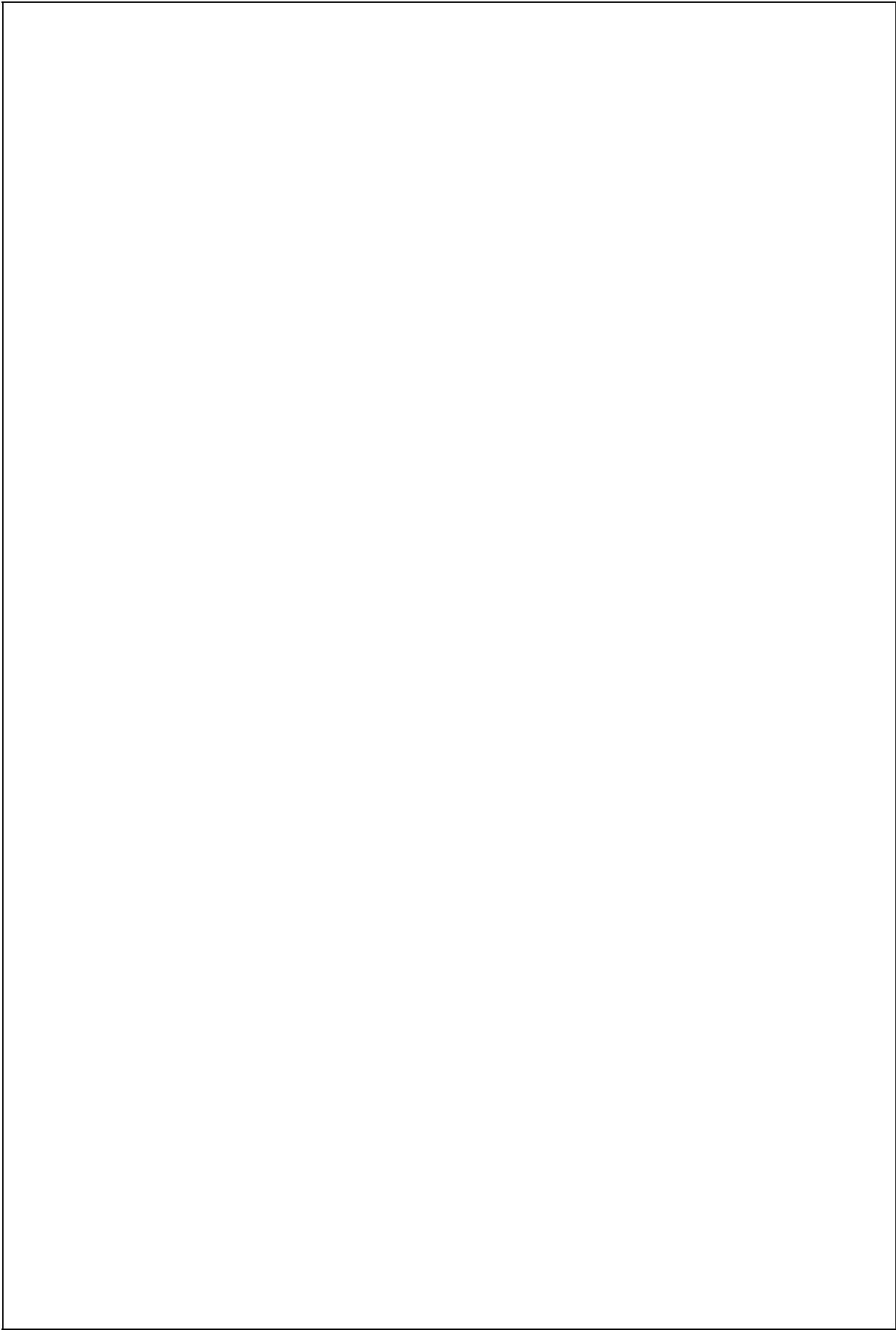
27 _____
Official Reporter , C.S.R. No. 7137
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I N D E X

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Status of Motion submitted on behalf of the Agricultural Pool by Ms. Egoscue and the Court's Submitted Tentative Ruling.....	1

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1 SAN BERNARDINO, CALIFORNIA; FRIDAY, APRIL 30, 2021

2 PM SESSION

3 DEPARTMENT S-35 HONORABLE STANFORD REICHERT, JUDGE

4
5 APPEARANCES:

6 For the Chino Basin Watermaster, SCOTT SLATER,
7 Attorney at Law, and BRADLEY HERREMA,
8 Attorney at Law and PETER KAVOUNAS,
9 Attorney at Law; for the Agricultural Pool,
10 TRACY EGOSCUE, Attorney at Law; for the City
11 of Ontario, FREDERIC FUDACZ, Attorney at Law,
12 and GINA NICHOLLS, Attorney at Law and
13 Courtney Jones, Attorney at Law;
14 for the State of California Department of
15 Justice and Agricultural Pool, MARILYN LEVIN,
16 Deputy Attorney General and CAROL BOYD,
17 Deputy Attorney General; for the
18 Non-Agricultural Pool, ALLEN W. HUBSCH,
19 Attorney at Law; for the Cucamonga
20 Valley Water District, STEVEN ANDERSON,
21 Attorney at Law; for the Jurupa Community
22 Services District, ROBERT DONLAN, Attorney
23 at Law, and SHAWNDA GRADY, Attorney at Law;
24 for the City of Pomona, THOMAS BUNN, Attorney
25 at Law; for the Inland Empire Utilities Agency,
26 JEAN CIHIGOYENETCHE, Attorney at Law;
27 ELIZABETH CALCIANO, Attorney at Law, for
28 the City of Chino Hills; for the

1 Monte Vista Water District and Monte Vista Water
2 District Irrigation Company, ANDREW GAGEN, Attorney
3 at Law; for the Cucamonga Valley Water District,
4 GENE TANAKA, Attorney at Law; for the Three
5 Valleys Municipal Water District, STEVEN KENNEDY,
6 Attorney at Law; JOHN SCHATZ, Attorney at Law,
7 for the Appropriative Pool. Also present are
8 interested parties.

9 (Cathy Albritton, C.S.R., Official Reporter, C-7137)

10 THE COURT: Okay. Let's go on the record now in
11 our Watermaster case.

12 Let me identify the people first I have here in the
13 courtroom. It's a short list. Let me get your formal
14 appearances, Mr. Slater, please.

15 MR. SLATER: Yes, Your Honor. This is Scott
16 Slater, S-l-a-t-e-r, on behalf of the Watermaster.

17 THE COURT: Okay.

18 MR. FOSTER: Good afternoon, Your Honor. Edgar
19 Tellez Foster, E-d-g-a-r, T-e double L -e-z, F-o-s-t-e-r,
20 for the Chino Basin Watermaster.

21 THE COURT: Okay, thank you.

22 Okay, here we go. I'm going to go through the list
23 just to get it on the record.

24 Steven Anderson on behalf of the Cucamonga Valley
25 Water District?

26 MR. ANDERSON: Yes, present, Your Honor. Thank
27 you.

28 THE COURT: And Chris Berch?

1 UNIDENTIFIED SPEAKER: Mr. Berch is not present
2 today.

3 THE COURT: Okay. Thank you.

4 And how about Mr. Bowcock from Watermaster?

5 MR. BOWCOCK: Present, thank you.

6 THE COURT: Thank you.

7 And Carol Boyd on behalf of the State of
8 California?

9 MS. BOYD: Yes, as a member of the Agricultural
10 Pool. Present, Your Honor. Thank you.

11 THE COURT: Thank you.

12 Kyle Brochard on behalf of the City of Upland?

13 MR. BROCHARD: Yes, present, Your Honor. Thank
14 you.

15 THE COURT: Thank you.

16 And Thomas Bunn on behalf of the City of Pomona?

17 MR. BUNN: Yes, Your Honor. Thank you.

18 THE COURT: Thank you.

19 And Scott Burton on behalf of the City of Ontario?

20 MR. BURTON: Yes, Your Honor.

21 THE COURT: Thank you.

22 And Elizabeth Calciano on behalf of the City of
23 Chino Hills?

24 MS. CALCIANO: Yes, Your Honor. Thank you.

25 THE COURT: Thank you.

26 And Jean Cihigoyenetche on behalf of the City of
27 the Chino?

28 MR. CIHIGOYENETCHE: Yes, Your Honor. I'm present.

1 No, on behalf of Inland Empire Utilities Agency.
2 I'm sorry.

3 THE COURT: Thank you. That's what I thought.
4 Hang on just a second. Inland Empire Utilities Agency.
5 Thank you. We will have to get that fixed one of these
6 days. Nobody's holding her or his breath.

7 Ron Craig on behalf of the City of Chino Hills?

8 MR. CRAIG: Yes, Your Honor.

9 THE COURT: Thank you.

10 And James Curatalo, Chair of the Watermaster
11 Committee.

12 MR. CURATALO: Yes, Your Honor. James Curatalo
13 present. Thank you.

14 THE COURT: Thank you.

15 And Robert Dolan on behalf of Jurupa Community
16 Services?

17 MR. DOLAN: Present, Your Honor.

18 THE COURT: Thank you.

19 And Tracy Egoscue on behalf of the Overlying
20 Agricultural Pool?

21 MS. EGOSCUE: Good afternoon, Your Honor. Thank
22 you.

23 THE COURT: Thank you.

24 And Steve Elie from Watermaster?

25 MR. ELIE: Steve Elie present, Your Honor.

26 THE COURT: Thank you.

27 And Eduardo Espinoza on behalf of Cucamonga Valley
28 Water District?

1 MR. ESPINOZA: Yes, I'm present, Your Honor.

2 THE COURT: Thank you.

3 And Frederick Fudacz on behalf of the City of
4 Ontario?

5 MR. FUDACZ: Present, Your Honor.

6 THE COURT: Thank you.

7 And Brian Geye from the Non Ag Pool?

8 MR. GEYE: Present, Your Honor.

9 THE COURT: Thank you.

10 And Shawnda Grady on behalf of Jurupa Community
11 Services?

12 MS. GRADY: Present, Your Honor.

13 THE COURT: Thank you.

14 And Brad Herrema on behalf of Chino Basin
15 Watermaster?

16 MR. HERREMA: Good afternoon, Your Honor.

17 THE COURT: Thank you.

18 And Alan Hubsch on behalf of the Non Ag Pool?

19 I'm present, Your Honor. Thank you.

20 THE COURT: Thank you.

21 And Courtney Jones on behalf of the City of
22 Ontario?

23 MS. JONES: Present, Your Honor.

24 THE COURT: Thank you.

25 And Peter Kavounas on behalf of Watermaster?

26 MR. KAVOUNAS: I'm present, Your Honor. Good
27 afternoon.

28 THE COURT: Good afternoon. Thank you.

1 And Steven Kennedy from Three Valleys Municipal
2 Water District?

3 MR. KENNEDY: Good afternoon, Your Honor. Present.

4 Thank you very much.

5 THE COURT: Thank you.

6 And Marilyn Levin on behalf of the State of
7 California?

8 MS. LEVIN: Present, Your Honor. Thank you.

9 THE COURT: Thank you.

10 And Dawn Martin on behalf of the County of
11 San Bernardino?

12 MS. MARTIN: Yes, Your Honor, present.

13 THE COURT: Thank you.

14 And Gina Nicholls on behalf of the City of Ontario?

15 MS. NICHOLLS: Present, Your Honor.

16 THE COURT: Thank you.

17 And Jeff Pierson from Watermaster.

18 MR. PIERSON: Present, Your Honor, representing
19 your board and vice chairman of the advisory committee and
20 vice chair of the Ag Pool.

21 THE COURT: Thank you, very much. I appreciate
22 that.

23 And Chris Quach on behalf of the City of Ontario?

24 MR. QUACH: Present, Your Honor. Thank you.

25 THE COURT: Thank you.

26 And Stephanie Reimer from Monte Vista Water
27 District?

28 MS. REIMER: Present, Your Honor. Thank you.

1 THE COURT: Thank you.

2 And John Schatz on behalf of the Appropriative
3 Pool?

4 MR. SCHATZ: Good afternoon, Your Honor. Thank
5 you.

6 THE COURT: Thank you.

7 And Bill Schwartz from Monte Vista Water District?

8 MR. SCHWARTZ: Present, Your Honor. Thank you.

9 THE COURT: Thank you.

10 And Justin Scott-Coe on behalf of Monte Vista Water
11 District?

12 MR. SCOTT-COE: Present, Your Honor. Thank you.

13 THE COURT: Thank you.

14 And Gene Tanaka on behalf of Cucamonga Valley Water
15 District?

16 MR. TANAKA: Yes, Your Honor. Thank you.

17 THE COURT: Thank you.

18 Did Mr. Wildermuth join us?

19 Mr. Wildermuth, are you there?

20 No response. Okay.

21 And Janine Wilson from Watermaster?

22 MS. WILSON: Present, Your Honor.

23 THE COURT: Thank you.

24 And let me just make sure I'm just finished running
25 through the list.

26 Mr. Foster is here with Watermaster. We got him.
27 Thank you.

28 Dawn Martin from the County of

1 San Bernardino?

2 No response?

3 MS. MARTIN: Yes, Your Honor.

4 THE COURT: Okay, thank you.

5 Christina Robb from the City of Chino?

6 No response? Okay.

7 And Elsa Sham from the City of Pomona?

8 No response. Okay.

9 And Anna Troung, Client of Brownstein Hyatt Farber
10 and Schreck?

11 Ms. Troung, are you there?

12 No response.

13 Okay.

14 Anybody whose name I did not call who is on the
15 phone?

16 No response. Okay. And no one else has entered
17 the courtroom while I was calling the list of parties and
18 attorneys.

19 MR. SCHWARTZ: Your Honor, this is Bill Schwartz.
20 I accidentally hung up the call. You called my name, but I
21 dialed back in.

22 THE COURT: Oh, thank you. I did hear a phone ring
23 off and I'm glad to hear you're back on. Thank you.

24 MR. SCHWARTZ: Thank you.

25 THE COURT: You're welcome.

26 Let me ask again if there's anybody else who's
27 joined us, whose name I haven't called?

28 Anyone else on the phone?

1 No response.

2 And, again, no one else has come into the
3 courtroom.

4 So we are here on one of our status conferences
5 that Mr. Slater requested, and I appreciate that effort and
6 everyone's participation.

7 So let me turn essentially the floor over to
8 Mr. Slater to begin, please.

9 MR. SLATER: Thank you, Your Honor.

10 THE COURT: Thank you. So please proceed.

11 MR. SLATER: So we have, I think, four items before
12 you today. But, first, again I wanted to thank the Court
13 and your staff for your consistent availability to respond
14 to the urgency that we have in front of us in trying to get
15 our situation corrected so we can save the water that's in
16 storage and make sure that it finds its highest and best use
17 at a time when the State is in a dramatic critical drought.

18 Of the four items, we have two which are ready, I
19 think, for your execution of an order, I hope.

20 The first is just simply a receive and answer file
21 on the OBMP status report. That was unopposed. And you
22 have that. You also have a proposed order to grant an
23 intervention. That, too, was unopposed and we would hope
24 those could be executed today.

25 THE COURT: Yes, there has been no objection.

26 MR. SLATER: No objection.

27 THE COURT: So I'll sign the order to receive the
28 OBMP status report today. I think I saw that. I

1 accidentally left it upstairs but I'll go get it and sign it
2 before the end of the day.

3 MR. SLATER: Thank you, Your Honor.

4 THE COURT: And also the intervention, I think,
5 also had a proposed order attached to it --

6 MR. SLATER: It did, Your Honor.

7 THE COURT: -- which I will track down and sign
8 before the end of the day.

9 MR. SLATER: Thank you, Your Honor.

10 THE COURT: You're welcome. Okay. So two down,
11 two to go.

12 MR. SLATER: So the item at least insofar as the
13 management of the decree goes in acting to preserve and
14 protect the water in storage at this important time is back
15 before you on a further status report. We urged Your Honor
16 to keep us on a short leash, and you have graciously agreed
17 to do that.

18 I'm here today to tell you where we are on the road
19 map in relationship to the hope for a finish and to walk
20 through what the options are ahead of the Court, so that
21 you're fully apprised about what's ahead of you. And,
22 again, to refresh everybody's recollection as to when that
23 action would be required.

24 So we are here before you today. The last time we
25 were here, we got to report that the great event of the IEUA
26 approving the addendum which was a critically important
27 element for us to clear. That has been cleared. And in the
28 time since the last court hearing on this in March, the

1 parties have been quite active in their, what I would call
2 privileged and unprivileged or non privileged communications
3 back and forth about proposed amendments to the Peace
4 Agreement and to the OBMP implementation plan with the
5 intention of satisfying the criteria for an amendment to the
6 Peace Agreement, and then allowing Watermaster the
7 opportunity to recommend a set of amendments and then bring
8 that to the Court in what I call doorway or pathway one
9 which was unanimity, the requirement of the Peace Agreement
10 to achieve an amendment. That's sort of the way that we
11 like things to go. We like the parties to reach agreement
12 because it reduces future conflict. It improves the
13 prospect of us not having to come before you again to
14 resolve matters and results in certainty and efficiency and
15 administration of the decree. So we love it when the
16 parties can get together and agree on what needs to be done.

17 There has been active communication, but I want to
18 represent to you, Your Honor, that we are getting to a place
19 where we always remain cautiously optimistic. However, we
20 also have to prepare, Your Honor, for the other two
21 prospects in the event that there's not an agreement.
22 There -- And I want to be clear, there has been quite a bit
23 of participation, some fits and starts, but there is effort
24 being expended in trying to get there.

25 The second door or pathway, if you will, is one
26 that Your Honor is familiar with. You can achieve an
27 amendment to the Peace Agreement if a party is objecting and
28 that objection is unreasonable. So there is a standard

1 which, in theory, could result in a suite or a single
2 amendment more likely to be a suite of amendments that would
3 be presented to Your Honor and you would hear potentially
4 opposition or objections to each one of those amendments.

5 THE COURT: How many -- Do you have an estimate as
6 to about how many there are?

7 MR. SLATER: Well, I think that's going to -- I
8 will respond to that as a -- without invading privileged
9 conversations, I would say it is -- it is likely that there
10 would be more than 20.

11 THE COURT: Okay. Thank you. I appreciate that.

12 MR. SLATER: And given the -- We often say this,
13 right, so there's a certain arcane-ness, and I am guilty for
14 calling it Byzantine from time to time, a suite of
15 agreements, interlocking impacts, that -- that it is
16 possible you sort of have a score sheet, right, in front of
17 you with proposed amendment and then rationale for
18 opposition.

19 THE COURT: Okay.

20 MR. SLATER: Without expressing any negativity
21 about any one of the amendments that has been proposed or is
22 being discussed, in fact expressing no view whatsoever on
23 the merits of those amendments, it is possible -- this is --
24 which leads me to Door No. 3, Pathway 3.

25 As we said to The Court at least -- and at least in
26 the three last status reports, we said that there is the
27 prospect of The Court acting upon a recommendation that was
28 offered by Watermaster in lieu of an agreement. I guess

1 there's the last consequence or possibility which really
2 hasn't accounted for which is you making one up entirely on
3 your own. We hope that that doesn't come to that.

4 THE COURT: I agree. Because if we -- I am not
5 expressing an opinion on the merits. If we get to that, we
6 might be back to my -- working in the background, if it came
7 to that, might be the necessity of my having a special
8 referee in that. And that would get extremely technical
9 extremely quickly, I would think, possibly think.

10 MR. SLATER: So I want to represent to you that we
11 have kept the Watermaster Board and the parties apprised, as
12 we have kept you apprised. And we are -- we, as being the
13 Watermaster counsel and staff, and having considered what is
14 the sometimes less is more, Your Honor; and sometimes
15 simpler can have merit even though the complex can have
16 benefits. I'm not arguing against complex. I'm just saying
17 in this instance, it if comes down to saving the water in
18 storage and adopting a position which harms no party, if we
19 can achieve that, and Watermaster could act on that via
20 resolution and make a recommendation to The Court, amendment
21 to the Peace Agreement is not required. And why is that?
22 It's because the Peace Agreement is silent and expresses no
23 outcome on quantities in excess of 500,000 acre feet of
24 water in storage.

25 So when we think about this, Your Honor, you'll
26 remember, of course, you have continuing jurisdiction, and
27 to adjust and to issue further orders. The judgment is
28 quite clear that the judgment covers the allocation of

1 storage, the optimization of water in the basin. And it is
2 really the execution of your Honor's authority and within
3 the subject matter jurisdiction of the Court to regulate
4 storage.

5 And instead of attempting to create something whole
6 cloth, new or different, what Watermaster is attempting to
7 evaluate and to produce for the benefit of the parties and
8 run through the process would be a concept which pursues the
9 absolute minimum number of changes to the present program
10 and make it available to these additional quantities from
11 500 -- 500,001, to up to the maximums that are authorized
12 under the addendum.

13 I think I'm going to stop there on the explanation.
14 I think in terms of the expected process, I have had
15 conversations with the officers. I've talked to our board
16 chair who is on the call, Jim Curatalo, as well as our
17 general manager. And it is absolutely clear to me that we
18 have a pathway without regard to the merits of what I'm
19 suggesting and the parties have an opportunity to review,
20 kick the tires, vet, object. But ultimately what we need to
21 assure Your Honor of at our May 27th board meeting, we have
22 the capacity to approve something and recommend something so
23 Your Honor would not be left with a blank slate when we show
24 up in June.

25 THE COURT: That would be good.

26 MR. SLATER: So, again, I have assurance from our
27 board chair and commitment from our general manager to make
28 sure that we meet all the general pool requirements,

1 advisory committee deliberations, assignments to weigh in
2 and determine whether or not we can pursue something which
3 is simple. And, again, protect everybody's rights without
4 prejudice. And that's our objective. And if we are to
5 pursue that, Your Honor will remember, we are back in front
6 of you on May 28th which makes this hopefully pretty
7 convenient.

8 THE COURT: Yes.

9 MR. SLATER: So, as I see the road map, if we find
10 success on May 27th, we would be prepared to file something
11 with The Court. We will -- The wheels of justice will turn
12 in expectation of success on the 27th and prepare our
13 pleading to move our recommendation if it makes it through
14 the process on the 27th and file it on the afternoon of
15 the 27th.

16 THE COURT: Okay.

17 MR. SLATER: So we would want to do that. Maybe --
18 maybe Edgar and Peter listening on the phone, could you
19 please give us till the 28th. The reason I'm sort of
20 cautious about this, Your Honor, is the parties under the
21 decree, we are obliged to file a motion 30 days in advance.
22 Since we are going to be in front of you on June 25th, by my
23 count, we are going to need your consent, and actually the
24 parties' consent would be great, to enable us to file on the
25 27th which is by -- 29 days in advance of the hearing as
26 opposed to the 30th. Right?

27 THE COURT: Are you asking me now?

28 MR. SLATER: I'm asking you now, Your Honor.

1 Otherwise, we'll hold a special meeting a day earlier and --

2 THE COURT: No. No, no. I'm going to permit that
3 you can file the motion 29 days before the hearing.

4 MR. SLATER: Thank you.

5 THE COURT: You're welcome.

6 And keep in mind the filing -- Actually, I'm --
7 because our clerks office closes at noon, that you need to
8 be aware of, I'm actually going to request that you serve it
9 29 days before the hearing, but file it 28 days before the
10 hearing to give you an extra day to get it to The Court.
11 Because otherwise you're running into deadlines that The
12 Court sets that create its own set of problems.

13 So get it served so everybody gets as close to 30
14 days as possible on the service, but you have an extra day
15 to get it filed because of the way the court clerks office
16 has its hours set now.

17 MR. SLATER: Thank you, Your Honor. That's greatly
18 appreciated. I believe Watermaster staff is feeling a
19 little better now as well.

20 THE COURT: He's nodding.

21 Mr. Foster, is it? Yes, Mr. Foster in the back.
22 Yes, okay.

23 And I'm sure Mr. Herrema is nodding on the phone as
24 well.

25 MR. SLATER: Indeed, he must be.

26 THE COURT: Yes.

27 MR. HERREMA: Thank you, Your Honor.

28 THE COURT: You're welcome.

1 MR. SLATER: So with this then, success or failure,
2 we are going to be here in front of you the next day. And
3 at that moment in time, we'll be able to look at, I think,
4 the -- where we are on our road towards conclusion. And we
5 will be within 30 days, and it may be that you will want to
6 set court calls or have a tighter leash on our activities
7 between then and the time we show up on June 25th. I cannot
8 say. I would say we'll be prepared to address the status.
9 And, hopefully, my promise to you to have deliberated on a
10 resolution on that Thursday board meeting, we'll deliver a
11 pathway for The Court to be able to rule in favor of saving
12 this water before the end of June.

13 THE COURT: That would be great. And The Court
14 will do what I can do to help get things resolved and moving
15 to keep in mind, I won't call it a deadline, but an
16 objective date of June 25.

17 MR. SLATER: Thank you.

18 THE COURT: You're welcome.

19 MR. SLATER: And then I will finish my comments on
20 this matter by simply saying when -- our board chair has
21 been very clear in saying we are going to make the time
22 available to do this the right way. And that's not with
23 prejudice about or the ability to review, and we are not
24 signing up for anything specifically. This is a commitment
25 to process, so. And I'm going to tell you that I'm very
26 hopeful.

27 THE COURT: Thank you.

28 MR. SLATER: Okay.

1 THE COURT: And thank you, Mr. Curatalo.

2 Go ahead, please, Mr. Slater.

3 MR. SLATER: So, I think that takes us to the end
4 of the three Watermaster originated items. And the fourth
5 item is the pending matter that involves the Agricultural
6 Pool invoices for legal fees reimbursement and the
7 Appropriative Pool's objections, and then your Court's --
8 the Court's last communication about potentially setting a
9 briefing schedule today.

10 THE COURT: Yes. And I didn't set one previously
11 because I wanted everyone to get a chance to look at the
12 tentative. And I felt like I did not understand some of the
13 details that I wanted to hear parties hear about in terms of
14 setting a briefing schedule because if -- if this is running
15 on -- My conclusion is, if this is running on a parallel
16 track with the issues that you just told me about on the one
17 hand. And on the other hand, in The Court's view, it's
18 not -- it can be postponed a little bit because whatever is
19 happening has already happened. But those were some initial
20 impressions about why I didn't address a briefing schedule
21 back on the 5th of April when I discussed the tentative and
22 then the tentative went out. Actually, it could have been
23 the next day, so.

24 And the questions I had dealt with the issues about
25 reimbursement, because what I heard is that there was some
26 complications about how parties were going to be repaid
27 assessments based on The Court's tentative ruling in the
28 first place. And in the second place, that some of them

1 wanted to address -- argue further after the tentative,
2 even, on the substantive aspects of the motion. And so
3 there were so many -- or, enough unanswered questions in my
4 mind after my tentative that I thought it would be best to
5 address them today.

6 So, again, I'm not quite sure where to start. But
7 let me come --

8 Ms. Egoscue might be a logical person with whom to
9 start, and hear from you, please, Ms. Egoscue.

10 MR. EGOSCUE: Thank you, very much. And thank you
11 very much for the explanation regarding the tentative and
12 the request to come back and address additional questions
13 that you would have.

14 I would like to turn first to the issue of your
15 comment -- the Court's comment regarding whether or not this
16 issue can be postponed.

17 THE COURT: Yes.

18 MR. EGOSCUE: I would like to -- I would like to
19 address that first, if I may, Your Honor.

20 The subject of --

21 THE COURT: No, go ahead. I was just agreeing with
22 you.

23 Go ahead, please.

24 MS. EGOSCUE: Okay. All right.

25 Thank you, Your Honor.

26 The subject of dispute arose under the proposal for
27 how the Ag Pool and rather, how all pools handle their
28 budgets and their legal expenses. Each pool, as Your Honor

1 is very aware, retains legal counsel and the expenses are
2 included in the pool's administration budget. And the
3 budget is processed every year and goes through the
4 Watermaster process. And then when a pool has an expense,
5 the invoice is submitted to the pool chair for approval and
6 then submitted from the chair to the Watermaster as Your
7 Honor is very well aware.

8 When this dispute arose last year, the overlying
9 Agricultural Pool amended its budget as has been the
10 standard and the practice for many years. In fact, when
11 other pools and their counsel are also on the line and can
12 attest to this, as can Watermaster counsel, when pools
13 exceed their budget, they amend their budget and it goes
14 through the process that the Overlying Agricultural Pool
15 underwent. The pool met. They amended their budget and
16 then they submitted that amended budget to the Watermaster
17 for processing.

18 Why this is important, Your Honor, is because then
19 in August, August 25th, this matter came before the
20 Watermaster Board for approval. And the Watermaster Board
21 was presented with a staff report that was compiled by
22 Watermaster staff, not the Agricultural Pool. And in this
23 staff report and, Your Honor, to the extent that you would
24 like additional briefing, we are prepared to submit all of
25 this including the supporting documentation. However, in
26 the staff report, the Watermaster found that the Overlying
27 Agricultural Pool submitted a revised or amended budget
28 according to the appropriate procedures.

1 The Watermaster staff then goes on to actually
2 opine as to whether or not this was consistent with the 2009
3 Memo which Your Honor is aware is part of this instant
4 dispute. The Watermaster Board voted to approve the budget.
5 This is August 25th. And if Your Honor recalls, this is one
6 of the last comments I made when we were before you in
7 March.

8 The Watermaster Board directed staff to assess the
9 Appropriative Pool. In response, some members of the
10 Appropriative Pool paid the assessment and the vast majority
11 actually withheld payment and filed the motion that we are
12 now discussing.

13 Now, the reason why I bring this to your attention
14 in terms of can this be postponed is that then we entered
15 into a subsequent fiscal year with a fully approved budget.
16 And that budget, as Your Honor is very well aware of, is how
17 the Agricultural Pool conducts its own business. The fully
18 approved budget has been assessed to the Appropriative Pool,
19 and the Ag Pool continues to be forced to draw upon this
20 reserve. The Agricultural Pool has been effectively
21 disenfranchised, Your Honor.

22 So I would propose to you, in very strong terms,
23 that we cannot postpone this any further because the
24 Agricultural Pool Special Reserve Fund is limited. And this
25 is all on the record before you, Your Honor. Because it was
26 the Appropriative Pool who pointed that the Agricultural
27 Pool could just use their reserve funds which they have been
28 forced to do.

1 Now why do I also bring this to your attention,
2 Your Honor? Because, this is something that I'm going to
3 borrow from counsel for Watermaster, Scott Slater, we need
4 to recognize and remember where we came from so that we can
5 know where we are going. And in preparing and reviewing
6 your Honor's tentative, I went back in time, Your Honor, and
7 I studied a February 19th, 1998 order or ruling from The
8 Court in this matter. And, again, I am more than happy to
9 submit all of this and have the supporting documentation so
10 that Your Honor can review it and see the actual ruling
11 itself. But just to summarize it for you, Your Honor, in
12 the ruling the issue was presented to The Court due to a
13 challenge as an audit. And, in fact, the challenge was
14 brought pursuant to Paragraph 38 of the judgment. Very
15 similar to something that has been instantly before The
16 Court and has been part of the tentative.

17 And The Court at that time asked a special referee,
18 Ann Snyder, to consider whether or not the advisory
19 committee should effectively be allowed to veto an audit
20 expense that the Watermaster deemed necessary. I find this
21 ruling extremely illuminating, Your Honor, and very
22 important. Sprinkled throughout this ruling are terms like,
23 "checks and balances." "Tragedy of the comments."
24 "Guidelines for Watermaster and advisory committee."

25 And in the end, the special referee represented to
26 The Court not only was the audit considered appropriate, but
27 that it was very important that there was this balance of
28 power between the Watermaster and the advisory committee in

1 particular. And as this ruling and our briefing that
2 hopefully you will schedule for us to submit will show you,
3 The Court goes on at great length to not only borrow this
4 special referee's recommendations, but to discuss how
5 important it is to have a strong nine member Watermaster
6 board.

7 If Your Honor recalls, this is the same ruling that
8 established the nine member board. And The Court takes
9 great pains to indicate, because there was some controversy
10 at the time about whether or not there should be a nine
11 member board and who should sit on the nine member board.
12 And The Court goes to great pains to discuss how important
13 it is for the functioning of the Watermaster for the
14 protection of the basin to have this governance structure in
15 place and working correctly.

16 So what began, Your Honor, as a dispute, what was
17 actually fashioned as a contract dispute, Your Honor,
18 despite many, many years of custom and practice which I will
19 note as a footnote, in the Watermaster Board packet
20 Watermaster staff also attached minutes from the
21 Appropriative Pool meeting -- this is the August 25th
22 Watermaster Board meeting -- has minutes from the
23 Appropriative Pool meeting in 1988. So this precedes the
24 ruling that I was just discussing by ten years.

25 In 1988, the Appropriative Pool voted and recorded
26 that they would pay for the Ag Pool's expenses. So back to
27 where we are today. The Agricultural Pool followed the
28 procedures that have been in place for many years. The

1 Agricultural Pool came to a place where they have found
2 themselves to be vanguards of the Basin's resources. They
3 have been strong proponents of having the safe yield reset
4 on a timely basis as Your Honor is very aware.

5 The Agricultural Pool has been pointing out and
6 advocating for strong storage management despite the fact
7 that they received no pecuniary interest in that storage.
8 And as a result, because of legal expenses, now the
9 Agricultural Pool has been effectively told that they can no
10 longer function. And the Appropriative Pool members, again,
11 it's not all of them, but the Appropriative Pool members who
12 have refused to pay the assessment, in my humble opinion,
13 are effectively undermining the governance of the Board in a
14 move last scene prominently in 1998.

15 So, Your Honor, I would ask that you allow us to
16 brief this to address your questions and to bring forward
17 the evidentiary records to substantiate that not only is
18 this an extremely important issue for the Agricultural Pool
19 who is running out of money despite having an approved
20 budget, this pool has been invested in this basin for over
21 40 years.

22 And we still have members of the pool,
23 representatives of the pool committee, that were here 40
24 years ago. And right now, Your Honor, they are asking as if
25 their very existence depended on it for a semblance of
26 governance and balance of power to continue to exist as it
27 has for decades. This is why there is an OBMP. This is why
28 there is storage to have this dispute over.

1 I very much appreciate the time, Your Honor. And I
2 will close my comments at this point.

3 THE COURT: Thank you, Ms. Egoscue.

4 Who would like to be heard next?

5 Perhaps Mr. Fudacz?

6 MR. FUDACZ: That's a good guess, Your Honor.

7 THE COURT: Mr. Fudacz, go ahead, please.

8 MR. FUDACZ: Fred Fudacz on behalf of the City of
9 Ontario. And I suspect there are others that might have
10 something to say that also joined in the motion that we
11 filed back in September of 2020.

12 I have in front of me a notebook that's like --
13 it's a couple inches thick of the pleadings that were filed
14 in reference to this motion that was initiated last
15 September. At the time we submitted that motion, we had a
16 proposed order that talked about an interpretation of
17 Section 5.4(a) which is all we are talking about,
18 interpreting that section of the Peace Agreement that
19 requires the Appropriative Pool to pay certain expenses of
20 the Ag Pool. And that order in your tentative was largely
21 adopted in terms of what sort of expenses would be qualified
22 for payment under 5.4(a) of the Peace Agreement.

23 We're talking about a relatively narrow issue.
24 Your Honor issued an oral tentative. I think it's fair to
25 say we submitted on that tentative, and it's -- it's a bit
26 confusing about where we are because the notion of rearguing
27 the whole motion after two inches of pleadings have been
28 filed, going back to September, where these issues were

1 fully briefed and addressed, I remember being in your
2 courtroom, arguing for about an hour through a mask. I was
3 having a hard time breathing. Ms. Egoscue was on the other
4 side of the courtroom from me similarly arguing through a
5 mask.

6 To now be presented with the notion that we are
7 going to reargue and re-brief this whole manner, the notion
8 of reopening this thing after months and months of
9 involvement and lawyer time and expense is more than a bit
10 unsettling.

11 The way I understood the last status conference
12 that had taken place, I was requested to prepare an order
13 that would be consistent with your tentative. I asked for a
14 written tentative which we got. And, as I understood it,
15 the issue of how much money would be returned to the
16 Appropriative Pool was the only issue that was outstanding.
17 And there was some confusion about what that number was and
18 perhaps I contributed to it. But going back and looking at
19 the pleadings, it was pretty clear about what expenses had
20 been invoiced that were pre-approved through the process
21 of -- that The Court had adopted in its tentative in
22 interpreting Section 5.4 of the Peace Agreement.

23 And so as we looked at the tentative, we thought
24 there were two issues. The Court ordered essentially an
25 interpretation that was consistent with our proposed order.
26 The Court also said it recognizes a certain fundamental
27 unfairness in charging Appropriative Pool member agencies
28 for bills they have not seen though we were thinking that

1 would be something we'd have to address. And The Court
2 would order reimbursements to parties who had paid
3 assessments above the budget previously approved by the
4 advisory committee to the Watermaster. It turns out that
5 number is already in the briefings that were submitted when
6 we went back and looked and it's approximately \$228,000 and
7 change.

8 Our understanding leaving last hearing, last status
9 conference, was that was the issue in front of The Court,
10 not to reopen all of the briefing and all the lawyer time
11 and expense to be done again. And we would urge that we not
12 go down that path. I mean there's obviously answers to all
13 the arguments that Ms. Egoscue has put forward. She had an
14 opportunity to put them forward for months and it seems
15 totally unfair to the Appropriative Pool and the people
16 signing under this motion to force them to reengage on those
17 issues.

18 We would ask The Court to issue an order reflecting
19 its interpretation of 5.4 going forward. We can do that
20 now. We'd ask for an order saying that we're entitled to
21 reimbursement to the tune of \$228,000 and change. And we
22 can -- I think it's consistent with the numbers that
23 Watermaster itself has come up at our request.

24 And then there's an issue of all of these
25 expenditures that we've been required to be paying without
26 any backup. And The Court recognized there was a
27 fundamental unfairness in paying money when you don't get to
28 see the bills. And that's something I think we need to

1 address, but it's pertinent to address it.

2 There's also another issue, just kind of public
3 policy, that the people paying these bills have a
4 responsibility to the public to have some back-up to support
5 the expenditures that it has made. It would behoove us to
6 get that documentation in order, and I think that The Court
7 rightfully would have an interest and concern itself in
8 seeing that that happens.

9 So I'm going to resist the temptation to respond to
10 Ms. Egoscue's arguments that we've been there, done that.
11 It's time to conclude this. I agree with her this needs to
12 be resolved now. I'd suggest that we do prepare our order
13 have that reflected and try to get this beyond us.

14 THE COURT: Got it.

15 Thank you, Mr. Fudacz.

16 Who else would like to be heard? If I get -- since
17 I've only got Mr. --

18 MS. NICHOLLS: Your Honor?

19 THE COURT: There we go. Could I get your name,
20 please.

21 MS. NICHOLLS: Yes, Your Honor. This is Gina
22 Nicholls. I work with Fred Fudacz. I also represent the
23 City of Ontario. I'm hoping to provide a little more
24 granularity on the numbers that Mr. Fudacz just presented.

25 THE COURT: Go ahead, please.

26 MS. NICHOLLS: Okay. And I will do my best not to
27 repeat here, Your Honor. But I'm going to go through this
28 for the purpose of making sure the record is clear as to the

1 numbers that we are talking about.

2 So I want to respectfully submit consistent with
3 what Mr. Fudacz said, the number for reimbursement is
4 consistent with the Court's tentative ruling as not having
5 been pre-approved through the Watermaster budget process and
6 unapproved by the Advisory Committee for the last fiscal
7 year that ended in 2020. That that number -- it's precisely
8 \$229,008.75. And, again, for the record to make sure it's
9 clear, this is based on adding two items. The first is
10 \$165,694.75 that was invoiced by Watermaster to the
11 Appropriative Pool in August 2020 for Ag Pool legal expense
12 overrun in the prior fiscal year. The fiscal year ended
13 2020.

14 The second item, and it gets us to the \$229,008.75,
15 is \$63,314 of internal budget transfers made by Watermaster
16 to cover a portion, additional portion, of the Ag Pool legal
17 expense overrun for the fiscal year ending 2020. These two
18 numbers together which add to the \$229,008.75 are, as
19 Mr. Fudacz said, discussed in the AP moving papers including
20 supporting declarations and request for judicial notice
21 which has minutes, et cetera, the Watermaster and the Ag
22 Pool related to the these items. These numbers are further
23 confirmed down to the penny in an e-mail that Watermaster
24 kindly provided to counsel representing both parties -- I'm
25 sorry -- both sides to the motion yesterday.

26 And so in light of the fact these numbers are in
27 the record, I would support Mr. Fudacz's conclusion and also
28 Mr. -- Frankly, Ms. Egoscue's concern, that further delay is

1 not necessary or desirable, and that The Court could issue
2 its final orders today in light of these numbers which are
3 before The Court.

4 And also just for purposes of clarity, I want to
5 point out that should The Court order reimbursement of the
6 amount proposed here, that can be accomplished, I submit, in
7 a fairly straight forward way by cancelling the Watermaster
8 invoices that were issued to the AP in August of 2020. That
9 would facilitate refunding of monies in escrow to the team
10 members that paid it as well as the team members that paid
11 Watermaster directly. And I submit that it would allow
12 Watermaster to reverse internal budget transfers covering
13 the \$63,314 using as necessary any funds not provided by the
14 AP. For example, the Ag Pool reserves that Ms. Egoscue had
15 mentioned and that were estimated by the AP at about
16 \$355,000 in a declaration that we submitted attached with
17 this matter on January 25th of 2021.

18 And Mr. Fudacz also referenced the issue of
19 payments of Ag Pool legal expenses for which the AP hasn't
20 seen documentation. And here -- I'm just going to throw out
21 a number for your Honor's consideration, the -- in looking
22 at how much the Ag Pool has billed that -- how much of the
23 Ag Pool legal expenses have been billed to the AP for fiscal
24 year starting -- I'm sorry for the fiscal year ending 2017
25 for 16/17 through the fiscal year ending 2020 for four
26 fiscal years. That total number, and let me back up for a
27 second, I'm discussing the fiscal years ending 2017 through
28 2020 because it generally corresponds with some of the

1 storage contest issues that were addressed in the motion
2 where we've argued that a portion of the Ag Pool legal
3 expenses included storage contest expenses for which the AP
4 isn't obligated and shouldn't have been required to pay
5 under the Peace Agreement.

6 But looking at those years, the total number of
7 amount of expenses that the AP has been invoiced for and has
8 paid, apart from the \$229,000 sum is about \$1,229,000 so
9 that's a large amount going back four years 2017 to 2020.
10 And, you know, that is an issue of concern for the
11 Appropriative Pool in terms of finding a way to exercise its
12 public obligation to the public to determine what of those
13 amounts were appropriate and payable pursuant to 5.4(a) of
14 the Peace Agreement.

15 THE COURT: Got it.

16 MS. NICHOLLS: And with that I'll conclude my
17 remarks. Thank you, Your Honor.

18 THE COURT: Thank you. Got it.

19 Who else would like the chime in?

20 Mr. Slater, perhaps?

21 MR. SLATER: Yes, Your Honor. I just want to be
22 clear, as Your Honor is aware, that Watermaster's position
23 is that the dispute arising under 5.4(a) of the Peace
24 Agreement is a binary independent contractual arrangement
25 between the parties. And we have tried to be Switzerland on
26 this point pretty consistently. And we appreciated your
27 Honor's initial order last fall that we were the mailman.
28 And so our involvement in this insofar as it's simply a

1 function of trying to determine what's recoverable under 5.4
2 is we accept an invoice and we transmit it. We are the
3 mailman.

4 THE COURT: You are still are the mailman.

5 MR. SLATER: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 Anyone else like to chime in?

8 MS. EGOSCUE: Your Honor, may I respond?

9 THE COURT: Yes. Let me just get -- You'll have
10 the last word Ms. Egoscue. Let me see if there is anybody
11 else on the Appropriative Pool side before I turn to you.

12 Anybody else on the Appropriative Pool side?

13 Going once, going twice?

14 You get the last word, Ms. Egoscue.

15 MS. EGOSCUE: Thank you, Your Honor. It's very
16 much appreciated.

17 I wanted to first comment that the issues that I am
18 arguing today are in the brief that was filed as Mr. Fudacz
19 alluded to, the two inches of briefing. The Agricultural
20 Pool did brief that they followed the process that has been
21 followed historically, and that in fact what the counsel for
22 Ontario is proposing today is not supported by the judgment
23 or the Peace Agreement or any of the practices of the
24 Watermaster.

25 The Advisory Committee, just pointing to one point
26 in your tentative, the Advisory Committee does not approve
27 the Pool invoices and fees. And the Agricultural fees are
28 very transparently reported every month by the Watermaster

1 staff. And the -- it's -- I would posit that it is no
2 surprise as to why the fees are what they are.

3 The Agricultural Pool is very active, files motions
4 with The Court, engages on the Safe Yield process, similar
5 to what the Appropriative Pool and the Non Ag Pool does in
6 reviewing documents, weighing in. In fact, that is what the
7 judgment contemplates, that there are three pools to weigh
8 in and consider and provide recommendations.

9 If the tentative stands, Your Honor, it effectively
10 creates a veto in the Advisory Committee over the
11 Agricultural Pool and other pools' expenses. And I will
12 also note, Your Honor, something that they're being very
13 careful not to address is that the Advisory Committee has
14 the power, they can also erode the budget for the
15 Watermaster.

16 So to give you a hypothetical, "We don't like this
17 process." "It's going to cost us too much." "It might
18 preserve the safe yield of the store basin, but we are not
19 happy." The Advisory Committee majority vote is made up of
20 the Appropriative Pool. I will also reiterate that the
21 Appropriative Pool attorneys that are saying to you today
22 that they don't see the invoices of the Agricultural Pool,
23 they see the expenses every single month. The budget was
24 followed. The Agricultural Pool followed the rules.

25 It is my argument, Your Honor, that the
26 Appropriative Pool would like the Agricultural Pool to
27 simply quietly go away. And the best way to fire someone,
28 Your Honor, is to cut their budget. Having said that, if

1 there is a dispute or a concern about the invoices, part of
2 my proposal to Your Honor is to submit the redacted invoices
3 so that you can see that effectively what it invoiced to the
4 Watermaster after approval by the Pool chair is what is
5 recorded by the Watermaster CFO every month and sent out to
6 all the pools and available online.

7 The last point I will make, Your Honor, besides
8 reiterating that there is a reason why they don't want to
9 address this, because they're about to essentially create a
10 veto power and a coup that would undermine the Watermaster
11 board is that they know that my bills are privileged. My
12 bills are the only invoices that go to the Watermaster after
13 being approved by the pool chair. And every pool follows
14 the same process. Every pool's attorney submits the
15 invoices to the chair and Watermaster does not review them
16 subsequent nor does any other pool nor does the Advisory
17 Committee.

18 Thank you, Your Honor.

19 THE COURT: Thank you.

20 I will just ask, Anybody else? Going back?

21 MR. SLATER: Your Honor? I just -- not to quarrel
22 with argument. I'm only looking to protect Your Honor in
23 this instance of, you know, reviewing a privileged
24 communication by counsel. You know the process, the in
25 camera, something like that, that could be handled
26 elsewhere. But Your Honor we would hate to lose you for
27 taking a look at privileged information.

28 THE COURT: Thank you. I'm not going to do that.

1 I'm simply not. I don't see it as a necessity for this
2 motion. And it will, in The Court's view, create more
3 problems that it's solves.

4 The new thing that got argued today was this
5 February 19, 1998 ruling. Simply, is that in the paperwork
6 somewhere? Because I don't -- I do remember something about
7 this but nothing specific.

8 Ms. Egoscue, can you help me with that, please?

9 MS. EGOSCUE: Your Honor, I would argue that the
10 ruling, the 1998 ruling, in addition to the Watermaster
11 Minutes and the board action are all part of the record of
12 the continuing jurisdiction. So although it is not attached
13 as evidence, that is the very reason why I am requesting
14 additional briefing.

15 And if Your Honor would like to limit it to
16 briefing that -- to briefing and evidence that has not been
17 submitted that is something that would make sense
18 considering the extreme importance of the matter and how
19 this portends for the future, not only the Agricultural Pool
20 but the Watermaster itself.

21 THE COURT: Well, here's what I'm going to do then,
22 because my conclusion is that it isn't -- it's not set up --
23 set forth in detail for everyone to look at, including me.
24 And we are going to do this -- I really don't want to do
25 this on a short fuse but it's something that needs to be
26 done and if the Ag Pool's running out of money, then it
27 needs to be done relatively soon.

28 And so here's what I would propose, that

1 Ms. Egoscue, you sent out a brief which includes an exhibit,
2 the February 19, 1998 ruling. And your brief discussed the
3 effect of that ruling on the motion and that issue only.
4 No -- no minutes. No Watermaster memos.

5 The Court thinks the important part of this is
6 looking at the previous Court's rulings so that I can be
7 consistent and aware of the previous Court's ruling for this
8 important issue. And so, I don't want to set a limit on the
9 briefing pages, but I'm going to.

10 I'm going to make a recommendation. It is not
11 going to be an order. Could you please hold the briefing
12 down to 15 pages plus exhibits?

13 Is that unreasonable, Ms. Egoscue?

14 MS. EGOSCUE: That's perfect, Your Honor.

15 THE COURT: Okay. So that brief, can you get that
16 served two weeks from today?

17 MS. EGOSCUE: Yes, Your Honor.

18 THE COURT: Okay.

19 Served and filed two weeks from today.

20 And then any response -- Okay, I'm a person of
21 dates. So everyone knows exactly what I'm talking about.

22 That's May the 14th. So it needs to be served and
23 filed by noon on -- Actually served -- served by the close
24 of business on the 14th and you can file it the following
25 Monday because the problem the Court has with its clerks
26 office closing at noon. So served by 4:00 p.m., Friday,
27 May 14 and filed by noon the following Monday which would be
28 16, May the 16th. And then any response to that filing, I

1 would like served and filed ten days later. So that would
2 be by -- actually served by Wednesday -- served and filed as
3 a courtesy copy with The Court the following Friday. And
4 then filed with the court clerk by noon the following
5 Monday. That's a one week turn around.

6 Mr. Fudacz, do you think you can do that?

7 MR. FUDACZ: I have no idea. I don't know what
8 Ms. Egoscue is going to present. I don't know -- if it's
9 very narrow, just one -- one ruling and her comments are
10 limited to that. I can't imagine that would take up 15
11 pages. But if that's -- if that's really the limitation, I
12 assume we could live with a short turn around.

13 THE COURT: Well, that's -- that's -- that's going
14 to be the order then.

15 So Ms. Egoscue, I'm going to limit you to the brief
16 15 pages plus exhibits. And, really, the only exhibit that
17 I really want to see is the ruling itself, the
18 February 19, 1998 ruling.

19 And then, Mr. Fudacz, get me your response by noon
20 the following Friday which is going to be the 21st of May.
21 And I will set the hearing and hope to have the final
22 argument -- there will be no reply.

23 So if you want to reply Ms. Egoscue, I will hear
24 argument. And I'll hope to have this issue then resolved at
25 the hearing we already have set for the --

26 MR. SLATER: May 28th, Your Honor.

27 THE COURT: Thank you.

28 The 28th of May at 1:30 and with -- I hope to put

1 this issue to rest at that time. But if we need a little
2 more time, we've got a hearing set a month later.

3 But if there's an urgency to get this done as
4 Ms. Egoscue has suggested, I will -- let's give it some
5 urgency and try to get it done in the next 30 days -- next
6 four weeks actually.

7 MS. EGOSCUE: Your Honor, thank you very much.

8 I just wanted to clarify that you would like us to
9 have it filed by the 17th not the 16th. You said the 16th,
10 that's a Sunday. So I just want to clarify, it's the 14th,
11 served by 4:00 p.m. and filed by noon on the 17th?

12 THE COURT: That's correct. That is correct.
13 Sorry, I misread the calendar. So -- and all -- Again,
14 always, always, always give me a courtesy copy in the
15 courtroom because we are just really backed up here. So
16 always send a courtesy copy into the courtroom. I will have
17 read them, the brief Ms. Egoscue is filing two weeks from
18 today, the brief Mr. Fudacz or anyone else in response wants
19 to file by the following Friday. And by four weeks from
20 today, I hope to have a final ruling for you and a final
21 argument and a final ruling and put this issue to rest.
22 That's the plan.

23 THE JUDICIAL ASSISTANT: Your Honor, is the
24 response to be filed and served --

25 MS. EGOSCUE: Thank you, Your Honor.

26 THE JUDICIAL ASSISTANT: -- by May 21st?

27 THE COURT: Give me a second. I've got a question
28 from my Judicial Assistant.

1 Which is Mr. Fudacz, you can serve -- serve
2 everybody with your response by noon Friday the 21st and
3 file it with the court clerk the following Monday. Just the
4 same deal I gave Ms. Egoscue. Because of the noon problem
5 that we've got here with the clerks office closing at noon,
6 I don't want you to -- I'm trying to make this as easy as I
7 can on counsel given the schedule the court has internally.

8 So does that answer your question, Ms. Amber?

9 THE JUDICIAL ASSISTANT: Yes, Your Honor. Thank
10 you.

11 THE COURT: Thank you.

12 And does someone else want to add something?

13 MS. GRADY: This is Shawnda Grady, Your Honor, on
14 behalf of JCSD.

15 And just for Your Honor's convenience, do you want
16 the Appropriative Pool to submit language -- the proposed
17 order with the dollar amount that Ms. Nicholls articulated
18 during the hearing today?

19 THE COURT: That would be excellent.

20 MS. GRADY: In advance of the next hearing?

21 THE COURT: Yes, please. That would be excellent.
22 So if I make the ruling, I've got -- I can have all of the
23 paperwork including the orders ready to go if that's the way
24 I go. And I'm not saying I will or I won't. But it always
25 helps to have everything together at one time in that
26 eventuality.

27 MR. FUDACZ: This is Mr. Fudacz again. Thank you,
28 Your Honor. We will take care of that.

1 THE COURT: Thank you.

2 And, Mr. Fudacz, so just again to clarify, so
3 Ms. Egoscue, you've got 15 pages. Mr. Fudacz, you have 15
4 pages. That's it.

5 Or anybody else who files anything. He or she has
6 15 pages. So that -- because you're right, Mr. Fudacz, the
7 stack that I've got on my desk on this motion is about a
8 foot tall.

9 And not that I'm complaining, it's just -- I think
10 we've got a limited issue with the limited briefing and I
11 will consider what Ms. Egoscue raised in the new point today
12 and making my ruling hopefully four -- hopefully four weeks
13 from today. Okay? Everybody?

14 MR. SLATER: Your Honor, for the convenience of The
15 Court and the parties, we propose to provide notice on all
16 the actions taken today by The Court.

17 MR. FUDACZ: Your Honor, one additional point, the
18 February 19, 1998 order, is there a way that we could --
19 that that could be identified as to the specific date, so we
20 could get a copy in advance of whatever brief that
21 Ms. Egoscue is going to file?

22 MR. SLATER: Your Honor, we would be delighted to
23 issue a copy of the order along with the notice for further
24 convenience of the parties.

25 MR. FUDACZ: That would be great.

26 THE COURT: Thank you, Mr. Slater.

27 Ms. Egoscue, I took that February 19, 1998 date as
28 the filing date; is that correct?

1 MS. EGOSCUE: Yes, that is correct, Your Honor.
2 And Mr. Slater as Watermaster counsel is very well aware of
3 it. It was also dated and signed by the judge on the exact
4 same day, Judge Gunn, on February 19, 1998.

5 THE COURT: I will read it in detail and be
6 prepared. Thank you, everyone.

7 I will just -- Before I conclude, anything else we
8 need to discuss today, Mr. Slater, from your point of view?

9 MR. SLATER: No, Your Honor. Thank you very much.

10 THE COURT: Thank you.

11 Anybody on the phone, anything else we need to
12 discuss today from anybody else's point of view?

13 Going once, going twice? That's a wrap.

14 Thank you, everybody. Talk to you four weeks from
15 today.

16 MR. SLATER: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 (At which time the foregoing
19 proceedings were concluded.)

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

3
4 CHINO BASIN MUNICIPAL)
WATER DISTRICT,)
5)
Plaintiff,) RCVRS 51010
6)
vs.)
7)
CITY OF CHINO, et.al.,)
8)
Defendants.)
9)
10 _____)

11 REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS
12 BEFORE HONORABLE STANFORD REICHERT, JUDGE
13 April 30, 2021

14
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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN BERNARDINO
3

4 CHINO BASIN MUNICIPAL)
5 WATER DISTRICT,)
6 Plaintiff,) RCVRS 51010
7 vs.)
8 CITY OF CHINO, et.al.,) REPORTER'S
9 Defendants.) CERTIFICATE
10 _____)

11 STATE OF CALIFORNIA)
12) SS
13 COUNTY OF SAN BERNARDINO)
14

15 I, CATHY A. ALBRITTON, C.S.R., Official Reporter of
16 the above-entitled court, do hereby certify:

17 That I am a Certified Shorthand Reporter of the
18 State of California, duly licensed to practice; that I did
19 report in Stenotype oral proceedings had upon hearing of the
20 aforementioned cause at the time and place herein before set
21 forth; that the foregoing pages numbered 1 to 41, inclusive,
22 constitute to the best of my knowledge and belief a full,
23 true, and correct transcription from my said shorthand notes
24 so taken for the date of April 30, 2021.

25 Dated at San Bernardino, California, this 8th day
26 of May, 2021.
27

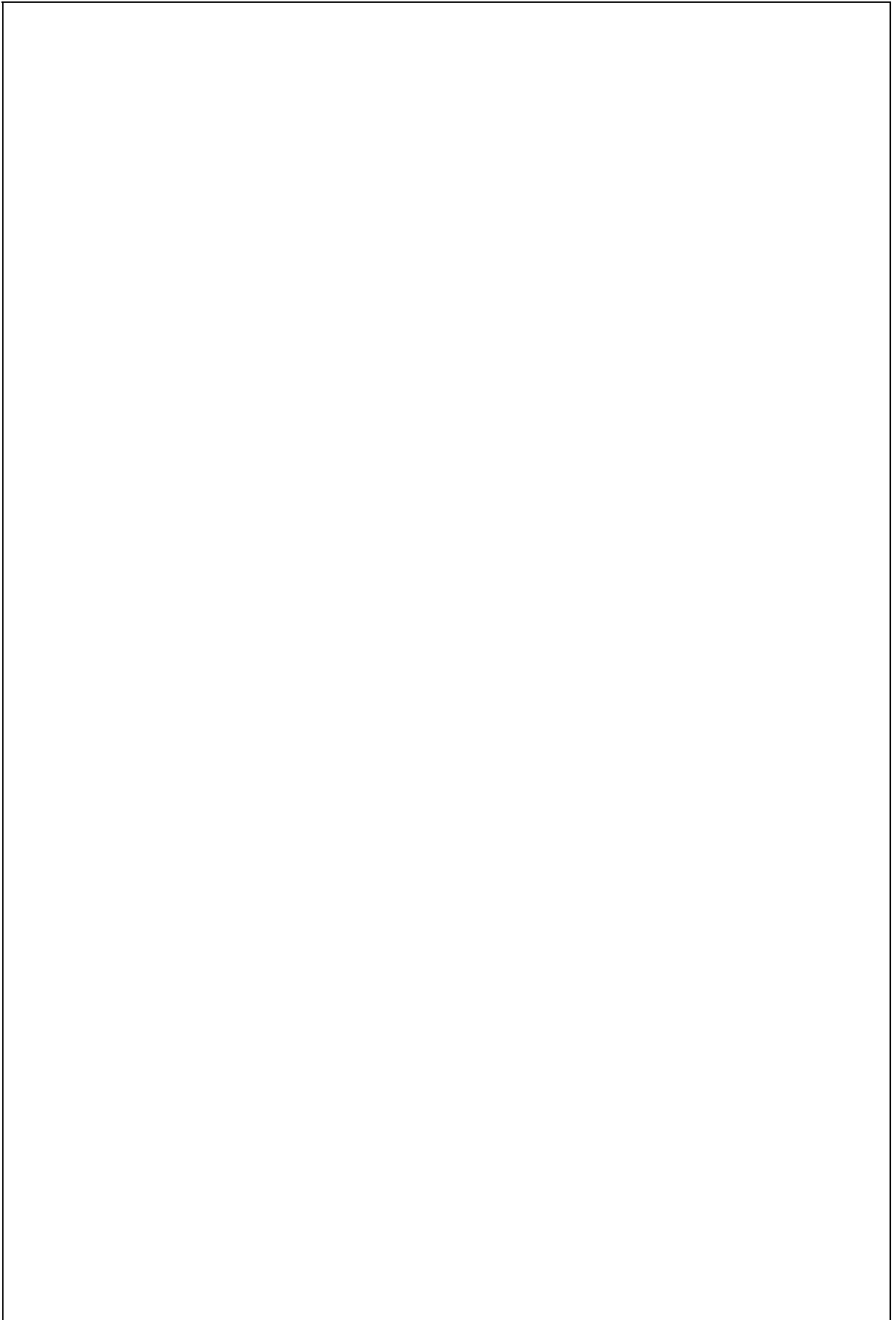
28 _____
Official Reporter , C.S.R. No. 7137

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I N D E X

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CHINO BASIN WATERMASTER

Case No. RCVRS 51010

Chino Basin Municipal Water District v. City of Chino, et al.

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On January 14, 2022 served the following:

1. APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL

BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

See attached service list: Master Email Distribution List

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 14, 2022 in Rancho Cucamonga, California.



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