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6 Attorneys for CITY OF ONTARIO

7 *[Additional Parties on Following Pages]*

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

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,
15
16 Plaintiff,
17
18 vs.
19
20 CITY OF CHINO, ET AL.,
21
22 Defendants.

Case No: RCVRS 51010
*Assigned for All Purposes to the
Honorable Gilbert G. Ochoa*

NOTICE OF ORDER

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4 8 Corporate Park, Suite 300
5 Irvine, CA 92606
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8 Attorneys for MONTE VISTA WATER DISTRICT and
9 MONTE VISTA IRRIGATION COMPANY

10 JIMMY L. GUTIERREZ, CAL. BAR NO. 59448
11 JIMMY L. GUTIERREZ LAW CORPORATION
12 12616 Central Avenue
13 Chino, CA 91710
14 (909) 591-6336 Office
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16 Attorneys for CITY OF CHINO

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on November 18, 2022, the Honorable Gilbert G. Ochoa,
3 having considered the briefing submitted and supporting documents filed concurrently therewith,
4 and having heard any oral argument from counsel, entered the following ORDERS and
5 RULINGS:

6 (1) The Court issued an ORDER denying the Motion Challenging Watermaster's Budget
7 Action to Fund Unauthorized CEQA Review, filed by the City of Ontario, Monte Vista Water
8 Company, Monte Vista Irrigation Company, and the City of Chino; and

9 (2) The Court issued an ORDER denying Watermaster's Motion to File Surreply and
10 Surreply In Response to Moving Parties' Reply In Support of Motion Challenging Watermaster's
11 Budget Action to Fund Unauthorized CEQA Review.

12 A copy of the transcript of said proceedings is attached to this Notice as **Exhibit A**.

13
14 Dated: November 29, 2022

NOSSAMAN LLP
FREDERIC A. FUDACZ
GINA R. NICHOLLS

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16
17 By:  _____

Gina R. Nicholls
Attorneys for CITY OF ONTARIO

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT S-24

HON. GILBERT G. OCHOA, JUDGE

CHINO BASIN MUNICIPAL)
WATER DISTRICT,)
)
Plaintiff,)
)
vs.)
)
CITY OF CHINO, ET AL.,)
)
Defendants.)
_____)

CASE NO. RCVRS51010

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

SAN BERNARDINO, CALIFORNIA

FRIDAY, NOVEMBER 18, 2022

PERSONAL APPEARANCES:

ANDREW GAGEN, Interested Party, for Monte Vista
Water District

FREDERIC FUDACZ, Attorney at Law, on behalf of
City of Ontario;

JEAN CIHIGOYENETCHE, Attorney at Law, on behalf
of Inland Empire Utilities;

MARTIN CIHIGOYENETCHE, Attorney at Law, on behalf
of Inland Empire Utilities;

SCOTT SLATER, Attorney at Law, on behalf of Chino
Basin Watermaster;

JIMMY L. GUTIERREZ, Attorney at Law, on behalf of
City of Chino;

1 PERSONAL APPEARANCES CONTINUED:

2 BRADLEY HERREMA, Attorney at Law, on behalf of
3 Chino Basin Watermaster;

4 APPEARANCES VIA COURTCALL:

5 ALLEN W. HUBSCH, Participant, Non-Agricultural
6 Pool;

7 BOB BOWCOCK, Interested Party, on behalf of the
8 Chino Basin Watermaster

9 BRIAN GEYE, Attorney at Law, on behalf of the
10 Non-Agricultural Pool;

11 CAROL A.Z. BOYD, Attorney at Law, on behalf of
12 The State of California

13 JEFF PIERSON, Interested Party, on behalf of
14 Chino Basin Watermaster;

15 RON CRAIG, Client, on behalf of City of
16 Chino Hills

17 JOHN SCHATZ, Attorney at Law, on behalf of the
18 Appropriative Pool,

19 SHAWNDA GRADY, Attorney at Law, on behalf of
20 Jurupa Community Services;

21 TRACY EGOSCUE, Attorney at Law, on behalf of the
22 Agricultural Pool;

23 ELIZABETH P. EWENS, Attorney at Law, on behalf of
24 City of Ontario;

25 CHRIS QUACH, Attorney at Law, on behalf of City
26 of Ontario;

1 APPEARANCES VIA COURTCALL CONTINUED:

2 GINA R. NICHOLLS, Attorney at Law, on behalf of
3 City of Ontario;

4 PETE HALL, Interested Party, on behalf of Chino
5 Basin Watermaster;

6 ELIZABETH M. CALCIANO, Attorney at Law, on behalf
7 of City of Chino Hills;

8 JUSTIN SCOTT-COE, Client, Monte Vista Water
9 District;

10 STEVEN M. KENNEDY, Attorney at Law, on behalf of
11 Three Valley Municipal Water District;

12 JENIFER RYAN, Attorney at Law, on behalf of City
13 of Upland

14 ERIC N. ROBINSON, Attorney at Law, on behalf of
15 City of Upland

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25 REPORTED BY: MARIA SALGADO-BRITO, CSR NO. 14141
OFFICIAL REPORTER

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1 SAN BERNARDINO, CALIFORNIA; FRIDAY, NOVEMBER 18, 2022

2 A.M. SESSION

3 DEPARTMENT S-24

HON. GILBERT G. OCHOA, JUDGE

4 APPEARANCES:

5 ANDREW GAGEN, Interested Party, for
6 Monte Vista Water District; FREDERIC
7 FUDACZ, Attorney at Law, on behalf of
8 City of Ontario; JEAN CIHIGOYENETCHE,
9 Attorney at Law, on behalf of Inland
10 Empire Utilities; MARTIN
11 CIHIGOYENETCHE, Attorney at Law, on
12 behalf of Inland Empire Utilities;
13 SCOTT SLATER, Attorney at Law, on
14 behalf of Chino Basin Watermaster;
15 JIMMY L. GUTIERREZ, Attorney at Law, on
16 behalf of City of Chino; BRADLEY
17 HERREMA, Attorney at Law, on behalf of
18 Chino Basin Watermaster; ALLEN W.
19 HUBSCH, Participant, Non-Agricultural
20 Pool; BOB BOWCOCK, Interested Party, on
21 behalf of the Chino Basin Watermaster;
22 BRIAN GEYE, Attorney at Law, on behalf
23 of the Non-Agricultural Pool;
24 CAROL A.Z. BOYD, Attorney at Law, on
25 behalf of The State of California;

26

1 APPEARANCES (Continued):

2 JEFF PIERSON, Interested Party, on
3 behalf of Chino Basin Watermaster; RON
4 CRAIG, Client, on behalf of City of
5 Chino Hills; JOHN SCHATZ, Attorney at
6 Law, on behalf of the Appropriative
7 Pool; SHAWNDA GRADY, Attorney at Law,
8 on behalf of Jurupa Community Services;
9 TRACY EGOSCUE, Attorney at Law, on
10 behalf of the Agricultural Pool;
11 ELIZABETH P. EWENS, Attorney at Law, on
12 behalf of City of Ontario; CHRIS QUACH,
13 Attorney at Law, on behalf of City
14 of Ontario; GINA R. NICHOLLS, Attorney
15 at Law, on behalf of City of Ontario;
16 PETE HALL, Interested Party, on behalf
17 of Chino Basin Watermaster; ELIZABETH
18 M. CALCIANO, Attorney at Law, on behalf
19 of City of Chino Hills;
20 JUSTIN SCOTT-COE, Client, Monte Vista
21 Water District; STEVEN M. KENNEDY,
22 Attorney at Law, on behalf of Three
23 Valley Municipal Water District;
24 JENIFER RYAN, Attorney at Law, on
25 behalf of City of Upland;

26

1 APPEARANCES (Continued):

2 ERIC N. ROBINSON, Attorney at Law, on
3 behalf of City of Upland.

4 (Maria Salgado-Brito, CSR No. 14141)

5 --o0o--

6 THE COURT: The Court calls the nine o'clock
7 matter, Chino Basin versus City of Chino. If I can have
8 everybody's appearances please beginning with the moving
9 parties and the respondent parties.

10 MR. GUTIERREZ: Good morning. I'll begin. Jimmy
11 Gutierrez appearing for the City of Chino and moving
12 party.

13 MR. GAGEN: Andrew Gagen on behalf of Monte Vista
14 Water District and the Monte Vista Irrigation Company.

15 MR. FUDACZ: Once again, Good morning, your
16 Honor, Frederic Fudacz on behalf of the moving party, City
17 of Ontario.

18 MR. SLATER: Good morning, your Honor, this is --

19 MS. NICHOLLS: And, your Honor, this is Gina
20 Nicholls on the phone on behalf of moving party, City of
21 Ontario.

22 MR. SLATER: Good morning, your Honor, Scott
23 Slater, S-l-a-t-e-r, on behalf of Watermaster.

24 THE COURT: On behalf of?

25 MR. SLATER: Watermaster.

26 MR. JEAN CIHIGOYENETCHE: Good morning, your

1 Honor, Jean Cihigoyenetché appearing on behalf of Inland
2 Empire Utilities Agency.

3 MR. MARTIN CIHIGOYENETCHE: Good morning, your
4 Honor, Martin Cihigoyenetché, on behalf of Inland Empire
5 Utilities.

6 MR. HERREMA: Good morning, your Honor, Brad
7 Herrema, H-e-r-r-e-m-a, on behalf of Chino Basin
8 Watermaster.

9 THE COURT: Anyone else on court call?

10 MR. ROBINSON: Good morning, your Honor. This is
11 Eric Robinson appearing on behalf of the City of Upland,
12 and I'm with my colleague Jenifer Ryan.

13 MS. RYAN: Good morning, your Honor. This is
14 Mrs. Ryan.

15 MS. EWENS: Good morning, your Honor, Elizabeth
16 Ewens -- sorry, Elizabeth Ewens for the City of Ontario.

17 MS. BOYD: Good morning, your Honor, Deputy
18 Attorney General Carol Boyd for the State of California as
19 a member of the Agricultural Pool, and I'm just listening
20 in today. Thank you.

21 MS. GRADY: Good morning, your Honor, this is
22 Shawnda Grady on behalf of Jurupa Community Services
23 District.

24 MR. HUBSCH: This is Allen Hubsch, the counsel
25 for the Non-Agricultural Pool and listening in to monitor.
26 Thank you.

1 MR. KENNEDY: Good morning, your Honor, Steve
2 Kennedy on behalf of Three Valley Municipal Water
3 District.

4 MS. CALCIANO: Good morning, your Honor, this is
5 Elizabeth Calciano, City of Chino Hills and along with my
6 client Ron Craig is on as well.

7 THE COURT: Anyone else on court call?

8 MR. SCHATZ: Good morning, your Honor, this is
9 John Schatz representing the Appropriative Pool.

10 MS. EGOSCUE: Good morning, your Honor, Tracy
11 Egoscue on behalf of the Agricultural Pool.

12 MR. GEYE: Good morning, your Honor, Brian Geye,
13 chairman of the Non-Ag Pool, monitoring today. Thank you.

14 MR. HALL: Good morning, your Honor, this is Pete
15 Hall, Watermaster board member and part of the
16 Agricultural Pool.

17 MR. PIERSON: Good morning, your Honor, this is
18 Jeff Pierson, Vice Chair of your Board. I'm representing
19 the Agricultural Pool.

20 MR. BOWCOCK: Good morning, your Honor, Bob
21 Bowcock, Watermaster board member. Thank you.

22 THE COURT: Anyone else on court call?

23 MR. SCOTT-COE: Good morning, your Honor, Justin
24 Scott-Coe with Monte Vista Water District and Monte Vista
25 Irrigation Company.

26 THE COURT: Anyone else?

1 MR. QUACH: Good morning, you Honor, this is --
2 (Audio distortion.)

3 THE COURT: Could you repeat that, Counsel?

4 MR. QUACH: Good morning, your Honor, this is
5 Christopher Quach with the City of Ontario, staff member
6 for the City of Ontario.

7 THE COURT: Anyone else?

8 Okay. So I just wanted, again, with a couple of
9 questions that the Court has, normally I'd like to do a
10 tentative on all of my motions but due to the volume of
11 materials on this -- on these motions, the Court wasn't
12 able to.

13 So my first question is -- it looks like nobody
14 follows or pays attention to the Rules of the Court here,
15 specifically 3.5113 with regards to the page limits of
16 motions and/or replies.

17 So it's my understanding that on the last motion
18 that you were here on, again, those limitations weren't
19 followed. It was my understanding that Judge Reichert
20 allowed you to go over those page limits for that motion.
21 I had -- I was not aware that that was a standing order or
22 maybe you thought it was a standing order or what his
23 position was on it.

24 But as you saw, as of today, this is not a
25 probate court. We are a full-service trial court, and we
26 are extremely busy. There's reasons for those page

1 limits, and this is not a Statement of Decision that you
2 folks are doing. It's not a Motion for Summary Judgment.
3 It's just a motion. And, quite honestly, between the last
4 motion and this motion, I don't see any reason why the
5 page limit should be extended.

6 As to the motion for the surreply -- I should say
7 the so-called motion for the surreply, I'm not even sure
8 what that is. First of all, I have never seen one before.
9 Second of all, it was filed right after the reply, so
10 procedurally it was effective.

11 Number one, it didn't comply with 1005 of the
12 CCP. Number two, it wasn't filed as an ex parte which it
13 should have been if, in fact, it was a reply. Now, it was
14 a motion that was masquerading or pretending to be a
15 motion, but it really wasn't. What it was was a surreply
16 because any -- there also wasn't any notice to the motion,
17 but that's not the procedural issue.

18 But with regards to the motion pretending to be
19 what it was, I think there were two vines with regards to
20 any P's and A's with regards to why a surreply should be
21 allowed here, and the rest of it was simply a surreply.
22 So it's very disingenuous to call it a motion.

23 By the way, whose motion was it?

24 MR. HERREMA: That was Watermaster's, your Honor.

25 THE COURT: So it's very disingenuous to the
26 Court to call it a motion when it wasn't a motion. It was

1 a surreply, so that's not for being procedurally
2 effective.

3 Certainly a party can file a surreply with leave
4 of Court, but I'm going to tell you right now, it's going
5 to be frowned upon.

6 Secondly, the option that the Court prefers which
7 I think is more efficient and expedient for the Court is
8 simply to disregard those items in the reply which you
9 think go beyond what should have been in the case in chief
10 and not appropriate for a reply.

11 And since you folks aren't making any attempt to
12 help the Court be efficient based upon the 2,000 or so
13 pages for this motion, I have to do it on my own and I
14 don't think that's very fair to the Court.

15 MR. SLATER: Your Honor, this is Scott Slater,
16 and I deeply regret not interfacing and -- and
17 establishing some protocols ahead of time. We do see the
18 extreme volume of paper that is showing up, and we
19 apologize for that. We have served three judges since --
20 in my tenure since 2000 and we'll do better, and -- and I
21 promise you that we'll coordinate with moving parties to
22 make sure that in the future your rules are met.

23 THE COURT: I appreciate that. And, you know, I
24 hope to be on this case for a very long time. I think
25 these issues are really interesting to me. Nobody wanted
26 this case, but I was more than happy to take it, so I hope

1 to be on it for a long time. But part of the problem of a
2 case being with one judge for a long time, it can kind of
3 create its own legal world; and when procedures aren't
4 followed, that's what happens. So there are a lot of
5 irregularities here, so my job is -- the first thing that
6 we're going to do is we're going to start following the
7 Code, so please keep that in mind.

8 Also, keep in mind, as I said, I'm not
9 complaining about my workload. I'm just telling you the
10 lay of the land. So I know you folks have put tons and
11 tons and tons of hours into these motions. The Court
12 isn't able to do that. But one way you could shorten your
13 motion page length is don't give me the historical
14 background. I'm pretty well-versed on it, so you don't
15 need to do that each and every time that we have a motion.

16 Use your page length, you know, to put in the
17 information that you want the Court to rule on, what
18 you're asking for, why you want it, why it can't be done,
19 whatever the issue is. I think that's a better way to
20 spend your time writing all these motions.

21 So that motion is denied, and I'll be happily
22 to -- hold on. The Court is still talking, I'm sorry, but
23 just let me speak and give some rulings here and then I'll
24 hear from the party that the ruling's gone against.

25 So that motion is denied. The other question the
26 Court has -- and I'll give you a tentative with regards to

1 the ruling on the other motion, but there's two certified
2 CEQA judges in this county by authority of the Chief
3 Justice. That's me and another Judge. So there's some
4 CEQA issues here, and I guess I'm having a hard time
5 trying to figure out this trigger point as to why CEQA is
6 required here.

7 CEQA, as you may or may not know, came to light
8 around the '70s, in the mid-'70s, probably around the same
9 time this judgment initially came up. And so here we have
10 a 50-year-old judgment, and I assume if there were any
11 CEQA issues, they would have come up much longer before
12 today. I'm not sure why some supplemental PEIR is needed
13 at this time, and nobody really briefed me on whether or
14 not there was any case law that was -- that was even
15 needed. So I'm not sure what the trigger point is that
16 CEQA is required here, but I noticed that both of you --

17 MR. SLATER: Your Honor, if I may address it in
18 the context of the history?

19 THE COURT: Sure. Go ahead.

20 MR. SLATER: So I started in January of 2000 --

21 THE COURT: Well, before you do that, though, let
22 me just finish -- that's one of the questions I had, the
23 ruling on the motion. The other motion challenging the
24 budget action is denied.

25 The Court adopts Watermaster's position at
26 Section 3A one, two, and three. So normally I just hear

1 from counsel that -- or from the moving party, but I'm
2 also interested on the issue regarding that -- the CEQA
3 issue, and I guess I don't really need to know it at this
4 point; but it's something that if the issue comes up
5 again, I think it needs to be addressed because from your
6 papers, the only thing that I could gather was that
7 everybody has agreed that it's needed, but I'm not quite
8 sure why it's needed. So that was just one of the
9 questions I had.

10 MR. SLATER: So if I can, your Honor, and -- and
11 please interrupt me if -- if I stray, but I'll try to be
12 succinct and pertinent. So judgment in 1978, activity
13 under the judgment, no optimum basin management program, a
14 requirement of paragraph 41 of the judgment; and I think,
15 your Honor, you should understand paragraph 41 in the
16 context of the judgment, paragraphs 39, 40, 41, and they
17 described physical solution. Your Honor is familiar with
18 the background of physical solution. Your Honor is
19 familiar with your authority and duty arising under
20 Article 10, Section 2.

21 You have constitutional authority on your part to
22 administer a physical solution over the will of the
23 parties on your own motion or if one should become
24 apparent to you. The judgment articulates the physical
25 solution for this purpose as paragraphs 39, 40, and 41.
26 41 is the OBMP. Paragraph 40 reflects the adapted

1 management character of this judgment. It's sort of
2 unique in that way that it forecasts a planning component,
3 and it, as this Court has continuing jurisdiction, it is
4 common in every groundwater adjudication for the Court to
5 have continuing jurisdiction.

6 And, your Honor, the judgment it selves, even
7 though you would already have it as a matter of common
8 law, the judgment expressly provides that you may, in your
9 discretion, supplement Watermaster's authority in its
10 discretion as required under continuing jurisdiction.

11 So let's go back to the late '90s, no optimum
12 basin management program; a deep concern about how the
13 basin was being administered, the need for having such a
14 forward-thinking program. The authority of the Court is
15 not constrained by CEQA. There are cases cited by both
16 sides which indicate the Court is separate and apart.

17 And indeed, your Honor, you could order and
18 courts have ordered in the past, parties by prohibitory or
19 mandatory injunctions to do things within your
20 constitutional authority in administering a physical
21 solution.

22 I showed up in 2000. The Court had ruled, and we
23 did mention this in our papers and it is an exhibit. The
24 Court had ruled in November -- on November 18th, 1999,
25 that on recommendation -- a recommendation of Watermaster
26 and unopposed by any party other than the Monte Vista

1 Water District -- I have -- I think it's Exhibit F.

2 MR. HERREMA: It's Exhibit F. It's administered
3 for the declaration in support of our opposition.

4 MR. SLATER: So the Court knew and understood
5 that there were two pathways; one was for the Judge to
6 actually be ordering the parties to do things and then
7 hold them in contempt or fine them or -- or prohibit
8 things in the event that this optimum basin management
9 plan was not done, or it could acknowledge the reality
10 that most of the parties to the judgment or many of the
11 parties to the judgment were public agencies, and those
12 public agencies could use a common playing field, not at a
13 project detailed-level EIR, but for purposes of gathering
14 the background data, uniform data, so that people would
15 have that to ultimately propose projects upon.

16 So there is a phase one OBMP report which is a
17 study. That study leads to an order of the Court on
18 November 18th that for purposes of the OBMP, that IUA be
19 the lead agency. So that's the first action, and the
20 Court did that because the parties themselves and
21 Watermaster believed that these individual actions that
22 may be taken in the future would require a programmatic
23 under the theory of CEQA and related activities.

24 So we started there and then we moved to a
25 process under a EIR -- PEIR that was under evaluation and
26 then the parties themselves pursuant to an agreement, not

1 Watermaster, but parties themselves largely to avoid
2 crossfire on CEQA litigation, the parties themselves said,
3 we agree that for purposes of the OBMP, IUA should be the
4 lead agency on a programmatic environmental impact report.

5 So that decision was made first by the Court and
6 then reflected in the contract agreement among the parties
7 and then it was brought to Judge Gunn and Judge Gunn said,
8 Watermaster, you will proceed in accordance with the peace
9 agreement recognizing IUA as the lead agency.

10 So that is how we got to this place, and the
11 benefit was common baseline and as opposed to having 25
12 different municipalities offering up environmental impact
13 reports on their own projects that cross-purposes and to
14 avoid the crossfire and to create a common ground for us
15 to move forward on. That's the --

16 THE COURT: Okay. So I guess I was right, you
17 just agreed.

18 MR. GUTIERREZ: Yes.

19 MR. SLATER: Yes, your Honor, we agreed, but the
20 Court did order it and Monte Vista opposed it.

21 MR. GUTIERREZ: If I may respond to that. I
22 can't disagree with what Mr. Slater has said, except we
23 need to make sure that it's an exception, what he said was
24 an exception because the Court and Watermaster do not have
25 any authority to construct facilities, permit facilities,
26 or do CEQA analysis as you point out. But because of what

1 happened when we were challenging what was going on with
2 Watermaster in 1998 and 1999 -- and I was here then, I
3 participated in all of this -- the parties knew that they
4 had to fix things in the judgment, so they entered into
5 various agreements which dealt with projects that are
6 defined in the first peace agreement and projects that are
7 defined in the second peace agreement.

8 And as to those projects, we all agreed. Every
9 party agreed that those projects need to be done. Every
10 party agreed that CEQA analysis needed to be done. Every
11 party agreed that IUA could be the lead agency. This was
12 not done by Watermaster alone because it had any
13 authority.

14 THE COURT: Had CEQA lawsuit been filed at that
15 time?

16 MR. GUTIERREZ: No, no.

17 THE COURT: So there was no lawsuit filed?

18 MR. GUTIERREZ: No, there was no lawsuit filed,
19 but we did it proactively because we knew we were going to
20 do some -- many, many things.

21 Let me give you the biggest example of the
22 biggest thing that we have done together, and that's one
23 of the reasons for this motion. We completely changed the
24 flow of water under the basin. It was a physical miracle
25 that we did, and that project, it resulted in what we call
26 "hydraulic control," and what I want to do is explain very

1 simply what it is.

2 Before hydraulic control was achieved, the water
3 would flow under the basin, to the south end of the basin,
4 and empty out into the river and we would lose water. We
5 stopped that so that we're not losing water from the basin
6 any more, and the parties to the judgment can acquire that
7 water.

8 The second thing we were able to do is get more
9 water into the basin from the Santa Ana River which is
10 south of the basin. How do we do that? We put some
11 wellfields on the south end of the basin and desalters to
12 take out the water at the south end of the basin so that
13 the water level would be depressed below the level of the
14 river; that then did not allow basin water to flow into
15 the river, and it allowed river water to flow into the
16 basin.

17 Now, the reason I'm saying that is because the
18 second peace agreement had a specific project description
19 that we all agreed to do, and the actual physical
20 construction was financed by public entities; the City of
21 Chino, the City of Ontario, Jurupa Municipal -- excuse me,
22 Jurupa Community Services District, and three others, and
23 we're the ones that paid for it.

24 Now, Watermaster's share was to do something
25 contrary to what the judgment said. At that time the
26 judgment said, no party that has -- that does not have

1 rights to the water cannot remove water from the basin.
2 And any party that has rights to the basin water, if it
3 exceeds its entitlement, must replenish it. But what we
4 did by a concept called "reoperation" was Watermaster,
5 with court approval, approved the use of 400,000-acre feet
6 of water in the basin in order to allow the desalters to
7 do their job and create hydraulic control.

8 After that 400,000-acre feet was -- was expended,
9 the parties now pay to replenish the water that the
10 desalters take out. The desalters take out about
11 40,000-acre feet of water from the basin annually, and
12 we're involved with paying it.

13 But the point I'm making here for CEQA purposes
14 is that there was this very specific grand project that
15 needed to be done and we all agreed to do it, and we
16 agreed to proceed with the -- the CEQA analysis that
17 occurred. But those agreements, your Honor, did not
18 permit any other specific project. They only permitted
19 those enumerated projects, and both peace agreements
20 specifically say that the peace agreement does not approve
21 any future project.

22 That's one of the issues we have here today
23 because Watermaster is seeking to identify new projects
24 and conduct a CEQA analysis, and we think Watermaster,
25 just like the Court lacks jurisdiction, to do that, would
26 violate the separation of powers doctrine, and that's the

1 reason why the CEQA statute does not define a court as
2 being a public entity, and a court and the arm of the
3 court, meaning Watermaster, does not have the authority to
4 undertake CEQA analysis and yet that's what's going on.

5 Now, the real concern with this is not so much
6 they do it or they don't do it, but it becomes wasteful
7 because the parties have not agreed as to what projects
8 we're going to do. We agreed in peace one what we're
9 going do. That's been done. We agreed in peace two what
10 was going to be done. That was done.

11 We haven't agreed in a peace three in terms of
12 what we would do and how we would do it, who would finance
13 it. None of that has been discussed, yet Watermaster has
14 put the cart before the horse by saying, we need to come
15 up with projects that we need to analyze, and they
16 acknowledged will never -- may never be built, so it
17 doesn't make sense, your Honor.

18 MR. FUDACZ: Fred Fudacz on behalf of the City of
19 Ontario. We're pretty deep into the leads here. Welcome
20 to our -- our cane little corner of California water law
21 that involves water-right adjudications, court-appointed
22 Watermaster's continuing jurisdictions. It's sometimes
23 counterintuitive, but there's some basic principles that
24 apply here that's --

25 THE COURT: -- nature. Can we keep it water
26 nitrified, please?

1 (Laughter in the court.)

2 MR. FUDACZ: That's -- that's one of the
3 principles for sure. But the question is what is
4 Watermaster? What does it do? How does it function?
5 What are the principles that guide that?

6 First of all, let's start with what Watermaster
7 is not. It's not a regional governmental agency. It's --
8 the members of the Watermaster board are not publicly
9 elected by the public. They're appointed by this Court.
10 The Watermaster board doesn't enjoy broad undefined
11 authority to assess the moving parties in this case or any
12 of the parties in this case for expenditures simply
13 because the board believes it might be useful or helpful
14 in some way. This is a court of law that we're dealing
15 with.

16 The moving parties are those public agencies.
17 They are governed by elected officials; elected officials
18 that have responsibility to their citizens to make sure
19 that public monies are spent in a responsible way, and
20 we're talking about hundreds of thousands of folks in the
21 Inland Empire.

22 So what is Watermaster? It's -- as Watermaster
23 has acknowledged, it's an arm of this court. It's your
24 agent, your Honor. And, in effect, the -- the actions of
25 Watermaster are the actions of this court. So given the
26 fact that this is essentially a judicial branch enterprise

1 that we're talking about, Watermaster and the Court is
2 limited to what's in the judgment. And if we go beyond
3 that, we need the agreement of all the parties to the
4 judgment to achieve those other ends.

5 If Watermaster's view is that somehow there's
6 past practice that warrants some activity, that isn't a
7 source of authority for Watermaster. It's the judgment
8 that's the source of authority. If the Watermaster board
9 views certain expenditures as being desirable in some way,
10 that is not a source of authority; and I think if you look
11 at these principles, this '22-'23 budget that we're here
12 about, talking about new projects that may happen that
13 have to be implemented and paid for by public agencies
14 such as the moving parties, it's pretty clear that
15 Watermaster doesn't have the authority to put this into
16 the budget.

17 First of all, you'll look at CEQA, Watermaster
18 isn't the CEQA party. It doesn't have responsibility or
19 authority under CEQA. So it has no authority under the
20 statute to assess us absent an agreement for the CEQA
21 expenditures. There's nothing in the judgment that says
22 Watermaster can assess the moving parties for the CEQA
23 expenditures without an agreement of the parties.

24 Your Honor mentioned that in 1970 CEQA was
25 passed. This judgment was entered in 1978. You would
26 have thought that if the parties to the judgment or the

1 Court at that time thought that there was some
2 responsibility invested in Watermaster or the Court to
3 deal with CEQA, it would have put something in the
4 judgment.

5 The judgment is totally devoid of any reference
6 to CEQA. And certainly there is no reference in either
7 the judgment or in the CEQA statute itself that allows
8 Watermaster to designate one of the parties to the
9 judgment as the lead agency for CEQA purposes.

10 THE COURT: I think that's a good point, but if
11 you know anything about CEQA, it's almost been workable to
12 part of the last three governors that either scrap it or
13 reform it. They couldn't; but it's a little bit of a
14 monster compared to the four pages in 1976, whenever it
15 was passed to the out of the 60 pages that it is now. So
16 it's a much different animal. I wouldn't be surprised if
17 they didn't even know about it.

18 MR. FUDACZ: Well, you know, certainly --

19 THE COURT: In 1977.

20 MR. FUDACZ: Well, it was 1970 when it was
21 passed. My ex-partner, now deceased, Jack Knox, was one
22 of the officers.

23 THE COURT: It took a few years to become the
24 almost unworkable framework that it is today.

25 MR. FUDACZ: I get that, but that just reinforces
26 my point. There is no real authority. It's not in the

1 judgment. If we amend the judgment to do CEQA, there's
2 got to be some basis of law of doing that. And without
3 such an amendment or an agreement to the parties to do
4 something, we're not in the mode of doing CEQA. And
5 certainly this appointing --

6 THE COURT: I -- I don't necessarily disagree
7 with you on that point.

8 MR. FUDACZ: Okay. So there's no -- there is no
9 agreement here among the parties for these specific
10 projects as Mr. Gutierrez has pointed out. In the past,
11 we did have agreements, peace one, peace two, and the
12 parties agreed without Watermaster being a party to the
13 agreement, to allow the Court to enter an order that would
14 let us go forward as to those projects relative to CEQA,
15 but we don't have that here in '22-'23.

16 We're still struggling with a project
17 description. So we have no project description, but we
18 have a lead agency in '22-'23 budget terms. That
19 certainly isn't sanctioned by CEQA or the judgment or
20 anything else.

21 So as we pointed out in our papers, and I think
22 in Watermaster's own statements, what we're waiting for is
23 an agreement among the parties as to what's going to be
24 done, an implementation plan that the parties agree to and
25 get behind, and that has not been achieved yet. We need
26 an amendment to the peace agreement to warrant an analysis

1 under CEQA and the expenditure of those funds. And,
2 again, these are public funds. These come out of the
3 pockets of the citizens of Ontario and Montclair and
4 Chino, and we pay 40 percent of the freight in this
5 judgment.

6 So it's -- it's very important that there be
7 authorization for everything that's spent, either by way
8 of something you can point to in the judgment or some
9 agreement that the parties all entered into to subscribe
10 to the process that we're undertaking.

11 As far as the lead agency part, you know, that's
12 problematic on at least four bases. There's nothing in
13 CEQA that allows Watermaster to designate a lead agency.
14 Courts don't designate lead agencies. Courts decide maybe
15 who's the proper lead agency, but they certainly don't
16 designate lead agencies. There's nothing in the judgment
17 that says Watermaster may designate a lead agency.

18 We don't have a project description, so how do
19 you have a lead agency when you're still working on what
20 the project description is going to be.

21 And, finally, we have a problem of the -- what
22 we've characterized as the new traveling principle. If
23 your Honor has read the Dow case by Justice Robie, he
24 points out the fact that Watermaster is supposed to be
25 neutral, and here we have a situation where IUA is
26 competing with other interests in the basin for projects

1 under this rubric OBMP.

2 THE COURT: Certainly, but you didn't offer up
3 any evidence if that was, in fact, the case. In fact, no
4 matter who's the lead agency, anybody would be --
5 potentially would benefit from that position.

6 MR. FUDACZ: Well, that --

7 THE COURT: So it was kind of just a conjecture
8 and speculation on your part that something was going to
9 come to be, but there wasn't really any evidence there.
10 So can you point to me the evidence?

11 MR. FUDACZ: Well, but, you know, harkening back
12 to the notion of the authority, where does the authority
13 come from for Watermaster to designate a lead agency?

14 THE COURT: So, then, you agree with me, there's
15 no evidence?

16 MR. FUDACZ: Well, the evidence is the fact we've
17 sued IUA over the project that competes with the Ontario's
18 project.

19 THE COURT: Truth be, everybody sued everybody by
20 this point.

21 MR. FUDACZ: Well, that could be so, but
22 clearly --

23 THE COURT: Again --

24 MR. FUDACZ: -- there's contention over what
25 project should be implemented, and the parties are in
26 competition on that; and whatever project is adopted, it

1 has to go through a Watermaster process.

2 THE COURT: The parties are in competition which
3 is the whole reason why we're here and the judgment
4 because people are fighting over water.

5 MR. FUDACZ: We certainly are doing --

6 THE COURT: The parties -- the parties are always
7 going to be in competition.

8 MR. FUDACZ: Well, let me -- you know, I -- I get
9 that, but we're talking about a specific component of the
10 problem that relates to CEQA. You've already acknowledged
11 your concern about how does that even apply here, you
12 know, and it's almost syllogistic. If -- if Watermaster's
13 doing something appropriate, CEQA doesn't apply to what it
14 does.

15 So if -- how does it get involved if that's the
16 case --

17 THE COURT: Well, that's why I asked in the
18 beginning. What's the trigger for CEQA? And everything I
19 could figure out was that each -- all these folks just
20 agree --

21 MR. SLATER: Convenience, your Honor. It was
22 convenience to the world that we have now is reflective of
23 there was a programmatic authorize before any of the
24 agreements that Mr. Fudacz is mentioning --

25 THE COURT: Hold up. Let me have counsel finish
26 because I don't think I'm going to need to hear from you

1 further.

2 MR. SLATER: Okay. Thank you.

3 THE COURT: And I don't want to waste anybody's
4 time. I'm in the middle of a court trial.

5 MR. FUDACZ: Okay. The only -- in concluding, I
6 just want to emphasize the point that we're not talking
7 about whether we do CEQA or not. That isn't the issue
8 here. That's a given. To the extent that CEQA is
9 required to be done, it will be done.

10 The question is who controls that process? Is
11 that process controlled by Watermaster that doesn't have a
12 stake, it doesn't have a responsibility or authority under
13 CEQA, or is it controlled by the public agencies that are
14 subject to CEQA, have responsibility under it. They're
15 the folks that are implementing the projects and paying
16 the freight, and they should have control over that
17 process, not a judicial entity, a court-empowered entity
18 such as Watermaster.

19 We'd urge you to reconsider your denial of our
20 motion on all of these matters.

21 THE COURT: Anything else from any further --

22 MR. GAGEN: Yes, your Honor, this is Andrew --

23 MS. NICHOLLS: This is Gina Nicholls on behalf --
24 with City of Ontario.

25 MR. GAGEN: This is Andrew Gagen on behalf --

26 MS. NICHOLLS: I just wanted to add --

1 THE COURT: I'm sorry. Who -- who -- I thought
2 you represent the City of Ontario?

3 MR. FUDACZ: I do. It's my colleague who's on
4 the phone.

5 THE COURT: Okay. Well, you only get one shot at
6 the apple for each party, so we don't --

7 MR. FUDACZ: Yes, your Honor. We will observe
8 that.

9 THE COURT: So thank you, Counsel, but I'm going
10 to hear from counsel for...

11 MR. GAGEN: Monte Vista, your Honor, Andrew
12 Gagen. Your Honor, just -- I'll be brief and just to
13 summarize -- Watermaster is acting in like, they're in
14 charge. And Watermaster, unless it's expressly stated in
15 the judgment, unless it's done pursuant to an agreement
16 amongst the parties that's been presented to the Court,
17 approved by the Court, Court then directs Watermaster,
18 they're not in charge.

19 This is a -- I'll loosely define it, a bottom
20 governance. It's the parties, it's the pools, the
21 advisory committee, then Watermaster. It's not the other
22 way around. It's not a top-down governance. Again,
23 unless it gets expressly stated in the judgment or by
24 agreement amongst the parties.

25 So here we have a situation where Watermaster is
26 choosing who's going to be in charge of CEQA review

1 regarding these projects related to the OBMP update.

2 THE COURT: But they made this decision 20 years
3 ago; right?

4 MR. GAGEN: The parties did pursuant to an
5 agreement as counsel just mentioned related to specific
6 projects at a specific time decades ago. That was not a
7 blank check or carte blanche authority to Watermaster to,
8 you may -- you may now have CEQA authority and from here
9 on out, regardless of the project, you can designate who
10 is the CEQA agency and what CEQA review is to be
11 performed.

12 That's not -- it was not a blank check. It was
13 not carte blanche. It was for those limited agreements
14 amongst the parties for a specific time for specific
15 projects. This is new now. We have new projects coming
16 up. Watermaster does not have this perpetual authority to
17 be the CEQA agency, your Honor, which is something --

18 THE COURT: So we're in agreement. Can you point
19 to me where there was a time notation where it was only
20 for specific projects?

21 MR. GUTIERREZ: Yes, your Honor. It's paragraph
22 2.2 of both of those agreements where they say that the
23 parties do not give present approval to future projects,
24 meaning the projects that are not already contained in
25 those documents. Peace one referred to the OBMP. Peace
26 two referred to the specific exhibit that defined the

1 desalter project as desalter wells and desalters and the
2 reoperation of water.

3 Beyond that, there is no authorization. Not only
4 that, the first peace agreement in Section 10.14 requires
5 an amendment if something new is going to take place,
6 but -- but that context is still available to us.

7 None of us have had an opportunity to do that.
8 We started but got shut down because of COVID. We haven't
9 restarted the process of trying to identify what needs to
10 be done and enter into another agreement. We've done that
11 twice before, and we've done big projects and we need to
12 do more, but we haven't had that opportunity yet. We're
13 saying let's have that opportunity first. So if we're
14 going to spend money on an environmental review, we are
15 spending it on projects that we want to develop.

16 THE COURT: Go ahead, Counsel.

17 MR. GAGEN: Nothing further, your Honor.

18 THE COURT: Anything further from any of the
19 movings?

20 Okay. So I just want to reiterate, when you
21 argue -- and I understand there are a number of -- there
22 may be a number of attorneys for the different interests
23 here, but each -- each side has a right to argue, but you
24 don't have a right to argue ad nauseam, and there's going
25 to be one person that is going to be arguing on behalf of
26 each entity. So in other words, if there's five

1 attorneys, you don't get five opportunities to argue it
2 from your particular viewpoint.

3 I've given all of you an opportunity to argue,
4 and you've all listened in at this point in your argument,
5 I don't need to hear from opposing party because of how I
6 ruled. So that's the end of the argument at this point.

7 All right. I thank you for all of your comments.
8 In the future, please make sure your briefs are succinct
9 and I'm sure you'll find that the page limits are just
10 fine that the legislature has initiated for all motions
11 except for perhaps an MSJ.

12 All right. I'm going to ask that the moving
13 party provide an order and notice.

14 Thank you, folks.

15 (The proceedings in the above-entitled matter
16 were concluded.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT S-24

HON. GILBERT G. OCHOA, JUDGE

CHINO BASIN MUNICIPAL)
WATER DISTRICT,)
)
Plaintiff,)
)
vs.)
)
CITY OF CHINO, ET AL.,)
)
Defendants.)
_____)

CASE NO. RCVRS51010

REPORTER'S CERTIFICATE

I, Maria Salgado-Brito, Official Reporter of the Superior Court of California, County of San Bernardino, to the best of my knowledge do hereby certify that the foregoing pages, 1 through 33, comprise a full, true and correct computer-aided transcript of the proceedings held in the above-entitled matter on November 18, 2022.

Dated this 25th day of November, 2022.

Maria Salgado C.S.R.
Official Reporter, CSR-14141

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 action within. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On November 29, 2022, I served the following:

1. NOTICE OF ORDER

/ X / BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by the United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:
See attached service list: Mailing List 1

/ ___ / 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.

/ X / BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.
See attached service list: Master Email Distribution List

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

Executed on November 29, 2022 in Rancho Cucamonga, California.



By: Ruby Favela Quintero
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