

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

DEPARTMENT NO. RC 8

HON. J. LEWIS LIESCH, JUDGE

CHINO BASIN MUNICIPAL
WATER DISTRICT,

PLAINTIFF,

VS.

CITY OF CHINO,
ET AL.,

DEFENDANTS.

NO. RCV 51010

REPORTER'S TRANSCRIPT

MONDAY, MAY 23, 1994

MOTION RE: RECOMMENDATION OF SPECIAL REFEREE

TO COURT REGARDING APPURTENANCE ISSUE

MONDAY, DECEMBER 9, 1991

GAIL GREENLEE, CSR # 8647

OFFICIAL REPORTER

COPY

1 -RANCHO CUCAMONGA, CALIFORNIA; MONDAY, MAY 23, 1994

2 A.M.

3 DEPT. RC 8

HON. J. LEWIS LIESCH, JUDGE

4

5 APPEARANCES: AS SET FORTH ON THE TITLE PAGE.

6

7 (GAIL GREENLEE, C-8647, OFFICIAL REPORTER.)

8

---###---

9 THE COURT: ON THE CHINO BASIN MATTER, I BELIEVE WE

10 HAVE ALL COUNSEL HERE; IS THAT CORRECT?

11 MR. MUSICK: YES.

12 MR. TANAKA: YES.

13 THE COURT: WOULD YOU GENTLEMEN ALL IDENTIFY

14 YOURSELF FOR THE RECORD.

15 MR. TANAKA: GENE TANAKA OF BEST BEST AND KRIEGER ON
16 BEHALF OF DEFENDANTS KAISER.

17 MR. LITTLEWORTH: AND ARTHUR LITTLEWORTH ALSO OF BEST
18 BEST AND KRIEGER.

19 MR. SMITH: GUIDO G-U-I-D-O R. SMITH S-M-I-T-H FOR
20 CHINO BASIN WATERMASTER.

21 MR. MUSICK: JOHN MUSICK ON BEHALF OF CALIFORNIA
22 STEEL INDUSTRIES, INCORPORATED.

23 THE COURT: OKAY. THANK YOU, GENTLEMEN. PLEASE BE
24 SEATED.

25 THIS IS A TREMENDOUS FILE. I HAVE HAD A CHANCE TO

1 GLANCE OVER MOST OF THE PLEADINGS IN THIS MATTER. AND MY
2 RESEARCH ASSISTANT HAS HELPED ME IN THIS.

3 BUT I'LL BE GLAD TO HEAR FROM ALL OF YOU IN REGARD TO
4 YOUR FEELINGS.

5 MR. LITTLEWORTH: WELL, YOUR HONOR, FOR KAISER, WE
6 SUPPORT THE RECOMMENDATION OF THE REFEREE. SO, WE WOULD,
7 I THINK, ONLY WANT TIME TO RESPOND.

8 THE ONLY THING I WOULD SAY IS THAT WE HAVE HAD THIS
9 BEFORE THE SPECIAL REFEREE FOR SOMETHING OVER A YEAR AND A
10 HALF. AN ENORMOUS, AS YOU INDICATED FROM THE FILE, AN
11 ENORMOUS AMOUNT OF WORK HAS GONE INTO THIS.

12 IF THIS IS SUPPOSED TO ARGUE FULLY AS THOUGH WE ARE
13 DOING IT AGAIN BEFORE THE REFEREE, THEN WE ARE GOING TO
14 NEED MORE TIME.

15 THE COURT: LET ME STATE FOR THE RECORD THAT MY
16 RECOMMENDATION IS, OR MY INCLINATION, IS TO ACCEPT AND
17 ADOPT THE REFEREE'S FINDINGS.

18 OR MAYBE WITH THAT AS A PRELIMINARY STATEMENT, THAT
19 WILL ELIMINATE SOME OF THE ARGUMENT.

20 MR. MUSICK: IF I MAY BE HEARD ON BEHALF OF
21 CALIFORNIA STEEL INDUSTRIES, AGAIN, JOHN MUSICK.

22 THE COURT: GO AHEAD.

23 MR. MUSICK: THE WRITTEN RECOMMENDATIONS OF THE
24 SPECIAL REFEREE ARE-- AND I THINK THIS GOES WITHOUT
25 QUESTION-- NOT SUPPORTED BY ALL PARTIES AT THIS TABLE.

1 WE THINK THAT THE ANALYSIS THAT THE SPECIAL REFEREE
2 WENT THROUGH IS THE PROPER TYPE OF ANALYSIS.

3 MR. LITTLEWORTH IS A VERY EXPERIENCED ATTORNEY. HE
4 IS PRESENTLY SERVING AS SPECIAL MASTER APPOINTED BY THE
5 UNITED STATES SUPREME COURT ON A WATER MATTER IN
6 COLORADO.

7 MR. LITTLEWORTH AUTHORIZED AN OPINION OF HUNDREDS AND
8 HUNDREDS OF PAGES. HE LABORED FOR YEARS OVER THIS.

9 I AM SURE THAT HE WOULD TELL THE SUPREME COURT THAT
10 DON'T JUST ADOPT MY RESULT AND TOSS OUT ALL OF MY
11 REASONING.

12 WHEN A REFEREE WORKS FOR MANY YEARS OVER LABORIOUS
13 DOCUMENTS AND ADOPTS A REASONING PROCESS AND A REASONING
14 PATTERN, FOR THE COURT TO THEN JUST SAY WE LIKE THE RESULT
15 BUT WE WILL TOSS OUT ALL OF THE UNDERLYING REASONING, IT
16 SEEMS TO ME THAT'S FAULTY.

17 NOW LET'S FOCUS ON WHAT CSI'S PROMISE OR PRINCIPAL
18 CONCERN IS BY THE COURT ADOPTING THE WRITTEN
19 RECOMMENDATION.

20 THE JUDGMENT IN THIS CASE WAS THE RESULT OF EXTENSIVE
21 NEGOTIATION RESULTING IN OVER TEN-THOUSAND PAGES OF
22 NEGOTIATION DOCUMENTS, ALL OF WHICH WERE FATEFULLY
23 PRESERVED BY THE COUNSEL, DONALD O. STARK, WHO HANDLED
24 MOST OF THE NEGOTIATIONS, AND SUBSEQUENTLY BY
25 MR. GUIDO SMITH AT HIS OFFICES OR BY THE WATERMASTER.

1 FORMED AN INNER-GROUP, SO TO SPEAK. AND THE MEMBERS OF
2 THAT INNER-GROUP WORKED TOGETHER TO DECIDE HOW TO APPLY
3 THIS JUDGMENT.

4 THAT IS CORRECT, YOUR HONOR, MR. STARK SAID. WHAT IS
5 HAPPENING WITH THE WRITTEN RECOMMENDATION OF THE SPECIAL
6 REFEREE IS THAT WE LOOSE THAT DEMOCRATIC PROCESS.

7 WE ARE NOW GOING BACK TO OUR INDIVIDUAL DECISIONS
8 MADE SEPARATE AND APART FROM THE GROUP WHO WILL CONTROL
9 HOW WATER IS ALLOCATED AND USED IN THIS BASIN.

10 CALIFORNIA STEEL INDUSTRIES THINKS THAT IS WRONG AND
11 THAT THAT SHOULD NOT BE ADOPTED BY THIS COURT.

12 TO RETURN TO AN ANARCHICAL SYSTEM WHERE INDIVIDUAL
13 RIGHTS TEAR AND RIP AT THE FIBER OF A SEVERELY DEPLETED
14 GROUND WATER BASIN FOR THEIR OWN PRIVATE PURPOSE AND ONLY
15 PRIVATE PROCESS AS OPPOSED TO THE RIGHTS OF THE PUBLIC AND
16 OTHER INDIVIDUAL USERS.

17 MR. LITTLEWORTH, WHEN PRESENTED WITH THAT QUESTION BY
18 HIS VERY CLIENT IN 1984, RESPONDED THAT WHILE IT WAS HIS
19 OPINION IN 1984 AND IT IS STILL HIS OPINION TODAY THAT
20 RESERVATION AND EXCEPTION OF A WATER RIGHT MAY BE POSSIBLY
21 ACCOMPLISHED, ALTHOUGH HE COULDN'T THEN AND HE CANNOT NOW
22 CITE A CASE LAW IN CALIFORNIA THAT CLEARLY AND
23 UNQUESTIONABLY SUPPORTS THAT PROPOSITION.

24 HIS ADVICE TO HIS CLIENT, KAISER RESOURCES OR KAISER
25 STEEL CORPORATION, AT THAT TIME WAS YES, A RESERVATION AND

1 FROM THE LAND MULTIPLE TIMES MORE THAN THAT.

2 STANDING IN FRONT OF THIS COURT, MR. STARK SAID,
3 JUDGE, WE HAVE A JUDGMENT. IT HAS BEEN SIGNED OFF BY
4 TWELVE HUNDRED PARTIES. WE HAVE CIRCULATED IT. THEY HAVE
5 ALL SIGNED OFF ON THIS. WE HAVE JURISDICTION OVER THEM.
6 THEY HAVE AGREED TO THE STIPULATED JUDGMENT. WE HAVE
7 WORKED HARD ON IT.

8 HOWEVER, JUDGE, I WANT TO ADD ONE THING TO THIS, ONE
9 THING THAT NONE OF THE OTHER PARTIES HAVE SEEN, THEY
10 HAVEN'T SIGNED OFF ON. THIS IS ESSENTIAL. YOU HAVE TO
11 PROVIDE THE WAIVER TO ADD PARAGRAPH EIGHT, WE HAVE TO ADD
12 AN IN LIEU TO THAT.

13 THIS IS FOR THE PURPOSE OF REEMPHASIZING AND
14 CLARIFYING THAT WE ABSOLUTELY POSITIVELY MEAN THAT THIS
15 WATER RIGHT IS APPURTENANT.

16 IT SAYS AT THE END OF PARAGRAPH EIGHT: ALL OVERLYING
17 RIGHTS ARE APPURTENANT TO THE LAND AND CANNOT BE ASSIGNED
18 OR CONVEYED SEPARATE OR APART THEREFROM.

19 IT WAS SO IMPORTANT TO JEOPARDIZE A JUDGMENT-- AND WE
20 ALL KNOW HOW HARD IT IS TO GET TWELVE-HUNDRED PEOPLE TO
21 SIGN A JUDGMENT-- TO JEOPARDIZE A JUDGMENT TO STAND IN
22 FRONT OF THE COURT AND HAVE THE COURT RED PENCIL THAT VERY
23 LINE THAT THE JUDGMENT, FOR THE PURPOSE OF PRESERVATION
24 AND PROTECTION OF PARTIES.

25 NOW WHY WAS THAT INCLUDED THERE? IT WAS INCLUDED

1 VARIOUS DOCUMENTS SUBMITTED BY CALIFORNIA STEEL DRAWN OUT
2 OF THE ORIGINAL NEGOTIATIONS AND SAID ON BALANCE, I'M
3 AFRAID THAT I DO NOT SEE CALIFORNIA STEEL INDUSTRIES ARE
4 THAT APPURTENANCY. YOU CANNOT RESERVE AND EXCEPT.

5 I DON'T SEE ANYTHING IN THE JUDGMENT THAT BARS
6 RESERVATION AND EXCEPTION. ALTHOUGH COMMON SENSE TELLS
7 YOU TO MOVE SOMETHING OFF OF LAND OR MOVE IT AROUND ON
8 LAND SOMEHOW RUNS AFOUL OF A CONCEPT OF APPURTENANCY, THAT
9 IS, CANNOT BE ASSIGNED OR CONVEYED SEPARATE APART
10 THEREFROM.

11 NOT SEEING ANYTHING SPECIFICALLY BARRING IT, I THINK
12 IT PROBABLY MAY BE PERMITTED IF CALIFORNIA LAW PERMITS
13 IT.

14 AND AFTER ANALYZING CASES THAT CLEARLY INDICATE THAT
15 IT CANNOT BE ACCOMPLISHED UNDER CALIFORNIA LAW, THE
16 SPECIAL REFEREE THEN SAYS I DISAGREE WITH THAT
17 INTERPRETATION, AND RENDERED A RECOMMENDATION TO THIS
18 COURT.

19 KAISER WOULD HAVE THIS COURT ADOPT THE SPIRE OF THE
20 CHURCH, THAT IS THE ULTIMATE RESULT, RESERVATION AND
21 EXCEPTION MAYBE ACCOMPLISHED UNDER GENERAL PRINCIPALS OF
22 CALIFORNIA LAW AND WITHOUT REFERENCE TO THE JUDGMENT, AND
23 WOULD HAVE THIS COURT TOSS AWAY ALL OF THE UNDERLYING
24 ANALYSIS THAT GOES INTO IT.

25 WATERMASTER FOR ITS PART WOULD HAVE THIS COURT BE--

1 THEY MAY HAVE SOME FAST INTERPRETATION OF WHAT THAT MEANS.

2 THE BOTTOM LINE OF IT IS THIS IS A VERY VERY SIMPLE
3 LEGAL PROPOSITION. EITHER WE STAY WITH THE DEMOCRATIC
4 PROCESS WHICH REQUIRES EVERYONE TO GO IN FRONT OF THE
5 WATER MASTER WHEN THEY SEEK TO CHANGE THEIR WATER, OR WE
6 RESORT TO AN ANARCHICAL SYSTEM WHERE PEOPLE CAN EXERCISE
7 THEIR INDIVIDUAL RIGHTS TO THE DISADVANTAGE OF THE
8 INDIVIDUAL USERS WITHIN THE BASIN.

9 I SUBMIT TO THE COURT THAT THAT IS NOT WHAT THE
10 JUDGMENT WAS ABOUT. THAT'S NOT WHAT THE COURT INTENDED AT
11 THE TIME. THAT'S NOT THE REASON FOR RED LINING, RED
12 PENCILING, IF YOU WILL, UNDER THE JUDGMENT AT THAT VISUAL
13 NOTE IN JANUARY OF '78 WHEN IT WAS X'D THE LANGUAGE ABOUT
14 APPURTENANCY.

15 AND IN ANY WAY, THAT CONCEPT IS NOT ENOUGH TO ACCEPT
16 THE PINNACLE OF THIS RECOMMENDATION, THAT IS, RESERVATION
17 AND EXCEPTION MAY BE ACCOMPLISHED AND TO THROW AWAY THE
18 ENTIRE UNDERLYING ARGUMENT AND THE ENTIRE UNDERLYING
19 ANALYSIS.

20 THE SPECIAL REFEREE FELT IT WAS NECESSARY TO DO WHAT
21 SHE DID.

22 AND I SUBMIT THAT WHILE I DISAGREE WITH PART OF IT,
23 HER ANALYSIS WAS ESSENTIAL AND SHOULD NOT BE TOSSED OUT
24 VERBATIM BY THIS COURT.

25 ONE FINAL POINT: THIS COURT DIRECTED THE SPECIAL

1 BE THE WATCHWORD IN THIS BASIN. KAISER STEEL RESOURCES
2 WILL BE SELLING ITS WATER OFF ITS PROPERTY TO THE
3 DISADVANTAGE OF OTHER USERS IN THE BASIN, NOT JUST CSI,
4 BUT THE DISADVANTAGE OF APPROPRIATORS, THE CITIES OF CHINO
5 AND ONTARIO AND SO FORTH. THEY WILL LOOSE WATER.

6 AND IT WILL BE MARKETED OFF FOR SOLE PROFIT BASED
7 UPON THE RETURN OF THIS ANARCHICAL SYSTEM AS OPPOSED TO
8 BRINGING IT BACK IN FRONT OF THE DEMOCRATIC MAJORITY AND
9 ALLOW THEM TO REVIEW AND CONSIDER THIS AND MAKE A
10 RECOMMENDATION ONE WAY OR THE OTHER.

11 THAT IS TOO SERIOUS A MATTER TO ALLOW THIS TO BE
12 ADOPTED AT THIS POINT IN TIME. IT MUST IN THE MINIMUM BE
13 SENT BACK TO THE REFEREE FOR FURTHER DIRECTION AND CLEAR
14 ENUNCIATION OF THE REASONS WHY DISCARDING THIS DEMOCRATIC
15 PROCESS IS ESSENTIAL.

16 THANK YOU, YOUR HONOR.

17 THE COURT: THANK YOU.

18 MR. LITTLEWORTH.

19 MR. LITTLEWORTH: GOOD MORNING, YOUR HONOR. YOU
20 KNOW, WHEN A LAWYER REFERENCES TO AN OPINION WHICH YOU
21 HAVE WRITTEN TEN YEARS AGO, THERE'S SOME INITIAL
22 APPREHENSION.

23 I DON'T KNOW HOW CSI OBTAINED THE WATER RIGHTS
24 OPINION WHICH WE GAVE TO KAISER AT THAT TIME. BUT I
25 REALLY DON'T CARE. I GUESS.

1 READ. THERE IS NOTHING CONTRARY IN THAT LETTER TO WHAT
2 HAS BEEN HELD BY THE SPECIAL REFEREE OR IN THE POSITION
3 THAT WE HOLD NOW.

4 BECAUSE IN FACT, KAISER ENDED UP THIS WAS PART OF THE
5 ARRANGEMENT, RESERVE THE WATER RIGHTS. THEY SOLD SOME
6 LAND. THEY DID NOT TRANSFER PART OF THIS WATER RIGHT. SO,
7 THAT'S ALL THAT LETTER REALLY SAID.

8 I WENT ON TO INDICATE THAT IF THEY ARE GOING TO MAKE
9 A TRANSFER OF PART OF THE WATER RIGHTS, THEN THEY NEEDED
10 TO BE IN CONTACT WITH THE WATERMASTER TO KEEP THE RECORD
11 STRAIGHT.

12 NOW, WITH RESPECT TO THE ARGUMENT THAT WE WANT TO
13 ACCEPT THE SPIRE WITHOUT THE FOUNDATION, THE ISSUE THAT
14 WAS REFERRED TO THE SPECIAL REFEREE, THAT WAS REALLY
15 PRETTY SIMPLE.

16 THIS CASE HAS GOTTEN ENORMOUSLY, AND I THINK
17 UNNECESSARILY, COMPLEX; STARTED OUT WITH JUST THE ISSUE OF
18 THE JUDGMENT PRECLUDED THE PARTIES FROM DEALING WITH THE
19 WATER RIGHTS FROM RESERVING IT IF THEY CHOSE.

20 THAT WAS THE ISSUE THAT WAS PUT-- THAT WAS THE FIRST
21 ISSUE THAT WAS PUT TO THE WATERMASTER.

22 AND LET ME JUST ANSWER A LAST POINT, MAYBE A BIT OUT
23 OF THE ORDER, BUT A LAST POINT THAT MR. MUSICK RAISED WHEN
24 HE SAID WELL YOU HAVE GOT TO REFER THIS BACK TO THE
25 REFEREE BECAUSE SHE DIDN'T DO HER WHOLE JOB. AND THERE

1 YOU WILL SEE THAT SHE TAKES A LOT OF THESE ARGUMENTS AND
2 SHE TRACKS THEM THROUGH, AND THEN ENDS UP SAYING BUT WE
3 DON'T REALLY HAVE TO DECIDE THAT. THAT'S NOT SOMETHING
4 WHICH IS BEFORE US RIGHT NOW.

5 THERE ARE OTHER ISSUES THAT ARE OUT THERE WITH
6 RESPECT TO HOW THIS JUDGMENT WILL BE ADMINISTERED UNDER
7 THE CONTINUING JURISDICTION OF THE COURT.

8 AND ONE OF THE ISSUES RELATES TO WATER THAT IS NOT
9 PUMPED. IF YOU DON'T TAKE YOUR WATER, WHAT CAN YOU DO
10 WITH IT AND WHAT HAPPENS TO IT.

11 THAT'S A LEGITIMATE ISSUE WHICH IS OUT THERE. BUT
12 IT'S NOT THE ISSUE THAT IS BEFORE US HERE OR WAS BEFORE
13 THE SPECIAL REFEREE.

14 UNLESS SHE GOES INTO CONSIDERING DISCUSSION AND I
15 THINK IT AMOUNTS TO DICTA, REALLY, FINALLY.

16 AND WE ALL HAVE SOMEWHAT DIFFERENT VALUES ON WHAT
17 THAT ANSWER OUGHT TO BE.

18 OUR VIEW HOWEVER WAS SIMPLY THAT IT IS NOT BEFORE US
19 AT THIS POINT AND THAT THERE'S A NORMAL PROCESS FOR
20 DEVELOPING RULES AND REGULATIONS AS TO HOW THAT'S TO BE
21 HANDLED. THAT'S WHAT WE SHOULD BE GOING THROUGH.

22 THIS NOTION OF WE ARE ABANDONING THE DEMOCRATIC
23 PROCESS, BRAND NEW ARGUMENT, AND THAT WE HAD ANARCHY
24 BEFORE, AND THEN AN ORDER WAS BROUGHT INTO SOCIETY THROUGH
25 THE DEMOCRATIC MAJORITY, THAT'S JUST PURE FANCY.

1 WATER OFF TO A CITY OR SAN DIEGO OR ANYPLACE, THAT THIS
2 WATER IS FOR THE BENEFIT OF THE LAND.

3 THERE'S WHERE IT STILL STAYS. THERE'S NOTHING IN THE
4 JUDGMENT. AND THAT'S WHAT THE REFEREE FOUND WHICH
5 PRECLUDED YOUR SELLING A PIECE OF LAND AND REQUIRING THAT
6 YOU ALLOCATE SOME OF THE WATER TO THAT LAND.

7 I DON'T WANT TO GET INTO THE SUBSTANCE. BUT
8 MR. MUSICK SAID THE CASE IS CLEARLY-- I WROTE DOWN THE
9 QUOTE AROUND HIS WORDS-- INDICATED THAT ONE CANNOT RESERVE
10 A WATER RIGHT.

11 AND I WOULD JUST SUGGEST, YOUR HONOR, THAT THAT IS
12 SIMPLY NOT CORRECT. THE WATERMASTER, WE ARGUED ALL THESE
13 CASES, THE WATERMASTER, I MEAN THE SPECIAL REFEREE WENT
14 THROUGH THEM ALL.

15 SPECIAL REFEREE CONCLUDED AS WE HAD EARLIER THAT
16 THERE IS AMPLE AUTHORITY IN THE GENERAL LAW TO THE FACT
17 THAT A WATER RIGHT CAN BE RESERVED. IT IS A PIECE OF REAL
18 PROPERTY.

19 AND THE OPEN ISSUE WAS WHETHER THE JUDGMENT CHANGED
20 IT. WE WENT INTO GREAT DETAIL LOOKING THROUGH THE
21 ORIGINAL FILINGS ON HOW THE JUDGMENT WAS PUT TOGETHER.
22 THERE'S A LOT OF EVIDENCE IN THE RECORD ON THAT.

23 SOME OF THE THINGS THAT MR. MUSICK IS STATING WERE
24 THINGS THAT WERE SAID WAY EARLY IN THE NEGOTIATIONS. AND
25 I DON'T WANT TO GET INTO ALL OF THIS.

1 BUT SHE SAYS, IN THE BEGINNING OF HER RECOMMENDATION,
2 SHE SAYS THIS IS THE ISSUE. AND THIS IS HOW I ANSWER IT.

3 AND WHAT WE ARE SAYING, SIMPLY CONFINE THE ORDER TO
4 THAT ISSUE.

5 THE COURT: THANK YOU. ANY OF THE OTHER GENTLEMEN
6 WISH TO BE HEARD? MR. SMITH.

7 MR. SMITH: YES. THANK YOU, YOUR HONOR. THE
8 WATERMASTER THROUGHOUT THESE PROCEEDINGS HAS ATTEMPTED TO
9 STAY AS NEUTRAL AS POSSIBLE WITH REGARD TO THE SUBSTANTIVE
10 RIGHTS OF THE PARTIES THAT ARE BEFORE THE COURT.

11 I WOULD ECHO AT LEAST SOME OF THE THINGS THAT HAVE
12 BEEN SAID TODAY, SPECIFICALLY BY COUNSEL FOR KAISER.

13 AND THAT IS THAT THE COURT LOOK AT THE CHARGE THAT
14 WAS GIVEN TO THE REFEREE AT THE OUTSET. AND THAT CHARGE
15 WAS TO DETERMINE WHETHER OR NOT RESERVATION OR EXCEPTION
16 ARE PERMITTED UNDER THE 1978 JUDGMENT.

17 THAT IS A QUESTION THAT CAN BE ANSWERED SIMPLY YES OR
18 NO. YES, THEY CAN BE, OR NO THEY CANNOT BE.

19 I WOULD URGE THE COURT TO LIMIT ITS RULING TO
20 SOMETHING AS SIMPLE AS THAT KIND OF A STATEMENT: YES THEY
21 CAN BE RESERVED UNDER THE JUDGMENT PURSUANT TO THE
22 RECOMMENDATION OF THE REFEREE.

23 HOWEVER, AS WE STATED IN OUR BRIEF, THERE ARE MATTERS
24 CONTAINED IN THE RECOMMENDATION OF THE REFEREE THAT WE
25 FEEL ARE DAMAGING TO THE RIGHTS OF OTHER PARTIES THROUGH

1 SCALPEL IN DISSECTING ALL OF THIS AND HAVING HER
2 RECOMMENDATION ONLY GERMANE TO THE POINT OF REFERENCE BE
3 ADOPTED AS THE ORDER OF THE COURT.

4 THANK YOU.

5 MR. MUSICK: IF I MAY BE HEARD, BRIEFLY.

6 THE COURT: ALL RIGHT. SURE.

7 MR. MUSICK: AND VERY BRIEFLY. KAISER IS,
8 MR. LITTLEWORTH, IS BEING DISINGENUOUS WHEN HE SAYS IT IS
9 A NEW ARGUMENT ON DEMOCRACY. CSI HAS MADE THIS ARGUMENT
10 REALLY THROUGHOUT THE ENTIREMENT OF THIS MATTER.

11 FURTHER, KAISER IS INDULGING IN MISDIRECTION TO THIS
12 COURT LIKE A MAGICIAN WOULD HAVE, THAT IS, THIS IS A
13 SIMPLE MATTER ONLY INVOLVING KAISER AND DON'T WATCH WHAT
14 WE ARE DOING WITH THE OTHER HAND, THAT WHICH IS CONVERTING
15 WATER TO STORAGE AND PUMPING IT OFF THE LAND AND SELLING
16 IT ELSEWHERE.

17 I AGREE WITH ONE THING THAT MR. SMITH SAID ON BEHALF
18 OF THE WATERMASTER. SPECIAL REFEREE WAS INCORRECT IN
19 DETERMINATION ABOUT THE APPROPRIATIVE RIGHTS AND THE
20 ABILITY OF THOSE RIGHTS TO BE MOVED AROUND WITHIN THE
21 BASIN, AND NONE OF THOSE RIGHTS TO BE HAS TO CHANGE THE
22 SALE OF DEAL.

23 LET'S TAKE THAT OUT FROM THE JUDGMENT. LET'S TAKE
24 THAT OUT FROM THE SPECIAL RECOMMENDATION. AND LIKE THE
25 CHURCH IN MY HYPOTHETICAL, IT FALLS. THE SPIRE COMES

1 IF THE COURT IS WILLING TO ACCEPT THE RECOMMENDATION,
2 IN THE MINIMUM, I WOULD RECOMMEND TO THE COURT THAT THE
3 MATTER BE SUBMITTED TO THE SPECIAL REFEREE TO EXERCISE THE
4 SCALPEL THAT MR. SMITH HAS SUGGESTED.

5 THE COURT IS VERY BUSY. THIS IS A LARGE FILE. IT
6 OCCUPIES ONE THIRD OF ITS DESK. THIS IS NOT THE TIME FOR
7 THE COURT TO BE INDULGING IN THIS SCALPEL TO CARVE OUT
8 THOSE PARTS THAT ARE IMPORTANT AND THOSE PARTS THAT ARE
9 NOT.

10 SEND THIS ENTIRE MATTER TO THE SPECIAL REFEREE AND
11 WITH THE DIRECTION TO EXERCISE THIS SCALPEL TO DETERMINE
12 WHICH PARTS OF THE RECOMMENDATION ARE ESSENTIAL TO HOLD
13 THE PINNACLE UP AND WHICH PARTS ARE NOT.

14 NOW, I WOULD ALSO SUBMIT THAT WHILE THE COURT IS AT
15 THAT, IT MIGHT ASK ONCE AGAIN WHY IS IT THAT YOU DID NOT
16 RESPOND TO MY ORDER DIRECTING YOU, THE LAST ORDER I MADE
17 TO YOU, TO DETERMINE WHAT WATER RIGHTS KAISER IS PUMPING.
18 DELVE INTO ONE MORE TIME. BECAUSE WHAT SHE TOLD YOU IN A
19 FOOTNOTE DOESN'T ANSWER THE QUESTION.

20 AND WHILE YOU ARE MAKING THIS REFERRAL BACK TO THE
21 SPECIAL REFEREE TO SCALPEL THE MATTER SO IT IS PRECISE,
22 THE COURT CAN ADOPT SOMETHING THAT HAS SUBSTANCE AND
23 FOUNDATION TO IT, I WOULD ASK ONE ADDITIONAL THING ON
24 BEHALF OF ALL OF THE PARTIES TO THIS PROCEEDINGS, SOME OF
25 WHICH ARE HERE AND SOME OF WHICH ARE NOT:

1 AND CIRCUMSTANCES WHICH WOULD LEAD HER TO REACH A DECISION
2 THAT WAS FAIR TO EVERYBODY CONCERNED SHOULD NOT BE
3 ARBITRARILY REJECTED BY THIS COURT AS BEING LESS THAN
4 SATISFACTORY.

5 I AM CONVINCED THAT THIS IS NOT THE LAST DAY OR THE
6 LAST WORDS IN THIS CASE. BUT THERE WILL BE OTHER HEARINGS
7 AND OTHER APPEALS.

8 BUT MY JUDGMENT IS GOING TO BE THAT I WILL, THE
9 COURT, WILL ACCEPT THE REPORT FROM THE SPECIAL REFEREE.
10 AND I AM GOING TO MAKE SOME-- I AM GOING TO ADOPT SOME
11 CONCLUSIONS THAT I THINK ARE NECESSARY.

12 I WILL MAKE A FINDING THAT THE 1978 JUDGMENT
13 PROHIBITS AN OVERLYING LANDOWNER WHO WAS DECREED AN
14 OVERLYING NONAGRICULTURAL POSITION THAT HE HAS RIGHTS
15 UNDER THE JUDGMENT BUT HE IS NOT RESTRICTED FROM
16 TRANSFERRING ALL OF THE OWNER'S OVERLYING RIGHTS,
17 OVERLYING LAND IN THIS MATTER, BUT RETAINING ALL OF THE
18 DECREED WATER RIGHTS OR FOR TRANSFERRING ALL OF THE
19 OWNERS' DECREED WATER RIGHTS WHILE RETAINING ALL OF THE
20 OVERLYING LAND.

21 SECONDLY, THAT THE 1978 JUDGMENT DOES NOT PROHIBIT AN
22 OVERLYING LANDOWNER WHO IS DECREED OVERLYING
23 NONAGRICULTURAL RIGHTS UNDER THE JUDGMENT FROM CONVEYING
24 ALL OF THE OWNER'S DECREED WATER RIGHTS WITH ALL OF THE
25 OVERLYING LAND OR SOME OF THE OWNER'S DECREED RIGHTS WITH