

1 SUPERIOR & MUNICIPAL COURTS OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF SAN BERNARDINO

3 DEPARTMENT H (RC)

HON. J. MICHAEL GUNN, JUDGE

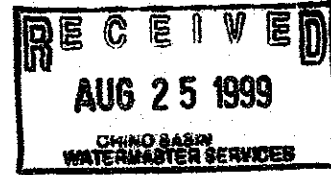
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5 CHINO BASIN MUNICIPAL)
6 WATER DISTRICT,)

7 Plaintiff,)

8 vs.)

9 CITY OF CHINO,)

10 Defendant.)
11



Case No. RCV-51010

12 REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

13
14 Wednesday, September 18, 1996

15 APPEARANCES:

16 For the Plaintiff: (None)

17
18 For the Defendant: NOSSAMAN, GUTHNER,
19 KNOX & ELLIOTT
20 By: FREDERIC A. FUDACZ
21 Attorney at Law
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23 445 South Figueroa Street
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25
26 **COPY**

Reported by: HEATHER R. PARIS, C.S.R.
Official Reporter, C-10294

1
2 **ALSO PRESENT:**

3
4 COVINGTON & CROWE
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10 OFFICE OF THE ATTORNEY GENERAL
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12 Deputy Attorney General
13 Department of Justice
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15 Los Angeles, CA 90013

16 McCORMICK, KIDMAN & BEHRENS
17 By: **ARTHUR G. KIDMAN**
18 Attorney at Law
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22 BEST BEST & KRIEGER
23 By: **MICHELLE OUELLETTE**
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BRUNICK, ALVAREZ & BATTERSBY
By: **STEVEN M. KENNEDY**
Attorney at Law
1839 Commercenter West
San Bernardino, CA 92412

1 CUCAMONGA, CALIFORNIA; WEDNESDAY, SEPTEMBER 18, 1996;

2 A.M. SESSION

3 DEPARTMENT H (RC)

HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5 (Appearances as listed on the title page.)

6 (Heather R. Paris, C.S.R., Official Reporter, C-10294)

7 THE COURT: Okay. Let's go on the record in the
8 case of Chino Basin Municipal Water District, Plaintiff,
9 versus City of Chino and related Complaints in
10 intervention, etc., etc., case number RCV-51010.

11 We only have four people showing up today?

12 Let's start with Mr. Dougherty and announce your
13 names for the record.

14 MR. DOUGHERTY: Robert Dougherty representing
15 the City of Ontario.

16 MS. LEVIN: Marilyn Levin, Deputy Attorney
17 General representing the State of California.

18 MR. KIDMAN: Art Kidman, McCormick, Kidman &
19 Behrens representing Monte Vista.

20 MR. FUDACZ: Fred Fudacz on behalf of Chino
21 Basin Water Basin.

22 THE COURT: I don't see anybody from Western
23 here.

24 MS. OUELLETTE: Your Honor, Michelle Ouellette
25 from Best, Best, and Krieger on behalf of Western on Item
26 Number 11.

1 THE COURT: All right. I'm going to handle
2 everything at the same time, so please step up. You're a
3 licensed attorney?

4 Are there any other attorneys here representing
5 anybody?

6 Let me do a couple of housekeeping matters. I
7 am looking right now at a Petition and Motion for
8 Approval of Agreement Regarding Water Supply for Chino
9 Basin Desalter, Memorandum of Points and Authorities.

10 That was filed by Mr. Fudacz' firm. On the
11 Exhibit Number 2, if you look at 14 where it's got the
12 signatures, it's on page 6, I believe.

13 MR. FUDACZ: Yes.

14 THE COURT: Okay. If you look under Chino Basin
15 Watermaster it says, by -- and I can't for the life of me
16 figure out what it says -- for Bill Hill, it's chairman.

17 Somebody has got their hand up.

18 MS. STEWART: That's Mr. Troxell.

19 THE COURT: What is your name?

20 MS. STEWART: Tracey Stewart, Chief of
21 Watermaster Services.

22 THE COURT: How do you spell that?

23 MS. STEWART: T-r-o-x-e-l-l is his last name.
24 W-y-a-t-t is his first name. He is a board member, a
25 member of the Watermaster group.

26 THE COURT: He's authorized to sign on behalf of

1 Bill Hill?

2 MS. STEWART: Yes. Mr. Hill was ill during the
3 time when it was necessary to have the agreement signed.

4 THE COURT: Okay. Let me indicate my intended
5 and then you guys can be heard, okay?

6 On the motion for Watermaster, there's been a
7 Motion to Continue that. It would be my intended to
8 grant that Motion to Continue until sometime in the
9 middle of November. Is there anybody -- does anybody
10 wish to be heard on that other than the date?

11 (No response.)

12 THE COURT: It will be specially set in my court
13 any day but a Monday or a Friday on the date you guys
14 want to pick.

15 MR. DOUGHERTY: For me, your Honor, sometime
16 after November 18th. I will be out of town most of the
17 first part of the month.

18 THE COURT: Okay. How about the 20th or the
19 21st? Is that too soon after your coming back from out
20 of town?

21 MR. DOUGHERTY: Either one is good on that.

22 THE COURT: Neither?

23 MR. DOUGHERTY: Either.

24 MR. FUDACZ: That's fine with me, your Honor.

25 MR. DOUGHERTY: Actually, the 21st I have the
26 unfortunate dentist appointment, so.

1 THE COURT: How about November the 20th, then?

2 MR. FUDACZ: That works for me.

3 THE COURT: Who is going to give notice?

4 MR. FUDACZ: I will give notice, your Honor.

5 THE COURT: I noticed your efforts that --

6 MR. FUDACZ: Maybe you would like a little bit
7 of a report, your Honor.

8 THE COURT: On the notice issue?

9 MR. FUDACZ: On the proof. Just where we are at
10 Watermaster.

11 THE COURT: Okay.

12 MR. FUDACZ: Your Honor ordered us to have
13 several meet and confers, two of which were held July
14 18th and August 28th.

15 It was a unique sort of experience, but I think
16 maybe we have made some progress. As indicated in the
17 papers, a new consent has evolved out of these meetings
18 which would create a Watermaster composed of three
19 members.

20 THE COURT: Hang on one second. Mr. Kennedy
21 from Three Valleys has just arrived.

22 MR. KENNEDY: That's correct, your Honor. Thank
23 you.

24 MR. FUDACZ: One member would be from Three
25 Valleys Municipal Water District, one member from Western
26 Municipal Water District, and one member from Chino Basin

1 Municipal Water District. I received, at the Advisory
2 Committee level, in concept, this notion about a 94
3 percent affirmative vote. Mr. Dougherty has prepared
4 specific language that is being circulated to the various
5 city counsel. Hopefully, that will form the basis for
6 some agreement.

7 THE COURT: Correct.

8 MR. FUDACZ: In addition to the extent that a
9 consensus can't be achieved on that proposal, there was
10 an alternative proposal forwarded. A five-member board,
11 three members from the Appropriative Pool, two members
12 from each of the overlying pools, Agricultural and
13 Non-Agricultural. That -- the language for that is now
14 being formulated. We haven't seen it. That's only as a
15 backup in case the three-member board concept isn't
16 approved. I have gotten an indication that at least
17 Western has approved it in concept and we're hopeful
18 regarding other support.

19 THE COURT: It was kind of intriguing, you had
20 the Fontana direction, you had the Los Angeles direction,
21 and you had the Chino area. And that was kind of
22 interesting. I am glad to see you're making some
23 progress on that.

24 MR. DOUGHERTY: Your Honor, what time on the
25 20th of November?

26 THE COURT: Why don't we specially set it for

1 10:00 since these are -- these can be difficult at times
2 and other times not. There are so many attorneys that it
3 could be a long wait for a lot of attorneys while I did
4 my Law and Motion; or if I did you first it could be a
5 long wait for a lot of Law and Motion attorneys. Of
6 course, we will be doing some criminal law shortly.

7 On the Petition and Motion for Approval of the
8 Agreement Regarding Water Supply for Chino Basin
9 Desalter, or the so-called Desalter Agreement, I noted
10 that Western, although not opposing the motion, had some
11 concerns that only current problems were going to be
12 dealt with as far as the agricultural salting of the
13 water -- if you'll pardon the expression -- with the
14 12,000 acres. And that then -- well, the Watermaster had
15 submitted a Reply; and on the Reply paper that indicated
16 that it was their intent to -- for the desalter to work
17 on the accumulated salts and nitrates that accumulated
18 over the past years.

19 And I wasn't sure if there was going to be any
20 objection. It didn't look to me like anybody was
21 objecting. Apparently, this negotiation took a year,
22 about. Essentially, this is the best deal that can be
23 made under the circumstances. The only concern that I
24 had is if it's the best deal. If it's not, you released
25 a lot of people's liability in exchange for the desalter,
26 which, you know, is interesting at best.

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Does anybody want to address that?

MS. OUELLETTE: Well, your Honor, Western, at this point, I think we have agreed to disagree; that we think in the interest of efficiency and cooperation we would ask you to approve this agreement at this time and work out the details; as far as I understand it, that's the deal.

MR. FUDACZ: I had a discussion with Mr. Tanaka representing Western; and Mr. Tanaka agreed just to kind of set forth a differing position on the effect of this agreement, what it means in terms of addressing the salt load in the basin. However, we're both in agreement that the Court should confirm this understanding. It's been a long time in happening. We need this desalter. It's got to get up and running. To the extent we have a dispute, perhaps that can be resolved. Maybe this issue never comes before the Court. I think Western felt they needed to preserve their position; and simply Watermaster felt it had a differing point of view and didn't want to be estopped from asserting that downstream. Basically, we may have a disagreement about the effect of this agreement, but everyone has the view it should be approved.

THE COURT: There's no opposition whatsoever?

(No response.)

THE COURT: Okay. I will approve it then. And

1 then third there was a Petition and Motion for Amendments
2 to Judgment regarding change in pooling plans and
3 Appropriative Pool representing on the Advisory
4 Committee. It's my understanding that the Agricultural
5 Pool is -- wants to rethink their amendment, and this
6 would only deal with the Appropriative Pool; is that
7 correct?

8 MR. FUDACZ: That's correct, your Honor.

9 MS. LEVIN: That's correct.

10 THE COURT: I looked over that proposal. It
11 looks okay to me.

12 Does anybody wish to be heard, though, before I
13 approve it?

14 (No response.)

15 THE COURT: Okay, hearing no response from
16 anyone, I'll approve it.

17 It looks like you guys have made a lot of
18 progress since we last met.

19 MR. FUDACZ: These things are difficult
20 sometimes. The process is obviously a torturous one.
21 Maybe there is some benefit that is derived out of it.
22 Let's hope so.

23 THE COURT: I keep thinking about the one
24 gentleman from Fontana the last time that said, when it
25 comes to water, people will fight.

26 MR. FUDACZ: That's true.

1 THE COURT: Okay. So is there anything else
2 that I need to do except sign orders?

3 MR. FUDACZ: Could I get some conformed orders,
4 then I can get the service out?

5 THE COURT: Anybody wish to be heard about
6 anything?

7 (No response.)

8 MR. KENNEDY: Thank you, your Honor.

9 MS. LEVIN: Thank you, your Honor.

10 (Proceedings in the above-entitled matter
11 were concluded.)

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5 CHINO BASIN MUNICIPAL)
WATER DISTRICT,)
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7 vs.)

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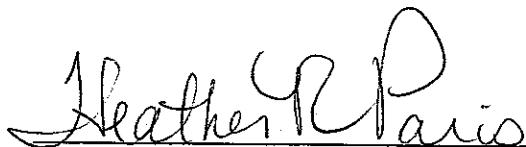
8 CITY OF CHINO,)
Defendant.)

9
10 _____)

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

14 I, Heather R. Paris, Official Reporter of the Superior
15 & Municipal Courts of the State of California, for the
16 County of San Bernardino, do hereby certify that the
17 foregoing pages numbered 1 through 9, comprise a full,
18 true, and correct computer-aided transcription of the
19 proceedings held in the above-entitled matter on
20 Wednesday, September 18, 1996.

21 Dated this 5th day of January, 1997.

22
23  C.S.R.

24
25 Official Reporter, C-10294