

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

4  
5 CHINO BASIN MUNICIPAL WATER  
6 DISTRICT,

7 Plaintiff,

8 vs.

9 CITY OF CHINO, et al.,

10 Defendants.  
11



Case No. RCV-51010

12 REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

13  
14 Tuesday, March 11, 1997

15 APPEARANCES:

16  
17 Cihigoyenetché, Grossberg & Clouse  
18 By: **JEAN CIHIGOYENETCHE**  
19 Attorney at Law  
20 Palmbrook Corporate Center  
21 3602 Inland Empire Boulevard, Suite C315  
22 Ontario, CA 91764

23 Reid & Hellyer  
24 By: **STEVEN G. LEE**  
25 Attorney at Law  
26 3800 Lemon Street  
P.O. Box 1300  
Riverside, CA 92502

Reported by:

HEATHER R. PARIS, C.S.R.  
Official Reporter, C-10294

1      **ALSO PRESENT:**

2  
3      **BRUCE J. LANCE, Jr.**  
4      Attorney at Law  
5      204 North San Antonio Avenue  
6      Ontario, CA 91762

7      Brunick, Alvarez & Battersby  
8      By: **STEVEN M. KENNEDY**  
9      Attorney at Law  
10      1839 Commercenter West  
11      San Bernardino, CA 92412

12      Office of the Attorney General  
13      By: **MARILYN H. LEVIN**  
14      Deputy Attorney General  
15      300 Spring Street, Suite 500  
16      Los Angeles, CA 90013

17      **DAVID BOYER**  
18      Attorney at Law

19      Markman, Arczynski, Hanson, Curley & Slough  
20      By: **JAMES L. MARKMAN**  
21      Attorney at Law  
22      P.O. BOX 1059  
23      Brea, CA 92822-1059

24      McCormick, Kidman & Behrens  
25      By: **Arthur G. Kidman**  
26      Attorney at Law  
27      Imperial Bank Building  
28      695 Town Center Drive, Suite 1400  
29      Costa Mesa, CA 92626-1924

30      Covington & Crowe  
31      By: **ROBERT E. DOUGHERTY**  
32      Attorney at Law  
33      1131 West Sixth Street  
34      Post Office Box 1515  
35      Ontario, CA 91762

1     **ALSO PRESENT:**

2           Nossaman, Guthner, Knox & Elliot  
3           By: **FREDERIC A. FUDACZ**  
4           Attorney at Law  
5           Thirty-First Floor  
6           445 South Figueroa Street  
7           Los Angeles, CA 90071-1602

8           Alvarez-Glasman & Colvin  
9           By: **RICHARD ADAMS, III**  
10          Attorney at Law  
11          200 East Beverly Boulevard, 2nd Floor  
12          Montebello, CA 90640

13          **TIMOTHY J. RYAN**  
14          Attorney at law  
15          11142 Garvey Avenue  
16          El Monte, CA 91733

17          McPeters, McAlearney, Shimoff & Hatt  
18          By: **THOMAS H. MCPETERS**  
19          Attorney at Law  
20          615 Brookside Avenue, Suite B  
21          P.O. Box 2084  
22          Redlands, CA 92373

23          Best, Best & Krieger  
24          By: **GENE TANAKA**  
25          Attorney at Law

26          **JIMMY L. GUTIERREZ**  
            Attorney at Law  
            12616 Central Avenue  
            Chino, CA 91710

1 RANCHO CUCAMONGA, CALIFORNIA; TUESDAY, MARCH 11, 1997;

2 A.M. SESSION

3 DEPARTMENT H (RC)

HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5 (Appearances as noted on the cover page.)

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

7  
8 THE COURT: Let's go on the record in the case  
9 of Chino Basin versus the City of Chino, case number  
10 RCV-51010.

11 As some of you may know, Gunn is Scottish. And  
12 among my ancestors when somebody got in disfavor in the  
13 little communities they would have in the hills above  
14 Inverness they would burn their home down. And that came  
15 to be known as firing. And then later on the term was, he  
16 got fired. In those days it was very clear if you had  
17 been fired, Mr. Fudacz. It's less clear today.

18 Let's get everybody's name for the record.  
19 We'll start with Mr. Cihigoyenetcche. I usually start with  
20 the right.

21 MR. CIHIGOYENETCHE: Jean Cihigoyenetcche on  
22 behalf of Chino Basin Municipal Water District.

23 MR. LEE: Steven Lee for Reid & Hellyer for the  
24 Agricultural Pool Committee of the Chino Basin.

25 MR. LANCE: Bruce Lance for Monte Vista.

26 MR. KENNEDY: Steve Kennedy on behalf of Three

1 Valleys Municipal Water District.

2 MS. LEVIN: Marilyn Levin, Deputy Attorney  
3 General, representing the State of California.

4 MR. BOYER: David Boyer.

5 MR. MARKMAN: James Markman for the City of  
6 Upland, City Attorney.

7 MR. KIDMAN: Art Kidman for the Monte Vista  
8 Water District.

9 MR. DOUGHERTY: Robert Dougherty representing  
10 the City of Ontario.

11 MR. FUDACZ: Fred Fudacz on behalf of  
12 Watermaster.

13 MR. ADAMS: Richard Adams for the City of  
14 Pomona.

15 MR. RYAN: Timothy Ryan, General Counsel for the  
16 Fontana Water Company.

17 MR. MCPETERS: Thomas McPeters representing  
18 Fontana Union Water Company, San Antonio Water Company,  
19 West End Consolidated Water Company, and Monte Vista  
20 Irrigation Company.

21 MR. TANAKA: Gene Tanaka on behalf of Kaiser  
22 Resources, Western Municipal Water District, and Cucamonga  
23 County Water District.

24 MR. GUTIERREZ: And your Honor, I just arrived;  
25 Jimmy Gutierrez for the City of Chino.

26 THE COURT: I am not going to hear argument

1 today; and I wanted to give you my Intended; and then I  
2 will send you back to your offices and you can tell me  
3 where I am wrong. I didn't finish this until about 12:30  
4 last night. I am not a typist.

5 There were several areas that I was going to  
6 expand on. And on conflict of interest I came to the  
7 conclusion it was moot the way I went. I really was going  
8 to write more. There were a couple of things I will read  
9 to you that I didn't have time to put in my opinion in  
10 that area; and then I will explain my chart.

11 And before anybody says it, that Gunn is trying  
12 to put a square peg in a round hole, I will beat you to  
13 your punch line. In the Retainer Agreement for General  
14 Counsel between Nossaman and Watermaster, one of the  
15 things that I haven't written about was there is a -- I  
16 think it was paragraph eight, "Nossaman agrees that same  
17 shall not be made available to any individual or  
18 organization, public or private, without the prior written  
19 consent of Watermaster, or as may be ordered or requested  
20 by the Court."

21 Another area that I didn't cover in the Intended  
22 was paragraph five. And it might have been in Senate Bill  
23 222. I have to dig through your stuff, which I have a  
24 comment on in a second, too. It says, First Annual Report  
25 of Operations, broad discretion is being contemplated for  
26 the Watermaster function.

1           And another area that I didn't expand on that  
2           somebody may want to is paragraph 20, line 17, page 13 of  
3           the Judgment. "Watermaster may employ or retain," and  
4           then I put in quotes, "legal or other specialized --" I  
5           put quotation mark, three dots, "legal or other  
6           specialized personnel and consultants as may be deemed  
7           appropriate in the carrying out of its powers." And I put  
8           four dots and a quotation mark. I was ending my sentence,  
9           but it went on in the Judgment.

10           And on paragraph 25, line 14, page 14, it  
11           stated, "Watermaster may enter into contracts for the  
12           performance of any powers herein granted." And it went  
13           on; and I closed it.

14           Page 22, line 20, says "Watermaster, as to  
15           mandated action. The Advisory Committee or any Pool  
16           Committee --" And I had underlined shall. So I put  
17           emphasis on that. "-- shall be entitled to employ  
18           counsel." I underlined that. It was, "-- and expert  
19           assistance in the event Watermaster or such Pool or  
20           Advisory Committee seeks Court review of any Watermaster  
21           action or failure to act."

22           And I apologize for -- I wanted to cut the  
23           Intended down; but I didn't have an opportunity to. I ran  
24           out of time. And like I say, I worked on it late Friday  
25           night. I even had to leave a christening on Sunday and  
26           worked until after midnight on Sunday. And I worked here

1 until -- this building creaks late at night -- I worked  
2 until 12:30 last night, and I finally gave up.

3 At one point I said, I've got eight hours until  
4 you guys come in. I was thinking you guys were coming in  
5 at 8:30. And also, I noted I was reading such things as  
6 somebody talking about a 1985 computer and the Quickbooks  
7 program. And to my knowledge, 1985 computers don't work  
8 with Windows. And Quickbooks Deluxe needing windows -- I  
9 don't know. There was a lot of extraneous information.  
10 It would have been a lot easier if you guys would have cut  
11 your paperwork down and got to the relevant issues.

12 Then again, I'm asking you for more  
13 information. The Facilities Agreement -- I didn't see  
14 that. That's in my Intended. I asked you for that.

15 Then late last night I became confused in my  
16 mind as to whether or not Chino Basin Municipal Water  
17 District was a Producer in 1978 or just supplying water  
18 from Metropolitan Water District. And I am sure you guys  
19 have given that to me, but if somebody wants to point out  
20 where they gave it to me -- I don't know. There could be  
21 a thousand pages of stuff you guys have submitted to me to  
22 read. It is overwhelming if you're doing jury trials and  
23 everything else at once.

24 Somebody else said Flatt was an en banc  
25 decision. I looked at that. And I went to the courtesy  
26 of reading your cases. It was four/three. Arabian



1 rendered the descending opinion. We're all prone to  
2 mistakes. So if we could work together, we can work our  
3 solution.

4 I am not even convinced on the Intended on the  
5 amount of money. Even if I followed the Intended to be  
6 reimbursed -- because there is a cogent argument, the  
7 Chino -- if the Watermaster is benefitted by the results  
8 of the audit -- some of the facts that were weighing in my  
9 mind -- and I don't want you guys to argue, because we'll  
10 brief it, otherwise, we'll spend all morning here, and I  
11 have got a jury trial to do.

12 But the issue of the audit is actually  
13 tangentially related to a couple of the motions, because  
14 the way Watermaster is being run -- and that's a  
15 double-edged sword, both good and bad, at least they're  
16 wanting to get to the bottom of matters. Then again, it  
17 is like nuts to the Advisory Committee, by gosh, we're  
18 going to do this audit no matter what they tell us. And  
19 so maybe that's circumstantial evidence that there is a  
20 breakdown in the machinery here.

21 And I did take note that the audit -- correct me  
22 if I'm wrong -- the audit was done on a calendar-year  
23 basis versus the Watermaster is on a fiscal-year basis.  
24 And it struck me, having been in the D.A.'s office,  
25 Mr. Lance, I see him, he was a D.A., also. I don't know  
26 how many of you have been D.A.'s, but somebody gave great

1 weight to a Sheriff coming in and doing the fraud  
2 investigation. As those of us that are familiar with  
3 criminal law know, police eschew paperwork cases. And  
4 maybe that is not the best way to arrive at a solution to  
5 that dilemma down there.

6 Perhaps, it struck me, if that was an  
7 organization that I was responsible for and I was having  
8 an audit done, that that was something I would want them  
9 to focus on, was the months where the embezzlement took  
10 place. And I am very cognizant the bank recompensed and  
11 there is no actual financial loss. In my mind I was going  
12 to write something about this. I am very cognizant about  
13 the fact that we got -- we have Riverside, Los Angeles,  
14 and San Bernardino County involved in this -- there are  
15 actually three counties involved here.

16 Let me then go to the diagram. I am sure it has  
17 been, and will be, the brunt of a lot of jokes, but the  
18 balloons, the circles, astroids, or whatever space  
19 nickname you want to give them, if you look at it, and  
20 what I was trying to do was visualize how the attorneys  
21 related to the various entities. I'll start at the top  
22 right and work my way around. But you have the  
23 Appropriative Pool there. And at one time, when Senate  
24 Bill 222 was being considered, they were called  
25 Appropriators; but in the Judgment, as I recall, it was  
26 Exhibit H, but I could be wrong. Now it is variously

1 called the Appropriate Pool. I think I am correct in the  
2 term there, at least it is an A.K.A., right?

3 But you call it the Appropriative Pool now, the  
4 Appropriative Pool Committee. They're represented by  
5 various attorneys. And they give input to the Advisory  
6 Committee.

7 The overlying Agricultural Pool on your left is  
8 represented by various attorneys. And you guys know who  
9 you are. When I say, "you guys", I mean in a generic  
10 sense. I realize women are represented here.

11 Then the Overlying Non-Agricultural pool has  
12 various attorneys.

13 Presently the issue of the disqualification  
14 focuses on the Watermaster, the Advisory Committee, and  
15 the Nossaman firm. I guess I am giving star billing to  
16 Cihigoyenetché over on the right there. I meant that to  
17 indicate that they, too, are giving advice to Chino Basin  
18 Municipal Water District. And why I had the circles not  
19 congruent is, every attorney has their outside work. I  
20 don't think there is any dedicated attorney here. Even  
21 the Attorney General's Office has other cases that they  
22 work on outside of the water cases.

23 So you have your work for the Pools. You have  
24 your work that you're doing privately. And Cihigoyenetché  
25 is the same way. They represent Chino Basin Municipal  
26 Water District, but have been in the past careful not to

1 represent the Watermaster.

2 Mr. Fudacz and Mr. Ossiff -- and I call it the  
3 Nossaman firm, because you have such a long name. And I  
4 know, we went through that period where you told me,  
5 Nossaman is dead. I realize that, but I just -- for  
6 convenience, as far as the limitations of space here, I  
7 just call it the Nossaman firm.

8 If, in fact -- and this is only my Intended; I  
9 am not doing anything to anybody today. If they're  
10 representing the Watermaster, and the Retainer  
11 Agreement -- well, there are two Agreements with the  
12 Nossaman firm. There is one with the Advisory Committee.  
13 And there seemed to be an overlap there almost. Probably  
14 what happened -- and it was unclear to me when the, I  
15 believe it was 1994, Retainer Agreement takes place with  
16 the Watermaster, there is still some time for the contract  
17 with the Advisory Committee.

18 And I assume that maybe that contract was  
19 dissolved at that time, and the new contract, because they  
20 were almost alike, there were a few things that were  
21 different. When I see the contract -- I mean, Retainer --  
22 the new Retainer Agreement with Watermaster -- and I  
23 believe that was about August of '94, something like  
24 that. Maybe I have got my years off. I think November  
25 versus August was sticking in my mind. There is some  
26 overlap in there.

1           The important thing that I noticed, and maybe I  
2 am approaching this -- I am not approaching it with the  
3 intent of derailing your conflict of interest. I just  
4 think it becomes moot. If you analyze it from the  
5 perspective that I am analyzing it, if the Chino Basin  
6 Municipal Water District, the Board of Directors, they  
7 were appointed the Watermaster until they are changed --  
8 and that may very well be what happens. But for now, they  
9 are the Watermaster. And I know Mr. Fudacz says, well, we  
10 have the Office of Watermaster; and right now I am not  
11 buying that.

12           I am buying that there is the Office of  
13 Watermaster; and if Chino Basin -- if the motion is  
14 granted -- and my opinion is that since the other  
15 attorneys, Mr. Dougherty among other people, join in the  
16 Motion to Change the Watermaster, that is still a valid  
17 motion, no matter if the Fudacz -- or if the Nossaman firm  
18 is in there or not. And so that motion is still good and  
19 still open.

20           And there is this -- as Mr. Kidman referred to  
21 it -- metaphysical Office of Watermaster. There is an  
22 entity, Watermaster entity, that was created by the  
23 Judgment. It could be filled by Chino Basin Municipal  
24 Water District. It could be filled -- I am not suggesting  
25 that. It could be filled by Anne Schneider. It could be  
26 filled by a retired judge.

1 I don't think we're going to get anywhere by  
2 doing things like that. I think it should be filled by  
3 people who have been participating in that. I want to get  
4 the opinion of an expert. She has done some good work in  
5 the past here, in my opinion. Be that as it may, you have  
6 the Watermaster, the Board of Directors -- well, the Chino  
7 Basin Municipal Water District, Board of Directors,  
8 Watermaster, they signed this Retainer Agreement.

9 Mr. Fudacz says at the Advisory Committee  
10 meeting -- and very smartly. And I have been very  
11 impressed with your work, Mr. Fudacz. You are even smart  
12 enough to say -- you go to the Advisory Committee meeting  
13 first and they introduce you when you sign the contract.  
14 I was looking at the minutes. And it says in the minutes,  
15 I want to know who I am representing, who I am going to  
16 report to, which was good lawyering on your part. I  
17 congratulate you on that. Somebody says you're going to  
18 report to Traci Stewart as Chief of Watermaster Services.

19 Then you go to the Chino Basin Municipal Water  
20 District meeting, acting as Watermaster -- and somebody  
21 had taken a shot at George Borba there. And I looked; and  
22 he was present at that meeting. They said he had gone two  
23 years without going to a meeting, but he was at that  
24 meeting. And your Retainer Agreement is signed. And it  
25 is signed by the Chino Basin -- well, Municipal Water  
26 District acting as Watermaster. You were retained as

1 Watermaster counsel. In all that verbiage, if you look to  
2 your Retainer Agreement, it is very clear you're THE  
3 working attorney for Watermaster.

4 Watermaster, for lack of a better term, now, and  
5 maybe to be -- one can say unanimously advocates or  
6 delegates some of their -- or assigns -- and I am going to  
7 have to -- you assign rights and delegate duties, right?  
8 And I probably confused that a little bit in my Intended  
9 at 12:30. I have to go back and look at that.

10 Anyway, the Watermaster gives up some of their,  
11 what I tentatively define as their responsibilities, and  
12 says, okay, look at the Advisory Committee, take direction  
13 from them. And Traci Stewart is going to be -- I want to  
14 see this Facilities Agreement. I am guessing and trying  
15 to read between the lines. You gave me too much in some  
16 areas and not enough in others. I want to see that.

17 I say in there that I don't think Traci Stewart  
18 is a party to this Judgment. And so I was very careful.  
19 I would like to have a copy from her. If not, I am going  
20 to order the Watermaster to give me a copy of the  
21 Facilities Agreement. I don't know what this reads.

22 What I am guessing from your paperwork is they  
23 say, we're busy -- as somebody says, we're doing 19  
24 minutes or 23 minutes, or 11 minutes, or 13 minutes, or  
25 whatever version it is, for a Board of Directors meeting.  
26 Some of us have never met Mr. Fudacz. And you take your

1 direction from Traci Stewart and the Advisory Committee.  
2 And various duties were delegated out.

3 I am assuming -- and again, I haven't read the  
4 Facilities Agreement. And I want to. Where the confusion  
5 comes in is that I -- my Tentative is that Chino Basin,  
6 acting as Watermaster, is still the client. They're  
7 saying, go out and in these common goals help accomplish  
8 what our common goals are. And take your direction from  
9 Traci Stewart.

10 If we need you at a Watermaster meeting, we'll  
11 let you know, because maybe we want to save some bucks,  
12 maybe we feel -- we're all sophisticated businessmen. We  
13 don't need an attorney there at our board meetings. We'll  
14 take our own minutes rather than pay you. I think his fee  
15 schedule is 200-and-some-odd bucks an hour. I think I saw  
16 that in one of the things. Maybe they don't want to do  
17 it. That's all right.

18 They still retained the power to terminate the  
19 attorney/client relationship. And once they did that, on  
20 February 27th, I believe it was, then the Nossaman firm,  
21 that's why I had them down here, not by suggesting any  
22 lines, they are a firm without a client at that point.  
23 They don't have an Agreement with the Advisory Committee.  
24 The Advisory Committee, by the Judgment, has the power to  
25 hire their attorney. And, in fact, they had an agreement  
26 with the Nossaman firm at one time and had a contract with



1       them, a Retainer Agreement. And that's in evidence here.

2               The Watermaster now has no attorney. And Chino  
3       Basin, for their private interest, has the Cihigoyenetc  
4       firm. That's the way I see it right now. And I told you  
5       guys I would give you a written opinion. I am not happy  
6       with the amount of time I had to get it out. That's not  
7       anybody's fault. It is just a circumstance, not your  
8       fault, not anybody's fault. It is not my fault either.

9               I have tried my best to get something out to  
10       you. I would like to clean it up. I already noticed  
11       there is one problem. I noticed one error. I would  
12       straighten that out.

13               There was an attorney from Chino Hills in here  
14       earlier that waived his presence and said he would submit  
15       on the Tentative, but pointed out there is one error as  
16       far as what Chino Hills joined in. And I will have the  
17       court reporter call him up and find out where that is; and  
18       I'll change that and take that into consideration.

19               And again, that is a Tentative Ruling. And I am  
20       not going to have argument today. Anybody who wants to  
21       respond to something may respond in writing. Try to make  
22       it relevant. I want -- my major thoughts are --

23               If I have got that Facilities Agreement,  
24       somebody raise their hand and tell me I have got it.

25               I do have it. Where is it?

26               MS. STEWART: The June 18th transcript, and I

1 believe -- not the transcript, but the Pleadings for that  
2 time. And there is a March 13th -- I think is the date.  
3 That was the Agreement that was intended -- Interim  
4 Agreement where there was a lack of --

5 THE COURT: You are?

6 MS. STEWART: Traci Stewart.

7 THE COURT: Give me another copy of it. I don't  
8 see it. You're the only person that -- all these  
9 attorneys have read all these. So you're the only person  
10 who knows what it is, then. Maybe the rest of us with all  
11 our degrees and such can't recognize a Facilities  
12 Agreement which could bite us in the face. Send that to  
13 this Court -- send it through somebody's office.

14 MS. STEWART: We can drop it off for you.

15 THE COURT: I am wondering.

16 MS. STEWART: It is the 1992 Agreement.

17 THE COURT: Mr. Kidman is the first one to shake  
18 his head. Give it to Mr. Kidman and he will give us all  
19 copies of it. I am rotating the Proof of Service around.  
20 It is going to be Kidman's time. And I will probably go  
21 over to Mr. Tanaka next time. Not knowing what motion is  
22 going to come up in the future, I am trying to spread it  
23 out. I gave Chino Hills the duty of updating the Proof of  
24 Service.

25 The last thing I want to mention to you today,  
26 is yesterday there was delivered to us a Request to be

1     Removed from the Proof of Service list. And I allude to  
2     that in the Tentative Ruling. And I am going to make it  
3     an Order to Show Cause date why they should not be removed  
4     next time. And I will make it a non-appearance on their  
5     part. I have read what they submitted. And it seems like  
6     they're getting this paperwork and their client was  
7     dissolved. And it will save somebody some paperwork.  
8     That was given to me ex parte, no Proof of Service.

9             UNIDENTIFIED SPEAKER: It came in the mail?

10            THE COURT: It came in the mail, yes.

11            I think I covered the box chart; I have got a  
12     couple of different examples. I might have made another  
13     one with some informal lines going from the Nossaman firm  
14     down to the Watermaster. In that box what I was thinking  
15     in terms of the cases of talking about, you can't serve  
16     two masters. And who is the client?

17            And if, in fact, the Advisory Committee is the  
18     client, then you can represent -- and on these sets of  
19     facts, anyway, the Watermaster, because the Watermaster,  
20     as presently composed, and as appointed, and as the Court  
21     sees right now, is Chino Basin Municipal Water District,  
22     if papers are going to be submitted to oust Chino Basin  
23     Municipal Water District, then that's probably a conflict  
24     of interest, too. So I didn't get into that. I didn't  
25     think it was necessary. And I know I ruled offside  
26     before.

1           It all deals with the Facilities Agreement,  
2   too. There is so much speculation. If the Facilities  
3   Agreement says, you do what Traci Stewart says, and  
4   whatever is best for the Office of Watermaster, and  
5   whatever the Advisory Committee tells you, and if they  
6   tell her, get rid of Chino Basin Municipal Water District  
7   as Watermaster, then he's probably -- there is probably no  
8   conflict. It is an illusion, as I said last June 18th, I  
9   believe it was. But, on the other hand, be that as it  
10   may, if that's the case, when Chino Basin fires them, then  
11   they don't have a client. And that's what I meant by the  
12   circle -- you have got to be in the circle. And the  
13   Nossaman firm is not in the circle.

14           Does everybody have a copy of the Tentative?  
15   And do you have a copy of my charts? You will have fun  
16   joking with each other about them. You're welcome to  
17   submit your own --

18           MS. LEVIN: Marilyn Levin with the State of  
19   California. I am sorry. I don't know if anything was  
20   said before I walked in. I don't think it was. I have a  
21   question, and that is: We're in the midst of a position  
22   where Chino Basin Municipal Water District has been  
23   appointed as Interim Watermaster. I think no matter  
24   whether all of us or some of us supported their ability to  
25   remain, either in total or in part the Watermaster, I  
26   think it is clear from the papers there is a -- there is a

1 major problem now, even in the day-to-day operations of  
2 the Basin.

3 And I was wondering if the Court had thought  
4 through, since the majority of the Producers had come to  
5 the Court about a year ago seeking some sort of change and  
6 have to live under the difficulties of implementing the  
7 Judgment on a day-to-day basis, has the Court given any  
8 thought to perhaps appointing, during this period of time,  
9 a different Interim Watermaster such as a person like Anne  
10 Schneider or another judge, Judge Turner? I believe the  
11 City of Chino even -- no one mentioned it, but the City of  
12 Chino, the last line in their Points and Authorities  
13 suggested, perhaps, that Judge Turner would want to serve  
14 as Watermaster. And so I am wondering if you have given  
15 that any thought?

16 THE COURT: A lot of thought. Having a master's  
17 degree in business, I thought about micro-managing it  
18 myself in the meantime. I rejected that, because no one  
19 would like my jokes. But I have given it -- I have given  
20 it thought. There is -- which keys me off on one other  
21 thing I mentioned in the Tentative. You have this PERS  
22 problem as I call it, I think I call it in there. I put  
23 it in quotation marks to kind of make it a cliché. It is  
24 a very serious problem I see, too; these people that have  
25 dedicated their lives to the area.

26 This Judgment is 20 years old. There are

1 probably people that have worked a number of years in a  
2 very insecure situation right now. I don't want to go  
3 switching things around, because those are real people,  
4 real live people with families who are dependent on their  
5 incomes. Whatever the resolution, that will weigh  
6 heavily. I have mentioned it twice. I have hinted to  
7 you. And I will take out the sledgehammer.

8 I am not interested in ruining lives. If there  
9 is a change, if Anne Schneider recommends a change, when I  
10 get ahold of it, and I am going to have the final  
11 authority, then I will be most interested in saving jobs  
12 of people that -- the day-to-day people that are dependent  
13 upon this Watermaster for their livelihood and are doing a  
14 good job, if, in fact, they're doing a job. If there is  
15 cause, let them go. It might be a great time to let them  
16 go.

17 MS. LEVIN: May I say one other thing? I think  
18 the PERS matter is a good example. Whatever entity serves  
19 as Watermaster ultimately, whether it is Chino Basin  
20 Municipal Water District or another entity, that entity  
21 has been determined by PERS that they can have their own  
22 separate system. And so that decision is not dependent  
23 upon your decision. The point is symbolic of the  
24 problems.

25 And I would -- I guess I would urge you that if  
26 a Meet and Confer has not been successful, and perhaps as

1 to either that one area, you could order, because there  
2 will be nothing done between now and the next time we meet  
3 unless this Court orders the Watermaster -- the Interim  
4 Watermaster to complete whatever actions are necessary to  
5 set up the separate system of PERS for Watermaster,  
6 whatever entity that is.

7 And that's, your Honor, why I was urging that it  
8 wouldn't be micro-managed. If Judge Turner or another  
9 person were to sit as Watermaster for this period of time  
10 it would make probably all of our lives a little less  
11 contentious during this period.

12 With respect to PERS, I would say that a Court  
13 ruling requiring the Interim Watermaster, as you have in  
14 the past, to take whatever steps are necessary to  
15 transition, that would allow whatever entity is the  
16 Watermaster ultimately to have control over there, even if  
17 it is the Chino Basin Watermaster.

18 MR. GUTIERREZ: Are we going to open up so  
19 everybody can speak? I want to correct one thing she  
20 says. PERS does not determine the Watermaster can have a  
21 contract with it. The communication between Traci Stewart  
22 and PERS assumes that Watermaster is a public entity under  
23 the Government Code. PERS can only enter into a contract  
24 with a public entity. I don't think the PERS people know  
25 that Watermaster, as it's been described in letters, is  
26 not a public entity.

1 THE COURT: And I have thought about that even.  
2 I have thought about having them file a document with the  
3 Secretary of State and go through the formal process of  
4 being a public entity. I don't know the details; and I am  
5 not going to rule on it. There it opens up. And now  
6 Mr. Dougherty is standing up. And we're going to be  
7 around here all morning like we have been in the past.  
8 And I am not prepared to do that today.

9 Calendarwise I have some things that I still  
10 want to research. I desperately want to see that  
11 Facilities Agreement. There is some information --

12 MR. DOUGHERTY: Just two things that directly  
13 bear on the time period between today and the time we come  
14 back for the hearing that you requested.

15 THE COURT: It is going to be an O.S.C. why I  
16 should not make the Intended --

17 MR. DOUGHERTY: Right.

18 THE COURT: -- a final decision.

19 MR. DOUGHERTY: It is really a housekeeping  
20 item.

21 What your Tentative does, at least until the  
22 time of the O.S.C., leaves us to Chino Basin as  
23 Watermaster. Now, the question is, what can Chino Basin  
24 do and how must they act in the interim? There is an  
25 agenda which is set for hearing on the 13th, two days from  
26 now. And we anticipate that without some control by the



1 Court, Chino Basin Municipal Water District could attempt  
2 to run roughshod over Advisory Committee recommendations,  
3 as has been the case in the past.

4 I would like to suggest, at least until such  
5 time as you make your final decision here, that you order  
6 Chino Basin Municipal Water District, acting as  
7 Watermaster, not to act in a manner inconsistent with an  
8 Advisory Committee recommendation; unless it follows the  
9 procedure and the Judgment, which is to give a noticed  
10 hearing with a full 30 days between the time they announce  
11 their intention and the time they would report to take  
12 action.

13 THE COURT: I think they have got a hint they  
14 shouldn't do that. With respect to my Intended, it could  
15 get costly.

16 MR. DOUGHERTY: And the second point is, your  
17 Honor, that the question now becomes, who would represent  
18 the Advisory Committee? Certainly, the Advisory Committee  
19 would meet -- could meet and could select counsel to  
20 represent it at this coming hearing.

21 THE COURT: That's not before me. I have  
22 thought about it and given it a great deal of thought, as  
23 you can imagine.

24 MR. DOUGHERTY: The only question I have in my  
25 mind is if Mr. Fudacz were hired at this time by the  
26 Advisory Committee, could he appear before this Court at

1 the O.S.C. and present argument so we would be then facing  
2 a Motion for Disqualification? I think we have to have  
3 direction?

4 THE COURT: It is an advisory opinion. I am not  
5 supposed to give an advisory opinion. I almost did touch  
6 that argument. And I started to. And I ran out of time  
7 in writing the Intended.

8 As you can see, I start off and wind up nowhere  
9 on the conflict. I started to put some cases -- I didn't  
10 put in Flatt, which I have read. And it is right back on  
11 the jury table right now. And I have read about Lawrence  
12 Bragg (phonetic spelling). I thought he was a local -- is  
13 his name on the side of a building?

14 MR. CIHIGOYENETCHE: I think it is the same one.

15 THE COURT: I have read those cases. I didn't  
16 cite them in the cases you cited -- all of the sudden I am  
17 noticing people that may have been in the court. I think  
18 I have seen his name on the side of a building. It used  
19 to be down on Haven and 7th down here.

20 I thought about it, actually a number of  
21 thoughts. Mr. Fudacz is an excellent attorney. I can see  
22 why, A, maybe somebody wouldn't want him in the case. And  
23 maybe why somebody would want him. The mere fact he is an  
24 excellent attorney and has done some very fine work, that  
25 goes to my two masters chart.

26 It seems to me in this case that there is a

1 presumption of competence in the case. And if you look  
2 at -- not only Flatt, but some of the other cases that I  
3 cited to you, Ahmanson, states that there is a presumed  
4 conflict, per say. And it would be difficult to get over  
5 the presumption. And we'd be fighting again.

6 I am not so sure that it wouldn't -- I haven't  
7 disqualified him yet. And anything is possible right  
8 now. And I assume that -- I fully considered that; and it  
9 has weighed heavily on my mind. And it is not an issue  
10 before the Court. If the Advisory Committee goes ahead,  
11 and they're empowered and entitled to hire counsel by the  
12 very Judgment; if they hire him, it goes back to that  
13 Facilities Agreement. I keep on saying that, but I don't  
14 know what it says.

15 If the Facilities Agreement, some of the  
16 instructions that Mr. Fudacz had is you're doing whatever  
17 Traci Stewart and the Advisory Committee tell you to do,  
18 then what possible confidence could they have if we're to  
19 believe the Declarations of some of the board members,  
20 recently elected -- one was recently elected. It had been  
21 a month. I read a Declaration and others who say they  
22 have never met Mr. Fudacz. How could they have  
23 confidence? It is certainly a possibility. It is not for  
24 me to give advisory information. And I have had a list --  
25 MR. FUDACZ: Your Honor, on the issue of the  
26 Facilities Agreement, if you have our Reply to the -- our

1     Reply Brief on the audit motion, it is Exhibit D.

2             THE COURT: It is probably on the table back  
3     there. I have got so many.

4             MR. FUDACZ: Before the Reply to the motion that  
5     the audit be deemed --

6             THE COURT: Is that the one with all the blue  
7     separators in it?

8             MR. FUDACZ: There is a bunch of exhibits  
9     attached.

10            THE COURT: I have that back on the table.

11            MR. FUDACZ: Including the Amended Facilities  
12     Agreement.

13            THE COURT: I will take a look at that again,  
14     then.

15            MR. FUDACZ: I guess I am unclear as to whether  
16     I should stay totally out of this at this point. You say  
17     it is a Tentative -- or whether I can or should argue. I  
18     don't know if I have got to talk to the people I think I  
19     am taking direction from --

20            THE COURT: The Advisory Committee. And say, I  
21     might go into court and the Judge says, I'm out and you're  
22     going to be without an attorney. I think that's something  
23     you would have to disclose to them.

24            MR. FUDACZ: I don't think it's anything that's  
25     a mystery to them.

26            THE COURT: That's why I started off with my

1 little Scottish tale of being fired, which I heard  
2 actually Roger Barclay tell. I love to take credit for  
3 the originality of it. I heard Roger Barclay discuss it  
4 on how he was fired from the radio station.

5 Is there anything else?

6 To answer the State of California's question,  
7 who actually opposes the motion at this point, the  
8 overlying Agricultural Pool opposes the motion.

9 MS. LEVIN: Your Honor, there is a distinction.

10 THE COURT: I know what your position is,  
11 though.

12 To answer your question, I am keeping Chino  
13 Basin in right now. I want as little problem, because I  
14 am -- my Intended -- in referring it to Anne Schneider is  
15 not that she would come back and say keep the status quo.  
16 I recognize there is trouble in River City and something  
17 needs to be adjusted, whether it is a minor adjustment, or  
18 a major overhaul, I don't know. That's why I think I need  
19 a referee. And I intended to get a referee who is very  
20 knowledgeable and has expertise.

21 Did you guys take a look at her resume? I got  
22 that out to you. Did you get the resume?

23 MR. DOUGHERTY: One last housekeeping matter,  
24 your Honor. I think experience has shown that if we have  
25 to Meet and Confer on a date it may be a year before we're  
26 back. I'd implore the Court to just --

1 MR. KIDMAN: That was really my point, too,  
2 Judge.

3 THE COURT: Let me ask you this: Do we still  
4 have the City of Chino available as a free resource as far  
5 as an auditorium?

6 MR. GUTIERREZ: Yes.

7 THE COURT: Say if I said that you had to Meet  
8 and Confer within the next two weeks, I know on an OSC I  
9 can't even have it sooner than two weeks, I need ten plus  
10 five.

11 MR. DOUGHERTY: Are we supposed to Meet and  
12 Confer just on a date?

13 THE COURT: I am going to give you a date. In  
14 the meantime, you're not even going to be back to court.

15 Let me point out something else to you. These  
16 pink -- I am in a procedures school. Friday is a Furlow  
17 day. Anyway, that's why I picked it. I would only miss  
18 one day of work.

19 Notice Easter vacation time and remember that I  
20 am a father. Now, I am really not taking off all of that  
21 time. I think I will be back on the 10th. I actually  
22 considered having you back on the 14th before I start  
23 another trial. I hate to do you guys on a Monday, because  
24 it is so involved. I really hate that. I hate for  
25 somebody, unbeknownst to me, to set something on a  
26 Monday. You ruin my whole weekend. I actually considered

1 having you guys come back on the 14th. And that would be  
2 an O.S.C. date. I would rule on all these motions at that  
3 time. And you have my Intended.

4 I am pretty sure of what I am going to do, but I  
5 could be persuaded one way or the other. There are a  
6 number of areas, the amount, as far as the -- I think it  
7 might have been a little -- if I may be blunt -- arrogant  
8 in going ahead and disobeying the desires of the Advisory  
9 Committee without coming to court,; but as far as giving  
10 them the full financial load, I'm not positive I am going  
11 to do that. And I could be persuaded to even defer that  
12 to Anne Schneider as to whether or not maybe, in fact,  
13 they were acting within their authority in interpreting  
14 the contract, which he had done once before, as far as the  
15 Kaiser problem that we had one time with the water rights.

16 I thought if it was all right with you guys I'd  
17 have you come back on the 14th and make it an O.S.C. date  
18 and have the Watermaster give Notice that this is what I  
19 intend to. And specifically, what is it, Section 640 of  
20 the CCP, 940, 640, whatever it was. I mentioned it to  
21 you. I have picked it up and looked at it as far as  
22 appointing the special referee. It is supposed to be  
23 somebody from this county.

24 Why pay somebody to get up to speed? It took me  
25 so many hours, I can't count. Anne Schneider has already  
26 done work on this case. You can save money. She is from

1 out of the area, which I consider to be a plus under the  
2 circumstances as far as impartiality is concerned. She is  
3 a recognized expert published in the field and is actually  
4 doing work for the State of California now on another  
5 area. And I don't consider that to be a conflict, even  
6 though we have the State of California represented here.

7 MR. KIDMAN: Your Honor, on the issue of the  
8 date to come back on the O.S.C., I would just suggest that  
9 you should give yourself more time. I am assuming that  
10 most of the parties that are participating so far are  
11 going to want to file written responses of some kind to  
12 the Tentative Ruling and to the Order to Show Cause. If  
13 you're going to be on vacation and what not, it might be  
14 useful to have additional time.

15 THE COURT: I would be most happy to do that. I  
16 felt -- to be honest with you, I felt very pressured to  
17 get out what I did today.

18 MR. KIDMAN: May I suggest --

19 THE COURT: I feel like I still needed another  
20 week to really look over the stuff.

21 MR. KIDMAN: These issues are of major  
22 importance. I don't think anyone contends the world is  
23 going to fall apart if a ruling isn't made within the next  
24 month, or two months, even.

25 THE COURT: It's gone on for years. Yeah.

26 MR. KIDMAN: And I think time should be taken on



1 it. I think your action to keep the Chino Basin Municipal  
2 Water District as the Interim Watermaster should cover the  
3 issues relative to the ability to move forward on PERS and  
4 one thing or another.

5 Just a comment that I had; and that is on the  
6 various experiences with another one of Mr. Fudacz's  
7 clients, the San Gabriel Watermaster, of actually getting  
8 them qualified to be a member of PERS. I am not aware of  
9 anything that has happened in this case or this -- with  
10 this Watermaster in that regard, but it can be done. But  
11 it is certainly a big consideration as to whether or not  
12 you want to have a --

13 THE COURT REPORTER: Mr. Kidman, could you  
14 please slow down.

15 MR. KIDMAN: A public agency to continue in that  
16 role. That particular set of retirement benefits can be  
17 applied to the employees. One thing I would like to  
18 suggest, also, is that -- that you impose some discipline  
19 or limits on counsel in the Responses; and one that I have  
20 in mind, although there is additional Declarations and  
21 factual evidence that I would like to put in on behalf of  
22 my client, maybe we ought to just say, enough is enough  
23 and have legal argument about why or why not the  
24 Tentative -- and leave it at that. Unless a party comes  
25 in and shows cause why more factual -- it convinces you  
26 that that party needs to put in additional factual

1 material.

2 THE COURT: All right. Also, you just reminded  
3 me of another thing, too.

4 There was actually only one evidentiary  
5 objection that I can think of right now. Various people  
6 talked about hearsay and stuff, such as the opinion  
7 testimony of Senator Ayala. Somebody objected to that,  
8 perhaps more could have been laid in the area of  
9 foundation. It doesn't matter to me to make this decision  
10 that I am making. If, in fact, somebody thought cause  
11 should be and I should rule right then and there, whatever  
12 date they select, maybe they want to think about that  
13 Declaration.

14 Certainly it seems to me that that written  
15 legislation in the area of water law could certainly aid  
16 an expert as far as any evidentiary fact finding is  
17 necessary in this area as to the incipience of the -- of  
18 the Advisory Committee, etcetera.

19 MR. DOUGHERTY: Your Honor, once again, did I  
20 interrupt?

21 THE COURT: Well, that's all right.

22 MR. DOUGHERTY: Once again, I will concur with  
23 Mr. Kidman. I think enough is enough, and any briefing  
24 should be limited to the issues raised in the Tentative.  
25 And I would suggest that if you do not wish to hear the  
26 matter -- and I agree it is kind of rough to hear it while

1 you're on vacation. And the 14th is probably not a good  
2 day for you; you will just be coming off vacation.

3 THE COURT: I am going to be back on the 10th.  
4 That's why I blocked out those days.

5 MR. DOUGHERTY: Keep it on the 14th, but limit  
6 the parties to one additional input per party, and with  
7 the cut-off date, they must be filed no later than April  
8 3rd. And that, I think would give you an opportunity, if  
9 you get back on the 10th, to have several days to look at  
10 everything; and we won't be faced with this continual  
11 exchange right up to the date of the hearing.

12 THE COURT: I got something about 4:00  
13 yesterday. Wasn't it 4:00? I think I mentioned that  
14 about 12:30 at night I was typing. I didn't even run  
15 spell check at the very end.

16 MR. DOUGHERTY: It is probably in my mailbox  
17 right now.

18 THE COURT: Also, let me tell you on this case,  
19 and then I will pick a date, make your filing directly in  
20 this court. On this case sometimes it has been 10 days  
21 when something is filed downstairs before I get it up  
22 here. And it just won't work with a case like this.

23 I would, if you guys don't mind going out to say  
24 the 29th of April to give everybody sufficient time to  
25 have one last shot; and then it is going to happen. I can  
26 tell you right now, an Intended is an Intended. What my

1 mind-set right now is what I put on paper and gave to  
2 you -- so you're going to have to convince me that I am  
3 wrong.

4 MS. LEVIN: What I am confused about is how Anne  
5 Schneider's recommendation to you fit into this last  
6 hearing and this last briefing? Preliminarily I believe I  
7 agree with Mr. Kidman and Mr. Dougherty that perhaps you  
8 should limit the number of pages that can be filed and no  
9 more evidence.

10 THE COURT: There was a limit of ten this last  
11 time. Then we had a Declaration on why we should get more  
12 than ten.

13 MS. LEVIN: And I guess, secondly, more  
14 importantly, I possibly missed it, but how will this  
15 hearing relate to appointing Anne Schneider as the referee  
16 on the issue of the Nine-Member Watermaster?

17 THE COURT: Let me give you some insight as to  
18 what happened. It was last Friday when I opened up the  
19 Code of Civil Procedure -- wait a minute. I am going to  
20 get to it, hopefully. When I opened up the Code of Civil  
21 Procedure and -- what is it 638 or 938, what is it to try  
22 to get you to volunteer? I said to myself, I am not going  
23 to get all those people to agree on anything. So I went  
24 to -- what is it? I am so tired.

25 MS. LEVIN: 640.

26 MR. DOUGHERTY: 640.

1           THE COURT: I went to 639; and that's where I  
2     can order it. And then I looked at 640, and I said,  
3     uh-oh, they have to be from the county. Then I thought,  
4     huh, I have got L.A. County and Riverside County. I can  
5     possibly work with my machinations that only a judicial  
6     mind could think of, right? I thought about that. I am  
7     trying to save money, too, as far as -- Anne Schneider has  
8     already spent a lot of time on matters relating to this  
9     Judgment. And she is a recognized expert.

10           Somebody had a case that had her name in it  
11     someplace floating around. That's the person I want. So  
12     I thought I would come straight at you and say, I am going  
13     to appoint a referee, which maybe one or two Judges might  
14     think, well, okay, don't tell them who you're going to  
15     appoint. I wanted to come straight at you. I intend to  
16     dispense with the requirement of hiring from San  
17     Bernardino County, per the code. That's why I want the  
18     O.S.C. so you can show me cause why I should not do that.

19           MS. LEVIN: I see. You have answered my  
20     question. I thought that was a foregone conclusion, your  
21     asking for our input.

22           THE COURT: I think it requires Notice. That is  
23     why I am putting it out. How am I going to give Notice?  
24     I am going to use a free Notice given by the attorneys  
25     that are going to be in court on March 11th; that's how I  
26     come up with that one. And that's why it is in there.

1 And now then I will set up an O.S.C. date and show cause  
2 why I should not do this. This is what I intend to do.

3 Does anybody else have anything?

4 Just limit it to relevant material. And I --  
5 actually, whoever gave me that stuff on the 1985 computer  
6 and the Quickbooks -- and Intuit (phonetic spelling) is a  
7 good company. I found it humorous, but you know, at --  
8 with the sheer volume, I don't know how much it weighs,  
9 but if you get paid by the pound, you're going to need a  
10 Swiss account. There was a lot of material in this case

11 MR. MARKMAN: I have a question. Jim Markman  
12 representing the City of Upland, your Honor.

13 As I understand it, there's going to be an  
14 O.S.C. for some time in April; and we'll deal with the  
15 Nossaman firm issue; we'll deal with the audit issue. The  
16 issue I am interested in is, of course, who is going to be  
17 the Watermaster in the long run? And I understand that  
18 the appointment of Anne Schneider will be at the same  
19 time; so does that mean the Court is deferring?

20 THE COURT: Correct.

21 MR. MARKMAN: The Court is disposing of that  
22 last --

23 THE COURT: If I did it today one of you guys is  
24 going to file a Brief or take a Writ and say, hey, there  
25 is 640 of the CCP. That Judge should have appointed  
26 somebody from the county, then we go into Appeal, and it's

1 two years.

2 MR. MARKMAN: We won't be here back on the  
3 Watermaster composition issue on the merits in April, that  
4 will be the appointment of Anne Schneider, who is going to  
5 do some process so she can input to the Court on that  
6 issue. We're probably still months away --

7 THE COURT: She would be authorized to even take  
8 evidence is what's going through my mind.

9 MR. MARKMAN: I understand the process. Thank  
10 you, your Honor.

11 THE COURT: I have not personally -- I didn't  
12 personally talk to her. I had an employee of the Court  
13 call to find out if she was available to accept the  
14 appointment and to send us her resume, which she FAX'd. I  
15 have not talked to her on the telephone at all.

16 MR. KIDMAN: A couple of things.

17 I know we haven't settled on a date yet and a  
18 date for submitting papers. I am wondering, since you  
19 asked me to give Notice on this, should I actually prepare  
20 an Order to Show Cause for your signature?

21 THE COURT: Yes. That would be better.

22 MR. KIDMAN: That would be in addition to Notice  
23 of what transpired here today?

24 THE COURT: That is excellent --

25 MR. KIDMAN: Somebody mentioned a Meet and  
26 Confer.

1 THE COURT: Just on the issue of the PERS.  
2 That's one thing I will let you talk about today. I am  
3 concerned that we can pursue this intellectually with  
4 appeals for years; and there are some real people that are  
5 employed down there. I am concerned about real people.  
6 Especially ones that live in this jurisdiction, because I  
7 am responsible for them in so many respects. That is why  
8 you put that in there. What are we going to do about this  
9 PERS situation there? What is the problem? Lots of times  
10 I try to look behind the lines and beyond the paper and  
11 say, where is the real problem? Where is the beef?

12 Where is the beef here, Mr. Cihigoyenetché?

13 MR. CIHIGOYENETCHE: Your Honor, I don't claim  
14 to be totally versed on the -- as the status quo  
15 Watermaster, they are Chino Basin Municipal Water District  
16 employees; and they are compensated as such. And I  
17 understand the money value gets transferred from  
18 Watermaster accounts, but for all intents and purposes --

19 THE COURT: They're covered with a retirement  
20 system.

21 MR. CIHIGOYENETCHE: -- they're covered with  
22 ours right now. I think a question comes into an effort  
23 to separate the Watermaster Services from Chino Basin is  
24 where this old issue came in.

25 THE COURT: To do that, you'll have to file a  
26 certificate with the Secretary of State and go through all



1 the other things you guys in your law practices do any  
2 time you are representing a public entity.

3 MR. CIHIGOYENETCHE: Yes.

4 MR. DOUGHERTY: I think the real problem is,  
5 most of us that represent the Producers in the Basin are  
6 concerned that Chino Basin Municipal Water District will  
7 take it upon their -- themselves to perform the Scottish  
8 ritual of burning the houses down of these employees.  
9 That's the last thing we want to see happen. As long as  
10 they remain under the Chino Basin, unless Chino Basin is  
11 restrained by the Court from doing it; and there is a  
12 possibility, because Chino Basin has demonstrated that it  
13 does not intend to follow the advice, even if it is an 80  
14 percent mandate by the Advisory Committee, when it comes  
15 to what they consider administrative actions.

16 THE COURT: I don't want to speculate on that.  
17 I will say this: It could prove costly the one time they  
18 have done it. And that is my Intended, is that they have  
19 done it. You read the Intended.

20 That should be sufficient deterrent in the  
21 future. It also effects my decision on whether or not  
22 they need to be replaced or not. It all blends in. I  
23 should think that Chino Basin wants to get along at this  
24 point, because I am going to find out about it. And  
25 ultimately, whatever entity runs -- or performs as  
26 Watermaster -- is appointed as Watermaster is going to be

1 effected by what everybody is doing right now and has done  
2 in the past and will do in the future and how they impress  
3 Anne Schneider, if that's who I appoint and what she  
4 recommends to me.

5 It all flows. So there is an incentive, I  
6 think, for Chino Basin to get along. And I think that my  
7 Intended should be a wake-up call to them that if there is  
8 a problem like this where it could be construed -- there  
9 is an appearance it could be construed differently, maybe  
10 come to court and let's hash it out. That would have been  
11 easy for me to decide at the time. That would have been  
12 the simplest case you brought to me. And now it becomes  
13 very complicated. We're talking about \$35,000,  
14 variously.

15 MR. CIHIGOYENETCHE: Fourteen. Not to exceed  
16 14,000 was the contract.

17 THE COURT: Was it?

18 So Mr. Fudacz --

19 MR. FUDACZ: As far as PERS, your Honor, I am  
20 not a PERS expert. And someone else in our firm is  
21 handling that. But as I understand it, part of the  
22 transition was the PERS contract was being developed for  
23 Watermaster -- the Office of Watermaster, so that this  
24 divorce from the District could take place, and the  
25 employees would be set up as Watermaster employees with  
26 their own Watermaster PERS contract. That has been

1 processed. It has gotten tentative approval and requires  
2 a signature of Watermaster to make it happen. That is as  
3 far as I know.

4 THE COURT: That is an issue in dispute right  
5 now, because Watermaster is a separate entity. If they're  
6 not a separate entity, political subdivision, or whatever,  
7 and they don't have a certificate filed with the Secretary  
8 of State, how are they going to accomplish that?

9 MR. FUDACZ: As Mr. Kidman indicated, I have  
10 another client that does have a PERS contract, that is a  
11 board and a nine-member board that is Watermaster and --

12 THE COURT: Nine-member what?

13 MR. FUDACZ: Surprisingly enough, they are the  
14 Watermaster. They have their own PERS contract.

15 MR. KIDMAN: Your Honor, there is one  
16 significant distinction between that situation and this  
17 one. What I would suggest is that either you order from  
18 the bench today -- or that you get such Stipulations from  
19 both the -- whoever is representing the Advisory Committee  
20 and Chino Basin, that we'll have a standstill on these  
21 issues. It seems to me that going forward with this  
22 independence movement of the Office of Watermaster  
23 Services is -- and having them set up a contract with  
24 PERS, among other things, is sort of, you know,  
25 premature.

26 THE COURT: Putting the cart before the horse?

1 MR. KIDMAN: Before we know who the Watermaster  
2 is going to be. It has been suggested, at least on paper,  
3 that has been before you in the process of last year  
4 talking about this issue that it might be useful simply to  
5 hire an independent company.

6 THE COURT: Let them be the Watermaster. That  
7 is on the table.

8 MR. KIDMAN: Maybe the Office of Watermaster  
9 Services will cease to exist. I am not trying to burn the  
10 house down as we're talking about. We had ought to have a  
11 standstill until we get some of this worked out. And  
12 neither side on those issues should make a move.

13 MR. CIHIGOYENETCHE: I would have no problem  
14 with that, your Honor.

15 THE COURT: The way I understand it, Watermaster  
16 can't own property; so they can't own their own -- they  
17 have leased and gone over. They have done everything,  
18 apparently, except for this PERS.

19 MS. STEWART: We have executed some documents  
20 with respect to the PERS agreement.

21 THE COURT: What is the position of PERS? Will  
22 they accept it even though they haven't filed a  
23 certificate?

24 It seems to me even if I have a private company  
25 running these, these are going to be quasi-public  
26 employees. You might give that some thought, too. This

1 is the most complicated situation that I have come across.

2 MR. DOUGHERTY: My understanding is there has  
3 been an agenda item on the Chino Basin Municipal Water  
4 Board as Watermaster for a number of meetings, now, to  
5 simply put the signature on paper PERS has requested and  
6 they refuse to do it. And I would suggest that they are  
7 ordered to sign both. PERS has asked that they sign it  
8 and it could be processed by PERS. And if PERS then says,  
9 you can apply, they can make a decision. Right now, they  
10 can't.

11 MR. GUTIERREZ: Your Honor, if I may?

12 THE COURT: Wait a minute. I know what you're  
13 going to say. What you're going to say is, look, we're  
14 going to come back in April. Why don't we write PERS and  
15 find out if they'll accept them and what we have to do.  
16 Find out if they, in fact, are not a separate public  
17 entity, but we give it to a private contractor, what is  
18 PERS' position going to be? Are these people going to be  
19 out when they should have stayed with Chino Basin?

20 Why don't you guys find out those facts. It  
21 appears as if they are being taken care of retirementwise  
22 by Chino Basin, and that maybe Mr. Kidman's suggestion is  
23 well taken to just leave the status quo and let's get some  
24 more facts on that issue as to where these employees  
25 really will be. It is their retirement. I assume some of  
26 them -- if this Judgment has been in existence, some of

1     them have been down there a long time and don't want to  
2     get wiped out.

3             MS. STEWART: Your Honor, the PERS process is  
4     through the point we have paid \$700 for the actual report  
5     which was the second step in the process after the  
6     application. We made the application a year ago. And the  
7     next step in the process is a Resolution of Intention to  
8     enter into the Agreement; and then the Resolution and  
9     signing the Agreement. We have already been accepted by  
10    PERS. And it was a whole entire year process for us to go  
11    through. And it was the last step of the transition that,  
12    in fact, we talked about in June.

13            THE COURT: What Mr. Kidman is suggesting, I  
14    think -- don't let me put words into your mouth. What if  
15    I went to a private engineering firm, and we'll give you  
16    guys an option of, you're going to be working in private  
17    enterprise?

18            MS. STEWART: We are government in the sense  
19    we're part of the judicial branch, not the legislature.

20            THE COURT: Now, that may or may not be the  
21    case. It depends on what happens. And that's what I  
22    don't know at this point. I really don't know.

23            MR. MARKMAN: Your Honor --

24            THE COURT: That is motion number 39, I guess.

25            MR. MARKMAN: Your Honor, I know -- I have the  
26    benefit of not having heard a lot of this stuff before,

1 but I have dealt with Art for years. And this PERS thing  
2 is a red herring. Whoever ends up being the Watermaster  
3 can be an individual person, a law firm, it could remain  
4 Chino Basin. It could be a Board in the Judicial Branch,  
5 because it is, in essence, a referee of the Court, an arm  
6 of the Court. I think that's what is being explained.

7 And, in fact, the right system ought to be set  
8 up, that ought to be completed. And if it remains, if  
9 Chino Basin remains, it doesn't matter. It is still  
10 different from Chino Basin functioning as a Water  
11 District. It is a function of the Court. And this is a  
12 red herring. These employee's retirements are going to be  
13 taken care of, assuming that the Watermaster, whoever that  
14 may end up being, takes in these employees under that PERS  
15 contract; and they will be protected.

16 And that is true whether or not Watermaster  
17 remains. Who Watermaster now is or becomes is something  
18 different. And that is the way the whole process has  
19 gone. And it is ready for completion. And it happened in  
20 the upper San Gabriel Adjudication. There is nothing  
21 different about it.

22 And I suggest that is a red herring; and that  
23 whatever the Court decides ultimately about whoever will  
24 be the Watermaster, those employees can be taken care of  
25 in that context. I am not advocating which way. Although  
26 we joined in the motion because my client voted on the

1     Advisory Committee to set up this nine-member panel. This  
2     has been massaged for a year. And I suggest to the  
3     Court --

4             THE COURT: This is a new filing. You keep on  
5     saying that, but the old filing was taken off calendar, I  
6     believe it was in November, or something like that. This  
7     is a filing in January, or whenever it was.

8             MR. MARKMAN: Just as an observation, it is not  
9     new news that people who want to remain in the position  
10    they are now in are in no hurry to get any of this stuff  
11    resolved, and will constantly find some reason why, some  
12    red herring, some other item ought to be resolved or put  
13    on hold or put in standstill. That just adds time and  
14    adds money. If you wait long enough and enough time is  
15    added, nothing changes.

16            THE COURT: I understand that.

17            MR. KIDMAN: Your Honor --

18            THE COURT: I understand that. That is  
19    obviously -- everybody is well-represented here. The  
20    caliber of attorneys here is very high.  
21    Mr. Cihigoyenatche, obviously, it is in his client's best  
22    interest to stall us to the 12th of never, because they  
23    remain. I understand that. I am fully aware, since last  
24    June when the sun was getting hot and the cows were  
25    getting thirsty.

26            Mr. Kidman?



1           MR. KIDMAN: It was in our papers and reiterated  
2 here in open court that my client, Monte Vista Water  
3 District, has no Brief, whatsoever; and, in fact, is  
4 opposed to the permanent appointment of Chino Basin  
5 Municipal Water District as the Watermaster.

6           They do want to see -- they do oppose this  
7 nine-person panel that is dominated by Producers. We  
8 welcome what is going on here, to have a second look by an  
9 independent -- somebody from the outside, take a look at  
10 how this thing ought to be administered. We think that's  
11 fine. In the meantime, why should anybody make a move one  
12 way or the other that prejudices the ultimate outcome.  
13 Either dictates that the Office of Watermaster Services  
14 continues to exist in some capacity or dictates that they  
15 disappear. Let's not do anything.

16          THE COURT: As you recall, the last time Anne  
17 Schneider had the case -- and I don't recall, because I  
18 wasn't the Judge then. I have been a Judge for going on  
19 eight years now, but it was more than eight years ago  
20 that -- well, not more than eight years ago, but more than  
21 eight years ago the Judgment was made. Anne Schneider  
22 gets ahold of the case, and she calls back and says, I  
23 hope the Judge doesn't rule in this area, because he is  
24 going to tie my hands as to what I can recommend. If  
25 we're going to give it to her, I agree with Mr. Kidman,  
26 give it to her. And give her -- don't tie her hands. Let

1 her come up with a recommendation. And you guys -- you'll  
2 still preserve your right to object to the findings of the  
3 referee.

4 I am not necessarily going to take her opinion.  
5 I may or may not take it. There may be a lot of things --  
6 I think I have tried to be as direct and blunt with  
7 everybody as I can at this point telling you the Intended  
8 is an Intended. And this is how I see it.

9 It actually -- it pained me to do some of it,  
10 actually, Mr. Fudacz -- I was thinking of Gungha Dihh  
11 (phonetic spelling) when I was doing him in. I was  
12 writing it. He has performed some very good services for  
13 his clients and is an excellent attorney. This is how I  
14 see the case. But an Intended is an Intended. And I  
15 think we're -- if we go any further, we're going to be  
16 discussing the merits.

17 One of the reasons I wrote that Intended is so I  
18 wouldn't -- I was as verbose so I would remember what some  
19 of my thought processes were the next time you are in  
20 here. It is very complicated. I do need time to work on  
21 it. And an Intended is just that. It is what I intend to  
22 do.

23 There is some fine tuning that needs to be  
24 done. There is already a mistake that I am admitting is  
25 in the Intended. And point out any other mistakes. You  
26 guys know what kind of crazy diagrams I have floating out

1 around there. That is the way I see it. If you think  
2 that those are space balls and I belong in outer space,  
3 you can let me know in so many nice words.

4 Hopefully, a little bit better than the one guy  
5 that we had in here that was released. The guy that was  
6 released by Castro during the -- remember that guy? I  
7 thought the guy was speaking French. He was calling me  
8 names you guys never would dream of in your sleep. We got  
9 somebody down here, and then he starts speaking Spanish.  
10 Remember that, Mike?

11 Anyway, hopefully, your disproportion will be on  
12 a higher level. You can tell me where I am wrong. Tell  
13 me I am dead wrong. That is what this trial balloon is  
14 about. An Intended is an Intended.

15 I don't want to do it on a Monday. If possible,  
16 if I can put it out past the 14th, for the reasons I told  
17 you earlier, because last minute things come in, and I  
18 wind up taking time away from my kids. The 29th, 30th,  
19 any of those dates are fine. And what I could actually do  
20 is I could specifically set it for 1:30.

21 MS. LEVIN: Yes.

22 THE COURT: And we could make an afternoon of  
23 it.

24 MR. DOUGHERTY: As early as possible.

25 THE COURT: Wait a minute. I am being told --  
26 the 29th, 1:30. Is that okay with everybody?

1 MR. KIDMAN: When do you want the papers?

2 THE COURT: Well, as soon possible; hopefully  
3 you get your O.S.C. to me within a week.

4 MR. KIDMAN: Yes.

5 THE COURT: That's the important thing is the  
6 Notice.

7 MR. KIDMAN: Right.

8 THE COURT: The way I see it --

9 MR. KIDMAN: I was thinking that maybe you and  
10 all the parties would benefit by having two weeks with the  
11 papers before we come in to argue.

12 THE COURT: A cut-off date. Yeah. That would  
13 be beautiful. How about a cut-off date of the 15th of  
14 April, income tax day.

15 MR. MARKMAN: That's a cut-off date all right.

16 THE COURT: Should be easy to remember, huh?

17 MR. KIDMAN: Are we going to do the Meet and  
18 Confer that was mentioned, or shall we include in the  
19 order everything is held in abeyance with regard to  
20 personnel actions?

21 THE COURT: That's another good suggestion. I  
22 think it is fruitless to have you guys Meet and Confer on  
23 the PERS if they're being taken care of. And I am  
24 accepting Mr. Cihigoyenette's representation on the  
25 record. Let's leave the status quo until we get some  
26 more.

1 MR. TANAKA: Page limit, your Honor?

2 MR. MARKMAN: Two.

3 MS. LEVIN: Excuse me, just to clarify on the  
4 status quo, we are having meetings; the day-to-day  
5 business is continuing --

6 THE COURT: You'll still do that.

7 MS. LEVIN: That might be confusing with an  
8 order since the decision on what entity is the Watermaster  
9 is not going to be made even by April 29th.

10 How do you, your Honor, propose when the  
11 Advisory Committee continues to meet on issues, and a  
12 recommendation is given to Watermaster, and we have a  
13 meeting set up, I believe --

14 THE COURT: That's another case filing.

15 MS. LEVIN: -- and there is an agenda and some  
16 action to be taken. How can we do that? Is that a  
17 standstill on personnel issues?

18 THE COURT: With what you're alluding to, if  
19 something happens like happened with the special audit, it  
20 happened in the regular course of business. The Advisory  
21 Committee meets and says, Watermaster, we have got all --  
22 we have got Joe down here, and he has got an MBA. This  
23 other guy is a C.P.A., let's do our own audit first; and  
24 we'll determine whether we want to hire an outside audit.  
25 And Watermaster says, the heck with you guys.  
26 Irrespective of a 91.43 percent vote, I would expect you

1 guys to come to court. And that's another filing that is  
2 free because you're all exempt.

3 MS. LEVIN: So the standstill is limited to this  
4 PERS issue; is that what I am hearing?

5 THE COURT: Correct.

6 There was another thought that I had that you  
7 mentioned regarding the audit. And if somebody wanted to  
8 give me some further briefing in that area, it would be if  
9 the employees are really pursuant to the Facilities  
10 Agreement that I have got but don't know that I have, if  
11 the employees are actually Advisory Committee employees,  
12 and it is the Advisory Committee saying, hey, back off,  
13 and Watermaster saying, we have got some funds that are  
14 Watermaster's and they have been embezzled, even though we  
15 have been reimbursed.

16 If, pursuant to the Facilities Agreement they're  
17 actually Advisory Committee employees, and the Advisory  
18 Committee is saying, back off, then that's another issue  
19 altogether. If, in fact, you're construing it that way,  
20 maybe that's another issue that Anne Schneider will  
21 address, but I have thought about it.

22 I had a whole list of other things that I had  
23 notes to on Mr. Fudacz. I think I covered a lot of them  
24 in my Intended, but I did write -- first of all, these  
25 were notes that I was doing right after March the 3rd.

26 Does Nossaman, Guthner, Knox, and Elliot

1 represent the Advisory Committee?

2 Does Nossaman, Guthner, Knox, and Elliot  
3 represent the Watermaster?

4 If the answer to both is no, then who do you  
5 represent?

6 If the answer to both is yes, then is there a  
7 conflict?

8 If the answer to the first question is yes, then  
9 there is a conflict to the answer to the question is no?

10 With whom does the power to vest to terminate  
11 the Nossaman firm as Watermaster attorney?

12 If the Nossaman firm was not properly terminated  
13 as Watermaster attorney, can the Nossaman firm represent  
14 Watermaster if the Nossaman firm ever represented the  
15 Advisory Committee? Which we now know more about that.  
16 They haven't.

17 Does any firm represent the Advisory Committee?

18 If Watermaster -- these were notes that I did  
19 the last time. I think I have answered most of them, or  
20 you have addressed many of them -- Watermaster can  
21 petition the Court contrary to the desires of the Advisory  
22 Committee, then is there an inherent conflict if, as has  
23 occurred, the Advisory Committee petitions the Court  
24 contrary to the desires of the Watermaster as defined by  
25 the Chino Basin Municipal Water District?

26 Are the rules and regulations established

1 pursuant to the policy-making authority of the Advisory  
2 Committee specific enough, vis-a-vis, among other things,  
3 who do the employees of Watermaster report to, and who has  
4 the power to hire and fire attorneys retained to represent  
5 Watermaster?

6 If Chino Basin Municipal Water District has to  
7 have a separate attorney, then does Watermaster, does it  
8 follow that the Advisory Committee has to have a separate  
9 attorney than Watermaster? And I think on the issue of  
10 conflict, the answer is probably yes.

11 Are the Advisory Committee's interests  
12 coterminous with the Watermaster interests? And I think  
13 under the circumstances we find ourselves in, the obvious  
14 answer is no.

15 Those are all things that I considered, but I am  
16 pretty solidified on my intention on this case. Okay?

17 MR. DOUGHERTY: Do we have a page limit, your  
18 Honor?

19 THE COURT: How about five; is that okay?

20 MR. DOUGHERTY: I think with the number of  
21 issues, I would ask for ten.

22 THE COURT: Ten is okay. We're back to the  
23 amount it always is.

24 MR. DOUGHERTY: A lawyer can't say anything in  
25 five pages, your Honor.

26 THE COURT: Okay. It is the attachments that



1 kill me; is there anything else floating around out there  
2 that you can express to get a dissertation on stainless  
3 steel valves versus brass valves and neoprene seals, but  
4 so far I haven't gotten that. That's not a suggestion.

5 MS. LEVIN: I guess, your Honor, there is just  
6 one question. And that is: Would you have any problem if  
7 some of us would like to avoid months or a year of  
8 continued litigation on interrupting the Judgment and seek  
9 to find, perhaps, a retired Judge, like Judge Turner or  
10 even Anne Schneider to serve as Watermaster for a year?  
11 Would you have any problem with some of us trying to  
12 approach the problem in that manner?

13 THE COURT: Yes, I would, because don't you  
14 think you would compromise Anne Schneider's recommendation  
15 if you said, hey, I want to hire you to be -- I am going  
16 to give you the big bucks to be Watermaster and make an  
17 end run around what the Court is doing?

18 MS. LEVIN: Just so you know her name has come  
19 up in the past in terms of trying to think of an  
20 individual who could serve as Watermaster.

21 THE COURT: Is she married? I mean, she is  
22 about my age. I looked at her --

23 MS. LEVIN: I have no idea.

24 MR. KIDMAN: She was.

25 THE COURT: See lives in Sacramento. I suspect  
26 that absentee management of that type might not be

1     desirable.

2             MS. LEVIN: Then the retired Judge. Then what  
3     some of us had been thinking about is possibly a retired  
4     Judge to serve as Watermaster. Will you have any problem  
5     with some of the parties at this point trying to cut this  
6     process down, which is what we have been trying to do,  
7     save money, and perhaps seek to find a person who might  
8     serve as Watermaster for a year and proceed with some of  
9     the other issues that are facing the Chino Basin?

10            THE COURT: Yeah, I would have a problem with  
11     it. My Intended is my Intended. I intend to refer this  
12     to Anne Schneider for a recommendation. She can recommend  
13     herself. I would probably not accept that recommendation,  
14     because she lives in Sacramento. That is not a good  
15     idea. If she wanted to move down here, that might be  
16     something I would consider. If she wants to say, Judge  
17     Turner has now worked on this. He is now retired. And he  
18     might be a good one. I would certainly consider that,  
19     too.

20            My Intended is my Intended.

21            MS. LEVIN: All right.

22            THE COURT: I intend to get a recommendation on  
23     what to do. And you're trying to lead me off in these  
24     directions now that then commit me to a path. And right  
25     now I have gotten a lot of choices. And if you tie my  
26     hands, then I don't have a lot of choices. And once we

1 get to Judge Turner running it, then we have got yet  
2 another loose end that we have got to clean up if we go to  
3 somebody else. Not that I -- I have never met the man. I  
4 have seen his work. It looks like good work. Not that I  
5 have anything against him.

6 This to me is extremely important. Take a look  
7 at -- when I saw Mr. Grindstaff's Declaration, it -- this  
8 is important to these citizens in this valley. It is  
9 extremely important. It probably deserves more time --  
10 and we put -- can you imagine how much time all of us have  
11 put into this, hundreds, maybe thousands of hours, maybe  
12 when you figure us altogether. It is worth more than that  
13 considering how pervasive the problem is and that it has  
14 gone on for 20 years now. And it is going to go on for  
15 generations in the future. So if we're going to take a  
16 little time right now to make sure we do it right, I would  
17 rather take that little time and make sure we do it right  
18 than these yoo-hoo motions, as I call them. Judge, rule  
19 in my favor, because I have got a big ego; and I want you  
20 to rule in my favor to be my friend.

21 I want to do what is correct and contemplated.

22 MS. LEVIN: Thank you.

23 THE COURT: All right. See everybody on the  
24 29th then at 1:30.

25 MR. CIHIGOYENETCHE: Thank you, your Honor.

26 THE COURT: Mr. Kidman is going to give Notice?

1 MR. KIDMAN: Yes.

2 (Proceedings in the above-entitled matter  
3 were concluded.)

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SUPERIOR & MUNICIPAL COURTS OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT H (RC)                      HON. J. MICHAEL GUNN, JUDGE

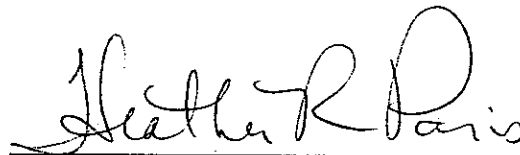
CHINO BASIN MUNICIPAL WATER )  
DISTRICT, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CITY OF CHINO, et al., )  
Defendants. )  
 )  
\_\_\_\_\_ )

Case No. RCV-51010

STATE OF CALIFORNIA )  
 )                      ss  
COUNTY OF SAN BERNARDINO )

I, Heather R. Paris, Official Reporter of the Superior  
& Municipal Courts of the State of California, for the  
County of San Bernardino, do hereby certify that the  
foregoing pages numbered 1 through 57, comprise a full,  
true, and correct computer-aided transcription of the  
proceedings held in the above-entitled matter on Tuesday,  
March 11, 1997.

Dated this 19th day of April, 1997.

 C.S.R.

Official Reporter, C-10294