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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.)	Case No. RCV-51010
)	
CITY OF CHINO, et al.,)	
)	
Defendants.)	
)	

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

Tuesday, April 29, 1997

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1 RANCHO CUCAMONGA, CALIFORNIA; TUESDAY, APRIL 29, 1997;

2 P.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 THE COURT: Okay. Let's go on the record in
8 the case of Chino Basin Municipal Water District versus
9 the City of Chino, case number RCV-51010. Let's have
10 everybody's name. We'll start at the right with
11 Mr. Kennedy, as I always do. Well, I don't always start
12 with Mr. Kennedy.

13 MR. KENNEDY: Steve Kennedy on behalf of Three
14 Valleys Municipal Water District.

15 MR. CIHIGOYENETCHE: Gene Cihigoyenetche on
16 behalf of Chino Basin Municipal Water District.

17 MS. LEVIN: Marilyn Levin on behalf of the State
18 of California.

19 MR. MCKINNEY: Dan McKinney of Reid & Hellyer
20 for the Agricultural Pool.

21 MR. KIDMAN: Art Kidman for Monte Vista Water
22 District.

23 MR. BOYER: David Boyer on behalf of Monte
24 Vista.

25 MR. LANCE: Bruce Lance, Monte Vista Water
26 District.

1 MR. McPETERS: Tom McPeters for Fontana Union
2 Water Company, Monte Vista Irrigation, and San Antonio
3 Water Company and West End Consolidated Water Company.

4 THE COURT: Monte Vista Irrigation?

5 MR. McPETERS: It is the smallest appropriator
6 in the Appropriative Pool.

7 MR. DOUGHERTY: Robert Dougherty of Covington
8 and Crowe for the City of Ontario.

9 MR. MARKMAN: James Markman today representing
10 the Chino Basin Advisory Committee.

11 MR. HILL: Boyd Hill, as well, for Chino Basin
12 Advisory Committee.

13 MR. FUDACZ: Fred A. Fudacz of Watermaster.

14 MR. OSSIFF: John Ossiff of Watermaster.

15 MR. TANAKA: Gene Tanaka for Kaiser, Western
16 Municipal Water District and Cucamonga County Water
17 District.

18 MR. ADAMS: Richard Adams on behalf of the City
19 of Pomona.

20 MR. RYAN: Timothy Ryan, general counsel for
21 Fontana Water Company.

22 MR. CHELEDEN: Christopher Cheleden of Burke,
23 Williams and Sorensen for the City of Chino Hills.

24 THE COURT: Is it Hensley or Hemsley?

25 MR. CHELEDEN: No. He's not here. He's on
26 vacation.

1 MR. DOUGHERTY: May we request a short recess,
2 perhaps 15 minutes? We just received the Court's ruling
3 when we walked in, and we have yet to have an opportunity
4 to discuss it amongst ourselves. It may very well be that
5 once we've had a chance to discuss it, the three hours of
6 oral argument that I prepared yesterday won't be
7 necessary, and I can spare you that pain and suffering.

8 THE COURT: Okay. What about five 'till? That
9 will give you 20 minutes.

10 MR. DOUGHERTY: That would be fine.

11 MR. KIDMAN: Thank you, your Honor.

12 THE COURT: Okay.

13 (A recess was taken at this time.)

14 THE COURT: Mr. Tanaka, I am going to have you
15 prepare whatever rulings there are today.

16 MR. TANAKA: I feel honored, your Honor.

17 THE COURT: Let's go back on the record. There
18 are some late arrivals. Mr. Gutierrez is one.

19 Who else is now present that was not present
20 before?

21 (No response.)

22 THE COURT: I guess Mr. Gutierrez is the only
23 one, representing the City of Chino.

24 Mr. Dougherty, you're the one that asked for the
25 recess; was it fruitful?

26 MR. DOUGHERTY: Yes, your Honor, I think so. On

1 behalf of the moving party -- the parties that have moved
2 to have Judge Turner appointed, we essentially are in
3 accord with the Court's order. And the only concern that
4 I want to express on behalf of the City of Ontario, which
5 is not necessarily a concern on behalf of the other
6 members of the Advisory Committee, is the provision on the
7 next to the last page at line 24 and line 25 where the
8 Court directs, "The Advisory Committee and Chino Basin
9 Municipal Water District are directed to jointly negotiate
10 terms and conditions and present them to the Court for
11 approval no later than June 18th, 1997."

12 We believe that inasmuch as what we're really
13 dealing with are terms and conditions that would involve
14 the expenditure of Producer funds, that it really ought to
15 be up to the Advisory Committee to negotiate with the
16 Department of Water Resources, and not Chino Basin Board,
17 because they're not going to be the ones that are on the
18 hook for payment for anything that the Board might request
19 for their services.

20 THE COURT: Let me interject one thing. And I
21 pretty much expended all efforts in writing that -- but I
22 will respond to that, in that the Chino Basin Municipal
23 Water District's employees, to wit., Tracey Stewart and --

24 Were there five employees in the Watermaster?

25 MR. DOUGHERTY: I believe so.

26 THE COURT: They're employees of the Chino Basin

1 Municipal Water District; and so something might want to
2 be accomplished in that regard --

3 MR. DOUGHERTY: Yeah.

4 THE COURT: -- or they're out of work.

5 MR. DOUGHERTY: In that sense, your Honor, what
6 we were suggesting, of course, was that they would be
7 included in the negotiations with the State Board to
8 provide that hopefully they would continue to function
9 under the auspices of the State Board.

10 THE COURT: But there is no guarantee on that.
11 And I can't commit the State Board.

12 MS. LEVIN: You're right.

13 MR. DOUGHERTY: It was an expression of
14 concern. I did agree. We certainly don't want to have
15 Ms. Stewart and her fellow employees left out in the cold
16 by whatever happens here.

17 THE COURT: Okay. So you agree with me then
18 that Chino Basin --

19 MR. DOUGHERTY: We agree.

20 THE COURT: Anybody else wish to be heard?

21 Let me also mention one thing before I forget.
22 There is no objection to removing Richards, Watsen and
23 Gershon from the service list?

24 MR. MARKMAN: No objection.

25 THE COURT: Having received no objection,
26 Richards, Watsen and Gershon is ordered deleted from the

1 service list.

2 MR. MARKMAN: One clean-up item, your Honor. In
3 view of this ruling, there's a pending motion for May 5th
4 as to which opposition has been filed today and will be
5 served on behalf of the Advisory Committee. And my
6 question is, shouldn't that come off calendar in view of
7 this order?

8 THE COURT: I briefly looked at that. And, in
9 fact, I had the clerk call Mr. Cihigoyenette's office
10 yesterday to be prepared to give us some figures on how
11 much the Watermaster budget was today, but I saw that, so
12 I didn't need to get that from you, but I did have the
13 clerk call you. I didn't want to talk to you myself. I
14 notice that's in there. At least what they paid last year
15 was for a six-month period. And it was --

16 Was it 300-and-some-odd-thousand dollars?

17 MR. CIHIGOYENETCHE: Yeah. What figure are you
18 referring to?

19 THE COURT: The budget for the Watermaster. I
20 was just wanting to know in case that came up, but
21 apparently, it's not coming up, so I don't need to know.

22 MR. MARKMAN: We can appear, but it seems to me
23 that putting the -- in front of the Court those optional
24 issues that are the subject matter of that motion, I mean,
25 it's up to Mr. Cihigoyenette.

26 THE COURT: He's doing what I asked him to do

1 last time.

2 MR. MARKMAN: We understand that. We understand
3 why the motion was filed; in view of this order whether it
4 needs to wind its way to completion. It's up to
5 Mr. Cihigoyenetché.

6 MR. CIHIGOYENETCHE: The question is, is it as
7 to urgency as to those issues? I have no problem, unless
8 there is a compelling reason that some decision on those
9 issues has to be made now or soon. I don't know what time
10 parameters we're looking at as far as referring this out
11 pursuant to the order that we have here today.

12 THE COURT: Nor do I. Ms. Levin might be able
13 to give us some better insight into that.

14 MS. LEVIN: Do you mean how quickly we would
15 know about the Department of Water Resources, or --

16 THE COURT: It is my understanding there could
17 be a price that would have to be negotiated.

18 MS. LEVIN: That is correct.

19 THE COURT: And employees, whether they would be
20 independent contractors or what. And those issues would
21 be resolved amongst Mr. Cihigoyenetché and the Advisory
22 Committee and whoever else, but that may take some time.
23 I don't know.

24 MS. LEVIN: And I wish I knew exactly how much
25 time that would take. And I really don't know how
26 quickly. Hopefully, we can get it done by the June date.

1 THE COURT: There is a certain amount of
2 symmetry in June 8th; isn't there?

3 MS. LEVIN: And it will be less complicated,
4 because if the price that's negotiated is paying the
5 Department of Water Resources for their time, that's
6 quicker than having to go to the legislature and having
7 the state pick up half, which I don't think DWR does
8 anymore?

9 THE COURT: Yeah, they do. 4505 of the Water --

10 MS. LEVIN: They do, but the state legislature
11 has to approve it.

12 THE COURT: They haven't been doing it. It was
13 my understanding that there was legislation proposed to do
14 away with the half where the state picks up half, and
15 locally, here, we would pick up half. And some lobbyist,
16 I don't know who, defeated it. And so they still pick
17 up -- the state still presently picks up half.

18 MS. LEVIN: That is correct. The state
19 presently does pick up half.

20 THE COURT: -- of the cost.

21 MS. LEVIN: So I don't know how long it will
22 take. And I guess we should really think about whether
23 those issues need to be decided.

24 MR. MARKMAN: We'll comply with the Court. And
25 I'm sure the representatives of Chino Basin will, also.
26 It is our intention to preserve the Watermaster staff. It

1 seems to make no sense to replace them with state
2 employees that have to come in and physically take over
3 systems.

4 There are offices. There is equipment. There
5 are people. We're talking about the supervisor to that
6 function becoming DWR for some period of time until the
7 Court's process of reference is over. That would be what
8 we would be intending to see that's done. And I'm sure --

9 THE COURT: Why don't we leave the 5th on
10 calendar then. If you guys --

11 Mr. Cihigoyenetché, you're the moving party.

12 MR. CIHIGOYENETCHE: That's correct.

13 THE COURT: It's up to you to take it off
14 calendar. If you don't resolve it, it will be on
15 calendar. If Mr. Cihigoyenetché calls, being the moving
16 party, informing us to take it off calendar, we'll take it
17 off calendar.

18 MS. LEVIN: I just might add one thing that's
19 probably only of importance to one firm in this room. I
20 recently came across a letter from the Chino Basin
21 Municipal Water District sending back a request to pay the
22 Nossaman, Guthner, Knox and Elliot firm for their services
23 for January and February, and, I believe, it might even be
24 March. Unless a vote of the Advisory Committee were taken
25 advising Chino Basin Municipal Water District in writing
26 that that was our intention, since that issue has come

1 before the Court in the past, and it is clear that we
2 oppose the Motion to Disqualify him, and it is our
3 intention to pay him for his services, unless there is a
4 meeting of the Advisory Committee to -- a special meeting
5 to comply with Chino Basin's request, Mr. Fudacz's firm
6 will not be paid. I was wondering if either through this
7 Court -- some order could be issued or on May 5th there
8 could be -- I guess this is another issue that Chino Basin
9 is refusing -- to be kind, has not addressed.

10 THE COURT: You don't need to be heard on that.
11 I think Mr. Cihigoyenetché, again, is doing that which I
12 stated the last time.

13 MS. LEVIN: Yes.

14 THE COURT: And at this point the ball is in the
15 Advisory Committee's court. All they have to do is send
16 Mr. Cihigoyenetché a letter, pay them --

17 MS. LEVIN: Okay.

18 THE COURT: -- and they'll get paid.

19 Mr. Cihigoyenetché is probably worried if they really
20 weren't properly hired or they had a conflict of interest
21 they're not really representing the Chino Basin Municipal
22 Water District account as Watermaster then we might have
23 some liability if we pay them. Let's be careful. We may
24 get burned on that other issue. And that's probably why
25 he did what he did. You can't blame him for being a
26 lawyer.

1 MS. LEVIN: You're not suggesting that after
2 they get the letter they have to bring that back for
3 further discussion?

4 THE COURT: I am not saying that. If the
5 Advisory Committee gives the Watermaster --

6 MS. LEVIN: A letter in writing, that is
7 sufficient for your purposes?

8 THE COURT: Yes.

9 MR. GUTIERREZ: Your Honor, I if may address
10 that subject?

11 THE COURT: Sure.

12 MR. GUTIERREZ: I would like, if there is going
13 to be a request to pay from January to the present time
14 that all parties be given notice of that intention prior
15 to the time that the check is cut so that some of us who
16 object to that payment can make a proper application to
17 this Court, given the Court's findings that there is a
18 conflict of interest.

19 MR. TANAKA: Your Honor --

20 THE COURT: So there we go again.

21 MR. TANAKA: I don't think it needs to be that
22 complicated. Under the Judgment there is a procedure that
23 if the Advisory Committee tells Watermaster, in this case,
24 Chino Basin Municipal Water District, to do something, and
25 they refuse or any party wants to --

26 THE COURT: 30 days notice.

1 MR. TANAKA: Exactly, your Honor.

2 THE COURT: And we can go from there.

3 MS. LEVIN: Thank you, your Honor.

4 THE COURT: It's not an issue before me today.
5 Anybody else wish to be heard any further then?

6 (No response.)

7 THE COURT: Okay then. Mr. Tanaka will prepare
8 the order. The order is already prepared then?

9 MR. TANAKA: Your Honor?

10 THE COURT: Will you prepare notice of the
11 ruling?

12 MR. TANAKA: I guess there is probably a little
13 clean up as to the Richards, Watsen and Gershon --

14 THE COURT: Yes.

15 MR. TANAKA: Also, just so I have it right. I
16 guess I don't need to make any reference to the May 5th
17 decision or the Nossaman firm?

18 THE COURT: No.

19 MR. KIDMAN: Thank you, your Honor.

20 MR. CIHIGOYENETCHE: Thank you, your Honor.

21 (Proceedings in the above-entitled matter
22 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)
COUNTY OF SAN BERNARDINO)

ss

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 14, comprise a full, true, and correct computer-aided transcription of the proceedings held in the above-entitled matter on Tuesday, April 29, 1997.

Dated this 21st day of June, 1997.

Heather R Paris C.S.R.

Official Reporter, C-10294