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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,)
)
Defendant.)
)
)
)

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS
Monday, May 5, 1997

APPEARANCES:

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By: **ROBERT E. DOUGHERTY**
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Reported by: HEATHER R. PARIS, C.S.R.
Official Reporter, C-10294

1 RANCHO CUCAMONGA, CALIFORNIA; MONDAY, MAY 5, 1997;

2 A.M. SESSION

3 DEPARTMENT H (RC)

HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5
6 (Appearances as noted on the appearance page.)

7
8 (Heather R. Paris, C.S.R., Official Reporter, C-10294)

9
10 THE COURT: Chino Basin Municipal Water District
11 versus the City of Chino, case number RCV-51010.

12 MR. CIHIGOYENETCHE: Good morning. Jean
13 Cihigoyenetche on behalf of Chino Basin Municipal Water
14 District.

15 THE COURT: Morning.

16 MR. HILL: Boyd Hill on behalf of the Chino
17 Basin Advisory Committee.

18 MR. DOUGHERTY: Robert Dougherty on behalf of
19 the City of Ontario.

20 THE COURT: Okay. This is what I think, and
21 then you guys can be heard, if you wish.

22 Number one, on the CalPers, I don't think it
23 would be productive under the circumstances to enter into
24 an agreement with CalPers at this time.

25 Number two, I don't think it would be
26 appropriate to change the employee status at this time.

1 They're employees of the Chino Basin Municipal Water
2 District; and their salaries should stay the same until
3 you work things out with Department of Water Resources,
4 and not tie their hands. That might be the death blow.
5 That might be a temporary benefit to the employees and
6 then a death blow because the State wouldn't accept them.

7 And locally I think only our District Attorney
8 and Board of Supervisors get vehicles, right?

9 MR. DOUGHERTY: I'm sorry --

10 THE COURT: Locally, I don't even know if the
11 Department of Water Resources, the head of it, has a
12 vehicle. Let's leave that open for a while.

13 Then the audit. There is an annual audit
14 required anyway, and we're getting close to the end of the
15 fiscal year, so if that's what we're talking about, I have
16 no problem with expanding it to include the loss.

17 The other thought I had is if it changes hands
18 over to the Department of Water Resources, they might have
19 their own audit people. So this is my thought on that.
20 If this extends beyond July 1st, for whatever reason, then
21 I don't mind adding the theft problem into the audit,
22 because it was excluded in that other audit, apparently.
23 Well, there was some cursory mention to it. I read that
24 audit, by the way. There was some cursory mention of it,
25 but not anything much, but if it -- if things are turned
26 over to the Department of Water Resources before July 1st,

1 I would assume that they would have their own audit
2 people.

3 What do you guys think about that?

4 MR. CIHIGOYENETCHE: I have no objection to that
5 proposal, your Honor. I would suggest that if it -- if it
6 does go to the State prior to July 1st and they don't have
7 their own audit people, then perhaps we should go forward.

8 THE COURT: The way I suggested?

9 MR. CIHIGOYENETCHE: With the proposal as it
10 is.

11 THE COURT: And then you have the investment
12 policy. And until the Department of Water Resources
13 agrees to act as the Watermaster, Chino Basin Municipal
14 Water is the Watermaster and does have the liability, so I
15 would just as soon leave things the way they are there.

16 Then the fifth contested action is the adoption
17 and implementation of a 457 plan, deferred compensation
18 plan. And for the same reasons I have articulated
19 previously, I don't think it would be wise to enter into a
20 457 deferred compensation plan at this time contemplating
21 the new Watermaster.

22 MR. HILL: Your Honor, on number one, and I
23 guess on number five, you indicated it wouldn't be
24 productive at this time. Can you explain your reasoning
25 there.

26 THE COURT: Well, as I said last week, the

1 Department of Water Resources may not accept these
2 employees, and they might make them independent
3 contractors. I don't know what's going to happen. And I
4 don't want to tie the hands of the Chino Advisory
5 Committee and the Water District with the Department of
6 Water Resources.

7 MR. DOUGHERTY: You basically want to leave that
8 issue open?

9 THE COURT: Correct.

10 MR. DOUGHERTY: Until you find out without
11 prejudice to --

12 THE COURT: One way or another, sure.

13 MR. DOUGHERTY: And I would assume then if the
14 Department of Water Resources would accept these employees
15 in a capacity where they would be eligible for PERS --

16 THE COURT: Through the Department of Water
17 Resources, correct, they would have their own plan.

18 MR. DOUGHERTY: Although they may wish to set up
19 a -- something special. So the main thing we want to be
20 sure of is that whatever happens we're not foreclosed in
21 pursuing it on behalf of both the present employees, to
22 the extent that we won't have them prejudiced.

23 THE COURT: Right.

24 MR. DOUGHERTY: For that matter we don't want to
25 have the negotiations prejudiced with the Department.

26 THE COURT: No. No. And what we could do now

1 could be a deal stopper, so I would rather leave all
2 options open at this point in time.

3 MR. DOUGHERTY: Your Honor, I would like to take
4 a look at the issue of an issue with the investment
5 policy. You mention that Chino Basin is the fiduciary.
6 They are an arm of the Court. And in that sense, they're
7 not acting independently. And again, this goes back to
8 the issue of what the Advisory Committee has the
9 discretion to direct.

10 And I just want to make some comments. I
11 certainly don't have of a problem leaving it open at this
12 time. Hopefully, it would be resolved very quickly and
13 the Department will come forth and we won't have any more
14 concern about it.

15 THE COURT: Has anybody contacted them?

16 MR. HILL: Yes.

17 THE COURT: Well, I guess -- that's not properly
18 before me. I guess I shouldn't ask you, so I won't. You
19 don't need to answer.

20 MR. HILL: Your Honor, we do have some concern
21 about issue number one. And because the Court did order,
22 on page 9 of your order, lines 21 and 22, "it is persuaded
23 that an Interim Watermaster is necessary on behalf of the
24 Advisory Committee," we feel that there is a need to have
25 a separate CalPers contract. We understand your concern
26 for the -- for not interrupting the negotiations with the

1 Department of Water Resources, but I am still maybe
2 somewhat in the dark as to your feeling that the
3 Department of Water Resources may not accept that -- the
4 fact that they have a separate CalPers contract.

5 MR. DOUGHERTY: I would think, perhaps,
6 requiring that the Resolution be approved, merely just
7 give the authority to implement it and not require it to
8 be done, but right now, even if the Department of Water
9 Resources accepts the separate CalPers contract, until, as
10 I understand it, Chino Basin signs off, we can't move
11 forward.

12 THE COURT: Well, they have got a plan -- we've
13 covered this a couple of meetings ago. Right now they're
14 covered through the Chino Basin Municipal Water District
15 plan. Remember, we discussed this. It was about two
16 hearings ago or maybe three or four hearings. It was
17 discussed at one time. I remember I indicated I didn't
18 want to hold the employees hostage in what was going on.
19 But now we're going in this direction, I don't want to get
20 any sweetheart agreements that commit the Department of
21 Water Resources in a fashion that they don't want to be
22 committed and they decide they don't want to enter into
23 this transaction.

24 MR. DOUGHERTY: Do you anticipate the
25 employee -- the Department of Water Resources being the
26 employer or a contract administrator of the Watermaster?

1 THE COURT: They would be the Watermaster under
2 the Judgment the same as Chino Municipal Water District
3 is. And just as Chino Municipal Water District policies
4 cover their employees, in my opinion, so would the
5 Department of Water Resources.

6 MR. DOUGHERTY: The thing of it is --

7 THE COURT: The only problem would be if they
8 decided to enter an agreement and the employees were
9 treated as contract employees. There might be a
10 difference there.

11 MR. HILL: So this issue is without prejudice at
12 this time?

13 THE COURT: It's without prejudice. I don't see
14 any point in doing anything right now, to be honest with
15 you, all it can do is bugar up the works and not be
16 productive at all at this point. And you have until June
17 the 18th to get that thing sewed up with the Department of
18 Water and --

19 MR. DOUGHERTY: Assume the Department of Water
20 Resources accepts the appointment and decides to employ
21 the current Watermaster staff in whatever capacity; it is
22 agreed that if it is necessary to have the -- the
23 Resolution approved by Chino Basin that would be a problem
24 at that time.

25 MR. CIHIGOYENETCHE: I would assume, your Honor,
26 if the State takes over in the position of Watermaster

1 they would sign the Resolution because they would be the
2 Watermaster.

3 THE COURT: Yeah. I would rather defer on
4 that. I mean, this could take some time. And with them
5 as Watermaster -- I mean the State. So they might just
6 take all the employees on board. Then again, they might
7 not. But at this point, I don't think it is wise to go
8 changing some things right before you negotiate with
9 them.

10 So anybody wish to be heard any further?

11 MR. HILL: I am still not sure how it is unwise
12 to not have a separate CalPers contract. I'm not sure how
13 that would tie the hands of the State in this matter.

14 THE COURT: That's just the way I feel.

15 MR. HILL: Okay.

16 THE COURT: And I have indicated what I
17 thought. I thought it was negotiations and further
18 complicated this matter. Right now I have got these
19 employees as Chino Basin Municipal Water District
20 employees. I don't know what's going to happen in the
21 future. Okay? Let me give you an example.

22 Say that the Department of Water Resources says,
23 okay, we'll be Watermaster, but we don't want those
24 employees. Either they're on the worker's unemployment
25 insurance of the Chino Basin Municipal Water District --
26 everything will fall back on that. So I don't want to

1 have them on the worker's compensation insurance or the
2 unemployment insurance of the Court, because we don't have
3 it for them. They're employees of the Chino Basin
4 Municipal Water District right now, and they shall remain
5 that way until the new Watermaster comes on board, or if
6 there is good cause, somebody was stealing or something
7 like that.

8 MR. DOUGHERTY: Let me just -- if you don't
9 mind, I don't want to take up too much time. Getting back
10 to the concept -- I think the whole problem is we started
11 out with Chino Basin as Watermaster. Chino Basin was a
12 governmental entity in and of itself and it had its own
13 CalPers contract and things just went that way because it
14 was convenient. Had we gone a different route from the
15 inception then the Court could well have at that point in
16 time appointed an individual for Watermaster or somebody
17 or some entity other than a public entity.

18 And according to CalPers, as I understand it,
19 had that occurred, then whoever the Court appointed in the
20 capacity of Watermaster would have the ability to have a
21 CalPers contract for their employees. So in a sense, this
22 is what we feel is going to have to happen sooner or
23 later, because if the Department is only going to be the
24 Interim Watermaster, at such time as a permanent
25 Watermaster is selected, that relationship between the
26 Court and the Watermaster is going to exit, and without a

1 doubt, whoever is Watermaster is going to have to have a
2 staff.

3 So I just don't see tying it to Chino Basin in
4 the sense that, you know, it certainly is logical that the
5 Department of Water Resources could say, we're not going
6 to bring these folks on board as Department employees.
7 They can certainly say, we're going to bring them on board
8 as a staff; and we're going to give them benefits under
9 the authority of the Court as part of the Judicial
10 Branch.

11 MR. HILL: This is not without precedence. In
12 San Gabriel -- I have got their employee handbook in front
13 of me and it talks about their separate PERS benefits as
14 Watermaster staff.

15 THE COURT: Not at this time.

16 MR. HILL: Thank you, your Honor.

17 THE COURT: You prepare the order?

18 MR. CIHIGOYENETCHE: Yes.

19 THE COURT: I will have you prepare it. At the
20 next Watermaster major function I'm going to have
21 Mr. Dougherty. I don't think I have hit on him yet.

22 MR. CIHIGOYENETCHE: Thank you, your Honor.

23 (Proceedings in the above-entitled matter
24 were concluded.)

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CHINO BASIN MUNICIPAL)
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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 10, comprise a full, true, and correct computer-aided transcription of the proceedings held in the above-entitled matter on Monday, May 5, 1997.

Dated this 17th day of May, 1997.

 C.S.R.

Official Reporter, C-10294