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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO  
DEPARTMENT H HON. J. MICHAEL GUNN, JUDGE

CHINO BASIN MUNICIPAL )  
WATER DISTRICT, )  
 )  
 PLAINTIFF, )  
 )  
 vs. )  
 )  
 CITY OF CHINO, )  
 )  
 )  
 DEFENDANT. )  
\_\_\_\_\_ )

SUPERIOR COURT  
CASE NO: RCV-51010

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

THURSDAY, NOVEMBER 5, 1998

APPEARANCES:

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CSR-RPR NO. 9949

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1 RANCHO CUCAMONGA, CALIFORNIA; THURSDAY, NOV. 5, 1998

2 DEPARTMENT H HON. J. MICHAEL GUNN, JUDGE

3 APPEARANCES:

4 Counsel for Watermasters WAYNE LEMIEUX, Attorney  
5 at Law; Counsel for Rancho Cucamonga Water  
6 District ARTHUR L. LITTLEWORTH, Attorney at Law;  
7 Counsel for Monte Vista Water District DAVID D.  
8 BOYER, Attorney at Law; Counsel for the State of  
9 California MARILYN H. LEVIN, Attorney at Law;  
10 Counsel for Three Valleys Water District STEVEN M.  
11 KENNEDY, Attorney at Law.

12 (Colleen C. Southwick, CSR-RPR, No. 9949)

13  
14 THE COURT: Okay. Let's go on the record in  
15 the matter of Chino Basin Municipal Water District  
16 versus City of Chino, et al, RCV-51010. I guess we'll  
17 start with you and go through Mr. Kennedy.

18 Is that the only attorneys we have?

19 MR. LEMIEUX: We have all these attorneys.

20 THE COURT: Okay. Let's start with  
21 Mr. Lemieux and let everybody announce their presence  
22 for the record.

23 MR. LEMIEUX: Good morning, your Honor.  
24 Wayne Lemieux of Lemieux & O'Neill for the  
25 Watermasters.

26 MR. LITTLEWORTH: Art Littleworth of Best

1 Best & Krieger for Rancho Cucamonga Water District.

2 MR. BOYER: David Boyer for Monte Vista Water  
3 District.

4 MS. LEVIN: Marilyn Levin Deputy Attorney  
5 General representing the State of California and the  
6 Department of Corrections.

7 MR. KENNEDY: Good morning. Steve Kennedy on  
8 behalf of Three Valleys Municipal Water District.

9 THE COURT: Okay. Great. Shouldn't take  
10 that long today. My intention is to grant the motion  
11 to extend the filing date of the 21st Annual Report to  
12 January 31st.

13 MR. LEMIEUX: Thank you, your Honor.

14 THE COURT: Mr. Gutierrez is present.  
15 Record should reflect he's walking in.

16 Grant the motion to approve the Scope and  
17 Level of Detail of the Optimum Basin Management Program  
18 with the proviso that Watermaster provide to the  
19 Special Referee any draft section that becomes  
20 available in the interim between now and the next time  
21 we come to court and immediately upon receiving same or  
22 producing same.

23 Two matters that I'd like to discuss. One,  
24 the last time when you were here we discussed this; the  
25 issue of the appropriateness of the Court's  
26 communications with certain people. Until I hear

1 otherwise, I'm going to assume that everybody is in  
2 agreement that I can talk with Ms. Schneider.

3 I noted that Mr. Scalmanini was -- a couple  
4 Thursdays ago was here locally. I actually -- I know I  
5 said last time I didn't think I should talk to him, but  
6 actually I thought it might be nice since he's  
7 appointed by the Court to be able to talk to him too.  
8 I don't know if anybody has objections to that.

9 MR. LEMIEUX: We have no objections to that.  
10 As a matter of fact, since our last meeting the Special  
11 Referee and Mr. Scalmanini have attended a couple of  
12 Advisory Committee meetings, Watermaster meetings and  
13 workshops, and I think the process has benefited a  
14 great deal as a result of that.

15 And we hope -- I think we're kind of groping  
16 here, but we hope we're developing a way of passing  
17 information along that will be very successful and  
18 efficient. So I think it's a good idea for you to be  
19 in contact with the Referee and the engineer,  
20 Mr. Scalmanini, and we'll try to be in contact with  
21 them also.

22 THE COURT: I notice -- well, I have the  
23 watermaster web site up on my computer there, but I  
24 know that he was -- noticed he was here on, I believe,  
25 it was a Thursday when I went over the web site. Gosh,  
26 I would have liked to have met him since he was down

1 there. I'm not going to waste the county's money to go  
2 to Sacramento or wherever to shake his hand, but I  
3 thought while he was down here, it actually might have  
4 been --

5 MR. LITTLEWORTH: Well, both Mr. Scalmanini  
6 and Anne Schneider have been involved in the process  
7 and this report, so I think there's a developing of a  
8 good cooperation.

9 THE COURT: Yeah, I hear things are going  
10 well. I have discussed it with Anne Schneider and she  
11 thinks great progress has been made. One question I  
12 have for you on the minutes on the web site, and that's  
13 one of the ways I keep abreast of what's  
14 happening with watermaster, is I would like the minutes  
15 to be more current.

16 Now, is that wishful thinking on my part? Is  
17 it impractical? I notice there's a section for draft  
18 minutes and approved minutes.

19 MR. LEMIEUX: You share that desire with the  
20 Watermaster and the Watermaster is in the process --  
21 has approved some additional staff and is in the  
22 process of trying to staff up a little more and make  
23 the minutes more current. That's been a problem and  
24 something that several watermaster's members have  
25 commented on and something we're trying to address, but  
26 it has kind of a ripple up and down effect.

1           It's a small staff, and to make the minutes  
2 more current and not spend an inordinate amount of  
3 money and staffing on that, we have to move people  
4 around, so we're working on that and we share your  
5 concern.

6           THE COURT: Might be a matter of priorities  
7 and where they are at on watermaster's time.

8           MR. LEMIEUX: I'll take that message back. I  
9 know Traci Stewart is here right now.

10          MS. STEWART: Could I interject, sir. It's  
11 because of the way the process is working. Essentially  
12 we finish a meeting, and then we have to prepare a  
13 notice for the next meeting. Then what we do is we do  
14 minutes from that prior meeting, so that's why there's  
15 that lag time in the minute process.

16          It takes two people and myself to put  
17 together the package plus the consultants we're using  
18 in order to be prepared for the next scheduled meeting.  
19 We basically have a two week turnaround time, so with  
20 the 96 hours by mail, there isn't really any way to get  
21 focused on minutes until after that's taken care of.  
22 And as soon as we have them draft, our intention is to  
23 get them up on the web, but they are not approved until  
24 they are taken back to the process.

25          THE COURT: I was noticing there was one  
26 section on the web site where the draft minutes were --

1 the most current draft minutes were July.

2 MS. STEWART: Yeah, and I think we put a note  
3 up there more recently regarding that particular  
4 dilemma. It's because we weren't able to convene  
5 meetings of those particular pools, so we had to leave  
6 the minutes in draft form until we can get their  
7 approval of the minutes and turn them into approved  
8 minutes.

9 THE COURT: Well, anyway, this is an area of  
10 concern to me. And the reason that I -- there's a  
11 number of reasons, I alluded to them last time, the web  
12 is technology that I think in the long run might save  
13 money as far as notices once everybody gets up to  
14 speed.

15 MR. LEMIEUX: We haven't forgotten about the  
16 discussion we had last time about modernizing the  
17 notice process. It's simply that was priority number  
18 three compared to the other things.

19 THE COURT: I can appreciate that.

20 MR. LEMIEUX: And perhaps by the end of the  
21 year or shortly -- whoops, we're getting close to that.  
22 Perhaps shortly after the first of the year we'll have  
23 some suggestions to make to the Court in that regard.

24 THE COURT: I'm not suggesting that everyone  
25 go out and buy a computer. I'm thinking there's a lot  
26 of people and if they have one --



1 MR. LEMIEUX: Just turn them on.

2 THE COURT: It would save postage and paper,  
3 but I'm not going to say hey, everybody is going to go  
4 out and buy a computer. I get no commission. I'm  
5 not -- that's not what I'm getting at. There's plenty  
6 of people that don't care. I got a letter from one guy  
7 that said, "Please take me off the mailing list." That  
8 was way back when, a couple years ago, if I recall.

9 Okay. So on minutes, though, I would like  
10 those to be more current because that's how I inform  
11 myself of what's going on down there. And I assume --  
12 well, it was the intent of the order that's how a lot  
13 of people would inform themselves on what was going on  
14 down there.

15 The meetings being at 3:00 in the afternoon  
16 are probably inconvenient for a great number of people  
17 and so if they get home from their day jobs as Forest  
18 Gump said, they could look at the computer and find out  
19 what's going on. But the way it is right now they  
20 could look at their computer for a couple months before  
21 they would find out what was going on.

22 All right. So enough said on that. I don't  
23 see anything else that we need.

24 Yes?

25 MR. LEMIEUX: We do have one problem, your  
26 Honor. The scheduling of this current motion was such

1 that we continued to have Watermaster meetings even  
2 after the motion was filed. As you pointed out a  
3 moment ago, we had a meeting last Thursday. At that  
4 meeting some concern was expressed about some of the  
5 language in the supplemental motion, and I'll try to  
6 provide the context of that. We're here to describe  
7 the scope and level of detail of the program OBMP.  
8 We're not here to describe the substance of the OBMP.

9 This document of necessity, I think, to  
10 provide context to the presentation on the scope and  
11 level of detail talked a little bit about the substance  
12 of the OBMP. And what we discovered at the Watermaster  
13 and Advisory Committee meetings last Thursday was some  
14 people are concerned that this incidental discussion of  
15 substance become writ, become approved at this time.

16 So I think it's very important that we  
17 emphasize today and in your order that you're approving  
18 the scope and level of detail. You're -- we've  
19 identified problems but you're not certainly --

20 THE COURT: I'm not saying the dairies have  
21 to leave the area.

22 MR. LEMIEUX: Took the words right out of my  
23 mouth.

24 MR. BOYER: Well, your Honor, there were also  
25 references to possible reduction in production of water  
26 which Monte Vista Water District of course is very

1 concerned about.

2 THE COURT: Or reduction in what goes down in  
3 the Santa Ana Water Project authority because they want  
4 to raise the level. I saw all that in there and I  
5 agree with Mr. Lemieux. I'm approving the scope of it.

6 MR. LITTLEWORTH: And I think the discussion  
7 was clear at that Thursday meeting that there wasn't  
8 intent in any of that language to really lay out  
9 solutions, and everyone agreed although some people  
10 thought we had then changed the language at that point  
11 perhaps not realizing it had already been filed.

12 But everyone I think understood the points  
13 that were made. There wasn't any effort in any of that  
14 language to forecast what the ultimate solution had to  
15 be.

16 MR. LEMIEUX: And, yeah, to emphasize, at the  
17 Thursday meeting I don't think there was disagreement  
18 other than there was general agreement that this  
19 document was a little too definite as far as the  
20 substance of the OBMP, and there's wasn't anything  
21 beyond that.

22 MS. LEVIN: And, your Honor, what was  
23 represented at the meeting was that at this court  
24 hearing Mr. Lemieux or anyone else who was here, you  
25 know, would request that that be reflected specifically  
26 in the order that's issued by the Court; that it's not

1 meant to accept any solutions; that you're really just  
2 approving the scope and level.

3 THE COURT: Okay. You'll put that in the  
4 order?

5 MR. LEMIEUX: I'll put it in the draft order.  
6 And if your Honor wishes, I'll circulate it among my  
7 colleagues and bring something back to you that's a  
8 consensus.

9 THE COURT: For approval as to form and  
10 content in five business days, then to get it back to  
11 you. If they don't, then we assume they that approved  
12 it.

13 One final thing, although there was really  
14 nothing on the counter last time, I indicated an  
15 interest -- I have a personal interest in going down  
16 and actually seeing -- actually I presume it's down on  
17 the prison grounds, the desalter.

18 MS. LEVIN: It's close, yes.

19 THE COURT: Close. Some of these maps --  
20 I've tried to figure out some of Mr. Wildermuth's maps.  
21 And I'm trying to visualize and everything what I'm  
22 looking at when you got total dissolved salt and  
23 whatever, but I wouldn't mind seeing that, but I don't  
24 know if that's going to step on anybody's toes.

25 MS. LEVIN: Mr. Wildermuth is here.

26 Where's the desalter?

1 MR. WILDERMUTH: Adjacent to the prison, the  
2 southeast corner I think.

3 MS. LEVIN: It's adjacent to the prison.

4 THE COURT: So if I come out there some day,  
5 if I don't talk to anybody --

6 MR. LITTLEWORTH: Your Honor, you probably  
7 need a guide. I would think we could work out a  
8 solution where one or two people could go and help you  
9 see what you need to see.

10 THE COURT: It's probably more personal, but  
11 who knows. When you try a case and you go out to the  
12 scene of the accident or scene of the crime, you learn  
13 a lot.

14 MS. LEVIN: What I would suggest is since the  
15 parties have accepted your abilities to speak with Anne  
16 Schneider and Mr. Scalmanini, perhaps through them they  
17 could organize something through the Watermaster so  
18 that you would have an appropriate access to that when  
19 you wanted to.

20 THE COURT: Okay. Perhaps the next time when  
21 they are down. I don't see having them come all the  
22 way out from northern California, airfare and  
23 everything, but when they are down. I thought it would  
24 have been nice the other day when Mr. Scalmanini was  
25 here to have talked to him about some of the more  
26 technical aspects. Some of the technical aspects are

1 kind of interesting, but perhaps not necessary for a  
2 judge to know, but still interesting.

3 MR. LEMIEUX: We'll work with them to try and  
4 put a program together that will be worth your time and  
5 figure out a way of doing it and not step on any  
6 party's toes.

7 THE COURT: The last thing I want to do is  
8 offend somebody or have them think I'm trying to  
9 micromanage them which I'm not above but --

10 MS. LEVIN: Your Honor, there's a meeting  
11 next week, I believe on the 12th, a work shop, and  
12 perhaps under other business, you know, it could be  
13 brought up at the beginning of the meeting that you  
14 would like to do what you've mentioned and, therefore,  
15 there could be parties there who could assist in that.

16 MR. LITTLEWORTH: Your Honor, you may want to  
17 see more than just the desalter. It's probably better  
18 for you to get a general feel for the basin and other  
19 things added.

20 THE COURT: I'll tell you I know a lot more  
21 than when I started this case, but that's when I was  
22 reading a book and got Anne Schneider's name and they  
23 were quoting her in the footnotes, I think I mentioned  
24 that to you sometime back, and lo and behold we had her  
25 on one of the Kaiser problems before so it became an  
26 easy decision.

1           But anyway it can't hurt to have a lot of  
2 knowledge, and it can hurt not to know certain things.  
3 I don't know how it would benefit this case. I can't  
4 really say it would, but I don't think it can hurt  
5 either so, okay.

6           Anything else, Mr. Gutierrez? You came in a  
7 little late.

8           MR. GUTIERREZ: No, I don't have anything to  
9 add, your Honor.

10          THE COURT: Mr. Kennedy?

11          MR. KENNEDY: No, your Honor. Three Valley  
12 supports the efforts of the Chino Basin Watermaster and  
13 supports your tentative decision.

14          THE COURT: Mr. Lemieux will prepare the  
15 order then.

16          MR. LEMIEUX: Thank you, your Honor.

17          THE COURT: So you'll file in January?

18          MR. LEMIEUX: We expect to have another  
19 filing with you in January for some of the things that  
20 were left dangling last time such as an amendment on  
21 Watermaster compensation, amendment on the date of  
22 filing the annual report, and maybe a couple of other  
23 things, but probably file it in January, that's right.

24          THE COURT: Okay. Good enough. That's it I  
25 think.

26          MS. LEVIN: Thank you, your Honor.

1 MR. BOYER: Thank you, your Honor.

2 MR. LEMIEUX: Thank you, your Honor.

3 MR. LITTLEWORTH: Thank you, your Honor.

4 (Proceedings concluded.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA            )  
  )        ss.  
COUNTY OF SAN BERNARDINO    )

I, COLLEEN C. SOUTHWICK, Official Reporter of the Superior Court of the State of California, for the County of San Bernardino, do hereby certify that the foregoing pages 1 through 14 comprise a full, true and correct computer-aided transcription to the best of my ability in the above-entitled matter on November 5, 1998.

Dated this 17th day of November, 1998.

 CSR, RPR  
OFFICIAL REPORTER, C-9949