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SUPERIOR COURT OF THE STATE OF CALIFORNIA

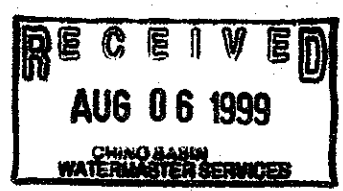
COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

DEPARTMENT R-8

HON. J. MICHAEL GUNN, JUDGE

CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
)
Plaintiff,)
)
vs.)
CITY OF CHINO,)
)
Defendant.)
_____)

Case No. RCV 51010



REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

Thursday, January 21, 1999

APPEARANCES:

For the Watermaster: Lemieux & O'Neil
By: MR. WAYNE K. LEMIEUX
Attorney at Law

COPY

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

1 RANCHO CUCAMONGA, CALIFORNIA; THURSDAY, JANUARY 21, 1999;

2 A.M. SESSION

3 DEPARTMENT H (RC)

HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5 (Appearing for Watermaster Services,

6 MR. WAYNE K. LEMIEUX, Attorney at Law.)

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

8 THE COURT: In the matter of Chino Basin
9 Municipal Water District versus the City of Chino, case
10 number RCV 51010. Regarding the compensation, all we have
11 is Mr. Lemieux here. There are no other attorneys.
12 Unless this is not properly noticed, there is nobody else
13 here.

14 MR. LEMIEUX: We have heard no opposition,
15 although this has been discussed at several meetings.

16 THE COURT: Regarding the compensation, for some
17 reason I looked in the file, I gave a guideline for
18 compensation or something to that effect. In September I
19 handed out a typed sheet. Do you happen to have the copy
20 of that? For some reason the -- it wasn't Wanda working,
21 and for some reason that didn't make the file.

22 MR. LEMIEUX: I do have a copy. I filled up a
23 file and brought the first copies in the new file.

24 THE COURT: This is my thought on that. Bearing
25 in mind that when I left my house this morning, you know,
26 I have an American flag out there, and when I took the

1 oath and swore to represent the people of this community,
2 I really was serious about it. I don't oppose people
3 being properly compensated. And I indicated that to you
4 last time. And when you mentioned nunc pro tunc, I was
5 thinking maybe the record would show otherwise.

6 I was thinking March would be appropriate. I
7 think people should be compensated. There was no
8 declaration as to why you wanted it back to March. I was
9 trying to think, these guys have really been working hard
10 and there might be some reasons for it, but I saw no
11 declaration in there what your reasons were for that.

12 MR. LEMIEUX: That's when it was first processed
13 by the Board, before it came to you.

14 THE COURT: However, the order that was given to
15 me last time had the potential for much mischief, as I
16 stated to you the last time. And that proposed order
17 approving compensation, which was not an amendment, which
18 I indicated to you you needed to amend the Judgment and
19 you agreed with that.

20 MR. LEMIEUX: Right.

21 THE COURT: But that order, even not amending
22 the Judgment, had been approved by the Advisory Committee
23 and had been approved by everyone who had come to court.
24 So now you have come to me with an order that says, if it
25 is approved by the same people that approved the last one,
26 and by the way, make it nunc pro tunc back to last March,

1 almost a year ago. And by the way, Judge, if you don't
2 like, or the people of this community don't like that
3 order or the compensation, that we will not specify to you
4 right now, all we say is leave it to us and trust us,
5 Judge. You can't do anything about it. And the people of
6 this community can't do anything about it as long as the
7 Advisory Committee and the members of the Board agree that
8 this compensation is proper.

9 It seems to me that -- I will let you be heard.
10 It seems to me that the same mischief that there was a
11 potential for last time is still present but multiplied by
12 a factor of five, probably. All right. You can be heard.

13 MR. LEMIEUX: A couple of things that you have
14 mentioned. The nunc pro tunc -- I may have misread what
15 the Court was saying on the nunc pro tunc. I had
16 understood when we met in September that you were willing
17 to nunc pro tunc it back to the time that they originally
18 started this at the Board level.

19 THE COURT: That could be. Whatever the record
20 says the record will say.

21 MR. LEMIEUX: If you want to go to September, or
22 not nunc pro tunc at all, that is certainly within your
23 power.

24 THE COURT: That's not my major issue. It is a
25 major issue when you consider that I don't know what you
26 guys have in mind down there, but you want me to nunc pro

1 tunc it.

2 MR. LEMIEUX: I will get to that.

3 The second thing is I don't want to give the
4 impression that this is a decision to be made by the
5 Advisory Committee and the Watermaster and you have
6 nothing to say about it. Nothing can be further from our
7 intention. This is -- it is in the Judgment now, and you
8 have the power over the Judgment. It isn't going to be
9 changed without your order. That's -- I agree with you
10 100 percent.

11 THE COURT: Maybe I am wrong. It goes back to
12 checks and balances, which I have always wanted in this
13 Judgment.

14 MR. LEMIEUX: Yes.

15 THE COURT: And that best serves the people of
16 this community. The people of this community have a
17 number of checks and balances regarding salary, number
18 one, the Advisory Committee and the Board members
19 themselves, and policing themselves; and if all else
20 fails, they also have a Judge that's duly elected. And
21 for me to give up the responsibility that -- the fiduciary
22 duty I have to the people is -- would be a disservice to
23 the people of this community. I am not willing to do
24 that. That's why I wrote the guidelines last time.

25 MR. LEMIEUX: I hear you. I am only explaining
26 how we got there. We wrote this up a couple of different

1 ways and tried to -- scratched our heads and were
2 satisfied we have got a Judgment and rules, and how do you
3 decide what goes where? This is written up in
4 anticipation of the very detailed rules, but we can write
5 this back up --

6 Now, there are a couple of approaches I could
7 suggest here. One is instead of saying the Watermaster
8 shall adopt rules, specified compensation, period. We can
9 say in this case the rules must be approved by the Court.
10 I am kind of lobbying towards keeping the specificity of
11 the detail in the rules rather than in the Judgment simply
12 because it is going to change from time to time. I think
13 right now \$100 a day might be reasonable, but we get some
14 inflation around here again and maybe five years from now
15 \$200 doesn't amount to \$100 today. And I would hate to
16 have to come back and request an amendment to the Judgment
17 because \$100 is embedded in the Judgment, but I understand
18 your point.

19 And we could say in this case the rules --
20 subsequently, the rules don't have to be approved by the
21 Court. And in this case the rules must be approved by the
22 Court, then we don't do a Judgment change, and --

23 THE COURT: Maybe I am reading too much into it,
24 Mr. Lemieux, and I apologize if I am. I am twice bitten
25 now. The last time there was a potential for mischief.
26 And I mean, we all can agree on that -- maybe we can.

1 This time it appears to me that there is a potential for
2 mischief, so that all of the sudden now from my standpoint
3 in trying to represent the people of this community again,
4 I mean, I am leery of giving up any power that the people
5 have to some people that have twice now tried to give an
6 order that I disapprove of.

7 Why should I do it?

8 MR. LEMIEUX: What I know that you don't are the
9 rules that we have drafted, and they go for a couple of
10 pages, and I think they -- they deal with your concerns.
11 We have incorporated not the whole sheet you handed out
12 verbatim, because I didn't understand that was your
13 intent, but we have incorporated many of the sentences in
14 the sheet you handed out in the rules. And what I would
15 like to propose is this: I would like to -- I would like
16 to give the rules to you to look at, and like I said, the
17 last file I had where the rules were in got too thick to
18 carry. I would like to give you the rulings and propose
19 that this order be amended to say that the Judgment be
20 amended to say the Watermaster can adopt rules subject to
21 Court approval. And I will give you the rules we have in
22 mind, because I think you will see that the kind of
23 details we have in mind are not quite the stuff you would
24 see in a Judgment.

25 THE COURT: There is a Judge permanently
26 assigned to this. What's wrong with dropping it off, even

1 if it has to be done once a year, once every two years?

2 MR. LEMIEUX: And amend the Judgment?

3 THE COURT: The problem that I see is once I
4 give up the judicial oversight that was put in the
5 original Judgment then I am -- I am abrogating one of the
6 checks and perhaps a balance --

7 MR. LEMIEUX: Yeah.

8 THE COURT: -- that the original drafters of
9 the Judgment had in mind. And as I am looking at it --
10 well, if there is a good reason, then fine. And you're
11 telling me, we'll save you, Judge, the time. I am willing
12 to put in the time. I have always been willing to put in
13 the time on this case, but I don't want to give up the
14 people's right to a check and balance that the people
15 presently have in exchange for nothing.

16 MR. LEMIEUX: I am not sure it would be a lot
17 less time if the Judgment said the rules had to be
18 approved by the Court, let's say, after notice of the
19 motion. I am actually approaching it from a different
20 spot and --

21 THE COURT: I am not saying you have to notice a
22 motion. If the Advisory Committee approved it and there
23 are some dates already set for the implementation of the
24 Optimum Basin Management Plan, there are certain
25 appearances that would be required around here. I am not
26 sure it would be an extra appearance, an additional

1 verbiage on any notice of future hearing.

2 MR. LEMIEUX: I am arguing toward -- and this is
3 not science, it is more art than science -- towards what
4 ought to be in an adjudication, Judge. And I guess I am
5 carrying some baggage, stay away from the level of detail
6 that we put in the rules. And there is nothing sacred
7 about that. We can make this Judgment more detailed.
8 That's all I am arguing.

9 THE COURT: Let's talk about baggage. There is
10 a rich history of politicians in all countries, it seems
11 like, thinking that something -- one thing or another may
12 be a gravy train. And I even mentioned the words gravy
13 train last time. And I don't want -- to me, as the saying
14 goes, and you have heard it on television recently, the
15 best political disinfectant is the light of the sun.

16 MR. LEMIEUX: Right.

17 THE COURT: And that's what I -- how I proceeded
18 on this whole case from the -- having the Internet
19 information that ordinary citizens could look up from the
20 convenience of their home. The whole thing has been to
21 open this up because there were allegations years ago,
22 before you were in this, that the Watermaster was too
23 secretive about what they did down there. I have tried to
24 open this up. I don't want to now close up something that
25 is critical. My opinion is that these people that work on
26 the Watermaster should be dedicated enough that this isn't

1 such a critical issue.

2 Sitting in my position they have come back with
3 me twice now, twice in a row, with things that I
4 disapprove of in the area of compensation. Apparently it
5 is a big issue to somebody, and they're taking me on is
6 how I see it from my position.

7 MR. LEMIEUX: We're trying to -- I don't think
8 this is a big issue, maybe with a couple of them. Nobody
9 is bending our ear and saying, "Lemieux, jack this thing
10 through." If this doesn't satisfy the Court, let me
11 assure you it is an honest mistake. And what I would
12 propose we do is to bring you back -- I would request that
13 this hearing be continued to March the 2nd at 10 o'clock,
14 which is the date that we have reserved for our next
15 motion.

16 THE COURT: Okay.

17 MR. LEMIEUX: And we will file a supplemental
18 after next Thursday.

19 Can you get this on the agenda for next
20 Thursday, Tracy? It should go back to the committees --
21 the Advisory Committee.

22 THE COURT: We won't need a full 30 days. Can
23 we get it the first meeting of February?

24 MS. STEWART: Yeah.

25 MR. LEMIEUX: After the first meeting in
26 February, we'll go through the committees and Watermaster

1 and develop a different version that has more specificity
2 in it and refile that with you. My belief is since this
3 is a continued hearing, I won't have to give 30 days'
4 notice to all the parties. If we do that in February, the
5 first Thursday in February --

6 MS. STEWART: The second Thursday, that would be
7 the 11th.

8 MR. LEMIEUX: If we have our meetings on the
9 11th -- well, that's the Advisory Committee meeting.

10 MS. STEWART: We can get it to the Board. We
11 will have to do it in reverse order. We will let the
12 Board know in a report on next Thursday and go back to the
13 Committee.

14 MR. LEMIEUX: We'll refile around February 13th.

15 THE COURT: Let there be no mistake. I believe
16 the people should be properly compensated, and that's why
17 I did that guideline when I turned you down last time. I
18 wrote the guidelines for compensation so that people
19 wouldn't misconstrue my intent. My intent is to properly
20 compensate people, but I don't want to create the
21 potential for mischief. In the things that we do today,
22 we're creating a legacy.

23 Hopefully, there is going to be water in this
24 valley long after we're all gone. What we do today
25 effects what happens then in compensation too. And I
26 just -- my bones are telling me that I need to have a

1 barrier up here, and maybe it shouldn't be there.
2 Everybody is getting along now. I don't want to create a
3 new firestorm, but this is an issue that I feel strongly
4 on, and I'm not going to give up judicial oversight.

5 MR. LEMIEUX: The Watermaster agrees with you.
6 And we don't want to create a gravy train either. It is
7 just now we have got to figure out the best language to do
8 that. There is no disagreement.

9 THE COURT: Good.

10 MR. LEMIEUX: Did you want to say something?

11 MS. STEWART: If it is okay.

12 THE COURT: Hopefully, you can more eloquently
13 convey my thoughts to those effected by this.

14 MS. STEWART: We do require the receipts for
15 anything. It is par -- it is subject to our audit
16 procedures. And we have an audit that is required to be
17 conducted each year and reported back, an independent
18 audit firm reports back to Watermaster, and that is made
19 part of the annual report, and there is -- there is a
20 number -- I apologize -- there are a number of things in
21 place that are internal, already built in within the
22 system with, for example, the budget when it is approved,
23 the Advisory Committee and the pools have to approve of
24 the budget, and any time there is going to be a change of
25 more than 20 percent in any category or there is a
26 modification of it, it has to go back through the process.

1 From the history it was felt because of the
2 number of parties and the representation that they were
3 providing that that was the part of the check that the
4 public had, because if the costs go up associated with
5 administering the Judgment and serving as Watermaster then
6 it ends up being in everybody's water rate. And all the
7 representatives have a responsibility back to their
8 constituents to make sure the water rates stay as low as
9 they can. The procedure was set up such that that's why
10 it goes through the process that it does. And currently
11 the rules and the regulations that Mr. Lemieux is
12 referring to, they aren't allowed to be changed unless
13 they go through this scrutiny, either upon prior
14 recommendation or with the approval of these
15 representatives, and that's how the public is supposed to
16 be in that context. That's how the public is represented
17 in the process.

18 We did a survey one time, and we have almost
19 700,000 people that are represented by the parties that
20 are coming to these meetings basically. That's a lot of
21 people. You're right. That's where the scrutiny comes
22 in. They see a voucher list every time, you know,
23 monthly, and they approve of the budget, and if they don't
24 like it, we don't get --

25 THE COURT: I regularly read your web page. And
26 I don't see how people are being compensated, but I have

1 seen one time an approval on one of your water boards of
2 somebody wanting some money to go to, I believe it was
3 Monterey for one of the conferences up there, and I was
4 astounded at the amount of money.

5 Anyway, also Mr. Page -- that's your name, isn't
6 it? Page? Is now coming to court. He wrote an article
7 about one of the water boards and a guy getting
8 compensated for having an interview with a reporter and
9 calling it a day's work. There is a rich history of
10 abuse, maybe not with this Watermaster, but I have a
11 responsibility to make sure it doesn't happen with this
12 Watermaster. And I want to be fair to everybody,
13 including the people of this community. And I know you do
14 too, Mr. Lemieux, your reputation has preceded you. You
15 have a very fine reputation. Be that as it may, we have
16 been here twice now with compensation issues that I don't
17 approve of, and I don't approve of this one. So now I
18 thought about this long and hard because things are going
19 good right now and I don't want to create a firestorm. I
20 don't want people to get any unhappier than they are, but
21 I do have a responsibility to this community, and the
22 Watermaster is an appendage of the Court.

23 MR. LEMIEUX: Yes.

24 THE COURT: So having said that, go back. I am
25 not opposed to a raise. I think \$25 a meeting is
26 ridiculously low. That's why I put it in the guidelines

1 for compensation. I don't want to be misconstrued. I am
2 not opposed to an increase in compensation, but I want to
3 have a vehicle that doesn't have the potential for abuse.

4 And I do think that there have not been with
5 respect to this Watermaster. I am not making an opinion
6 one way or another on that, but in this County right now
7 we even have things going on. There is that saying, the
8 best disinfectant is the light of day. Let's let the sun
9 shine on all these things being done, and one of the ways
10 is to bring those compensation issues before the Court. I
11 don't approve of what has been done with some of the
12 agencies, if those rumors are true.

13 If somebody has an interview with a reporter, I
14 think -- it is not proper to charge a day's pay for that.
15 And I indicated to you before that I don't think that when
16 somebody gets a lot of money to go to Monterey because
17 they want to go to Monterey and at the same time educate
18 themselves a little bit, that they should get a day's pay
19 for that. Judges don't. I go to those things. I travel
20 on Sunday. They are an appendage of the Court.

21 We went through that analysis before. I don't
22 charge the County overtime for Sunday. I would be
23 embarrassed to do that. And yet it seems there are
24 certain commonly accepted practices.

25 This is not a private enterprise. And it is not
26 a privately owned country club. It is an appendage of the

1 Court, and I expect the people to behave properly. And I
2 know they will if I have the proper safeguards in place.

3 MR. LEMIEUX: Judge, is the process I suggested
4 a moment ago acceptable that we bring this back March 2nd
5 as a continued motion?

6 THE COURT: Correct. That would be very
7 acceptable. What I am saying is I don't want you to come
8 back with a new method of computing this. I want you to
9 come back with a pay scale very specific for my approval
10 representing the people of this community. And I don't
11 want to have something come back at me again that we're
12 going to do something, Judge, you're not going to know
13 what we do, but we're going to do it and then you're not
14 going to have any say about it after we do it.

15 MR. LEMIEUX: I think we have your message.

16 THE COURT: Loud and clear?

17 MR. LEMIEUX: What would be the deadline for
18 filing supplemental papers? Can we do that by February
19 the 12th?

20 THE COURT: That's fine.

21 THE CLERK: The 12th is a holiday, court
22 holiday.

23 MR. LEMIEUX: The 17th? That gives us to the
24 following Wednesday to get the lists put together and --
25 that still gives us how many -- oh, like 10 days before
26 the court date, right?

1 THE COURT: Okay. That would be fine. I am
2 assuming that your reason is that I have had you doing all
3 this extra work since last year. And I know it has been a
4 lot of work. And that's why you want the nunc pro tunc,
5 but I think you should have a declaration as to why you
6 want me to nunc pro tunc it, because I just think it
7 should be done, especially if it is something -- well --

8 MR. LEMIEUX: Your Honor, thank you.

9 THE COURT: Okay. Sorry.

10 MS. STEWART: We're learning as we go.

11 THE COURT: You can go off the record.

12 (The proceedings in the above-entitled
13 case were concluded.)
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

DEPARTMENT R-8

HON. J. MICHAEL GUNN, JUDGE

CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
Plaintiff,)
vs.)
CITY OF CHINO,)
Defendant.)

Case No. RCV 51010

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)

ss

I, Heather R. Moore, Official Reporter of the Superior Court of the State of California, for the County of San Bernardino, Rancho Cucamonga Division, do hereby certify under penalty of perjury that the foregoing pages numbered 1 through 16, comprise a full, true and correct computer-aided transcription of the proceedings held in the above-entitled matter on Thursday, January 21, 1999.

Dated this 28th day of July, 1999.

Heather R Moore C.S.R.

Official Reporter, C-10294