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SUPERIOR COURT OF THE STATE OF CALIFORNIA

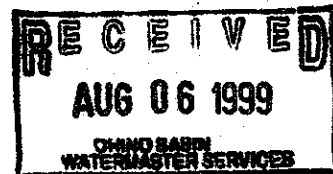
COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

DEPARTMENT R-8

HON. J. MICHAEL GUNN, JUDGE

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

Case No. RCV 51010



REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

Tuesday, March 2, 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; TUESDAY, MARCH 2, 1999;

2 A.M. SESSION

3 DEPARTMENT R-8

HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5 (Appearing for the Watermaster, MR. WAYNE K.

6 LEMIEUX, Attorney at Law.)

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

8 THE COURT: Let's go on the record in the case
9 of Chino Basin Municipal Water District versus the City of
10 Chino, Case Number RCV 51010. The record should reflect
11 Mr. Lemieux is present.

12 Are there any other attorneys present?

13 MR. LEMIEUX: No, your Honor.

14 THE COURT: Okay. The annual reports will be
15 received and filed. The motion to change the date of
16 filing the annual reports to -- January 31st, I believe is
17 the date you wanted; isn't it?

18 MR. LEMIEUX: Yes.

19 THE COURT: That will be granted.

20 With respect to the --

21 MR. LEMIEUX: Your Honor, I have prepared an
22 order, would that be helpful?

23 THE COURT: I was looking for it.

24 MR. LEMIEUX: Yeah, may I approach the Bench?

25 THE COURT: Yeah, because I -- actually, I was
26 discussing it with you just a second ago.

1 MR. LEMIEUX: No, I brought it with me.

2 THE COURT: Okay.

3 MR. LEMIEUX: I learned last time not to hand
4 orders in in advance.

5 THE COURT: Okay. Let me go to the Local
6 Storage Agreement with Monte Vista Water District. That
7 is approved.

8 The Cyclic Storage Agreement with the
9 Metropolitan Water District of Southern California,
10 pursuant to paragraph 1.2.2 of the Chino Basin Watermaster
11 Uniform Ground Water Rules and Regulations is extended to
12 December the 31st, 1999, by Amendment.

13 The interventions of Ambrosia Farms, California
14 Speedway Corporation, City of Fontana, Chin Lee, Frank
15 Lizarraga, Mountain Vista Power Generation Company, LLC,
16 Elizabeth H. Rohrs, Paul -- is it, Russavage?

17 MR. LEMIEUX: I think so.

18 THE COURT: -- SNS Dairy, and Wineside 45, and
19 Richard Van Loon are approved.

20 The 21st annual report of Watermaster is
21 received and filed. The Production Summary for 1997/98,
22 is received and filed.

23 MR. LEMIEUX: That's the language we put in the
24 motion, the Section 48 Amendment.

25 THE COURT: All right. That's the one dealing
26 with the setting of the compensation.

1 MR. LEMIEUX: Moving it off to the 31st.

2 Your Honor, the Metropolitan Water District's
3 counsel has asked me to inform the Court that though the
4 Watermaster has approved that Cyclic Storage Agreement,
5 Metropolitan hasn't. I told them that doesn't bother me.
6 It is really not before the Court today, but I told them I
7 would tell you.

8 THE COURT: All right.

9 Now, on the deadline. Was there anything in
10 there on moving the deadline from the 31st without Court
11 approval?

12 MR. LEMIEUX: No, your Honor. The --

13 THE COURT: Okay.

14 MR. LEMIEUX: The current year the Court
15 approved a late filing to get this motion in front of you,
16 and we believe the January 31st date now will be feasible
17 and we don't need to ask --

18 THE COURT: -- for further Court approvals?

19 What I meant is it is not going to be one of
20 those situations where we need the Advisory Committee's
21 approval. We can change the date again if we wish.

22 MR. LEMIEUX: No. No.

23 THE COURT: I want to make very clear that that
24 would not be acceptable. January 31st is good. I also
25 wanted to caution -- I haven't checked. I have been busy
26 in the last week, I believe it is, but I think it is as

1 soon as last week I was looking at the web site and
2 looking at agendas for December 10th of 1998; and we're in
3 March of 1999.

4 So I am concerned that again we're talking about
5 keeping that agenda up to date on the web site for the
6 reasons I articulated in the past. And that is that there
7 were some averments way back when that the public wasn't
8 fully communicated with with respect to Watermaster
9 activities. There was some insinuation that Watermaster
10 intentionally, I guess that might be the farthest stretch
11 of it, intentionally hid things from the public. They
12 were ordered to have a web site, in part to alleviate the
13 fears of those who expressed concern, what is it, three
14 years ago, now? But I am concerned that -- I can't tell
15 what's going on by looking at the web site either.

16 I can't tell what happened a long time ago, but
17 also, I can't tell what's coming. And the whole purpose
18 of that on the agendas was to let the public know if there
19 was something they needed to be heard on. What's the
20 purpose of having a public meeting if the public doesn't
21 know what's going to happen ahead of time? Every night of
22 the week you can go turn on Channel 3 around here of the
23 cable and one night you can see Montclair, the next night
24 you can see Ontario, Upland, each on a different night.
25 There are all kinds of meetings going on.

26 A person can't possibly be physically present at

1 every meeting. If they have an agenda, they can better
2 inform themselves of what meetings they should go to.

3 MR. LEMIEUX: Right now the Watermaster is
4 especially busy with the Basin Management Program, trying
5 to wrap that up. It seems like we're meeting every day.
6 It only seems that way.

7 THE COURT: I have had you here often, and I
8 take that into consideration too.

9 MR. LEMIEUX: What I was going to say, we're
10 trying to -- the Watermaster is trying to decide on an
11 appropriate staffing level. If you can authorize a few
12 more positions, they're trying to go slow to make sure
13 this isn't just an aberration, that we're really busy now,
14 but won't be busy. Probably the web site is not in
15 everybody's mind as the first priority. I will certainly
16 transmit the Court's view on that.

17 THE COURT: I think I asked Traci last time you
18 guys were here, and it is -- it doesn't take that long the
19 way I --

20 MS. STEWART: It is a high priority. I need to
21 check into it. My understanding is those things have been
22 being put up within two days of them being mailed out, and
23 so this is surprising. Minutes have been as much as a
24 month delayed since the last time that, you know, we
25 talked about the minutes on the web site. The agenda
26 should be up there. I really need to check on that.

1 THE COURT: I am trying to get it up right now.
2 I will tell you exactly what you have. I have you on my
3 favorites now.

4 MS. STEWART: Okay. Boy.

5 THE COURT: Your agenda right now of upcoming
6 meetings -- it doesn't say what's going to be discussed.
7 It says 2-11-99, Thursday, is Joint Pools and committee
8 meetings. And, well, actually, you go to 2-25 for Joint
9 Pools and committee meetings. It doesn't say what's on
10 the agenda. Maybe in hypertext we can get it up.

11 MS. STEWART: Yeah.

12 THE COURT: So it has got the agenda for 2-25,
13 four items on there.

14 MS. STEWART: That would have been the OBMP
15 joint meeting, four items. It should have been up one
16 week, approximately, prior to the meeting.

17 THE COURT: You have got prior meeting agendas.
18 March --

19 What meetings did you have in March?

20 MS. STEWART: We have the 11th and the 25th.
21 They're not up yet. They will be out in the mail the
22 11th, this Friday; and it should be up on the web over the
23 weekend. And then the 25th we'll be up the week before
24 and out in the mail the week before, but that's the
25 challenges. We did it, translated it, and then our
26 computer person comes in and posts it over the weekend.

1 THE COURT: You have done something just
2 recently. I checked over a week ago and you were way
3 behind. I confirmed it. I said, "Hey, looks like they're
4 a couple of months behind." I think it was December.
5 Now, you have drafted minutes for February 11th.

6 MS. STEWART: We have been trying to keep it a
7 high priority. Besides the meetings, we have had some
8 illnesses and jury duty and things like that that have
9 come into play. We really have been making a --

10 THE COURT: You must have been omniscient. You
11 knew that I was going to pull this on you today, didn't
12 you?

13 MS. STEWART: No.

14 THE COURT: You're fairly good -- you're better
15 today. Anyway, the draft minutes should be done right
16 away after these meetings, and draft minutes means just
17 that, they're not approved because your meetings sometimes
18 take such a long time to have, then they meet and say,
19 okay, item number one on the draft minutes is incorrect.
20 It should have been that. Okay. We'll amend that. Then
21 they're approved as amended and their posted. I
22 understand that. In the past they haven't been that
23 timely, but it looks like you're doing better on that.

24 Now, on the compensation, what I am concerned
25 about on the compensation is that when the compensation
26 was originally set, the Pools, the Advisory Committee,

1 everybody participated and signed off on that
2 compensation. I think the compensation is ridiculously
3 low. Don't get me wrong. And I have no problem with the
4 compensation that you have set presently. What you want
5 to do in the future, though -- and you can walk right out
6 of here when I sign off, which I am not going to -- you
7 can go down and change it back to the compensation package
8 that you tried to have me sign off on in September; that's
9 the way I read that one order.

10 MR. LEMIEUX: Where at, your Honor?

11 THE COURT: In your order, in your motion.

12 MR. LEMIEUX: We have recommend now that
13 Paragraph 18 of the Judgment be changed. And on
14 compensation, the Judgment would say, the Watermaster
15 could be paid up to, and it could be paid less, up to \$125
16 and up to attend meetings. Last time we were here I think
17 we were asking for 10 per month.

18 THE COURT: That doesn't concern me as much. I
19 figure toward the end of the Optimum Basin Management Fund
20 I want them to be compensated. I don't want them to shirk
21 their duty because they feel they're not being
22 compensated. Having said that though, I thought I saw --
23 maybe I was looking at an older order where the
24 Watermaster, in conjunction with the Advisory Committee,
25 could adopt and modify it without coming to Court.

26 MR. LEMIEUX: That's not in there. In fact, let

1 me give you a proposed order for this, if I can approach.

2 THE COURT: So if that's not in there, that's
3 the only problem I have. I don't want to give up judicial
4 control of that. And it is not a reflection on anybody.
5 It is a reflection on what potentially could occur and
6 actually what has occurred in the past.

7 And I see Mr. Page back there again today, but I
8 have in the back of my mind, among other things, a time
9 when one Watermaster Board Member was interviewed by
10 Mr. Page and he charged it off as a day's work, and
11 Mr. Page caught him; isn't that right, Mr. Page?

12 MR. PAGE: Yes.

13 THE COURT: So that type of abuse is something
14 that I want to make sure never happens again. To be
15 honest with you, that's what I am -- it is the potential
16 for mischief that I want to circumvent, but in that --
17 having said that, if that's your representation, that it
18 would be still the Court's final say, I will sign off on
19 this. I guess I must have been looking at an old order.

20 MR. LEMIEUX: Thank you, very much, Judge. The
21 nunc pro tunc on this part of the order is carefully
22 worded. As to compensation we're going back to --

23 THE COURT: You want to go back to March? I had
24 some question if you wanted to go back to September or
25 March. From our conversation there was a specific date
26 you wanted.

1 MR. LEMIEUX: Back to the date where the -- it
2 is September. I am sorry. It is back to the date where
3 the -- we thought we could do the large -- the higher
4 compensation, mistakenly believed that, because the Judge
5 had indicated --

6 THE COURT: That was back in March, wasn't it,
7 Traci?

8 MR. LEMIEUX: You indicated in September we
9 could nunc pro tunc it.

10 THE COURT: I talked to you last time you were
11 here and I said, "Well, there is something that is not on
12 paper." Viscerally I know there is a reason you want to
13 nunc pro tunc it. Just tell me.

14 MR. LEMIEUX: There are two reasons. When we
15 first presented the motion we indicated to the Court that
16 the Watermaster had believed, it turns out erroneously,
17 they could start paying the higher amount right away, so
18 people hadn't received it. You indicated in September,
19 "Well, it is nunc pro tunc when we finally get it right."
20 Now, the situation with expenses is just the opposite.

21 Prior to today the expense -- the Judgment said
22 very little about expenses. It said, "adopt a rule." And
23 the Watermaster had adopted a rule and had a more liberal
24 expense policy prior to today. So today we don't want to
25 nunc pro tunc that back because that would create some
26 hardship. As of today the new expense policy goes into

1 effect.

2 THE COURT: Okay. And --

3 MR. LEMIEUX: Now the order.

4 THE COURT: The way it looks now is that you get
5 the same package as I get as a Judge. If you go to the
6 seminar it is paid for, but you don't get a day's pay for
7 going to the seminar, right? On the weekend, for example,
8 if it is the thing that you guys have in Monterey --

9 MR. LEMIEUX: Right.

10 THE COURT: -- and LaQuinta. You go there.
11 You're donating your time. The benefit to the Watermaster
12 is you're better educated on water activities, and the
13 Watermaster will pay for the seminar, your lodging, and
14 travel and your food --

15 MR. LEMIEUX: Your Honor --

16 THE COURT: -- but not your wages.

17 MR. LEMIEUX: The order that I presented to the
18 Court doesn't have the nunc pro tunc that I just
19 discussed. Did you want that in the order? Should that
20 be in the clerk's order?

21 THE COURT: It really should be in the order
22 that I will nunc pro tunc it.

23 MR. LEMIEUX: Let me --

24 THE COURT: You want to do another one?

25 MR. LEMIEUX: Yeah, I will give you --

26 THE COURT: Because it is tricky how you nunc

1 pro tunc it. You're not nunc pro tuncing the expense
2 provision.

3 MR. LEMIEUX: Yes. So I will revise the order
4 that I just handed to you on compensation to do that.

5 THE COURT: You want to revise it and submit it
6 at a later date?

7 MR. LEMIEUX: I will mail it in. I won't even
8 pick the other one up until then.

9 THE COURT: Yeah. That was my only concern. I
10 don't -- I think that when they developed that Judgment
11 everybody participated in it and there was -- to this day
12 not everybody agrees on everything, and by that one
13 Judgment that I saw -- it must have been an old one with
14 just the Watermaster Advisory Committee agreeing amongst
15 themselves they can do whatever they want, that's not how
16 the people who originally signed off on the Judgment
17 contemplated it. And I am not going to give up that power
18 now that we have it -- the Court has it. Okay?

19 MR. LEMIEUX: Your Honor, I would like to
20 inquire something of the Court. Obviously, we didn't make
21 a motion, so this is almost off the record, I guess.
22 We're going to be finishing up the OBMP at the end of the
23 summer, early fall. With the Court's permission we'll be
24 talking to your Special Master about setting up a hearing
25 schedule.

26 THE COURT: Okay.

1 MR. LEMIEUX: Do you have a preference?

2 THE COURT: It was already set. Have you seen
3 that timeline?

4 MR. LEMIEUX: Do you have a preference? Should
5 we sit with her and have hearings before we come to you,
6 or would you like us to schedule several days of hearings
7 here?

8 THE COURT: At the time you guys are really
9 doing good. I am impressed with the progress that's being
10 made. At the time I set that up I think I had a September
11 meeting to report on the status of the negotiations with
12 the State Department of Water Resources.

13 MR. LEMIEUX: Yes.

14 THE COURT: And an October meeting --

15 MS. STEWART: I think we just went through this
16 in the last month and a half. I think in September -- for
17 October 28th we're supposed to let you know what the
18 status of the DWR negotiations are, what everybody feels
19 about the continuance of Watermaster as a nine-member
20 board, and we're supposed to submit to you the OBMP
21 document. We have set up the timeline so that we start
22 working with the Special Referee and provide her with a
23 draft so we can get her comments. And you can get her
24 comments by that September filing time and then be in
25 court on October 28th is how we interpreted the, you know,
26 the process.

1 THE COURT: Yeah, I haven't talked to Anne in a
2 while, about a month ago maybe.

3 MR. LEMIEUX: On the tour?

4 THE COURT: But if you're going the way you're
5 going, it looks good for the five-year appointment. The
6 one concern I had, and I told Anne at the time that I was
7 concerned about the web site, and if I lose control of
8 things, if they're this bad right now -- but you caught
9 up. To me that's kind of a gauge, a barometer of how well
10 you're doing. If I can look at that web site and I can
11 see that it's way behind and they're letting that slip
12 right underneath my nose, what would they do if I
13 relinquished control? What would they do? And now you're
14 getting caught up on that even. And the amount of
15 meetings you had is impressive. And the report I got from
16 Joe Scalminini is you're actually making great progress.

17 MR. LEMIEUX: A lot of progress. The document
18 is going to be thick. It is going to be impressive, I
19 think.

20 THE COURT: And not only that, you know what was
21 impressive is the fact that when I first started out I was
22 concerned that Scalminini and Wildermuth wouldn't work
23 together.

24 MR. LEMIEUX: They're working fine.

25 THE COURT: That appears to be a good match up
26 from what I hear from Scalminini, anyway. I haven't

1 talked to Wildermuth.

2 MR. LEMIEUX: Would your Honor anticipate when
3 we present the OBMP to you that after you have had a
4 chance to look at it you would want to schedule a hearing
5 and have us bring experts in to testify to it?

6 THE COURT: I don't think so. I have got my own
7 expert advising me, right now, Anne Schneider.

8 MR. LEMIEUX: We should maybe concentrate, ask
9 Anne if that's what she would like to do.

10 THE COURT: If she thought it was necessary,
11 that would be one thing, but I don't at the present time
12 contemplate it. If you think it is necessary, that's
13 fine. You can always file a petition in the court. I
14 mean, as they say, you can do any filing you want. The
15 information that the special master is giving you is that
16 things are going really well with a few exceptions, and
17 they're working on those. And that's the same report I
18 get from Joe Scalminini. And the only concern actually
19 from the last conversation I had with Anne was, "Can you
20 hint to those guys that I am looking at that web site?"
21 And that was what I -- this was my biggest comment is she
22 thought you guys were making progress.

23 Mr. Lemieux, your qualifications -- you're known
24 state wide, and we're happy with you.

25 MR. LEMIEUX: Thank you.

26 THE COURT: And Joe Scalminini -- I had a chance

1 to talk with him on the day we took the tour and he was
2 here. Was it two weeks ago?

3 MS. STEWART: The 7th.

4 THE COURT: Somebody dropped him off. I drove
5 him down to the airport and sat with him for awhile at the
6 airport, and his reports were just short of scintillating
7 as far as the progress that was being made. He said there
8 were a couple of things, and that the meetings are going
9 very smoothly, that the people are receptive to some of
10 the suggestions that he has made, and so I don't -- unless
11 something really -- actually, the way I had it envisioned
12 is that it would be set -- somebody would have the motion
13 to approve the new Water Board, and if somebody felt
14 appropriate they would object, and at that point, maybe we
15 would have -- we would take testimony. If nobody
16 objects -- right now I didn't see any reason.

17 MR. LEMIEUX: We're trying to move in that
18 direction then. We'll talk to Anne, and -- it is just we
19 need a little bit of pre-planning. If it was going to be
20 a full-scale hearing here, we'd have to line people up.

21 THE COURT: No, actually, maybe I am being
22 misinformed or maybe I have misinterpreted the information
23 I am getting. My impression is that a lot has happened in
24 the last three years.

25 MR. LEMIEUX: Oh, no. That's certainly true.

26 THE COURT: Stuff that maybe should have been

1 done a long time ago. That is water under the bridge. No
2 pun intended.

3 MR. LEMIEUX: Water under the ground.

4 THE COURT: But the reports I get from Anne
5 Schneider and from Joe Scalminini, from what I have seen,
6 things are happening. And that one comment -- I was
7 reading the transcript over, and one time I said, we can
8 all roll up our sleeves and get to work and try to make
9 this water fit to drink, or it can turn into a cess pool.
10 People have rolled up their sleeves and they're working.
11 That's my impression. Maybe I am wrong.

12 MR. LEMIEUX: I think that's correct.

13 THE COURT: When somebody files a motion to make
14 it a five-year appointment and I get an objection, maybe
15 my eyes will be opened. I am quite happy with being not
16 so much a jerk, but being the Judge on this case. I am
17 pleased with what's happened in the last -- at least the
18 last year.

19 MR. LEMIEUX: Good.

20 THE COURT: If not even more.

21 MR. LEMIEUX: Thank you, your Honor. I will get
22 the new order over.

23 MR. PAGE: Your Honor, since you addressed me on
24 the record, I wondered if I could say something. My name
25 is Bob Page, P-a-g-e, from the Daily Bulletin. There was
26 a former Watermaster Board Member who was given a day's

1 service compensation for an interview with the press. He
2 was not compensated by the Watermaster budget, though,
3 that was a -- the previous formation of the Watermaster
4 Board, when it was the Chino Basin Municipal Water
5 District's Board and Chino Basin Municipal Water District
6 compensated them on that. The person who paid for a day's
7 service for being interviewed was not the Watermaster. I
8 don't want anybody to get the wrong impression.

9 THE COURT: Still, it was wrong. No matter
10 whose budget it came out of, he shouldn't have done
11 that -- without mentioning any names. Okay? And that's
12 what I don't want to see in the future. Okay?

13 Mr. Lemieux, it's been a pleasure.

14 Traci.

15 (Proceedings in the above-entitled matter
16 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, et al.,)
Defendants.)
_____)

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 18, comprise a full, true and correct computer-aided transcription of the proceedings held in the above-entitled matter on Tuesday, March 2, 1999.

Dated this 28th day of July, 1999.

Heather R Moore C.S.R.

Official Reporter, C-10294