

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION
3 DEPARTMENT R-8 HON. J. MICHAEL GUNN, JUDGE
4

5 CHINO BASIN MUNICIPAL WATER)
6 DISTRICT,)

7 Plaintiff,)

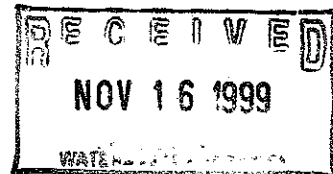
8 vs.)

9 THE CITY OF CHINO,)

10 Defendant.)
11

COPY

Case No. RCV 51010



12 REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

13 *Hearing Re: 5-Year Appointment of Watermaster*

14 Thursday, October 28, 1999
15

16 APPEARANCES:

17 For Monte Vista
18 Water District:

McCormick, Kidman & Behrens
By: MR. ARTHUR G. KIDMAN
Attorney at Law

19 For Inland Empire
20 Utilities Agencies:

Cihigoyenetché, Grossberg &
Clouse
By: MR. JEAN CIHIGOYENETCHE
Attorney at Law

22 For the Agricultural
23 Pool:

Reid & Hellyer
By: MR. DAN G. MCKINNEY
Attorney at Law

24 (Appearances continued on the next page.)
25

26 Reported by:

HEATHER R. MOORE, C.S.R.
Official Reporter, C-10294

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2 APPEARANCES: (Continued)

3 For the Chino Basin
4 Water Rights
5 Adjudication:

Office of the Attorney General
By: **MS. MARILYN S. LEVIN**
Deputy Attorney General

6 For Watermaster
7 Services:

Lemieux & O'Neil
By: **MS. TARI L. CODY**
Attorney at Law

8
9 For the City
10 of Pomona:

Lagerloff, Senecal, Bradley,
Gosney & Kruse
By: **MR. THOMAS S. BUNN, III**
Attorney at Law

11
12 For the City of Chino:

Law Offices of
Jimmy L. Gutierrez
By: **JAMES E. ERICKSON**
Attorney at Law

13
14
15 For the Three
16 Vallies Municipal
Water District:

Brunick, Alvarez & Battersby
By: **MR. STEVEN M. KENNEDY**
Attorney at Law

17 For CCWD & Western
18 Municipal Water
19 District:

Best, Best & Krieger
By: **MR. GENE TANAKA**
and
MR. JIM MORRIS
Attorney at Law

1 HEATHER R. MOORE, C.S.R. #10294
2 8303 Haven Avenue, Department R-8
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5 November 15, 1999

7 I N V O I C E

8
9 To: Watermaster Services - Attention: Mary
10 Re: Chino Basin Municipal Water District
11 versus The City of Chino Case Number RCV 51010

12 Enclosed please find a certified copy of the
13 Reporter's Transcript and an ASCII disk of the Oral
14 Proceedings for the date of Thursday, October 28, 1999.

15 The original has been lodged with the Court.

16
17
18 Original & 1 copy
19 38 pages @ \$3.00 per page

20
21 Total cost: \$114.00
22 Less deposit: \$000.00
23 Balance due: \$114.00

24
25 T H A N K Y O U
26

1 RANCHO CUCAMONGA, CALIFORNIA; THURSDAY, OCTOBER 28, 1999;

2 1:30 P.M.

3 DEPARTMENT R-8

HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5 (Appearances as listed on the cover page.)

6
7 (Heather R. Moore, C.S.R., Official Reporter, C-10294)

8 THE COURT: Let's go on the record then in the
9 case of Chino Basin Municipal Water District versus the
10 City of Chino, et al., case number RCV 51010.

11 We'll start with Mr. Kidman and go over to
12 Mr. Cihigoyenetché.

13 Mr. KIDMAN: Thank you. Arthur Kidman for the
14 moving party, Monte Vista.

15 MR. CIHIGOYENETCHE: Jean Cihigoyenetché on
16 behalf of Inland Empire Utilities Agencies.

17 MR. MC KINNEY: Dan McKinney on behalf of the
18 Agricultural Pool of the Chino Basin Watermaster.

19 MS. LEVIN: Marilyn Levin appearing for the
20 limited purpose on behalf of the Chino Basin Water Rights
21 Adjudication.

22 MS. CODY: Tari Cody on behalf of the
23 Watermaster.

24 MR. BUNN: Thomas S. Bunn, Lagerlof, Senecal,
25 Bradley, Gosney & Kruse on behalf of the City of Pomona.

26 MR. ERICKSON: James Erickson on behalf of the

1 City of Chino.

2 MR. KENNEDY: Steve Kennedy on behalf of Three
3 Valleys Municipal Water District.

4 MR. TANAKA: Gene Tanaka on behalf of Cucamonga
5 County Water District and Western Municipal Water
6 District.

7 THE COURT: Okay.

8 MR. MORRIS: Jim Morris on behalf of Cucamonga
9 County Water District and Western Municipal Water
10 District.

11 THE COURT: Double teaming me today?

12 Ms. Levin, she does a preemptive strike with her
13 announcement of presence. You used to be on behalf of the
14 State of California. Now it is very limited purposes in
15 there.

16 MS. LEVIN: You caught that?

17 THE COURT: Oh, did I.

18 Let me give you a couple of preliminaries since
19 I -- since I am talking to Ms. Levin right now. Then
20 we'll get back to Mr. Kidman's usual good work on his
21 paperwork.

22 But Ms. Levin, on your order, there was one
23 portion -- we're going to redo it here. It was good,
24 except that -- what was this? There was one omission.
25 And I don't know if I have it right here or not.

26 The omitted portion is, and for input and

1 consideration as to the continuance of the nine-member
2 board as Watermaster after June 30th, 2000.

3 MS. LEVIN: What page are you on?

4 THE COURT: Parenthetically, top of page 3, I
5 believe it was.

6 I am going to -- we'll change it. Apparently,
7 we got some time lines. Watermaster called us, and
8 they're not going to be here for an hour and a half or so
9 with a new time line.

10 MS. LEVIN: That's correct.

11 THE COURT: I will redo the orders and try to
12 incorporate the new time line as it meshes with what we
13 want to accomplish here.

14 I will give you some preliminary thoughts here,
15 and we'll get to what Mr. Kidman has noticed for today and
16 a lot of this you can be thinking about, because we won't
17 do anything today. We've got it on November 18th. Other
18 than what Mr. Kidman was talking about, as far as a
19 termination of the current Watermaster, my thought is,
20 extend it out to the end of the calendar year of 2000. So
21 December the 31st, the year 2000, rather than the current
22 June the 30th.

23 That will relieve some of the stress on the
24 employees and give you guys more time to plan. I
25 understand that there are a couple of employees out on
26 stress right now. And I know I sent an e-mail to the

1 Watermaster of which you guys can have a copy of the
2 response. I got a response. Is Traci here? I got a
3 response, and it stated that two employees are out on
4 stress.

5 MS. STEWART: One is back and one is out still.

6 THE COURT: So that's a consideration. We need
7 every -- the e-mail I sent was like a citizen would. I
8 got a quite lengthy -- I will give everybody the response
9 back from Traci, but it was sent to Watermaster from me
10 inquiring about the minutes. Anyway, apparently there
11 aren't any since July, and there is a reason, which is in
12 Traci's e-mail back to me, which I get the point. I got
13 the point before, actually.

14 And I mentioned that before that I don't want to
15 create any additional stress on the employees. I know as
16 we approach June the 30th, everybody -- there is a
17 heightened degree of stress as far as their future
18 employment status. And that's not my intention to create
19 that additional stressor in their lives or anybody's lives
20 to do with Watermaster. Things, as convoluted as they
21 are, are moving forward, I think. So I don't want to be
22 the harbinger of doom. Yet I want everybody's feet to the
23 fire.

24 Regarding Mr. Kidman's motion, my general
25 thoughts are, it is well taken. The Regional Water
26 Quality Control Board hasn't done anything. And I don't

1 think there can be any injunction. I don't think I can
2 force them to do anything. There is no articulated action
3 on their part at this time. They're holding hearings, but
4 until they make findings, I don't think there is anything
5 I can do.

6 I do take note that the State of California is
7 in here. And Ms. Levin must have taken note of that, too.
8 That is kind of an unusual position we do have the State
9 of California in, and that old saying, you can't have your
10 cake and eat it to. Maybe we do have jurisdiction over
11 the State of California.

12 Mr. Kidman was good enough to add to his motion
13 the judgments out of Orange County. And in the
14 stipulation portion of the judgment, the parties
15 stipulated that Orange County had jurisdiction, but it
16 didn't say "exclusive jurisdiction". It just said
17 "jurisdiction". And my preliminary thought is that San
18 Bernardino County has jurisdiction also. The ground water
19 is underneath the citizens of San Bernardino County in
20 this end of the county.

21 Yes, Mr. Kidman?

22 MR. KIDMAN: Thank you, your Honor. I -- the
23 motion that was made by Monte Vista Water District was an
24 intentionally limited motion. There has been another
25 paper that I have seen a draft -- and I don't know if it
26 was filed -- prepared by Mr. Lemieux, that I think takes a

1 more aggressive -- or urges the Court to take a more
2 aggressive position.

3 We have to recognize that there is a kind of a
4 funny jurisdictional overlap here. And I say funny,
5 meaning strange with this State Water Resources Control
6 Board. And I wanted to clarify that, that your Honor
7 mentioned the Regional Water Quality Control Board, which
8 is sort of a subsidiary of the State Board that deals only
9 with water quality issues. And there are some nine of
10 those in the State. And they all are subject to a review
11 on water quality issues with -- by the State Water
12 Resources Control Board. The State Water Resource Control
13 Board has jurisdiction not only over the water quality
14 questions in the State, but also has jurisdiction over
15 surface water and appropriations.

16 And so we have that jurisdiction. We have the
17 jurisdiction of the Orange County court, which was dealing
18 with some surface water issues and what I call an AB
19 pattern. This was followed in the Santa Ana case. It has
20 been followed in the San Gabriel River. Some other areas
21 that I can't name have started out with the idea of
22 dividing the waters between an upper basin and a lower
23 basin. And then once that is done, then dividing the
24 water in say, for instance, in this case, in part of the
25 upper area.

26 So the Orange County court has jurisdiction, the

1 San Bernardino court has jurisdiction. The State Board
2 has some level of jurisdiction. And how those three mesh
3 is truly a mysterious thing. I don't know that any lawyer
4 will be able to give you an authoritative answer, and if
5 he says he can, you should doubt it.

6 THE COURT: My thoughts went back to *Marbury*
7 *versus Madison*. Then I have my own subjective position on
8 that.

9 MR. KIDMAN: There are some interesting aspects
10 of that, the administrative branch on the one hand, and
11 the judicial on the other. To what extent the Court could
12 go into the process of actually commanding the State of
13 California to come in here and do something in the context
14 of this case, I don't know. What I do think, though,
15 would be appropriate --

16 THE COURT: That's not ripe at this point.
17 That's what my initial comments were aimed at. It is not
18 that that subject may not ripen in the future. It is that
19 right now it is not ripe, vis-a-vis your other Inland
20 Empire utilities agency, Western -- people like that -- or
21 agencies like that certainly, I think that could be done.
22 I thought your review idea was actually a good idea,
23 although, how often and -- I think that depends on when
24 these meetings are going to be as far as the reporting.

25 MR. KIDMAN: Right now what Monte Vista has
26 requested or suggested really is 60-day report, but the

1 real idea is to make sure that everybody in the Chino
2 Basin is wide awake, given a heads up in the State Board
3 proceedings, and if it has any impact on the water rights
4 that were reserved for the upper basin I object area in
5 the Orange County case. That is kind of the limited
6 extent of the motion, was to make sure that the Court and
7 all the parties in this case are aware of it. Now, I
8 became aware, after the papers were prepared, that Orange
9 County Water District actually is a party to the Chino
10 Basin case, to this case.

11 THE COURT: Actually, they had a member on the
12 Advisory Committee at one time.

13 MR. KIDMAN: They are a producer entity in the
14 property that they own behind Prado Dam.

15 THE COURT: Yeah. Ms. Stewart took me down
16 there and showed me it. I am intimately aware. By the
17 way, my thoughts on the derivative of the State of
18 California having this big umbrella go down through the
19 Water Control Board, all the way on down, but that --
20 that's -- I think if it ever -- push come to shove, I do
21 have jurisdiction, but that's a preliminary thought.

22 MR. KIDMAN: There are some -- I think that
23 the -- with the awareness of what might be the
24 implications of the Orange County Water
25 District's application to appropriate 506- or 7- or
26 8,000 --

1 THE COURT: Versus 42,000 acre feet a year, plus
2 whatever hits the dam.

3 MR. KIDMAN: More of the parties within the
4 Chino Basin have become concerned about that.

5 THE COURT: I have got some good -- I am not
6 sure where it leads. And it is for other people with more
7 expertise in water than a judge, but it is kind of
8 interesting -- you make an interesting observation on the
9 amount of hardscape effecting the amount of water that
10 goes down into the dam, if I read you correctly, you say
11 that you have more water going off roofs, down into the
12 drains, down into flood control channels that the Army
13 Corps of Engineers has concreted over, instead of having
14 more water go down into the ground water, it is going down
15 to the dam, and Orange County has -- the way I understand
16 it -- they have the 42,000 acre feet, plus whatever hits
17 the damn is a free for all. So --

18 MR. KIDMAN: That's my understanding too.
19 Although there is what I would call a reserve right to --
20 as long as the 42,000 is there for the upper basin areas
21 to make use of, conserve, etc., any water over and above
22 that 42,000.

23 THE COURT: Which made me go back to a newspaper
24 article where Traci Stewart showed up at some meeting -- I
25 don't even remember what meeting it was -- saying the
26 Watermaster wanted a say in these flood control channels,

1 I believe it was because we need recharge. And that's
2 what I was thinking about when I was reading your Points
3 and Authorities, is I -- I don't know if I saved a copy of
4 that newspaper. I did read it in the local newspaper that
5 she did show up at some meeting.

6 MR. KIDMAN: I make no claim to be an expert on
7 that set of issues and how that all transpires, but it
8 makes some intuitive sense that if the native landscape is
9 being covered with an impervious surface of some kind,
10 there will be less seepage into the ground water supply
11 and more run off as a consequence.

12 THE COURT: And then there is some talk of
13 taking water from higher up. That's one of the reasons I
14 had Wanda call Mr. Tanaka's office.

15 Isn't there a Five Oaks or --

16 MR. MORRIS: Seven Oaks.

17 THE COURT: You have got water up higher that is
18 a potential for coming down, and recharge also, which is
19 kind of an interesting thought. But if the water is there
20 to be recharged, and these catch basins, or whatever,
21 it -- you bring up some interesting ideas in that, why let
22 it go down. After looking at it from the parsimonious
23 standpoint of San Bernardino County, why let it go down
24 where it becomes somebody else's water if you can catch it
25 up here before it hits the dam. It is clearly -- I always
26 love it when lawyers say clearly --

1 MR. KIDMAN: I have to, as -- I guess just as an
2 officer of the Court, say that the Chino Basin interests
3 broadly have been receiving some verbal assurances from
4 both the Seven Oaks Diverters and from the Orange County
5 Water District that they have no intention of upsetting
6 the allocation that was made in the Orange County case.

7 THE COURT: But how could they -- if they take
8 more water, how could they not effect it, because it was a
9 100 percent adjudication?

10 MR. KIDMAN: That's why we need to pay attention
11 to what's going on and be awake to it. And if it doesn't
12 look like it's going the way they are saying or giving us
13 assurance it is going to go, then maybe there is some
14 appropriate action to be taken. And that's the thrust of
15 the motion that Monte Vista has made is, let's pay
16 attention. Be aware of what's going on here. I think
17 that there is some interest on some part -- on the part of
18 some parties in the Chino Basin to try to find a way to be
19 even more proactive than what we have suggested, but that
20 seems to be a -- at least a limited, clearly within the
21 Court's jurisdiction, way to go without testing some of
22 the further reaches of some of the issues that you have
23 already mentioned.

24 MR TANAKA: Your Honor, may I pick up on the
25 last point Mr. Kidman was making as well as respond to
26 your preliminary thoughts on the motion?

1 Mr. Kidman points out quite properly that there
2 is discussion and dialogue going on as to exactly what
3 will the impact be of the applications that are filed in
4 these other proceedings, and that is correct. And if we
5 need to get into any details, Mr. Morris is much more
6 versed on that than I am. I think if you marry that up
7 with your point, which is that you can set aside the
8 jurisdictional questions for now, in your view the State
9 proceedings are not ripe yet; and, therefore, your feeling
10 was it is not ripe as to the State. I think that point is
11 well taken as to the other agencies as well, and it is the
12 very point Mr. Kidman is suggesting that amplifies that.

13 Depending on how those proceedings developed,
14 there may or may not be an issue for this Court to wrestle
15 with or not. And I think it would be important to let
16 that process play out before we start jumping into other
17 proceedings.

18 THE COURT: What do you have to say? Mr. Kidman
19 mentioned in his Points and Authorities that the Court has
20 power to calendar a periodic status conference to see what
21 is happening.

22 Each one of these people with the exceptions
23 that we noted, are parties to the judgment, and so this
24 Court does have jurisdiction over, for example, my notes
25 here say, Inland Empire Utilities Agency, Western
26 Municipal Water District, Orange County Water District.

1 MR. TANAKA: I think your Honor probably has
2 jurisdiction over -- I don't want to address the issue of
3 the State -- I wouldn't pretend to answer that. As to the
4 parties that are parties to the judgment, and if their
5 actions effect this judgment, then I think you have
6 jurisdiction too over the parties in some fashion. How
7 broad and exactly what you can make them do is subject to
8 discussion. But do you have the jurisdiction? Probably.

9 I think your first point is a different issue
10 than jurisdiction, it goes to ripeness or mootness. And I
11 think that is as real an issue for the Court to wrestle
12 with and I think you have. And the preliminary answer is,
13 let's see how that plays out. I suspect a lot of those
14 issues will be addressed, or if they are, what you will
15 require the parties to do will be much more focused.

16 THE COURT: I think the middle ground of being
17 heads up, as Mr. Kidman suggests, but recognizing that we
18 have a limitation vis-a-vis certain organizations and
19 agencies is perhaps a wiser course at this point, and
20 maybe have those other people come in and report on what's
21 happening. Bearing in mind that I can't effect findings
22 by other agencies outside the judgment at this point.
23 With the caveat that I -- we have an interesting position
24 with Ms. Levin present.

25 Do you go by Ms. or Mrs.?

26 MS. LEVIN: Whatever. Ms. is fine.

1 MR. TANAKA: If your Honor is inclined to grant
2 the order, then I would respect -- or request that
3 Mr. Morris have an opportunity to explain the issues that
4 I was alluding to, to put it into context, if I could.

5 THE COURT: Sure. Then Mr. Cihigoyenetché wants
6 to be heard -- wishes to be heard also.

7 MR. CIHIGOYENETCHE: After Mr. Morris.

8 MR. MORRIS: Your Honor, I think it might be
9 helpful in an attempt to focus the hearing and discuss the
10 nature of the -- briefly, the two actions that are pending
11 before the State Board. As you indicated earlier, there
12 is an action upstream that has been submitted to the State
13 Board by Western Municipal Water District and San
14 Bernardino Valley Municipal Water District. That is an
15 application to the State Board to request that they lift
16 the exiting declaration that the Santa Ana is fully
17 appropriated for the very limited purposes of considering
18 an appropriative right granting an appropriative right to
19 Western and San Bernardino Valley to conserve additional
20 storm flows that are currently flowing downstream and
21 being wasted, to conserve those behind the newly
22 constructed Seven Oaks Dam. That proposal, we would
23 offer, doesn't have a legal effect on the terms of Orange
24 County's judgment.

25 Those terms are still binding on Western and San
26 Bernardino Valley. They will continue to abide by the

1 obligation to send 32,000 acre feet to Orange County at
2 the Prado Dam. Neither does that application have any
3 impact on the Chino Basin and the waters in the Chino
4 Basin. Currently, there is no conservation taking place
5 behind the dam. Storm flows that come down the upper
6 reach of the Santa Ana River are currently coming down the
7 river passing through the Riverside Narrows, and they flow
8 right into the Prado reservoir and don't hydrologically
9 connect with or enter the waters in the Chino Basin.

10 In an attempt to focus on the real concern of
11 parties of the upper basin, which Western certainly
12 shares, we think the Court might want to put that issue on
13 the upper reach of the Santa Ana River behind it and
14 really look at the other action pending before the State
15 Board, and that's the Orange County action. They have
16 submitted a request to the State Board to again lift the
17 declaration that the Santa Ana is fully appropriated for
18 the limited purpose of appropriating, or granting an
19 appropriative right to Orange County for an additional, I
20 think it is up to 500,000 acre feet of water, that may
21 either hit the Prado Dam or exist below the Prado Dam.

22 Regarding that application, Western certainly
23 shares the same concern as all the upper basin users, that
24 that application and the proceedings in the State Board
25 not impact the existing declared right in the Orange
26 County judgment that says the upper basin users have a

1 prior and superior right to use, conserve, store, and
2 reuse and make any beneficial use of all waters that
3 originate in the upper basin. Western wants to protect
4 that and certainly is as concerned as everybody else that
5 the Orange County application not effect that preexisting
6 right. To that end, though, and in trying to assure and
7 provide some assurance for Western and the rest of the
8 upper basin users, Western has been in continuing dialogue
9 with Orange County and with their legal counsel about
10 getting some assurance that indeed their application is
11 not intended to effect that preexisting declared right in
12 the Orange County judgment. And we have received verbal
13 assurance from Orange County's attorneys. And we are in
14 the process of putting those into an agreement.

15 And we received the -- we have received the
16 assurance that Orange County will consider and likely sign
17 this agreement. And the agreement, essentially,
18 memorializes these three assurances.

19 First, that the request of the Orange County
20 Water District before the State Board is in no way
21 intended to change or effect the terms of the Orange
22 County judgment. Those terms remain valid, binding and
23 control the rights in the Santa Ana River water shed.

24 Secondly, the terms of the Orange County
25 judgment will be fully honored in the State Board
26 proceeding, and any outcome with that will be subject to

1 the judgment and terms of the judgment, so they won't
2 violate the terms of that judgment.

3 And thirdly, that the request of the Orange
4 County Water District is intended to apply only to those
5 flows from the Santa Ana River that reach the Prado
6 Reservoir or exist downstream from the Reservoir. And
7 that there is no intention by Orange County to effect
8 those preexisting declared rights in the Orange County
9 judgment of the upstream basin users to store or conserve
10 water or to use reclaimed water or to even withdraw the
11 existing treated waste water that is being discharged into
12 the river and to make beneficial use of that water.

13 Those are the assurances we have received verbally from
14 the Orange County Water District and their attorneys. We
15 have told them, and they have agreed to our drafting a
16 policy agreement that memorializes those. They will look
17 at executing that agreement.

18 We will circulate the four-party agreement among
19 the users -- or among the continuing parties in the
20 judgment. That's Inland Empire Utilities, Western, San
21 Bernardino Valley, and Orange County. That four-party
22 agreement will be circulated among the parties, we hope,
23 on Monday. We expect it will be executed in the near
24 future. Once it is executed, it will be lodged in the
25 proceedings of the State Board, so that when the State
26 Board, if it does take any action, that it will be in

1 consideration of and respect the terms of that agreement,
2 which reflects the terms of the Orange County judgment.

3 We think that with the execution of that
4 agreement, that should, in essence, address the concerns
5 and provide the parties in the upper basin some assurance
6 and ability to stand behind those assurances that the
7 Orange County application and petition of the State Board
8 won't effect the upper basin rights.

9 THE COURT: Income tax started at one percent
10 too, right?

11 MR. MORRIS: That's the tact we have been
12 taking, because Western certainly is as concerned as
13 everybody else is about that Orange County application.
14 But I just remind the Court that there is that second
15 application that we think really doesn't have any bearing
16 on the Chino Basin at all legally or hydrologically and
17 maybe the Court ought to continue to focus the issue just
18 on the Orange County application and consider whether or
19 not this agreement that we're proposing fully satisfies
20 and satiates the concerns that all parties have about the
21 effect of that proceeding.

22 THE COURT: Okay. Mr. Cihigoyenetché.

23 MR. CIHIGOYENETCHE: Thank you very much. I
24 think the statement of Mr. Morris, basically, covers the
25 concerns that at least our agency has and probably
26 concerns shared by other people in this courtroom today.

1 If you look at the Orange County judgment, your Honor,
2 there are some -- the language in there repeated that
3 basically gives this upper region -- and they use language
4 such as unlimited right and full freedom to store, divert
5 and utilize water up here before sending it down stream.
6 As long as the base flow is satisfied as required under
7 the judgment.

8 I think the chief concerns as indicated by
9 Mr. Morris are, number one, that the State hearings not
10 alter that particular right that is extended us under this
11 judgment.

12 And number two, that the base flow requirement
13 as set forth in the judgment not be modified. So that, in
14 essence, all those rights are preserved under the
15 judgment. And if there is any additional water, the State
16 Board can take that into consideration. Going to the
17 issue here at hand with Mr. Kidman's motion, our agency is
18 fully agreeable to reporting to this Court and to any
19 other agency who is concerned as to the progress and
20 developments that are taking place in Sacramento as we
21 follow the hearings. Mr. Lemieux's motion goes a little
22 step further and hangs an Order to Show Cause over our
23 head, basically an order to appear. But we're more than
24 willing to be friends of the Court and friends of our
25 colleagues and appear without threat of sanction or
26 contempt. We're more than willing to do so.

1 THE COURT: Well, actually, Inland Empire
2 Utilities Agency is who you represent.

3 MR. CIHIGOYENETCHE: Correct, sir.

4 THE COURT: They're a pivotal role in all of
5 this, because they would be the lead agency in CEQA.

6 MR. CIHIGOYENETCHE: Correct.

7 THE COURT: So it would behoove everyone to have
8 Inland Empire Utilities Agency reporting back on what is
9 taking place.

10 I understand it is more than 42,000 acre feet a
11 year, because they get what hits the dam, but half a
12 million acre feet -- I see Mr. Wildermuth back there.
13 Last time we were here we talked about a million acre feet
14 disappearing in 10 years. Here we're talking about half
15 as much per year up for grabs. I think at least it
16 deserves a hearing. And to keep -- I think Mr. Kidman has
17 got some good ideas as to keeping everybody heads up. And
18 at least if something untoward happens, at least everybody
19 walked into it with their eyes wide open, as opposed to
20 what in the past might have happened. As you remember, I
21 was concerned that nobody showed up on the original
22 desalter agreement, as you remember, but I said, anybody
23 opposed to it with all those releases of liability in
24 there, and nobody was. So I said, I guess a desalter is
25 better than no desalter. And I think you said, yes, if I
26 am reflecting back correctly. I haven't seen a transcript

1 of it. At any rate, a lot of people probably might have
2 wished to be heard, but they weren't aware it was going
3 on, which was my concern then, but that's water under the
4 bridge. No pun intended.

5 This one, I think we should be heads up. And I
6 think Mr. Kidman's motion is well taken.

7 Anybody wish to be heard before the hammer
8 falls?

9 MR. KIDMAN: May I just add one thing in
10 response to Mr. Morris?

11 I think he is right about the Seven Oaks Dam,
12 but there is a guaranteed flow at the Riverside Narrows.
13 That potentially is effected by that. And that guaranteed
14 flow, then -- I think it is 12,000 acre feet a year --
15 becomes part of the 42 of Prado. So there is -- maybe it
16 is not a huge concern, but at least there is enough here
17 to again keep our eyes on the Seven Oaks application, as
18 well as on the Orange County application. I am a little
19 concerned that an agreement is almost ready to sign, or at
20 least be circulated for signature next week, and a lot of
21 the parties that are directly effected by what's going on
22 there haven't seen it, including this Court.

23 THE COURT: Ms. Levin, you haven't been heard
24 yet.

25 MS. LEVIN: I just wanted to say some things for
26 the record. But before that, just to respond, I agree

1 with Mr. Kidman that many of the parties have not seen
2 that agreement, so that would be an important piece of
3 information for all of us to receive to determine whether
4 or not our rights as upper basin producers are protected
5 in that agreement.

6 Secondly, I would be interested to know
7 procedurally whether Inland Empire, as a party to this
8 judgment, but not as a producer, as I understand, is going
9 to be filing any kind of request for a continuance of this
10 hearing, or request to appear, or request to intervene.
11 It seems to me that one of the ways to address this issue
12 is to determine what the parties to the judgment intend to
13 do to protect their rights before the State Board, because
14 if they haven't seen the agreement, the State Board
15 hearing may go forward, and the agreement may or may not
16 protect those rights, and so it will be interesting for
17 the rest of us in regard to that December hearing.

18 THE COURT: Correct me if I'm wrong, it is not
19 only just the State Board, it gets down to when you're
20 talking about the -- reclaimed water you're getting down
21 to the Regional Water Quality Control Board again, right?

22 MS. LEVIN: Before I answer any question, I
23 should say, again, that the Attorney General's Office
24 represented the State of California in the water rights
25 adjudication, and specifically a few agencies were named
26 as producers of water. The State Water Resources Control

1 Board is also represented by the Attorney General's
2 Office. They are a regulatory agency, and so is the
3 Regional Board. I do not in this adjudication represent
4 either the Regional Board or the State Water Resources
5 Control Board, but in answer to your question, the
6 Regional Board in enforcing the discharge requirements,
7 etc., etc., does look at water quality issues with respect
8 to reclaimed water; that is correct.

9 But the State Board right now is holding a
10 hearing and --

11 THE COURT: That's what Mr. Kidman is addressing
12 is the State Board.

13 MS. LEVIN: And that's the Water Rights Division
14 as opposed to the Water Quality Division of the State
15 Board.

16 THE COURT: But eventually this thing mushrooms
17 out to and subsumes even the Regional Water Quality
18 Control Board, right? Eventually this thing is like a
19 cancer. It is growing.

20 MS. LEVIN: In a different way. But the
21 hearing, as I understand it, and again, I am -- the
22 hearing before the State Bored is a hearing to deal with
23 the State Board's own order that it issued. And so in
24 this regard, not representing the State Board, I had a
25 concern that I just wanted to put on the record, and we
26 don't need to discuss it, and that is, if you were

1 inclined, which you are not, to rule on the request to
2 bring the State Board here, that motion -- sorry that
3 request is defective. There is no pending motion before
4 you, no papers, no declarations.

5 THE COURT: No threat of irreparable harm.

6 MS. LEVIN: Pardon?

7 THE COURT: No threat --

8 MS. LEVIN: I am not addressing that issue.
9 Procedurally, there is nothing.

10 THE COURT: Is it 525 CCP, the criteria
11 underneath there? You would have to run down that to
12 bring in anybody other than what we have in the judgment
13 right now, because there is no action threatened or taken
14 to be taken. They're having hearings. As I said, I don't
15 think it is ripe. You're right.

16 MS. LEVIN: I just wanted to put this on the
17 record. I don't believe there was adequate service on the
18 State Water Resources Control Board to even respond to
19 today, so no one is representing them today to respond.

20 THE COURT: I am representing them, I guess,
21 with my preliminary.

22 MS. LEVIN: You did say ultimately you would
23 have jurisdiction. And I don't exactly want to get into a
24 discussion of that, but just for the record, the hearing
25 in December is set to consider amending the Board's order.
26 There is an argument that this Court may not have

1 jurisdiction to enjoin a State agency from holding a
2 discretionary hearing to revise it's own order. That
3 said, there are entities among us, including the upstream
4 producers, who are concerned about the State Board
5 hearing. And one of the things that I was looking at
6 yesterday is the possibility of requesting a continuance
7 of the December 7th and 8th hearing so that all the
8 parties would have more adequate time to deal with it.

9 For example, the latest petition that was filed
10 by Orange County was filed in -- let's see, I think it was
11 August or September, 1999. Prior to that there had
12 been -- its first petition filed in 1992. Then a
13 supplemental in 1995. And then another supplemental in
14 1998, I believe. And so many of us have not seen or did
15 not see the latest change of theory that Orange County is
16 presenting to the State Board as to why it can appropriate
17 this water. And many of us would just like the
18 opportunity to see all the paperwork, see what they're
19 claiming now is the theory and deal with it.

20 So one of the things that I had thought about
21 with respect to the State of California in this
22 adjudication is requesting a continuance of that hearing,
23 possibly requesting -- I know, yet another workshop up at
24 the State Board to let the State Board know how concerned
25 the Chino Basin parties are. They have had workshops in
26 the past, and perhaps they be amiable to that, knowing how

1 concerned we are about it. I was basically going to urge
2 this Court not to -- and it sounds like you're not going
3 to -- take any action with respect to the State of
4 California.

5 THE COURT: Vis-a-vis the State Board?

6 MS. LEVIN: Yes.

7 THE COURT: I mean, you're here.

8 Okay. It was Morris, right? You wish to be
9 heard again?

10 MR. MORRIS: Real quickly to respond to
11 Mr. Kidman. In regard -- and to re-emphasize the notion
12 that there really are two distinct actions before the
13 State Board. And to really -- as you have heard was being
14 discussed here is the primary concern of everyone is the
15 Orange County application. Western and San Bernardino
16 Valley's application doesn't have any impact on the Chino
17 Basin and doesn't change the legal obligation. It can't
18 change the legal obligation that Western and San
19 Bernardino Valley have to continue to ensure the 42,000
20 acre feet meets and is delivered at the Prado Dam. That
21 State Board proceeding can't effect that or preempt the
22 judicial judgment.

23 And we will continue to deliver that whether or
24 not we can save any water behind the Seven Oaks Dam. We
25 really urge the Court to focus the motion and really
26 refine it to focus on what is at issue here, and it is a

1 concern that the Orange County petition and application
2 before the State Board may have some impact on all the
3 upper area basin users, contrary to the stated terms of
4 the Orange County judgment. And Western is fully
5 supportive of having the Court involved in that and
6 monitoring that to an extent that is needed. We offered
7 up this agreement, and it has been in the works for years
8 because we have had this concern as an upper basin user,
9 not as something crafted to try to deal with Mr. Kidman's
10 motion. This has been a work in progress.

11 All we're doing is reaffirming the existing
12 declared rights in the Orange County judgment and ensuring
13 those rights are not in any way effected by the State
14 Board proceedings. We will be happy to share that with
15 the Chino Basin Watermaster and the Court before it is
16 executed certainly for your review.

17 THE COURT: With the omission of the State Water
18 Resources Control Board, Mr. Kidman, when would you have
19 this reporting take place?

20 MR. KIDMAN: Well, I was -- we were suggesting,
21 your Honor, that it would occur periodically; that you
22 will just receive status reports. If you want to craft
23 that so the reports go to Watermaster and be part of the
24 report that the Watermaster makes to the Court, I think
25 that would be sufficient. We were saying every 60 days
26 that there ought to be some sort of status.

1 THE COURT: The 60 days is past December, now,
2 right?

3 MR. KIDMAN: Believe me, 50 -- 60 days is
4 greased lightning speed for the State Water Resources
5 Control Board. They have matters that go on pending for
6 decades without getting resolution. I would rather doubt,
7 in fact, that they're having this hearing on this issue of
8 lifting the declaration of fully appropriated stream is
9 going to be removed within the next 60 days. It might be
10 appropriate, in light of the current schedule, to maybe --
11 to make a different reporting schedule.

12 THE COURT: Have an initial status report?

13 MR. KIDMAN: We could talk about it, again, for
14 instance on the 18th?

15 THE COURT: On November 18th. But could some
16 preliminary report be feasible by November the 18th.

17 MR. KIDMAN: A preliminary report?

18 THE COURT: That's 20 days from now.

19 MR. KIDMAN: I think you would have to ask
20 Mr. Cihigoyenetché.

21 THE COURT: It's 20 and a half.
22 Mr. Cihigoyenetché writes beautifully. I have seen his
23 work. He would be happy --

24 MR. CIHIGOYENETCHE: I have no problem with that
25 time schedule. I want to point out an answer to one of
26 Ms. Levin's questions. We do expect to go to Sacramento

1 on the 7th and the 8th at the hearings. And I will take
2 Mr. Atwater. And I believe he has been working with Traci
3 Stewart. And we are going to descend on the capital.

4 THE COURT: On Pearl Harbor day.

5 MR. CIHIGOYENETCHE: Correct. And we'll make
6 our position well-known. Between now and then, prior to
7 the hearing, I suppose the only updates or reporting that
8 we can do is the status of this letter or agreement from
9 Orange County, whether it has been approved or not, and
10 perhaps our plan of attack when we arrive in Sacramento as
11 far as witnesses to present and evidence to present. I
12 don't know how far in depth or what additional information
13 the parties would want us to report on prior to the
14 hearing. Certainly after the hearing, we would have ample
15 things to report on.

16 THE COURT: Is there some concern that after the
17 hearing it is going to be too late?

18 MR. KIDMAN: Well --

19 THE COURT: With as much a prophetic date of
20 December the 7th.

21 MR. KIDMAN: I tend to think that it would be
22 difficult for the Court to direct Mr. Cihigoyenetché or
23 Inland Empire as to what positions they're going to
24 advocate or what witnesses they're going to present or any
25 of that; that is not the idea.

26 THE COURT: Nor the intent. But go ahead.

1 MR. KIDMAN: Of the motion -- the idea is to
2 make sure that there is some transparency so that the
3 other parties can look over the shoulder of Inland Empire,
4 see what they're doing, try to influence it, if it need
5 be, or correct it, or have input to it. And the one real
6 good way to do that is to make sure we have the
7 opportunity to, by Court order, see what's going on. As
8 the Court sees it, all the other parties get to see it
9 too.

10 THE COURT: Better to be the booster club giving
11 your input ahead of time than the Monday morning
12 quarterback, neither of which is the coach. One has input
13 ahead of time, and one has only the option of grouching on
14 Monday.

15 MR. KIDMAN: And I suppose then again, in answer
16 to the real question, will it be too late? Is if the
17 State Board takes action, or if and when the State Board
18 takes action, if it seems like to any of the parties it is
19 contrary to the term of our judgment or violative of any
20 of the values that are set forth in our judgment, and
21 there is a need to try to correct that that we can try to
22 bring judicial process to bear, but we can't do that if it
23 is all being done in the back room.

24 THE COURT: Well, there has never been anything
25 like that done around here, has there?

26 MR. KIDMAN: Not in the water world, I am sure.

1 THE COURT: Okay. Then Mr. Cihigoyenetché, you
2 can -- maybe we only need one report. And
3 Mr. Cihigoyenetché will get the information, an initial
4 report, we'll revisit the issue November 18th, and
5 Mr. Cihigoyenetché can give us a preliminary report.

6 Ms. Levin?

7 MS. LEVIN: Just -- I don't necessarily agree
8 with the concept that because the Western Municipal Water
9 District's petition is not legally or hydrologically
10 connected that the legal theory of what constitutes
11 changed circumstances before the State Board, in other
12 words, can you take water and use it from upstream users,
13 that concept could apply to the Orange County petition.
14 So I think it would be disingenuous for us to say, we
15 don't care -- to exclude Western from any reporting what
16 is going on with respect to that petition, if the Court is
17 going to order some reporting to this Court.

18 Some of us would like to hear what is --
19 Western's report is, as well as, since Western sits on the
20 Chino Basin Watermaster Board as well as the Santa Ana
21 Watermaster Board, and so, to whatever extent the Court
22 believes it has authority to request a status conference,
23 I would recommend that Western be included.

24 THE COURT: So Mr. Morris, you would get
25 together with Mr. Cihigoyenetché and submit a joint
26 report -- preliminary report.

1 MR. MORRIS: Can I respond real quick to
2 Ms. Levin?

3 Western's position is that the changed
4 circumstances are the creation of the Seven Oaks Dam up in
5 the upper reach of the Santa Ana River. Under the terms
6 of the Orange County judgment, it has the full right to
7 conserve and use that water for any beneficial use, as
8 long as it meets its continuing obligation, which it fully
9 intends to do, and that can't change no matter what
10 happens at the State Board. That's why we tried to simply
11 provide a more narrow focus for what the real concerns are
12 of the upper basin users. If there is no impact to the
13 Chino Basin legally or hydrologically, it seems a bit
14 superfluous. And we're getting distracted from what is
15 really the concern of the Court.

16 The second issue is Mr. Kidman's request for the
17 continuing 60-day reporting period. As he indicated, the
18 State Board proceeding can sometimes be a 10-year long
19 process. And I would certainly hate every 60 days to come
20 into court and say, nothing has happened. And that is a
21 waste of your time and resources as well as everybody
22 else's. It might behoove the Court, if the Court is
23 inclined, to go with the motion to at least have one
24 preliminary hearing on the matter.

25 THE COURT: November the 18th.

26 MR. MORRIS: To hear that and see if there is

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1 any need for additional reporting or hearing.

2 THE COURT: Maybe we should have an A and B
3 section of that preliminary report. You might not be able
4 to agree on just one joint preliminary report.

5 Mr. Cihigoyenetché, you can submit the report
6 with the A and B portion of it. You will be the A
7 portion. Mr. Morris will be the B portion; is that okay?

8 MR. MORRIS: And our report will be simply
9 limited to our application and having no comment or
10 obligation as to Orange County?

11 THE COURT: You'll report as you see fit. I am
12 not going to tell you what to do as I can't tell you how
13 to approach it, as Mr. Kidman puts it. I can't order you
14 to take a certain position in front of the State Board
15 either.

16 MR. MORRIS: I understand.

17 THE COURT: They want a heads up. And under the
18 circumstances and with the rich history of water in this
19 part of the county, no pun intended, with respect to the
20 lower-end farming operations -- above the rich history, I
21 think it is probably appropriate. The people of this area
22 have been in the dark long enough, and that was the whole
23 intent way back when. I will let you be heard. Even the
24 web site is to open this up so people really are made
25 aware of what's going on.

26 THE COURT: Yes. State your name.

1 MS. CODY: Tari Cody for Lemieux and O'Neill for
2 the Watermaster. Usually Wayne Lemieux is here, but I am
3 here today. I would propose there be a C section for that
4 report for Orange County which you recognized is within
5 your jurisdiction. They're a party.

6 THE COURT: They will be ordered to be present,
7 but as far as to order a report, they're not here to
8 contest it. They're not properly --

9 MR. KIDMAN: Orange County Water District was
10 not part of the motion, so I think it would be fair to say
11 that they are not on notice they might be ordered to do
12 anything today.

13 THE COURT: Okay.

14 MR. KIDMAN: The Lemieux office motion or
15 response really to the motion that we made brings them
16 into it, but I am not sure they have fair notice that they
17 were liable to be ordered to do anything today.

18 THE COURT: So we'll have an A and B section and
19 on November 18th we'll revisit it.

20 Mr. Kennedy?

21 MR. KENNEDY: Yes, your Honor. If you're not
22 inclined to grant that requested C section, may I suggest
23 that there be a C section report from Ms. Levin in
24 connection with her requests regarding a continuance by
25 the State Board of the hearing on December 7th and 8th and
26 whether or not the State Board is inclined to conduct a

1 workshop. She indicated on the record that that might be
2 a direction the State Board may be willing to go and she'd
3 check on that. Perhaps she can report back on the 18th as
4 well.

5 THE COURT: She could probably do it verbally.
6 I don't think that's necessarily something we need to put
7 in writing.

8 MS. LEVIN: Right. And also I would have to be
9 representing my client in the Chino Basin and do some sort
10 of formal request. So it wouldn't just be picking up the
11 phone. So those papers will be filed before the State
12 Board, if I do --

13 THE COURT: Mr. Kidman, can you prepare an order
14 to reflect what we have done today?

15 MR. KIDMAN: Yes, your Honor.

16 THE COURT: Is there anything else?

17 MR. KIDMAN: No, your Honor.

18 THE COURT: Then I will take over finalizing
19 that order from last time.

20 MS. LEVIN: Just so that you know, that order
21 was submitted -- was filed, and I served it on all the
22 attorneys and the Chino Basin Watermaster, I believe,
23 served it on all of the parties, but I have not received
24 my copy yet. So the parties haven't seen the final
25 proposed ruling for the Court. And I had given them up to
26 October 20th, I think, and it has not been received yet.

1 So you might wait a few days in case other people have
2 comments.

3 THE COURT: Sure. I have got to let you know,
4 when you said that one portion was not red lined in your
5 moving papers, I was thinking about that omission you had
6 in your red line copy at the time. I just found it kind
7 of amusing, anyway, but good job. But good job, as usual.
8 You do very good work. We'll see everybody on the 18th.

9 MR. KIDMAN: Excuse me. One quick thing. It
10 would be my intention to draft the order on -- to leave
11 open the question of frequency of status conferences.

12 THE COURT: Right.

13 MR. KIDMAN: And just order the one.

14 THE COURT: That's why we need to come back on
15 the 18th to find out just what we're looking at, because I
16 don't think we have sufficient information at this time
17 to -- and as Mr. Morris pointed out -- it can be a
18 laborious task to come back every 60 days and not have
19 anything to report. And he really got my attention when
20 he said it is a waste of the Court's time.

21 MR. KIDMAN: Thank you, your Honor.

22 THE COURT: Thank you.

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

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26

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

3 DEPARTMENT R-8

HON. J. MICHAEL GUNN, JUDGE

4
5 CHINO BASIN MUNICIPAL WATER)
DISTRICT,)

6 Plaintiff,)

7 vs.)

Case No. RCV 51010

8 THE CITY OF CHINO,)
9 Defendant.)
10

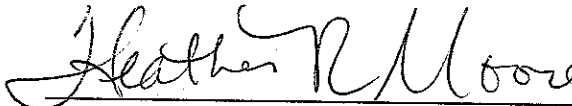
11 STATE OF CALIFORNIA)

12 COUNTY OF SAN BERNARDINO)

ss

13 I, Heather R. Moore, Official Reporter of the Superior
14 Court of the State of California, for the County of San
15 Bernardino, Rancho Cucamonga Division, do hereby certify
16 under penalty of perjury that the foregoing pages numbered
17 1 through 36, comprise a full, true and correct
18 computer-aided transcription of the proceedings held in
19 the above-entitled matter on Thursday, October 28, 1999.

20 Dated this 15th day of November, 1999.

21
22  C.S.R.

23
24 Official Reporter, C-10294
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26