

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.

THE CITY OF CHINO,

Defendant.

COPY

Case No. RCV 51010

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

Thursday, November 18, 1999

APPEARANCES:

For Monte Vista
Water District:

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

For Inland Empire
Utilities Agencies:

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

(Appearances continued on the next page.)

Reported by:

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

APPEARANCES: (Continued)

For the Department
of Corrections:

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

For Watermaster
Services:

Lemieux & O'Neil
By: **MR. WAYNE K. LEMIEUX**
Attorney at Law

For the City
of Pomona:

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

For the City of Chino:

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

For the Three
Valleys Municipal
Water District:

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

For CCWD & Western
Municipal Water
District:

Best, Best & Krieger
By: **MR. JAMES P. MORRIS**
Attorney at Law

1 RANCHO CUCAMONGA, CALIFORNIA; THURSDAY, NOVEMBER 18, 1999;

2 P.M. SESSION

3 DEPARTMENT R-8

HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5 (Appearances as noted on the cover page.)

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

7 THE COURT: Okay. Let's go on the record in the
8 matter of the Chino Basin Municipal Water District, case
9 number RCV 51010.

10 As far as attorneys present, let's get
11 everybody's name starting with Mr. Cihigoyenetché over
12 there.

13 MR. CIHIGOYENETCHE: Jean Cihigoyenetché
14 appearing on behalf of Inland Empire.

15 MR. MORRIS: Jim Morris appearing on behalf of
16 Western Municipal Water District and Cucamonga County
17 Water Agency.

18 MR. KIDMAN: Art Kidman on behalf of the Monte
19 Vista Water District.

20 MR. KENNEDY: Steve Kennedy on behalf of Three
21 Valleys Municipal Water District.

22 MR. LEMIEUX: Wayne Lemieux on behalf of the
23 Watermaster.

24 MS. LEVIN: Marilyn Levin, Deputy Attorney
25 General, representing the State of California, Department
26 of Corrections.

1 MR. BUNN: Thomas Bunn representing the City of
2 Pomona.

3 MR. ERICKSON: Jim Erickson representing the
4 City of Chino.

5 THE COURT: Before I forget, let me ask a
6 question. I know there are some people that are from
7 other agencies in the audience. Who has any familiarity
8 with the Inland Empire Conservation District? Does
9 anybody?

10 MR. LEMIEUX: Not water conservation, but --

11 MR. KENNEDY: You're referring to the Chino
12 Basin Conservation District?

13 THE COURT: No.

14 MS. STEWART: I believe, your Honor, that agency
15 is located on Fourth Street in Rancho Cucamonga, if it is
16 the agency that I think.

17 THE COURT: The building might be locked up,
18 because they have spent a lot of money and the County has
19 pulled the strings on them.

20 Well, they own land, and it might behoove the
21 Watermaster to ascertain where that land is, because I am
22 informed that -- well, the Chairman of the Board of
23 Supervisors, Jon Mikels, told me that they may or may not
24 have land that would be in a path that would lend itself
25 readily to a recharge facility. I don't know. I don't
26 know.

1 MS. STEWART: I will contact them.

2 THE COURT: I don't know, but he thinks -- and I
3 mentioned it to this gentleman over here -- I asked him if
4 the Seven Oaks Dam got some land from the -- well, there
5 is an east and west part of it. And in other words,
6 Inland Empire Conservation -- Inland Empire East
7 Conservation District and Inland Empire West Conservation
8 District.

9 He thought maybe that the east had land that was
10 utilized in the area of the Seven Oaks Dam. For whatever
11 it is worth, it might be worth pursuing, because it seemed
12 like it would be an overlapping function, and it might be
13 a free source of some lands for the recharge facility. If
14 that plays out, it plays out, if it doesn't, it doesn't.
15 You haven't lost anything but the effort to check it out.

16 Okay. I have given you a final ruling on the
17 September 30th hearing.

18 I suggested on the other two rulings,
19 particularly the CEQA ruling, that Mr. Kidman is going to
20 want to be heard, because you had quite a well written,
21 but incongruent with my own thinking, report. So I don't
22 know if you want to start with that one or where you want
23 to start. It might be a good place to start off with
24 boxing gloves on first, huh?

25 MR. KIDMAN: I will take that as an invitation,
26 your Honor.

1 The view that's been presented on behalf of the
2 Water District is that the Optimum Basin Management Plan
3 is not a project for which CEQA compliance is required,
4 and particularly if the Optimum Basin Management Plan is
5 prepared in a manner that we believe would be most
6 appropriate. I am turning, really, to what is, I think,
7 the main issue, and that is what is the Court's
8 jurisdiction?

9 THE COURT: Hang on just a second, Anne
10 Schneider is on the phone. I am going to bring her up.

11 THE CLERK: I am going to go ahead and put you
12 on speaker phone. Can you hear us?

13 MS. SCHNEIDER: Yes, I can.

14 THE COURT: And we're on the record right now.
15 Mr. Kidman's going to address the court on the CEQA
16 ruling.

17 MS. SCHNEIDER: Okay.

18 THE COURT: Did you get a copy FAX'd to you of
19 my rulings?

20 MS. SCHNEIDER: No, I haven't gotten it, so I
21 guess I will have to go without.

22 THE COURT: My tentative is against Mr. Kidman,
23 so I am giving him the opportunity to be heard first.

24 MR. KIDMAN: Starting again then. The position
25 of the Monte Vista Water District that we presented is
26 that the CEQA compliance is premature and inappropriate,

1 because the Optimum Basin Management Plan is not a project
2 within the definition of the California Environmental
3 Quality Act. And I might say that as a practical matter,
4 some of the worst messes that I have seen created by
5 public agencies trying to comply with the Environmental
6 Quality Act have been when they have undertaken that
7 compliance without having a clearly defined project, or
8 perhaps because they thought CEQA compliance sounds like a
9 great idea, and we might get in trouble if we don't try to
10 comply with it; therefore, we're going to jump in and
11 comply or try to comply, even though there isn't an
12 adequately defined project under the definitions of CEQA.

13 Now then, turning to the heart of the matter,
14 the issue here is, what is the authority of the court? Or
15 how can the Court's authority be most appropriately
16 exercised? And the papers that we submitted point out a
17 time-honored distinction between mandatory injunctions and
18 prohibitory injunctions and the difficulties of
19 enforcement relative to mandatory injunctions leading to
20 making them a rare and unusual breed. A mandatory
21 injunction would be commanding all of the parties in this
22 action to go out and build water spreading facilities,
23 water treatment facilities, even going so far as to
24 command how those facilities might be financed, where they
25 might be located, a myriad of activities that I suggest
26 the court and the courts in general are ill-equipped to

1 enforce, oversee, etc. So the information that we have
2 advocated is -- really goes to -- not goes more to the
3 nature of what the court can and should be doing with the
4 Optimum Basin Management Plan than it does to the issue of
5 CEQA compliance.

6 In our view, the Optimum Basin Management Plan
7 should establish as the first three chapters do, the
8 goals, the objectives, establish what the problem is,
9 establish what the potential solutions may be. The
10 implementation chapter that's coming up that didn't get
11 done in time and is going to be the subject of further
12 proceedings in the court is the one where we -- the rubber
13 meets the road, so to speak. And it is there that we feel
14 that the court should be issuing prohibitory type
15 injunctions, the more traditional kinds of injunctions
16 that stop parties from doing certain activities, unless.
17 And that's the point. You, the court, can prohibit
18 parties from producing water from within the basin unless
19 they make provisions for recharge and water quality
20 cleanup. You can provide incentives for the parties --
21 and let's say unless there is a water treatment facility
22 established, these parties or all the parties are not
23 allowed to produce water in a given area. Those are
24 prohibitory types of injunctions.

25 THE COURT: Excuse me one moment.

26 MR. KIDMAN: Those prohibitory injunctions that

1 in nature create incentives for the parties, incentives
2 for them to go forward with the projects, and when they
3 make decisions to actually build projects that will have
4 physical changes in the environment, that is the proper
5 time for CEQA. So then let's go back to the problem with
6 the court simply ordering that a public agency go out and
7 build a water treatment facility. Well, beside the
8 problems of how you enforce that kind of a mandatory
9 injunction, because there must be 10,000 ways to build
10 that treatment plant, and if the court sets an end
11 objective and lets the parties decide how they're going to
12 get to that objective, that's something the court isn't
13 involved in in the CEQA process, only the parties that
14 decide they're going to take the court up on the
15 incentive.

16 THE COURT: Let me ask you, couldn't there be a
17 preliminary environmental impact report and more specific
18 environmental impact reports later on, though?

19 MR. KIDMAN: Obviously, that's possible. And
20 that's the siren song I think is being sung to you. Let's
21 get a picture and look at this thing. And when I suggest
22 that there's not yet enough -- not enough information
23 about what the specific projects are going to be -- you
24 know there is a continuum, a time continuum in the life of
25 any given project, and the law -- the case law under CEQA
26 says that you can't start the CEQA process too soon. If

1 you start it too soon, you don't have enough focus on
2 what's going on in the project, what might be the
3 potential impacts on the environment.

4 There is another point in time on that continuum
5 when it is too late, when the environmental document
6 becomes an after-the-fact justification for a decision
7 already made is sort of the mantra in the case. So it is
8 somewhere between those two points, somewhere after the
9 project is well enough formulated, and somewhere before
10 you're locked in to go that the CEQA processing is
11 appropriate. And I suggest right now all we have got is a
12 wish list and some general ideas about what needs to be
13 done here, but it is not yet formulated specifically
14 enough to allow meaningful CEQA compliance. So that's the
15 second reason.

16 One is what is the kind of order that the court
17 is going to -- going to be issuing? Will it be a
18 mandatory injunction or prohibitory injunction? Who is
19 going to be making the decisions about what projects to
20 build where? I suggest that those decisions not be made
21 by the local agencies who are trying to bring themselves
22 into compliance with incentives that the court sets out.

23 And the second reason is the timing and the
24 process. And, again, public agencies get themselves into
25 a problem, just a total analytical mish-mash when they
26 undertake to do CEQA compliance before the project is

1 defined.

2 I will be glad to answer any questions that that
3 raises.

4 THE COURT: What do you think Mr. Grindstaff
5 would say if he were in my position? I keep on thinking
6 back to the Joseph Grindstaff's declaration, I believe it
7 was you that submitted that a few years ago, talking about
8 how something had to be done right away, and showing how
9 the pollution was spreading and giving projections, I
10 think it was as of 2002, which is a couple of years away
11 now as opposed to six.

12 MR. KIDMAN: It remains the position of the
13 Monte Vista Water District that the -- generally speaking,
14 the parties have been inattentive to proper management of
15 the Chino Basin, and that there is an urgent need to get
16 on with it, particularly as it relates to water quality.
17 But even since those two or three years have transpired,
18 there is also a growing realization that some active
19 recharge activities would help both the water quality and
20 the water quantity issues. To say that right now is not
21 the appropriate time to try to comply with CEQA is not to
22 say, well, let's relax, there is plenty of time before
23 something needs to be done. The position would be, golly,
24 if we're a little far down the road, we should have been
25 doing this some time ago in that sense of things. But in
26 the sense of where are we in connection with the actual

1 development of a plan and implementation measures, we're
2 premature.

3 And it is really the issue of compliance with
4 CEQA should be left to the public agencies, not to the
5 court. And the court is exempt -- I think you indicated
6 that some consensus or unanimity about the parties
7 compliance with CEQA. I think there are a couple of
8 others beside Monte Vista suggesting other things that
9 jumping into a program EIR right now. One thing everybody
10 does agree on is there is a statutory exemption for the
11 Court's orders. Probably everyone agrees you can't get
12 around CEQA.

13 Also, the second point they agree on is that you
14 can't get around CEQA because the court orders it. But I
15 am suggesting the court shouldn't order it, shouldn't
16 order that these public agencies go out and build "X"
17 project at "X" location at a given period of time and
18 finance it in a given way. What the court should be
19 saying to the parties is, unless you go build something
20 that meets these particular objectives, you're going to
21 have to pay extra for the ground water that you produce
22 out of the Chino Basin.

23 THE COURT: Oh, I am sure there is going to be
24 costs if we're to look at Mr. Scalminini's report. It is
25 about 380 million dollars, which is a staggering sum. But
26 also, I think about the time that there was an agreement

1 for the desalter that's almost completed now, and no one
2 was in court asking us not to proceed with that desalter
3 at that time. Mr. Cihigoyenetché, I know you were here.
4 Mr. Kidman, I am not sure you were here. You were
5 probably here. I know your law firm was probably here,
6 either one of you or your other peers.

7 We said, let's go ahead and let's get going. I
8 signed the -- there were some heavy releases of liability.
9 I put that on the record. Remember, Mr. Cihigoyenetché, I
10 think I said, "a desalter is better than no desalter."
11 Because I was concerned about the releases of liability
12 that are there.

13 We have gone down the path. Combine that with
14 Mr. Grindstaff's report from way back when, and I think it
15 is past time. CEQA -- everybody agrees that CEQA is going
16 to apply eventually. And apparently already meetings have
17 taken place, and the Inland Empire Utilities Agency has
18 agreed to be the lead agency, from what I understand. And
19 there isn't much in the way of opposition to that.

20 So, anybody else wish to be heard?

21 (No response.)

22 THE COURT: No one else?

23 Mr. Kidman, you write very well, and I mean it.

24 MR. KIDMAN: Thank you, very much, your Honor.

25 THE COURT: You can read me like a book on this
26 one. You probably knew I was going to rule against you

1 too I bet?

2 The tentative ruling will be the final ruling of
3 the court. Anybody else --

4 Mr. Morris, you wish to be heard on something?
5 You write well too. It was interesting, although, you
6 don't address specifically this agreement that originally
7 was entered into in the Chino Basin. You address quite
8 well the Orange County agreement with Riverside, among
9 others. Okay.

10 Anybody else wish to be heard on anything?

11 MR. LEMIEUX: On CEQA.

12 THE COURT: On CEQA did you wish to be heard?

13 MR. ERICKSON: Yes, if I may.

14 THE COURT: Please state your name again for the
15 record.

16 MR. ERICKSON: James E. Erickson representing
17 the City of Chino. I speak from the perspective of the
18 attorney that formed and represented the Transportation
19 Department or agencies that built 70 miles of toll roads
20 at the cost of nearly four billion dollars and experienced
21 27 lawsuits, theoretically founded on CEQA, and tossed out
22 over four million dollars and took nearly 10 years. Maybe
23 I am too sensitive, but I think not. I don't
24 underestimate the ingenuity of our environmental friends
25 to think of more ways to stop or just hold up a project
26 than the mind of man has difficulty perceiving or

1 expressing.

2 THE COURT: I think Mr. Kidman mentions that
3 very well in his moving papers, also, it can be used.

4 MR. ERICKSON: It's a wonderful style by those
5 who wish to stop a project or attack a project. As a
6 result, my perspective of CEQA is, anything we can do
7 along the lines to foreclose the possibility of a legal
8 challenge based upon CEQA, we should take advantage of and
9 should do. I would suggest two things. One is that
10 the -- we should allow OPR to appoint the lead agency.

11 Now, this is really a confirmation of the
12 appointment of IEUA, because I think everybody is
13 comfortable with them being the lead agency. There are
14 some questions regarding the ability to serve as a lead
15 agency under the specific language of CEQA and under the
16 guidelines which can be foreclosed completely by having
17 OPR make that appointment. OPR only has 21 days in which
18 to do this, and in the meantime can go ahead with the
19 process. But this would confirm a step in the CEQA
20 process that avoids our exposure to attack on that basis.

21 The second thing that I have suggested is that
22 we get -- attempt to get an exemption from CEQA for the
23 adoption of the OBMP by the Watermaster. That's a
24 separate thing from the implementation projects of the
25 OBMP which will come later. The adoption is being done by
26 the Watermaster, not by IEUA. Some confusion is raised

1 under the language of the act and the guidelines, I
2 believe, which caused some insert which can be foreclosed
3 if we can get either the secretary of resources to add the
4 adoption of the OBMP to the list of categorically exempt
5 projects or get legislation to do the same thing. Now,
6 the legislation won't obviously occur prior to the
7 beginning of the process, but if we can get it anywhere
8 along the line, it will strengthen our position and give
9 us a bull worth of defense. We can get the administrative
10 exemption on a much quicker basis.

11 And I am suggesting that we ask the court to
12 authorize the Watermaster to assist one or more of the
13 public agencies, and the City of Chino will volunteer to
14 do this, to make that application for the exemption.

15 THE COURT: Okay. Anybody else wish to be
16 heard?

17 MR. LEMIEUX: Just a minor point, almost a flip
18 note. If the court does authorize the Watermaster, I
19 think it should be with the understanding that the
20 Watermaster itself, the court, won't be lobbying the
21 legislature.

22 MR. ERICKSON: Simply to give us the authority
23 to say that the Watermaster knows what we're doing. The
24 Watermaster concurs with that and will assist us in
25 providing information to do so. By the way, I have talked
26 with the majority of lawyers about this, and I have no

1 objection from any of them on this.

2 THE COURT: Even if we started out with pursuing
3 CEQA, and Inland Empire Utilities Agency was the lead
4 agency, assuming that what you attempt to accomplish could
5 be accomplished, we could always back off. But if we
6 don't do anything now, we're still that much further
7 behind. One of the major concerns that I have, and have
8 had, is that way back in 1989 it was going to take two
9 years to get an Optimum Basin Management Program out. And
10 we're 10 years down the road and we still don't have one.
11 And we keep on sliding the dates. So I prefer to keep
12 moving forward the General Motors way. Just step on the
13 accelerator and go.

14 MR. ERICKSON: Your Honor, I don't think either
15 of these processes would delay the process of applying
16 CEQA at all.

17 THE COURT: Okay.

18 MR. ERICKSON: We begin now. And we go as far
19 as we can. If we get the additional protection of the
20 exemption from CEQA, great.

21 THE COURT: So what you're saying is it is okay
22 to go ahead with Inland Empire Utilities Agency?

23 MR. ERICKSON: Yes, I am. I am saying, let's
24 try to get the additional protections if we can.

25 THE COURT: Okay. Anybody else wish to be heard
26 on that matter?

1 MR. MORRIS: Real briefly. As long as we're all
2 clear this in no way inhibits or will slow down the CEQA
3 process; that's fine by us. You know, the processes for
4 changing the CEQA guidelines to get an administrative
5 exemption can be very lengthy. There's got to be a
6 noticed proceeding to change that. It is a regulation
7 issued by the State, so we just want to make sure that
8 there is an understanding that the Watermaster, as a
9 composite of public agencies at this point has an
10 obligation to undertake a review of it's project that it
11 is going to bring to the court before it actually puts
12 it's final stamp on the project. We agree without an
13 exemption that specific and state statute or regulation
14 this body needs to go forward and do an adequate CEQA
15 review.

16 MR. KIDMAN: I would have to ask for a
17 clarification or ask the court to take some care, as it
18 should not be the Watermaster being directed to comply
19 with CEQA. Any one of the parties, Inland Empire,
20 somebody else, can do this thing, but the Watermaster --
21 who can sue the Watermaster if the EIR is inadequate or
22 somebody feels that it is? So, I thought I heard
23 Mr. Morris suggest that it be the Watermaster carrying
24 this out, and that should be --

25 THE COURT: There are certain limitations on the
26 Watermaster anyway. We all can appreciate this.

1 Watermaster probably in its present configuration cannot
2 own facilities, and there are a number of reasons why.
3 Maybe what you say is well taken as far as Inland Empire
4 Utilities Agency or whatever, Chino Basin Conservation
5 District owning assets and proceeding forward. The
6 concept, though, is to proceed forward. And if CEQA is
7 ultimately going to be an obstacle, if we proceed in that
8 fashion right now, eventually, we're going to have our
9 initial groundwork out of the way, and we're going to be
10 able to proceed without being impaired.

11 MR. LEMIEUX: When the court has ruled, I think,
12 you may have on the need for the CEQA or the program EIR,
13 I would like an opportunity to address the court on the
14 dates that are contained on what was put on the desk
15 earlier. We have some problems with those dates. I could
16 discuss that in terms of the larger time line, or these
17 dates itself. They become intertwined, so maybe this is a
18 good time to do it.

19 THE COURT: We can go on to that. You're
20 speaking about the time line, final ruling, September 30,
21 1999, hearing?

22 MR. LEMIEUX: If we center on the two dates on
23 page two of the ruling, completing the draft program EIR
24 by February 28th, and completing the final program EIR by
25 May 7th, there is only one other date. There are a lot of
26 interim dates in there. If I try to track them all, it

1 would drive me crazy, so I would like to center on these
2 two dates, and we can back anything else up into that.

3 We have had a Watermaster meeting this morning.
4 It was quite a long meeting. And at that meeting the
5 Watermaster again affirmed it's intent many different
6 ways, of getting this OBMP done as rapidly as possible.
7 There is a lot of effort being put into that, and it will
8 be done. Just as an aside, one of the motions that were
9 made today was to instruct staff to go back and to see if
10 additional staff has to be hired. We're very concerned
11 about getting the job done.

12 THE COURT: You noticed that in my report also?

13 MR. LEMIEUX: Well, it was a happy coincidence.
14 Sometimes it works out, and sometimes it doesn't. The
15 concern the Watermaster expressed this morning is that if
16 we come in to you and not comment on goals that seem to be
17 unrealistic, that we will then trap everybody in some
18 failed expectations eventually. We believe that the time
19 needed to get the draft EIR done is not February 28th, it
20 would be more like June 28th. That's about a four-month
21 difference.

22 That being the case, that would back up the --
23 not back up -- lengthen the time to get to the final EIR
24 from May 17th to -- the date we have is September the
25 20th, again, about a four-month delay. If those two
26 events occur four months later, then, of course, the other

1 key event, the approval of the final EIR, would occur some
2 time in October rather than June, another four-month hit.

3 THE COURT: Well, this is something that is an
4 area of concern, because the time line is taken basically
5 from a document that was submitted to the court by
6 Watermaster. And so I incorporated a lot of your basic
7 projections in coming up with this time line, and now all
8 of the sudden you don't like the time line as based upon
9 your time line, so --

10 MR. LEMIEUX: I think maybe I have a couple of
11 explanations for that. There may have been some
12 miscommunication between the Watermaster and the
13 Watermaster staff and the special referee or the special
14 referee's engineer. I am not sure I got Josephine's title
15 right. But in addition to that, we're now a little
16 further on in the process. It is a good thing that Inland
17 Empire has hired the environmental consultant and sent out
18 the notice of appropriation and moving down the track on
19 this thing. As we get more information, we are able to
20 guess a little less and be a little more definitive.

21 But we apologize to the court for submitting
22 something that the court was kind enough to adopt and then
23 ask you to change it, but as of this morning -- so this is
24 hot off the press -- our best estimate of what it takes to
25 get the draft EIR done is June of 2000, not February of
26 2000, and then track everything else up four months also.

1 THE COURT: The concern I have is -- well, I
2 expressed a concern in the paperwork, and I am going to
3 express a concern from the beginning. You also have a
4 human relation problem with the employees. If the
5 employees think that their job is going to terminate in
6 the near future, in my opinion, you're not as apt to get
7 as good of work out of them as if they believe they had
8 some employment in the future. And the fact that they do
9 a good job means they do have a job in the future. The
10 contemplation is that the Watermaster would be given a
11 five-year appointment, which right now we're on an interim
12 Watermaster.

13 We're in the interim, the extension, the
14 overtime of the interim Watermaster right now. So then
15 last time when everybody was here I agreed to extend it
16 out. The reason I wanted to extend it out is in meeting
17 the time lines as prognosticated at that time by the
18 Watermaster, it didn't, in my opinion, give sufficient
19 notice to the employees in an occupation that's not that
20 easy to transfer to a new Watermaster. They're
21 geographically and perhaps occupationally confined to this
22 area, to a certain extent. They would have to move --
23 some of them have bought homes, whatever -- if they were
24 terminated. So I wanted to give them a long period of
25 time..

26 If we start sliding this again, we're back off

1 the date of the end of the year 2000, which -- in
2 selecting that date, it was a calendar year now as opposed
3 to a fiscal year. And the original time I had was a
4 fiscal year. So we keep on sliding the date. That's why
5 I use the word procrastination in the tentative, is I --
6 and I knew you would take umbrage to that and say, we have
7 calculated this, and this is more of an educated estimate
8 at this point. I know that's your position.

9 I just want to -- if I can, keep this thing
10 moving forward. And I know they can do it. It is just in
11 the past I get the impression -- and that's why I alluded
12 to it -- it is maybe only half an employee that is
13 stalling things. Maybe a little bit of effort in that
14 area might speed things up a little bit.

15 MR. LEMIEUX: Your Honor, we share your concern
16 about giving the employees some sense of security. And I
17 was going to speak to that under a little different part
18 of the discussion today. One of the things that you
19 ordered was the development of a contingency plan with
20 DWR, and that's really -- that's kind of where I am
21 looking at on the employee status, because after all, the
22 department takes over the operation, that's when the
23 employees have something to look forward to or worry
24 about, depending, I guess. I was going to report to you
25 on that that our frustration there is, perhaps because
26 there are new people in the bureaucracy, we have not been

1 able to make the contact with the people we think we're
2 supposed to talk to up there. Ms. Stewart has left three
3 or four phone calls with the person who she thinks she is
4 supposed to talk to and they haven't returned those yet.

5 I think Ms. Brenner spoke to someone -- and I
6 am about to prove why hearsay is something you should
7 avoid -- I understand the result of that conversation was
8 they are looking at it and they will get back to us. We'd
9 like to get back onto the track of presenting you with a
10 contingency plan and the DWR and address employee concerns
11 in that way. I think that's a little different, though,
12 than the schedule for the OBMP. Our problem -- employee
13 problem with OBMP is to decide if we have enough staff
14 working on it, as well as I said earlier, we're looking
15 into that to see if we need some more bodies.

16 THE COURT: I congratulate you on pursuing that.
17 I get that same impression, as I said in my order. It is
18 not for me to tell you how many employees to hire. You're
19 constantly having to prepare, organize and divert
20 resources and employee resources in different directions.
21 It is not efficient. And maybe this is a good idea, but
22 then again, it is not my jurisdiction to tell the
23 Watermaster who to hire and how many to hire.

24 I think these deadlines as they're articulated
25 are appropriate.

26 MR. LEMIEUX: Articulated by me or by you?

1 THE COURT: By me on Exhibit A. And I want to
2 see what you do.

3 I better just talk to the attorneys today,
4 Traci.

5 MS. STEWART: Okay.

6 THE COURT: I know you guys can do it or I
7 wouldn't order it. And that's one of the criteria that,
8 as far as the performance of the interim Watermaster, it
9 is one of the things that in this mosaic of Watermaster
10 functions I am looking at. How timely they are on things;
11 how many reports are late; or is that web site -- is it
12 true they're not communicating with the public?

13 I checked two days ago and the minutes and draft
14 minutes were four months behind. I checked with the
15 special referee and Barbara, and apparently, there are
16 draft minutes, because you know what happens, they get
17 something, and how come it can't be put on the web site?
18 About a year ago I asked Traci, how long does it take to
19 get the stuff on the web site? It wasn't that much time
20 to get that information on the web site. That's why in my
21 order I am talking about maybe it is only half an
22 employee, but it gives the appearance that things are not
23 getting done.

24 And things are getting done, because Joe
25 Scalminini tells me things are getting done. He is quite
26 pleased with some of the progress you guys are making.

1 In other areas I do have some concerns, so I applaud your
2 efforts in the area of maybe hiring another employee.
3 Perhaps that will solve the problem, but I think this is a
4 doable time line.

5 MR. LEMIEUX: Your Honor, if I can't talk you
6 out of it or negotiate you out of it, could I ask one
7 concession, and that is in February of 2000, which is the
8 deadline --

9 THE COURT: February 29th instead of 28th, but
10 go on.

11 MR. LEMIEUX: The deadline for the draft EIR --

12 THE COURT: Is a leap year.

13 MR. LEMIEUX: You set a court date, a hearing
14 date.

15 THE COURT: I think I set one in March.

16 MR. LEMIEUX: Could you set one earlier than
17 that in case we're having some problems.

18 THE COURT: That's why I set the one in March,
19 because --

20 MR. LEMIEUX: We take your deadlines very
21 seriously; and as soon as we see we can't meet one, we
22 want to be in here to tell you about it. If you could
23 tentatively give us a time in February in case it is true
24 that we just can't get this thing done by February. And
25 part of the problem with this, your Honor, is many of the
26 CEQA deadlines are out of our control. And we can -- we

1 can find other people just dragging this thing out for
2 maybe no good reason but beyond our control.

3 Maybe we can just file a progress report in
4 February?

5 MS. SCHNEIDER: Your Honor, this is Anne
6 Schneider --

7 THE COURT: Okay. I think if there is a need
8 for a progress report, it should be substantially in
9 advance of February 29th. We're fast approaching the
10 holiday zone. What would you suggest, early January?

11 MS. SCHNEIDER: Right. I would suggest early
12 January. And even though we're fast approaching the
13 holiday, the decision has been made to use Inland Empire
14 and Mr. Dodson for some time now. My understanding is
15 that work has already commenced, and that a substantial
16 amount of the work will be able to rely on
17 Mr. Wildermuth's previous work.

18 MR. LEMIEUX: I think that's true.

19 MS. SCHNEIDER: So it would make sense to me
20 that Mr. Lemieux is asking something logical, but the date
21 should be well in advance of the deadline, because there
22 is an assumption if you have a hearing at the 29th or
23 thereabouts, that the deadline is not going to be met.
24 And I think the assumption going in is more properly that
25 it will be then --

26 THE COURT: So January 6th at 1:30. I have

1 other matters scheduled then, but I will make time for
2 this.

3 MR. LEMIEUX: Your Honor, if the report is we're
4 going to meet the deadline, maybe we could give you that
5 indication in advance, file it, and do away with the
6 hearing. But if there is a problem, I think we would like
7 to come in and explain ourselves to you.

8 THE COURT: We'll have it a status hearing, and
9 it will be a non-appearance if all deadlines can be met
10 per Exhibit A. Okay?

11 Anything else on anything?

12 MR. LEMIEUX: Your Honor, were you satisfied
13 with our explanation of where we're at on the contingency
14 plan with the DWR?

15 THE COURT: I think so. I think you should
16 prepare a plan, though, anyway and just mail it to them.
17 My opinion is that DWR can just thumb their nose at us.

18 MR. LEMIEUX: That's true.

19 THE COURT: I don't have the jurisdiction to
20 order them to do something. That's why I underlined the
21 word "invite". If they so choose, then they could respond
22 to it. If they don't choose to respond to it, that's
23 where we're at. At least you made an effort to think
24 things through ahead of time. And if DWR doesn't do it,
25 maybe there would be somebody else that would.

26 MR. LEMIEUX: But for the fact there is a new

1 administration with new leadership, DWR would not be
2 interested in doing this. This is not something
3 historically done. There are new department heads and
4 leadership. I can understand it is going to take them
5 awhile to digest the proposal, so we'll keep -- we'll keep
6 pushing that.

7 THE COURT: Another thought I have in that area
8 is we have enough trouble right now getting you guys to do
9 something. I don't need a larger agency to be responsible
10 for doing something. Be that as it may, if nothing gets
11 accomplished, I have to have that sword of Damocles there.

12 MS. LEVIN: Your Honor, Marilyn Levin.

13 Just briefly on the schedule, so that it is
14 clear on the record. I have been attending most every
15 meeting. The parties have been working more than
16 diligently to meet the Court's deadlines. I was one of
17 the parties who, at the public hearing tried to
18 respectfully disagree with the Court appointed special
19 master or referee on the time lines. I was concerned, I
20 think, that there wasn't enough time between February 15th
21 and the date -- ultimately, that it was going to be
22 adopted for real input from the parties and voting.

23 I think some of that you must have taken into
24 consideration in this time line, but as I attended the
25 various hearings or meetings over the last month, it
26 became clearer to me that the February 15th deadline was a

1 problem. And I believe in the new proposed time line, and
2 I don't know if you have a copy of it, I had -- I had
3 previously suggested that we have more status reports with
4 the Court. And on this proposed time line it says
5 February 15th would be filing a status report with the
6 Court, and that ultimately the draft implementation plan
7 would be circulated June 29th.

8 As of today I understand that a consultant has
9 been hired to -- as he said, take into consideration all
10 the factors that need to go into an implementation plan,
11 and that includes the recharge. There is a recharge
12 subcommittee. There is a basin yield maintenance
13 subcommittee. Those are two important factors that are
14 going to determine which parties should be assessed for
15 the major projects that are being developed. And that
16 really moves away from this issue of Joe Grindstaff and
17 water quality, because I think it is important for the
18 Court, and ultimately the consultant that's going to
19 consider the crunching of the numbers, to look at what the
20 real reasons for developing some of the projects are. And
21 that is conjunctive use down the line, basin yield
22 maintenance down the line, and that the parties who are
23 going to benefit from those projects, not just cleaning up
24 the basin, because that's an easy catch all, because
25 really, in the future what this water and this basin is
26 going to be used for, and which agencies are going to

1 benefit from that. And as of today we don't have that
2 model. And we were asking -- I was asking some questions
3 at the meeting, who's going to give you the factors?
4 Which are you going to take into account credits for some
5 agencies, for example, the State of California, that
6 builds a waste water treatment facility on its land, or is
7 being a type of ion exchange? Are you considering that?
8 And the comment was well put in writing. So I guess what
9 I am saying is, I am concerned that February 15th just is
10 an impossible deadline when some of us have not even seen
11 the model that is going to be used and the factors for
12 assessing the parties. And some of us who are concerned
13 about being able to pay any further assessments -- we
14 haven't seen that model yet. And people are really
15 working very diligently. The number of meetings, the
16 number of hours spent on the subcommittees is astounding
17 to me. And so I just wanted it at least to be on the
18 record that I just don't know how we can possibly meet the
19 February 15th deadline with the addition of this Santa Ana
20 petition that has just been thrown in our laps. And many
21 of us are planning to prepare documents and appear those
22 two days in December. We're moving meetings for that.
23 Then adding on CEQA compliance. And some of the agencies,
24 for example, the State of California, actually has to look
25 at to comment on this NOP that is being sent out. And so,
26 there are a lot of extra things on our plate right now.

1 And I would urge the Court possibly to look at the new
2 time line. You have your ruling today, but perhaps we can
3 come in and really discuss this further and inform you
4 about all the things we really are doing.

5 THE COURT: I am sure we might be doing that in
6 January. What's going through my mind -- you know when
7 you were talking what I was thinking about? There is a
8 man that said, I propose we put a man on the moon by the
9 end of this decade and bring him home safely. I am
10 willing to bet, however, he did not know how those rockets
11 were going to work, solid fuel, liquid fuel. What type of
12 guidance system those rockets were going to have. How big
13 the rocket was going to be. A lot of the minutia or
14 details he didn't know.

15 And he had some very specific goals. And that's
16 what we need, and we need to stick with them. We have a
17 major problem if we're going to believe Mr. Grindstaff's
18 report from way back when, and I did. And we need to move
19 forward. Unless we set some goals, we're never going to
20 move forward.

21 We set some goals, not guidelines. That's why
22 you have a time line. That's why I initially, way back
23 when, gave you a time line. I bet nobody in here has ever
24 gotten a time line from a judge before, have you?

25 You have, Ms. Levin, have you?

26 (No audible response.)

1 THE COURT: But you have now, and you continue
2 to get them. That's what we need to do is to have some
3 goals, stick with them, and there are going to be some
4 very specific reasons. Mr. Lemieux was talking in terms
5 of writs of prohibition, so to speak, to prevent them from
6 doing something. Maybe that was Mr. Kidman. Tell them
7 not to do something.

8 And I propose we do the exact opposite. You're
9 going to do something, and then you're going to tell me
10 why you can't do it. And maybe you will be telling me as
11 soon as January the 6th, but at least, let's proceed
12 forward at this time on --

13 Anybody else wish to be heard on anything?
14 Mr. Kidman?

15 MR. KIDMAN: Thank you, your Honor. We did have
16 a status conference listed today concerning the Santa Ana
17 River full appropriated stream matter. You have had two
18 reports that have been submitted to the Court and it might
19 be useful to get some verbal update delivered. There are
20 continuing to be considerations, deliberations and actions
21 being taken.

22 THE COURT: In order of receipt I think I got --
23 I received Mr. Cihigoyenatche's first then Mr. Morris'.

24 Mr. Morris' came in, was it yesterday, or today?

25 THE CLERK: Yesterday.

26 MR. KIDMAN: My I also suggest that as

1 something -- if you are going to take some oral comment on
2 that, that we ought to schedule another status conference
3 somewhere down the road too on this?

4 THE COURT: Would January the 6th be too late?
5 We might be able to have some economies of some sort. As
6 far as notice of hearing, I think -- was it
7 Mr. Cihigoyenetché who said it cost \$400 to put the notice
8 out?

9 MR. CIHIGOYENETCHE: No, I don't believe so.

10 THE COURT: Somebody mentioned it one time. It
11 is quite expensive to just get the mailing out.

12 MR. CIHIGOYENETCHE: Quite briefly. I don't
13 know if you want an update. We had an update at the
14 Watermaster meeting that I thought was pretty thorough.
15 Everybody participated and it took many of the same faces
16 as are here right now. If the Court is inclined to desire
17 additional updates here in court, I would be happy to --

18 THE COURT: No. Actually, I didn't find your
19 report that different than Mr. Morris'. You talk in
20 terms -- I think it was you that talked in terms of two
21 500,000 acre feet. And Mr. Morris talks in terms of a
22 million acre feet. One mentions that Orange County is not
23 seeking a half million acre feet. It is a half million
24 acre plus feet.

25 In addition to the 42,000 at the -- I think
26 basically everybody knows what's going on. December the

1 7th hopefully will get continued to enable parties to
2 prepare more, I guess.

3 MR. CIHIGOYENETCHE: I doubt it very seriously,
4 your Honor. There were some other parties that filed a
5 continuance prior to our filing, and that was summarily
6 rejected by the State Board on the grounds that the issues
7 presented on December 7th are a rather narrow one. That
8 is whether the petition should even be considered in the
9 first place and processed, which will entail yet another
10 hearing process later on down the line. And the State
11 Board's reasoning in a nutshell was that you will have --
12 if the basis of your request for continuance is so you may
13 negotiate amongst the parties to reach some type of
14 agreement amongst yourselves, you will have six months to
15 do that under the Water Code. And we don't see the need
16 to continue these very narrow based hearings for that
17 purpose, and, therefore, they denied it. I would expect a
18 similar rejection of our request for continuance as well.

19 THE COURT: I am sure you will report back to us
20 on January 6th what happens on December 7th then.

21 MR. CIHIGOYENETCHE: As an update. We had a
22 fruitful telephone conference amongst some of the parties
23 that served to establish what I think is a united front.
24 At least basically we established we're all on the same
25 page and how we're going to attack this application by
26 Orange County. I believe we have all our witnesses lined

1 up. We have our documents in order. And we will be
2 arriving there to vehemently defend the interests of the
3 upper region.

4 I think we'll do as best we can. But when I
5 read the rejection of the continuance, I am -- I don't
6 hold out much promise for our success in that regard, but
7 we'll try.

8 THE COURT: Mr. Morris?

9 MR. MORRIS: Your Honor, I just simply wanted to
10 address the Court on the nature of our report, which, as
11 you have noticed, is limited simply to Western and San
12 Bernardino Valleys petition and application related to the
13 project at Seven Oaks Dam on the upper main stem of the
14 Santa Ana River.

15 We tried to provide the Court a detailed
16 explanation of what the basis and the nature of the
17 project is; the fact that it is a flood control project
18 with a conservation provision worked into it, but that it
19 is primarily a flood control project working in
20 conjunction with Prado Dam; and that San Bernardino Valley
21 and Western have applied to simply secure a right to the
22 water that will potentially be conserved during the late
23 spring behind the Seven Oaks Dam. And we want to try to
24 alleviate any concerns that should be any concern of this
25 Court related to Western and San Bernardino Valleys
26 petition to application, because it is consistent with

1 both of the judgments that have any bearing on that water.
2 It is consistent with the Western judgment, which we
3 described for you in the report, which simply says that
4 additional conservation up in the San Bernardino Valley
5 Basin will be divided amongst the parties.

6 And that we applied simply for this petition and
7 application in front of the State Board to help firm up
8 the division of those rights as between the parties in the
9 upper basin. As to the other judgment which may have some
10 effect on this is the Orange County judgement. As we
11 indicated in the report, there is nothing about the
12 petition and application of the conservation project that
13 would in any way hinder Western and San Bernardino Valleys
14 ability to continuously meet their legal obligation on the
15 Orange County judgment to provide for the water of 400,000
16 acre feet base flow of Prado Damn. We wanted to make
17 clear to the Court that there really is no need for any
18 continuing worry about that particular petition and
19 application. And we would hope that with the information
20 we have submitted here that you would recognize that the
21 State Board proceedings as related to Western and San
22 Bernardino Valleys application, it simply can't effect the
23 legal obligations that are on Western and San Bernardino
24 to continue to provide that base flow to Prado Damn.

25 The State Board can't alter that. It is
26 prohibited by it's own regulations and state law from

1 interfering with those prior adjudicated rights in the '69
2 judgement. We are really coming in to you today to say,
3 here's our report. Hope it meets with your satisfaction
4 and really takes care of the concerns that this Court may
5 have.

6 THE COURT: The concerns this Court has, of
7 course, are the 1978 judgment here.

8 MR. MORRIS: Sure.

9 THE COURT: There is a dearth of information on
10 that subject in your report. However, you do indicate
11 that changed circumstance is the main thrust of your
12 position why there needs to be a new determination whether
13 the Santa Ana River is fully appropriated. It is -- if
14 that's -- if I am reading you correctly --

15 MR. MORRIS: -- and you are, but the changed
16 circumstance is simply the Seven Oaks Dam that is being
17 built by the Army Corps on the upper stem -- or upper main
18 stem of the Santa Ana River. That's the particular
19 finite, small change in circumstances that we're
20 requesting the State Board look at and answer the question
21 as to whether that change of circumstance necessitates a
22 lifting of the declaration and a granting of an
23 appropriative right for the water that we think is newly
24 conserved water. It has not been used before. It
25 previously just flowed uncontrolled out to the ocean. It
26 is now going to be stored.

1 And if it is going to be stored, we need to have
2 a secure right to that, if the State Board would be
3 willing to grant that with a declaration to do that. So
4 it is a limited reasoning we're asking the Court -- or
5 asking the State Board to lift that declaration for
6 appropriation.

7 THE COURT: Well, as I said before, the issue --
8 it is for the people that are effected by the 1978
9 judgment, vis-a-vis this Court, and they are concerned.
10 And if what you say is correct, their concerns will be
11 alleviated in the future. If it is not, then we'll have
12 to deal with it. As far as them educating themselves and
13 keeping heads up on the subject, as Mr. Kidman suggested,
14 it appears to be smart business on their part now. And I
15 am not going to tell them they can't do that.

16 MR. KIDMAN: Your Honor, on the issue of changed
17 circumstances. Is one of the -- you know, real important
18 things that is going on in this process, and whether or
19 not those circumstances are changed, relative to what the
20 expectation of the parties were. And I still have to go
21 back to the '69 judgment and talk about that for a minute,
22 and there is a good reason for that. Number one -- or a
23 couple of good reasons.

24 First of all, unlike what is going on in the '78
25 judgment in this court, the Orange County court in the '69
26 judgment is completely and totally asleep. The file is

1 not active. There is no judge assigned to it. If you go
2 down there and try to find out about what is going on in
3 the case, it takes a number of days for the paper file to
4 be located. Apparently annual reports have been being
5 filed, but nothing -- there has not even been a judge to
6 sign an order in that case since 1985.

7 That's a little bit frightening when you think
8 about how important that case is to this court. That case
9 established three separate priorities of water on the
10 Santa Ana River -- or within the Santa Ana River
11 watershed. The first priority is 42,000 acre feet
12 annually for Orange County of base flow of Prado Dam.
13 The second priority is the right of all of the water users
14 in the upper area to be able to develop and conserve and
15 use native water from within the watershed. And they're
16 free to do that as long as the 42,000 acre foot per year
17 base flow obligation is maintained at Prado.

18 And it is that second level that is being
19 confirmed or dealt with by the Western and San Bernardino
20 Valley applications. It also is leading to great fear in
21 the Chino Basin that, golly, if the -- we better talk
22 about the third level first.

23 Okay, the third level is after the first level
24 is met. And after the second level is met, then all the
25 water that comes out of the watershed and manages to find
26 its way past the upstream diverters and get its way to

1 Prado, all of that water belongs to the Orange County
2 Water District or the lower area. So Orange County Water
3 District has gone into the State Water Resources Control
4 Board and said that we want to confirm our right to that
5 third level. Well, several years ago the State Water
6 Resources Control Board, based upon the '69 judgment,
7 established that all the water on the Santa Anna River
8 watershed is fully appropriated; that is, all the surface
9 stream water is fully appropriated.

10 Between the Santa Anna judgment and -- that is
11 the '69 judgment, and the declaration of flow
12 appropriation, the Chino Basin area has a pretty secure
13 status, that as we need to develop more water within the
14 watershed to operate the Optimum Basin Management Plan,
15 that we have the right to do that so long as the 42,000
16 minimum base flow obligation is maintained, we get first
17 crack at all the other water. Anything that gets let by
18 goes to Orange County. The spector has been raised that
19 because of all the urban development in the upper area,
20 now there is a lot more run off than was contemplated in
21 '69 and that that's changed circumstances, and that
22 would -- might justify some stranger to the '69 judgment
23 coming in and making an application for the water. And
24 for that reason as it's been explained, and I think it has
25 some credibility, it has been explained that the Orange
26 County Water District wants to soak up all that water,

1 that left over water that gets to Prado, before some
2 stranger can come in and get it.

3 Well -- but in order to do that, they have got
4 to destroy one of the two barriers that are the biggest
5 protection. They have to destroy the declaration of full
6 stream appropriation, because as long as that's their
7 Orange County Water District, not any stranger, no one can
8 come in and appropriate additional water out of the
9 watershed.

10 And then they say, well, they want to do that on
11 a limited basis. We only want to do that so we can sew up
12 and confirm the rights that we have under the '69 judgment
13 to everything that the upper barrier doesn't use.

14 So there -- and that move is unprecedented.
15 There has never been a limited or partial lifting of one
16 of these declarations of full stream appropriation. It
17 has never been tried. Nobody knows if it is going to
18 work. It is a gamble that is being taken. And I submit
19 that the Orange County Water District doesn't care whether
20 they win or loose.

21 If they lose, then there is still full stream
22 appropriation in place. The declaration of a fully
23 appropriated stream system would be in place. If they
24 win, they get their additional security that they can go
25 ahead and rely on to develop the water. But the problem
26 is that if they win, then it is very -- that is that the

1 declaration of full stream appropriation is lifted
2 partially or lifted entirely, they have provided the
3 template then for anybody else, stranger or other parties
4 in the basin to come in and say, I want some of that water
5 too and go and ask the State Board to either appropriate
6 the water to them, if the declaration of full stream
7 appropriation is gone, or to go in and say, I want a
8 partial lifting too so I can get mine. That very
9 temptation is being felt by Chino Basin, that is maybe we
10 better get in line too, because just in case the State
11 Board says there is a change of circumstances and that
12 there really is water available to be appropriated, we
13 better get ours, too, before somebody else comes in to get
14 it.

15 THE COURT: To stand in line, we need an Optimum
16 Basin Management Program to stand in line to be able to
17 articulate our position. That's further reason why we
18 should get this thing going, but --

19 MR. KIDMAN: One of the things that is terribly
20 troublesome, as pointed out to us yesterday, Section 8b in
21 the '69 judgment talks about the court, that court's
22 continuing jurisdiction, which I say is at least in a
23 hibernation of some kind right now, full jurisdiction,
24 power, and authority are retained and reserved by the
25 court for the purposes of enabling the court, upon
26 application of any party or of the Watermaster by motion,

1 upon at least 30 days' notice thereof, after hearing
2 thereon, and item about, to modify amend, amplify, any of
3 the provisions of this judgment whenever substantial
4 changes or other conditions effecting the physical
5 hydrological or other conditions dealt with herein. The
6 parties, at least the four remaining parties to the Santa
7 Ana judgment, the moment they felt there was changed
8 circumstances that affected their water rights in this
9 system, had a duty to give a 30-day notice and go back to
10 the court in Orange County. Instead, that court is asleep
11 in hibernation and they have gone around it and gone to
12 the State Water Resources Control Board. So this has been
13 kind of a long lecture, and I apologize for that. What I
14 think needs to happen here is this is not -- the '69
15 judgment is not anything before this court other than by
16 information, but we need to remember that at least a half
17 dozen, 10, 12, maybe more -- I didn't count them -- of the
18 parties here before you today were in that case too, in
19 the '69 case, and that those proceedings have been fought
20 since the early 1930s when the Irvine Company originally
21 sued the City of Chino. They finally got a resolution of
22 it in '69. And now a number of the major parties that
23 were remaining and signed off on that '69 judgment are
24 going around that judgment, not following the specific
25 directives of the judgment that when there is changed
26 circumstances you have got to come back and talk to the

1 court about it. They have instead decided to go somewhere
2 else to do it. We need to be awake to that. The lawyers
3 representing the parties in the Chino Basin have been
4 awakened to it. The parties have been awakened to it.
5 The Watermaster and the court have all been awakened to
6 it. We need to make sure we come back again, get another
7 status report as to what's going on, and personally -- I
8 shouldn't say personally -- on behalf of my client, I
9 don't think that Western Municipal Water District should
10 be let off the hook as far as making a further --
11 additional status reports and trying to explain to this
12 court what's going on in that other proceeding that has a
13 significant impact -- significant potential impact on this
14 Court's ability to be able to administer its judgment.

15 MR. MORRIS: Your Honor, if I can respond?
16 Because I think we ought to have the opportunity to at
17 least respond to some of the allegations that Mr. Kidman's
18 making in regards to --

19 THE COURT: In due time, Mr. Morris. He hasn't
20 been heard. You have been heard several times. Maybe you
21 will need to respond to both of them by the time he is
22 done.

23 MR. BUNN: I think that's accurate. I am Tom
24 Bunn, and I represent the City of Pomona. And I wanted to
25 take a slightly different slant than Mr. Kidman's. I
26 believe that the Orange County application is important to

1 this court and to the parties beyond the notion of just
2 waking up to what's going on or being aware of the status
3 of matters.

4 Your Honor indicated the intention to focus on
5 the 1978 judgment; and that's absolutely right. That's
6 the one that's before this court. I believe that this
7 does concern the 1978 judgment in at least two ways.
8 Number one, the 1978 judgment was premised on the division
9 of the Santa Ana River water that was done in 1969.

10 That was part of the factual underpinning that
11 then allowed this court to divvy up the water rights in
12 the Chino Basin. And so anything that effects that
13 factual underpinning also effects the rights of the
14 parties that were determined in this court. And separate
15 from the matter of water rights, the adjudication of the
16 Chino Basin is really a water management tool. And this
17 court has taken that very seriously with the Optimum Basin
18 Management Plan. The water management that's being
19 proposed here, again, depends on the ability of the
20 parties to make use of the water that they're proposing to
21 use for that plan.

22 So I think that what happens is the Water Board
23 application is going to have a direct impact on the
24 parties to the Chino Basin adjudication, like my client,
25 Pomona. As far as the application of Western is
26 concerned, as distinction from Orange County, the point

1 that I believe is important here is that maybe for
2 historical reasons only, I don't know exactly what all the
3 reasons why, but right now we have water management by the
4 court in this area as opposed to other ways of water
5 management that could possibly exist. And the notion that
6 now all of the sudden parties should be able to file with
7 the State Water Resources Control Board in order to be
8 able to appropriate water from the river, whether it is
9 newly made available or not, I think is inconsistent with
10 the structure that is being set up, that's been set up,
11 that provides for water management by the court. It is
12 two different animals. And I believe that our position
13 should be, and that the position of many agencies in the
14 Chino Basin is, that for better or worse, we're working
15 with water management by the court; and we should continue
16 to work that way.

17 And that's why Pomona, in particular, is opposed
18 to both applications, not only Orange County's, but also
19 that of Western and San Bernardino County, because it
20 takes away that power of the court, and it takes away that
21 judgment that has already allocated the waters in the
22 river system. That's what I think is important to us. I
23 understand that the court is not being asked to make a
24 decision today. And I am not going to ask you to make a
25 decision. That's the reason we're spending so much time
26 on this particular issue.

1 THE COURT: Okay. Now, Mr. Morris.

2 MR. MORRIS: Well, I kind of don't know where to
3 start. Let me go back and talk a little bit about what
4 the '69 judgment did and the nature of that judgement and
5 it's effects on water rights in the Santa Ana River. The
6 '69 judgment issued by the Orange County courts, as
7 Mr. Kidman explained, did do two basic things. It
8 provided for a base flow from the upper basin of 42,000
9 acre feet at Prado Dam. The second part of that judgment
10 then made an interbasin allocation of rights.

11 And it said, as to the upper area, which
12 includes Chino Basin, Riverside Basin, the San Bernardino
13 County Basin, the right to all other water above 42,000
14 acre feet that you can put to a reasonable and beneficial
15 use. Any water you happen not to use that makes its way
16 down to Prado Dam then belongs to the Orange County Water
17 District to the extent that they can make a reasonable,
18 beneficial use of that water. So you had two essential
19 terms, a base obligation, plus an interbasin allocation of
20 rights as per the upper and lower area. What the judgment
21 did not do is it did not say anything about how the rights
22 within the upper area would be divided among the parties.
23 It is silent to that.

24 As a result, when Western and San Bernardino
25 Valley spend several millions of dollars in developing a
26 conservation pool behind the flood control dam at Seven

1 Oaks, there is nothing in the Orange County judgment that
2 provides us any security that we have a right to that
3 water. We have a right to that water in the judgment
4 vis-a-vis the lower area, Orange County, but as to
5 other -- all the other parties in the upper basin, it is
6 unclear. So Mr. Kidman suggests that somehow Western's
7 petition and application could be addressed within the
8 Orange County judgment. It is not -- it is completely
9 consistent with that judgment because it -- that judgment
10 says, we have the right to do all conservation activities
11 in the upper basin, but it doesn't give any protected
12 right vis-a-vis any other parties except the lower area 30
13 miles downstream as to their rights after spending
14 millions of dollars for that conservation to that water.
15 In an effort to ensure everybody in the upper basin and
16 the lower area -- the lower basin that nothing in
17 Western's petition and application effects the water
18 rights as declared in the Orange County judgment, we have
19 been diligently pursuing and have executed a memorandum of
20 understanding that reaffirms those rights; that reaffirms
21 that water base flow obligation. That says in no way, and
22 reaffirms the extent of the division of water rights
23 between the upper and lower basin. That has been
24 executed, and I --

25 THE COURT: Executed? It has been, if you will,
26 prepared. It has been executed? The one I received

1 didn't have a single signature.

2 MR. MORRIS: It has been considered by each of
3 the four, which are the continuing agencies in the Orange
4 County judgment. It reaffirms their rights and their
5 obligations, and says nothing in the State Board
6 proceedings can effect that. And as we argued in our
7 report, legally, nothing can effect that in the State
8 Board proceedings. So I would offer that to you and to
9 the court as an example of why nothing will change as a
10 result of the State Board proceedings. Nothing will
11 change in the terms and obligations of the party under the
12 Orange County judgment.

13 The second point I want to make is that
14 Mr. Kidman said that maybe the proper jurisdiction of
15 Western's change in circumstance is the Orange County
16 courts, and that somehow the Orange County court is asleep
17 at the switch on this one, and we're putting one over on
18 the Orange County judgment and trying to violate it's
19 terms. I would submit to you that since 1969, for the 20
20 years -- excuse me, 30 years that that has been
21 administered by the Watermaster -- the Santa Ana
22 Watermaster, the terms of that judgment have been complied
23 with to excruciating detail. There is a report on file
24 with the court that shows that the obligations of the
25 parties have been in effect. There is a million acre feet
26 credit to this upper basin vis-a-vis the lower basin as a

1 result of all the continuing base flows that have gone
2 down to the --

3 THE COURT: That's the Chino Basin credit. I
4 think the other one is substantially less than that, maybe
5 half a million maybe credit.

6 MR. MORRIS: Is there a credit at the Riverside
7 Narrows for San Bernardino Valley? That's about it. I
8 think maybe four million acre feet. The one collective of
9 the upper is almost an entire million feet.

10 THE COURT: The other one 400,000.

11 MR. MORRIS: I am sorry. Yeah. 400,000. So
12 that judgment has been complied with to the letter of the
13 law for the 30 years that it's been in it's
14 implementation. As to whether the parties should be going
15 back to the court, there is no reason to go back to the
16 court, because this -- the State Board proceedings and
17 what the parties are asking for doesn't change the terms
18 of that judgment. It doesn't alter it at all.

19 No one is asking to change that judgment.
20 Everyone agrees with the rights that are established under
21 that judgment. The questions Mr. Kidman raised that there
22 is a two part system in our State for how one gets a water
23 right. The two are not always congruent, and it raises
24 some problems. A court can grant a water right, as it has
25 done in the '69 judgment. It adjudicates water rights.

26 It generally granted a water right vis-a-vis the

1 upper basin and lower basin in that case. That is an
2 established water right. It is only binding, though, as
3 to the parties in this judgment. No party can violate
4 that judgment. They have got to respect those water
5 rights.

6 Therefore, however, is a way to gain a water
7 right in this State. It is to make an application to the
8 State Board saying there is water to be appropriated from
9 a particular stream system, and we are requesting that the
10 State grant us the right to appropriate that water. Now
11 the State Board, to it's credit, cannot violate and cannot
12 grant a right that would violate an existing right. So
13 nothing the State Board can do can violate the rights
14 under the '69 judgement, but if the State Board finds
15 there is water available and that that water and the
16 granting of a right to that water is not inconsistent with
17 the judgment, then it can grant that, and it can grant
18 that to anybody. So the concern of the parties is if
19 Western goes off and puts multi millions of dollars into a
20 conservation pool and it doesn't have a secure right to
21 that water because the '69 judgment really doesn't speak
22 to it's right specifically as to the other parties in the
23 basin, it has to go to the State Board and secure that
24 other right in the other way to protect itself if it is
25 going to spend a million dollars for that water.

26 So it is not that anyone is going around the

1 judgment. It is not that anybody is trying to subvert the
2 judgment. These are actions taken by the parties
3 consistent with that judgment, and as offered to you in
4 that MOU, which everyone agrees and affirms that nothing
5 can ever effect the terms of that judgment if we respect
6 the sanctity of that.

7 MR. KIDMAN: I would like to respond on three
8 points.

9 THE COURT REPORTER: I am almost out of paper.

10 THE COURT: Let her switch paper first.

11 MR. KIDMAN: Thank you, your Honor. My three
12 quick points are this: The MOU that you have just been
13 handed; I have seen it. I think it is a little bit like
14 taking your sick child and giving them a pat on the back
15 and saying, everything is going to be okay. But it really
16 doesn't do anything to cure the underlying concerns.

17 There is no way that that particular MOU, I am
18 not even sure it is enforceable among the parties to -- it
19 is certainly not enforceable against the State Water
20 Resources Control Board if the State Board decides to take
21 some actions that are inconsistent with the court judgment
22 in 1969.

23 The second point is -- and I am not accusing
24 Western Municipal Water District of violating this
25 court -- the '69 judgment, but I will refer to the
26 judgment itself. It doesn't say you have to come back if

1 you're going to change the judgment. It says you have to
2 come back whether there are changed physical, hydrological
3 or other conditions dealt with herein. So the
4 construction of Seven Oaks Dam, the increased run off
5 because of urbanization in the Inland Empire, both of
6 those may be changed circumstances that indicate, that
7 required the parties to go back to the court.

8 The third point is, look, this is -- we're
9 talking about issues that are pending in two other
10 jurisdictions, one in the Orange County court, and the
11 other in the State Water Resources Control Board. Other
12 than sort of being frustrated that this thing is going on
13 outside of what the court can control, the only thing that
14 we can suggest is stay tuned, be advised. And if
15 something does happen that looks like it -- as Mr. Bunn
16 suggests, is going to interfere with the Court's ability
17 to administer the water rights here, then action can be
18 taken.

19 THE COURT: Okay. Mr. Morris, what do you have
20 to say about a January 6th status report in conjunction
21 with Mr. Cihigoyenetché as we did this time?

22 MR. MORRIS: I guess we would have no objection
23 to coming in and making an additional report. Just one
24 correction. The State Board, by it's own laws in the
25 state statutes, cannot issue a water right that in any way
26 contravenes an existing vested water right that the

1 parties have and it was granted within the judgment. The
2 State Board knows that it can't do anything to alter that.
3 So that this court is clear on that and --

4 THE COURT: Owens Valley Water is only going to
5 go to the City of Los Angeles.

6 Okay. Who is going to give notice?

7 Mr. Lemieux, you're going to give notice? Okay. The
8 tentative rulings are hereby the final rulings of the
9 court, with the exception that they're augmented to the
10 extent that there is a hearing January 6th at 1:30
11 regarding the status of the application before the State
12 Water Resources Control Board. There is also a hearing at
13 1:30 if the time line cannot be met in all of it's
14 particulars. And any other matters that need to be
15 noticed will be noticed for January 6th, if they can't
16 wait until the times on the time line.

17 MR. KIDMAN: I am sorry, your Honor. One other
18 matter. The last time around we had five days -- or
19 Inland Empire and Western had five days before today's
20 date to deliver the report. Five days before the 6th
21 creates some obvious problems. I wonder if you could
22 designate a date when they will give you a written report?

23 THE COURT: Well, Mr. Morris wants to watch a
24 football game on January 1st, probably -- how about the
25 end of December. If you are having your meetings December
26 7th and 8th in Sacramento --

1 MR. CIHIGOYENETCHE: Right. Yes.

2 THE COURT: So if I said to have a filing by
3 December the 21st, you could probably make it then,
4 couldn't you?

5 MR. CIHIGOYENETCHE: I would think so, your
6 Honor. Yes.

7 THE COURT: Mr. Lemieux?

8 MR. LEMIEUX: Remember the other purpose to set
9 aside the January date is to give us a date and give you
10 some up-to-date information on CEQA. That's just a month
11 from now, and we won't have much new to report. If we
12 could give our CEQA information closer to the deadline, it
13 shouldn't be as elaborate of an issue anyway, I can make
14 that my Y2K problem.

15 THE COURT: December the 29th?

16 MR. LEMIEUX: Thank you.

17 THE COURT: Ms. Schneider, you wanted to be
18 heard awhile ago and I forgot about you.

19 MS. SCHNEIDER: I couldn't tell what was
20 happening from this line. I just have one comment,
21 however.

22 THE COURT: Okay.

23 MS. SCHNEIDER: And that is that the Water Board
24 is extremely unlikely to make a decision or issue an order
25 for months. If it follows its standard practice it will
26 be, you know, well into 2000 before you know what it's

1 going to do on the fully appropriated stream declaration.

2 THE COURT: Then we'll only need a one-page
3 report from Mr. Morris.

4 MS. SCHNEIDER: That's correct.

5 THE COURT: Half a page. Okay.

6 Anything else from anybody? We'll see everybody
7 on January 6th; 1:30, then. Mr. Lemieux will give notice.

8 Was that Traci that was going to check on the
9 Inland Empire Conservation District?

10 (Proceedings in the above-entitled matter
11 were concluded.)

12 --oOo--

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,)
Defendant.)

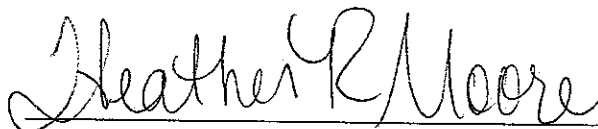
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10
11 STATE OF CALIFORNIA)

) ss

12 COUNTY OF SAN BERNARDINO)

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 55, comprise a full, true and correct
18 computer-aided transcription of the proceedings held in
19 the above-entitled matter on Thursday, November 18, 1999.

20 Dated this 23rd day of November, 1999.

21
22  C.S.R.

23
24 Official Reporter, C-10294

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26