

COPY

FILED
SUPERIOR/MUNICIPAL COURT
OF RIVERSIDE COUNTY
DEC 05 2002

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9 MOJAVE WATER AGENCY

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF RIVERSIDE

12 CITY OF BARSTOW, et al

13 Plaintiff,

14 v.

15 CITY OF ADELANTO, et al

16 Defendant.

CASE NO.: 208568

AMENDMENT TO JUDGMENT
AFTER TRIAL ENTERED
JANUARY 10, 1996; and
ORDER THEREON

Assigned for All Purposes to:
Judge E. Michael Kaiser

17 AND RELATED CROSS ACTIONS

18 The Judgment After Trial, filed and entered January 10, 1996, on the above captioned
19 matter, shall be amended to read as follows:

20 Section IV. Continuing Jurisdiction

21 Paragraph 19(a):

22 Pursuant to the direction of the California Supreme Court and the Court of Appeal,
23 as set forth in the Stipulation for Settlement entered in the Court of Appeal on August 6,
24 2002, Neil DeVries, Virgil Gorman, Richard Leyerly, Geneva Leyerly, Jerry Osterkamp,
25 David and Elizabeth Daily, Richard (deceased) and Elaine Fitzwater, Robert T. and Barbara
26 T. Older and Steve Older, collectively referred to as the "Cardozo Appellants" are, except
27 as provided in this paragraph, excluded from this Judgment and they are not bound by any
28 of the provisions of this Judgment. As overlying owners, the Cardozo Appellants have the

1 right to pump water from the ground underneath their respective lands for their current and
2 prospective reasonable and beneficial need for water on their respective properties

3 Therefore, the parties who stipulated to this Judgment are hereby enjoined and
4 restrained from interfering with the Cardozo Appellants' ability to exercise their overlying
5 water rights for their current and prospective reasonable and beneficial need for water on
6 their respective properties.

7 If parties who stipulated to the Judgment are in full compliance with the Judgment,
8 there shall be a rebuttable presumption that the Cardozo Appellants' water rights are not
9 being interfered with.

10 Each individual Cardozo Appellant shall have the right at any time, by written
11 election filed with the Court and served on the Mojave Water Agency to become a
12 stipulating party to the Judgment. If such an election is made, that party shall be accorded
13 Base Annual Production shown on Table B-1 of Exhibit "B", subject to any rampdown then
14 or thereafter in effect, but shall have no liability with respect to any assessments which were
15 made, or which could have been made, before the date of the election.

16 The provisions of this paragraph are binding upon and inure to the benefit of not only
17 the Cardozo Appellants, but as well as to the respective heirs, executors, administrators,
18 successors, assigns, lessees, licensees and to the agents, employees and attorneys-in-fact of
19 any of the Cardozo Appellants.

20 Paragraph 19(b):

21 Jess Ranch Water Company has stipulated to the Judgment of January 10, 1996, as
22 set forth in the Stipulation and Intervention and Entry of Judgment filed in the Riverside
23 County Superior Court on August 23, 2002.

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ORDER

It is so ordered.

E. MICHAEL KAISER

Dated: DEC. 05 2002

E. Michael Kaiser
Judge of the Superior Court

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BRUNICK, BATTERSBY,
McELHANEY & BECKETT
AUG 08 2002

Court of Appeal

FOURTH DISTRICT, DIVISION TWO
3389 TWELFTH STREET
RIVERSIDE, CALIFORNIA 92501

CHAMBERS OF
JAMES D. WARD
ASSOCIATE JUSTICE

(909) 248-0925

August 7, 2002

William J. Brunick, Esq.
Brunick, Battersby, McElhaney & Beckett
P. O. Box 6425
San Bernardino, CA 92412

Re: Mojave Water/Jess Ranch/Cordoza/E029791

Dear Mr. Brunick:

Enclosed is the original Cordozo stipulation for settlement; the order on which I have signed and forward to you herewith for disposition.

My thanks to you for all your efforts in bringing this case to a satisfactory conclusion.

A handwritten signature in black ink, appearing to be "James D. Ward".

James D. Ward

Enclosure

**COURT OF APPEAL, FOURTH DISTRICT
DIVISION TWO
STATE OF CALIFORNIA**

CITY OF BARSTOW, et al.)	
)	E017881 and E018923
Plaintiffs and Respondents,)	
)	(Superior Court No. 208568)
v.)	
)	
MOJAVE WATER AGENCY, et al.)	
)	
Defendants, Cross-Complainants,)	
and Respondents,)	
)	
JESS RANCH WATER COMPANY,)	
)	
Cross-Defendant and Appellant.)	
_____)	
)	
MOJAVE WATER AGENCY, et al.,)	
)	
Cross-Complainants and)	
Respondents,)	E018 2 3 and E018681
)	
v.)	
)	
MANUAL CARDOZO, et al.,)	
)	
Cross-Defendants and Appellants.))	
_____)	

**STIPULATION FOR SETTLEMENT
PROVIDING FOR AMENDMENT OF JUDGMENT
IN TRIAL COURT AND ORDER THEREON**

The undersigned parties, each of whom stipulated to the Judgment in the trial Court, hereinafter the "Stipulating Parties" on the one hand, and Niel Devries, Virgil Gorman, Richard Leyerly, Geneva Leyerly, Jerry Osterkamp, David and Elizabeth Daily, Richard (Deceased) and Elaine Fitzwater, Robert T. and Barbara T. Older and Steve Older, collectively referred to as the "Cardozo Appellants" on the other hand, by and through their respective attorneys, do stipulate and agree as follows:

RECITALS

Whereas the Cardozo Appellants are among the Cross-Defendants in the case known as *City of Barstow, et al. vs. City of Adelanto, et al.*, Case No. 208568, Superior Court of California, County of Riverside (the "Action"); and

Whereas the Cardozo Appellants did not stipulate to the Judgment in the Action, and;

Whereas a "Judgment after Trial" in the Action was filed on January 10, 1999, and;

Whereas the Cardozo Appellants appealed from the Judgment, and;

Whereas on August 21, 2000, the Supreme Court of California affirmed the earlier judgment of the Court of Appeal and in so doing stated at pages 31 and 32 of its Opinion:

"Respondents also argue that overlying pumpers in an overdrafted basin should be required to file an Action to adjudicate groundwater rights at the first indication of substantial growth in the area. However, overlying pumpers are not

under an affirmative duty to adjudicate their groundwater rights, because they retain them by pumping. (*City of San Fernando, supra*, 14 Cal.3d at p. 293, fn.100; *Hi-Desert County Water Dist., supra*, 23 Cal.App.4th at pp. 1731-1732.)

“As overlying owners, the Cardozo appellants have the right to pump water from the ground underneath their respective lands for use on their lands. The overlying right is correlative and is therefore defined in relation to other overlying water rights holders in the basin. In the event of a water supply shortage, overlying users have priority over appropriative users. (*City of Pasadena, supra*, 33 Cal.2d at p. 926.) The Court of Appeal properly recognized that the Cardozo Appellants retained their overlying rights by pumping, and that no claim of prescription had been asserted to reduce those retained overlying rights.”

And further, at page 30 of the Opinion, stated:

“The Court of Appeal directed the trial court to exclude the Cardozo appellants from the judgment and to grant them injunctive relief protecting their overlying water rights to the current and prospective reasonable and beneficial need for water on their respective properties.”

Whereas on February 28, 2001, the Court of Appeal issued a second Opinion in the Action, this one not to be published, in which the Court stated at page 8:

“The Cardozo appellants are to be excluded from the stipulated judgment, they are not bound by any provisions of the stipulated judgment, and any payments made

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by them under the assessment provisions of the stipulated judgment are to be ordered refunded to them.

“Although it is clear that the Cardozo appellants are not included in the stipulated judgment, an issue is raised as to their water rights. The Cardozo appellants cite the disposition ordered in our superseded opinion: “[T]he trial court is directed to enter its order . . . , based on the evidence previously submitted, [which grants] the Cardozo Appellants injunctive relief to protect their riparian and overlying water rights to the current and prospective reasonable and beneficial need for water on their respective parties. (*Tehachapi-Cummings County Water Dist. V. Armstrong*) [1975] 49 Cal.App.3d 992, 1001.)” Since this portion of the disposition was affirmed by the Supreme Court, it stands, and should be followed by the trial court on remand.”

And further at page 13, the Court states:

“As the only party (other than Jess Ranch) that proved any water rights at trial, the Cardozo appellants are entitled to full protection of those rights. As we said in our previous disposition, the Cardozo appellants are entitled to “injunctive relief to protect their riparian and overlying water rights to the current and prospective reasonable and beneficial need for water on their respective properties. (*Tehachapi-Cummings County Water Dist. v. Armstrong, supra*, 49 Cal.App.3d 992, 1001.)” (Fn. omitted.) Since that portion of our judgment was affirmed, the trial court should follow this mandate on remand.”, and;

Whereas, on remand, the Action was reassigned to the Honorable J. Michael Kaiser, Judge of the Superior Court; and

Whereas, following that assignment, the Cardozo Appellants filed a peremptory challenge against Judge Kaiser under *Code of Civil Procedure* §170.6; and

Whereas the peremptory challenge was denied; and

Whereas the Cardozo Appellants filed a Petition for Writ of Mandate in the Court of Appeal, Fourth Appellate District, Division Two where it is now pending; and

Whereas the Action has been referred to the Court of Appeals Settlement Conference program in the course of which the parties have participated in extensive settlement discussions under the guidance of the Honorable James D. Ward, Associate Justice of this Court, and

Whereas the parties have now arrived at a settlement which they believe is in the best interest of the parties hereto as well as the majority of other parties in the Mojave River Basin.

NOW THEREFORE, the parties hereto stipulate and agree as follows:

1. The Stipulating Parties shall deposit in Covington & Crowe LLP's client trust account, in such amounts as they shall among themselves determine, the total sum of \$500,000.00 to be distributed to the Cardozo Appellants as hereinafter provided.

2. Said sum of \$500,000.00 shall be divided among the Cardozo Appellants in such proportions as they shall determine.

3. Covington & Crowe LLP shall distribute said sum of \$500,000.00 to the Cardozo Appellants upon Justice Ward approving this Stipulation for Settlement.

4. Upon distribution of said sum of \$500,000.00, to the Cardozo Appellants, they shall cause their pending Petition for Writ of Mandate regarding the disqualification of Judge Kaiser to be dismissed.

5. The judgment after trial, filed January 10, 1996, shall be amended, paragraph 19(a) thereto to read as follows:

Special Provisions for the "Cardozo Appellants"

Pursuant to the direction of the California Supreme Court and the Court of Appeal, Niel DeVries, Virgil Gorman, Richard Leyerly, Geneva Leyerly, Jerry Osterkamp, David and Elizabeth Daily, Richard (Deceased) and Elaine Fitzwater, Robert T. and Barbara T. Older and Steve Older, collectively referred to as the "Cardozo Appellants" are, except as provided in this paragraph, excluded from this Judgment and they are not bound by any of the provisions of this judgment. As overlying owners, the Cardozo Appellants have the right to pump water from the ground underneath their respective lands for their current and prospective reasonable and beneficial need for water on their respective properties.

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Therefore, the parties who stipulated to this Judgment are hereby enjoined and restrained from interfering with the Cardozo Appellants' ability to exercise their overlying water rights for their current and prospective reasonable and beneficial need for water on their respective properties.

If parties who stipulated to the Judgment are in full compliance with the Judgment, there shall be a rebuttable presumption that the Cardozo Appellants' water rights are not being interfered with.

Each individual Cardozo Appellant shall have the right at any time, by written election filed with the Court and served on the Mojave Water Agency to become a stipulating party to the Judgment. If such an election is made, that party shall be accorded that Base Annual Production shown on Table B-1 of Exhibit "B", subject to any rampdown then or thereafter in effect, but shall have no liability with respect to any assessments which were made, or which could have been made, before the date of the election.

The provisions of this paragraph are binding upon and inure to the benefit of not only the Cardozo Appellants, but as well to the respective heirs, executors, administrators, successors, assigns, lessees, licensees and to the agents, employees and attorneys-in-fact of any of the Cardozo Appellants.

6. This Stipulation for Settlement may be executed in counterparts. Each counterpart shall be deemed to be an original. All counterparts shall constitute but a single Stipulation for Settlement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement
this 19th day of July, 2002.

STIPULATING PARTIES

State of California

Victor Valley Water District

Southern California Water Company

Hesperia Water District

Apple Valley Ranchos



Mojave Water Agency

Silver Lakes Association

Cemex

Mitsubishi Cement

CARDOZO APPELLANTS

By
COVINGTON & CROWE, LLP



Robert E. Dougherty

Attorneys for Cross-Defendants and
Appellants Niel Devries, Virgil
Gorman, Richard Leyerly, Geneva
Leyerly, Jerry Osterkamp, David and
Elizabeth Daily, Richard (Deceased)
and Elaine Fitzwater, Robert T. and
Barbara T. Older and Steve Older

ORDER

The foregoing "STIPULATION FOR SETTLEMENT . . ." is hereby approved. Pursuant to the stipulation:

1. The Stipulating Parties shall immediately deposit in the client trust account of Covington & Crowe, LLP, in such amounts as they shall among themselves determine, the total sum of \$500,000.00 to be distributed among the Cardozo Appellants as they shall among themselves determine.

2. Upon the deposit of the \$500,000.00 in the trust account, Covington & Crowe, LLP, on behalf of the Cardozo Appellants shall serve and file with the clerk of this court a request to dismiss the petition for writ of mandate filed in case No. E029791, entitled Neil Devries et al. v. Riverside County Superior Court (Mojave Water Agency et al.), thereby permitting the Hon. E. Michael Kaiser, Judge of the Riverside County Superior Court, to complete the superior court proceedings in the underlying case pursuant to the parties' stipulations.

3. Upon the filing of the order dismissing the petition in case No. E029791, a judgment shall be prepared incorporating the provisions of paragraph 19(a) as set forth in the "STIPULATION FOR SETTLEMENT . . ." If it approves the judgment, the Riverside Superior Court shall execute and enter the judgment.

Dated: _____

8/6/02



Hon. James D. Ward
Associate Justice, Court of Appeal
Fourth District, Division Two