

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

CITY OF BARSTOW, et al.,)
)
 Plaintiffs,)
)
 vs.) No. CIV208568
)
 CITY OF ADELANTO, et al.,)
)
 Defendants.)
)
 _____)
 AND RELATED CROSS-ACTIONS.)
 _____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Proceedings of Thursday, June 18, 2009,
before the Honorable Gloria Connor Trask,
Judge, Department 1.

APPEARANCES:

For Defendant/
Cross-Complainant:
Mojave Water Agency

BRUNICK, McELHANEY & BECKETT
By: William J. Brunick, Esq.
1839 Commercenter West
San Bernardino, California 92412

For California
Department of Fish
and Game:

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA
By: Marilyn H. Levin, Deputy
300 South Spring Street, Suite 11000-N
Los Angeles, California 90013-1204

For Mitsubishi Cement
Corp./Silver Lakes
Association:

GRESHAM, SAVAGE, NOLAN & TILDEN
By: Michael Duane Davis, Esq.
3750 University Avenue, Suite 250
Riverside, California 92501-3335

Patricia L. Hanson, CSR 2329
Riverside Superior Court
4050 Main Street, Department 1
Riverside, California 92501

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1 PROCEEDINGS OF THURSDAY, JUNE 18, 2009

2 * * *

3 THE COURT: Good morning, Ladies and Gentlemen.

4 Calendar call for Department 1.

5 If you all are here on City of Barstow versus City of
6 Adelanto, I'll take that at the end of calendar, and that
7 probably won't be till about quarter to 10:00 or 10:00. So
8 you're welcome to be excused.

9 MR. BRUNICK: Thank you.

10 MS. LEVIN: Thank you, Your Honor.

11 THE COURT: And of course topics for discussion -- If
12 you're out there, the topics for discussion would be the
13 notion that the court would reduce the Baja water from
14 5 percent to -- or reduce it not 5 percent, but 2.5. And the
15 issue about Oeste and whether or not that would be somehow
16 stayed or not put into action, I'm a little confused, and I
17 want to talk about that. So those would be the topics for
18 discussion.

19 MR. BRUNICK: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (A recess is taken.)

22 THE COURT: City of Barstow we'll take at the end of the
23 calendar.

24 (A recess is taken.)

25 THE COURT: Good morning.

26 In the matter of City of Barstow versus City of
27 Adelanto.

28 MR. BRUNICK: Good morning, Your Honor.

1 Bill Brunick appearing for Mojave Water District.

2 MS. LEVIN: Good morning, Your Honor.

3 Marilyn Levin, Deputy Attorney General, representing the
4 California Department of Fish and Game.

5 THE COURT: Good morning.

6 This matter is on calendar for a motion to adjust the
7 Free Production Allowance for Water Year 2009 through 2010.

8 I have read and considered the -- the motion submitted
9 by the Mojave -- by defendants, Mojave Water Agency, as well
10 as the response to the Watermaster's motion submitted by the
11 attorneys for Department of Fish and Game -- California
12 Department of Fish and Game.

13 Were there any other documents that were received such
14 as oppositions?

15 MR. BRUNICK: No, Your Honor. There's no other
16 opposition.

17 THE COURT: Okay.

18 MS. LEVIN: Your Honor, Mojave Water Agency did not file
19 a reply to the Department of Fish and Game's response.

20 THE COURT: All right. Thank you.

21 But there were no other interested parties?

22 MR. BRUNICK: No, Your Honor. There is a representative
23 from the Baja subarea that would like to address the court in
24 support of the -- of the Watermaster's recommendation.
25 There's no other filings. There's no other opposition to the
26 recommendations made by the water district.

27 THE COURT: All right.

28 It seems to me that the Department of Fish and Game has

1 a stronger stand on that and believes that the 2.5 percent
2 reduction is not sufficient and that we should stay with the
3 5 percent as previously discussed. Did you want to address
4 that? And how strongly do you feel about it?

5 MR. BRUNICK: The Watermaster Board, this is a lengthy
6 process in arriving at this recommendation. But the
7 Watermaster Board went through a couple hearings and listened
8 to the community,--as has been done in the past by this court,
9 and felt that the 2 and a half percent could be worked with.
10 It means that we will not be in balance until 2024 versus
11 2018 if we had the 5 percent. And I think they made the
12 determination and recommended to the court that people are as
13 important as plants, and we don't think that there will be
14 anymore damage to the plant life in that area.

15 So weighing the pros and cons, and they understand the
16 judgment, they understand that it has to get down to safe
17 yield, they felt if it gave the community the 2 and a half
18 percent, it would allow the community to adjust over the next
19 five, ten years, that they would make that recommendation to
20 the court.

21 THE COURT: Okay. Thank you.

22 MS. LEVIN: Your Honor, --

23 I feel more comfortable standing, if that's okay.

24 I believe --

25 Oh, I'll sit down.

26 THE COURT: It's fine. It's a function of the
27 microphones.

28 MS. LEVIN: Okay. Great.

1 Thank you, Mr. Brunick.

2 I believe, though, what is before the court is the
3 evidence before the court. And the evidence before the court
4 is not the same as the argument that's been made by Mojave
5 Water Agency. The water levels in Baja are declining without
6 any recharge. As Mr. Brunick said, under the 5 percent
7 rampdown, Baja will experience storage depletion until 2018,
8 nine years from today; under the adjusted plan proposal it
9 will be 2024, fifteen years.

10 There's no evidence in, you know, rebutting what Fish
11 and Game said with respect to plants versus people. There's
12 no evidence before the court that the 2.5 will assist people
13 in any way. In effect, this is a motion to amend the
14 judgment. And there's nothing before the court -- no
15 evidence before the court that there are changed substantial
16 circumstances that should suggest the court veer from the
17 conclusion of last year, that the operative management
18 strategy for Baja should be the judgment. I believe last
19 year you were fairly clear. I reviewed the transcript about
20 we can't keep waiting to implement the judgment. It's been,
21 you know, a fair amount of time.

22 And so with respect to that I carefully looked at the
23 Watermaster's recommendation to its board, both February 25th
24 and March 25th. Nothing has changed. There is no evidence
25 that was presented to the board and there's no evidence
26 presented to this court that the conclusion should be
27 anything but the 5 percent. The judgment requires it. The
28 court order previously says that there will be continued

1 rampdown of 5 percent. In fact, the -- the evidence
2 presented by Mojave says that -- in their declaration as well
3 as the attachments to our declarations, under the 2.5 percent
4 scenario, quote, the subarea will remain unbalanced, and the
5 long-term effect of continued overdraft in Baja is the
6 continued reduction in water levels and -- and not just
7 habitat -- and the potential to impair the water supply for
8 all Baja residents. That is the conclusion in the
9 declarations and in the recommendation by the Watermaster
10 engineer based on USGS studies, based on the LA Cou- -- based
11 on the other county studies, based on photographs, what is
12 going on in the Baja subarea.

13 The legal -- The legal basis for the court's, hopefully,
14 ruling that it should be a continued reduction of 5 percent
15 is Exhibit H, which was attached to one of the declarations,
16 and Provision 24(o) of the judgment. Exhibit H was attached
17 to Denyse Racine's declaration. And I believe last year the
18 ruling in the statement of decision of the court is: Was
19 that the legal basis for the 5 percent reduction? And it
20 says it's required; the Watermaster is required to make a
21 recommendation to the court of 5 percent under certain
22 circumstances. And I believe Exhibit H could be -- it might
23 be Exhibit 1 to Denyse Racine's declaration.

24 Mr. Bilhorn's declaration referenced the drop in water
25 levels throughout the Baja Subarea, not just in the riparian
26 level areas. But there have been .7, .5, 1 foot per year, 2
27 feet per year. There's been a re-drop, let's say, since 2005
28 down to 47 feet. I think Mr. Bilhorn's declaration said that

1 there was a slight recapture, in a sense, of some of the
2 water levels after the flood and after reduced pumping on
3 the -- when Fish and Game purchased some property. And those
4 continued declines, 1 foot a year, 2 feet a year, .7 a year,
5 down to 47 feet in some areas is significant. And I think we
6 point out that it will also cause Baja -- cost Baja residents
7 money to reduce -- you know, to adjust their well so that
8 they can even get water to pump if the water levels keep
9 dropping.

10 The slower rate of -- Mr. Wagner, in some of the
11 submittals, noted, and so did Mr. Bilhorn, that there's been
12 a slower rate of a reduction in water levels and there hasn't
13 been a reduction in pumping. And, to me, that's because the
14 judgment is working. And for the first time we need to -- we
15 need to continue that approach. The judgment -- Numerous
16 people spent many years coming up with this judgment, this
17 stipulated judgment. And so I believe that it is -- just as
18 last year, it is now time to move on, especially since all
19 the evidence in front of you dictates that result.

20 THE COURT: Her arguments are very persuasive.

21 MR. BRUNICK: When in doubt, go to equity.

22 You know, the judgment has -- has been tinkered with,
23 modified by the Watermaster with recommendations with the
24 court. And the court has modified the judgment by its own
25 motion.

26 THE COURT: I'm familiar with that.

27 MR. BRUNICK: Pardon me?

28 THE COURT: I'm familiar with that.

1 MR. BRUNICK: And so I think the court is the
2 Watermaster, and the court has jurisdiction as to what the
3 Mojave Water Agency does with its board sitting as
4 Watermaster.

5 The Watermaster did not take -- make this 2 and a half
6 percent recommendation lightly. They recognize all the
7 things that the Attorney General has indicated. But we feel
8 we have enough time to get to that point in 2024 is
9 sufficient. We have indicated we will come back to the court
10 in 2017 with a thorough study of Baja. But the judgment does
11 require a rampdown. But the court has allowed the judgment
12 to slip in the past, and I think the Watermaster made that
13 recommendation after considering that the material was
14 presented by the Watermaster.

15 THE COURT: I guess the question I would have for you is
16 that numbers on a page don't easily translate to what you
17 referred to as the personal aspect. And so I don't
18 appreciate and look to your guidance for how it translates to
19 the residents of Baja.

20 MR. BRUNICK: The residents of Baja are primarily
21 agricultural and small users. There are no organized water
22 systems within the Baja subarea. If the Free Production
23 Allowance goes down, theoretically assessments go up, and the
24 cost to farm, the cost to have a small pond or a recreational
25 lake go up. I think for the first time at the Watermaster
26 hearings the community recognized that they have to continue
27 to rampdown. And they're not going to get away from having
28 to pay for additional water. They have simply asked my

1 client for more time to adjust to that. And they got the
2 message loud and clear last year, and I think the message has
3 been taken back to the community. And this is what kind of
4 collaterally was come up with at the Watermaster meeting, and
5 Fish and Game has consistently objected.

6 THE COURT: You said there's someone here from Baja to
7 address the court?

8 MR. BRUNICK:-- Yes, Your Honor.

9 THE COURT: Any objection?

10 MS. LEVIN: The only -- And I spoke outside, and I said
11 don't take anything personally. The only objection I have,
12 but I think the court needs to hear -- the only objection I
13 have is I don't think I've attended any other hearing in my
14 entire career where someone who has not appeared, is not
15 represented, we don't know their background, we don't know if
16 they represent anyone but their -- themselves or the board or
17 how representative their position is just gets to come up and
18 speak to the court. So I don't think it's evidence. I think
19 it's just argument. Hopefully it will be interesting; and we
20 all are concerned about people's responses. So to that
21 extent I have an objection, but I understand I'll probably be
22 overruled and that the court will want to listen to argument
23 from a person in Baja.

24 THE COURT: You raise some very excellent issues. We
25 don't know who this person is, what their ability to speak,
26 are they a homeowner, an agricultural person? We didn't
27 really provide for public comment, which is I suppose I could
28 analogize as to a CEQA matter, which is the closest I have to

1 relate these kinds of things to. It puts a personal note on
2 numbers and pieces legal words. So to that extent. But I
3 don't know how it helps me.

4 MR. BRUNICK: The individual, Mrs. Johnson, is a party
5 to the adjudication. She's a member of the Subarea Advisory
6 Committee, has advised the Watermaster. And all she has
7 asked for is a few minutes to address the court.

8 MS. LEVIN: Again, if I'm overruled, that's fine. I
9 don't think her -- her statements can be given any weight.

10 THE COURT: And let me say, let's say she raises
11 something that seems pertinent, we can always just continue
12 this and brief it. I don't expect that to happen.

13 All right.

14 MR. BRUNICK: Thank you, Your Honor.

15 THE COURT: Good morning, Ma'am.

16 If you will state and spell your name for the record.
17 And you are welcome to be seated.

18 MS. JOHNSON: Okay. Thank you, Your Honor.

19 My name is Ellen Johnson. E-l-l-e-n, J-o-h-n-s-o-n.

20 And I'm a member of the Baja Subarea Advisory Committee.

21 And we would like to state for the record the Baja
22 Subarea Advisory Committee has accepted the Watermaster's 2
23 and a half percent recommendation for rampdown. And we also
24 feel very -- very strongly and very appreciative of their
25 willingness to work with us.

26 We have many issues that are yet to be resolved, and we
27 are hoping to resolve these issues very soon here by meeting
28 with the Watermaster and MWA staff.

1 We have questions of the water levels and other things
2 of that nature. And therefore we wish some extra time to be
3 able to actually investigate these -- these issues with the
4 Watermaster and staff so that we can totally understand
5 better.

6 And we wish that at this point in time you would just
7 accept the Watermaster's recommendation of 2 and a half
8 percent.

9 THE COURT: All right. Thank you.

10 Let's move on to the next question I have while I think
11 about that.

12 I'm still troubled, I guess have to say, Mr. Brunick. I
13 just -- I don't have -- I don't have a sense of what 2 and a
14 half percent means. Does it mean an acre of corn doesn't get
15 watered? Does it mean that a block -- a residential block
16 doesn't get an extra shower? What does it mean? Does it
17 mean somebody pays extra money? How does it translate?

18 MR. BRUNICK: Essentially it means if the production is
19 dropped from 100 to 97 and a half, if they pump 100, it costs
20 them more money. And we -- we assess them based on a 2 and a
21 half percent -- or a -- Whatever an acre-foot of water costs,
22 we assess them on that basis.

23 So if it's ramped down, they pay more to the water
24 agency for supplemental water for the agency to bring in
25 supplemental water and spread that water into the ground.

26 THE COURT: Why -- and I'm sorry if I'm -- You know I'm
27 fairly new to this. Why is Baja different than, say, Oeste,
28 which divided -- divided the water -- divided the water

1 between agricultural and municipal and industrial?

2 MR. BRUNICK: That goes back to Judge Kaiser. And
3 Judge Kaiser did not feel in the initial rampdown of Alto,
4 let's say, or Oeste that rampdown was justified in the
5 agricultural areas. So he came up with a differential
6 rampdown for M and I because he felt that they could pay
7 versus leaving Ag. at the 8 percent rate. And in an area
8 where you have mixed uses, both industrial and Ag., the
9 Watermaster has followed the recommendation and really the
10 idea of Judge Kaiser.

11 In Baja it's almost 100 percent Ag. It is Ag. feeding
12 upon Ag.

13 THE COURT: Oh, okay.

14 MR. BRUNICK: Where in the other areas there is --
15 there's cities, there are other industrial uses.

16 THE COURT: So it's primarily agricultural in Baja,
17 which is why you wouldn't divide it up.

18 MR. BRUNICK: Correct.

19 And that's why Ag. -- I think seven to ten Ag. producers
20 are pumping 70 percent of the water in the Baja Subarea. So
21 you have some very large agricultural uses that are using the
22 majority of the water, and the smaller folks are using a much
23 lesser amount of water.

24 THE COURT: Well then that -- that makes a huge
25 difference in making the determination because I can't help
26 but take notice of the economy and what the economy has done
27 to agriculture and that ramping it down 5 percent as opposed
28 to 2 and a half percent would be a difference to these people

1 and to the microeconomy of the area and these people. So I
2 think that that is something you really need to take into
3 consideration.

4 MR. BRUNICK: And I think -- I think, you know, the
5 court, by ramping down 5 percent last year, sent those folks
6 a message that it's not business as usual. And I think that
7 they've bought into the 2 and a half percent on an annual
8 basis. But their livelihoods depend on water production.

9 In the other areas you've got -- and this is the
10 Judge Kaiser approach, which was opposed by our office. But
11 he felt that Ag. should stay at 80 percent because M and I
12 could pick up -- in the four other subareas M and I could
13 pick up kind of the difference and leave M and I just kind of
14 constant and let them pay. In Baja, it just does not work.

15 MS. LEVIN: A couple of things. And I appreciate you
16 asking about what does 2.5 percent versus 5 percent really
17 mean. Again, I don't think --

18 Well, first thing. Mr. Brunick said that, for example,
19 if you're -- if you're pumping -- if you have a hundred
20 allocation, 100 acre-feet allocation, and it's ramped down
21 5 percent in '97, if you pump a hundred, then, you know,
22 allegedly -- he said "theoretically," I think were his exact
23 words -- theoretically you end up paying assessments for that
24 hundred to bring in supplemental water. The there's some
25 really important things about that. And then I want to
26 address something else you said.

27 First of all Baja is above by 39.9 percent. The purpose
28 of the judgment was to encourage reduction in pumping to stay

1 under your allocated amount. It wasn't to -- like a credit
2 card. You know, it wasn't -- it wasn't to encourage that you
3 keep pumping a hundred and pay the Watermaster to bring in
4 supplemental water. Because I think, as we explained last
5 year, there is no supplemental water down in Baja. There's
6 one spreading grounds. So that's not happening.

7 So the reason for the continued reduction, it's not an
8 economic hardship--if the agricultural producers reduce their
9 pumping. Because they wouldn't have to pay the additional
10 assessment because there is no supplemental water.

11 And in fact Mr. Wagner, in his declaration and in the
12 papers, recognized that there is absolutely no economic
13 difference. And I'm not sure that the Baja residents
14 understand this. I think it's sort of more political or a --
15 or an issue like "you can't ramp us down." But
16 realistically, factually what that court has in front of it
17 Mr. Wagner said: Through the use of carryovers and transfers
18 Baja producers could avoid purchasing supplemental water
19 under either scenario, the 2.5 or the 5 percent.

20 And then I quote: Last year we reported to the court
21 that setting FPA at 70 percent for 2008-2009 and reducing FPA
22 at a rate of 5 percent per year would delay the requirement
23 of Baja producers to purchase replacement water for nine
24 years.

25 So I'm just -- I just get the feeling that the economy
26 is a problem for all of us. But I -- I believe that there
27 really is no evidence that's presented -- that's been
28 presented to the court about what is the actual hardship,

1 financial hardship in terms of percentages, money. So the
2 court really -- I think we're all concerned about it; but I
3 don't think that there's anything in front of the court, in a
4 declaration, in a study. I don't think the Annual Report
5 that was submitted by the Watermaster addresses this issue in
6 any significant way. So I think what happens is the board
7 members, or the Subarea Advisory Committee, sort of feel that
8 it's going to be better at 2.5 for many years. But I don't
9 think -- As you said, I don't think it actually translates to
10 be a financial hardship. And in fact I believe that if water
11 levels continue to drop, some of the wells -- the cost to the
12 individual well owners is going to increase. So I don't know
13 that the Baja residents have actually been given the
14 information they need to make this decision. And I don't
15 think the court, or Fish and Game actually, has been given
16 any information in that regard. Because we certainly
17 wouldn't want to harm the Baja residents financially.

18 So what I believe -- I believe the court, respectfully,
19 could continue the rampdown -- Since Mr. Wagner noted that
20 under either scenario Baja producers would avoid purchasing
21 supplemental water for many, many years, I think what the
22 court could do this year is continue the rampdown in Baja as
23 required under the judgment and last year's court order.
24 That will send a continuing message that if we have to come
25 back next year, we're going to have the information the court
26 needs. Fish and Game will have it. The Baja residents will
27 have it. And we can all make a more reasonable decision. On
28 the other hand, I actually think that we should continue the

1 5 percent until there's been a substantial change. That
2 would be my recommendation so that we don't come back here
3 every year. Because to be honest, in some sense I think this
4 is more of a political issue than a hydrologic issue. And we
5 all spent so many years working on this judgment that I
6 believe it's time to -- to move forward and to continue the
7 rampdown.

8 THE COURT: Well, I am looking at Mr. Wagner's
9 declaration. And he does discuss the economic hardship to
10 the agricultural producers based upon comments and concerns.

11 I am looking at his declaration, Page 3, Lines 1 through
12 9. And I suppose for the sake of brevity he didn't bore the
13 court with all the details, but that was a concern of his.
14 And I think that under the circumstances maybe we will have a
15 record rainfall this year and we won't have a problem ramping
16 down 5 percent next year. But I'm fairly persuasive --
17 persuaded by Mr. Wagner's declaration, and I think there is
18 sufficient evidence for the court to modify its order and
19 accept the Watermaster's recommendation in that regard.

20 You wanted to say something, Mr. Brunick.

21 MR. BRUNICK: I'm happy with the....

22 THE COURT: Okay.

23 And I was persuaded by all of your arguments,
24 Miss Levin, but for the fact that Mr. Wagner's declaration
25 and the economic hardship for the agricultural community in
26 the Baja area really is entitled to great weight. Everyone
27 is having to suffer. And I think that this slight relief may
28 be of some benefit to them.

1 The next thing I would like to address is the notion of
2 Oeste's and the Watermaster's request that they hold in
3 abeyance the implementation of the rampdown for four years?
4 What does that mean?

5 MR. BRUNICK: This is a problem of piping primarily.
6 The Oeste -- And once again, in Oeste we're relieving Ag. at
7 80 percent. But in Oeste there is one major public entity;
8 and that public entity has requested that the Watermaster go
9 ahead and rampdown, but not actually reflect the assessments
10 until we have a way to get the supplemental water out into
11 their system. So they've agreed that we need to rampdown
12 probably to 60 percent of Base Annual Production similar to
13 Alto. But they want to develop the mechanism and work with
14 the Watermaster to finance moving the supplemental water out
15 to their area. So if the court would order the rampdown, but
16 we would not assess that particular entity until such time as
17 we have facilities to deliver. And then the rampdown would
18 take -- immediately take effect.

19 THE COURT: So it sounds like there is no rampdown.

20 MR. BRUNICK: That was -- There is a rampdown in
21 that they -- their production is actually ramped down. The
22 assessments would not be collected until such time as our
23 ability to get supplemental water out to their wells.

24 We could collect the money, but we have no way to move
25 the water.

26 THE COURT: I'm sorry. I just don't understand how it
27 works. To my mind, if I sentence somebody to a hundred days
28 in jail and I stay it, they don't go to jail. Okay. So if I

1 say that the water -- that the rampdown should be 60 percent
2 and I hold it in abeyance, it means it's not ramped down
3 60 percent.

4 MR. BRUNICK: Yeah, it's ramped down as soon as we get a
5 facility out to be able to move the water. So the rampdown
6 has taken place. But we do not collect the -- the Mojave
7 Water Agency does not collect the assessments until we have a
8 way to move the water off the river.

9 And this is similar to the Este situation, where there
10 was a rampdown. What the court did was order the rampdown
11 but stayed the assessment collection until such time as water
12 production became a problem in that area. So Este is
13 somewhat similar to the Oeste situation.

14 THE COURT: So they will be required to reduce,
15 "rampdown" meaning reduce, the number -- the amount of water;
16 but they won't have to pay the money until in four years.

17 MR. BRUNICK: Right. Correct.

18 THE COURT: Okay. I understand that.

19 My concern was with the amount of water is still going
20 to be reduced. It's the fees assessed on that.

21 MR. BRUNICK: We're going to reduce it. And as soon as
22 we have the ability to move water into their well field or
23 spread or whatever, then the rampdown takes place, and they
24 pay us, and we move water out there.

25 THE COURT: Okay.

26 Did you wish to be heard in that regard?

27 MS. LEVIN: On Oeste, I think you were asking the
28 correct questions. And Fish and Game has not submitted a

1 letter or any evidence with respect to Oeste. So I don't
2 think it's appropriate for me to be commenting on it.

3 I do have a few other things to say about Baja if you're
4 willing to --

5 THE COURT: Certainly.

6 MS. LEVIN: -- let me circle back for a moment.

7 THE COURT: Yes.

8 MS. LEVIN: I did review Mr. Wagner's declaration. And
9 maybe I'm missing something. But I believe that it wasn't
10 necessarily not to bore the court with the details of the
11 economic hardship in the Watermaster's recommendation that no
12 details, no specifics, no evidence was provided to the court.
13 I believe the declaration merely says that some parties in
14 Baja raise economic concerns. It does not say that the
15 Watermaster or the Watermaster engineer had any evidence of
16 those concerns. It just simply says that generally -- on
17 Page 3: The concerns raised by several Baja producers
18 include requests for consideration by the court that a
19 reduction will result in economic hardship for agricultural
20 producers. In response to comments and concerns of those
21 Baja producers the Watermaster amended its own recommendation
22 to set FPA at 65 percent to include the possible alternative
23 that FPA be set at 67.5 percent. Watermaster recognized that
24 the judgment requires a reduction in FPA equal to a full
25 5 percent of Base Annual Production, but also recognized the
26 concerns of the parties regarding the economic impact of
27 reducing FPA.

28 There is nothing -- Respectfully, I don't believe there

1 is anything in this declaration that says Watermaster has
2 information to confirm the economic hardship, has evidence of
3 the economic hardship specifically.

4 And in response to what you said previously, I'm
5 thinking that to avoid something like this every year, where
6 one person gets up and talks, and the Watermaster does not
7 provide either Fish and Game or the court with the
8 appropriate information and evidence to -- to give us an
9 opportunity to respond, I would agree with the court
10 potentially that we should have additional briefing. Perhaps
11 the Watermaster should provide the transcript to the court of
12 the February and March hearings on the matter. I believe
13 that listening to or reading the transcript will -- will
14 inform the court that -- that there's no interest in -- in
15 continuing to rampdown except that the Court ordered it last
16 year. And so, to me, a break in the requirement of the
17 judgment without any evidence in front of the court gives
18 additional -- additional encouragement to continue this
19 without studying it, without providing the proper evidence.
20 All of the technological and hydrogeologic evidence suggests
21 that continuing rampdown in Baja will impair all of the Baja
22 residents as that statement is in Mr. Wagner's declaration.

23 And I really -- Fish and Game can't -- would encourage
24 the court that if -- if -- if they are not going to -- if --
25 would encourage the court potentially to continue this matter
26 so that the proper evidence is provided to the court
27 regarding this economic hardship so that we can -- so that
28 Fish and Game can understand it and that -- and that -- you

1 know, that the proper evidence is -- is before the court. So
2 that's -- I would suggest that as a possibility.

3 THE COURT: Normally I would. But I have a couple of
4 thoughts. Continuing it only incurs greater expense and
5 wastes additional time. When I was speaking with my research
6 attorney about this, he said, this has come around again so
7 soon?

8 Well, we really did it last September. So apparently I
9 continued it a couple of times to prepare -- be better
10 prepared and ended up not doing it until September. And I
11 think that the time -- the yearly evaluation is probably best
12 regularly heard in June. So I don't want to extend the time.
13 I do want to convey the message that I understand and
14 appreciate the climate now and expect that, one, hopefully
15 it's going to rain, and, two, everybody's going to get used
16 to the fact that they are going to have to rampdown, and that
17 there is no reason why if it does rain or next year, even if
18 the economic climate is the same, you've had a chance to get
19 used to it, and we can make it 5 percent next year if that's
20 the recommendation of the Watermaster, and that they will
21 have to have something more specific other than just a
22 summary of the comments and concerns.

23 Mr. Brunick, your comments.

24 MR. BRUNICK: We will comply with the court direction;
25 and I think next year if we hear the same eight hours of
26 arguments about the economic effect in these public hearings,
27 we will bring that.

28 It would also help if Fish and Game would attend our

1 meetings. And they --

2 THE COURT: You can be seated, Miss Levin.

3 MR. BRUNICK: They want to have it both ways.

4 THE COURT: Please be seated, Miss Levin.

5 MR. BRUNICK: They -- So they are more -- They're an
6 ex officio member of the Baja Subarea Advisory Committee, and
7 they are welcome, if not invited, to every meeting of the
8 Watermaster. So next year we will present the -- if we hear
9 the same economic arguments, we will present them in more
10 detailed form, and they will be given to Miss Levin to
11 analyze. But I think we're going to be back here quicker
12 than you -- Time goes by quickly.

13 THE COURT: You're not suggesting that you're going to
14 be back sooner than one year.

15 MR. BRUNICK: No, one year. No. We have -- I don't
16 think they want to go through this again.

17 MS. LEVIN: I'm sorry. Can I -- Can I just briefly
18 respond? I didn't mean to stand up. I think what happened
19 is that last year we had someone stand up, and you asked him
20 to sit down. And so....

21 Fish and Game would probably have concerns about
22 Mr. Brunick's comments again, so I think we need -- I just
23 need to put it into perspective. Fish and Game has hired --

24 THE COURT: I don't know what that means.

25 MS. LEVIN: When -- I'm sorry. When he said that if
26 Fish and Game would just attend the meetings and be
27 available, you know, maybe they could get their -- their
28 point across. Let me say a couple of things. One, Fish and

1 Game is not only -- Let me say this.

2 Mr. Bilhorn has been hired at a great expense to the
3 Department of Fish and Game, and he continually works with
4 Mr. Wagner on an ongoing basis to implement the judgment and
5 do the best that can be done with the Baja residents and
6 throughout the judgment, Alto, the Exhibit H water levels,
7 and Baja. There is mutual respect, and they are continuing
8 to work together to make this work. We -- Fish and Game is
9 not a gadfly. We are continually involved in -- with the
10 Watermaster in the Mojave Basin Subarea, and Mr. Bilhorn has
11 had a contract -- an expert contract, which actually may be
12 canceled by the governor soon. And so, one, we do work
13 continually.

14 With respect to attending meetings, it was our
15 understanding that at the February meeting the recommendation
16 of the Watermaster was going to be 5 percent. We submitted a
17 letter. It was our understanding that the Watermaster was
18 going to be making that recommendation to the court pursuant
19 to the judgment. There was -- We have limited resources.
20 Fish and Game is on furlough by the governor. Their salaries
21 are being cut by 15 percent. And so if choosing between
22 driving hundreds of miles to attend a Watermaster meeting
23 that the Watermaster recommended and no comments were
24 received at the February meeting, that was a choice. When we
25 heard there was an eight-hour meeting where the Watermaster
26 Board basically said, "we're not making any recommendation to
27 the court," and ignored the court's order from last year.
28 And this was a compromise suggested by -- by the attorney.

1 The message from the board was not necessarily, "we
2 understand what the court is saying." It was rejecting what
3 the court was saying, and this was a compromise by the
4 attorneys.

5 So I -- I -- we continue to work with the Watermaster to
6 try to implement the judgment, to try to implement the
7 Exhibit H exhibits, and will continue to do so within the
8 constraints of what the governor has done.

9 We had very resources ten years ago. And they're even
10 less now. I have agreed with one of the Subarea Advisory
11 Committee members that I'll try to organize a conference
12 call. So I just want to say on the record that we are
13 continually involved with the implementation of this judgment
14 and have only the best interest of everyone in the Baja
15 Subarea at heart. And so it gets -- to use a term of art, a
16 legal term of art, it gets a little old to have Fish and Game
17 be seen as, you know, the evil -- the evil protector of
18 habitat in some way. That's not our role. So --

19 THE COURT: I did not --

20 MS. LEVIN: -- I just wanted to say that for record.

21 No, you did not. You did not. But that has been said
22 to us consistently that somehow we are protecting the habitat
23 and don't care about the people. And that's just not the
24 case. I think that's what Mr. Brunick --

25 THE COURT: I did not get that inference.

26 MS. LEVIN: Okay. Thank you.

27 THE COURT: And I did not make that inference.

28 MS. LEVIN: No, you did not.

1 THE COURT: And I don't feel that way.
2 Mr. Brunick, anything further?
3 MR. BRUNICK: No, Your Honor.
4 THE COURT: All right.
5 If you will prepare a -- What do we want? A new
6 judgment? A new statement of decision? How do you want to
7 prepare this?
8 MR. BRUNICK:-- Normally I would just prepare an order for
9 the court's signature.
10 THE COURT: That's fine.
11 MR. BRUNICK: And then we would serve it.
12 MS. LEVIN: Often a statement of decisions helpful. We
13 know what the basis of the court's order is. And that's what
14 we did last year, an order and a statement of decision, to
15 make it clear what the court's order is.
16 MR. BRUNICK: I'll prepare the statement of decision.
17 THE COURT: All right. Thank you.
18 MR. BRUNICK: Thank you.
19 MS. LEVIN: Thank you, Your Honor.
20 (Proceedings are adjourned.)
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