

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT SSC-10 HON. WILLIAM F. HIGHBERGER, JUDGE
4 - - -
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6 SANTA BARBARA CHANNELKEEPER,)
7)
8 Plaintiff,)
9)
10 vs.) Case No. 19STCP01176
11)
12 STATE WATER RESOURCES CONTROL BOARD,)
13 et al.,)
14)
15 Defendants.)
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, DECEMBER 6, 2019

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[APPEARANCES OF COUNSEL CONTINUE ON THE NEXT PAGE]

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I N D E X

FRIDAY, DECEMBER 6, 2019

W I T N E S S E S

(NONE)

E X H I B I T S

(NONE)

1 And I'm not really sure, in that context, what a
2 responsive pleading would look like or do or benefit anyone,
3 which is why we asked for that relief specifically in the
4 motion.

5 Thank you.

6 THE COURT: I take it both Fish & Game and the other
7 agency basically wanting to be active amicus in the sense
8 of wanting a place at the table and a chance to speak
9 good or ill of the proposed settlement if and when such a
10 settlement emerges or, if the case has to be contested,
11 they have a voice as to the strengths and weaknesses of
12 all of the parties' factual and legal positions.

13 MR. KATZ: Yes, your Honor.

14 THE COURT: Do you concur, Mr. Melnick?

15 MR. MELNICK: Yes, your Honor, I concur.

16 We don't intend to enlarge any of the issues,
17 add any issues, subtract any issues.

18 THE COURT: But you don't want something horrible
19 blown by without a chance to speak.

20 MR. MELNICK: Exactly, your Honor.

21 THE COURT: You may step back.

22 Mr. Tanaka, what is it that you want to know
23 from these people that you think pleading practice would
24 advance?

25 MR. TANAKA: Well, I would like to know how they see
26 their role, because I understand that they're in a unique
27 position vis-a-vis all the parties. And I don't dispute
28 that, but we need to understand what frames their comments.

1 I thought I heard a very brief but perhaps
2 satisfactory response, "we want to be able to take a look
3 at the physical solution and any settlement and weigh in
4 from our perspective."

5 That would be helpful, something like that, because
6 what I don't want is for us to then come up, if we have to
7 try the case and we're beyond that issue, who knows where
8 this will take us.

9 THE COURT: Well, if they have party status they
10 could cross-examine an expert, they could call their own
11 witnesses, they could offer evidence, and it may or may
12 not help your case move forward. You're an old historic
13 consumptive user with, you know, senior rights, in age
14 terms at least, but they may take a litigation position
15 that is contrary to your client's best interests.

16 MR. TANAKA: And I certainly understand that. And I
17 would anticipate their role as regulator could encompass
18 something like that. I just want to make sure that we
19 understand the parameters of what they view their role
20 as regulators in this case.

21 I mean, you know, even if you file an answer,
22 a general denial or the form answer, you're framed by our
23 Third Amended Cross-Complaint -- excuse me, answer to the
24 cross-complaint, and then your response and any defenses.

25 But with this party, we only know that they're
26 going to be the regulator and they have an interest in any
27 resolution. So if that's satisfactory --

28 THE COURT: Well, if they don't file their own pleading

1 and I tell them to file simply a Notice of Appearance as
2 to the cross-complaint, which I might, then they in theory
3 have no right to interject new issues, because they have no
4 pleading that tenders an issue that is somehow apart from
5 the issues presented by your cross-complaint and the answers
6 to that cross-complaint which have been filed or will in
7 due course be filed by the thousands and thousands of
8 cross-defendants who you're naming.

9 MR. TANAKA: So if I'm following, by making an
10 appearance, then, they come in like any of the overlying
11 parties? Or --

12 THE COURT: They have party status, which means they
13 can call witnesses at the time of a hearing and offer
14 evidence, but they in theory don't have any of their own,
15 quote, issues, unquote, that they can try to litigate
16 because they don't have a pleading tendering any issues.
17 They don't have an answer tendering any affirmative
18 defenses.

19 So the issues in the case to be litigated
20 are limited to what you brought forward with your
21 cross-complaint, which is your operative pleading, I guess
22 it's the Third Amended if memory is right, or maybe the
23 Fourth, and you're naming quite a few people, so in the
24 fullness of time many of them will have lawyers, and if
25 you figure out how many different answers have to be filed
26 by how many different lawyers, you're probably going to
27 see every affirmative defense that's ever been known in
28 the history of the legal practice --

1 MR. TANAKA: Yep.

2 THE COURT: -- once you look at hundreds and thousands
3 of answers to cross-complaints that are going to come in in
4 the fullness of time.

5 So somehow if there's an issue that isn't included
6 amongst all of those thousands of cross-complaint answers,
7 then it's not an issue in the case.

8 That's a round-about way of saying that I think
9 between your pleading and the gazillion responsive
10 pleadings, everything that's imaginable to be at issue will
11 be tendered by them, but if Mr. Melnick and Mr. Katz don't
12 want to tender a pleading then they don't have ownership of
13 any issue that's unique and near and dear to their hearts
14 because they didn't put it before the court on a pleading.

15 MR. TANAKA: With that context, your Honor, I think I'm
16 comfortable with it because --

17 THE COURT: Mr. Katz, do you accept those terms of
18 engagement?

19 MR. TANAKA: May I just finish out what I was about to
20 say?

21 THE COURT: No.

22 Mr. Katz, do you accept those terms of engagement?

23 MR. KATZ: Yes, your Honor.

24 THE COURT: Mr. Melnick?

25 MR. MELNICK: Yes, your Honor.

26 THE COURT: Now go ahead, Mr. Tanaka. All the time you
27 want.

28 MR. TANAKA: All right. Because if I'm understanding

1 your Honor, it would be no different than if they filed
2 a form answer, which a lot of the parties are allowed,
3 potential parties, are allowed to do to become a party,
4 number one.

5 The question I have, also, however, is, and it
6 might be my ignorance, but does a Notice of Appearance
7 permit an entity to have party status without filing
8 pleadings?

9 THE COURT: Ordinarily it probably wouldn't. But
10 if I grant the motion to intervene on the terms stated,
11 I think uniquely in this case, because I'm saying they're
12 going to have party status for things like arguing motions
13 and offering witnesses, they would have that status.

14 But in the absence of tendering an affirmative
15 pleading, I don't think they can find issues of their own
16 that they can interject.

17 Frankly, if it comes to them that they have an
18 issue that the parties are missing, that's when they're
19 going to come to the court for leave to belatedly file a
20 complaint-in-intervention to, at that point, tender an
21 issue which somehow didn't emerge from the issues you've
22 put before the court, Mr. Tanaka, or which your many
23 adversaries are going to put before the court.

24 But hopefully we're working our way towards a
25 settlement, actually, not towards big fist fights, so
26 hopefully this is just going to be an effort at singing
27 Kumbaya in a large organized fashion in the fullness of
28 time.

1 MR. TANAKA: Yes, agreed as to the "hopefully," and
2 agreed as to the way you've described the Notice of
3 Appearance.

4 THE COURT: Okay. Any of the other parties before the
5 court at counsel table in the courtroom want to be heard?

6 MR. SLATER: Your Honor, could I indulge you just for
7 a quick conference with Mr. Tanaka?

8 THE COURT: Sure.

9 And for that record, that was Mr. Slater?

10 MR. SLATER: Yes, your Honor.

11
12 (Discussion held off the record)

13
14 THE COURT: Mr. Slater?

15 MR. SLATER: I think we're good, your Honor. Thank you.

16 THE COURT: Anybody else at counsel table want to be
17 heard?

18 Anybody on CourtCall? I know we've got half a
19 dozen lawyers on Courtcall. Anybody on CourtCall want to
20 be heard?

21 Okay. So under those circumstances the Court is
22 going to sign the two orders, with slight interlineation.
23 And the interlineation to each of the two otherwise
24 identical orders is: "This party to file formal Notice
25 of Appearance specific to the Cross-Complaint at issue."

26 Acceptable, Mr. Katz?

27 MR. KAZ: Yes, your Honor.

28 THE COURT: Acceptable, Mr. Melnick?

1 MR. MELNICK: Yes, your Honor. Thank you.

2 THE COURT: Acceptable, Mr. Tanaka?

3 MR. TANAKA: Yes, sir.

4 THE COURT: I'm not giving you an express deadline,
5 but I hope you'll do it within one week, Mr. Katz.

6 MR. KATZ: Will do, your Honor.

7 THE COURT: Mr. Melnick?

8 MR. MELNICK: Yes, your Honor.

9 THE COURT: And it's a no-fee document, given that
10 you're the State, so it's not like I'm ringing the register.

11 All right. I believe we have agreement that the
12 presentation about the physical solution from the parties
13 you hope to be the settling parties should proceed on the
14 afternoon of January 31?

15 MR. MELNICK: Your Honor, we didn't talk about dates,
16 and unfortunately I have a conflict on that day. I have
17 to be at the Alameda County Superior Court that day.

18 THE COURT: Because there had been some postings on
19 File & ServeXpress which had led me to this conclusion.

20 Who is the main proponent of doing the
21 presentation? You, Mr. Tanaka?

22 MR. TANAKA: I am. And I think he has a proposed
23 date that works with your schedule and his schedule.

24 THE COURT: When might that be, Mr. Melnick?

25 MR. MELNICK: Well, there was discussion about doing
26 it the day before, in the morning. And that would be
27 okay with me. I don't know if it's okay with everyone
28 else.

1 THE COURT: I can push aside what's otherwise on
2 calendar. So you can have the morning of January 30th.

3 Do you want 8:30 or 9:00?

4 MR. TANAKA: 8:30 would be preferable, if it's okay.

5 THE COURT: Fine.

6 Okay. So the posting that's suggesting we do
7 your presentation about the physical solution on January 31
8 is superseded by the order of today. That will occur on
9 Thursday the 30th at 8:30 in the morning in this courtroom.

10 Hopefully we'll be done by noon, but if you
11 need to dribble into the lunch hour, I will be happy to
12 accommodate you.

13 Should we also set a further status conference
14 on calendar for January 30th so we have a more formal
15 event occurring as part of the case progress?

16 MR. MELNICK: Your Honor, sorry, I want to make sure
17 your Honor is clear that this is not a presentation about
18 their proposed settlement, but it's a presentation about
19 sort of background science information about the watershed.
20 So. . .

21 THE COURT: I'll accept whatever is offered.

22 MR. MELNICK: Yeah, I just want to make sure you're not
23 expecting something different.

24 THE COURT: Oh, I thought optimistically that this was
25 supposed to be some kind of dramatic foreshadowing of the
26 physical solution, but perhaps it's not.

27 MR. TANAKA: We couldn't reach agreement on that, but
28 we think there's still significant benefits for everybody

1 to do technical background, and we've discussed --

2 THE COURT: So it's more of a general Science Day
3 about the Ventura River watershed above ground and below
4 ground.

5 MR. TANAKA: Yes. And intended to be a neutral
6 presentation. That's why they see the papers and --

7 THE COURT: Okay. I'll let you title it when you give
8 notice, Mr. Tanaka, of whatever it is you'd like to title
9 it. But I'll revise my informal description. So I'll call
10 it Science Day Re Ventura River.

11 All right. Go ahead.

12 MR. KATZ: And your Honor, just one question.

13 I hadn't been involved in kind of the day-to-day
14 back and forth, but there was discussion among the parties
15 as to who was going to be the presenters, and that the idea
16 would be some lawyers and a technical person from the City
17 or?

18 I guess the issue I'm raising is that when your
19 Honor had raised the idea of doing a Science Day the first
20 time we met, you had expressed a preference that the words
21 come out of the mouths of lawyers and not --

22 THE COURT: That's what I'm used to. But if you want
23 to have experts who are off the record, I'll let the experts
24 do it. It may be too technical, it may be pointless to have
25 the experts educate the lawyers just so the lawyers can try
26 to educate a layman.

27 MR. KATZ: Yeah, I guess I'll just say that my only
28 hesitation with that is that if -- well, I appreciate the

1 fact that the intention is to be a neutral presentation,
2 but I just have a little hesitancy with the consumptive
3 users putting up their expert to educate the Court.

4 THE COURT: You got a Fish & Game guy who wants to come
5 and educate me, too?

6 MR. KATZ: Well, probably not. I guess in my mind I was
7 thinking that the --

8 THE COURT: Well, play in the game if you want to be
9 heard. If you don't want to play in the game, then you
10 get heard less.

11 MR. KATZ: Okay. I just wanted to --

12 THE COURT: The Fish & Game people ought to be able to
13 provide some useful insight. If they're bringing non-lawyer
14 educators, I'd take a Fish & Game educator to tell me about
15 what trout or salmon need to be happy in the Ventura River
16 tributaries on a hot day in July.

17 MR. KATZ: Right. And my assumption is that no matter
18 who provides that information, we're going to agree on a
19 neutral presentation and it won't matter. But I just had
20 heard the idea from your Honor before and wanted to make
21 sure that whatever we decide to do is consistent with your
22 expectations. And it sounds like it is.

23 THE COURT: I want to be cooperative. I want to get
24 educated. So I'll take it on most any terms offered if I
25 don't have to pay, you know, for the popcorn.

26 MR. KATZ: Very good. Thank you, your Honor.

27 THE COURT: Okay?

28 Let's also, though, have a further status

1 conference on that date so that we can check in about
2 how things are going more generally with that huge paper
3 chase that your paralegals are doing back at your office,
4 Mr. Tanaka. I'm sure you're probably the least favorite
5 senior lawyer in the firm at this point.

6 MR. TANAKA: I am, your Honor. Lots of Christmas
7 presents.

8 THE COURT: From you to them.

9 MR. TANAKA: Right.

10 THE COURT: All right. So we'll have a further status
11 conference on January 30th at 8:30 in the morning, with a
12 report from City of Ventura that can have others joining
13 in as they want.

14 There are too many people to require a joint report
15 of everyone appearing, but if there are obvious people that
16 you think ought to be joined with Mr. Tanaka, you're welcome
17 to bring them in.

18 The Attorney General can speak separately if you
19 wish on January -- well, I'd like it on January 23rd in
20 advance of the 30th. And if other separately-represented
21 parties want to file unilateral reports, they're at liberty
22 to do so if they're not in league with Mr. Tanaka, either
23 because they can't be bothered or because they can't agree
24 on a joint report.

25 So I want one from Ventura, that's mandatory,
26 and I want the other reports from the A.G., and then
27 from anybody else are voluntary.

28 MR. TANAKA: Thank you, your Honor.

1 And I'll serve a draft to everybody to see if
2 they want to join or have any concerns.

3 THE COURT: So much the better.

4 I'm not looking for multiple paperwork, but
5 I'm just trying to set a low bar for what it takes to
6 participate.

7 MR. TANAKA: And just one housekeeping matter on the
8 record.

9 Your Honor, I've got the flash drive that has
10 the spreadsheets of the three different groups of parties
11 or potential parties, and I'll hand it to your clerk.

12 THE COURT: Give it to Mr. Lim, please.

13 MR. TANAKA: Okay. And I'll do Notice of Ruling.

14 THE COURT: Okay. And I'm signing the orders on the
15 grant of the motions by Melnick and Katz.

16 Are you willing to give notice of that?

17 MR. TANAKA: Yes, I will.

18 THE COURT: Okay. Wonderful.

19 All right. Anything else this morning, Mr. Katz?

20 MR. KATZ: No, your Honor.

21 THE COURT: Mr. Melnick?

22 MR. MELNICK: No, your Honor.

23 THE COURT: Mr. Tanaka?

24 MR. TANAKA: No, your Honor.

25 THE COURT: Do we have anybody from the plaintiff Santa
26 Barbara Channelkeepers with us this morning?

27 Apparently not.

28 All right. Anybody else want to be heard?

1 Hearing nothing, the Court's in recess. You're
2 free to go.

3 COURTROOM RESPONSE: Thank you, your Honor.

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5 (At 10:35 a.m., the proceedings were adjourned)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT SSC-10 HON. WILLIAM F. HIGHBERGER, JUDGE
- - -

SANTA BARBARA CHANNELKEEPER,)
)
Plaintiff,)
)
vs.) Case No. 19STCP01176
)
STATE WATER RESOURCES CONTROL BOARD,)
et al.,)
)
Defendants.)
_____)

I, TIMOTHY J. McCOY, CSR No. 4745, Official Reporter Pro Tempore of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 1 through 16, inclusive, comprise a full, true and correct transcript of the proceedings held in the above-entitled matter on Friday, December 6, 2019.

DATED THIS 13TH DAY OF DECEMBER 2019.

<%13255,Signature%>
TIMOTHY J. McCOY, CSR NO. 4745
OFFICIAL REPORTER PRO TEMPORE
LOS ANGELES SUPERIOR COURT

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