



Court fight over water is complex, not always civil

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'FICTION AND CHARADES'

In Judge Stock's courtroom, there is talk of motions in limine, of proposed orders, of tentative rulings and of cross-complaints. She listens respectfully to an array of attorneys and appears in complete control of the sprawling maze of litigation before her. Her occasional witty remark provokes laughter amid the otherwise unremitting seriousness.

Early in June, Stock discusses with lawyers a looming deadline in the south basin case: a mandate under state law that a trial must begin within five years after a lawsuit is filed.

All that's needed is to swear in one witness, a lawyer for the water district argues. Then the trial could be recessed indefinitely, until the parties were truly ready, according to a state Supreme Court ruling cited by Justin Massey, a Miller, Axline attorney.

"You have the California Supreme Court case declaring that fictions and charades are OK," Stock replies. "Interesting read."

On June 21 – two days before the five-year deadline – the trial commences with the swearing in of Herndon as the first witness. He testifies for a few minutes about his education and experience. Then Stock recesses the proceedings for a few weeks.

On July 9, the trial began for real. On Aug. 2, Stock ruled that the district's claims were unsupported by the evidence.

Now, seven of the defendants can seek to have their court costs reimbursed by the district. That will cost the district millions, said attorney Jeffrey Ring, who represents Gallade Chemical.

PRIOR CLEANUP

Before they were sued by the water district, some of the defendants already had paid millions to remove contaminants from groundwater under the auspices of other government agencies.

For example, Santa Ana's Gallade Chemical, founded 49 years ago, has been working with two regulators – the state's Department of Toxic Substances Control and the Santa Ana Regional Water Control Board – for nearly 25 years since contamination was discovered under its property in 1989, CEO Richard Gallade said.

The company built a “state-of-the-art system for remediating” the water beneath its property, Gallade said. Then, in 2008, without warning, Gallade Chemical was sued by OCWD.

Since then, Gallade estimates he's spent \$100,000 to \$125,000 per month on attorney fees and other costs to fight the OCWD suit.

“The time and millions of dollars that I have spent on litigation over the past five years could have been focused instead on completing our remediation project,” Gallade told the state Senate Environmental Quality Committee in May. “Millions of dollars we spent in courts and attorneys and consultants to deal with the lawsuit rather than dealing with our sites and cleaning up our sites.”

Why, then, were Gallade and other firms sued?

“Despite the efforts of regulatory agencies, plumes had left the properties,” the OCWD's Herndon said. “Now they're mixed. Now they're commingled. Somebody's plume has left and mingled with somebody else's.”

The regulatory agencies were hamstrung, because their authority to order remediation only extends to individual properties, he said.

“Somebody’s got to pay to clean these plumes,” said longtime OCWD board member Denis Bilodeau: either “the people who polluted the ground or the ratepayers.

“How else do you make corporations come to the table unless you file suit?” Bilodeau asked.

The lawsuits are the fruit of a partnership between the water district and a firm of trial lawyers. The Sacramento firm of Miller, Axline & Sawyer is representing the water district on a contingency basis, meaning that if the water district doesn’t win damages, the lawyers don’t get paid.

Defendants grumble that the district’s strategy amounts to taking a risk-free whack at deep pockets.

“In our opinion, the district was seduced by the siren of easy riches,” defense attorney John Van Vlear said. “Since it was a contingency fee deal, OCWD had little to lose by suing everyone in the region.”

Bilodeau argues that the contingency arrangement has been a good one for ratepayers, saving the district millions in legal fees. Meanwhile, the district has obtained more than \$23 million in settlements from the two suits.

“If I were a water district customer, I’d be asking long, hard questions about why I’m paying for this debacle,” Ring said.

The north basin case, focused on groundwater beneath Fullerton and Anaheim, went to trial in similar fashion in February 2012, then took a six-week hiatus. Closing arguments occurred in September 2012. In May, Judge Kim Dunning issued a stinging decision, finding against the district. The next phase of the trial has yet to be scheduled.

There will be appeals in both cases. If the Court of Appeals doesn’t reverse the Superior Court judges, the water district may have to bill its customers for the proposed cleanup, estimated at \$230 million over several decades. Yet in court, the district’s legal theories have so far failed to persuade judges.

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