

SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: September 29, 2006 DEPT. 71 REPORTER A: CSR#

PRESENT HON. Ronald S. Prager REPORTER B: CSR#

JUDGE

CLERK: K. Sandoval

**BAILIFF: REPORTER'S ADDRESS: P.O. BOX 120128
SAN DIEGO, CA 92112-4104**

**TENTATIVE RULING-MOTION TO CORRECT JUDGEMENT
IN RE: JCCP 4221/4224/4226&4428 – Natural Gas Anti-Trust Cases (Pipeline)**

The attached Court's applies to all cases listed as follows:

4221-00001	PHILLIP vs EL PASO MERCHANT ENERGY
4221-00002	PHILLIP vs EL PASO MERCHANT ENERGY
4221-00003	CONTINENTAL FORGE COMPANY vs SOUTHERN CALIFORNIA GAS COMPANY
4221-00004	BERG vs SOUTHERN CALIFORNIA GAS COMPANY
4221-00005	THE CITY OF LONG BEACH vs SOUTHERN CALIFORNIA GAS COMPANY
4221-00006	THE CITY OF LOS vs SOUTHERN CALIFOR
4221-00005	SWEETIE'S A CALIFORNIA PARTNERSHIP vs EL PASO CORPORATION
4221-00006	THE CITY OF LOS ANGELES vs SOUTHERN CALIFORNIA GAS COMPANY
4221-00007	SWEETIE'S A CALIFORNIA PARTNERSHIP vs EL PASO CORPORATION
4221-00008	CALIFORNIA DAIRIES INC vs EL PASO CORPORATION
4221-00009	DRY CREEK CORPORATION (JCCP 4228) vs EL PASO NATURAL GAS COMPANY
4221-00010	HACKETT vs EL PASO CORP
4221-00011	THE COUNTY OF LOS ANGELES vs SOUTHERN CALIFORNIA GAS COMPANY
4221-00012	THE CITY OF VERNON vs SOUTHERN CALIFORNIA GAS COMPANY
4221-00013	WORLD OIL CORP vs SOUTHERN CALIFORNIA GAS COMPANY
4221-00014	CITY OF UPLAND vs SOUTHERN CALIFORNIA GAS COMPANY
4221-00015	THE COUNTY OF SAN BERNARDINO vs SOUTHERN CALIFORNIA GAS COMPANY
4221-00016	EDGINGTON OIL COMPANY vs SOUTHERN CALIFORNIA GAS COMPANY
4221-00017	THE CITY OF CULVER CITY vs SOUTHERN CALIFORNIA GAS COMPANY
4221-00018	THE CITY OF BURBANK vs SOUTHERN CALIFORNIA GAS COMPANY
4221-00019	THUMS LONG BEACH COMPANY vs SOUTHERN CALIFORNIA GAS COMPANY

That part of the motion by Sierra Pacific Resources and its affiliates which seeks to correct and/or clarify the language in paragraph 12 of the judgment is granted.

That part of the motion which seeks to amend the judgment to reflect that Sierra Pacific Resources timely and properly excluded itself from the Sempra settlement through its request for exclusion filed with the Court on October 14, 2003, is denied.

Query: Can this Court correct, clarify, amend or modify the judgment (1) as it relates to the language in ¶12 that infers Sierra Pacific Resources is a member of the defined class and/or (2) to include a determination that Sierra Pacific Resources' 2003 request for exclusion is effective as to the Sempra settlement? "Generally, once a judgment has been entered, the trial court loses its unrestricted power to modify, retaining only the power to correct clerical errors in the entered judgment. 'However, it may not amend such a judgment to substantially modify it or materially alter the rights of the parties under its authority to correct clerical error.' [Citations.] A court of general jurisdiction has this inherent power to correct clerical error in its records, whether made by the court, clerk or counsel, at anytime so as to conform its records to the truth." *Aspen Internat. Capital Corp. v. Marsch* (4th Dist., Div. One 1991) 235 Cal. App.3d 1199, 1220.

Code of Civil Procedure §473(d) provides that the court may correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed. The court also has the inherent power to correct clerical errors in its records so as to make the records reflect the true facts. "The power exists independently of statute and may be exercised in criminal as well as in civil cases. [Citation.] The power is unaffected by the pendency of an appeal or a habeas corpus proceeding. [Citation.] The court may correct such errors on its own motion or upon the application of the parties. [Citation.] Courts may correct clerical errors at any time. . ." *People v. Mitchell* (2001) 26 Cal. 4th 181, 185.

The Court must also be mindful of the fact that the judgment is on appeal. Code of Civil Procedure §916 provides, in relevant part, that the perfecting of an appeal stays proceedings in the trial court upon the judgment appealed from or upon the matters embraced therein or affected thereby, but the trial court may proceed upon any other matter not affected by the judgment.

Whether the final judgment can be corrected, clarified, modified or amended at all or whether it can be corrected, clarified, modified or amended while the judgment is on appeal turns on the same question. Are the corrections, clarifications, modifications or amendments sought clerical or judicial errors?

“The general rule with respect to the power of the court to modify a judgment does not preclude the court from correcting clerical errors and misprisions either in the entry of the judgment or due to inadvertence of the court. The term ‘clerical error’ covers all errors, mistakes, or omissions which are not the result of the exercise of the judicial function. If an error, mistake, or omission is the result of inadvertence, but for which a different judgment would have been rendered, the error is clerical and the judgment may be corrected to correspond with what it would have been but for the inadvertence. [Citations.] The court has inherent power to correct such errors. [Citations].” *Aspen Internat. Capital Corp. v. Marsch* (4th Dist., Div. One 1991) 235 Cal. App. 3d 1199, 1204.

When a signed judgment does not reflect the express judicial intention of the court, the signing of the judgment involves clerical rather than judicial error. *In re Marriage of Kaufman* (2nd Dist. 1980) 101 Cal. App. 3d 147, 151. Judicial error occurs when the judgment entered is the judgment that the trial court intended to render, even though it was entered in error. See *Tokio Marine & Fire Ins. Corp. v. Western Pac. Roofing Corp* (2nd Dist. 1999) 75 Cal.App.4th 110, 117.

A “clerical mistake” may include an ambiguous provision in a judgment which seemingly changes what was actually agreed to and ordered in open court. The mistake may be that of the lawyer who was asked to draft the court order. The judgment should accurately express what was done in court and what the judge had called for. It is the understanding of the court and not that of the parties that is the determinative factor. See *Russell v. Superior Court of Placer County* (3rd Dist. 1967) 252 Cal. App. 2d 1, 8

The court finds Sierra Pacific Resources’ arguments persuasive as to their first request. The language of ¶12 of the judgment is ambiguous and can be read to mean that those persons whose late opt outs were ineffective, including Sierra Pacific Resources, are also necessarily members of the class. No such issue was raised, no arguments were made, no determinations were rendered and no such conclusions were intended by this Court. The issue is one which involves the clerical correction of an ambiguous provision and over which this court has present jurisdiction. There is nothing to support or even suggest nor does the Court have any personal recollection that it intended to find that the persons who filed late exclusions are necessarily class members even if those same persons do not fit within the class definitions in the judgment. The addition of the word “potential” before class members will rectify the ambiguity and will

accurately reflect what the parties and the court intended the judgment to say. That is, the thirteen persons who may be class members and who had the opportunity to exclude themselves at the time the Sempra class was certified for trial but failed to do so are not excluded from the class even though they filed later requests for exclusion from the Settlement Class. This is because the court found it would not be fair to allow these thirteen persons to ignore their timely obligation to opt out at the time the class was originally certified for trial. However, these same persons do not necessarily become members of the class just because they submitted the late opt outs. Class and subclass members are determined by the definitions in the judgment. A person can only be excluded or not excluded, as the case may be, from a class if they first meet the definition of a class member.

On the other hand, Sierra Pacific Resource's request to amend the judgment to include a statement or finding that its October 2003 request for exclusion is effective as to the Sempra settlement is not a clerical error. Sierra Pacific Resources cites no statutory or other legal basis for its request. Sierra Pacific Resources is asking the court to amend or vacate a final judgment that is on appeal by making a post-judgment factual and/or legal determination on the 2003 request for exclusion as it relates to the Sempra settlement. This Court is without jurisdiction to make such substantive determinations which substantially modify the judgment and materially alters the rights of the parties.
