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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO - WEST DISTRICT

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO,

Defendant.

) Case No. RCV 51010

)
) REPLY TO OPPOSITION OF CHINO
) BASIN MUNICIPAL WATER
) DISTRICT AND OPPOSITION OF
) CITY OF CHINO TO MOTION FOR
) ORDER OF COURT THAT AUDIT
) COMMISSIONED BY THE CHINO
) BASIN MUNICIPAL WATER
) DISTRICT BOARD IS NOT A
) WATERMASTER EXPENSE;
) DECLARATIONS OF TRACI
) STEWART, ALICE LICHTI, PATRICK
) PARK

) DATE: March 3, 1997
) TIME: 8:30 a.m.
) PLACE: Department H

) Specially assigned to the Honorable
) Judge J. Michael Gunn

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I. INTRODUCTION.

The only real issue before the Court in this motion is whether the Board of the Chino Basin Municipal Water District ("CBMWD") while purportedly acting as the Watermaster Board followed the procedures required by the Judgment and by the Watermaster Rules and Regulations before voting to commit Watermaster funds for payment of a special audit of Watermaster Services. It is clear beyond question that the requirements of the Judgment and the Rules and Regulations were not followed, even though the CBMWD Board was repeatedly advised, both in writing and orally, of those requirements.

Because the CBMWD Board acted outside the scope of the Judgment and the Rules and Regulations, its actions with respect to the audit were totally ultra vires of any authority it may have as the Watermaster Board. Accordingly, the cost of the audit is not properly a Watermaster expense and the Court has been asked and is asked to issue an order to that effect.

In its Opposition, CBMWD makes many assertions and raises issues completely irrelevant to the issue of responsibility for the cost of the audit. The assertions are, in addition to being irrelevant, also erroneous. To clarify the record, those erroneous assertions will also be addressed briefly in this Reply Memorandum.

II. THE APPROVAL OF THE AUDIT BY THE CBMWD BOARD WAS COMPLETELY OUTSIDE THE SCOPE OF THE JUDGMENT AND IS NOT AND CANNOT BE A WATERMASTER EXPENSE.

A. The CBMWD Board Failed to Comply With the Requirements of the Judgment Before Taking Action to Direct That the Audit Be Done.

In its Opposition, CBMWD accurately states that in its meeting on January 14, 1997, it voted to direct that an audit be done. CBMWD neglects, however, to state key facts concerning the background and context in which that meeting took place.

First of all, the concern over whether an audit was even needed arose because in

1 December 1996 it had been discovered that forged checks, amounting to approximately
2 \$26,000 had been drawn on Watermaster's checking account. By the time of the January
3 14th meeting, those funds had been fully restored by the bank and the issue was under
4 investigation by law enforcement authorities. Those law enforcement authorities had
5 appeared at a meeting of the Advisory Committee and told the Committee that such
6 fraudulent activity was, unfortunately, not uncommon, and that there was no indication that
7 it was the result of anything that Watermaster had, or had not, done.

8 Secondly, the Advisory Committee had met and by a 91.43% majority, voted to
9 approve a motion that Watermaster take no action directing that a special audit be done
10 until an internal review board, consisting of financial officers and representatives of various
11 parties had met, reviewed the circumstances, and made a recommendation as to whether
12 an audit was necessary and, if so, what the proper scope of an audit should be. The
13 Advisory Committee action and direction was conveyed to the CBMWD Board. Pursuant to
14 the Judgment, an Advisory Committee recommendation supported by an 80% or greater
15 vote becomes "a mandate for action consistent therewith." (Judgment ¶ 38(b)(1).)

16 Even if CBMWD's decision to conduct the audit had not been subject to an
17 Advisory Committee mandate, it still would have been improper. If the Watermaster Board
18 wishes to take action on a matter which has not been the subject of an Advisory Committee
19 vote, the Watermaster Board must give 30 days notice of the meeting at which it intends to
20 take action and in such notice to state the action proposed to be taken. (Judgment ¶
21 38(b)(2).)

22 If the Advisory Committee has voted on a matter, by a majority vote less than
23 80%, the Watermaster Board may take action which is contrary to that vote. But before it
24 may do so, the Watermaster Board must first "hold a public hearing, which shall be followed
25 by written findings and decision." (Judgment ¶ 38(b)(1).) Finally, all Watermaster meetings
26 are to be held in public pursuant to Watermaster Rules and Regulations No. 2.06.

27 In this situation, the Watermaster Board violated a clear Advisory Committee
28 mandate, did not give 30 days notice of its intent to approve an audit, did not hold a public

1 hearing or adopt findings and a decision and acted contrary to its own rules in conducting a
2 closed session.^{1/} It did not, even though it was acting contrary to a mandate by the
3 Advisory Committee, seek a Court hearing and a Court ruling.

4 Before its decision to direct that the audit take place, the CBMWD Board was
5 repeatedly advised of these requirements of the Judgment. It failed absolutely to meet, or
6 even attempt to meet, these requirements. In light of its knowledge of these requirements,
7 its failure to comply was clearly intentional.

8
9 **B. The Watermaster Board is Limited as to Discretionary Actions It May**
10 **Take. Direction to Conduct the Special Audit is a Discretionary Action.**

11 CBMWD asserts that as Watermaster it has authority to retain the services of
12 professionals, that day to day administrative responsibilities are vested "exclusively" within
13 the Watermaster, that the decision to direct the audit to take place was not a "discretionary"
14 decision as defined by the Judgment, that such decision was within the "sole purview of the
15 Watermaster", and that "neither the Advisory or Pool Committees are vested with the
16 authority to overrule such decision by 80% vote or otherwise." CBMWD's position misstates
17 the nature of its decision, the extent of Watermaster's authority under the Judgment, and
18 the extent of the authority and control of the Advisory Committee under the Judgment.

19
20 ^{1/} CBMWD's Opposition states that the closed session was held in light of
21 "threatened litigation." In fact there was no such "threatened litigation." What
22 had been stated at the prior meeting was that some parties might seek Court
23 review of Watermaster action with respect to the audit. (See Stewart Decl. ¶ 18.
24 That is not "threatened litigation", that it an exercise of a process and right clearly
25 and explicitly set forth in the Judgment. It is part of the process established by
26 the Judgment. Watermaster action is ~~always~~ subject to review upon the request
27 of any party. If the possibility of Court review constituted "threatened litigation"
28 then Watermaster business could always be conducted in secret. In fact, the
Rules and Regulations require that all Watermaster meetings be conducted in
public. It is by conscientiously adhering to the requirements of the Judgment
and by conducting Watermaster business in an open and public forum that the
interests of the parties, and the public are best served and protected. The
CBMWD Board has disregarded both in its rush to have this audit conducted

1 The Judgment clearly and expressly states that Watermaster may not take any
2 "discretionary action, other than approval or disapproval of a Pool Committee action or
3 recommendation properly transmitted, or execute any agreement not theretofore within the
4 scope of an Advisory Committee recommendation" without first giving 30 days advance
5 notice of the meeting at which Watermaster action would be taken, and advising the parties
6 of the intended action. The decision to conduct the special audit is a discretionary action
7 and the agreement with the accounting firm to conduct the audit is the execution of an
8 agreement not theretofore approved by the Advisory Committee. The Watermaster Board
9 did not have authority to direct the audit or sign the agreement with complying with the
10 requirements of the Judgment.^{2/}

11 CBMWD's argument that directing the special audit to be conducted was not a
12 discretionary action is totally insupportable. A decision by an agency to take a particular
13 action is "discretionary" if the agency has a choice to either take or not take the action or as
14 to how the action is to be undertaken.^{3/} An action is not discretionary if the party is
15 compelled by law to do it. Nothing in the Judgment compelled the Watermaster to order
16 that this audit be done.

17
18 ^{2/} Moreover, as noted above, since the Advisory Committee had voted by a greater
19 than 80% vote to delay taking action on an audit, the Watermaster Board was
20 mandated to act consistent therewith.

21 ^{3/} See "Discretion: power of free decision or latitude of choice within certain legal
22 bounds." (Webster's Third New International Dictionary (1993).)

23 A discussion of what constitutes discretionary action can be found in the CEQA
24 context. The California Environmental Quality Act ("CEQA") (Pub. Resources
25 Code § 21000, et seq.) applies to "discretionary projects" (Pub. Resources Code
26 § 21080(a)) and the statutes and case law have discussed what "discretionary"
27 means.

28 "A 'discretionary project' is one that 'requires the exercise of judgment or
deliberation when the public agency or body decides to approve or disapprove a
particular activity, as distinguished from situations where the public agency or
body merely has to determine whether there has been conformity with applicable
statutes, ordinances or regulations.' [Citations.]" (Remy, Thomas, Moose &
Yeates, Guide to the California Environmental Quality Act (CEQA) (1994) p. 38.)

1 The decision to have a special audit, the decision regarding what the scope of that
2 audit should be, and the decision to hire a specific firm to do the audit, were each
3 discretionary decisions. As discretionary decisions they were subject to the requirements of
4 the Judgment. CBMWD failed to meet those requirements.

5 CBMWD argues that the decision to conduct an audit was not discretionary
6 because it was an "administrative" matter. (Opposition, 7:25 - 8:15, 10:5-6.) But the
7 pertinent distinction to be drawn is between discretionary action and action which is required
8 under the Judgment, not between discretionary action and administrative action.
9 Administrative action is not a category that is separate or distinct from discretionary action.
10 Administrative action may or may not be discretionary. Administrative merely means having
11 to do with the administration of the Judgment. Webster's defines administration as having
12 to do with "performance of executive duties." (Webster's Third New International Dictionary
13 (1993).) But all of the actions of Watermaster have to do with administration of the
14 Judgment. That is Watermaster's only reason for being. Under CBMWD's analysis all
15 actions would be administrative, and thus none of them would be discretionary. That would
16 render Paragraph 38 of the Judgment meaningless.

17 Finally, even "day to day administrative" actions of the Watermaster are subject to
18 mandated action by the Advisory Committee. Nothing in the Judgment limits the subjects
19 on which the Advisory Committee may vote and give direction to the Watermaster.

20 CBMWD fails to distinguish between tasks which Watermaster is obligated under
21 the Judgment to take from actions in which Watermaster has discretion regarding whether
22 or how to act. For example, the Judgment gives Watermaster authority to enter into
23 contracts. (Judgment ¶ 20.) However the decision about *when* to enter into a contract, the
24 terms of the contract and the party with whom to contract are all discretionary; one cannot
25 turn to the Judgment to find answers to those questions.

26 CBMWD's position ignores and is contrary to Judge Turner's July 1989 Order
27 which clearly and unambiguously identifies the Advisory Committee as the "controlling body"
28 in the basin. (Order, 7:12-14.) CBMWD's position is also contrary to Watermaster's own

1 Rules and Regulations. Rule 1.03, entitled "Powers and Duties - Limited" states in part:
2 "No policy decision shall be made by Watermaster until the question involved has been
3 raised for discussion and a vote thereon taken by the Watermaster Advisory Committee and
4 the recommendations thereof received by Watermaster." CBMWD's position is also
5 inconsistent with the interpretation of the Judgment by CBMWD and the Advisory
6 Committee as reflected in the Services and Facilities Agreement which directed the Chief of
7 Watermaster Services and Watermaster staff to take direction from the Advisory
8 Committee. (See Exhibit D.)

9 CBMWD asserts that the only "discretionary" power given to Watermaster under
10 the Judgment are those identified in Paragraph 41 which give Watermaster the power to
11 develop an optimum basin management program. That is a misreading of that paragraph.
12 Paragraph 41 identifies an additional discretionary power of Watermaster. It does not
13 detract from authority granted elsewhere in the Judgment to the Advisory Committee, nor
14 does it turn other Watermaster discretionary powers into mandated actions. For example,
15 paragraphs 19 through 30 of the Judgment outline the powers of Watermaster. Many
16 expressly state powers that Watermaster "may" exercise. Just because the Judgment gives
17 Watermaster the ability to do something, does not mean that the Judgment requires that
18 Watermaster do it, and certainly does not state the manner in which the authority may be
19 exercise. Such powers are discretionary. This includes contracting and budget issues.

20 CBMWD's assertion that an audit is required as part of the annual report is
21 misleading. (Judgment ¶ 48) An annual audit has in fact been conducted each year.
22 Indeed it was the recommendation of the Ad Hoc Finance Committee that the annual audit
23 be expanded to include issues related to the fraudulent transfer of Watermaster funds. The
24 audit ordered by CBMWD however is not part of the annual audit. It is a special audit
25 separate and apart from the audit being conducted for purposes of the annual report. No
26 special audit of this type has been done in the past. It is not part of Watermaster's required
27 duties under the Judgment; it is a separate and distinct audit. (See Stewart Decl. ¶ 19.)
28 The decision to do that audit, the decision about the scope of that audit and the decision

1 about what firm to retain were each discretionary actions.

2 The decision to have this audit done was discretionary and it was contrary to the
3 mandated direction of the Advisory Committee. The CBMWD Board failed to follow the
4 requirements of the Judgment with respect to the audit.

5
6 **C. Even If the Audit "Addresses Watermaster Business Only", as Alleged, It is Not a Proper Watermaster Expense Because It Was Not Properly**
7 **Authorized.**

8 CBMWD asserts that the costs of the audit is a proper Watermaster expense
9 because the audit only looked at Watermaster operations. This argument misses the entire
10 point. The issue is whether the requirements of the Judgment were followed in supposedly
11 committing Watermaster funds to pay for the audit. Those requirements were not followed.
12 Under CBMWD's theory, anyone who conducted an audit of Watermaster business could
13 obtain payment for the audit from Watermaster funds. Such a result would obviously be
14 absurd and unworkable. Watermaster funds have to be controlled in accordance with the
15 provisions of the Judgment. Decisions about those funds have to be made in accordance
16 with the provisions of the Judgment. If the Judgment is not adhered to, Watermaster funds
17 cannot be expended.

18
19 **III. NATURE OF WATERMASTER AND ALLOCATION OF AUTHORITY UNDER THE**
20 **JUDGMENT.**

21 CBMWD rests much of its argument on its characterization of the allocation of
22 authority under the Judgment and on its characterization of the intent or purpose of the
23 Judgment. As noted below, CBMWD's position does not reflect the language of the
24 Judgment, the history of its drafting or the manner in which the Judgment has been
25 interpreted and applied.

1 A. The Advisory Committee Is, and Has Been Acknowledged by the Court
2 as Being, the Decision Making and Policy Making Body Under the
3 Judgment.

4 The Judgment in this case established a unique management structure,
5 specifically tailored to meet the circumstances and needs of the Chino Basin, its various
6 parties and interests. It established a Watermaster, an Advisory Committee, an
7 Appropriative Pool Committee, an Overlying (Agricultural) Pool Committee, and an
8 Overlying (Non-Agricultural) Pool Committee. Each is given certain power, authority, duties
9 and obligations under the Judgment. In its Opposition CBMWD argues that CBMWD, as
10 Watermaster, has "exclusive authority" to conduct Watermaster business. That is palpably
11 not true and, moreover, is contrary to prior decisions of the Court interpreting the Judgment.

12 As has been noted in this Court before, the role of the Advisory Committee was
13 discussed at length by Judge Turner in his order of July 1989. (A copy of the Order is
14 attached hereto as Exhibit A.) In that order Judge Turner acknowledged the power of the
15 Advisory Committee to change Watermaster, stating that Watermaster "should be changed
16 if the request is supported by a majority of the voting power of the Advisory Committee."
(Order, 2:5-7.)

17 Judge Turner noted the representative nature of the Advisory Committee and the
18 key role of the Advisory Committee in decision making, stating:

19 "All decisions are first submitted to the various pool committees.
20 After they have acted on a matter, the matter is referred to the
21 Advisory Committee which is basically made up of almost all of
22 the members of the Appropriative Pool and elected
23 representatives of the Overlying (Agricultural) Pool and Overlying
24 (Non-Agricultural) Pool." (Order, 2:21-26.)

25 Judge Turner further stated:

26 "The Advisory Committee takes action on all matters considered
27 by the various pools and submits its recommendations to the
28 Watermaster. The Advisory Committee is the policymaking

1 group for the Basin. Any action approved by 80 percent or
2 more of the Advisory Committee constitutes a mandate for
3 action by the Watermaster consistent therewith." (Order, 3:4-
4 9, emphasis added.)

5 Judge Turner further referred to the Advisory Committee as the "controlling body
6 of the ground water basin." (Order, 7:12-14.) He stated:

7 "The purpose of having the pool committees and the Advisory
8 Committee is to have a representative assembly where the parties
9 most interested can discuss the needs of the basin and vote on
10 the best way of meeting those needs." (Order, 7:22-25.)

11 Finally, he stated: "The Watermaster . . . acts under the policy direction of the
12 Advisory Committee." (Order, 12:26-28.)

13
14 **B. Background - Creation of the Chino Basin Judgment.**

15 To understand the "intent" of the parties under the Judgment, certain facts
16 regarding the formation of the Chino Basin Judgment must be kept in mind. The Judgment
17 was entered in January 1978. For many years prior to that, the Chino Basin had been in
18 overdraft. (Lipson, p. 74.)^{4/} However, it was not until 1969, when a judgment was entered
19 adjudicating rights in the Santa Ana River Watershed between the upper and lower areas
20 that the groundwork was present for the introduction of a groundwater management plan in
21

22 ^{4/} Lipson, "Efficient Water Use In California: The Evolution of Groundwater
23 Management in Southern California", at p. 74. This study was published by the
24 Rand Corporation in November 1978 for the California State Assembly Rules
25 Committee. Part of the study focuses on seven specific groundwater basins in
26 Southern California, one of which is the Chino Basin, and examines in detail the
27 management plan used in those basins. The study was published not long after
28 the Judgment had been entered in the Chino case, and is based upon interviews
with many of the producers, consultants, and attorneys involved in the
negotiations which led up to the Judgment. A copy of the pages from the study
which discuss the Chino Basin is attached to this Memorandum as Exhibit B.

1 the Chino Basin. (Lipson, pp. 74-75.)

2 Discussions regarding Basin management were conducted by the Chino Basin
3 Municipal Water District ("CBMWD") and by the Chino Basin Water Users Association.
4 (Lipson, p. 75.) These discussions continued for several years before any court action was
5 filed. As Lipson reports, CBMWD filed an action in January 1975 to "stimulate resolution of
6 outstanding issues." The purpose of filing the action was to "act as a unifying mechanism
7 for all producers within the basin' to develop a long-term basin plan under Watermaster
8 management." (Lipson, p. 77.)

9 A number of alternative management plans were considered. One alternative
10 was to have no controls at all. Under this plan, an assessment would be placed on all
11 groundwater pumped from the Basin and the funds would be used to purchase replacement
12 water. This alternative was rejected because the major producer groups wanted a
13 management plan which would recognize and give economic value to their water rights.
14 (Lipson, p. 77.)

15 A second alternative which was considered was to simply limit production of water
16 to the safe yield of the Basin. This was rejected "primarily because it would involve major
17 contested litigation expense, delay, and major uncertainty as to outcome." (Lipson, p. 78.)

18 The alternative which received the support of the parties, and which was
19 ultimately written into the Judgment, was a negotiated physical solution, which recognized
20 water rights, imposed assessments for pumping above specified limits, and which provided
21 for purchases of supplemental water. This was favored by both public entities and private
22 parties. Lipson reports:

23 "Appropriators, such as the cities of Pomona and Chino, several
24 water districts (e.g. Cucamonga County Water District and Monte
25 Vista County Water District), and private water companies (e.g.
26 Fontana Union Water Company), spearheaded the effort to arrive
27 at an acceptable physical solution." (Lipson, p. 78.)

28 The physical solution was supported by appropriators, agricultural interests and

1 industrial interests in the basin. (Lipson, pp. 78-79.) With the consensus reached among
2 the parties, the stipulated Judgment was entered in January 1978, three years after the
3 case had been filed.

4 Thus the Judgment was the result of the collective efforts of the producers within
5 the Basin, represented the consensus of the producers, and was, in effect, an agreement
6 among the producers to assess themselves in order to achieve balance in the Chino Basin.

7 The parties negotiating the terms of the Judgment considered, and rejected, a
8 number of alternatives for the position of Watermaster. (See Blomquist, The Performance
9 of Institutions for Groundwater Management, Vol. 7, Chino Basin, pp. 28-29. (Attached as
10 Exh. C hereto.)) The negotiations were funded largely through monies collected by
11 CBMWD under a special statutory authority. (Blomquist, p. 33.) CBMWD also had a staff
12 and facilities in place and its boundaries included much, though not all, of the Chino Basin.
13 For these reasons it was suggested that CBMWD be named the Watermaster in the
14 Judgment. Many parties had a concern about having CBMWD as the Watermaster.
15 However, as a matter of administrative convenience, and also because CBMWD threatened
16 to stop its funding if it were not named Watermaster, the parties agreed to name CBMWD
17 as the initial Watermaster. (Blomquist p. 43.)^{5/}

18 Thus, CBMWD was chosen as the initial Watermaster primarily as a matter of
19 administrative convenience. The Watermaster was not envisioned as a control on or
20 supervisor of the Advisory Committee. On the contrary, the Advisory Committee was given
21

22
23
24 ^{5/} Professor Blomquist, at p. 43, states: "[T]here was apparently some expression
25 of concern about the selection of the District as Watermaster from those Chino
26 Basin water producers in Riverside and Los Angeles Counties (and thus not
27 within the District and unable to vote for its Board of Directors), because during
28 the consideration of the Watermaster designation in the negotiations
accompanying the adjudication, the District 'also made known that it would drop
the adjudication if it were not selected.'"

1 powers to ensure that it would control and direct the Watermaster. (Blomquist, p. 43.)^{6/}

2 Among the powers given to the Advisory Committee is the power to name a new
3 Watermaster. This can be accomplished at any time by a majority vote of the Advisory
4 Committee. The Judgment contains no limitations on who the Advisory Committee may
5 name.

6 Thus, CBMWD's assertion of its "exclusive" authority is totally unfounded.

7
8 **IV. THERE IS NO CONFLICT OF INTEREST ON THE PART OF WATERMASTER**
9 **COUNSEL.**

10 CBMWD argues that the motion should be dismissed because of an alleged
11 conflict of interest on the part of the Nossaman firm. Once again, the response is two fold.

12 First, this motion was joined by many individual parties. Regardless of the role or
13 position of this firm, the Court has an obligation to enforce the provisions of the Judgment
14 and to protect the rights of the parties.

15 Secondly, the assertion of conflict of interest is simply a revisiting of the motion
16 made and ruled upon by this Court last June. CBMWD's argument that there is a conflict
17 between representation of the Advisory Committee and representation of the Watermaster
18 Board is no more valid now than it was when the Court denied the previous motion to
19 recuse counsel. The argument itself is based on a basic misunderstanding of the nature of
20 Watermaster. As noted above, the Judgment established a unique management structure,
21 with authority, duties and obligations given to different bodies which were established under
22

23 ^{6/} Professor Blomquist, at p. 43, continues: "While agreeing to the designation of
24 the Chino Basin Municipal Water District Board of Directors as the Chino Basin
25 Watermaster, the producers also placed a representative structure around the
26 Watermaster, requiring the approval of the Watermaster Advisory Committee
27 before the taking of any substantive basin management actions. This allows all
28 producers, within the District boundaries and without, to exercise a check upon
the district's actions as Watermaster. 'In fact, there is little the Watermaster can
do without producer approval.'" (Emphasis added.)

1 the Judgment, specifically the Watermaster, Advisory Committee, Appropriative Pool
2 Committee, Overlying (Agricultural) Pool Committee, and Overlying (Non-Agricultural) Pool
3 Committee.

4 The Judgment established policy making authority in the Advisory Committee.
5 This was confirmed by the Court in its 1989 order. This puts the Advisory Committee in a
6 position equivalent to that of a Board of Directors of a corporation. The Watermaster is
7 responsible for implementing the policies adopted by the Advisory Committee, much the
8 same as an officer of a corporation would carry out the directions of the Board of Directors.
9 And, like the relationship between the Board of Directors and the corporate officers, the
10 Advisory Committee has the authority, by a majority vote, to name a new Watermaster.
11 Such majority action by the Advisory Committee must be followed by the Court, absent
12 compelling reasons to the contrary. (Judgment §¶ 16.)

13 All of these entities, Watermaster, Advisory Committee and Pool Committees, act
14 at the direction of and as extensions of the Court itself in administering the Judgment under
15 the Court's continuing jurisdiction. Watermaster staff, much like any corporate staff, carries
16 on the day to day functions of the operations.

17 In this situation Watermaster legal counsel is placed in a situation not unlike that
18 of a corporate counsel. The client is the office of Watermaster. The entity may have
19 several different decision making bodies. Counsel's role is to advise each body as to the
20 requirements it must follow. If there is a disagreement between the different bodies, there is
21 no conflict of interest on the part of counsel in advising each body as to the procedures it
22 must follow.

23 In representing an entity, counsel is guided by California Rule of Professional
24 Conduct 3-600(A) which states:

25 "In representing an organization, a member shall conform his or
26 her representation to the concept that the client is the organization
27 itself, acting through its highest authorized officer, employee,
28 body, or constituent overseeing the particular engagement."

1 If, such as in the present case, a corporate officer acts outside of his or her
2 authority, the duty of counsel is to refer the matter to the next highest internal authority
3 within the organization. Rule 3-600(B) of California Rules of Professional Conduct states:

4 "(B) If a member acting on behalf of an organization knows that
5 an actual or apparent agent of the organization acts or intends or
6 refuses to act in a manner that is or may be a violation of law
7 reasonably imputable to the organization, or in a manner
8 which is likely to result in substantial injury to the organization,
9 the member shall not violate his or her duty of protecting the
10 confidential information as provided in Business and
11 Professions Code section 6068,^{7/} subdivision (e). Subject to
12 Business and Professions Code section 6068, subdivision (e), the
13 member may take such actions as appear to the member to be in
14 the best lawful interest of the organization. Such actions may
15 include among others:

16 (1) Urging reconsideration of the matter while explaining
17 its likely consequences to the organization; or

18 (2) Referring the matter to the next higher authority in the
19 organization including, if warranted by the seriousness of the
20 matter, referral to the highest internal authority that can act on
21 behalf of the organization." (Emphasis added).

22 In the corporate context the next highest authority would be the Board of
23 Directors. In the present case, where the Watermaster Board has acted outside the scope
24 of its authority, the obligation of counsel is to refer the matter to the Advisory Committee,
25

26 ^{7/} Business and Professions Code §6068 requires an attorney "to maintain inviolate
27 the confidence, and at every peril to himself or herself to preserve the secrets, of
28 his or her client."

1 the "controlling body" and "policymaking body" under the Judgment, and to follow the
2 direction of the Advisory Committee. This is in fact consistent with the direction given to the
3 Nossaman firm when it was retained as Watermaster counsel.

4 In July 1994, Nossaman started serving as general counsel to the Chino
5 Watermaster. It was selected after an interview process with the Advisory Committee. The
6 Watermaster Board never involved itself in the process. The Advisory Committee instructed
7 Nossaman that it would report to and receive its direction from the Chief of Watermaster
8 Services. Pursuant to the 1992 Services and Facilities Contract, the Chief of Watermaster
9 Services in turn receives direction from and reports to the Advisory Committee. (See
10 Exhibit D hereto. The terms of that Agreement have been extended during the transition
11 period to a new Watermaster pursuant to an interim agreement. This is reflected in the
12 Watermaster minutes of July 10, 1996. See Exhibit H hereto.) The instruction to
13 Nossaman never changed. Nossaman has in fact received its instructions from and has at
14 all times acted at the direction of the Chief of Watermaster Services in accordance with the
15 vote and direction of the Advisory Committee.

16 The relationship between Nossaman in its role as Watermaster counsel with the
17 Advisory Committee and with the Watermaster Board is a continuation of the relationship
18 which past Watermaster Counsel has had, as is reflected by Watermaster's own records. In
19 1980, for example, Donald Stark was retained as Watermaster Counsel after meeting with
20 and receiving the recommendation of the Advisory Committee. (See Exhibit E, excerpt of
21 Watermaster minutes of December 31, 1980.) In the 1988 and 1989 Court proceedings the
22 Advisory Committee gave direction to Watermaster Counsel, then Guido Smith, to make
23 recommendations and to take action. (See Exhibit F, excerpt of Watermaster minutes of
24 December 7, 1988.)

25
26 **V. CBMWD'S ACTIONS ARE ALSO IMPROPER IN LIGHT OF ITS INTERIM ROLE.**

27 In the June hearing, and in the Court's subsequent written order the Court
28 appointed CBMWD as Watermaster, not to a full term, but only on an interim basis. At that

1 time the Court set a further hearing date in September to rule on the motion for change of
2 Watermaster. (Transcript of Hearing, June 18, 1996, 106:16-22.)

3 Many of the issues which CBMWD addresses as problems stem directly from the
4 lack of cooperation from CBMWD in effecting a smooth transition to a new Watermaster in
5 accordance with the wishes of the majority of the Advisory Committee.

6 Following the June 1996 hearing the parties held two meet and confer sessions
7 as well as holding workshops. The parties agreed upon a three member Watermaster
8 Board made up of one representative each from Western Municipal Water District, Three
9 Valleys Municipal Water District, and Chino Basin Municipal Water District, the three
10 municipal water districts located in the basin. This was explained to the Court at a hearing
11 in September 1996. All that remained at that time was for CBMWD to name its
12 representative. It refused to do so, thus prolonging the interim transition status. Since
13 CBMWD refused to cooperate the parties have again requested the Court to approve a nine
14 member Watermaster Board, modified from what was previously submitted to the Court.
15 That issue is scheduled for hearing on March 11th. It is apparent that CBMWD is trying to
16 use the audit which it itself commissioned as a basis for opposing a change in Watermaster.
17 Such actions are improper. The cost of the audit is not a proper Watermaster expense. To
18 the extent there are valid issues raised in the audit, those issues should be brought to the
19 attention of the new Watermaster.
20

21 **VI. CBMWD'S USE OF THE AUDIT IN ITS OPPOSITION IS MISLEADING AND**
22 **IMPROPER.**

23
24 **A. CBMWD'S Post Hoc Rationalizations For the Audit Are Groundless and**
Do Not Justify CBMWD'S Unauthorized Actions.

25 When it ordered the audit in January, CBMWD indicated that it was acting in such
26
27
28

1 haste because of the fraudulent transfer that had occurred.^{8/} CBMWD's motives are now
2 called into question. As noted below, the audit fails to discuss the circumstances of the
3 fraudulent transfer in any meaningful respect and in fact devotes only a few sentences of its
4 45 page report to that issue. The declarations of Bill Hill and Larry Rudder which
5 accompany CBMWD's Opposition appear to state other grounds on which CBMWD wishes
6 to now retroactively base its hasty action. In fact, rather than justifying CBMWD's actions,
7 the issues raised by Mr. Hill and Mr. Rudder have the opposite effect.

8 Mr. Hill states a concern that the Watermaster budget had increased 700% in six
9 years. (Hill Decl. ¶ 6.) Mr. Rudder makes a similar statement. (Rudder Decl. ¶ 7.) What
10 neither gentleman points out is that during that time period CBMWD was Watermaster and
11 CBMWD approved each and every budget. In addition to receiving Watermaster approval,
12 the budget information was available for review and discussion at any time. This historical
13 information hardly justifies acting without proper notice and without following procedures
14 established by the Judgment.

15 Mr. Rudder states that he had a number of concerns over a period of time.
16 (Rudder Decl. ¶¶ 6-10.) He fails to explain why during the multi-year period over which he
17 had those concerns he did not raise them at a meeting of Watermaster, or the Advisory
18 Committee or before the Court. He expresses a concern about the lease executed for the
19 present Watermaster staff facilities (Rudder Decl. ¶ 9), but fails to explain why he did not
20 raise this concern at the April 1996 meeting at which the Watermaster Board ratified the
21 lease.

22 In short, the declarations of Messers Hill and Rudder appear to be post hoc
23 rationalizations which, if they were accurate, would merely demonstrate the need for a new
24 and more responsive Watermaster.

25
26
27 ^{8/} Even though by the time of the CBMWD action all funds had been restored and
28 bank and law enforcement investigations were already under way.

1 **B. CBMWD Failed to Provide the Audit to the Parties,**

2 Although it cites the audit numerous times, CBMWD did not attach a copy of the
3 audit to the pleadings which it served. Indeed, although a copy was obviously available to
4 CBMWD for purposes of preparing its opposition, its pleadings had in place of the audit a
5 single page which stated that the audit would be provided at a later date. In fact
6 Watermaster staff was able to obtain a copy only after demanding one from CBMWD. The
7 cover page for the audit, interestingly, is dated February 12th, eleven days before CBMWD
8 served its opposition. It strains credulity to believe that CBMWD was not able to provide
9 copies of the audit together with its opposition.

10 The audit is, in any event, not relevant to the issue before the Court in this motion.
11 The issue is whether Watermaster funds may be used to pay for the costs of the audit.
12 That in turn depends upon whether proper procedures were followed in accordance with the
13 provisions of the Judgment in deciding to conduct the audit. The procedures were not
14 followed. The content of the audit cannot change that fact.

15 **C. The Audit Fails to Meaningfully Address the Issue for Which It was**
16 **Supposedly Commissioned. The Audit Fails to Provide Explanation or**
17 **Basis for Its Conclusions and It Misinterprets the Judgment.**

18 The audit itself is most notable for what it does not discuss. The purported reason
19 for conducting the audit in such a rush was the fraudulent transfers which had occurred to
20 Watermaster's account. That is not addressed in the audit in any meaningful way. The
21 audit report is 46 pages long. Yet in only one place does it address that key issue. At page
22 17 the event was described. The audit then states: "Because this engagement was not
23 intended to be a fraud investigation, we did not pursue the matter." The audit then states
24 that bank and law enforcement investigations are under way. There is no further
25 discussion.

26 Beyond its failure to discuss the main issue for which it was supposedly
27 commissioned, the audit addresses other issues incompletely, or with a flawed approach or
28 understanding. The audit raises questions about which party has fiduciary responsibility,

1 but fails to acknowledge that such issues are addressed, and answered, in the Judgment
2 and in the Watermaster Rules and Regulations. Such issues are further addressed and
3 answered in Judge Turner's 1989 Order, which is not mentioned in the audit.

4 The audit ignores the fact that Watermaster is now in a transition stage. Many of
5 the procedural issues addressed stem directly from that fact. The audit also fails to
6 acknowledge that that transition stage has been prolonged due directly to CBMWD's failure
7 to cooperate in the process. The audit does, however, acknowledge right of Advisory
8 Committee to change Watermaster by a majority vote. (Audit, p. 5.)

9 The audit identifies selected CBMWD policies (Audit p. 23) and states: "In the
10 Handbook the following policies and procedures were represented as being applicable to
11 the Watermaster . . ." No indication is given of how such a determination was made, when
12 it was made, whether it was valid, and whether it still applied in light of the transition which
13 has been underway since before June 1996. This calls into question all of the audit
14 discussion, conclusions and recommendations based upon such policies.

15 The audit notes Watermaster is creation of Judgment, but then goes on to
16 analyze Watermaster in same manner as if it were a standard public agency created by
17 statute. Watermaster is created by a Judgment and many of the rules, requirements, and
18 limitations which would apply by statute to a public agency are contained in substance in
19 various provisions of the Judgment. It is to the Judgment that Watermaster must look for
20 direction. The critical controls over the operation of Watermaster are to be found in the
21 Judgment. All decisions are "first submitted to the various pool committees", and reviewed
22 by the Advisory Committee which "submits its recommendations to the Watermaster." The
23 recommendations are then considered and acted upon by Watermaster. (Order, pp. 2-3.)
24 Thus, there is a highly redundant control process over the operation of Watermaster that is
25 not considered or analyzed by the audit.

26
27 **VII. OTHER SPURIOUS ACCUSATIONS BY CBMWD.**

28 Apparently in the spirit of throwing in everything but the kitchen sink, CBMWD

1 raises sever other issues having nothing to do with the issue of whether the cost of the audit
2 is a proper Watermaster expense. Some of those other issues are addressed below.

3 CBMWD asserts that Watermaster counsel had not attended some Watermaster
4 Board meetings. In fact, the standard practice of Watermaster counsel for many years
5 preceeding the hiring of this firm was that counsel did not attend such meeting. Most
6 Watermaster meetings simply approved matters submitted by the Advisory Committee.
7 Some meetings lasted as little as 5 minutes. Counsel attended whether expressly directed
8 or requested to attend.

9 CBMWD asserts that Watermaster services have failed to follow written or
10 approved polices and procedures in day to day operations. (Opposition, 8:22-23.) The
11 policies in question are not identified and apparently were never included in the
12 Watermaster Rules and Regulations. The applicability of any CBMWD policies in light of
13 the transition is, in any event, subject to question. (See Lichti Decl. ¶¶ 5-9, 11.)

14 CBMWD asserts that the Chief of Watermaster Services has hired persons under
15 the guise of independent contractors who in fact were acting as employees (Opposition,
16 8:24-25.) As indicated in the Declaration of Traci Stewart, the individuals involved are
17 independent contractors and an opinion of counsel to that effect will be available shortly.

18 CBMWD asserts that outside engineering firms have complained about
19 interference with contract for services (Opposition, 8:27-28.) This is addressed at
20 paragraph 14 of Ms. Stewart's declaration.

21 CBMWD asserts that the Chief of Watermaster Services did not have authority to
22 sign a multi-year lease. The lease was specifically ratified by Watermaster at its meeting on
23 April 3, 1996. (See Exhibit G, Watermaster minutes of April 3, 1996.) The assertion in the
24 audit that the lease is somehow improper indicates both an incomplete study and
25 understanding and a lack of communication on the part of those preparing the audit.
26 Moreover, the lease and the move to the new facility were discussed before the Court at the
27 June 1996 hearing. No party raised any objection or concern at that time, even though all
28 information about the move and the lease had been given to all parties and was available

1 for further review.

2 CBMWD asserts that the Watermaster budget has increased significantly.
3 (Opposition, 13:27-28.) As noted above, CBMWD, as Watermaster, approved all the
4 budgets of which it now complains.

5 CBMWD asserts that car allowances are being drawn without being properly
6 reported (Opposition, 14:2-3.) This is addressed at paragraph 6 of Ms. Stewart's
7 declaration and paragraph 10 of Ms. Lichti's declaration.

8 CBMWD asserts that the Advisory Committee is trying to avoid paying for clean
9 up of nitrates in southern portion of the Basin. (Opposition, 14:10-20.) There is no
10 evidence to support this allegation. CBMWD is obviously just trying to cause division
11 between the agricultural and non-agricultural producers within the basin. The Advisory
12 Committee had indicated its commitment to high standards of water quality throughout the
13 basin. In fact, the Advisory Committee has recently approved an agreement to supply
14 12,000 acre feet of water per year to support a desalting operation. At current market rates
15 this represents a contribution of approximately \$3 million per year for basin clean up.

16 CBMWD notes that the Advisory Committee has moved to replace Watermaster.
17 (Opposition, 14:6-7.) This is true. The Advisory Committee exercising its authority under
18 the Judgment has voted to name a new nine member board as Watermaster. Given the
19 failure of CBMWD to fulfill its obligations as Watermaster, the need for a replacement is
20 obvious.

21
22 **VIII. REPLY TO OPPOSITION BY CITY OF CHINO.**

23 The City of Chino has filed an opposition. To the extent it raises the same issues
24 as the opposition by CBMWD, the reply to those issues will not be repeated. In addition,
25 however, the City of Chino implies (City of Chino Opposition, 1:27 - 2:6) that persons
26 charged with administration of Watermaster funds may have been involved in the theft of
27 those funds and further alleges that the Chief of Watermaster Services has "attempted to
28 derail" any audit. These assertions are untrue and unfounded and outrageous.

1 There is absolutely no indication that persons involved with the administration of
2 Watermaster funds were involved in any wrongdoing. It is irresponsible of the City of Chino
3 to suggest so.

4 The Chief of Watermaster Services has not hindered any audit. The Advisory
5 Committee directed that an audit should not take place until after the review and report by
6 the Ad Hoc Finance Committee. In fact, the Chief of Watermaster Services and the entire
7 Watermaster staff has cooperated fully with the firm which conducted the audit requested by
8 CBMWD. Once again, it is irresponsible of the City of Chino to suggest otherwise.

9
10 **IX. CONCLUSION.**

11 The decision to conduct the audit, the decision about the scope of the audit, and
12 the decision about what firm to hire to do the audit were each discretionary decisions.
13 CBMWD failed, indeed made no attempt, to comply with the requirements of the Judgment
14 in making those decisions. The cost of the audit cannot properly be considered a
15 Watermaster expense.

16
17 **RESPECTFULLY SUBMITTED:**

18 **NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP**
19 **FREDERIC A. FUDACZ**
20 **JOHN OSSIFF**

21 By 
22 **John Ossiff**
23 **Attorneys for Chino Basin Watermaster**

1 facilitated development of consensus on and a means of providing policy and procedural direction to staff
2 regarding items of interest and relevance to the basin producers. The Assessment Package uses the Judgment
3 as the basis of accounting in that it provides a means of assessing the costs of Watermaster in compliance with
4 the Judgment.

5
6 5. The initial Watermaster budget for FY 1996/97 was adopted by the Advisory Committee on March
7 27, 1996. It contained an estimated amount for office lease of \$48,000 per year or \$4,000 per month. This figure
8 was developed at the budget workshops subsequent to the January 25, 1996, action by the Advisory Committee to
9 change Watermaster and it was known Watermaster Services staff would be relocating. This provided the
10 guidance as to the allowable amount which could be expended. The lease was ratified by Watermaster on April 3,
11 1996.

12 6. To my knowledge, mileage reimbursements have never been included on employee W-2's by
13 CBMWD as income. My understanding is that this is money expended by the employee on behalf of the employer,
14 and it was already taxed prior to the employee's ability to use it in this manner. CBMWD staff was aware of my car
15 allowance, however, I was told they would not include it on my W-2 as income that had not been taxed, but that
16 had been paid because it was not paid through the CBMWD accounting system.

17
18 7. The proposed investment policy was approved by a greater than 80% vote of the Advisory
19 Committee in October 1996 and again in January 1997. Additionally, it was reviewed by the Ad Hoc Finance
20 Committee on January 16, 1997 and found to be acceptable. The Committee did not find that it contained items
21 that are not good business practice (see attached list of Committee members). CBMWD did not send a
22 representative to participate on the Committee even though they were specifically invited to do so by the Advisory
23 Committee, and were again specifically asked to participate by the State of California Attorney, Marilyn Levin on
24 January 23, 1997, at the special meeting where they took action to hire the firm of Soren McAdams & Bartells.

25
26 8. Regarding Resolution 96-2 and the authorized signatures on bank accounts, the Ad Hoc Finance
27 Committee recommended the elimination of an "exception checking account", which had never been established,
28 to prevent a bank from having to ascertain whether an employee was authorized to sign on other established

1 accounts. Due to the recent change in Watermaster Board members and member duties, and this
2 recommendation, the Watermaster has a new signature resolution before it for adoption on February 27, 1997.

3
4 9. Regarding the check stock not being "secured against all individuals who should not have
5 access", staff is in the process of obtaining quotes for an onsite safe. The check stock is always kept under lock
6 and key in the interim.

7
8 10. The "in excess of 100,000 copies" referred to relates to preparation for the June 18, 1996, hearing
9 to appoint a new Watermaster. At that time, staff was unaware a post card was also able to be used in these
10 types of matters for some parties to the Judgment. When the number of copies that could be made per hour on
11 an average was calculated, it became apparent the service deadline would not be able to be met unless
12 outsourcing occurred. The task required the use of five different Kinko locations to be accomplished on time.
13 Watermaster staff member Jim Theirl was directed by the Chief of Watermaster Services to deliver the originals to
14 Kinkos.

15
16 11. The computer consultant ordered a new printer for Watermaster when it was thought the old
17 printer was unable to be repaired. This was done as directed by the Chief of Watermaster Services. All
18 consultants receive their direction from the Chief of Watermaster Services to carry out the policies and
19 procedures, and specific projects or requests made or authorized by the Advisory Committee.

20
21 12. CBMWD ordinances are not applicable with regard to Watermaster consultants or contractors.
22 Direction from the Advisory Committee is applicable when given pursuant to the Watermaster process. On
23 numerous occasions over the years, consultants have been asked to attend meetings and perform services in this
24 manner. There were no contracts or agreements for the services provided by Guido Smith, Watermaster General
25 Counsel until June 30, 1994, or for Art Kidman and Dan McKiney when retained as special counsel by the Ag Pool
26 in the recent past.

27
28 13. CBMWD staff submitted the RFP's for the audit, reviewed the responses, established the scope
for the service to be provided, told the auditors that CBMWD policies and procedures applied to Watermaster, and

1 worked with the auditors to prepare and review the audit report. The Judgment and the Watermaster process
2 have always set Watermaster policies and procedures as indicated above. This has been acceptable to a greater
3 than 80% majority of the Advisory Committee since the Judgment was entered. This is evidenced by the fact that
4 the budgets and assessments have always been adopted and implemented with one exception covering FY 90/91
5 when the proposed budget used, but was never formally adopted based on a recent review of the committee and
6 Watermaster minutes (see all annual reports).

7
8 14. With regard to independent contractor status of Patrick Park, I worked with Lee Penrice, former
9 CBMWD accounting manager, to determine that Mr. Park is in fact an independent contractor. I requested Mr.
10 Park to provide Mr. Penrice with copies of 1099's he received from other clients, a W-2 from the regular employer
11 for the job he kept on weekends while establishing his consulting business, and his tax returns to demonstrate his
12 status as a sole proprietor in the eyes of the IRS. With regard to Fernando Lopez, he is an employee of Mark
13 Wildermuth. At the February 13, 1997, Advisory Committee meeting, the Advisory Committee directed the firm of
14 Nossaman, Guthner, Knox & Elliott to draft an opinion with regard to this subject matter and to address whether
15 there is potential liability to Watermaster from the procurement of services in this manner. The written opinion will
16 be available in the near future. The initial conclusion is that he is an employee of Mark Wildermuth (and he was
17 an employee of Stetson Engineers). The potential Watermaster liability with regard to an agent of Watermaster
18 versus an employee of Watermaster would be addressed on a case by case basis, depending on the relevant
19 circumstances, just like it would for any other business or public entity that had "outsourced" some of its work or
20 that had contracted with a temporary staffing service.

21 15. The auditors concluded I received no direct or continuous oversight during the last half of the
22 year. During this entire year, there have been more Pool, Advisory Committee, Watermaster, Special meetings
23 and workshops than there have been in any year since the Judgment was entered. Since I receive my direction
24 from the Advisory Committee directly, and indirectly through the Watermaster process, I have had more oversight
25 than any of my predecessors.

26
27 16. The auditors included an organization chart prepared by CBMWD. When questioning me, I did
28 indicate that Tina Cheng, CBMWD Senior Budget Officer, would have the appropriate chart. The one presented in

1 the audit report was specifically not acceptable to the Advisory Committee because it had a direct line from the
2 Watermaster Board to staff . The Facilities and Services Agreement was specifically amended in the 1992 version
3 to include paragraph 6 because of the Advisory Committee's concerns. I do not report to or receive direction from
4 the CBMWD Board of Directors, nor does any consultant or CBMWD employee working for Watermaster. We
5 receive our direction from and report to the Advisory Committee.

6
7 17. The desalter agreement was approved by the Court on September 18, 1996. It provides the
8 desalter with 12,000 acre feet of water a year to satisfy a replenishment obligation that the desalter would
9 otherwise incur. The current value of this water is approximately \$3,000,000 per year. The desalter is the
10 beginning of cleanup of the lower end of the Chino Basin. The agreement was supported by more than an 80%
11 vote of the Advisory Committee.

12 18. I was in attendance at the Watermaster Board meeting held on January 9, 1997. At that meeting,
13 a party to the Judgment informed the Watermaster Board that if the Board decided to pursue an audit, that it would
14 probably invite legal action and that it may be through that legal action that you [CBMWD] might pay [for the audit].
15 This informed the Watermaster Board that action under the Judgment might be taken if they proceeded with an
16 audit. It was this thought that they felt warranted closed session, which they later that day scheduled for January
17 14, 1997. Between January 9 and January 14, 1997, the Watermaster Board was informed that closed session
18 was contrary to Watermaster Rules and Regulations by Watermaster Counsel. They were again informed of this
19 by Watermaster Counsel at the January 14, 1997 meeting.


20
21 19. An audit of Watermaster operations as an individual entity has not been performed in the past and
22 is not a part of the annual financial audit. Justification for the audit contracted for by CBMWD was verification of
23 staff's implication in the fraudulent activity that occurred in December 1996. The final audit does not address that
24 activity except on page 17, where it indicates that "Because the engagement was not intended to be a fraud
25 investigation, we did not pursue the matter".

1 20. The recent actions of Nossaman, Guthner, Knox & Elliott and attorneys Fred Fudacz and John
2 Ossiff were pursuant to instruction given to me as Chief of Watermaster Services and to them as Watermaster
3 Counsel by appropriate votes of the Advisory Committee.

4
5 21. The statements in the audit regarding the independent contractor status of several people is
6 addressed above and in other declarations included herein.

7 22. Attached is Exhibit A is a true and correct copy of the July 31, 1989 Order entered in this action.
8 Attached as Exhibit D is a true and correct copy of the Amended Services and Facilities Agreement. Attached as
9 Exhibit E is a true and correct copy of excerpts of the minutes of the December 31, 1980 Watermaster meeting.
10 Attached as Exhibit F is a true and correct copy of excerpts of the minutes of the December 7, 1988 Watermaster
11 meeting. Attached as Exhibit G is a true and correct copy of excerpts of the minutes of the April 3, 1996
12 Watermaster meeting. Attached H is a true and correct copy of excerpts of the minutes of the July 10, 1996
13 Watermaster meeting.

14
15 I declare under penalty of perjury the foregoing to be true and correct to the best of my knowledge.
16 Executed this 27th day of February, 1997 at Rancho Cucamonga, California.

17
18
19 

20
21 Traci Stewart

WATERMASTER AD HOC FINANCE COMMITTEE

| NAME | AFFILIATION | | |
|--|---------------------------------------|--------------------|---|
| (Listed alphabetically by last name) | | | |
| Carole A. Coney, Accounting Manager | City of Ontario | Telephone: FAX: | (909) 391-2550 (909) 467-2773 |
| Calvin W. Good, Jr., Admin. Services Mgr/Controller | Monte Vista Water District | Telephone: FAX: | (909) 624-0035 Extension 110 (909) 624-4725 |
| Patrick J. Griffin, Director of Finance | City of Chino | Telephone: FAX: | (909) 627-7577 Extension 227 (909) 591-6829 |
| Walter F. Reardon, CPA | City of Upland | Telephone: FAX: | (909) 985-7286 (909) 982-0487 |
| Ken Waring, Auditor/Controller | JCSD | Telephone: FAX: | (909) 685-7434 (909) 685-1153 |
| Shawna Whallon, Dir. of Finance & Administration | Cucamonga County Water District | Telephone: FAX: | (909) 987-2591 (909) 941-8069 |
| Karen Zane, Accounting Manager | City of Pomona | Telephone FAX: | (909) 620-2355 (909) 620-2269 |

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DECLARATION OF ALICE W. LICHTI

I, Alice W. Lichti, hereby declare as follows:

1. I am the Interim Controller for the Chino Basin Watermaster (Watermaster). I have first hand knowledge of the matters set forth herein and, if called as a witness I would be competent to testify thereto.

2. I submit this declaration in support of Chino Basin Watermaster's Advisory Committee's action to have the audit commissioned by Chino Basin Watermaster declared an expense of the Chino Basin Municipal Water District (District).

3. In May, 1975, I passed all four parts of the Certified Public Accountant examination. [Board of Accountancy notification attached.] I did not pursue certification as, on, June 15, 1975 I had been appointed Controller for the Chino Basin Municipal Water District. I served in that capacity until my retirement on August 8, 1989.

4. Following the January 27, 1978 adjudication of the groundwater basin, District entered into an agreement with Watermaster to provide staff and facilities for Watermaster activities. In conformance with the Judgment, District staff assigned to Watermaster on a part-time basis was instructed to act under the direction of the Advisory Committee. Under this agreement, Chino Basin Municipal Water District was fully reimbursed for all costs of services and facilities. Staff salaries were charged at actual hourly wages of personnel plus District's standard payroll burden and department overhead factors. A General and Administrative charge, computed as a percentage of total salary costs, was set to recover indirect Administrative and accounting time. Watermaster was also charged for all expenditures directly benefiting Watermaster.

5. During my term as District Controller, I supervised a staff of 5 persons whose duties covered day-to-day accounting and bookkeeping duties. I personally handled contract administration, preparation of the District's Budget, grant accounting, debt issuance and retirement, preparation of year-end financial statements for the Annual Audit and preparation and filing of the Annual State Auditor Controller's report. Under my direction, the accounting staff was responsible for all accounting and investment activities of the District and the Watermaster; including, but not limited to: cash receipts, invoicing (including monthly billings to Watermaster for staff and expenses), cash disbursements including Watermaster invoices approved by the Chief of Watermaster Services (which at times were in the millions of dollars), overseeing the investment of District and Watermaster funds and preparing the payroll for all Chino Basin Municipal Water District employees including those assigned the task of working in the area of Watermaster Services. As a result of my position, I am familiar with the accounting and the bookkeeping of the Watermaster from 1978 until my retirement on August 8, 1989.

Following the adjudication, I also prepared Watermaster's annual Budgets and Assessments for submittal to the Advisory Committee and the Watermaster Board. During the first few years, Budget and Assessment formats were designed

1 to meet the needs of the various Pools, and corollary charts of accounts were established for ease in tracking and allocating
2 expenditures. In 1985, with the purchase of the District's first personal computer, I developed a computer program to expedite
3 computation of the Assessments and production of "Schedule 1" of the Annual Audit. "Schedule 1" is an unaudited
4 supplemental statement developed to segregate revenues and expenses as appropriate between groundwater replenishment,
5 the three pools and other categories as appropriate. Grand Total figures tie directly to the audited Comparative Statement of
6 Revenue, Expenses and Changes in Retained Earnings. This schedule was, and will continue to be, a supplement to the
7 Annual Financial Statements until all wells of the Agricultural Pool's are metered, eliminating the need to estimate production
8 figures. Once all wells are metered, there will be an audit trail for the annual audit should it be considered cost effective for
9 the Auditors to expend this effort.

10 6. In May of 1996, I was retained as a consultant to review responses to a Request for Proposal for an
11 Accounting Firm to provide Watermaster with part-time Treasurer, Controller and Bookkeeper services, thus removing all
12 financial duties except payroll from the District. During my review, it became apparent to me that the actual amount of time
13 necessary to perform the defined scope of work was not reflected in the low bids submitted by all proposers. Subsequent to
14 reviewing and short-listing three accounting firms, I was requested to assume the duties of Interim Controller until such time
15 as the full scope of work could be better defined and the books could be readily assumed by the firm selected. None of the
16 proposals reflected sufficient time to cover implementation of new Watermaster accounting software, drawing up a new chart
17 of accounts, recording outstanding 95/96 bills and invoices, and working with District staff to draft accurate year end financial
18 statements.

19 7. Effective July 10, 1996, I was appointed by the Watermaster Board to serve as Interim Controller. A full
20 copy of the executed Letter Agreement is attached.

21 I serve as an independent contractor, determining the days and hours I work dependent upon the work to be
22 accomplished. I have sufficient expertise in both accounting and financial reporting that I have shared with Ms Stewart, who
23 handles cash receipts and disbursements in my absence. I work alone and am responsible only for the attainment of the
24 scope of work for which I was contracted. The defined Scope of Work could be accomplished at my home, on my computer;
25 however, it was my decision to work at the Watermaster Office to avoid hand carrying receipts, bills, checks and financial
26 reports back and forth between sites. In addition to the work I perform for Watermaster, I also perform accounting services for
27 two non-profit organizations.

1 8. Although not enumerated in the Scope of Work, the first work to be done was the drafting of an Investment
2 Policy and Financial Policies and Procedures to be followed by Watermaster's five (5) member Staff and Controller. These
3 documents were reviewed by the three Pools on October 10, 1996. The Appropriate Pool requested the draft document be
4 reviewed by District's Chief Financial Officer, Larry Rudder, prior to presentation to the Advisory Committee on October 16,
5 1996. Mr. Rudder was contacted and his recommendations were incorporated in the final draft document. On October 16,
6 1996, the Advisory Committee, approved this final draft Investment Policy subject to distribution of the document to all
7 Appropriate Pool representatives to allow them to satisfy their internal review requirements. Comments were to be provided
8 Watermaster by December 15, 1996. (No comments were received, and the Investment Policy is being submitted to the
9 Watermaster Board for adoption at the February 27, 1997 meeting.) The drafts of both the Investment Policy and the
10 Financial Policies and Procedures have been substantially adhered to since July 10.

11 9. Also not enumerated in the contract's Scope of Work, the Advisory Committee was assured that the
12 financial transactions of 1995/96 would be reviewed for compliance with the Judgment. Annual and periodic Financial
13 Statements are prepared by District Staff, who appear to be unfamiliar with the Watermaster program. For instance, the
14 Financial Statements for the year ended June 30, 1995, contained several discrepancies which significantly skewed the
15 segregation of Pool Funds reflected on Schedule 1. Also, a "dump figure" had been used to balance the Comparative
16 Statement of Cash Flows, thus tainting the 94/95, and eventually the 95/96, financial statements with noncompliance with
17 generally accepted government audit standards. Review of these discrepancies with District's staff resulted in leaving the
18 94/95 Statements as approved, restating the 94/95 column in the 95/96 statement without footnoting the correction, and
19 moving forward from there. Copies of the two audits mentioned above are attached.

20 10. During this period of transition, it is recognized that Ms Stewart's automotive allowance should have been
21 paid through the normal bi-weekly payroll process, but was paid directly to her. She has been issued an IRS form 1099Misc
22 for the amount paid during 1996, and is subject to full taxation including self-employment taxation (FICA and Medicare)
23 on the full amount. Ms Stewart's 1996 wages, without the car allowance, exceeded the FICA base of \$62,700 and FICA
24 would have simply cut off at an earlier date with the car allowance. Ms Stewart will, through receipt of a 1099Misc be
25 required to pay both FICA and Medicare on the funds received as a car allowance. She has not benefited from this
26 oversight.

1 11. The Operations Audit reflects negative findings occurring both prior and subsequent to July 10, 1996. The
2 majority of these findings, if still in place at June 30, would have been noted in the 96/97 Annual Audit. Regardless, I have the
3 following comments on the report.

4 --Page 2--Regarding timeliness of reports, many Watermaster reports, including the Annual Report are tied to
5 completion of the year end audit, which provides "beginning balances" for the assessment package and the next
6 year's budget process. It is also a required part of the Watermaster Annual Report. The 95/96 Financial Report
7 (audit) was received on October 16, 1996, weeks after the conclusion of the field work. Separation of the
8 Watermaster accounts to a stand-alone system, will facilitate future audits and resolve such problems.

9 --Page 6--Watermaster has been recognized since 1978 by California's Local Agency Investment Fund as a
10 separate investor, i.e. a quasi governmental agency.

11 --Page 6--Watermaster has been approved by the Public Employees' Retirement System for employee participation
12 in the system. The Actuarial Study has been made, and the Watermaster Board will be taking action on the Contract
13 at their February 27 and March 26, 1997 meetings.

14 --Page 11--The Auditor has referred to a conversation wherein I am quoted as stating that the assessment package
15 has no audit trail. My statement to the Auditor referred to "Schedule 1" of the annual audit. We did not discuss
16 auditing the assessment package, which does depend upon estimated Agricultural production as does "Schedule 1".
17 However, except for production, the Assessment package was always verified during all Audit periods through fiscal
18 87/88.

19 --Page 29--Independent Contractor vs employee is responded to in Paragraph 7 above.

20 The Auditor has stated that the Letter Agreement pertaining to my services was not signed. This Agreement was signed on
21 July 10, 1996 by Mr. Anderson, Watermaster's Treasurer, President Hill was absent due to open heart surgery at that time.

22 --Page 33--The final proposed Assessments per agency are distributed to the members of the Appropriative and Non
23 Agricultural Pools well in advance of their approval by the Watermaster. As such, each agency has an opportunity to
24 object and/or recommend corrections should errors occur in either production or computation of amounts assessed.
25 Any errors found after the levy are reviewed by the Pools and the Advisory Committee. Thus "oversight" is provided
26 by thirty-seven producers.

27 --Pages 36, 38, 40 & 41--The audit was performed to cover calendar 1996. District was responsible for the period
28 January through July 10 when Watermaster financial transactions were transferred to the Controller. To truly reflect

1 the effectiveness of Watermaster operations for the calendar year, sampling taken by the auditors should have been
2 equal for the two six month periods. Sampling of disbursements for the year included 24 for the period prior to July
3 10 and 68 for the period after July 10. And no cash receipt samples appear to have been reviewed for the first half
4 of the year compared with 15 in the final half. [It is noted that although the resulting statistics for the July 10 -
5 December 31 period were better than the earlier period, no recommendations were made regarding District
6 operations in this document.]

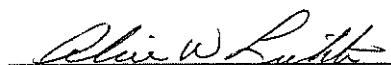
7 --Page 37--Regarding capitalized equipment, Watermaster does indeed need to adopt a capitalization policy.
8 Concerning capital equipment, it was only at my request that District reclassified the capital assets, including the
9 screen projector, from the 95/96 "relocation" costs. The SAWPA Sun 4/330 was purchased in May of 1996 and
10 should, indeed, have been capitalized. However it appears to have been overlooked by both District staff and the
11 Auditor. If appropriate, capitalization of the Minolta leases will be done in 96/97.

12 --Page 37--Coding errors as noted by the Auditor will be corrected, and we thank them for calling them to our
13 attention.

14 --Page 43--Watermaster established an account with Downs Oil Company late in 1996; however the subsequent
15 invoice was not among those sampled by the Auditor.

16 --Throughout--An insufficiency of checks and balances in the accounting system is known to be inherent with
17 agencies with limited staff available to provide the optimum segregation of financial responsibilities. Segregation has
18 been and will continue to be made to the best of our ability among the five person Watermaster staff.

19
20 I declare under penalty of perjury the foregoing to be true and correct to the best of my knowledge. Executed on this
21 26th day of February, 1997 at Rancho Cucamonga, California.

22
23
24 

25 Alice W. Lichti
26
27
28



BOARD OF ACCOUNTANCY
1021 O STREET, SACRAMENTO, CALIFORNIA 95814
TELEPHONE: (916) 445-5347



August 6, 1975

Alice W. Lichti
74 Gardenia Court
Upland, CA 91786

Dear Mrs. Lichti:

On reviewing the results of the recent Certified Public Accountant examination, the State Board of Accountancy found that you have passed all four parts of the examination at your first sitting.

On behalf of the Board, I am extending my congratulations for your excellent showing and I wish you continued success in your chosen profession.

Very truly yours,

Brenton B Bradford
President

LETTER AGREEMENT BETWEEN
CHINO BASIN WATERMASTER AND
ALICE W. LICHTI, INTERIM CONTROLLER

Upon appointment by Chino Basin Watermaster as Interim Controller, Alice Lichti agrees to perform the following tasks in the time and manner necessary to meet the needs of Watermaster and the Chief of Watermaster Services.

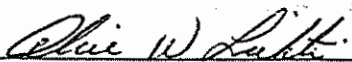
SCOPE OF WORK.

1. Keep and maintain adequate accounts of all financial transactions of Watermaster, make deposits and disburse such funds as may be received by the Watermaster.
2. Invest funds of the Watermaster as authorized.
3. Keep and maintain records allocating costs and expenses of Watermaster as between the several pools.
4. Oversees payroll services to be provided by Chino Basin Municipal Water District or by an outside contractor.
5. Reconcile all bank accounts each month.
6. Prepare monthly, quarterly and annual financial reports as mandated either by State or by the Advisory Committee.
7. Assist Chief of Watermaster Services in reviewing, selecting and testing new accounting software.
8. Work with Chief of Watermaster Services in preparation of the 1997/1998 Budget.
9. Attend Advisory Committee, Pool or Watermaster meetings as requested for the purpose of presenting financial reports.

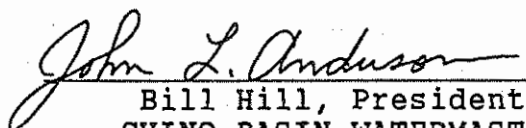
REIMBURSEMENT FOR SERVICES. Services will be billed at the rate of \$35.00 per hour (portal to portal) plus \$10.00 for each hour's use of Mrs. Lichti's personal computer.

TERMINATION OF SERVICES. It is understood that this appointment is for a undetermined period of time; therefore, Watermaster may terminate this agreement without notice at any time. Lichti may terminate upon giving thirty (30) days notice.

ACCEPTED this tenth day of July, 1996 by:



Alice W. Lichti (Mrs.)
74 West Gardenia Court
Upland, CA 91786-2213



Bill Hill, President
CHINO BASIN WATERMASTER

Approved by those present by unanimous vote at the Watermaster Board Meeting held July 10, 1996

**Comprehensive
Annual Financial Report
for the
Fiscal Year Ended
June 30, 1995.**

CHINO BASIN WATERMASTER

Bill Hill, *Chairman*

George Borba, *Vice Chairman*

John Anderson, *Secretary/Treasurer*

Anne Dunihue, *Member*

Wyatt Troxel, *Member*

EXECUTIVE STAFF

Traci Stewart, *Chief of Watermaster Services*

AUDITORS

KPMG Peat Marwick LLP

LEGAL COUNSEL

Nossaman, Guthner, Knox & Elliott LLP

Fred Fudacz, *Attorney at Law*

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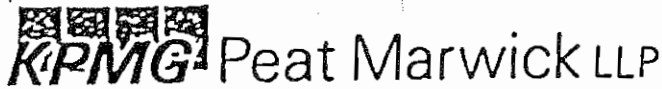
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Financial Section

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Center Tower
650 Town Center Drive
Costa Mesa, CA 92626

INDEPENDENT AUDITORS' REPORT ON FINANCIAL STATEMENTS

The Board of Directors
Chino Basin Watermaster:

We have audited the accompanying financial statements of Chino Basin Watermaster as of and for the year ended June 30, 1995, as listed in the accompanying table of contents. These financial statements are the responsibility of the District's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the 1995 financial statements referred to above present fairly, in all material respects, the financial position of Chino Basin Watermaster as of June 30, 1995 and the results of its operations and its cash flows for the year then ended in conformity with generally accepted accounting principles.

Our audit was made for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplementary information included is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements, and in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

KPMG Peat Marwick LLP

September 29, 1995

CHINO BASIN WATERMASTER
Comparative Balance Sheet
June 30, 1995 and 1994

ASSETS

| Assets | <u>1995</u> | <u>1994</u> |
|------------------------|--------------------|--------------------|
| Cash | \$114,847 | \$14,221 |
| Short-term investments | 2,788,000 | 1,133,791 |
| Accounts receivable | 1,451,276 | 2,264,338 |
| Prepaid expenses | <u>3,509</u> | <u>3,695</u> |
| Total assets | <u>\$4,357,632</u> | <u>\$3,416,045</u> |

LIABILITIES AND RETAINED EARNINGS

Liabilities

| | | |
|--|-------------|-------------|
| Accounts payable and accrued liabilities | \$3,012,831 | \$2,134,706 |
|--|-------------|-------------|

Retained earnings

| | | |
|---|--------------------|--------------------|
| Unreserved | <u>1,344,801</u> | <u>1,281,339</u> |
| Total liabilities and retained earnings | <u>\$4,357,632</u> | <u>\$3,416,045</u> |

CHINO BASIN WATERMASTER
Comparative Statement of Revenue, Expenses and Changes in Retained Earnings
For the Fiscal Years Ended June 30, 1995 and 1994

| | <u>1995</u> | <u>1994</u> |
|---|--------------------|--------------------|
| Operating revenues | | |
| Assessment revenue: | | |
| Replenishment water assessments | \$95,901 | \$1,580,485 |
| Administrative assessments | 842,985 | 666,875 |
| Special assessments | 0 | 82,750 |
| Water sales: | | |
| Stored water | <u>5,813,219</u> | <u>4,008,596</u> |
| Total operating revenues | <u>6,752,105</u> | <u>6,338,706</u> |
| | | |
| Operating expenses | | |
| Direct operating expenses: | | |
| Replenishment water deliveries | 95,901 | 1,578,974 |
| Water purchases - other | 5,992,320 | 4,008,596 |
| Materials & supplies | 1,258 | 0 |
| Printing and mailing | 1,934 | 1,178 |
| Contract labor and materials | 177,806 | 264,567 |
| Engineering fees | 61,984 | 4,198 |
| Audit fees | 3,800 | 3,800 |
| Legal fees | 119,567 | 111,530 |
| Insurance expenses | 12,221 | 9,585 |
| Meeting compensation | 2,575 | 1,600 |
| Other expenses | <u>25,657</u> | <u>7,539</u> |
| Total direct operating expenses | <u>6,495,023</u> | <u>5,991,567</u> |
| | | |
| Chino Basin Municipal Water District (CBMWD) services contract | | |
| Salaries, payroll burden & overheads | 234,398 | 210,830 |
| Materials and supplies | 1,202 | 1,398 |
| Printing and mailing | 3,938 | 332 |
| Legal expenses | 9,841 | 4,180 |
| Other expenses | 7,931 | 8,943 |
| General and administrative | <u>4,353</u> | <u>2,291</u> |
| Total operating expenses | <u>6,756,686</u> | <u>6,219,541</u> |
| Operating income (loss) | <u>(4,581)</u> | <u>119,165</u> |
| | | |
| Nonoperating revenues | | |
| Miscellaneous revenues | 5 | 0 |
| Interest revenue | <u>68,038</u> | <u>69,507</u> |
| Total nonoperating revenues, net | <u>68,043</u> | <u>69,507</u> |
| Net income | <u>63,462</u> | <u>188,672</u> |
| Retained earnings at beginning of year | <u>1,281,339</u> | <u>1,092,667</u> |
| Retained earnings at end of year | <u>\$1,344,801</u> | <u>\$1,281,339</u> |

See accompanying notes to the financial statements

CHINO BASIN WATERMASTER
Comparative Statement of Cash Flows
For the Fiscal Years Ended June 30, 1995 and 1994

| | 1995 | 1994 |
|--|-------------|-------------|
| Cash Flows from operating activities: | | |
| Operating income (loss) | (\$4,581) | \$119,165 |
| Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities: | | |
| Other non-operating expenses/revenues, net | 5 | 0 |
| Change in assets and liabilities: | | |
| (Increase)/decrease in accounts receivable | 799,221 | (1,014,246) |
| (Increase)/decrease in prepaid expenses | 186 | (3,431) |
| Increase/(decrease) in accounts payable and accrued liabilities | 878,125 | (113,049) |
| Total adjustments to operating income (loss) | 1,677,537 | (1,130,726) |
| Net cash provided (used) by operating activities | 1,672,956 | (1,011,561) |
| Cash flows from investing activities: | | |
| Payments for investments | (1,031,000) | 0 |
| Interest income from investments | 81,879 | 69,507 |
| Net increase (decrease) in cash and cash equivalents | 723,835 | (942,054) |
| Cash and cash equivalents at beginning of year | 1,148,012 | 2,090,066 |
| Cash and cash equivalents at end of year | \$1,871,847 | \$1,148,012 |

See accompanying notes to the financial statements

**CHINO BASIN WATERMASTER
NOTE TO THE FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED JUNE 30, 1995**

(1) Reporting Entity and Summary of Significant Accounting Policies:

Description of Reporting Entity

The Chino Basin Watermaster ("Watermaster"), was established under a judgment entered in Superior Court of the State of California for the County of San Bernardino as a result of Case No. WCV51010 (formerly Case No. SCV164327) entitled "Chino Basin Municipal Water District v. City of Chino et al", signed by the Honorable Judge Howard B. Wiener on January 27, 1978. The effective date of this judgment for accounting and operations was July 1, 1977.

Pursuant to the judgment, the Chino Basin Municipal Water District (CBMWD) five (5) member Board of Directors is appointed "Watermaster" to administer and enforce the provisions of the judgment. Their term of appointment of Watermaster is for five (5) years, and the Court, by subsequent orders, provides for successive terms or for a successor Watermaster. Three (3) Pool committees were formed: (1) Overlying (Agricultural) Pool which includes the State of California and all producers of water for overlying uses other than industrial or commercial purposes, (2) Overlying (Non-Agricultural) Pool which represents producers of water for overlying industrial or commercial (non-agricultural) purposes; and (3) Appropriative Pool which represents cities, districts, other public entities and public utilities. The three Pools act together to form the "Advisory Committee" which serves to make recommendations for formal action to the Chino Basin Watermaster.

The Watermaster provides the Chino Groundwater Basin service area management services which primarily include: water appropriations, computes acre-footage of stored water by agency, purchase of replenishment water, groundwater monitoring and development of special projects.

Watermaster expenses are allocated to the Pools based on the prior year's production volume (or the same percentage used to set the annual assessments). Allocations for fiscal year 1994/95 expenses are based on the 1993/94 production volume, and allocations for fiscal year 1993/94 expenses are based on the 1992/93 production volume:

| | 1993/94 | | 1992/93 | |
|---------------------------------|-----------|-------|-----------|-------|
| | Acre Feet | % | Acre Feet | % |
| Appropriative Pool | 101,012 | 67.4 | 100,024 | 66.8 |
| Overlying Agricultural Pool | 44,298 | 29.5 | 44,093 | 29.5 |
| Overlying Non-Agricultural Pool | 4,586 | 3.1 | 5,464 | 3.7 |
| Total Production | 149,896 | 100.0 | 149,581 | 100.0 |

The Agricultural Pool members ratified an agreement with the Appropriative Pool at their meeting of June 16, 1988. The agreement required the Appropriative Pool to assume Agricultural Pool administrative expenses including special project allocations in exchange for an accelerated transfer of unpumped agricultural water to the Appropriative Pool. In addition, the Agricultural Pool transferred all pool administrative reserves at June 30, 1988 to the Appropriative Pool effective July 1, 1988.

The accounting policies of the Watermaster conform to generally accepted accounting principles as applicable to governmental units. The following is a summary of the more significant policies:

Basis of Accounting

The accounts of the Chino Basin Watermaster are maintained on the accrual basis and are reported as a single enterprise. Separate accounting records are maintained to segregate the Watermaster activities, as well as to track cash and investment amounts for each individual fund's use, as required under the judgment and the rules and regulations of the Watermaster and each Pool. Investments are stated at cost, which approximates market.

Reclassifications

Certain reclassifications have been made to the 1994 memorandum column data to conform with the 1995 financial statement presentation.

(2) Cash, Deposits, Short-Term and Pooled Investments

State statutes and the Watermaster's investment policy authorize the Watermaster to invest in obligations of the U.S. Treasury and other U.S. agencies, banker's acceptances, commercial paper rated A-1 by Standard and Poor's Corporation or P-1 by Moody's Commercial Paper Records, certificates of deposit with financial institutions having an operating branch within the Watermaster geographic area, repurchase agreements, and the state treasurer's investment pool.

The Watermaster's deposits are categorized to give an indication of the level of risk assumed at year end by the following three categories:

Category 1

- Includes deposits insured or collateralized with securities held in the Watermaster's name.
- Includes investments that are insured or registered or for which the securities are held by the Watermaster or its agent in the Watermaster's name.

Category 2

- Includes deposits with collateralized securities held by the pledging financial institution's trust department or agent in the Watermaster's name.
- Includes uninsured and unregistered investments for which the securities are held by the broker's or dealer's trust department or agent in the Watermaster's name.

Category 3

- Includes uncollateralized deposits or deposits with collateralized securities held by the financial institution or its agent, but not in the Watermaster's name.
- Includes uninsured and unregistered investments for which securities are held by the broker or dealer or by its trust department or agent but not in the Watermaster's name.

In accordance with Government Accounting Standards Board Statement Number 3 ("GASB 3") criteria, the Watermaster's custodial credit risk on deposits and investments are categorized as follows:

| DEPOSITS | Categories | | | Bank Balance/ Contract Value | Carrying Amount |
|---------------------------------------|------------------|------------------|------------|---------------------------------|--------------------|
| | 1 | 2 | 3 | | |
| Demand cash amounts | \$100,000 | \$23,475 | \$0 | \$123,475 | \$ 114,847 |
| Certificates of deposits | 200,000 | 831,000 | 0 | 1,031,000 | 1,031,000 |
| Pooled funds: | | | | | |
| Local Agency Investment Funds (LAIF)* | 0 | 0 | 0 | 1,757,000 | 1,757,000 |
| Total deposits | \$300,000 | \$854,475 | \$0 | \$2,911,475 | \$2,902,847 |
| Less Non-Cash Equivalents: | | | | | |
| Certificates of deposit | | | | | (1,031,000) |
| Cash and Cash Equivalents | | | | | \$1,871,847 |

* Monies pooled with the State Treasurer in the Local Agency Investment Fund (LAIF) are not subject to risk categorization.

The bank balance reflects the amount credited by a financial institution to the Watermaster's account as opposed to the Watermaster's own ledger balance for the account. The carrying value reflects the ledger value, which includes checks written by the Watermaster which have not cleared the bank as of June 30, 1995.

For the purposes of the statement of cash flows, the Chino Basin Watermaster considers cash and cash equivalents to be defined as demand deposits, savings accounts, LAIF investments and all securities with original maturities of three months or less from date of purchase. For financial presentation purposes, cash and cash equivalents are shown as cash and short-term investments.

(3) Appropriative Pool Interest Revenue Allocation

On August 30, 1979 the Appropriative Pool unanimously approved assessment procedures whereby any interest earned from the Watermaster assessments paid by Appropriative Pool members would reduce the total current assessment due from those members. Fiscal year 1993/94 interest revenue was allocated to the Appropriative Pool members based on the funds received in payment of the 1993/94 assessments, resulting in a reduction of the 1994/95 assessment.

(4) Agricultural Pool Sale

In June 1988, the Agricultural Pool sold 2,000 acre feet of water in storage to Cucamonga County Water District. Funds from this sale are held and invested by the Watermaster Treasurer for future use as determined by the Agricultural Pool members. At June 30, 1995 the proceeds from the sale and related interest earned thereon totaled \$361,819.

(5) Replenishment Water Deliveries

The Watermaster assessed water producers 432 acre feet of replenishment water during fiscal year 1994 based on prior fiscal year production. During fiscal year 1994/95, an additional 20,072 acre feet was purchased internally to avoid purchasing water from Metropolitan Water District (MWD) at a higher price in the following year.

CHINO BASIN WATERMASTER
Combining Schedule of Revenue, Expenses and Changes In Retained Earnings - Schedule I
For the Fiscal Year Ended June 30, 1995

| | Watermaster Administration | | | Groundwater Operations | | Pool Administration and Special Projects | | | Educational Funds | Grand Total |
|--|----------------------------|----------------------------|-----------|------------------------|------------------------------|--|----------------------|-----------------|-------------------|-------------|
| | Adminis- tration | Joint WM Advisory Board | Total | SD222 Funds | Groundwater Replenishment | Appropriative Pool | Agricultural Pool | Non-Agr Pool | | |
| Revenues | | | | | | | | | | |
| Assessment revenue | | | | | | | | | | |
| Replenishment water assessments | | | \$0 | | \$95,901 | | | | | \$95,901 |
| Administrative assessments | | | 0 | | | \$22,791 | | \$20,694 | | \$43,485 |
| Water sales | | | | | | | | | | |
| Stored water | | | 0 | | 5,813,219 | | | | | 5,813,219 |
| Interest revenue | | | 0 | | | 40,057 | \$17,321 | 1,742 | \$118 | 58,038 |
| Miscellaneous revenues | | | 0 | | | | | 5 | | 5 |
| Total revenues | 0 | 0 | 0 | 0 | 5,909,120 | 871,148 | 17,321 | 22,441 | 118 | 6,820,148 |
| Expenses | | | | | | | | | | |
| Replenishment water deliveries | | | 0 | | 85,901 | | | | | 85,901 |
| Other water purchases | | | 0 | | 5,992,320 | | | | | 5,992,320 |
| CBMYWD salaries, payroll burden & overhead | \$174,635 | \$21,470 | 196,105 | | | 20,995 | 11,684 | 5,614 | | 234,398 |
| CBMYWD general and administrative | 3,431 | 322 | 3,753 | | | 334 | 100 | 86 | | 4,353 |
| Material and supplies | 2,460 | | 2,460 | | | | | | | 2,460 |
| Printing and mailing | 3,165 | 308 | 3,473 | | | 315 | 1,865 | 119 | | 3,872 |
| Contract labor and materials | 0 | | 0 | \$15,600 | | 80,653 | 67,749 | 3,796 | | 177,806 |
| Engineering fees | 61,984 | | 61,984 | | | | | | | 61,984 |
| Audit fees | 3,800 | | 3,800 | | | | | | | 3,800 |
| Legal fees | 122,602 | | 122,602 | | | 3,223 | 1,535 | 1,960 | | 129,408 |
| Meeting compensation | 0 | 1,950 | 1,950 | | | 25 | 800 | | | 2,375 |
| Insurance expenses | 12,221 | | 12,221 | | | | | | | 12,221 |
| Vehicle lease | 6,714 | | 6,714 | | | | | | | 6,714 |
| Other expenses | 25,372 | 992 | 26,364 | | | 352 | 140 | 18 | | 26,874 |
| Total Watermaster administration expenses | 416,464 | 25,042 | 441,506 | | | | | | | |
| Administration expense transfer | 0 | 0 | 0 | | | 83,853 | (83,853) | | | 0 |
| Allocation of administrative expenses | (416,464) | (25,042) | (441,506) | | | 427,996 | | 13,510 | | 0 |
| Total expenses | 0 | 0 | 0 | 15,600 | 6,000,221 | 627,746 | 0 | 25,111 | 0 | 6,756,686 |
| Net income (loss) | | | | (15,600) | (178,101) | 243,402 | 17,321 | (2,670) | 118 | 63,462 |
| Retained earnings July 1, 1994 | | | | 167,253 | 227,184 | 511,769 | 344,498 | 28,282 | 2,353 | 1,281,339 |
| Retained earnings June 30, 1995 | \$0 | \$0 | \$0 | \$151,645 | \$40,083 | \$755,171 | \$361,819 | \$25,612 | \$7,471 | \$1,344,801 |

Financial Report
for the
Fiscal Year Ended
June 30, 1996

CHINO BASIN WATERMASTER

Bill Hill, *Chairman*

George Borba, *Vice Chairman*

John Anderson, *Secretary/Treasurer*

Anne Dunihue, *Member*

Wyatt Troxel, *Member*

EXECUTIVE STAFF

Traci Stewart, *Chief of Watermaster Services*

AUDITORS

Charles Z. Fedak & Co., CPAs

LEGAL COUNSEL

Nossaman, Guthner, Knox & Elliott, LLP

Fred Fudacz, Attorney at Law

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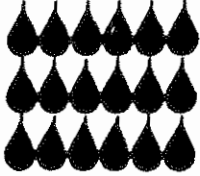
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Financial Section

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| Comparative Balance Sheet | 2 |
| Comparative Statement of Revenue, Expenses and Changes in Retained Earnings | 3 |
| Comparative Statement of Cash Flows | 4 |
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Supplementary Information

| | |
|---|---|
| Combining Schedule of Revenue, Expenses and Changes in Working Capital and Retained Earnings-Schedule I | 8 |
|---|---|



Charles Z. Fedak & Co.

Certified Public Accountants

Orange Valley
Professional Building
6081 Orange Avenue
Cypress, California 90630
(714) 527-1818
(310) 598-6565
FAX (714) 527-9154

INDEPENDENT AUDITORS' REPORT ON FINANCIAL STATEMENTS

The Board of Directors
Chino Basin Watermaster
Fontana, California

We have audited the accompanying financial statements of Chino Basin Watermaster as of and for the year ended June 30, 1996, as listed in the accompanying table of contents. These financial statements are the responsibility of the Watermaster's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Chino Basin Watermaster as of June 30, 1996 and the results of its operations and its cash flows for the year then ended in conformity with generally accepted accounting principles.

Our audit was made for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplementary information listed in the accompanying table of contents is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements, and, in our opinion, is fairly stated in all material respects in relation to the financial statements taken as a whole.

Cypress, California
October 4, 1996

Charles Z. Fedak & Co.

CHINO BASIN WATERMASTER
Comparative Balance Sheet
June 30, 1996
With Comparative 1995 Totals

ASSETS

| | 1996 | 1995 |
|------------------------------|-------------|-------------|
| Assets | | |
| Cash | \$162,453 | \$114,847 |
| Short-term investments | 1,036,639 | 2,788,000 |
| Accounts receivable | 515,318 | 1,451,276 |
| Prepaid expenses | 13,783 | 3,509 |
| Refundable deposits | 3,120 | 0 |
| Total current assets | \$1,731,313 | \$4,357,632 |
| Fixed Assets | | |
| Office furniture & equipment | 36,516 | 0 |
| Accumulated depreciation | (2,140) | 0 |
| Total fixed assets | 34,376 | 0 |
| Total assets | \$1,765,689 | \$4,357,632 |

LIABILITIES AND RETAINED EARNINGS

Liabilities

| | | |
|--|-----------|-------------|
| Unearned revenue | \$15,734 | \$0 |
| Accounts payable and accrued liabilities | 634,107 | 3,012,831 |
| Total liabilities | \$649,841 | \$3,012,831 |

Retained Earnings

| | | |
|---|-------------|-------------|
| Unreserved | 1,115,848 | 1,344,801 |
| Total liabilities and retained earnings | \$1,765,689 | \$4,357,632 |

See accompanying notes to the financial statements

CHINO BASIN WATERMASTER
Comparative Statement of Revenue, Expenses and Changes in Retained Earnings
For the Fiscal Year Ended June 30, 1996
With Comparative 1995 Totals

| | 1996 | 1995 |
|---|-------------|-------------|
| Operating revenues | | |
| Assessment revenue: | | |
| Replenishment water assessments | \$713,652 | \$95,901 |
| Administrative assessments | 551,147 | 842,985 |
| Water sales: | | |
| Stored water | 1,859,291 | 5,813,219 |
| Total operating revenues | 3,124,090 | 6,752,105 |
| Operating expenses | | |
| Direct operating expenses: | | |
| Replenishment water deliveries | 700,957 | 95,901 |
| Water purchases | 1,858,949 | 5,992,320 |
| Material & supplies | 4,017 | 1,258 |
| Printing and mailing | 13,661 | 1,934 |
| Contract labor and materials | 256,882 | 177,806 |
| Engineering fees | 64,494 | 61,984 |
| Audit fees | 325 | 3,800 |
| Depreciation | 2,140 | 0 |
| Legal fees | 195,711 | 119,567 |
| Insurance expenses | 11,259 | 12,221 |
| Meeting compensation | 0 | 2,575 |
| Other expenses | 28,601 | 25,657 |
| Total direct operating expenses | 3,136,996 | 6,495,023 |
| Chino Basin Municipal Water District (CBMWD) services contract | | |
| Salaries, payroll burden & overhead | 279,013 | 234,398 |
| Material and supplies | 326 | 1,202 |
| Printing and mailing | 2,537 | 3,938 |
| Legal expenses | 0 | 9,841 |
| Other expenses | 19,859 | 7,931 |
| General and administrative | 5,287 | 4,353 |
| Total operating expenses | 3,444,018 | 6,756,686 |
| Operating income (loss) | (319,928) | (4,581) |
| Nonoperating revenues | | |
| Miscellaneous revenues | 0 | 5 |
| Interest revenue | 90,975 | 68,038 |
| Total nonoperating revenues, net | 90,975 | 68,043 |
| Net income (loss) | (228,953) | 63,462 |
| Retained earnings at beginning of year | 1,344,801 | 1,281,339 |
| Retained earnings at end of year | \$1,115,848 | \$1,344,801 |

See accompanying notes to the financial statements

CHINO BASIN WATERMASTER
Comparative Statement of Cash Flows
For the Fiscal Years Ended June 30, 1996 and 1995

| | 1996 | 1995 |
|--|--------------------|--------------------|
| Cash Flows from operating activities: | | |
| Operating income (loss) | (\$319,928) | (\$4,581) |
| Add/(deduct) items not requiring, or generating cash during the current period: | | |
| Depreciation expense | 2,140 | 0 |
| (Increase)/decrease in accounts receivable | 947,844 | 799,221 |
| (Increase)/decrease in interest receivable | (11,886) | 13,841 |
| (Increase)/decrease in prepaid expenses | (10,274) | 186 |
| (Increase)/decrease in refundable deposits | (3,120) | 0 |
| Increase/(decrease) in unearned revenue | 15,734 | 0 |
| Increase/(decrease) in accounts payable and accrued liabilities | <u>(2,378,724)</u> | <u>878,125</u> |
| Total adjustments to operating income (loss) | <u>(1,438,286)</u> | <u>1,691,373</u> |
| Net cash provided (used) by operating activities | <u>(1,758,214)</u> | <u>1,686,792</u> |
| Cash flows from investing activities: | | |
| Interest income from investments | <u>90,975</u> | <u>68,038</u> |
| Net increase/(decrease) from investing activities | <u>90,975</u> | <u>68,038</u> |
| Cash applied and other sources: | | |
| Other non-operating expenses/revenues, net | 0 | 5 |
| Office furniture and equipment purchases | <u>(36,516)</u> | <u>0</u> |
| Net cash provided/(used) from other sources | <u>(36,516)</u> | <u>5</u> |
| Net cash provided/(used) by nonoperating activities | <u>54,459</u> | <u>68,043</u> |
| Net increase/(decrease) in cash and cash equivalents | <u>(1,703,755)</u> | <u>1,754,835</u> |
| Cash and cash equivalents at beginning of year | <u>2,902,847</u> | <u>1,148,012</u> |
| Cash and cash equivalents at end of year | <u>\$1,199,092</u> | <u>\$2,902,847</u> |

See accompanying notes to the financial statements

CHINO BASIN WATERMASTER
NOTES TO THE FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED JUNE 30, 1996

(1) Reporting Entity and Summary of Significant Accounting Policies:

Description of Reporting Entity

The Chino Basin Watermaster ("Watermaster"), was established under a judgment entered in Superior Court of the State of California for the County of San Bernardino as a result of Case No. WCV51010 (formerly Case No. SCV164327) entitled "Chino Basin Municipal Water District v. City of Chino et al", signed by the Honorable Judge Howard B. Wiener on January 27, 1978. The effective date of this judgment for accounting and operations was July 1, 1977.

Pursuant to the judgment, the Chino Basin Municipal Water District (CBMWD) five (5) member Board of Directors is appointed "Watermaster" to administer and enforce the provisions of the judgment. Their term of appointment of Watermaster is for five (5) years; and the Court, by subsequent orders, provides for successive terms or for a successor Watermaster. Three (3) Pool committees were formed: (1) Overlying (Agricultural) Pool which includes the State of California and all producers of water for overlying uses other than industrial or commercial purposes, (2) Overlying (Non-Agricultural) Pool which represents producers of water for overlying industrial or commercial (non-agricultural) purposes; and (3) Appropriative Pool which represents cities, districts, other public entities and public utilities. The three Pools act together to form the "Advisory Committee" which serves to make recommendations for formal action to the Chino Basin Watermaster.

The Watermaster provides the Chino Groundwater Basin service area with management services which primarily include: water appropriations, components of acre-footage of stored water by agency, purchase of replenishment water, groundwater monitoring and development of special projects.

Watermaster expenses are allocated to the Pools based on the prior year's production volume (or the same percentage used to set the annual assessments). Allocations for fiscal year 1995/96 expenses are based on the 1994/95 production volume, and allocations for fiscal year 1994/95 expenses are based on the 1993/94 production volume:

| | 1994/95 | | 1993/94 | |
|---------------------------------|-----------|---------|-----------|---------|
| | Acre Feet | % | Acre Feet | % |
| Appropriative Pool | 97,641 | 62.196 | 101,012 | 67.388 |
| Overlying Agricultural Pool | 55,022 | 35.048 | 44,298 | 29.552 |
| Overlying Non-Agricultural Pool | 4,327 | 2.756 | 4,586 | 3.060 |
| Total Production | 156,990 | 100.000 | 149,896 | 100.000 |

The Agricultural Pool members ratified an agreement with the Appropriative Pool at their meeting of June 16, 1988. The agreement required the Appropriative Pool to assume Agricultural Pool administrative expenses including special project allocations in exchange for an accelerated transfer of unpumped agricultural water to the Appropriative Pool. In addition, the Agricultural Pool transferred all pool administrative reserves at June 30, 1988 to the Appropriative Pool effective July 1, 1988.

The accounting policies of the Watermaster conform to generally accepted accounting principles as applicable to governmental units. The following is a summary of the more significant policies:

Basis of Accounting

The accounts of the Chino Basin Watermaster are maintained on the accrual basis and are reported as a single enterprise. Separate accounting records are maintained to segregate the Watermaster activities, as well as to track cash and investment amounts for each individual fund's use, as required under the judgment and the rules and regulations of the Watermaster and each Pool. Investments are stated at cost, which approximates market.

Reclassifications

Certain reclassifications have been made to the 1994 memorandum column data to conform with the 1995 financial statement presentation.

(2) Cash, Deposits, Short-Term and Pooled Investments

State statutes and the Watermaster's investment policy authorize the Watermaster to invest in obligations of the U.S. Treasury and other U.S. agencies, banker's acceptances, commercial paper rated A-1 by Standard and Poor's Corporation or P-1 by Moody's Commercial Paper Records, certificates of deposit with financial institutions having an operating branch within the Watermaster geographic area, repurchase agreements, and the state treasurer's investment pool.

The Watermaster's deposits are categorized to give an indication of the level of risk assumed at year end by the following three categories:

Category 1

- Includes deposits insured or collateralized with securities held in the Watermaster's name.
- Includes investments that are insured or registered or for which the securities are held by the Watermaster or its agent in the Watermaster's name.

Category 2

- Includes deposits with collateralized securities held by the pledging financial institution's trust department or agent in the Watermaster's name.
- Includes uninsured and unregistered investments for which the securities are held by the broker's or dealer's trust department or agent in the Watermaster's name.

Category 3

- Includes uncollateralized deposits or deposits with collateralized securities held by the financial institution or its agent, but not in the Watermaster's name.
- Includes uninsured and unregistered investments for which securities are held by the broker or dealer or by its trust department or agent but not in the Watermaster's name.

In accordance with Government Accounting Standards Board Statement Number 3 ("GASB 3") criteria, the Watermaster's custodial credit risk on deposits and investments are categorized as follows:

| | Categories | | | Bank Balance/ Contract Value | Carrying Amount |
|---------------------------------------|------------------|-----------------|------------|---------------------------------|--------------------|
| | 1 | 2 | 3 | | |
| DEPOSITS | | | | | |
| Demand cash amounts | \$100,000 | \$85,693 | \$0 | \$185,693 | \$ 162,453 |
| INVESTMENTS | | | | | |
| Pooled funds: | | | | | |
| Local Agency Investment Funds (LAIF)* | 0 | 0 | 0 | 1,036,639 | 1,036,639 |
| Total deposits and investments | \$100,000 | \$85,693 | \$0 | \$1,222,332 | \$1,199,092 |

* Monies pooled with the State Treasurer in the Local Agency Investment Fund (LAIF) are not subject to risk categorization.

The bank balance reflects the amount credited by a financial institution to the Watermaster's account as opposed to the Watermaster's own ledger balance for the account. The carrying value reflects the ledger value, which includes checks written by the Watermaster which have not cleared the bank as of June 30, 1996.

For the purposes of the statement of cash flows, the Chino Basin Watermaster considers cash and cash equivalents to be defined as demand deposits, savings accounts, LAIF investments and all securities with original maturities of three months or less from date of purchase. For financial presentation purposes, cash and cash equivalents are shown as cash and short-term investments.

(3) Appropriative Pool Interest Revenue Allocation

On August 30, 1979 the Appropriative Pool unanimously approved assessment procedures whereby any interest earned from the Watermaster assessments paid by Appropriative Pool members would reduce the total current assessment due from those members. Fiscal year 1994/95 interest revenue was allocated to the Appropriative Pool members based on the funds received in payment of the 1994/95 assessments, resulting in a reduction of the 1995/96 assessment.

(4) Agricultural Pool Sale

In June 1988, the Agricultural Pool sold 2,000 acre feet of water in storage to Cucamonga County Water District. Funds from this sale are held and invested by the Watermaster Treasurer for future use as determined by the Agricultural Pool members. At June 30, 1996 the proceeds from the sale and related interest earned thereon totaled \$387,168. From this amount, \$10,517 was authorized by the Pool for retention of special legal counsel for negotiations on the Desalter Agreement. This resulted in a remaining unexpended balance of \$376,651 at June 30, 1996.

(5) Replenishment Water Deliveries

The Watermaster assessed water producers 3,061 acre feet of replenishment water during fiscal year 1995/96, based on prior fiscal year production. During fiscal year 1995/96, an additional 8,976 acre feet was purchased internally to avoid purchasing water from Metropolitan Water District (MWD) at a higher price in the following year.

CHINO BASIN WATERMASTER
COMBINING SCHEDULE OF REVENUE, EXPENSES AND CHANGES IN WORKING CAPITAL AND RETAINED EARNINGS - SCHEDULE I
For the Year Ended June 30, 1996

| | WATERMASTER ADMINISTRATION | | GROUNDWATER OPERATIONS | | POOL ADMINISTRATION AND SPECIAL PROJECTS | | | | GRAND TOTAL | |
|---|----------------------------|-----------------------|------------------------|-------------|--|--------------------|-------------------|--------------|-------------|-------------------|
| | ADMINISTRATION | JOINT WM ADVISORY BRD | TOTAL | SB222 FUNDS | GROUNDWATER REPLENISHMENT | APPROPRIATIVE POOL | AGRICULTURAL POOL | NON-AGR POOL | | EDUCATIONAL FUNDS |
| Revenues | | | | | | | | | | |
| Assessment revenue | | | | | | | | | | |
| Replenishment water assessments | | | \$0 | \$8,014 | \$707,638 | | | | | \$713,652 |
| Administrative assessments | | | 0 | | | \$530,297 | | \$14,850 | | 551,147 |
| Water sales | | | | | | | | | | |
| Stored water | | | 0 | | 1,859,291 | | | | | 1,859,291 |
| Interest revenue | | | 0 | | | 63,594 | \$25,349 | 1,858 | \$174 | 90,975 |
| Total revenues | 0 | 0 | 0 | 6,014 | 2,568,929 | 599,891 | 25,349 | 16,708 | 174 | 3,215,1 |
| Expenses | | | | | | | | | | |
| Furniture & Equipment purchases | \$36,516 | | \$36,516 | | | | | | | 36,516 |
| Water purchases | 0 | | 0 | | 2,559,908 | | | | | 2,559,908 |
| CBMWD salaries, payroll burden & overhead | 162,327 | 33,236 | 195,563 | | | 47,069 | 31,536 | 4,845 | | 279,013 |
| CBMWD general and administrative | 3,077 | 473 | 3,550 | | | 715 | 935 | 87 | | 5,287 |
| Material and supplies | 4,343 | | 4,343 | | | | | | | 4,343 |
| Printing and mailing | 10,655 | 308 | 10,963 | | | 178 | 5,008 | 49 | | 16,198 |
| Contract labor and materials | 73,308 | | 73,308 | | | 70,983 | 108,239 | 4,352 | | 256,882 |
| Engineering fees | 64,494 | | 64,494 | | | | | | | 64,494 |
| Audit fees | 325 | | 325 | | | | | | | 325 |
| Legal fees | 105,194 | | 105,194 | | | | 10,517 | | | 195,711 |
| Insurance expenses | 11,259 | | 11,259 | | | | | | | 11,259 |
| Utilities | 3,878 | | 3,878 | | | | | | | 3,878 |
| Leases | 12,130 | | 12,130 | | | | | | | 12,130 |
| Other expenses | 31,450 | 427 | 31,877 | | | 225 | 350 | | | 32,452 |
| Total Watermaster administration expenses | 598,956 | 34,444 | 633,400 | | | | | | | |
| Administration expense transfer | 0 | 0 | 0 | | | 158,585 | (158,585) | | | |
| Allocation of admin. expenses | (598,956) | (34,444) | (633,400) | | | 615,843 | | 17,457 | | 0 |
| Total expenses | 0 | 0 | 0 | 0 | 2,559,908 | 891,698 | 0 | 26,790 | 0 | 3,478,394 |
| Net income (loss) | | | | 6,014 | 7,023 | (291,807) | 25,349 | (10,082) | 174 | (263,329) |
| Working capital, beginning of period | | | | 151,645 | 48,083 | 755,171 | 361,819 | 25,612 | 2,471 | 1,344,801 |
| Working capital, end of period | 0 | 0 | 0 | 157,659 | 55,108 | 463,364 | 387,168 | 15,530 | 2,645 | 1,081,472 |
| Adjustments to retained earnings: | | | | | | | | | | |
| Add back: Furniture & equipment purchases | | | | 0 | 0 | 35,510 | | 1,006 | 0 | 38,516 |
| Subtract: Depreciation expense | | | | 0 | 0 | (2,081) | 0 | (59) | 0 | (2,140) |
| Retained earnings, end of period | \$0 | \$0 | \$0 | \$157,659 | \$55,108 | \$498,793 | \$387,168 | \$16,477 | \$2,645 | \$1,115,848 |

See accompanying notes to the financial statements

DECLARATION OF PATRICK R. PARK

I, Patrick R. Park, hereby declare as follows:

1. I am a Computer Consultant for the Chino Basin Watermaster. I have been a Consultant for Watermaster since April of 1993, first through Thor Temporary Services and since June of 1993 under contract. I have first hand knowledge of the matters set forth herein, and if called as a witness, I would be competent to testify thereto.

2. I reviewed portions of an operations audit report and a motion by Chino Basin Municipal Water District attorneys opposing the Watermaster motion that the cost of an audit is a District expense.

3. As a Computer Consultant for the Watermaster, I provide services such as hardware and software evaluation, installation, and maintenance, and I develop integrated applications for customers with special needs. I am also certified to administer several types of networks such as Novell and Windows NT, and to instruct classes on how to install and administer these networks by the software vendors.

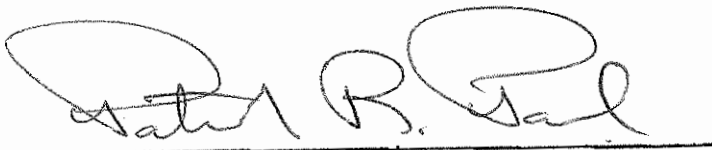
4. Chino Basin Municipal Water District was concerned early in my tenure with Watermaster as to whether or not I am an independent contractor or an employee. The former accounting manager for the District, Lee Penrice, applied the twenty factors summarized by the auditors starting on page 26 to my relationship with Watermaster and found that I am an independent contractor.

5. The auditors state that I signed an order "in the customer signature area" which obligated the Watermaster to purchase the equipment for the price stated. I do not obligate Watermaster to purchase equipment. I do pick up equipment and software ordered on behalf of my clients. In the case referred to by the auditors, I was picking up a printer to replace one thought to be unrepairable by the service representatives. It was ordered pursuant to direction by the Chief of Watermaster Services, which is a normal part of the Watermaster process since my tenure began.

6. I am unaware of any "credit" accounts for computer system related items. I have recommended the establishment of a relationship with a local vendor, similar to those maintained by the District, to facilitate maintenance of the Watermaster system in a more timely manner.

1 7. The auditors state they could not obtain a phone listing for my business as part of their
2 test for independent contractor status. I do not list my numbers because most of my business comes
3 from referrals and the classes I instruct. I only give my business number to those I wish to have it

4 I declare under penalty of perjury the foregoing to be true and correct to the best of my
5 knowledge. Executed this 26th day of February, 1997 at Riverside, California.

6
7
8
9
Handwritten signature of Patrick R. Park in cursive script, positioned above a horizontal line.

10 Patrick R. Park

1 GUIDO R. SMITH, ESQ.
2 505 City Parkway West
3 Suite 1000
4 Orange, CA 92668-2958
5 Tel.: (714) 978-6781
6 State Bar No. 75055

FILED - Central District
San Bernardino County Clerk

FILED West District
San Bernardino County Clerk JUL 31 1989

5 Attorney for Chino Basin M.W. ^{061 12 1989}
6 as CHINO BASIN WATERMASTER

By *Cynthia C. Pope*
Deputy

Edgar M. Sklar

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN BERNARDINO

51010

pell

10
11 CHINO BASIN MUNICIPAL WATER)
12 DISTRICT,)
13)
14)
15)
16)

Case No. 164327

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants.

STATEMENT OF DECISION AND
ORDER RE MOTION FOR REVIEW
OF WATERMASTER ACTIONS AND
DECISIONS FILED BY CITIES
OF CHINO AND NORCO AND
SAN BERNARDINO COUNTY
WATERWORKS DISTRICT NO. 8

17 Prior to 1978, various parties dependent upon the
18 Chino Basin for water were engaged in litigation concerning
19 their respective water rights and obligations. This litigation
20 resulted in a judgment filed in this action on January 30, 1978
21 (Judgment). The Judgment defined the Chino Groundwater Basin
22 and, pursuant to the authority of the California Constitution,
23 put into effect a program for administration of the water rights
24 within the basin under the Court's authority. The
25 administration of the water rights included the imposition of a
26 physical solution and delegated the administration of the
27 program to the Chino Basin Watermaster with continuing
28 jurisdiction and supervision of the Court. By agreement of the

EXHIBIT A

003645
AUG 16 1989

1 parties, the Chino Basin Municipal Water District Board of
2 Directors was appointed to act as Watermaster. Watermaster
3 appointments are for a period of five (5) years, unless sooner
4 changed by order of the Court. Any party may request, by
5 motion, that the Watermaster be changed, and should be changed
6 if the request is supported by a majority of the voting power of
7 the Advisory Committee.

8 The Judgment declared the Safe Yield to be 140,000
9 acre feet per year. This was allocated as follows:

- 10 -- To the Overlying (Agricultural) Pool, an aggregate
11 of 414,000 acre feet in any consecutive five (5)
12 years;
13 -- To the Overlying (Non-Agricultural) Pool, 7,366
14 acre feet per year; and
15 -- To the Appropriative Pool, 49,834 acre feet per
16 year.

17 The Appropriative Pool is made up of primarily cities and water
18 districts and consists of 22 producers, each of which has
19 assigned specific rights which may be transferred. Each of the
20 three pools is represented by a committee, members of which are
21 elected on a yearly basis. All decisions are first submitted to
22 the various pool committees. After they have acted on a matter,
23 the matter is referred to the Advisory Committee which is
24 basically made up of almost all of the members of the
25 Appropriative Pool and elected representatives of the Overlying
26 (Agricultural) Pool and Overlying (Non-Agricultural) Pool. At
27 the present time, there are 100 votes in the Advisory Committee
28 of which 20 belong to the Overlying (Agricultural) Pool, 5

003646

1 belong to the Overlying (Non-Agricultural) Pool, and 75 are
2 allotted to the members of the Advisory Committee from the
3 Appropriative Pool.

4 The Advisory Committee takes actions on all matters
5 considered by the various pools and submits its recommendations
6 to the Watermaster. The Advisory Committee is the policymaking
7 group for the Basin. Any action approved by 80 percent or more
8 of the Advisory Committee constitutes a mandate for action by
9 the Watermaster consistent therewith.

10 On February 8 of this year, there was calendared for
11 hearing a motion for review of Watermaster actions and
12 decisions. This motion was filed by the City of Chino, City of
13 Norco and San Bernardino County Water Works District No. 8
14 (Moving Parties). The Moving Parties are members of the
15 Appropriative Pool and are members of the Advisory Committee.

16 The Moving Parties pointed out a great many areas in
17 which they considered the activities of the Watermaster less
18 than perfect. The matter was continued until March 1, and the
19 Court ordered the parties to meet and confer in order to narrow
20 the issues. They did this, and the Court received a
21 Consolidated Statement of Issues to be Determined by the Court.
22 Although prepared by the Office of the Attorney General of the
23 State of California, all parties stipulated to the definition of
24 remaining issues as therein stated. The Consolidated Statement
25 of Issues served as the pre-hearing Order of the Court.

26 Before addressing each of the unresolved issues as set
27 forth in the Consolidated Statement of Issues, the Court wishes
28 to observe that it is quite aware of the fact that we are

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1 dealing with a problem of enormous proportions. The Chino Basin
2 is a huge ground water basin which, although primarily in San
3 Bernardino County, extends partially into or impinges upon the
4 rights of several neighboring counties. The Moving Parties are
5 located in the lower end of the basin. They are the recipients
6 of all problems which have accumulated in the course of the
7 circulation of water down to their end. They are particularly
8 subject to the excess of nitrates in the substrata occasioned
9 partly because of their location in the lower end of the basin
10 and partly because of the concentration of dairy and
11 agricultural activities in their part of the territory.

12 The fundamental idea behind the Judgment was to
13 guarantee, especially in times of drought, that there would be
14 sufficient water for all legitimate users of the basin and that
15 the water be of good quality. There was great concern that
16 water of inferior quality (i.e., of high mineral content) would
17 be imported into the basin and dilute the quality of water in
18 storage. The basin constitutes a huge natural reservoir in
19 which excess water may be stored during wetter years for
20 withdrawal during the drier years. This, of course, would
21 contemplate that the groundwater would rise and fall depending
22 upon the input and outtake of water. Unfortunately, this
23 affects the Moving Parties somewhat adversely. When the water
24 level rises, it apparently intercepts higher levels of the
25 substrata which contain the nitrates which are being leached
26 down into the basin. It dissolves these nitrates and produces
27 an unsatisfactory level of nitrate for the pumpers at the lower
28 end of the basin. This leaves them with the necessity of

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1 removing the nitrates at their pumping stations or building
2 pipelines to bring water in from another area. The Moving
3 Parties feel that this is an expense which should be borne by
4 the entire basin, not just those at the lower end of the basin.
5 The members of the basin who do not have this problem feel that
6 they have their own problems to meet and that the Moving Parties
7 should resolve their problems in whatever way they can. In any
8 event, the rest of the basin has resisted the efforts to have
9 them contribute to the cost of purifying water produced at the
10 lower end of the basin by removing nitrates.

11 This nitrate problem is not one of easy solution. We
12 cannot waste the great part of the storage capacity of the basin
13 because to use it would dissolve more nitrates. And yet to use
14 the storage capacity does affect the quality of the water.
15 There is at the present time in progress the "Santa Ana River
16 Nitrate Management Study" which is to be completed later this
17 year and which, it is hoped, will provide assistance in
18 evaluating the problem.

19 The Court has been the beneficiary of the arguments in
20 this case which were heard on March 1 and a large quantity of
21 briefs supplied by the various interested parties. Having
22 carefully considered and reconsidered the points and authorities
23 and other arguments submitted, the Court rules on the unresolved
24 issues as set forth in the Consolidated Statement of Issues to
25 be Determined by the Court as follows:

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ISSUE NO. 1.: "The standing of The Metropolitan Water District to respond to the Moving Parties' motion and the Moving Parties' motion to strike."

The Metropolitan Water District is not a party to the Judgment. Metropolitan has entered into a Cyclic Storage Agreement and a Trust Storage Agreement with the Watermaster and exchange agreements with certain of the parties. The Cyclic Storage Agreement and Trust Storage Agreement were entered into with full approval of the Advisory Committee. The Moving Parties are attacking the Trust Storage and related exchange agreements. Metropolitan only claims the right to be heard on Issues 1 and 4 which significantly affect its agreements.

The Moving Parties' contention that Metropolitan either must intervene as a full-fledged, active party to the Judgment or not at all is neither sound nor just. Metropolitan does have standing and, in fact, is an indispensable party to the proper determination of Issue No. 4 which relates to the validity of the aforementioned agreements. The Court finds that Metropolitan may intervene in connection with any motion hearing or other form of litigation to the extent that it affects Metropolitan's real and substantive interests. Therefore, the motion of the Moving Parties to strike Metropolitan's response to the motion for review is denied.

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1 ISSUE NO. 2.: "Adequacy of data gathering
2 by Watermaster."
3

4 The Moving Parties have failed to demonstrate by a
5 preponderance of the evidence, or indeed by any substantial
6 evidence, that the Watermaster has not fully complied with all
7 requirements of the pool committees or of the Advisory Committee
8 or that its data gathering is not reasonable in view of the
9 intent of the Judgment. The Court finds that there is no basis
10 for its intervention in this area.

11 This brings up a matter of some concern to the Court.
12 The Moving Parties are members of the Advisory Committee which
13 under the Judgment is the controlling body of the ground water
14 basin. The Moving Parties between them have slightly more than
15 20 percent of the voting power of that body. The evidence
16 before the Court seems to indicate that most of the actions of
17 the Watermaster have been done with the unanimous approval of
18 the Advisory Committee and nowhere have the Moving Parties
19 indicated to the Court that they have requested the Advisory
20 Committee to vote to instruct the Watermaster to do the things
21 they are now urging the Court to order the Watermaster to do.

22 The purpose of having the pool committees and the
23 Advisory Committee is to have a representative assembly where
24 the parties most interested can discuss the needs of the basin
25 and vote on the best way of meeting those needs. This motion
26 comes before the Court without any apparent previous efforts of
27 the Moving Parties to accomplish their purposes by convincing
28 the Advisory Committee of the wisdom of their requests. This is

1 somewhat akin to resorting to the Court without having first
2 exhausted one's administrative remedies and should be frowned
3 upon. The Court particularly feels that Issue No. 2 could well
4 have been resolved by discussion at the level of the Advisory
5 Committee rather than by coming to Court. In making the Motion
6 for Review, the Moving Parties failed to provide the Court with
7 any record of proceedings of any of the meetings or activities
8 of the Watermaster, the Advisory Committee, or any of the pool
9 committees, i.e., of any of the administrative record of the
10 Watermaster and its component pools and committees. It was only
11 through the efforts of the Watermaster in providing such record
12 that the Court was able to review the actions and decisions
13 brought before the Court for its review.

14 The Court's ruling against the Moving Parties in
15 connection with Issue No. 2 should not be taken to mean that the
16 Advisory Committee and the Watermaster should not be constantly
17 considering the adequacy of its data gathering procedures as
18 needs and conditions change.

19
20 ISSUE NO. 3.: "The Optimum Basin Management
21 Program."

22
23 The Moving Parties contend that the Watermaster has
24 failed to develop an adequate Optimum Basin Management Plan
25 (OBMP). The Watermaster, on the other hand, says that it has an
26 excellent working OBMP although it has not been reduced to a
27 single document. In any event, the Moving Parties feel that the
28 OBMP needs to include the basis for greater flexibility in the

1 use of waters of varying qualities and that it must provide
2 necessary safeguards to assure equity and water quality
3 protection throughout the basin.

4 Long before the Judgment was entered, it was
5 recognized that water quality problems were present in the
6 basin; however, no one could agree on exactly which problems to
7 tackle and what to do about them. Where a point source has been
8 located and identified there has been some mobilization to try
9 to cure it, but the pervasive nature of nitrate build-up from
10 dairy farms and agricultural activities has not been adequately
11 recognized until recently. The Moving Parties have not
12 suggested any solution to this problem other than to keep the
13 water level in the basin low so that it will not meet the
14 descending nitrates and dissolve them and get them into
15 circulation. The Moving Parties apparently feel that if we are
16 going to raise the water level in the basin and thus aggravate
17 the nitrate problem, that the entire basin should be responsible
18 for curing that nitrate problem which apparently can only be
19 done by proper treatment at the pump. Of course, long range the
20 introduction of the nitrates can be reduced, and the nitrates in
21 the soil will ultimately be leached out. But that will not be
22 of much help to this generation or the next. The nitrate
23 problem has its source primarily in the territory of the Moving
24 Parties, particularly Chino. Whether or not the Judgment had
25 ever been entered, the nitrate problem would be a problem to the
26 Moving Parties. However, there is some justification to the
27 concept put forward by the Moving Parties that the problems of
28 the lower end of the basin should be the problem of the entire

1 basin.

2 As to the immediate problem of the OBMP, it must be
3 borne in mind that the primary goal of the Watermaster under the
4 Judgment is to guarantee an adequate water supply in dry years
5 as well as wet years for all users and to do everything it can
6 to improve, or at least not to degrade, the quality of that
7 water. There is no claim that the Watermaster has not provided
8 an adequate supply of water, and there is no claim that the
9 Watermaster has done anything to degrade the quality of the
10 water. In other words, the Watermaster has not added poor
11 quality water to the basin. The only contention is that by
12 adding water at all, the Watermaster is dissolving more nitrates
13 and getting them into circulation more quickly than nature would
14 normally do it.

15 As indicated above, there are studies under way trying
16 to at least define the problem and work out possible solutions.
17 The Court finds no defect in the OBMP, although the Court does
18 recommend that within two years the OBMP be reduced to a single
19 integrated document approved by the Advisory Committee.

20
21 ISSUE NO. 4.: "Validity of the Exchange
22 Agreements."

23
24 The Exchange Agreements and the Trust Storage
25 Agreement were specifically anticipated in the Judgment
26 (Paragraphs 12 and 28).

27 The agreements were considered and unanimously
28 approved by the Advisory Committee (including the

1 representatives of the Moving Parties). These agreements were
2 approved by the Court without challenge. The time for
3 challenging the approval of these contracts has long since
4 expired.

5 However, on the merits, the agreements fully comply
6 with the letter and spirit of the Judgment, and provide proper
7 and adequate safeguards to the rights of the parties.

8 The request of the Moving Parties that these
9 agreements be declared invalid and void is denied.

10
11 ISSUE NO. 5.: "The method and timing of the
12 distribution of the Agricultural Pool transfer."

13
14 The parties have agreed that the one-time 1988
15 transfer of approximately 78,000 acre feet, or at least 28,000
16 acre feet, from the Agricultural Pool to the Appropriative Pool
17 was valid. However, the Moving Parties ask that 50,000 acre
18 feet be placed in an Appropriative Pool holding account pending
19 completion of an OBMP and a socio-economic study.

20 The Court finds no illegality or inequity in this
21 transfer. Procedurally, it complied with the requirements of
22 the Judgment. The Judgment sets forth a scheme for the
23 distribution of transferred waters and excludes this question
24 from the continuing jurisdiction of the court.

25 The request of the Moving Parties is denied.

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1 ISSUE NO. 6.: "Ontario's storage of 10,000
2 acre feet of water."
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4 The Moving Parties request that Ontario's recent
5 agreement to store 10,000 acre feet be nullified. The Moving
6 Parties seem to agree that this agreement was proper and legal
7 under the Judgment, but only because the Judgment was defective
8 in some way as to provide a "loophole".

9 The Minutes of the Advisory Committee meeting of
10 September 15, 1988, show approval of this agreement with the
11 City of Chino and Water Works District No. 8 (moving parties
12 herein) voting for approval!

13 The Moving Parties claim to be entitled to an order
14 nullifying this agreement because the Watermaster has not
15 prepared a proper OBMP or a socio-economic study, and has not
16 commented on Metropolitan's draft EIR. None of these claims
17 would justify bringing the operations of the Watermaster to a
18 halt by voiding contracts properly and lawfully entered into .

19 The motion is denied.
20

21 ISSUE NO. 7.: "Is there a mandatory duty of
22 the Watermaster to comment on Metropolitan's
23 conjunctive use draft environmental impact report and,
24 if so, to what extent?"
25

26 The Watermaster is the Board of Directors of the Chino
27 Basin Municipal Water District which acts under the policy
28 direction of the Advisory Committee. Unless there is a clear

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1 consensus of opinion as to a particular draft EIR among members
2 of the Advisory Committee, there is no obligation to comment.
3 In fact, to do so would be divisive and destructive to the
4 primary function of the Watermaster and the Advisory Committee.
5 It would be quite appropriate for the various parties to the
6 Judgment to make their own comments. In this way, the divergent
7 interests and views could be considered.

8 The Court finds there is no duty on the part of the
9 Watermaster to comment on the Metropolitan draft EIR.

10

11 ISSUE NO. 8.: "The adequacy of the
12 Eleventh Annual Watermaster Report."

13

14 The Moving Parties complain of the Eleventh Annual
15 Watermaster Report primarily because the socio-economic study
16 has not been done and the Moving Parties are not satisfied with
17 the OBMP. There is perhaps also a complaint that it does not
18 contain a minority point of view.

19 It is difficult for the Court to fault the report for
20 not containing a minority point of view when there was no
21 minority point of view. The report was unanimously approved by
22 all parties prior to submission to the Court. This includes
23 approval by each of the Moving Parties. The report seems to
24 fairly and accurately set forth what was done by the Watermaster
25 during the period of the report.

26 The report is approved.

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1 ISSUE NO. 9.: "Whether the impoundments of
2 the '88-89 annual assessments with interest, costs,
3 and penalties should be transferred to the
4 Watermaster, and how the transfer should be
5 accomplished."

6
7 The Judgment provides for assessments to be made by
8 the Watermaster and further provides that challenges to the
9 validity of the Watermaster's assessments must be made within 60
10 days. In this case, certain assessments were made, and the
11 Moving Parties paid their assessments into an impound account
12 withholding them from use by the Watermaster for which the
13 assessments were intended until determination of this action.
14 No challenge to the Watermaster's assessments was ever made by
15 the Moving Parties, and the time for such challenges has long
16 since expired. It is clear -- in fact, the Moving Parties agree
17 -- that the withholding of the assessments was intended as a
18 political statement, a means of protest.

19 The Judgment provides legitimate avenues for protest,
20 as does the general law. Withholding payment of proper
21 assessments is a form of political blackmail which is not
22 contemplated by the Judgment and which leads to the inevitable
23 frustration and breakdown of the purposes of the Judgment.
24 Under the facts of this case, such withholding of legitimate
25 assessments was without any legal justification.

26 Paragraph 55 of the Judgment mandates a late payment
27 penalty of ten percent per annum from 30 days after the date of
28 billing.

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1 The impounded assessments together with all interest
2 earned thereon (Metropolitan Water District v. Adams [1948] 32
3 Cal.2d 620) and the ten percent per annum penalty required by
4 Paragraph 55 of the Judgment are to be paid forthwith by the
5 Moving Parties to the Watermaster. Interest and penalty
6 assessments shall accrue until actually paid to the Watermaster.

7 The Judgment also provides that the Watermaster may
8 recover attorney fees and other costs of collection in
9 recovering assessments which have been withheld. In recognition
10 of the good, if misguided, intentions of the Moving Parties, the
11 Court orders that no costs of collection or attorney fees in
12 connection therewith shall be paid.

13
14 ISSUE NO. 10.: "Attorney fees."

15
16 There are two issues in connection with attorney fees.
17 The first relates to whether the Moving Parties must share in
18 the cost of defense of their own motion; and the second is
19 whether the Moving Parties should be required to pay the entire
20 cost of the defense, including attorney fees.

21 The Court is convinced that there are some legitimate
22 concerns in the way of long-range planning for improved quality
23 of the water of the basin and for an equitable method of
24 spreading the costs of improving the quality. The motion filed
25 by the Moving Parties has served to point out these problems and
26 bring them to the surface. On the other hand, the Court is
27 satisfied that the motion was improvidently filed in that there
28 was apparently no efforts made by the Moving Parties to

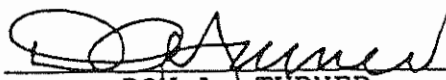
1 accomplish their purposes through the procedures set up in the
2 Judgment before bringing this lawsuit. They may have been
3 convinced that with only 20 percent of the vote they had no
4 chance of getting the Advisory Committee to adopt their
5 position, but that is no excuse for not presenting the issues
6 properly and fairly to the Advisory Committee and trying to
7 persuade all or some of the members of the Advisory Committee to
8 agree with them on some issues. By filing this action and
9 particularly by almost burying the legitimate concerns amidst a
10 myriad of lesser concerns, they have cost the Basin a great deal
11 of money and, of course, taken considerable court time.
12 Although the Watermaster is the prevailing party, the Court does
13 not award attorney fees to the Watermaster. The Watermaster's
14 legal expenses are a proper expense of the entire Basin, and the
15 Moving Parties, along with all other parties, will have to pay
16 their proportional share of the costs of defending this action,
17 but the Court will not require them to shoulder the entire
18 expense.

19 A suggestion -- if not a warning -- will be made,
20 however, that in the future, before any such motion be made, all
21 reasonable efforts should be made to resolve the issue within
22 the administrative set-up provided by the Judgment. Any motion
23 filed should recite in detail what efforts have been made to
24 achieve the desired results short of filing a motion in court,
25 and such motion should be supported with copies of the agenda
26 for and Minutes of the meetings at which the matter brought
27 before the Court for review has first been calendared for
28 discussion in the appropriate pool committee, before the

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Advisory Committee and before the Watermaster.

Dated: 7-31-89


DON A. TURNER
Judge of the Superior Court

EFFICIENT WATER USE IN CALIFORNIA: THE EVOLUTION OF GROUNDWATER MANAGEMENT IN SOUTHERN CALIFORNIA

**PREPARED IN PART FOR THE CALIFORNIA STATE ASSEMBLY RULES COMMITTEE
AND IN PART UNDER A GRANT FROM THE ROCKEFELLER FOUNDATION**

ALBERT J. LIPSON

**R-2387/2-CSA/RF
NOVEMBER 1978**

Rand
SANTA MONICA, CA. 90406

EXHIBIT B

Appendix G

CHINO BASIN GROUNDWATER MANAGEMENT¹

BACKGROUND

The Chino Basin adjudication is the latest example of management by adjudication. The stipulated judgment involving 1300 parties provides for several innovations including Watermaster management by an overlying Municipal Water District, with important producer checks and balances on the exercise of its powers, and for separate management plans affecting different classes of users.

The Chino Basin contains over 8 million acre-feet of water in storage and includes portions of Riverside, San Bernardino, and Los Angeles Counties. It collects surface runoff from the San Gabriel Mountains and rainfall from the valley floor. It lies within the Santa Ana River Watershed upstream from Orange County. Groundwater use during 1975-76 totaled about 182,000 acre-feet and surface water about 36,000 acre-feet. While most water is still used for agriculture, urbanization has increased municipal and industrial uses. Agricultural production consists primarily of citrus crops and vineyards. Major industrial users are Kaiser Steel, Southern California Edison, and Sunkist. Major urban centers in the basin are Ontario, Pomona, Chino, Fontana, Upland, and Montclair. Pumping costs for appropriators in 1976 averaged between \$25 and \$30 per acre-foot, and for overlying agricultural users about \$40 to \$50 per acre-foot. Chino Municipal Water District, Western Municipal Water District, and Pomona Valley Municipal Water District overlie the basin.

The Chino Basin has been in an overdraft condition for more than 20 years. This has resulted in lowering of water tables and increased pumping costs. Existence of nitrates constitutes a water quality problem, particularly in the western portion of the basin. There has been some subsidence, although this has not been regarded as a major problem. The question of what to do to manage the basin has been an issue for the last 10-15 years. While there are some important short-term water quality problems facing the area, continued overdraft and optimal use of groundwater and surface supplies constitute long-term problems affecting the entire overlying area.

There were two important steps that preceded the development of a groundwater management program for the Chino Basin. First was the formation of the Chino Basin Municipal Water District and its annexation to the MWD in 1951 to obtain supplemental imported water to meet the area's growing water demands.

Second was an agreement governing the allocation of water supply in the Santa Ana River Watershed. This was accomplished by an adjudication action initiated by Orange County Water District in 1963 involving 4000 parties. The downstream users in Orange County wanted to assure that increased water use by upstream users in the Chino area did not deplete their supply. A 1969 stipulated judgment

¹ This summary draws from various sources, including interviews with producers, Chino Basin MWD staff, consultants, and attorneys involved in the adjudication including: Donald Stark, Fran Brommenschkel, Ed Dubiel, Martin Whelan, Adolph Moscovitz, Fred Douma, Lee Travers, and Hoite Ruggie.

resolving the interbasin conflict provides for a regional allocation of Santa Ana River system water supply in a way similar to that developed for the San Gabriel River system. Under this judgment, the Chino Basin Municipal Water District (along with the Western Municipal Water District in Riverside County and the San Bernardino Valley Municipal Water District) is required to provide water to assure an average flow at Prado Dam for downstream use in Orange County.² The judgment is monitored by a five-member Watermaster committee under court supervision. With this obligation to downstream users settled, Chino Basin water users were not in a position to formulate a groundwater management plan for the Chino Basin.

EARLY PLANNING EFFORTS

After settlement of its dispute with Orange County, the Chino Basin Water Users Association and the Chino Basin Municipal Water District took leadership to develop a groundwater management plan using imported water for replenishment. There were four primary factors that stimulated the desire for groundwater management:

1. Increased pumping costs because of higher pump lifts and increasing power charges.
2. The fear that uncontrolled pumping would deplete the basin and would require future construction of expensive surface delivery systems.
3. Recognition that controls were required to force local producers to use more expensive imported water.
4. Desire to make efficient use of basin transmissive and storage capacity.

Since the basin could be managed without a production cutback through replenishment, producers could have chosen not to adjudicate and instead to institute a program similar to that in Orange County using a pump tax. Most producers did not favor this approach. They wanted vested rights protected and accorded an economic value.³ It was believed that new users would be the primary beneficiaries under a plan like the one operating in Orange County, since their water costs would be essentially the same as those with historic rights.

Early negotiations during 1970-71 failed to result in an acceptable groundwater management plan. Initially, the Chino Basin Municipal Water District proposed a gross pump tax (i.e., a tax on all production) not only to fund studies necessary for development of a management plan but also to pay the cost of replenishment water as part of an adjudicated settlement. However, this was opposed by agricultural producers. Later, during 1974, intensive negotiations by all producers were renewed at the behest of the Chino District and area municipalities, and an agreement was reached to adjudicate the basin and to make the studies necessary to develop a management plan and to evaluate its effects using finances from a tempo-

² *Orange County Water District v. City of Chino et al.*, Orange County Superior Court, Case No. 117628, April 17, 1969.

³ For example, the City of Upland had purchased water rights from a private water company and believed the value of its rights should be recognized and protected against new users. Similarly, other existing producers would benefit to the extent that their rights were established and recognized in the allocation of costs for replenishment water.

rary pump tax.⁴ Under the agreement, the Chino Basin Municipal Water District was recognized as the lead agency to develop the plan in consultation with producers. Legislation was then requested and enacted in 1975 (S.B. 222, Ayala) authorizing a \$2 per acre-foot pump tax for three years. This revenue was used to fund special studies to verify past production and to determine basin hydrology, other preliminary steps toward adjudication. The program authorized by the special legislation would provide a test of how a pump tax would work. The legislation required appointment of an advisory committee of producers and existing agencies by the board of the Chino District to develop the details of a plan. Special producer subcommittees were set up to explore ways of allocating the costs of providing supplemental water to overlying agricultural users, overlying non-agricultural users, and appropriators. The state participated in the negotiations as a major pump in the basin because of its correctional and Department of Fish and Game facilities. It also is the largest owner of land overlying the Chino Basin.

Basin negotiators faced several major hurdles before a settlement could be reached. They had to organize a diverse set of producers, find an acceptable means of determining their water rights, and allocate the costs of more expensive imported water among them. This represented a difficult challenge, since so many of the parties were small agricultural users. They also had to define the boundaries of the basin hydrologically and geographically, and to determine what type of institutional arrangements would be set up for basin governance. In addition, they had to deal with uncertainty introduced into their negotiations by the 1975 State Supreme Court San Fernando decision.

IMPACT OF THE SAN FERNANDO DECISION

The early Chino negotiations were based on the mutual prescription theory developed in the Raymond Basin. The San Fernando case made substantial changes in legal theory that governed previous adjudications and changed the negotiating ground rules for the Chino Basin adjudication. Probably the biggest impact of the San Fernando case was that mutual prescription could no longer be automatically applied and imposed on the parties. This was because the court ruled that in an overdrafted basin private pumpers could not obtain prescriptive rights against public entities and that overlying users retained their rights by use rather than prescription. The San Fernando decision strengthened the position of cities, since they could not lose rights by prescription. It also implied that overlying rights were for use only on overlying lands and therefore might not be separately transferred.

The superior position of cities was constrained by a changed legal notice requirement that complicated determining where adverse use began, making it difficult to effectuate prescription against overlying users. In fact, because of the notice qualification in the San Fernando decision, Chino Basin planners assumed that the rights of agricultural users would not be prescribed or reduced to a share of safe yield. Overall, San Fernando made the determination of overlying and appropriative rights highly uncertain.

While the decision created uncertainty, it also helped resolve problems between large and small farmers that had stymied previous negotiations and aided elimina-

⁴ "Memorandum of Agreement Chino Basin Plan," contained in *First Annual Report of Chino Basin Municipal Water District*, November 1976.

tion of some inequities that might have resulted from strict application of the Raymond Basin formula. For example, strict application of mutual prescription would have given some farmers with large patterns of historic use large rights and new farmers none. This caused a major split between farmers during the early negotiations. The court's determination preserving overlying rights put all farmers in the same boat. It eliminated the windfall that might have gone to some of them and helped pave the way for a settlement between them. The solution to this problem was not to specify rights for individual agricultural producers and to work out a plan for equitable distribution of assessments among them.

San Fernando also removed an inequity affecting Kaiser industries. Application of mutual prescription with rights based on five years continuous use after the overdraft began would have seriously impaired the rights of Kaiser industries because they had a strike that reduced their use for one year. The decision also complicated determination of appropriators' rights, since it eliminated interparty prescription among them. To solve this problem a negotiated agreement was worked out under which all appropriative rights were of equal priority.

ALTERNATIVE MANAGEMENT PLANS

The legislatively established advisory committee considered a variety of basin plans that had been developed elsewhere, and retained attorneys and consultants with experience in the development of other Southern California conjunctive use management programs. The stipulated judgment arrived at in the Main San Gabriel Basin helped serve as a model for their deliberation as did the method of levying assessments used in Orange County. DWR and Santa Ana Watershed Project Authority studies were also examined to help define water demand and quality problems.⁵

To stimulate resolution of outstanding issues, an action was filed on January 2, 1975, by the Chino District to adjudicate the basin with the approval of producers. Its purpose was "to act as a unifying mechanism for all producers within the basin" to develop a long-term basin plan under Watermaster management.⁶

The major objectives of the plan were to halt unregulated overdraft and stabilize the basin, to secure a long-term future water supply making efficient use of ground and surface waters, and to develop an equitable means of financing replenishment water. It was agreed that the adjudication would not be pursued unless agreements could be reached on the elements of a basin plan as part of the planning process authorized by S.B. 222. As part of this process three overall management approaches were evaluated:

1. *No Control.* This option assumed continued mining of the basin without a recharge program. It was rejected after serious consideration because all major producer groups, and especially the appropriators, believed the continuous overdraft would eventually have serious consequences for the basin. They favored a long-term management approach that would protect their future water supply and economic interests.

⁵ Ibid.

⁶ See Department of Water Resources, *Meeting Water Demands in the Chino-Riverside Area*, Bulletin 104-3, Sacramento, California, May 1971. The work of the committee was made somewhat easier by the existence of production records required by the Recordation Act.

2. *Strict Adjudication.* Under this option producers would be restricted to safe yield and would have to separately purchase supplemental surface supplies. This approach was rejected primarily because it would involve major contested litigation expense, delay, and major uncertainty as to outcome.

3. *A Physical Solution.* The negotiated physical solution controlling pumping, using pump taxes, and using ground and surface supplies conjunctively became more attractive as a compromise that benefited each producer group enough to gain their support. Also, one of the major objectives of the physical solution was to preserve the environmental values of the Chino area. Those involved in the negotiations wanted to preserve agriculture and to protect open space while assuring the long-term water supply necessary to permit controlled growth. Cost analysis of the three approaches strengthened the case for a physical solution.

It was estimated that by 1990 total costs to supply basin requirements without controls would be about \$31 million in 1976 constant dollars, whereas imposition of a strict injunction would cost \$32 million and a physical solution \$26.6 million.⁷

Appropriators, such as the cities of Pomona and Chino, several water districts (e.g., Cucamonga County Water District and Monte Vista County Water District), and private water companies (e.g., Fontana Union Water Company), spearheaded the effort to arrive at an acceptable physical solution. They had water problems and were interested in assuring a long-term water supply without being forced to bear the cost of a surface delivery system. They recognized the need to protect the agricultural economy and were willing to bear a large share of the costs of a physical solution in part because they could more easily spread these costs among many users and saw themselves as "inheritors" of the basin with the anticipated decline of future agricultural water use.

A "strict injunction" applying the principles of San Fernando would have involved expensive litigation with an uncertain outcome. From the appropriators' viewpoint, no control and a "strict injunction" were unacceptable. They were willing to shoulder the added costs of implementing a physical solution in return for basinwide management in which they would have a predominant voice.

Initial efforts were made to put industrial users with overlying rights into the appropriators' pool. This proposal was beaten back and the industrial users were placed in a separate pool. The stake of the industrial users in the outcome was not as great as the other producers. The industrial users, led by Kaiser industries, supported the need for management to protect the area's water supply and were willing to go along with an approach that gave some help to agriculture as long as they did not have to assume a disproportionate share of the costs of a physical solution.

Agriculture, which accounted for the largest share of use in the basin, was facing the cost of higher pump lifts, which would continue to be the case under no control. Agricultural producers believed they would be better off under the proposed physical solution than under no control, because they would face increased pump costs that would probably cost more than any replenishment assessment they might have to pay. They were willing to take less safe yield than they might have gotten under a "strict injunction" to gain the overall benefit they

⁷ *Economic Evaluation of Proposed Physical Solution for the Chino Ground Water Basin*, Ultra Systems, Inc., Irvine, California, March 1977, Table 3-11, p. 31.

anticipated receiving in reduced pump costs. Moreover, their replenishment assessment would be minor compared to appropriators' because they received the lion's share of safe yield. As long as agriculture did not expand, their assessments in the future would be minimal. As overall agricultural use declined, their replenishment assessments would disappear altogether because total pool rights are guaranteed in perpetuity. With use by appropriators expanding, they would pay the future increased costs of basin replenishment.

When it appeared that agreement could be reached among the parties the adjudication was activated. Spurred in part by the 1977 drought, a stipulated judgment was agreed to by them on January 27, 1978, three years after the case was filed.

THE JUDGMENT

The judgment establishes a framework for long-term basin management under a plan aimed at assuring "that all water users dependent upon the Chino Basin will be allowed to pump sufficient waters . . . to meet their requirements."⁸ Its primary objective is to permit management by replenishment with replenishment costs distributed among producer groups.

Three Management Pools

One of the unique aspects of the Chino adjudication is the division of users into three separate management groups or "pools": overlying agricultural, overlying non-agricultural (industrial users), and appropriative, with *each pool* allocated a share of the basin safe yield. In accord with the physical solution, each pool operates under its own pooling plan and pays a replenishment assessment to purchase water used in excess of its share of the safe yield or operating safe yield defined as the appropriators' share of the safe yield plus controlled overdraft authorized by the Watermaster. This permits flexibility in basin management to conserve water over wet and dry cycles. However, the initial operating safe yield was set for five years by the judgment, which also provides for limits on accumulated overdraft of the basin and on operating safe yield. Thus, flexibility is limited during the early years of basin management primarily because of appropriators' interest in maintaining an assured supply while the new program was being phased in. After five years, unused agricultural water is available for reallocation to the appropriative pool to supplement operating safe yield.

Transferability of Rights

Another special characteristic of the Chino Basin adjudication is that water rights for individual producers in the agricultural pool are not determined as they are for overlying non-agricultural users or for appropriators. Since agricultural rights are not specified, they cannot be transferable. Overlying non-agricultural rights are determined but they are considered "appurtenant to the land" and not

⁸ *Chino Basin Municipal Water District v. City of Chino*, San Bernardino Superior Court, Case No. 16437, January 28, 1978.

separately transferable. Only appropriative rights can be transferred within the appropriative pool with Watermaster approval.

Some agricultural producers (dairies) were opposed to transferability of rights because this would complicate their anticipated relocation within the basin. They wanted rights to be transferred with the land, which would assure them their required water supply. They were also concerned that transferable rights would inflate their water costs. Their position was strengthened by the Supreme Court's San Fernando ruling. Although transferability would have given agricultural rights value, this would have required the application of a formula like mutual prescription to establish them. In addition to disputes between large and small farmers that this engendered, many believed it also would reduce agriculture's share of safe yield, benefit appropriators, and result in higher agricultural costs. Overall, agricultural producers concluded that they would be better off under the proposed physical solution, anticipating that they would pay little or no replenishment assessment.

Some appropriators were also concerned about transferability of agricultural water rights. They feared that one appropriator might gain dominance by acquiring them. Also, they were concerned about uncertainty that might result from rights transfers. The judgment ties rights of overlying users to overlying land and provides a method for allocating unused agricultural rights to appropriators.

BASIN GOVERNANCE

One of the major objectives of the Chino Basin negotiators was to devise a plan for unified basin management. They explored how this might be attained within the framework of an adjudicated settlement.

The expansion of local district boundaries by special act of the legislature was unacceptable because conflicts with other overlying districts could not be resolved. For example, the San Bernardino Valley Municipal Water District would lose assessed value, some of which was being taxed to pay for State Project Water, if all the area overlying the Chino Basin were annexed to the Chino Basin MWD.

A joint powers agreement was also unacceptable, since it would involve establishing another overlying agency with attendant unnecessary administrative complexity. The Department of Water Resources was considered as Watermaster but was rejected primarily because local interests did not want the state involved in management of their basin. They also were concerned that state management might impose higher costs on them. Instead of these approaches, the negotiators chose the Chino Basin Municipal Water District as Watermaster, expanding its powers by the terms of the proposed stipulated judgment.

One of the most interesting aspects of the Chino Basin judgment is the intricate system of governance established by it. The negotiators spent considerable time formulating an institutional structure "which would give a controlled balance of authority and responsibility between Chino Basin Municipal Water District, on one hand, and producers from Chino Basin, on the other."⁸

Some opposed district management because they feared there would be a con-

⁸ First Annual Report of Chino Basin Municipal Water District, Chino Basin Water Production Assessment Operations for 1974-1975, p. 3.

flict between the district's role as a surface water purveyor and operator of sewage treatment works and its role as a groundwater manager. Some felt this might lead to overreliance on imported MWD water or transfer of costs to groundwater pumpers that should instead be charged to other water users.¹⁰ However, the district was acceptable to most producers because they were already governed by it (its boundaries covered about 75 percent of the groundwater basin), and it had also defended their interests in the Santa Ana River adjudication initiated by Orange County Water District. It had the capability to implement a groundwater management program and had taken leadership to develop a long-range groundwater management plan. Moreover, the district had existing authority to purchase replenishment water from the MWD and had agreed to drop the surcharge it had previously levied on use of this water if it were selected as Watermaster. It also made known that it would drop the adjudication if it were not selected. In addition some producers believed that management by public district would have greater legitimacy and be more acceptable than management by a committee of producers, such as that established in the Main San Gabriel Basin. Although producers agreed on the district as Watermaster, they placed a number of conditions on its operations to assure that their interests were protected. In fact, there is little the Watermaster can do without producer approval.

The judgment establishes the Chino Basin Municipal Water District as Watermaster but requires review and approval of all major discretionary actions by a producer advisory committee representing the three producer pools. Moreover, the Watermaster is appointed for the limited term of five years and may be removed by a motion of the advisory committee supported by a vote from the majority (where the majority represents the majority of assessments paid). Also, any party can request court review of a Watermaster action and is entitled to full court review with no presumption of fact in favor of the Watermaster. In addition, the advisory committee can *mandate* the Watermaster to take certain actions if favored by 80 percent of the eligible voters. If the Watermaster does not adhere to the advisory committee's recommendations on non-mandated actions, a public hearing must be held before a decision can be reached. Furthermore, separate pool committees, elected on the basis of member assessments, make recommendations on policies for their respective groups. The actions of the Watermaster are also limited by policies set forth in the judgment, many of which specify management parameters and limit discretion. Thus, the sophisticated institutional structure places substantial checks on Watermaster discretion and appears to assure that primary policy control remains in the hands of producers on the advisory and individual pool committees.

Inasmuch as appropriators are expected to pay the lion's share of replenishment assessments and advisory committee voting is based on these assessments, appropriators appear to be assured a primary voice in basin policymaking.

Within this institutional framework just described, the Watermaster is given the following powers:

1. To adopt rules and regulations after public hearing upon recommendation of the advisory committee.

¹⁰ Recently, some pumpers have objected to the district's proposal to tax pumpers to pay for legal costs to defend itself in a waste discharge action of the Regional Water Quality Control Board. Since the suit involved the district's role as operator of a sewage treatment plant, they felt groundwater pumpers should not pay the cost.

2. To acquire facilities, employ experts and agents, borrow, contract, account for stored water, and cooperate with public agencies.
3. To require parties to install measuring devices or meters and to inspect them.
4. To levy assessments as provided for in the separate pooling plans and physical solution.
5. With concurrence of the advisory committee, to conduct studies and adopt rules for storage agreements.
6. To submit and adopt a budget after public hearing and advisory committee review and recommendation.

Assessments

As pointed out above, a key factor in the negotiations was how the cost of replenishment water would be shared among producer groups. Under the judgment, each user pool's replenishment cost is based on the relationship of its share of the basin's safe yield to actual production. Safe yield was set at 140,000 acre-feet per year for 10 years with overlying agricultural rights set at 82,800 acre-feet (85 percent of their average use for the two previous years) and overlying non-agricultural rights at 7366 acre-feet (97 percent of average use for two previous years). Appropriators receive the remaining 49,834 acre-feet of safe yield as a residual (68 percent of average use for the two previous years), but their rights were increased to 54,834 acre-feet (72 percent of two previous years' average use) by the physical solution.¹¹ By this method overlying users will pay a lesser share of replenishment cost than appropriators because their share of the safe yield is a higher percentage of actual production. Moreover, since overlying use is expected to decline and appropriators' use increase, this disparity will continue until unused overlying rights are reallocated to appropriators.

In addition to resolving how replenishment costs would be allocated between users' pools, negotiators also had to determine how to distribute costs among users in each pool.

Members of the overlying agricultural pool pay a gross assessment on all production. Nonagricultural overlying users pay a net replenishment assessment on excess production over their share of safe yield. There was some disagreement among appropriators about how to distribute the costs of replenishment. This was resolved by a compromise under which 15 percent of replenishment water costs was to be recovered by a gross pump tax and the remaining 85 percent from a net pump tax.

Appropriators may also pay a facilities equity assessment for added facilities needed to import water and to recompense those accomplishing recharge by taking surface supplemental supplies in lieu of pumping. The judgment established one in lieu area, including the cities of Upland, Ontario, and Montclair, in which the Watermaster buys unpumped water at a price based on a predetermined formula. New pumping is permitted with the payment of the appropriate assessment with new producers assigned to the proper pool.

New non-agricultural producers will pay a gross pump tax on all production,

¹¹ Appropriators' use was cut back 27 percent during the 1965-74 production period. Non-agricultural overlying users were cut back 21 percent.

since they have no previously adjudicated right. New agricultural producers share in the safe yield of the agricultural pool and pay a gross pump tax based on the extent to which agricultural use exceeds the safe yield assigned to it.

Basin Storage

The state's interest in using the Chino Basin for storage of SWP water was an added incentive promoting a local management solution incorporating the power to enter into storage agreements. The San Fernando decision also helped clarify the right to store and recover such water from an underground basin.

It was estimated that the lower pump lifts that resulted from state storage of water would save local pumpers from \$225,000 to \$450,000 in 1985 costs (assuming that storage would range from 500,000 to one million acre-feet). However, this benefit could probably not be realized unless there was local management of the basin. In addition, some were concerned that failure to develop a local management plan might be used to justify state control of the basin, a choice most producers wished to avoid.

The judgment recognizes the existence of unused storage space and the need for Watermaster control to permit both storage and conjunctive use of basin and supplemental water under conditions that would protect both stored and basin water. It allows groundwater storage agreements with approval of the advisory committee under guidelines requiring determination of amounts to be stored and withdrawn, and priority of storage rights.

Costs of Adjudication

The agreement approved by the courts involves 1300 parties. Legal and study costs to the district from assessments raised by the Ayala bill were \$626,000. This includes about \$190,000 in district in-house staff and other costs, \$230,000 in legal costs, and \$206,000 in engineering costs. It is estimated that additional—mostly legal—costs to the parties ranged between \$150,000 and \$250,000. Thus the adjudication costs for the three year period of serious negotiations were between \$750,000 and \$850,000 or between \$5 and \$6 per acre-foot of adjudicated right.

CONCLUDING COMMENT

The Chino Basin is the most complex and sophisticated adjudication yet devised. It is noteworthy for several reasons. There were more parties involved than in previous basin adjudications (1300), most of them small agricultural producers. The case was settled by stipulated agreement only three years after the action was filed. However, negotiations were begun in earnest only after an interbasin adjudication determined the allocation of Santa Ana River flow among upstream and downstream users. The management plan contains several important innovations including the creation of separate management controls for different producer groups and an intricate institutional structure for basin governance, which married district Watermaster management with checks and balances over the exercise of Watermaster powers that appear to assure producer policy control.

Under the plan farmers, industrial users, and appropriators are permitted different pump taxes and water rights of different users are treated differently. They are not specifically determined for farmers and all overlying rights are non-transferable, whereas appropriative rights are transferable with Watermaster approval.

Like past adjudications, this adjudication was stimulated by the problem of basin overdraft, and several management tools developed in other adjoining areas were put to use here. The Main San Gabriel agreement served as the model for extending the role of Watermaster from ministerial duties to broad policymaking, and previous experience with pump tax management in Orange County was helpful in designing pooling plans. The availability of imported water and the transmissivity of the basin permitted management by replenishment and a physical solution that did not require pumping cutbacks. The key issue was how to share the cost of more expensive imported water.

Interestingly, farmers who initially opposed management by pump tax were willing to accept it as part of an adjudicated settlement under which they were guaranteed a firm long-term water supply with appropriators paying a large share of replenishment costs.

The development of a basin plan was by local producers through their water users' association and by the Chino Basin Municipal Water District, which took leadership to help negotiate an acceptable settlement and was designated Watermaster.

The adjudication action served as the basis for unifying producers as part of the process of developing a long-range basin management plan for the area. Appropriators took the lead among producers in negotiating a settlement that was acceptable to farmers and industrial users.

The negotiations were made more complex by the Supreme Court's San Fernando decision, but eliminating the automatic application of mutual prescription did not derail the negotiations. In fact, while the San Fernando decision introduced uncertainty, it also made possible the elimination of inequities and the development of a more flexible management plan. It also clarified the ability to store and retrieve imported water. However, one important impact of the court decision was to limit transferability of overlying water rights.

THE PERFORMANCE OF INSTITUTIONS
FOR GROUNDWATER MANAGEMENT

Volume 7 -- Chino Basin

by

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EXHIBIT C

Santa Ana River Judgment, Base Flow at Prado averaged over 50,000 acre-feet per year.¹³⁶ At the end of twelve years of operation, Chino Basin Municipal Water District and Western Municipal Water District of Riverside County had a cumulative credit to their Base Flow obligation at Prado Dam of 261,083 acre-feet.¹³⁷

Similar results have been obtained at Riverside Narrows. From the 1943-44 water year to the 1965-66 water year, Base Flow at Riverside Narrows declined, reaching a low of 13,450 acre-feet in 1965-66. In the ensuing years, the Base Flow at Riverside Narrows has increased. In the first ten years of operation, the Base Flow at Riverside Narrows averaged about 20,000 acre-feet per year.¹³⁸ After twelve years of operation, San Bernardino Valley Municipal Water District had a cumulative credit to its Base Flow obligation at Riverside Narrows of 59,974 acre-feet.¹³⁹

The Chino Basin Adjudication

The issue of Chino Basin's water-supply obligations as part of the Santa Ana River watershed were essentially settled by the Santa Ana River Judgment at the end of the 1960s. And, as observed above, the Santa Ana River Judgment left the Upper Area water users (including Chino Basin water users) free to manage, conserve, and use their water supplies as they desired, as long as the Lower Area received its specified share.

Beginning the Process of Negotiation. In Chino Basin, the issue of managing, conserving and using their water supplies moved to the forefront as the Santa Ana River adjudication proceeded through the 1960s. Basin water users remained overwhelmingly dependent on their local groundwater basin for their water supply, and that basin was in a continuing state of overdraft.

According to the California Department of Water Resources, in the mid-1960s, the water supplied to the Chino-Riverside area was 70% from groundwater, 18% local imports from the Bunker Hill-San Timoteo area, 6% from surface diversions, and 6% imported supplies from MWD.¹⁴⁰ Assuming that most of the local imports from the Bunker Hill-San Timoteo area on the other side of the San Jacinto Fault were used in the vicinity of Riverside, Chino Basin water users in the 1960s were probably depending on groundwater for 80 percent or more of their water supply.

The long-range stability of this situation was in question, with the groundwater yield of Chino Basin being overdrawn by an amount estimated between 25,000 and 50,000 acre-feet per year by the end of the 1960s. The consequences of overdraft were longer pumping lifts and higher water production costs for Chino Basin water users, and the loss of hundreds of thousands of acre-feet of ground water in storage, creating a tremendous quantity of available underground water storage capacity within Chino Basin.

Yet, movement toward increased use of imported water supplies continued to be impeded by the unwillingness of water users to reduce their reliance on the local groundwater supply, which remained substantially less expensive than imported water from MWD. Chino Basin water users and water agencies had observed the examples of neighboring southern California groundwater basins, and learned from them that water users would reduce reliance on local groundwater, even under overdraft conditions and with imported supplies available, only when withdrawals of groundwater were limited by some sort of management program.

Discussion of the development of some manner of Chino Basin management plan was facilitated by the Santa Ana River Judgment and by the area's heavy dependence on an overdrafted groundwater supply, and by the presence of the Chino Basin Municipal Water District, the Pomona Valley Municipal Water District, and the Western Municipal Water District of Riverside County. These three municipal water districts, all MWD member agencies with access to imported water supplies, covered the entire Basin. In addition, a new water users' association was formed during the 1960s, the Chino Basin Water Association. (The old Chino Basin Protective Association had dissolved after the creation of the Chino Basin Water Conservation District in 1949.)

The Chino Basin Water Association and the Chino Basin Municipal Water District became the focal organizations in the discussion of a Chino Basin management plan.¹⁴¹ The earliest negotiations were unsuccessful. The Chino Basin Municipal Water District had proposed the idea of using an assessment against all water production (i.e., a "gross pump tax") to fund studies toward the development of a management plan, and for purchases of replenishment water as part of an adjudicated settlement.¹⁴²

This idea met opposition from the numerous agricultural water users in the Chino Basin. These producers had the longest history of use in the Basin, and claimed their water rights based on their ownership of the overlying land. They perceived the increased demands on the Basin's water supply as having come primarily from the appropriators -- the cities and the water companies and water districts -- who had increased their production of water to serve the growing population that had accompanied the urbanization of the area. To the agricultural producers, using an equal tax on all water production to purchase replenishment water to offset the overdraft shifted onto them replenishment costs that the appropriators should have to pay.

Investigation of a wider range of management plans ensued, led by the Chino Basin Water Association and the staff of the Chino Basin Municipal Water District. In December 1970, the Chino Basin Municipal Water District staff prepared "Study Documents on Proposed Basin Management Plan," and submitted it to the Chino Basin Water Association, whose Executive Committee and Board of Directors studied it for 9 months. The Chino Basin Municipal Water District agreed to furnish staff assistance for study of feasibility of developing a basin management program, within the context of a stipulated adjudication to limit production and define water rights within the Basin.

A Negotiating Committee was formed to review management possibilities for the Chino Basin. The Negotiating Committee consisted of the 13 members of the Executive Committee of the Chino Basin Water Association, a representative from the State of California (for the correctional institutions), a representative from Pomona Valley Water Company, a representative of agricultural producers in the San Bernardino County portion of Chino Basin, and a representative of agricultural producers from the Riverside County portion of Chino Basin.

The Negotiating Committee began with some baseline principles of agreement. Based on a report from the Chino Basin Municipal Water District staff, the Committee noted that, Chino Basin was in overdraft in the magnitude of least 50,000 acre-feet per year and that this magnitude of overdraft could be expected to double in the next 20 years.¹⁴³ Other principles were to restrict the use of ad valorem taxes to funding capital construction projects, and to not use them for water purchases. A gross assessment on all water production in the Basin would pay for Watermaster administrative expenses and for increases in ground water in storage (i.e., things felt to benefit all producers more or less equally). A net assessment would pay for replacement water for overpumping. It was also recognized that diversion rights to the surface waters of San Antonio Creek and Cucamonga Creek had already been adjudicated and needed only to be reaffirmed in any Chino Basin adjudication.

Reviewing the Management Possibilities: Building on the Lessons of Raymond, West, and Central Basins, the Orange County Water District, and the Example of the Main San Gabriel Basin. A 1971 working memorandum of the Negotiating Committee reviewed the management options used in neighboring groundwater basins. The "mutual prescription" approach to adjudicating water production rights by stipulated judgment in the Raymond, West, and Central Basins of Los Angeles County formed a basic premise for the plan to determine water production rights in the Chino Basin. Consideration of financing replenishment operations drew upon the programs used in the Central and West Basins and the Orange County Water District. Possibilities for organizing the replenishment and ongoing management and monitoring of the Basin drew upon the examples of the Central and West Basin Water Replenishment District, the Orange County Water District, and the emerging plan for the management of the Main San Gabriel Basin adjacent to the Chino Basin in Los Angeles County.¹⁴⁴

Chino Basin water producers could have foregone adjudication, financing replenishment with a gross pump tax. The producers rejected this alternative, because they "wanted vested rights protected and accorded an economic value."¹⁴⁵ The Negotiating Committee working memorandum observed: "Adjudication appears to offer the only decisive method of meeting and resolving the question of ownership and control of unused ground water storage capacity."¹⁴⁶ That adjudication was to be based on the "mutual prescription" doctrine, with managerial control reposed in a watermaster under continuing jurisdiction of the court.

The memorandum also offered some procedural guidelines for an adjudication. The Negotiating Committee sought to reap the advantages of a stipulated adjudication while avoiding some of the difficulties that had been experienced by water users in other basins:¹⁴⁷

A major procedural premise for the adjudication technique should be: adjudication will be undertaken only after agreement has been reached by a majority (perhaps 75 to 80%) of all production rights in the basin. On this basis, it should be possible to proceed to a decree without major adversary litigation. The examples of expense, time and waste in poorly managed adversary water litigation are legion. However, the few instances of carefully planned stipulated adjudications indicate that this course can be followed without major adversary proceedings.

Basically, the approach should be to develop a plan for implementation of the management program which would be incorporated in the form of a stipulated judgment. *Only after the form of judgment had been essentially agreed upon would the complaint be formally filed and legal proceedings undertaken.* In this way, the trial time should be restricted to a matter of days. After the general agreement on approach to the solution, those parties willing to do so should furnish their attorneys for participation in a committee organization to work quickly on finalization of the stipulated judgment.... Since the fact of overdraft in Chino Basin is long standing and of general notoriety, no major factual or hydrologic issue should be involved.

The 1971 Memorandum to the Negotiating Committee included an Appendix which contained a study draft of a stipulated judgment. The study draft used the assumption that the Chino Basin Municipal Water District would use its statutory powers to act as plaintiff bringing the adjudication, with all known producers joined as defendants.¹⁴⁸ The memorandum also laid out assumed prescriptive rights of parties based on water production from 1953 through 1969 reported by producers to the State Water Rights Board under the 1955 Recordation Act. It included a Table showing the annual reported production figures for pumpers with annual rights in excess of 1,000 acre-feet per year. There were 33 such parties listed, accounted for 59.7 percent of the assumed 170,000 acre-feet of mutually prescriptive rights in the basin. Their estimated prescriptive rights totaled 101,481 acre-feet. Their reported total annual production ranging from a low of 76,248 acre-feet in 1958 to a high of 117,051 in 1961 (see Table 7-6).

With respect to financing the management plan in Chino Basin, the Negotiating Committee remained largely confined to the baseline agreement concerning the use of ad valorem revenues, a gross pump tax to finance improvements of benefit to all water producers, and a net pump tax to finance purchases of replenishment water to replace water pumped in excess of adjudicated rights. The one addition made by the Negotiating Committee concerning financing was to recommend the elimination of "minimal producers" from reporting and assessment. This addition was adapted from the proposals for management of the Main San

Gabriel Basin, and was intended to avoid problems encountered by the Central and West Basin Water Replenishment District in billing and keeping track of numerous producers with production rights of one or two acre-feet per year.¹⁴⁹

With respect to the mechanism for monitoring the judgment and setting basin management policy, the Negotiating Committee obviously watched the developments in the pending Main San Gabriel Basin adjudication closely. They noted that a broadened concept had been developed of the use of the stipulated decree and physical solution there. Under this concept, the jurisdiction of the court and the conception of the Watermaster's function were used to overcome several problems of a more sophisticated nature and to furnish a semi-legislative, as well as administrative, function for the watermaster in the development of flexible basin management planning. They noted that the use of a discretionary, policy-making Watermaster gives the parties, who are all of the interested water entities affected by the management plan, an opportunity to unitize and democratize the formation and specification of powers, and delegation of discretion, in the entity which will develop, modify, and administer the management plan.¹⁵⁰

The negotiating committee considered two principal alternatives to the policy-making watermaster mechanism that was unfolding in the Main San Gabriel Basin. One alternative was titled the "political approach," which was to empower one of the special districts within the Chino Basin to act as the management authority for the Basin, along the lines of the Orange County Water District's role in managing groundwater supplies there. The other alternative was the formation of a water replenishment district along the lines of the Central and West Basin Water Replenishment District in Los Angeles County, using the authority granted by the California Legislature in the Water Replenishment District Act of 1955.

The Negotiating Committee's evaluation of the "political approach" noted first its basic inconsistency with the premise of an a firm determination of property rights through adjudication. While acknowledging that the "political approach" was being successfully employed in Orange County, the Committee observed that it was "premised on a 'utility' approach to water and water resources, as distinct from the traditional 'private property' approach observed elsewhere in the State."¹⁵¹

The Negotiating Committee's evaluation of the "political approach" focused second on the difficulties inherent in the division of Chino Basin among three existing municipal water districts, which reflected the fact that the Basin extends into three counties. The Committee acknowledged that "Practical politics indicate the improbability that any existing political entity would be able to annex territory across county lines to cure this defect."¹⁵² A conceivable alternative was the formation of a joint powers agency by the three overlying municipal water districts. This was not without its difficulties, as well:¹⁵³

Because of the substantial difference in magnitude of interest between the three districts, there might be some

considerable problem with regard to voting and representation on the managing board of such a joint powers agency. Such a joint powers agency could appoint the district with the major interest in the basin (CBMWD) as the managing agency. Whether this is a realistic assumption (particularly as to WMWD, which has a separate interest in Chino Basin outflow under the Orange County settlement) might well be questioned. In any event, administration of a strong management program in this manner portends many problems.

Financing under a joint powers approach would need to find means to integrate ad valorem taxing powers of existing overlying water districts with pump tax powers for basin management plan. This would be especially challenging in Pomona Valley Municipal Water District and Western Municipal Water District, only small parts of which overlie Chino Basin.

The Committee described three difficulties in the use of a water replenishment district. First, in the twelve years of existence of the Central and West Basin Water Replenishment District, the only one formed under the Water Replenishment District Act, "the act has become a 'captive act' of that one district and any amendments or modification of the act would require concurrence. (The same is true of the Metropolitan Water District Act and the County Water Authority Act.)"¹⁵⁴ Another difficulty was "the current reluctance of the Local Agency Formation Commission (LAFCo) and the voters to approve the creation of any additional overlapping special districts -- with duplication of taxing powers and functions."¹⁵⁵ Furthermore, any attempt to create another type of special act district to perform these functions for Chino Basin alone was likely to run into current opposition in the Legislature to the creation of more such districts.¹⁵⁶

After consideration of these alternatives, the Committee concluded in favor of the management approach that was emerging in the Main San Gabriel Basin, which was management by a watermaster under the continuing jurisdiction of the court. They viewed this alternative as the one best suited to overcoming the jurisdictional complexity of Chino Basin:¹⁵⁷

The Watermaster, as the managing agency, has the ability to allocate costs with relation to pumping and to make other basin-wide management decisions. Political boundaries no longer are of consequence. The exterior geographic boundaries of the Watermaster's jurisdiction are defined by the hydrologic unit adjudicated.

Furthermore, the Committee concluded that the use of a watermaster with policy-making powers, especially the power to set an "operating safe yield" that would account for changes in physical conditions from year to year, would improve the flexibility and adaptability of the basin management program.¹⁵⁸ And, the Committee concluded that control and management of the storage capacity of the Basin required some sort

of determination of rights and some form of representation of water users in the making of storage decisions. ¹⁵⁹

The Committee acknowledged that it was conceivable that a public agency could be designed and equipped with adequate basin management powers, but that no public agency would exhibit one strongly desired characteristic -- self-governance of the Basin by Basin water users:

The basic distinction is in the control of the exercise of discretion by the managing agency. In the case of the political solution, control resides in the entire community and is exercised through the registered voters. This compares to the adjudicated solution wherein the control lies in the court, subject to petition and appeal from the producers and water right owners. ¹⁶⁰

Clearly, the water producers on the Negotiating Committee were interested in a basin management program that would be under the control of the water producers alone.

Moving the Process Into Court. After the consideration of alternative and the development of this management model for the Chino Basin in late 1971, the negotiation process slowed for a while. It was revived in 1974 with the encouragement of the cities and the Chino Basin Municipal Water District. During 1974, a "Memorandum of Agreement on the Chino Basin Plan" was reached within the Chino Basin Water Association and signed. It called for the Chino Basin Municipal Water District to proceed with the adjudication of the Basin, and with the remaining studies needed to develop a practicable management plan, in consultation with the Association. It further provided for the financing of the studies and the development of the management plan using a temporary gross pump tax.

Authority to levy a gross pump tax came from the California Legislature. State Senator Ruben S. Ayala of Chino, a very active member of the State Senate on California water issues, introduced Senate Bill 222 in January 1975. S.B. 222 authorized the levying of a \$2 per acre-foot pump tax for three years. The revenue was to be used to fund studies to determine Basin hydrology, to verify the past production of water producers within the Basin, and to study the socio-economic characteristics of the Basin with a view toward the changing nature of its land and water use. The legislation also required the appointment by the Chino Basin Municipal Water District's Board of Directors of an advisory committee of water producers to develop the details of the Chino Basin management plan. Ayala's bill passed the Legislature and was signed by Governor Reagan on June 28, 1975. Its pump tax provisions were made effective to begin with the 1974-75 water year. ¹⁶¹

The advisory committee called for by the legislation was formed and resumed the process of studying management alternatives and water conditions within Chino Basin. The advisory committee met regularly, with over 100 names on the mailing list throughout the negotiation and study period. Producer subcommittees were established within the

advisory committee to consider the issues of how to allocate production rights and basin management costs among the different types of water producers within the Basin. The three producer subcommittees represented: agricultural water users with water rights appurtenant to their ownership of overlying lands within the Basin; non-agricultural (primarily industrial) water users with water rights appurtenant to their ownership of overlying lands; and water purveyors (primarily cities, water companies, and water districts) with water rights acquired by actual diversion and use (i.e., appropriation).¹⁶² The three subcommittees came to be known as the Overlying (Agricultural) Pool Committee, the Overlying (Nonagricultural) Pool Committee, and the Appropriative Pool Committee.¹⁶³

To provide a spur to the resolution of the remaining issues outstanding, the Board of Directors of the Chino Basin Municipal Water District also filed a complaint on January 2, 1975, thus formally initiating the adjudication process.¹⁶⁴ The adjudication was known as Chino Basin Municipal Water District v. City of Chino et al.¹⁶⁵ The complaint sought "an adjudication of water rights, injunctive relief and the imposition of a physical solution."¹⁶⁶

Adjudication of water rights in the Chino Basin was certain to be complex. There were 1300 parties named in the adjudication, and at one point as many as 93 different attorneys involved.¹⁶⁷ Thus, the Chino Basin adjudication promised to involve more pumpers and lawyers than any of the previous groundwater basin adjudications. Nevertheless, early agreement among the parties and the negotiating committee members on the fact of the presence of the overdraft in Chino Basin and on the basic theory of the adjudication -- i.e., "mutual prescription" -- offered the prospect in January 1975 of a relatively smooth process of resolution of this large and multi-party adjudication. Within a few months, however, it became clear that the process would not be as smooth as originally hoped.

The Impact of the San Fernando Decision. The negotiations toward a Chino Basin management plan had been, since the end of the 1960s, premised on the use of the "mutual prescription" doctrine developed in the Raymond Basin adjudication in the 1940s and used as the basis of stipulated judgments in the other basin adjudications to which the Chino Basin negotiators had referred. On May 12, 1975, four months after the initiation of the Chino Basin adjudication, the California Supreme Court issued its decision in City of Los Angeles v. City of San Fernando et al., reversing the trial court's application of a "mutual prescription" solution to the determination of water rights in the San Fernando Valley groundwater basin. The San Fernando decision precipitated an entire restructuring of the planned stipulation in the Chino Basin case.¹⁶⁸

There were two key elements of the San Fernando decision that affected the planned determination of rights in the Chino Basin. First, the California Supreme Court had ruled that the water rights of overlying landowners could not be reduced to a specific quantity, but were limited only by "beneficial use" and the "correlative rights" of other overlying landowners. Therefore, the water rights of overlying

Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster.

Financial feasibility, economic impact and the cost and optimum utilization of the Basin's resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters.¹⁹²

Watermaster, with the advice of the Advisory and Pool Committees, is granted discretionary powers in order to develop an optimum basin management program for Chino Basin, including both water quantity and quality considerations. Withdrawals and supplemental water replenishment of Basin Water, and the full utilization of the water resources of Chino Basin, must be subject to procedures established by and administered through Watermaster with the advice and assistance of the Advisory and Pool Committees composed of the affected producers. Both the quantity and quality of said water resources may thereby be preserved and the beneficial utilization of the Basin maximized.¹⁹³

It is essential that this Physical Solution provide maximum flexibility and adaptability in order that Watermaster and the Court may be free to use existing and future technological, social, institutional and economic options, in order to maximize beneficial use of the waters of Chino Basin.¹⁹⁴

The Governance Structure for Chino Basin: The Chino Basin Watermaster, the Watermaster Advisory Committee, and the Pool Committees. The governance structure for the Chino Basin involves the participation of the three producers' pools, their selection of representatives to a Watermaster Advisory Committee, and the designation of a Chino Basin Watermaster. Although the Chino Basin water producers had given consideration to the development of a multi-member court-appointed Watermaster that would cross water district boundary lines in similar fashion to the Watermaster created in the Main San Gabriel Basin, they settled instead upon the designation of one of the overlying municipal water districts.

The Judgment appoints the five-member Board of Directors of the Chino Basin Municipal Water District (which overlies about 75 percent of the Chino Basin) to serve as the Chino Basin Watermaster. The court appoints the Watermaster, which serves at the pleasure of the court. The initial appointment in the Judgment was for five years. After that initial appointment, the Watermaster could be reappointed or could be changed at any time at the direction of either the court or a majority of the members of the Watermaster Advisory Committee.¹⁹⁵

The Chino Basin Municipal Water District "was acceptable to most producers because they were already governed by it (its boundaries covered about 75 percent of the groundwater basin), and it had also

defended their interests in the Santa Ana river adjudication initiated by the Orange County Water District."¹⁹⁶ In addition, the District had been involved in the early development of the Chino Basin management plan throughout the pre-adjudication period, and already had most of the powers needed for the management of the basin, including access to imported water supplies from MWD. However, there was apparently some expression of concern about the selection of the District as Watermaster from those Chino Basin water producers in Riverside and Los Angeles Counties (and thus not within the District and unable to vote for its Board of Directors), because during the consideration of the Watermaster designation in the negotiations accompanying the adjudication, the District "also made known that it would drop the adjudication if it were not selected."¹⁹⁷

While agreeing to the designation of the Chino Basin Municipal Water District Board of Directors as the Chino Basin Watermaster, the producers also placed a representative structure around the Watermaster, and placed a number of conditions on Watermaster operations, such as requiring the approval of the Watermaster Advisory Committee before the taking of any substantive basin management actions. This allows all producers, within the District boundaries and without, to exercise a check upon the District's actions as Watermaster. "In fact, there is little the Watermaster can do without producer approval."¹⁹⁸

The Judgment directs the Watermaster to organize a Pool Committee of producer representatives for each of the Pools created under the physical solution in the Judgment. In fact, of course, this was merely a formal institutionalization of the Pool Committee that had been in existence since the beginning of the adjudication. The Pool Committees are the governing bodies for the individual Pools of producers, and may decide matters affecting the internal administration of their respective Pools. The Pool Committees, in turn, choose representatives to serve on the Watermaster Advisory Committee referred to above, which reviews Watermaster activities, may recommend or require Watermaster actions, and which can also serve to decide issues affecting more than one Pool.¹⁹⁹ In addition to the water producer representatives, the other overlying municipal water districts (Pomona Valley Municipal Water District, San Bernardino Valley Municipal Water District, and Western Municipal Water District of Riverside County) are allowed to place one representative each on the Watermaster Advisory Committee.

Pool Committees shall be composed as specified in the respective pooling plans, and the Advisory Committee shall be composed of not to exceed ten (10) voting representatives from each pool, as designated by the respective Pool Committee.²⁰⁰

The producers in the Overlying (Agricultural) Pool annually elect a 20-member Overlying (Agricultural) Pool Committee. In this process, voting is based on one vote per 100 acre-feet of production in the previous year, as shown in Watermaster's records.²⁰¹

The Overlying (Nonagricultural) Pool Committee consists of the entire Overlying (Nonagricultural) Pool, which had only 12 members at

the time of the Judgment. Voting in the Overlying (Nonagricultural) Pool is on a one member, one vote basis.²⁰²

All producers in the Appropriative Pool (22 at the time of the Judgment) are members of the Appropriative Pool Committee. Voting in the Appropriative Pool Committee is allocated by a scheme totaling 1,000 votes, with 500 votes apportioned among the members by production right and 500 votes apportioned among the members by assessments paid. To prevail in a weighted vote, one must have the support of a majority of the votes and at least one-third of the members. When no members object, the Appropriative Pool Committee may conduct business on the simpler one member, one vote basis, but the weighted voting method must be used when called for by any member.²⁰³

The Pool Committees each select their representatives to the Watermaster Advisory Committee. The Overlying (Agricultural) Pool has chosen 10 representatives to the Watermaster Advisory Committee, the Overlying (Nonagricultural) Pool has chosen 3 representatives to the Watermaster Advisory Committee, and the Appropriative Pool has chosen 10 representatives to the Watermaster Advisory Committee (although 8 of the 10 Appropriative Pool representatives on the Watermaster Advisory Committee are designated in the Judgment: the Cities of Chino, Ontario, Pomona, and Upland, the Cucamonga and Monte Vista County Water Districts, and the Fontana Union and Pomona Valley Water Companies).

On the Watermaster Advisory Committee, total voting power is 100 votes allocated among the three pools in proportion to the total assessments paid to Watermaster during the preceding year, provided that the least the Overlying (Agricultural) and Appropriative Pools can have is 20 votes each and the least the Overlying (Nonagricultural) Pool can have is 5.²⁰⁴ This voting scheme reflects an additional inducement to the Appropriative Pool. Because of the allocation of Basin safe yield and the replenishment assessment formulas, it was known beforehand that the Appropriative Pool members would be paying the great majority of the assessments under the Chino Basin management program. This voting scheme on the Watermaster Advisory Committee assures the Appropriative Pool members of "a primary voice in basin policymaking."²⁰⁵

The Watermaster Advisory Committee, and each of the Pool Committees, are led by a President, a Vice-President, a Secretary, and a Treasurer. By tradition, but not by requirement, the Secretary of the Watermaster Advisory Committee (and of each of the pool committees) has been the Chief of Watermaster Services. The Treasurer of the Watermaster Advisory Committee has been the CBMWD Treasurer.

Water Management in Chino Basin Since the Adjudication

The Governance Structure Since the Judgment. Administration of the Judgment was underway soon after its formal entry. The first meeting of the Chino Basin Municipal Water District's Board of Directors as the Chino Basin Watermaster was held on February 15, 1978. At that meeting, the Watermaster signed a "services and facilities contract" with the Chino Basin Municipal Water District. In other words, the Chino Basin

NOTES

1. California Department of Water Resources (1987) California Water: Looking to the Future. Bulletin No. 160-87. Sacramento, CA: State Printing Office, p. 7.
2. Susan M. Trager (1988) "Emerging Forums for Groundwater Dispute Resolution in California: A Glimpse at the Second Generation of Groundwater Issues and How Agencies Work Towards Problem Resolution." Pacific Law Journal. Vol. 20, No. 1 (October), pp. 46-47.
3. Joe A. Moreland (1972) Artificial Recharge in the Upper Santa Ana Valley, Southern California. U.S. Geological Survey Open-File Report. Menlo Park, CA: U.S. Geological Survey, p. 9.
4. Appellants' Brief, Orange County Water District v. City of Riverside et al., 1958, pp. 7-9.
5. Orange County Water District Annual Report, June 1983.
6. Appellants' brief, Orange County Water District v. City of Riverside et al., p. 6; Trager, op. cit., p. 44.
7. Appellants' Brief, Orange County Water District v. City of Riverside et al., pp. 7-9.
8. Moreland, op. cit., p. 9.
9. Appellants' Brief, Orange County Water District v. City of Riverside et al., p. 6.
10. Moreland, op. cit., p. 10; also, California Department of Water Resources (1970) Meeting Water Demands in the Chino-Riverside Area. Appendix A: Water Supply. Bulletin No. 104-3. Sacramento, CA: State Printing Office, pp. 5-11.
11. Chino Basin Watermaster (1978) Annual Report of the Chino Basin Watermaster for the 1977-78 Water Year. Rancho Cucamonga, CA: Chino Basin Municipal Water District, p. 3.
12. Interview with Donald Peters, Chief, Watermaster Services, Chino Basin Municipal Water District, Rancho Cucamonga, California, July 25, 1988.
13. J.H. Koehler (1983) Artificial Recharge in the Northern Part of Chino Ground-Water Basin, Upper Santa Ana Valley, California. U.S. Geological Survey Water-Resources Investigations Report 82-4122. Sacramento, CA: U.S. Geological Survey, p. 5.
14. Negotiating Committee on a Chino Basin Management Plan (1971a) Working Memorandum No. 25, p. 63.
15. California Department of Water Resources (1966) Planned Utilization of Ground Water Basins, San Gabriel Valley. Appendix A:

122. Id. at 10.

123. In 1978, CBMWD and WMWD entered into an agreement to divide their joint obligation under the Santa Ana Riiver Judgment for delivery of the required quantities of water to the Lower Area at Prado. Trager, op. cit., pp. 48-49.

124. Judgment, Orange County Water District v. City of Chino et al., 11 et seq.

125. Id. at 13 et seq.

126. Id. at 12.

127. Id. at 16.

128. Id.

129. Id. at 10.

130. Id. at 15.

131. Santa Ana River Watermaster (1983) Annual Report of the Santa Ana River Watermaster for the Water Year 1981-82. Orange, CA: Santa Ana River Watermaster, p. 13.

132. Ibid., p. 4.

133. Ibid., p. 2.

134. Ibid., p. 4.

135. Ibid., p. 5.

136. Ibid., pp. 8-9.

137. Ibid., letter of transmittal.

138. Ibid., p. 9.

139. Ibid., letter of transmittal.

140. California Department of Water Resources, 1970, op. cit., p. 78.

141. Albert J. Lipson (1978) Efficient Water Use in California: The Evolution of Groundwater Management in Southern California. Santa Monica, CA: RAND Corporation Report R-2387/2-CSA/RF, p. 75.

142. Ibid., pp. 75-76.

143. Negotiating Committee on a Chino Basin Management Plan, 1971b, op. cit.

144. Lipson, op. cit., p. 77.
145. Ibid., p. 75.
146. Negotiating Committee on a Chino Basin Management Plan, 1971b, op. cit., p. 37.
147. Ibid., p. 36 (emphasis added).
148. Ibid., p. 38.
149. Ibid., p. 37.
150. Ibid.
151. Ibid., p. 34.
152. Ibid., p. 33.
153. Ibid., p. 33.
154. Ibid., pp. 33-34.
155. Ibid., pp. 33-34.
156. Ibid., p. 34.
157. Ibid., p. 37.
158. Ibid., p. 37.
159. Ibid., p. 35.
160. Ibid., p. 34.
161. Chino Basin Watermaster, 1978, op. cit., p. 1.
162. Lipson, op. cit., pp. 75-76.
163. Chino Basin Watermaster Annual Report, 1978, op. cit., p. 2.
164. Lipson, op. cit., p. 77.
165. Civil Case No. 164327 in the Superior Court of the State of California in and for the County of San Bernardino.
166. Judgment, Chino Basin Municipal Water District v. City of Chino et al., Civil Case No. 164327 in the Superior Court of the State of California in and for the County of San Bernardino, 1978, p. 1 [hereafter "Chino Basin Judgment"].
167. Interview with Donald Peters, July 25, 1988.

168. Interview with Thomas M. Stetson, Stetson Engineers, West Covina, California, July 26, 1988.
169. Lipson, op. cit., p. 76.
170. Ibid., p. 76.
171. Ibid., p. 78.
172. Ibid., pp. 78-79.
173. Ibid., pp. 76-77; Chino Basin Judgment, p. 7.
174. Lipson, op. cit., pp. 78-79.
175. Ibid., pp. 76-77.
176. Ibid., p. 78.
177. Ibid., pp. 78-79.
178. Chino Basin Judgment, p. 2.
179. Id. at 6.
180. Id.
181. Chino Basin Judgment, Exhibit C, pp. 36-59.
182. Chino Basin Judgment, pp. 6-7.
183. Id. at 7.
184. Chino Basin Judgment, Exhibit H, pp. 73-77.
185. Chino Basin Judgment, 1978, Exhibit C.
186. Lipson, op. cit., p. 82.
187. Ibid.
188. Chino Basin Judgment, p. 9.
189. Id. at 8.
190. Id. at 23.
191. Id. at 24.
192. Chino Basin Judgment, Exhibit I, p. 79.
193. Chino Basin Judgment, p. 24.
194. Id. at 23.

195. Id. at 12.
196. Lipson, op. cit., p. 81.
197. Ibid.
198. Ibid.
199. Chino Basin Judgment, p. 21.
200. Id. at 17 et seq.
201. Chino Basin Judgment, Exhibit F, p. 62.
202. Chino Basin Judgment, Exhibit G, p. 65.
203. Chino Basin Judgment, Exhibit H, p. 68.
204. Chino Basin Judgment, p. 18.
205. Lipson, op. cit., 81.
206. Chino Basin Watermaster, 1978, op. cit., p. 4.
207. Although the first reappointment of the Chino Basin Municipal Water District was made with the unanimous support of the Watermaster Advisory Committee, and the second reappointment was endorsed by a majority (but not all) of the Watermaster Advisory Committee, reflecting the discontent of some of the water producers in the Basin, the District appears likely to continue to serve as Chino Basin Watermaster. When asked about the prospects for continued reappointment of the District as Watermaster, the current Chief of Watermaster Services at the District replied, "Who else would do it?" Interview with Donald Peters, July 25, 1988.
208. Interview with Donald Peters, July 25, 1988.
209. Chino Basin Watermaster, 1978, op. cit., pp. 7-11.
210. Chino Basin Watermaster (1985) Seventh Annual Report of the Chino Basin Watermaster, 1983-84. Rancho Cucamonga, CA: Chino Basin Municipal Water District, p. K-7.
211. Chino Basin Watermaster, 1978, op. cit., p. 13.
212. Chino Basin Watermaster, 1990, op. cit., p. 18.

AMENDED SERVICES AND FACILITIES CONTRACT

THIS CONTRACT made and entered into this 5th day of August 1992, by and between the Chino Basin Municipal Water District, hereafter referred to as "District," and Chino Basin Municipal Water District acting in its capacity as Watermaster pursuant to appointment of the Court in Judgment entered, Chino Basin Municipal Water District vs. City of Chino, et al., San Bernardino Superior Court Case No. WCV51010 (formerly Case No. SCV164327), hereafter referred to as "Watermaster";

W I T N E S S E T H:

WHEREAS, District is willing and able, through its staff and facilities, to provide certain services necessary in the performance of Watermaster's duties; and

WHEREAS, it is deemed to be in the best interest of Watermaster to contract with the District rather than to procure independent personnel and facilities for said services;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein made and contained, the parties hereto agree as follows:

1. SCOPE OF AGREEMENT. District agrees to provide services and facilities as designated in paragraph 5. hereof and as may be reasonably requested from time to time and consistent with District's primary obligation to serve the needs of District, and its Watermaster function, to be performed for and on behalf of Watermaster, pursuant to the conditions imposed hereby unless terminated as set forth herein.

2. REIMBURSEMENT FOR SERVICES.

a. It is agreed by the parties that District shall be reimbursed by Watermaster for the cost of all services performed and facilities utilized pursuant to this Contract. Such costs shall be determined through the application of generally accepted accounting principles and in compliance with the following guidelines:

1) All direct labor costs and related labor costs of personnel involved.

2) The cost of materials and/or supplies utilized.

3) The cost of computer time, postage and special photocopy runs.

4) A percentage charge to cover general and administration overhead shall be added to items 1) - 3) above. The general and administration overhead shall be computed as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

b. District shall be reimbursed the actual cost of insurance, materials and/or supplies purchased exclusively for Watermaster use.

c. District shall submit to Watermaster a monthly statement for services rendered by District to Watermaster no later than the fifteenth (15) of each next succeeding month. Payment thereof to be made by Watermaster to District within thirty (30) days of receipt of such statement.

3. CONTRACTED SERVICES. Consulting services shall be contracted for independently by Watermaster, including but not limited to legal, engineering and audit.

4. SUPPLEMENTAL WATER. Supplemental water for replenishment purposes as may be required by the Judgment, shall be sold by District to Watermaster at District's actual cost.

5. SERVICES AND FACILITIES TO BE PERFORMED BY THE DISTRICT. The services and/or facilities as set forth hereafter constitute a general outline of the duties that may or may not be requested by Watermaster, for District to perform from time to time. District is hereby requested by Watermaster to do and faithfully perform the following services and make facilities available as may be reasonable from time to time, for and on behalf of Watermaster throughout the term of this Contract:

a. Make available for the holding of Watermaster meetings and/or public hearings from time to time, the facilities of District. Prepare, copy and mail written

findings and decisions of Watermaster public hearings, minutes, and other documents as may be necessary from time to time. Maintain and make available for inspection all records, including minutes of any meeting of Watermaster, the Watermaster Advisory Committee, and/or any Pool Committee.

b. Make available to Watermaster said facilities, telephone equipment, supplies, other equipment, utilities and personnel, as may be necessary and requested by the Watermaster to perform the day to day operations of the Watermaster.

c. Prepare, upon request of Watermaster, appropriate agendas for all meetings of Watermaster. Prepare and distribute the annual Watermaster report. Process all the Watermaster correspondence.

d. Coordinate, maintain, and administer the meter service, carry-over rights, ground water storage and withdrawal procedures, supplemental water purchases and assignment, transfer and lease of decreed rights.

e. Receive and analyze producer reports and compile, organize and distribute production data summaries as needed. Compile necessary historical data for safe yield purposes.

f. Conduct in lieu and other negotiated procedures and coordinate such programs upon implementation.

g. Provide such incidental general engineering support as may be required.

h. Keep and maintain adequate accounts of all financial transactions of Watermaster, make deposits and disburse such funds as may be received by the Watermaster, and invest funds of the Watermaster as authorized.

i. Keep and maintain the appropriate fidelity and other bonds required by the Judgment and/or appropriate insurance as necessary. Keep and maintain records allocating costs and expenses of Watermaster as between the several pools. Issue assessments as levied by Watermaster, including notice thereof and perform collection procedures if required.

j. Cause to be performed an independent annual audit of Watermaster funds.

k. Prepare and distribute the annual Administrative Budget and incidental reports.

6. DISTRICT EMPLOYEES WORKING FOR WATERMASTER. Any District staff working on or providing assistance to the Watermaster program shall receive their direction from and report to the Advisory Committee.

7. SPECIAL PROJECTS. It is anticipated by the parties hereto that special projects, in addition to the day to day administrative duties set forth in paragraph 5. hereof, may be required from time to time. All such special projects will be initiated only by separate work orders approved by the Watermaster Advisory Committee and Watermaster.

8. LIABILITY. District shall list Watermaster as an additional named insured on its policies of liability insurance, or secure, if necessary, separate policies of liability insurance.

9. ENTIRE CONTRACT AND MODIFICATION. This Contract expresses the whole agreement between the parties, there being no representations, warranties or other agreements not herein expressly set forth or provided for. No change, or modification of, or condition to this Contract shall be valid unless the same shall be in writing and signed by both parties hereto.

10. BINDING CONTRACT. This Contract shall be binding upon and inure to the benefit of District, its successors and assigns, and shall be binding upon and inure to the benefit of Watermaster.

11. PARAGRAPH HEADINGS/COUNTERPARTS. All paragraph headings herein are inserted for the convenience of the parties only. This Contract may be executed in several counterparts, each of which shall be deemed to be an original and which together will constitute one and the same instrument.

12. TERMINATION. This Contract may be terminated by either party, with or without cause, by giving six (6) months written notice to the other party. This Contract shall be automatically terminated whenever District shall cease to be Watermaster.

13. WAIVER. The waiver of, or failure to enforce any provision of this Contract, shall not operate as a waiver of such provisions, or any future breach of any such provisions.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives on the date first above appearing.

"WATERMASTER"

By [Signature]
President

"DISTRICT"

By [Signature]
President of the Board of
Directors of CHINO BASIN
MUNICIPAL WATER DISTRICT

ATTEST:

By [Signature]
Secretary

ATTEST:

By [Signature]
Secretary of the Board of
Directors of CHINO BASIN
MUNICIPAL WATER DISTRICT

APPROVED BY WATERMASTER ADVISORY COMMITTEE

By [Signature]
Chairman

contract

ADOPTED BUDGET 1991/92
General Fund

NOTES TO GENERAL & ADMINISTRATIVE ABATEMENTS

The General and Administrative (G&A) Expense is a charge made to each and every non-General Fund or General Fund Special Project to cover the cost of administration of the District as a whole. These costs cannot be directly charged against a plant or a project and include such costs of operations as follows:

- Administration of the District
- Purchasing and paying the bills of the District
- Issuing statements and receiving payment therefore
- Routine Customer Services
- Collection and distribution of receipts among the taxing funds
- Engineering services of general benefit to the District
- General office maintenance, utilities and insurance
- Preparation of payroll for all employees
- Accounting work pertinent to all funds but not distinct to any (budget control, trial balance work, etc.)
- Any coverage or shortage incurred in arriving at a proper percentage for direct charges for payroll burden
- And anything left over in the General Fund at the close of audit.

The General and Administrative Expense percentage is derived from the prior year's audit, in this instance the audit for the year ended June 30, 1991.

| | Total Expenses | Less Depreciation | Net Expenses |
|-------------------------------------|-------------------|----------------------|---------------------|
| Internal General Fund (Unabated) | \$ 3,909,720 | \$455,180 | \$3,454,540 |
| Water Fund | 697,454 | | |
| Regional Waster Water Funds | 17,037,816 | | |
| Tertiary Funds | 4,220,680 | | |
| Co-Composting Fund | 269,016 | | |
| Non-Reclaimable Waste System | 2,816,785 | | |
| AD #1 Fund | <u>1,820</u> | | |
| Total Expenses | \$35,223,291 | | |
| Less G&A Applied | | | <u>2,028,331</u> |
| Total Expenses per Audit | | | <u>\$33,194,960</u> |

$$\frac{\$3,454,540}{\$33,194,960} = 10.41\% \text{ Actual Percentage used for 1991/92}$$

EXHIBIT "A"

12/31/80

3. Third Annual Report To The Court
And Interventions

Staff presented the final draft of the Watermaster Third Annual Report as approved by the Watermaster Advisory Committee. By motion and unanimous vote:

(the Watermaster Third Annual Report was approved).

Discussion ensued regarding the intervening parties listed in Appendix "G" of the Third Annual Report. By motion and unanimous vote:

(the intervening parties listed on Appendix "G" of the Third Annual Report were approved).

4. OC-59 Agreement and Draft Memorandum

Staff presented the OC-59 Agreement as signed by the Chino Basin MWD and a draft Memorandum of Understanding as approved by the Watermaster Advisory Committee. Staff stated the intent of the Memorandum was to set forth the rights and obligations of the Chino Basin MWD and Chino Basin Watermaster pertaining to the acquisition of use rights in the MWD OC-59 Connection to the Foothill Feeder. Discussion ensued on Paragraph 4 of the Memorandum and it was suggested the wording be amended to reflect the use of OC-59 by other parties to apply only to the use right as acquired and controlled by CBMWD. By motion and unanimous vote:

(the Memorandum of Understanding be approved subject to the language modification in Paragraph 4).

5. Guasti Park Agreement

Staff reported the Watermaster Advisory Committee, at its meeting of December 23, 1980, recommended Watermaster not participate in the Guasti Park Agreement at this time because the percolation rate of these basins is, for the most part, non-measurable and staff time necessary to compute the benefit is not justified. It would, however, be in the interest of Watermaster to enter into such an agreement if the percolation rate (determined by actual field studies) was sufficient to make a measurable impact in Watermaster's annual recharge program. By motion and unanimous vote, it was decided:

(Watermaster not participate in the Guasti Park Agreement negotiations at this time).

6. Retention of Legal Counsel

Staff reported the Watermaster Advisory Committee, at its meeting of December 23, 1980, recommended Watermaster maintain the firm of Donald D. Stark, A Professional Law Corporation, as legal counsel. By motion and unanimous

EXHIBIT E

vote, it was decided:

(the firm of Donald D. Stark, A Professional Law Corporation,
be maintained as legal counsel for Watermaster).

7. Status Reports

Spreading Activities - Staff reported the SBCFCD has contracted with E. L. Yeager Co. to remove 150,000 yards of material from the number one basin at San Sevaine. When this work is completed, the percolation rate should double. At East Etiwanda, SBCFCD is cleaning out some of the smaller dikes to provide additional and improved spreading areas. The spreading basins completed at Day Spreading Grounds are being utilized and the percolation rate has been excellent. Basins 1 and 2 at Montclair Basins are being used for spreading. The work on the spillway into Basin 3 is expected to begin in January by the SBCFCD.

Replenishment Water for Oct./Nov. 1980 was reviewed by staff and a summary of the replenishment schedule discussed. Staff stated that transfer of cyclic storage water will no longer be made to satisfy the monthly replenishment schedule as originally requested by MWD. The probable increase of intake rate, after basin renovation, may provide an adequate replenishment rate to satisfy the requirements plus add water to our cyclic storage account.

Meter Installations are being achieved and there are approximately 200 wells remaining to be metered.

8. Other Business

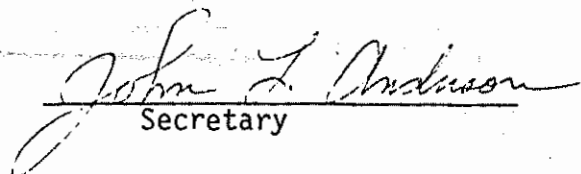
Staff introduced Norm Johnson, owner of the Fourth Street Rock Crusher, and Tom Paradise of the Planning and Engineering Firm of PBR, and noted they are working on a project in the north Fontana area which might create a groundwater recharge site. Staff informed the Board the project was being reviewed by the Watermaster Advisory Committee.

9. Adjournment

There being no further business, the meeting was adjourned at 10:15 AM.

10. Documents Distributed

Minutes of October 29, 1980
Treasurer's Reports
Final Draft Watermaster Third Annual Report
OC-59 Agreement and Draft Memorandum
Oct./Nov. 1980 Replenishment Water Summary


Secretary

12/7/88

D. Accept the proposed amendments to the 1988-89 budget.

E. Approve the Eleventh Annual Report of the Chino Basin Watermaster

F. Award the contract for the Chino Basin Groundwater Monitoring Program to James M. Montgomery Consulting Engineers and authorize a budget transfer of \$35,675 from the SB-222 account to cover costs.

G. Approve the one year lease agreement between Cucamonga County Water District and West San Bernardino County Water District in the amount of 1,561.826 acre feet.

H. Approve the Local Storage Agreement for Southern California Water Company in the amount of 500 acre feet.

Motion carried by unanimous vote.

Consent Calendar Item A - Minutes of October 5, 1988.

Chief Peters noted minor corrections to the Minutes. There being no discussion, the following motion was made by Director Dunihue, seconded by Director Anderson:

MOVED, the Minutes of October 5, 1988 be approved as corrected.

Motion carried by unanimous vote.

2. Vouchers

Vouchers 2250 through 2258 were presented for ratification. There being no discussion, the following motion was made by Director Borba, seconded by Director Dunihue:

MOVED, Vouchers 2250 through 2258 be approved as presented.

Motion carried by unanimous vote.

3. Notice of Motion and Motion for Review of Watermaster Programs

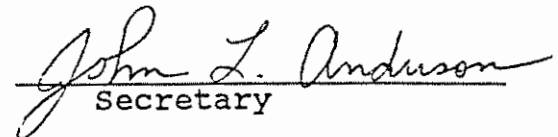
Mr. Peters presented his December 7, 1988 letter advising the Watermaster of the Motion filed by Attorney Susan Trager on behalf of the Cities of Norco and Chino, and Waterworks District No. 8 asking the Court to review certain decisions and actions taken by Watermaster. Chief Peters stated the Advisory Committee had directed Watermaster Attorney Guido Smith to review the motion and develop a course of action to be followed. Mr. Peters further stated an advisory ad hoc committee had been formed to work with Mr. Smith and any course of action to be taken would be recommended to Watermaster for

approval. Following brief discussion, the Motion was received filed.

4. Other Business

Chairman French reviewed the draft report released by the State Water Resources Control Board on the San Francisco Bay-Delta Estuary which threatens the economy and well being of Southern California. French detailed the impacts on Southern California if the report were approved, specifically restricting the State Water Project deliveries to 1985 levels. After brief discussion, Staff was requested to revise the report and prepare a written summary to the Board detailing impacts on the Chino Groundwater Basin if the report were approved and a proposed course of action to mitigate the impacts.

There being no further business to come before the meeting, meeting was adjourned to January 4, 1989 at 8:30 a.m.


Secretary

MINUTES
OF THE
CHINO BASIN WATERMASTER MEETING
April 3, 1996

The meeting of the Chino Basin Watermaster was held at the offices of Chino Basin Municipal Water District, 9400 Cherry Avenue, Building A, Fontana, April 3, 1996 at 8:07 A.M.

Watermaster Members Present

| | |
|------------------|---------------------|
| Bill Hill | Chairman |
| John L. Anderson | Secretary/Treasurer |
| Wyatt Troxel | Member |
| Anne W. Dunihue | Member |

Watermaster Members Absent

| | |
|--------------|---------------|
| George Borba | Vice Chairman |
|--------------|---------------|

Watermaster Staff Present

| | |
|------------------|-------------------------------|
| Traci Stewart | Chief of Watermaster Services |
| Michelle Lauffer | Water Resources Specialist |
| Mary Staula | Administrative Assistant |

Others Present

| | |
|-------------------|---|
| Steve Arbelbide | California Steel Industries |
| Paula Barron | Chino Basin Municipal Water District |
| Victor Barrion | Southern California Edison Co. |
| Gerald Black | Fontana Union Water Company |
| Martha Cannon | Kaiser Ventures, Inc. |
| Robert DeLoach | City of Pomona |
| Eric Gamer | Kaiser Ventures, Inc. |
| Joe Grindstaff | Monte Vista Water District |
| Sal Gumina | Chino Basin Water Conservation District |
| Roger Larkin | State of California, CIM |
| Mike McGraw | Fontana Water Company |
| Martin Pastucha | City of Upland |
| Robb Quincey | Chino Basin Municipal Water District |
| Larry Rudder | Chief Financial Officer |
| Tom Shollenberger | Cucamonga County Water District |

Chairman Hill called the meeting to order at 8:07 A.M.

He asked if there were any members of the public that wished to address the Board. There being none, Chairman Hill asked if any Consent Calendar items needed to be pulled for discussion. There being none, he asked if all Consent Calendar items had been approved by the Advisory Committee. Ms. Stewart responded they had.

Secretary Anderson said that in reading Consent Calendar Item No. F, Watermaster Office Lease, he noticed there are only eight vehicle parking spaces at the new location. Ms. Stewart explained that the eight spaces shown on the building lease are assigned, full-time employee parking spaces and that there is ample parking available for meeting attendees.

1. **CONSENT CALENDAR**

Chairman Hill said the first order of business was the Consent Calendar.

Motion by Mr. Troxel, second by Ms. Dunihue and by unanimous vote:

Moved, to ratify/approve Consent Calendar, Items A through F as follows:

- A. *Vouchers Numbered 3117 through 3170 in the amount of \$581,891.36.*
- B. *Treasurer's Report of Financial Affairs for period ended December 31, 1995.*
- C. *Proposed F.Y. 1996/97 Budget.*
- D. *City of Upland's Intent to Sell Stored Water.*
- E. *Cyclic Storage In-Lieu Exchange to allow Metropolitan Water District of Southern California to increase its cyclic storage account by in-lieu exchange.*
- F. *Relocation of Watermaster Administrative Offices and Watermaster Services staff, and ratification of office lease.*

EXHIBIT G

Chairman Hill said that due to confusion over the Court re-appointment of CBMWD as Watermaster, he would ask Tom Shollenberger to reaffirm the understanding that the Board's past actions were based upon the thought that they were Watermaster and that they would continue to act as Watermaster by motion of the Advisory Committee until a new Court appointment is made. Mr. Shollenberger acknowledged the motion was made at the Advisory Committee and that the terms were acceptable.

2. STAFF REPORT

A. SAWPA SUN 4/330 WORK STATION RELOCATION

Ms. Stewart reported that the SUN Work Station was relocated by SAWPA to the Watermaster Service's office. She explained that the SUN Work Station contains the IGSM Model that was developed during the Water Resources Management Study.

B. SPECIAL COUNSEL TO THE OVERLYING (AGRICULTURAL) POOL

Ms. Stewart said that on February 8, 1996, the Ag Pool took action to approve the retention of special counsel, Dan McKinney, to represent their interest regarding the Desalter Agreement, and to cover the expenses incurred by them in utilizing special counsel. Ms. Stewart asked the Board if they saw any problems with the Chief of Watermaster Services approving payment on the special counsel invoices, going back to December, 1995, for approximately \$2100.00. These funds will be taken out of the Ag Pool Reserves.

Chairman Hill asked if anyone had any problems with Ms. Stewart's proposal. There were none. He then confirmed with Financial Services Officer, Larry Rudder, that the lease check for the new Watermaster office space had been mailed.

C. DESALTER AGREEMENT

On behalf of Kaiser Ventures, Inc., Eric Garner with Best, Best & Krieger, expressed some concerns regarding the Desalter Agreement. Chairman Hill explained that the concerns he expressed were between Kaiser Ventures, Inc. and the Regional Water Quality Control Board and that this agreement had no bearing on Kaiser's offset agreement. He asked that a clarification be made on Paragraph 5 and Chairman Hill explained that Watermaster does not have that option. He said they could only approve it as presented because it had been approved by a unanimous vote of the Advisory Committee. He entertained a motion to approve the Desalter Agreement.

Motion by Wyatt Troxel, second by John Anderson, and by unanimous vote:

Moved to approve the Advisory Committee's actions on the Desalter Agreement.

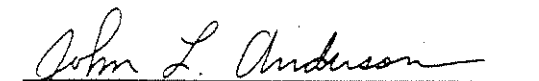
3. OTHER BUSINESS

Mr. Grindstaff thanked the CBMWD Board acting as Watermaster for their help during this difficult transition time. He provided an update on the appointment of a new Watermaster and the relocation of the staff.

Chairman Hill said that CBMWD would continue to do the things necessary to ensure a smooth transition for staff. He said that CBMWD would continue to pay the bills and make sure that everybody is protected on their retirement, health benefits, etc., according to the agreement worked out between Mr. Quincey and Mr. Shollenberger.

Mr. Shollenberger pointed out literature available in the back of the room that shows the correspondence that has been sent between the staff, members of CBMWD and the Watermaster Advisory Committee. He explained that Mr. Quincey's punch list should be satisfactory to the Advisory Committee for the balance of the fiscal year and as it relates to PERS and those employee-related items that will extend past June 30, 1996.

There being no further business, the meeting was adjourned at 8:30 a.m.


Secretary

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06/30/96

* Approved by unanimous vote of those present at the Watermaster Board Meeting held July 10, 1996.

MINUTES
OF THE
CHINO BASIN WATERMASTER MEETING
July 10, 1996

The meeting of the Chino Basin Watermaster was held at the offices of Chino Basin Municipal Water District, 9400 Cherry Avenue, Building A, Fontana, July 10, 1996 at 8:00 A.M.

Watermaster Members Present

| | |
|------------------|---------------------|
| John L. Anderson | Secretary/Treasurer |
| Wyatt Troxel | Member |
| Anne W. Dunihue | Member |

Watermaster Members Absent

| | |
|--------------|---------------|
| George Borba | Vice Chairman |
| Bill Hill | Chairman |

Watermaster Staff Present

| | |
|---------------|-------------------------------|
| Traci Stewart | Chief of Watermaster Services |
| Mary Staula | Administrative Assistant |

Others Present

| | |
|---------------------|---|
| Steve Arbelbide | California Steel Industries, Inc. |
| Paula Barron | Chino Basin Municipal Water District |
| Martha Cannon | Kaiser Ventures, Inc. |
| Jean Cihigoyenetché | Attorney for Chino Basin Municipal Water District |
| Douglas D. Drury | Chino Basin Municipal Water District |
| Larry Rudder | Financial Services Officer |
| Tom Shollenberger | Cucamonga County Water District |

Secretary Anderson called the meeting to order at 8:10 A.M.

I. CONSENT CALENDAR

Secretary Anderson asked if any consent calendar items needed to be pulled for discussion. Mr. Troxel asked for more information relating to Items B.2 and B.3.

Ms. Stewart reported that Item B.2., the Desalter Agreement, was approved by the Watermaster Board in April and is scheduled for adoption by the Regional Water Quality Control Board (RWQCB) this Friday. In the interim, Kaiser Ventures', Inc. attorney had requested, and the Advisory Committee concurred, that Section 6 of the Agreement be modified to exempt the Overlying "Non-Agricultural" Pool from assessments resulting from this agreement. Kaiser's obligation to the desalter is defined in a separate agreement with the RWQCB. With respect to Item B.1, Ms. Stewart handed out a copy of the moving expenses approved by the Advisory Committee in April, 1996.

Mr. Troxel requested Items B.3, 4, 7, 9, 10 and 11 be pulled for discussion.

Motion by Ms. Dunihue, second by Mr. Troxel, and by unanimous vote:

Moved, to approve/ratify Consent Calendar Items A, B.1, B.2, B.5, B.6, B.8, B.12, B.13 and B.14 as follows:

- A.1. *Minutes of the Chino Basin Watermaster Meeting held March 20, 1996.*
2. *Minutes of the Chino Basin Watermaster Meeting held April 3, 1996.*
- B.1. *Vouchers numbered 3171 through 3286 in the amount of \$2,104,492.83.*
2. *Desalter Agreement: Addition of "and the Overlying (Non-Agricultural) Pool" to Section 6 of the Desalter Agreement among Watermaster, the Pools and the RWQCB, as requested by BB&K Attorney, Anne Thomas, representing Kaiser Ventures, Inc.*

EXHIBIT H

5. *Lease of Water Rights from the Santa Ana River Water Company to the Jurupa Community Services District for the period of July 1, 1995 through June 30, 1996, in the amount of 1800 acre-feet.*
6. *Notices of Sale or Transfer of Right to Water in Storage from:*
 - a. *Monte Vista Irrigation Company, through Watermaster, to the City of Chino, in the amount of 500 acre-feet of water.*
 - b. *City of Pomona, through Watermaster, to Southern California Edison Company, in the amount of 2,976 acre-feet of water.*
 - c. *City of Upland, through Watermaster, to the City of Chino, in the amount of 500 acre-feet of water.*
 - d. *City of Upland, through Watermaster, to the Jurupa Community Services District, in the amount of 2,500 acre-feet of water.*
 - e. *City of Upland, through Watermaster, to the City of Ontario, in the amount of 2,000 acre-feet of water.*
 - f. *City of Upland, through Watermaster, to the City of Chino, in the amount of 48 acre-feet of water.*
 - g. *Southern California Water Company, through Watermaster, to Fontana Water Company, in the amount of 500 acre-feet of water.*
 - h. *Marygold Mutual Water Company, through Watermaster, to Fontana Water Company, in the amount of 2,500 acre-feet of water.*
8. *Agency Agreements for the Provision of Water Service:*
 - a. *Between the County of San Bernardino and the City of Chino, in the amount of 133.87 acre-feet.*
 - b. *Agreement "B" between Praxair, Inc. and Fontana Water Company, in the amount of 427.446 acre-feet.*
12. *Budget Encumbrance of funds remaining in the F.Y. 1995/96 Adopted Budget after June 30, 1996, in the engineering services, groundwater monitoring, meter installation and compensation accounts.*
13. *Resolution No. 96-3 to Financially Support the Development of Additional Desalting in Chino Basin to Protect the Safe Yield of the Basin, when economically justifiable.*
14. *Interest Payments accrued on invoices that were not promptly paid to CCWD and the City of Pomona.*

Discussion ensued on the following consent calendar items:

3. ***Watermaster Relocation Budget***

Mr. Troxel asked how much of the \$50,000 relocation budget had been spent to date. Ms. Stewart explained that the relocation budget was prepared to demonstrate anticipated expenses to facilitate the move and, therefore, expenses and fixed assets were combined. To date, \$45,000 to \$46,000 of that budget has been spent, with the purchase of a budgeted desktop computer still pending. The Board requested an update be provided at their next quarterly meeting.

The Board agreed to take action on this item in conjunction with those remaining to be discussed.
4. ***Facilities & Services Agreement***

Mr. Troxel asked for clarification and a status of those items listed in the letter serving as an Interim Facilities and Services Agreement dated March 13, 1996 between Chino Basin Watermaster and Chino Basin Municipal Water District.

Ms. Stewart said the intent was to complete, to the extent possible, all items relating to the separation by the end of the fiscal year to facilitate a smooth transition of accounting records, etc. She said that the transfer of accounting functions, as well as a major portion of the remaining items, are complete.

Several Board members expressed confusion surrounding the separation since the Court ruled that CBMWD was to continue serving as Watermaster until September. Ms. Stewart advised them of the Judge's interest in the transition process moving forward so insurance, etc. would be in-place prior to the appointment of a new Watermaster. Mr. Troxel said he did not feel this Agreement could be formally adopted as it contains deadlines that had already slipped. Instead, he suggested the letter dated March 13, 1996 be used as a guideline for transitioning activities. When asked about the transfer of PERS, Ms. Stewart explained that a separate entity account had been applied for and, as indicated on the face of PERS' application, it will take approximately nine months to process the application.

Mr. Shollenberger asked to address the Board. He explained that his letter to the CBMWD Board of Directors was based on concerns for the employees who would be affected by the separation process, to ensure their benefits remain in effect. He quoted a conversation with Chairman Hill where he was told that while Mr. Hill had no objections to the transition, he did not necessarily agree with the appointees that were being recommended, but that he would instruct staff to cooperate. Mr. Shollenberger said that the Interim Agreement came out of that conversation and that his intent, as Chairman of the Advisory Committee, was primarily to promote cooperation during the transition. He agreed that, rather than formal action, the Board could receive this as an information item, however, some barriers continue to exist that need to be corrected.

Motion by Mr. Troxel, second by Ms. Dunihue, and by unanimous vote.

Moved, to receive Item No. 4 as an information item and where new schedules for the transition of activities are appropriate, they be developed.

7. **Watermaster Controller**

Ms. Stewart said that, recognizing the need to hire a new provider for accounting services as a result of the separation, Requests for Proposals (RFP) were sent out. She requested Alice Lichti (Watermaster Controller from 1978 until she retired in 1989), to review the RFP, the proposals received, and make a recommendation. Ms. Lichti attended an Advisory Committee Meeting on May 22, 1996 where she was asked to serve as Interim Controller. Upon her acceptance, a motion was made and approved, with the assumption it would go forward to whomever was appointed Watermaster at the June 18, 1996 Court Hearing. Subsequently, Resolution 96-2 (Item B.10) was approved by a greater than 80% vote of the Advisory Committee.

Ms. Dunihue said that until the Court ruling is decided, she was uncomfortable with the Board taking action on any of these items. Ms. Stewart explained that the CBMWD Board can serve as Watermaster without a provision for the ancillary services. She said there should not be a challenge with the separation of the functions from the physical entity serving as Watermaster. A consensus had been reached among the producers that CBMWD would not be acting in the capacity of Watermaster in the future. At the June 18, 1996 hearing, the Judge asked how transition activities and day to day operations were being handled and he was advised that everything was moving forward.

Discussion ensued regarding the Board's fiduciary responsibility. Mr. Troxel reminded the Board members that their role was to provide general oversight from a policy standpoint, and that they are not in the position of Controller. He also pointed out that the transition activities discussed under Item 4 included the accounting activities. Ms. Stewart explained that the direction received by staff was to enter into a letter agreement with Ms. Lichti to provide services as a consultant on an interim basis to help transition from CBMWD to a new provider of this service. It was pointed out that this agreement was approved by the Advisory Committee by a greater than 80% vote, with only one opposing vote.

Further discussion ensued. Mr. Shollenberger said that the last question asked at the Court hearing, before the gavel went down, was "What about services and the administrative end of it?" and the Judge said "I understand that is proceeding." Mr. Shollenberger interpreted that to mean the Judge acknowledged that as the proper process.

Mr. Cihigoyenette, CBMWD's counsel, said that he considers this an administrative decision that falls within the parameters of Watermaster and not a policy consideration of the Advisory Committee. Ms. Stewart said the City of Chino's attorney raised that question at the Advisory Committee meeting and it was pointed out to him that all of the contracts and agreements that have been entered into by Watermaster have been at the recommendation (or mandated direction) of the Advisory Committee. She provided the example in which the Watermaster Board did not participate in the retention of Watermaster's General Counsel. The Board was not involved in the request for proposals or the interview process. The Advisory Committee selected a group of people to interview the applicants, the Advisory Committee made a recommendation by greater than 80% vote, and the Watermaster Board signed the contract. She said that over the past 18 years, that is how the retention of all Watermaster outside services have been conducted. The retention of Ms. Lichti was not perceived as anything different and is considered to be within the purview of the Advisory Committee, as is the setting of policy and direction for the Watermaster.

Mr. Troxel reiterated that his initial question was not whether the Board should or should not approve this item, but in the absence of a contract, what exactly are they being asked to approve. If a contract is to be signed, it should be in a form that is amenable to CBMWD's format. Secondly, his concerns were whether an individual could replace a function that has been performed by a group within CBMWD, if CBMWD would be expected to support a shortfall if one occurred, and who would ask for help if it is needed? He added that he felt their role was to provide support whenever a need might occur during the transition so that the service is not disrupted or doesn't get stalled somehow.

Ms. Stewart assured the Board that Ms. Lichti has already provided excellent service and was retained because of her expertise in the area of Watermaster. Additionally, through the years, Watermaster has entered into various contracts with different types of formats that were acceptable. She said that, with regard to form, there really is not an issue. As far as Ms. Lichti being able to provide the service, if the number of invoices Watermaster processes in a year were added up with the combined effort of the little pieces of specific CBMWD employees performing accounting services to Watermaster, it totals approximately one day per week. It is not beyond the realm of what one individual is capable of doing.

Mr. Shollenberger added that initially, the accounting services were to be provided by staff, however the agreement with Ms. Lichti grew out of a concern for checks and balances and an overview of whatever was being

done in-house. Looking at this as a transition process, it was entered into as a letter agreement based on services rendered, as opposed to a contract, and stipulates that the services can be terminated at any time.

Ms. Dunihue said that since the Board had no part in hiring Ms. Lichti and if they are only the interim Watermaster, she did not understand why they were being asked to ratify the item. She said that if the Advisory Committee can make this type of a decision, ratification should wait for the new Board instead of pulling CBMWD into it.

Ms. Stewart explained that CBMWD asked the Court to appoint them Watermaster for the interim period and the Judge complied. The Judgment specifies that Watermaster will meet quarterly and act upon the recommendations and actions of the Advisory Committee. Therefore, this meeting is in conformance with the Judgment and the Board is acting in its capacity as Watermaster. The actions requested are not any different than those the Board has acted on over the last 18 years. Watermaster has a history of retaining their own counsel, retaining engineering services, and retaining other consultants as necessary in order to carry out Watermaster activities when the producers consider it appropriate, which are supported by Watermaster assessments. Then Watermaster, acting on the recommendations or mandates of the Advisory Committee, ratifies them.

Although CBMWD Counsel agreed with Ms. Stewart as to past practice, he did not agree that past practice was done properly. He said that if Watermaster has concerns over what happens in the future, they have full authority to act in accordance with those concerns. In their capacity as Watermaster, they can approve an item, disapprove an item or consider it a mandated item.

Mr. Shollenberger concurred that the Watermaster Board has those privileges. However, he pointed out that, if they approve an item, it becomes a reality; if they decide to put an item off, Watermaster staff would have to look at an alternative; if they disapprove an item, the Advisory Committee would need to look to their attorney. At that time, the Watermaster attorney could petition the Court stating that the Advisory Committee wanted to institute something that CBMWD acting as Watermaster objected to, creating another cause of action before the Court. He said the Board's action can cause the Advisory Committee to react to their decision.

When asked why Watermaster Counsel was not present, Ms. Stewart replied that the need for an attorney was not anticipated. She said that historical records show Watermaster counsel attended Watermaster Board meetings less than 20 times in 18 years. A need to invite Counsel Fudacz to a Watermaster meeting has not come up in the past two years. Additionally, she said that Watermaster was recently criticized for spending too much money on legal services. Now the Board is suggesting counsel attend a meeting that normally lasts five to twenty minutes and where the action items have already received a vote greater than 80% by the Advisory Committee.

Mr. Troxel asked again if CBMWD would be expected to provide a safety net behind Ms. Lichti. Ms. Stewart said the answer to that question is probably yes, based on the direction of the Court regarding services and facilities. However, she explained that does not mean that the need is anticipated and to the extent that it can be avoided, it will be.

The Board agreed to take action on this item in conjunction with those remaining to be discussed.

9. **Increase of Maximum Accrual of Vacation Leave.**

Ms. Stewart received a letter from CBMWD's Human Resources stating that she must take vacation time or lose the ability to accrue additional vacation hours. Due to the activities resulting from the action taken by the Advisory Committee in January, she reported she had been unable to take time off. Mr. Shollenberger said that the Committee members recognized that staff was being required to live within the context of what was taking place politically and did not want staff to suffer or be damaged as a result of their actions. Because they did not want Ms. Stewart to be penalized for serving at the will of the Advisory Committee, the Committee approved an increase in her maximum accrual of vacation leave from 160.0 to 200.0 hours.

Mr. Troxel said he did not have a problem approving this item because it was a circumstance that created the situation, not the individual. Discussion ensued and the Board members agreed to approve the increase of 200 hours but recommended the addition of a sunset clause.

Motion by Mr. Troxel, second by Ms. Dunihue, and by unanimous vote:

Moved to approve Item 9 with the addition of a sunset clause that this apply only until the transition of Watermaster or until December 31, 1996, whichever occurs first.

10. **Resolution No. 96-2 Authorizing and Designating Signatories of Depository Agreements, Depository Cards and Deposits, Transfers and Withdrawals of Funds.**

Mr. Troxel inquired as to what was currently in place for signature authority. Mr. Rudder said that CBMWD already has signatories on the accounts in question. Secretary Anderson asked why a change needed to be made.

Ms. Stewart stated that it is necessary because the Advisory Committee has changed who the Watermaster Controller is and Watermaster is transitioning away from CBMWD. Mr. Rudder concurred that if a new Watermaster Controller is approved, this Resolution would also need to be approved.

Secretary Anderson asked if this would eliminate Mr. Rudder altogether. Ms. Stewart replied "yes". After further discussion, the Board members wanted to delay taking action. However, Ms. Stewart reminded them that it would not make sense to agree to the appointment of Ms. Lichti as Controller and to continue moving in the direction Watermaster is going, and not revise the signature authority. Mr. Rudder agreed that if the Controller function moves, this should move also. Mr. Anderson again asked if Mr. Rudder would continue to be responsible for Watermaster's financial matters. Mr. Rudder explained that he would be phased out of the picture, but he did not know the legalities involved with remaining Treasurer. Ms. Stewart said that Secretary Anderson is the Treasurer of Watermaster and Mr. Rudder was the Financial Services Officer and explained the discussion that ensued at the Advisory Committee regarding the titles and functions being served by CBMWD.

Mr. Shollenberger said that Mr. Rudder was the "Treasurer of the Advisory Committee". He said that if the Board felt there was reason to oppose this Resolution, it would fall back to the Advisory Committee and the Committee would need to go to Court with a separate filing to have this take place. Otherwise, the Board could approve it, in which event the Financial Services Officer, Mr. Rudder, would step away from the responsibility for Watermaster funds. Mr. Rudder said he could comply with that.

11. Representation on the Advisory Committee

Ms. Stewart explained the change in the number of Appropriative Pool representatives to serve on the Advisory Committee which will be based on safe yield rights or production greater than 3000 acre-feet.

Discussion ensued wherein Secretary Anderson expressed concern that their actions today were going to set a precedence for the new Board. Ms. Stewart and Mr. Troxel assured him that the new Board will be able to make changes as requested by the Advisory Committee in the same manner that they always had been.

Motion by Mr. Troxel, second by Ms. Dunihue, and by unanimous vote:

Moved to approve Consent Calendar Items B.3, B.7, B.10 & B.11 as presented.

II. STAFF REPORT

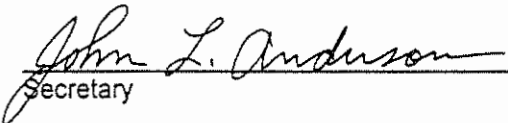
A. Watermaster Transition Activities:

Ms. Stewart said that most of the Watermaster transition activities were thoroughly discussed during the course of reviewing consent calendar items. She provided an update with regard to insurance and expressed her appreciation for the support they have given and promise to continue giving through the transition process.

III. OTHER BUSINESS

A. Mr. Rudder reported that the Advisory Committee requested he, Ms. Lichti and Ms. Stewart meet to discuss and facilitate transitioning the accounting activities from CBMWD as a provider to Ms. Lichti as the Interim Controller. That meeting is scheduled for Friday, July 12.

Meeting adjourned at 9:40 A.M.


Secretary