

FEE EXEMPT

FILED-West District  
San Bernardino County Clerk

AUG 31 1999

By *[Signature]*  
Deputy

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8 Chino Basin Watermaster

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SAN BERNARDINO

11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )

13 Plaintiff,

14 vs.

15 CITY OF CHINO, et al., )

16 Defendants. )

) CASE NO.: RCV 51010

) NOTICE OF MOTION, MOTION, MEMORANDUM  
) OF POINTS AND AUTHORITIES CONCERNING  
) STATUS OF NEGOTIATIONS WITH THE  
) DEPARTMENT OF WATER RESOURCES AND  
) THE OPTIMUM BASIN MANAGEMENT  
) PROGRAM, AND DECLARATION OF TRACI  
) STEWART

) Hearing Date: September 30, 1999

) Time: 1:30 p.m.; Dept. R-8

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

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21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

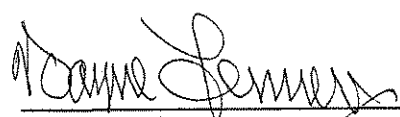
22 **PLEASE TAKE NOTICE** on September 30, 1999, at 1:30 p.m., or as soon thereafter

23 as the matter may be heard in Department R-8 of the San Bernardino County Municipal  
24 Court, located at 8303 North Haven Avenue, Rancho Cucamonga, California 91730-3862,  
25 before the Honorable Judge J. Michael Gunn, special assigned judge presiding, the Chino  
26 Basin Watermaster will provide a status report on the negotiations with the Department of  
27 Water Resources (DWR) and will file an Optimum Basin Management Program (OBMP)  
28 Report which includes a substantial portion of the OBMP, or provide the Court with an

1 explanation as to why the OBMP cannot be filed by September 30, 1999. This motion is  
2 based on this notice, the enclosed memorandum of points and authorities, declaration of  
3 Traci Stewart, and such other evidence the Court deems appropriate.

4  
5 Dated: August 30, 1999.

Respectfully Submitted,  
LEMIEUX & O'NEILL

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Wayne K. Lemieux

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 **Introduction**

4 On February 19, 1998, the Court entered a Ruling that requires Watermaster to  
5 report on the status of negotiations with DWR no later than September 30, 1999. (Ruling,  
6 7:10-11). Additionally, the Ruling requires Watermaster to submit an Optimum Basin  
7 Management Program (OBMP) to the Court no later than September 30, 1999, or show  
8 cause why it cannot do so. The Ruling also requires Watermaster to notice a hearing for  
9 October 28, 1999 regarding the OBMP and continuance of the nine-member Watermaster  
10 Board. (Ruling, 10:14-18 and 7:4-6).

11 **Background**

12 As part of the OBMP development process, the Ruling required Watermaster to  
13 submit a "Recommended Scope and Level of Detail" to the Court and the Special Referee  
14 by June 30, 1998. The Special Referee was to submit her report and recommendation  
15 regarding the Recommended Scope by July 30, 1998. This was accomplished and a  
16 hearing was held on September 9, 1998. The hearing was continued to November 5, 1998  
17 to allow a "Summary of Goals" and a "Problem Statement" to be added to the  
18 Recommended Scope and Level of Detail. The Court approved the Recommended Scope,  
19 as supplemented with the inclusion of a Summary Matrix of the OBMP Goals, Impediments,  
20 Action Items and Implications, and a Problem Statement on November 5, 1998.

21 Since the November 5, 1998 hearing, there have been numerous meetings on the  
22 OBMP, including: 37 meetings of the Watermaster Board, the Advisory Committee, or the  
23 Joint Pools and Advisory Committee; and 13 pool meetings (see Declaration of Traci  
24 Stewart). Sub-committees or ad-hoc groups were formed to address specific items such as  
25 storage management, safe yield, management zone 1, recharge, conjunctive use and  
26 desalters. There have been 14 "special" workshops, ad-hoc or sub-committee meetings.  
27 The last three sub-committees, which are focusing on implementation, financing and cost  
28 allocation of key parts of the OBMP, were formed since July 1999. Meetings will continue

1 to occur at least twice per month to complete the OBMP as discussed below.  
2 (Watermaster members also attended additional meetings on other generally related  
3 subjects.)

4 The vast majority of the meetings related to development of the OBMP. A majority  
5 of the Watermaster Board members attended most meetings, as did a substantial number  
6 of active or interested parties (generally 30 or more). Additionally, the Special Referee's  
7 Technical Expert, Mr. Joseph Scalmanini, participated in all but two of the meetings.  
8 Because of this intense schedule of meetings (beginning March 5, 1998, with the  
9 installation of the nine-member Board), the first three sections of the OBMP report were  
10 completed and distributed for discussion by December 10, 1998, shortly after the  
11 Recommended Scope was approved.

12 After the first three sections were completed, Watermaster continued to work  
13 diligently and intensely to identify necessary program elements along with the means to  
14 implement and fund the elements to be included in the OBMP. Much progress has been  
15 made. For example, the parties have agreed:

- 16 1) On the major program elements included in the OBMP;
- 17 2) On the current state of the basin;
- 18 3) On the need for an increased amount of data, and for more accurate data;
- 19 4) On the need for more recharge basins;
- 20 5) That an increased quantity of high quality storm flows should be captured and  
21 recharged;
- 22 6) That the safe yield of the basin will be preserved and can be enhanced by  
23 maintaining production in the lower end of the basin, however, in order to put  
24 water pumped from the lower end of the basin to beneficial use, some form of  
25 treatment, including desalting will be necessary;
- 26 7) That more recycled water should be used;
- 27 8) That it is in the best interest of the basin to work cooperatively and collaboratively  
28 with other agencies in the basin;

- 1 9) That it is in the best interest of the basin, the region and the people of the State  
2 of California that a conjunctive use program be developed in the Chino Basin;  
3 10) It is more efficient to remove salt by removing manure than by desalting; and  
4 11) That to fund development and implementation of the OBMP (primarily to fully  
5 utilize water requiring treatment from the lower end of the basin), funding from  
6 outside sources will be necessary to make using the water economically viable  
7 for the local rate payers.

8 These things are generally addressed in Section 4 of the OBMP Phase I Report, as  
9 are ideas on to how to accomplish them.

10 While much progress has been made, there are still several outstanding issues to be  
11 resolved to complete the OBMP, including:

- 12 1) Who will own and operate a desalter(s) (or other treatment facilities);  
13 2) Who will purchase the water from a desalter(s), at what price and in what  
14 quantity;  
15 3) Who will purchase the land for spreading basins, and who will subsequently  
16 operate them;  
17 4) What priority will be assigned to various types of recharge or replenishment  
18 water sources;  
19 5) What role the Watermaster can and should play in all of this;  
20 6) What power the Watermaster has to require other parties to carry out what those  
21 parties agree to; and  
22 7) Some questions regarding the California Environmental Quality Act (CEQA), the  
23 Watermaster and the OBMP.

24 To meet the timeline and hearing dates established by the Ruling, Watermaster  
25 provided a copy of draft Sections 1 through 5 of the OBMP Report to the Special Referee  
26 for comment. Watermaster received those comments on August 13, 1999 and distributed  
27 them via fax on August 14, 1999. (See Declaration of Traci Stewart.)

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1 The Special Referee's letter contains comments on all the OBMP Sections and  
2 recommendations as to how to proceed. The letter has five main headings:

- 3 A. Defer Consideration of Certain Questions as to Watermaster Power and  
4 Authority
- 5 B. Submit OBMP Sections 1-4 as a Report Only
- 6 C. Recommendation to the Court for a Phased Process to Prepare an  
7 Implementation Program and Complete the OBMP Plan
- 8 D. Extension of Interim Appointment of Watermaster
- 9 E. Procedural Questions – CEQA Compliance

10 These recommendations are discussed below.

11 **Defer Consideration of Certain Questions as to Watermaster Power and Authority**

12 The Special Referee acknowledges that there is tension between the role of  
13 Watermaster as the entity preparing the draft OBMP and the roles of the parties in  
14 implementing the OBMP. She suggests:

15 "If the parties step forward and make the commitments and enter into the requisite  
16 agreements that, combined, would constitute a clear and complete implementation  
17 plan, then the issues of the extent of the Watermaster's power and authority may be  
18 significantly different than they currently appear."

19 Debating the Watermaster's role, including the extent of the Court's power to insist parties  
20 take specific action, is premature. The parties have expressed the desire to preserve their  
21 ability to raise issues during and after the development of the OBMP. The parties concur  
22 with the Special Referee that questions of this nature can be revisited if the parties are  
23 unable to make the commitments and reach the agreements that logically would comprise  
24 the implementation program. The Special Referee suggests the most productive course of  
25 action is to set aside for now the questions of the scope and nature of the Watermaster's  
26 power and authority and to define a process to produce a clear and complete  
27 implementation program.

28 **///**

1 **Submit OBMP Sections 1-4 as a Report Only**

2 The Special Referee suggests that an expeditious way to move toward working out  
3 the remaining details necessary to finalize an implementation plan would be to break the  
4 process into two phases. She further suggests the draft OBMP Sections 1-4 could be  
5 adopted by Watermaster and submitted to the Court as a report on the schedule  
6 established in the Ruling.

7 Watermaster concurs. A Watermaster public hearing is scheduled for September  
8 15, 1999 to receive input on the OBMP Phase I Report. Watermaster will consider the  
9 input received and make a decision on September 23, 1999 regarding the Report at that  
10 time. Watermaster will report to the Court by September 30, 1999 regarding this decision.

11 **Recommendation to the Court for a Phased Process to Prepare an Implementation**  
12 **Program and Complete the OBMP Plan**

13 The Special Referee recognizes that work remains before the implementation and  
14 funding portions of the OBMP are completed (Section 5 of the OBMP). She suggests that  
15 the Watermaster request the Court to accept the OBMP Phase I Report as a report and  
16 commit to complete the OBMP by February 15, 2000.

17 A phased approach is necessary to implement the OBMP because important policy  
18 issues must still be resolved by Watermaster and several independent public agencies.  
19 However, Watermaster is committed to move forward with many of the OBMP program  
20 elements and has actually begun implementation of components of the OBMP as described  
21 in Section 4 of the OBMP Phase I Report. The action items within the OBMP consist of  
22 nine program elements. Watermaster has budgeted over \$1,000,000 in this current fiscal  
23 year toward initial implementation of those various program elements. The program  
24 elements and their level of funding in fiscal 1999/2000 are:

- 25 • Program Element 1 – Develop and Implement Comprehensive Monitoring  
26 Program -- \$562,000

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- 1 • Program Element 2 – Develop and Implement Comprehensive Recharge  
2 Program -- \$94,000
- 3
- 4 • Program Element 3 – Develop and Implement Water Supply Plans for the  
5 Impaired Areas of the Basin and Program Element 5 – Develop and  
6 Implement Regional Supplemental Water Program combined -- \$40,000 (it  
7 is very likely that much more than \$40,000 will be spent this fiscal year)
- 8
- 9 • Program Element 4 – Develop and Implement Comprehensive  
10 Groundwater Management Plan for Management Zone 1 -- \$100,000
- 11
- 12 • Program Element 6 – Develop and Implement Cooperative Programs with  
13 the Regional Water Quality Control Board, Santa Ana Region (Regional  
14 Board) and Other Agencies to Improve Basin Management – \$53,000
- 15
- 16 • Program Element 7 – Develop and Implement Salt Management Program  
17 -- \$150,000
- 18
- 19 • Program Element 8 – Develop and Implement Groundwater Storage  
20 Management Program -- \$5,000
- 21
- 22 • Program Element 9 – Develop and Implement Conjunctive-Use Program --  
23 \$13,000 (it is very likely that much more than \$13,000 will be spent this  
24 fiscal year)

25 This budget commitment by Watermaster is a clear demonstration of its intent to  
26 improve basin management and to implement the OBMP. Additionally, Watermaster is  
27 both physically and financially participating in two very important watershed-wide activities  
(the TIN/TDS study and the Santa Ana River Watershed Group).

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1           The two-phased approach to finalize the implementation component of the OBMP  
2 will allow time for Watermaster to interact with the governing bodies of the agencies using  
3 the basin. Watermaster will submit a proposal regarding phased completion of the OBMP  
4 to the Court by September 30, 1999. Watermaster understands the Court's desire to have  
5 a meaningful OBMP in place in an expeditious timeframe, and commits to continue the  
6 current meeting schedule to do so.

7 **Extension of Interim Appointment of Watermaster**

8           The Special Referee suggests consideration of a full five-year appointment of the  
9 nine-member board be heard by the Court by April 30, 2000 rather than on October 28,  
10 1999. The Watermaster will continue to serve at the will of the Court and concurs with this  
11 recommendation.

12 **Procedural Questions – CEQA Compliance**

13           The Special Referee recognizes the importance of questions raised with regard to  
14 the OBMP and the California Environmental Quality Act (CEQA). She suggests that OBMP  
15 Sections 1 through 4 be submitted and accepted as a report, with Section 5,  
16 Implementation, to follow resolution of financing and cost sharing issues as described  
17 above. No "action" is being taken and there is no project requiring CEQA review. The  
18 questions regarding CEQA will be resolved as soon as possible to avoid delay in ultimate  
19 OBMP implementation as suggested by the Special Referee.

20 **Status of Negotiations with Department of Water Resources**

21           On November 18, 1998, the Chief of Watermaster Services wrote to the Department  
22 of Water Resources (DWR) regarding Watermaster services. (See Declaration of Traci  
23 Stewart.) This was done in compliance with the Ruling. Meaningful negotiations with DWR  
24 will require a significant amount of time and effort to be expended by both parties  
25 (contacting them in November essentially allowed for ten months of the Court's timeline  
26 over which negotiations could occur). DWR responded by letter dated January 15, 1999.

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1 (See Declaration of Traci Stewart.) In essence, the Department said:

2 "The Department is ready to resume negotiations, but we have been informed that  
3 the current Watermaster has been working adequately. Consistent with the Court  
4 Ruling, we believe that it is in the best interests of the parties and the Department  
5 that negotiations should not be resumed until directed by the Court."

6 The Special Referee's August 13, 1999 letter (under item D commenting on the  
7 OBMP) suggests that discussions with DWR should be renewed given the appointment of a  
8 new director since that time. She further suggests that the deadline for the hearing regarding  
9 the status of negotiations with DWR be extended from the September 30, 1999 date to  
10 March 31, 2000.

11 DWR has been represented at the majority of Watermaster meetings since the  
12 Ruling and is aware of the progress being made on the OBMP and the effort being  
13 expended by the parties. Watermaster understands the sentiment of the DWR and the  
14 Special Referee on this subject. Watermaster will contact the DWR representative prior to  
15 the September 30, 1999 hearing regarding this matter and be prepared to report at the  
16 hearing.

17 **Status of the Optimum Basin Management Program (OBMP)**

18 The Ruling also requires the Watermaster to notice a hearing for October 28, 1999,  
19 on the subject of adoption and implementation of the OBMP. (Ruling 7:4-6.) While the  
20 September 30, 1999 hearing was originally more concerned with the continuation of the  
21 Watermaster than negotiations with the Department of Water Resources, these subjects  
22 are intertwined. An OBMP Phase I Report was distributed to all active/interested parties on  
23 August 19, 1999. Watermaster and the Joint Pools and Advisory Committee discussed this  
24 Report and the Special Referee's recommendation on August 26, 1999. It will also be  
25 discussed at the September 9, 1999 Joint Pools and Advisory Committee meeting.  
26 Watermaster is holding a public hearing to receive input on the Report on September 15,  
27 1999 (primarily Section 4 of the Report). Watermaster is then scheduled

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1 to meet on September 23, 1999 to make a decision regarding the Report. Subject to the  
2 outcome of the hearing and subsequent Watermaster Board meeting, Watermaster intends  
3 to submit the OBMP Phase I Report in accordance with the Special Referee's  
4 recommendation.

5 As indicated in the Special Referee's letter, it became apparent that the Section  
6 5/Implementation portions of the OBMP would require additional meetings and time for  
7 further development. Recognizing this, special sub-committees were formed to address  
8 key implementation issues with regard to the desalters, recharge and conjunctive use. The  
9 efforts of these committees will be focused on resolution of key implementation issues.

10 Based on the above timeline and implementation issues, and the Special Referee's  
11 recommendation, Watermaster will be providing the Court with a report regarding the  
12 overall Optimum Basin Management Program on September 30, 1999.

13 **Conclusion**

14 The parties have been working diligently to complete the OBMP. Consensus on  
15 several issues has been reached as noted above. Mr. Scalmanini's participation has been  
16 very helpful. The Special Referee and Technical Expert concur that the Sections 1 through  
17 4 have been well done and the process undertaken by Watermaster, its staff and  
18 consultants has been productive. Watermaster concurs with the Referee's  
19 recommendation regarding developing the OBMP in two phases. Watermaster  
20 respectfully requests:

21 The Court order:

- 22 1) The OBMP to be developed in two phases;  
23 2) The October 28, 1999 hearing on the continuation of the nine-member  
24 Watermaster Board be rescheduled to April 30, 2000; and

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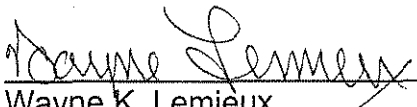
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3) A hearing be scheduled for March 31, 2000 regarding the status of negotiations with DWR.

Dated: August 30, 1999

Respectfully submitted,

  
Wayne K. Lemieux

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**DECLARATION OF TRACI STEWART**

I, Traci Stewart, declare:

I am the Chief of Watermaster Services for Chino Basin Watermaster and I have served in this capacity for approximately five years. Attached are true and correct copies of the following documents:

1. A "Summary of Meetings" prepared by Watermaster staff (Attachment A).
2. A letter dated August 13, 1999, from Anne J. Schneider, Esq., Re: Comments on Draft OBMP Sections (Attachment B). I personally faxed this document to the Watermaster Board and Advisory Committee members on August 14, 1999.
3. A November 18, 1998, Watermaster letter to the Department of Water Resources (DWR) concerning Watermaster operations (Attachment C).
4. A January 15, 1999, letter from DWR responding to the November 18, 1998 Watermaster letter (Attachment D).

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed on August 31, 1999, at Rancho Cucamonga, California.

  
\_\_\_\_\_  
Traci Stewart

Attachment A  
**CHINO BASIN WATERMASTER**  
 Watermaster Board and Advisory Committee Meetings  
 F.Y. 1998-99  
 (July 1, 1998 through June 30, 1999)

MEETING DATE	TYPE OF MEETING	MINUTES APPROVED
July 09, 1998	Joint Pool & Advisory Committee	08/13/98
July 09, 1998	Watermaster Board	07/23/98
July 23, 1998	Joint Pool & Advisory Committee	08/13/98
July 23, 1998	Watermaster Board	08/27/98
August 13, 1998	Joint Pool & Advisory Committee	09/10/98
August 13, 1998	Advisory OBMP Workshop Mtg. – Institutional	09/10/98AC 09/24/98Bd
August 13, 1998	Advisory OBMP Workshop Mtg. – FinancePlan	09/10/98AC 09/24/98Bd
August 27, 1998	Watermaster Board	09/10/98
August 27, 1998	Advisory OBMP Workshop Mtg. – Institutional	09/10/98AC 09/24/98Bd
August 27, 1998	Advisory OBMP Workshop Mtg. – FinancePlan	09/10/98AC 09/24/98Bd
September 10, 1998	Joint Pool & Advisory Committee	10/15/98
September 10, 1998	Advisory OBMP Workshop Mtg. – Institutional	10/29/98
September 10, 1998	Special Watermaster Board	10/29/98
September 23, 1998	Advisory OBMP Workshop Mtg. – Eng.Tasks	02/11/99AC 03/25/99Bd
September 24, 1998	Advisory OBMP Workshop Mtg. – Institutional	10/29/98
September 24, 1998	Watermaster Board	10/29/98
September 30, 1998	Advisory OBMP Workshop Mtg.	02/11/99AC 03/25/99Bd
October 15, 1998	Joint Pool & Advisory Committee	12/10/98
October 15, 1998	Advisory OBMP Workshop Mtg.	07/08/99AC 07/22/99Bd
October 29, 1998	Watermaster Board	12/10/98
October 29, 1998	Advisory OBMP Workshop Mtg.	05/13/99AC 05/27/99Bd
November 12, 1998	Joint Pool, Advisory, OBMP Workshop Mtg.	12/10/98
November 24, 1998	Watermaster Brd, Advisory, OBMP Wrks.Mtg.	12/10/98
December 10, 1998	Joint Pool, Advisory & Watermaster Board	01/14/99
December 10, 1998	Advisory OBMP Workshop Mtg.	02/11/99AC 03/25/99Bd
January 14, 1999	Joint Pool, Advisory. & Watermaster Board	01/28/99
January 14, 1999	Advisory OBMP Workshop Mtg.	02/11/99AC 03/25/99Bd
January 28, 1999	Watermaster Board	02/25/99
January 28, 1999	Advisory OBMP Workshop Mtg.	02/11/99AC 03/25/99Bd
February 11, 1999	Joint Pool & Advisory Committee	03/11/99
February 11, 1999	Advisory OBMP Workshop Mtg.	03/11/99AC 03/25/99Bd
February 25, 1999	Watermaster Board	03/25/99
February 25, 1999	Advisory OBMP Workshop Mtg.	03/11/99AC 03/25/99Bd
March 11, 1999	Joint Pool & Advisory Committee	04/15/99
March 11, 1999	Advisory OBMP Workshop Mtg.	04/15/99AC 04/29/99Bd
March 25, 1999	Watermaster Board	04/29/99
March 25, 1999	Advisory OBMP Workshop Mtg.	04/15/99AC 04/29/99Bd
April 15, 1999	Joint Pool & Advisory Committee	06/10/99
April 15, 1999	Advisory OBMP Workshop Mtg.	06/10/99AC 06/10/99Bd
April 29, 1999	Watermaster Board	05/27/99
April 29, 1999	Advisory OBMP Workshop Mtg.	05/13/99AC 05/27/99Bd
May 13, 1999	Joint Pool & Advisory Committee	07/08/99
May 13, 1999	Advisory OBMP Workshop Mtg.	06/10/99AC 06/10/99Bd
May 13, 1999	Special Watermaster Board	06/10/99

MEETING DATE	TYPE OF MEETING	MINUTES APPROVED
May 27, 1999	Watermaster Board	06/24/99
May 27, 1999	Advisory OBMP Workshop Mtg.	07/08/99AC 06/24/99Bd
June 10, 1999	Joint Pool & Advisory Committee	07/08/99
June 10, 1999	Advisory OBMP Workshop Mtg.	07/08/99AC 07/22/99Bd
June 10, 1999	Special Watermaster Board	06/24/99
June 24, 1999	Watermaster Board	07/22/99
June 24, 1999	Advisory OBMP Workshop Mtg.	08/12/99AC 08/26/99Bd

<u>Board &amp; Advisory Mtgs:</u>	Watermaster Board	15
	Joint WM Board & Adv. Comm.	2
	Joint Pools & Advisory Committee	11
	Advisory OBMP Workshop Mtgs.	23
	<b><u>Total Board &amp; Advisory Mtgs.</u></b>	<b>51</b>
<u>Pool Meetings:</u>	Appropriative Pool	2
	Non-Ag Pool	2
	Agricultural Pool	7
	<b><u>Total Pool Mtgs.</u></b>	<b>11</b>
<u>Special Workshops:</u>	Budget Workshops	1
	RAM Tool Workshops	1
	Salinity Workshop	1
	<b><u>Total Spec. Workshops</u></b>	<b>3</b>
<u>Ad-hoc &amp; Sub-Committees:</u>	Legal Committee	1
	Personnel Committee	1
	Executive Committee	1
	Safe Yield Sub-Committee	1
	Storage Mgmt. Sub-Committee	4
	MZ-1 Sub-Committee	2
	<b><u>Total Other Mtgs.</u></b>	<b>10</b>

**GRAND TOTAL MEETINGS IN FY 1998-1999.....75**

Watermaster Board and Advisory Committee Meetings  
 F.Y. 1999-2000

MEETING DATE	TYPE OF MEETING	MINUTES APPROVED
July 08, 1999	Annual Appropriative Pool	
July 08, 1999	Annual Pools & Advisory Committee	08/12/99
July 08, 1999	OBMP Workshop	08/12/99AC 08/26/99Bd
July 15, 1999	Special Agricultural Pool	Info. on 08/12/99
July 15, 1999	Desalter Subcommittee	N/A
July 22, 1999	Watermaster Board	8/26/99
July 22, 1999	OBMP Workshop	
August 12, 1999	Joint Pool & Advisory Committee	
August 12, 1999	OBMP Workshop	

Attachment B

ELLISON & SCHNEIDER

ATTORNEYS AT LAW

2015 H STREET

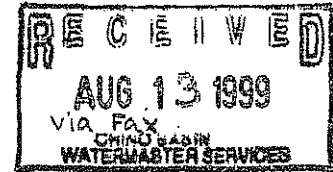
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LYNN M. HAUG  
WENDY M. FISHER  
BARBARA A. BRENNER  
ROBERT E. DONLAN  
ANDREW B. BROWN  
CHRISTOPHER M. SANDERS  
TARA E. LYNCH

August 13, 1999



Board of Directors  
Chino Basin Watermaster  
8632 Archibald Avenue, Suite 109  
Rancho Cucamonga, CA 91730

Re: Comments on DRAFT OBMP Sections

Dear Board Members:

We have reviewed the draft Optimum Basin Management Plan ("OBMP") Sections 1, 2, and 3 (December 9, 1998), 4 (June 22, 1999), and 5 (July 1, 1999), and supporting technical memoranda. We also have reviewed correspondence containing comments on the draft Sections which have been provided to us by Watermaster staff. This letter contains both comments on the draft documents and recommendations as to how to proceed at this time. The Board of Directors, staff, consultants, and the parties have worked diligently and are making good progress. It appears, however, that a phased approach allowing a discrete amount of additional time to prepare an implementation program is needed.

**A. Defer Consideration of Certain Questions as to Watermaster Power and Authority**

One of the main thrusts of the comments is that the Watermaster has limited power and authority. Watermaster "... like the [RWQCB] has the power to regulate and require agencies to perform their responsibilities, within its jurisdiction. ..." but should:

"... be careful not to enter into competition with or usurp the granted responsibilities of each of the responsible agencies and property owners of the Basin. ... Member Agencies of Watermaster have specific responsibilities to maintain and improve the Basin. Of utmost importance is the responsibility to clean up the Basin for present and future generations." (IEUA June 9, 1999 Letter to Watermaster.)



There is a tension between the role of Watermaster as the entity preparing the draft OBMP and the roles of parties in actually implementing the draft OBMP. At this time, the draft OBMP does not set out a clear and complete implementation element. Section 4 is complete in its discussion of monitoring by the Watermaster, including purpose, timelines, and how the work will be paid for. Neither Section 4 nor 5 contains a similar level of information, for other program elements, however. The Watermaster has apparently been mindful of the admonition "not to enter into competition with or usurp the granted responsibilities of" responsible parties. Compiling concrete implementation actions, including timelines and financing plans that incorporate commitments from responsible parties must still be accomplished.

Debating the Watermaster's role, including the extent of its or the Court's power to insist that parties take any specific action, is premature. The Watermaster certainly has the power and authority to prepare the OBMP, and the OBMP will be sufficient only if it includes a clear and complete implementation program. The current draft does not contain an implementation program, with the exception of the Watermaster's monitoring program. If the parties step forward and make the commitments and enter into the requisite agreements that, combined, would constitute a clear and complete implementation plan, then the issues of the extent of the Watermaster's power and authority may be significantly different than they currently appear. At this time, delving into questions of the Watermaster's power and authority would only distract from efforts to complete the OBMP work. The questions can be revisited in the event the parties are unable to make the commitments and reach the agreements that logically would comprise the implementation program.

Examples of the type of commitment needed are listed in IEUA's June 9, 1999 letter. The list included the commitment:

"...to work with regional and local agencies to establish a Joint Powers Agreement(s) ("JPA") or an alternative organizational structure to expedite the financing, construction and operation of additional desalters, i.e., Desalters II and III."

If the parties were to establish a JPA, or enter into a Memorandum of Understanding ("MOU") to establish a JPA, or develop some "alternative organizational structure," the Watermaster's role would necessarily reflect that structure. The issue of whether the Watermaster could, if absolutely necessary, finance and build desalters, for example, is never reached if the parties offer a clear and complete plan which will accomplish the same thing.

**B. Submit OBMP Sections 1-4 as a Report Only**

The most productive course appears to be to set aside for now the questions of the scope and nature of the Watermaster's power and authority and define a Phase II process which will produce a clear and complete implementation program. The draft OBMP Sections 1 through 4 can be adopted as a report by Watermaster and submitted to the Court as a report on the schedule established in the Court's February 19, 1998 ruling. Although Section 4 includes specific implementation provisions for monitoring work to be undertaken by Watermaster, the bulk of Section 4's discussion of implementation merely suggests what the parties "should" do or consider. The existing draft Section 5 could be reformatted to be a memorandum to be used as source material for the revised Section 5 which would be produced in Phase II. There is no reason to revise Section 4 to delete these references to implementation; it would avoid confusion, however, if the title of Section 4 were changed to delete the word "implementation."

The following describes revisions to the overall schedule based on a phased approach to complete the implementation program. The implementation program, together with the OBMP Sections 1 through 4 report, would comprise the OBMP plan.

**C. Recommendation to the Court for a Phased Process to Prepare an Implementation Program and Complete the OBMP Plan**

A partially completed table (attached) was handed out at the July 22, 1999 OBMP workshop meeting. That table speaks volumes. It identifies the categories of information that still must be gathered as to which parties (or other responsible agencies or individuals) will participate in implementation actions, timelines, and financial commitments. That table, in the most barebones form, is the crux of the implementation program. It must be completed to have a clear and complete implementation program. The manner in which the parties may decide to memorialize their commitments to carry out the implementation program has also not been identified. The options, such as JPA's, appear to have been discussed. The ultimate form of agreement is not as important as entering into some form of agreement which commits parties to carry out the implementation actions.

Watermaster, through the OBMP Desalter Subcommittee, is working to develop responsibilities and commitments among the parties on the planning, construction, operation, and financing of the desalters which the draft OBMP shows are needed. That subcommittee only began work on July 15, 1999, and needs additional time to complete its work. Other subcommittees (if they have not yet been created) should be created to develop the commitments and agreements necessary to complete other aspects of the implementation program.

Based on discussions with Mr. Wildermuth and Ms. Stewart, it appears that a Phase II could be completed by March 31, 2000. Assuming the Watermaster submits the draft OBMP Sections 1-4 to the Court by September 30, 1999, as required, and requests that the Court accept the document as a report, the Watermaster and the parties would at that time have a full six months to complete the implementation program. The OBMP Sections 1-4 would serve as a resource for that final effort. Everyone's time and energy could then focus exclusively on preparing a clear and complete implementation program during a six-month Phase II process.

A Phase II implementation program report would have to be prepared and reviewed on a schedule set by the Court. If a draft implementation program report (including all elements contained in the table described above) and executed agreements (in whatever form the parties may agree to) could be submitted to the parties and the Special Referee by February 15, 2000, comments could be received and considered by Watermaster and a final Phase II document submitted to the Court by March 31, 2000. At that time, the Court could set a schedule for hearing on the approval of the OBMP which would be comprised of the OBMP Sections 1-4 Report and the Phase II Implementation Program.

**D. Extension of Interim Appointment of Watermaster**

Extension of the OBMP process to accommodate a phased completion of the OBMP raises the issue of reappointment of the nine-member board as Watermaster. A new Court order setting deadlines for a Phase II should include extension of the existing October 28, 1999 deadline for a Court hearing on continuation of the nine-member board as Watermaster. A full five-year appointment of the nine-member board would be heard by the Court by April 30, 2000. The success of the six-month Phase II process would be known by that time. The Court's ruling also directed that a hearing be noticed no later than September 30, 1999 to report on the status of negotiations with the California Department of Water Resources ("DWR"). Although a desultory effort apparently was made in January 1999, discussions should be renewed given appointment of a new DWR director since that time. The deadline for that hearing should be extended to March 31, 2000.

**E. Procedural Questions — CEQA Compliance**

The issue has been raised whether the preparation of the OBMP is a "project" for purposes of the California Environmental Quality Act ("CEQA") and what entity would be lead agency to prepare any document that may be required. Watermaster Counsel Lemieux has advised Watermaster that the Court, and consequently the Watermaster, is not a "local agency" and therefore does not have to prepare an environmental document before undertaking a "project," although parties must comply with CEQA before approving discretionary capital

projects. Watermaster may wish to engage special CEQA counsel to review these and related questions in greater depth.

The issue of whether adoption of the OBMP would trigger CEQA review is not as urgent if draft OBMP Sections 1-4 are submitted and accepted as a report. As a report, CEQA counsel is likely to conclude that no action is being taken, no decision is being made, and there is, therefore, no project which requires CEQA review. The issue of whether elements of the implementation program (such as JPA's, for example) and adoption of the OBMP itself are projects for CEQA purposes will still have to be addressed. The CEQA issues should be resolved as soon as possible to avoid delay in ultimate OBMP implementation.

**F. Summary of Recommendations of Special Referee**

In summary, a phased approach is recommended, with the following timeline:

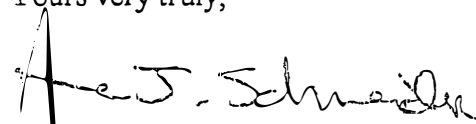
9/30/1999	Submit OBMP Sections 1-4 to Court (for acceptance as a report).
2/15/2000	Circulation of draft Implementation Program.
3/15/2000	Comment deadline.
3/31/2000	Court hearing to approve OBMP.
3/31/2000	Court hearing on status of DWR negotiations.
4/30/2000	Court hearing on nine-member board appointment as Watermaster.

Mr. Scalmanini has attended nearly all of the meetings of the Watermaster on the OBMP. He has regularly reported on those meetings to me. His participation appears to have been very helpful. He has reviewed in detail the draft Sections and supporting technical memoranda, and provided his comments to us. Our combined comments are attached. In a meeting with Mr. Wildermuth on August 5, 1999, Mr. Scalmanini conveyed his technical comments, and discussed preparation of an Executive Summary for Sections 1-4. Mr. Wildermuth indicated that revised Sections and an Executive Summary would be prepared and circulated to all parties by the end of September.

Board of Directors  
August 13, 1999  
Page 6

In Mr. Scalmanini's view, the draft Sections 1-4 have been well done, and the process undertaken by Watermaster, its staff and consultants, has been productive. I concur. As you know, I am most interested in the implementation program. If the Court approves the phased approach and schedule recommended in this letter, I suggest that Watermaster set a meeting for early October to discuss in detail the process and content of the work to be accomplished in Phase II. Thank you for all of your efforts.

Yours very truly,

A handwritten signature in cursive script that reads "Anne J. Schneider". The signature is written in black ink and is positioned above the printed name.

Anne J. Schneider

AJS:dg

Attachment

cc: Honorable J. Michael Gunn  
Joseph C. Scalmanini

**PROGRAM ELEMENT # 1 - COMPREHENSIVE MONITORING PROGRAM**

PROJECT	AGENCY	CONSTRUCT	OWN	O/M	FINANCE	OTHER (Admin)	PLANNING /INTER GOVERNMENTAL COORDINATION
GROUND WATER LEVEL	WM				X	X	WM
GROUNDWATER QUALITY	WM				X	X	
GROUNDWATER PRODUCTION	WM				X	X	
SURFACE WATER QUALITY	WM			WM CBWCD, SBCFCD IEUA - COLLECTION	WM/CBWCD	X	
GROUND LEVEL	WM				X	X	
SUBSIDENCE	* WM			PRODUCERS	X	X	

\*OTHERS PROPERTY

**PROGRAM ELEMENT # 2 - RECHARGE**

PROJECT	AGENCY	CONSTRUCT	OWN	O/M	FINANCE	OTHER (Admin)	PLANNING/INTER-GOVERNMENTAL COORDINATION
PHASE 2	WM				X	X	WM
	CBWCD	X	X	X	X	X	
	SBCFCD*	X	X	X	X	X	
	IEUA	X	X	X	X	X	
	MWD				X	X	
PHASE 3	RWQCB				X	X	

\*FLOOD CONTROL COMPONENT

**PROGRAM ELEMENTS # 3 & 5- SUPPLEMENTAL SUPPLY/IMPAIRED AREAS\***

PROJECT	AGENCY	CONSTRUCT	OWN	O/M	FINANCE	OTHER (Admin)	PLANNING/INTER-GOVERNMENTAL COORDINATION
						X	WM

\*FORWARDED TO DESALTER COMMITTEE MEETING - JULY 15, 1999





**PROGRAM ELEMENT # 7 - SALT MANAGEMENT\***

PROJECT	AGENCY	CONSTRUCT	OWN	O/M	FINANCE	OTHER (Admin)	PLANNING/INTER-GOVERNMENTAL COORDINATION
	WM				X	X	WM

\*MANURE REMOVAL CONTRIBUTION

**PROGRAM ELEMENT # 8 & 9 - STORAGE MANAGEMENT/CONJUNCTIVE USE\***

PROJECT	AGENCY	CONSTRUCT	OWN	O/M	FINANCE	OTHER (Admin)	PLANNING/INTER-GOVERNMENTAL COORDINATION
	WM					X	WM
	IEUA						
	WMWD						
	TVMWD						
	MWD						

\*REFERRED TO NEGOTIATING TEAM

## Technical Comments to the Optimum Basin Management Plan for the Chino Basin

### **A. Section 2-Current Physical State of the Basin**

#### **1. Current and Future Water Demands**

An explanation of the difference between the projected population increases (+50%) versus the projected water demand increases (+35%) should be provided. The OBMP should also clarify the projected future needs of individual purveyors which disagree with the projections in the draft OBMP.

#### **2. Water Supplies**

The OBMP does not explain how the pumpage will meet 180,000 - 190,000 afy of demand while the safe yield is 140,000 - 156,000 afy. Where does the approximately 40,000 afy come from?

If pumpage is expected to be 180,000 - 190,000 afy over the planning period, will groundwater replenishment reach 40,000 afy by 2020 or is that replenishment required now? Section 4, Table 4-9 shows pumpage of 200,000-210,000 afy over the period of 2000-2020, thus additional replenishment appears to be necessary now. This should be clarified.

### **B. Section 3-Goals of the OBMP**

The OBMP necessarily defines "optimum". However, the definition of "optimum" provided should be revisited, particularly with regard to financial feasibility. The stakeholders can determine the basis for whether they can "afford" the program and the concept of financial feasibility should be fully developed. The question arises as to whether a less technically complete/less effective basin management plan becomes "optimum" because it is deemed "affordable". Defining "optimum" by a determination of affordability by the stakeholders leaves too much room to ultimately accept a non-optimal basin management plan.

C. **Section 4-Management and Implementation Plan**

1. **General Comment**

There is a general lack of specificity regarding who will actually be implementing the particular programs and tasks set forth in the OBMP. References such as “assume leadership role” and “potential cooperating agencies” do not provide the reader with a sense of who will be doing what. In addition, the OBMP consistently states what “should” be done and in many instances does not provide information as to what “will” be done and “who” will carry out the requisite tasks. (See p. 4-15 for example). It is not clear what role the Watermaster will play and what actions the Watermaster may be able to take in the event an agency does not fulfill a goal as suggested in Section 4.

2. **Program Element 3-Develop and Implement Water Supply Plan for the Impaired Areas of the Basin and Program Element 5 Develop and Implement Regional Supplemental Water Program**

It would be useful to highlight the evolution from current water supply planning (Section 2, p. 2-33 and Table 2-17), which came from various individual purveyors, to the OBMP water supply concept (Table 4-9). As set forth in the water supplies discussion at page 2-33, it would be helpful to the reader to summarize how the basin will work under the OBMP with expanded details as appropriate. The reader could be provided an overall description of water supplies, recharge, outflows, salt removal, etc.

3. **Program Element 6-Develop and Implement Cooperative Programs With the RWQCB and Other Agencies to Improve Basin Management and Program Element 7-Develop and Implement Salt Management Program**

There does not appear to be a complete Salt Management Program. The emphasis of the combined Programs 6 and 7 is on future development of a salt budget. The text, however, describing salt management only mentions the desalters, review of the economics of dairy waste management and possible contribution of funds to subsidize removal of manure, and, in the first year of implementation of the OBMP, a financial contribution to subsidize manure export. This is not a reduction in salt loading, except for manure export.

The OBMP relies on the elimination of dairy farms to reduce salt loading and then identifies a potential problem if dairy farmers move out of the basin rapidly. The problem of a rapid decline in groundwater production in the southern part of the basin will result in a subsequent increase in poor quality rising water. Although the problem is identified, no response to the potential problem is provided.

Program Element 6 identifies the need for salt management which includes minimizing TDS and nitrogen additions by fertilizers. A complete salt management program should include items such as removal of manure and in-basin composting and could incorporate mandated or other source control measures.



Attachment C

# CHINO BASIN WATERMASTER

8632 Archibald Ave., Suite 109, Rancho Cucamonga, CA 91730  
TEL: (909) 484-3888 • FAX: (909) 484-3890

TRACI STEWART

Chief of Watermaster Services

November 18, 1998

Department of Water Resources  
1416 Ninth Street  
P.O. Box 942836  
Sacramento, CA 94236-0001

Re: Department of Water Resources and the February 19, 1998 Superior Court Case Number RCV 51010 Ruling regarding the Chino Basin Watermaster.

Attached for your review is a copy of the above referenced Ruling. On page 7 of the Ruling, the Court directs the parties to the Chino Basin Judgment to resume negotiations with the Department to place it in a position to assume the duties of Watermaster and to takeover Watermaster operations, should the nine member board fail to operate independently and effectively. This letter is being sent to indicate the parties' desire to fulfill this requirement of the ruling and resume negotiations.

Please have a Department representative contact me at their earliest convenience concerning this matter. I can be reached by phone at (909) 484-3888, by fax at (909) 484-3890, by e-mail at [traci@cbwm.org](mailto:traci@cbwm.org), and by regular mail at the Watermaster offices.

Sincerely,

Traci Stewart

Attachment

Cc: Watermaster Board and Committee Members

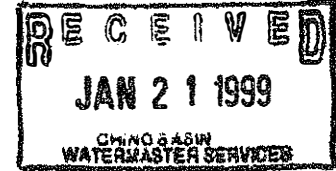
## DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 94236-0001  
(916) 653-5791



JAN 15 1999

Ms. Traci Stewart  
Chino Basin Watermaster  
8632 Archibald Avenue, Suite 109  
Rancho Cucamonga, California 91730



Dear Ms. Stewart:

This is in response to your letter of November 18, 1998 regarding the Superior Court Case Number RCV 51010 ruling regarding the Chino Basin Watermaster. I apologize for the delay in responding.

You suggested in your letter that the February 19, 1998 court ruling relating to the Chino Basin Watermaster requires the parties to the Chino Basin judgment and the Department of Water Resources begin negotiations immediately so that the Department may assume the duties of the current watermaster in the event that the court determines that the watermaster is not operating effectively. As we read the ruling, the obligation to resume negotiations for the Department to take over as watermaster is not in effect now and will only be triggered if it is first determined by the court that the current arrangement is not working.

The Department is ready to resume negotiations, but we have been informed that the current watermaster has been working adequately. Consistent with the court ruling, we believe that it is in the best interests of the parties and the Department that negotiations should not be resumed until directed by the court.

You have indicated that the watermaster would be appearing before the court to make a report in the near future. At that time, you indicated that the issue concerning the obligation of the Department and the parties to resume negotiations could be reviewed by the court. We support such an approach, and we are willing to appear at the hearing with the watermaster to express our views.

If you have any questions concerning this letter, please contact David Sandino, Senior Staff Counsel, with DWR at (916) 653-5129.

Sincerely,

A handwritten signature in cursive script that reads "Stephen L. Kashiwada".

Stephen L. Kashiwada  
Acting Director

CHINO BASIN MUNICIPAL WATER DISTRICT V. CITY OF CHINO et al.  
CASE NO. RCV 51010

PROOF OF SERVICE

I, Mary L. Staula, declare:

1. I am over the age of 18 and not a party to this action. My business address is Chino Basin Watermaster, 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California 91730.

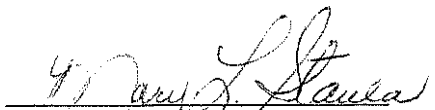
2. On today's date I served notice of matters identified below by mailing a postcard containing the information set forth on the attached page, addressed to each of the addresses listed on the attached mailing lists.

NOTICE OF MOTION, MOTION, MEMORANDUM OF POINTS AND AUTHORITIES  
CONCERNING STATUS OF NEGOTIATIONS WITH THE DEPARTMENT OF WATER  
RESOURCES AND THE OPTIMUM BASIN MANAGEMENT PROGRAM AND  
DECLARATION OF TRACI STEWART

3. I then placed said post cards for collection, processing and mailing by Chino Basin Watermaster personnel with the United States Postal Service on today's date, following Chino Basin Watermaster's ordinary business practices. Pursuant to these practices, with which I am familiar, post cards are deposited in the ordinary course of business with the United States Postal Service on the same date they are collected and processed, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 30, 1999, at Rancho Cucamonga, California.

  
Mary L. Staula

AAA AA  
MAILING LIST 1  
UPDATED 08/30/99

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