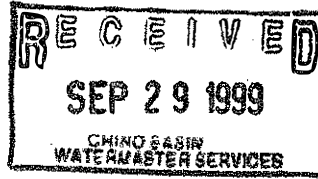


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8

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

12 CHINO BASIN MUNICIPAL WATER
DISTRICT,

13
14 Plaintiff,

15 v.

16
17 CITY OF CHINO, et al.,

18 Defendants.
19

Case No.: RCV 51010

**RESPONSE OF STATE OF
CALIFORNIA TO WATERMASTER
MOTION AND SUPPLEMENTAL
POINTS AND AUTHORITIES
CONCERNING STATUS OF
NEGOTIATIONS WITH THE
DEPARTMENT OF WATER
RESOURCES OPTIMUM BASIN
MANAGEMENT PROGRAM;
PROPOSED ORDER**

Hearing Date

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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23 The State of California ("State") submits this response to the Motion and
24 Supplemental Points and Authorities of the Chino Basin Watermaster ("Watermaster")
25 concerning the status of negotiations with the Department of Water Resources and the
26 Optimum Basin Management Program ("OBMP").

27 The State supports the request of the Watermaster, following the public hearing

28 ///

1 held on September 15, 1999, at 9:00 a.m. to forward the Phase I Report to the Court to be
2 received and filed as a Phase I Report. Some of the parties in their comments, including
3 the State, Cucamonga County Water District, and Pomona have requested that the
4 Watermaster, and this court, explicitly note that the parties reserve their right to comment
5 on and/or object to the entire OBMP at the time the entire OBMP is presented for
6 approval.

7 The Court appointed referee, in her comments to the Watermaster, seemed to
8 concur in this request, in that she recognized that some of the issues raised by the parties
9 may be premature, prior to the development of the final OBMP.

10 The State filed comments on a number of occasions urging that the Parties attempt
11 to reach voluntary consensus. Copies of the State of California comments are included in
12 Appendix A, Public Comments pgs. 53-116 and in the transcript of the hearing (pgs. 169-
13 175). Inadvertently excluded are the written comments provided at the public hearing and
14 the cover letter filing the additional documents requested at the hearing. A copy of the
15 September 15, 1999 written comments and additional letter are attached hereto Exhibit A.
16 (The pages of the Appendix inadvertently omit a date stamp on the second side of each
17 page.)

18 Wherefore, the State requests that this court receive and file the Phase I report with

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1 the recognition that the parties reserve their rights to object to and/or comment on the
2 entire OBMP in the future.

3 Dated: September 28, 1999

Respectfully Submitted,

4
5 BILL LOCKYER, Attorney General
of the State of California
6 MARY HACKENBRACHT,
Acting Assistant Attorney General
7 MARILYN H. LEVIN,
Deputy Attorney General

8
9 By: 

MARILYN H. LEVIN,
Deputy Attorney General

10
11 Attorneys for Defendant
STATE OF CALIFORNIA
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September 15, 1999

Comments of State of California

*Original
1978*

1. I am Marilyn Levin, Deputy Attorney General of the California Office of the Attorney General. Our office represents the State of California, and all state agencies and departments with lands overlying the Chino Basin. Our office represented the State of California in the Chino Basin water rights adjudication. The State is a party to the judgment. The State agencies that produce water and/or own land in the Basin include the California Department of Corrections, the Department of Fish and Game, the Department of Transportation and the Department of Toxic Substances Control. The State of California is in the Agricultural Pool.

2. The State and the California Department of Corrections filed comments on various drafts of Sections 1 through 4 of the Optimum Basin Management Program. The latest comments were filed on September 7, 1999 in response to Phase I of the Optimum Basin Management Plan. One of our continuing concerns is that the revised drafts are not red-lined, and therefore it is difficult, if not impossible, to identify the major and/or minor changes to the language in each draft.

3. I would like to highlight a few points today while incorporating all my prior comments and reserving the State's rights to comment and object to Phase I and Phase II as it is further developed:

A. I would like to commend all the parties and the consultants, including the referee, for their hard work and dedication to the development of the Optimum Basin Management Program.

B. I think it is important to let the court know that the parties are working to reach a consensus, without extensive litigation on legal and procedural issues, on the main elements of a Basin Management Program. The program as proposed at this time addresses maintenance of the safe yield and the quality of water in the Basin.

C. I think it is important to let the court know that many of the parties support many of the statements in the Phase I Report, but that many of the parties object to some of the conclusions and facts contained within the report. Because of these objections and concerns, it is impossible for many of the parties at this time to approve or adopt the elements of the program developed to date because the financing elements have not been finalized and the parties are unable to assess the financial impact on them. Therefore, in the State's opinion, it is premature at this time for the committees or the Watermaster to vote to adopt or approve an Optimum Basin Management Program. The court referee has recognized some of the concerns of the parties in her memorandum.

D. However, the court had set a deadline for the development of the OBMP and the appointment of the Watermaster. Therefore, the Watermaster, after hearing all the comments, should respectfully modify the court referee's recommendations and request that the court :

1. Receive the Phase I Optimum Basin Management Program dated August 19, 1999 as a report, subject to the comments and objections received, and with the recognition that the language in the document may be revised and/or updated as part of the development of Phase II.

2. Recognize that the Parties reserve all rights to comment and/or oppose the Phase I Report and the Phase II implementation program and to raise any legal or procedural issues with respect to the Optimum Basin Management Program. .

3. Recognize that the Parties are respectfully seeking additional time from October 28, 1999 to May 31, 2000 to prepare and agree to an implementation plan through continued consensus building within the Basin in order to avoid costly litigation.

4. Recognize the following schedule proposed by the parties:

Development of Draft Implementation Program between September 30, 1999 and February 4, 1999. Circulation of OBMP, including proposed voluntary implementation program by February 4, 1999.

Final Comments on Optimum Basin Management Program including Phase II to be submitted to Watermaster by March 3, 1999.

Comments circulated to all parties by March 10, 1999.

Consideration by Pool and Advisory Committees between March 10, 1999 and April 21, 1999

Consideration by Watermaster by April 28, 1999.

Filing of Pleadings with Court regarding the development of Phase I and Phase II of the OBMP on May 12, 1999 with court hearing set for May 31, 2000.

5. Set a Status Conference Hearing for January 18, 1999 with comments to be submitted by referee on progress of parties and Watermaster to develop Phase II of the OBMP and negotiations with DWR..

6. Continue the hearing currently set for October 28, 1999 to May 31, 2000 re the OBMP and negotiations with DWR.

7. Continue the hearing re Appointment of Nine-Member Board to June 9, 2000.

I conclude by urging the Watermaster to urge to court to adopt this revised schedule as reasonable. The additional status conference should be encouraged to provide the court with continuing information about the significant progress the parties have made, and the intense, time consuming process in which the parties have been engaged.

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



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September 16, 1999

CHINO BASIN WATERMASTER
Chief of Watermaster Services
8632 Archibald Ave., Suite 109
Rancho Cucamonga, CA 91730

RE: Comments on DRAFT OBMP Sections

Dear ~~Ms.~~ Stewart:

As requested at the public meeting on September 15, 1999, enclosed please find the following documents to which I referred in my comments and which will be included in the record:

1. Summary Prepared by Rand Corporation dated October 19, 1978; and
2. Plaintiff's Post Trial Memorandum filed July 12, 1978.

Again, thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Marilyn H. Levin".

MARILYN H. LEVIN
Deputy Attorney General

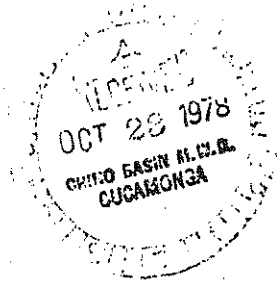
For BILL LOCKYER
Attorney General



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19
October
1978




Mr. Fran Brommenschenkel
Chino Basin Municipal Water District
8555 Archibald Avenue - Box 697
Cucamonga, Calif. 91730

Dear Fran:

We have prepared the enclosed case study of ground water management in the Chino Basin as part of our Draft Report to the California Assembly on the evolution of ground water management in Southern California. I am particularly interested in assuring the accuracy of the enclosed draft and would welcome your comment on it.

Please feel free to "mark up" the draft material. Since we are operating under a time constraint, I would welcome your comments by the end of this month. Please call me at 916/442-9085 if there is anything you would like to discuss.

Your comments have been most helpful in developing the Chino case study. I appreciate your willingness to take the time to review it.

Sincerely,

Albert J. Lipson, Director
Sacramento Office

AJL:em

Summary

Prepared

by

Rand Corporation

Albert J. Lipson

Director, Sacramento

19 / OCTOBER 78

TO: Fran Bommenschenkel

CHINO BASIN GROUND WATER MANAGEMENT*BACKGROUND

The Chino Basin adjudication is the latest example of management via 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, the largest ground water reservoir in the South Coast area, 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 (see Map). 1976 ground water use totaled about 182,000 acre feet and surface water primarily from MWD 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. 1976 pumping costs for appropriators averaged between \$25 and \$30 per acre foot, and for overlying agriculture users about \$40 to \$50 per acre foot. The Basin is overlain by Chino Municipal Water District, Western Municipal Water District, and Pomona Valley Municipal Water District.

The Chino Basin has been in an overdraft condition for the past 20 years. This has resulted in lowering of water tables and increased pumping costs.

* In addition to the sources cited below this summary is based on interviews with producers, Chino Basin MWD staff, consultants and attorneys involved in the adjudication including: Donald Stark, Fran Brommenschenkel, Ed Dubiel, Martin Whelan, Adolph Moscovitz, Fred Douma, Lee Travers, and Hoite Ruge.

Existence of nitrates constitutes a water quality problem, particularly in the easterly 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 past 10-15 years. While there are some important short-term water quality problems facing the area, continued overdraft and optimal use of ground water and surface supplies constitute a long-term problem affecting the entire overlying area.

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

Second was an agreement governing the allocation of water supply in the Santa Ana River Waterbed. This was accomplished by an adjudication action initiated by Orange County Water District in 1963 involving 4,000 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 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) is required to provide water to assure an average flow at Prado Dam for downstream use in Orange County.* The judgment is monitored by a five-person Watermaster under court supervision. With its obligation to downstream users settled, Chino Basin Water users were now in a position to formulate a ground water management plan for the Chino Basin.

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

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 ground water management plan using imported water for replenishment. There were four primary factors that stimulated a search for ground water management:

1. Increased pumping costs due to higher pump lifts and increasing power charges.
2. The fear that uncontrolled pumping would deplete the basin and 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 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.* It was believed new users would be the primary beneficiaries of an Orange County type plan since their water costs would be essentially the same as those with historic rights.

Early negotiations during 1970-71 to develop an acceptable ground water management plan failed. Initially, the Chino Basin Municipal Water District proposed a gross pump tax (i.e., tax on all production) to fund both studies necessary for development of a management plan and the cost of replenishment water as part of an adjudicated settlement, but this was opposed by agricultural producers. Later, during 1974, intensive negotiations by all producers were renewed

* 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.

at the behest of the Chino District and area municipalities, and an agreement was reached to adjudicate the Basin with studies necessary to develop a management plan and evaluate its effects financed through a temporary pump tax.* 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 (SB 222 Ayala) authorizing a \$2 per acre ft. pump tax for three years to fund special studies to verify past production and determine basin hydrology, other preliminary steps toward adjudication, and to 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 that costs of providing supplemental water might be allocated to overlying agricultural users, overlying non-agricultural users, and appropriators. The State participated in the negotiations as a major pumper in the Basin because of its correctional facility. 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 determine what type of institutional arrangements for basin governance would be set up. In addition they had to deal with uncertainty introduced into their negotiations by the 1975 State Supreme Court San Fernando decision.

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

IMPACT OF 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 which 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. It made the determination of overlying and appropriative rights uncertain. It appears that the decision strengthened the position of those with overlying rights vis-a-vis appropriators because cities realized they did not have prescriptive rights and would have to settle for less than they would have received under mutual prescription.

Strict application of mutual prescription would have given old farmers large rights and new farmers none. This caused a major split between farmers during the early negotiations. The San Fernando decision eliminated the windfall that might have gone to the large diversified farmers. 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. The decision also complicated determination of the rights among appropriators 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 and a specified base period would be used to determine 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.

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.*

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.†

The major objectives of the plan were to halt unregulated overdraft and stabilize the basin, secure a long-term future water supply making efficient use of ground and surface waters, and 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 SB 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.

* Op. Cit. First Annual Report

† See *Department of Water Resources Bulletin* 104-3, "Meeting Water Demands in the Chino-Riverside Area. 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 ground and surface supplies conjunctively became more attractive as a compromise which 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 protect open space while assuring the long-term water supply necessary to permit controlled growth. Cost of an 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 while imposition of a strict injunction would cost \$32 million and a physical solution \$26.6 million.*

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.

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

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 (see list) 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 group, 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 comprised 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 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 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." * Its primary objective is to permit management by replenishment with replenishment costs distributed among producer groups.

One of the unique aspects of the Chino adjudication is the division of users into three separate management groups or "pools"; overlying agricultural, overlying nonagricultural (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 due to the interest of appropriators in 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."

* *Chino Basin Municipal Water District v. City of Chino*, San Bernardino Superior Court No. 16437, January 27, 1978.

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 nonagricultural users and for appropriators. Since agricultural rights are not specified they cannot be transferable. Overlying nonagricultural rights are determined but they are considered "appurtenant to the land" and not 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. 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, it also would reduce agriculture's share of safe yield, benefit appropriators and result in higher agricultural costs. Overall, agricultural producers believed they had a "better deal" under the proposed physical solution under which they anticipated 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 replenishment 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 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.*

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

Some opposed district management because they feared there would be a conflict between the District's role as a surface water purveyor and operator of sewage treatment works and its role as a ground water manager. Some felt this might lead to over-reliance on imported MWD water or transfer of costs to ground water pumpers that should be charged to other water users.* However, the district was acceptable to most producers because they were already governed by it, its boundaries covered about 75% of the ground water basin and it had also defended their interests in the Santa Ana River adjudication initiated by Orange County ground water basin. It had in-house implementation capability and had taken leadership to develop a long-range ground water management plan. Moreover, the District had existing authority to purchase replenishment water from MWD and agreed to drop the surcharge it had previously levied on use of this water if it were selected as Watermaster. It also made it known it would drop the adjudication if it were not selected. In addition some producers believed management by public district would have greater legitimacy and be more acceptable than a producer committee 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 majority of votes based on

* 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 ground water pumpers should not pay the cost.

assessments paid. Moreover, 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 a substantial majority. Also if he does not adhere to their recommendations on non-mandated actions, he must hold a public hearing before reaching a decision. What's more, separate pool committees elected, based on 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 anticipated 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 policy-making.

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.
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, conduct studies and adopt rules for storage agreements.
6. 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 ft. per year for 10 years with overlying agricultural rights set at 82,800 acre feet (85% of their average use for the two previous years) and overlying non-agricultural rights at 7,366 acre feet (97% of average use for two previous years). Appropriators receive the remaining 49,834 acre feet of safe yield as a residual (68% of average use for the two previous years), but their rights were increased to 54,834 (72% of two previous year's average use) by the physical solution. 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 agriculture pool pay a gross assessment on all production. Non-agricultural overlying users pay a net replenishment assessment on excess production of over their share of safe yield. There was some disagreement among appropriators about how to distribute the costs of replenishment. Some favored a tax on all production (i.e., a gross pump tax) and others only on production over their share of operating safe yield (i.e., 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 since they have no previously adjudicated right. New agricultural producers share in the safe yield of the agricultural pool and pay 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 the lower pump lifts due to State storage would save local pumpers from \$225,000 to \$450,000 in 1985 costs (assuming 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 ground water 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 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 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 only begun in earnest after an inter-basin 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 treated differently. They are not specifically determined for farmers and all overlying rights are not transferable while appropriative rights are transferable with Watermaster approval.

Like past adjudications, it 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 the Watermaster from ministerial duties to broad policy-making 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.

ORIGINAL FILED

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN BERNARDINO
11

12 CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
13)
14 Plaintiff,)
15 v.)
16 CITY OF CHINO, et al.)
17 Defendants.)

No. 164327

PLAINTIFF'S POST TRIAL
MEMORANDUM

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19 Pursuant to order of the Court issued January 27, 1978,
20 Judgment was entered in this action whereby the Court retained
21 continuing jurisdiction of the matter.

22 To assist the Court in such continuing jurisdiction the
23 plaintiff, Chino Basin Municipal Water District, hereby submits
24 this Post Trial Memorandum setting forth the statement of the
25 nature of the action, and the principle characteristics of the
26 Judgment.

27 -----
28 -----

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I.

NATURE OF ACTION

This action is a plenary adjudication of all rights in an o the ground waters of Chino Basin and its storage capacity. The case is predicated on the fact that the basin is, and since at least 1953 has been, in a condition of overdraft.

The Judgment adjudicated the rights of several hundred overlying landowners, producing in the aggregate over sixty percent of the basin supply for agricultural use, as well as several substantial industrial and commercial producers of water for use on their overlying lands, cities, public water districts, utilities, and mutual water companies all of whom produce water from the basin.

Each of the defendants named in the Judgment is a water producer or other water claimant or public water district within the Chino Basin. Each such defendant has been identified as a member of one of the following three groups:

a. Overlying (Agricultural) Producers -- A party entitled to possession of lands overlying Chino Basin producing water from such basin for overlying agricultural use on said lands.

b. Overlying (Non-Agricultural) Producers -- A party entitled to possession of lands overlying Chino Basin producing water from such basin for overlying use on said lands for other than agricultural purposes.

c. Appropriator -- A party producing water from Chino Basin pursuant to an appropriative or prescriptive right, which right is protected from loss or diminution by prescription by the provisions of Section 1007 of the California Code.

1 II.

2 HIGHLIGHTS OF THE JUDGMENT

3 A. Declaration of Rights.

4 1. Overlying Agricultural Rights. Because of the nature
5 of the Physical Solution and the method of assessment proposed for
6 the exercise of overlying agricultural rights, it was not necessary
7 to declare individual overlying rights. This avoided a dual problem.
8 First, the total number of parties in the category exceeded 1,200.
9 Second, the available records and measuring devices for precise
10 calculation of individual rights was less than adequate. Thus the
11 rights of all agricultural users have been declared in gross for
12 all necessary purposes of the Judgment.

13 2. State of California. Because of the several diverse
14 and complex interests of the State of California, and in view of
15 the willingness of the State to stipulate to be bound by the
16 Physical Solution of the Judgment, no attempt was made in the
17 Judgment to define or categorize the rights of the State of Cali-
18 fornia. The State and its agencies were subjected by Judgment, to
19 the Physical Solution, and their rights are treated in gross along
20 with the overlying agricultural rights.

21 3. Appropriative Rights. The twenty-two parties in the
22 "Appropriative Pool" have rights which are appropriative and pre-
23 scriptive in nature. Under full adjudication of such rights to
24 ground water each would have had differing priorities and quantities.
25 The complexity of such determination was avoided by resorting to
26 principles of mutual prescription in the Judgment. Thus, all of
27 the parties who are appropriators have been adjudged that their
28 rights have equal priority.

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1 B. Continuing Jurisdiction of Watermaster Provisions.

2 1. Exemptions from Continuing Jurisdiction. The Cour
3 with limited exceptions, retained continuing jurisdiction of the
4 case. Exempted (either entirely or for a specific period of time)
5 from the Court's continuing jurisdiction was the re-determination
6 of Safe Yield and modifications of assessment formulas in the
7 appropriate pool for a period of ten years.

8 2. Watermaster Organization and Powers. The public
9 interests in the preservation of the water resource was protected
10 and assured in the sense that the Court's Watermaster is an over-
11 lying district, which holds no rights to produce ground water but
12 is the importing agency bringing supplemental water into the basin
13 At the same time, the Watermaster Advisory Committee was created
14 and given broad powers to review, advise and consent to the act
15 of the Watermaster, subject to more detailed actions by pool com-
16 mittees formed to advise, consent and administer the affairs of the
17 several pools established under the Physical Solution. In these
18 many provisions, there is a balance created to assure the protecti
19 of the private rights of the parties and the general public intere
20 in the preservation of the resource.

21 C. Physical Solution. The Physical Solution is the heart of
22 the Judgment. It is essential to understanding of the Physical
23 Solution that it be recognized that there is sufficient water to
24 meet the needs of all of the parties. This is because there are
25 significant imported water supplies available to supplement the
26 native Safe Yield of the basin. However, the supplemental water
27 are significantly more expensive than local ground waters. Accord
28 ingly, the function of the Judgment, and of its Physical Solution,

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1 is to provide an equitable and reasonable method of assuring that
2 parties share in the burden of the costs of importing the necessary
3 supplemental water to achieve a hydrologic balance within Chino
4 Basin.

5 The Physical Solution provides the mechanics by which the
6 management plan is implemented. The basic concept of the Physical
7 Solution is similar to that adopted in the prior ground water
8 adjudications in Southern California, i.e., the parties are entitled
9 to produce their requirements for ground water from the basin,
10 provided that they contribute, by Watermaster assessments, sufficient
11 money to assure purchase of supplemental water to replace any
12 aggregate production in excess of the Safe Yield. It is in the
13 detailed formulation of that Physical Solution that some of the
14 most interesting features of the Judgment were developed.

15 1. Multiple Pool Plans. All of the parties have been
16 categorized into three major pools. The total Safe Yield of the
17 basin has been allocated as between the three pools with each pool
18 assuming a level of reduction in aggregate rights below current
19 ~~levels~~ ~~of~~ ~~the~~ ~~entire~~ ~~basin~~, by utilizing this format
20 the Judgment grouped parties with distinct economic and social
21 concerns in a manner allowing them to provide the necessary funds
22 within their particular needs and requirements. For example, it
23 of importance to agricultural operations that the total cost of
24 water be kept to a minimum. It is also important to the entire
25 area that the Physical Solution be structured so as to encourage
26 continued commitment of land to agricultural or "green belt" activities.
27 Accordingly, approximately 60% of the Safe Yield of the basin is
28 committed, in gross, to the Overlying (Agricultural) Pool. Over

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1 production by that pool, in the aggregate, is to be replaced by a
2 gross assessment on all production by all parties within the pool.
3 The net effect of the use of this assessment technique, under cur-
4 rent conditions, is an assessment in the magnitude of \$5.00 per
5 acre foot for replenishment water.

6 On the other hand, overlying industrial and commercial
7 users do not find the cost of water to be as critical a factor.
8 Accordingly, the more traditional "net assessment" formula was
9 used with rights being allocated among the twelve members of the
10 Overlying (Non-Agricultural) Pool. In this assessment mode, over-
11 production is replenished on the basis of an assessment for the
12 full cost of excess water produced on an acre foot per acre foot
13 basis.

14 In the case of the Appropriators, the Judgment developed
15 a formula whereby the total over-production by that pool is met by
16 a gross assessment as to 15% of the cost and a net assessment as to
17 the remaining 85% of the cost.

18 The Judgment then leaves the assessment pattern within
19 each pool under the continuing jurisdiction provisions subject to
20 review and modification by the Court. Thus, each category of
21 producers retains the maximum flexibility to meet future and
22 developing circumstances. In this regard, the Judgment specifically
23 recognizes the impact of social-economic conditions and provides
24 for continuing study of those factors.

25 2. Operating Safe Yield. The concept of operating Safe
26 Yield was applied with regard to the Appropriative Pool. The net
27 effect of the concept was to allow limited mining of water in
28 storage in excess of Safe Yield during the early period of the

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1 Physical Solution in order to reduce the burden of assessment. A
2 a result, provision was made for limited extractions by the Approp
3 priative Pool in excess of that pool's share of the Safe Yield.
4 Offsetting that right is the fact that the Appropriative Pool tak
5 the full burden of reductions in the Safe Yield if such reduction
6 should occur in the future. A maximum limit of 200,000 acre feet
7 has been placed upon the aggregate mining of water authorized und
8 this provision of the Judgment.

9 3. Ground Water Storage Contracts. The utilization of
10 excess ground water storage capacity has been recognized in the
11 Judgment. The administration of activities of storing water to
12 utilize that capacity are provided for in underground storage
13 agreements pursuant to Watermaster regulations. This is an enorm
14 significant aspect of the adjudication, in view of the existence
15 approximately 2,000,000 acre feet of unused storage capacity with
16 the basin, the largest resource of its kind in Southern Californi

17 4. In Lieu Areas. The element of water quality, hereto
18 fore only peripherally approached in ground water adjudication, w
19 accommodated in the Judgment by provision for "in lieu areas."
20 Therein producers may obtain compensation for water left in the
21 ground in lieu of its production pursuant to adjudicated rights.
22 Provision is made within the Judgment for "in lieu areas" to be
23 established by action of the Court.

24 5. Facilities Equity Assessment. In the Appropriative
25 Pool, provision has been made for implementation of a "facilities
26 equity assessment" as an aid to a gross assessment if that was
27 ultimately adopted by the pool. These provisions are generally
28 patterned on the statutory solution involved in the Basin Equity

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1 Assessment provisions of the Orange County Water District Act.

2 6. Agency Contracts for Exercise of Overlying (Non-
3 Agricultural) Rights. The overlying rights of the Non-Agricult a
4 Pool may be well exercised ultimately by municipal systems of
5 parties within the Appropriative Pool. Inasmuch as the overlying
6 right by its nature is appurtenant to the land and cannot be trans-
7 ferred, provision is made for an appropriator to enter into and
8 approve an agency agreement to produce water for delivery to the
9 overlying land pursuant to its overlying right.

10 7. Unallocated Safe Yield Water. It is contemplated tha
11 over a long period of years, agricultural production may well fall
12 substantially below the aggregate amount of the Safe Yield right
13 allocated to the pool. That Safe Yield right will remain availabl
14 for agricultural use, but in a given year or a series of years
15 there may be a substantial amount of Safe Yield water which is .
16 pumped by Overlying Agricultural Pool parties. The Judgment adopt
17 a formula for allocating that unpumped water among the members of
18 Appropriative Pool by first, replacing any reductions in Safe Yield
19 (the full impact of which falls on the Appropriative Pool), and
20 then to recognize the conversion of agricultural land to municipal
21 and domestic purposes.

22 8. Use of Reclaimed Water. Reclaimed water is recognize
23 as part of supplemental water subject to use for replenishment by
24 Watermaster or for storage by any party.

25 9. Export. The Judgment did not limit or prohibit export
26 of ground water production, but such export over base export
27 quantities was made subject to a full net assessment. That is,
28 party producing "new" water for export must pay an assessment

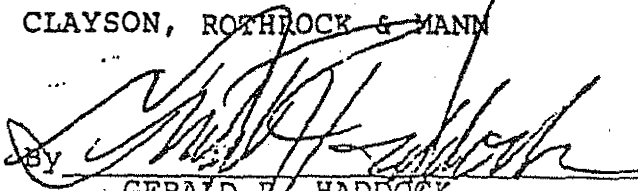
1 sufficient to buy or replenishment water to replace exported w
2 acre foot for acre foot.

3 10. Unlawful Pumping Practices. The Judgment does n
4 preclude the prosecution of any cause of action which may aris
5 with relation to the location on the extent of pumping between
6 neighboring well owners which may constitute a wrongful interf
7 The subject matter of the Judgment is the determination and al
8 cation of rights in the gross quantity of water representing t
9 Safe Yield of the ground water basin.

10 DATED: July 11, 1978.

11 DONALD D. STARK
12 A. Professional Corporation

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14 
15 BY _____
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CHINO BASIN MUNICIPAL WATER DISTRICT v. CITY OF CHINO, et al.
Case No.: RCV 51010

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I declare as follows:

I am employed in the County of Los Angeles, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 300 South Spring Street, 5th Floor, Los Angeles, California 90013-1204.

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal service that same day in the ordinary course of business.

On September 28, 1999, at my place of business, at Los Angeles, California, I served the attached:

**RESPONSE OF STATE OF CALIFORNIA TO WATERMASTER MOTION AND
SUPPLEMENTAL POINTS AND AUTHORITIES CONCERNING STATUS OF
NEGOTIATIONS WITH THE DEPARTMENT OF WATER RESOURCES
OPTIMUM BASIN MANAGEMENT PROGRAM; PROPOSED ORDER**

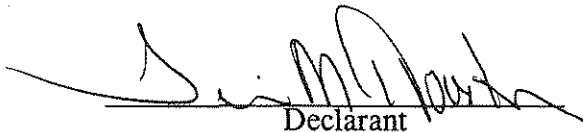
by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

PARTIES SERVED:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on September 28, 1999 at Los Angeles, California.

TINA M. HOUSTON
[Please Print Name]



Declarant

*Chino Basin Municipal Water District vs. City of Chino, et al.,
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*Chino Basin Municipal Water District vs. City of Chino, et al.,
San Bernardino County Superior Court, Case No. RCV 51010*

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