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of the State of California
2 MARY HACKENBRACHT,
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4 MARILYN H. LEVIN, SBN: 92800,
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FILED-West District
San Bernardino County Clerk

OCT 18 1999

By *Marilyn H. Levin* Deputy

7 Attorneys for
STATE OF CALIFORNIA

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

11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

12 Plaintiff,

13 v.

14 CITY OF CHINO, et al.,

15 Defendants.

Case No.: RCV 51010

NOTICE OF LODGING OF
PROPOSED RULING

Hearing Date

Date: September 30, 1999

Time: 1:30 p.m.

Dept: R-8

Specially assigned to the Honorable
Judge J. Michael Gunn

17 A Motion filed by the Chino Basin Watermaster concerning the status of negotiations
18 with the Department of Water Resources and development of the Optimum Basin Management
19 Program ("OBMP") came on regularly for hearing on September 30, 1999. At this court's
20 request, the State of California revised the Court's Tentative Ruling dated September 30, 1999 to
21 reflect the Court's oral statements. A copy of the original Tentative Ruling with red-lined
22 changes is attached as Exhibit A. A copy of the Proposed Ruling for the court's signature is
23 attached as Exhibit B. The court revised its tentative as follows:

- 24
- 25 1. The Court accepts the OBMP Phase I report, including Appendix A, and additional
26 comments filed with the court as a provisional report, in conformance with the Court's Order to
27 Show Cause why the OBMP has not been submitted.
 - 28 2. The Court recognizes that the parties have filed comments and/or made objections
during the development of the OBMP and that the Watermaster has retained those comments for

1 the record. The court recognizes that the parties reserve their rights to comment on and/or object
2 to the Phase I Report during the development of Phase II of the OBMP, and at the time the final
3 OBMP is considered.

4 3. The October 28, 1999 hearing regarding the OBMP and continuance of the Nine-
5 Member Board is vacated. The court additionally noted that the October 28, 1999 hearing date
6 will be held open for any Motion relating to the Petitions filed to appropriate water from the
7 Santa Ana River.

8 4. Parties shall present briefs on the application of the California Environmental Quality
9 Act ("CEQA") on the OBMP on or before October 28, 1999.

10 5. The Court will conduct a hearing on November 18, 1999 to consider the impact of
11 CEQA on the OBMP process and to further consider deadlines set forth in the ruling.

12 6. The Court is considering extending the interim appointment of the Watermaster to
13 reflect the extensions granted to the parties for the development of Phase II of the OBMP.

14 A Supplement to Appendix A consisting of all written comments submitted as part of the
15 September 15, 1999 hearing will be filed with the court and served on all parties by the
16 Watermaster. The Supplement will also be accepted as part of the provisional report.

17 All comments to the proposed ruling must be filed with the court on or before
18 October 19, 1999. The Ruling to be issued by the Court will be served by Watermaster.

19
20 Dated: October 12, 1999

Respectfully Submitted,

21 BILL LOCKYER, Attorney General
of the State of California
22 MARY HACKENBRACHT,
Assistant Attorney General
23 DOUGLAS B. NOBLE,
Supervising Deputy Attorney General
24 MARILYN H. LEVIN,
Deputy Attorney General

25
26 By: 

MARILYN H. LEVIN,
Deputy Attorney General

27
28 Attorneys for
STATE OF CALIFORNIA

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3 **REDLINED VERSION**
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**
10

11 **CHINO BASIN MUNICIPAL WATER**
12 **DISTRICT,**

13 Plaintiff,

14 v.

15 **CITY OF CHINO, et al.,**

16 Defendants.

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[PROPOSED] RULING

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Date: September 30, 1999

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Judge J. Michael Gunn

17 **Background**
18

19 On February 19, 1998, this Court set aside its previous order appointing the
20 California Department of Water Resources ("DWR") as Interim Watermaster and instead
21 appointed a nine-member board consisting of representatives from the Overlying
22 (Agricultural Pool), the Overlying (Non-Agricultural Pool), the Appropriative Pool, and
23 three municipal water districts to serve as **Interim Watermaster** for a twenty-six month
24 period commencing March 1, 1998, and ending June 30, 2000. To ensure that DWR is in
25 a position to assume the duties of Watermaster at the end of the interim appointment
26 should the nine-member board fail to operate independently and effectively, the Court
27 directed the parties to engage in negotiations with DWR related to its takeover of
28 Watermaster operations. The court further directed the Interim Watermaster to notice a
hearing no later than September 30, 1999, to report on the status of the negotiations. The

1 parties were further reminded that the Court's order prohibits the Interim Watermaster
2 from entering into any agreement that DWR will be obligated to assume, i.e., contracts
3 wherein payment and/or performance of any kind whatsoever will be required after June
4 30, 2000. Current Interim Watermaster employees have been and continue to be
5 reminded that if DWR is appointed as Watermaster at the end of the Interim appointment,
6 Watermaster employee positions will terminate on June 30, 2000, without further order of
7 the Court. Further, DWR will not be required to hire current or then-current Interim
8 Watermaster employees upon DWR's appointment; rather Watermaster employees may be
9 rehired at the discretion of DWR and on such terms as DWR deems appropriate.

10 On February 19, 1998, the Court also ordered the Interim Watermaster to notice a
11 hearing on or before October 28, 1999, to consider all parties' input as to the continuance
12 of the nine-member board as **Watermaster** after June 30, 2000. The Court noted that the
13 timely filing of all reports with the Court and the development of an optimum basin
14 management program are of significant interest to the Court in the continuation of the
15 nine-member board as Watermaster. The Court directed the Interim Watermaster to
16 develop an optimum basin management program and to submit the optimum basin
17 management program ("OBMP") first to the Advisory Committee for review and/or
18 action, then to the Court no later than September 30, 1999, or show cause why it could
19 not do so. The Court also set a hearing on October 28, 1999, at 1:30 p.m., to consider
20 whether to approve and order full implementation of the program or consider why the
21 program has not been completed.

22 In compliance with the Court's order requiring the Interim Watermaster to develop
23 and to submit an optimum basin management program first to the Advisory Committee
24 for review and/or action, then to the Court no later than September 30, 1999, the Interim
25 Watermaster has filed with the Court: (1) Optimum Basin Management Program Phase I
26 Report, dated August 19, 1999, and (2) Appendix A Public Comments to the Report. The
27 Interim Watermaster requests these documents be filed and accepted by the Court **only as**
28 **reports** and that the Interim Watermaster be given an additional six months to prepare an

1 implementation plan– Phase II of the Optimum Basin Management Program Report. The
2 Interim Watermaster further requests that the Court adopt a revised schedule for approval
3 of the final Optimum Basin Management Program (presently set for approval on October
4 28, 1999). The City of Pomona, Monte Vista Water District, and the State of California
5 have filed responses to the motion by the Interim Watermaster.

6
7 Status of Negotiations with DWR

8 The Interim Watermaster reports that on November 18, 1998, the Chief of
9 Watermaster Services wrote to DWR regarding Watermaster services. DWR responded
10 to the letter on January 15, 1999, stating that DWR is ready to resume negotiations but in
11 view of the fact that the Interim Watermaster has been working adequately DWR believes
12 it is in the parties' best interests that negotiations should not be resumed until directed by
13 the Court. The Court notes that the Interim Watermaster and several other parties have
14 expressed concern regarding significant funding issues to be resolved in connection with
15 the development of an implementation plan for the OBMP. It might be the case that
16 DWR is in a superior position to obtain available federal and state funding for the
17 implementation plan; hence, it is crucial that the Interim Watermaster and DWR have in
18 place a plan for the orderly transfer of operations from the nine-member board to the
19 DWR at the end of the interim appointment SHOULD Watermaster or relevant
20 responsible organizations, among other things, experience obstacles to obtaining
21 necessary financing concerning implementation of the OBMP. Accordingly, the Court
22 hereby orders the Interim Watermaster to prepare and submit to DWR and file with the
23 Court no later than November 12, 1999, a proposed contingency plan for the orderly
24 transfer of operations at the end of the interim appointment. DWR is invited to prepare a
25 response to the Interim Watermaster's proposal by no later than January 14, 2000, which,
26 if prepared, shall also be filed with the Court. Assuming DWR is still interested in
27 becoming Watermaster, the Interim Watermaster and DWR shall thereafter meet to
28 develop a joint proposal for the orderly transfer of operations, which shall be submitted to

1 the Court no later than February 18, 2000. This is not an appointment; instead, it is a
2 contingency plan, with no commitment regarding appointment of DWR or any agency
3 and/or person as Watermaster.

4
5 Status of Optimum Basin Management Plan

6 The Court commends the parties on the achievements accomplished to date on the
7 preparation of the OBMP and their commitment to complete a draft implementation
8 program report by February 15, 2000, and a final OBMP by March 31, 2000. The
9 Optimum Basin Management Program Phase I Report describes the issues which need to
10 be addressed. The Phase I Report describes the goals for management of the basin,
11 impediments to those goals, and possible solutions to achieve the goals described. The
12 focus of the Interim Watermaster and the interested parties must now turn to choosing the
13 solutions will be implemented. The Court recognizes this requires further significant
14 work by all of the parties and encourages the parties to stay focused on solving the
15 outstanding implementation issues.

16 Comments received by the court regarding the Optimum Basin Management
17 Program Phase I Report indicate parties may want to edit the report some time in the
18 future ~~and/or have continuing objections to some of the facts and conclusions in the~~
19 ~~report.~~ The Court, ~~however therefore,~~ accepts the OBMP Phase I report, including the
20 Appendix A, as a ~~final provisional~~ report in conformance with the Court's Order to show
21 cause why the OBMP has not been submitted. Any discrepancies in the report have been
22 noted by the comments to the report coterminously submitted to the Court as Appendix A
23 ~~and further comments submitted by Pomona, Monte Vista Water District and State of~~
24 ~~California.~~ A Supplement to Appendix A consisting of all written comments submitted as
25 part of the September 15, 1999 hearing will be filed with the Court and served on all
26 parties by the Watermaster. Any further issues which may arise in the course of Phase II
27 implementation discussions can be addressed in Phase II. The court recognizes that the
28 parties reserve their rights to comment on and/or object to the Phase I Report during the

1 ~~development of Phase II of the OBMP, and at the time the final OBMP is considered.~~
2 ~~Closure on Phase I is necessary in order to contravene Receipt of the Phase I report as~~
3 ~~provisional is not meant to encourage~~ further delay in Phase II implementation.
4

5 Environmental Concerns

6 An issue has been raised as to the applicability of the California Environmental
7 Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA") to the
8 preparation of the OBMP. For purposes of CEQA a state court is not a public agency and
9 thus is exempt from its requirements. However, an argument may be made that although
10 state courts are exempt from CEQA they do not have the authority to issue orders that
11 would excuse a public agency from complying with CEQA. The Court is mindful of the
12 underlying purpose of CEQA, to ensure the maintenance of a quality environment for the
13 citizens of California. The Court is also mindful of the Legislature's expressed policy
14 that the state take all action necessary to provide its citizens with, among other things,
15 clean air and water, and to ensure that the long-term protection of the environment is the
16 guiding criterion in public decisions. To facilitate resolution of the issue of the
17 application of CEQA and NEPA to the adoption and/or preparation of the OBMP, the
18 Court hereby orders the Interim Watermaster and all other interested parties to appear on
19 November 18, 1999, to show cause why the Court should not order the preparation of an
20 environmental document in compliance with CEQA and NEPA and direct Inland Empire
21 Utilities Agency to proceed as the lead agency to ensure timely preparation of an
22 environmental document, to avoid delay in adoption and implementation of the OBMP.
23 All briefs are to be submitted by October 28, 1999.

24
25 **WHEREFORE, IT IS HEREBY ORDERED:**

26 1. The Court accepts the OBMP Phase I report, including Appendix A,
27 Supplement to Appendix A and additional comments filed with the court, as a provisional
28 report, in conformance with the Court's Order to Show Cause why the OBMP has not

1 been submitted.

2
3 2. The Court recognizes that the parties have filed comments and/or made
4 objections during the development of the OBMP and that the Watermaster has retained
5 those comments for the record. The court recognizes that the parties reserve their rights to
6 comment on and/or object to the Phase I Report during the development of Phase II of the
7 OBMP, and at the time the final OBMP is considered.

8 3. The October 28, 1999 hearing regarding the OBMP and continuance of the
9 Nine-Member Board is vacated. The court additionally noted that the October 28, 1999
10 hearing date will be held open for any Motion relating to the Petitions filed to appropriate
11 water from the Santa Ana River.

12 4. Parties shall present briefs on the application of the California Environmental
13 Quality Act ("CEQA") on the OBMP on or before October 28, 1999.

14 5. The Court will conduct a hearing on November 18, 1999 to consider the
15 impact of CEQA on the OBMP process and to further consider deadlines set forth in the
16 ruling.

17 6. The Court is considering extending the interim appointment of the
18 Watermaster to reflect the extensions granted to the parties for the development of Phase
19 II of the OBMP.

20
21 DATED: _____

22 J. MICHAEL GUNN, JUDGE
23 SAN BERNARDINO COUNTY SUPERIOR COURT
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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17 Program Phase I Report indicate parties may want to edit the report some time in the
18 future and/or have continuing objections to some of the facts and conclusions in the
19 report. The Court, therefore, accepts the OBMP Phase I report, including the Appendix
20 A, as a provisional report in conformance with the Court's Order to show cause why the
21 OBMP has not been submitted. Any discrepancies in the report have been noted by the
22 comments to the report coterminously submitted to the Court as Appendix A and further
23 comments submitted by Pomona, Monte Vista Water District and State of California. A
24 Supplement to Appendix A consisting of all written comments submitted as part of the
25 September 15, 1999 hearing will be filed with the Court and served on all parties by the
26 Watermaster. Any further issues which may arise in the course of Phase II
27 implementation discussions can be addressed in Phase II. The court recognizes that the
28 parties reserve their rights to comment on and/or object to the Phase I Report during the

1 development of Phase II of the OBMP, and at the time the final OBMP is considered.
2 Receipt of the Phase I report as provisional is not meant to encourage further delay in
3 Phase II implementation.

4
5 Environmental Concerns

6 An issue has been raised as to the applicability of the California Environmental
7 Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA") to the
8 preparation of the OBMP. For purposes of CEQA a state court is not a public agency and
9 thus is exempt from its requirements. However, an argument may be made that although
10 state courts are exempt from CEQA they do not have the authority to issue orders that
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12 underlying purpose of CEQA, to ensure the maintenance of a quality environment for the
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16 guiding criterion in public decisions. To facilitate resolution of the issue of the
17 application of CEQA and NEPA to the adoption and/or preparation of the OBMP, the
18 Court hereby orders the Interim Watermaster and all other interested parties to appear on
19 November 18, 1999, to show cause why the Court should not order the preparation of an
20 environmental document in compliance with CEQA and NEPA and direct Inland Empire
21 Utilities Agency to proceed as the lead agency to ensure timely preparation of an
22 environmental document, to avoid delay in adoption and implementation of the OBMP.
23 All briefs are to be submitted by October 28, 1999.

24
25 WHEREFORE, IT IS HEREBY ORDERED:

26 1. The Court accepts the OBMP Phase I report, including Appendix A,
27 Supplement to Appendix A and additional comments filed with the court, as a provisional
28 report, in conformance with the Court's Order to Show Cause why the OBMP has not

1 been submitted.

2
3 2. The Court recognizes that the parties have filed comments and/or made
4 objections during the development of the OBMP and that the Watermaster has retained
5 those comments for the record. The court recognizes that the parties reserve their rights to
6 comment on and/or object to the Phase I Report during the development of Phase II of the
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15 impact of CEQA on the OBMP process and to further consider deadlines set forth in the
16 ruling.

17 6. The Court is considering extending the interim appointment of the
18 Watermaster to reflect the extensions granted to the parties for the development of Phase
19 II of the OBMP.

20
21 DATED: _____

22 **J. MICHAEL GUNN, JUDGE**
23 **SAN BERNARDINO COUNTY SUPERIOR COURT**
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1 **PROOF OF SERVICE BY U.S. MAIL**

2 **STATE OF CALIFORNIA**)
3 **COUNTY OF LOS ANGELES**) ss:
4

5 I declare as follows:

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

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

14 On October 12, 1999, at my place of business, at Los Angeles, California, I served
15 the attached:


16 **NOTICE OF LODGING OF [PROPOSED] RULING**

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

19 **PARTIES SERVED:**

20 SEE ATTACHED SERVICE LIST

21 I declare under penalty of perjury the foregoing is true and correct and that this declaration
22 was executed on October 12, 1999 at Los Angeles, California.

23 
24 Tina M. Houston, Declarant

Service List

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

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Jimmie Gutierrez, Esq.
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Upland, CA 91785

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Ontario, CA 91762

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Redlands, CA 92373

Timothy J. Ryan
SAN GABRIEL VALLEY WATER COMPANY
P.O. Box 6010
El Monte, CA 91734

Richard Adams II
ALVAREZ-GLASMAN & COLVIN
c/o Pomona City Hall
505 South Garey Avenue
Pomona, CA 91766

Gene Tanaka
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P.O. Box 1028
Riverside, CA 92502-1028

Frederic Fudacz, Esq.
NOSSAMAN GUTHNER KNOX & ELLIOTT
LLP
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Los Angeles, CA 90071-1672

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P.O. Box 6425
San Bernardino, CA 92412

Steven M. Kennedy
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1839 Commercenter West
P.O. Box 6425
San Bernardino, CA 92412

John J. Schatz
c/o SANTA MARGARITA WATER DISTRICT
P.O. Box 7775
Laguna Niguel, CA 92607-7775

Service List
(Continues)

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

CHINO BASIN WATERMASTER
8632 Archibald Ave., Suite 109
Rancho Cucamonga, CA 91730

Wayne K. Lemieux, Esq.
LEMIEUX & O'NEILL
200 N. Westlake Blvd., Suite 100
Westlake Village, CA 91363-3755

Jarlath Olay, Deputy General Counsel
METROPOLITAN WATER DISTRICT
700 N. Alameda Street
Los Angeles, CA 90012

Susan Trager
LAW OFFICE OF SUSAN TRAGER
2100 S.E. Main Street, Suite 104
Irvine, CA 92614-6238

Anne T. Thomas
BEST BEST & KREIGER, LLP
P.O. Box 1028
Riverside, CA 92502-1028

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

PROOF OF SERVICE

I, Mary 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 the documents identified below by placing a true and correct copy of same in sealed envelopes addressed to each of the addresses shown on the attached mailing lists.

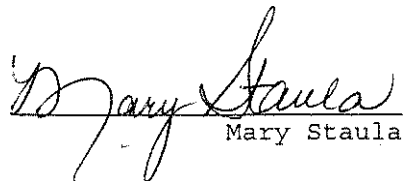
Case No.: RCV 51010

NOTICE OF LODGING OF [PROPOSED] RULING

3. I then placed said envelopes 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, envelopes 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 October 18, 1999 at Rancho Cucamonga,
California.


Mary Staula

List updated 10/12/99 by request

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