

1 Scott S. Slater (SBN 117317)
Michael T. Fife (SBN 203025)
2 Justin J. Lucke (SBN 205004)
HATCH AND PARENT
3 21 East Carrillo Street
Santa Barbara, CA 93101
4 Phone: 805-963-7000
Fax: 805-965-4333

5 Attorneys for CHINO BASIN WATERMASTER

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION
10

11 CHINO BASIN MUNICIPAL WATER DISTRICT,)
12 Plaintiff,)
13 v.)
14 THE CITY OF CHINO,)
15 Defendants.)
16 _____)
17 AND RELATED CROSS-ACTIONS.)
18 _____)

CASE NO. RCV 51010

Judge: Honorable J. MICHAEL GUNN

STATUS REPORT

Date: March 16, 2000

Time: 1:30 PM

Dept: R8

19 I. Procedural History

20 On January 27, 1978, this Court entered judgment in the case of *Chino Basin Municipal*
21 *Water District v. City of Chino, et al.*, an adjudication of groundwater rights in the Chino Basin.
22 Pursuant to that Judgment (Judgment), Chino Basin Municipal Water District (District) was
23 appointed "Watermaster" to administer and enforce the provisions of the Judgment and any
24 subsequent order of the Court. (Judgment Para. 16.) Subsequently, in 1997, a motion was made to
25 the Court to relieve the District of its Watermaster duties and to substitute in its place a nine-member
26 board. The Court appointed Special Referee Anne Schneider to issue a report and recommendation
27 on this motion. On December 12, 1997, Special Referee Schneider issued the Report and
28

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1 Recommendation. The Court adopted the findings of the Report and Recommendation and on
2 February 19, 1998, ordered that a nine-member board be appointed as Interim Watermaster for a
3 period of twenty-six months ending on June 30, 2000. If at the end of this time it appears to the
4 Court that the nine-member board is unable to function as an independent extension of the Court,
5 the Court may appoint the Department of Water Resources (DWR) as Watermaster for a five-year
6 appointment.

7 The Court further ordered Watermaster to develop an Optimum Basin Management Program
8 (OBMP), which encompasses the elements of the implementation program recommended by the
9 Chino Basin Water Resources Management Task Force in its 1995 report, and the implementation
10 elements discussed at a hearing conducted by Special Referee Schneider.

11 Watermaster released the Working Draft Implementation Plan of the OBMP in mid-February,
12 2000. Comments on this draft were due on Friday, February 25. Watermaster is currently in the
13 process of reviewing the comments received as part of its meeting and workshop schedule.
14 Moreover, important financial information concerning the costs of implementing the OBMP will be
15 made available for the first time on or about March 7, 2000. This financial information should allow
16 the stakeholders to consider their alternatives and proceed to negotiate a proper allocation of costs
17 which is essential to the successful implementation of the OBMP.

18 Watermaster now appears before this Court to report on the overall progress toward adoption
19 and implementation of the OBMP.

20
21 **II. Progress Toward Adoption and Implementation of the OBMP**

22 Watermaster has been diligently working to build consensus among Chino Basin (Basin)
23 water users on the adoption of the OBMP, and toward beginning OBMP implementation.
24 Watermaster has been consistently working to implement specific program elements of the OBMP
25 as well as working diligently to ensure that the OBMP is workable and acceptable to all the parties
26 involved.

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1 A. Progress on Implementation of Specific Management Plan Program Elements

2 *Program Element 1 – Monitoring Program:*

3 Watermaster has made significant progress toward implementation of the OBMP
4 monitoring program element. Implementation of this element is critical because monitoring data will
5 provide an accurate snapshot of current conditions in the Basin. This snapshot will then serve as a
6 technical basis for the successful implementation of the other program elements.

7 Watermaster began implementation of a groundwater level monitoring program with
8 a budget commitment of approximately \$61,000 in fiscal year 1999/2000 and 2000/2001. This past
9 year Watermaster also implemented a groundwater quality monitoring program and is in the process
10 of enhancing the current production monitoring program for the overlying agricultural pool.
11 Watermaster has completed collection of approximately 250 water quality samples this year, as well
12 as collected water quality samples from the basins after the recent rainfall events. The production
13 monitoring effort in the agricultural pool has resulted in information being obtained for all but 10
14 or less active wells producing more than 10 acre-feet. This year's budget commitment for the
15 groundwater quality monitoring program is \$212,000, with the same level projected for both
16 2000/2001 and 2001/2002.

17 In addition, as part of its efforts to monitor surface water discharge and quality, in
18 fiscal year 2000/2001, Watermaster will begin installing water level sensors in all existing recharge
19 and retention facilities that have the highest potential for storm water recharge. Since 1997,
20 Watermaster staff have also been obtaining and analyzing grab samples for all basins following
21 rainfall of more than one inch in twenty-four hours.

22 This year Watermaster budgeted \$15,000 to review the surface water discharge and
23 associated water quality monitoring programs for the Santa Ana River and the lower Chino Basin
24 tributaries. Watermaster will qualitatively evaluate the data from these programs to determine what
25 is needed for Watermaster investigations under the OBMP. A cooperative, supplementary
26 monitoring program will be developed based on the information obtained from this review and will
27 be implemented by Watermaster.
28

1 As to the ground level monitoring program, Watermaster will also this year be
2 compiling, mapping, and reviewing historical survey data collected by and on file with federal, state,
3 and local agencies to estimate the amount of subsidence in the Basin for as long a period as possible.
4 This year already, Watermaster has taken approximately 500 water level measurements. Synthetic
5 aperture radar (SAR) imagery will also be used to assess historical subsidence in the Basin from
6 1993 through 1999. Based on this information, a network of ground elevation stations in
7 subsidence-prone areas will be developed and periodic surveys of these stations will be done.
8 Watermaster has budgeted about \$36,000 this year for these tasks.

9 Finally, during the coming fiscal year Watermaster will develop agreements with
10 county and state agencies to notify each other regarding construction of new wells and to obtain
11 construction related information. Additionally, beginning in fiscal year 2001, and every year
12 thereafter, Watermaster will prepare a list of abandoned wells and forward that list to the counties
13 for their action. Watermaster will then follow up with the counties to ensure that abandoned wells
14 are destroyed so that the prospect for future groundwater contamination will be reduced.

15 *Program Element 2 – Recharge Program:*

16 The OBMP stakeholders have developed and submitted a working draft of a
17 Memorandum of Agreement (MOA) to create and implement a comprehensive recharge program.
18 The draft MOA has been circulated for review and comment.

19 Presently, it is contemplated that at a minimum, the potential signatories to the MOA
20 will be the Watermaster, Inland Empire Utilities Agency (IEUA), San Bernardino County Flood
21 Control District (SBCFCD), and the Chino Basin Water Conservation District (CBWCD). The
22 MOA commits the parties to, among other things, complete Phase 2 of the Chino Basin Recharge
23 Master Plan within three years. Watermaster will fund completion of Phase 2 of the Recharge
24 Master Plan. However, the precise method of funding will be subject to timely negotiation. A
25 proper financial prospectus should provide useful information for context and frame of reference
26 essential to successful negotiation over the next several months.

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1 *Program Element 3 – Water Supply Plan for Impaired Areas*
2 *Program Element 5 – Regional Supplemental Water Program*
3 *Program Element 9 – Conjunctive Use Programs*

4 The OBMP stakeholders have also developed and submitted a working draft of an
5 MOA to create and implement Program Elements 3, 5, and 9. The purposes of this MOA are to
6 define the actions necessary to maintain and enhance the safe yield of the Chino Basin consistent
7 with the goals of the OBMP, and to define the parties that are responsible for its implementation.
8 Again, at a minimum, the likely signatories to the MOA include the Watermaster, IEUA, Western
9 Municipal Water District (WMWD), and Three Valleys Municipal Water District (TVMWD).
10 Providing a legal commitment to back-stop contractual promises under the MOA is also likely to be
11 an important component of the MOA and the subject of negotiation.

12 Maintaining and enhancing the safe yield of the basin cannot be done without
13 consideration of the other sources of supply and the local investment in these supplies and the
14 potential revenue sources within the control of the Watermaster. In addition, the MOA commits the
15 Parties to maintaining production in the impaired areas of the Chino Basin and to implementing a
16 Regional Water Supply Plan that ensures maximum beneficial use of all local water. Watermaster
17 will fund the completion of engineering and environmental investigations necessary for facility
18 siting, feasibility and environmental review.

19 *Program Element 4 – Comprehensive Groundwater Management Plan for*
20 *Management Zone 1*

21 Watermaster intends to develop the interim management plan for Management Zone
22 1 (MZ1) during fiscal year 2000/2001. Watermaster's estimated budget for this effort in fiscal
23 2000/2001 is \$100,000. Monitoring and construction of extensometers for this effort are included
24 in Program Element 1.

25 *Program Element 6 – Cooperative Programs with the Regional Board and Other*
26 *Agencies to Improve Basin Management*
27 *Program Element 7 – Salt Management Program*

28 The Chino Desalter #1 will open for operations in April, 2000. In addition,
Watermaster is conducting preliminary salt budget studies which will be completed in May of 2000.
Watermaster is also currently developing a salt budget tool that will enable it to evaluate the water

1 quality benefits of the OBMP. The salt budget tool is a spreadsheet tool that estimates the flow-
2 weighted concentration of TDS and nitrogen into the Chino Basin at the management zone and basin
3 levels, and estimates the TDS and nitrogen impacts of the OBMP on the Santa Ana River. The salt
4 budget tool will cost about \$80,000 to \$100,000 to develop and put to use. Watermaster will either
5 construct this tool directly for the Chino Basin, or will participate in an effort to develop a regional
6 salt budget tool for the Santa Ana watershed should that be determined to be more effective.

7 Watermaster is also in the process of identifying water quality anomalies through its
8 groundwater monitoring programs in Program Element 1. A revised anomaly map similar to Figure
9 2-58 in the OBMP Phase 1 report will be prepared by Watermaster by May 2000. These maps will
10 be revised at least annually by Watermaster and submitted to the Regional Water Quality Control
11 Board (RWQCB) for their use in future water quality planning and waste discharge permitting.

12 Watermaster will continue to monitor the nitrogen and salt management activities
13 within the Basin and update its nitrogen and salt management strategy as necessary.

14 To the extent desalting activities create a marketable asset, there is the possibility for
15 developing an income stream to off-set costs, and that may enure to the over-all benefit of the Basin.

16 **B. Progress Independent of Specific Program Elements**

17 In addition to implementation of the specific program elements of the OBMP, Watermaster
18 has also mounted a substantial effort to build local consensus in support of the OBMP and has been
19 active in supporting efforts to develop associated funding mechanisms. Watermaster has been
20 diligently moving toward full implementation of the OBMP and has succeeded in garnering
21 widespread acceptance of the program through a series of informational meetings and public
22 outreach efforts, and through participation in workgroups, associations and task forces.

23 For example, Watermaster members or staff have been devoted to developing and
24 maintaining open channels of communication with agencies in the Chino Basin. This has fostered
25 collaboration and coordination and a better exchange of information. Activities Watermaster has
26 participated in have included:

- 27 ● Meetings with Flood Control District
- 28 ● Meetings and contact with the Regional Water Quality Control Board

- 1 ● Participation on the Association of Groundwater Agencies
- 2 ● Participation and funding for the Santa Ana River Watershed Group

3 Watermaster staff has begun actively making presentations, most recently at the Three
4 Valleys Municipal Water District Board and the Inland Empire Utilities Agency Board, to build
5 consensus amongst the Basin stakeholders. Watermaster has also recently prepared and submitted
6 an application to the Association of California Water Agencies (ACWA) for the Clair Hill Award
7 in water management, and has made significant progress on the Watermaster web site.

8 In addition, Watermaster has initiated the process of developing principles of agreement with
9 MWD and Inland Empire for conjunctive use so that there is a basis of common understanding
10 between these entities.

11 Watermaster has actively supported efforts to seek third party funding for implementation
12 of the OBMP. For example, it supported the Santa Ana Watershed Project Authority's (SAWPA)
13 successful lobbying to include items in Proposition 13 that may benefit management efforts in the
14 Chino Basin. Proposition 13 is the \$1.97 billion water bond that will appear on the March 7 ballot.
15 If passed, it is likely to benefit the Basin because approximately \$85 million of the \$235 million
16 earmarked for the Santa Ana River Watershed is for the Basin. The money will be used for, among
17 other things, the development of a conjunctive use program and desalters in the southwest end of the
18 basin. In addition, Watermaster has been actively working with local sewerage agencies to
19 encourage them that they have an interest in helping to fund the OBMP. Watermaster has also
20 supported local interests in their lobbying to receive Federal funding assistance.

21 Finally, the draft program Environmental Impact Report (EIR) is on the verge of completion.
22 The most recent report from the consultant is that it will be ready the week of March 21. It is not
23 expected that this delay will affect the completion date for the final version.

24

25 **III. Challenges to the Timely Adoption and Successful Implementation of the OBMP**

26 Despite Watermaster's progress toward adoption and implementation of the OBMP, it still
27 faces many challenges. Ultimately, the success of the OBMP will depend on the timely development
28 and analysis of some bench-mark financial cost information, an understanding of the potential

1 revenue raising measures within the control of the Watermaster, third party contributions and
2 crafting customized solutions to these challenges.

3 For example, one of the major barriers to implementation of the OBMP is the lack of
4 consensus on how to allocate the costs of the program. To maintain production levels in areas with
5 impaired water quality, the pumpers will have to continue pumping despite higher water costs due
6 to the expense of treatment, even though the pumpers could avoid the costs by not pumping in the
7 area at all. In contrast, in areas where water quality is high, the users will be unwilling to bear the
8 costs of treating water pumped by somebody else. This is an important issue because it could inhibit
9 the implementation of program elements even when the value of such elements to the health of the
10 water resource is clearly established by the data.

11 As described in Section II above, Watermaster has been successful in seeking outside funding
12 in order to mitigate this problem, but eventually some form of consensus will need to develop
13 amongst the stakeholders in the Basin about how the costs associated with OBMP, whatever they
14 may be, are to be allocated. Watermaster remains committed to locating additional funding sources
15 to support the OBMP and believes that a renewed local recognition of the enormous and strategic
16 value of the Chino Basin will serve to motivate producers toward expanded cooperation. Both the
17 desalted water and the dewatered storage space represent assets with immense economic value and
18 the potential to create a revenue stream to the benefit of the Basin.

19 Beyond the specific issue of costs, successful implementation of the OBMP will require
20 ongoing consensus between all of the stakeholders, and this will require Watermaster staff to
21 continue to communicate and be involved with all of the different agencies, associations, and groups.
22 The next several months will be critical. However, maintaining this level of involvement will be a
23 challenge given the current staffing level of Watermaster.

24 Watermaster's authority, or alleged lack thereof, to regulate water use under the OBMP has
25 also been raised as a potential problem. During the most recent comment period on OBMP plan
26 elements, comments were received indicating a lack of agreement concerning the scope of the
27 authority of Watermaster to implement the OBMP. This is relevant because it raises the specter that
28 the stakeholders in the Basin are relying on the development of a plan that will ultimately be without

1 an implementing authority. On the other hand, if Watermaster is properly authorized to implement
2 the program elements of the OBMP, then the challenge is one of education so that all parties
3 properly understand their rights under the Judgment. Moreover, where the parties can reach
4 agreement and believe that an amendment to the Judgment is necessary to implement a beneficial
5 change or their collective self-interest, it is doubtful that form will prevail over substance and that
6 such a change would be resisted.

7 Related to Watermaster's participation in Basin activities, the effective implementation of
8 the OBMP will require integration of all parts of the overall strategy throughout the Basin. How this
9 will be done and who will pay remain substantial barriers to full implementation. However, in the
10 end, the producers are likely to understand the benefits of striking a fair and beneficial business deal,
11 such as harnessing the value of the basin's storage capacity, to ensure the long term viability of the
12 resource.

13
14 **IV. The Watermaster is Committed to Completion of the OBMP but the Plan Must be**
15 **Sufficiently Flexible to Accommodate the Potential Variables that will Influence**
16 **Implementation**

17 In addition to the obstacles that Watermaster has overcome and the challenges it continues
18 to face, there are numerous variables that are likely to influence finalization and effective
19 implementation of the OBMP. These unknowns highlight the importance of flexibility in the
20 ultimate implementation of the OBMP because as variables shift, the OBMP must be capable of
21 accommodating the change if it is to be functional and comprehensive.

22 For example, a major variable the Watermaster faces relates to the flexibility and reliability
23 of the OBMP recharge program. There are two basic types of water available for recharge source
24 water: imported surface water, otherwise known as "wet" water, and underproduced water. If the
25 OBMP includes a program to recharge the basin and only "wet" water recharge is used, then there
26 are a number of expected outcomes. The "wet" water only approach is criticized by some on the
27 theory that the amount of water stored in the basin will increase which may also result in an increase
28 in water rising in the basin, reducing the effectiveness of recharge efforts; the storage capacity

1 available for conjunctive use could be reduced; and water quality in the lower end, or Southwestern
2 area of the basin and the river could worsen.

3 In addition, The Regional Water Quality Control Board (RWQCB) could theoretically
4 require mitigation for any increased discharges into the river, thereby obviating the incentive for
5 others to participate in the mitigation detailed in the OBMP; and the ability of basin water users to
6 place the entire basin yield to beneficial use could be limited.

7 On the other hand, proponents of “wet” water only argue that the addition of recharge water
8 could improve the water quality in the recharge area (through in ground blending), and result in a
9 corresponding increase in pumping capacity in the recharge area.

10 A decision on this subject or a subsequent shift in policy linked to best available information
11 may serve to require management strategies to be revised and revisited, and implementation
12 schedules may not always be met.

13 Another issue for resolution centers on which entity or entities will implement the OBMP.
14 If responsibility for implementation lies only with Watermaster, questions abound concerning its
15 ability to enforce commitments, carry-out or approve projects, and the appropriate cost-allocation
16 under the circumstances.

17 Watermaster may be “responsible” for basin management and allow producers and
18 stakeholders to design and negotiate the benefits necessary to optimize basin management within
19 a agreed upon framework. The wisdom of the Watermaster ownership of assets, water rights and
20 facilities may need to be scrutinized and evaluated. Clearly the authority of Watermaster to
21 implement the OBMP by compelling performance will need to be addressed.

22 These possibilities are not mutually exclusive. For example, the Watermaster might be
23 limited in its ownership of physical assets but have the right to condition or approve the use of water,
24 facilities and storage space upon terms established by Watermaster. Watermaster might also assign
25 or permit conduct deemed to benefit the Basin so long as the party performs as promised. In any
26 event, the Watermaster might *conditionally* lease, sell, or auction common assets where it has been
27 authorized to do so under terms understood by a consensus of the parties to the Judgment so as to
28 fund portions of the OBMP that are as yet unfunded.

1 If Watermaster is not the only party directly responsible to the Court for implementing the
2 OBMP, then Watermaster's ability to manage the Basin would require other, and as yet unforeseen
3 tools to enforce implementation of the OBMP if non-performance occurs.

4 Another area potentially affected by changing conditions could be the OBMP's requirements
5 for the use of recycled water. Potentially, recycled water use could be integrated with the OBMP
6 to enhance basin yield because water quality problems could be mitigated by the increased recharge
7 of storm flows and the development of treatment facilities in the southern end of the basin. The
8 recycled water program could also be combined with a conjunctive use program. However, if
9 recycled water is not integrated with the OBMP, the supply of each individual agency would be
10 increased and individual agencies would be responsible for mitigation. In addition, storage capacity
11 available for conjunctive use could be reduced.

12 Finally, despite the emphasis of the OBMP process on local guidance and control of the fate
13 of the water resources of the Basin, implementation of the OBMP will not be free from outside
14 influences. At the very least, several government bodies such as the Environmental Protection
15 Agency (EPA), the State Water Resources Control Board (SWRCB), and the RWQCB will give their
16 input and have various forms of control over the implementation of specific parts of the OBMP.
17 Even now a spot-bill has been introduced into the Legislature by a party other than Watermaster
18 seeking to legislatively establish the responsible entity for implementation for the OBMP. The
19 impact of these influences on the course of implementation is impossible to know at this time, and
20 serves only to emphasize that implementation of the OBMP will, above all, be a process of adaptive
21 management.

22

23 **V. Progress on Contingency Plan to Transfer to Department of Water Resources**

24 Watermaster has been in contact with the Department of Water Resources (DWR) regarding
25 the possibility of transfer of Watermaster to DWR. We are informed that any plan for such a transfer
26 that is submitted to DWR will need to resolve, at a minimum, the following issues:

- 27 (1) Will an interagency agreement be necessary?
28

1 (2) DWR is unsure how it would enter in the current structure of Watermaster as reflected
2 in the Judgment.

3 (3) DWR would want to retain exclusive control over its staff.

4 (4) DWR will want to retain the ability to terminate any agreement.

5 (5) DWR will not provide funding for Watermaster activities and will expect to be
6 reimbursed for costs incurred.

7 (6) DWR will want liability protection for any past actions of Watermaster and will want
8 its future liability limited to only their acts as Watermaster.

9 (7) DWR prefers that any existing contracts with any vendors be terminated.

10 (8) DWR will want a "Waiver of conflict" regarding the DWR/MWD/State Water Project
11 relationship.

12 (9) DWR will need at least six months from the time of appointment until it can begin
13 functioning as Watermaster.

14 CONCLUSION

15 It is true that significant work remains to be done to comply with the Court's requirements
16 for the timely adoption of the OBMP. However, there are reasons to be optimistic. The release of
17 financial information will allow negotiation concerning cost-allocation. The potential for new
18 revenue streams may serve to dampen the financial impacts, whatever they may be. Most
19 importantly, the Watermaster is committed to getting the job done.

20
21
22 DATED: March 2, 2000

HATCH AND PARENT

23
24 By 

25 SCOTT S. SLATER
26 MICHAEL T. FIFE
27 JUSTIN J. LUCKE
28 Attorneys for Chino Basin Watermaster