

FEE EXEMPT

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6 SPECIAL REFEREE

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SEP 26 2000

By *Susan King* Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION

11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )  
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Plaintiff,  
v.  
THE CITY OF CHINO,  
Defendants.

CASE NO. RCV 51010  
Judge: Honorable J. Michael Gunn  
REPORT AND RECOMMENDATION  
CONCERNING MOTION TO  
EXTEND NINE-MEMBER BOARD  
Date: September 28, 2000  
Time: 2:00 p.m.  
Dept: 8

I.

INTRODUCTION

A. Background

On April 29, 1997, I was appointed Special Referee to prepare a report and recommendation on two then-pending motions: Motion for Order That Audit Commissioned by Watermaster Is Not a Watermaster Expense and Motion to Appoint Nine-Member Watermaster Board. At the same time, the Court appointed the California Department of Water Resources (subject to its acceptance and agreement on mutually acceptable terms) as Interim Watermaster. In my Report and Recommendation filed with the Court on December 15, 1997, I recommended the Court set aside its previous order appointing the California Department of Water Resources as Interim Watermaster and instead appoint a nine-member board as Watermaster for an interim period of 24 months. I

1 | noted that the opposing parties' fear and prediction that the nine-member board would be controlled  
2 | by the Advisory Committee was not a sufficient basis for concluding that a compelling reason  
3 | existed not to appoint the proposed board. I cautioned, however, that the events leading up to the  
4 | motion for appointment of a nine-member board demonstrated a need for additional Court guidance  
5 | and oversight of Watermaster and its optimum basin management program ("OBMP") process. I  
6 | advised the Court that it was apparent that the independent Watermaster functions contemplated in  
7 | the Judgment had not been carried out effectively by the then-existing Watermaster and that they  
8 | may not be carried out effectively by the interim board. I also advised the Court that if the  
9 | nine-member board were to function successfully, the board would provide the Court with an OBMP  
10 | before the end of the 24-month period.

11 | **B. Appointment of Nine-Member Board for Interim Period**

12 | In its order dated February 19, 1998, my recommendation was accepted, and the Court  
13 | appointed a nine-member board consisting of representatives from the Overlying (Agricultural) Pool,  
14 | the Overlying (Non-Agricultural) Pool, the Appropriative Pool, and three municipal water districts  
15 | to serve as Interim Watermaster. The Court also ordered the Interim Watermaster to notice a hearing  
16 | on or before October 28, 1999, to consider all parties' input as to the continuance of the  
17 | nine-member board. The Court informed the parties that one of the measures that would be used in  
18 | determining whether or not the nine-member board is able to function independently would be the  
19 | progress on the adoption of an optimum basin management program.

20 | Watermaster was directed "to develop an optimum basin management program, which  
21 | encompasses the elements of the implementation program recommended by the task force (the Chino  
22 | Basin Water Resources Management Task Force, which issued its Chino Basin Water Resources  
23 | Management Study Final Summary Report in September 1995) and the implementation elements  
24 | discussed at the recent hearing conducted by Special Referee Schneider." The Court also ordered  
25 | Watermaster to make quarterly progress reports to the Court. The OBMP was to be submitted to the  
26 | Court no later than September 30, 1999 and a hearing was set on October 28, 1999 to consider  
27 | whether to approve and order full implementation of the program.

28 | The deadline for approval of the OBMP was continued several times. The Court finally

1 approved the OBMP, consisting of the Phase I Report and Implementation Plan, subject to certain  
2 conditions precedent, on July 13, 2000. The hearing on the extension of the nine-member board  
3 appointment has also been continued several times, until September 28, 2000, so that all conditions  
4 precedent can have been satisfied before the extension of the appointment is heard.

5 **C. Motion before the Court**

6 As Interim Watermaster, the nine-member board has filed a Motion to Extend the  
7 Nine-Member Board for a Full Five-Year Term. The motion requests the Court to order that the  
8 current nine-member structure of the Watermaster Board continue in effect for a full five-year term.  
9 Watermaster asserts that all of the conditions precedent set forth in the Court's July 13, 2000 order  
10 have been satisfied:

- 11 1. Unanimous approval of the Peace Agreement was obtained by August 1, 2000. On  
12 August 3, 2000, the Watermaster Board "adopted" the Agreement. However,  
13 Western Municipal Water District's "ratification" of the Agreement was not  
14 unconditional. Watermaster reports the need for further negotiations related to the  
15 purchase of desalted water. A negotiated settlement of this issue is expected to be  
16 presented at the hearing on September 28, 2000.
- 17 2. Certification of the Programmatic Environmental Impact Report ("PEIR") was  
18 completed on July 12, 2000.
- 19 3. The California Legislature has appropriated \$235,000,000 for the benefit of the Santa  
20 Ana Watershed Project Authority ("SAWPA") and allocated this sum to the State  
21 Water Resources Control Board ("SWRCB") for distribution. SAWPA has  
22 submitted an application to SWRCB for distribution of these funds, including  
23 \$56,000,000 to be used to fund the Chino II desalter and an expansion of the Chino  
24 I desalter. Watermaster's motion did not explain how the \$121,000,000 condition  
25 precedent is satisfied. It would be helpful to have Watermaster Counsel provide a  
26 report on funding status at the September 28, 2000 hearing.
- 27 4. Watermaster has submitted a schedule for its adoption and Court approval of Revised  
28 Rules and Regulations (to be accomplished no later than December 31, 2000.)

1 Watermaster proposes to present draft revised rules and regulations to the Joint Pools  
2 and the Advisory Committee on October 12, 2000, to obtain Joint Pool and Advisory  
3 Committee approval on November 16, 2000, and to obtain Watermaster Board  
4 approval on November 30, 2000. The Court will set a date for a hearing on the  
5 Revised Rules and Regulations and Court approval.

6 5. Watermaster has submitted a draft pro forma implementation schedule and a  
7 proposed process for submission to the Court of detailed periodic reports regarding  
8 implementation of the OBMP. As noted in the discussion below, this draft  
9 implementation schedule is not complete. Watermaster proposes that its first  
10 progress report will be submitted on October 31, 2000. Watermaster proposes that  
11 its second progress report will be submitted on January 31, 2001, in conjunction with  
12 the annual report. Thereafter, Watermaster proposes to submit progress reports to the  
13 Court every six months.

14 6. Watermaster anticipates Court approval of all Judgment modifications in furtherance  
15 of the OBMP. (See Special Referee's September 13, 2000 Report and  
16 Recommendation Regarding Watermaster's Motion to Amend Judgment as to the  
17 need for additional briefing concerning Judgment modifications.)

18 Watermaster seeks an order stating that:

- 19 1. The current nine-member structure of the Watermaster Board shall continue in effect  
20 for a full five-year term.
- 21 2. Watermaster is authorized to perform all managerial and administrative functions as  
22 specified in the Judgment, including the execution of all administrative and  
23 employment contracts.
- 24 3. Watermaster shall propose a schedule for rotation of its Board members no later than  
25 October 31, 2000.

26 The City of Chino has filed an Opposition to Motion to Extend the Nine-Member Board for  
27 a Full Five-Year Term. Although it supports the continuation of the current nine-member board  
28 structure, the City of Chino seeks Court guidance with respect to the establishment of "criteria,



1 District; (5) one member appointed by the Board of Western Municipal Water District; and (6) one  
2 member appointed by the Board of Chino Basin Municipal Water District.

3 The Court's February 19, 1998 Ruling provides that "[e]xcept as to members of the first  
4 Watermaster Board, Watermaster Board members shall serve staggered three-year terms." At least  
5 60 days prior to the end of the Interim Appointment, each Pool and the three municipal water  
6 districts were directed to extend the term of one member for one year and the term of a second  
7 member for two years. The appointments by the "Municipal Water District boards, the  
8 Appropriative Pool and the Overlying (Non-Agricultural) Pool shall be made on a rotating basis with  
9 all members afforded an equal opportunity to serve." "Appointments by the Overlying (Agricultural)  
10 Pool shall be rotated among categories of agricultural producers with each category of producers  
11 having an equal opportunity to serve. The State of California shall be included as one of the  
12 categories of producers rotating from the Overlying (Agricultural) Pool, unless the State of  
13 California is currently serving in a vacant municipal water district position."

14 The members of the Watermaster Board shall vote on a one-person, one-vote basis. "If one  
15 of the three municipal water districts elects not to serve ... a representative from the State of  
16 California will be seated in its place. Any member of the Appropriative Pool which owns or has a  
17 controlling interest in another member of the Appropriative Pool will not be allowed to serve  
18 concurrently with said other member of the Appropriative Pool on the Watermaster Board." "No  
19 individual will be allowed to serve concurrently on the Watermaster Board while serving as a  
20 member of the Advisory Committee and/or the respective Pool Committee, with the exception of  
21 representatives from the Overlying (Non-Agricultural) Pool. This shall not prevent the same  
22 member agency or entity with a representative on the Chino Basin Advisory Committee from  
23 appointing a different representative to the Watermaster Board. Additionally, participating agencies  
24 with governing bodies are strongly encouraged to have elected officials serve as their representative  
25 on the Watermaster Board."

26 The City of Chino's proposal for criteria, procedures, and a schedule appears to be consistent  
27 with the requirements of the Court's February 19, 1998 Ruling. The City of Chino's Opposition  
28 notes, however, that "the members of the Appropriative Pool have been unable to reach any

1 unanimity of agreement on such rotation.” A review of the Appropriative Pool Committee Rules  
2 and Regulations indicates that the Appropriative Pool can conduct its business on the basis of one  
3 vote per member or by weighted vote. In other words, the Appropriative Pool Committee Rules and  
4 Regulations do not require unanimity.

5 **B. Adoption of Revised Rules and Regulations for the Chino Basin**

6 The Peace Agreement regarding the Chino Groundwater Basin, dated June 29, 2000 (“Peace  
7 Agreement”), calls for specific provisions to be adopted with respect to numerous issues, including  
8 the following:

- 9 ● Recharge and Replenishment: (a) establish criteria for the use of water from different  
10 sources for replenishment; (b) establish procedures to ensure proper accounting; (c)  
11 adopt a policy that will ensure that areas of declining groundwater will be supplied  
12 with recharge; (d) prepare annual accounting.
- 13 ● Storage and Recovery: (a) adopt procedures for Watermaster regulation of storage  
14 capacity; (b) adopt uniform Local Storage Agreement for Supplemental Water; (c)  
15 establish procedures and adopt forms for giving public notice of applications for  
16 storage and recovery and providing for public hearings and judicial review of  
17 Watermaster decisions; (d) adopt procedures for Watermaster to establish limits on  
18 water held in storage; (e) adopt procedures for Watermaster to regulate conditions of  
19 storage and recovery; (f) provide for judicial review of storage and recovery  
20 agreements.
- 21 ● Transfers: (a) adopt procedures for providing advance notice of proposed transfers,  
22 along with a public hearing and judicial review.
- 23 ● Assessments, Credits and Reimbursements: (a) adopt procedures to evaluate requests  
24 for OBMP credits against future OBMP assessments; (b) assign salt credits to  
25 members of Appropriative Pool; (c) provide for assessments for meters.

26 The Peace Agreement thus presages revisions to the Rules and Regulations for Chino Basin.

27 The existing Rules and Regulations for the Basin consist of the following:

- 28 ● Chino Basin Watermaster Rules and Regulations (Articles I through III) as amended

1 from time to time, including by Resolution No. 98-7, Resolution No. 96-6,  
2 Resolution No. 85-2, Resolution 78-1 and Watermaster Rules and Regulations  
3 Concerning Well Meter Testing (adding Rule 3.07.1.)

- 4 ● Chino Basin Watermaster Uniform Groundwater Storage Rules and Regulations  
5 (Parts 1 through 4 and Forms 1 through 6.)
- 6 ● Overlying (Non-Agricultural) Pool Committee Rules and Regulations (Articles I &  
7 II.)
- 8 ● Overlying (Agricultural) Pool Committee Rules and Regulations (Articles I & II)
- 9 ● Appropriative Pool Committee Rules and Regulations (Articles 1 & 2.)
- 10 ● Watermaster Advisory Committee Rules and Regulations (Articles 1 & 2)

11 A review of the notices sent for recent meetings held by the Joint Pools and Advisory  
12 Committee demonstrates the need for Watermaster to conduct a comprehensive review and revision  
13 of the Rules and Regulations for Chino Basin. Some issues raised by the notices are minor. For  
14 example, it has been proposed that the time for election of officers for each pool committee and the  
15 advisory committee be changed from the first meeting each year to the meeting held in October of  
16 each year in order that it coincide with the assessment package and calculation of volume vote. This  
17 is logical, but both the Judgment and the current rules and regulations contain provisions respecting  
18 these issues. The Judgment at ¶ 37 (a) provides that at “its first meeting in each year, each Pool  
19 Committee and the Advisory Committee shall elect [officers]....” The Judgment at ¶ 37 (b) provides  
20 that the Pool and Advisory Committee rules will specify meeting places and times. Although this  
21 is a minor issue, it points to the fact that a comprehensive revision of the Rules and Regulations for  
22 Chino Basin is necessary, and that Watermaster must be mindful of both Judgment provisions and  
23 existing rules and regulations.

24 A more substantive example is the recent approval of requests for the recapture of stored  
25 water and for transfer of stored water from one appropriator to another. Recognizing the lack of  
26 rules and regulations implementing the Peace Agreement, Watermaster devised a form of notice of  
27 transfer of water. It is unclear whether the form was approved by the Advisory Committee; however,  
28 it seems to have served its function. In response to the notice, comments were filed with the Chief



1 of Watermaster Services noting certain deficiencies in the application and pointing out the need for  
2 the development of uniform procedures and processes which will permit the timely analysis of such  
3 transfers.

4 The Chino Basin Watermaster Uniform Groundwater Storage Rules and Regulations contain  
5 specific provisions with respect to applications for storage. Rule 2.5 provides that “[a]ny party  
6 desiring to store supplemental water in the Chino Basin for subsequent recapture shall file an  
7 application with Watermaster (see Form 1 attached) setting forth the applicant’s proposed method  
8 of operation, the maximum amount of water sought to be stored, the proposed method of storage and  
9 the facilities contemplated therefor.” Under Rule 2.8, Watermaster is obligated to make continuing  
10 studies and adopt appropriate procedures and recommendations to minimize losses of stored water  
11 in Chino Basin. As to Local Storage, under Rule 2.1 Watermaster is directed to “make an initial  
12 determination of Local Storage Requirements, which have priority and preference over use of storage  
13 capacity for export.” Watermaster is given authority under the rules to review and to revise  
14 outstanding Local Groundwater Storage Agreements, and “redetermine, if appropriate, the Local  
15 Storage Requirement. Any such redetermination shall likewise” be confirmed by Watermaster  
16 resolution. (Rule 2.4.)

17 There is presently pending before Watermaster a request to reclassify 33,009.165 acre-feet  
18 of water in a local storage account to supplemental water “nunc pro tunc.” While the requester offers  
19 a formula to be used by the Watermaster in determining whether or not to approve said request, it  
20 is not clear that the present rules and regulations provide for such a “reclassification.” It is important  
21 that Revised Rules and Regulations for Chino Basin be in place before Watermaster addresses such  
22 a request, and that Watermaster not proceed without clear and comprehensive regulations upon  
23 which to base its actions.

24 At my request, Joe Scalmanini has reviewed the Peace Agreement with a revision of the rules  
25 and regulations in mind. Mr. Scalmanini made several comments and recommendations. There are  
26 new definitions introduced in the Peace Agreement. Setting aside the question whether amendment  
27 of the Judgment is required, it is important that the Revised Rules and Regulations for Chino Basin  
28 include all the definitions contained in the Peace Agreement as well as the definitions contained in

1 the Judgment. The Revised Rules and Regulations should address issues raised by the new  
2 definitions. For example, the definition of "New Yield" includes desalted water from Chino Desalter  
3 I and Chino Desalter II as one of the components, in contrast to the fundamental presumption that  
4 desalters were intended to preserve existing pumping (and thus safe yield) as agricultural land use  
5 changes to municipal land use. Section 4.5 of the Peace Agreement provides that Exhibit I to the  
6 Judgment shall be construed to authorize Watermaster to include New Yield as a component of  
7 Operating Safe Yield. The Revised Rules and Regulations should clarify the definition of "New  
8 Yield" and provide detail that will support the expansion of "Operating Safe Yield" to include "New  
9 Yield." The Revised Rules and Regulations should provide a clear and comprehensive basis for  
10 Watermaster accounting of all water extracted from, added to, and stored in the Chino Basin, and  
11 inclusion of clear and complete definitions in the Revised Rules and Regulations will make this task  
12 manageable, and will facilitate redetermination of Safe Yield in the future.

13 The Revised Rules and Regulations should support Watermaster's actions and activities  
14 related to specific provisions in the Peace Agreement. For example, Peace Agreement Sections  
15 5.1(e)(iii) and (viii), which specify that Watermaster shall exercise its best efforts to direct recharge  
16 relative to production in each area and sub-area of the Basin to achieve long term balance within all  
17 areas and sub-areas of the Chino Basin, and to maintain long-term hydrologic balance between total  
18 recharge and discharge within all areas and sub-areas, should be supported by rules and regulations  
19 describing how Watermaster will assess whether this goal is being achieved.

20 The Revised Rules and Regulations should encompass Peace Agreement Section 5.1(g),  
21 which specifies that Watermaster shall arrange for the recharge of 6,500 acre feet per year of  
22 supplemental water in one or more of three spreading facilities for a period of five years. There is  
23 no technical analysis supporting these arrangements. The rules and regulations might clarify, for  
24 example, that these recharge activities will be evaluated as part of the Recharge Master Plan effort  
25 (OBMP Program Element 2.)

26 Similarly, the Revised Rules and Regulations should address the 50,000 acre feet limit on  
27 cumulative local storage (Peace Agreement Sections 5.2(b)(iv) and (vii)) and how that limit will be  
28 imposed. The rules should resolve the discrepancy between the Peace Agreement and the

1 Implementation Plan regarding the initial target for the cumulative quantity of water to be stored  
2 (500,000 acre feet in addition to existing storage vs. 500,000 acre feet including existing storage  
3 accounts) pursuant to Recharge and Recovery programs. The rules should specify how Ag Pool  
4 underproduction will be calculated and include a technical explanation of the change in the  
5 calculation of converted water rights. These are examples of what the Revised Rules and  
6 Regulations should cover; obviously this is not a comprehensive list.

7 **C. Periodic Reporting Requirements**

8 Watermaster asserts that formal reports to the Court consume a considerable amount of time,  
9 therefore periodic progress reports should be limited to twice a year. Watermaster proposes to  
10 submit its first progress report to the Court on October 31, 2000. Watermaster proposes to submit  
11 a second progress report on January 31, 2001, and thereafter, every six months.

12 Requiring the parties to provide the Court with frequent progress reports on implementation  
13 of the OBMP will serve the Court in its continuing jurisdiction, and will serve to ensure that the  
14 Watermaster is performing its independent function and keeping to the schedule adopted for OBMP  
15 implementation. Because the Implementation Plan does not describe how Watermaster will  
16 routinely demonstrate that the Implementation Plan is being carried out and that implementation of  
17 the OBMP is resulting in water quality improvements, regular and forthcoming reporting by  
18 Watermaster is essential. Elaborate reports are not required. Rather, a simple method may be  
19 devised to communicate to the Court, and regular reporting can effectively be coupled with regular  
20 Court hearings. I recommend that regular reports be made as follows:

21	Report No. 1	March 31, 2001
22	Report No. 2	September 30, 2001
23	Report No. 3	March 31, 2002
24	Report No. 4	September 30, 2002
25	Report No. 5	March 31, 2003
26	Report No. 6	September 30, 2003

27 Report No. 6 would coincide with the end of the appointment of the Nine-Member Board,  
28 and would be the basis for consideration of continuing the appointment. The Court can, as it sees  
fit, schedule hearings to coincide with some or all of these reports. Alternatively, the Court may  
from time to time direct the Special Referee to conduct a workshop in lieu of a court hearing. The

1 reports should follow a format generally as follows:

2 **Report No. 1**

- 3 ● **Complete Implementation Schedule and Corresponding Budget.** (See discussion below.)
- 4 ● **Initial Status of Program Elements.** A complete description of initial actions underway  
5 toward implementation of the various Program Elements, e.g., summary of specifications and  
6 contracts for meter installations; scope and contract for completion of the Recharge Master  
7 Plan; scope and budgets for various components of desalter expansion/new construction  
8 (wells, transmission pipelines, desalter facilities, waste discharge lines, distribution piping);  
9 explanation of Agricultural Pool underproduction and transfer, etc.
- 10 ● **Issues and Problems.** A summary of any problems which impact the timely implementation  
11 and/or operation of any aspects of the OBMP, e.g., water level impacts of desalter well  
12 operation on existing water supply wells.
- 13 ● **Baseline Groundwater Basin Conditions.** Based on historical monitoring, describe  
14 “baseline” groundwater basin conditions (water levels, water quality, pumpage, subsidence,  
15 storage, etc.) against which future groundwater basin conditions, and thus the effectiveness  
16 of the OBMP, can be measured.
- 17 ● **Compliance with PEIR.** A summary of all the mitigation measures in the PEIR and  
18 indication of how they will be satisfied, particularly as related to timely construction/  
19 installation of facilities that are critical to implementation of the OBMP, e.g., individual well  
20 and desalter sites, pipeline routes, recharge basins, etc.

21 **Reports Nos. 2 - 6**

- 22 ● **Schedule Status.** A summary of actual vs. projected schedule (such as the Exhibit “E” chart,  
23 revised to include all the OBMP Program Elements) to give the Court a sense of  
24 accomplished progress versus what is projected at the present time.
- 25 ● **Budget Status.** A summary of actual budget expenditures vs. projected budget require-  
26 ments/commitments to give the Court a sense of accomplished progress in terms of work  
27 completed relative to budget expenditures; this would also give the Court a sense of budget  
28 adequacy (whether there are any budget-related constraints to implementation of any of the

1 Program Elements or, conversely, any budget-related improvements as a result of outside  
2 funding, fees for use of basin storage, etc.)

3 ● **Status of Program Elements.** A summary of progress on each of the Program Elements,  
4 including description of any problems which are encountered that impede progress on  
5 implementation to give the Court a sense of work completed as well as work ongoing toward  
6 implementation (e.g., meters installed, wells measured for water levels and/or sampled for  
7 water quality, details of completed parts of the Recharge Master Plan, desalter well field  
8 design and construction, desalter design, transfer and/or storage agreements, etc.)

9 ● **Groundwater Basin Conditions.** Based on ongoing monitoring of the basin (Program  
10 Element 1), describe conditions in the basin in the context of the OBMP (changes as a result  
11 of implementing the OBMP), including groundwater levels and trends throughout the basin,  
12 groundwater quality and trends throughout the basin, pumpage by Pool as well as by  
13 distribution in Management Zones (or other subareas of the basin), distribution of recharge  
14 by Management Zones (or other subareas of the basin), land subsidence, groundwater storage  
15 including any water stored pursuant to Program Elements 8 or 9, etc. This section of  
16 ongoing progress reports should give the Court a sense of the technical success of the  
17 OBMP, in terms of whatever has been accomplished to date as well as what is underway (in  
18 design, in construction, etc.) It should also include an assessment of the effectiveness of the  
19 OBMP as originally conceived in the context of how the basin actually responds; in that  
20 light, as appropriate, it should include a discussion of evolving needs to modify the OBMP  
21 when basin conditions so dictate.

22 ● **Ongoing Compliance with EIR.** A summary of the status of addressing all of the required  
23 mitigation measures in the EIR, in the context of construction or installation of facilities that  
24 are critical to implementation of the OBMP, e.g., individual well and desalter sites, pipeline  
25 routes, recharge basins, etc.

#### 26 **D. Schedule and Budget Reporting**

27 Watermaster submitted the Exhibit "E" "Draft Implementation Schedule for the Chino Basin  
28 Optimum Basin Management Program" chart which identifies in detail tasks to be accomplished to

1 | implement the OBMP, including start and finish dates for each task. This is a key document.  
2 | Another key document is Table 4-14 contained in the Phase I Report, which sets forth a complete  
3 | schedule of estimated budget commitments for OBMP implementation. These two pro forma  
4 | documents could serve well as the basis of reporting regularly to the Court and the public.

5 | Exhibit "E" has glaring omissions. Even though it purports to include tasks to be done by  
6 | Watermaster as well as tasks to be "done by others to implement the OBMP under the review of  
7 | Watermaster," there are no tasks listed for, nor any mention of, Program Elements 3 and 5, which  
8 | include desalters. There is no mention of the mitigation measures contained in the Programmatic  
9 | Environmental Impact Report. Exhibit "E" does not include monitoring of agricultural production  
10 | meters. There are additional omissions that are apparent if the Implementation Plan is compared to  
11 | Exhibit "E."

12 | Exhibit "E" would be an appropriate tool to keep track of the OBMP Implementation Plan  
13 | projections that at least 40,000 acre feet per year of desalting capacity is needed to maintain safe  
14 | yield.

15 | The Peace Agreement predicates any future desalting capacity on a reevaluation of the need  
16 | for additional desalting after the earlier of ten years or the conversion of 20,000 acres of agricultural  
17 | land. (If the agricultural water duty is 2.0 acre feet per acre per year, by the time 20,000 acres of  
18 | agricultural land is converted, agricultural pumping will have been reduced by the 40,000 acre feet  
19 | per year envisioned in the OBMP Phase I Report and in the Implementation Plan. If the numbers  
20 | are even close to correct, there could have been a significant impact on Safe Yield as a result of that  
21 | conversion, but a "reevaluation" of the need for desalting will not yet have been done.)

22 | Exhibit "E" should be an evolving document. It includes preparation of, for example, the  
23 | Recharge Master Plan. The schedule will have to be revised at such time as that plan is completed,  
24 | to show specific recharge projects, quantities, and timing. A table such as Table 4-14 would also  
25 | track these developments and include corresponding budget information for the specific programs.

26 | **E. Watermaster Compliance with Established Procedures for Judicial Review and**  
27 | **Enforcement**

28 | Part and parcel with the need to adopt a revised set of rules and regulations to guide the

1 Watermaster in performing its duties, Watermaster must be mindful that in implementing the OBMP  
2 it is acting in a manner consistent with the Judgment and with the Court's previous orders with  
3 respect to procedures to be used for judicial review and enforcement of Watermaster actions. It  
4 appears that Watermaster has been at times inattentive to procedures heretofore adopted by the  
5 Court.

6 For example, pursuant to the Court's Order Re Intervention Procedures dated July 14, 1978,  
7 Watermaster may accept petitions in intervention and accumulate them for subsequent filing from  
8 time to time in an ex parte court proceeding. Watermaster may also take all administrative steps  
9 pertaining to the Judgment, but no assessments may be imposed on intervenors until the Court has  
10 entered a formal order. Thus, while it may be appropriate for Watermaster to accumulate  
11 intervention petitions to present to the Court on an annual basis, an application for order approving  
12 the interventions is required. Including a list of new intervenors in the annual report is not adequate;  
13 a separate court order approving the interventions must be obtained.

14 Under the Court's "Order Approving the Uniform Local Storage Agreement; Amplifying and  
15 Clarifying Procedures under Paragraph 28 of the Judgment; Approving a Cyclic Storage Agreement"  
16 dated January 5, 1979, a standard form of Local Storage Agreement has been approved for use by  
17 Watermaster without further Court approval; however Court approval must be obtained for each  
18 groundwater storage agreement for cyclic and/or conjunctive use before it shall become effective.  
19 The notices of recent pool meetings suggest that additional forms of storage agreement may be  
20 needed. Should the parties wish to modify the standard form of Local Storage Agreement, or adopt  
21 additional standard forms, Court approval is required under the Judgment. Plainly, the Court's  
22 January 5, 1979 Order requires each agreement for cyclic and/or conjunctive use to be submitted for  
23 Court approval. Watermaster should bear this in mind in adopting Revised Rules and Regulations.

24 This, again, is not a comprehensive discussion. One of the conditions precedent in the  
25 Court's July 13, 2000 Order is obtaining Court approval of Revised Rules and Regulations for Chino  
26 Basin by December 31, 2000. The Watermaster's proposed schedule is to present draft rules and  
27 regulations to Joint Pools and Advisory Committee on October 12, 2000, to obtain Joint Pool and  
28 Advisory Committee approval on November 16, 2000, and to obtain Watermaster Board approval

1 on November 30, 2000. A hearing date shall be set by the Court.

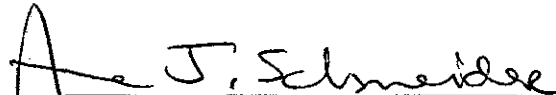
2 **III**

3 **RECOMMENDATION**

4 It is my recommendation that the nine-member board be appointed for an additional three  
5 years, until September 30, 2003, subject to the following directions:

- 6 1. Watermaster adoption and Court approval of Revised Rules and Regulations for  
7 Chino Basin by December 31, 2000. (The Court should set a hearing date for  
8 approval of the Revised Rules and Regulations at the September 28, 2000 hearing.)
- 9 2. Submission of Reports Nos. 1 through 6 in accordance with the schedule set forth in  
10 the discussion above.
- 11 3. Inclusion in such reports of schedule and budget information essentially in a form  
12 equivalent to Exhibit "E" and Table 4-14 of the Phase I Report.

13  
14 Dated: September 25, 2000

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16   
17 Anne J. Schneider, Special Referee  
18  
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20  
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22  
23  
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26  
27  
28



**PROOF OF SERVICE**

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On September 26, 2000, I served the attached:

**Chino Basin Watermaster Hearing Date: 9/28/2000 2:00 p.m.**

- **REPORT & RECOMMENDATION CONCERNING MOTION TO EXTEND NINE-MEMBER BOARD**

in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addressed as follows:

*See attached service lists:*

- Attorney Service List
- Mailing List A

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Rancho Cucamonga, California, on September 26, 2000.

  
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