

1 ELLISON, SCHNEIDER & HARRIS L.L.P.  
2 Anne J. Schneider, Esq. (Bar No. 72552)  
3 2015 H Street  
4 Sacramento, California 95814-3109  
5 Telephone: (916) 447-2166

FILED - West District  
San Bernardino County Clerk

NOV 09 2001

By *L. Swartz* Deputy

6 SPECIAL REFEREE

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION

FEE EXEMPT

10  
11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )  
13 )  
14 v. )  
15 THE CITY OF CHINO, )  
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22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )  
Plaintiff,  
Defendants.

CASE NO. RCV 51010  
Judge: Honorable J. Michael Gunn  
SPECIAL REFEREE'S REPORT AND  
COMMENTS CONCERNING OBMP  
IMPLEMENTATION STATUS  
REPORT NO. 2  
Date: Nov. 15, 2001  
Time: 2:00 p.m.  
Dept: 8

I.

INTRODUCTION

On September 28, 2000, the Court appointed the nine-member board serving as Interim Watermaster for the Chino Basin ("Basin") to an additional five-year term, subject to the Court's continuing jurisdiction and the fulfillment of certain conditions. To facilitate the exercise of the Court's continuing jurisdiction, and as one of the conditions of the appointment of the nine-member board, Watermaster is required to submit periodic progress reports regarding implementation of the Optimum Basin Management Program ("OBMP") for the Basin. Watermaster submitted its first progress report on March 30, 2001, the OBMP Implementation Status Report ("First OBMP Report"), which the Court received and filed. Watermaster submitted its second progress report, the OBMP Implementation Status Report No. 2 ("OBMP Report No. 2") to the Court on September

1 30, 2001.

2 The periodic progress reports are to include schedule and budget information essentially in  
3 a form equivalent to Exhibits "A" and "B" of Watermaster's First OBMP Report. In addition, the  
4 following information should be included in each of the reports:

- 5 • Schedule Status (summary of the actual versus the projected schedule respecting all of the  
6 OBMP Program Elements to give the Court a sense of progress made in comparison with  
7 projected schedules).
- 8 • Budget Status (summary of actual budget expenditures compared with projections).
- 9 • Status of Program Elements (summary of progress of each of the Program Elements).
- 10 • Groundwater Basin Conditions (description of basin conditions and any changes as a result  
11 of implementation of OBMP).
- 12 • Ongoing Compliance with EIR (discussion of required mitigation measures).

13 Because Watermaster did not include a discussion of baseline groundwater conditions for  
14 the Basin in its First OBMP Report, OBMP Report No. 2 should have included a full report on  
15 baseline conditions. Further, since the First OBMP Report did not include a discussion of any PEIR  
16 compliance activities related to the OBMP, OBMP Report No. 2 also should have included a  
17 discussion of mitigation measures identified in the PEIR related to OBMP implementation to date.

## 18 II.

### 19 DISCUSSION

#### 20 A. Schedule and Budget Status

21 The OBMP Report No. 2 does not contain schedule and budget information in the suggested  
22 format; that is, in a form equivalent to Exhibits "A" and "B" of Watermaster's First OBMP Report.  
23 A standardized format for schedule and budget reporting would permit the Court to make an accurate  
24 assessment of progress made on implementation of all OBMP Program Elements. As an example,  
25 Watermaster notes in the introduction of OBMP Report No. 2 that it has completed both the  
26 Recharge Master Plan and the initial round of groundwater quality monitoring one year ahead of  
27 schedule, and that it has made progress in obtaining significant levels of funding for both of these  
28 implementation items. However, OBMP Report No. 2 does not discuss the schedule and budget

1 status of each of the other Program Elements. Because schedule and budget status information is  
2 essential to the Court in exercising its continuing jurisdiction, Watermaster should be required to  
3 submit a Supplemental OBMP Report No. 2 addressing schedule status and budget status for all  
4 Program Elements in the format used in its First OBMP Report.

5 **B. Status of Program Elements**

6 OBMP Report No. 2 contains a fairly detailed review of the current implementation status  
7 of each of the Program Elements. The highlights of the review are included below.

8 **1. Program Element 1 (Comprehensive Monitoring)**

9 Significant progress appears to have been made in the area of monitoring. Watermaster states  
10 that it has completed the spring round of groundwater level monitoring throughout the Basin and that  
11 semi-monthly monitoring of 250 wells near the Chino Desalter I and the proposed Chino Desalter  
12 II is continuing. Watermaster anticipates that all meter repairs and installation will be completed  
13 by June 2003. The initial round of groundwater quality monitoring reportedly has been completed  
14 one year earlier than called for in the Implementation Plan.

15 Presumably, some form of report was prepared in connection with the groundwater  
16 monitoring efforts. However, these data have not been communicated to the Special Referee in  
17 furtherance of the Court's direction to Watermaster to cooperate with the independent assessment  
18 and verification of data to be provided to the Court.

19 The Court stated in its Order Concerning Motion To Extend Nine-Member Board filed  
20 September 28, 2000, that the "OBMP progress reports together with independent assessment of  
21 OBMP implementation status, including verification of data to be provided by the Special Referee  
22 and her technical expert, will be the basis for consideration of continuing the appointment" of the  
23 nine-member board for an additional five-year term. (*Id.*, p. 4, lns. 16-18.) To facilitate independent  
24 verification of data, I propose that two to four meetings a year be scheduled between Mr. Joe  
25 Scalmanini and Watermaster staff and consultants to supplement the filing of semi-annual progress  
26 reports concerning OBMP implementation status. Following these periodic meetings, the Special  
27 Referee and Mr. Scalmanini will report to the Court in fulfillment of the obligation to provide an  
28 independent assessment to the Court. A proposed reporting schedule, which includes all anticipated

1 written and oral reports to be made to the Court is attached.

2 **2. Program Element 2 (Comprehensive Recharge Program)**

3 Watermaster states that the Phase II Recharge Master Plan (hereinafter "the Recharge Master  
4 Plan") has been completed, one year ahead of schedule. The goal of the Recharge Master Plan is  
5 to complete the improvements for existing recharge basins and to construct two new basins by the  
6 end of 2003. According to Recharge Master Plan, Figure 6-1, Preliminary Implementation Schedule,  
7 CEQA coordination will be completed by October 2001, the design work will be completed by April  
8 2002, and construction will be completed by June 30, 2003. Inland Empire Utilities Agency recently  
9 distributed the "Initial Study for the Implementation of Storm Water and Imported Water Recharge  
10 at 20 Recharge Basins in Chino Basin." Watermaster reports that a design consultant will be  
11 selected in November 2001. It appears, therefore, that the completion goals for the Recharge Master  
12 Plan are being met.

13 **3. Program Elements 3 & 5 (Water Supply Plan and Regional Supplemental**  
14 **Water Program)**

15 The current status of Program Elements 3 & 5 is discussed in the Desalter Status Report filed  
16 with the Court on September 20, 2001. I comment separately on the Desalter Status Report, but note  
17 here that the projected schedule has changed. Watermaster's First OBMP Report stated that its goal  
18 was to complete the Chino I Desalter Expansion by December 31, 2001, and to complete  
19 construction of the Chino II Desalter Project by December 31, 2003. Recently, however, an Initial  
20 Study for the Chino I Desalter Expansion and Chino II Desalter Project was prepared. Phasing for  
21 the project is described on page 22 of the Initial Study. According to the Initial Study, construction  
22 of the Chino I Desalter expansion is anticipated to occur between June 2002 and December 2003;  
23 construction of Chino II Desalter Project is anticipated to occur between June 2002 and May 2004.  
24 The OBMP Status Report No. 2 fails to address or reconcile the differences between the First OBMP  
25 Status Report and the recent Initial Study regarding the completion dates for the Chino I Desalter  
26 Expansion and the Chino II Desalter. This is an example of significant information on OBMP status  
27 that should appear in Watermaster's status reports.

28 ////

1           **4. Program Element 4 (Comprehensive Groundwater Management Program for**  
2           **Management Zones 1 & 3)**

3           Watermaster states that scientific investigations are being conducted in Zone 1 regarding  
4 ground level changes. With regard to Zone 3, Watermaster states that the amount of recharge  
5 necessary to meet the production needs within the zone is addressed in the Recharge Master Plan.

6           **5. Program Elements 6 & 7 (Cooperative Efforts and Salt Management)**

7           Watermaster reports that TMDLs are being developed for Reach 3 of the Santa Ana River  
8 and other water bodies in the lower Chino Basin. Watermaster is coordinating with the Regional  
9 Water Quality Control Board regarding surface water quality and with the Department of Toxic  
10 Substances Control regarding a monitoring program to track perchlorate in groundwater in the Glen  
11 Avon area. Watermaster states that the salt budget is being developed for Chino Basin. (The initial  
12 assessment of the salt budget was to have been completed by June 30, 2001.)

13           **6. Program Elements 8 & 9 (Storage Management and Storage and Recovery)**

14           A Request for Proposals to participate in a storage and recovery program was developed and  
15 distributed. Watermaster states that ten proposals have been received and more are expected.  
16 Watermaster staff is reviewing the proposals and developing a plan to institute the storage and  
17 recovery program.

18           **C. Groundwater Basin Conditions**

19           Although many of the initial monitoring surveys reportedly have been completed, OBMP  
20 Report No. 2 does not include a description of the initial state of the Basin, to serve as a baseline and  
21 a measure for judging the overall effectiveness of OBMP implementation. In my Report and  
22 Comments Concerning Watermaster's Transmittal of Revised Rules and Regulations I noted that  
23 section 2.21 of the revised rules, which pertains to Watermaster's Annual Report, provides that the  
24 Annual Report "shall generally include an update on the status of the parties' efforts to implement  
25 the OBMP." And, "[o]n a biannual basis, the annual report shall include an engineering appendix  
26 which contains a more specific 'state of the Basin' report including an update on the status of  
27 individual OBMP-related activities such as monitoring results and Watermaster's analysis of  
28 Hydrologic Balance." I stated that it was important that the OBMP reporting to be included in the

1 Annual Report not become a substitute for the ten semi-annual reports the Court requires to be filed  
2 at the end of March and the end of September of each year.

3 An initial state of the Basin report should have been included in Watermaster's First OBMP  
4 Report, but it was not. I anticipated that the initial state of the Basin report would be included in  
5 OBMP Report No. 2, but it was not. I strongly suggest that the Court require Watermaster to prepare  
6 an initial state of the Basin report to be filed no later than January 31, 2002. The report may be filed  
7 concurrent with, but should be separate from, the Annual Report.

#### 8 **D. Environmental Documentation Review**

9 The subject of ongoing compliance with CEQA is not addressed in Watermaster's OBMP  
10 Status Report No. 2. However, as noted in the discussion above pertaining to the status of each of  
11 the OBMP Program Elements, two initial environmental studies have been completed. A separate  
12 section should be included in future OBMP Implementation Status Reports addressing  
13 environmental documentation status, compliance with the PEIR, and any implications of  
14 environmental review for OBMP implementation. In addition, this subject should be addressed in  
15 Watermaster's Supplemental OBMP Report No. 2 addressing the schedule and budget status for each  
16 of the Program Elements.

### 17 **III.**


#### 18 **CONCLUSION AND RECOMMENDATION**

19 I recommend the Court receive and file Watermaster's OBMP Implementation Status Report  
20 No. 2 on the following condition: that Watermaster file (1) Supplemental OBMP Report No. 2, a  
21 supplemental report addressing schedule and budget status information in the suggested format and  
22 ongoing CEQA compliance, and (2) Initial State of the Basin Report, a separate report detailing the  
23 initial state of the basin to serve as a measure for judging overall OBMP effectiveness.  
24 Supplemental OBMP Report No. 2 should be filed within 30 days of the hearing. The Initial State  
25 of the Basin Report should be filed concurrently with the Annual Report, no later than January 31,  
26 2002.

27 I also recommend that Watermaster convene ongoing meetings of its staff and consultants,  
28 as appropriate, with Mr. Scalmanini to supplement the semi-annual progress reports on the

1 implementation of the OBMP. Such meetings can initially be planned to be held two to four times  
2 per year. In light of the need for a Supplemental OBMP Report No. 2 and an Initial State of the  
3 Basin Report to be filed over the next two months, the first of those meetings should occur in the  
4 next month.

5 Dated: November 8, 2001

6  
7  <sup>sko</sup>  
8 Anne J. Schneider, Special Referee

1 OBMP REPORTING SCHEDULE

2 December 17, 2001–Supplemental OBMP Implementation Status Report No. 2

3 January 31, 2002–Initial State of Basin Report

4 January 31, 2002–Annual Report

5 March 31, 2002–OBMP Implementation Status Report No. 3

6 May 2002–Special Referee Technical Report to Court

7 September 30, 2002–OBMP Implementation Status Report No. 4

8 November 2002–Special Referee Technical Report to Court

9 January 31, 2003–Annual Report & Engineering Appendix

10 March 31, 2003–OBMP Implementation Status Report No. 5

11 May 2003–Special Referee Technical Report to Court

12 September 30, 2003–OBMP Implementation Status Report No. 6

13 November 2003–Special Referee Technical Report to Court

14 January 31, 2004–Annual Report

15 March 31, 2004–OBMP Implementation Status Report No. 7

16 May 2004–Special Referee Technical Report to Court

17 September 30, 2004–OBMP Implementation Status Report No. 8

18 November 2004–Special Referee Technical Report to Court

19 January 31, 2005–Annual Report & Engineering Appendix

20 March 31, 2005–OBMP Implementation Status Report No. 9

21 May 2005–Special Referee Technical Report to Court

22 September 30, 2005–OBMP Implementation Status Report No. 10

23 September 30, 2005–End of five-year appointment of nine-member board

24

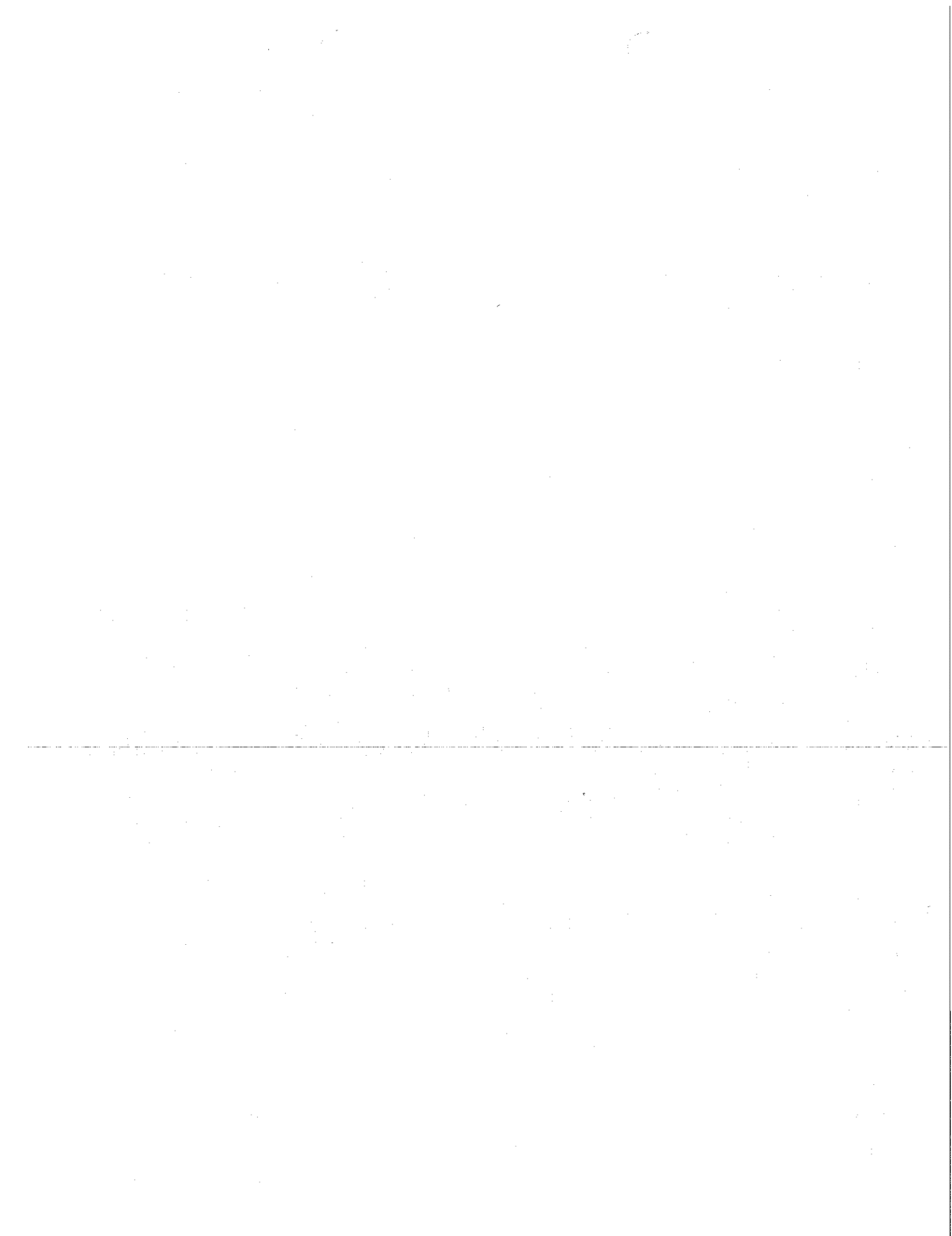
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By Susan King Deputy

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

11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )

Plaintiff, )

v. )

14 THE CITY OF CHINO, )  
15 )

Defendants. )

CASE NO. RCV 51010

Judge: Honorable J. Michael Gunn

SPECIAL REFEREE'S REPORT AND  
COMMENTS CONCERNING  
DESALTER STATUS REPORT

Date: Nov. 15, 2001

Time: 2:00 p.m.

Dept: 8

18 I.

19 INTRODUCTION

20 The Court approved Watermaster's adoption of an Optimum Basin Management Program  
21 ("OBMP") for the Chino Groundwater Basin ("Basin") on July 13, 2000. Judicial approval was  
22 subject to certain conditions precedent, including the unanimous approval of the Peace Agreement  
23 by August 1, 2000. Western Municipal Water District ("WMWD") "conditionally" approved the  
24 Peace Agreement on July 31, 2000, reserving its consent to the obligations imposed under the Peace  
25 Agreement concerning the desalters until it was satisfied that (1) the purchase contract for water  
26 from the new desalters is consistent with WMWD's obligations in Chino Basin, (2) financing of  
27 regional desalting facilities is coordinated with funds from Proposition 13, (3) appropriate interties  
28 are planned to improve the reliability and backup of desalters, (4) the City of Norco has readily

1 available and direct access to water produced by the desalters, and (5) the financial feasibility and  
2 stability of the new desalters is ensured by commitments to purchase a minimum quantity of water  
3 by identified purchasers of water. (Watermaster's Progress Report dated December 27, 2000, p.2,  
4 Ins. 16-27.) Hence, the Court's condition that unanimous approval of the Peace Agreement be  
5 accomplished by August 1, 2000, was not satisfied.

6 On August 30, 2000, Watermaster filed a motion to extend the term of the nine-member  
7 board serving as Interim Watermaster, asserting that all of the Court's conditions precedent to  
8 judicial approval of the OBMP had been satisfied. Recognizing that unanimous approval of the  
9 Peace Agreement had not yet been obtained, the Court granted Watermaster's motion and appointed  
10 the nine-member board for an additional five-year term, until September 30, 2005, "subject to the  
11 continuing jurisdiction of the Court to reconsider the appointment in the event Watermaster fails to  
12 timely comply" with certain conditions. One of the conditions imposed by the Court was WMWD's  
13 rescission of its "conditional" approval of the Peace Agreement and adoption of its "unconditional"  
14 approval of the Peace Agreement.

15 In an effort to obtain WMWD's rescission of its "conditional" approval of the OBMP,  
16 Watermaster has been facilitating negotiations between identified sellers and purchasers of water  
17 from the new desalters. Anticipating success in obtaining WMWD's rescission of its "conditional"  
18 approval of the Peace Agreement and noting that expansion of the existing Chino I Desalter was  
19 expected by the end of 2001, and that Chino I Desalter expansion and construction of a new Chino  
20 II Desalter in the Basin by 2003 are "critical elements of the OBMP Implementation Plan," the Court  
21 set a hearing on April 19, 2001, to receive a status report from Watermaster. That status report was  
22 to cover: (1) the adoption and execution of a formal Term Sheet and desalter agreements, (2) the  
23 initiation of the plans for design and construction of the Chino II Desalter, and (3) a report on the  
24 status of funding for the desalter component of the OBMP. The Court ordered the status report to  
25 be filed by September 20, 2001. The hearing is set for November 15, 2001.

26 Watermaster's Desalter Status Report, filed on September 19, 2001 ("Desalter Report"),  
27 addresses only the adoption and execution of a Term Sheet and desalter agreements. The Desalter  
28 Report does not address design and construction plans for the Chino II Desalter or the fact that

1 expansion of the Chino I Desalter will not be completed by December 31, 2001.

2 II.

3 DISCUSSION

4 A. WMWD's Rescission

5 Watermaster reports that negotiations between purchasers and sellers of the water produced  
6 by the new desalters have resulted in the execution of a Term Sheet setting forth the parties' rights  
7 and responsibilities under the Peace Agreement with respect to the desalters. Stating that the Term  
8 Sheet "makes significant progress towards addressing the terms and conditions of Western's  
9 approval of the Peace Agreement," on April 25, 2001, WMWD approved and executed the Term  
10 Sheet and adopted Resolution 2162. Resolution 2162 rescinds WMWD's earlier "conditional"  
11 approval of the Peace Agreement and "based on execution of the Term Sheet by all parties" thereto  
12 and "the implementation and enforceability of the provisions set forth therein," approves and  
13 authorizes execution of the Peace Agreement. Resolution 2162 "shall not be effective unless and  
14 until" all parties to the Term Sheet "have duly executed and signed the Term Sheet; otherwise" the  
15 resolution is "null and void in its entirety."

16 The parties to the Term Sheet are (1) WMWD, Inland Empire Utilities Agency ("IEUA"),  
17 and Orange County Water District ("OCWD") as "Sellers;" (2) the Cities of Chino, Chino Hills,  
18 Norco, and Ontario, Jurupa Community Services District ("JCSD") and Santa Ana River Water  
19 Company ("SARWC") as "Purchasers;" and (3) the State of California ("State"). Copies of the  
20 execution pages of the Term Sheet were not attached to the Desalter Report, but Watermaster states  
21 on p. 2, ln. 9 that the "prospective purchasers and sellers" of the desalted water have all executed the  
22 Term Sheet. There is no information as to whether the State also has executed the Term Sheet.

23 Paragraph 12 of the Term Sheet provides that the Term Sheet "shall not become effective  
24 until executed by all of the Parties" and there is "the endorsement by SAWPA as provided in  
25 Section 9 [sic]." Paragraph 11 of the Term Sheet states the following condition precedent to  
26 performance: "the Commission of SAWPA must endorse this Term Sheet by the adoption of a  
27 resolution pursuant to which SAWPA agrees to (a) delegate all executive authority to PC No. 14 and  
28 PC No. 9 to carry out the provisions of Project Agreements 14 and 9 and the implementation of these

1 projects under the Term Sheet, and (b) to complete in good faith all processes necessary to allocate  
2 Proposition 13 bond proceeds in accordance with the provisions of this Term Sheet.” Watermaster  
3 states on p. 2, ln. 13 of the Desalter Report that all conditions precedent have been satisfied. It is  
4 clear that condition (a) has been satisfied. But it is not clear that condition (b) has been satisfied--  
5 SAWPA Resolution No. 353 is silent with regard to the allocation of Proposition 13 bond funds.  
6 (See Desalter Report, Exhibit C.)

#### 7 **B. Court Approval Related to the Term Sheet**

8 In paragraph 7(b) of the Term Sheet, the parties agree that upon the sellers’ performance of  
9 the terms of the Term Sheet and any agreements executed in furtherance of the Term Sheet, the  
10 sellers’ obligations, responsibilities, and liabilities under the Article VII of the Peace Agreement are  
11 discharged and satisfied, except for those provisions concerning “Future Desalters.” The parties  
12 further agree that the sellers’ performance and consequent discharge of obligations “shall be deemed  
13 complete and binding even if full performance by Sellers is made impossible by an action of the  
14 Parties to this Term Sheet or any third party.” As Watermaster states on p. 2, lns. 16-19 of the  
15 Desalter Report, to effectuate this section of the Term Sheet the parties have agreed to file a “joint  
16 submittal” by noticed motion that requests the Court to issue an order stating that the respective  
17 obligations of the parties are discharged as provided in the Term Sheet. Watermaster explains that  
18 such an order is necessary “to confirm that the actions of Watermaster, and the purchasers and sellers  
19 are in conformance with the OBMP and the Peace Agreement to avoid a future challenge by parties  
20 to the Peace Agreement that are *not* parties to the Term Sheet. . . .” To date, no motion has been  
21 filed requesting judicial approval of this aspect of the Term Sheet.

#### 22 **C. Formation of JEG**

23 The Term Sheet contemplates formation of a joint enterprise group (“JEG”) and construction  
24 of the expansion and new desalter facilities by WMWD, IEUA, and OCWD, in consultation with  
25 JEG. (Note, however, that the Term Sheet calls for the Arlington Desalter improvements to be  
26 financed only by WMWD and OCWD.) The integral facilities to be completed are to be known as  
27 the “ICADS Project Alternative 10A,” which includes the Arlington Desalter. Watermaster reports  
28 that documentation has been completed for the formation of a JEG that will be known as the Chino

1 Basin Desalter Authority ("CDA"). All of the purchasers have approved the CDA agreement, except  
2 that the City of Chino Hills has given only conditional approval. The purchasers have nominated  
3 JCSD as the designated representative for CDA for purposes of communicating with the sellers of  
4 desalted water.

5 **D Bridge Agreement**

6 The Term Sheet contemplates that the sellers will design, finance, and construct the  
7 expansion and new facilities. The Term Sheet further contemplates the use of a lease/purchase  
8 agreement whereby purchasers of water produced by the facilities will assume the debt service for  
9 the construction of the new facilities and operation of the desalter facilities. Watermaster reports that  
10 the parties have concluded that the lease/purchase component of the Term Sheet is unnecessary, and  
11 that the parties intend to proceed instead with a straight purchase transaction. The parties have  
12 entered into a Bridge Agreement titled "Chino Basin Desalter Transitional Operations and  
13 Maintenance Agreement" ("Bridge Agreement") which will govern the parties' actions until the  
14 purchase/sale agreement is finalized and the desalter facility is transferred from the sellers to the  
15 purchasers. The following entities are parties to the Bridge Agreement: SAWPA, IEUA, OCWD,  
16 WMWD, and JCSD.

17 The Bridge Agreement recognizes that SAWPA owns the existing groundwater desalination  
18 plant and appurtenant facilities (Chino I Desalter) and holds a permit issued by the Department of  
19 Health Services to market the treated water produced by the facility as potable water. The Bridge  
20 Agreement further recognizes that, in the operation of the existing facilities, IEUA sells the potable  
21 water to the City of Chino and the City of Chino Hills, and WMWD sells potable water to JCSD and  
22 the City of Norco, pursuant to agreements entered into by the parties on March 15, 2000. The  
23 intention expressed by the parties to the Bridge Agreement is that the new desalter operation  
24 agreement will supersede the March 15, 2000 agreement. Under the new desalter operation  
25 agreement, SAWPA, IEUA, OCWD and WMWD intend to fully delegate the operations and  
26 maintenance duties to JCSD for the Chino I Desalter, which will be owned by CDA and operated  
27 by JCSD under contract with CDA. (CDA will succeed to SAWPA's rights, duties, and obligations.)  
28 The new desalter operation agreement is not intended to alter or amend the Term Sheet.

1 **E. Continuing Negotiations**

2 What remains to be completed are (1) water supply agreements between CDA and its  
3 members and (2) the purchase and sale agreement related to ownership of the desalter facilities. In  
4 addition, Watermaster reports that a mitigation plan for the desalter well field must be prepared and  
5 Watermaster must ensure that operation of the desalter will implement the OBMP and not result in  
6 material physical injury to any party to the Judgment or to the Basin.

7 **F. Design Plans and Funding**

8 As I noted in the introduction, the Desalter Report does not include information regarding  
9 the initiation of the plans for design and construction of the Chino II Desalter Project. This  
10 information should be provided. With respect to funding for the desalter component of the OBMP,  
11 Watermaster states that SAWPA is the State Agency responsible for distributing Proposition 13  
12 funds. Three members of the five-member SAWPA Board are representatives from IEUA, WMWD  
13 and OCWD—entities that have executed the Term Sheet. Watermaster further states that, by adopting  
14 Resolution No. 353, SAWPA has agreed to comply with all processes to ensure the Proposition 13  
15 funds are provided. However, as I noted earlier in the discussion regarding WMWD's rescission  
16 of its conditional approval of the Peace Agreement, Resolution No. 353 does not contain any  
17 commitment concerning allocation of Proposition 13 funding.

18 **G. Scheduling**

19 As I noted in my separate report on the OBMP Status Report No. 2, Watermaster's First  
20 OBMP Report stated that the goal was to complete the Chino I Desalter Expansion by December 31,  
21 2001, and to complete construction of the Chino II Desalter Project by December 31, 2003.  
22 Recently, an Initial Study for the Chino I Desalter Expansion and Chino II Desalter Project was  
23 prepared. Phasing for the project is described on page 22 of the Initial Study. According to the  
24 Initial Study, construction of the Chino I Desalter expansion is anticipated to occur between June  
25 2002 and December 2003; construction of Chino II Desalter Project is anticipated to occur between  
26 June 2002 and May 2004. The Desalter Status Report fails to address or reconcile the differences  
27 between the various desalter completion dates previously reported to the Court and now reported in  
28 the Initial Study.

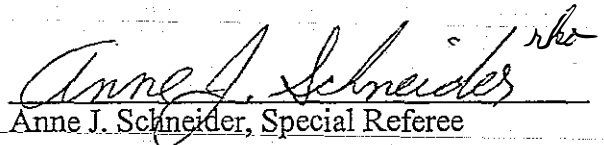
1 III.

2 CONCLUSION AND RECOMMENDATION

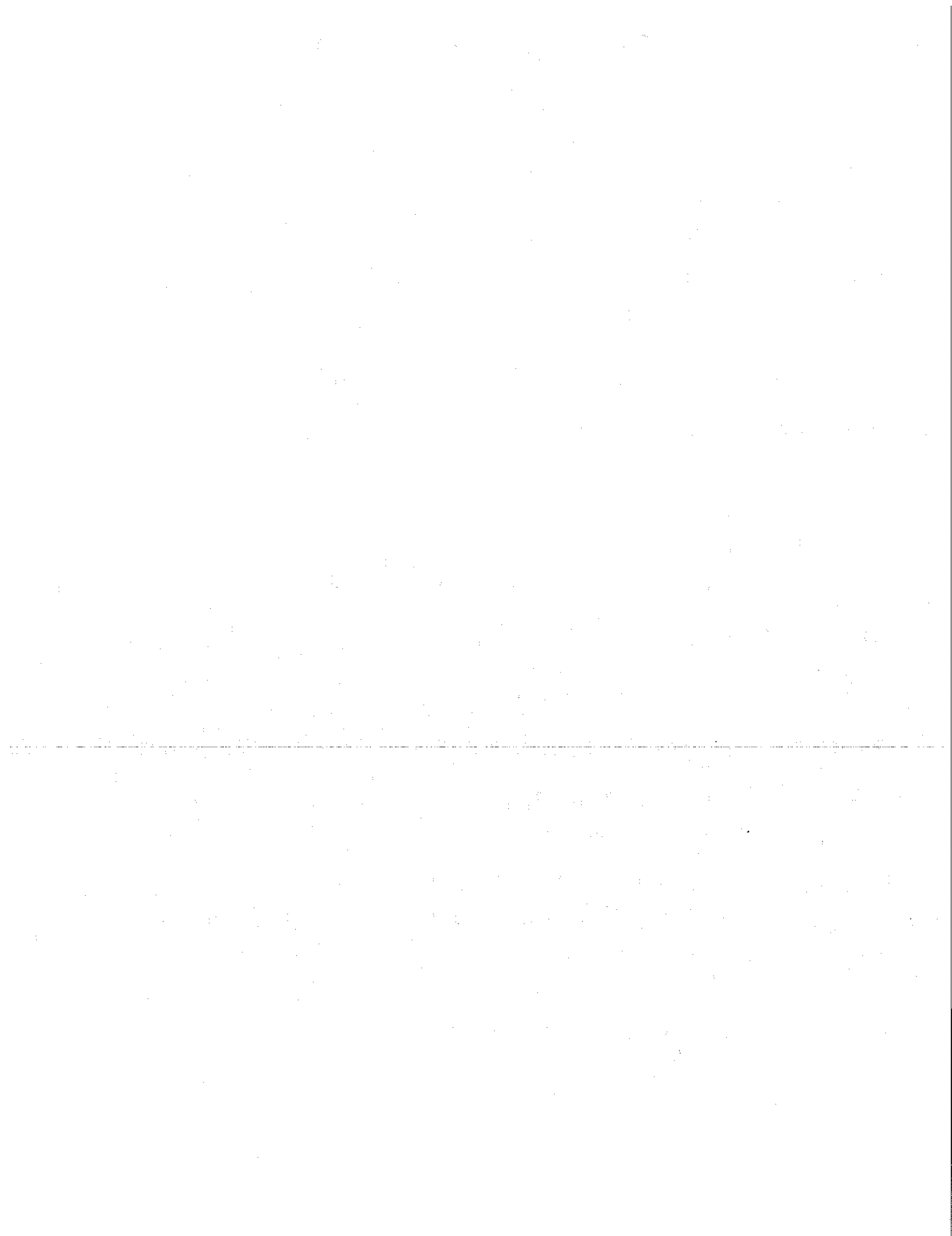
3 I recommend that the Court receive and file Watermaster's Desalter Status Report on the  
4 following condition: that Watermaster prepare and file a Supplemental Desalter Status Report  
5 addressing the change of schedule now apparent in the Initial Study, Watermaster's current schedule  
6 and plans for design and construction of the Chino I Expansion and Chino II Desalters, and the status  
7 of funding. The Supplemental Desalter Status Report should be filed within 30 days of the hearing.

8 As an extension of my recommendation regarding the OBMP Status Report No. 2 that two  
9 to four meetings per year be scheduled between Mr. Scalmanini and Watermaster staff and  
10 consultants to supplement the semi-annual OBMP status reports, I recommend that such meetings  
11 also include detailed discussion of such topics as overall desalter planning, design, and  
12 environmental review, to facilitate our reporting to the Court on this major component of the OBMP.

13 Dated: November 8, 2001

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17 Anne J. Schneider, Special Referee  
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9 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION

11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )  
13 )  
14 v. )  
15 THE CITY OF CHINO, )  
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Plaintiff,  
Defendants.

CASE NO. RCV 51010  
Judge: Honorable J. Michael Gunn  
SPECIAL REFEREE'S REPORT AND  
RECOMMENDATION CONCERNING  
MOTION TO CONFORM MINIMAL  
PRODUCER DEFINITION  
Date: Nov. 15, 2001  
Time: 2:00 p.m.  
Dept: 8

I.  
INTRODUCTION

The Court gave final approval to revised rules and regulations for the Chino Basin – Chino Basin Watermaster Rules and Regulations (“CBWRR”) – on July 19, 2001, subject to Chino Basin Watermaster’s commitment to remove the inconsistency between the definition of Minimal Producer in CBWRR and paragraph 4(j) of the Judgment herein. (Judgment ¶ 4(j) defines “Minimal Producer” as a producer “whose production does not exceed five acre-feet per year.” CBWRR §1.1(w) defines “Minimal Producer” as a producer “whose production does not exceed ten (10) acre-feet per year.”) To resolve the inconsistency, Watermaster has filed a motion to amend paragraph 4(j) of the Judgment to read: “Minimal Producer—Any producer whose production does not exceed ten acre-feet per year.”

1 II.

2 DISCUSSION

3 The parties recognize that the controlling document herein is the Judgment; it is the source  
4 document for Watermaster's authority and the Court's continuing jurisdiction. The parties  
5 understand the importance of having the document which governs Watermaster's operation of the  
6 Basin, CBWRR, be consistent with the Judgment.

7 Watermaster reports that the burden associated with using the five acre-feet definition of  
8 Minimal Producer provided in the Judgment is not offset by any accounting benefits, because of the  
9 small quantity of water used by those producing between five and ten acre-feet per year. (According  
10 to Watermaster, the total annual production of all producers producing ten acre-feet or less per year  
11 does not exceed 450 acre-feet per year.) Watermaster has concluded that the application of the ten  
12 acre-feet per year definition stated in CBWRR will avoid undue expense.

13 The Judgment provides for continuing jurisdiction to, *inter alia*, enable the Court upon  
14 application of Watermaster "by motion and, upon at least 30 days' notice thereof, and after hearing  
15 thereon...to modify ..." any of the Judgment provisions. Watermaster has presented a sound reason  
16 to modify Judgment paragraph 4(j). No party to the Judgment has filed opposition to the motion.  
17 Further, all three Pools (Agricultural, Non-Agricultural and Appropriative), the Advisory  
18 Committee, and the Nine-Member Board have each voted unanimously to amend the Judgment to  
19 conform the Judgment definition of Minimal Producer to the definition contained in CBWRR.

20 III.

21 CONCLUSION AND RECOMMENDATION

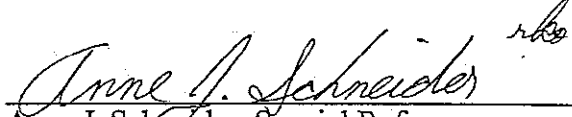
22 Considering that the Safe Yield of the Basin is 140,000 acre-feet per year and assuming the  
23 accuracy of Watermaster's 450 acre-feet per year assessment of the total annual production of all  
24 producers producing ten acre-feet or less per year, I agree with Watermaster's conclusion that the  
25 accounting benefits are not worth the burden associated with using the five acre-foot definition of  
26 Minimal Producer in the Judgment. Accordingly, I recommend the Court grant Watermaster's

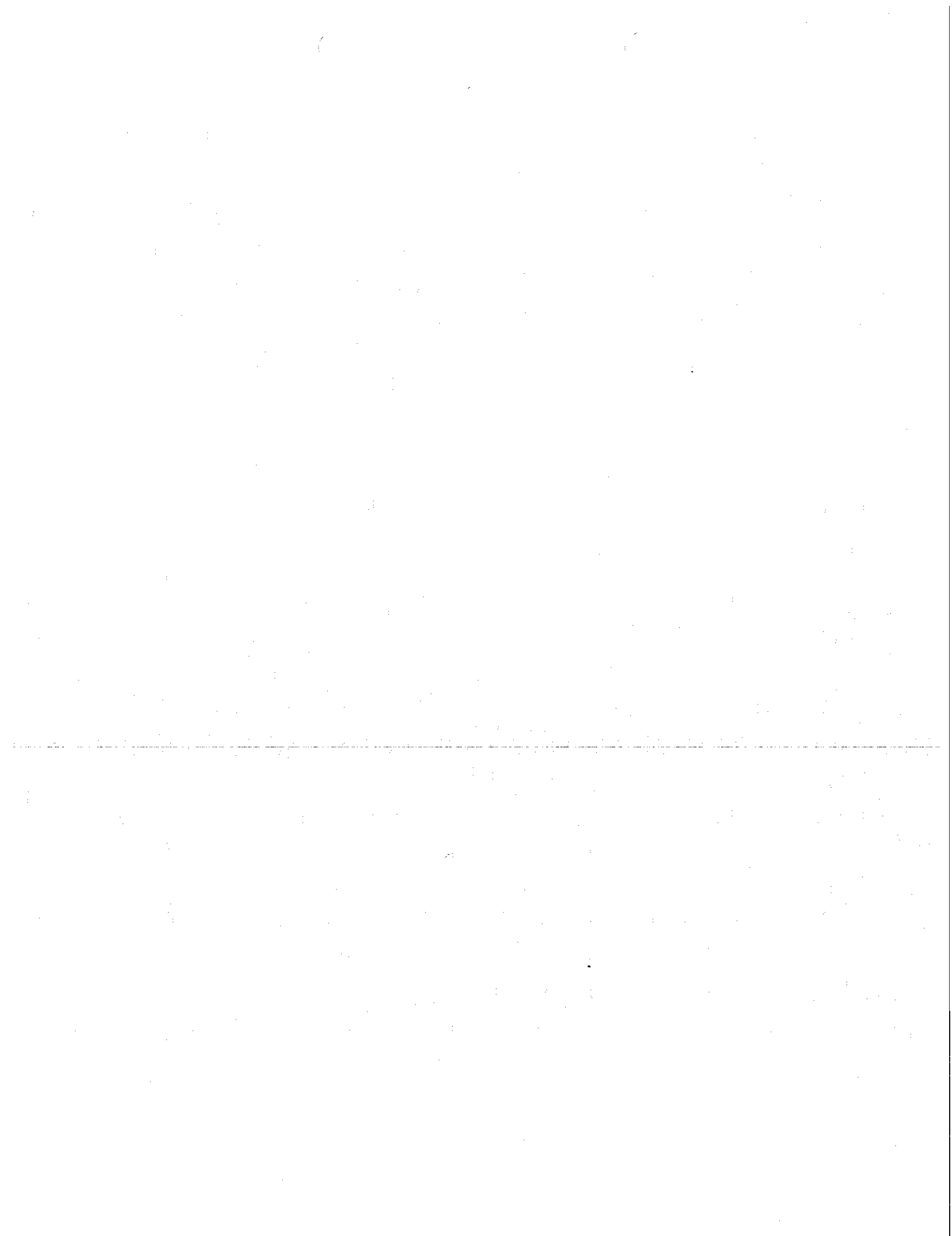
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1 "Motion to Conform Minimal Producer Definition in Judgment to 10 Acre-Feet Per Year as  
2 Provided in Watermaster Rules and Regulations."

3 Dated: November 8, 2001  
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7 Anne J. Schneider, Special Referee  
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1 ELLISON, SCHNEIDER & HARRIS L.L.P.  
2 Anne J. Schneider, Esq. (Bar No. 72552)  
3 2015 H Street  
4 Sacramento, California 95814-3109  
5 Telephone: (916) 447-2166

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San Bernardino County Clerk

NOV 09 2001

By *[Signature]* Deputy

6 SPECIAL REFEREE

FEE EXEMPT

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

11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )  
13 )  
14 v. )  
15 THE CITY OF CHINO, )  
16 )  
17 Defendants. )

CASE NO. RCV 51010  
Judge: Honorable J. Michael Gunn  
SPECIAL REFEREE'S REPORT AND  
RECOMMENDATION CONCERNING  
AUTHORITY TO PURSUE WATER  
RIGHTS PETITION  
Date: Nov. 15, 2001  
Time: 2:00 p.m.  
Dept: 8

18 I.

19 INTRODUCTION

20 Watermaster has filed a motion with the Court to obtain judicial approval to move forward  
21 on an application for water rights from the State Water Resources Control Board ("SWRCB").  
22 Watermaster has acknowledged that there is no clear authority in the Judgment for it to hold water  
23 rights; in fact, the Judgment specifically prohibits Watermaster from acquiring any interest in real  
24 property. Notwithstanding this limitation, Watermaster proposes an interpretation of the ownership  
25 limitation which permits it to hold water rights in trust for the benefit of the parties to the Judgment.  
26 Watermaster contends that such an arrangement would confer upon it "bare legal title" only and  
27 therefore would not contravene the Judgment's directive prohibiting the acquisition of real property.

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II.

DISCUSSION

A. The 1978 Judgment

The 1978 Judgment provides that Watermaster is not to acquire any interest in real property. Paragraph 19, entitled "Acquisition of Facilities", states:

Watermaster may purchase, lease, acquire and hold all necessary facilities and equipment; provided, that it is not the intent of the Court that Watermaster acquire any interest in real property or substantial capital assets.

(*Chino Basin Municipal Water District v. City of Chino, et al.*, Judgment, Paragraph 19, pg. 13 (1978) [hereinafter "Judgment"].)

B. Appropriative Water Rights Are Real Property

In its broad sense, the word "property" means "the thing of which there may be ownership." (Civ. Code § 654.) It includes the right of one or more persons to possess and use the thing to the exclusion of others. (*Id.*) Property is either "real or immovable" or "personal or movable." (Civ. Code § 657.) Real or immovable property consists of: (1) land; (2) that which is affixed to land; (3) that which is incidental or appurtenant to land; (4) that which is immovable by law. (Civ. Code § 658.) "A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or watercourse, or of a passage for light, air, or heat from or across the land of another." (Civ. Code § 662.) The right of taking water, the right of receiving water from or discharging water on land, and the right of having water flow without diminution or disturbance of any kind are servitudes upon land, which may be attached to other land as incidents or appurtenances and are then called easements. (Civ. Code § 801.)

California cases speak only of ownership of the right to use water, not to the ownership of water itself. "This Court has never departed from the doctrine that running water, so long as it continues to flow in its natural course, is not, and cannot be made the subject of private ownership.

A right may be acquired to its use, which will be regarded and protected as property; but it has been distinctly declared in several cases that this right carries with it no specific property in the water itself." (*Kidd v. Laird* (1860) 15 Cal. 161, 179-180.) "It is laid down by our law writers, that the right of property in water is *usufructuary*, and consists not so much of the fluid itself as the advantage of

1 its use. [¶] The owner of land through which a stream flows, merely transmits the water over its  
2 surface, having the right to its reasonable use during its passage. The right is not the *corpus* of the  
3 water, and only continues with its possession. [Citation.]” (*Eddy v. Simpson* (1853) 3 Cal. 249, 252.)

4 Notwithstanding the usufructuary nature of water rights, they are considered to be protectible  
5 property rights. “The authorities in this state have uniformly defined the right to appropriative water  
6 as a possessory property right. [Citations]. The possessory right entitles the owner to be protected  
7 in the quiet enjoyment of the use of water against a subsequent public land appropriator of the same  
8 water. ... Ownership of land with the incidental right to control the water supplies the necessary  
9 possessory right to entitle the owner to apply for an appropriation of the water. [Citation]. (*Fullerton*  
10 *v. State Water Resources Control Board* (1979) 90 Cal.App.3d 590, 598-99.) “Under the law of this  
11 state as established at the beginning, the water-right which a person gains by diversion from a stream  
12 for a beneficial use is a private right, a right subject to ownership and disposition by him, as in the  
13 case of other private property. All the decisions recognize it as such.” (*Thayer v. Thayer* (1912) 164  
14 Cal. 117, 125.)

### 15 C. Watermaster’s Authority to Hold Water Rights in Trust

16 Watermaster relies on several factors as the basis of its authority to hold water rights in trust.  
17 These factors fall into three general areas of support: (1) the additional expense and potential  
18 conflicts of filing separate applications; (2) the context of the Judgment as a whole; and (3) the Peace  
19 Agreement and case law.

#### 20 1. The Additional Expense and Potential Conflicts of Filing Separate Applications

21 Watermaster argues that, if the court does not allow it to move forward on its permit  
22 applications with the SWRCB, the parties would have to make separate filings and incur  
23 considerable monetary expense. (Watermaster Request For Ratification And Confirmation Of  
24 Authority To Prosecute A Water Rights Petition, Water Rights Application To Appropriate And To  
25 Hold Water Rights In Trust, pg. 2 (Nov. 15, 2001) [hereinafter “Watermaster’s Motion”]).  
26 Additionally, “there is the further possibility that the filings would work at cross-purposes to each  
27 other or the OBMP.” (*Id.*) Watermaster’s contentions have merit and illustrate the tangible benefits  
28 of moving forward as requested in its motion. However, the central issue of Watermaster’s authority



1 to hold water rights in trust consistent with Paragraph 19 of the Judgment remains.

2           **2. The Context of the Judgment as a Whole**

3           Watermaster regards the ownership limitation in Paragraph 19 of the Judgment as part of a  
4 contract that should be “construed in the context of the entire Judgment and the intention of the  
5 parties.” (Watermaster’s Motion, pgs. 4-5.) Many courts have stated “that a consent judgment,  
6 being regarded as a contract between the parties, must be construed as any other contract . . . and,  
7 like an ordinary judgment, when it admits of two constructions, the whole record will be examined  
8 . . .” (*In re Ferrigno* (1937) 22 Cal.App.2d 472, 474 (1937); *Yarus v. Yarus* (1960) 178 Cal.App.2d  
9 190, 197; *Cottom v. Bennett* (1963) 214 Cal.App.2d 709, 716; *Stevens v. Stevens* (1968) 268  
10 Cal.App.2d 426, 436.) Although the ownership limitation in Paragraph 19 is sufficiently clear,  
11 Watermaster argues that when Paragraph 19 is construed in the context of the complete Judgment  
12 there is compelling support for Watermaster to hold water rights in trust for the benefit of the parties.  
13 (Watermaster’s Motion, pgs. 5-8; Post-Order Memorandum, pg. 5.)

14           In support of this position, Watermaster argues that in carrying out the objectives of the  
15 physical solution it has the duty to “accomplish replenishment of overproduction from the Basin by  
16 any reasonable method.” (Judgment, Paragraph 50, emphasis added.) It argues that acquiring water  
17 rights in trust for the benefit of the parties is simply one reasonable method of accomplishing  
18 recharge and replenishment. (Watermaster’s Motion, pg. 5; see also Post-Order Memorandum, pg.  
19 15 (Oct. 26, 2000).)<sup>1</sup> Watermaster states that in carrying out this duty it is not limited to spreading,  
20 percolation, and injection and in-lieu procedures as provided by Paragraph 50. (Post-Order  
21 Memorandum, pg. 15.) Watermaster, however, fails to mention that the spreading, percolation, and  
22 injection methods are expressly subject to the ownership limitation in Paragraph 19. (Judgment,  
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26           <sup>1</sup>To strengthen this assertion, Watermaster points out that it already holds water right permits  
27 19895 and 20753. (Post-Order Memorandum, pg. 16.) Watermaster has not obtained court approval  
28 for permits 19895 and 20753. Watermaster, as “Chino Basin Watermaster Board” and “Chino Basin  
Watermaster Public Works Group,” is a co-permittee with County of San Bernardino on these  
permits.

1 Paragraph 50(a).)<sup>2</sup>

2 Watermaster also argues that, read together, Paragraphs 19, 20, 25, and 26 “authorize  
3 Watermaster to purchase, lease, acquire, and hold all necessary facilities, enter into agreements and  
4 cooperate with State and Federal Agencies to implement the Physical Solution.” (Watermaster’s  
5 Motion, pg. 7; *see also* Post-Order Memorandum, pg. 16.) Although holding water rights in trust  
6 could be considered consistent with Paragraphs 20, 25, or 26, it is not consistent with Paragraph 19.

7 Watermaster suggests the “need for flexibility articulated in Paragraphs 40 and 41 of the  
8 Judgment” is further support for Watermaster’s authority to acquire water rights in trust.  
9 (Watermaster’s Motion, pg. 7.) The Judgment calls for a flexible and adaptable physical solution  
10 so that Watermaster can utilize “social, institutional and economic options, in order to maximize  
11 beneficial use of waters of Chino Basin.” (Judgment, Paragraph 40.) The action of Watermaster  
12 acquiring water rights in trust is consistent with Paragraphs 40 and 41, but these Paragraphs do not  
13 necessarily “lend[] support to Watermaster’s *authority* to hold water rights in trust . . .”  
14 (Watermaster’s Motion, pg. 7, emphasis added.)

15 **3. The Peace Agreement and Case Law**

16 Section 5.1(h) of the Peace Agreement states:

17 Watermaster shall not own recharge projects, including but not limited to spreading  
18 grounds, injection wells, or diversion works. It shall never own real property.  
19 However, Watermaster may own water rights in trust for the benefit of the parties to  
the Judgment.

20 Watermaster asserts that the Peace Agreement is “not intended to alter the Judgment, but is rather  
21 an interpretation that satisfies the policy of Paragraph 19 of the Judgment.” (Watermaster’s Motion,

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22  
23 <sup>2</sup>Paragraph 50-50(a), in relevant part, states: Watermaster may accomplish replenishment of  
24 overproduction from the Basin by any reasonable method, including: (a) Spreading and percolation  
of Injection water . . . , *subject to the provisions of Paragraph 19 . . .*” (emphasis added).

25 Watermaster also argues that “[f]or a period of time when Watermaster secures the rights  
26 to [replenishment water], it has an ownership interest in the supply, not dissimilar from the  
27 appropriative rights it would hold in trust . . .” (Watermaster’s Motion, pg. 5.) Watermaster may  
28 have overlooked a critical distinction between obtaining personal property—the act of securing  
replenishment water by contract and permitted by the Judgment; and obtaining real property—which  
includes the act of acquiring water right permits from the SWRCB.

1 pg. 6.) Watermaster suggests that the Peace Agreement attempts to carve out an exception to the  
2 ownership limitation in Paragraph 19. However, the Peace Agreement is not dispositive.

3 Watermaster cites several cases in support of what Section 5.1(h) of the Peace Agreement  
4 attempts to authorize. Watermaster maintains that “[c]ourts have long expressed a willingness to  
5 look through the veil of bare legal ownership of a water right in order to preserve the rights to the  
6 water by those who hold the true beneficial interest in such water. An example of such willingness  
7 can easily be seen in those cases analyzing the trustee/beneficiary relationship that pertains between  
8 a mutual water company and its shareholders.” (Watermaster’s Motion, pg. 6.) For this proposition  
9 Watermaster cites *Locke v. Yorba Irr. Co.* (1950) 35 Cal.2d 205, 209. In *Locke*, owners of various  
10 parcels conveyed their water rights to the Yorba Irrigation Company as a mutual water company in  
11 exchange for stock certificates. (*Locke*, 35 Cal.2d at 207.) Thereafter the plaintiff conveyed land  
12 to the defendant and reserved “all right to water from the Santa Ana River, as conveyed to the Yorba  
13 Irrigation District.” (*Id.*) The defendant claimed that the reservation was invalid because the water  
14 rights had been previously transferred. The court held the reservation was valid because the transfer  
15 of the water right “was nothing more than a change in the form of the ownership of the right. At no  
16 time was there other than a change in the form of the ownership of the right.” (*Id.* at 209.)

17 *Locke* does not analyze a “trustee” or “beneficiary” relationship. Although the conveyance  
18 of plaintiff’s water rights to the mutual water company created some type of fiduciary relationship,  
19 and the same could be said about the relationship between Watermaster and the parties with respect  
20 to carrying out the Judgment, the existence of a legal relationship does not help answer the question  
21 before the court.

22 Watermaster asserts that it will hold “bare legal title” to the water rights in a manner similar  
23 to the mutual water companies. The mutual water companies, however, initially acquire their  
24 ownership interest by a conveyance from the water right holders, not from any independent action  
25 of their own to secure water rights. Therefore in order to suggest the analogy is appropriate, the  
26 parties to the Judgment would have to convey to Watermaster their own water rights for it to hold  
27 as trustee. This is clearly not envisioned by the proposed action, and even if it were, the arrangement  
28 would include a formal trust instrument.

1 Watermaster has addressed the need for a formal trust instrument, however, in Watermaster's  
2 Resolution by providing: "Watermaster intends to establish a trust and hold such water rights subject  
3 to certain equitable duties to deal with the property for the benefit of the parties to the Judgment."  
4 (Resolution of the Chino Basin Watermaster to Establish Terms and Conditions Under Which  
5 Watermaster May Hold Water Rights in Trust for the Parties to the Judgment Consistent with the  
6 Judgment and the Peace Agreement, Watermaster Resolution, No. 2001-\_\_, pg. 2 [hereinafter  
7 "Resolution"].) The action of securing water rights in trust does not compromise Watermaster's  
8 objective role; nor is it inconsistent with the "intent of the Court." To be sure, the Resolution  
9 provides, *inter alia*, that:

- 10 • "Watermaster shall hold the Water Rights as trustee for the benefit of the Parties to  
11 the Judgment . . ." (Resolution, pg. 3.)
- 12 • "Watermaster may not sell, lease, [or] transfer . . ." the water rights. (Resolution, pg.  
13 3.)
- 14 • "Watermaster may only take actions regarding the Water Rights it holds that are in  
15 the best interests of the Parties to the Judgment considered as a whole . . ."  
16 (Resolution, pg. 3.)
- 17 • "Watermaster shall deal impartially with the Parties to the Judgment . . ."  
18 (Resolution, pg. 3.)
- 19 • "Watermaster shall not to [*sic*] use or deal with the Water Rights for its own profit  
20 or for any other purpose unconnected with the trust, nor to take part in any  
21 transaction in which it has an interest adverse to any party of the Judgment."  
22 (Resolution, pg. 3.)

23 **D. Alternative Basis to Confirm Watermaster's Holding Water Rights in Trust**

24 An alternative basis to provide Watermaster with the authority to hold water rights is to  
25 modify the language of Paragraph 19. For example, in relevant part, Paragraph 19 could provide:

26 . . . it is not the intent of the Court that Watermaster acquire any interest in real  
27 property or substantial capital assets, *except that Watermaster, in furtherance of the*  
28 *physical solution and OBMP, may acquire and hold water rights for the benefit of*  
*the parties to the Judgment.* (Emphasis added to suggested text.)

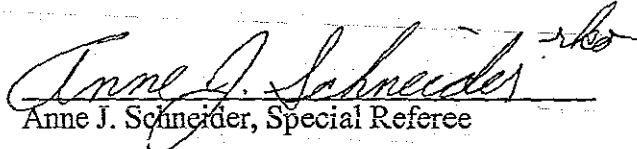
1 Watermaster has not applied for an order modifying the Judgment.

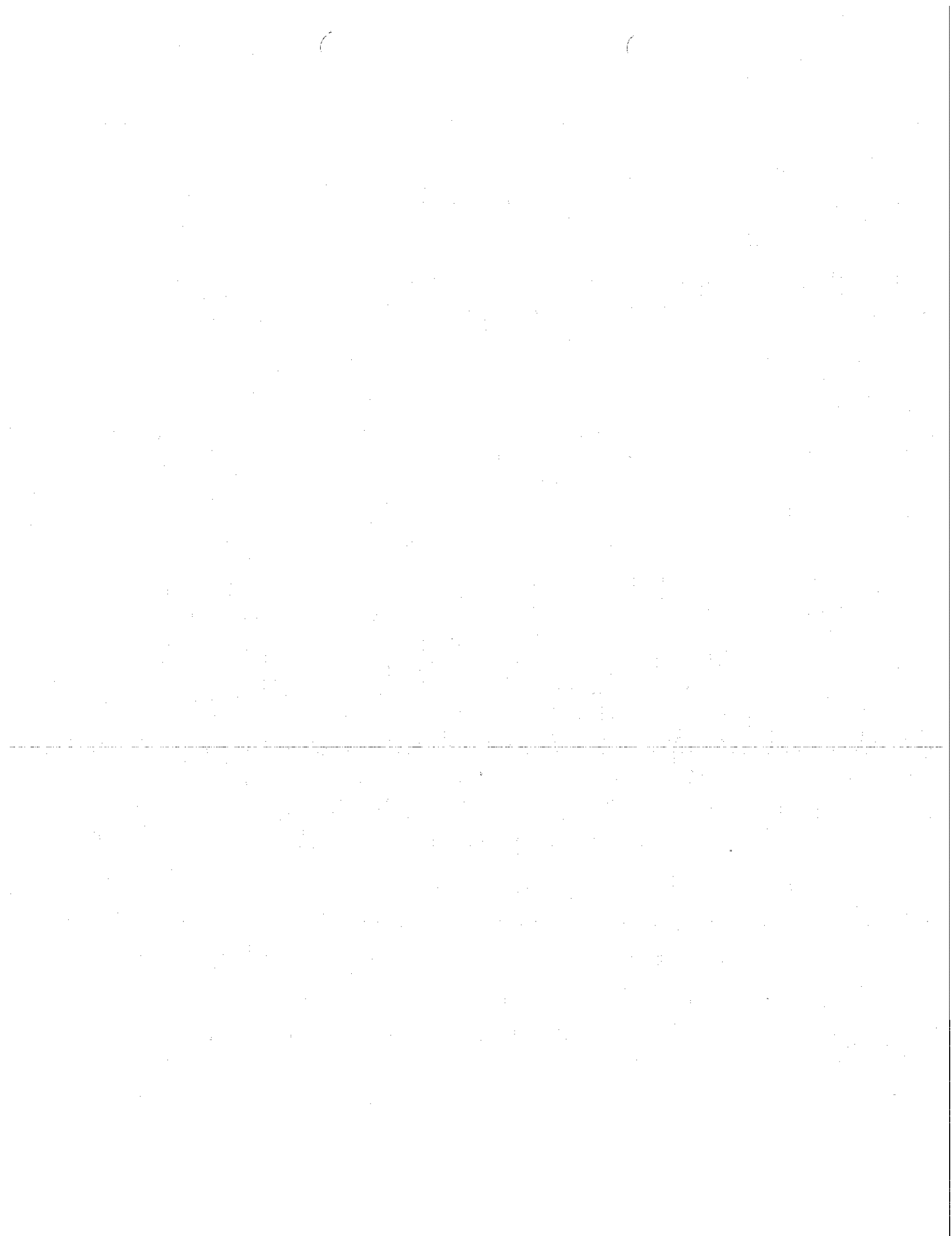
2 **III.**

3 **CONCLUSION AND RECOMMENDATION**

4 Although the Judgment prohibits Watermaster from owning real property, the Court in the  
5 exercise of its continuing jurisdiction has the authority to order Watermaster to secure water rights  
6 permits *in trust for the benefit of the parties to the Judgment for the purpose of carrying out the*  
7 *Recharge Element of the OBMP*. Accordingly, it is appropriate in this instance to accommodate the  
8 interim period that Watermaster will acquire an interest in real property in order to facilitate a trust  
9 arrangement which is in the best interest of the Chino Basin parties and that will not frustrate the  
10 substantive purpose of Paragraph 19 of the Judgment. Because there is no clear authority in the  
11 Judgment for Watermaster to acquire appropriative water rights, however, it is recommended that  
12 Watermaster obtain Court approval before making any future applications. Further, all existing  
13 permits (e.g., Permits 19895 and 20753) should be amended to reflect that any water rights held by  
14 Watermaster as co-permittee are held in trust for the benefit of all of the parties to the Judgment.

15 Dated: November 8, 2001

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18   
19 Anne J. Schneider, Special Referee



1 ELLISON, SCHNEIDER & HARRIS L.L.P.  
2 Anne J. Schneider, Esq. (Bar No. 72552)  
3 2015 H Street  
4 Sacramento, California 95814-3109  
5 Telephone: (916) 447-2166

6 SPECIAL REFEREE

FILED - West District  
San Bernardino County Clerk

NOV 09 2001

By Susan King Deputy

FEE EXEMPT

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

SPECIAL REFEREE'S REPORT AND  
RECOMMENDATION CONCERNING  
TRANSMITTAL OF UPDATED  
JUDGMENT

Date: Nov. 15, 2001  
Time: 2:00 p.m.  
Dept: 8

I.

INTRODUCTION

In the Transmittal of Appendix 1 (Forms) to Rules and Regulations filed with the Court on July 18, 2001, Watermaster indicated that its staff was in the process of updating the Judgment, and that the updated Judgment would be presented to the Court for adoption when it was completed. The Court ordered Watermaster to submit any motion to approve the updated Judgment by October 15, 2001. Instead of filing a motion to approve the Judgment, Watermaster filed a Transmittal of Updated Judgment. Watermaster staff has produced an updated Judgment incorporating amendments that have been made to the Judgment since it was first issued in 1978, and providing cross-references to significant Watermaster documents. Watermaster indicates that, while it initially thought that the updated Judgment would be presented to the Court for adoption, several concerns

1 were raised that such a procedure might have the unintended consequence of permitting a legal  
2 argument that, by substituting the updated Judgment, the original Judgment would somehow be  
3 invalidated and jurisdiction over the original parties lost. Although the parties did not intend that  
4 the updated Judgment would serve as a substitute for the original Judgment, to avoid potential  
5 challenges to the continued validity of the original Judgment and to preserve the continued  
6 jurisdiction of the Court over the original parties, Watermaster decided not to submit the updated  
7 Judgment for Court approval, but instead plans to distribute the document as an *unofficial reference*  
8 *tool*. The document will be useful as an unofficial reference tool and should serve to assist in  
9 tracking existing and future Judgment modifications and important Watermaster documents.  
10 However, I have concerns regarding the format of the updated Judgment, and the accuracy and  
11 completeness of the document. In the discussion section below I note some of these concerns.

## 12 II.

### 13 DISCUSSION

14 1. The Cover Page and Table of Contents in the original Judgment have not been  
15 reproduced in the updated version of the Judgment. This may be an oversight, since the Table of  
16 Contents is a useful reference.

17 2. Only the current case number is used in the updated Judgment—RCV 51010. The  
18 updated Judgment should reflect that the case was originally filed in the San Bernardino District of  
19 San Bernardino County Superior Court as case number 164327.

20 3. Watermaster has added a definition of “Peace Agreement” in the updated Judgment,  
21 which more appropriately should be included as a footnote to modified paragraph 8 of the Judgment.  
22 Addition of a definition should be done by formal Judgment modification.

23 4. Apparently, several new exhibits have been added. (See updated Judgment ¶5.) (The  
24 Special Referee has not received a copy of any of the exhibits that are attached to the updated  
25 Judgment.) Exhibit C-1 lists the interventions approved for the Overlying Agricultural Pool since  
26 1978. Exhibit D-1 lists the Overlying Non-Agricultural Pool members as of September 2001.  
27 Exhibit E-1 lists the Appropriative Pool members as of September 2001. The updated Judgment  
28 appropriately continues to include the original Exhibits C, D, and E. Exhibit L is the engineering



1 appendix (Appendix 1) of the 1995 Judgment amendment related to Land Use Conversions. Exhibit  
2 M is the rotation schedule for the nine-member board serving as Watermaster.

3 5. The updated Judgment incorporates the recent modification of paragraph 8 of the  
4 Judgment. However, the Judgment amendment is slightly misquoted in the updated Judgment. The  
5 amendment should begin with the words "except that for the term of the Peace Agreement, the  
6 members of ....." (not "for the term of the Peace Agreement except that the members of ....." ).

7 6. The updated Judgment reflects a purported modification of paragraph 15(c) of the  
8 Judgment, which pertains to the Court's continuing jurisdiction with respect to the determination of  
9 specific quantitative rights and shares in the declared Safe Yield or Operating Safe Yield: The  
10 updated Judgment provides that the Court does not retain and reserve jurisdiction to determine  
11 "specific quantitative rights and shares in the declared Safe Yield or Operating Safe Yield herein  
12 declared in Exhibits "D" ("D-1"), "E" and ("E-1")... ." The reference to Exhibits D-1 and E-1  
13 would be more appropriate in a footnote, since paragraph 15 of the Judgment has not been modified.

14 7. The signature line in the updated Judgment has been changed to reflect that the judge  
15 who presided over the case initially is no longer the assigned judge. The original Judgment was  
16 signed by Judge Howard B. Weiner on January 27, 1978. Since then, several judges have been  
17 assigned to the case. The case has been assigned to Judge J. Michael Gunn since February 1996.  
18 It would be more appropriate to note the change in assigned judges in a footnote than to change the  
19 signature line.

20 8. Footnote 19 of the updated Judgment references a resolution adopted by the nine-  
21 member board on May 13, 1999. The resolution deals with public meetings, hearings, confidential  
22 sessions and notice requirements, and thus affects Paragraph 37 (b) & (c) of the Judgment.  
23 Watermaster should clarify whether Watermaster Rules and Regulations supersede the resolution.

24 9. The complete modification of Judgment paragraph 18 related to adoption of rules and  
25 regulations and compensation of board members has not been included in the updated Judgment-  
26 subparagraphs (b) and (c) are omitted.

27 10. The modification of Judgment paragraph 48 related to the annual report is slightly  
28 different in the updated Judgment from the Court's March 31, 1999 order. The Court's order states

1 that the annual report shall apply to the operation of the preceding fiscal year.

2 11. The updated Judgment has been changed to reflect the pending Judgment modification  
3 related to the definition of Minimal Producer.

4 12. Paragraph 28 of the updated Judgment has not been footnoted to reference the January  
5 5, 1979 Order Approving Uniform Local Storage Agreement; Amplifying and Clarifying Procedures  
6 under Paragraph 28 of the Judgment; approving Cyclic Storage Agreement.

7 **III.**

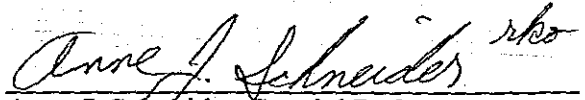
8 **CONCLUSION AND RECOMMENDATION**

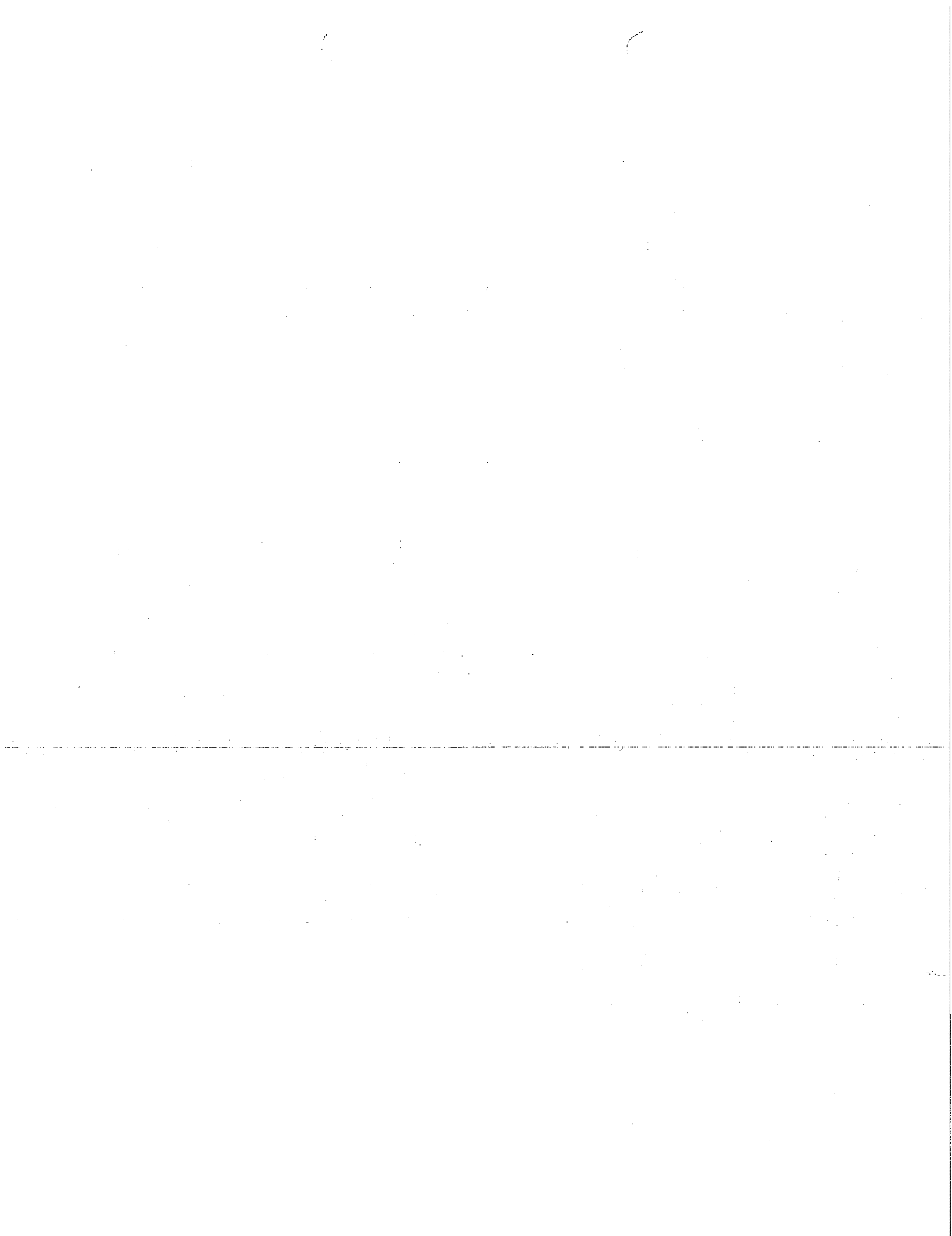
9 Watermaster should make the corrections and changes discussed. The Special Referee is  
10 available to meet with Watermaster staff to ensure the accuracy of the final document. Watermaster  
11 should resubmit the corrected document to the Court.

12 When distributing the document, Watermaster should include a caveat that Watermaster does  
13 not intend that any party to the Judgment rely on the updated Judgment in lieu of researching the  
14 Court file, which remains the ultimate source of Judgment amendments and Orders pertaining to  
15 the Judgment.

16 The Special Referee recommends that Watermaster staff continue to update the Judgment  
17 on a regular basis to include any future Judgment modifications, any amendments to Chino Basin  
18 Watermaster Rules and Regulations, and any interventions or other modifications to Exhibits C-1,  
19 D-1 and E-1.

20 Dated: November 8, 2001

21  
22  
23   
24 Anne J. Schneider, Special Referee



CHINO BASIN WATERMASTER

Case No. RCV 51010

Chino Basin Municipal Water District v. The City of Chino

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 November 9, 2001, I served the document(s) identified below

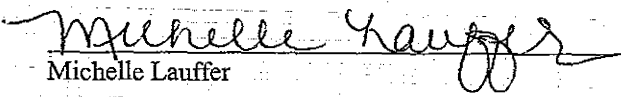
- 1) SPECIAL REFEREE'S REPORT AND COMMENDS CONCERNING OMBP IMPLEMENTATION STATUS REPORT NO. 2
- 2) SPECIAL REFEREE'S REPORT AND COMMENTS CONCERNING DESALTER STATUS REPORT
- 3) SPECIAL REFEREE'S REPORT AND RECOMMENDATION CONCERNING MOTION TO CONFORM MINIMAL PRODUCER DEFINITION
- 4) SPECIAL REFEREE'S REPORT AND RECOMMENDATION CONCERNING AUTHORITY TO PURSUE WATER RIGHTS PETITION
- 5) SPECIAL REFEREE'S REPORT AND RECOMMENDATION CONCERNING TRANSMITTAL OF UPDATED JUDGMENT

for Court Hearing November 15, 2001 @ 2:00 p.m.

by placing a true copy of same in sealed envelopes for delivery by United States Postal Service mail at Rancho Cucamonga, California, to each of the addresses shown on the 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 November 9, 2001.

  
Michelle Lauffer

RICHARD ADAMS II  
DEPUTY COUNSEL - POMONA  
ALVAREZ-GLASMAN & CLOVEN  
505 S GAREY AVE  
POMONA CA 91766

DAVID B. ANDERSON  
DEPARTMENT OF WATER RESOURCES  
1416 NINTH ST  
P.O. BOX 94236  
SACRAMENTO CA 94236-0001

WILLIAM J. BRUNICK ESQ.  
BRUNICK ALVAREZ & BATTERSBY  
P O BOX 6425  
SAN BERNARDINO CA 92412

THOMAS S. BUNN III  
LAGERLOF SENEAL BRADLEY  
GOSNEY & KRUSE  
301 N LAKE AVE 10<sup>TH</sup> FL  
PASADENA CA 91101-4108

CHINO BASIN WATERMASTER  
8632 ARCHIBALD AVE STE 109  
RANCHO CUCAMONGA CA 91730

JEAN CIHIGOYENETCHE  
GENERAL COUNSEL-IEUA  
CIHIGOYENETCHE GROSSBERG &  
CLOUSE  
3602 INLAND EMPIRE BLVD STE C315  
ONTARIO CA 91764

ROBERT DOUGHERTY  
GENERAL COUNSEL-ONTARIO  
COVINGTON & CROWE  
P O BOX 1515  
ONTARIO CA 91762

JIM ERICKSON  
LAW OFFICES OF JIMMY GUTIERREZ  
EL CENTRAL REAL PLAZA  
12616 CENTRAL AVE  
CHINO CA 91710

FREDERIC FUDACZ  
NOSSAMAN GUTHNER KNOX & ELLIOTT LLP  
445 S FIGUEROA ST 31<sup>ST</sup> FL  
LOS ANGELES CA 90071-1672

ERIC GARNER  
BEST BEST & KRIEGER LLP  
P O BOX 1028  
RIVERSIDE CA 92502-1028

JIMMY GUTIERREZ  
ATTORNEY-CITY OF CHINO  
EL CENTRAL REAL PLAZA  
12616 CENTRAL AVE  
CHINO CA 91710

SHARON JOYCE  
LEGAL COUNSEL - STATE OF CA - CDC  
1515 S STREET ROOM 125  
SACRAMENTO, CA 95814

STEVEN KENNEDY  
GENERAL COUNSEL-TVMWD  
BRUNICK ALVAREZ & BATTERSBY  
P O BOX 6425  
SAN BERNARDINO CA 92412

ARTHUR KIDMAN  
ATTORNEY-MVWD  
MC CORMICK KIDMAN & BEHRENS  
695 TOWN CENTER DR STE 400  
COSTA MESA CA 92626

MARILYN LEVIN  
STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL  
300 S SPRING ST 11<sup>TH</sup> FL N TOWER  
LOS ANGELES CA 90013-1232

JAMES L MARKMAN  
RICHARDS WATSON & GERSHON  
P O BOX 1059  
BREA CA 92622-1059

DAN MC KINNEY  
SPECIAL COUNSEL-AG POOL  
REID & HELLYER  
P O BOX 1300  
RIVERSIDE CA 92502-1300

THOMAS H MC PETERS  
MC PETERS MC ALEARNEY SHIMFF &  
HATT  
P O BOX 2084  
REDLANDS CA 92373

JAMES P MORRIS  
BEST BEST & KRIEGER LLP  
P O BOX 1028  
RIVERSIDE CA 92502-1028

JARLATH OLAY  
DEPUTY GENERAL COUNSEL MWD  
700 N ALAMEDA ST  
LOS ANGELES CA 90012

TIMOTHY J RYAN  
SAN GABRIEL VALLEY WATER  
COMPANY  
P O BOX 6010  
EL MONTE CA 91734

JOHN SCHATZ  
COUNSEL-JCSD  
P O BOX 7775  
LAGUNA NIGUEL CA 92607-7775

ANNE J SCHNEIDER  
ELLISON & SCHNEIDER  
2015 H ST  
SACRAMENTO CA 95814-3109

JESS SENEAL  
LAGERLOF SENEAL BRADLEY  
GOSNEY & KRUSE  
301 N LAKE AVE 10<sup>TH</sup> FL  
PASADENA CA 91101-4108

GERALYN SKAPIK ATTORNEY  
CITY OF CHINO HILLS  
BURKE WILLIAMS & SORENSON  
611 W 6<sup>TH</sup> ST STE 2500  
LOS ANGELES CA 90071-1469

SCOTT SLATER  
HATCH & PARENT  
21 E CARRILLO ST  
SANTA BARBARA CA 93101-2782

MICHELE A STAPLES  
JACKSON DEMARCO & PECKENPAUGH  
4 PARK PLAZA 16<sup>TH</sup> FL  
IRVINE CA 92614

GENE TANAKA  
BEST BEST & KRIEGER LLP  
P O BOX 1028  
RIVERSIDE CA 92502-1028

ANNE T THOMAS  
BEST BEST & KRIEGER LLP  
P O BOX 1028  
RIVERSIDE CA 92502-1028

SUSAN TRAGER  
LAW OFFICES OF SUSAN M TRAGER  
19712 MacArthur Blvd Ste 120  
Irvine, CA 92612

BURTON J. GINDLER  
MORRISON & FOERSTER LLP  
555 W 5<sup>TH</sup> ST  
LOS ANGELES CA 90013-1024

DONALD SCHROEDER  
CBWM BOARD  
3700 MINTERN  
RIVERSIDE CA 92509

JUDY SCHURR  
76433 SHOSHONE DR  
INDIAN WELLS CA 92210

DAVID SCRIVEN  
KRIEGER & STEWART ENGINEERING  
3602 UNIVERSITY AVE  
RIVERSIDE CA 92501

MICHAEL SMITH  
NICHOLS STEAD BOILEAU & KOSTOFF  
223 W FOOTHILL BLVD #200  
CLAREMONT CA 91711-2708

KYLE SNAY  
SOUTHERN CA WATER CO  
401 S SAN DIMAS CANYON RD  
SAN DIMAS CA 91773

NELL SOTO  
STATE CAPITOL  
ROOM NO 4066  
SACRAMENTO CA 95814

BILL STAFFORD  
MARYGOLD MUTUAL WATER CO  
9725 ALDER ST  
BLOOMINGTON CA 92316-1637

DAVID STARNES  
MOBILE COMMUNITY MGMT CO  
1801 E EDINGER AVE STE 230  
SANTA ANA CA 92705

L HAIT  
STERN & GOLDBERG  
9150 WILSHIRE BLVD STE 100  
BEVERLY HILLS CA 90210

TOM STETSON  
STETSON ENGINEERS INC  
3104 E GARVEY AVE  
WEST COVINA CA 91791

CRAIG STEWART  
GEOMATRIX CONSULTANTS INC.  
330 W BAY ST STE 140  
COSTA MESA CA 92629

TRACI STEWART

SWRCB  
SWRCB - DIV OF WATER RIGHTS  
P.O. BOX 2000  
SACRAMENTO CA 95809-2000

JIM TAYLOR  
POMONA UTILITY SVS DEPT.  
148 N HUNTINGTON BLVD  
POMONA CA 91768

JERRY THIBEAULT  
RWQCB - SANTA ANA REGION  
3737 MAIN ST STE 500  
RIVERSIDE CA 92501-3339

MICHAEL THIES  
SPACE CENTER MIRA LOMA INC  
3401 S ETIWANDA AVE BLDG 503  
MIRA LOMA CA 91752-1126

JOHN THORNTON  
PSOMAS AND ASSOCIATES  
3187 RED HILL AVE, SUITE 250  
COSTA MESA CA 92626

R.E. THRASH  
PRAXAIR  
5705 AIRPORT DR  
ONTARIO CA 91761

MANAGER  
THREE VALLEYS M W D  
1021 E MIRAMAR AVE  
CLAREMONT CA 91711-2052

PETER VAN HAAM  
OFFICE OF THE ATTORNEY GENERAL  
300 S SPRING ST 11TH FL N TOWER  
LOS ANGELES CA 90013-1232

GEOFFREY VANDEN HEUVEL  
CBWM BOARD  
7551 KIMBALL AVE  
CHINO CA 91710

ERICK VAUGHN  
ANGELICA RENTAL SERVICE  
1575 N CASE ST  
ORANGE CA 92867-3635

MARK WARD  
AMERON INTERNATIONAL  
13032 SLOVER AVE  
FONTANA CA 92335-6990

RAY WELLINGTON  
SAN ANTONIO WATER COMPANY  
139 N EUCLID AVE  
UPLAND CA 91786-6036

MICHAEL WHITEHEAD  
SAN GABRIEL VALLEY WC  
P.O. BOX 6010  
EL MONTE CA 91734

MARK WILDERMUTH  
WILDERMUTH ENVIRONMENTAL INC  
415 N EL CAMINO REAL STE A  
SAN CLEMENTE CA 92672

JEROME WILSON  
CBWM BOARD  
6035 FALLING TREE LN  
ALTA LOMA CA 91737

AAA AA  
MAILING LIST 1  
UPDATED 10/16/01

CURTIS AARON  
CITY OF FONTANA  
8353 SIERRA AVE  
FONTANA CA 92335-3598

RICHARD ANDERSON  
1365 W FOOTHILL BLVD STE 1  
UPLAND CA 91786

A W ARAIZA  
WEST SAN BERN CWD  
P.O. BOX 920  
RIALTO CA 92376-0920

STEVE ARBELBIDE  
CBWM BOARD  
417 PONDEROSA TR  
CALIMESA CA 92320

DAVE ARGO  
BLACK & VEATCH  
6 VENTURE STE 315  
IRVINE CA 92618-3317

DAN ARRIGHI  
SAN GABRIEL VALLEY WATER CO  
P.O. BOX 6010  
EL MONTE CA 91734-2010

RICH ATWATER  
IEUA  
P.O. BOX 697  
RCHO CUCA CA 91729-0697

RODNEY BAKER  
COUNSEL FOR EGGSWEST & JOHNSO  
BROS  
P.O. BOX 438  
COULTERVILLE CA 95311-0438

VIC BARRION  
RELIANT ENERGY ETIWANDA  
8996 ETIWANDA AVE  
ETIWANDA CA 91739

KEITH BELAND  
STATE OF CALIFORNIA CDC  
P.O. BOX 942883  
SACRAMENTO CA 94283-0001

BOB BEST  
NAT'L RESOURCES CONS SVS  
25864 BUSINESS CENTER DR K  
REDLANDS CA 92374

GERALD BLACK  
FONTANA UNION WATER CO  
P.O. BOX 309  
FONTANA CA 92334

MICHAEL BOCCADORO  
THE DOLPHIN GROUP  
925 L ST STE 800  
SACRAMENTO CA 95814

ROBERT BOWCOCK  
VULCAN MATERIALS  
2417 N BONNIE BRAE  
CLAREMONT CA 91711-1913

FRANK BROMMENSCHENKEL  
134 DAVIS ST  
SANTA PAULA CA 93060

JIM BRYSON  
FONTANA WATER COMPANY  
P.O. BOX 987  
FONTANA CA 92334-0987

BRUCE CASH  
UNITED WATER MGMT CO INC  
1905 BUSINESS CENTER DR STE 100  
SAN BERNARDINO CA 92408

TERRY CATLIN  
CBWM BOARD  
2344 IVY CT  
UPLAND CA 91784

NEIL CLIFTON  
IEUA  
P.O. BOX 697  
RCHO CUCA CA 91729-0697

DAVID COOPER  
SUNKIST GROWERS INC  
760 E SUNKIST ST  
ONTARIO CA 91761

STEVE CORTNER  
VULCAN MATERIALS COMPANY  
P.O. BOX 39756  
LOS ANGELES CA 90039

DAVID B COSGROVE  
RUTAN & TUCKER  
611 ANTON BLVD STE 1400  
COSTA MESA CA 92626

RON CRAIG  
RBF & ASSOC  
14725 ALTON PKWY  
IRVINE CA 92718

DAVE CROSLLEY  
CITY OF CHINO  
5050 SCHAEFER AVE  
CHINO CA 91710-5549

DAVID DE JESUS  
CBWM BOARD (TVMWD)  
146 E COLLEGE ST  
COVINA CA 91723

ROBERT DEBERARD  
CHAIRMAN-AG POOL  
1886 UKIAH WAY  
UPLAND CA 91784

ROBERT DELOACH  
CUCAMONGA CTY WD  
P.O. BOX 638  
RANCHO CUCA CA 91729-0638

BILL DENDY  
BILL DENDY & ASSOCIATES  
429 F ST STE 2  
DAVIS CA 95616-4111

GREG DEVEREAUX  
CITY OF ONTARIO  
303 E "B" ST  
ONTARIO CA 91764



DOUG DRURY  
IUEA  
P.O. BOX 697  
RANCHO CUCAMONGA CA 91730

GLENN DUNCAN  
CHINO, CITY OF  
P.O. BOX 667  
CHINO CA 91708-0667

GLEN DURRINGTON  
5512 FRANCIS ST  
CHINO CA 91710

DICK DYKSTRA  
10129 SCHAEFER  
ONTARIO CA 91761-7973

MOHAMED ELAMAMY  
CITY OF ONTARIO  
1425 S BON VIEW  
ONTARIO CA 91761-4406

BOB FEENSTRA  
MILK PRODUCERS COUNCIL  
13545 S EUCLID AVE  
ONTARIO CA 91762-6656

RALPH FRANK  
755 LAKEFIELD RD #E  
WESTLAKE VILLAGE CA 91361

COLE FRATES  
WESTERN DEVELOPMENT & STORAGE  
5657 WILSHIRE BLVD STE 330  
LOS ANGELES CA 90036

CARL FREEMAN  
L. D. KING  
2151 CONVENTION CENTRE WAY  
ONTARIO CA 91764

SAM FULLER  
SAN BERNARDINO VALLEY MWD  
P.O. BOX 5906  
SAN BERNARDINO CA 92412-5906

MARK GAGE P E  
GEOMATRIX CONSULTANTS INC  
2101 WEBSTER ST #1200  
OAKLAND CA 94612

JIM GALLAGHER  
SOUTHERN CALIFORNIA WATER CO  
2143 CONVENTION CTR WAY STE 110  
ONTARIO CA 91764

JOE GRINDSTAFF  
SAWPA  
11615 STERLING AVE  
RIVERSIDE CA 92503

JACK HAGERMAN  
STATE OF CALIFORNIA CIM  
4158 CENTER ST  
NORCO CA 91760

LISA HAMILTON  
GE/MGR ENV REMEDIATION PRGM  
640 FREEDOM BUSINESS CTR  
KING OF PRUSSIA PA 19406

PATSY HAMILTON  
STATE OF CALIFORNIA, CIW  
P.O. BOX 6000  
CORONA CA 91718

DONALD HARRIGER  
CBWM BD/ALTERNATE (WMWD)  
P.O. BOX 5286  
RIVERSIDE CA 92517-5286

CARL HAUGE  
DPLA DIV. PLANNING & LOCAL  
ASSISTANCE  
901 P ST  
SACRAMENTO CA 95814-6418

PAUL HOFER  
CBWM BOARD  
11248 S TURNER AVE  
ONTARIO CA 91761

CLARK IDE  
OCWD GENERAL COUNSEL  
P.O. BOX 8300  
FOUNTAIN VALLEY CA 92728-8300

ANNESLEY IGNATIUS  
COUNTY OF SAN BERNARDINO FCD  
825 E 3RD ST  
SAN BERNARDINO CA 92415-0835

JOHN WILLIAM INGRAHAM  
CNTY OF SAN BERNARDINO  
7000 MERRILL AVE BOX 1  
CHINO CA 91710-9027

KEN JESKE  
CITY OF ONTARIO  
1425 S BON VIEW AVE  
ONTARIO CA 91761-4406

JOSEPHINE JOHNSON  
CBWM BOARD  
3635 RIVERSIDE DR  
CHINO CA 91710

BARRETT KEHL  
CBWCD  
P.O. BOX 2400  
MONTCLAIR CA 91763-0900

ROB KETTLE  
STATE OF CALIFORNIA, CIW  
P.O. BOX 6000  
CORONA CA 91718

JERRY A. KING  
PSOMAS  
3187 RED HILL AVE, SUITE 250  
COSTA MESA CA 92626

PATRICK KING  
CONSULTANT TO SENATOR NELL SOTO  
822 N EUCLID AVE  
ONTARIO CA 91762

MARK KINSEY  
MONTE VISTA WATER DISTRICT  
P.O. BOX 71  
MONTCLAIR CA 91763-0071

MARK KINSEY  
MONTE VISTA IRRIGATION CO  
10575 CENTRAL AVE  
MONTCLAIR CA 91763

GENE KOOPMAN  
13898 ARCHIBALD AVE  
ONTARIO CA 91761-7979

KRONICK ET AL  
KRONICK MOSKOVITZ TIEDEMANN &  
GIRARD  
400 CAPITOL MALL 27TH FL  
SACRAMENTO CA 95814-4417

KENNETH KULES  
METROPOLITAN WATER DISTRICT  
P.O. BOX 54153  
LOS ANGELES CA 90054-0153

RONALD LA BRUCHERIE  
12953 S BAKER AVE  
ONTARIO CA 91761-7903

FRED LANTZ  
CBWM BD/ALTERNATE (TVMWD)  
P.O. BOX 2701  
POMONA CA 91769

CARLOS LOZANO  
STATE OF CA YTS  
15180 S. EUCLID  
CHINO CA 91710

MIKE MAESTAS  
CITY OF CHINO HILLS  
2001 GRAND AVE  
CHINO HILLS CA 91709-4869

ALAN MARKS  
CTY OF SAN BERN CTY CNSL  
157 W 5TH ST  
SAN BERNARDINO CA 92415

MIKE MCGRAW  
CBWM BD MEMBER/FWC  
P.O. BOX 987  
FONTANA CA 92334-0987

CAROLE MCGREEVY  
JURUPA COMM SVCS DIST  
8621 JURUPA RD  
RIVERSIDE CA 92509-3229

BILL MILLS  
ORANGE COUNTY WATER DIST  
P.O. BOX 8300  
FTN VALLEY CA 92728-8300

ERIC MILLS  
CITY OF POMONA  
148 N HUNTINGTON ST  
POMONA CA 91768

JIM MOODY  
CITY OF UPLAND  
P.O. BOX 460  
UPLAND CA 91785-0460

CHRIS NAGLER  
DEPT OF WATER RESOURCES  
770 FAIRMONT AVE SUITE 102  
GLENDALE CA 91203-1035

ROBERT NEUFELD  
CHAIRMAN CBWM BOARD  
14111 SAN GABRIEL CT  
RANCHO CUCAMONGA CA 91739

ROBERT NICHOLSON  
SAN GABRIEL VALLEY WC  
P.O. BOX 6010  
EL MONTE CA 91734-2010

DANA OLDENKAMP  
MILK PRODUCERS COUNCIL  
3214 CENTURION PL  
ONTARIO CA 91761

SANDY OLSON  
WALNUT VALLEY WATER DISTRICT  
271 S BREA CANYON RD  
WALNUT CA 91789

MARY PARENTE  
8559 EDISON AVE  
CHINO CA 91710-9242

HENRY PEPPER  
CITY OF POMONA  
505 S GAREY AVE  
POMONA CA 91766

JEFF PIERSON  
2 HEXAM ST  
IRVINE CA 92612

ROBB QUINCEY  
CITY OF HESPERIA  
15776 MAIN ST  
HESPERIA CA 92345

BILL RICE  
RWQCB - SANTA ANA REGION  
3737 MAIN ST STE 500  
RIVERSIDE CA 92501-3339

LES RICHTER  
CALIFORNIA SPEEDWAY  
P.O. BOX 9300  
FONTANA CA 92334-9300

DAVID RINGEL  
MONTGOMERY WATSON  
P.O. BOX 7009  
PASADENA CA 91109-7009

ARNOLD RODRIGUEZ  
SANTA ANA RIVER WATER CO  
10530 54TH ST  
MIRA LOMA CA 91752-2331

PATRICK SAMPSON  
P.O. BOX 660  
POMONA CA 91769

DIANE SANCHEZ  
DWR  
770 FAIRMONT AVE  
GLENDALE CA 91203-1035

JOSEPH C SCALMANINI  
500 FIRST ST  
WOODLAND CA 95695

JOE SCHENK  
CITY OF NORCO  
P.O. BOX 428  
NORCO CA 91760-0428

ELLISON, SCHNEIDER & HARRIS L.L.P.

CHRISTOPHER T. ELLISON  
ANNE J. SCHNEIDER  
JEFFERY D. HARRIS  
DOUGLAS K. KERNER, OF COUNSEL

ATTORNEYS AT LAW  
2015 H STREET  
SACRAMENTO, CALIFORNIA 95814-3109  
TELEPHONE (916) 447-2166 FAX (916) 447-3512

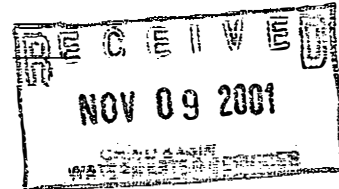
BARBARA A. BRENNER  
ANDREW B. BROWN  
ROBERT E. DONLAN  
LYNN M. HAUG  
GREGORY L. MAXIM  
CHRISTOPHER M. SANDERS  
GREGORY L. WHEATLAND

November 8, 2001

VIA OVERNIGHT DELIVERY

Traci Stewart  
Chino Basin Watermaster  
8632 Archibald Avenue, Suite 109  
Rancho Cucamonga, CA 91730

FEE EXEMPT



Re: Chino Basin Municipal Water District v. The City of Chino  
Case Number: RCV 51010

Dear Traci:

Enclosed are the reports listed below. Please serve these documents on all parties, persons and entities included on the Watermaster's service list. Please also file proofs of service with the Court.

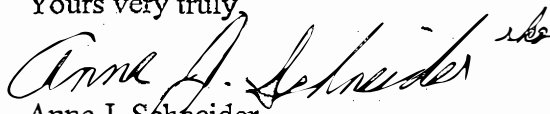
The reports enclosed are as follows:

1. Special Referee's Report and Comments Concerning OBMP Implementation Status Report No. 2
2. Special Referee's Report and Comments Concerning Desalter Status Report
3. Special Referee's Report and Recommendation Concerning Motion to Conform Minimal Producer Definition
4. Special Referee's Report and Recommendation Concerning Authority to Pursue Water Rights Petition
5. Special Referee's Report and Recommendation Concerning Transmittal of Updated Judgment

Traci Stewart  
November 8, 2001  
Page 2

Thank you for your assistance. If you have any questions, please call Ron O'Connor at  
(916) 447-2166.

Yours very truly

  
Anne J. Schneider  
Special Referee

AJS:rko

cc: Scott Slater  
Joe Scalmanini  
Judith Schurr

ELLISON, SCHNEIDER & HARRIS L.L.P.

CHRISTOPHER T. ELLISON  
ANNE J. SCHNEIDER  
JEFFERY D. HARRIS  
DOUGLAS K. KERNER, OF COUNSEL

ATTORNEYS AT LAW  
2015 H STREET  
SACRAMENTO, CALIFORNIA 95814-3109  
TELEPHONE (916) 447-2166 FAX (916) 447-3512

BARBARA A. BRENNER  
ANDREW B. BROWN  
ROBERT E. DONLAN  
LYNN M. HAUG  
GREGORY L. MAXIM  
CHRISTOPHER M. SANDERS  
GREGORY L. WHEATLAND

November 8, 2001

VIA OVERNIGHT DELIVERY

San Bernardino County Superior Court, Department 8  
8303 N. Haven Avenue  
Rancho Cucamonga, CA 91730  
Attn: Susan King, Courtroom Clerk

Re: Chino Basin Municipal Water District v. The City of Chino  
Case Number: RCV 51010

Dear Ms. King:

Enclosed are the reports listed below. One copy of each report is to be filed with the Court. The other copy is to be delivered to the Honorable J. Michael Gunn.

Under separate cover, copies of these report are being sent to Traci Stewart, Chief of Watermaster Services, with a request that copies be sent to all parties, persons and entities included on Watermaster's service list. Ms. Stewart will also be asked to file proofs of service with the Court.

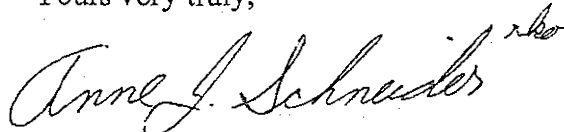
The reports enclosed are as follows:

1. Special Referee's Report and Comments Concerning OBMP Implementation Status Report No. 2
2. Special Referee's Report and Comments Concerning Desalter Status Report
3. Special Referee's Report and Recommendation Concerning Motion to Conform Minimal Producer Definition
4. Special Referee's Report and Recommendation Concerning Authority to Pursue Water Rights Petition
5. Special Referee's Report and Recommendation Concerning Transmittal of Updated Judgment

San Bernardino County Superior Court  
November 8, 2001  
Page 2

Thank you for your assistance. If you have any questions, please call Ron O'Connor at  
(916) 447-2166.

Yours very truly,

A handwritten signature in cursive script that reads "Anne J. Schneider". To the right of the signature, there are small initials "rko".

Anne J. Schneider  
Special Referee

AJS:rko  
enc.

cc: Traci Stewart  
Scott Slater  
Joe Scalmanini  
Judith Schurr