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16 Fee exempt – Gov. Code §§6103 and 27383

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION**

19 CHINO BASIN MUNICIPAL WATER
20 DISTRICT,
21
Plaintiff,
22 vs.
23 THE CITY OF CHINO, et al.,
24 Defendants.
25

CASE NO. RCV 51010
Assigned for All Purposes to:
THE HONORABLE JOHN P. WADE
Department S32

**JOINT SUR-REPLY TO CUCAMONGA
VALLEY WATER DISTRICT'S REPLY
TO JOINT OPPOSITION TO CVWD'S
MOTION TO DISCONTINUE THE
APPOINTMENT OF THE SPECIAL
REFEREE AND REPLY TO SPECIAL
REFEREE'S RESPONSE**

**[Filed Concurrently with Evidentiary
Objections and Notice of Lodging
Documents]**

Hearing Date: November 13, 2008
Time: 8:30 a.m.

1 Defendants, Monte Vista Water District, the City of Chino Hills, and the City of Chino (the
2 "Opposing Parties") hereby jointly submit this Sur-Reply to Cucamonga Valley Water District's Reply
3 to Joint Opposition to CVWD's Motion to Discontinue the Appointment of the Special Referee and
4 Reply to Special Referee's Response to Motion to Discontinue the Appointment of the Special
5 Referee.

6 **I. INTRODUCTION**

7 On June 30, 2008, Cucamonga Valley Water District ("CVWD") filed a Notice of Motion and
8 Motion to Discontinue the Appointment of the Special Referee. On July 8, 2008, CVWD filed a
9 Declaration of Jill N. Willis in support of the Motion to Discontinue the Appointment of the Special
10 Referee. This motion was initially scheduled to be heard before Judge Michael Gunn on August 21,
11 2008, in Department R-8.

12 Based on the August 21, 2008, date, the Opposing Parties filed a Joint Opposition to CVWD's
13 Motion to Discontinue the Appointment of the Special Referee on August 8, 2008. On that same date,
14 the parties filed a Joint Request for Judicial Notice as well as Evidentiary Objections to CVWD's
15 Motion. The documents were served on Watermaster, as is customary in this case, on August 8,
16 2008.¹ Watermaster, however, did not serve the Joint Opposition and accompanying documents on all
17 the parties until August 11, 2008.

18 On or about August 13, 2008, CVWD filed a Reply to the Special Referee's Response to
19 Motion to Discontinue the Appointment of the Special Referee as well as a Reply to the Joint
20 Opposition to the Motion to Discontinue the Appointment of the Special Referee.

21 This matter has been continued a number of times due to judicial reassignments. The hearing
22 on CVWD's Motion is now scheduled for November 13, 2008. As a result of new matters raised in
23 CVWD's Reply briefs, the Opposing Parties submit this Sur-Reply to respond to CVWD's Reply,
24 along with Evidentiary Objections and a Notice of Lodging Documents.

25 ///

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28 ¹ The Proof of Service of Joint Opposition Etc By Serving Alexandra Perez (Receptionist) on
08/08/08, As To Chino Basin Watermaster, evidencing the service to the Watermaster on August
8, 2008, was filed with this Court on August 19, 2008.

1 **II. THE OPPOSING PARTIES' TIMELY FILED AND SERVED THEIR OPPOSITION .**

2 CVWD asserts that the Joint Opposition was filed untimely, and as such, CVWD could not
3 fully respond to the Joint Opposition. (CVWD Reply to Joint Opposition, August 13, 2008, at 1:5.)
4 The Joint Opposition, Evidentiary Objections, and Request for Judicial Notice were in fact timely filed
5 with the Court and served on the Watermaster, as is customary in this case, on August 8, 2008, nine
6 court days prior to the original hearing date.

7 Code of Civil Procedure section 1005 requires that opposing papers be filed and served at least
8 nine court days prior to the hearing and that service of opposing papers be reasonably calculated to
9 ensure delivery to the other party or parties no later than the close of the next business day after the
10 time the opposing papers are filed. Opposing Parties complied with these requirements and CVWD's
11 assertions to the contrary have no basis. In fact, CVWD admits that the documents were served on
12 Monday, August 11, 2008, the next business day after the opposing papers were filed with the court
13 and served on the Watermaster. (CVWD Reply to Joint Opposition, August 13, 2008, at 1, fn. 1.)

14 However, as a result of the continuance of this hearing from August 21, 2008, to November 13,
15 2008, any claims that the Joint Opposition and accompanying documents were untimely filed are
16 irrelevant. Opposing Parties have agreed directly with CVWD that Opposing Parties will not raise any
17 objections to any supplemental reply brief. CVWD has had ample opportunity both to respond to the
18 alleged "factual misrepresentations and inaccurate assertions contained" in the Joint Opposition and
19 Evidentiary Objections, and to submit "further briefing by CVWD after CVWD has had the
20 opportunity to subpoena the appropriate records from Watermaster." (CVWD Reply to Joint
21 Opposition, August 13, 2008, at 1:6-11.)

22
23 **II. REQUESTS FOR FURTHER BRIEFING AND A NEW ORDER OF REFERENCE TO**
24 **DEFINE THE SCOPE OF THE SPECIAL REFEREE'S DUTIES ARE IMPROPER**
25 **AND OUTSIDE THE SCOPE OF THIS MOTION**

26 CVWD asserts for the first time in its Reply to the Special Referee's Response to Motion to
27 Discontinue the Appointment of the Special Referee that, "should the Court choose to continue the
28 role of the Special Referee, further briefing and a new Order of Reference would be appropriate."
(CVWD's Reply to Special Referee's Response to Motion to Discontinue the Appointment of the

1 Special Referee, p. 4, lines 5-6.) CVWD also requests further briefing regarding whether a judgment
2 amendment is required if the role of the Special Referee becomes permanent. (*Id.* at 4:6-11.)
3 California Rules of Court rule 3.1112, subdivision (d)(3) requires a motion to state the “basis for the
4 motion and the relief sought.” Both the above mentioned requests for relief are outside the scope and
5 the relief requested in the original Motion. (CVWD’s Notice of Motion and Motion to Discontinue
6 the Appointment of the Special Referee, June 30, 2008, 1: 4-8.)

7 In addition, the relief requested in CVWD’s Reply is too vague and ambiguous for Opposing
8 Parties to formulate any response. Opposing Parties hereby request that any reference to relief not
9 requested in CVWD’s Notice of Motion and Motion to Discontinue the Appointment of the Special
10 Referee be stricken from CVWD’s Reply.

11 **III. THE APPOINTMENT OF THE SPECIAL REFEREE CONTINUES TO BE**
12 **NECESSARY.**

13 CVWD asserts that the continued use of a Special Referee is no longer necessary. (CVWD
14 Reply to Special Referee’s Response to CVWD’s Motion to Discontinue the Appointment of the
15 Special Referee, August 13, 2008, at 4:4-5.) As Opposing Parties asserted in their Opposition to
16 CVWD’s motion, there is no justification at this time to abandon the Special Referee. The Special
17 Referee is a vital part of the Court’s plan and a necessary catalyst for the progress of the Optimum
18 Basin Management Plan (OBMP) and Basin management. (Joint Opposition to CVWD’s Motion to
19 Discontinue the Appointment of the Special Referee, August 8, 2008, at 11:11-12.)

20 Managing the Chino Basin involves a variety of discretionary and complex issues, including
21 the development and implementation of an OBMP (see Ruling, Feb. 19, 1998, at 9:18- 10:19) and the
22 oversight of goals and objectives contained within Peace Agreement I and II, as approved by the Court
23 on July 13, 2000 and December 20, 2007. Due to the complexity of these issues as well as the need
24 for continued technical oversight, as described in the Joint Opposition to CVWD’s Motion, the
25 Opposing Parties hereby request that the Court continue the role of the Special Referee to assist both
26 the Court and the parties in ensuring the future success of the Basin.

27 ///

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1 **IV. CONCLUSION**


2 In conclusion, Opposing Parties hereby respectfully request that the Court deny CVWD's
3 Motion to Discontinue the Appointment of the Special Referee.

4
5 RESPECTFULLY SUBMITTED.

6 Dated: October 29, 2008

MCCORMICK, KIDMAN & BEHRENS, LLP

7
8 By:



ARTHUR G. KIDMAN
JOHN P. GLOWACKI
TRAM T. TRAN
Attorneys for Monte Vista Water District

9
10
11 Dated: October _____, 2008

JENKINS & HOGIN

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MARK HENSLEY
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Attorneys for the City of Chino Hills

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15 Dated: October _____, 2008

LAW OFFICES OF JIMMY L. GUTIERREZ

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17 By:

JIMMY GUTIERREZ
Attorneys for the City of Chino

1 IV. CONCLUSION

2 In conclusion, Opposing Parties hereby respectfully request that the Court deny CVWD's
3 Motion to Discontinue the Appointment of the Special Referee.

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5 RESPECTFULLY SUBMITTED.

6 Dated: October _____, 2008

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.

Defendants.

CASE NO. RCV 51010

**EVIDENTIARY OBJECTIONS TO
CUCAMONGA VALLEY WATER
DISTRICT'S REPLY TO SPECIAL
REFEREE'S RESPONSE TO THE
MOTION TO DISCONTINUE THE
APPOINTMENT OF THE SPECIAL
REFEREE AND DECLARATIONS
SUBMITTED THEREWITH**

**Date: November 13, 2008
Time: 8:30 a.m.
Dept.: S32**

1 **TO WATERMASTER, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 Defendants Monte Vista Water District, the City of Chino Hills, and the City of Chino
3 (the "Opposing Parties") jointly lodge the following evidentiary objections to Cucamonga Valley
4 Water District's ("CVWD") Reply to Special Referee's Response to Motion to Discontinue
5 Appointment of the Special Referee ("Reply to Special Referee"), including the Declarations of
6 Sheri Rojo and Robert A. DeLoach filed in support thereof, and CVWD's Reply to the Joint
7 Opposition to CVWD's Motion to Discontinue the Appointment of the Special Referee ("Reply to
8 Joint Opposition"). The Opposing Parties further request that any reference to such inadmissible
9 evidence be stricken from the Reply and disregarded.

10 **I. CVWD IS NOT ENTITLED TO OFFER LIVE TESTIMONY IN CONNECTION**
11 **WITH ITS MOTION**

12 CVWD failed to support its Motion to Discontinue the Appointment of the Special
13 Referee with citation to any supporting evidence. Instead, in order to advance its position that the
14 Special Referee is no longer necessary or that the Special Referee has a disqualifying conflict of
15 interest, CVWD relied on statements that lacked foundation or personal knowledge, that were
16 conclusory, or that offered mere speculation and hyperbole.

17 Recognizing this deficiency, CVWD now urges in its Reply that it could produce
18 evidence to support its positions if given the opportunity to present live testimony. (Reply to
19 Special Referee at 2:15-17; Reply to Joint Opposition at 1:14-15.) CVWD was in fact required
20 and had every opportunity, to present any supporting evidence at the time it filed its Motion. (*See*
21 Cal. Rules of Court, rule 3.1113(b) [Motion must be accompanied by the evidence relied on to
22 support the position advanced in the motion].) CVWD cannot file a motion without evidentiary
23 support, and then only when confronted, offer to provide supporting evidence upon request.
24 CVWD's time to do so has passed.

25 A showing of good cause is required in order to present live testimony at a motion
26 hearing. (Cal. Rules of Court, Rule 3.1306(b).) CVWD, having failed to offer any evidence in
27
28

1 support of its Motion, cannot satisfy that standard. Indeed, CVWD has not attempted to satisfy
2 that standard.

3 **II. OFFERING EVIDENCE IN THE REPLY IS INAPPROPRIATE; HENCE, SUCH**
4 **EVIDENCE SHOULD BE STRICKEN**

5 In its Motion, CVWD made bald, general assertions without attributing the statements to
6 a speaker, without laying any foundation, and without establishing that the statements are not
7 inadmissible hearsay. The Opposing Parties filed written objections to this lack of evidentiary
8 support. In its Reply, CVWD attempted to support a number of its unsupported statements by
9 attaching the Declarations of Robert A. DeLoach and Sheri Rojo. However, the submission of
10 evidence for the first time on reply is improper absent a showing of good cause, a showing
11 CVWD does not endeavor to make. (*Balboa Insurance Co. v. Aquirre* (1983) 149 Cal.App.3d
12 1002, 1010.) The court should reject this untimely evidence.

13 **A. The Declaration of Robert A. DeLoach is Irrelevant**

14 CVWD offers the self-serving testimony of Robert A. DeLoach, CVWD's General
15 Manager and Chief Executive Officer, to argue that "CVWD is not aware of any process by
16 which CVWD would be able to contest bills." (Reply to Special Referee at 3:11:14.) This
17 assertion by CVWD begs the question -- if CVWD believes it has the legal means to challenge the
18 appointment of the Special Referee, then why would it not believe it has the legal right to
19 challenge the billings submitted by the Special Referee. Regardless, because CVWD is unaware
20 of a process, such lack of knowledge does not mean that a process does not exist. Consequently,
21 the DeLoach Declaration is irrelevant. (Evidence Code §350.)

22 Moreover, CVWD does not make any effort to establish the necessary preliminary facts
23 for introduction of this evidence - that no process exists by which CVWD can "object to the legal
24 bills submitted by the Special Referee." (Reply to Special Referee at 3:11-12.) The testimony of
25 Mr. DeLoach that he is not aware of a process certainly does not properly lay this foundation.
26 (Evidence Code §§700, 701.)

27 ///

1 **B. The Declaration of Sheri Rojo is Inadmissible**

2 In connection with its Joint Opposition, the Opposing Parties lodged objections to
3 CVWD's unsupported citation to Watermaster expenditures for Special Referee costs. (*See*
4 Evidentiary Objections to Cucamonga Valley Water District's Motion to Discontinue the
5 Appointment of the Special Referee at 3:1-12.) Only now, with its Reply does CVWD provide
6 such evidence. Again, its time to do so has passed.

7 Ms. Rojo testifies about various amounts "invoiced" by the Special Referee without
8 providing the invoice. Hence, Ms. Rojo's testimony is objectionable for the reasons that, absent
9 evidentiary support, this "testimony" is not the best evidence of the asserted facts and constitutes
10 hearsay. (Evidence Code §§1200(b), 1523.)

11 This testimony and the implication CVWD draws from it are also irrelevant and lack
12 foundation. Simply stating that the Special Referee invoiced a specific amount, without stating
13 what these amounts reflected or, by comparison, placing them within the larger context of
14 Watermaster's own technical and legal expenditures, does not establish that the Special Referee's
15 invoices are improper, duplicative, or excessively high as implied by CVWD. (Motion at 3:1-9.)

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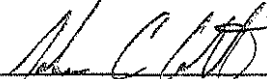
III. CONCLUSION

For the foregoing reasons, the Opposing Parties respectfully request that the Court strike the inadmissible statements from the Reply and deny CVWD's request for live testimony.

RESPECTFULLY SUBMITTED:

Dated: October 30, 2008

JENKINS & HOGIN

By: 
JOHN C. COTTI
Attorneys for the City of Chino Hill

Dated: October _____, 2008

MCCORMICK, KIDMAN & BEHRENS, LLP

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ARTHUR G. KIDMAN
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TRAM T. TRAN
Attorneys for Monte Vista Water District

Dated: October _____, 2008

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1 III. CONCLUSION

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6 Dated: October ____, 2008

JENKINS & HOGIN


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8 By: _____

JOHN C. COTTI
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10 Dated: October 29, 2008

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17 Dated: October ____, 2008

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1 III. CONCLUSION

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT CIVIL DIVISION**

19 CHINO BASIN MUNICIPAL WATER
20 DISTRICT,

21 Plaintiff,

22 vs.

23 THE CITY OF CHINO, et al.,

24 Defendants.

CASE NO. RCV 51010

**NOTICE OF LODGING DOCUMENTS IN
SUPPORT OF JOINT OPPOSITION TO
CUCAMONGA VALLEY WATER
DISTRICT'S MOTION TO
DISCONTINUE THE APPOINTMENT OF
THE SPECIAL REFEREE**

**Date: November 13, 2008
Time: 8:30 a.m.
Dept: S-32**

25
26
27 Defendants, Monte Vista Water District, the City of Chino Hills, and the City of Chino, by and
28 through their respective counsel of record, jointly lodge the following documents in support of the

1 Opposing Parties' Joint Opposition to Cucamonga Valley Water District's Motion to Discontinue the
2 Appointment of the Special Referee (the "Motion"). In a separate pleading, the lodging parties
3 requested the Court take judicial notice of the lodged documents, which are all records of this Court in
4 the above-captioned proceeding, pursuant to Evidence Code 452, subdivision (d). While California
5 Rules of Court, rule 3.1306, do not require the documents, which are part of the records in the case
6 before the Court, to be attached to the request for judicial notice, the attachments hereto are lodged for
7 the convenience of the Court and all parties in light of the voluminous file in this matter and the recent
8 reassignment of the case to this Court.

- 9 1. Order to Show Cause (March 19, 1997).
- 10 2. Ruling and Order of Special Reference (April 29, 1997).
- 11 3. Ruling (February 19, 1998).
- 12 4. Order Continuing the Hearing on the Scope and Level of Detail Plan for the OBMP
13 (October 5, 1998).
- 14 5. Final Ruling—Sept. 30, 1999 Hrng. (October 28, 1999).
- 15 6. Notice of Rulings and Hearing (December 3, 1999).
- 16 7. Order (June 29, 2000).
- 17 8. Order Concerning Adoption of OBMP (July 13, 2000).
- 18 9. Report and Recommendation Concerning Motion to Extend Nine-Member Board
19 (September 26, 2000).
- 20 10. Order Concerning Motion to Re-Appoint Nine-Member Board (September 28, 2000).
- 21 11. Order Concerning Motion to Amend Judgment (September 28, 2000).
- 22 12. Special Referee's Report and Comments Concerning First OBMP Implementation
23 Status Report (April 19, 2001).
- 24 13. Order Granting Final Approval of Watermaster Rules and Regulations (July 19, 2001).
- 25 14. Special Referee's Report and Comments Concerning OBMP Implementation Status
26 Report No. 2 (November 15, 2001).
- 27 15. Order Granting Motion to Conform Minimal Producer Definition in Judgment
28 (November 15, 2001).

- 1 16. Order Receiving Supplemental Desalter Report, Supplemental OBMP Report, 24th
2 Annual Report, and Initial State of the Basin Report; Order Continuing Hearing on
3 Subsidence (February 28, 2002).
- 4 17. Order Scheduling Workshop on Interim Plan, Continuing Hearing on Subsidence, and
5 Receiving Final Initial State of the Basin Report (June 19, 2002).
- 6 18. Special Referee's Report and Comments Concerning Draft Final State of the Basin
7 Report (June 26, 2002).
- 8 19. Points and Authorities in Support of Motion to Re-Appoint the Nine-Member Board for
9 a Further Five-Year Term; Motion to Receive and File State of the Basin Report
10 (January 12, 2006).
- 11 20. Declaration of Michael Fife in Support of Motion to Re-Appoint the Nine-Member
12 Board for Further Five-Year Term (January 12, 2006).
- 13 21. Objections by Cucamonga Valley Water District to Special Referee's Report and
14 Recommendations Concerning Motion to Re-Appoint the Nine-Member Board for a
15 Further Five-Year Term (January 30, 2006).
- 16 22. Special Referee's Comments and Recommendations Concerning Motion to Re-Appoint
17 the Nine-Member Board for a Further Five-Year Term (February 9, 2006).
- 18 23. Order Re-Appointing Nine-Member Board for Further Five-Year Term (February 9,
19 2006).
- 20 24. Order on Ex Parte Application for Continuance of Hearing on Motion for Approval of
21 Long Term Plan (August 27, 2007).
- 22 25. Special Referee's Comments and Recommendations Concerning Motion for Approval
23 of Watermaster's Long Term Plan (October 16, 2007).
- 24 26. Special Referee's Preliminary Comments and Recommendations on Motion for
25 Approval of Peace II Documents (November 27, 2007).
- 26 27. Watermaster's Response to Special Referee's Preliminary Comments and
27 Recommendations on Motion for Approval of Peace II Documents (December 14,
28 2007).

1 28. Special Referee's Final Report and Recommendations on Motion for Approval of Peace
2 II Documents (December 20, 2007).

3 29. Order Concerning Motion for Approval of Peace II Documents (December 21, 2007).

4 For the convenience of the Court and ease of serving the parties, copies of the lodged
5 documents have been made available to the Court and Watermaster in electronic format.

6 RESPECTFULLY SUBMITTED.

7 Dated: October 21, 2008

MCCORMICK, KIDMAN & BEHRENS, LLP

8
9 By:



10 ARTHUR G. KIDMAN
11 JOHN P. GLOWACKI
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Attorneys for Monte Vista Water District

13 Dated: October _____, 2008

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28. Special Referee's Final Report and Recommendations on Motion for Approval of Peace II Documents (December 20, 2007).

29. Order Concerning Motion for Approval of Peace II Documents (December 21, 2007).

For the convenience of the Court and ease of serving the parties, copies of the lodged documents have been made available to the Court and Watermaster in electronic format.

RESPECTFULLY SUBMITTED.

Dated: October ____, 2008

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By:

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Attorneys for Monte Vista Water District

Dated: October 20, 2008

JENKINS & HOGIN

By:



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Dated: October ____, 2008

LAW OFFICES OF JIMMY L. GUTIERREZ

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28. Special Referee's Final Report and Recommendations on Motion for Approval of Peace II Documents (December 20, 2007).

29. Order Concerning Motion for Approval of Peace II Documents (December 21, 2007).

For the convenience of the Court and ease of serving the parties, copies of the lodged documents have been made available to the Court and Watermaster in electronic format.

RESPECTFULLY SUBMITTED.

Dated: October _____, 2008

MCCORMICK, KIDMAN & BEHRENS, LLP

By:

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Dated: October _____, 2008

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Dated: October 29, 2008

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Attorneys for the City of Chino

EXHIBIT 1

MAR 19 1997
Wanda DeVinney

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

CHINO BASIN MUNICIPAL WATER)	CASE NO. RCV 51010
DISTRICT,)	
)	PROPOSED ORDER TO SHOW CAUSE
Plaintiff,)	RE: APPOINTMENT OF SPECIAL
)	REFEREE FROM OUTSIDE OF COUNTY
v.)	AND ADOPTION BY COURT OF ITS
)	TENTATIVE RULING
CITY OF CHINO, et al.,)	
)	
Defendants.)	
)	

Having considered the Motion for the Appointment of Nine Member Board as Watermaster, the Motion for Order of Court that Audit Commissioned by the Chino Basin Municipal Water District Is Not a Watermaster Expense, and the Motion for Disqualification of Counsel, the Court has issued its Tentative Ruling, which is attached to this Order as Exhibit "1".

The Court further finds that it is necessary to appoint a special referee to provide recommendations to resolve the issues raised by the Motion for the Appointment of Nine Member Board.

1 The Court finds that there are compelling reasons to deviate from the procedure set forth
2 in Code of Civil Procedure section 640 regarding the appointment of a referee, and intends to
3 appoint as special master Anne Schneider, a person who resides outside of San Bernardino
4 County. Among these compelling reasons is:

5 1. The high level of expertise possessed by Ms. Schneider on the subject of Water
6 litigation;
7

8 2. The fact that by residing outside of this county, Ms. Schneider will have a greater
9 ability to remain objective and impartial; and

10 3. Ms. Schneider's familiarity with the 1978 Judgment, having previously acted as
11 special referee to this Court regarding issues related to the Judgment.
12

13 Pursuant to the above findings,

14 IT IS ORDERED that on April 29, 1997, at 1:30 p.m., any party to the Judgment will
15 be permitted to show cause why this Court should not enter its Tentative Ruling as its ruling on
16 the motions before it, and/or show cause why this Court should not appoint a special referee
17 from outside. *San Bernardino County Jma/wsr*

18 IT IS FURTHER ORDERED that any party submitting papers related to this Order to
19 Show Cause must file them with the Court and serve them no later than April 15, 1997, with
20 any written argument limited to ten (10) pages.
21

22 IT IS FURTHER ORDERED that the motion by Richards, Watson & Gershon for an
23 order deleting that law firm from the service list will be considered by the Court at that time,
24 with no appearance necessary from moving party.

25 IT IS FURTHER ORDERED that Chino Basin Municipal Water District will remain as
26 interim watermaster.
27

28 ///

1 IT IS FURTHER ORDERED that all personnel matters concerning Watermaster staff shall be
2 held in abeyance by both Chino Basin Municipal Water District and by the Advisory Committee
3 until after the Court issues its ruling following receipt of recommendations by the special
4 referee.


5
6 DATED: MAR 1 9 1997

J. Michael Gunn

8 HONORABLE J. MICHAEL GUNN

9
10 Respectfully submitted by:

11 MCCORMICK, KIDMAN & BEHRENS

12
13 By: 
14 David D. Boyer
15 Attorneys for Defendant
16 Monte Vista Water District

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1
2
3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA, COUNTY OF ORANGE

5 I am employed in the County of Orange, State of California. I am over the age of
6 18 and not a party to the within action; my business address is: 695 Town Center Drive,
7 Suite 1400, Costa Mesa, California 92626-1924.

8 On March 14, 1997, I served the foregoing document described as **[PROPOSED]**
9 **ORDER TO SHOW CAUSE RE: APPOINTMENT OF SPECIAL REFEREE FROM**
10 **OUTSIDE OF COUNTY AND ADOPTION BY COURT OF ITS TENTATIVE RULING**
11 on the interested parties in this action by placing a true copy thereof enclosed in a sealed
12 envelope addressed as follows:

13 **SEE ATTACHED SERVICE LIST**

14 BY MAIL:

15 As follows: I am "readily familiar" with the firm's practice of collection and
16 processing correspondence for mailing. Under that practice it would be deposited
17 with the U.S. Postal Service on that same day with postage thereon fully prepaid at
18 Costa Mesa, California in the ordinary course of business. I am aware that on
19 motion of the party served, service is presumed invalid if postal cancellation date or
20 postage meter date is more than one day after date of deposit for mailing in
21 affidavit.

22 Executed on March 14, 1997, at Costa Mesa, California.

23 (STATE) I declare under penalty of perjury under the laws of the State of
24 California that the above is true and correct.

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28

NORA M. BLAIR, PLS

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SUPERIOR AND MUNICIPAL COURT
STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER)
DISTRICT,)

Plaintiff)

v.)

CITY OF CHINO, et al)

Defendant)

NO. RCV RCV 51010

Hearing Date: March 11, 1997 Dept: RC-H

- Motions: (1) Motion to Disqualify Counsel for Watermaster
(2) Motion for Order that Audit Commissioned by Watermaster is not a
Watermaster Expense
(3) Motion to Appoint Nine-Member Watermaster Board

TENTATIVE RULING

This is an adjudication of all rights in and to the ground waters of Chino Basin and its storage capacity. For at least five years prior to the filing of the amended complaint in July, 1976, the annual production from the Chino Basin had exceeded the safe yield, resulting in a

1 continuous state of overdraft of the basin. Concern for the future of the basin prompted the
2 filing of the original complaint in 1975. After three years of negotiation, judgment was entered
3 on January 27, 1978.¹

4 In 1978 Chino Basin Municipal Water District ("District") was appointed as
5 "Watermaster" to administer and enforce the provisions of the judgment and any subsequent
6 order of the Court (Judgment ¶ 16.) The District has performed its Watermaster duties for the
7 past 19 years. A motion is presently before the Court, purportedly filed on behalf of the
8 "Watermaster," to relieve the District of its Watermaster duties and substitute in place of the
9 District a nine-member board composed of representatives of various producers of the basin.

10 The motion to relieve the District of its Watermaster duties is described by one
11 group of producers as a power struggle between the producers in the north end of the basin and
12 the producers in the south end of the basin. The motion has prompted Senator Ruben S. Ayala
13 to file a declaration with this court stating his vigorous opposition to a motion which would
14 "replace an independent Watermaster with individual producers whose self-interest would bias
15 them against the protection of the groundwater supplies for the Chino Basin for the public,
16 health, safety and welfare." This declaration has been objected to as impermissible opinion
17 evidence. The Court feels that there exists sufficient foundation for qualifying Senator Ayala
18 as an expert, and the foundation will probably be required by the special referee as will be
19 discussed further in this opinion. For now, the issue is moot.

20 The motion to relieve the District of its Watermaster duties was apparently
21 precipitated, at least in part, by a recent action taken by the District's board of directors in
22 contravention of a purported "mandate" by the Advisory Committee, which is composed of
23 various producers of the basin. The action taken by the District's board of directors was to call
24 for a special audit of certain Watermaster administrative matters. The estimated cost of the
25 special audit is \$35,000.00. A motion has been filed, again purportedly on behalf of the

26
27 ¹ A bound copy of the judgment is in the current file, and the Court will take judicial notice
28 of the judgment on the Court's own motion.

1 "Watermaster," for an order declaring that the cost of the audit is not a "Watermaster" expense.
2 The "Nossaman Firm" purportedly representing the Watermaster is bringing this motion
3 pursuant to the direction of the Chino Basin Watermaster Advisory Committee (Advisory
4 Committee), acting pursuant to a 91.43% of the vote.

5 The motion requests an order from the Court that the costs of the audit be borne
6 by the Board of the Chino Basin Municipal Water District (District).

7 Watermaster contends that the District commissioned an audit in violation of the
8 requirements of the Judgment and Rules and Regulations of Watermaster.

9 Opposition to the Motion has been filed by Chino Basin Municipal Water District,
10 among others. The arguments made by City of Chino Hills and The Chino Municipal Water
11 District are almost identical. Besides the arguments made by the District, Chino Hills contends
12 that it has not been proven that the forged checks were not drawn by employees and/or
13 independent contractors of the Watermaster. This argument is not relevant to the issue here.
14 There is no evidence that the individuals were in any way involved in the forged checks.

15 **Background**

16 In December of last year, it was discovered that fraudulent checks had been drawn
17 upon Watermaster's account. Upon discovering this information, the Watermaster immediately
18 informed the bank and the law enforcement authorities. The sums were restored by the bank and
19 a new checking account has been established.

20 The information was brought to the attention of the Advisory Committee, which
21 considered the situation at an Advisory Committee meeting on January 8, 1997. The Advisory
22 Committee was informed by a representative of the San Bernardino County Sheriff's Department
23 that fraudulent activity of this type was not uncommon. The Advisory Committee was also
24 informed that this activity could occur even if proper procedures were in place.

25 At the January 8, 1997 meeting, the Advisory Committee took the following
26 actions:

27 1. It established, by a 91.43% majority vote, an Ad Hoc Finance Committee to examine
28 the financial procedures of Watermaster. The Advisory Committee further stated that if the

1 Committee determines an independent audit is necessary, the Advisory Committee would
2 consider that recommendation.

3 2. It directed a recently formed Executive Committee (which consists of the chairman
4 of each of the three Pools) to attend the special Watermaster meeting that had been called for
5 the next day, January 9, to recommend that the Watermaster Board not take any action on its
6 agendized [sic] items, including the authorization of an independent audit. This motion was
7 approved by a 91.43% majority.

8 3. The Advisory Committee defeated a motion that was made to recommend to the
9 Watermaster that the Board of Directors of the District conduct an examination and review of
10 the internal procedures utilized by Watermaster Services. This motion failed by a 91.43% vote.

11 At the special Watermaster meeting on January 9, the Watermaster was informed
12 that the Advisory Committee had recommended by more than an 80% vote that Watermaster
13 take no action seeking an independent audit of Watermaster Services. On January 10, the
14 Watermaster through its counsel sent a letter to the Vice Chairman of the District, reminding the
15 District of the requirement of the judgment.

16 At the January 14 meeting, the District met in closed session. It then, in open
17 session, voted to conduct an audit immediately. This audit will be referred to as a "special
18 audit."

19 On January 17, the District gave notice of a January 23, 1997 special Watermaster
20 meeting to select an auditor and award a contract.

21 On January 22, the Advisory Committee met and, by a 91.43% vote, voted to
22 direct Watermaster counsel to advise the District of the position of the Advisory Committee and
23 to file this motion if the District took action to retain an auditor.

24 On January 22, Watermaster Counsel sent a letter to District advising it of the
25 actions of the Advisory Committee.

26 At a January 23 special Watermaster meeting, the District was again advised by
27 Watermaster Counsel that because of the Advisory Committee's decision, the District did not
28 have authority to take the actions that were being considered.

1 At the January 23 meeting the District announced that it had received proposals
2 from several accounting firms. The Chief Financial Officer of the District recommended that the
3 firm of Soren, McAdam, Bartells be hired to conduct a special audit.

4 The contact of various accounting firms was done without any input from the
5 Advisory Committee, the Pool Committees or any parties other than Chino Basin Municipal
6 Water District. The District approved the hiring of Soren, McAdam, Bartells.

7 The District contends that this motion arises from "a decision by the Watermaster
8 to conduct an audit of the Watermaster affairs." The District contends that the special audit was
9 prompted by a well-founded concern that the Advisory Committee had usurped the
10 administrative authority of the Watermaster. The District contends that the Advisory Committee
11 was conducting Watermaster business in total disregard of generally accepted accounting
12 standards.

13 The District further contends that the Board of Directors of the District, as the
14 Watermaster, correctly voted to have a special audit conducted and further voted to hire Soren,
15 McAdam & Bartells to perform that special audit. The District argues that this action was one
16 that could be taken by the Watermaster without consultation with the Advisory Committee.

17 Watermaster contends that the Advisory Committee, by over an 80% vote, voted
18 to take no action directing a special audit at the then present time. Therefore, Watermaster
19 contends, this was a mandate from the Advisory Committee and the Watermaster could not act
20 in contradiction to that vote.

21 Watermaster further contends that even if the decision to conduct a special audit
22 had not been subject to the Advisory Committee's mandate, it still would have been improper.
23 Watermaster bases this on paragraph 38(b)(2) of the Judgment, which requires that the
24 Watermaster give 30 days notice of the meeting at which it intends to take action.

25 The special audit has been completed. The results are submitted as Exhibit "D"
26 to the opposition

27 The Watermaster contends that the procedures followed to commission the special
28 audit violated the requirements of the Judgment. The Watermaster contends that the Judgment

1 imposes clear conditions on the exercise of any powers of the Watermaster that has not been
2 approved in advance by the Advisory Committee.

3 Paragraph 38(b)² provides that:

4 (b) Advisory Committee. The Advisory Committee shall have the duty to study,
5 and the power to recommend, review and act upon all discretionary
6 determinations made or to be made hereunder by Watermaster.

7 (2) Committee Review. In the event Watermaster purposes to take any
8 discretionary action, other than approval or disapproval of a Pool Committee
9 action or recommendation properly transmitted, or execute any agreement not
10 theretofore within the scope of an Advisory Committee recommendation, notice
11 of such intended action shall be served on the Advisory Committee and its
12 members at least thirty (30) days before the Watermaster meeting at which such
13 action is finally authorized.

14 Watermaster contends that:

- 15 1. The commission of a special audit was a discretionary act.
- 16 2. The agreement with the accounting firm to conduct the special audit was the execution
17 of an agreement not approved by the Advisory Committee.
- 18 3. Since the Advisory Committee voted by a greater than 80% vote to delay taking action
19 on a special audit, the District was mandated to act consistently with that vote.

20 The District does not dispute that if the act was discretionary, 30 days notice of
21 the meeting or public hearing was required. They contend, however, that the hiring of an
22 accounting firm to perform a special audit is not a discretionary action, but one that is
23 exclusively within the District's powers as Watermaster.

24 If the special audit was a discretionary act that had to be recommended or
25 approved by the Advisory Committee, the District acted without authority and violated the
26 procedures contained in the Judgment. Therefore, the costs of the special audit would not be
27 a Watermaster expense.

28 If the special audit was not a discretionary act then the special audit was within
the District's authority. In this instance the cost of the special audit would be a Watermaster
expense.

Therefore, the actual question raised is: Was the commission of a special audit

²All paragraph references are contained in the 1978 Judgment.

1 a discretionary act?

2 Watermaster contends that a decision to take a particular action is discretionary
3 if the agency has a choice to either take or not take the action or how the action is to be
4 undertaken. This definition is extracted from Webster's Dictionary and the California
5 Environmental Quality Act.

6 CEQA provides that:

7 A discretionary project is one that requires the exercise of Judgment or
8 deliberation when the public agency or body decides to approve or
9 disapprove a particular activity, as distinguished from situations where the
10 public agency or body merely has to determine whether there has been
conformity with applicable statutes, ordinances or regulations. Remy,
Thomas, Moose & Yeates, Guide to the California Environmental Quality
Act (CEQA) (1994) p.38.

11 A discretionary act is discussed in Part VI of the Judgment relating with the
12 Physical Solution. Paragraph 41 provides that:

13 41. Watermaster, with the advice of the Advisory and Pool Committees,
14 is granted Discretionary powers in order to develop an optimum basin
15 management program for Chino Basin including both water quantity and
16 quality considerations. Withdrawals and supplemental water
17 replenishment of basin water, and the full utilization of the water resources
18 of Chino Basin, must be subject to procedures established by and
administered through Watermaster with the advice and assistance of the
Advisory and Pool Committees composed of the effective producers. Both
the quantity and quality of said water resources may thereby be preserved
and the beneficial utilization of the basin maximized.

19 The District contends that this paragraph defines discretionary acts and limits them
20 to those listed. I disagree with this proposition. The theme of the Judgment is that the Advisory
21 Committee is the policy making body. If the matters that required the Advisory Committee's
22 input were limited to those listed, the Watermaster would be the policy making body.

23 Therefore, I do not find this paragraph to be determinative on the issue.

24 Employment of professionals by the Watermaster is discussed in
25 paragraph 20.

26 The District contends that hiring an accountant is an administrative function that
27 is specifically allowed by the Judgment.

28 Paragraph 20 states that:

1 20. Employment of Experts and Agents. Watermaster may employ or
2 retain such administrative, engineering, geologic, accounting, legal or other
3 specialized personnel and consultants as may be deemed appropriate in the
4 carrying out of its powers and shall require appropriate bonds from all
5 officers and employees handling Watermaster funds. Watermaster shall
6 maintain records for purposes of allocation of costs of such services as
7 well as of all other expenses of Watermaster administration as between the
8 several pools established by the Physical Solution.

9 This paragraph states that the Watermaster may retain certain professionals to
10 carry out its powers. This section does not expand the Watermaster's powers, or categorize
11 certain powers as discretionary. This section merely allows for the retention of certain
12 professionals to assist the Watermaster in completing either discretionary or nondiscretionary
13 tasks.

14 Paragraph 48 states that the Watermaster's report, which is filed at the end of the
15 year, must contain a certified audit of all assessments and expenditures.

16 The special audit in question here is not the "normal course of business" yearly
17 audit that is required by paragraph 48. The special audit in question is a special audit. It is not
18 required by any provision in the Judgment. The scope, timing, and the firm to complete the
19 special audit were all separate decisions. This makes the special audit distinct from the yearly
20 audit. Therefore, this section does not delineate whether the special audit was a discretionary
21 act or not.

22 After reviewing the Judgment, I think that commissioning a special audit (costing
23 \$30,000 - \$35,000) and hiring a firm to complete the special audit is outside the normal course
24 of business.

25 Further, I think the language contained in paragraph 20 refers to retention of
26 experts in the ordinary course of business, not a commission to do an independent study outside
27 the normal course of business.

28 The Court intends to find that the commission of the special audit was a
discretionary act. Therefore, the cost of the special audit is not a Watermaster expense.

 The District contends, among other things, that the commission of the special audit
was an administrative function and therefore, not a discretionary act. Paragraph 54 divides
administrative expenses into two categories, either general Watermaster administrative expenses,

1 or special project expenses.

2 (a) General Watermaster Administrative Expense shall include office
3 rental, general personnel expense, supplies and office equipment, and
4 related incidental expense and general overhead.

5 (b) Special Project Expense shall consist of special engineering, economic
6 or other studies, litigation expense, meter testing or other major operating
7 expenses. Each such project shall be assigned to a Task Order number and
8 shall be separately budgeted and accounted for.

9 Paragraph 54 further provides that:

10 Special Project Expense shall be allocated to a specific pool, or any portion thereof,
11 only upon the basis of prior express assent and finding of benefit by the Pool Committee,
12 or pursuant to written order of the Court.

13 If the Court were to accept District's contention that the special audit was an
14 administrative act, then the Court must decide into which category it falls.

15 I think that if the special audit falls within either of these two categories, it would
16 fall within the special project category. A full, nonroutine audit is not general overhead. I think
17 that it would be an economic study.

18 If an economic study could be performed without special provisions for paying the
19 costs, then the phrase "economic or other studies" in paragraph 54(b) would be surplusage.

20 Since prior approval of a special project expense is required, this contention does
21 not assist the District.

22 The District argues that the special audit was justified. It cites certain
23 circumstances regarding the expenditures of the Watermaster, the 700% rise in the Watermaster
24 budget, the results of the special audit, and the contention that the Nossaman firm has a conflict
25 of interest, to justify the special audit. Objecting to the expenditures is an interesting argument.
26 The Watermaster has approved, in fact, paid the expenditures to which it is now objecting. This
27 puts the District in an interesting position. The Watermaster has also approved the 700%
28 increase in the Watermaster budget.

29 The District recites the circumstances and the results of the special audit to justify
30 the special audit. This argument ignores the procedures through which the special audit was
31 commissioned. This argument also attempts to justify the action taken by the results found.
32 This argument ignores the provisions of the Judgment and attempts to say if we are right we do

1 not have to follow any procedures. I do not find this argument persuasive. The result does not
2 justify the method.

3 The District had notice that the Advisory Committee considered the commission
4 of the special audit a discretionary act. Since the District was aware of the problem, the District
5 could have brought this matter before the Court before commissioning the special audit. Instead
6 the District took a risk that the Court would agree that it was not a discretionary act.

7 The Court intends to grant the motion. This is a harsh result. The District will be
8 required to pay for a special audit that has already been completed. The District, however,
9 ignored all warnings that this was inappropriate and decided to continue without a court order,
10 in spite of these warnings. Since the District decided to take the risk, it must accept the
11 consequences of losing. However, I could be persuaded to postpone my decision until after
12 hearing the recommendation of the special referee discussed herein, since the Court does feel
13 that the audit was not without its benefits, taking into consideration a number of things,
14 including whether someone was "sleeping at the switch."

15 All three motions are inextricably related. They are also dependent upon the
16 Court's interpretation of the provisions of the 1978 judgment and ultimately its delineation of
17 the functions and authority of the Watermaster and the Advisory Committee.

18 Although there has been no evidentiary hearing where live testimony was taken,
19 it appears to the Court from the papers submitted in this matter that over the course of the past
20 few years the Advisory Committee has assumed the task of directing the performance of the
21 District's Chief Executive Officer, Traci Stewart, with respect to Watermaster functions. Until
22 several months ago, the District's board of directors acquiesced to the Advisory Committee's
23 assumption of Watermaster administrative duties. However, the District's recent actions in
24 calling for a special audit and terminating the services of Nossaman, Guthner, Knox & Elliott
25 as Watermaster general counsel demonstrate its present intention to prevent the Advisory
26 Committee from interfering in administrative matters.

27 It is the opinion of this Court that the resolution of the motion to appoint a nine-
28 member Watermaster board presently before it will necessitate a thorough review of the checks

1 and balances contained in the 1978 judgment, an interpretation of the phrase "discretionary
2 determinations" used in paragraph 38, subdivision (b) of the judgment, and a delineation of the
3 functions of the Watermaster and Advisory Committee. The importance of the issues before the
4 Court is illustrated by the statements contained in the declaration submitted by P. Joseph
5 Grindstaff, the General Manager for the Monte Vista Water District and the present Chairman
6 of the Advisory Committee. Mr. Grindstaff states that the water quality and safe yield in the
7 basin has deteriorated as a result of the failure of the Advisory Committee to address certain
8 issues: pumping patterns, storage limits and losses, speculation in water and development of an
9 optimum basin management plan. Mr. Grindstaff believes that most of the water pumped from
10 the basin no longer meets health department standards for safe drinking water without blending
11 or treatment.

12 The Court finds that there is an urgent need to address the issue presented by the
13 motion, but the Court further finds that it is necessary to obtain a recommendation from a
14 recognized water law expert on the issues before it. Accordingly, the Court proposes to appoint
15 a special referee pursuant to Code of Civil Procedure section 639 subdivision (d); however,
16 notice is hereby given that the Court intends to make a finding that there are compelling reasons
17 to deviate from the procedure set forth in Code of Civil Procedure section 640, to the extent that
18 the Court intends to appoint Anne Schneider, a person who resides outside of San Bernardino
19 County, unless cause is shown at the next hearing why this Court should not appoint a special
20 referee from outside the county. Among the reasons that the Court finds compelling are the
21 high level of expertise Ms. Schneider possesses in the subject of Water litigation, and by virtue
22 of the fact that she resides outside the county, the chances of impartiality on her part and in her
23 recommendation are diminished; moreover, Ms. Schneider has previously acted as special
24 referee to this court (another judge) regarding issues related to the 1978 judgment. The referral
25 to Ms. Schneider would be for advisory purposes only, and this court would retain jurisdiction
26 to adopt in whole or part the recommendations of the special referee, taking into consideration
27 appropriate objections. It would be the intent of the Court that Ms. Schneider's fee be an
28 expense of Watermaster in order to spread the costs over all of the users instead of just to the

1 parties filing papers in this proceeding.

2 DISQUALIFICATION

3 The filing of the above two motions prompted the filing of yet a third motion,
4 again purportedly filed on behalf of the "Watermaster," to disqualify the law firm of Nossaman,
5 Guthner, Knox & Elliott, L.L.P., and attorneys John Ossiff and Frederic A. Fudacz as attorneys
6 representing *either* the Watermaster or the Advisory Committee

7 "A former client may seek to disqualify a former attorney from representing an adverse party
8 by showing the former attorney actually possesses confidential information adverse to the former
9 client. However, it is well settled actual possession of confidential information need not be
10 proved in order to disqualify the former attorney. It is enough to show a 'substantial
11 relationship' between the former and current representation . [Citation.] If the former client can
12 establish the existence of a substantial relationship between representations, the courts will
13 conclusively presume the attorney possesses confidential information adverse to the former
14 client. [fn.] [Citations.]" *H.F. Ahmanson & Co. v. Salomon Brothers, Inc.* (1991) 229 Cal. App.
15 3d 1445, 1452.)

16 The Court finds that the law firm of Nossaman, Guthner, Knox & Elliott and
17 attorneys Frederic A. Fudacz and John Ossiff have in the past acted as general counsel to the
18 Chino Basin Water District Board of Directors in its role as Watermaster. The Court further
19 finds that Nossaman, Guthner, Knox & Elliott has been discharged by the District Board of
20 Directors and no longer represents the Watermaster. The Court finds that the retainer agreement
21 was signed by CBMWD board of directors in their official capacity. The Nossaman firm used
22 substantially the same contract with Watermaster as they utilized with the advisory Committee.
23 Although the Court does not possess a copy of the "Facilities Agreement," a delegation of
24 duties back to the advisory committee does not necessarily assign the right and the power to
25 terminate the contract. The Nossaman Firm looked to Watermaster for fees, and as that duty
26 was not delegated, neither was the power to terminate the attorney client agreement. Since the
27 Nossaman firm is now terminated, the issue of conflict disqualification is moot; again, this is
28 the intended decision. I would like to see the facilities agreement before a final ruling, but study

1 the charts attached hereto for insight into my reasoning, and you are welcome to provide your
2 version if you disagree with that depicted in the charts supplied for analysis.

3 Facilities Agreement

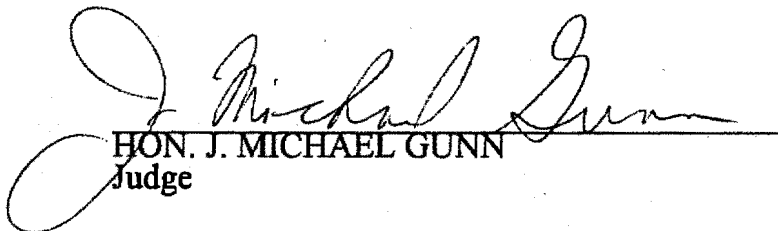
4 The Court has not been provided with a copy of the present Facilities and Services
5 Agreement between the District in its role as Watermaster and the Advisory Committee. The
6 Chief of Watermaster Services, Traci Stewart is requested to provide a copy to the Court
7 forthwith. This will become an order to Watermaster if the request is not honored; of course,
8 I have no reason to doubt that the request will not be honored. The Court is concerned that the
9 employees of Watermaster not be held hostage to this litigation, and the Advisory Committee
10 and the Watermaster (CBMWD) are ordered to meet and confer regarding the so-called "Pers
11 problems."

12 An OSC date will be set approximately three weeks from today to show cause why
13 the intended decision stated herein should not be an order of the Court. In addition the deletion
14 from service requested by unnoticed motion will be heard that day without necessity of
15 appearance by the moving party. See Wanda for a copy of the request.

16 As one can readily ascertain by reading this intended decision, due to volume of
17 papers filed, and in spite thereof, and the magnitude of the effect of the Court's decision on the
18 people affected by the Court's ruling, this Court needs the additional information requested, as
19 well as some additional time. As some of you know, some filings came as late as this afternoon,
20 and you will be here in just eight hours from the time it is now. As soon as you have read this
21 intended, confer with those present on a date to come back to court.

22 Dated: March 10, 1997,

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HON. J. MICHAEL GUNN
Judge

FILED - West District
San Bernardino County Clerk

MAR 20 1997

W. A. Winney

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SUPERIOR AND MUNICIPAL COURT
STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER)
DISTRICT)

NO. RCV 51010

Plaintiff

v.

ORDER

CITY OF CHINO, et al

Defendant

Copies of the items listed on Exhibit "A" attached hereto have been received by the Court, and Watermaster is hereby ordered to make copies available to parties to this case requesting all or a portion of the items listed on Exhibit "A" attached herein and herein incorporated by reference.

Dated: March 20, 1997

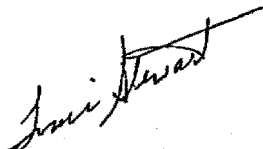
J. Michael Gunn
HON. J. MICHAEL GUNN
Judge

CHINO BASIN WATERMASTER
8632 Archibald Ave., Ste. 109
Rancho Cucamonga, CA 91730
TEL (909) 484-3888
FAX (909) 484-3890

TRANSMITTAL SHEET

DATE: March 20, 1997

TO: Honorable J. Michael Gunn
San Bernardino Superior Court
RC-H
11884 North Haven Blvd
Rancho Cucamonga, CA

FROM: Traci Stewart
Chief of Watermaster Services 

SUBJECT: March 11, 1997, Tentative Ruling Request for Documents

Enclosed, per page 15 of the Tentative Ruling and per verbal request of the Court Clerk received this date, are copies of:

1. February 15, 1978, Watermaster meeting minutes, Item 3 approving Service and Facilities Contract.
2. First Services and Facilities Contract approved by the Court on July 14, 1978.
3. February 5, 1992 Watermaster meeting minutes regarding Watermaster Program and modification of Contract (pg 4)
4. Notice of Inaugural Meeting of the Chino Basin Watermaster Steering Committee for June 16, 1992, with:
 - a. attendance sheet
 - b. draft minutes (see pg. 2, no formal minutes prepared)
 - c. draft Amended Services and Facilities Contract
5. August 5, 1992, Watermaster meeting minutes approving Contract (pg 4).
6. Approved Amended Services and Facilities Contract dated August 5, 1992.
7. March 25, 1993, Advisory Committee meeting minutes, page 3 & 4.
8. February 29, 1996 correspondence to Watermaster from Advisory Committee regarding Watermaster Transition Period.
9. March 13, 1996, response from Chino Basin MWD General Manager regarding transition.
10. December 20, 1996 letter notifying CBMWD transition is complete except for PERS.
11. Copy of PERS information:
 - a. January 9, 1997, "Contract between Chino Basin Watermaster and the Board of Administration PERS for an Actuarial Valuation as Stated Herein".
 - b. Paid invoice for Actuarial Valuation
 - c. February 7, 1997 transmittal from PERS of draft Resolution of Intention to enter into a PERS Contract.
 - d. February 14, 1997 transmittal and draft contract for formal ratification of Watermater.

EXHIBIT 2

APR 29 1997
Wanda DeVinney

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SUPERIOR AND MUNICIPAL COURT
STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff

v.

CITY OF CHINO, et al

Defendant

NO. RCV 51010

RULING AND ORDER
OF SPECIAL REFERENCE

RULING

This is an adjudication of groundwater and storage rights in the Chino Basin. Judgment was entered on January 2, 1978. Under the express terms of the Judgment¹ jurisdiction is reserved to the Court to modify, amend, amplify or enforce the provisions contained therein. (Judgment ¶ 15.) The following motions are currently before the court: (1) Motion for Order that Audit Commissioned by Watermaster is not a Watermaster Expense; (2) Motion to Appoint Nine-Member Watermaster Board; (3) Motion to Disqualify Counsel for Watermaster; (4) Motion for Appointment of Interim Watermaster; and (5) Motion to Strike the Motion for Appointment of Interim Watermaster. The parties have also been ordered to show

¹ A bound copy of the Judgment is in the current file; on its own motion the Court takes judicial notice of the Judgment.

1 cause why the Court should not appoint a Special Referee to assist in the resolution of the
2 Motion to Appoint Nine-Member Watermaster Board.

3
4 MOTION FOR ORDER THAT AUDIT COMMISSIONED
5 BY WATERMASTER IS NOT A WATERMASTER EXPENSE

6
7 Background of Audit Dispute

8 Chino Basin Municipal Water District ("the District") has served as Watermaster
9 since entry of judgment in 1978. In December of last year, it discovered that fraudulent checks
10 had been drawn upon Watermaster's account. Watermaster immediately informed the bank and
11 law enforcement authorities; the sums were restored by the bank and a new checking account
12 has been established.

13 The information was brought to the attention of the Advisory Committee, which
14 put the matter on the agenda for its meeting on January 8, 1997. The Advisory Committee was
15 informed by a representative of the San Bernardino County Sheriff's Department that fraudulent
16 activity of this type was not uncommon. The Advisory Committee was also informed that this
17 activity could occur even if proper procedures were in place. The Advisory Committee took the
18 following actions:

19 1. By a 91.43% majority vote it established an Ad Hoc Finance Committee
20 to examine the financial procedures of Watermaster. The Advisory Committee
21 further stated that if the Committee determines an independent audit is necessary,
22 the Advisory Committee would consider that recommendation.

23 2. It directed a recently formed Executive Committee (which consists of
24 the chairman of each of the three Pools) to attend the special Watermaster meeting
25 that had been called for the next day, January 9, to recommend that the
26 Watermaster Board not take any action on its agenda items, including the
27 authorization of an independent audit. This motion was also approved by a
28 91.43% majority.

1 3. The Advisory Committee defeated a motion to recommend to the
2 Watermaster that the Board of Directors of the District conduct an
3 examination and review of the internal procedures utilized by Watermaster
4 Services. This motion failed by a 91.43% vote.

5 At the special Watermaster meeting on January 9, the Watermaster was informed
6 that the Advisory Committee had recommended, by more than an 80% vote, that Watermaster
7 take no action seeking an independent audit of Watermaster Services. The special Watermaster
8 meeting was adjourned to January 14th.

9 On January 10, counsel for Watermaster sent a letter to the Vice Chairman of the
10 District, reminding it of the requirements of the Judgment. At the reconvened special
11 Watermaster meeting on January 14, Watermaster (the District) met in closed session. Later,
12 in open session, Watermaster voted to conduct an immediate audit -- the "special audit."

13 On January 17, the District gave notice of a January 23, 1997 special Watermaster
14 meeting to select an auditor and award a contract. On January 22, the Advisory Committee met
15 and, by a 91.43% vote, voted to direct Watermaster counsel to advise Watermaster (the District)
16 of the position of the Advisory Committee and to file this motion if Watermaster took action to
17 retain an auditor. On January 22, Watermaster counsel sent a letter to the District advising
18 it of the actions of the Advisory Committee.

19 At a January 23 special Watermaster meeting, Watermaster (the District) was
20 again advised by Watermaster counsel that because of the Advisory Committee's decision,
21 Watermaster did not have authority to take the actions that were being considered. Watermaster
22 announced that it had received proposals from several accounting firms. The Chief Financial
23 Officer of the District recommended that the firm of Soren, McAdam, Bartells be hired to
24 conduct a special audit. Watermaster (the District) approved the hiring of Soren, McAdam,
25 Bartells. The special audit has been completed.

26 Contentions

27 The Advisory Committee contends that the procedures followed to commission
28 the special audit violated the requirements of the Judgment. Specifically, the Advisory

1 Committee contends that the Judgment imposes clear conditions on the exercise of any
2 Watermaster powers that have not been approved in advance by the Advisory Committee.
3 Paragraph 38(b) of the Judgment provides:

4 (b) Advisory Committee. The Advisory Committee shall have the duty to study,
5 and the power to recommend, review and act upon all discretionary
6 determinations made or to be made hereunder by Watermaster.

7 (1) * * * * *
8 (2) Committee Review. In the event Watermaster proposes to take any
9 discretionary action, other than approval or disapproval of a Pool Committee
10 action or recommendation properly transmitted, or execute any agreement not
11 theretofore within the scope of an Advisory Committee recommendation, notice
12 of such intended action shall be served on the Advisory Committee and its
13 members at least thirty (30) days before the Watermaster meeting at which such
14 action is finally authorized. (Judgment, ¶ 38(b), underline added.)

15 Watermaster contends that the commission of a special audit was a discretionary
16 act. Watermaster further contends that because the Advisory Committee voted by a greater than
17 80% vote to delay taking action on a special audit, the District was mandated to act consistently
18 with that vote. The District does not dispute that if the act was a discretionary determination,
19 30 days notice of the meeting or public hearing was required. The District contends, however,
20 that the hiring of an accounting firm to perform a special audit is not a discretionary
21 determination, but an administrative function that is exclusively within the District's powers as
22 Watermaster.

23 If the special audit was a discretionary determination approved by 80% of the
24 Advisory Committee, the Watermaster violated the procedures contained in the Judgment. The
25 Court is requested to penalize the District's alleged violation by ordering that the costs of the
26 Special Audit not be deemed a Watermaster. If the special audit was not a discretionary
27 determination, then the special audit was within the Watermaster's authority and the expense
28 is properly charged to a Watermaster.

Part VI of the Judgment relating with the Physical Solution, provides:

41. Watermaster, with the advice of the Advisory and Pool
Committees, is granted Discretionary powers in order to develop an
optimum basin management program for Chino Basin including both water
quantity and quality considerations. Withdrawals and supplemental water
replenishment of basin water, and the full utilization of the water resources
of Chino Basin, must be subject to procedures established by and
administered through Watermaster with the advice and assistance of the
Advisory and Pool Committees composed of the effective producers. Both

1 the quantity and quality of said water resources may thereby be preserved
2 and the beneficial utilization of the basin maximized. (Judgment, ¶ 41,
3 underline added.)

4 Employment of professionals by the Watermaster is discussed in paragraph 20 of
5 the Judgment:

6 **20. Employment of Experts and Agents.** Watermaster may employ
7 or retain such administrative engineering, geologic, accounting, legal or
8 other specialized personnel and consultants as may be deemed appropriate
9 in the carrying out of its powers and shall require appropriate bonds from
10 all officers and employees handling Watermaster funds. Watermaster shall
11 maintain records for purposes of allocation of costs of such services as
12 well as of all other expenses of Watermaster Administration as between the
13 several pools established by the Physical Solution. (Judgment, ¶ 20.)

14 Paragraph 48 of the Judgment provides that the Watermaster's report, which is
15 filed at the end of each year, must contain a certified audit of all assessments and expenditures.
16 The special audit in question here was not prepared in the "normal course of business" for the
17 annual audit. The question then is whether the decision to conduct a special audit is a
18 discretionary determination, as that term is used in paragraph 38(b) of the Judgment.

19 The Court is persuaded to postpone its decision on the Motion For Order That
20 Audit Commissioned By Watermaster Is Not A Watermaster Expense until a recommendation
21 has been received from a special referee, because a determination of this motion requires an
22 interpretation of the above-mentioned provisions of the Judgment for which the Court seeks
23 expert advice. Furthermore, the issue of whether or not the Advisory Committee may mandate
24 administrative tasks to the Watermaster has a direct relationship to the checks and balances
25 provided in the Judgment and, hence, will impact the decision on the Motion to Appoint a Nine-
26 Member Board as Watermaster.

27 MOTION TO APPOINT NINE-MEMBER BOARD

28 A motion has been filed by the Advisory Committee purportedly on behalf of the
Watermaster for an order relieving the District of all Watermaster duties and substituting a nine-
member board as Watermaster in its place. The motion is described by one group of producers

1 as a power struggle between the producers in the north end of the basin and the producers in the
2 south end of the basin. The motion has prompted Senator Ruben S. Ayala to file a declaration
3 with this court stating his vigorous opposition to a motion which would "replace an independent
4 Watermaster with individual producers whose self-interest would bias them against 'the
5 protection of the groundwater supplies for the Chino Basin for the public, health, safety and
6 welfare."²

7 Although there has been no evidentiary hearing where live testimony was taken,
8 it appears to the Court from the papers submitted in this matter that over the course of the past
9 few years the Advisory Committee has assumed the task of directing the performance of the
10 District's Chief Executive Officer, Traci Stewart, with respect to Watermaster functions. Until
11 several months ago, the District's board of directors acquiesced to the Advisory Committee's
12 assumption of Watermaster administrative duties. However, the District's recent actions in
13 calling for a special audit and terminating the services of Nossaman, Guthner, Knox & Elliott
14 ("Nossaman Firm") as Watermaster counsel demonstrate that the District is no longer willing
15 to acquiesce to the Advisory Committee with respect to its (the District's) employees and other
16 administrative matters.

17 It is the opinion of this Court that the resolution of the motion to appoint a nine-
18 member board as Watermaster will necessitate a thorough review of the checks and balances
19 contained in the 1978 Judgment and an interpretation of the phrase "discretionary
20 determinations" used in Paragraph 38(b) of the Judgment.

21 The Court finds that there is an urgent need to address the issues presented by the
22 motion, and that it is necessary to obtain a recommendation from a recognized water law expert
23 on the issues before it. Accordingly, the Court will order a special reference of this motion. The
24 Advisory Committee and its allies contend that the Court may not order a reference under Code
25

26 ²This declaration has been objected to as impermissible opinion evidence. The Court feels
27 that there exists sufficient foundation for qualifying Senator Ayala as an expert, and the
28 foundation will probably be required by the special referee as will be discussed further in this
opinion. For now, the issue is moot.

1 of Civil Procedure section 639, subdivision (d). The Court disagrees. Tide Water Assoc. Oil
2 Co. v. Superior Court (1955) 43 Cal.2d 815 is not authoritative for the proposition advanced by
3 the Advisory Committee. In Tide Water the issue presented for determination was whether or
4 not the trial court had jurisdiction over a cross-complaint filed by the defendant. The Court did
5 not consider Code of Civil Procedure section 639 subdivision (d).

6 Furthermore, Water Code section 2000³ provides that "In any suit brought in any
7 court of competent jurisdiction in this State for determination of rights to water, the court may
8 order a reference to the board [State Water Resources Control Board], as referee, of any or all
9 issues involved in the suit." Not only have constitutional challenges to this section been
10 unsuccessful, our Supreme Court has indicated a preference for such references.

11 "Every recent major water law decision of this court has expressly or impliedly
12 approved the reference procedure provided by section 24 [which preceded Water Code section
13 2000] and has recommended, in view of the complexity of the factual issues in water cases and
14 the great public interests involved, that the trial courts seek the aid of the expert advice and
15 assistance provided for in that section. [Citations.]" *City of Pasadena v. City of Alhambra* (1949)
16 33 Cal.2d 908, 917, underline added.)

17 The Court believes it has the authority to appoint Anne Schneider over the
18 objection of some of the parties. However, if an appellate court later determines that it is
19 without such authority, then the matter will be referred to the State Water Resources Control
20 Board pursuant to Water Code section 2000.

21
22 MOTION TO DISQUALIFY

23 The filing of the above two motions prompted the filing of a third motion, to
24 disqualify the law firm of Nossaman, Gunther, Knox & Elliott and attorneys John Ossiff and
25 Frederic A. Fudacz (collectively the Nossaman Firm) from representing *either* Watermaster or
26 the Advisory Committee.
27

28

³Water Code section 2000 was preceded by Water Code section 24.

1 "A former client may seek to disqualify a former attorney from representing an
2 adverse party by showing the former attorney actually possesses confidential
3 information adverse to the former client. However, it is well settled actual
4 possession of confidential information need not be proved in order to disqualify
5 the former attorney. It is enough to show a 'substantial relationship' between the
6 former and current representation . [Citation.] If the former client can establish the
7 existence of a substantial relationship between representations, the courts will
8 conclusively presume the attorney possesses confidential information adverse to
9 the former client. [fn.] [Citations.]" *H.F. Ahmanson & Co . v. Salomon Brothers,*
10 *Inc.* (1991) 229 Cal. App. 3d 1445, 1452, underline added.)

11 The Court finds that the Nossaman Firm in the past represented the Advisory
12 Committee in this action and presently represents Watermaster in this action. It is apparent to
13 the Court that Watermaster is unwilling to waive the conflict presented by such dual
14 representation since the Nossaman Firm has been discharged by the District board -- the
15 Nossaman Firm no longer represents Watermaster.⁴

16 The Court is not persuaded that the current Services & Facilities Contract requires
17 a different result. Under the contract District Staff are directed to take direction from and report
18 to the Advisory Committee. The Nossaman Firm cannot be considered District Staff. As
19 counsel to Watermaster, the Nossaman Firm owed its allegiance to the District, not to the
20 Advisory Committee.

21 The motion to disqualify the Nossaman Firm from representing either Watermaster
22 or the Advisory Committee is **GRANTED**.

23
24 **MOTION FOR APPOINTMENT OF INTERIM WATERMASTER**

25 **AND RELATED MOTION TO STRIKE**

26
27 ⁴The retainer agreement was signed by the District board of directors in their official
28 Watermaster capacity. Therefore the District board has the authority to discharge the Nossaman
Firm.

1 The Advisory Committee and the City of Ontario move to have retired Judge Don
2 Turner appointed as interim watermaster, pending a recommendation from the special referee.
3 The appointment of Judge Turner would also require a modification of the Judgment to provide
4 for his compensation. The Advisory Committee and the City of Ontario contend that the
5 appointment of an interim watermaster is necessary because the relationship between the
6 Advisory Committee and the District has deteriorated to such a degree that very little is presently
7 being done to manage the Chino Basin Aquifer. Traci Stewart declares that all of the activities
8 necessary to disengage the "Watermaster Services Staff" from the District have occurred, with
9 the exception of the execution of final documents for a PERS contract and obtaining a separate
10 payroll service. Ms. Stewart further declares that the Watermaster Services Staff could be
11 completely separated from the District provided the District would cooperate.

12 Monte Vista Water District has filed a motion to strike the Advisory Committee's
13 motion for appointment of interim watermaster. Monte Vista contends the motion is an
14 improper reconsideration of an oral motion made by the State of California at the last court
15 hearing. Monte Vista further contends that the ex parte communication with Judge Turner was
16 improper. Monte Vista asserts that the Court's prior order directing the District to take no
17 personnel action with regard to Watermaster Services Staff is sufficient protection for the
18 employees assigned to Watermaster Services. Finally, Monte Vista contends that because Judge
19 Turner has already expressed a view as to the merits of certain issues before the Court, that he
20 is not qualified to act either as a referee or as Watermaster.

21 The Court is persuaded that an interim watermaster is necessary to resolve the
22 continuing deadlock between the Advisory Committee and the District. The Court hereby
23 appoints the California Department of Water Resources as Interim Watermaster subject to the
24 Department's acceptance and agreement on mutually acceptable terms. The Advisory
25 Committee and Chino Basin Municipal Water District are directed to jointly negotiate terms and
26 conditions and present them to the Court for approval no later than June 18, 1997. The
27 Department of Water Resources shall operate as Interim Watermaster until such time as the
28 Court has considered and acted upon the report of the special referee.

1 The Motion to Strike the Motion of an Interim Watermaster is **DENIED**. The
2 Court finds that the motion is not an improper motion for reconsideration.

3
4 **ORDER OF REFERENCE**

5 Pursuant to California Code of Civil Procedure section 639 subdivision (d) the
6 Court hereby makes this special reference for the purpose of receiving written recommendations
7 to the Court from the Special Referee, Schneider, regarding the facts and law relative to the
8 following matters after review of the file, judgment, pleadings, motions, memorandum of points
9 and authorities, exhibits, declarations, requests for judicial notice, any live testimony and such
10 other factual or legal matters including conducting such hearings thereon as may appear relevant
11 or necessary.

12 1. The Special Referee shall consider the Motion for Order that Audit Commissioned
13 by Watermaster is not a Watermaster Expense and make a recommendation as to how to proceed
14 with resolving the motion. The Special Referee is specifically requested to consider and give
15 an opinion on the meaning of Paragraph 38(b) of the Judgment and its relationship to Paragraph
16 41 of the Judgment.

17 2. The Special Referee shall consider the Motion to Appoint a Nine-Member
18 Watermaster Board and make a recommendation as to how to proceed with resolving the motion.
19 The Special Referee is specially requested to consider the checks and balances contained in the
20 1978 Judgment and to consider the advantages and disadvantages of a public entity watermaster
21 versus a private entity watermaster.

22
23
24 DATED: April 29, 1997.

25
26
27 *J. Mike Gunn*
28 J. MICHAEL GUNN, JUDGE

EXHIBIT 3

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

CHINO BASIN MUNICIPAL
WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants.

CASE NO. RCV 51010

RULING

Introduction

This is an adjudication of groundwater rights in the Chino Basin. For at least five years before the filing of the amended complaint in July 1976, the annual production from the Chino Basin had exceeded the safe yield, resulting in a continuous state of overdraft of the basin. Concern for the future of the basin prompted the filing of the original complaint in 1975. After three years of negotiations, judgment was entered on January 27, 1978. Chino Basin Municipal Water District was appointed "Watermaster" to administer and enforce the provisions of the judgment and any subsequent order of the Court (Judgment ¶ 16.)

Chino Basin Municipal Water District has served as Watermaster for the past twenty years. A motion is presently before the court to relieve the District of its Watermaster duties and substitute in its place a nine-member board. The motion was

EXHIBIT 3

1 precipitated, at least in part, by the District's action calling for a special audit of certain
2 Watermaster administrative matters. The action was taken in contravention of an
3 asserted "mandate" by the Advisory Committee, which prompted the motion for an order
4 declaring that the cost of the audit (\$35,000) is not a "Watermaster" expense.

5 On April 29, 1997, the court issued an Order of Special Reference to receive a
6 report and recommendation on these two motions from Anne J. Schneider, a recognized
7 water law expert. The court requested Special Referee Schneider to consider and give
8 an opinion on the meaning of Paragraph 38(b) of the Judgment and its relationship to
9 Paragraph 41 of the Judgment. The court also requested Special Referee Schneider to
10 consider the checks and balances contained in the 1978 Judgment and the advantages
11 or disadvantages of a public entity watermaster versus a private entity watermaster. On
12 December 12, 1997, Special Referee Schneider issued her Report and
13 Recommendation. The court has considered the Report and Recommendation and
14 hereby issues its ruling accepting the Report and adopting the Recommendation of Anne
15 Schneider. The court hereby incorporates herein by reference the entirety of Special
16 Referee Schneider's Report and Recommendation.

17 Motion to Appoint Nine-Member Board as Watermaster

18 Unless there are compelling reasons to the contrary, upon noticed motion the
19 court must grant a request to change the Watermaster if the motion is supported by a
20 majority of the voting power of the Advisory Committee. (Judgment, ¶116.) In other
21 words, to deny such a motion, the court must find reasons that "force" or "compel" denial
22 of the motion.

23 A review of the Judgment reveals that the Watermaster's function is to administer
24 and enforce the provisions therein and subsequent instructions or orders of the court.
25 (*Ibid.*) The Watermaster operates on the one hand as an administrator and on the other
26 hand as an extension of the court. When functioning as an extension of the court the
27 Watermaster acts as a steward of the groundwater resources in the Chino Basin. The
28 Watermaster must protect the interests of the public as well as the interests of the

1 producers. Consequently, the Watermaster may find it necessary to take positions
2 adverse to the Advisory Committee.

3 With respect to replacing the existing Watermaster, automatic rejection of the
4 proposed change can only be based on one of two assumptions: (1) the status quo is
5 perfect; or (2) the choice we face is between reform and no action at all; if the proposed
6 reform is imperfect, we presumably should take no action at all, while we wait for a
7 perfect proposal. But the real choice is between the nine-member board and the status
8 quo. The court finds that the status quo Watermaster is imperfect and does not in and of
9 itself warrant finding of a compelling reason. Absent a compelling reason, the court must
10 appoint the nine-member board as Watermaster.

11 However, if the appointment of a nine-member board would permit the Advisory
12 Committee to control the Watermaster; and/or deprive the Watermaster of its ability to
13 administer the Judgment independently and objectively, surely it would be a compelling
14 reason to deny the motion. Therefore, it is significant that the proposed nine-member
15 board would include the following:

- 16 1. Three members selected by the Overlying (Agricultural) Pool;
- 17 2. Three board members selected by the Overlying (Non-Agricultural) Pool; and
- 18 3. The remaining three members would be nonpumper water districts: (a) Chino
19 Basin Municipal Water District, (b) Western Municipal Water District, and (c)
20 Three Valleys Municipal Water District.

21 Thus, the majority of the board members would represent the interests of producers, but
22 the court finds the proposed nine-member board to be the best of the alternatives
23 considered by the court, and the court, in considering compelling reasons, did consider
24 all forms of Watermaster listed on Exhibit "A" attached hereto and herein incorporated by
25 reference.

26 Although there is no evidence that the pecuniary interests of the board members will
27 control their voting, to ensure that the board is carrying out the function of the
28 Watermaster, Special Referee Schneider recommends that the appointment of the nine-

1 member board be of a limited duration to determine whether or not it will function
2 independently from the Advisory Committee. The court agrees with the recommendation
3 and chooses to appoint the nine-member board as Interim Watermaster, with the
4 limitations listed in the order below.

5 At the end of the interim appointment, if it appears to the court that the proposed
6 nine-member board is unable to function as an independent extension of the court, the
7 court will appoint the Department of Water Resources as Watermaster for a five-year
8 appointment, as provided in the Judgment. The parties are hereby informed that one of
9 the measures that will be used by the court in determining whether or not the Nine-
10 member Board is able to function independently is the progress made on the adoption of
11 an optimum basin management program, which is discussed *infra*.

12 **Order Appointing Nine-Member Board as Interim Watermaster**

13 The court hereby sets aside its previous order appointing the Department of Water
14 Resources as Interim Watermaster and instead appoints the Nine-member Board as
15 Interim Watermaster for a twenty-six-month period commencing March 1, 1998, and
16 ending June 30, 2000. Thus, commencing March 1, 1998, the position of Chino Basin
17 Watermaster shall be filled by a nine-member board selected and organized as
18 follows:

19 The Nine-member Watermaster Board shall consist of (1) two members from the
20 Overlying (Agricultural) Pool appointed by the Overlying (Agricultural) Pool; (2) one
21 member from the Overlying (Non- Agricultural) Pool appointed by the Overlying (Non-
22 Agricultural) Pool; (3) three members from the Appropriative Pool appointed by the
23 Appropriative Pool; (4) one member appointed by the Board of Three Valleys
24 Municipal Water District; (5) one member appointed by the Board of Western
25 Municipal Water District; and (6) one member appointed by the Board of Chino Basin
26 Municipal Water District. The members of the Watermaster Board will vote on a one-
27 person, one-vote basis.

28 //

1 If one of the three municipal water districts elects not to serve on the Nine-
2 member Watermaster Board, a representative from the State of California will be
3 seated in its place. Any member of the Appropriative Pool which owns or has a
4 controlling interest in another member of the Appropriative Pool will not be allowed to
5 serve concurrently with said other member of the Appropriative Pool on the
6 Watermaster Board.

7 No individual will be allowed to serve concurrently on the Watermaster Board
8 while serving as a member of the Advisory Committee and/or the respective Pool
9 Committee, with the exception of representatives from the Overlying (Non-Agricultural)
10 Pool. This shall not prevent the same member agency or entity with a representative
11 on the Chino Basin Advisory Committee from appointing a different representative to
12 the Watermaster Board. Additionally, participating agencies with governing bodies are
13 strongly encouraged to have elected officials serve as their representative on the
14 Watermaster Board.

15 Except as to members of the first Watermaster Board, Watermaster Board
16 members shall serve staggered three-year terms. The appointments by the Municipal
17 Water District boards, the Appropriative Pool and the Overlying (Non-Agricultural) Pool
18 shall be made on a rotating basis with all members afforded an equal opportunity to
19 serve. Appointments by the Overlying (Agricultural) Pool shall be rotated among
20 categories of agricultural producers with each category of producers having an equal
21 opportunity to serve. The State of California shall be included as one of the categories
22 of producers rotating from the Overlying (Agricultural) Pool, unless the State of
23 California is currently serving in a vacant municipal water district position.

24 Except as otherwise provided in this paragraph, the first Nine-member
25 Watermaster Board shall serve until June 30, 2000. Assuming the Nine-member
26 Board in the future is appointed Watermaster for a full five-year term, then the
27 following actions shall be performed: At least 60 days prior to June 30, 2000, the
28 Appropriative Pool shall extend the term of one of its then current Watermaster Board

1 representatives to June 30, 2001, and shall extend the term of another of its then
2 current Watermaster Board representatives to June 30, 2002. At least 60 days prior to
3 June 30, 2000, the Overlying (Agricultural) Pool and the Overlying (Non-Agricultural)
4 Pool shall jointly extend the term of one of the three then-current Watermaster Board
5 representatives of the two pools to June 30, 2001, and shall extend the term of
6 another of the three then-current Watermaster Board representatives of the two pools
7 to June 30, 2002. At least 60 days prior to June 30, 2000, the three Municipal Water
8 Districts shall jointly extend the term of one of the three then-current Watermaster
9 Board representatives of those three districts to June 30, 2001, and shall extend the
10 term of another of the three then-current Watermaster Board representatives of those
11 three districts to June 30, 2002.

12 The court hereby orders the Chief of Watermaster Services to file the names
13 of the representatives, including any alternates thereto, with the court and to serve a
14 copy of the names of the representatives and any such alternates on the active parties
15 by not later than March 15, 1998. The Chief of Watermaster Services is encouraged
16 to provide the same information to the public through print and electronic media.
17 (See discussion *infra* concerning Watermaster's use of the Internet.)

18 Should any member of the Watermaster Board resign therefrom, become
19 ineligible to serve thereon, or lack the mental or physical capacity to serve thereon, as
20 determined by the court, the appointing authority shall appoint a replacement member
21 of the Watermaster Board to serve through the unexpired period of the term of the
22 replaced member.

23 The current Watermaster, Chino Basin Municipal Water District, is hereby
24 ordered to take all steps necessary and proper to ensure a smooth and orderly
25 transition to the new Watermaster Board including, but not limited to, any required
26 actions, resolutions and/or agreements which will transition all of the present
27 Watermaster staff members from their status as Chino Basin Municipal Water District
28 employees to their status as employees of the Watermaster while maintaining all of

1 their employment credits and benefit programs. Not later than March 15, 1998, the
2 Chief of Watermaster Services shall file with the court a list of the names of all
3 Watermaster employees and their respective positions.

4 The Watermaster shall notice a hearing to occur on or before October 28, 1999,
5 to consider all parties' input as to the continuance of the nine-member board as
6 Watermaster after June 30, 2000. To ensure that the California Department of Water
7 Resources is in a position to assume the duties of Watermaster at the end of the interim
8 appointment, the court directs the parties to resume negotiations with the Department
9 related to its takeover of Watermaster operations, should the nine-member board fail to
10 operate independently and effectively. The Interim Watermaster shall notice a hearing no
11 later than September 30, 1999, to report on the status of negotiations. The court further
12 orders that, without prior court approval, the Interim Watermaster shall not enter into any
13 agreement that the Department of Water Resources will be obligated to assume, which
14 means no contracts signed from this day forward wherein payment and/or performance
15 of any kind whatsoever will be after June 30, 2000. The current Watermaster employees
16 are hereby advised that if the court appoints the California Department of Water
17 Resources as Watermaster at the end of the interim appointment, their positions will
18 terminate on June 30, 2000, without further order of the court. Further, the Department of
19 Water Resources will not be required to hire current Watermaster employees upon its
20 appointment; rather, current Watermaster employees may be rehired at the discretion of
21 the Department and on such terms as the California Department of Water Resources
22 deems appropriate. Finally, the California Department of Water Resources should be
23 added to the parties' mailing list to ensure that the Department receives notice of all
24 proceedings.

25 It should be apparent that timely filing of all reports with the court and
26 development of an optimum basin management program are of significant interest to the
27 court in the continuation of the nine-member board as Watermaster. The court is very
28 aware that the parties hereto desire local control of the Watermaster function, and the

1 court has no desire to transfer control from the nine-member board provided that
2 Watermaster professionally performs its responsibilities under the judgment. ¹

3 Motion to Determine Audit Expense was not a Watermaster Expense

4 Special Referee Schneider found that the special audit was ordered in response
5 to (1) substantial increases in Watermaster's annual budget expenditures, (2) allegations
6 of fraud or theft (even though the audit itself did not address theft), and (3) recognition
7 that the District had lost control of the Watermaster services staff. In addition, one of the
8 purposes of the audit was to advise the District board members of the activities occurring
9 at the Watermaster staff level. Special Referee Schneider further found that the special
10 audit does not fit within the definition in the Judgment of a discretionary act, nor does it
11 fall into the category of things subject to Advisory Committee recommendation or
12 approval. The court hereby adopts the findings of Special Referee Schneider along with
13 the recommendation that the court determine that the special audit was made in the
14 general course of Watermaster business; therefore, it is a proper Watermaster expense.

15 Court Monitoring of Optimum Basin Management Program

16 The judgment grants to the Watermaster discretionary powers to develop an
17 optimum basin management program for Chino Basin, which is to include both water
18 quantity and water quality considerations. Special Referee Schneider discovered that the
19 current Watermaster has not completed an optimum basin management program,
20 despite Judge Turner's recommendation in 1989 that the plan be completed within two

21 //

22 //

24 ¹ However, one is reminded of the passage in "The tragedy of the commons Revisited" by Beryl Crowe (1969) with
25 reference to administrators of the commons: ". . . one writer postulated a common life cycle for all attempts to
26 develop regulatory bodies. The life cycle is launched by an outcry so widespread and demanding that it generates
27 enough political force to bring about establishment of a regulatory agency to insure the equitable, just, and rational
28 distribution of the advantages among all holders of interest in the commons. This phase is followed by the symbolic
reassurance of the offended as the agency goes into operation, developing a period of political quiescence among
the great majority of those who hold a general but unorganized interest in the commons. Once this political
quiescence has developed, the highly organized and specifically interested groups who wish to make incursions
into the commons bring sufficient pressure to bear through other political processes to convert the agency to the
protection and furthering of their interests. In the last phase even staffing of the regulating agency is accomplished
by drawing the agency administrators from the ranks, of the regulated." Reprinted in "Managing the Commons" by
Garrett Hardin and John Baden. W.H. Freeman, 1977.

1 years and despite the fact that the water quality in the basin has deteriorated in recent
2 years.

3 The Chino Basin Water Resources Management Task Force issued its report in
4 1995, which has been identified as the initial step in the development of a management
5 plan for the basin. (Chino Basin Water Resources Management Task Force, Chino Basin
6 Water Resources Management Study Final Summary Report (September, 1995),
7 hereinafter "the task force report".) Special Referee Schneider recommends that as part
8 of the court's continuing jurisdiction and obligation to oversee, control, and direct the
9 Watermaster, the court appoint an independent person to take a look at the work that's
10 been done on the program to date, to determine what remains to be accomplished, and
11 to make a complete report to the court.

12 Anne J. Schneider hereby is appointed as the court's Special Referee to report
13 and make recommendations to the court concerning the contents, implementation,
14 effectiveness, and shortcomings of the optimum basin management plan. Further, Joe
15 Scalmanini hereby is appointed to provide Anne J. Schneider with technical assistance
16 as required by Ms. Schneider to provide said report and recommendations.

17 **Order Concerning Development of Optimum Basin Management Program**

18 The court hereby makes the following orders related to the development of an
19 optimum basin management program, which encompasses the implementation plan
20 elements identified in the task force report and at the recent hearing conducted by
21 Special Referee Schneider.

22 On or before June 1, 1998, each party to this action desiring to do so shall
23 submit recommendations to the Watermaster as to the scope and level of detail of the
24 optimum basin program. On or before June 30, 1998, the Watermaster, having first
25 provided a copy of the scope and level of detail plan to the Advisory Committee for its
26 review and/or action, shall file with the court its written recommendation as to the
27 scope and level of detail of the program, together with a duly noticed motion seeking
28 court approval of said recommendation. Special Referee Schneider shall review the

1 Watermaster's recommendations for technical and legal sufficiency, using Joe
2 Scalmanini as a consultant on technical issues, if necessary, and make a progress
3 report to the court by July 30, 1998. Special Referee Schneider and Mr. Scalmanini
4 are cautioned not to duplicate the work completed by the task force in making their
5 report to the court; but instead, supplement and modify the previous work where
6 appropriate. Hopefully, the aforementioned procedure will enhance and elucidate
7 work already performed, and, at the same time, save money.

8 The court further orders the Watermaster to develop an optimum basin
9 management program, which encompasses the elements of the implementation
10 program recommended by the task force and the implementation elements discussed
11 at the recent hearing conducted by Special Referee Schneider. The Watermaster, in
12 consultation with Special Referee Schneider, is to make quarterly progress reports to
13 the court. The Special Referee is authorized to conduct hearings, if necessary, to
14 ensure the development of all essential elements of the program. The Watermaster is
15 to submit the optimum basin management program first to the Advisory Committee for
16 review and/or action, then to the court no later than September 30, 1999, or show
17 cause why it cannot do so. Thereafter, the court will hold a hearing on October 28,
18 1999, at 1:30 p.m. to consider whether to approve and order full implementation of the
19 program or consider why the program has not been completed.

20 Finally, in order to facilitate greater communication with the public, in addition to
21 notices required in newspapers of general circulation, Watermaster shall have installed
22 and maintained a so-called "web site" or such new Internet technologies as may be
23 equal to or better than the World Wide Web, similar to those established by the Main
24 San Gabriel Basin Watermaster and the Mojave Basin Area Watermaster, and keep it
25 up-to-date with notice of meetings, agenda items, minutes of meetings, and such other
26 items and such other information as Watermaster deems appropriate to inform the

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28 //

1 public of Watermaster's functions.² The public has a right to know if, as previously
2 alleged, some board members are routinely absent from meetings, and a web page
3 with minutes of the meetings, among other things, seems an appropriate means of
4 communication with the public in order to keep them informed on Watermaster issues.

5 Guidelines for Watermaster and Advisory Committee

6 To provide guidance to the parties, Special Referee Schneider determined it is
7 necessary for the court to provide an outline of the roles of the Watermaster and
8 Advisory Committee. As noted in the Special Referee's Report and Recommendation,
9 routine administrative functions of the Watermaster are performed independently, without
10 review by the Advisory Committee. The Watermaster may acquire facilities and
11 equipment (subject to certain limitations delineated in the Judgment³), may employ
12 administrative, engineering, legal or other specialized personnel and consultants as it
13 deems appropriate, may borrow money, and may enter into contracts for the
14 performance of any powers granted in the Judgment. On the other hand, many
15 Watermaster actions are subject to the approval of the Advisory Committee. For
16 example, the Watermaster's annual budget is subject to Advisory Committee approval,
17 the Watermaster's rules and regulations may only be adopted upon recommendation by
18 the Advisory Committee, and the Watermaster may act jointly or in cooperation with State
19 or Federal agencies to carry out the physical solution only upon recommendation or
20 approval of the Advisory Committee. For further guidance as to the respective roles of
21 the Watermaster and the Advisory Committee, the parties are directed to Part III of
22 Special Referee Schneider's Report and Recommendation entitled "Watermaster Roles
23 and Review of Watermaster Actions", found on pages 10 through 22, which is hereby

24 //

25 //

26 ² Initial installation of a web site cost one local attorney less than five hundred dollars, and maintenance or training
27 of employees for updates costs approximately thirty-five dollars per hour. It would have been inappropriate for the
28 court to have contacted any water agencies regarding their costs; hence, the above-listed costs are only
informational, not limitations, but, clearly a multi-year contract is not warranted under the circumstances of the
interim appointment discussed herein.

³ Your attention is called to the special audit's findings regarding facilities and computer service contracts, among
other things.

1 adopted and approved by the court and incorporated herein by this reference.

2 Conclusion

3 The court does not presage a future intention to replace the nine-member board
4 with any other form of watermaster. On the contrary, if this court were not confident in
5 the ability of the Nine-member Board Watermaster to effectuate the intent of the
6 judgment, other conditions would have been imposed or another form of watermaster
7 would have been appointed. At the present time, this court is of the opinion that the
8 conditions of the appointment will insure the success and future five-year appointment
9 of the Nine-Member Board as Watermaster. However, this court is of the opinion that
10 some follow-up dates are necessary to vitiate the possibility of repeating the history of
11 missed filing dates⁴ and asserted inadequate management by Watermaster. None of
12 us wants the past to be prologue.

13 There was a request for benefit and salary increases. The court is of the opinion
14 that the Nine-member Board Watermaster should examine these requests in its initial
15 thorough review of the entire Watermaster budget. The court is not opposed to wage
16 and benefit increases if the Nine-member Watermaster Board deems an increase in
17 either or both of these categories appropriate, assuming Watermaster first sends its
18 proposed budget to the Advisory Committee and Advisory Committee has no
19 objection. Additionally, there was expressed some concern that the employees were
20 worried about their future employment. As you may recall, at the outset of this court's
21 handling of this case, all parties were warned not to fire employees out of spite or for
22 tactical reasons, because the employees were real people with real families to feed,
23 although the employees could be terminated for legitimate reasons. Additionally,
24 without voicing it, the court was of the opinion that most, if not all, employees could be
25 utilized by whatever form the Watermaster became. Some may have misconstrued
26 this as permanent judicial protection of employees beyond what law and decency

27 //

28

⁴ There was a nunc pro tunc order necessary to confirm the activities of Watermaster after its previous appointment expired, and yearly reports have been tardy.

1 require. This was not, nor is it the court's intention.⁵ The court does expect
2 Watermaster to have a social conscience, but most people have no more protection
3 than law and decency require, and Watermaster employees should be no different.
4 Watermaster employees should realize that their best efforts are necessary to ensure
5 the quality and quantity of water in the Chino Basin. If an employee cannot perform
6 his or her duties, then the people dependent on the quality and quantity of water suffer;
7 moreover, the continued existence of the Nine-member Board Watermaster is
8 jeopardized. It should be remembered that June 30, 2000, no-Board, no-job-
9 expectation. This is meant to be neither a flip statement nor a threat. It is meant to be
10 fair warning; the same concern, albeit a different vein, that the court had when it
11 conditioned the appointment of the California Department of Water Resources on
12 negotiation by the Advisory Board and the CBMWD. At the previous hearing when
13 asked why the negotiating parties were appointed, the attorneys were informed that
14 there were employees to consider; and there still are employees to consider, but the
15 employees interests have to be balanced against the greater good for all the people
16 affected by the judgment. So far, the employee's interests have prevailed, but at the
17 end of June 2000, the outcome could be different.

18 It should be mentioned that this court has been impressed with the
19 professionalism displayed recently by the attorneys involved in this litigation. When
20 this case initially came to my court, the level of vitriol was far more than was evident in
21 a reading of the transcript of the hearing held with the Special Referee. Furthermore,
22 although the attorneys have been very professional throughout these proceedings, it
23 seems as though the level of vitriol at recent hearings in court has subsided to an
24 imperceptible level, and the accelerated progress toward resolution of this case is
25 impressive. Thank you. Also, I want to thank all of the people, Gene Koopman,
26 among others, whose large presence, concern, and commitment did not go unnoticed
27 or unappreciated at the hearings in this matter.

28 //

⁵ Although the attorneys correctly interpreted my comments to mean err, if at all, on the side of restraint during the period of litigation

1 The Special Referee alluded to "the tragedy of the commons." Assuming she
2 meant to allude to Garrett Hardin's 1968 essay, "The Tragedy of the Commons,"⁶ it is
3 hoped that the appointment of the new Nine-member Board as Watermaster will result
4 in the triumph of the commons. The people of this area deserve it. Good Luck.

5
6 DATED: _____

J. MICHAEL GUNN, Judge

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28 ⁶ The article appeared in Science 162:1243-1248, December 13, 1968. The "commons" refers to the common resources that are owned or controlled by everyone or everyone in a subset having control of the common resource. The tragedy occurs when everyone has the freedom to exploit the commons, resulting in the destruction of the commons. The intent of the exploiter is irrelevant. A political solution, although problematical, is the only way to potentially save the commons, all must agree to conserve the commons.

TIMELINE

MAR. 1, 1998	MAR. 15, 1998	JUNE 1, 1998	JUNE 30, 1998	JULY 30, 1998	SEPT. 30, 1999	SEPT. 30, 1999 1:30 P.M.	OCT. 28, 1999 1:30 P.M.	JUNE 30, 2000
Interim Appointment Begins (Nine-member Board begins)	Names of Board Members and Employees filed with court	Scoping Recommendation filed with Watermaster.	Scoping Recommendation filed with court	Referee's Recommendation filed with court	OMB filed with court	OSC Re: Status of Negotiations with Department of Water Resources.	OSC Re: Adoption and Implementation of OMB & Continuance of Nine-member board	End of Interim Appointment (End of Nine-member Interim Watermaster Board)

EXHIBIT 4

COPY

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2 LEMIEUX & O'NEILL
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5 805/495-4770; FAX: 805/495-2787

FILED-West District
San Bernardino County Clerk

OCT 05 1998

5 Attorney for
6 Chino Basin Watermaster

By [Signature]
Deputy

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

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

CASE NO. RCV 51010
ORDER CONTINUING THE HEARING
ON THE SCOPE AND LEVEL OF
DETAIL PLAN FOR THE OPTIMUM
BASIN MANAGEMENT PROGRAM
Hearing date: 9/9/98
Time: 8:30 a.m.
Dept.: RC-H
Specially assigned to the
Honorable Judge J. Michael
Gunn

19 IT IS ORDERED AND DECREED the hearing on the Scope and Level
20 Plan for the Optimum Basin Management Program is continued to
21 November 5, 1998, at 10:00 a.m., or as soon thereafter as the
22 matter may be heard in Department RC-H. The parties may file and
23 serve supplemental documents by or before October 26, 1998.

24 Dated: OCT 05 1998

25 J. Michael Gunn

26 JUDGE OF THE SUPERIOR COURT

EXHIBIT 5

Pldgs
Mout 2

FILED - West District
San Bernardino County Clerk

OCT 28 1999

By Lina L. Buckman
Deputy

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

CHINO BASIN MUNICIPAL
WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants.

CASE NO. RCV 51010

Final Ruling--Sept. 30, 1999 Hrng.

Background

On February 19, 1998, this Court set aside its previous order appointing the California Department of Water Resources ("DWR") as Interim Watermaster and instead appointed a nine-member board consisting of representatives from the Overlying (Agricultural Pool), the Overlying (Non-Agricultural Pool), the Appropriative Pool, and three municipal water districts to serve as **Interim Watermaster** for a twenty-six month period commencing March 1, 1998, and ending June 30, 2000. To ensure that DWR is in a position to assume the duties of Watermaster at the end of the interim appointment should the nine-member board fail to operate independently and effectively, the Court directed the parties to engage in negotiations with DWR related to its takeover of Watermaster operations. The Court further directed the Interim Watermaster to notice a hearing no later than September 30, 1999, to report on the status of the negotiations. The parties were further reminded that the Court's order prohibits the Interim Watermaster from entering into any agreement that DWR will be obligated to assume (i.e., contracts wherein payment and/or performance of any kind whatsoever will be required after June 30, 2000). Current Interim Watermaster employees were reminded that if DWR were appointed as Watermaster at

1 the end of the interim appointment, Watermaster employee positions would terminate on
2 June 30, 2000, without further order of the Court. Further, DWR will not be required to
3 hire current Interim Watermaster employees upon its appointment; rather, Watermaster
4 employees may be rehired at the discretion of DWR and on such terms as DWR deems
5 appropriate.

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

18 In partial compliance with the Court's order requiring the Interim Watermaster to
19 develop and to submit an optimum basin management program first to the Advisory
20 Committee for review and/or action, then to the Court no later than September 30,
21 1999, the Interim Watermaster has filed with the Court: (1) Optimum Basin
22 Management Program Phase I Report, dated August 19, 1999, and (2) Appendix A
23 Public Comments to the Report. The Interim Watermaster requests these documents
24 be filed and accepted by the Court **only as reports** and that the Interim Watermaster
25 be given an additional six months to prepare an implementation plan-- Phase II of the
26 Optimum Basin Management Program Report. The Interim Watermaster further
27 requests that the Court adopt a revised schedule for approval of the final Optimum
28 Basin Management Program (presently set for approval on October 28, 1999) and for
input and consideration as to the continuance of the nine-member board as

1 Watermaster after June 30, 2000 (also set for October 28,1999). The City of Pomona,
2 Monte Vista Water District, and the State of California have filed responses to the
3 motion by the Interim Watermaster.

4 Order Re Status of Negotiations with DWR

5 The Interim Watermaster reports that on November 18, 1998, the Chief of
6 Watermaster Services wrote to DWR regarding an implementation plan for the
7 transfer of Watermaster operations. DWR responded to the letter on January 15,
8 1999, stating that DWR is ready to resume negotiations but in view of the fact that the
9 Interim Watermaster has been working adequately DWR believes it is in the parties'
10 best interests that negotiations should not be resumed until directed by the Court.
11 The Court notes that the Interim Watermaster and several other parties have
12 expressed concern regarding significant funding issues to be resolved in connection
13 with the development of an implementation plan for the OBMP. It might be the case
14 that DWR is in a superior position to obtain available federal and state funding for the
15 implementation plan; hence, it is crucial that the Interim Watermaster and DWR have
16 in place a plan for the orderly transfer of operations from the nine-member board to
17 the DWR at the end of the interim appointment SHOULD Watermaster or relevant
18 responsible organizations, among other things, experience obstacles to obtaining
19 necessary financing concerning implementation of the OBMP. Accordingly, the Court
20 hereby orders the Interim Watermaster to prepare and submit to DWR and file with
21 the Court no later than March 2, 2000, a proposed plan for the orderly transfer of
22 operations at the end of the interim appointment. DWR is invited to prepare a
23 response to the Interim Watermaster's proposal by no later than April 27, 2000, which,
24 if prepared, shall also be filed with the Court. Assuming DWR is still interested in
25 becoming Watermaster, the Interim Watermaster and DWR shall thereafter meet to
26 develop a joint proposal for the orderly transfer of operations, which shall be
27 submitted to the Court no later than July 13, 2000. This is not an appointment;
28 instead, it is a contingency plan, with no commitment regarding appointment of DWR
or any agency and/or person as Watermaster.

1 On July 13, 2000, at 1:30 p.m., the Court will conduct a hearing on the
2 continuance of the nine-member board. Interested parties are requested to file briefs
3 no later than June 29, 2000. The interim appointment of the nine-member board may
4 be extended to December 31, 2000. Thus, if the court determines not to continue the
5 nine-member board the new appointment will take effect on January 1, 2000. An
6 expressed reason for adjusting the timeline, among others, was the Court's concern
7 regarding adequate notice to Watermaster employees; however, the Court is
8 concerned that the timeline adjustment might be misinterpreted as an invitation to
9 procrastinate, which would be a miscalculation of the Court's concern regarding
10 timeliness of Watermaster responsibilities. On the contrary, the Court is concerned
11 whether or not the Watermaster is adequately staffed to perform its administrative
12 functions, evidenced by the tardiness of draft minutes posted on the Watermaster
13 Web Site, among other things. (As one might recall, there has been problems in the
14 past filing annual reports in a timely fashion—true, with the prior Watermaster
15 composition.) It seems as though an additional employee or the addition of a part-
16 time employee might be beneficial, assuming that it is contemplated that the posting
17 of minutes will continue to be untimely or priorities will have to be adjusted to get
18 current on matters not yet current. On balance, though, the Court finds that the
19 Watermaster is making positive progress toward achieving its stated goals, and it is
20 not the Court's function to order the number of employees of Watermaster, although it
21 is the Court's function to measure the effectiveness of the Interim Watermaster.

22 Order Re Status of Optimum Basin Management Plan

23 The Court commends the parties on the achievements accomplished to date on
24 the preparation of the OBMP and their commitment to complete a draft implementation
25 program report by February 15, 2000. The Optimum Basin Management Program
26 Phase I Report describes the issues that need to be addressed. The Phase I Report
27 describes the goals for management of the Basin, impediments to those goals, and
28 possible solutions to achieve the goals described. The focus of the Interim
Watermaster and the interested parties must now turn to choosing the solutions that

1 will best achieve the goals described and to determining how the solutions will be
2 implemented. The Court recognizes this requires further significant work by all of the
3 parties and encourages the parties to stay focused on solving the outstanding
4 implementation issues.

5 Comments received by the Court regarding the Optimum Basin Management
6 Program Phase I Report indicate parties may want to edit the Report some time in the
7 future and/or have continuing objections to some of the facts and conclusions in the
8 report. The Court, therefore, accepts the Phase I Report, including the Appendix A, as
9 a provisional report in conformance with the Court's Order to show cause why the
10 OBMP has not been submitted. Any discrepancies in the Report have been noted by
11 the comments to the Report submitted simultaneously to the Court as Appendix A and
12 any further comments submitted by Pomona, Monte Vista Water District and State of
13 California. A Supplement to Appendix A consisting of all written comments submitted
14 as part of the September 15, 1999 hearing will be filed with the Court and served on
15 all parties by the Watermaster. Any further issues that may arise in the course of
16 Phase II implementation discussions can be addressed in Phase II. The Court
17 recognizes that the parties reserve their rights to comment on and/or object to the
18 Phase I Report during the development of Phase II of the OBMP, and at the time the
19 final OBMP is considered. Receipt of the Phase I Report as provisional is not meant
20 to encourage further delay in Phase II implementation.

21 The Court hereby schedules a hearing at 1:30 p.m. on March 16, 2000, to
22 review the status of the OBMP and related CEQA matters. Interested parties are
23 requested to file briefs on or before March 2, 2000. The Court also hereby adopts
24 and incorporates herein by this reference the timeline attached as "Exhibit A". The
25 timeline includes a June 30, 2000, completion date for the Final OBMP. The Court
26 recognizes the efforts of the Chino Basin Watermaster over the past two years and
27 the demanding schedule that the process has required. The timeline for completion of
28 the Final OBMP requires a continued, focused effort. The Court would like to point
out, however, that the filing on February 15 includes a draft Phase II Implementation

1 Plan and draft MOAs. The parties then have an additional four months to prepare and
2 submit the Final Phase II Implementation Plan and Final MOAs as the Phase II Report
3 on the OBMP. Thus, the drafts submitted in February may be substantially modified
4 before being resubmitted in June. The Court has slightly modified the timeline to
5 provide for agency, board, and city council approvals of the final MOAs, subject to
6 Court approval, a comment period, and approval of the final OBMP.

7 Environmental Concerns

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

26
27 DATED: October 28, 1999

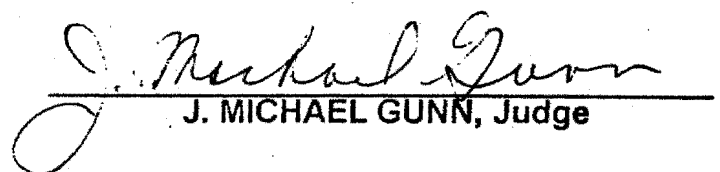
28 
J. MICHAEL GUNN, Judge

Exhibit A

TIMELINE*

DUE DATE	DESCRIPTION
July, 1999 to May, 2000	Throughout the process, subcommittees on Artificial Recharge and Basin Yield Maintenance are meeting on a regular basis regarding recharge, basin yield maintenance, and conjunctive use.
Oct. 28, 1999, 1:30 P.M.	CEQA/NEPA Brief Submitted to Court.
Nov.18, 1999, 1:30 P.M.	Hearing on CEQA/NEPA & Proposed Timeline.
Feb. 15, 2000	Submit Draft Implementation Plan (comment period begins). Complete initial draft of MOA's re: Recharge, Yield Maintenance (including treatment), and Conjunctive Use.
Feb. 29, 2000	Draft Environmental Impact Report (DEIR) completed (public comment period begins).
Mar. 02, 2000	Interim Watermaster submits its contingency plan for transfer of operations to DWR.
Mar. 03, 2000 to May 17, 2000	Joint Pool & Advisory Committees meetings to discuss MOA's, DEIR, and Draft Implementation Plan.
Mar. 16, 2000, 1:30 P.M.	Status Hearing OBMP and related CEQA matters.
Apr. 27, 2000	DWR submits response to Interim Watermaster contingency plan for transfer of operations.
May 11, 2000	Joint Pool & Advisory Committees final discussions to complete MOA's, and Implementation Plan.
May 17, 2000	IEUA Hearing to certify Final EIR.
May 25, 2000	Watermaster Board hearing to consider final EIR, MOA's, and Implementation Plan for submission to Court.
June 15, 2000	Final OBMP (Final Phase One, Final Phase Two comprised of Final Implementation Plan and Final MOA's) and Resolution by agencies indicating readiness to participate in OBMP, subject to Court approval, filed with the Court.
June 23, 2000	Comments to Final OBMP filed with the Court (Final Phase One, Final Phase Two (Final Implementation Plan and Final MOAs).
June 29, 2000, 1:30 P.M.	Hearing on OBMP & Final EIR.
July 13, 2000, 1:30 P.M.	Hearing on continuance of nine-member Board.

*Notes:

1. This timeline does not reflect deadlines for comments, hearings, etc. planned in compliance with the CEQA process.

EXHIBIT 6

Alldge

SA 12/14/99

1 WAYNE K. LEMIEUX (SBN 43501)
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 2 200 N. Westlake Blvd., Suite 100
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 3
 4 Telephone: 805/495-4770;
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 5 Attorneys for:
 Chino Basin Watermaster
 6
 7

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

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

CASE NO.: RCV 51010
 NOTICE OF RULINGS AND HEARING
 Hearing Date: January 6, 2000
 Time: 1:30 PM Dept. R-8
 Specially assigned to the Honorable Judge J.
 Michael Gunn

18 PLEASE TAKE NOTICE on November 18, 1999, the court in this action, Judge J.
 19 Michael Gunn presiding, adopted: (1) "Final Ruling—Sept. 30, 1999 Hrng."; (2) "Santa Ana
 20 River Ruling"; and (3) "CEQA Ruling." These rulings were distributed by the Watermaster
 21 on November 22, 1999. (See attached Proof of Service.)

22 PLEASE TAKE FURTHER NOTICE, the court has scheduled a hearing on January
 23 6, 2000, at the hour of 1:30 p.m., or as soon thereafter as the matter may be heard, to
 24 consider: (1) a further report from Inland Empire Utilities Agency and Western Municipal
 25 Water District on the petitions to set aside the fully appropriated stream status of the Santa
 26 Ana River; and (2) a report from the Chino Basin Watermaster concerning its ability to
 27 comply with the deadlines for the preparation of the environmental documents and the
 28 Optimum Basin Management Program. Documents relating to the report on the Santa Ana

1 River petition shall be filed by December 21, 1999. Documents relating to the report on
2 deadlines shall be filed by December 29, 1999.

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Dated: December 3, 1999.

Respectfully submitted,



Wayne K. Lemieux

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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 22, 1999, I served the attached:

FINAL RULING—SEPTEMBER 30, 1999 HEARING

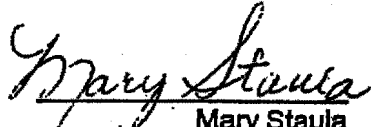
- 1. Status of Negotiations with DWR, Status of the Optimum Basin Management Program and Environmental Concerns**
- 2. Santa Ana River Ruling**
- 3. CEQA Ruling**

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

See attached service lists:

Mailing List A
Attorney Service List

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 22, 1999.


Mary Staula

List updated 10/20/99 by request

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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 December 14, 1999, I served the attached:

a. NOTICE OF RULINGS AND HEARING

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

See service lists attached to November 22, 1999 proof of service:

Mailing List A
Attorney Service List

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Rancho Cucamonga, California, on December 14, 1999.

Genia van Schaik
Genia van Schaik

EXHIBIT 7

COPY

FILED - West District
San Bernardino County Clerk

JUN 29 2000

Christine A. Sakkas

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010

ORDER

Date: June 29, 2000

Dept: 8

Time: 1:30 p.m.

Good cause appearing, the motion of Chino Basin Watermaster for a continuance of the hearing on the OBMP is hereby granted. The hearing is continued to July 13, 2000. That portion of the hearing previously scheduled for July 13, 2000, concerning the continuation of the nine-member board shall be continued to September 28, 2000, and consolidated with a hearing concerning any motions to amend the Judgment in furtherance of the OBMP. Watermaster shall prepare and file any motions to amend the Judgment in furtherance of the OBMP on or before August 15, 2000. Watermaster is requested to lodge the following documents with the Court no later than July 6, 2000: any final Task Memoranda for each program element of the OBMP (referenced in the Phase I Report); the Revised Draft Water Supply Plan Phase I Desalting Project Facilities Report; the Phase I Report and comments to the Phase I

1 Report; and the Implementation Plan and comments to the Implementation Plan.
2 Watermaster is also requested to lodge the final PEIR with the Court as soon as it has
3 been certified.

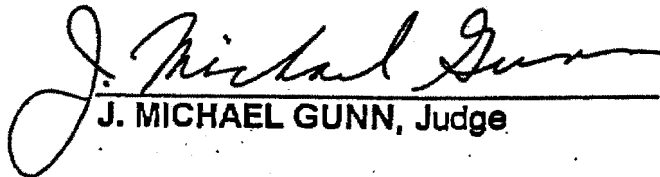
4 The Court intends that, at the hearing on July 13, 2000, the interim appointment
5 of the nine-member board as Watermaster will be extended to September 28, 2000.
6 Furthermore, the Court intends to order that Watermaster shall retain discretion
7 regarding the negotiation, termination and execution of contracts for personnel and
8 consultants with an expiration date no later than September 30, 2000, and the Court
9 intends to authorize Watermaster to enter into equipment rental and service
10 agreements with an expiration date no later than June 30, 2001.

11 Finally, the Court intends that, at the hearing on July 13, 2000, the following
12 orders will be made concerning the OBMP:

- 13 1. Watermaster shall adopt the goals and plans of the Phase I Report and implement
14 them through the Implementation Plan, which is attached as Exhibit B to the Peace
15 Agreement. The Watermaster shall proceed in accordance with the Peace
16 Agreement and the OBMP Implementation Plan.
- 17 2. The Court will adopt the following briefing schedule for any motions in furtherance
18 of the OBMP to amend the Judgment: motions to be filed by August 15, 2000;
19 oppositions to be filed by September 1, 2000; replies to be filed by September 8,
20 2000; hearing on motions set for September 28, 2000, at 2:00 p.m.

21 Although the parties have previously had such an opportunity, the Court is
22 providing advance notice of its intended rulings to permit the filing of any additional
23 comments or objections to the OBMP Phase I Report and Implementation Plan.

24
25 Dated: June 29, 2000


J. MICHAEL GUNN, Judge

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 June 30, 2000, I served the attached:

1. Order Dated June 29, 2000.

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 June 30, 2000.



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EXHIBIT 8

File!
Monte Vista
Chino Basin
Pleading.

COPY

FILED - West District
San Bernardino County Clerk

JUL 13 2000

By Susan King
Deputy

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010

ORDER CONCERNING
ADOPTION OF OBMP

Date: July 13, 2000
Dept: 8
Time: 2:00 p.m.

Background

This is a hearing on a motion by Watermaster for the Chino Groundwater Basin ("Watermaster") for court endorsement of its adoption of an Optimum Basin Management Program ("OBMP") and for an extension of the interim appointment of the nine-member board as Watermaster.

The Chino Groundwater Basin ("the Basin") is one of the largest groundwater basins in Southern California, containing an estimated 5,000,000 acre-feet of water in storage, with an estimated additional, unused storage capacity of about 1,000,000 acre-feet. The Basin is located primarily in San Bernardino County, with some portions of the Basin underlying lands in Riverside and Los Angeles Counties.

EXHIBIT 8

1 The rights to produce and store water in the Basin were adjudicated by this
2 Court in 1978, and a Physical Solution was imposed "to establish a legal and practical
3 means for making the maximum reasonable beneficial use of the waters of Chino
4 Basin by providing the optimum economic, long-term, conjunctive utilization of surface
5 waters, ground waters and supplemental water, to meet the requirements of water
6 users having rights in or dependent upon Chino Basin." (Judgment, ¶ 39, p. 23, Ins. 6-
7 11.) The imposition of a Physical Solution was intended to stop the growing decline in
8 groundwater levels and storage capacity. It continues to be "essential that this
9 Physical Solution provide maximum flexibility and adaptability" in using "existing and
10 future technological, social, institutional and economic options in order to maximize
11 beneficial use of the waters of Chino Basin." (Judgment, ¶ 40, p. 23, Ins. 12-16.) As
12 Watermaster's Annual Reports have shown, the Physical Solution has been generally
13 successful in stabilizing or recovering groundwater levels and storage. However,
14 degraded groundwater quality now requires completion of "an optimum basin
15 management program for Chino Basin, including both water quantity and quality
16 considerations." (Judgment, ¶ 41, p. 23, Ins. 22-23.) The Court is mindful that
17 "maintenance and improvement of water quality" must, and clearly will be, "a prime
18 consideration and function of management decisions by Watermaster." (Judgment, Ex.
19 "I", ¶ 1 (b), p. 79, Ins. 13-15.)

20 To address water quality issues, in February 1998, this Court directed
21 Watermaster to prepare an optimum basin management program ("OBMP"). Pursuant
22 to that order, efforts were begun to complete an OBMP for the Basin. The OBMP was
23 divided into two phases. Watermaster, with the approval of the Advisory Committee,
24 adopted the Optimum Basin Management Program Phase I Report, dated August 19,
25 1999, which was filed with the Court as a provisional report in September 1999. In
26 addition, Watermaster committed to developing an Implementation Plan for the OBMP
27 Phase I Report -- Phase II of the OBMP. A working draft of the Implementation Plan
28 was submitted to the Court in February 2000, and it was anticipated that when

1 completed, the two documents (OBMP Final Phase I Report and Final Implementation
2 Plan) would constitute the OBMP for the Chino Basin.

3 Commencing in April 2000, a series of intensive settlement negotiations was
4 initiated, led by Watermaster's General Counsel. The negotiations have led to the
5 drafting of a Peace Agreement, which is to be executed by the parties by August 1,
6 2000. Although not a signatory, Watermaster asserts that its support and approval of
7 the Peace Agreement will permit implementation of the OBMP without the attendant
8 delays caused by untold litigation and political posturing. Consequently, on June 29,
9 2000, the nine-member board unanimously adopted the goals and plans of the Phase I
10 Report consistent with the Implementation Plan and the Peace Agreement.
11 Watermaster also resolved that it will proceed in accordance with the OBMP
12 Implementation Plan and the Peace Agreement. Watermaster further resolved that it
13 will comply with the conditions described in Article V of the Peace Agreement labeled
14 "Watermaster Performance." Finally, Watermaster resolved that it shall adopt all
15 necessary policies and procedures in order to implement the provisions set forth in
16 Article V, on or before December 31, 2000, unless an earlier date is specified in the
17 Peace Agreement or the OBMP Implementation Plan. Watermaster has submitted a
18 copy of the final Peace Agreement and the final Implementation Plan and requests this
19 Court to approve its adoption of the OBMP and to enter an order directing
20 Watermaster to proceed in accordance with the Peace Agreement, the OBMP
21 Implementation Plan, and the pro forma Recharge Memorandum of Agreement.
22 Watermaster also requests that the term of the nine-member board be extended to
23 September 28, 2000, and that the hearing on the reappointment of the board be
24 continued to that date.

25 26 Findings

27 Subject to the continuing jurisdiction of this Court and to the satisfaction of the
28 conditions precedent listed below, the Court hereby makes the following findings:

1 1. The Court finds that the OBMP consists of the OBMP Phase I Report and the
2 OBMP Implementation Plan. The Court acknowledges that Watermaster has adopted
3 a resolution supporting and approving the Peace Agreement, and that Watermaster
4 and the parties to the Peace Agreement will commit to carry out elements of the OBMP
5 in accordance with the Peace Agreement. The Court also recognizes that the Peace
6 Agreement is consistent with the OBMP.

7 2. The Court finds that Watermaster's support and approval of the Peace
8 Agreement and its commitment to implement the OBMP Phase I Report through the
9 provisions of the OBMP Implementation Plan as expressly set forth in Article V of the
10 Peace Agreement is in furtherance of the Physical Solution set forth in the Judgment
11 and is in furtherance of Article X, Section 2 of the California Constitution;

12 3. The Peace Agreement and the OBMP Implementation Plan implement the
13 goals and plans of the OBMP Phase I Report. Subject to the satisfaction of the
14 conditions precedent identified below, the continuing jurisdiction of the Court, and
15 adaptive management consistent with the Peace Agreement, Watermaster has
16 satisfied its obligation to prepare and implement an optimum basin management
17 program for the Basin.

18
19 Order

20 Subject to the continuing jurisdiction of this Court and to the satisfaction of the
21 conditions precedent listed below, the Court hereby makes the following Orders:

22 1. Watermaster shall adopt the goals and plans of the Phase I Report and
23 implement them through the Implementation Plan, which is attached as Exhibit B to the
24 Peace Agreement. Watermaster shall proceed in a manner consistent with the Peace
25 Agreement and the OBMP Implementation Plan;

26 2. In furtherance of the OBMP and the Peace Agreement, the Court adopts the
27 following briefing schedule for any motions to amend the Judgment: motions to be filed

28 ///

1 by August 15, 2000; oppositions to be filed by September 1, 2000; replies to be filed
2 by September 8, 2000; hearing on motions set for September 28, 2000, at 2:00 p.m.

3 3. Watermaster shall prepare and timely file reports with the Court regarding its
4 progress in implementing the OBMP.

5
6 *Conditions Precedent*

7 The Court's Findings and Orders stated above are expressly conditioned upon the
8 satisfaction of the following conditions precedent:

9 1. Unanimous approval of the Peace Agreement by the parties thereto, no later
10 than August 1, 2000;

11 2. Certification of the Programmatic Environmental Impact Report for the OBMP
12 by Inland Empire Utilities Agency;

13 3. Appropriation by the California Legislature by October 1, 2000, of at least
14 \$121,000,000 from the proceeds made available by the passage of Proposition 13, for
15 the benefit of the Santa Ana Watershed Project Authority;

16 4. Submission by September 1, 2000, of a schedule for Watermaster's adoption
17 and Court approval of Uniform Groundwater Rules and Regulations; such adoption
18 and approval to be accomplished no later than December 31, 2000;

19 5. Submission by September 1, 2000, of a schedule and a process for submission
20 to the Court of detailed periodic reports regarding compliance with OBMP
21 implementation; such periodic reports to commence no later than October 31, 2000;

22 6. Court approval of all Judgment modifications in furtherance of the OBMP. That
23 is, pursuant to its continuing jurisdiction, the Court shall ensure that Watermaster's
24 actions, including actions in accordance with the Peace Agreement, are consistent with
25 the Judgment as amended.

26 To enable Watermaster to satisfy all of the above-listed conditions precedent, the
27 Court hereby extends the interim appointment of the nine-member board as
28 Watermaster to September 28, 2000. Watermaster shall retain discretion regarding

1 the negotiation, termination, and execution of contracts for personnel and consultants
2 with an expiration date no later than September 30, 2000, and Watermaster is
3 authorized to enter into equipment rental and service agreements with an expiration
4 date no later than June 30, 2001. The hearing on the reappointment of the nine-
5 member board as Watermaster shall be continued to September 28, 2000, and the
6 reappointment motion heard in conjunction with any motions for Judgment modification
7 in furtherance of the OBMP.

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Dated: July 13, 2000


J. MICHAEL GUNN, Judge

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 July 13, 2000, I served the attached:

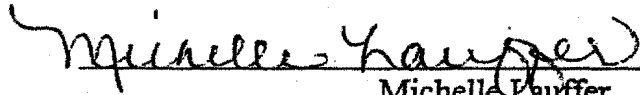
**1. ORDER CONCERNING ADOPTION OF OPTIMUM BASIN
MANAGEMENT PROGRAM**

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 July 13, 2000.


Michelle Larffer

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UPDATED 7/13/2000

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7

8

SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION

10

11

CHINO BASIN MUNICIPAL WATER DISTRICT,

12

Plaintiff,

13

v.

14

THE CITY OF CHINO,

15

Defendants.

16

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

17

18

I.

19

INTRODUCTION

20

A. Background

21

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

28

EXHIBIT 9

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 procedures and schedules for the rotation of Appropriative Pool members" serving on the
2 nine-member board. The City of Chino claims that the members of the Appropriative Pool have
3 been unable to reach unanimity on the issue of rotation on the nine-member board.

4 The City of Chino therefore proposes that the Court order continuation of the current
5 nine-member structure of the board, subject to the establishment of criteria, procedures and a
6 schedule for rotation which would require that total long-term length and frequency of service by
7 all entities represented by Appropriative Pool members on the board since its inception would be "as
8 equal as possible, consistent with all other criteria." Sequence of service would be rotated so that
9 no entity would be represented on the board again until all other eligible entities have served one
10 term on the board. Duplication of representation would be avoided. Finally, continuity of
11 representation of Appropriative Pool members would be assured by selection of staggered terms for
12 Appropriative Pool members.

13 The Appropriative Pool has scheduled a meeting to discuss the issue of rotation before the
14 September 28, 2000 hearing.

15 II

16 DISCUSSION

17 A. Extension of Appointment of Nine-Member Board

18 It is not clear from the moving papers whether the appointment sought is for an additional
19 three years, or whether the appointment sought is for a new term of five years. However, the
20 language used in the moving papers suggests that the board expects that the term of the interim
21 appointment will be included in the board's first full five-year term. This would also be consistent
22 with the Court's February 19, 1998 Ruling appointing the board for an interim period beginning on
23 March 1, 1998 and ending on June 30, 2000.

24 Pursuant to the Court's February 19, 1998 Ruling, the nine-member board shall consist of
25 (1) two members from the Overlying (Agricultural) Pool appointed by the Overlying (Agricultural)
26 Pool; (2) one member from the Overlying (Non-Agricultural) Pool appointed by the Overlying
27 (Non-Agricultural) Pool; (3) three members from the Appropriative Pool appointed by the
28 Appropriative Pool; (4) one member appointed by the Board of Three Valleys Municipal Water

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 (c.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.

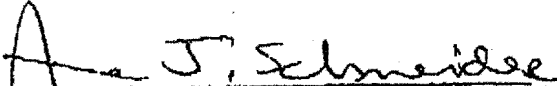
2 III

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
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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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EXHIBIT 10

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

**CHINO BASIN MUNICIPAL WATER
DISTRICT,**

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010

**ORDER CONCERNING
MOTION TO EXTEND NINE-MEMBER
BOARD**

Date: September 28, 2000

Dept: 8

Time: 2:00 p.m.

Background

On February 19, 1998, the Court appointed a nine-member board consisting of representatives from the Overlying (Agricultural) Pool, the Overlying (Non-agricultural) Pool, the Appropriative Pool, and three municipal water districts to serve as Interim Watermaster for the Chino Groundwater Basin (hereinafter sometimes referred to as "Basin"). Watermaster was directed to notice a hearing on or before October 28, 1999, to consider all parties' input as to the continuance of the nine-member board. The Court informed the parties that one of the measures that would be used in determining the effectiveness of the nine-member board, in functioning as a steward of the Basin,

EXHIBIT 10

1 would be the progress made on the adoption of an optimum basin management
2 program ("OBMP") for the Basin. The OBMP was to be submitted to the Court no later
3 than September 30, 1999, and a hearing was set on October 28, 1999, to consider
4 whether to approve and order full implementation of the program. The deadline for
5 approval of the OBMP was continued several times. The Court finally approved the
6 OBMP, consisting of the Phase I Report and Implementation Plan, subject to certain
7 conditions precedent, on July 13, 2000.

8
9 Discussion

10
11 Extension of Appointment of Nine-member Board

12 On August 30, 2000, Watermaster filed a Motion to Extend the Nine-Member
13 Board for a Full Five-Year Term. The motion requests the Court to order that the
14 current nine-member structure of the Watermaster board continue in effect for a full
15 five-year term. Watermaster asserts that all of the conditions precedent set forth in the
16 Court's July 13, 2000, Order have been satisfied. However, as noted in Special
17 Referee Anne Schneider's Report and Recommendation Concerning Motion to Extend
18 Nine-Member Board, there are several outstanding issues that must be resolved
19 before it can be said that all of the conditions have been satisfied. First, it is not clear
20 that unanimous approval of the Peace Agreement regarding the Chino Groundwater
21 Basin, dated June 29, 2000, hereinafter "Peace Agreement," has been obtained.
22 Western Municipal Water District's "ratification" of the Peace Agreement was
23 conditional. Watermaster reports the need for further negotiations related to the
24 purchase of desalted water. Second, Watermaster states that the California
25 Legislature has appropriated \$235,000,000 for the benefit of the Santa Ana Watershed
26 Project Authority ("SAWPA") and allocated this sum to the State Water Resources
27 Control Board ("SWRCB") for distribution. Watermaster further states that SAWPA
28 has submitted an application to SWRCB for distribution of these funds, including

1 \$56,000,000 to be used to fund the Chino II desalter and an expansion of the Chino I
2 desalter. However, Watermaster has not explained how the \$121,000,000 condition
3 precedent is satisfied when only \$56,000,000 of the funds allocated to SAWPA are to
4 be used for the Chino Basin desalter project. Third, while Watermaster has submitted
5 a schedule and process for submission to the Court of detailed periodic reports
6 regarding compliance with the Implementation Plan for the OBMP, the schedule has
7 some omissions. For example, Program Elements 3 and 5, which encompass the
8 desalter project, are not included in the schedule.

9 It must be noted that the City of Chino has filed an Opposition to Motion to
10 Extend the Nine-Member Board for a Full Five-Year Term. Although it supports the
11 continuation of the current nine-member board structure, the City of Chino asserts that
12 Court guidance is needed with respect to the establishment of "criteria, procedures
13 and schedules for the rotation of Appropriative Pool members" serving on the
14 nine-member board. Watermaster responds that several groups must determine a
15 procedure for rotation: Overlying (Agricultural) Pool, Overlying (Non-agricultural) Pool,
16 and the three municipal districts that hold seats on the board and the Appropriative
17 Pool. Watermaster is hopeful that a complete consensus will emerge prior to October
18 31, 2000, and requests the Court to allow the consensus-building process to continue
19 and give the parties until October 31, 2000, to resolve their differences. An inability to
20 reach consensus on the rotation issue is of considerable concern to the Court. The
21 Court is unwilling to extend the appointment of the board unless and until the rotation
22 issue is resolved.

23 24 Periodic Reporting Requirements

25 In the exercise of its continuing jurisdiction, the Court shall require periodic
26 progress reports regarding implementation of the OBMP to ensure that the
27 Watermaster is performing its independent function and keeping to the schedule
28

1 adopted for OBMP implementation. The Court adopts the following schedule for
2 OBMP reporting:

3	Report No. 1	March 31, 2001
4	Report No. 2	September 30, 2001
5	Report No. 3	March 31, 2002
6	Report No. 4	September 30, 2002
7	Report No. 5	March 31, 2003
8	Report No. 6	September 30, 2003
9	Report No. 7	March 31, 2004
10	Report No. 8	September 30, 2004
11	Report No. 9	March 31, 2005
12	Report No. 10	September 30, 2005

13
14 Report No. 10 coincides with the end of the appointment of the Nine-Member Board.
15 The OBMP progress reports, together with independent assessment of OBMP
16 implementation status, including verification of data to be provided by the Special
17 Referee and her technical expert, will be the basis for consideration of continuing the
18 appointment. The Court may schedule hearings to coincide with some or all of these
19 reports. Alternatively, the Court may, from time to time, direct the Special Referee to
20 conduct a workshop in lieu of a court hearing. The reports should follow the format
21 prescribed in Special Referee Anne Schneider's Report and Recommendation
22 Concerning Motion to Extend Nine Member Board.

23
24 Future Desalters

25 The Court wants to particularly note that the Peace Agreement predicates any
26 future desalting capacity on a reevaluation of the need for additional desalting after the
27 earlier of ten years or the conversion of 20,000 acres of agricultural land. The Court is
28 mindful that while the parties to the Peace Agreement contemplate the construction of

1 future desalters and/or expansion of Chino I and/or Chino II Desalters, there are no
2 provisions in the Peace Agreement that effectively ensure that they will be built. In
3 effect, future desalters (and any expansions of the Chino I and II Desalters) will be built
4 "if and only if" funding from sources other than the Parties can be secured. The OBMP
5 (Phase I Report and Phase II Implementation Plan) calls for some 40,000 acre-feet per
6 year of desalting capacity to be installed in the southern part of the Basin by 2020. The
7 Court hereby gives notice to the parties that a primary concern of the Court in any
8 future application for reappointment of the nine-member board will be the parties'
9 continued commitment to provide for future desalters and preserve safe yield in
10 accordance with the OBMP.

11
12 Order

13 Watermaster seeks an order continuing the current nine-member structure of
14 the Watermaster Board in effect for a full five-year term and authorizing it to perform all
15 managerial and administrative functions as specified in the Judgment, including the
16 execution of all administrative and employment contracts. Watermaster states that it
17 will propose a schedule for rotation of its board members no later than October 31,
18 2000.

19
20 The Court is not inclined to extend unconditionally the reappointment of the nine-
21 member board until both the rotation and the Western Municipal Water District issues
22 have been resolved. Therefore, the appointment shall be made subject to certain
23 conditions. The failure of any one of these conditions shall be considered by the Court
24 as a compelling reason to reconsider the appointment of the nine member board.
25 Therefore, subject to the continuing jurisdiction of the Court and satisfaction of conditions
26 numbers 1 - 5 below, the Court hereby issues its order.

1 The Court has considered the Special Referee's Report and Recommendation
2 Concerning Motion to Extend Nine-Member Board and hereby issues its ruling accepting
3 the Report and adopting the Recommendation of Anne Schneider, except to the extent
4 that it recommends continuation of the appointment for only three years. The Court
5 incorporates herein by reference the entirety of the Special Referee's Report and
6 Recommendation Concerning the Motion to Extend Nine-Member Board. The
7 nine-member board is hereby appointed for an additional five-year term, until
8 September 30, 2005, subject to the continuing jurisdiction of the Court to reconsider
9 the appointment in the event Watermaster fails to timely comply with the following
10 conditions:

- 11
12 1. Watermaster's report on the status of its efforts to resolve the terms and
13 conditions applicable to the purchase of desalted water and to secure a
14 rescission of Western Municipal Water District's conditional execution of the
15 Peace Agreement no later than December 31, 2000; and
16
- 17 2. Watermaster adoption and Court approval of Revised Rules and
18 Regulations for Chino Basin by February 1, 2001; and
19
- 20 3. Submission of Reports Nos. 1 through 10 in accordance with the
21 schedule set forth in the discussion above; and
22
- 23 4. Inclusion in such reports of schedule and budget information essentially
24 in a form equivalent to Exhibit "E" and Table 4-14 of the Phase I Report; and
25
- 26 5. Watermaster cooperation in the independent assessment and verification
27 of the data included in Reports Nos. 1 through 10 to be provided to the Court
28 by the Special Referee and her technical expert.

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The parties are forewarned that any future application for reappointment of the nine-member board may be conditioned on the development of a detailed plan to reach the OBMP goal of 40,000 acre-feet per year of desalting capacity to be installed in southern part of the Basin by 2020.

Dated: September 28, 2000

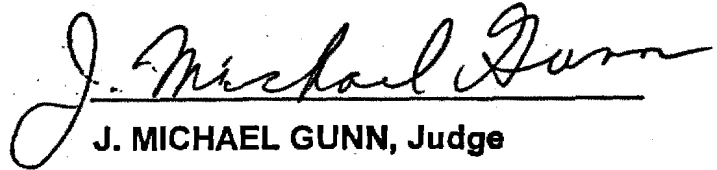

J. MICHAEL GUNN, Judge

EXHIBIT 11

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7 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN BERNARDINO
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10 CHINO BASIN MUNICIPAL WATER) CASE NO. RCV 51010
11 DISTRICT,)
12 Plaintiff,) ORDER CONCERNING
13 vs.) MOTION TO AMEND JUDGMENT
14 CITY OF CHINO, et al.,)
15 Defendants)
16) Date: September 28, 2000
17) Dept: 8
18) Time: 2:00 p.m.
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20 Background

22 On February 19, 1998, the Court directed Watermaster to prepare an
23 optimum basin management program ("OBMP") for the Chino Basin. On July
24 13, 2000, the Court found, subject to certain conditions precedent, that
25 Watermaster's support and approval of the Peace Agreement regarding the
26 Chino Groundwater Basin, dated June 29, 2000, hereinafter "Peace Agreement,"
27 and Watermaster's commitment to implement the OBMP Phase I Report through
28 the provisions of the OBMP Implementation Plan as expressly set forth in Article

EXHIBIT 11

1 V of the Peace Agreement satisfied Watermaster's obligation to prepare an
2 OBMP. One of the conditions precedent to that finding is Court approval of all
3 Judgment modifications in furtherance of the OBMP.

4 On August 15, 2000, Watermaster filed a Motion to Amend the Judgment.
5 No other party has submitted proposed Judgment modifications in furtherance of
6 the OBMP, nor has opposition been filed to Watermaster's motion. Watermaster
7 asserts that the parties to the Peace Agreement have agreed that the proposed
8 amendments are the only Judgment modifications necessary to achieve
9 consistency between the OBMP and the Judgment. Consequently, the parties
10 have not provided comprehensive briefing on Judgment modification issues.

11 Discussion

12 Special Referee Anne Schneider has provided the Court (and the parties)
13 with a thoughtful analysis of various provisions in the Peace Agreement that
14 appear to be in conflict with the Judgment. Watermaster's motion recognizes
15 some of these conflicts. However, the Special Referee's Report and
16 Recommendation Regarding Watermaster's Motion to Amend Judgment notes
17 several provisions in the Peace Agreement which appear to conflict with the
18 Judgment, for which no modification is proposed. For example, Watermaster
19 proposes to modify the amended Judgment Exhibit H conversion provisions to
20 allow 2.0 acre-feet of unallocated Safe Yield water for each converted acre.
21 However, no revision is proposed with respect to Appendix 1, which explains the
22 basis for the existing 1.3 acre-feet per acre provision. Another example is the
23 Peace Agreement provision which permits "Early Transfer" allocations of 32,800
24 acre-feet of water to occur annually, yet the Overlying (Agricultural) Pool is still
25 entitled to pump 82,800 acre-feet per year without reduction. There are several
26 other provisions of the Peace Agreement noted by the Special Referee which
27 appear to conflict with the Judgment, for which no Judgment amendment is
28 sought.

Order

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2
3 The Court has considered the Special Referee's Report and
4 Recommendation Regarding Motion to Amend Judgment and hereby issues its
5 ruling accepting the Report and adopting the Recommendation of Anne Schneider.
6 The Court incorporates herein by reference the entirety of the Special Referee's
7 Report and Recommendation Regarding Motion to Amend Judgment.
8 Watermaster's Motion to Amend the Judgment is granted subject to the
9 following: the parties are directed to file a post-hearing brief (s) clarifying their
10 intent with respect to the Peace Agreement provisions discussed in Sections IIB
11 through IIF in the Special Referee's Report and Recommendation Regarding
12 Watermaster's Motion to Amend Judgment. The post-hearing brief (s) shall be
13 submitted no later than October 26, 2000.

14
15
16 Dated: September 28, 2000



17 J. MICHAEL GUNN, Judge
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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 29, 2000, I served the following as a result of the motions before the Court for hearing on September 28, 2000 at 2:00 p.m.

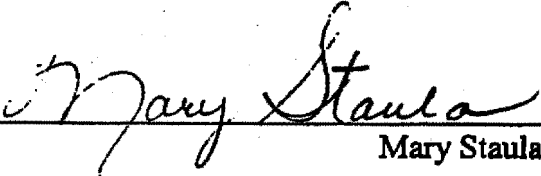
NOTICE OF ENTRY OF ORDER CONCERNING MOTION TO EXTEND NINE-MEMBER BOARD AND ORDER CONCERNING MOTION TO AMEND JUDGMENT

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 29, 2000.



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9 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION

10

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

CASE NO. RCV 51010
Judge: Honorable J. Michael Gunn
SPECIAL REFEREE'S REPORT AND
COMMENTS CONCERNING FIRST
OBMP IMPLEMENTATION STATUS
REPORT
Date: April 19, 2001
Time: 2:00 p.m.
Dept: 8

17

18 I.

19 INTRODUCTION

20 On February 19, 1998, the Court appointed a nine-member board to serve as Interim
21 Watermaster for the Chino Groundwater Basin (hereinafter sometimes referred to as "Basin"). On
22 August 30, 2000, Watermaster moved to extend the appointment of the nine-member board for a full
23 five-year term. The Court granted the motion subject to certain conditions, including Watermaster's
24 submission of ten biannual reports, to be filed with the Court at the end of March and the end of
25 September of each calendar year.

26 The reports are to follow the format prescribed in the Special Referee's Report and
27 Recommendation Concerning Motion to Extend Nine-Member Board. Report No. 1 is to include
28 the following:

EXHIBIT 12

- 1 • Complete Implementation Schedule and Corresponding Budget.
- 2 • Initial Status of Program Elements.
- 3 • Issues and Problems.
- 4 • Baseline Groundwater Basin Conditions.
- 5 • Compliance with PEIR.

6 In addition, each of the ten reports is to include specified schedule and budget information.

8 II.

9 DISCUSSION

10 On March 30, 2001, Watermaster submitted Report No. 1, titled "OBMP Implementation
11 Status Report" ("Status Report"). The report contains, inter alia, a discussion of the initial status of
12 Program Elements 1 & 2, 3 & 5, 4, 6 & 7, and 8 & 9 of the optimum basin management program
13 ("OBMP") for the Basin. Watermaster reports that implementation of Program Elements 1 & 2
14 (Monitoring and Recharge) is underway: A comprehensive groundwater-level program is being
15 conducted, a groundwater quality monitoring program has begun, the procurement process has
16 started for the production monitoring program, Watermaster is developing a surface water discharge
17 and water quality monitoring program, ground level monitoring has begun, a baseline assessment
18 of stormwater recharge has been completed, recharging at the Montclair Basins has begun, and
19 Watermaster is updating its Recharge Master Plan.

20 Watermaster's Status Report on Program Element 1 (Monitoring) raises several issues. There
21 is no mention in the OBMP that semiannual comprehensive groundwater level monitoring will in
22 any way be limited north of the 60 freeway, or that it will focus on the area south of that freeway.
23 It is supposed to be comprehensive and basin-wide. If monitoring is to be changed from basin-wide
24 as planned in the OBMP, an explanation and justification for that change should be provided. The
25 Status Report also notes that the area-specific groundwater level monitoring program in the vicinity
26 of the existing and proposed desalters includes development of "information on the aquifer
27 properties in these areas" as one of its objectives. It is not clear how water level monitoring would
28 be used to develop information on aquifer properties.

1 With respect to Program Element 2 (Recharge Program), it appears that there is financial
2 support for installation of recharge projects and, in an effort to take advantage of that financial
3 support, Watermaster has assigned priorities to a number of projects which will result in new or
4 improved existing recharge facilities. The documentation for those projects will be in the form of
5 a facilities-oriented report which, for practical purposes, will be considered an initial recharge master
6 plan. The report, and implementation of the projects described in it, are an encouraging and ahead-
7 of-schedule start on Program Element 2. Presumably, the Recharge Master Plan as delineated in the
8 OBMP, which would include projects in addition to the high priority projects which will be
9 identified in the initial recharge master plan, will continue to be developed via field investigation
10 and analyses, and an updated Recharge Master Plan document will still be developed over the next
11 three years, as scheduled in the OBMP.

12 With respect to Program Elements 3 & 5 (Water Supply Program), Watermaster reports that
13 the current goal is to complete the expansion of Desalter 1 by December 31, 2001. However, the
14 design of Desalter 2 has not started and is pending resolution of certain issues in the negotiations of
15 the desalter agreements.

16 As to Program Element 4 (Groundwater Management Program) Watermaster reports that
17 interim management strategies for Management Zones 1 & 3 will be developed by the end of the
18 2001. The addition of Management Zone 3 to Program Element 4 was not explicitly discussed in
19 the OBMP, but predicted water level declines in Management Zone 3 were raised in the Peace
20 Agreement process. Development of a comprehensive groundwater management program for
21 Management Zone 3, as well as for Management Zone 1, is important, and is not inconsistent with
22 the OBMP. It is good to recognize the potential for changed conditions in the basin, and to develop,
23 in this case, a focused management program for Management Zone 3.

24 As to Program Element 6 (Cooperative Programs), Watermaster reports that staff is meeting
25 with the Regional Water Quality Control Board in July 2001, to discuss water quality assessments
26 that are currently being prepared by Watermaster staff. In addition, Watermaster staff is developing
27 a salt budget that will be completed by June 30, 2001. Presumably, the written reports prepared in
28 connection with these water quality assessments will be forwarded to the Special Referee in

1 fulfillment of Watermaster's commitment to cooperate with the independent assessment and
2 verification of data to be provided to the Court.

3 Finally, Watermaster reports that programs for local storage, storage and recovery, and
4 supplemental storage are being developed (Program Elements 8 & 9). To the extent the operational
5 storage requirement and safe storage have previously been determined, those values were
6 preliminary estimates which were prepared to facilitate the Peace Agreement process. The
7 quantitative approach to estimating those values, which is currently ongoing, will provide important
8 information for potential future groundwater storage and recovery programs.

9 Notably absent from Watermaster's report is a discussion of baseline groundwater conditions
10 for the Basin. Understandably, Watermaster has been unable to complete the task of assembling the
11 necessary information for such a report. The Special Referee anticipates that a full report on baseline
12 conditions will be included in Watermaster's report filed at the end of September. Also absent from
13 the report is any discussion of any PEIR compliance activities related to the OBMP. Since, for
14 example, mitigation measures were included in the PEIR for desalter well sites, and since well siting
15 studies are underway for the Chino I Desalter Expansion, it is expected that future status reports will
16 include details of impacts and mitigation measures identified in the PEIR as they are addressed in
17 OBMP implementation.


18 19 **III.**

20 **CONCLUSION AND RECOMMENDATION**

21 In summary, the report indicates that implementation of the OBMP has begun. There is,
22 however, an outstanding concern regarding implementation of Program Element 3, which is a crucial
23 element of the OBMP. As noted above, the design of Desalter 2 has not begun and is pending
24 resolution of certain issues in the negotiations of the desalter agreements. It is important that the
25 Court carefully monitor progress in this area to ensure full implementation of the OBMP. It is also
26 important to obtain necessary baseline data on the Basin so the effectiveness of the OBMP may be
27 measured. Finally, it is important that implementation be consistent with, and incorporate mitigation
28 measures in the PEIR. Therefore, special attention must also be paid to Watermaster's next report,

1 | which should include a full discussion of baseline groundwater conditions of the Basin, as well as
2 | the status of compliance with mitigation measures in the PEIR. With these caveats, I recommend
3 | the report be received and filed.

4 | Dated: April 13, 2001

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7 | Anne J. Schneider, Special Referee

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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 April 16, 2001, I served the document identified below

- 1) **SPECIAL REFEREE'S REPORT AND COMMENTS CONCERNING FIRST OBMP IMPLEMENTATION STATUS REPORT** for Hearing on April 19, 2001 at 2:00 p.m. Department 8.

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 April 16, 2001.


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EXHIBIT 13

FILED - West District
San Bernardino County Clerk

JUL 19 2001

By *Swan King* Deputy

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010.

ORDER GRANTING FINAL
APPROVAL OF WATERMASTER
RULES AND REGULATIONS;
APPROVING INTERVENTION OF
CCG ONTARIO, LLC; CONTINUANCE
OF HEARING RE STATUS REPORT;
FILING OF MOTIONS TO AMEND
JUDGMENT

Date: July 19, 2001
Dept: 8
Time: 2:00 p.m.

On July 19, 2001, a hearing was held in San Bernardino County Superior Court ("Court") on Watermaster's "Transmittal of Revised Rules and Regulations; Explanation of Revisions" and "Joinder to Petition in Intervention by CCG Ontario, LLC." Satisfactory proof having been made and good cause appearing, IT IS HEREBY ORDERED AND DECREED:

///

///

EXHIBIT 13

1 I.

2 CHINO BASIN WATERMASTER RULES AND REGULATIONS

3 A hearing was held on Watermaster's "Motion to Approve Chino Basin
4 Watermaster Rules and Regulations" ("Rules"), on April 19, 2001. The Court granted
5 tentative approval of the Rules, provided that certain changes and clarifications were
6 subsequently adopted. The Court set the July 19, 2001, hearing date to consider final
7 approval of the Rules.

8 The Court has received and considered Watermaster's Transmittal of Revised
9 Rules and Regulations; Explanations of Revisions. The Court also has received and
10 considered Special Referee's Report and Comments Concerning Watermaster's
11 Transmittal of Revised Rules and Regulations. The Court accepts Watermaster's
12 explanations and Special Referee's comments, which are incorporated herein by this
13 reference. The Court adopts the Special Referee's recommendation to give final
14 approval to the Rules, *subject to*: 1) Watermaster's commitment to revise the
15 definition of "Minimal Producer" to be consistent with the Judgment; and 2) providing
16 Appendix 1 forms consistent with the Special Referee's earlier "Report on Workshop
17 and Comments Regarding Watermaster's Revised Rules and Regulations." IT IS SO
18 ORDERED.

19 II.

20 APPROVAL OF INTERVENTION

21 Under the Court's July 14, 1978; "Order Re Intervention Procedures,"
22 Watermaster is authorized to accept petitions in intervention and accumulate them for
23 filing from time to time. On June 29, 2001, Watermaster filed its "Joinder to Petition in
24 Intervention by CCG Ontario, LLC." Watermaster requests that the Court approve the
25 intervention of CCG Ontario, LLC as specified in its Petition in Intervention. No
26 opposition has been filed. Good Cause appearing, IT IS HEREBY ORDERED that the
27 Petition be and hereby is granted as follows:
28

1 1. CCG Ontario, LLC is granted leave to intervene and become a Party to
2 the Judgment herein;

3 2. CCG Ontario, LLC shall hereafter be a Party bound by the Judgment
4 herein entitled to all the rights and privileges accorded under the Physical Solution in
5 the Judgment through the Overlying Non-Agricultural Rights Pool shown on Exhibit D
6 to the Judgment in place of Kaiser Steel Corporation;

7 3. CCG Ontario, LLC's Overlying Non-Agricultural Rights are:

8 (a) 525 annual acre-feet;

9 (b) 475 annual acre-feet as tenants in common with the California
10 Speedway Corporation ("TCS") with TCS having the right of first use;

11 (c) 630.274 acre-feet as tenants in common with California Steel
12 Industries, Inc. ("CSI"), with CSI having the right of use, with payment to
13 CCG Ontario, LLC, through June 30, 2004, and CCG Ontario, LLC
14 having the right of first use thereafter; and

15 4. CCG Ontario, LLC shall become the successor in interest to the local
16 storage agreements with Chino Basin Watermaster now held by Kaiser Steel
17 Corporation and Kaiser Ventures, Inc., and all amounts in storage thereunder, which
18 amount was 4,547.044 acre feet as of June 30, 2000.

19
20 III.

21 OBMP IMPLEMENTATION

22 In the Court's order of April 19, 2001, the Court set September 20, 2001, as the
23 date for filing a status report from Watermaster on (1) the adoption and execution of
24 formal Term Sheet and Desalter Agreements, (2) the initiation of the plans for design
25 and construction of Desalter 2, and (3) a report on the status of funding for the desalter
26 component of the OBMP. The Court set a hearing on October 4, 2001, to receive the
27 status report from Watermaster.

28 ///

**CHINO BASIN WATERMASTER
RULES AND REGULATIONS**

June 2001

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ARTICLE I
GENERAL PROVISIONS

1.0 Title.

This document shall be known and may be referred to as the "Chino Basin Watermaster Rules and Regulations" adopted pursuant to the Judgment.

1.1 Definitions

As used in these Rules and Regulations, these terms, including any grammatical variations thereof shall have the following meanings.

- (a) "Active Parties" means all parties to the Judgment other than those who have filed a written waiver of service of notices with Watermaster, pursuant to Paragraph 58 of the Judgment. [Judgment ¶ 4(a).]
- (b) "Agricultural Pool" shall have the meaning of Overlying (Agricultural) Pool as used in the Judgment and shall include all its members. [Peace Agreement § 1.1(a).]
- (c) "Agricultural Pool Committee" shall mean the designated representatives and alternates who serve on behalf of the Agricultural Pool.
- (d) "Annual or Year" means a fiscal year, July 1 through June 30 following, unless the context shall clearly indicate a contrary meaning. [Judgment ¶ 4(b).]
- (e) "Annual Production Right" means the total amount of water available to the Appropriative Pool in any year from all available sources (e.g., Carry-Over Water, assigned share of Operating Safe Yield, Transfers, New Yield, water Recaptured from Storage, land-use conversions, Early Transfer) which Watermaster shall determine can be Produced by the members of the Appropriative Pool free of a Replenishment Obligation.

- (f) "Answer" means the written response that may be filed to a Complaint or the reply to a Contest pursuant to the provisions of Article X.
- (g) "Applicant" means a person that files an Application for Watermaster approval of an action pursuant to Article X.
- (h) "Application" means a request filed by any person pursuant to the provisions of Article X, seeking (i) Watermaster approval of Recharge, Transfer, Recapture or Qualifying Storage operations or activities or (ii) for Watermaster approval of a credit or reimbursement.
- (i) "Appropriative Pool" shall have the meaning as used in the Judgment and shall include all its members. [Peace Agreement § 1.1(b).]
- (j) "Appropriative Right" means the annual Production right of a Producer from the Chino Basin other than pursuant to an Overlying Right. [Judgment ¶ 4(c).]
- (k) "Basin Water" means Groundwater within the Chino Basin which is part of the Safe Yield, Operating Safe Yield, New Yield), or Replenishment Water in the Basin as a result of operations under the Physical Solution decreed in the Judgment. Basin Water does not include "Stored Water" under the Judgment and the Peace Agreement. [Judgment ¶ 4(d).]
- (l) "Best Efforts" means reasonable diligence and reasonable efforts under the totality of the circumstances. [Peace Agreement § 1.1(d).] Note: a rule of construction applies to this definition. See section 1.2(e) below.
- (m) "CBWCD" means the Chino Basin Water Conservation District. [Peace Agreement § 1.1(e).]
- (n) "Carry-Over Right" means the annual unpumped share of Safe Yield and Operating Safe Yield that is reserved to be pumped first the following year by the members of the Non-Agricultural Pool and the Appropriative Pool respectively. [Based on the Judgment Exhibit "G" ¶ 7 and Exhibit "H" ¶ 12.]
- (o) "Carry-Over Water" means the un-Produced water in any year that may accrue to a member of the Non-Agricultural Pool or the Appropriative Pool and that is Produced first each subsequent Fiscal Year or stored as Excess Carry-Over. (Judgment Exhibit H ¶ 12.)

- (p) "CEQA" means the California Environmental Quality Act, Public Resources Code Sections 21000 et seq; 14 California Code of Regulations 15000 et seq. [Peace Agreement § 1.1(f).]
- (q) "Chino Basin" or "Basin" means the Groundwater basin underlying the area shown on Exhibit "B" to the Judgment and within the boundaries described on Exhibit "K" to the Judgment. [Judgment ¶ 4(f) and Peace Agreement § 1.1(g).]
- (r) "Chino Basin Watershed" means the surface drainage area tributary to and overlying Chino Basin. [Judgment ¶ 4 (g) and Peace Agreement § 1.1(h).]
- (s) "Chino I Desalter," also known as the SAWPA Desalter, means the Desalter owned and operated by PC14 with a present capacity of approximately eight (8) million gallons per day (mgd) and in existence on the Effective Date. [Peace Agreement § 1.1(i).]
- (t) "Chino I Desalter Expansion" means the planned expansion of the Chino I Desalter from its present capacity of approximately eight (8) mgd to a capacity of up to fourteen (14) mgd. [Peace Agreement § 1.1(j).]
- (u) "Chino II Desalter" means a new Desalter not in existence on the Effective Date with a design capacity of approximately ten (10) mgd, to be constructed and operated consistent with the OBMP and to be located on the eastside of the Chino Basin. [Peace Agreement § 1.1(k).]
- (v) "Committee(s)" means any of the Pool Committees or the Watermaster Advisory Committee as the context may compel.
- (w) "Complainant" means a party to the Judgment that files a Complaint pursuant to Article X.
- (x) "Complaint" means a claim filed by a party to the Judgment with Watermaster pursuant to the provisions of Article X.
- (y) "Contest" means an objection filed by a party to the Judgment pursuant to the provisions of Article X.

- (z) "Contestant" means a party to the Judgment that files a Contest pursuant to the provisions of Article X.
- (aa) "Court" means the court exercising continuing jurisdiction under the Judgment. [Peace Agreement § 1.1(l).]
- (bb) "Cyclic storage" as used in various related Watermaster documents, means the pre-delivery of Replenishment water pursuant to an agreement with Watermaster.
- (cc) "Date of Execution" means the first day following the approval and execution of the Peace Agreement by the last Party to do so which date is August 1, 2000. [Peace Agreement § 1.1(m).]
- (dd) "Desalter" and "Desalters" means the Chino I Desalter, Chino I Desalter Expansion, the Chino II Desalter, related facilities and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin Water, including extraction wells, transmission facilities for delivery of groundwater to the Desalter, Desalter treatment and delivery facilities for the desalted water including pumping and storage facilities, and treatment and disposal capacity in the SARI System. [Peace Agreement § 1.1(n).]
- (ee) "Direct Recharge" means the storage of water by percolation in spreading grounds or by injection through wells. [Judgment ¶ 50(a).]
- (ff) "Early Transfer" means the reallocation of Safe Yield in accordance with the Peace Agreement where water from the Agricultural Pool is made available to the Appropriative Pool on an annual basis. [Peace Agreement § 1.1(o).]
- (gg) "Effective Date" refers to the Effective Date of the Peace Agreement and means October 1, 2000. [Peace Agreement § 1.1 (p).]
- (hh) "Excess Carry-Over Water" means Carry-Over Water which in aggregate quantities exceeds a party's share of Safe Yield in the case of the Non-Agricultural Pool, or the assigned share of Operating Safe Yield in the case of the Appropriative Pool, in any year.
- (ii) "Future Desalters" means enlargement of the Chino I Desalter to a capacity greater than the Chino I Expansion or enlargement of the Chino II Desalter and any other new Desalter

facilities that may be needed to carry out the purposes of the OBMP over the term of the Peace Agreement. [Peace Agreement § 1.1(q).]

- (jj) "General law" means all applicable state and federal laws. [Peace Agreement § 1.1(r).]
- (kk) "Groundwater" means all water beneath the surface of the ground. [Judgment ¶ 4 (h) and Peace Agreement § 1.1(s).]
- (ll) "Groundwater Storage Agreement" means either a Local Storage Agreement or an agreement in connection with a Storage and Recovery Program.
- (mm) "Hydrologic Balance" means the maintenance of total inflow at a level generally equivalent to total outflow as measured over an appreciable period of time that is sufficient to account for periodic changes in climate and watershed, basin and land management conditions.
- (nn) "IEUA" means the Inland Empire Utilities Agency, referred to in the Judgment as Chino Basin Municipal Water District. [Peace Agreement § 1.1(t).]
- (oo) "In-lieu Recharge" means taking supplies of Supplemental Water in lieu of pumping groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, as provided in Exhibit "H" Paragraph 11 of the Judgment. [Peace Agreement § 1.1(u).]
- (pp) "Initial Operating Safe Yield" means the Operating Safe Yield first established by the Judgment; i.e. 54,834 acre-feet. [Judgment Exhibit "E".]
- (qq) "Judgment" means the Judgment dated January 27, 1978, in San Bernardino County Case No. 164327 (redesignated as San Bernardino County Case No. RCV 51010) as amended by Order regarding Procedures for Petitions in Intervention dated July 14, 1978; Order regarding Groundwater Storage Agreements dated January 5, 1979; Order Approving Amendments to Judgment Dated December 1, 1995; Order for Amendments to the Judgment Regarding Changes in Pooling Plans and Appropriative Pool Representation on the Advisory Committee, dated September 18, 1996; Order regarding Watermaster's Annual Report dated March 31, 1999; Order regarding Compensation of Watermaster Board Members dated March 31, 1999; Order regarding Adoption of the

OBMP dated September 28, 2000; and other such amendments. [Peace Agreement § 1.1(v).]

- (rr) "Local Imported Water" is water from any origin, native or foreign which was not available for use or included in the calculation of Safe Yield of the Chino Basin at the time the Judgment was entered. [Based on Judgment ¶ 49(c).] Local Imported Water is reported by Watermaster in its annual report.
- (ss) "Local Storage" means water held in a storage account pursuant to a Local Storage Agreement between a party to the Judgment and Watermaster. Local Storage accounts may consist of: (i) a Producer's unproduced Excess Carry-Over Water or (ii) a party to the Judgment's Supplemental Water, up to a cumulative maximum of fifty thousand (50,000) acre-feet for all parties to the Judgment stored in the Basin on or after July 1, 2000 or (iii) that amount of Supplemental Water previously stored in the Basin on or before July 1, 2000 and quantified in accordance with the provisions and procedures set forth in Section 7.2 of these Rules and Regulations, or (iv) that amount of water which is or may be stored in the Basin pursuant to a Storage Agreement with Watermaster which exists and has not expire before July 1, 2005. [Peace Agreement § 1.1(x).]
- (tt) "Local Storage Agreement" means a Groundwater Storage Agreement for Local Storage.
- (uu) "Material Physical Injury" means material injury that is attributable to the Recharge, Transfer, Storage and Recovery, management, movement or Production of water, or implementation of the OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence, increases in pump lift (lower water levels) and adverse impacts associated with rising Groundwater. Material Physical Injury does not include "economic injury" that results from other than physical causes. Once fully mitigated, physical injury shall no longer be considered to be material. [Peace Agreement § 1.1(y).]
- (vv) "Metropolitan Water District or MWD" means the Metropolitan Water District of Southern California. [Peace Agreement § 1.1(2).]
- (ww) "Minimal Producer" means any producer whose Production does not exceed ten (10) acre-feet per year. [Judgment ¶ 4(j).]

- (xx) "New Yield" means proven increases in yield in quantities greater than historical amounts from sources of supply including, but not limited to, capture of rising water, capture of available storm flow, operation of the Desalters and related facilities, induced Recharge and other management activities implemented and operational after June 1, 2000. [Peace Agreement § 1.1(aa).]
- (yy) "Non-Agricultural Pool" shall have the meaning as used in the Judgment for the Overlying (Non-Agricultural) Pool and shall include all its members. [Peace Agreement § 1.1(bb).]
- (zz) "OBMP" means the Optimum Basin Management Program, which consists of the OBMP Phase I Report and the OBMP Implementation Plan, which shall be implemented consistent with the provisions of Article V of the Peace Agreement. [July 13, 2000 Court Order.]
- (aaa) "OBMP Assessments" means assessments levied by Watermaster for the purpose of implementing the OBMP. [Peace Agreement § 1.1(cc).] Note: a rule of construction applies to this definition. See section 1.2(f) below.
- (bbb) "OBMP Implementation Plan" means Exhibit "B" to the Peace Agreement.
- (ccc) "OCWD" means the Orange County Water District. [Peace Agreement § 1.1(dd).]
- (ddd) "Operating Safe Yield" means the annual amount of Groundwater which Watermaster shall determine, pursuant to criteria specified in Exhibit "T" to the Judgment, can be Produced from Chino Basin by the Appropriative Pool parties free of Replenishment obligation under the Physical Solution. [Judgment ¶ 4(l) and Peace Agreement § 1.1(ee).]
- (eee) "Overdraft" means a condition wherein the total annual Production from the Basin exceeds the Safe Yield thereof, as provided in the Judgment. [Judgment ¶ 4(m) and Peace Agreement § 1.1(ff).]
- (fff) "Overlying Right" means the appurtenant right of an owner of lands overlying Chino Basin to Produce water from the Basin for overlying beneficial use on such lands. [Judgment ¶ 4(n).]

- (ggg) "PC14" means Project Committee No. 14, members of SAWPA, composed of IEUA, WMWD, and OCWD, pursuant to Section 18 of the SAWPA Joint Exercise of Powers Agreement which now constitutes the executive Authority through which SAWPA acts with respect to the Chino I Desalter and other facilities, programs and projects. [Peace Agreement § 1.1(II).]
- (hhh) "Party" or "Parties" means a Party to the Peace Agreement. [Peace Agreement § 1.1(gg).]
- (iii) "Party" or "parties to the Judgment" means a party to the Judgment. [Peace Agreement § 1.1(hh).]
- (ijj) "Peace Agreement" means the agreement dated June 29, 2000 among various parties to the Judgment identified therein and approved by Watermaster as it existed on that date and without regard to any subsequent amendment thereto unless such amendments are approved by each Party to the Peace Agreement, Watermaster and the Court.
- (kkk) "Person" means any individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature including but not limited to the State of California and the Department of Water Resources. [Judgment ¶ 4(o).]
- (lll) "Physical Solution" shall have the meaning of the Physical Solution as described the Judgment.
- (mmn) "Produce" or "Produced" means to pump or extract groundwater from the Chino Basin. [Judgment ¶ 4(q) and Peace Agreement § 1.1 (ii).]
- (nnn) "Producer" means any person who Produces water from the Chino Basin. [Judgment ¶ 4(r) and Peace Agreement § 1.1 (ij).]
- (ooo) "Production" means the annual quantity, stated in acre-feet, of water Produced from the Chino Basin. [Judgment ¶ 4(s) and Peace Agreement § 1.1(kk).]
- (ppp) "Public Hearing" means a hearing of Watermaster held pursuant to the Judgment other than as provided in Article X herein.

- (qqq) "Qualifying Storage" means the storage of Supplemental Water, Excess Carry-Over Water after July 1, 2005 or to participate in a Storage and Recovery Program.
- (rrr) "Qualifying Storage Agreement" means an agreement with Watermaster to store Supplemental Water, Excess Carry-Over Water after July 1, 2005 or to store water by participation in a Storage and Recovery Program.
- (sss) "Recapture" and "Recover" means the withdrawal of water stored in the Basin under a Groundwater Storage Agreement.
- (ttt) "Recharge" and "Recharge Water" means the introduction of water into the Basin, directly or indirectly, through injection, percolation, delivering water for use in-lieu of Production or other method. Recharge references the physical act of introducing water into the Basin. Recharge includes Replenishment Water but not all Recharge is Replenishment Water. [Peace Agreement § 1.1(nn).] Note: a rule of construction applies to this definition. See section 1.2(g) below.
- (uuu) "Recycled Water" means water which, as a result of treatment of wastewater, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource, referred to as "reclaimed water" in the Judgment. [Judgment ¶ 4(u) and Peace Agreement § 1.1 (pp).]
- (vvv) "Replenishment Obligation" means the quantity of water that Watermaster must purchase to replace Production by any Pool during the preceding Fiscal Year which exceeds that Pool's allocated share of Safe Yield or Operating Safe Yield in the case of the Appropriative Pool. The quantity of a Producer's Over-Production and the Replenishment Obligation is determined after Watermaster takes into account any Transfers of water or any Recovery from storage in the same year, and takes into account the Appropriative Pool obligation as a result of the implementation of the Peace Agreement, if any. [Judgment ¶ 45.]
- (www) "Replenishment Water" means Supplemental Water used to Recharge the Basin pursuant to the Physical Solution, either directly by percolating the water into the Basin or indirectly by delivering the water for use in-lieu of Production and use of Safe Yield or Operating Safe Yield. [Judgment ¶ 4(v) and Peace Agreement § 1.1(oo).]

- (xxx) "Responsible Party" means the owner, co-owner, lessee or other person(s) designated by multiple parties interested in a well as the person responsible for purposes of filing reports with Watermaster pursuant to the Judgment ¶ 4(w). [Judgment, ¶ 4(w).]
- (yyy) "Rules and Regulations" means these Chino Basin Watermaster Rules and Regulations as authorized pursuant to the Judgment, initially adopted by the Watermaster on February 15, 2001 and as they may be amended from time to time. They are to be distinguished from the previous Watermaster Rules and Regulations and the Uniform Groundwater Rules and Regulations that were repealed and replaced by the same action adopting and approving these Rules and Regulations.
- (zzz) "Safe Yield" means the long-term average annual quantity of groundwater (excluding Replenishment Water or Stored Water but including return flow to the Basin from use of Replenishment or Stored Water) which can be Produced from the Basin under cultural conditions of a particular year without causing an undesirable result. [Judgment ¶ 4(x) and Peace Agreement § 1.1(qq).]
- (ab) "Salt Credits" means an assignable credit that may be granted by the Regional Water Quality Control Board and computed by Watermaster from activities that result from removal of salt from the Basin, or that result in a decrease in the amount of salt entering the Basin. [Peace Agreement § 1.1(rr).] Salt Credits may be used by individual members of the Appropriative Pool to facilitate implementation of the OBMP as a whole and as an offset against potential impacts associated with discrete projects.
- (ac) "SAWPA" means the Santa Ana Watershed Project Authority. [Peace Agreement § 1.1(ss).]
- (ad) "SBVMWD" means San Bernardino Valley Municipal Water District. [Judgment ¶ 4(y).]
- (ae) "Sphere of Influence" has the same meaning as set forth in Government Code Section 56076.
- (af) "Storage and Recovery Program" means the use of the available storage capacity of the Basin by any person under the direction and control of Watermaster pursuant to a Court approved Groundwater Storage Agreement but excluding "Local Storage," including the

right to export water for use outside the Chino Basin and typically of broad and mutual benefit to the parties to the Judgment. [Peace Agreement § 1.1(uu).]

- (ag) "Stored Water" means Supplemental Water held in storage, as a result of direct spreading, injection or in-lieu delivery, for subsequent withdrawal and use pursuant to a Groundwater Storage Agreement with Watermaster. [Judgment ¶ 4(aa) and Peace Agreement § 1.1(vv).]
- (ah) "Supplemental Water" means water imported to Chino Basin from outside the Chino Basin Watershed and Recycled Water. [Judgment ¶ 4(bb) and Peace Agreement § 1.1(ww).]
- (ai) "Transfer" means the assignment (excepting an assignment by a member of the Non-Agricultural Pool or the Agricultural Overlying Pool), lease, or sale of a right to Produce water to another Producer within the Chino Basin or to another person or entity for use outside the Basin upon the person's intervention in conformance with the Judgment. [Peace Agreement § 1.1 (xx).]
- (aj) "TVMWD" means Three Valleys Municipal Water District (referred to in the Judgment as Pomona Valley Municipal Water District). [Peace Agreement § 1.1(yy).]
- (ak) "Uniform Groundwater Rules and Regulations" (UGRR) means the Uniform Groundwater Rules and Regulations that were in effect on December 31, 2000.
- (al) "Watermaster" means Watermaster as the term is used in the Judgment. [Peace Agreement § 1.1 (zz).]
- (am) "Watermaster Resolution 88-3" means the resolution by the Chino Basin Watermaster establishing the procedure for transferring unallocated Safe Yield water from the Agricultural Pool to the Appropriative Pool on an annual basis, adopted on April 6, 1988 and rescinding Resolution 84-2 in its entirety. [Peace Agreement § 1.1(aaa).]
- (an) "Watermaster Rules and Regulations" means the Watermaster Rules and Regulations that were in effect on December 31, 2000.
- (ao) "WMWD" means Western Municipal Water District. [Judgment ¶ 4(cc) and Peace Agreement § 1.1 (bbb).]

1.2 Rules of Construction

- (a) Unless the context clearly requires otherwise:
 - (i) The plural and singular forms include the other;
 - (ii) "Shall," "will," "must," and "agrees" are each mandatory;
 - (iii) "may" is permissive;
 - (iv) "or" is not exclusive;
 - (v) "includes" and "including" are not limiting; and
 - (vi) "between" includes the ends of the identified range.
- (b) The masculine gender shall include the feminine and neuter genders and vice versa.
- (c) Reference to any agreement, document, instrument, or report means such agreement, document, instrument or report as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.
- (d) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part and in effect from time to time, including any rules and regulations promulgated thereunder. [Peace Agreement § 1.2.]
- (e) "Best Efforts" as defined in section 1.1(l) above, shall be construed to mean that indifference and inaction do not constitute Best Efforts. However, futile action(s) are not required. [Peace Agreement § 1.1(d).]
- (f) OBMP Assessments as defined in section 1.1(aaa) above, shall be deemed Administrative Expenses under Paragraph 54 of the Judgment. OBMP Assessments do not include assessments levied as provided in Section 5.1(g) of the Peace Agreement. Upon the expiration of the Peace Agreement, no conclusion of "general benefit" may be drawn

based upon the manner in which the assessments have been made during the term of the Peace Agreement. [Peace Agreement § 1.1(cc).]

- (g) The definition of the terms Recharge and Recharge Water in section 1.1(ttt) above, shall not be construed to limit or abrogate the authority of CBWCD under general law. [Peace Agreement § 1.1(nn).]
- (h) The right of a party to receive a credit if Watermaster compels a Groundwater Production facility to be shut down and/or moved under section 4.5 below, shall not be construed in determining the extent of Watermaster's authority under the Judgment, if any, to compel the shut-down of a well.
- (i) These Rules and Regulations should not be construed as placing any limitation on the export of Supplemental Water other than as may be provided in the Judgment, except as may be necessary as a condition to prevent Material Physical Injury (*see specifically* section 8.3 below).

- 1.3 Consistency with Judgment and Peace Agreement. These Rules and Regulations shall be construed consistent with the Judgment and the Peace Agreement. In the event of a conflict between these Rules and Regulations and the Judgment or the Peace Agreement, the Judgment and/or the Peace Agreement shall prevail. In the event of a conflict between the Peace Agreement and the Judgment, the Judgment shall control.
- 1.4 No Prejudice. No provision of these Rules and Regulations shall be used to construe the power and authority of the Advisory Committee or the Watermaster Board inter-se under the Judgment.
- 1.5 Amendment of Rules. These Rules and Regulations may be amended by Watermaster only upon the prior approval of the Watermaster Advisory Committee.
- 1.6 Repeal of Existing Rules and Regulations. Watermaster's existing Rules and Regulations and the the Uniform Groundwater Rules and Regulations shall be repealed upon the adoption of these Watermaster Rules and Regulations. However, all other rules and regulations, which includes the Rules for the Advisory Committee and for each of the three Pools, shall remain in effect.

ARTICLE II ADMINISTRATION

- 2.0 Principal Office. The principal office of Watermaster shall be the Chino Basin Watermaster business office, currently located at 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California 91730; telephone number 909-484-3888, or at such other location or locations as may be designated from time to time by Watermaster Resolution and filed with the Court.
- 2.1 Records. The minutes of Watermaster meetings shall be open to inspection and maintained at the principal office. [Based on Judgment ¶ 37(d).] Copies of minutes may be obtained upon payment of the duplication costs thereof. Copies of other records may be obtained on the payment of the duplication costs thereof and pursuant to Watermaster policy. Watermaster shall maintain a website. Watermaster Staff shall publish those records and other matters that it deems to be of interest to the parties to the Judgment, the general public or the Court on its website.
- 2.2 Regular Meetings. Regular meetings shall be held at the principal office of Watermaster pursuant to Watermaster policy at such time(s) as may be contained in the necessary notice(s) thereof. [Based on Judgment ¶ 37 (b).] As a matter of policy, Watermaster shall generally operate in accordance with the provisions of the California Open Meetings Law (Brown Act). However, in the event of conflict, the procedures set forth in these Rules and Regulations shall control.
- 2.3 Special Meetings. Special meetings may be called at any time by a majority of the Watermaster Board by delivering notice thereof at least twenty-four (24) hours before the time of each such meeting in the case of personal delivery (including faxes and electronic mail), and ninety-six (96) hours in the case of mail. [Based on Judgment ¶ 37 (c).]
- 2.4 Adjournment. Any meeting may be adjourned to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously posted forthwith on or near the door of the place where the meeting was held. [Based on Judgment ¶ 37 (e).]
- 2.5 Public Meetings/Hearings. All meetings, whether regular or special, shall be open to the public unless they are properly designated as a confidential session. Whenever a Public Hearing shall be

required therein, written notice of such public hearing containing the time, date and place of Public Hearing, together with the matter to be heard thereat, shall be given to all Active Parties and each such person who has requested, in writing, notice of such meeting, at least ten (10) days prior to said Public Hearing. At such Public Hearing, evidence shall be taken with regard to only the matters noticed, unless a sufficient urgency shall exist to the contrary, and full findings and decisions shall be issued and made available for public inspection. Notwithstanding the provisions of this section 2.5, the provisions of Article X shall control when applicable.

2.6 Confidential Sessions.

- (a) The Watermaster Board may hold confidential sessions authorized by this Rule. A confidential session may be held by the Watermaster Board and, at a minimum, the chairs of the three Pools (Appropriative, Agricultural and Non-Agricultural) to, in a manner consistent with the Judgment:
 - (i) meet with counsel to discuss or act on pending or threatened litigation involving Watermaster; or
 - (ii) discuss personnel matters of Watermaster employees involving individual employees; or
 - (iii) discuss contract negotiations involving Watermaster.
- (b) Minutes shall not be taken for confidential sessions of the Watermaster Board, but a confidential memorandum shall be prepared to describe attendance and votes on decisions.
- (c) Notice of confidential sessions of the Watermaster Board shall be as provided in section 2.7.
- (d) A report on any action taken at the confidential session of the Watermaster Board shall be given both immediately following the conclusion of the confidential session and at the next regular meeting of the Watermaster Board.
- (d) The Advisory Committee may hold a confidential session on any matter authorized by its own resolution.

- 2.7 Notice. Notices shall be given in writing to all Active Parties and each such person who has requested notice in writing, and shall specify the time and place of the meeting and the business to be transacted at the meeting. Notice may be provided by either facsimile or electronic mail delivery if the party so consents to such delivery. [Based on Judgment ¶ 37(c).] Delivery of notice shall be deemed made on the date personally given or within ninety-six (96) hours of deposit thereof in the United States mail, first class, postage prepaid, addressed to the designee and at the address in the latest designation filed by such person. Copies of all notices shall be published on the Watermaster website. Watermaster will maintain a current list of the names of active parties and their addresses for the purpose of providing service, and will maintain a current list of the names and addresses of all parties to the Judgment. [Judgment ¶ 58.]
- 2.8 Quorum. A majority of the Board acting as Watermaster shall constitute a quorum for the transaction of the affairs or business. [Based on Judgment ¶ 35.]
- 2.9 Voting Procedures. Only action by affirmative vote of a majority of the members of the Watermaster Board present and acting as Watermaster shall be effective. All actions may be adopted by voice vote, but upon demand of any member of a Board acting as Watermaster, the roll shall be called and the ayes and noes recorded in the minutes of the proceedings. Every member of a Board acting as Watermaster, in attendance, unless disqualified by reason of an opinion of the Watermaster counsel that the member of the board has a conflict of interest, shall be required to vote.
- 2.10 Conflict of Interest. Watermaster is an interest based governing structure in which various interests must be represented in decision-making. It is expected and preferred that each interest be allowed to participate in Watermaster decisions except as provided in these Rules and Regulations. Each member of the Watermaster Board or the Advisory Committee shall vote on matters before the Board or Advisory Committee unless that member has a conflict of interest as described in this Rule or other provision of general law. No member of the Watermaster Board or Advisory Committee may vote, participate in meetings or hearings pertaining to, or otherwise use his or her position to influence a Watermaster decision in which he knows or has reason to know he has both a direct personal and financial interest.
- (a) Subject to the qualification provided for in section 2.10(b) herein, a member of the Watermaster Board or Advisory Committee is deemed to have a direct personal and financial interest in a decision where it is reasonably foreseeable that the decision will have

a material effect on the Watermaster member, members of his or her immediate family, or the Watermaster member's other business, property, and commercial interests.

- (b) To be classified as a direct personal and financial interest, the particular matter must be distinguishable from matters of general interest to the respective pool (Appropriative, Non-Agricultural, or Agricultural) or party to the Judgment, which the Watermaster member has been appointed to represent on the Watermaster Board or Advisory Committee. The member must stand to personally gain discrete and particular advantage from the outcome of the decision beyond that generally realized by any other person or the interests he or she represents. Moreover, Watermaster representatives are expressly intended to act in a representative capacity for their constituents. A member of the Board or Advisory Committee shall not be considered to have a discrete and particular financial advantage unless a decision may result in their obtaining a financial benefit that is not enjoyed by any other person. In those instances where the Board member or Advisory Committee member does have a conflict of interest, that respective interest may be represented by that interest's designated alternate and the Board or Advisory Committee member with the identified conflict of interest may address the Board or Committee or participate in the hearing or meeting as a party to the Judgment.

- 2.11 Minutes. The secretary (or in the absence thereof any person so designated at said meeting) shall cause the preparation and subscription of the minutes of each meeting and make available a copy thereof to all Active Parties and each person who has filed a request for copies of all minutes or notices in writing. The minutes shall constitute notice of all actions therein reported. Unless a reading of the minutes is ordered by a majority of the members of the Board acting as Watermaster, minutes may be approved without reading. [Based on Judgment ¶ 37(d).] Watermaster shall publish a copy of its minutes on the Watermaster website.
- 2.12 Rules of Order. Except as may be provided herein, the procedures of the conduct of any meeting shall be governed by the latest revised edition of Roberts' Rules of Order. However, such rules, adopted to expedite the transaction of the business in an orderly fashion, are deemed to be procedural only and failure to strictly observe such rules shall not affect the jurisdiction or invalidate any action taken at a meeting that is otherwise held in conformity with law.
- 2.13 Compensation. Members of Watermaster shall receive compensation from Watermaster for attendance at meetings, regular or special, in an amount as approved by the Court together with

reasonable expenses related to the respective activities thereof, subject to applicable provisions of law. [Based on Judgment ¶ 18 (as amended).]

- 2.14 Employment of Experts and Agents. Watermaster may employ or retain such administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as it may deem appropriate and shall require appropriate bonds from all officers and employees handling Watermaster funds. Watermaster shall maintain records for purposes of allocating costs of such services as well as of all other expenses of Watermaster administration as between the several pools established by the Physical Solution of the Judgment. No member of the Watermaster Advisory Committee or any Pool Committee may be employed or compensated by Watermaster for professional or other services rendered to such committee or to Watermaster other than as provided in section 2.13 above. [Based on Judgment ¶ 20.]
- 2.15 Acquisition of Facilities. Watermaster may purchase, lease, acquire and hold all necessary facilities and equipment; provided, that it is not the intent of the Judgment that Watermaster acquire any interest in real property or substantial capital assets. [Judgment ¶ 19 and Peace Agreement § 5.1(h).]
- 2.16 Investment of Funds. Watermaster may hold and invest all Watermaster funds in investments authorized from time to time for public agencies of the State of California, taking into consideration the need to increase the earning power of such funds and to safeguard the integrity thereof. [Based on Judgment ¶ 23.]
- 2.17 Borrowing. Watermaster may borrow from time to time, amounts not to exceed the annual anticipated receipts of Watermaster during such year. [Judgment ¶ 24.]
- 2.18 Contracts. Watermaster may enter into contracts and agreements for the performance of any of its powers pursuant to the Judgment.
- 2.19 Cooperation with Other Agencies. Watermaster may, subject to the prior recommendation of the Advisory Committee, act jointly or cooperate with agencies of the United States of America, and the State of California or any political subdivisions, municipalities, districts or any person to the end that the purpose of the Physical Solution of the Judgment may be fully and economically carried out. [Based on Judgment ¶ 26.]

- 2.20 Annual Administrative Budget. Watermaster shall submit to the Advisory Committee, after Pool Committee review and approval, an administrative budget and recommendation for action for each subsequent Fiscal Year on or before March 1. The Advisory Committee shall review and submit the budget and their recommendations to Watermaster on or before April 1, next following. Watermaster shall hold a public hearing on the budget which was approved by Advisory Committee at an April meeting of each year and adopt the annual administrative budget which shall include the administrative items for each committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to make a proper allocation of expenses among the several pools, together with Watermaster's proposed allocation. The budget shall contain such additional comparative information or explanation as the Advisory Committee may recommend from time to time. Expenditures within the budgeted items may thereafter be made by Watermaster in the exercise of its powers, as matter of course. Any budget transfer in excess of 20% of a budget category, or modification of the administrative budget during any year shall be first submitted to the Advisory Committee for review and recommendation. [Based on Judgment ¶30.]
- 2.21 Annual Report. Watermaster shall prepare and make available an annual report, which shall be filed on or before January 31 of each year and shall contain details as to the operation of each of the pools, a certified audit of all assessments and expenditures pursuant to the Physical Solution of the Judgment and a review of Watermaster activities. [Based on Judgment ¶48.] The annual report shall generally include an update on the status of the parties' efforts to implement the OBMP. On a biannual basis, the annual report shall include an engineering appendix which contains a more specific "state of the Basin" report including an update on the status of individual OBMP related activities such as monitoring results and Watermaster's analysis of Hydrologic Balance. The annual report shall also include a compilation of any amendments to these Rules and Regulations made by Watermaster during the prior twelve (12) months and serve as notice to the Court of the amendments.
- 2.22 Studies. Watermaster may, with concurrence of the Advisory Committee or affected Pool Committee and in accordance with Paragraph 54(b) of the Judgment, undertake relevant studies of hydrologic conditions, both quantitative and qualitative, and operating aspects of implementation of the Chino Basin OBMP. [Judgment ¶ 27.]
- 2.23 Demonstrated CEQA Compliance. Watermaster shall not approve any request made under the Judgment or these Rules and Regulations where the proposed action also constitutes a "project" within the meaning of CEQA unless the Watermaster finds that the person requesting Watermaster approval has demonstrated CEQA compliance.

- 2.24 Notice of Litigation. Watermaster shall provide reasonable notice to the parties to the Judgment of any threatened or existing litigation affecting Watermaster or that challenges the legality, validity, or enforceability of the Judgment, the Peace Agreement, the OBMP Implementation Plan or the Rules and Regulations.
- 2.25 Defense of Judgment. Watermaster shall reasonably defend the Judgment, the Peace Agreement, the OBMP Implementation Plan and these Rules and Regulations against challenges brought by persons who are not parties to the Judgment. These costs incurred by Watermaster in defending the Judgment, the Peace Agreement, the OBMP Implementation Plan and these Rules and Regulations shall be considered a Watermaster general administrative expense. However, the State of California shall not be obligated to reimburse Watermaster for any legal or administrative costs incurred in such defense. [Peace Agreement § 4.1.]
- 2.26 Written Reports. All reports required to be provided by Watermaster under these Rules and Regulations shall be provided in written form unless the context requires otherwise.
- 2.27 Interventions. Watermaster will receive and make recommendations regarding petitions for intervention and accumulate them for filing with the Court from time to time. [Judgment ¶ 60 and Order re Intervention Procedures, July 14, 1978.]
- 2.28 Advisory Committee and Pool Administration. Administration of each of the three Pools is not governed by these Rules and Regulations. Each of these entities has its own rules and shall thereby be governed by those rules. The Advisory Committee shall also be governed by its own rules and procedures. However, when these Rules and Regulations make express reference to the Advisory Committee and the context requires such a construction, these Rules and Regulations shall control.

ARTICLE III MONITORING

- 3.0 Scope. Watermaster will carry out the monitoring activities described under Program Element 1 of the OBMP and as described in the OBMP Implementation Plan. Monitoring procedures not described by this Article III shall be implemented through the development of appropriate Watermaster policies and procedures as necessary. Any such policies and procedures adopted by resolution or minute action shall be reported to the Court in Watermaster's annual report.

3.1 Meters. This section sets forth Watermaster's rules and procedures for monitoring Groundwater Production by metering.

- (a) Reporting. Any person Producing in excess of ten (10) acre-feet per year shall install and maintain in good operating condition, at the cost of each such person except as provided in (b) below, such meters as Watermaster may deem necessary. Any such measuring device shall be subject to regular inspection and testing as the Watermaster may, from time to time, require, but at a minimum every two years. [Judgment ¶ 21.]
- (b) Watermaster shall provide a meter testing service with a complete line of carefully calibrated test equipment. Any Producer may request an evaluation of any or all of its water meters at any time. Watermaster shall only pay for tests initiated by Watermaster and for all tests on meters owned by Watermaster
- (c) Agricultural Pool Meters.
 - (i) Any assessment levied by Watermaster on the members of the Agricultural Pool to fund the installation of meters which is set forth in the Judgment, paragraph 21 regarding metering, shall be paid by the Appropriative Pool. Members of the Agricultural Pool, shall have no obligation to pay for or assume any duty with regard to the installation of meters. The obligation to install and maintain and replace meters on wells owned or operated by members of the Agricultural Pool shall be that of the Watermaster. [Peace Agreement § 5.6(a).]
 - (ii) Agricultural Pool meters shall be installed within thirty-six (36) months of the Date of Execution. Watermaster shall be responsible for providing the meter, as well as paying the cost of any installation, maintenance, inspection, testing, calibrating and repairing. The members of the Agricultural Pool shall provide reasonable access during business hours to a location reasonably appropriate for installation, inspection, testing, calibrating and repairing of a meter. [Peace Agreement § 5.6(b).] However, the State of California reserves its right to continue to install, operate, maintain, inspect, test and repair its own meters on wells owned or operated by the State, unless it consents to installation by Watermaster in which case Watermaster assumes the cost. [Peace Agreement § 5.6(c).]

- (iii) Watermaster shall test every Agricultural Pool meter other than those owned by the State of California on an active well under Watermaster's jurisdiction at least once every two years.

3.2 Reporting by Producers. Each party, or Responsible Party Producing water from the Basin, shall file with Watermaster on forms provided therefore, a quarterly report of the total water Production of that Producer during the preceding calendar quarter, together with such additional information as Watermaster and/or the affected Pool Committee may require. The report shall be due on the 15th day of the month next succeeding the end of each respective calendar quarter, i.e., April 15, July 15, October 15 and January 15, except for minimal Producers, whose reports are due annually by July 15. [Judgment ¶ 47.] Watermaster shall annually estimate the quantity of water Produced by "minimal producers" by any reasonable means, including but not limited to the use of a water duty factor dependent upon the type of use and/or acreage.

ARTICLE IV ASSESSMENTS, REIMBURSEMENTS AND CREDITS

4.0 Scope. This Article sets forth Watermaster's rules and procedures regarding, assessments, reimbursements and credits.

4.1 Assessments. Watermaster shall levy assessments against the parties (other than Minimal Producers complying herewith) based upon Production during the preceding Production period. The assessment shall be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool. [Based on Judgment ¶ 53.] Assessments shall cover the cost of Replenishment Water and the expenses of Watermaster administration which shall be categorized as either (a) general, or (b) special project expense.

- (a) General Administrative Watermaster Expense shall include office rental, general personnel expense, supplies and office equipment and related incidental expense and general overhead. [Judgment ¶ 54(a).]
- (b) Special Project Expense shall consist of special engineering, economic or other studies, litigation expense, meter testing or other major operating expenses. Each such project shall

be assigned a task order number and shall be separately budgeted and accounted for. [Judgment ¶ 54(b).]

- (c) General Watermaster administrative expense shall be allocated and assessed against the respective pools based upon allocations made by the Watermaster, who shall make such allocations based upon generally-accepted cost accounting methods. [Judgment ¶ 54.]
- (d) Special project expense shall be allocated to a specific pool, or any portion thereof, only upon the basis of prior express assent and finding of benefit by the appropriate Pool Committee, or pursuant to written order of the Court. [Judgment ¶ 54.]
- (e) Minimal Producers shall be exempted from payment of assessments upon filing of the Production reports referred to in section 3.2 hereof and payment of an annual five dollar (\$5.00) administrative fee with the annual Production report. [Based on Judgment ¶ 52.] In addition, any Minimal Producer who is a member of the Appropriative Pool or the Non-Agricultural Pool and who has no quantified right to Produce water, shall pay a replenishment assessment upon the water that it Produces.
- (f) Notwithstanding the foregoing, Watermaster shall levy assessments for the 6,500 acre-feet per year as provided in section 5.1(g) of the Peace Agreement and the cost and allocation of this Supplemental Water shall be apportioned pro rata among the members of the Appropriative Pool under the Judgment according to the Producer's assigned share of Operating Safe Yield. [Peace Agreement § 5.1(g)(ii) (inclusion of word "Operating" to correct mis-phrasing of Peace Agreement as required by the context in the Peace Agreement).]

4.2 OBMP Assessments. Watermaster Assessments for implementation of the OBMP shall be considered a Watermaster Administrative Expense pursuant to paragraph 54 of the Judgment.

4.3 Assessment - Procedure. Assessments shall be levied and collected as follows:

- (a) Notice of Assessment. Watermaster shall give written notice of all applicable assessments to each party as provided in the Judgment not later than October 31 of each year [Judgment ¶ 55(a).];

- (b) Payment. Each assessment shall be payable on or before thirty (30) days after the date of invoice, and shall be the primary obligation of the party or successor owning the water Production facility at the time written notice of assessment is given, even though prior arrangement for payment by others has been made in writing and filed with Watermaster [Judgment ¶ 55(b).]; and
- (c) Delinquency. Any delinquent assessment shall incur a late charge of ten (10%) percent per annum (or such greater rate as shall equal the average current cost of borrowed funds to the Watermaster) from the due date thereof. Delinquent assessments and late charge may be collected in a show-cause proceeding instituted by the Watermaster, in which case the Court may allow Watermaster's reasonable cost of collection, including attorney's fees. [Judgment ¶ 55(c).]

4.4 Assessment Adjustments. The Watermaster shall make assessment adjustments in whole or in part for assessments to any Producer as a result of erroneous Production reports or otherwise as necessary for the reporting period as either a credit or debit in the next occurring assessment package unless otherwise decided by Watermaster.

- (a) All assessments will be based on the assumption that appropriate, timely filed and pending Applications will be approved by Watermaster. If any such Applications are not approved, a supplemental assessment may be levied.
- (b) Assessment adjustments may be necessary due to overstated Production, understated Production, or errors in the assessment package discovered after the assessments have been approved.
- (c) Watermaster may cause an investigation and report to be made concerning questionable reports of Production from the Basin.
- (d) Watermaster may seek to collect delinquent assessments and interest in a show-cause proceeding in which case the Court may allow Watermaster its reasonable costs of collection, including attorney's fees. [Judgment ¶ 55(c).] Alternately, Watermaster may bring suit in a court having jurisdiction against any Producer for the collection of any delinquent assessments and interest thereon. The court, in addition to any delinquent assessments, may award interest and reasonable costs including attorney's fees.

4.5 Credits Against OBMP Assessments and Reimbursements. Watermaster shall exercise reasonable discretion in making its determination regarding credits against OBMP Assessments and reimbursements, considering the importance of the project or program to the successful completion of the OBMP, the available alternative funding sources, and the professional engineering and design standards as may be applicable under the circumstances. However, Watermaster shall not approve such a request for reimbursement or credit against future OBMP Assessments under this section where the Producer or party to the Judgment was otherwise legally compelled to make the improvement. [Peace Agreement § 5.4 (d).]

- (a) Any party to the Judgment may make Application for credits against OBMP assessments or for reimbursement by filing a timely Application pursuant to the provisions of this section and Article X of these Rules and Regulations.
- (b) A party to the Judgment is eligible to be considered for credits or reimbursement for those documented capital, operations and maintenance expenses, including the cost of shutting down and/or relocating Groundwater Production facilities, that are reasonably incurred in the implementation of any project or program that carries out the purposes of the OBMP upon approval of the request by Watermaster. [Peace Agreement § 5.4(d).] The purposes of the OBMP shall be those goals set forth in the Phase I Report as implemented through the OBMP Implementation Plan in a manner consistent with the Peace Agreement including, but not limited to, the prevention of subsidence in the Basin. [July 13, 2000 Court Order.]
- (c) Any Producer that Watermaster compels to shut down and/or move a Groundwater Production facility that is in existence on August 1, 2000 shall have the right to receive a credit against future Watermaster assessments or reimbursement up to the reasonable cost of the replacement Groundwater Production facility, including the legal rate of interest on California Judgments. [Peace Agreement § 5.4 (e).] In its sole discretion, Watermaster may determine to issue full reimbursement upon approval of the Application or to issue a credit against future Watermaster assessments. However, in the event Watermaster elects to provide a credit in lieu of reimbursement, it must have fully compensated the Producer for the reasonable cost of the replacement Groundwater Production facility through any combination of credits and reimbursements within five years from the date of the Application, unless the Producer consents in writing to a longer period. Note: this section is subject to a rule of construction. See section 1.2(h) above.

- (d) An Application to Watermaster for reimbursement or a credit against OBMP Assessments shall be considered timely, if and only if, the Application has been approved by Watermaster in advance of construction or the offer by a party to dedicate the facility to carry out the purposes of the OBMP as described in (b) above. [Based on Peace Agreement § 5.4(d).]
- 4.6 Agricultural Pool Assessments and Expenses. During the term of the Peace Agreement, all Assessments and expenses of the Agricultural Pool including those of the Agricultural Pool Committee shall be paid by the Appropriative Pool. This includes but is not limited to OBMP Assessments, assessments pursuant to paragraphs 20, 21, 22, 30, 42, 51, 53, 54 (both general administrative expenses and special project expenses), 55, and Exhibit F (Agricultural Pool Pooling Plan) of the Judgment except however in the event the total Agricultural Pool Production exceeds 414,000 acre-feet in any five consecutive year period as defined in the Judgment, the Agricultural Pool shall be responsible for its Replenishment Obligation pursuant to paragraph 45 of the Judgment. [Peace Agreement § 5.4 (a).]
- 4.7 Replenishment Assessments. Watermaster shall levy and collect assessments in each year, pursuant to the respective pooling plans, in the amount of the Replenishment Obligation (including any Desalter Replenishment) for any pool during the preceding year. [Based on Judgment ¶ 51.]
- 4.8 Desalter Replenishment Assessments and Credits. The price of Desalted water to a purchaser of Desalted water does not include the cost of Replenishment. The source of Replenishment shall be those provided in Article VII herein and Article VII of the Peace Agreement. However, a purchaser of Desalted water may elect to obtain a reduced Assessment levied by Watermaster by dedicating by Transfer, or assignment, some or all of its Production rights to Watermaster for the purpose of satisfying Desalter Replenishment. The amount of the credit granted by Watermaster shall be equal to the value of the cost of Replenishment Water then available from the MWD as interruptible, untreated water or the then prevailing value of the avoided Replenishment Obligation, whichever is less. For purposes of determining Replenishment assessments, water Produced by the Desalters shall be considered Production by the Appropriative Pool.
- 4.9 Consistency with Peace Agreement. The procurement of Replenishment Water and the levy of Assessments shall be consistent with the provisions of section 5.4(a) of the Peace Agreement.
- 4.10 Salt Credits. Salt Credits shall be held in trust for the benefit of the individual members of the Appropriative Pool according to section 5.5 of the Peace Agreement. Watermaster shall assign each member's proportionate share of Salt Credits to the member of the Appropriative Pool upon

request by the member. This rule establishes no basis for the allocation of Salt Credits. Such procedures shall be developed in the Appropriative Pool Rules at the time Salt Credits become available for assignment.

4.11 OBMP Committee. Watermaster shall establish a subcommittee (OBMP Committee) for the purpose of coordinating fund raising efforts in furtherance of the OBMP.

- (a) The subcommittee shall hold a regularly scheduled meeting a minimum of once every quarter.
- (b) Prior to each subcommittee meeting, Watermaster shall prepare a summary of the funds, loans or grants secured for the purpose of implementing the OBMP over the past three months and distribute any information it may possess regarding the availability of other potential funds, loans or grants.

ARTICLE V PHYSICAL SOLUTION

- 5.0 Scope. This Article generally sets forth the standards for Watermaster implementation of the Physical Solution established by the Judgment, including the application of these standards to Watermaster conduct and decisions under the Judgment, these Rules and Regulations and the OBMP.
- 5.1 Physical Solution. It is essential that this Physical Solution provide maximum flexibility and adaptability to use existing future, technological, social, institutional and economic options to maximize beneficial use of the waters of the Chino Basin. [Judgment ¶ 40.]
- 5.2 Watermaster Control. Watermaster, with the advice of the Advisory and Pool Committees, is granted discretionary powers in order to develop its OBMP. [Based on Judgment ¶ 41.]
- 5.3 Basin Management Parameters. Watermaster shall consider the following parameters in implementing the Physical Solution under Articles VI - X of these Rules and Regulations:

- (a) Pumping Patterns. Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin's waters that no Producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized Recharge of Replenishment Water, insofar as such result may be practically avoided. [Judgment Exhibit "T".]
- (b) Water Quality. Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster. [Judgment Exhibit "T".]
- (c) Economic Considerations. Financial feasibility, economic impact and the cost of optimum use of the Basin's resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters. [Judgment Exhibit "T".]

**ARTICLE VI
SAFE YIELD AND OPERATING SAFE YIELD**

- 6.0 Scope. This Article sets forth the rules and procedures that are applicable to Watermaster's regulation, control, and management of Safe Yield and Operating Safe Yield.
- 6.1 Annual Production Right. The Annual Production Right shall be calculated by Watermaster pursuant to the Judgment and the Peace Agreement.
- 6.2 New Yield. The Judgment provides that Safe Yield may need to be periodically adjusted based on more accurate and updated data and based on evidence of increased capture of native water and increased return flow from use of Replenishment or Stored Water. Safe Yield can only be re-determined periodically when long-term data or evidence is developed in support thereof. In order to encourage maximization of Basin Water under the Physical Solution, New Yield shall be accounted for by Watermaster in interim periods between re-determinations of Safe Yield.
 - (a) Proven increases in yield in quantities greater than the historical level of contribution from certain Recharge sources may result from changed conditions including, but not limited

to, the increased capture of rising water, increased capture of available storm flow, and other management activities. These increases are considered New Yield.

- (b) To the extent the New Yield arises from conditions, programs or projects implemented and operational after July 1, 2000, it is available for allocation by Watermaster as a component of the Annual Production Right for each member of the Appropriative Pool.
- (c) As part of the documentation for the assessments and annual report for each year, Watermaster will provide a summary and analysis of the historical recharge and whether there are changed conditions that have resulted in a quantity of New Yield.
- (d) Pursuant to the Peace Agreement, any New Yield shall first be assigned to offsetting Desalter Replenishment Obligations in the immediately following year and as reasonably required to satisfy expected future Replenishment Obligations arising from the Desalter. If there is water in the Watermaster Desalter Replenishment Account to satisfy the Desalter Replenishment Obligation for the year, the New Yield shall be made available to the Appropriative Pool to satisfy a Replenishment Obligation consistent with section 6.3(c) herein.
- (e) New Yield is expected to result from a variety of conditions, including but not limited to enhanced Basin management, increased stormwater Recharge, induced Recharge from operation of the Desalters, injection, and changes in land use patterns. Watermaster has established an initial baseline quantity of stormflow Recharged in the Basin under historical conditions in the amount of 5,600 acre-feet per year. Any party to the Judgment may request Watermaster to re-examine this initial estimate of the baseline quantity and to adjust the quantity in accordance with best available technology and substantial evidence.

6.3 Accounting of Unallocated Agricultural Portion of Safe Yield.

- (a) In each year, the 82,800 acre-feet being that portion of the Safe Yield made available to the Agricultural Pool under the Judgment, shall be made available:
 - (i) To the Agricultural Pool to satisfy all demands for overlying Agricultural Pool lands;
 - (ii) To land use conversions that were completed prior to October 1, 2000;

- (iii) To land use conversions that have been completed after October 1, 2000; and
 - (iv) To the Early Transfer of 32,800 acre-feet from the Agricultural Pool to the Appropriative Pool in accordance with their pro-rata assigned share of Operating Safe Yield.
- (b) In the event actual Production by the Agricultural Pool exceeds 414,000 acre-feet in any five years, the Agricultural Pool shall procure sufficient quantities of Replenishment Water to satisfy over-Production obligations, whatever they may be.
- (c) In the event actual Production from the Agricultural Pool does not exceed 82,800 acre-feet in any one year or 414,000 acre-feet in any five years but total Production from all the uses set forth in section 6.3(a) above, exceeds 82,800 acre-feet in any year, the members of the Appropriative Pool shall procure sufficient quantities of Replenishment Water to satisfy over-Production obligations, whatever they may be. The cost of the Replenishment Water, if any, shall be borne by the Appropriators as follows:
- (i) For Fiscal Years 2001-2002 through Fiscal Year 2005-2006, the cost of Replenishment Water shall be borne by Appropriators in accordance with their proportionate assigned share of Operating Safe Yield. Thereafter, the Appropriative Pool shall reconsider its method for apportioning the cost of Replenishment Water, if any, and
 - (ii) Notwithstanding 6.3(c)(i) if the sum of the actual Production from the Agricultural Pool, plus the 32,800 acre-feet from the Early Transfer, plus the land use conversions, exceeds the sum of 82,800 acre-feet plus any New Yield not dedicated to Desalter Replenishment pursuant to section 7.4(b) herein by more than 10,000 acre-feet in any Fiscal Year after 2003-2004, the Appropriative Pool shall establish the basis for apportioning the cost of Replenishment Water, if any. Therefore, the Appropriative Pool's reconsideration of the method of allocating the cost of the Replenishment Water attributable to this section may occur earlier than 2006-2007. Watermaster's allocation of Replenishment Obligations pursuant to Section 6.3(c)(i) shall not prejudice a member of the Appropriative Pool from requesting another method of allocation under the last sentence of 6.3(c)(i) above or this section 6.3(c)(ii) on the basis of benefits

received including consideration of any necessary amendments of the Peace Agreement as may be required.

6.4 Conversion Claims. The following procedures may be utilized by any Appropriator:

- (a) Record of Unconverted Agricultural Acreage Watermaster shall maintain on an ongoing basis a record, with appropriate related maps, of all agricultural acreage within the Chino Basin subject to being converted to appropriative water use pursuant to the provisions of this subparagraph.
- (b) Record of Water Service Conversion. Any Appropriator who undertakes to permanently provide water service to any portion of a legal parcel subject to conversion shall report such change to Watermaster. Watermaster shall ensure that when a partial conversion occurs, that the water use on the acreage is properly metered. For all or any portion of the legal parcel that is proposed for conversion, Watermaster shall thereupon verify such change in water service and shall maintain a record and account for each Appropriator of the total acreage involved. Should, at any time, all or any portion of the converted acreage return to agricultural overlying use, Watermaster shall return such acreage that returns to agricultural use to unconverted status and correspondingly reduce or eliminate any allocation accorded to the Appropriator involved.

6.5 Recalculation of Safe Yield. The Safe Yield shall be recalculated in year 2010/11 based upon data from the ten-year period 2000/01 to 2009/10.

ARTICLE VII RECHARGE

7.0 Scope. This Article sets forth the standards that are applicable to Watermaster's review of Recharge actions by all persons that may be subject to the Judgment as well as Watermaster's efforts to administer, direct, and arrange for Recharge in accordance with the Judgment.

7.1 In General

- (a) Watermaster shall administer, direct and arrange for the Recharge of all water in a manner pursuant to the Judgment, the Peace Agreement and the OBMP; and in a manner that causes no Material Physical Injury to any party to the Judgment or the Chino Basin. Nothing herein shall be construed as committing a Party to provide Supplemental Water upon terms and conditions that are not deemed acceptable to that party. This means that no party to the Judgment shall be individually and independently obligated to purchase or acquire Supplemental Water on behalf of another party to the Judgment. [Peace Agreement § 5.1(e).] Applications to engage in Recharge activities shall be processed in accordance with the provisions of Article X using the forms provided by Watermaster attached hereto as Appendix 1.
- (b) Watermaster shall exercise its Best Efforts to:
- (i) Protect and enhance the Safe Yield of the Chino Basin through Replenishment and Recharge [Peace Agreement § 5.1(e).];
 - (ii) Ensure there is sufficient Recharge capacity for Recharge water to meet the goals of the OBMP and the future water supply needs within the Chino Basin [Peace Agreement § 5.1(e).];
 - (iii) Evaluate the long term Hydrologic Balance within all areas and subareas of the Chino Basin;
 - (iv) Make its initial report on the then existing state of Hydrologic Balance by July 1, 2003, including any recommendations on Recharge actions which may be necessary under the OBMP. Thereafter Watermaster shall make written reports on the long term Hydrologic Balance in the Chino Basin every two years;
 - (v) Use and consider the information provided in the reports under (iv) above, when modifying or updating the Recharge Master Plan and in implementing the OBMP;
 - (vi) Evaluate the potential or threat for any Material Physical Injury to any party to the Judgment or the Chino Basin, including, but not limited to, any Material Physical Injury that may result from any Transfer of water in storage or water rights which

is proposed in place of physical Recharge of water to Chino Basin in accordance with the provisions of section 5.3 of the Peace Agreement [Peace Agreement § 5.1(e).];

- (vii) Cooperate with owners of existing Recharge facilities to expand/improve/preserve Recharge facilities identified in the Recharge Master Plan; arrange for the construction of the works and facilities necessary to implement the quantities of Recharge identified in the OBMP Implementation Plan [Peace Agreement § 5.1(e)(ix)] and cooperate with appropriate entities to construct and operate the new Recharge facilities that are identified in the Recharge Master Plan;
 - (viii) Ensure that its Recharge efforts under the Recharge Master Plan are consistent with the Judgment, and the Peace Agreement;
 - (ix) Establish and periodically update criteria for the use of water from different sources for Replenishment purposes [Peace Agreement § 5.1(e)(v).];
 - (x) Ensure a proper accounting of all sources of Recharge to the Chino Basin [Peace Agreement § 5.1(e)(vi).];
 - (xi) Recharge the Chino Basin with water in any area where Groundwater levels have declined to such an extent that there is an imminent threat of Material Physical Injury to any party to the Judgment or the Basin [Peace Agreement § 5.1(e)(vii).];
 - (xii) Maintain long-term Hydrologic Balance between total Recharge and discharge within all areas and sub-areas [Peace Agreement § 5.1(e)(viii).]; and
 - (xiii) Use water of the lowest cost and the highest quality, giving preference as far as possible to the augmentation and the Recharge of native storm water. [Peace Agreement § 5.1(f).]
- (c) Table 1 to the OBMP Implementation Plan shall serve as the Watermaster Recharge Master Plan until amended by Watermaster. Watermaster will evaluate whether any modifications to the Recharge Master Plan shall be required on or before July 1, 2001. Thereafter, Watermaster will update the Recharge Master Plan, in a manner consistent with the Peace Agreement, a minimum of every five years thereafter or earlier if warranted

because of changed conditions. The fact that the first of the Watermaster reports under section 7.1(b)(iv) will not be made available until July 1, 2003 shall not alter Watermaster's obligations to prepare and evaluate the Recharge Master Plan as provided in this section 7.1(c).

- (d) Watermaster shall not own Recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. [Peace Agreement § 5.1(h).]
- (e) Watermaster may own and hold water rights in trust for the benefit of the parties to the Judgment. Subject to this exception, Watermaster shall not own land or interests in real property. [Peace Agreement § 5.1(h).] Watermaster shall obtain Court approval prior to acquiring any water rights in trust for the benefit of the parties to the Judgment. In addition, Watermaster shall conform all existing permits to ensure that title is held in trust for the benefit of the parties to the Judgment.
- (f) Watermaster shall arrange, facilitate and provide for Recharge by entering into contracts with appropriate persons, which may provide facilities and operations for physical Recharge of water as required by the Judgment and the Peace Agreement, or pursuant to the OBMP. Any such contracts shall include appropriate terms and conditions, including terms for the location and payment of costs necessary for the operation and maintenance of facilities, if any. [Peace Agreement § 5.1(h).]
- (g) Watermaster shall provide an annual accounting of the amount of Recharge and the location of the specific types of Recharge. [Peace Agreement § 5.1(j).]

7.2 Recharge of Supplemental Water. All Recharge of the Chino Basin with Supplemental Water shall be subject to Watermaster approval obtained by Application made to Watermaster in accordance with provisions of Article X. [Peace Agreement § 5.1(a).] In reviewing any such Application, Watermaster shall comply with the following.

- (a) Watermaster will ensure that any person may make Application to Watermaster to Recharge the Chino Basin with Supplemental Water pursuant to Article X, including the exercise of the right to offer to sell In-Lieu Recharge Water to Watermaster as provided in the Judgment and the Peace Agreement in a manner that is consistent with the OBMP and the law. [Peace Agreement § 5.1(b).]

- (b) Watermaster shall not approve an Application by any party to the Judgment under Article X if it is inconsistent with the terms of the Peace Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. [Peace Agreement § 5.1 (b).]
- (c) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Recharge of Supplemental Water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Recharge of Supplemental Water must be denied. [Peace Agreement § 5.1 (b).]

7.3 Sources of Replenishment Water. Supplemental Water may be obtained by Watermaster from any available source. Watermaster shall, however, seek to obtain the best available quality of Supplemental Water at the most reasonable cost for recharge in the Basin. It is anticipated that Supplemental Water for Replenishment of Chino Basin may be available at different rates to the various pools to meet their Replenishment Obligations. If such is the case, each pool will be assessed only that amount necessary for the cost of Replenishment Water to that pool, at the rate available to the pool, to meet its Replenishment Obligation. In this connection, available resources may include, but are not limited to:

- (a) Maximum beneficial use of Recycled Water, which shall be given a high priority by Watermaster [Judgment ¶ 49(a).];
- (b) State Project Water subject to applicable service provisions of the State's water service contracts [Judgment ¶ 49(b).];
- (c) Local Imported Water through facilities and methods for importation of surface and Groundwater supplies from adjacent basins and watersheds [Judgment ¶ 49(c).]; and
- (d) Available supplies of Metropolitan Water District water from its Colorado River Aqueduct. [Judgment ¶ 49(d).]

7.4 Sources of Desalter Replenishment Water. Notwithstanding the provisions of section 7.3 above, replenishment for the Desalters shall be provided from the following sources in the following order of priority [Peace Agreement § 7.5.]:

- (a) Dedications by purchasers of Desalted water through Transfer or assignment, some or all of their Production rights to Watermaster for the purpose of satisfying Desalter replenishment. Such dedications shall result in a reduction in replenishment assessments as provided in section 4.8 of these Rules and Regulations.
 - (b) Watermaster Desalter replenishment account composed of 25,000 acre-feet of water abandoned by Kaiser Ventures pursuant to the "Salt Offset Agreement" dated October 21, 1993, between Kaiser Ventures and the RWQCB, and other water previously dedicated by the Appropriative Pool.
 - (c) New Yield that may be made available to Watermaster through a combination of management programs, actions or facilities. On an annual basis, and beginning on July 1, 2003, Watermaster will credit the Desalter's replenishment account with any New Yield it determines has been developed after June 1, 2000;
 - (d) Safe Yield of the Basin; and
 - (e) Additional Replenishment Water purchased by Watermaster the costs of which shall be levied as an assessment by Watermaster.
- 7.5 Method of Replenishment. Watermaster may accomplish Replenishment by any reasonable method, including spreading and percolation, injection of water into existing or new facilities, in-lieu procedures and acquisition of unproduced water from members of the Non-Agricultural and Appropriative Pools. [Judgment ¶ 50.]
- 7.6 Accumulations. In order to minimize fluctuations in assessment and to give Watermaster flexibility in the purchase and spreading of Replenishment Water, Watermaster may make reasonable accumulations of Replenishment Water assessment proceeds. Interest earned on such retained funds shall be added to the account of the pool from which the funds were collected and shall be applied only to the purchase of Replenishment Water. [Judgment ¶ 56.]
- 7.7 In-Lieu and Other Negotiated Procedures. To the extent good management practices dictate that recharge of the Basin be accomplished by taking surface supplies of Supplemental Water in lieu of Groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, the following in-lieu procedures or other additional procedures as may be negotiated by

Watermaster and approved by the Watermaster Advisory Committee shall prevail [Judgment Exhibit "H" ¶ 11.]:

- (a) Designation of In-Lieu Areas. In-lieu areas may be designated by order of Watermaster upon recommendation or approval of the Watermaster Advisory Committee. Watermaster has previously designated the entire Chino Basin as an in-lieu area. In-lieu areas may be enlarged, reduced or eliminated by subsequent order, provided, however, that designation of an in-lieu area shall be for a minimum fixed term sufficient to justify necessary capital investment. However, should in-lieu Area No. 1, which has been established by the Court, be reduced or eliminated, it shall require prior order of the Court.

- (b) Method of Operation. Any member of the Appropriative Pool Producing water within a designated in-lieu area who is willing to abstain for any reason from Producing any portion of its share of Operating Safe Yield in any year, may offer such unpumped water to Watermaster on a form to be provided therefor. In such event, Watermaster shall purchase said water in place, in lieu of spreading Replenishment Water, which may be otherwise required to make up for over Production. The purchase price for in-lieu water shall be the lesser of:
 - (i) Watermaster's current cost of Replenishment Water, plus the cost of spreading;
or
 - (ii) The cost of supplemental surface supplies to the Appropriator, less
 - a) said Appropriator's average cost of Groundwater Production, and
 - b) the applicable Production assessment where the water is Produced.

ARTICLE VIII STORAGE

8.0 Scope. This Article sets forth Watermaster's obligations and responsibilities regarding the management, regulation and control of storage within the Basin.

8.1 In General

- (a) Watermaster Control. A substantial amount of available Groundwater storage capacity exists in the Basin that is not used for storage or regulation of Basin Waters. It is essential that the use of storage capacity of the Basin be undertaken only under Watermaster control and regulation so as to protect the integrity of the Basin. Watermaster will exercise regulation and control of storage primarily through the execution of Groundwater Storage Agreements. [Judgment ¶ 11.]
- (b) Categories of Groundwater Storage Agreements. There are different categories of storage and different types of Groundwater Storage agreements. Only those Groundwater Storage agreements defined as "Qualifying Storage agreements" require new Watermaster approval. The agreements identified in section 8.1(f)(iii) herein do not require new Watermaster approval. Qualifying Storage agreements will be processed by Watermaster in accordance with the forms provided by Watermaster and attached hereto as Appendix 1.
- (c) Court Notification and Approval. Before it is effective, any Storage and Recovery Agreement entered into pursuant to a Storage and Recovery Program shall first receive Court Approval. With respect to all other Groundwater Storage Agreements, Watermaster shall notify the Court after approval.
- (d) Relationship Between Recapture and Storage. Recapture of water held in a storage account will generally be approved by Watermaster as a component of and coincident with a Groundwater Storage Agreement for Qualifying Storage. However, an Applicant for Qualifying Storage may request, and Watermaster may approve, a Groundwater Storage Agreement where the plan for recovery is not yet known. In such cases, the Applicant may request Watermaster approval of the Qualifying Storage only and subsequently submit and process an independent Application for Recapture under the provisions of Article X.
- (e) Storage of Safe Yield as Carry-Over Water. Any member of the Appropriative Pool or member of the Non-Agricultural Pool who Produces less than its assigned share of Operating Safe Yield or Safe Yield, respectively, may carry such unexercised right forward for exercise in subsequent years. Watermaster shall be required to keep an accounting of Carry-Over Water in connection with said Carry-Over Rights. The first water Produced in any subsequent year, shall be deemed to be in exercise of that Carry-Over Right. If the

aggregate remaining Carry-Over Water available to any member of the Appropriative Pool, or member of the Non-Agricultural Pool with Safe Yield, in a given year exceeds its assigned share of Operating Safe Yield after its demands are met, such Producer shall, as a condition of preserving such Excess Carry-Over Water execute a Local Storage Agreement with Watermaster. A member of the Appropriative Pool shall have the option to pay the gross assessment applicable to said Carry-Over Right in the year in which it occurred. [Judgment Exhibit "G," and Exhibit "H" ¶ 12.]

- (f) Storage of Supplemental Water. The rules and procedures for the storage of Supplemental Water are set forth as follows.
- (i) Supplemental Water. Each party, its officers, agents, employees, successors, and assigns, has been enjoined and restrained from storing Supplemental Water in Chino Basin for withdrawal, or causing withdrawal of water stored, except pursuant to the terms of a Groundwater Storage Agreement with Watermaster. Any Supplemental Water recharged by any person within Chino Basin, except pursuant to these Rules and Regulations and a Groundwater Storage Agreement, is deemed abandoned and shall not be considered Stored Water. [Judgment ¶ 14.]
- (ii) Application for Storage of Supplemental Water. Watermaster will ensure that any person, including but not limited to the State of California and the Department of Water Resources may make Application to Watermaster to store and Recover water from the Chino Basin as provided herein in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an Application to store and Recover water if it is inconsistent with the terms of the Peace Agreement or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the storage and Recovery of water shall be reasonably and fully mitigated as a condition of approval. In the event the Material Physical Injury cannot be mitigated, the request for storage and Recovery must be denied. [Peace Agreement § 5.2 (a) (iii).] Applications for the storage of Supplemental Water shall be processed in accordance with the provisions of Article X.
- (iii) Pre-existing Groundwater Storage Agreements. In accordance with the Peace Agreement, pre-existing Groundwater Storage Agreements are revived and extended as follows:

- a) Any Local Storage Agreement that would have expired pursuant to its terms on or before July 1, 2000 and which is determined to have water in storage account is revived and extended by these Rules and Regulations until July 1, 2005 subject to the limitations set forth in these Rules and Regulations; and
- b) In addition, a Producer that has a Local Storage Agreement for Supplemental Water that will expire after July 1, 2000 pursuant to its terms and that has Supplemental Water in a storage account as of its original date of termination, shall be revived and extended by these Rules and Regulations to July 1, 2005. The extension shall only be valid for that quantity of Supplemental Water that is then in the storage account at the end of the term set forth in the Local Storage Agreement.

(iv) Quantification of Supplemental Water Held in Local Storage on July 1, 2000.

- a) Quantification of Groundwater Held in Local Storage. Upon the request of any Producer, Watermaster shall quantify the amount of Groundwater held in Local Storage by that Producer. Groundwater held in Local Storage by a party to the Judgment, the majority of whose stock is owned by another party to the Judgment, may be treated as the Stored Water of the majority shareholder for purposes of quantification of the amount of such Groundwater as Supplemental Water under this section 8.1(f)(iv) only.
- b) Procedure for Quantification. On or before May 1, 2001, any party may submit a request to Watermaster for the quantification of water held in Local Storage as Supplemental Water. Watermaster shall evaluate pursuant to d) below all written requests filed by any Producer and shall make its determination regarding each request on or before May 31, 2001. Watermaster shall provide a minimum of thirty(30) days advance written notice to all parties of the date to submit requests. Watermaster shall consider all written requests concurrently.
- c) Limitations. Watermaster's quantification of Groundwater in Local Storage pursuant to a Local Storage Agreement as of July 1, 2000 as

Supplemental Water and Supplemental Water held in Local Storage as provided in section 8.1(f)(iii) above shall not be subject to the 50,000 acre-foot limitation on Supplemental Water held in Local Storage set forth in the Peace Agreement, section 5.2(b)(iv)(1) and these Rules and Regulations. However, all other Supplemental Water held in a Local Storage Account not quantified as such by Watermaster by May 31, 2001 shall be conclusively presumed to be Basin Water which shall also be subject to a Local Storage Agreement. While a party that obtains a quantification of Supplemental Water pursuant to this section is exempt from the 50,000 acre-foot limitation on the cumulative quantity of Supplemental Water that may be held in Local Storage, the exemption is limited. First, a party that obtains a Watermaster determination that quantifies some quantity of Groundwater as Supplemental Water pursuant to this Section shall not be entitled to replace the Supplemental Water Produced from Local Storage with new Supplemental Water without regard to the 50,000 acre-foot limitation on Local Storage of Supplemental Water. This means that the 50,000 acre-foot limitation applies to all Supplemental Water that is physically Recharged and stored in the Basin under a Local Storage Agreement after July 1, 2000. A Producer shall not have the right to replace the Groundwater quantified as Supplemental Water under this Section with other Supplemental Water following its initial Transfer or Recapture from Local Storage. Second, the recovery of the Supplemental Water stored under this provision by any Producer shall not cause Material Physical Injury to any party to the Judgment or the Basin.

d) Calculation. For users of Supplemental Water, the quantity of Supplemental Water held by a Producer in Local Storage as of July 1, 2000 is deemed to be the lesser of:

- 1) the quantity of water held by the Producer in Local Storage ; or
- 2) the quantity of Supplemental Water used by the Producer prior to July 1, 2000.

- (g) Rules and Procedures in General
- (i) Any person desiring to store Supplemental Water in the Basin shall make appropriate Application therefor with the Watermaster pursuant to the provisions of this Article and Article X. Supplemental Water stored or Recharged in the Basin, except pursuant to a Groundwater Storage Agreement with Watermaster, shall be deemed abandoned and not classified as Stored Water. [Judgment ¶ 14.]
 - (ii) Guidelines and Criteria. Any person, whether a party to the Judgment or not, may make reasonable beneficial use of the available groundwater storage capacity of Chino Basin for storage of Water pursuant to written agreement with the Watermaster as provided herein. [Judgment ¶ 12.]
 - (iii) In the allocation of storage capacity, the needs and requirements of lands overlying Chino Basin and the owners of rights in the Safe Yield or Operating Safe Yield of the Basin shall have priority and preference over storage for export. [Judgment ¶ 12.]
 - (iv) It is an objective in management of the Basin's waters that no Producer shall be deprived of access to the Basin's waters by reason of unreasonable pumping patterns, nor by regional or localized Recharge of Replenishment Water, insofar as such result may be practically avoided. [Judgment Exhibit "T" ¶ 1(a).]
 - (v) Maintenance and improvement of water quality shall be given prime consideration. [Judgment Exhibit "T" ¶ 1(b).]
 - (vi) Financial feasibility, economic impact and the cost and optimum utilization of the Basin's resources and the physical facilities of the parties to the Judgment shall be considered equal in importance to water quantity and quality parameters. [Judgment Exhibit "T" ¶ 1(c).]
- (h) Contents of Groundwater Storage Agreements. Each Groundwater Storage Agreement shall include but not be limited to the following components [Judgment Exhibit "T" ¶ 3.]:
- (i) The quantities and the term of the storage right, which shall specifically exclude credit for any return flows;

- (ii) A statement of the priorities of the storage right as against overlying, Safe Yield uses, and other storage rights;
 - (iii) The delivery rates, together with schedules and procedures for spreading, injection or in-lieu deliveries of Supplemental Water for direct use;
 - (iv) The calculation of storage water losses and annual accounting for water in storage; and
 - (v) The establishment and administration of withdrawal schedules, locations and methods.
- (i) Accounting. Watermaster shall calculate additions, extractions and losses of all Stored Water in Chino Basin, and any losses of water supplies or Safe Yield of Chino Basin resulting from such Stored Water, and keep and maintain for public record, an annual accounting thereof. [Judgment ¶ 29.]
 - (j) No Material Physical Injury. Watermaster will ensure that any party to the Judgment may Recapture water in a manner consistent with the Peace Agreement, the OBMP, the Judgment and these Rules and Regulations. Watermaster shall not approve a Recapture plan if it is inconsistent with the terms of Peace Agreement or will cause Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Recapture of water by any person shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Recapture must be denied.

8.2 Local Storage: Special Considerations. Under a Local Storage Agreement with Watermaster, every party to the Judgment shall be permitted to store its Excess Carry-Over Water and Supplemental Water in the Chino Basin according to the following provisions:

- (a) Until July 1, 2005, Watermaster shall ensure that: (a) the quantity of water actually held in local storage under a Local Storage Agreement with Watermaster is confirmed and protected and (b) each party to the Judgment shall have the right to store its Excess Carry-Over Water. Thereafter, a party to the Judgment may continue to Produce the actual quantity of Excess Carry-Over Water and Supplemental Water held in its storage account,

subject only to the loss provisions set forth herein. All Producers with a Local Storage Agreement for either Excess Carry-Over Water or Supplemental water shall be deemed to have received an extension of the applicable term in each of their respective Local Storage Agreements as provided in section 8.1(f)(iii)(a-b) above. However, such extensions shall be subject to the limitations set forth herein; e.g. the requirement that Local Storage does not cause Material Physical Injury, and the 50,000 acre-foot limitation on the cumulative total of Supplemental Water that may be placed in Local Storage after July 1, 2000. However, a Producer that obtains a determination regarding a request for classification of some quantity of Groundwater as Supplemental Water pursuant to section 8.1 above, shall also be deemed to have received an extension of their Local Storage Agreement until July 1, 2005, but only for that Supplemental Water actually stored in the Basin as of July 1, 2000. A Producer shall not have the right to replace the Groundwater classified as Supplemental Water pursuant to section 8.1 with other Supplemental Water following its initial Production from Local Storage without regard to the 50,000 acre-foot limitation.

- (b) Until July 1, 2005 or for such additional period as Watermaster, in its discretion, may establish, any party to the Judgment may make Application to Watermaster for a Local Storage Agreement pursuant to the provisions of this Article and Article X, whereby it may store Supplemental Water in the Chino Basin. [Peace Agreement § 5.2(b)(ii).]
- (c) In accordance with Article X, Watermaster shall provide written notice to all interested parties of the proposed Local Storage Agreement prior to approving the agreement.
- (d) Watermaster shall approve the storage of Supplemental Water under a Local Storage Agreement so long as: (1) the total quantity of Supplemental Water authorized to be held in Local Storage under all then-existing Local Storage Agreements, other than amounts classified as Supplemental Water under the procedure set forth in section 8.1 above, for all parties to the Judgment does not exceed the cumulative total of 50,000 acre-feet; (2) the party to the Judgment making the request provides their own Recharge facilities for the purpose of placing the Supplemental Water into Local Storage; (3) the agreement will not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed agreement with conditions that mitigate any threatened or potential Material Physical Injury. [Peace Agreement § 5.2(b)(iv).]

- (e) There shall be a rebuttable presumption that the Local Storage Agreement for Supplemental Water does not result in Material Physical Injury to a party to the Judgment or the Basin. [Peace Agreement § 5.2(b)(v).]
- (f) In the event more than one party to the Judgment submits a request for an agreement to store Supplemental Water pursuant to a Local Storage Agreement, Watermaster shall give priority to the first party to file a bona fide written request which shall include the name of the party to the Judgment, the source, quantity and quality of the Supplemental Water, an identification of the party to the Judgment's access to or ownership of the Recharge facilities, the duration of the Local Storage and any other information Watermaster shall reasonably request. Watermaster shall not grant any person the right to store more than the then-existing amount of available Local Storage. The amount of Local Storage available for the storage of Supplemental Water shall be determined by subtracting the previously approved and allocated quantity of storage capacity for Supplemental Water from the cumulative maximum of 50,000 acre-feet. [Peace Agreement § 5.2(b)(vii).] This means Watermaster shall not approve requests for the storage of Supplemental Water in excess of the cumulative total of 50,000 acre-feet limitation. Priorities among the parties to the Judgment shall be on the basis that the completed Applications filed first in time under the provisions of Article X shall have a priority in right up to the amount of the quantity approved by Watermaster.
- (g) Any Producer that does not have a Local Storage Agreement extended by the terms of section 8.1 above, may file an Application with Watermaster for a Local Storage Agreement to place Excess Carry-Over Water in a Local Storage account. The Excess Carry-Over Water may be held in Local Storage without regard to the 50,000 acre-feet cumulative limitation on Supplemental Water until July 1, 2005. Thereafter, or at such later date that Watermaster may, in its discretion, establish, Producers shall obtain a Local Storage Agreement with Watermaster to store Excess Carry-Water in a Local Storage Account.
- (h) After July 1, 2005, Watermaster shall have discretion to place reasonable limits on the further accrual of Excess Carry-Over Water and Supplemental Water in Local Storage. However, Watermaster shall not limit the accrual of Excess Carry-Over Water for Fontana Union Mutual Water Company and Cucamonga County Water District when accruing Excess Carry-Over Water in Local Storage pursuant to the *Settlement Agreement Among Fontana Union Water Company, Kaiser Steel Resources Inc., San Gabriel Valley*

Water Company and Cucamonga County Water Districts dated February 7, 1992, to a quantity less than 25,000 acre-feet for the term of the Peace Agreement. [Peace Agreement § 5.2(b)(x).]

- (i) Watermaster shall evaluate the need for limits on water held in Local Storage to determine whether the accrual of additional Local Storage by the parties to the Judgment should be conditioned, curtailed or prohibited if it is necessary to provide priority for the use of storage capacity for those Storage and Recovery Programs that provide broad mutual benefits to the parties to the Judgment as provided in this paragraph and section 5.2(c) of the Peace Agreement. [Peace Agreement § 5.2(b)(xi).]
- (j) Watermaster shall set the annual rate of loss from Local Storage for parties to the Judgment at zero until October 1, 2005. Thereafter the rate of loss from Local Storage for parties to the Judgment will be 2% until recalculated based upon the best available scientific information. Watermaster may, at its sole discretion, set the rate of loss from storage for parties who are not parties to the Judgment. Losses shall be deducted annually from the storage accounts. [Peace Agreement § 5.2(b)(xii).]
- (k) Watermaster shall allow water held in storage to be Transferred pursuant to the provisions of section 5.3 of the Peace Agreement as provided in Article X. Storage capacity is not Transferable. [Peace Agreement § 5.2(b)(xiii).]
- (l) Monetary payment shall not be accepted as a form of mitigation for Material Physical Injury where the injury is not confined to a specific party or parties. Where the Material Physical Injury is confined to a specific party or parties, monetary payment may be accepted as a form of mitigation, if acceptable to the affected party or parties.
- (m) Applicants for Local Storage of Supplemental Water agreements shall submit such Application prior to initiation of the placement of the Supplemental Water into storage except as provided in sections 8.1 and 8.2 above.
- (n) Any Supplemental Water stored or recharged in the Basin, except pursuant to a Local Storage Agreement for Supplemental Water with Watermaster, shall be deemed abandoned and not classified as Stored Water. [Judgment ¶ 14.]

8.3 Groundwater Storage and Recovery Program: Special Considerations. The parties, through Watermaster, may initiate a regional Storage and Recovery (sometimes called "conjunctive use")

Program, for the mutual benefit of the Appropriators and the Non-Agricultural Pool in the Chino Basin according to the following provisions:

- (a) Watermaster will ensure that no person shall store water in, and recover water from the Basin, other than pursuant to a Local Storage Agreement, without a Storage and Recovery agreement with Watermaster [Peace Agreement § 5.2(c)(i).];
- (b) A proposed Applicant for a Storage and Recovery Program must submit the information set forth in Article X to Watermaster prior to Watermaster's consideration of an Application for a Storage and Recovery agreement;
- (c) As a precondition of any project, program or contract regarding the use of Basin storage capacity pursuant to a Storage and Recovery Program, Watermaster shall first request proposals from qualified persons [Peace Agreement § 5.2(c)(iii).];
- (d) Watermaster shall be guided by the following criteria in evaluating any request to store and recover water from the Basin by a party to the Judgment or any person under a Storage and Recovery Program.
 - (i) The initial target for the cumulative quantity of water held in storage is 500,000 acre-feet in addition to the existing storage accounts. The 500,000 acre-feet target may be comprised of any combination of participants and is in excess of up to an additional 50,000 acre-feet of Supplemental Water and Excess Carry-Over Rights that may be stored under Local Storage Agreements.
 - (ii) Watermaster shall prioritize its efforts to regulate and condition the storage and recovery of water developed in a Storage and Recovery Program for the mutual benefit of the parties to the Judgment and give first priority to Storage and Recovery Programs that provide broad mutual benefits.
[Peace Agreement § 5.2(c)(iv).];
- (e) The members of the Appropriative Pool and the Non-Agricultural Pool shall be exclusively entitled to the compensation paid for a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (collectively "compensation") with the benefits of such compensation to

be spread as broadly as possible as directed by the Non-Agricultural and the Appropriative Pools [Peace Agreement § 5.2(c)(v).];

- (f) The compensation received from the use of available storage capacity under a Storage and Recovery Program, may be used to offset the Watermaster's cost of operation, to reduce any assessments on the parties to the Judgment within the Appropriative and Non-Agricultural Pools, and to defray the costs of capital projects as may be requested by the members of the Non-Agricultural Pools and the Appropriative Pool [Peace Agreement § 5.2(c)(vi).];
- (g) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by storage and recovery of water, whether Local Storage and recovery or pursuant to a Storage and Recovery Program, shall be reasonably and fully mitigated as a condition of approval [Peace Agreement §§ 5.2(a)(iii) and 5.2(c)(viii) (labeled "(xiii)").];
- (h) Watermaster reserves discretion to negotiate appropriate terms and conditions or to deny any request to enter into a Storage and Recovery Program Agreement. With respect to persons who are not parties to the Judgment, Watermaster reserves complete discretion to ensure that maximum compensation, as defined in section (e) above, is received. Watermaster shall base any decision to approve or disapprove any proposed Storage and Recovery Program Agreement upon the record as provided in Article X. However, it may not approve a proposed Storage and Recovery Program Agreement unless it has first imposed conditions to reasonably and fully mitigate any threatened or potential Material Physical Injury [Peace Agreement § 5.2(c)(ix).];
- (i) Any party to the Judgment may seek review of the Watermaster's decision regarding a Storage and Recovery Program Agreement as provided in Article X;
- (j) Nothing herein shall be construed as prohibiting the export of Supplemental Water stored under a Storage and Recovery Program and pursuant to a Storage and Recovery Agreement; and
- (k) The Parties shall indemnify and defend the State of California and the members of the Agricultural Pool against any lawsuit or administrative proceedings, without limitation, arising from Watermaster's adoption, approval, management, or implementation of a Storage and Recovery Program.

8.4 Recapture.

- (a) All Recapture of water held in a storage account under a Groundwater Storage Agreement shall be subject to the requirement that the Recovery of the water not result in Material Physical Injury to a party to the Judgment or the Basin.
- (b) Recapture of water held in a Local Storage Account that pre-exists the adoption of these Rules and Regulations and that was extended by Watermaster in accordance with Article V of the Peace Agreement and these Rules and Regulations until July 1, 2005, shall be in accordance with the provisions of the plan for Recapture previously approved by Watermaster. Any amendments to an approved Recapture plan shall require additional Watermaster's approval under the provisions of Article X .
- (c) A person with an approved plan for Recapture shall have the right to process amendments to the previously approved plan in accordance with the provisions of Article X.

**ARTICLE IX
TRANSFERS**

- 9.0 Scope. Any Transfer shall be made only in accordance with the Judgment, the Peace Agreement section 5.3, the OBMP and this Article IX.
- 9.1 In General. Watermaster will ensure that any party to the Judgment may Transfer water in a manner that is consistent with the Judgment, the Peace Agreement, the OBMP and the law. Watermaster shall approve a Transfer if it is consistent with the terms of the Peace Agreement, and will not cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Transfer of water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Transfer must be denied. Upon receipt of written request by Watermaster, a party to the Judgment shall exercise Best Efforts to provide Watermaster with a preliminary projection of any anticipated Transfer of Production within the Year.
- 9.2 Application to Transfer. A party to the Judgment may make Application to Watermaster to Transfer water as provided in the Judgment under the procedures set forth in Article X.

- (a) Watermaster shall provide reasonable advance written notice to all the Active Parties of a proposed Transfer, prior to approving the Transfer as provided in Article X.
- (b) Watermaster shall approve the Transfer of water as provided in the Judgment so long as the individual Transfer does not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed Transfer with conditions that fully and reasonably mitigate any threatened or potential Material Physical Injury.
- (c) There shall be a rebuttable presumption that the Transfer and the Production by the transferee does not result in Material Physical Injury to a party to the Judgment or the Basin.
- (d) Watermaster shall base any decision to approve or disapprove any proposed Transfer upon the record after considering potential impacts associated with the individual Transfer alone and without regard to impacts attributable to any other Transfers. [Peace Agreement § 5.3(b)(v).] However, nothing herein shall be construed as impairing or restraining Watermaster's duty and discretion with regard to cumulative impacts in the context of section 9.3.
- (e) Transfers which occur between the same parties in the same year shall be considered as a single Transfer for the purpose of determining Material Physical Injury.

9.3 Integrated Watermaster Review. In reviewing Transfers under these Rules and Regulations, Watermaster shall exercise reasonable discretion. Watermaster shall review each proposed Transfer based upon the record before it and considering the potential impacts of the proposed Transfer alone. However, Watermaster shall also consider the cumulative impacts of Transfers generally when carrying out its responsibilities to implement the OBMP and Recharge and monitoring programs authorized by these Rules and Regulations or the Judgment.

- (a) Watermaster will evaluate the cumulative physical impact of Transfers on the Basin, if any, by July 1, 2003, and a minimum of once every two years thereafter.
- (b) Watermaster will take the results of its evaluation into account when carrying out its obligations under section 7.1 of these Rules and Regulations.

9.4 Transfer of Non-Agricultural Pool Production Rights. Watermaster shall approve the Transfer or lease of the quantified Production rights of Non-Agricultural Producers within the Non-Agricultural Pool subject to the provisions of section 9.2(b) above. The right to Transfer within the pool includes the right to lease water to other members of the Non-Agricultural Pool. In addition, the parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program.

9.5 Early Transfer.

- (a) Pursuant to the Peace Agreement, Watermaster approved an Early Transfer of water to the Appropriative Pool in an amount not less than 32,800 acre-feet per year. The quantity of water subject to Early Transfer under this section shall be the greater of (i) 32,800 acre-feet or (ii) 32,800 acre-feet plus the actual quantity of water not Produced by the Agricultural Pool for that Fiscal Year that is remaining after all the land-use conversions are satisfied pursuant to section 5.3(h) of the Peace Agreement.
- (i) The Transfer shall not limit the Production right of the Agricultural Pool under the Judgment to Produce up to 82,800 acre-feet of water in any year or 414,000 acre-feet in any five years as provided in the Judgment. [Peace Agreement § 5.3(g)(ii).]
- (ii) The combined Production of all parties to the Judgment shall not cause a Replenishment assessment on the members of the Agricultural Pool. The Agricultural Pool shall be responsible for any Replenishment obligation created by the Agricultural Pool Producing more than 414,000 acre-feet in any five-year period. [Peace Agreement § 5.3(g)(iii).]
- (iii) The Appropriative Pool shall procure sufficient quantities of Replenishment Water to satisfy Replenishment Obligations pursuant to § 6.3(c) of these Rules and Regulations.
- (iv) Nothing herein shall be construed as modifying the procedures or voting rights within or by the members of the Agricultural Pool. [Peace Agreement § 5.3(g)(v).]

(b) The amount of water converted from agricultural use to urban use prior to execution of the Peace Agreement was 2.6 acre-feet per acre, with 1.3 acre-feet per acre being allocated collectively to all members of the Appropriative Pool with an assigned share of Operating Safe Yield and 1.3 acre-feet per acre being allocated to that Appropriator providing service for that urban use. The rate of 2.6 acre-feet per acre shall be changed to a total of 2.0 acre-feet per acre, all of which shall be allocated upon the conversion of the land use to that party to the Judgment which is a member of the Appropriative Pool, on the Effective Date of the Peace Agreement, and whose Sphere of Influence or authorized service area contains the land ("purveyor"). Upon such conversion of water use the purveyor will pledge that the amount of water needed for such urban land use, when such urban land use is established, up to 2.0 acre-feet of water per acre of land per year will be made available for service for such converted land by purveyor under its then existing standard laws, regulations, rules and policies, or for service arranged by such purveyor, subject only to prohibition of such service by a federal, state agency or court with jurisdiction to enforce such prohibition. The owner of such converted land shall have the right to enforce such pledge by specific performance or writ of mandate under the terms of the Peace Agreement. No monetary damages shall be awarded.

9.6 Voluntary Agreement. The members of the Agricultural Pool, including the State of California, shall have the right to engage in a voluntary agreement with an Appropriator which has a service area contiguous to or inclusive of the agricultural land, to provide water allocated from the Agricultural Pool to the overlying land for agricultural use on behalf of the member of the Agricultural Pool unless otherwise prohibited by general law. The Appropriator providing service shall be entitled to a pumping credit to offset Production pursuant to the Peace Agreement section 5.3(1).

9.7 Assignment of Overlying Rights. In addition to the Voluntary Agreement under section 9.6 above, should an Appropriator take an assignment of rights from a Non-Agricultural Pool member, the agreement shall provide that the Appropriator may undertake to provide water service to such overlying land, but only to the extent necessary to provide water service to said overlying lands. Watermaster shall make available to members of the Non-Agricultural Pool and/or Appropriative Pool, a standard form which shall be completed and filed with Watermaster. Any assignment, lease and/or license shall be ineffective unless provided on the standard form approved by Watermaster and filed with Watermaster. [Based on Judgment Exhibit "H" ¶ 13; Exhibit "G" ¶ 6.]

ARTICLE X
APPLICATIONS, CONTESTS AND COMPLAINTS

- 10.0 Purpose. This Article sets forth the Watermaster rules and procedures for processing requests by a person for: (i) Watermaster approval of Recharge and Transfer; (ii) Qualifying Storage and Recapture; (iii) amendments to previously approved Applications; (iv) reimbursement or a credit for costs incurred by a party to the Judgment in furtherance of the OBMP; and (v) a Complaint for redress arising from an alleged Material Physical Injury to a party to the Judgment or the Basin. However, the procedures described in this Article X shall not be construed to apply to Watermaster actions, decisions, or rules other than as expressly set forth herein. All proceedings hereunder shall be conducted in an expeditious manner.
- 10.1 Notice and Opportunity to be Heard. Watermaster shall provide reasonable notice and opportunity to be heard to any person requesting Watermaster review or approval of any matter arising under this Article.
- 10.2 Judicial Review.
- (a) The Complaint procedures set forth in this Article X are not intended to constitute an exclusive remedy or constitute a requirement that a party to the Judgment exhaust this discretionary remedy. However, a party to the Judgment may elect to avail itself of the procedures set forth herein by filing a Complaint and requesting relief from any actual or threatened Material Physical Injury to any person or to the Basin where the alleged injury arises from the Recharge, Transfer or Qualifying Storage or Recapture of water by any person other than Watermaster.
 - (b) Once a party to the Judgment elects to pursue redress under the provisions of this Article, it shall exhaust this process until conclusion unless there is a sudden, unexpected event or emergency that causes a need for immediate judicial review or in the event that the Watermaster has failed to take action on a longstanding request. Thus, other than in the event of an emergency or where Watermaster has engaged in undue delay, a party to the Judgment may not seek judicial review of a Watermaster action on a pending Application or Complaint until the Watermaster Board has taken final action under the provisions of

this Article. However, the procedures described in this Article X shall not preclude any party from seeking judicial review of any action, decision or rule of Watermaster in accordance with paragraph 31 of the Judgment.

10.3 Applications for Watermaster Approval: In General. Any party to the Judgment requesting approval by Watermaster for the Recharge, Transfer, Qualifying Storage or Recapture of water in the Basin, or reimbursements or credits against OBMP Assessments, or any person requesting approval of an agreement to participate in a Storage and Recovery Program, may make Application to Watermaster as provided in these Rules and Regulations.

- (a) Requests for Watermaster approval shall be processed by Application to the Watermaster.
- (b) All Applications shall be submitted to Watermaster in compliance with the requirements set forth in this Article. Approved forms for use by persons requesting Watermaster approval pursuant to this section are attached hereto as Appendix 1. Watermaster shall have no obligation to process incomplete Applications.
- (c) No person shall obtain a right to engage in the activities subject to an Application to Watermaster under these Rules and Regulations or the Judgment unless and until the proposed action is approved by Watermaster as provided herein.
- (d) Upon approval by Watermaster, the person shall have the right to proceed in accordance with the terms and conditions of the Watermaster approval. The rights of a party shall be construed consistent with the Judgment and subject to the terms and conditions set forth in Watermaster's approval.

10.4 Recharge Applications. Any party to the Judgment may make a request for Watermaster approval to engage in Recharge by submitting an Application to Watermaster that includes the following information.

- (a) The identity of the person proposing to engage in Recharge;
- (b) The quantity of water to be Recharged;
- (c) The quality of water to be Recharged;

- (d) The duration of the Recharge;
- (e) The method of the Recharge; and
- (f) The facilities to be used in the Recharge, and their location.

10.5 Transfer Applications. Any party to the Judgment may request Watermaster's approval for a Transfer by submitting an Application to Watermaster. A party to the Judgment that Produces water may in the same Fiscal Year request approval of a Transfer to offset all or a portion of its Replenishment Obligation, subject to the Watermaster's authority to approve or reject the Application under the provisions of this Article. An Application for Transfer shall include the following information:

- (a) The identity of the transferee and transferor;
- (b) The maximum quantity of water to be Transferred;
- (c) The duration of the Recovery of the quantity of water Transferred;
- (d) The location of the Production facilities from which the water will be Transferred, if known;
- (e) The location of the Production facilities from which the Transferred water will be Recaptured and Produced, if known; and
- (f) The rate of extraction at which the Transferred water will be Recaptured and Produced.

10.6 Qualifying Storage Agreements. A party to the Judgment may request Watermaster's approval of a Local Storage Agreement to store Supplemental Water, or, after July 1, 2005, a party to the Judgment may request Watermaster's approval of the accumulation of Excess Carry-Over Water in the event the party's aggregate Carry-Over Water exceeds its share of assigned Operating Safe Yield or Safe Yield. Prior to July 1, 2005, a party to the Judgment shall also be required to obtain a Local Storage Agreement to store Excess Carry-Over Water, and Watermaster shall approve such agreements under uniform terms and conditions. In addition, so long as there is then less than 50,000 acre-feet of Supplemental Water that was placed in Local Storage after July 1, 2000, a party to the Judgment's request to store Supplemental Water under a Local Storage Agreement shall be approved by Watermaster. The Applicant may include a plan for Recapture within the

request for approval of the Qualifying Storage or subsequently identify the proposed plan for Recapture under an independent Application for Recapture or combine the request for subsequent approval in an Application for Transfer.

- (a) Any party to the Judgment may file an Application to store Supplemental Water pursuant to a Local Storage Agreement. The Application shall include the following information:
- (i) The identity of the person(s) that will Recharge, Store and Recover the water;
 - (ii) The quantity of Supplemental Water to be Stored and Recovered;
 - (iii) The proposed schedule and method for the Recharge of water for Storage, if any;
 - (iv) The proposed schedule for Recovery, if any;
 - (v) The location of the Recharge facilities through which the Stored water will be Recharged, if any;
 - (vi) The location of the Production facilities through which the Stored water will be Recovered, if known; and
 - (vii) The water levels and water quality of groundwater in the areas likely to be affected by the storage and Recovery.
- (b) Each Producer shall have the right to store its un-Produced Carry-Over Water in the Basin. Excess Carry-Over Water placed into Local Storage after July 1, 2005 shall require a Local Storage Agreement with Watermaster. A Producer may file an Application prior to July 1, 2005 for a Local Storage Agreement for Excess Carry-Over Water that will be placed into Local Storage after July 1, 2005. Such an Application shall include the following information:
- (i) The identity of the person(s) that will store and Recover the Carry-Over Water;
 - (ii) The quantity of Carry-Over Water to be stored and Recovered;
 - (iii) The proposed schedule for the Recovery, to the extent known;

- (iv) The location of the Production facilities through which the stored Carry-Over Water will be Recovered, to the extent known; and
- (v) The water levels and water quality of Groundwater in the areas likely to be affected by the Production of the stored Carry-Over Water.

10.7 Storage and Recovery Program. Any person may request Watermaster's approval of an Agreement to participate in a Storage and Recovery Program by submitting an Application to Watermaster that, at a minimum, includes the following information:

- (a) The identity of the person(s) that will Recharge, store and Recover the water as well as its ultimate place of use;
- (b) The quantity of water to be Stored and Recovered;
- (c) The proposed schedule for the Recharge of water for storage, if any;
- (d) The proposed schedule and method for Recovery;
- (e) The location of the Recharge facilities through which the Stored Water will be Recharged;
- (f) The location of the Production facilities through which the Stored Water will be Recovered;
- (g) The water levels and water quality of the Groundwater in the areas likely to be affected by the Storage and Recovery, if known; and
- (h) Any other information that Watermaster requires to be included.

10.8 Recapture. Any person may file an Application for approval of its Recovery of water held in storage. Recapture of water may be approved by Watermaster as a component of and coincident with a request for approval of Qualifying Storage or a Transfer. However, an Applicant for Qualifying Storage may request, and Watermaster may approve, a Groundwater Storage Agreement where the plan for Recovery is not yet known. An Application for Recapture shall include the following information:

- (a) The identity of the person(s) that Recharged and stored the water;
- (b) The identity of the person(s) that will Recover the water as well as its ultimate place of use;
- (c) The quantity of water to be Recovered;
- (d) The proposed schedule for Recovery;
- (e) The location of the Production facilities through which the Stored Water will be Recovered;
- (f) The existing water levels and water quality of the Groundwater in the areas likely to be affected by the Recovery; and
- (g) Any other information that Watermaster requires to be included.

10.9 Credits Against OBMP Assessments and Reimbursements. Any Producer, including the State of California, may make Application to Watermaster to obtain a credit against OBMP Assessments or for reimbursements by filing an Application that includes the following information:

- (a) The identity of the party to the Judgment;
- (b) The specific purposes of the OBMP satisfied by the proposed project;
- (c) The time the project is proposed to be implemented and a schedule for completion;
- (d) The projected cumulative project costs; and
- (e) The specific capital or operations and maintenance expenses incurred in the implementation of any project or program, including the cost of relocating Groundwater Production facilities.

10.10 Watermaster Summary and Notification of a Pending Application. Upon Watermaster's receipt of an Application for Recharge, Transfer, Storage, Recapture or for a credit or reimbursement, Watermaster shall prepare a written summary and an analysis (which will include an analysis of the potential for Material Physical Injury) of the Application and provide Active Parties with a copy of the written summary and advance notice of the date of Watermaster's scheduled consideration

and possible action on any pending Applications. The notice shall be accompanied by the Watermaster summary and analysis and it shall reasonably describe the contents of the Application and the action requested by the Applicant. Watermaster shall provide the following minimum notice to the Active Parties:

- (a) Applications for Recharge: 30 (thirty) days.
- (b) Applications for Transfer: 30 (thirty) days.
- (c) Applications for Storage and Recovery: 90 (ninety) days.
- (d) Local Storage Agreement or Recapture: 30 (thirty) days.

10.11 All Applications Considered by Pool Committees. All Applications shall be considered by the Pool Committees. Following its completion of the summary and analysis and the issuance of the required notice as provided in section 10.10, Watermaster Staff shall place the Application on the first available Pool Committee Agenda for each of the respective Pool Committees for consideration, discussion, recommendations or proposed conditions. The Application shall not be considered by the Advisory Committee until at least twenty-one (21) days after the last of the three Pool Committee meetings to consider the matter.

10.12 Watermaster Investigations of Applications. Watermaster may, in its discretion, cause an investigation of the Groundwater or the portion of the Basin affected by a pending Application. Any party to the proceeding may be requested to confer and cooperate with the Watermaster, its staff or consultants to carry out such investigations.

10.13 Contesting an Application. Following consideration of an Application by each Pool Committee, a Contest to the Application may be filed by any party to the Judgment. Contests to Applications filed by parties to the Judgment or other persons requesting Watermaster's approval pursuant to this Article shall be submitted in writing a minimum of fourteen (14) days prior to the date scheduled for Advisory Committee consideration and possible action. The Contest shall describe the basis for the Contest and the underlying facts and circumstances. Watermaster shall provide notice of the Contest to the Active Parties.

10.14 Contents of a Contest.

- (a) Each Contest shall include the name and address of the Contestant and show that the Contestant has read either the application or the related notice.
- (b) If the Contest is based upon the allegation that the proposed action may result in Material Physical Injury to a party to the Judgment or the Basin, there shall be an allegation of the specific injury to the Contestant or to the Basin which may result from the proposed action and an identification of any then available evidence to support the allegation. If the Contest identifies documentary evidence other than Watermaster records or files, the Contestant shall serve copies of the documentary evidence on Watermaster and the Applicant seven (7) days prior to the hearing. *If relevant to the Contest, the Contestant shall provide Watermaster with the location of the Contestant's extraction and place of use. The location shall be described with sufficient accuracy so that the position thereof relative to the proposed action may be determined. If relevant to the Contest, the Contestant shall describe the Contestant's purpose of use.*
- (c) If a Contest is based upon other grounds it shall summarize the grounds of the Contest.
- (d) The Contest shall set forth any conditions or amendments to the proposed action which, if agreed upon, would result in withdrawal of the Contest.
- (e) If Watermaster finds the Contest fails to comply with this provision, it may reject the Contest and deny the request for hearing if the Contestant fails to correct the defect and file a proper Contest within five (5) business days of the Watermaster's rejection. In any instance where a rebuttable presumption is applicable, the Watermaster shall include a statement in the rejection of the Contest that the Contestant has failed to reference any potential substantial evidence to overcome the presumption of no Material Physical Injury.

10.15 Extensions of Time and Continuance for Good Cause. An Applicant or Contestant may request an extension of time to file a Contest and Answer or for a continuance of a scheduled hearing and the request may be granted by Watermaster staff where good cause exists.

10.16 Applicant May Answer the Contest. An Applicant or project proponent may elect to file a written Answer to any Contest.

- (a) Contents. An Answer shall be responsive to the allegations contained in the Contest.
- (b) Time for Filing. Answers shall be filed at least seven (7) days prior to the scheduled hearing. If the Applicant intends to rely on documentary evidence other than Watermaster records or files, the Applicant shall serve copies of the documentary evidence upon Watermaster and the Contestant a minimum of three (3) days prior to the hearing.

10.17 Uncontested Applications by Parties to the Judgment.

- (a) The Advisory Committee and Board shall consider and may approve any uncontested Application. No hearing shall be required for an uncontested Application by a party to the Judgment unless there is good cause to hold a hearing. Where good cause appears, the Advisory Committee and the Board may deny, condition, or continue an *uncontested* Application. However, Watermaster shall not deny an Application until it has referred the matter to a hearing officer. In the case of a proposed denial or conditional approval, and upon the request of the Applicant, Watermaster shall schedule an appropriate and timely hearing in general conformity with this Article X.
- (b) An uncontested Application shall be considered at the first regularly scheduled meeting of the Advisory Committee following the expiration of the Contest period.
- (c) The Advisory Committee shall consider the Application, the staff Summary and Analysis and staff report and any rebuttable presumption that may be applicable and make any determinations under the Judgment in accordance with the provisions of section 10.25 herein.
- (d) Following consideration by the Advisory Committee, the matter shall be transmitted to the Board for consideration. The Board shall also consider the Application, the staff summary and Analysis and staff report and any rebuttable presumption that may be applicable, as well as the Advisory Committee action consistent with the Judgment. The Board's determination shall be made in accordance with the provisions of section 10.25 herein.
- (e) In each case where Watermaster the Advisory Committee or Board denies or conditions an uncontested Application made by a party to the Judgment, it must support its determination by substantial evidence and act in a manner that is consistent with the Judgment and the Peace Agreement.

- 10.18 Contested Applications. In each case where a Contest is filed, the matter shall be set for hearing by Watermaster staff in coordination with the hearing officer and the parties to the proceeding.
- 10.19 Applications by Persons not Parties to the Judgment. In its sole discretion, Watermaster may review, consider, process and decide upon Applications made by persons not parties to the Judgment. However, Watermaster may not approve or conditionally approve such an Application without first holding a hearing in accordance with this Article X.
- 10.20 Complaints in General. Any party to the Judgment may file a Complaint with Watermaster alleging that the conduct of another person is causing or will cause Material Physical Injury in violation of these Rules and Regulations, the Judgment and the Peace Agreement.
- (a) The Complaint shall identify the name of the Complainant, the specific action or conduct that is causing or will or may cause Material Physical Injury, and any recommended mitigation measures or conditions that might avoid or reduce the alleged Material Physical Injury.
 - (b) Upon receipt of the Complaint by Watermaster, it shall prepare a summary of the allegations and serve the summary along with a notice of the Complaint to the parties to the Judgment within 30 (thirty) days from filing.
 - (c) Any party to the Judgment may file an Answer to the Complaint within 14 (fourteen) days of the date of the notice of Complaint or other time as may be prescribed in the Watermaster notice of the Complaint.
 - (d) Watermaster shall schedule a hearing on the Complaint within 30 (thirty) days of the notice of the Complaint.
 - (e) A party to the Judgment's failure to appear or Contest a hearing on the approval of an Application of any matter before Watermaster shall not be a bar to the party's right to file a Complaint as provided herein. However, a party shall not be permitted to file a Complaint if it knew or should have known of a particular harm that that party would suffer and had a reasonable opportunity to object at the time of the original approval process but did not file such a Contest.

- (f) Any party to the Judgment may request an extension of time to file an Answer or to continue the hearing, which may be granted for good cause by Watermaster.
- (g) Any party to a Complaint proceeding that intends to rely upon documentary evidence at the hearing, other than Watermaster documents or files, shall serve copies of the evidence upon Watermaster and the other parties to the proceeding a minimum of seven (7) days in advance of the hearing.
- (h) Watermaster may, in its discretion, cause an investigation of the injury alleged to exist by the pending Complaint. Any party to the proceeding may be requested to confer and cooperate with the Watermaster, its staff or consultants to carry out such investigations.

10.21 All Complaints Considered by Pool Committees. All Complaints shall be considered by the Pool Committees. Following consideration by the respective Pool Committees, if the Complaint is not dismissed any person(s) directly impacted by the Complaint may file an Answer in accordance with the provisions of section 10.16 and the Complaint shall be set for hearing.

10.22 Designation of Hearing Officer for Applications, Contests and Complaints. The Watermaster Board shall develop and maintain a panel of five individuals that have technical expertise and some familiarity with the Basin. The hearing officer shall be selected by the mutual agreement of each side. If mutual agreement cannot be reached, each side to any hearing on an Application or Complaint shall rank their preferred hearing officer from one (1) to five (5). The panel member receiving the highest total score shall be selected by the Watermaster Board as the Hearing Officer, unless he or she is unable to serve in which case the panel member receiving the next highest rank shall be selected. Ties shall be broken by vote of the Watermaster Board. Watermaster may add or remove new members to the five member panel from time to time or as circumstances may warrant. There shall be only two sides in any hearing and intervenors shall be assigned to a side.

10.23 Duty of the Hearing Officer. The hearing officer shall conduct the hearings in accordance with the provisions of this Article. It shall be the responsibility of the hearing officer to compile the record, develop proposed findings and recommendations supported by substantial evidence in the record within thirty days of the hearing and transmit the record to the Advisory Committee and thereafter the Watermaster Board for further action. The hearing officer shall have and shall exercise the power to regulate all proceedings in any matter before it, and to take and do all acts and measures necessary or proper for the efficient performance of its duties.

10.24 Procedure at Hearings on Applications, Contests and Complaints

- (a) Parties Recognized at Hearing. Only the Applicant(s), Contestant(s), Watermaster staff and other party or parties to the Judgment which the hearing officer, in its discretion, allows to intervene as Applicant or Contestant, may be allowed to appear at the hearing.
- (b) Appearances. Persons appearing on their own behalf shall identify themselves at the beginning of the hearing. When a person is represented by an agent or attorney, such agent or attorney shall likewise enter an appearance before the hearing officer and thereafter will be recognized as fully controlling the case on behalf of that party to the proceeding.
- (c) Conduct of Hearings. Hearings shall be open to the public. The hearing officer has and shall exercise the power to regulate all proceedings in any manner before it, and to do all acts and take all measures necessary or proper for the efficient performance of its duties. The hearing officer may rule on the admissibility of evidence and may exercise such further and incidental authority as necessary for the conduct of the proceedings.
- (d) Evidence. The hearing need not be conducted according to technical rules of evidence and witnesses. Any relevant, non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions.
- (e) Rebuttable Presumption. A rebuttable presumption under these Rules and Regulations means that the presumption shall be sufficient to approve an Application, unless a party to the Judgment opposing the Application produces substantial evidence to rebut the presumption. Once the party to the Judgment opposing the Application produces substantial evidence in support of their contention that an action may cause Material Physical Injury to a party to the Judgment or the Basin, the presumption shall be deemed rebutted.
- (f) Official Notice. Before or after submission of a matter for decision, official notice may be taken by the Hearing Officer of such facts as may be judicially noticed by the courts of this State.

- (g) Evidence by Reference. Public records of Watermaster which are relevant to the subject of the hearing and books, reports or other papers and pleadings which have been prepared by Watermaster and submitted previously to the Court, may in the discretion of the hearing officer, be received into evidence as exhibits without the need of supplying copies to Watermaster or other parties to the proceeding.
- (h) Examination of Witnesses. Each party to the proceeding shall have the right to call and examine witnesses and introduce exhibits. Watermaster staff and consultants may participate in the hearing as appropriate, using their technical knowledge and experience for the primary purpose of developing a full, fair and accurate record, including the questioning of any witness or the agents for any party to the proceeding
- (i) Order of Procedure. There shall be an opening statement by Watermaster staff, summarizing the subject matter and purpose of the hearing and the procedures to be followed. The designated hearing officer will then ask all persons wishing to participate in the hearing to identify themselves. Staff shall present any written reports, or summary of any findings resulting from an investigation of the Application or the Complaint. The Applicant or the Complainant shall then proceed in the case in chief, followed by the Contestant(s) or the Respondents. The Applicant and the Complainant will then be afforded an opportunity to present any responsive evidence. The hearing officer may allow further response as the interests of justice may require. Questions from the hearing officer or Watermaster staff shall be appropriate at any time.
- (j) Opening Statements and Closing Briefs. Prior to presenting their case, any party to the proceeding may file a written opening statement, or may make an oral opening statement, the length of which may be prescribed by the hearing officer. At the close of the hearing, if the hearing officer deems it advisable, time will be allowed for the filing of written briefs.
- (k) Record. The record of the hearing shall consist of all documents submitted for consideration as well as all testimony presented. Tape recordings of all testimony shall be made. Any party, at that party's sole expense, may have a court reporter present at the hearing.
- (l) Completion of Record. The Hearing Officer may request assistance from Watermaster staff and general counsel in completing the record, proposed findings and recommendations. The Hearing Officer shall transmit his or her proposed findings to the

Advisory Committee within thirty days of the close of the hearing. The proposed findings of the hearing officer shall be based upon substantial evidence in the record.

10.25 Watermaster Determinations.

- (a) Watermaster shall consider and may approve, deny, or condition any contested Application. Prior to rendering a determination on a contested Application or a Complaint, both the Advisory Committee or the Board may also each remand the matter for further findings by the hearing officer a maximum of one time each. The hearing officer shall conduct any additional hearings and complete its review and rehearing and transmit its subsequent report to the Advisory Committee within thirty days from the date of notice from Watermaster of the need for additional findings.
- (b) A contested Application or a Complaint shall be considered at the first regularly scheduled meeting of the Advisory Committee following the transmittal of the record, proposed findings of fact and recommendations by the hearing officer and no later than 30 days from the date of the hearing. The Advisory Committee shall consider the Application, the staff summary and analysis and staff report, any rebuttable presumption, the Contest, Answer, the record, proposed findings of fact and any recommendations of the hearing officer. The Advisory Committee may amend, modify, accept or reject the report of the hearing officer, or it may direct the hearing officer to conduct a re-hearing to receive additional evidence, direct the filing of additional briefs or request oral argument.
 - (i) The findings and decision adopted by the Advisory Committee shall be supported by citations to substantial evidence in the record.
 - (ii) If the Advisory Committee fails to base its decision on substantial evidence in the record or fails to consider the proposed findings of fact developed by the Hearing Officer, subject to the right of the Advisory Committee to remand for further findings, any Advisory Committee mandate shall not be binding on the Watermaster Board. This provision shall not be considered in construing the power of the Watermaster Board or the Advisory Committee that may exist under the Judgment.
- (c) Following consideration by the Advisory Committee, the matter shall be transmitted to the Board for consideration within the next thirty (30) days. The Board shall also consider the

Application, the staff summary, analysis and staff report, any rebuttable presumption that may be applicable, the Contest, the Answer, the record, the proposed findings of fact and recommendations of the hearing officer, as well as the Advisory Committee action consistent with the Judgment. The Watermaster Board may amend, modify, accept or reject the report of the hearing officer, or it may direct the hearing officer to conduct a re-hearing to receive additional evidence, direct the filing of additional briefs or request oral argument. If the Board directs the hearing officer to conduct a re-hearing, then the proposed findings of fact and any recommendations shall be transmitted to the Advisory Committee for re-consideration prior to transmittal to the Board.

- (d) Watermaster Action. In acting upon a Complaint, or by approving, denying or conditioning in whole or in part any Application under this Article, the determinations made by the Watermaster Advisory Committee and Board shall be based upon substantial evidence in the record developed by the hearing officer and then before the Advisory Committee and Board. In making such determinations, the Advisory Committee and Board shall act in a manner consistent with the Judgment, the Peace Agreement and these Rules and Regulations. Each shall support its determinations by written findings. Each shall consider all relevant evidence presented and give due consideration to the policies and purposes set forth in the Judgment as well as Article X, section 2 of the Peace Agreement and the OBMP Implementation Plan.
- (e) No Restriction on Rights to Judicial Review Following Determination by Watermaster. Nothing herein shall be construed as imposing any limitation on any party's rights to seek judicial review of a Watermaster decision under this Article pursuant to paragraph 31 of the Judgment once Watermaster has rendered a decision on the respective Application or, in the case of a Complaint, to seek judicial review of a Watermaster decision where a party to the Judgment has elected to pursue Watermaster review of an action under this Article.
- (f) Emergency Review. In the event of a sudden, unforeseen and unexpected emergency impacting the health, safety and welfare of a party to the Judgment or the Basin, the party to the Judgment may seek immediate judicial review in accordance with the provisions of the Judgment and the Local Rules.
- (g) Undue Delay. Absent a Watermaster determination that extraordinary circumstances exist, Watermaster shall render its final decision on any Application filed under this Article within

180 days from the date the Application is deemed complete by Watermaster Staff. In the event Watermaster fails to offer a satisfactory response to repeated requests by a party to the Judgment to approve, deny or condition an Application or to rule on a Complaint, a party to the Judgment may request judicial review of the matter prior to the final Watermaster action.

(h) Effective Date of Watermaster Action.

- (i) For purposes of judicial review, any action determination or rule of Watermaster shall be the date on which the decision is filed.
- (ii) For the purposes of determining the date on which an approved Application pursuant to Article X shall be considered effective, the approval shall relate back to date the completed Application is filed.

10.26 Application, Contests, Complaints Fees and Expenses.

- (a) Each party to the proceeding shall bear its own costs and expenses associated with the proceeding.
- (b) Watermaster's summary and analysis and participation in any hearing under this Article X shall be considered a general Watermaster administrative expense.
- (c) Upon request by the Agricultural Pool, Non-Agricultural Pool, or Appropriative Pool, the parties shall renegotiate this section 10.26. This renegotiation shall consider, but shall not be limited to, the adoption of a Court-approved resolution to address potential costs, fees and procedures incurred by parties to the Judgment and Watermaster in resolving frivolous and repetitiously unsuccessful similar contests.
- (d) Nothing herein shall be construed as precluding the right or claim by any party to the Judgment to request a reviewing Court under paragraph 31 of the Judgment to award litigation fees and costs to the extent such fees and costs may be available under general law.

APPENDIX 1

APPENDIX 1

FORMS

- Form 1 Application for Local Storage Agreement**
- Form 2 Application for Recharge**
- Form 3 Application for Sale or Transfer of Right to Produce Water from Storage**
- Form 4 Application or Amendment to Application to Recapture Water In Storage**
- Form 5 Application to Transfer Annual Production Right or Safe Yield**
- Form 6 Application by a Party to the Judgment to Participate in a Storage & Recovery Program**
- Form 7 Application for Reimbursement or Credit Against OBMP Assessment**
- Form 8 Standard Local Storage Agreement**
- Form 9 Voluntary Agreement for Service to an Agricultural Pool Party by an Appropriative Pool Party**
- Form 10 Standard Form Regarding Provision of Service to a Non-Agricultural Pool Party by an Appropriative Pool Party**
- Form 11 Notice of Land-Use Conversion**

APPLICATION FOR LOCAL STORAGE AGREEMENT

APPLICANT

Name of Party, Date Requested, Date Approved, Street Address, Amount Requested, Amount Approved, City, State, Zip Code, Telephone, Facsimile

TYPE OF WATER TO BE PLACED IN STORAGE

- [] Excess Carry Over [] Local Supplemental or Imported [] Both

PURPOSE OF STORAGE - Check all that may apply

- [] Stabilize or reduce future water costs/assessments. [] Facilitate utilization of other available sources of supply. [] Facilitate replenishment under certain well sites. [] Preserve pumping right for a changed future potential use. [] Other, explain

METHOD AND LOCATION OF PLACEMENT IN STORAGE - Check and attach all that may apply

- [] Recharge (Form 2) [] Transfer of Right to Water in Storage (Form 3) [] Transfer from another party to the Judgment (Form 5)

METHOD AND LOCATION OF RECAPTURE FROM STORAGE - Check and attach all that may apply

- [] Pump from my wells (Form 4) [] Transfer to another party to the Judgment (Form 3)

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

MATERIAL PHYSICAL INJURY

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that may be caused by the action covered by the application? Yes [] No []

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the action does not result in Material Physical Injury to a party to the Judgment or the Basin?

ADDITIONAL INFORMATION ATTACHED

Yes [] No []

Applicant

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____ Agreement # _____

APPLICATION FOR RECHARGE

APPLICANT

Name of Party _____			Date Requested _____	Date Approved _____
Street Address _____			Amount Requested _____ Acre-feet	Amount Approved _____ Acre-feet
City _____	State _____	Zip Code _____	Projected Rate of Recharge _____	Projected Duration of Recharge _____
Telephone: _____			Facsimile: _____	

SOURCE OF SUPPLY

Water from:

- State Water Project
- Colorado River
- Local Supplemental Source: _____
- Recycled Water
- Other, explain _____

METHOD OF RECHARGE

- PERCOLATION Basin Name _____
Location _____
- INJECTION Well Number _____
Location (attach map) _____
- EXCHANGE Facility Name _____
Share of Safe Yield _____
Carry Over Right _____
Water in Storage _____
Pumping Capacity (cfs) _____

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

MATERIAL PHYSICAL INJURY

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that may be caused by the action covered by the application? Yes [] No []

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the action does not result in Material Physical Injury to a party to the Judgment or the Basin?

ADDITIONAL INFORMATION ATTACHED Yes [] No []

Applicant

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____ Agreement # _____

APPLICATION FOR
SALE OR TRANSFER OF RIGHT TO PRODUCE WATER FROM STORAGE

TRANSFER FROM LOCAL STORAGE AGREEMENT # _____

Name of Party

Date Requested

Date Approved

Street Address

Acre-feet
Amount Requested

Acre-feet
Amount Approved

City

State

Zip Code

Telephone:

Facsimile:

Applicant

TRANSFER TO:

Attach Recapture Form 4

Name of Party

Street Address

City

State

Zip Code

Telephone:

Facsimile:

Have any other transfers been approved by Watermaster
between these parties covering the same fiscal year?

Yes []

No []

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

MATERIAL PHYSICAL INJURY

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that
may be caused by the action covered by the application? Yes [] No []

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the
action does not result in Material Physical Injury to a party to the Judgment or the Basin?

ADDITIONAL INFORMATION ATTACHED

Yes [] No []

Applicant

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____ Agreement # _____

**CHINO BASIN WATERMASTER
2000/2001 ASSESSMENTS**

2000-2001 OVERLYING (NON-AGRICULTURAL) POOL PRODUCTION

PRODUCER	NOTES	Carry-Over From 99-00	Share of Operating Safe Yield	Transfers	2000-01 Production & Exchange	Net Over Production	Carry-Over To 2001-02	Eligible for Local Storage	Amount In Storage From 1999-00	Storage Transfer	Local Storage At Yr End 2000-01
Ameron Steel		97,858	97,858	0.000	0.000	0.000	97,858	97,858	1,365,091	0.000	1,462,949
Vulcan Materials Co.(Calmat)(1)	1	317,844	317,844	0.000	0.000	0.000	317,844	317,844	6,944,178	0.000	7,262,022
CCG Ontario LLC	6, 9,10	1,155,274	1,155,274	0.000	0.000	0.000	1,155,274	1,155,274	4,547,044	0.000	5,702,318
S. B. County, Chino Airport	8	4,470	133,870	0.000	0.000	0.000	133,870	4,470	0.000	0.000	4,470
Southern Calif Edison Company		27,959	27,959	0.000	0.000	0.000	27,959	27,959	27,959	0.000	55,918
Reliant Energy, Etiwanda	4	768,460	954,540	0.000	0.000	0.000	954,540	768,460	6,287,041	0.000	7,055,501
Angelica Rental Service	2	0.000	18,789	0.000	0.000	0.000	0.000	18,789	0.000	0.000	18,789
Space Center-Mira Loma		104,121	104,121	0.000	0.000	0.000	104,121	104,121	467,240	0.000	571,361
California Speedway	9	0.000	475,000	0.000	0.000	0.000	0.000	475,000	0.000	0.000	475,000
Sunkist	7	1,873,402	1,873,402	0.000	0.000	0.000	1,873,402	1,873,402	6,825,715	0.000	8,699,117
Swan Lake		464,240	464,240	0.000	0.000	0.000	464,240	464,240	1,789,723	0.000	2,253,963
Praxair Inc.	3	427,446	427,446	0.000	0.000	0.000	427,446	427,446	2,776,566	0.000	3,204,012
California Steel Industries (CSI)	3, 6	1,300,000	1,300,000	0.000	0.000	0.000	1,300,000	1,300,000	0.000	0.000	1,300,000
West Venture Development		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
General Electric - Geomatrix	5	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
TOTALS		6,541,074	7,350,343	0.000	0.000	0.000	6,856,554	7,034,863	31,030,557	0.000	38,065,420

FOOTNOTES:

- (1) Calmat Properties, formerly Conrock, became Vulcan Materials in 99-00.
- (2) Southern Service Company became Angelica Rental Service in FY 94-95.
- (3) Union Carbide Corp. became Praxair Inc. in FY 94-95. Fontana Water Company entered into two agency agreements with Praxair & CSI in calendar year 1996. Praxair assigned 205,076 af. CSI had not assigned water to FWC for service it provided to them in FY 99-00 as of this printing.
- (4) Reliant Energy leased 2,500,000 af from City of Pomona to offset FY 99-00 production.
- (5) GR pumped and recharged after treatment, 558,850 af, pursuant to the Judgment, they are assessed 3% losses due to spreading.
- (6) Kaiser/CSI received court approval on settlement Dec 20, 1995. CSI was assigned 1300,000 af permanent right as of July 1, 1995, Kaiser 1000 af & 630,274 af of Joint Water Rights per Water Rights Agreement and Water Rights Acknowledgement dated in October 1995. The agreement allows for removal of water from storage to satisfy the assignment.
- (7) Sunkist and Ontario entered into an Agency Agreement for the assignment of water provided by Ontario to Sunkist, which was 1,448,973 af in FY 99-00.
- (8) San Bernardino County Department of Airports assigned 129,400 af of production to the City of Chino under an Agency agreement approved by Watermaster. It is included in their production and not included in Chino's production.
- (9) Kaiser/SDC entered into a Water Rights agreement similar to Kaiser/CSI's on November 21, 1995. The agreement provides for 475 af to be held as "tenants in common", with SDC having the first priority for use of the rights, but no carryover or storage rights for unused water.
- (10) Kaiser Ventures sold its last property holdings & all water rights to CCG Ontario LLP on August 16, 2000.

FY 2000-01 OVERLYING (NON-AGRICULTURAL) POOL

**CHINO BASIN WATERMASTER
2000/2001 ASSESSMENTS
NET REPLENISHMENT**

PRODUCER	NOTES*	GROSS ADMINISTRATIVE ASSESSMENTS			ASSESSMENTS		
		2000-01 Production	Assessed per Acre-Foot		Acre-Feet Exceeding Safe Yield	Assessment Per Acre-Foot #DIV/0!	Assessment Adjustments
			Administration #DIV/0!	OBMP #DIV/0!			
Ameron Steel		0.000	#DIV/0!	#DIV/0!	0.000	#DIV/0!	\$0.23
Vulcan Materials Co.(Calmat)(1)		0.000	#DIV/0!	#DIV/0!	0.000	#DIV/0!	0.45
CCG Ontario LLC	6,9	0.000	0.00	#DIV/0!	0.000	#DIV/0!	0.00
S. S. County, Chino Airport	8	0.000	#DIV/0!	#DIV/0!	0.000	#DIV/0!	6.83
Southern Calif Edison Company		0.000	0.00	#DIV/0!	0.000	#DIV/0!	0.00
Reliant Energy, Etiwanda	4	0.000	#DIV/0!	#DIV/0!	0.000	#DIV/0!	191.86
Angelica Rental Service	2	0.000	#DIV/0!	#DIV/0!	0.000	0.00	1.67
Space Center-Mira Loma		0.000	#DIV/0!	#DIV/0!	0.000	#DIV/0!	(287.32)
California Speedway	9	0.000	#DIV/0!	#DIV/0!	0.000	0.00	47.42
Sunkist	7	0.000	#DIV/0!	#DIV/0!	0.000	#DIV/0!	97.68
Swan Lake		0.000	#DIV/0!	#DIV/0!	0.000	#DIV/0!	18.19
Praxair Inc.	3	0.000	#DIV/0!	#DIV/0!	0.000	#DIV/0!	10.81
California Steel Industries (CSI)	3,6	0.000	0.00	#DIV/0!	0.000	#DIV/0!	0.00
West Venture Development		0.000	0.00	#DIV/0!	0.000	#DIV/0!	0.00
General Electric - Geomatrix	5	0.000	#DIV/0!	#DIV/0!	0.000	0.00	29.46
TOTALS		0.000	#DIV/0!	#DIV/0!	0.000	#DIV/0!	\$117.28

* Non-Agricultural Pool Notes are on Page 11

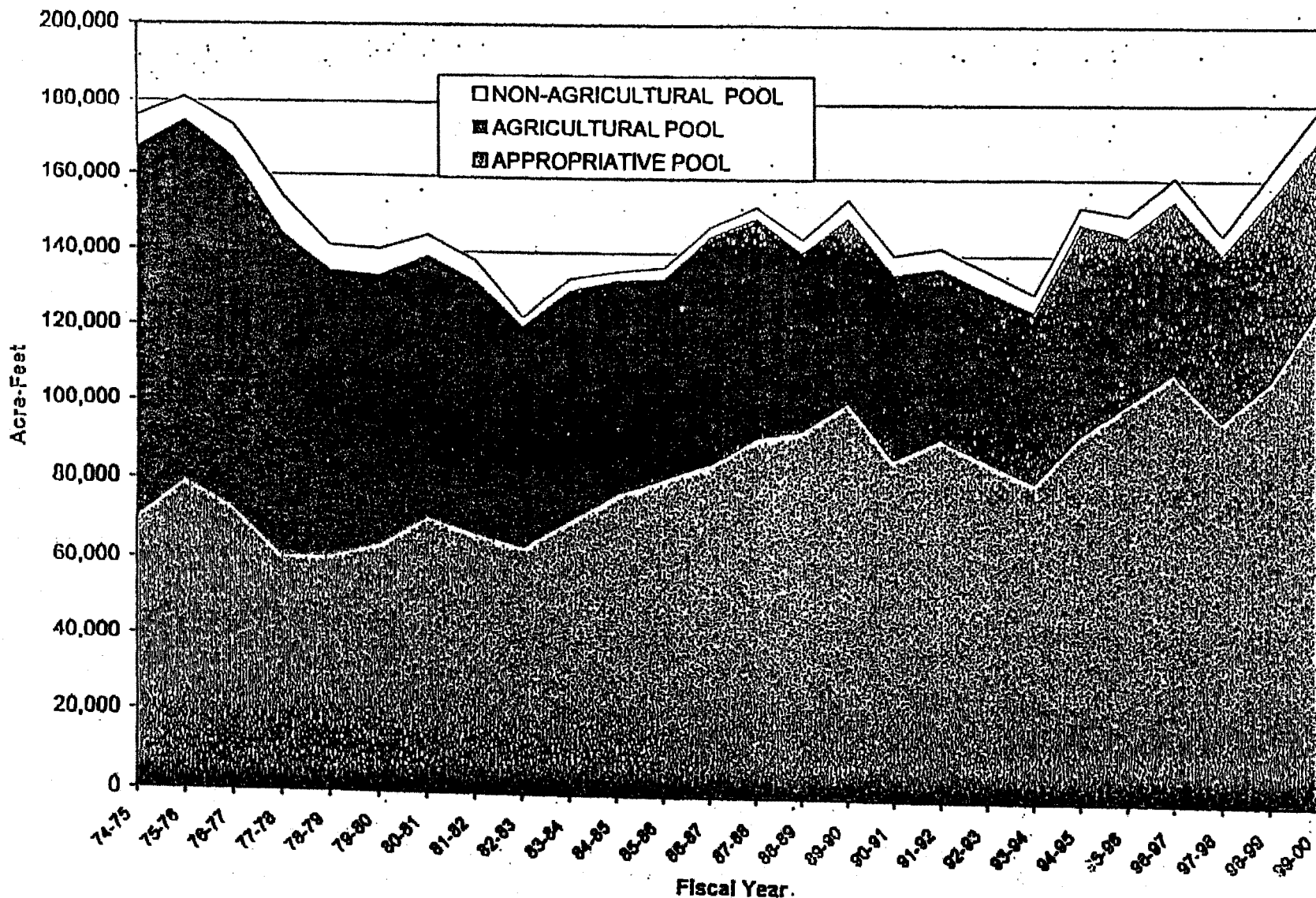
APPENDIX B ⁽¹⁾GROUNDWATER PRODUCTION BY POOL
(ACRE-FEET)

Fiscal Year	Appropriative Pool	Overlying (Agricultural) Pool	Overlying (Non-Agricultural) Pool	Total
74-75	70,312	96,567	8,878	175,757
75-76	79,312	95,349	6,356	181,017
76-77	72,707	91,450	9,198	173,355
77-78	60,659	83,934	10,082 ⁽²⁾	154,675
78-79	60,597	73,688	7,127	141,412
79-80	63,834	69,369	7,363	140,566
80-81	70,726	68,040	5,650	144,416
81-82	66,731	65,117	5,684	137,532
82-83	63,481	56,759	2,395	122,635
83-84	70,558	59,033	3,208	132,799
84-85	76,912	55,543	2,415	134,870
85-86	80,859	52,061	3,193	136,113
86-87	84,662	59,847	2,559	147,068
87-88	91,579 ⁽³⁾	57,865	2,958	152,042
88-89	93,617 ⁽⁴⁾	46,762	3,619	143,998
89-90	101,344 ⁽⁵⁾	48,420	4,856	154,620
90-91	86,658 ⁽⁶⁾	48,085	5,407	140,150
91-92	91,982 ⁽⁷⁾	44,682	5,240	141,904
92-93	86,367 ⁽⁸⁾	44,092	5,464	135,923
93-94	80,798 ⁽⁹⁾	44,298	4,586	129,682
94-95	93,419 ⁽¹⁰⁾	55,022	4,327	152,768
95-96	101,606 ⁽¹¹⁾	43,639	5,424	150,669
96-97	110,163 ⁽¹²⁾	44,809	6,309	161,281
97-98	97,435 ⁽¹³⁾	43,345	4,955 ⁽¹⁴⁾	145,735
98-99	107,723	47,538	7,006	162,267
99-00	126,645	44,401	7,774	178,820

**APPENDIX B
GROUNDWATER PRODUCTION BY POOL
NOTES**

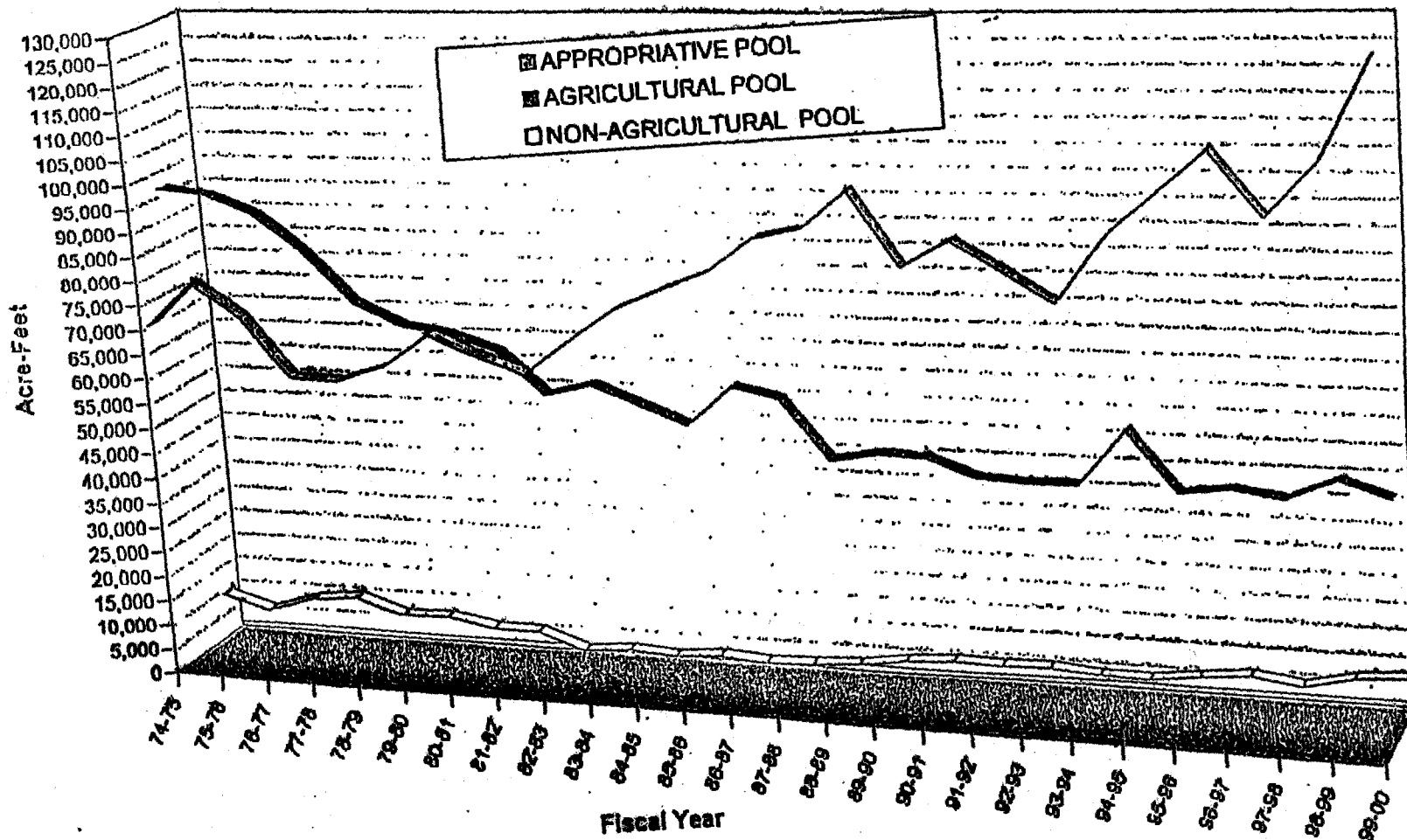
- (1) Assessed production or production reported in Annual Reports
- (2) Includes 3,945 AF of mined water pumped by Edison as agent for TEUA.
- (3) Does not include 7,674.3 AF exchanged with MWDSC.
- (4) Does not include 6,423.6 AF exchanged with MWDSC.
- (5) Does not include 16,377.1 AF exchanged with MWDSC.
- (6) Does not include 14,928.1 AF exchanged with MWDSC.
- (7) Does not include 12,202.4 AF exchanged with MWDSC.
- (8) Does not include 13,657.3 AF exchanged with MWDSC.
- (9) Does not include 20,194.7 AF exchanged with MWDSC.
- (10) Does not include 4,221.9 AF exchanged with MWDSC.
- (11) Does not include 6,167.2 AF exchanged with MWDSC and reflects corrected production after reporting errors accounted for.
- (12) There were no MWDSC exchanges in FY 96-97 and reflects corrected production after reporting errors were accounted for.
- (13) Does not include 4,275.4 AF exchanged with MWDSC.
- (14) Does not include 216.5 AF exchanged with MWDSC.

Historical Groundwater Production Total
APPENDIX B - Figure 1



Historical Groundwater Production By Pool

APPENDIX B - Figure 2



APPENDIX E-1

SUMMARY OF MWDSC DELIVERIES⁽¹⁾
FISCAL YEAR 1999-00
(ACRE-FEET)

Month	Water Facilities Authority									
	UPLAND	MVWD	ONTARIO	CHINO	CHINO HILLS	(CB-12) TOTAL	SCE CB-01	CCWD CB7&16	Pomona PM-15	Total
JUL	649.8	1642.6	1284.3	532.9	538.5	4548.1	60.9	2596.3	376.2	7305.3
AUG	694.2	2057.8	1367.6	556.1	257.7	4933.4	58.3	2803.9	489.9	7795.6
SEP	348.3	1776.0	950.6	533.9	126.0	3734.8	22.6	2272.5	405.1	6029.9
OCT	407.1	1712.7	1086.2	530.0	0.0	3736.0	47.2	2131.8	377.9	5915.0
NOV	63.8	964.5	393.0	412.5	0.0	1833.8	0	1651.8	97.6	3485.6
DEC	9.7	796.7	346.9	390.5	0.0	1543.8	0	2191.1	96.2	3734.9
JAN	1.4	561.9	312.0	376.0	0.0	1251.3	0.0	2348.0	37.5	3599.3
FEB	12.3	320.2	142.5	332.6	0.0	807.6	0.0	1581.3	0.1	2388.9
MAR	69.9	519.8	107.1	270.9	0.0	967.7	0.0	1687.3	56.7	2655.0
APR	184.1	1123.5	513.1	346.1	0.0	2166.8	0.0	2289.2	120.9	4456.0
MAY	399.1	1636.1	958.2	402.4	2.9	3398.7	48.7	2542.3	275.9	5989.7
JUN	807.8	1825.5	1362.2	510.8	87.3	4593.6	75.1	2824.0	433.9	7492.7
Total	3647.6	14937.3	8823.6	5194.7	1012.5	33615.7	312.8	26919.5	2767.9	60848.0

Total Metropolitan Water District of Southern California (MWDSC) direct deliveries used in Chino Basin including Pomona equals $60,848.0 + 2,767.9 = 63,615.9$ AF.

- (1) A breakdown of categories of water is available upon request. Watermaster replenishment is not included. Includes water exchanged with MWDSC (none in FY 99-00).
- (2) Figures reflect 37.8% of the total MWDSC water delivered that was used over the Chino Basin (based on estimated land use area physically located within the Chino Basin adjudicated boundary).
- (3) During FY 1999-00, Ontario did not take any deliveries through the CB-2 connection.

NOTE: Rounding may have an insignificant impact.

APPENDIX E-2

**SUMMARY OF COOPERATIVE, REPLENISHMENT, AND CYCLIC ACTIVITIES
FISCAL YEAR 1999-00
(ACRE-FEET)**

Cooperative Activity ⁽¹⁾		Groundwater Replenishment Purchased from Cyclic ⁽³⁾			Groundwater ⁽²⁾ Replenishment Activity		Total
Month	Produced from Cooperative	CB-12	CB-14T Etiwanda	CB-OC-59 Montclair		CB-OC-59 Montclair	
Jul							
Aug							
Sep							
Oct							
Nov							
Dec							
Jan		200.9	242.6	214.0			657.5
Feb							
Mar							
Apr						358.3	358.3
May						642.5	642.5
Jun							
Total	*1,100.0	200.9	242.6	214.0		1,000.8	2768.3

- (1) During FY 1999-2000 Monte Vista Water District sold 1,100.0 AF of Cooperative Storage Account water to the City of Ontario. There were no additional deliveries into cooperative storage during FY 99-00. There was a balance of 10.0 AF remaining which was transferred to MVWD's storage account. *The delivery of 1,110.0 AF was not invoiced by MWD until August 2000 (FY00-01) but is shown in the totals above.
- (2) Monte Vista Water District pre-purchased 1,000.8 AF to offset overproduction in FY99/00.
- (3) As of June 30, 2000, the balance of MWDC's Cyclic Storage Account is 36,122.9 AF.

APPENDIX F

SUMMARY OF IMPORTED SUPPLIES
FISCAL YEAR 1999-00
(ACRE-FEET)

Member Agency	Other Basins	Surface Diversions	MWDSC Imported Surface Deliveries	Recycled Water	Total ⁽¹¹⁾
Cucamonga County Water District ⁽²⁾	12,800.1	4,861.6	0		17,661.7
Inland Empire Utilities Agency ⁽¹⁾	0	0	0	5,778.6	0
Fontana Water Company ⁽³⁾	17,401.2	3,832.8	0		21,234.0
Marygold Mutual Water Company ⁽⁴⁾	1,519.6	0	0		1,519.6
MWDSC ⁽⁵⁾	0	0	60,848.0		60,848.0
Pomona, City of ⁽⁶⁾	3,334.7	1,597.8	2,767.9		7,700.4
San Antonio Water Company ⁽⁷⁾	9,428.1	535.6	0	0	9,963.7
State of California, CIM ⁽⁸⁾	0	0	0	820.8	0
West End Consolidated Water Co ⁽⁹⁾	3,715.0	0	0		3,715.0
West San Bernardino CWD ⁽¹⁰⁾	6,565.8	0	0		6,565.8
Total	54,764.5	10,827.8	63,615.9	6,599.4	129,208.2

- (1) IEUA provided 5778.6 AF of recycled water in FY99-00. A breakdown of individual deliveries follows: San Bernardino County/Prado Lake/Golf Course (2,015.5 AF), Whispering Lakes Golf Course in Ontario (1,047.8 AF), Westwind Park in Ontario (26.1 AF) Chino (368.4 AF), Chino Hills (128.9 AF), CCWRF/RP2 (1,685.4 AF) and 506.6 AF from the Ely Basin Recharge Project.
- (2) Imported water includes groundwater produced from Cucamonga Basin and surface water runoff captured from Day Creek and Deer Canyon.
- (3) The imported water includes water produced from other groundwater basins and Lytle Creek surface water production diverted for use in Chino Basin.
- (4) Imported groundwater produced from wells owned by the City of Rialto, located in the Rialto Basin.
- (5) Amount of MWDSC deliveries to the IEUA service area, excluding that delivered and used in the City of Pomona (also listed in Appendix E-1).
- (6) Imported groundwater includes 1,165.8 AF from Pomona Basin, 1,705.8 AF from Claremont Basin, and 463.0 AF from Spadra Basin. The MWDSC delivered 2,767.9 AF to Pomona through Three Valleys MWD and used in Chino Basin (also listed in Appendix E-1).
- (7) An amount of 535.6 AF was treated local canyon flow used in the overlying Chino Basin. The imported groundwater was 636.6 AF from San Antonio Tunnel, 7,979.8 AF from Cucamonga Basin, and 811.7 AF from Six Basins.
- (8) Recycled wastewater that was applied to fields, including water held in storage ponds.
- (9) Figure includes 2,996 AF from Claremont Heights Basin and 719 AF from Cucamonga Basin.
- (10) Listed amount was delivered to "meter book" service area.
- (11) Recycled water is not included in the total.

APPENDIX G

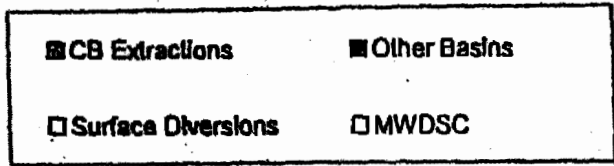
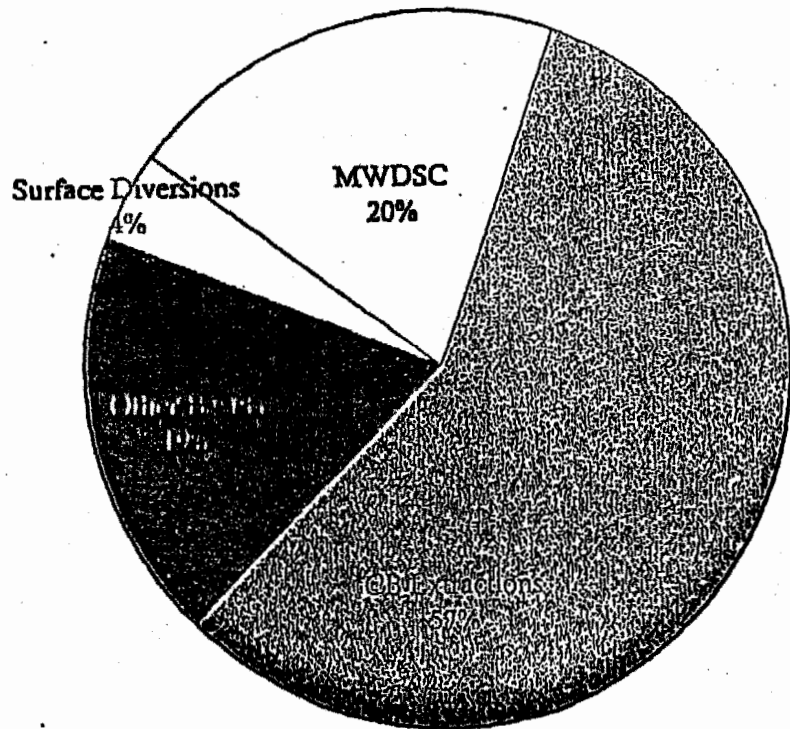
TOTAL WATER CONSUMPTION WITHIN CHINO BASIN ⁽¹⁾
(ACRE-FEET)

Fiscal Year	Chino Basin Extractions ⁽²⁾	Other Imported Supplies ⁽³⁾	Total
1974-75	175,757	49,383	225,140
1975-76	181,017	57,686	238,703
1976-77	173,355	55,765	229,120
1977-78	154,675	61,567	216,242
1978-79	142,412	75,864	217,276
1979-80	140,566	70,727	211,293
1980-81	144,416	77,765	222,181
1981-82	137,532	67,491	205,023
1982-83	122,635	76,000	198,635
1983-84	132,799	99,257	232,056
1984-85	134,870	92,952	227,822
1985-86	136,113	114,624	250,737
1986-87	147,068	126,493	273,561
1987-88	152,402	116,175	268,577
1988-89	143,898	128,167	272,165
1989-90	154,620	139,004	293,624
1990-91	140,151	116,493	256,644
1991-92	141,904	104,480	246,384
1992-93	135,923	117,205	253,128
1993-94	129,682	136,038	265,720
1994-95	152,768	116,797	269,565
1995-96	150,669	130,494	281,163
1996-97	161,281 ⁽⁴⁾	115,031	276,312
1997-98	145,735	106,360	252,095
1998-99	162,267	113,040	275,307
1999-00	178,620	129,208	308,028

- (1) Total includes water used over Cucamonga Basin.
- (2) Source: Watermaster Assessment Packages. Total production in Appropriative Pool of 126,645 AF (excludes exchanges) plus Non-Ag production of 7,774 AF and Ag Pool production in the amount of 44,401 AF.
- (3) Total does not include recycled water, cyclic deliveries, water delivered by exchange, or water from direct spreading that was used for replenishment (see Appendices E-1, E-2, and F).
- (4) Reflects corrected production after reporting errors were accounted for.

**Total Water Consumption Within Chino Basin
FY 1999-2000**

APPENDIX G - Figure 3



APPENDIX H

LOCAL GROUNDWATER STORAGE ACCOUNT STATUS
FISCAL YEAR 1999-00
(ACRE-FEET)

Appropriative Pool

Entity	No.	Date of Agreement(s)	Amount of Agreement(s)	Amount in Storage	Total
Chino, City of	12	01/23/85	15,000.000	1,306.513	1,306.513
Chino Hills, City of	18.1	04/06/88	15,000.000	9,414.078	9,414.078
Cucamonga CWD	10.3	06/07/89	50,000.000	23,295.503	23,295.503
Jurupa CSD	30	07/06/94	20,000.000	6,951.125	6,951.125
Marygold Mutual WC	16.3	07/07/93	2,000.000	1,896.521	1,896.521
Monte Vista Irrigation Co	17	05/07/89	500.000	500.000	7,015.313
	17.1	06/06/90	2,500.000	6,515.313	
Monte Vista WD	27.1	08/14/97	34,023.843	4,194.367	4,194.367
Norco, City of	31.0	11/02/94	2,000.000	366.198	366.198
Ontario, City of	11.1	07/06/94	20,000.000	10,000.000	10,000.000
Pomona, City of	15.2	06/06/90	10,000.000	10,000.000	23,669.235
	15.3	08/05/92	10,000.000	10,000.000	
	15.4	07/07/93	10,000.000	3,669.235	
San Antonio Water Co	3	08/15/80	2,500.000	2,500.000	17,422.509
	3.1	11/05/86	2,500.000	2,500.000	
	3.2	04/06/88	10,000.000	12,422.509	
Santa Ana River WC	20	05/06/87	1,500.000	538.389	538.389
Southern California WC	23	12/07/88	500.000	2,098.825	2,098.825
Upland, City of	24	04/05/89	1,000.000	1,000.000	10,971.788
	24.1	06/06/90	8,000.000	9,971.788	
West End Consolidated WC	13.2	08/05/92	6,000.000	10,487.135	10,487.135
West San Bernardino CWD	25	01/10/91	3,000.000	4,092.028	4,092.028
Watermaster	29	08/05/92	10,000.000	36,622.746	36,622.746
Total			236,023.843	170,342.273	170,342.273

APPENDIX H - Continued

LOCAL GROUNDWATER STORAGE ACCOUNT STATUS
FISCAL YEAR 1999-00
(ACRE-FEET)

Overlying (Non-Agricultural) Pool

Entity	No.	Date of Agreement(s)	Amount of Agreement(s)	Amount in Storage	Total
Ameron Steel	6	03/30/83	100.000	100.000	1,365.091
	6.1	04/06/88	500.000	500.000	
	6.2	08/05/92	500.000	765.091	
Vulcan Materials Co (Calmat Division)	1	06/30/79	1,589.220	1,589.220	6,944.178
	1.1	05/30/84	1,589.220	1,589.220	
	1.2	02/07/90	1,589.220	3,765.738	
Kaiser Ventures, Inc.	9.1	10/07/87	15,000.000	4,547.044	4,547.044
Praxair, Inc.	8.2	04/06/88	3,000.000	2,776.566	2,776.566
Reliant Energy, Etiwanda	14.1	04/06/88	5,000.000	6,287.041	6,287.041
Southern Cal Edison Co	***		0	27.959	27.959
Space Center Mira Loma	4	03/31/82	100.000	100.000	467.240
	4.1	11/05/86	200.000	367.240	
Sunkist Growers Inc.	7	03/31/83	2,500.000	2,500.000	6,825.715
	7.1	11/05/86	5,000.000	4,325.715	
Swan Lake	21	05/06/87	300.000	300.000	1,789.723
	21.1	05/06/91	500.000	1,489.723	
Total			37,467.66	31,030.557	31,030.557

- * Total Agreements now reflects the actual amount of storage agreements entered into where storage occurred. The agreements that expired during the last 5-years or that were never utilized have been removed from the list.
- ** On October 9, 1992, West Venture Development notified Watermaster of its intent to abandon its overlying annual water right of 15.657 acre-feet. In FY2000-01 it is anticipated that the water in storage will be abandoned and the safe yield will be reallocated by some mutually agreed upon method, to the remaining members of the pool.

APPENDIX I-1

RECAPTURES, SALES, AND LEASES
FISCAL YEAR 1999-00
(ACRE-FEET)

From	To	Use*	Lease	Sale	Recapture
Chino, City of	Ontario, City of	4		602.870	
Chino Hills, City of	Ontario, City of	4		1,368.340	
Chino Hills, City of	Monte Vista Water District	2		500.000	
Cucamonga CWD	Fontana Water Company	2		19,746.752	
Cucamonga CWD	Jurupa CSD	2		5,000.000	
Fontana Union Water Co	Cucamonga CWD	2	13,768.506		
Marygold Mutual Water Co	Fontana Water Company	2		1,200.000	
Monte Vista Irrigation Co	Monte Vista Water District	2		200.000	
Monte Vista Water District	Ontario, City of	4		152.110	
Monte Vista Water District	Ontario, City of	2		1000.000	
Pomona, City of	Ontario, City of	2	7,900.000		
Pomona, City of	Pomona, City of	2			4,946.810
Pomona, City of	Reliant Energy, Etiwanda	1	2,500.000		
San Antonio Water Co	Ontario, City of	2			
San Antonio Water Co	Chino, City of	2		2,000.000	
San Antonio Water Co	Jurupa CSD	2		650.000	
Santa Ana River Water Co	Jurupa CSD	2	1,500.000		
Upland, City of	Ontario, City of	4		289.660	
Upland, City of	Ontario, City of	2		5,000.000	
Total			25,668.506	37,709.752	4,946.810

Use*

- (1) Placed in storage.
- (2) Offset production.
- (3) Satisfy replenishment.
- (4) Part of a WFA settlement, used to offset 99/00 Production.

Note: Ontario also purchased 1,100 AF from MVWD's Cooperative Storage Account. It is not reflected in the totals above.

APPENDIX I-2
 ASSIGNMENTS
 FISCAL YEAR 1999-00
 (ACRE-FEET)

To	From	Amount	Total Amount
Chino, City of	County of San Bernardino Department of Airports	129.400	129.400
Fontana Water Company	Praxair Incorporated	205.076	205.076
Jurupa CSD	Norco, City of	146.722	1,225.457
	Santa Ana River Water Company	692.815	
	Space Center Mira Loma	96.900	
	Swan Lake Mobile Home Park	289.020	
Ontario, City of	Sunkist Growers, Inc.	1,448.973	1,448.973
Total		3,008.906	3,008.906

**Chino Basin Watermaster
Agricultural Area Monitoring Program
Notification Procedure for Distribution of Groundwater Quality Data**

1. Watermaster shall maintain a database that contains the names and addresses of well owners of record.
2. Every well owner of record shall be sent a copy of the laboratory report for his or her well within 30 days of receipt of laboratory report by Watermaster.
3. Each owner of record shall receive a copy of the laboratory data for his or her well only.
4. The laboratory reports shall be for individual wells and shall not have any information about any other well in the sampling program. The analytical laboratory under contract to Watermaster shall provide these laboratory reports to Watermaster in one of two formats:
 - o signed, hard copy; or
 - o electronic format. These electronic reports shall be a facsimile of the hard copy report, *i.e.*, the report shall be formatted in the same style as the hard copy. These electronic data shall be in a format that is not amenable to unauthorized modification (*e.g.*, Acrobat .pdf files). The laboratory reports shall contain an electronic signature of the laboratory's project manager. These files will be e-mailed to Watermaster at the same time as the electronic data deliverable (for upload in the database).
5. If the laboratory reports are delivered electronically, Watermaster staff shall print hard copies.
6. An owner of record may add an additional person of authority to Watermaster's database. Such person of authority will also receive a copy of the laboratory report. Additions to the database shall be made only by written request of the owner of record.
7. If the laboratory report reveals an exceedance of a drinking water standard, then Watermaster shall include with the report a copy of a letter notifying the owner of record and/or person of authority of such exceedance. The letter shall substantially conform to the sample attached to this policy as Exhibit "A."
8. Watermaster shall use a mail merge program to create address labels for mailing laboratory reports. Watermaster shall quality control check the recordation number on the laboratory sheet with the recordation number/owner of record and/or person of authority from the database to ensure that the correct laboratory report is in each envelope.
9. The laboratory report shall be sent via the US Postal Service.
10. If a letter is also sent with the laboratory report indicating a drinking water quality standard exceedance, then the report shall be sent via the US Postal Service with a return receipt requested.
11. Laboratory reports returned as undeliverable will trigger the following actions by Watermaster staff:
 - o address on letter will be checked against Watermaster database;
 - o the laboratory report will be hand-delivered by Watermaster staff to owners of record and/or person of authority who reside within the Basin;
 - o updated contact information will be requested from the Owner of Record and/or Person of Authority.
12. Copies of the laboratory reports and any USPS return receipts will be kept on file at Watermaster's offices.

EXHIBIT "A"

[Well Owner or Person of Authority Address]

Dear _____

The Chino Basin Watermaster is a Court appointed entity established to manage the groundwater resources of the Chino Basin. As part of the Optimum Basin Management Program ("OBMP") for the Chino Basin, the Watermaster conducts a monitoring program to gather data regarding groundwater conditions in the Basin.

Water quality data gathered from well [identify well] indicates an exceedance of a drinking water standard for the following contaminants:

[Identify contaminants in chart form, which lists the contaminant, the standard, and the level reported by the laboratory].

Consumption of water that exceeds such standards could be hazardous to a person's health. However, the Watermaster makes no representation as to the legal consequences to you, if any, of such exceedances. Watermaster collects this information as part of a basin-wide water quality management program and not for the purpose of safeguarding the water quality at any particular well site. The results of this monitoring effort are provided solely as a convenience to you. If you have any questions about the water quality from your wells, you should contact the appropriate regulatory entity.

Sincerely,

Chino Basin Watermaster

RESOLUTION 01-03
A RESOLUTION OF THE CHINO BASIN WATERMASTER
ADOPTING PROCEDURES, GUIDELINES AND FEE SCHEDULE
FOR
RELEASE OF INFORMATION AND DOCUMENTS

WHEREAS, Chino Basin Watermaster is appointed by the Court to administer the terms of the Judgment; and

WHEREAS, it is appropriate for Watermaster to make Watermaster records available for public review, consistent with proper and efficient functioning of the Watermaster office and with protection of sensitive, personnel and privileged information; and

WHEREAS, it is necessary and proper for Watermaster to adopt standardized procedures for the release of information and documents and establish a fee schedule.

NOW THEREFORE, BE IT RESOLVED BY THE CHINO BASIN WATERMASTER as follows:

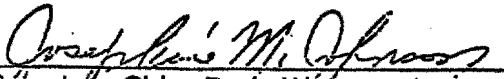
Resolution 01-03 and the attached Procedures, Guidelines and Fee Schedule of the Chino Basin Watermaster for the Release of Information and Documents shall become effective upon adoption by the Chino Basin Watermaster Board and Resolution No. 99-01 will be rescinded in its entirety.

THE FOREGOING RESOLUTION was adopted this 15th day of February 2001.



Chairman, Chino Basin Watermaster

ATTEST:



Secretary, Chino Basin Watermaster

APPROVED:



Chairman, Watermaster Advisory Committee

**CHINO BASIN WATERMASTER
PROCEDURE, GUIDELINES AND FEE SCHEDULE
FOR
RELEASE OF INFORMATION AND DOCUMENTS**

I. PURPOSE

The purpose of this procedure is to delineate the procedure to be used, the guidelines to follow and the fees to be charged for costs associated with the release of information and documents. This procedure is effective upon adoption of Resolution 01-01.

II. PROCEDURE

A. GENERAL

Watermaster staff will attempt to respond to written requests for copies of documents within 10 working days following receipt of the request.

B. FORMS

A Request for Information Form will be completed and appropriately approved prior to responding to a request for information. Certain information and documents described in III.C below will require the Requestor to provide a "signed release" from an individual, company or agency.

III. GUIDELINES

Watermaster staff will consider requests for information and documents on a case-by-case basis, subject to the following guidelines:

A. The Requestor must provide Watermaster staff with the reason or purpose for their request for information.

B. The following records will be generally made available:
These records reflect actions taken by Watermaster. Reproduction of these records will be subject to the limitations set forth in the following paragraph.

1. Agendas
2. Minutes
3. Resolutions
4. Published Committee Reports
5. Annual Reports

C. The following records will generally not be available:

1. Discussions of or references to pending, threatened or on-going matters of litigation;
2. Discussions of or references to pending contract negotiations (including internal drafts of contracts);
3. Attorney or engineer records concerning the topics identified in subparagraphs B.1 or B.2;
4. Attorney work papers;
5. Recommendations of attorney or engineer prior to public Watermaster discussion or action;
6. Personnel, or personal information regarding Watermaster members, staff and/or employees; and

- 7. Unpublished drafts and working copies of committee reports; and
- 8. Materials received by Watermaster stamped "Confidential" by the sender.

D. Signed Release

If a request is made specifically relating to a particular individual, company or agency that would require a release for information which has not previously been made public or which contains the status or operations of a particular individual, company or agency, the Requestor must provide a "signed release" form from the individual, the company or the agency allowing Watermaster to release the information being requested. Any such release shall be subject to the limitations stated in these guidelines.

E. Confidential Pool Information

In the event information is given to Watermaster and must be returned or has been authorized by the Agricultural Pool representatives to be released to consultants or other public agencies, such information shall be provided with a stamped endorsement on each page that such information is confidential and shall be maintained confidential by the recipient.

F. Inspection of Watermaster Records

Due to limited space and limited staff, inspection of Watermaster records may be allowed only through prior arrangement and will be subject to the guidelines outlined above.

G. Waiver of Required Fees

Fees will be waived for parties of the Watermaster and public agencies who reciprocate with a similar waiver of fees.

IV FEE SCHEDULE

- A.** Copies will be made available subject to the procedures and guidelines outlined and upon payment of reasonable fees to cover the costs associated with copying and handling.

An additional fee will be charged, as necessary, for actual costs associated with any request for information requiring special research or input.

B. Watermaster shall charge the following reasonable fees:

- | | |
|---|------------------------------------|
| 1. Photocopies (8 1/2" x 11"-or 8 1/2" x 14) | \$ 0.15 per page, \$5.00 minimum |
| 2. Facsimiles | \$ 0.30 per page |
| 3. Board or Committee agendas only | \$ 40.00 annually |
| 4. Board or Committee full agenda packages | \$500.00 annually |
| 5. Electronic data/text equal to one (1) printed page | \$ 0.15 per page |
| 6. Computer diskette | \$ 0.60 each |
| 7. CD Rom | \$ 2.00 each |
| 8. Mailing | Applicable First-class Postal Rate |
| 9. Information requiring special research or input | Direct Costs |

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.

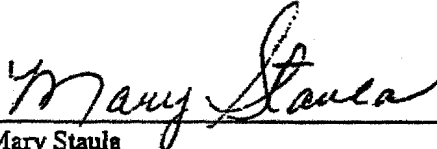
On July 24, 2001, I served the document identified below

- 1) ORDER GRANTING FINAL APPROVAL OF WATERMASTER RULES AND REGULATIONS; APPROVING INTERVENTION OF CCG ONTARIO, LLC; CONTINUANCE OF HEARING RE STATUS REPORT; FILING OF MOTIONS TO AMEND JUDGMENT
- 2) APPROVED WATERMASTER RULES & REGULATIONS INCLUDING APPENDICIES

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 July 24, 2001.



Mary Staule

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Updated 7/19/01

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1020 9TH ST 3RD FL
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PAUL HOFER
CBWM BOARD
11248 S TURNER AVE
ONTARIO CA 91761

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

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 DIS
P.O. BOX 54153
LOS ANGELES CA 90054-01

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
8624 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

RUBEN MONTES
SAN BERNARDINO CTY FLD CONT DIST
825 E THIRD ST
SAN BERNARDINO CA 92415

JIM MOODY
CITY OF UPLAND
P.O. BOX 480
UPLAND CA 91785-0460

EILEEN MOORE
SECY ONTARIO CITY COUNCIL
303 E "B" STREET
ONTARIO CA 91764

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 91781

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

STAN OWENS
STATE OF CA CIM
P.O. BOX 128
CHINO CA 91710

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

DONALD SCHROEDER
CBWM BOARD
3700 MINTERN
RIVERSIDE CA 92509

JUDY SCHURR
30587 LOS ALTOS DR
REDLANDS CA 92373

DAVID SCRIVEN
KRIEGER & STEWART ENGINEER
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 4008
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 91752-4126

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

GEOFFREY VANDEN HEUVEL
CBWM BOARD
7551 KIMBALL AVE
CHINO CA 91710

ERICK VAUGHN
ANGELICA RENTAL SERVICE
1575 N CASE ST
ORANGE CA 92667-3635

MARK WARD
AMERON INTERNATIONAL
13032 SLOVER AVE
FONTANA CA 92335-8990

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

CHARLES R. WHITE
DWR-SO DIST
770 FAIRMONT AVE
GLENDALE CA 91203-1035

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

APPLICATION OR AMENDMENT TO APPLICATION
TO
RECAPTURE WATER IN STORAGE

APPLICANT

_____ Name of Party			_____ Date Requested	_____ Date Approved
_____ Street Address			_____ Amount Requested	_____ Amount Approved
_____ City	_____ State	_____ Zip Code	_____ Projected Rate of Recapture	_____ Projected Duration of Recapture
Telephone: _____			Facsimile: _____	

IS THIS AN AMENDMENT TO A PREVIOUSLY APPROVED APPLICATION? YES NO
IF YES, ATTACH APPLICATION TO BE AMENDED

IDENTITY OF PERSON THAT STORED THE WATER: _____

PURPOSE OF RECAPTURE

- Pump when other sources of supply are curtailed
- Pump to meet current or future demand over and above production right
- Pump as necessary to stabilize future assessment amounts
- Other, explain _____

METHOD OF RECAPTURE (if by other than pumping) (e.g. exchange)

PLACE OF USE OF WATER TO BE RECAPTURED

LOCATION OF RECAPTURE FACILITIES (IF
DIFFERENT FROM REGULAR PRODUCTION
FACILITIES).

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

MATERIAL PHYSICAL INJURY

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that may be caused by the action covered by the application? Yes [] No []

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the action does not result in Material Physical Injury to a party to the Judgment or the Basin?

ADDITIONAL INFORMATION ATTACHED Yes [] No []

Applicant

TO BE COMPLETED BY WATERMASTER

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____ Agreement # _____

APPLICATION
TO
TRANSFER ANNUAL PRODUCTION RIGHT OR SAFE YIELD

Fiscal Year 20__ - 20__

Commencing on July 1, ____ and terminating on June 30, _____, _____ ("Transferor") hereby transfers to _____ ("Transferee") the quantity of _____ acre-feet of corresponding Annual Production Right (Appropriative Pool) or Safe Yield (Non-Agricultural Pool) adjudicated to Transferor or its predecessor in interest in the Judgment rendered in the Case of "CHINO BASIN MUNICIPAL WATER DISTRICT vs. CITY OF CHINO, et al.," RCV 51010 (formerly Case No. SCV 164327).

Said Transfer shall be conditioned upon:

- (1) Transferee shall exercise said right on behalf of Transferor under the terms of the Judgment and the Peace Agreement and for the period described above. The first water produced in any year shall be that produced pursuant to carry-over rights defined in the Judgment. After production of its carry-over rights, if any, the next (or first if no carry-over rights) water produced by Transferee from the Chino Basin shall be that produced hereunder.
- (2) Transferee shall put all waters utilized pursuant to said Transfer to reasonable beneficial use.
- (3) Transferee shall pay all Watermaster assessments on account of the water production hereby Transferred.
- (4) Any Transferee not already a party must intervene and become a party to the Judgment.

TO BE EXECUTED by both Transferor and Transferee, and to be accompanied by a general description of the area where the Transferred water was to be Produced and used prior to the Transfer, and where it will be Produced and used after the Transfer. This general description can be in the form of a map.

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

MATERIAL PHYSICAL INJURY

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that may be caused by the action covered by the application? Yes [] No []

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the action does not result in Material Physical Injury to a party to the Judgment or the Basin?

ADDITIONAL INFORMATION ATTACHED

Yes [] No []

Transferor

Transferee

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____ Agreement # _____

APPLICATION BY A PARTY TO THE JUDGMENT
TO
PARTICIPATE IN A STORAGE & RECOVERY PROGRAM

APPLICANT

Name _____		Date Requested _____	Date Approved _____
Street Address _____		Amount Requested _____ Acre-feet	Amount Approved _____ Acre-feet
City _____	State _____	Zip Code _____	
Telephone: _____		Facsimile: _____	

TYPE OF WATER TO BE PLACED IN STORAGE

- Recycled Imported Both

METHOD AND LOCATION OF PLACEMENT IN STORAGE - Check and attach all that may apply

- Recharge (Form 2)
 Transfer of Right to Water in Storage (Form 3)
 Transfer from another Party to the Judgment (Form 5)

METHOD AND LOCATION OF RECAPTURE FROM STORAGE - Check and attach all that may apply

- Pump from wells (Form 4)
 Transfer to another party to the Judgment (Form 3)

FEASIBILITY PLAN TO ACCOMPLISH STORAGE & RECOVERY PROGRAM ATTACHED? Yes [] No []

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

MATERIAL PHYSICAL INJURY

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that may be caused by the action covered by the application? Yes [] No []

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the action does not result in Material Physical Injury to a party to the Judgment or the Basin?

ADDITIONAL INFORMATION ATTACHED

Yes [] No []

Applicant

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____

APPLICATION FOR REIMBURSEMENT OR CREDIT AGAINST OBMP ASSESSMENT

APPLICANT

REQUESTING

Credit []

Reimbursement []

Name of Party

Date Requested

Date Approved

Street Address

City

State

Zip Code

Telephone:

Facsimile:

DESCRIPTION OF PROJECT OR PROGRAM FOR WHICH REIMBURSEMENT OR CREDIT IS SOUGHT

(Include a description of how the project/program accomplishes or contributes to the accomplishment of the goals of the OBMP as well as time of implementation and schedule for completion - see Sections 4.9 & 10.9 of the Rules & Regulations)

MATERIAL PHYSICAL INJURY

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that may be caused by the project/program? Yes [] No []

If yes, what are the proposed mitigation measures, if any that might be reasonably imposed to ensure the project/program does not result in Material Physical Injury to a party to the Judgment or the Basin?

PROJECTED PROJECT OR PROGRAM COSTS

(a) Capital: (b) Operations and Maintenance:

(c) Cumulative Project or Program Cost:

\$ AMOUNT OF CREDIT OR REIMBURSEMENT REQUESTED _____

ADDITIONAL INFORMATION ATTACHED

Yes [] No []

Applicant

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____

CHINO BASIN WATERMASTER

Form 6

STANDARD
LOCAL STORAGE AGREEMENT # _____

THIS AGREEMENT is made and entered into this _____ day of _____, by and between Chino Basin Watermaster, (herein "Watermaster") and _____ (herein "Local Storage Party") pursuant to the Judgment entered January 27, 1978 and the Peace Agreement and Implementation Plan dated June 29, 2000.

STORAGE AUTHORITY. The authority is hereby granted to the above Storage Party, pursuant to the terms and conditions hereof, to store _____ acre-feet of water in the Chino Basin and to recapture the same for reasonable beneficial use as indicated on the forms or attachments below. The right to store water under this Local Storage Agreement is not transferable or assignable.

Excess Carry Over Local Supplemental or Imported Both

STORAGE APPROVAL. In submitting the Application for Local Storage, Applicant presented the following forms in addition to Form 1:

- Form 2 Application for Recharge
- Form 3 Application for Sale or Transfer of Right to Produce Water in Storage
- Form 4 Application or Amendment to Application to Recapture Water in Storage
- Form 5 Application Transfer Annual Production Right or Safe Yield
- Form 6 Application by a Party to the Judgment to Participate in a Storage & Recovery Program
- Form 7 Application for Reimbursement or Credit Against OBMP Assessments

All additional forms are included herein by reference and deemed approved or conditioned as attached.

TERM OF AGREEMENT. This Agreement shall continue in effect coterminous with the Peace Agreement unless or until the Agreement is modified, amended or terminated by Watermaster action. Except for losses or other factors as Watermaster may establish, any water in storage at the time of termination of this Agreement shall remain to the credit of Storage Party for subsequent recapture in its normal operations, i.e., termination of the Agreement shall affect termination of the right to place water in storage, but shall not impair the integrity of water stored or the right to recapture the same. Local Storage Agreements do not require court approval.

This Agreement and all provisions thereof are applicable to and binding upon not only the parties hereto, but also upon their respective heirs, executors, administrators, successors, assigns, lessors and licensees and upon the agents, employees and attorneys in fact of all such persons.

The following standard terms and conditions are deemed incorporated in any local storage agreement approved by Watermaster.

ASSIGNMENT OF STORAGE CAPACITY. Storage capacity is not assignable. Water in storage may be assigned, sold, leased or transferred as herein or subsequently approved.

LOSSES ATTRIBUTABLE TO STORED WATER. Pursuant to the Peace Agreement, losses may be applied to water stored hereunder after July 1, 2005.

RECAPTURE. Storage Party may recapture Stored Water by the direct extraction of groundwater from Chino Basin as herein approved by Watermaster. Each Storage Party shall apply to Watermaster in writing using Form 4 at least thirty (30) days prior to commencement of direct recapture if Form 4 is not included herewith, or if the recapture plan is different than that originally submitted to Watermaster. Watermaster shall determine whether significant adverse impacts will result to the Chino Basin and to other producers by reason of such production and shall either confirm, deny, or modify such proposed extraction schedule.

PROCEDURES AND ACCOUNTING FOR WATER STORED. Watermaster shall maintain a continuing account of water stored in and recaptured from Storage Party's account, which shall be available for review upon reasonable notice by Storage Party.

REPORTS TO WATERMASTER. Storage Party shall file with Watermaster such reports, forms, or additional information as is reasonably required by Watermaster in order to provide full information as to storage, losses and recapture of Stored Water hereunder.

WATERMASTER'S RIGHT OF INSPECTION. Watermaster shall have the right to inspect at reasonable times the records and facilities of Storage Party with relation to storage and recapture of water in the Chino Basin.

NOTICE. Any notices may be given by mail and postage prepaid addressed as follows:

Watermaster

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

Storage Party

As set forth on the application.

ADDITIONAL CONDITIONS OR TERMS. In granting approval of this storage agreement, Watermaster placed the following additional conditions in the agreement:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers.

WATERMASTER

STORAGE PARTY

Watermaster Approval

Applicant

NOTICE
OF
VOLUNTARY AGREEMENT REGARDING
PROVISION OF SERVICE TO AN AGRICULTURAL POOL PARTY
BY AN APPROPRIATIVE POOL PARTY

PLEASE TAKE NOTICE that pursuant to the Peace Agreement dated June 29, 2000,
_____ ("Appropriative Pool Party") is undertaking to provide water service to
_____ ("Agricultural Pool Party"), commencing on _____ and
continuing in effect until further notice, the quantity of water necessary to provide water service to said
Agricultural Pool Party for use on its overlying lands in each fiscal year. Said water is only for use on
Agricultural Pool Party's overlying lands. Watermaster is hereby requested to reduce (assign) the
Production reported for the Appropriative Pool Party by a corresponding quantity of water each year, and
to record such Production as Production in the Agricultural Pool.

To be valid, appropriate meters must be installed and this form must be signed by the Agricultural
Pool Party and the Appropriative Pool Party.

AGRICULTURAL POOL PARTY

APPROPRIATIVE POOL PARTY

By: _____

By: _____

(print or type above name)

(print or type above name)

Watermaster Received & Filed

Date:

**NOTICE
REGARDING
PROVISION OF SERVICE TO A NON-AGRICULTURAL POOL PARTY
BY AN APPROPRIATIVE POOL PARTY**

PLEASE TAKE NOTICE that pursuant to Paragraph 8 of Exhibit "G" of the Judgment entered on January 27, 1978 in the Case of "CHINO BASIN MUNICIPAL WATER DISTRICT vs. CITY OF CHINO, et al.," RCV 51010 (formerly Case No. SCV 164327) and the Peace Agreement dated June 29, 2000, _____ ("Appropriative Pool Party") is directly or indirectly undertaking to provide water service to _____ ("Non-Agricultural Pool Party"), commencing on _____ and continuing in effect until further notice, the quantity of water necessary to provide water service to said Non-Agricultural Pool Party for use on its overlying lands in each fiscal year. Said water is only for use on Non-Agricultural Pool Party's overlying lands. Watermaster is hereby requested to reduce (assign) the Production reported for the Appropriative Pool Party by a corresponding quantity of water each year, up to the Non-Agricultural Pool Party's share of Safe Yield, which quantity is _____, and to record such Production as Production by the Non-Agricultural Pool Party.

To be valid, appropriate meters must be installed and this form must be signed by the Non-Agricultural Pool Party and the Appropriative Pool Party.

NON-AGRICULTURAL POOL PARTY

APPROPRIATIVE POOL PARTY

By: _____

By: _____

(print or type above name)

(print or type above name)

Watermaster Received & Filed

Date: _____

NOTICE
OF
ANNUAL LAND USE CONVERSION

Name of Party

Street Address

City State Zip Code

Telephone: _____

Facsimile: _____

Hereby certifies the following:

- _____ acres located outside of Conversion Area No. 1 did not receive any "agricultural water" during the _____ fiscal year. This acreage includes _____ acres claimed in prior years and the addition of _____ acres to be claimed for the _____ fiscal year.
- _____ acres located inside of Conversion Area No. 1 did not receive any "agricultural water" during the _____ fiscal year. This acreage includes _____ acres claimed in prior years and the addition of _____ acres to be claimed for the _____ fiscal year.

TOTAL NUMBER OF NEW ACRES FOR CONVERSION: _____

TOTAL NUMBER OF ACRES PREVIOUSLY CONVERTED: _____

REQUIRED ATTACHMENTS:

- Separate lists of previously converted and proposed conversion areas including parcel numbers, acreage, etc.
- Maps showing both previously converted and proposed conversion areas.

Certified by Appropriative Pool Party (Date)

APPENDIX 2

Sample Assessment Package
Sample Exhibits from Annual Report
and
Policies & Procedures

**CRINO BASIN WATERMASTER
2000/2001 ASSESSMENTS
Approved 01/25/01**

Base Initial Draft FY 01-02 Assessment

NOTE: Budget not updated, no production entered, etc.

**MEMO ONLY
FULL CONDITIONAL
2001/2002 BUDGET**

ASSESSMENT	APPROPRIATIVE POOL	AGRICULTURAL POOL	NON-AGRICULTURAL POOL
TOTALS (Acres-Fee)	Amount (Acres-Fee)	Amount (Acres-Fee)	Amount (Acres-Fee)
1974-00	124,645,339	44,400,900	7,774,074
2000-01	0.000	44,400,900	0.000
	70.233%	100.000%	3.407%
	0.001%	100.000%	-0.001%

MEMO ONLY	General Administration	ODMP	General Administration	ODMP	General Administration	ODMP
2001/2002 BUDGET	664,987	\$7	5084,987	\$1,549,736	(\$7)	(\$15)
TOTALS	71,107	9,371	55,772	1,549,736	5,442	-15
	2,305,830	9,388	740,779	1,549,736	5,435	0

MEMO ONLY	General Administration	ODMP	General Administration	ODMP	General Administration	ODMP
2001/2002 BUDGET	664,987	\$7	5084,987	\$1,549,736	(\$7)	(\$15)
TOTALS	71,107	9,371	55,772	1,549,736	5,442	-15
	2,305,830	9,388	740,779	1,549,736	5,435	0

ON-GOING SPECIAL PROJECTS

Muler Tending Program - Pool Specific
Monitoring - Pool Specific
Competitive Efforts

TOTAL ON-GOING SPECIAL PROJECTS
TOTAL ADMINISTRATIVE BUDGET

ADD: 33% Admin Operating Reserve, 0% ODMP

ODMP AG Pool Specific
ODMP EXPERT AND STAFF

TOTAL 01/02 BUDGET & OPERATING RESERVE
Plus or (Minus)

0001 Appropriative Pool Interest Revenue
CASH DEMAND for FY 2001/2002
Less: Funds on Hand for Administrative Assessments 7/1/01
TOTAL 2001/2002 BUDGET

FUNDS TO BE ASSESSED OVER FY 2000/2001 PRODUCTION

RECOMMENDED 2001/2002 ASSESSMENTS:
General Administration Assessment
Minimum Assessments
Water Reallocation Cash (Revenue) (3)

2000/2001 ASSESSMENTS (FOR INFORMATION ONLY)

Per Acre-Foot
Per Producer
Per Acre-Foot

Per Acre-Foot

Per Acre-Foot

Per Acre-Foot

Footnotes:

- (1) Total Cash has been allocated to Pools by actual production percentages.
- (2) Cash on Hand for Appropriative Pool is June 30, 2000 Working Capital less interest revenue and less funds shown as Cash on Hand for the Appropriative Pool and Ag Pool for Carryover Projects.
- (3) Cash on Hand for Agricultural Pool is the balance of funds assessed in 00/00 for Special Projects carried over to 00/01.
- (4) Cash on Hand for Non-Ag Pool is June 30, 2000 Working Capital.
- (5) Appropriative Pool members have agreed to assume the Ag Pool's 2000-2001 administrative assessments in exchange for impumped Ag water reallocated to the Appropriative Pool following the 9/27/99 production year.
- (6) Per Minute action by the Appropriative Pool at their meeting of June 7, 1993.
- (7) CASH has been allocated to each Appropriative Pool member based on its assigned share (percent) of Operating Safe Yield

**CHINO BASIN WATERMASTER
2000/2001 ASSESSMENTS**

ACRE-FEET TO BE REALLOCATED TO APPROPRIATORS (A)

Agricultural Pool Annual Safe Yield	82,800.000
2000-01 Less Early Transfer:	32,800.000
2000-01 Less Pool Production:	<u>44,400.900</u>
Under(Over) Production:	5,599.100
	32,800.000
	5,599.100
	<u>0.000</u>

**APPROPRIATIVE POOL
REALLOCATION OF UNPRODUCED AGRICULTURAL POOL SAFE YIELD**

Appropriative Pool Party	Share of Operating Safe Yield (Percent)	Assigned Share of Operating Safe Yield (Acre-Fect)	0.000 Prior Yr One Time Transfer (Acre-Fect)	32,800 AF Annual Early Transfer (2)	Land Use Conversions (3)	Total Required Conversions (4)=(1)+(2)+(3)	2000-01 Production Year		Total Reallocated (Acre-Fect)	Assessments per acre-foot Administration \$25.6578	OBMP \$40.3587	2000-01 Safe Yield Reallocation (Acre-Fect)
							Difference Btwn Total Required & Total Available (Acre-Fect)	Total Reallocated (Acre-Fect)				
Inland Empire Utilities Agency	0.000%	0.000	0.000	0.000	0.000	0.000	0.000	0.000	50.00	50.00	0.000	
City of Chino	7.357%	4,033.857	0.000	2,413.096	2,368.410	4,781.51	-358.451	4,423.055	113,485.86	178,508.76	4,423.055	
Cucamonga County Water District	6.601%	3,619.454	0.000	2,165.128	598.364	2,763.49	-321.617	2,441.875	62,653.15	98,550.91	2,441.875	
Fontana Union Water Company	11.666%	6,396.736	0.000	3,826.448	0.000	3,826.45	-568.396	3,258.052	83,594.45	131,490.75	3,258.052	
Fontana Water Company	0.000%	0.000	0.000	0.000	0.000	0.00	0.000	0.000	0.00	0.00	0.000	
Jurupa Community Services (D)	3.759%	2,061.118	0.000	1,232.952	5,656.550	6,889.50	-183.148	6,706.354	172,070.30	270,659.75	6,706.354	
Marygold Mutual Water Co	1.195%	655.317	0.000	391.960	0.000	391.96	-58.223	333.737	8,562.95	13,469.18	333.737	
Monte Vista Water District	8.797%	4,823.954	0.000	2,885.416	36.595	2,922.01	-428.611	2,493.400	63,975.16	100,630.38	2,493.400	
Monte Vista Irrigation Co	1.234%	676.759	0.000	404.752	0.000	404.75	-60.123	344.629	8,842.41	13,908.76	344.629	
M/W Co./Glen Avon Heights (B)	0.000%	0.000	0.000	0.000	0.000	0.00	0.000	0.000	0.00	0.00	0.000	
City of Norco	0.368%	201.545	0.000	120.704	0.000	120.70	-17.930	102.774	2,636.96	4,147.83	102.774	
City of Ontario	20.742%	11,373.816	0.000	6,803.376	894.557	7,697.93	-1,010.600	6,687.333	171,582.24	269,892.05	6,687.333	
City of Pomona	20.454%	11,215.852	0.000	6,708.912	0.000	6,708.91	-996.568	5,712.344	146,566.17	230,542.76	5,712.344	
San Antonio Water Co	2.748%	1,506.888	0.000	901.344	0.000	901.34	-133.889	767.455	19,691.20	30,973.48	767.455	
S.D. County (Olympic +)	0.000%	0.000	0.000	0.000	0.000	0.00	0.000	0.000	0.00	0.00	0.000	
City of Chino Hills	3.851%	2,111.422	0.000	1,263.128	916.866	2,179.99	-187.630	1,992.364	51,119.68	80,409.22	1,992.364	
Santa Ana River Water Co	2.373%	1,301.374	0.000	778.344	0.000	778.34	-115.618	662.726	17,004.08	26,746.75	662.726	
Southern California Water Co	0.750%	411.476	0.000	246.000	0.000	246.00	-36.542	209.458	5,374.24	8,453.46	209.458	
City of Upland	5.202%	2,852.401	0.000	1,706.256	0.000	1,706.26	-253.454	1,452.802	-37,275.70	58,633.20	1,452.802	
West End Consolidated Water Co	1.728%	947.714	0.000	566.784	0.000	566.78	-84.192	482.592	12,382.24	19,476.77	482.592	
West San Bernardino CWD	1.175%	644.317	0.000	385.400	0.000	385.40	-57.249	328.151	8,419.64	13,243.75	328.151	
TOTALS	100.000%	54,834.000	0.000	32,800.000	10,471.342	43,271.342	-4,872.242	38,399.100	\$985,236.43	\$1,549,737.76	38,399.100	

(A) Judgment Paragraph 44, pg 25; check figures

Paragraph 46, pg 26; Exhibit H, Paragraph 10, pg 73.

(D) Jurupa Community Services District acquired

Mutual Water Company of Glen Avon Safe Yield Rights in FY 96/97

Producer	Land Use Conversion Claim Summary		Total Prior to Peace Agrmt Converted(AE)	Total Post Peace Agrmt Converted Acres	Post Peace Agrmt Converted AF	Total Converted AF	
	Acres Converted @ 1.3 a/ac (Acres)	Prior Converted (AF) (Acre-Fect)					
Chino	1,454.750	1,891.175	196.235	2,087.410	140.500	281.000	2,368.410
Chino Hills	670.266	871.346		871.346	22.760	45.520	916.866
Cucamonga County WD	460.280	598.364		598.364	0.000	0.000	598.364
Jurupa CSD	3,094.500	4,022.850		4,022.850	816.850	1,633.700	5,656.550
Monte Vista WD	28.150	36.595		36.595	0.000	0.000	36.595
Ontario	527.044	685.157	209.400	894.557	0.000	0.000	894.557
Totals	6,234.990	8,105.487	405.635	8,511.122	980.110	1,960.220	10,471.342

**CHINO BASIN WATERMASTER
2001-02 ASSESSMENTS**

2000-01 APPROPRIATIVE POOL WATER TRANSACTION ACTIVITY

PRODUCER	Notes ^a	Prepurchased from Stor/MWD	6,500 AF MZ1. Suppl Water	Lease/Assign Rts To/(From)	Total Water Transactions	MWD Cyclic/ Cooperative	Special Assessment	Replenishment	Total Exchange	Share of Operating Safe Yield (Percent)
Inland Empire Utilities Agency		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000%
City of Chino	1	0.000	478.205	0.000	478,205	0.000	0.000	0.000	0.000	7.356%
Cucamonga County Water Dist	16	0.000	429.065	0.000	429,065	0.000	0.000	0.000	0.000	6.601%
Fontana Union Water Company	16	0.000	758.290	0.000	758,290	0.000	0.000	0.000	0.000	11.666%
Fontana Water Company	3	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000%
Jurupa Community Services	4,5	0.000	244.335	0.000	244,335	0.000	0.000	0.000	0.000	2.905%
Marygold Mutual Water Co.		0.000	77.675	0.000	77,675	0.000	0.000	0.000	0.000	1.195%
Monte Vista Water District	7,8,14,17	0.000	571.805	0.000	571,805	0.000	0.000	0.000	0.000	8.797%
Monte Vista Irrigation Co.	7	0.000	80.210	0.000	80,210	0.000	0.000	0.000	0.000	1.234%
M/W Co./Glen Avon Heights		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.853%
City of Norco		0.000	23.920	0.000	23,920	0.000	0.000	0.000	0.000	0.368%
City of Ontario	6,7	0.000	1,348.230	0.000	1,348,230	0.000	0.000	0.000	0.000	20.742%
City of Pomona	9	0.000	1,329.510	0.000	1,329,510	0.000	0.000	0.000	0.000	20.454%
San Antonio Water Company		0.000	178.620	0.000	178,620	0.000	0.000	0.000	0.000	2.748%
S. B. County (Olympic +)		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000%
City of Chino Hills		0.000	250.315	0.000	250,315	0.000	0.000	0.000	0.000	3.851%
Santa Ana River Water Compa	5	0.000	154.245	0.000	154,245	0.000	0.000	0.000	0.000	2.373%
Southern California Water Co.		0.000	48.750	0.000	48,750	0.000	0.000	0.000	0.000	0.750%
City of Upland	10	0.000	338.130	0.000	338,130	0.000	0.000	0.000	0.000	5.202%
West End Consolidated Water Co.		0.000	112.320	0.000	112,320	0.000	0.000	0.000	0.000	1.728%
West San Bernardino CWD		0.000	76.375	0.000	76,375	0.000	0.000	0.000	0.000	1.175%
Arrowhead MTN. Spring Water Co.		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0
Los Serranos Country Club		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0
Pyrite Canyon Group		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0
MWDSC	11,15	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0
TOTALS		0.000	6,500.000	0.000	6,500.000	0.000	0.000	0.000	0.000	100.000%

^a See corresponding notes on page 5

Summary of MWD Related Information - Including Non-Agricultural Producers

Producer	Co-Op. Storage	Co-Op. Balance	Cyclic Exchange	Total Activity
Southern California Edison Co	0.000	0.000	0.000	0.000
Cucamonga County Water Dist	0.000	0.000	0.000	0.000
Jurupa Community Svc Dist	0.000	0.000	0.000	0.000
Monte Vista Water District (20)	0.000	0.000	0.000	0.000
City of Norco	0.000	0.000	0.000	0.000
City of Pomona	0.000	0.000	0.000	0.000
City of Upland	0.000	0.000	0.000	0.000
Total Acres Feet	0.000	0.000	0.000	0.000

CHINO BASIN WATERMASTER
2001-02 ASSESSMENTS

2000-01 APPROPRIATIVE POOL PRODUCTION

PRODUCER	Notes*	Carry-Over From 1999-00 Production	Assigned Share of Safe Yield	Water Transaction Activity To/(From)	Ag Pool Safe Yield Reallocation	Annual Production Right	2000-01 Production	MWD Exchanges	Net Over-Production 15%/85% 100%	Under Production Balances			
										2000-01 Total Under- Produced	Applications Carry-Over To 2000-01 Production	Excess Carryover	
Inland Empire Utilities Agency		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	
City of Chino	1	2,851.846	4,033.857	478.205	4,423.055	11,786.963	0.000	0.000	0.000	0.000	11,786.963	4,033.857	7,753.106
Cucamonga County Water District		3,619.454	3,619.454	7,584.091	5,699.928	20,522.927	0.000	0.000	0.000	0.000	20,522.927	3,619.454	16,903.473
Fontana Union Water Company	2,12,16	0.000	6,396.736	(6,396.736)	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Fontana Water Company	2,3	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Jurupa Community Services	4,13	1,730.430	2,061.118	244.335	6,706.354	10,742.237	0.000	0.000	0.000	0.000	10,742.237	2,061.118	\$,681.119
Marygold Mutual Water Company		655.317	655.317	77.675	333.737	1,722.046	0.000	0.000	0.000	0.000	1,722.046	655.317	1,066.729
Monte Vista Water District	14	2,806.868	4,823.954	571.805	2,493.400	10,696.027	0.000	0.000	0.000	0.000	10,696.027	4,823.954	5,872.073
Monte Vista Irrigation Co	7	676.759	676.759	80.210	344.629	1,778.357	0.000	0.000	0.000	0.000	1,778.357	676.759	1,101.598
M/W Co./Glen Avon Heights		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
City of Norco		201.545	201.545	23.920	102.774	529.784	0.000	0.000	0.000	0.000	529.784	201.545	328.239
City of Ontario	6	6,573.831	11,373.816	1,348.230	6,687.333	25,983.210	0.000	0.000	0.000	0.000	25,983.210	11,373.816	14,609.394
City of Pomona	9	19.446	11,215.852	1,329.510	5,712.344	18,277.152	0.000	0.000	0.000	0.000	18,277.152	11,215.852	7,061.300
San Antonio Water Company	1,4	1,506.888	1,506.888	178.620	767.455	3,959.851	0.000	0.000	0.000	0.000	3,959.851	1,506.888	2,452.963
S. B. County (Olympic+)		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
City of Chino Hills		2,111.422	2,111.422	250.315	1,992.364	6,465.523	0.000	0.000	0.000	0.000	6,465.523	2,111.422	4,354.101
Santa Ana River Water Compa	5	1,301.374	1,301.374	154.245	662.726	3,419.719	0.000	0.000	0.000	0.000	3,419.719	1,301.374	2,118.345
Southern California Water Co		411.476	411.476	48.750	209.458	1,081.160	0.000	0.000	0.000	0.000	1,081.160	411.476	669.684
City of Upland	10	2,852.401	2,852.401	338.130	1,452.802	7,495.734	0.000	0.000	0.000	0.000	7,495.734	2,852.401	4,643.333
West End Consol. Water Co.		947.714	947.714	112.320	482.592	2,490.340	0.000	0.000	0.000	0.000	2,490.340	947.714	1,542.626
West San Bernardino CWD		644.317	644.317	76.375	328.151	1,693.160	0.000	0.000	0.000	0.000	1,693.160	644.317	1,048.843
Arrowhead Mtn. Spring Water Co.		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Los Serranos Country Club		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Dept of Toxic Substances		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
MWDSC	11,15	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
TOTALS		28,911.088	54,834.000	6,500.000	38,399.100	128,644.188	0.000	0.000	0.000	0.000	128,644.188	48,437.264	80,206.924

TOTAL PRODUCTION AND EXCHANGES

0.000

* See corresponding notes on Page 5.

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**CHINO BASIN WATERMASTER
2001-02 ASSESSMENTS**

* NOTES: Pages 3,4,6,8,9:

2000-01 APPROPRIATIVE POOL NOTES

FY 00-01 Production

Summary of Water Transactions for
2001-02 Assessment Package

Note Number	From	To	Type	From	From Annual	\$AF	\$ - 25%	\$ - 15%	15% To
				Storage	Production Rt.				
	Chino	Ontario		0.000			0.00	0.00	Ontario
	Cucamonga CWD	FWC		0.000			0.00	0.00	CCWD
		JCSD		0.000			0.00	0.00	CCWD
	Marygold M/W Co.	FWC		0.000			0.00	0.00	Marygold
	Monte Vista WD	Ontario		0.000			0.00	0.00	Ontario
		Ontario		0.000			0.00	0.00	MVWD
		Ontario		0.000			0.00	0.00	MVWD
	Monte Vista Irrigati	MVWD		0.000			0.00	0.00	MVIC
	City of Pomona	Ontario	Lease	0.000			0.00	0.00	Pomona
	San Antonio Water	Chino		0.000			0.00	0.00	Chino
		JCSD		0.000			0.00	0.00	JCSD
	City of Chino Hills	MVWD		0.000			0.00	0.00	Chino Hills
		Ontario		0.000			0.00	0.00	Ontario
	Santa Ana River W.	JCSD		0.000			0.00	0.00	SARWCO
	City of Upland	Ontario		0.000			0.00	0.00	Upland
		Ontario		0.000			0.00	0.00	Ontario
	Metro. W.D. So. Ca.	MVWD		0.000			0.00	0.00	MVWD
				0.000					
	Praxair	FWC (1)	Assign	0.000			0.00	0.00	FWC (1)
	California Steel	FWC	Assign	0.000			0.00	0.00	FWC
	Swan Lake	JCSD	Assign	0.000			0.00	0.00	JCSD
	Space Center Mira	JCSD	Assign	0.000			0.00	0.00	JCSD
	Sunkist	Ontario	Assign	0.000			0.00	0.00	Ontario
	Chino Airport	Chino	Assign	0.000			0.00	0.00	Chino
				0.000				<u>0.00</u>	
(1) FWC also paid prior year assessments of \$18,360.68 & \$2,537.87 for CSI & Praxair respectively									
Total Credit								<u>\$0.00</u>	
	Pomona	Reliant Energy		0.000					
				0.000					

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CHINO BASIN WATERMASTER
2001-02 ASSESSMENTS

2000-01 APPROPRIATIVE POOL STORAGE ACTIVITY

LOCAL STORAGE ACTIVITY
(Acre-Feet)

PRODUCER	NOTES*	Amount In Storage From 1999-00	Eligible for Storage In 2000-01	Storage Transfer To/(From)	Basin	Supplemental
					Water In Local Storage Yr End 2000-01	Water In Local Storage Yr End June 30, 2000
Inland Empire Utilities Agency		0.000	0.000	0.000	0.000	
City of Chino	17	1,306.513	7,753.106	0.000	7,753.106	1,306.513
Cucamonga CWD	3,6,8	23,295.503	16,903.473	0.000	16,903.473	23,295.503
Fontana Union Water Company		0.000	0.000	0.000	0.000	
Fontana Water Company		0.000	0.000	0.000	0.000	
Jurupa Community Services	4,18	6,951.125	8,681.119	0.000	15,632.244	
Marygold M/W Co.	3	1,896.521	1,066.729	0.000	1,066.729	1,896.521
Monte Vista WD	20	4,194.367	5,872.073	0.000	5,872.073	11,209.680
Monte Vista Irrigation Co.	14	7,015.313	1,101.598	0.000	1,101.598	
M/W Co./Glen Avon Heights		0.000	0.000	0.000	0.000	
City of Norco	19	366.198	328.239	0.000	694.437	
City of Ontario		10,000.000	14,609.394	0.000	14,609.394	10,000.000
City of Pomona	9	23,669.235	7,061.300	0.000	7,061.300	23,669.235
San Antonio Water Co.	1,4	17,422.509	2,452.963	0.000	19,875.472	
S. B. Co. (Olympic +)		0.000	0.000	0.000	0.000	
City of Chino Hills	6	9,414.078	4,354.101	0.000	4,354.101	9,414.078
Santa Ana River Water Co.		538.389	2,118.345	0.000	2,656.734	
Southern Cal. Water Co.		2,098.825	669.684	0.000	669.684	2,098.825
City of Upland		10,971.788	4,643.333	0.000	4,643.333	10,971.788
West End Consol. Water Co.		10,487.135	1,542.626	0.000	12,029.761	
West San Bernardino CWD		4,092.028	1,048.843	0.000	5,140.871	
Arrowhead MTN. Spring Water Co.		0.000	0.000	0.000	0.000	
Los Serranos County Club		0.000	0.000	0.000	0.000	
Dept of Toxic Substances		0.000	0.000	0.000	0.000	
Watermaster	18	36,622.746	0.000	0.000	36,622.746	
TOTALS		170,342,273	80,206,924	0.000	156,687,054	93,862,143

CYCLIC STORAGE ACTIVITY
(Acre-Feet)

	Spreading Deliveries	Exchange Deliveries	Sales	Change in Storage	Total in Storage
					36,126.1
July	0.0	0.0	0.0	0.0	36,126.1
August	0.0	0.0	0.0	0.0	36,126.1
September	0.0	0.0	0.0	0.0	36,126.1
October	0.0	0.0	0.0	0.0	36,126.1
November	0.0	0.0	0.0	0.0	36,126.1
December	0.0	0.0	0.0	0.0	36,126.1
January	0.0	0.0	0.0	0.0	36,126.1
February	0.0	0.0	0.0	0.0	36,126.1
March	0.0	0.0	0.0	0.0	36,126.1
April	0.0	0.0	0.0	0.0	36,126.1
May	0.0	0.0	0.0	0.0	36,126.1
June	0.0	0.0	0.0	0.0	36,126.1
TOTAL	0.0	0.0	0.0	0.0	

Cyclic Storage Account as of June 30, 2001 36,126.1 acre-feet.

MWDSC short term conjunctive use account. (Note 11)

* see corresponding notes on Page 5.

CHINO BASIN WATERMASTER
2000/2001 ASSESSMENTS

2000-01 PRODUCTION REPLENISHMENT

WATER REPLENISHMENT OBLIGATIONS -
PRODUCTION IN EXCESS OF SAFE YIELD:
Appropriative Pool Replenishment Obligation
Non-Agricultural Pool Replenishment Obligation

	COST OF REPLENISHMENT WATER PER ACRE FOOT:	
0.000	Metropolitan Water District Replenishment Water Ra	\$233.00
0.000	Projected Water Spreading Cost	10.00
	To	<u>\$243.00</u>
<u>0.000</u>		

TOTAL ACRE FEET TO BE REPLENISHED

	APPROPRIATIVE POOL 15%-85% GROUP ASSESSMENTS		100% GROSS ASSESSMENTS	TOTAL REPLENISHMENT ASSESSMENTS
	Gross 15%	Net 85%		
TOTAL				
Non-Agricultural Pool Gross Production			0.000	
Total Appropriative Pool Production in Acre-Feet	0.000			
Acre Feet Produced in Excess of Safe Yield		0.000		
Less Production by 100% Net Producers				
City of Pomona	0.000		0.000	
Murygold Mutual Water Company	0.000		0.000	
City of Norco Exceeding Export Right	0.000		0.000	
Dept of Toxic Substances	0.000		0.000	
Los Serranos	0.000		0.000	
Arrowhead	0.000		0.000	
MWDSC	0.000		0.000	
15%-85% Group Production	<u>0.000</u>	<u>0.000</u>		
Less Prepaid Gross Assessments	<u>0.000</u>	<u>0.000</u>		
Acre Feet to be Assessed	<u>0.000</u>	<u>0.000</u>	<u>0.000</u>	<u>0.000</u>

REPLENISHMENT ASSESSMENTS:

15%-85% Group Assessments				
0.000 @ \$243.00 per Acre-Foot	\$0.00	\$0.00	\$0.00	
Less Prepaid 15% Gross Assessments	0.00	0.00	0.00	
100% Gross Assessments				
0.000 @ \$243.00 per Acre Foot			\$0.00	
Total Assessments	\$0.00	\$0.00	\$0.00	\$0.00

ASSESSMENTS PER ACRE FOOT

#DIV/0! #DIV/0! #DIV/0!

**CITINO BASIN WATERMASTER
2000/2001 ASSESSMENTS**

**APPROPRIATIVE POOL
ASSESSMENT ADJUSTMENTS TO POOL MEMBERS**

PRODUCER	Peace Agreement			Cost of Credits Promoted	85%/15% Water Activity Adjustments			1st 6-Mo Assessment Adjustment	Prior Year Interest Revenue		Total 2000-01 Adjustments
	6500 AF MZ1 Supplemental Water Assmt \$	Kaiser Codelma Credit \$15,000	Pomona Credit \$66,667		AF Production & MWD Exchange	Producer 15% Credits	Promoted 15% Debits		Paid Assessments	Interest Proration	
Inland Empire Utilities Agency	\$0.00	\$0.00	\$0.00	\$0.00	0.000	\$0.00	#DIV/0!	23.98	2353.63	0.00	#DIV/0!
City of Chino	116,203.82	0.00	0.00	4,904.69	0.000	0.00	#DIV/0!	3,448.74	258,351.83	0.00	#DIV/0!
Cucamonga County Water District	104,262.80	0.00	0.00	4,400.69	0.000	0.00	#DIV/0!	(2,640.75)	0.00	0.00	#DIV/0!
Fountains Union Water Co.	184,264.47	0.00	0.00	7,777.37	0.000	0.00	#DIV/0!	829.61	90,690.07	0.00	#DIV/0!
Fountains Water Co.	0.00	0.00	0.00	0.00	0.000	0.00	#DIV/0!	4,595.75	214,299.16	0.00	#DIV/0!
Jurupa Community Services	59,373.41	0.00	0.00	2,506.01	0.000	0.00	#DIV/0!	(15,244.72)	391,950.81	0.00	#DIV/0!
Marygold Mutual Water Co.	18,875.03	0.00	0.00	796.67	0.000	0.00	#DIV/0!	(945.70)	0.00	0.00	#DIV/0!
Monte Vista Water District	138,948.62	0.00	0.00	3,864.70	0.000	0.00	#DIV/0!	3,370.99	276,300.22	0.00	#DIV/0!
Minute Vista Irrigation Co.	19,491.03	0.00	0.00	822.67	0.000	0.00	#DIV/0!	(80.12)	0.00	0.00	#DIV/0!
Mutual Wtr Co. of Glen Avon Hts	0.00	0.00	0.00	0.00	0.000	0.00	#DIV/0!	0.00	0.00	0.00	#DIV/0!
City of Norco	3,812.56	0.00	0.00	245.33	0.000	0.00	#DIV/0!	61.56	3,126.48	0.00	#DIV/0!
City of Ontario	327,819.89	0.00	0.00	13,828.07	0.000	0.00	#DIV/0!	12,510.82	1,013,553.36	0.00	#DIV/0!
City of Pomona	323,070.93	0.00	(66,667.00)	13,636.07	0.000	0.00	#DIV/0!	3,490.01	243,640.26	0.00	#DIV/0!
San Antonio Water Co.	43,404.66	0.00	0.00	1,832.01	0.000	0.00	#DIV/0!	(1,633.08)	0.00	0.00	#DIV/0!
San Bernardino County (Olympic +)	0.00	0.00	0.00	0.00	0.000	0.00	#DIV/0!	3.70	434.36	0.00	#DIV/0!
City of Chino Hills	60,826.53	0.00	0.00	2,567.35	0.000	0.00	#DIV/0!	(2,302.08)	0.00	0.00	#DIV/0!
Santa Ana River Water Co.	37,481.54	0.00	0.00	1,582.01	0.000	0.00	#DIV/0!	34.39	0.00	0.00	#DIV/0!
Southern California Water Co.	11,846.23	0.00	0.00	500.00	0.000	0.00	#DIV/0!	164.47	11,626.05	0.00	#DIV/0!
City of Upland	82,165.59	0.00	0.00	3,468.82	0.000	0.00	#DIV/0!	978.62	94,795.44	0.00	#DIV/0!
West End Consolidated Water Co.	27,292.76	0.00	0.00	1,152.01	0.000	0.00	#DIV/0!	122.93	13,440.26	0.00	#DIV/0!
West San Bernardino Co Water Dist.	18,559.13	0.00	0.00	783.34	0.000	0.00	#DIV/0!	83.39	8,139.22	0.00	#DIV/0!
Arrowhead MTN. Spring Water Co.	0.00	0.00	0.00	0.00	0.000	0.00	#DIV/0!	22.73	2,805.60	0.00	#DIV/0!
Los Serranos Country Club	0.00	0.00	0.00	0.00	0.000	0.00	#DIV/0!	19.70	3,168.01	0.00	#DIV/0!
Pyrite Canyon Group	0.00	0.00	0.00	0.00	0.000	0.00	#DIV/0!	(907.09)	0.00	0.00	#DIV/0!
MWDSC	0.00	0.00	0.00	0.00	0.000	0.00	#DIV/0!	0.00	0.00	0.00	\$0.00
CCG Ontario LLC	0.00	0.00	0.00	0.00	0.000	0.00	#DIV/0!	0.00	0.00	0.00	#DIV/0!
Assessments Paid/Interest Earned	\$1,579,300.00	\$0.00	(\$66,667.00)	\$86,667.00	0.000	\$0.00	#DIV/0!	(\$1,011.90)	\$2,730,874.78	\$0.00	#DIV/0!

Interest proration should be zero if received a credit for the prior year assessment

Pool Interest to be allocated:
Total Interest Earned
Plus SD222 Portion
Total Interest Adjustment

\$0.00
\$0.00

Water activity adjustments
Prepurchase adjustments
85/15 adjustment
Total activity adjustments
85%/15% Citrus AF Prod
Adjustment per acre foot

0.00
0.00
0.00
0.00
#DIV/0!

**CHINO BASIN WATERMASTER
2004/2005 ASSESSMENTS
APPROPRIATIVE POOL ASSESSMENTS**

Producer	ADMINISTRATIVE ASSESSMENTS					REFRESHMENT ASSESSMENTS					Assessment Adjustments From Page 2	2nd 6-Mo FY 00-01 Assessment	
	Acres-Fect Produced	Assessed per Acre-Foot		Ag Pool Safe Yield Reallocation		15% Gross Assessments		57% Net Assessments		100% Net Assessments			
		Gross Admin. #DIV/0!	OBMP #DIV/0!	Administration \$15.6571	OBMP \$40.1587	Acres-Fect	Assessment #DIV/0!	Acres-Fect	Assessment #DIV/0!	Assessment \$243.00			
Inland Empire Utilities Agency	0.000	#DIV/0!	#DIV/0!	50.00	50.00	0.000	#DIV/0!	0.000	#DIV/0!	0.00	\$0.00	#DIV/0!	#DIV/0!
City of Chino	0.000	#DIV/0!	#DIV/0!	113,485.86	178,508.76	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
Citramonga County Water District	0.000	#DIV/0!	#DIV/0!	42,653.13	98,550.91	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
Pomona Union Water Company	0.000	0.00	#DIV/0!	83,594.45	131,490.75	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
Pomona Water Company	0.000	#DIV/0!	#DIV/0!	0.00	0.00	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
Jacups Community Services	0.000	#DIV/0!	#DIV/0!	172,070.30	270,659.75	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
Marygold Mutual Water Company	0.000	0.00	#DIV/0!	8,562.95	13,469.18	0.000	#DIV/0!	0.000	#DIV/0!	0.000	0.00	#DIV/0!	#DIV/0!
Montic Vista Water District	0.000	#DIV/0!	#DIV/0!	63,975.16	100,630.38	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
Monte Vista Irrigation Company	0.000	0.00	#DIV/0!	8,842.41	13,908.76	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
M/W Co./Glen Avon Heights	0.000	0.00	#DIV/0!	0.00	0.00	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
City of Norco	0.000	#DIV/0!	#DIV/0!	2,636.96	4,147.83	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
City of Ontario	0.000	#DIV/0!	#DIV/0!	171,582.24	269,892.05	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
City of Pomona	0.000	#DIV/0!	#DIV/0!	148,566.17	230,542.76	0.000	#DIV/0!	0.000	#DIV/0!	0.000	0.00	#DIV/0!	#DIV/0!
San Antonio Water Company	0.000	#DIV/0!	#DIV/0!	18,691.20	30,973.48	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
S.B. County (Olympic +)	0.000	#DIV/0!	#DIV/0!	0.00	0.00	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
City of Chino Hills	0.000	#DIV/0!	#DIV/0!	51,119.68	80,409.23	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
Santa Ana River Water Company	0.000	#DIV/0!	#DIV/0!	17,004.08	26,746.75	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
Southern California Water Company	0.000	#DIV/0!	#DIV/0!	5,374.24	8,453.46	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
City of Upland	0.000	#DIV/0!	#DIV/0!	37,375.70	58,633.20	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
West End Consolidated Water Company	0.000	0.00	#DIV/0!	12,382.34	19,476.77	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
West San Bernardino CWD	0.000	0.00	#DIV/0!	8,419.64	13,243.75	0.000	#DIV/0!	0.000	#DIV/0!	0.00	0.00	#DIV/0!	#DIV/0!
Arrowhead MTL Spring Water Company	0.000	#DIV/0!	#DIV/0!	0.00	0.00	0.000	#DIV/0!	0.000	#DIV/0!	0.000	0.00	#DIV/0!	#DIV/0!
Los Serranos Country Club	0.000	0.00	#DIV/0!	0.00	0.00	0.000	#DIV/0!	0.000	#DIV/0!	0.000	0.00	#DIV/0!	#DIV/0!
Dept of Toxic Substances	0.000	0.00	0.00	0.00	0.00	0.000	#DIV/0!	0.000	#DIV/0!	0.000	0.00	#DIV/0!	#DIV/0!
MWDSC (1)	0.000	0.00	#DIV/0!	0.00	0.00	0.000	#DIV/0!	0.000	#DIV/0!	0.000	0.00	#DIV/0!	#DIV/0!
Repl. Exchange Reimbursement		0.00	0.00			0.000	#DIV/0!	0.000	#DIV/0!	0.000	0.00	0.00	0.00
Total Acres-Fect	0.000					0.000		0.000		0.000			
Total Assessments		#DIV/0!	#DIV/0!	\$983,236.43	\$1,549,737.76		#DIV/0!		#DIV/0!		\$0.00	#DIV/0!	#DIV/0!

(1) Under the "Mtd Conjointive Use Agreement", MWD agreed to pay administrative assessments on water produced from its account.

(A) The assessment shown here does not include the 6,500 of supplemental water assessment shown in the second column on page 2.

(A) #DIV/0!

Rising Water Captured 0.000
 Storm Water Recharged 0.000
 Desaller Water Needed 0.000
 Transfer Water Needed 0.000

New Yield Developed

Appropriative Pool Party	(percent)	(AF)	(AF)	New Yield Developed		(AF)	(AF)
	Share of Operating Safe Yield	Safe Yield Reall. Replenishment Water Required	Desalter Replenishment Water Required	Rising Water Captured	Storm Water Recharged	Net Water By Appropriator	Net Cost By Appropriator
Inland Empire Utilities Agency	0.000%	0.000	0.000	0.000	0.000	0.000	\$0.00
City of Chino	7.357%	0.000	0.000	0.000	0.000	0.000	0.00
Cucamonga County Water District	6.601%	0.000	0.000	0.000	0.000	0.000	0.00
Fontana Union Water Company	11.666%	0.000	0.000	0.000	0.000	0.000	0.00
Fontana Water Company	0.000%	0.000	0.000	0.000	0.000	0.000	0.00
Jurupa Community Services (B)	3.759%	0.000	0.000	0.000	0.000	0.000	0.00
Marygold Mutual Water Company	1.195%	0.000	0.000	0.000	0.000	0.000	0.00
Monte Vista Water District	8.797%	0.000	0.000	0.000	0.000	0.000	0.00
Monte Vista Irrigation Company	1.234%	0.000	0.000	0.000	0.000	0.000	0.00
M/W Co./Glen Avon Heights (B)	0.000%	0.000	0.000	0.000	0.000	0.000	0.00
City of Norco	0.368%	0.000	0.000	0.000	0.000	0.000	0.00
City of Ontario	20.742%	0.000	0.000	0.000	0.000	0.000	0.00
City of Pomona	20.454%	0.000	0.000	0.000	0.000	0.000	0.00
San Antonio Water Company	2.748%	0.000	0.000	0.000	0.000	0.000	0.00
S.B. County (Olympic +)	0.000%	0.000	0.000	0.000	0.000	0.000	0.00
City of Chino Hills	3.851%	0.000	0.000	0.000	0.000	0.000	0.00
Santa Ana River Water Company	2.373%	0.000	0.000	0.000	0.000	0.000	0.00
Southern California Water Company	0.750%	0.000	0.000	0.000	0.000	0.000	0.00
City of Upland	5.202%	0.000	0.000	0.000	0.000	0.000	0.00
West End Consolidated Water Com	1.728%	0.000	0.000	0.000	0.000	0.000	0.00
West San Bernardino CWD	1.175%	0.000	0.000	0.000	0.000	0.000	0.00
Arrowhead Mtn. Spring Water Co.	0.000%	0.000	0.000	0.000	0.000	0.000	0.00
TOTALS	100.000%	0.000	0.000	0.000	0.000	0.000	\$0.00

EXHIBIT 14

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

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION

10
11 CHINO BASIN MUNICIPAL WATER)
12 DISTRICT,)

13 Plaintiff,)

14 v.)

15 THE CITY OF CHINO,)

16 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

17
18 I.

19 INTRODUCTION

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

EXHIBIT 14

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

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8 Anne J. Schneider, Special Referee

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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

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EXHIBIT 15

NOV 15 2001

By Wanda L. DeVries Deputy

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010

ORDER GRANTING MOTION TO
CONFORM MINIMAL PRODUCER
DEFINITION IN JUDGMENT;
RATIFYING WATERMASTER'S
PROSECUTION OF WATER RIGHTS
PETITION AND APPLICATION;
ACKNOWLEDGING TRANSMITTAL
OF UPDATED JUDGMENT;
RECEIVING OBMP STATUS REPORT
NO. 2 AND DESALTER STATUS
REPORT

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

On November 15, 2001, the Court held a hearing on Watermaster's Motion to Conform Minimal Producer Definition in Judgment to 10 Acre-Foot Per Year as Provided in Watermaster Rules and Regulations (hereinafter "Watermaster's Motion to Conform Minimal Producer Definition"), Watermaster Request for Ratification and Confirmation of Authority to Prosecute a Water Rights Petition, Water Rights Application to Appropriate and to Hold Water Rights in Trust (hereinafter "Request for Ratification Re Water Rights"), Transmittal of Updated Judgment, OBMP

EXHIBIT 15

1 Implementation Status Report No. 2 (hereinafter "OBMP Report No. 2") and Desalter
2 Status Report. Satisfactory proof having been made and good cause appearing, IT IS
3 HEREBY ORDERED AND DECREED:

4
5 I.

6 MOTION TO CONFORM MINIMAL PRODUCER DEFINITION

7 Final approval was given for the Chino Basin Watermaster Rules and
8 Regulations ("CBWRR") on July 19, 2001, subject to a commitment by the Chino Basin
9 Watermaster (hereinafter "Watermaster") to remove the inconsistency between the
10 definition of Minimal Producer in CBWRR (ten acre-feet per year) and the definition of
11 Minimal Producer in the Judgment herein (five acre-feet per year). To resolve the
12 inconsistency, Watermaster seeks to amend the Judgment to change the definition of
13 Minimal Producer to any producer whose production does not exceed ten acre-feet per
14 year.

15 The Court has considered Watermaster's Motion to Conform Minimal Producer
16 Definition, in which it is reported that all three Pools, the Advisory Committee, and the
17 nine-member board serving as Watermaster (hereinafter "Watermaster Board") have
18 voted unanimously to amend the Judgment to conform the Judgment definition of
19 Minimal Producer to the definition contained in CBWRR. No opposition has been filed.

20 The Court also has received and considered the Special Referee's Report and
21 Recommendation Concerning Motion to Conform Minimal Producer Definition. The
22 Court approves and hereby adopts the Special Referee's recommendation that
23 Watermaster's Motion to Conform Minimal Producer Definition be granted.

24 Accordingly, Paragraph 4(j) of the Judgment is hereby amended to read:

25 "Minimal Producer—Any producer whose production does not exceed ten acre-
26 feet per year."

27 ///

28 ///

1 II.

2 REQUEST FOR JUDICIAL DECLARATION RE HOLDING WATER RIGHTS IN
3 TRUST

4 Watermaster seeks a judicial declaration that it may take the following actions
5 notwithstanding limitations in the Judgment concerning Watermaster's ownership of
6 real property: (1) prosecute a petition with the State Water Resources Control Board
7 ("SWRCB") for a limited revision of the SWRCB's declaration of the Santa Ana River
8 as a fully appropriated stream (hereinafter "Petition"); (2) prosecute an application to
9 appropriate unappropriated water from the Santa Ana River System (hereinafter
10 "Application"); (3) hold any water rights secured under the Application "in trust" for the
11 benefit of the parties to the Judgment. (Req. for Ratification, at 1-2.)

12 The Court has considered Watermaster's Request for Ratification Re Water
13 Rights. The Court also has considered the Special Referee's Report and
14 Recommendation Concerning Authority to Pursue Water Rights Petition. The Court is
15 aware that the proposed actions are in conflict with the plain meaning of paragraph 19
16 of the Judgment. However, the Court has approved Watermaster's adoption of an
17 Optimum Basin Management Program ("OBMP") for the Chino Groundwater Basin
18 ("hereinafter Basin"); furthermore surface water recharge of the Basin is an essential
19 element of the OBMP. The Court also is aware that a diversion of surface water flows
20 may require a permit from the SWRCB; i.e., that a permit from the SWRCB may be
21 necessary to accomplish fully the Recharge Element of the OBMP.

22 The Court notes that one solution would be to modify paragraph 19 of the
23 Judgment. Watermaster does not seek an express modification of the Judgment, but
24 instead seeks a declaration from the Court ratifying its actions in prosecuting the
25 Petition and Application with the SWRCB. The Court agrees with the Special Referee
26 that securing water rights in trust will not compromise Watermaster's objective role as
27 steward of the Basin and is not inconsistent with the intent of the Court expressed in
28 paragraph 19 of the Judgment. The Court has the authority to effectively modify

1 paragraph 19 of the Judgment by ratifying Watermaster's actions. The Court finds that
2 it is appropriate in this instance that Watermaster acquire an interest in real property to
3 facilitate an arrangement that is in the public's best interest and the best interests of
4 the parties to the Judgment, so long as the real property interest to be acquired will be
5 held in trust for the benefit of the parties.

6 The Court adopts and incorporates in full herein the Special Referee's Report
7 and Recommendation Concerning Authority to Pursue Water Rights Petition. The
8 Court declares that Watermaster may pursue its Petition and Application only "in trust
9 for the benefit of the parties" as necessary to carry out the Recharge Element of the
10 OBMP. Because there is no express authority in the Judgment for Watermaster to
11 acquire water rights in trust, in the future Watermaster is advised to obtain Court
12 approval before filing any further petition or application with the SWRCB. Existing
13 permits issued by the SWRCB that are held by Watermaster for purposes of recharge
14 should be amended to reflect that the water rights are held by Watermaster in trust for
15 the benefit of the parties to accomplish recharge of the Basin as envisioned by the
16 Judgment.

17 Watermaster shall hold the water rights in trust in accordance with the terms
18 and conditions of Resolution No. 01-16, *A Resolution of the Chino Basin Watermaster*
19 *to Establish Terms and Conditions under which Watermaster May Hold Water Rights*
20 *in Trust for the Parties to the Judgment Consistent with the Judgment and the Peace*
21 *Agreement*, attached hereto, marked "Exhibit A," and incorporated herein by this
22 reference. So long as Watermaster holds water rights, Resolution No. 01-16 shall not
23 be amended or revoked without prior Court approval. The Court or any party may
24 enforce this provision through the use of an order to show cause.

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III.

TRANSMITTAL OF "UPDATED JUDGMENT"

Watermaster staff has produced an unofficial compilation of the Judgment herein, entitled "Updated Judgment," which is intended to incorporate amendments that have been made to the Judgment since it was first issued in 1978. Watermaster has transmitted a copy to the Court indicating its intention of distributing this compilation as an unofficial reference tool. The Special Referee has expressed some concerns regarding the format, accuracy, and completeness of this compilation. In the Special Referee's Report and Recommendation Concerning Transmittal of Updated Judgment, it is recommended that certain corrections be made to this compilation before it is distributed. The Court approves the Special Referee's Report and Recommendation Concerning Transmittal of Updated Judgment, which is incorporated herein by this reference. Watermaster is directed to make the corrections noted by the Special Referee and to make any other corrections, as appropriate, and resubmit the compilation to the Court before distributing it. Further, when distributing the compilation, Watermaster should include a warning that it does not intend that any party to the Judgment rely on the compilation in lieu of researching the Court file. The Court file remains the official source for all Judgment amendments and all orders pertaining to the Judgment.

IV.

OBMP IMPLEMENTATION

Desalter Status Report

In its Order dated April 19, 2001, the Court set a special hearing to receive a status report from Watermaster on the desalter component of the OBMP. The Court has considered Watermaster's Desalter Status Report. The Court also has considered the Special Referee's Report and Comments Concerning Desalter Status Report.

1 It appears that progress has been made in the negotiations concerning the
2 Desalter I Expansion and Desalter II Project. (The Court notes that the negotiations
3 also cover the expansion of the Arlington Desalter, but that expansion is not part of the
4 OBMP.) The Term Sheet and Bridge Agreement are complex documents, which no
5 doubt, took a considerable amount of time and effort to complete. The Court
6 commends the parties' efforts. However, the Court urges the parties to complete and
7 execute the water supply agreements as soon as practicable, as well as the
8 agreement governing the purchase and sale of the existing desalter facility.

9 The Court also is concerned with the apparent two-year delay in completing the
10 Desalter I Expansion. The Court adopts and incorporates herein the Special Referee's
11 Report and Comments Concerning Desalter Status Report. Watermaster is directed to
12 submit within 30 days a Supplemental Desalter Status Report, addressing the change
13 of schedule, funding, and design and construction plans for the desalter component of
14 the OBMP. The Supplemental Desalter Status Report should also include a proposed
15 timeframe for the completion of negotiations related to the water supply agreements
16 and the agreement governing the purchase and sale of the existing desalter facility.

17 OBMP Status Report No. 2

18 Watermaster is required to submit periodic reports to the Court concerning the
19 progress made in implementing the OBMP. Watermaster submitted its first report on
20 March 30, 2001. Watermaster submitted its second progress report on September 30,
21 2001. The Court has considered Watermaster's OBMP Status Report No. 2 and the
22 Special Referee's Report and Comments Concerning OBMP Implementation Status
23 Report No. 2. The Court congratulates the parties on the significant progress that has
24 been made on the monitoring and recharge components of the OBMP. The Court
25 also is pleased with Watermaster's reports on its cooperative efforts with other entities
26 and the storage and recovery program. But the Court shares the Special Referee's
27 concern that the OBMP Status Report No. 2 does not address the schedule and
28 budget status for each of the OBMP Program Elements. The Court also is concerned

1 that an Initial State of the Basin report has not yet been completed. The Initial State of
2 the Basin Report is to serve as a measure for judging the overall effectiveness of the
3 OBMP. It is essential to the exercise of the Court's continuing jurisdiction that the
4 report be filed promptly.

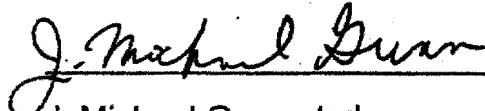
5 Accordingly, Watermaster is directed to file within 30 days a Supplemental
6 OBMP Status Report No. 2, which addresses the schedule and budget status for each
7 of the OBMP Program Elements and ongoing CEQA compliance. Watermaster also is
8 directed to file an Initial State of the Basin Report no later than January 31, 2002,
9 which is also the date by which the Annual Report must be filed. Watermaster is
10 reminded to request and give notice of a hearing date in February for the Court to
11 receive the Annual Report.

12
13 V.

14 INDEPENDENT ASSESSMENT OF OBMP IMPLEMENTATION STATUS

15 When the Court appointed the Watermaster Board to an additional five-year
16 term, it indicated that the OBMP progress reports, together with an independent
17 assessment of OBMP implementation status, including verification of data by the
18 Special Referee and her Technical Expert, Mr. Joe Scalmanini, would be the basis for
19 consideration of continuing the appointment at the end of the term. To facilitate the
20 independent verification of OBMP implementation status, the Special Referee
21 recommends that two to four meetings a year be scheduled between Mr. Scalmanini
22 and Watermaster staff and consultants to supplement the written progress reports filed
23 semi-annually by Watermaster. The Court adopts the recommendation and requests
24 Watermaster to convene the first of such meetings within 30 days.

25
26 Dated: November 15, 2001


J. Michael Gunn, Judge

Resolution No. 01-16

**A RESOLUTION OF THE CHINO BASIN WATERMASTER TO ESTABLISH
TERMS AND CONDITIONS UNDER WHICH WATERMASTER MAY HOLD
WATER RIGHTS IN TRUST FOR THE PARTIES TO THE JUDGMENT
CONSISTENT WITH THE JUDGMENT AND THE PEACE AGREEMENT.**

WHEREAS, the Judgment in the Chino Basin Adjudication, *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino Superior Court Case No. RCV. 51010, created the Watermaster and directed it to perform the duties as provided in the Judgment or ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction; and

WHEREAS, paragraph 19 of the Judgment states that: "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"; and

WHEREAS, the paragraph 5.1 (h) of the Peace Agreement provides a construction of paragraph 19 of the Judgment by the parties thereto in which it is declared that: "Watermaster shall not own Recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. It shall never own real property. However, Watermaster may own water rights in trust for the benefit of the parties to the Judgment"; and

WHEREAS, this interpretation of paragraph 19 was unanimously approved by each of the respective parties, the Advisory Committee and the Watermaster Board in approving the Peace Agreement; and

WHEREAS, consistent with the parties' written construction, Watermaster has long held two water rights, identified as Permit 19895 and Permit 20753, to surface water in the Chino Basin without objection from any party to the Judgment; and

WHEREAS, surface water has been previously allocated inter-se among the parties to the 1978 Judgment, and Watermaster has made efforts to preserve and protect the continued and expanded recharge of Basin water for the benefit of all parties to the Judgment; and

WHEREAS, many of the parties to the judgment have signed the Santa Ana River and Chino Basin Water Right Accord dated September 15, 2000, which represents an agreement between the Chino Basin parties and the Orange County Water District contemplates that Watermaster may file an application to appropriate water "in trust" on behalf of the parties to the Judgment; and

WHEREAS, the principal mechanism of the Santa Ana River and Chino Basin Water Right Accord through which the Chino Basin parties can protect their right to use the surface water is through an application filed by Watermaster with the State Water Resources Control Board requesting a confirmation of those rights; and

WHEREAS, such water rights should not belong to any individual entity since the recharge goals of the Optimum Basin Management Program ("OBMP") are intended to benefit the Chino Basin as a whole as a common pool resource; and

WHEREAS, the parties to the Judgment continue to believe that the best way to secure the rights to utilize the surface water resources of the Chino Basin is through water rights held by the Watermaster as trustee for the parties to the Judgment; and

WHEREAS, Watermaster has held numerous meetings, workshops and hearings with stakeholders and parties to the Judgment coincident with the approval of the Peace Agreement and subsequent filing of an application to appropriate water, representing that the proposed construction of

paragraph 19 of the Judgment means that water rights held by Watermaster will be held solely for the benefit of the parties to the Judgment, all without objection by any person; and

WHEREAS, a consistent construction has been memorialized and published in the Post-Order Memorandum dated October 26, 2000, and in the Watermaster Request for Ratification and Confirmation of Authority to Prosecute a Water Rights petition, Water Rights Application to Appropriate and to Hold Water Rights in Trust dated October 15, 2001; and

WHEREAS, the parties to the Judgment believe that it would be beneficial for Watermaster to determine the limitations upon Watermaster's authority with regard to Water Rights held in trust by Watermaster; and

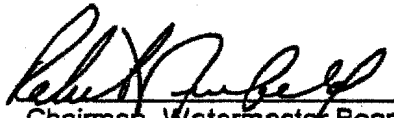
WHEREAS, Watermaster intends to establish a trust and hold such water rights subject to certain equitable duties to deal with the property for the benefit of the parties to the Judgment.

NOW THEREFORE, IT IS HEREBY RESOLVED AND DETERMINED THAT:

1. Definitions.
 - a. "Watermaster" means the entity created by the Court in the Judgment in the Chino Basin Adjudication, *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino Superior Court Case No. RCV 51010, as it exists as an entity separate from any of the entities of which it is constituted.
 - b. "Water Rights" means any permit or license issued by the State Water Resources Control Board for the use of water.
 - c. "Party to the Judgment" means a party to the Judgment in the Chino Basin Adjudication, *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino County Superior Court Case NO. RCV 51010.
2. Watermaster shall hold the Water Rights as trustee for the benefit of the Parties to the Judgment in accordance with the terms and conditions of this Resolution.
3. The Water Rights shall be held by Watermaster in a fiduciary capacity, and Watermaster shall have no substantive rights with regard to the Water Rights held by it.
4. The Water Rights shall be used and managed by Watermaster in accordance with the terms, conditions and requirements of the Judgment and the Peace Agreement and in furtherance of the Optimum Basin Management Program.
5. Watermaster may not sell, lease, transfer, or in any way encumber said Water Rights except at the express direction of the Parties to the Judgment as expressed through the three Pool Committees, the advisory committee and the board and as approved by the Court.
6. Watermaster may only take actions regarding the Water Rights it holds that are in the best interests of the Parties to the Judgment considered as a whole, which interest shall be determined solely through the expression the three Pool committees, the Advisory Committee and the Board.
7. Watermaster shall deal impartially with the Parties to the Judgment and shall act impartially in communicating with them and in managing the Water Rights, taking into account any differing interests of the Parties to the Judgment.

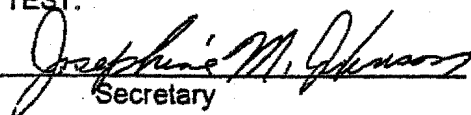
Exhibit "A"

8. Watermaster shall act in the highest good faith towards the Parties to the Judgment, and must not use its position to gain any advantage over the Parties to the Judgment.
9. Any benefits in whatever form that are derived from the Water Rights shall inure to the Parties to the Judgment according to the preference of the Parties to the Judgment as expressed by the three Pool Committees, the Advisory Committee and the Board.
10. Watermaster shall not use or deal with the Water Rights for its own profit or for any other purpose unconnected with the trust, nor take part in any transaction in which it has an interest adverse to any Party to the Judgment.
11. Watermaster shall pay, contest, release, prosecute, adjust, compromise, or settle any claim involving the Water Rights only at the express direction of the Parties to the Judgment expressed through the three Pool Committees, the Advisory Committee and the Board and as approved by the Court.
12. Watermaster shall keep the Parties to the Judgment reasonably informed of its administration of the Water Rights.
13. Upon reasonable request by a Party to the Judgment, Watermaster shall make full disclosure of information relevant to that Party's beneficial interest in the Water Rights.
14. Watermaster shall keep accurate and complete records and shall provide an annual accounting to each Party to the Judgment of the quantity of water used under the Water Rights and the nature of such use.


Chairman, Watermaster Board

Approved: 
Chairman, Advisory Committee

ATTEST:


Secretary

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

I, Josephine Johnson, Secretary of the Chino Basin Watermaster, DO
HEREBY CERTIFY that the foregoing Resolution being No. 01-16, was adopted on October 25, 2001 at
a regular meeting of the Chino Basin Watermaster Board by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CHINO BASIN WATERMASTER


Secretary

Exhibit "A"

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 15, 2001, I served the document(s) identified below

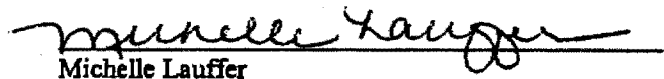
- 1) ORDER GRANTING MOTION TO CONFORM MINIMAL PRODUCER DEFINITION IN JUDGMENT;
RATIFYING WATERMASTER'S PROSECUTION OF WATER RIGHTS PETITION AND APPLICATION;
ACKNOWLEDGING TRANSMITTAL OF UPDATED JUDGMENT; RECEIVING OBMP STATUS REPORT
NO. 2 AND DESALTER STATUS REPORT

from 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 15, 2001.


Michelle Lauffer

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EXHIBIT 16

File:
Monde Vista/
Chino Basin/
Pleadings

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7
8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10
11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 vs.

15 CITY OF CHINO, et al.,

16 Defendants

CASE NO. RCV 51010

ORDER RECEIVING
SUPPLEMENTAL DESALTER
REPORT, SUPPLEMENTAL OBMP
REPORT, 24th ANNUAL REPORT,
AND INITIAL STATE OF BASIN
REPORT; ORDER CONTINUING
HEARING ON SUBSIDENCE

17 Date: February 28, 2002

18 Dept: 8

19 Time: 11:00 a.m.

20
21
22 On February 28, 2002, the Court held a hearing on Watermaster's
23 Supplemental Desalter Status Report, Watermaster's Supplemental OBMP
24 Implementation Status Report No. 2, Watermaster's 24th Annual Report, and
25 Watermaster's Initial State of the Basin Report. A hearing was also scheduled for the
26 Court to receive technical reports from Watermaster and others concerning
27 subsidence and related issues. Satisfactory proof having been made and good cause
28 appearing, IT IS HEREBY ORDERED AND DECREED:

EXHIBIT 16

I.

SUPPLEMENTAL OBMP IMPLEMENTATION STATUS REPORT NO. 2

On November 15, 2001, the Court received a status report from Watermaster on the desalter component of the Optimum Basin Management Program for the Chino Basin ("OBMP"). The Court acknowledged the progress that had been made to date concerning the Desalter I Expansion and Desalter II Project, but expressed concern with the apparent delay in completing the Desalter I Expansion. Watermaster was directed to file a Supplemental Status Report.

The Court has received and considered Watermaster's Supplemental Desalter Status Report, dated December 13, 2001 ("Supplemental Desalter Report"). The Court also has considered the Special Referee's Report and Recommendation Concerning the Supplemental Desalter Report, which is incorporated herein by this reference. The Court adopts the recommendation that Mr. Scalmanini be kept apprised of design plans for Chino I Expansion and Chino II Desalter Project through regular design progress reports. Of course, when the design plans become final, they should be submitted to the Court as part of the OBMP reporting process. In addition, Mr. Scalmanini should be kept apprised of the overall project schedule and any changes made to that schedule as a result of Proposition 13 funding requirements.

II.

SUPPLEMENTAL OBMP IMPLEMENTATION STATUS REPORT NO. 2

Watermaster submitted its second OBMP implementation progress report on September 30, 2001. In the Court's Order dated November 15, 2001, a concern was expressed that the report did not address the schedule and budget status and that an Initial State of the Basin Report had not been completed. Accordingly, Watermaster was directed to file a Supplemental OBMP Implementation Status Report ("Supplemental OBMP Report").

///

1 The Court has received and considered the Supplemental OBMP Report and
2 the Special Referee's Report and Recommendation Concerning the Supplemental
3 OBMP Report, which is incorporated herein by this reference. The Court adopts the
4 recommendations of the Special Referee with regard to schedule reporting, budget
5 reporting and mitigation tracking.

6
7 III.

8 WATERMASTER'S 24th ANNUAL REPORT

9 Watermaster is required, under paragraph 48 of the Judgment, to file an annual
10 report containing details of the operation of the pools, a review of Watermaster
11 activities, and a certified audit of all assessments and expenditures pursuant to the
12 Physical Solution. The recently revised Chino Basin Watermaster Rules and
13 Regulations also requires the annual report to include an update on implementation of
14 the OBMP for the Chino Basin, and on a biannual basis, an engineering appendix with
15 a specific 'state of the basin' report. Finally, the report is to include a compilation of
16 any amendments to the Rules and Regulations.

17 Watermaster transmitted its annual report to the Court on January 29, 2001.
18 The Court has reviewed the annual report and the comments made by the Special
19 Referee. Watermaster's 24th Annual Report is received and filed.

20
21 IV.

22 DRAFT INITIAL STATE OF THE BASIN REPORT

23 The Court's Order, dated November 15, 2001, directed Watermaster to file an
24 Initial State of the Basin Report, no later than January 31, 2002. The Court has
25 considered the Draft Initial State of the Basin Report transmitted by Watermaster with
26 the 24th Annual Report. The Court also has considered the Special Referee's Report
27 and Recommendation Concerning the Initial State of the Basin Report, which is
28 incorporated herein by this reference.

1 The Court adopts the recommendation that an "initial" point in time be selected
2 for the description of the "initial state of the basin." The Court also adopts the
3 recommendations that a conclusion be added to each section describing the state of
4 the basin at that "initial" time and that an executive summary be added to the final
5 report. Having Watermaster prepare a useful reference against which to assess the
6 effectiveness of implementing the OBMP is far more expedient than having the Court,
7 in the exercise of its continuing jurisdiction, require the Special Referee and her
8 Technical Expert to prepare such a report.

9
10 V.

11 TECHNICAL REPORTS CONCERNING SUBSIDENCE AND RELATED ISSUES

12 In response to a petition for writ of mandate filed by the City of Chino Hills
13 against the City of Chino, on December 19, 2001, the Court issued an order to all
14 parties to the Judgment to appear "to report on the status of the technical work
15 performed to date by Watermaster and others concerning subsidence and related
16 issues." Watermaster filed a Report of Activities and Request for Further Finding and
17 Order, in response to the Court's Order. In addition, the City of Chino filed a Response
18 and Motion Pursuant to Paragraph 15 of the Judgment. Subsequently, Monte Vista
19 Water District filed a Motion to Strike Portions of City of Chino's Motion, the City of
20 Chino Hills filed an Objection to the City of Chino's Motion, and the City of Chino filed a
21 response to Monte Vista's Motion to Strike.

22 Watermaster, joined by twelve other parties to Judgment, including the City of
23 Chino Hills and the City of Chino, has filed a Motion for Continuance asking the Court
24 to defer ruling on the pleadings filed pursuant to paragraph 15 of the Judgment.
25 Reportedly, the parties have reached a consensus to convene a regularly scheduled
26 stakeholder process to solicit input and to better define all elements of Program
27 Element 4 of the OBMP with regard to subsidence, including an interim management
28 plan for subsidence. Watermaster also reports that the parties have acknowledged

1 that if they are successful in reaching an agreement on how to further implement
2 OBMP Program Element 4, it will be unnecessary for the Court to rule on the motions
3 filed in response to the Court's December 19 Order. Therefore, the Court anticipates
4 that if the parties reach agreement on an interim management plan for subsidence,
5 some, or perhaps all, of the motions before the Court will be withdrawn.

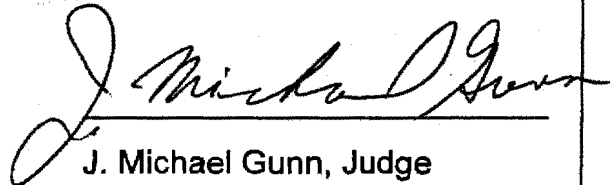
6 The Court has considered the Special Referee's Report and Recommendation
7 Concerning Motions Filed Related to Subsidence, which is incorporated herein by this
8 reference. The Special Referee believes that it would be extremely helpful to have
9 such a stakeholder process convene. The Court agrees with the Special Referee that
10 it is important for Mr. Scalmanini to closely monitor that process so that he can report
11 fully to the Court on the technical aspects currently existing and progress made in
12 further implementing OBMP Program Element 4. The Court also adopts the
13 recommendation concerning the contents of Watermaster's progress report to be filed
14 by May 1, 2002.

15 The Court is mindful that it must not render advisory opinions and must consider
16 the impact of making findings prematurely, which could prejudice the position of one or
17 more of the parties. Before ruling on the merits of any controversy before it, the Court
18 should thoroughly consider genuine controversies for adjudication. The Court intends
19 to continue the hearing on all of the motions pertaining to subsidence, as requested by
20 the majority of the parties. Therefore, the Court will not make any findings that may
21 have an impact on the merits of the positions of one or more of the parties, including
22 the findings requested by Watermaster in its Report of Activities and Request for
23 Further Finding and Order.

24 The hearing on the technical reports and motions concerning subsidence is
25 hereby continued. Watermaster shall convene the regularly scheduled stakeholder
26 process that has been agreed upon by the majority of the parties and report back to
27 the Court by May 1, 2002 on any consensus that has been achieved on how best to
28 further implement OBMP Program Element 4. In addition, the parties that have filed

1 pleadings in connection with the hearing concerning subsidence, i.e., City of Chino,
2 City of Chino Hills and Monte Vista Water District, shall file supplemental pleadings
3 updating the Court on the issues that have been resolved and those that remain
4 unresolved. The supplemental pleadings shall be filed by May 16, 2002. A schedule
5 for further briefing and a new hearing date will be set after receiving Watermaster's
6 report and supplemental pleadings, at a hearing to be held at 11:00 a.m., on June 19,
7 2002.

8
9 Dated: February 28, 2002


J. Michael Gunn, Judge

JUN 17 2002

By *Wanda L. DeVinny* Deputy

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

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

CASE NO. RCV 51010
Judge: Honorable J. MICHAEL GUNN

~~Proposed~~ ORDER GRANTING EX
PARTE APPLICATION FOR AN
ORDER SHORTENING TIME FOR
THE TRANSMITTAL OF
SUBSIDENCE INTERIM PLAN
AND MOTION TO SCHEDULE
WORKSHOP

Hearing Date: June 17, 2002
Time: 4:00 pm
Dept: 8

GOOD CAUSE APPEARING, Watermaster's Ex Parte Application for an Order
Shortening Time for the Transmittal of the Interim Plan for the Management of Subsidence is
hereby GRANTED.

DATED: JUN 17 2002

By J. Michael Gunn
Honorable J. Michael Gunn

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 June 17, 2002 I served the attached:

SCHEDULED HEARING DATE: June 19, 2002 @ 11:00 a.m.

**ORDER GRANTING EX PARTE APPLICATION FOR AN ORDER
SHORTENING TIME FOR THE TRANSMITTAL OF SUBSIDENCE INTERIM
PLAN AND MOTION TO SCHEDULE WORKSHOP**

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, addresses as follows:

See attached service list:

Attorney Service List

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Rancho Cucamonga, California, on June 17, 2002.



Michelle Lauffer, Water Resources Specialist

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EXHIBIT 17

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

CHINO BASIN MUNICIPAL WATER DISTRICT,
- Plaintiff,
vs.
CITY OF CHINO, et al.,
Defendants

CASE NO. RCV 51010

ORDER SCHEDULING WORKSHOP ON INTERIM PLAN, CONTINUING HEARING ON SUBSIDENCE, AND RECEIVING FINAL INITIAL STATE OF BASIN REPORT

Date: June 19, 2002
Dept: 8
Time: 11:00 a.m.

1

In response to a petition for writ of mandate filed by the City of Chino Hills against the City of Chino, on December 19, 2001, the Court issued an order to all parties to the judgment to appear on February 28, 2002, "to report on the status of the technical work performed to date by Watermaster and others concerning subsidence and related issues." On February 28, 2002, the Court continued the hearing on the technical reports to permit a stakeholder process to convene, with the hope that a

EXHIBIT 17

1 consensus could be achieved on how best to further implement OBMP Program
2 Element 4. Watermaster was asked to report back by May 1, 2002 on any consensus
3 achieved. The Court has considered Watermaster's Report on Progress of Interim
4 Plan Stakeholder Process and the City of Chino's Response to Watermaster's Report.
5 The Court also has considered Watermaster's Transmittal of Subsidence Interim Plan
6 and Motion to Schedule Workshop. Watermaster proposes that a workshop be
7 scheduled for Watermaster to present to the Court, through the Special Referee, the
8 Interim Plan for Management of Subsidence ("Interim Plan") recently approved by the
9 various Pool Committees, the Advisory Committee and the Board of Directors. No
10 opposition has been filed to the workshop proposal.

11 Satisfactory proof having been made and good cause appearing, IT IS
12 HEREBY ORDERED AND DECREED that a workshop be held on August 29, 2002, for
13 Watermaster to present to the Court, through the Special Referee, the details of the
14 Interim Plan. The Special Referee shall file and serve her Report and Comments
15 Concerning the Interim Plan no later than September 18, 2002. Any comments or
16 objections to the Special Referee's Report shall be filed and served by September 30,
17 2002. Any responses to objections shall be filed and served by October 10, 2002. A
18 hearing on the Interim Plan and the Special Referee's Report shall be held on October
19 17, 2002 at 1:30 p.m. At the hearing the Court will also determine whether to set a
20 briefing schedule for the City of Chino's Motion under Paragraph 15 of the Judgment
21 and related motions or to take the motions off calendar. Any motion by Watermaster
22 for an order instructing it to proceed in accordance with the Interim Plan shall be filed
23 and served by September 30, 2002.

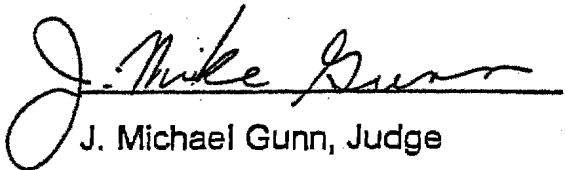
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26 In November 2001, Watermaster was directed to file an Initial State of the Basin
27 Report ("ISOB Report"). Watermaster filed a draft ISOB Report in January 2002. On
28 February 28, 2002, the Court directed Watermaster to revise the draft ISOB Report in

1 conformance with the recommendations made by the Special Referee. Watermaster
2 has transmitted to the Court the final ISOB Report. The report is hereby received and
3 filed. The Special Referee is requested to file any comments she may have by June
4 28, 2002. The parties shall have 20 days thereafter for any objections and responses
5 to objections.

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Dated: June 19, 2002


J. Michael Gunn, Judge

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 June 20, 2002 I served the attached:

RE: HEARING June 19, 2002 @ 11:00 a.m.

1. **ORDER SCHEDULING WORKSHOP ON INTERIM PLAN, CONTINUING HEARING ON SUBSIDENCE, AND RECEIVING FINAL INITIAL STATE OF BASIN REPORT**

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, addresses as follows:

See attached service list:
Attorney Service List
Mailing List 1

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Rancho Cucamonga, California, on June 20, 2002.



Michelle Lauffer, Water Resources Specialist

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EXHIBIT 18

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9 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION

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

CASE NO. RCV 51010
Judge: Honorable J. Michael Gunn
SPECIAL REFEREE'S REPORT AND
COMMENTS CONCERNING DRAFT
FINAL INITIAL STATE OF THE
BASIN REPORT
Date: N/A
Time: N/A
Dept: 8

18 I.
INTRODUCTION

20 Watermaster has prepared two drafts (January 31, 2002 and May 6, 2002) and a Draft Final
21 Initial State of the Basin Report ("ISOB Report") dated June 5, 2002.¹ Mr. Scalmanini and I have
22 reviewed these documents and offer the following comments.

23 II.
DISCUSSION

25 For all practical purposes, the ISOB Report can effectively serve to document an "initial"

27 _____
28 ¹The Court's June 19, 2002 Order refers to the draft final report as the "final ISOB Report."

1 state of the Chino Basin. "Initial" is an arbitrary designation to describe conditions in the basin as
2 of a time that, again for practical purposes, immediately precedes the implementation of the
3 Optimum Basin Management Program (OBMP). The baseline reflected in the ISOB Report is on
4 or about July 1, 2000, which is consistent with the start of OBMP implementation.

5 Our only substantial comment on the technical content of the ISOB Report is that it does not
6 include any discussion or other presentation of pumpage from the basin. Particularly in light of the
7 issues that have dominated the basin prior to and for much of the time since the Judgement, and also
8 in light of the OBMP objective to preserve and enhance safe yield, this description of basin
9 conditions should have included discussion of the amount of pumpage and the distribution of that
10 pumpage (i.e. throughout the basin, by Pool, etc.). Similarly, since pumpage in aggregate exceeds
11 the currently decreed safe yield as set forth in the Judgement, the ISOB Report should have included
12 an explanation and reconciliation of the difference in order to reflect the Watermaster's
13 replenishment activities and to describe how safe yield is not being exceeded.

14 It would also have been useful for the ISOB Report to include several hydrographs of
15 ground-water level vs. time to illustrate how the basin reached its "initial" state, which is illustrated
16 in the report by contours of equal ground-water elevation in Fall 2000. (One or more hydrographs
17 would also have been useful to complement an explanation of pumpage and reconciliation of
18 pumpage vs. safe yield, discussed above.) An understanding of how the basin has responded to
19 pumpage, i.e. the success of the Judgement, would have given the Fall 2000 ground-water contours
20 an important historical context.


21 The fact that the June 5, 2002 version of the ISOB Report is still labeled "draft" ("draft
22 final") is most evident in Chapter 8. The title of Chapter 8 promises reconciliation of dates in the
23 final document, but that had not yet occurred as of the "draft final" date of June 5. In Chapter 8,
24 discussion of the Recharge Master Plan (Section 8.2), the Desalters (Section 8.3), and the
25 Management Zone 1 Plan (Section 8.4.1) refer to "future" actions and dates that have now passed;
26 they were "future" dates when the first draft of the ISOB Report was prepared last January. The
27 June 5 "draft final" ISOB Report should have been edited to describe accurately the actions which
28 have now been completed or delayed, as well as the results or impacts of any delay.

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III.
CONCLUSION AND RECOMMENDATION

The ISOB Report now incorporates most of the recommendations made in the February 25, 2002, Special Referee's Report and Recommendation on the January 31, 2002, Draft ISOB Report. Although the ISOB Report does not discuss pumpage and reconcile pumpage with safe yield, or utilize water level histories as part of that reconciliation (and to illustrate the hydrologic balance of the basin), the ISOB Report can be used for its primary purpose: as an established baseline against which progress on the implementation of the OBMP can be measured. Pumpage and safe yield reconciliation should be included in the Annual Report Engineering Appendix due January 31, 2003.

Dated: June 26, 2002



Anne J. Schneider, Special Referee

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June 26, 2002

VIA OVERNIGHT DELIVERY

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

Dear Traci:

Enclosed is the Special Referee's Report and Comments Concerning Draft Final Initial State of the Basin Report. Please serve this document on all parties, persons and entities included on the Watermaster's service list. Please also file a proof of service with the Court.

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 rko

Anne J. Schneider
Special Referee

AJS:rko

cc: Scott Slater
Joe Scalmanini
Judith Schurr

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 June 27, 2002 I served the attached:

1. ***SPECIAL REFEREE'S REPORT AND COMMENTS CONCERNING DRAFT FINAL INITIAL STATE OF THE BASIN REPORT***

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, addresses as follows:

See attached service list:

Attorney Service List
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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Rancho Cucamonga, California, on June 27, 2002.


Michelle Lauffer, Water Resources Specialist

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

10 CHINO BASIN MUNICIPAL DISTRICT

11 Plaintiff,

12 vs.

13 CITY OF CHINO, ET AL.

14 Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the Honorable
MICHAEL GUNN]

**POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO RE-APPOINT
THE NINE-MEMBER BOARD FOR A
FURTHER FIVE YEAR TERM; MOTION
TO RECEIVE AND FILE STATE OF THE
BASIN REPORT**

Hearing Date: February 9, 2006
Time: 2:00 p.m.
Department: 8

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Santa Barbara, CA 93101

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21 INTRODUCTION

22 On February 19, 1998, the Court appointed a nine-member Board consisting of
23 representatives from the Overlying (Agricultural) Pool, the Overlying (Non-Agricultural) Pool, the
24 Appropriative Pool, and three municipal water districts to serve as Interim Watermaster for the
25

26
27 EXHIBIT 19
28

HATCH AND PARENT
21 East Corrallo Street
Sunnyvale, CA 95016

1 Chino Basin. On August 30, 2000, Watermaster filed a Motion to Extend the Nine-Member Board
2 for a Full Five-Year Term.¹

3 When the nine-member Board was appointed in 1998, the central concern of the Court was
4 the completion and adoption of the Optimum Basin Management Program. In 1998, "[t]he Court
5 informed the parties that one of the measures that would be used in determining the effectiveness of
6 the nine-member board, in functioning as a steward of the Basin, would be the progress made on the
7 adoption of an optimum basin management program ("OBMP") for the Basin." (September 28, 2000
8 Order, p.1-2.)

9
10 Through the Peace Agreement, Watermaster completed the preparation of the OBMP. Thus,
11 in the August 30, 2000 Motion, Watermaster argued that adoption of the OBMP justified the Court
12 in re-appointing the nine-member Board for a five-year term. The Court accepted Watermaster's
13 argument and re-appointed the nine-member Board with certain conditions that related to ensuring
14 that the OBMP, having been adopted, would be implemented.

15
16 **II.**

17 **CONDITIONS OF APPOINTMENT**

18 The Court said: "[t]he nine-member board is hereby appointed for an additional five-year
19 term, until September 30, 2005, subject to the continuing jurisdiction of the Court to reconsider the
20 appointment in the event Watermaster fails to timely comply with the following conditions: (1)
21 Watermaster's report on the status of its efforts to resolve the terms and conditions applicable to the
22 purchase of desalted water and to secure a recession of Western Municipal Water District's
23 conditional execution of the Peace Agreement . . . ; and (2) Watermaster adoption and Court approval
24 of Revised Rules and Regulations for Chino Basin . . . ; and (3) Submission of Reports Nos. 1
25

26
27 ¹ The use of the five-year period as the term for Watermaster appointment is a feature of Paragraph
28 16 of the Judgment which specifies that: "The term of appointment of Watermaster shall be for five

HATCH AND PARENT
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1 through 10 in accordance with the schedule set forth [in the Order] . . . ; and (4) Inclusion in such
2 reports of schedule and budget information essentially in a form equivalent to Exhibit "E" and Table
3 4-14 of the Phase I Report; and (5) Watermaster cooperation in the independent assessment and
4 verification of the data included in Reports Nos. 1 through 10 to be provided to the Court by the
5 Special Referee and her technical expert." (September 28, 2000 Order p.6.)
6

7 **A. SATISFACTION OF INITIAL CONDITIONS OF APPOINTMENT**

8 Watermaster has fulfilled all of the Court's five conditions of appointment:

9 1. The terms and condition applicable to the purchase of desalted water were resolved
10 through an agreement known as the Integrated Chino Arlington Desalter Term Sheet and the
11 subsequent formation of the Chino Desalter Authority. Based on this, Western Municipal Water
12 District rescinded its conditional execution of the Peace Agreement on April 25, 2001, by way of
13 Western Resolution 2162. Watermaster submitted this resolution to the Court on September 19,
14 2001.
15

16 2. The Court approved a revised Watermaster Rules and Regulations on July 19, 2001.

17 3. Watermaster has exceeded the requirement to file 10 bi-annual OBMP status reports
18 and since the beginning of 2003 has been filing quarterly status reports. Watermaster has completed
19 a total of 15 such status reports.
20

21 4. Inclusion of schedule and budget information in a form equivalent to that on Exhibit
22 E, Table 4-14 of the Phase I Report has been provided to the Special Referee and the Court
23 periodically and in a satisfactory manner. As the years have passed, the format of this information
24 has departed from the original dictates of the Court, but Watermaster has remained responsive to the
25 expectations of the Special Referee and the Court.
26

27
28 (5) years. The Court will by subsequent orders provide for successive terms or for a successor
Watermaster."

1 5. Watermaster has cooperated in the independent verification of the data included in
2 OBMP status reports through periodic meetings between Watermaster staff and consultants and the
3 Special Referee and the Court's Technical Advisor.
4

5
6 **B. ADDITIONAL CONDITIONS OF RE-APPOINTMENT**

7 As described above, when the nine-member Board was extended for a full five-year term, the
8 Court stated broadly that, "[t]he OBMP progress reports, together with independent assessment of
9 OBMP implementation status, including verification of data to be provided by the Special Referee
10 and her technical expert, will be the basis for consideration of continuing the appointment."
11 (September 28, 2000 Order, p.4.)

12 However, in addition to this broad statement of the basis for continuing the appointment of
13 the nine-member Board, the Court also guidance on specific elements of the OBMP that it would
14 closely consider. "The Court hereby gives notice to the parties that a primary concern of the Court in
15 any future application for reappointment of the nine-member board will be the parties' continued
16 commitment to provide for future desalters and preserve safe yield in accordance with the OBMP."
17

18 (September 28, 2000 Order p.5.) "The parties are forewarned that any future application for
19 reappointment of the nine-member board may be conditioned on the development of a detailed plan
20 to reach the OBMP goal of 40,000 acre-feet per year of desalting capacity to be installed in [the]
21 southern part of the Basin by 2020." (September 28, 2000 Order p.7.)
22

23 At the September 28, 2000 hearing, the Court also provided additional guidance on the
24 factors that would be relevant to the consideration of re-appointment:

- 25 "1. All production meters will be installed;
26 2. Basin monitoring will be completely in place and will have been the basis for the
27 semi-annual reports specified in my Order;
28

1 3. The Recharge Master Plan will be complete and appropriate recharge facilities will
2 have been installed; and

3 4. The OBMP Desalter I Expansion and Desalter II will be installed and operational,
4 with demonstrated delivery of desalter water for municipal use in the Basin.”

5
6 (Handout re September 28, 2000 Order from Court to Watermaster General Counsel and
7 memorialized at the Court’s direction in the September 28, 2000 Notice of Entry of Order.)

8 **C. SATISFACTION OF ADDITIONAL CONDITIONS OF RE-APPOINTMENT**

9 Pursuant to Order of the Court dated November 15, 2001, Watermaster was to prepare an
10 Initial State of the Basin Report and a State of the Basin Report. The Initial State of the Basin Report
11 was prepared in October 2002. In July 2005, Watermaster completed its State of the Basin Report
12 which provides a comprehensive analysis of Watermaster’s management of the Chino Basin and
13 status of OBMP implementation. A copy of the State of the Basin Report is attached to this pleading
14 as Exhibit “A.” As a part of the present Motion, Watermaster respectfully requests the Court to
15 receive and file the State of the Basin Report.
16

17 The State of the Basin Report provides the information necessary to be responsive to the
18 Court’s additional conditions of re-appointment:

19 1. Watermaster’s State of the Basin Report describes the installation of meters as
20 follows: “As of June 1, 2005, Watermaster counted about 530 active agricultural wells. About 390 of
21 these wells are now equipped with operating inline flow meters. Watermaster has budgeted to install
22 meters on 30 additional wells during the fiscal year 2005-06. Of the approximately 110 unmetered
23 wells remaining, approximately 65 are wells producing less than 10 acre-feet per year. The other 45
24 wells are anticipated to become inactive within 18-24 months because of urban development in the
25 southern portion of Chino Basin.” (State of the Basin Report 3-2.)
26
27
28

1 2. Under OBMP Program Element 1, Watermaster has developed numerous monitoring
2 programs. The accomplishments of these programs are described in detail in the State of the Basin
3 Report.

4 In summary, Watermaster has programs to monitor groundwater level, groundwater
5 production, and artificial recharge. These three programs are described in chapter 3 of the State of
6 the Basin Report. Watermaster also monitors water quality throughout the Basin and these efforts are
7 described in chapter 4 of the State of the Basin Report. Watermaster conducts ground level
8 monitoring and these efforts are currently focused on MZ1 subsidence issues. The ground level
9 monitoring activities are described in chapter 5 of the State of the Basin Report. Watermaster closely
10 monitors activities at all of the recharge basins and these activities are described in chapter 6 of the
11 State of the Basin Report. Finally, Watermaster conducts detailed monitoring of the condition of
12 hydraulic control, which is the relationship between the groundwater basin and the surface water of
13 the Santa Ana River. This program is described in chapter 8 of the State of the Basin Report and in
14 the May 2004 Hydraulic Control Monitoring Program Final Workplan. The project described in the
15 Hydraulic Control Monitoring Program Final Workplan consisted of the construction of nine wells at
16 an estimated cost of \$1,500,000 (State of the Basin 9-5.).

17
18
19 3. The parties completed the Recharge Master Plan Phase II Report in August 2001. The
20 Recharge Master Plan described a series of recharge basin improvements that would enhance the
21 water supply of the Basin through the ability to capture more stormflow. Because of the magnitude
22 of the project, the Recharge Master Plan recommended a phased approach to implementation.
23 However, the parties decided that given the importance of the project that implementation should
24 move forward as quickly as possible. The full project was a \$40 million series of construction
25 activities that were completed in the fall of 2004.
26
27
28

1 The project is anticipated to be fully operational for the 2006 storm season. Based on lessons
2 learned during the 2004-2005 storm season, further refinements to the recharge basins are being
3 developed.

4 4. In 2001, the parties created a Joint Powers Agency known as the Chino Desalter
5 Authority to own and operate the Chino Basin Desalters. The progress of the desalters is reported in
6 great detail in chapter 9.2 of the State of the Basin Report. According to the April 2005 CDA
7 Progress Report, the expansion of the Chino I Desalter and the construction of Chino II are estimated
8 to be complete by February 2006.

10 **D. CONDITIONALITY REGARDING WATERMASTER'S REQUEST FOR**
11 **REAPPOINTMENT**

12 This Motion, and the issue of Watermaster governance, has been a subject of extensive
13 discussion between the parties. The Motion was presented to the Pool Committees, the Advisory
14 Committee and the Board at their December meetings. The Motion was unanimously approved for
15 filing by all committees and the Board, and Watermaster is unaware of any present opposition to the
16 re-appointment of the Board. However, as a condition of its approval of the Motion, the Board
17 included a commitment to establish a committee to review and recommend whether changes to the
18 Watermaster governance structure, including composition of the Board and clarification regarding
19 the roles and functions of the various committees and the Board, are necessary. The committee will
20 provide its report no later than December 31, 2007. Logistical matters associated with this
21 committee, including size of the committee and membership, have been left for future discussion by
22 the parties and direction from the Board at a later date.

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III.

MOTION FOR RE-APPOINTMENT

Based on all of the forgoing, Watermaster respectfully requests the Court to re-appoint the nine-member Watermaster Board for another five-year term beginning February 9, 2006 and ending February 9, 2011, acknowledging the Board's commitment to convene a committee which will make recommendations concerning Watermaster governance issues by December 31, 2007.

Dated: January 11, 2006


By: _____
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Michael T. Fife
Attorneys for Chino Basin Watermaster

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State of Basin Report and Appendix

Refer to our ftp site: cbwm.org/ftp

EXHIBIT 'A'

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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, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On January 12, 2006, I served the following:

- 1) **NOTICE OF MOTION FOR IN SUPPORT OF MOTION TO RE- APPOINT THE NINE MEMBER BOARD FOR A FURTHER FIVE YEAR TERM : MOTION TO RECEIVE AND FILE STATE OF THE BASIN REPORT**
- 2) **POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO REPAPPOINT THE NINE MEMBER BOARD FOR A FURTHER FIVE YEAR TERM; MOTION TO RECCEIVE AND FILE STATE OF THE BASIN REPORT**
- 3) **DECLARATION OF MICHAEL FIFE IN SUPPORT OF MOTION TO RE-APPOINT THE NINE MEMBER BOARD FOR FURTHER FIVE YEAR TERM; MOTION TO RECEIVE AND FILE STATE OF THE BASIN REPORT**

BY MAIL: 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, addresses as follows:

See attached service list:

Mailing List 1

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 12, 2006 in Rancho Cucamonga, California.


PAULA S. MOLTER
Chino Basin Watermaster

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7

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

10 CHINO BASIN MUNICIPAL DISTRICT

11 Plaintiff,

12 vs.

13 CITY OF CHINO, ET AL.

14 Defendant.
15
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17
18
19

Case No. RCV 51010

[Assigned for All Purposes to the Honorable
MICHAEL GUNN]

**DECLARATION OF MICHAEL FIFE IN
SUPPORT OF MOTION TO RE-APPOINT
THE NINE-MEMBER BOARD FOR
FURTHER FIVE YEAR TERM; MOTION
TO RECEIVE AND FILE STATE OF THE
BASIN REPORT**

Hearing Date: February 9, 2006
Time: 2:00 P.M.
Department: 8

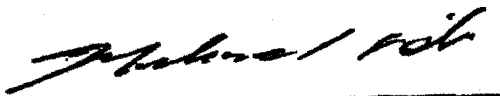
20 I Michael Fife under penalty and perjury:

- 21 1. I am an attorney with the law firm of Hatch and Parent licensed to practice law in the
22 State of California.
23 2. The Law firm of Hatch and Parent serves as general counsel to the Chino Basin
24 Watermaster.
25 3. I have served as general counsel for the Chino Watermaster since February 2000 and
26 am readily familiar with the practices and procedures of all Watermaster Committees and the Board.
27 4. The Watermaster Pool Committees, Advisory Committee, and Board considered this
28 motion at their December meetings, and directed legal counsel to file this motion.

DECLARATION OF MICHAEL T. FIFE IN SUPPORT OF MOTION

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5. At its December 15, 2005 meeting the Watermaster Board committed to form a committee to investigate and make recommendations concerning the issue of Watermaster governance by December 31, 2007.


MICHAEL T. FIFE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

13

COUNTY OF SAN BERNARDINO

14

RANCHO CUCAMONGA DISTRICT

15

16 CHINO BASIN MUNICIPAL WATER
17 DISTRICT,

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Plaintiff,

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v.

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CITY OF CHINO, et al.,

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Defendant.

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Case No. RCV 51010
Judge: Hon. J. Michael Gunn

**OBJECTIONS BY CUCAMONGA VALLEY
WATER DISTRICT TO SPECIAL
REFEREE'S REPORT AND
RECOMMENDATIONS CONCERNING
MOTION TO RE-APPOINT THE NINE-
MEMBER BOARD FOR A FURTHER
FIVE-YEAR TERM**

Date: February 9, 2006
Time: 2:00 p.m.
Dept: 8

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OBJECTIONS BY CVWD TO SPECIAL REFEREE'S REPORT

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Cucamonga Valley Water District ("CVWD") submits the following Objections to the Comments and Recommendations provided by the Special Referee.

At the outset, CVWD notes that the timeframe provided by the Special Referee to respond to the Comments and Recommendations is insufficient to fully and accurately address the scope and nature of the Comments and Recommendations. Thus, CVWD requests that the Court grant a thirty-day extension of time to respond to the Special Referee's Comments and Recommendations. The Objections and comments provided herein constitute a summary of CVWD's response to the Special Referee's Comments and Recommendations. Should the Court grant CVWD's request for an extension of time, CVWD will provide a more comprehensive set of Objections and comments.

I. CVWD Objects to the Recommendation that Further Special Referee Involvement is Needed in Watermaster Affairs

Having reached the end of the first full five-year term of the Watermaster Board, the Special Referee has filed a Report which paints a bleak picture of the accomplishments of the parties over the past five years, and predictably suggests that the best way to move forward in the next five years is to increase the involvement of the Special Referee in the management of the Basin.

The Referee Report recommends that: "The Court should direct [the] Special Referee to conduct workshops with respect to the issues to be addressed by Watermaster." (Referee Report, 15:23-24.) This open-ended recommendation suggests *carte blanche* for the Referee to conduct workshops on a variety of Watermaster issues, thus ensuring continued employment for the full staff of the Court's consultants.¹

This recommendation seems to be an outgrowth of the entire tenor of the Special

¹ The Court's consultant staff currently includes the Special Referee, an attorney assistant for the Special Referee and a technical assistant for the Special Referee. In effect, the Court's consultant staff is nearly as large as Watermaster's.

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1 Referee's Report which discounts the many millions of dollars that have been spent on OBMP
2 implementation by the members of the Appropriative Pool over the past five years in order to
3 suggest that further (and perhaps increased) oversight by the Special Referee is necessary in order
4 to ensure continued implementation of the OBMP.

5
6 Furthermore, the steps outlined by the Special Referee appear to overreach the original
7 authority granted the Referee, and this usurps the proper role of the Watermaster and parties to
8 the Judgment. Notably, the cost of the Special Referee and the related expense incurred by the
9 Parties and their ratepayers to respond to the Special Referee and related issues continues to
10 grow; it is anticipated that this will become an issue for some Parties to the Judgment.

11 **II. The Diminished Role of the Court Over the Past Five Years is the Best**
12 **Evidence of the Success of Watermaster and Alone Justifies Reappointment**

13
14 The Special Referee's Report declines to mention even once the fact that in the past five
15 years, the Court has not been called upon to resolve a single contested issue between the parties.
16 The parties have demonstrated complete success in managing their conflicts amongst themselves,
17 and the primary work for the Court and its three consultants has been to review status reports and
18 approve specific implementation items. In the past five years, no party has found it necessary to
19 utilize the complaint procedure of Article X of Watermaster's Rules and Regulations, nor has any
20 party complained about the progress of OBMP implementation. This fact alone justifies the
21 reappointment of Watermaster.

22
23 The diminished role of the Court over the past five years is the best evidence that the
24 Watermaster process is working, and there is certainly no need for expensive Referee workshops
25 in order to establish that fact. Indeed, the long-term objective of the Court should be the gradual
26 phasing out of the Special Referee and technical experts, which add to the Parties' expenses and
27 may prove unnecessary in the future. The Watermaster successfully fulfilled its mission without
28 the need for a Special Referee until recently, when the Advisory Committee petitioned the Court

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1 for a functional change to deal with the OBMP. At this time, it appears that the continuation of
2 the Special Referee is overly burdensome and does not promote consensus building among the
3 Parties who are charged with carrying out the OBMP and Judgment; thus, it is in the best interest
4 of the Parties to the Judgment and the ratepayers within the jurisdiction of Watermaster not to
5 continue the present role of the Special Referee. Rather, Watermaster should be permitted to
6 dictate its own schedule and develop management strategies consistent with the OBMP for the
7 public good.

8 **III. The Special Referee's "Construction" Of Watermaster's Motion as a Motion**
9 **for a Two-Year Reappointment is Incorrect**
10

11 The Special Referee suggests that Watermaster's motion should be construed as a motion
12 to re-appoint the Nine-Member Board for a period of two years. The Special Referee's
13 suggestion is faulty and would cause the Parties to deviate from their mission to complete work
14 that is significantly more important to the management of the Basin in order to respond to the
15 issues raised by the Special Referee. The Parties, through Watermaster, moved the Court for a
16 five-year re-appointment of the Watermaster Nine-Member Board. To the best of CVWD's
17 knowledge, the Motion is unopposed, and all Parties to the Judgment are supportive of a five-year
18 re-appointment under the conditions outlined in Watermaster's Motion. The Motion, which
19 expresses the intent and desire of the Parties, does not call for workshops or other added oversight
20 by the Special Referee. Such workshops do not further any objective of governance or
21 management.


22 Finally, it appears that the Special Referee takes exception to the format of the Parties'
23 reporting process. The Parties' reporting process is a product of this Court's orders; if the Court
24 desires a change in the format or frequency of the reporting process, the Court may so order.
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Thus, CVWD respectfully requests that the Court grant Watermaster's Motion to re-appoint the Nine-Member Board and decline to accept the recommendations of the Special Referee.

Dated: January 30, 2006

BEST BEST & KRIEGER LLP

By: 
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7
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9 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION

11 CHINO BASIN MUNICIPAL WATER)	CASE NO. RCV 51010
12 DISTRICT,)	
	)	Judge: Honorable J. Michael Gunn
13 Plaintiff,)	
	)	SPECIAL REFEREE'S COMMENTS
14 v.	)	AND RECOMMENDATIONS
	)	CONCERNING MOTION TO RE-
15 THE CITY OF CHINO,	)	APPOINT THE NINE-MEMBER
	)	BOARD FOR A FURTHER FIVE-
16 Defendants.	)	YEAR TERM
	)	Date: February 9, 2006
	)	Time: 2:00 p.m.
	)	Dept: 8

18 I. WATERMASTER MOTION

19 The 1978 Judgment specifies, at paragraph 16, that the Court will provide for successive
20 Watermaster terms or for a successor Watermaster. Watermaster has filed a motion requesting the
21 Court "... to re-appoint the nine-member Watermaster Board for another five-year term beginning
22 February 9, 2006, and ending February 9, 2011." (Motion to Re-Appoint the Nine-Member Board
23 for a Further Five-Year Term, p. 6 ("Motion").) The Special Referee presents this report and
24 recommendation on the Motion. It is recommended that any comments or objections to this report
25 be filed no later than Tuesday, January 30, 2006, and any responses to objections be filed no later
26 than Monday, February 6, 2006.

27 It is reported in the Motion that the Pool Committees, the Advisory Committee, and the
28 Watermaster Board unanimously approved filing of the motion. (Motion, p. 7.) It is also reported

1 EXHIBIT 22

1 that "... Watermaster is unaware of any present opposition to the re-appointment of the Board."
2 (*Id.*) At the same time, however, it is explicitly noted that: "This Motion, and the issue of
3 Watermaster governance, has been a subject of extensive discussion between the parties." (*Id.*) The
4 extent and scope of the discussion between the parties is not reflected in the Motion, but
5 Watermaster requests that the Court "... acknowledge the Board's commitment to convene a
6 committee which will make recommendations concerning Watermaster governance issues by
7 December 31, 2007. (*Id.* at p. 8.) It appears from the Motion that changes in Watermaster
8 governance are contemplated: The committee is to "review and recommend whether changes to the
9 Watermaster governance structure, including composition of the Board and clarification regarding
10 the roles and functions of the various committees and the Board, are necessary." (Motion, p. 7.)

11 The Court's Order Concerning Motion to Extend Nine-Member Board (September 28, 2000)
12 made the appointment of the Nine-Member Board as Watermaster subject to certain conditions,
13 noting: "The failure of any one of these conditions shall be considered by the Court as a compelling
14 reason to reconsider the appointment of a nine member board." (Order at p. 5.) Watermaster states
15 that it has fulfilled all of the Court's initial and additional conditions of appointment. Watermaster
16 lists the initial conditions of re-appointment: report on the status of Watermaster's efforts to resolve
17 terms and conditions related to the purchase of desalted water and to secure the rescission of Western
18 Municipal Water District's conditional execution of the Peace Agreement; adoption of Watermaster
19 Rules and Regulations; filing of OBMP Status Reports;¹ provision of OBMP schedule and budget
20 information to the Special Referee and Court; and cooperation in the independent verification of data
21 included in OBMP Status Reports. (Motion at pp. 2 *et seq.*) Watermaster recounts that additional
22 conditions of re-appointment include a broad condition and specific conditions. The broad condition
23 is that "OBMP progress reports, together with independent assessment of OBMP implementation
24 status including verification of data to be provided by the Special Referee and her technical expert,
25 will be the basis for consideration of continuing the appointment." (Motion at p. 4, quoting from
26

27 ¹Status Report No. 15 was due on September 30, 2005. It appears that the report was
28 submitted to the committees and Board for approval, but it is not clear that the report has been filed
with the Court.

1 September 28, 2000 Order at p. 4.) The specific additional re-appointment conditions include:
2 installation of all production meters; basin monitoring; completion and implementation of the
3 Recharge Master Plan; Desalter I expansion and Desalter II installation and operation; and “. . .
4 continued commitment [of the parties] to provide for future desalters and preserve safe yield in
5 accordance with the OBMP.” (Motion at p. 4, quoting from September 28, 2000 Order at p. 5.)

6 Watermaster notes that as to that final specific additional condition, the Court added:

7 The parties are forewarned that any future application for reappointment of a nine-
8 member board may be conditioned on the development of a detailed plan to reach the
9 OBMP goal of 40,000 acre-feet per year of desalting capacity to be installed in [the]
southern part of the Basin by 2020.

10 (Motion at p. 4, quoting September 28, 2000 Order at p. 7.)²

11 Watermaster describes the actions it has taken to satisfy the “initial” conditions of
12 appointment. (Motion at pp. 3 *et seq.*) As to the additional conditions of re-appointment,
13 Watermaster’s Motion relies on the State of the Basin Report attached to the Motion as Exhibit A
14 (“Chino Basin Optimum Basin Management Program, State of the Basin Report– 2004” (July 2005)
15 prepared by Wildermuth Environmental Inc. [“SOBR-2004”]). Watermaster’s Motion states that
16 SOBR-2004 describes installation of meters, numerous monitoring programs, completion of the
17 Recharge Master Plan Phase II Report and installation of the Recharge Water Plan facilities, and that
18 the “. . . progress of the desalters is reported in great detail in chapter 9.2. . .” (Motion at p. 7.) The
19 discussion of monitoring notes that: “. . . Watermaster conducts detailed monitoring of the condition
20 of hydraulic control, which is the relationship between the groundwater basin and the surface water
21 of the Santa Ana River.” The Motion is silent as to what the “progress of the desalters” is other than
22 to refer to SOBR-2004. In effect, Watermaster’s Motion relies exclusively on its SOBR-2004 and
23 provides no substantive additional information or explanation as to the adequacy of Watermaster’s
24 efforts to meet the additional conditions of re-appointment regarding future desalters, reaching the
25 goal of 40,000 acre-feet per year (or 40 mgd) of total desalting capacity, preserving basin safe yield,
26

27
28 ²The September 28, 2000 Order included substantial discussion of future desalters in addition
to the “parties are forewarned” excerpt quoted in Watermaster’s Motion. See Section IV, below.

1 and achieving hydraulic control (other than to monitor the "condition of hydraulic control").³

2 **II. HISTORY OF WATERMASTER APPOINTMENTS**

3 Chino Basin Municipal Water District (now Inland Empire Utilities Agency ["IEUA"]) was
4 the first Watermaster appointed under the Judgment. Chino Basin Municipal Water District served
5 as Watermaster until April 29, 1997, when the California Department of Water Resources ("DWR")
6 was appointed as Interim Watermaster, and the Special Referee was asked to consider and prepare
7 a report on a motion to appoint an independent nine-member board as Watermaster. The
8 Watermaster and Advisory Committee had until that time worked together without any reported
9 significant disagreement:

10 The parties appear to concur that the only time the Watermaster has disagreed with
11 the recommendation of the Advisory Committee has led to the current motion to
12 appoint the new Watermaster. . . The underlying issue that triggered the current
13 motion appears to have been the participation of the Watermaster in the question of
14 payment for the groundwater put through a "desalter" facility. [Footnote omitted]

15 (1997 Special Referee Report and Recommendation at p. 4.) It appears to have been generally
16 agreed that the dispute leading to the Motion to appoint the Nine-Member Board related to
17 replenishment water for the desalter. (*Id.*)

18 In the report filed with the Court on December 15, 1997, the Special Referee noted that DWR
19 had been appointed Interim Watermaster, but negotiations with the Department had not been
20 finalized, that the Chino Basin Municipal Water District continued to be recognized as the Interim
21 Watermaster, and that the Advisory Committee was acting as the *de facto* Watermaster. It was
22 further noted that:

23 . . . The fact that the Watermaster has not prepared the Optimum Basin Management
24 Program reflects systemic failure of the Judgment and its Physical Solution, and that
25 failure must weigh heavily in the decision to appoint a new Watermaster.

26 (Report and Recommendation of Special Referee to Court Regarding: (1) Motion for Order that
27 Audit Commissioned by Watermaster is Not a Watermaster Expense, and (2) Motion to Appoint a
28 Nine-Member Watermaster Board, dated December 12, 1997, pp. 31-32.) The recommendation was

³There appears to be confusion between the use of a 40,000 acre-feet per year of desalting capacity goal discussed in the Court's 2000 Order and the 40 million gallons per day (mgd) number used in SOBR-2004.

1 to appoint the Nine-Member Board as Watermaster for an interim two-year period during which
2 Watermaster was to prepare an Optimum Basin Management Program.

3 On February 19, 1998, the Court set aside its Order Appointing DWR as Interim Watermaster
4 and instead appointed a Nine-Member Board, consisting of representatives from the Overlying
5 (Agricultural) Pool, Overlying (Non-Agricultural) Pool, and the Appropriative Pool, and three
6 municipal water districts, to serve as Interim Watermaster from March 1, 1998, to June 30, 2000.
7 (Ruling dated February 19, 1998, p. 4.) The Court directed the Nine-Member Board to develop and
8 submit for approval an Optimum Basin Management Program ("OBMP"). (*Id.* at p. 10.)
9 Watermaster submitted the OBMP to the Court and the Court finally approved the OBMP, consisting
10 of the Phase I Report and Implementation Plan, subject to certain conditions precedent, on July 13,
11 2000. ("Order Concerning Adoption of OBMP", dated July 13, 2000.)

12 The current Nine-Member Board has served as Watermaster since September 28, 2000.
13 (Order Concerning Motion to Extend Nine-Member Board, September 28, 2000.) In that 2000
14 Order, the Nine-Member Board appointment was continued from the 1998 interim two-year
15 appointment. The term of the appointment ended on September 28, 2005. The Court granted
16 Watermaster's request for an extension of that appointment until February 9, 2006. (Order Granting
17 Motion to Schedule Board Reappointment Hearing and to Extend Term of Board until Hearing Date,
18 dated September 22, 2005.)

19 **III. WATERMASTER HAS COMPLIED WITH MOST CONDITIONS OF RE-** 20 **APPOINTMENT**

21 One of the key elements in the Implementation Plan for the OBMP is the development of a
22 comprehensive monitoring program. Watermaster has successfully implemented a comprehensive
23 monitoring plan for the basin. Watermaster has instituted three groundwater level monitoring
24 programs that are active. A key-well, water quality monitoring program has been implemented in
25 the southern portion of the basin. Watermaster now monitors, quarterly, most active agricultural
26 wells. Watermaster is monitoring surface water in recharge basins to characterize water quality, and
27 water levels are monitored in some recharge basins. Watermaster has developed a surface water
28 monitoring program for the Santa Ana River to determine if significant discharge of Chino Basin

1 groundwater to the river is occurring. Finally, Watermaster has begun a multi-faceted monitoring
2 program for MZ1, which was presented in detail at the Special Referee Workshop held on May 25,
3 2005.

4 Another key element in the OBMP Implementation Plan is the development of a Recharge
5 Master Plan. It is reported that the Phase II Recharge Master Plan was completed in August 2001.
6 It is also reported that a \$44 million facilities improvement project was undertaken, most of which
7 was completed in the fall of 2004. (SOBR-2004 at p. 6-5.) SOBR-2004 provides very detailed
8 information on geology and hydrogeology investigations and analysis, groundwater quality data
9 collection and related assessments, ground level monitoring, hydraulic control monitoring, and
10 describes the efforts to date to monitor basin recharge.

11 In general, the detailed discussion in SOBR-2004 of Watermaster monitoring programs
12 supports the conclusion that Watermaster has met the additional re-appointment conditions as to
13 basin monitoring. It is of concern, however, that the SOBR-2004 discussion of reported monitoring
14 activities also reveals that Watermaster has undertaken certain obligations which it describes only
15 in terms of monitoring and not in terms of substantive basin management decisions. For example,
16 SOBR-2004 includes a discussion of the Regional Water Quality Control Board ("RWQCB") Basin
17 Plan requirements:

18 The RWQCB required irrevocable commitments that ensure that Watermaster and
19 IEUA will take appropriate actions that are triggered by ambient water quality and
20 other time-certain conditions. These commitments are contained in the 2004 Basin
21 Plan Amendment. . . Failure to meet these commitments will cause the TDS and
nitrate objectives to revert back to the antidegradation objectives, and Watermaster
and IEUA will be required to mitigate TDS and nitrate loadings to groundwater based
on the antidegradation objectives back to 2004. . .

22 Watermaster and IEUA will initiate planning for expansion of the Chino Basin
23 desalting program called out in the OBMP in 2004 and have a plan completed and
adopted by the Court in 2005. . .

24 Watermaster and IEUA will monitor conditions in the southern Chino Basin to
25 determine the state of hydraulic control and will modify recharge, production and/or
26 treatment to ensure hydraulic control is maintained and the effects of temporary
losses of hydraulic control are mitigated. . .

27 The Basin Plan Amendment, as it pertains to managing the Chino Basin, is now in
28 effect.

1 (SOBR-2004 at pp. 7-9 *et seq.*) The implications of achieving hydraulic control are not clearly and
2 fully addressed, nor are the implications of not providing a desalter expansion plan to either the
3 Court or the RWQCB in 2005. Watermaster should be required to provide the Court with a complete
4 discussion and analysis of its actions with regard to hydraulic control operation of the basin as those
5 actions relate to requirements of the Judgment to implement the Physical Solution.

6 In addition, although Watermaster reports in the SOBR-2004 on recharge basin monitoring,
7 there is almost no discussion of Watermaster's efforts to replenish overproduction or to balance
8 recharge and "discharge" from the Basin. What little discussion there is (SOBR-2004 at pp. 9-6 *et*
9 *seq.*) is relegated to Chapter 9 of that document entitled "Summary of Other OBMP Activities". Of
10 note, that brief summary chapter appears to contain the only discussion of the meter installation
11 program (one paragraph on page 9-1), the desalter projects (discussed below), and the storage and
12 recovery and DYY programs (SOBR-2004 at pp. 9-3 *et seq.*). Watermaster should have made the
13 effort to extract from the extensive amount of data in SOBR-2004 the basic information the Court
14 requires to readily ascertain whether Watermaster has accomplished the tasks which it was charged
15 to perform as a condition of re-appointment.

16 **IV. WATERMASTER HAS NOT COMPLIED WITH CONDITIONS FOR RE-**
17 **APPOINTMENT AS TO FUTURE DESALTER CAPACITY AND RELATED**
18 **ISSUES**

18 Watermaster's Motion notes that the parties were "... forewarned that any future application
19 for re-appointment ... may be conditioned on the development of a detailed plan to reach the OBMP
20 goal of 40,000 acre-feet per year of desalting capacity to be installed in [the] southern part of the
21 Basin by 2020." (Motion at p. 4, quoting September 28, 2000 Order at p. 7.) The Order included
22 substantial additional discussion of future desalters in addition to the "parties are forewarned"
23 excerpt:

24 The Court wants to particularly note that the Peace Agreement predicates any future
25 desalting capacity on a reevaluation of the need for additional desalting after the
26 earlier of ten years or the conversion of 20,000 acres of agricultural land. The Court
27 is mindful that while the parties to the Peace Agreement contemplated the
28 construction of future desalters and/or expansion of Chino I and/or Chino II
Desalters, there are no provisions in the Peace Agreement that effectively ensure that
they will be built. In effect, future desalters (and any expansions of the Chino I and
II Desalters) will be built "if and only if" funding from sources other than the Parties
can be secured. The OBMP (Phase I Report and Phase II Implementation Plan) calls

1 for some 40,000 acre-feet per year of desalting capacity to be installed in the southern
2 part of the Basin by 2020. The Court hereby gives notice to the parties that a primary
3 concern of the Court in any future application for reappointment of the nine-member
4 board will be the parties' continued commitment to provide for future desalters and
5 preserve safe yield in accordance with the OBMP.

6 SOBR at page 9-8 discusses groundwater production assumptions based on a modified
7 version of the water supply plan from the OBMP Implementation Plan, and Watermaster's associated
8 replenishment obligation. The latter was estimated "... using the following assumptions pursuant
9 to the Judgment and the Implementation Plan." The second assumption was:

- 10 • OBMP desalter capacity is increased from the current level of 8 million gallons
11 per day (mgd) in 2002/2003 to 40 mgd as per the water supply plan from the
12 Implementation Plan. Half of the production of the desalters will come from
13 decreased rising water and new induced recharge from the Santa Ana River.⁴

14 SOBR-2004 does not include any detailed discussion of how a 40 mgd (or 40 afa) desalter
15 capacity will be achieved, what the effect of using it will be, or how and whether replenishment
16 obligations will be met.⁵ SOBR-2004 states only that:

17 The locations and magnitude of recharge shown in Table 9-4 were based on the
18 requirements of the Peace Agreement to balance recharge and discharge in every area
19 and sub-area. This requirement must be met over a period of time, which was
20 assumed herein as a long-term requirement. Thus, in an individual season or year
21 there might not be a balance between recharge and discharge in an area, sub-area, or
22 the Basin.

23 Balancing recharge and discharge may be critical to the management of the
24 subsidence-prone area in MZ-1. . . In the rest of the Basin, replenishment would be
25 managed to maximize desalter replenishment from a combination of reduced rising
26 water to the Santa Ana River and increased streambed recharge from the Santa Ana
27 River.

28 Throughout the duration of the baseline scenario [2003/2004 through 2019/2020],
groundwater levels in the western part of the Chino Basin remain near or above the
fall 2001 groundwater levels. Groundwater levels in the other parts of Chino Basin
declined over the planning period [October 2003 through September 2028] to levels
that support decreased rising water to the Santa Ana River and increased streambed
recharge from the Santa Ana River. Groundwater levels declined the most in the

⁴This assumption is repeated at SOBR-2004 at p. 8-11. Both the Peace Agreement (§ 7.5)
and Watermaster's Rules and Regulations (§ 7.4) provide for replenishment of desalter pumping.

⁵SOBR-2004 Table 9-4 shows that replenishment obligations are based on a combination of
assumptions that recharge of additional stormwater will be 12,000 afa and "hydraulic control",
although not called that, will produce up to 24,602 afa of inflow from the Santa Ana River in 2028.
At that time, the "replenishment obligation" is shown to be 33,821 afa.

1 Fontana area – as much as 30 to 40 feet near the far eastern edge of the Fontana
2 area. . . The effect of the desalters is evident in the south central part of Chino Basin
where groundwater levels declined in excess of 25 feet.

3 The total storage in the Chino Basin declined monotonically during the baseline
4 scenario from a high of 5,940,000 acre-ft in the fall 2003 to 5,730,000 acre-ft in fall
5 2028 – a decline of about 210,000 acre-ft.⁶ Figure 9-6 shows the estimated
6 groundwater storage for the Chino Basin during the planning period. The modeling
results suggest that the total storage in the basin appears to be asymptotically
approaching a level near 5,700,000 acre-ft. This decline in storage is necessary to
induce the recharge of the Santa Ana River.

7 . . . There is no projected material physical injury to a party to the Judgment or to the
8 Chino Basin from the proposed recharge program in the baseline OBMP scenario.

9 . . . For the members of the Appropriative Pool, the added cost to production will be
10 more than offset by the savings provided by the avoided purchase of supplemental
11 water for desalter replenishment. . . Operating the Basin at this lower level avoids
the cost of purchasing about 24,600 acre-ft/yr of supplemental water at a cost of
about \$6 million if the replenishment water consists of State Water Project water and
about \$2 million if it consists of recycled water.⁷

12 (SOBR-2004 at pp. 9-8 *et seq.*)

13 Although terse, and not up-to-date, this description raises numerous questions and concerns.
14 Watermaster has declined to provide the Court with any discussion of the status of efforts to increase
15 desalter capacity to the approximately 40 afa – which has been a planning number for a considerable
16 time. Watermaster has not described for the Court the effects of the “decline in storage” (“about
17 210,000 acre-ft”) and changes in groundwater levels over the planning period which it only very
18 generally described in the above-quoted excerpt. Watermaster’s Motion refers to SOBR-2004
19 Chapter 9.2 as reporting “in great detail” on the “progress of the desalters.” (Motion at p. 7.)
20 SOBR-2004 provides essentially no discussion of future desalters.⁸

21 _____
22 ⁶The “decline of about 210,000 acre-ft” means, in effect, that the basin would be mined by
23 that amount of water by 2028, and that production in excess of operating safe yield would not be
replenished during that period to that extent.

24 ⁷SOBR-2004 does not address the Judgment implications of Watermaster not replenishing
25 for production over and above operating safe yield.

26 ⁸SOBR-2004 indicates that the CDA Chino I Desalter Expansion and Chino II Desalter
27 Project is estimated to be complete by February 2006. (SOBR-2004 at p. 9-1.) Watermaster does
not report on whether the project is on schedule. The SOBR also classifies Desalter III as
28 “potential”, noting that:

(continued...)

1 **V. THE COURT SHOULD RECEIVE AND FILE THE STATE OF THE BASIN**
2 **REPORT WITH DIRECTIONS AS TO FUTURE REPORTS**

3 The State of the Basin Report is a very detailed report primarily on the state of OBMP
4 implementation. It contains a substantial amount of useful information and analysis. The next State
5 of the Basin Report ("SOBR-2006") is due to be filed with the annual report in July 2007.⁹

6 Special Referee and the Court's technical expert have persistently expressed concerns about
7 SOBR-2004 and the initial State of the Basin Report. Special Referee provided comments on the
8

9 _____
10 ⁹(...continued)

11 [t]he southern appropriators are currently planning not to build Desalter III and,
12 instead, to construct new wells north of the high TDS and nitrate areas. All
13 appropriative pool producers are currently engaged in the Peace II process where
14 discussions are being held that will determine if Desalter III will be constructed.

15 Watermaster has not provided the Court with a detailed plan to reach the OBMP goal of 40,000 acre-
16 feet per year of desalting capacity. Watermaster needs to inform the Court whether the "baseline
17 OBMP scenario", or some other scenario, represents its plan to reach the 40,000 afa goal for
18 desalting. With that clarification, Watermaster then needs to inform the Court whether the Desalter
19 I and II facilities will be operational in 2006, and how it plans to expand from that level of desalter
20 pumping to 40,000 afa. With the latter, Watermaster needs to inform the Court as to impacts
21 associated with its 40,000 afa desalting plan, e.g. replenishment obligations, resultant groundwater
22 levels and storage, and basin yield. Watermaster should tell the Court what is meant by "the avoided
23 purchase of supplemental water for desalter replenishment".

24 ⁹SOBR-2004 contains data through 2003/2004 and reports on Watermaster "activity" through
25 fall 2004. (SOBR at p. 1-1.) Watermaster Rules and Regulations ¶ 2.21 require Watermaster to
26 prepare and make available an annual report which shall be filed on or before January 31 of each
27 year. On a biannual basis, the annual report shall include an engineering appendix which contains
28 a more specific "state of the basin" report including an "... update on the status of individual OBMP
related activities such as monitoring results and Watermaster's analysis of Hydrologic Balance."
Under ¶ 2.21, the next SOBR ("SOBR-2006") would be due January 31, 2007, and will logically
cover data collection through 2005/2006 and Watermaster activity through fall 2006. However, see
paragraph 7.1(b)(iv) which requires that Watermaster:

Make its initial report on the then existing state of Hydraulic Balance by July 1, 2003,
including any recommendations on Recharge actions which may be necessary under
the OBMP. Thereafter Watermaster shall make written reports on the long term
Hydrologic Balance in the Chino Basin every two years. . .

Watermaster should revise its Regulations to make them consistent. It appears that SOBR-2006
should be due in July 2007.

1 initial State of the Basin Report. ("Special Referee's Report and Recommendation Concerning
2 Supplemental Desalter Report, Supplemental OBMP Report, Watermaster's 24th Annual Report, and
3 Initial State of the Basin Report", February 25, 2002.) The main point in those comments was that
4 a true "state of the basin" report would select a baseline and compare changes in basin conditions
5 against that baseline as a way to assess the effectiveness of the OBMP as various program elements
6 are implemented. Specifically:

7 In order to document the "initial" state of the basin for the purposes described above,
8 an "initial" point in time needs to be selected, in this case at a point in advance of
9 actual OBMP activities that will change basin conditions, e.g., before OBMP
10 desalting, before additional recharge, etc. Once that "initial" time is selected, the
11 state of the basin conditions can be specifically described for that time. . . In simple
summary, once an "initial" point in time is selected, the question can be asked at the
end of each topic discussed in a draft report: "what is the state of the basin" at the
selected ("initial") point in time? A conclusion should be added to each section to
briefly answer that question.

12 (Special Referee Report at p. 8.)

13 Similar comments were conveyed in mid-2005 directly by the Court's technical expert to
14 Watermaster on SOBR-2004. It was recognized that SOBR-2004 does provide a large amount of
15 detail about conditions in the basin, but focuses almost exclusively on OBMP activities rather than
16 on the actual state of the basin. There is obviously a close relationship between the OBMP and the
17 state of the basin; however, Watermaster already provides status reports on OBMP activities. As
18 was noted for the initial State of the Basin Report, it would be more useful for the SOBR to focus
19 predominantly on the physical state of the basin.

20 The initial State of the Basin Report did not include a reconciliation of pumping and Safe
21 Yield. While there is discussion of pumping in SOBR-2004, there is again no reconciliation of
22 pumping with Safe Yield. It is also unclear whether total wet water recharge has kept pace with
23 increased production from the basin. It appears that wet water recharge, and most notably
24 replenishment, are significantly depressed since 2000/2001. Total replenishment over the previous
25 four years appears to be only about 4,000 acre-feet, despite aggregate pumping over the same time
26 exceeding Safe Yield by substantially more than that amount. (See SOBR-2004 at Table 3-1.) It is
27 essential that Watermaster clearly address the most fundamental of its original charges, that Safe
28 Yield be maintained or that overproduction be replenished. Left unexplained, SOBR-2004 can be

1 interpreted to show that Watermaster is not meeting that obligation. There is likely a rational
2 explanation that will reconcile production and replenishment, but that reconciliation is not included
3 in SOBR-2004, and has not otherwise been presented to the Court.

4 **VI. WATERMASTER SHOULD PROVIDE ADDITIONAL ASSURANCES AND**
5 **RECONCILIATION OF INFORMATION**

6 The Watermaster's reliance on SOBR-2004 leaves important questions unanswered. If the
7 Court determines to continue the appointment of the Nine-Member Board as Watermaster, certain
8 factors should be reconciled and there are certain assurances that should be provided to the Court.
9 Some of these can be prepared in a short amount of time with existing information and some will
10 likely require additional technical work and coordination among the parties.

11 **A. Three Months**

12 Given the importance of Watermaster complying with the Judgment to carry out the Physical
13 Solution, the Court should require a clear and thorough reconciliation of replenishment with total
14 pumping from the basin (including desalter pumping). Watermaster has an obligation under the
15 Judgment to replenish any production over and above operating safe yield. It needs to be clear that
16 Watermaster is now meeting and will continue to meet its Judgment obligation to replenish
17 overproduction. Watermaster should also provide a clear and thorough reconciliation of existing
18 recharge capability (including a discussion of water available for recharge) with projected total future
19 requirements for recharge capability and water available for recharge. In addition, Watermaster
20 should provide a reconciliation of agricultural land conversions and report to the Court how it will
21 handle any possible over-allocation resulting from the Peace Agreement provisions including the
22 provision for "early transfer". (Peace Agreement § 5.3(f), (g) and Rules and Regulations § 6.3.)
23 These reconciliations should be provided by Watermaster within three months.¹⁰

24 Also within a three-month period, Watermaster should provide assurances that it will comply
25 with the Peace Agreement provisions to apply the losses factor (two percent) as of January 1, 2006,

26 _____
27 ¹⁰Watermaster prepared an "Unofficial Reference Version" of the Judgment (undated, circa
28 2001). Attachment 1 describes the Judgment "Amendment Regarding Land Use Conversions", with
detailed tables. Watermaster should consider preparing an updated version of this attachment.

1 as required by the Peace Agreement (Peace Agreement § 5.2(xii)), and that it will continue its 50,000
2 acre-feet limit on accrual of carry-over and supplemental water in storage accounts also as required
3 by the Peace Agreement. (Peace Agreement § 5.2(b)(iv).) These requirements are set forth in the
4 Peace Agreement and have not been changed. Watermaster should report on the status of its actions
5 related to the 6500 afa MZ-1 replenishment obligation. (Peace Agreement at § 5.1(g).) There may
6 be additional Peace Agreement provisions which should be implemented.

7 Within the next three months, Watermaster should also be required to provide to the Court
8 the MZ-1 technical summary report and guidance criteria discussed at length in the Special Referee
9 "Report on Progress Made on Implementation of the Watermaster Interim Plan for Management of
10 Subsidence" (June 16, 2005). Watermaster is remiss in not filing a motion requesting that the
11 deadline for preparation of the long-term MZ-1 management plan be extended. Pursuant to the
12 Court's 2002 Order, the long-term management plan was to be developed by fiscal year 2004/2005.
13 ("2002 Court Order".)

14 The next OBMP status report is due March 31, 2006.

15 **B. Six Months**

16 A period of approximately six months is a reasonable period to allow Watermaster to prepare
17 additional submittals related to the key issue of additional desalter capacity. Not later than six
18 months from now, Watermaster should be required to provide the Court with a full discussion of
19 desalter capacity, particularly with regard to the requirement in the Court's 2000 Order that
20 approximately 40,000 afa of desalter capacity should be developed by the parties. Also in that six-
21 month period, Watermaster should provide full technical and modeling analyses of desalter wellfield
22 design, location, and planned operations for review by the Special Referee and the Court's technical
23 expert. Given the importance and potential ramifications of desalter pumping operations, full
24 documentation of all models used to support technical analysis should be provided. A full
25 explanation should be provided of all ramifications of alternative desalter scenarios, all hydraulic
26 control implications, and all outcomes including potential mining of the basin. In connection with
27 that analysis, full discussion should be provided regarding any potential Judgment modifications,
28 modifications to Watermaster's Rules and Regulations, or to the Peace Agreement. This will

1 provide the "great detail" the Watermaster should have provided to the Court in support of its
2 Motion.

3 **C. Twelve Months**

4 Within twelve months, Watermaster should submit to the Court a long-term plan for MZ-1.
5 Postponement to allow collection of additional data and analysis of those data has been reasonable
6 to date, but there appears to be no reason why an MZ-1 long-term plan cannot be completed and
7 submitted to the Court within twelve months.

8 **VII. THE MOTION SHOULD BE CONSTRUED AS A REQUEST FOR RE-
9 APPOINTMENT FOR A TWO-YEAR TERM**

10 In a section on "Conditionality Regarding Watermaster's Request for Re-Appointment",
11 Watermaster implies that the Board was only allowed to file the motion because it committed to
12 establish a committee to review its own governance structure, which committee is to prepare a report
13 by December 31, 2007. The committee's charge will be:

14 . . . to review and recommend whether changes to the Watermaster governance
15 structure, including composition of the Board and clarification regarding the roles
16 and functions of the various committees and the Board, are necessary. The
17 committee will provide its report no later than December 31, 2007. Logistical
18 matters associated with this committee, including size of the committee and
19 membership, have been left for future discussion by the parties and direction from
20 the Board at a later date.

21 (Motion at p. 7.)

22 The current governance structure of the Watermaster Board was established by Court Order
23 dated February 19, 1998 ("1998 Ruling"). That ruling set forth that the Nine-Member Board would
24 consist of two members of the Overlying (Agricultural) Pool appointed by that pool, one member
25 from the Overlying (Non-Agricultural) Pool appointed by that pool, three members from the
26 Appropriative Pool appointed by that pool, one member appointed by the Board of Three Valleys
27 Municipal Water District, one member appointed by the Board of Western Municipal Water District,
28 and one member appointed by the Board of the Chino Basin Municipal Water District [now IEUA].
The 1998 Ruling further provided for staggered three-year terms, for rotation of appointments, and
for inclusion of the State of California in the rotation. No individual was to be allowed to serve
concurrently on the Watermaster Board and the Advisory Committee or Pool Committees (with the

1 exception of representatives from the Overlying (Non-Agricultural) Pool). In its 2000 "Motion to
2 Extend the Nine-Member Board for a Full Five-Year Term", Watermaster requested that this nine-
3 member structure of the Watermaster Board continue in effect. In its 2000 Order, the Court
4 expressed concern with the City of Chino's assertion that Court guidance was needed "with respect
5 to the establishment of 'criteria, procedures and schedules for the rotation of Appropriative Pool
6 members' serving on the nine-member board." The parties reached a consensus on a rotation
7 schedule before the hearing on the motion.¹¹

8 Although the Watermaster's Motion is to re-appoint "the Nine-Member Watermaster Board"
9 for a five-year term, it appears from the motion that significant changes are anticipated with regard
10 to Watermaster governance structure within two years. Because the governance structure of "the
11 Nine-Member Watermaster Board" has been established by the Court's 1998 Ruling, it will require
12 a Court order to change the governance structure. For this reason, it would be appropriate to
13 interpret Watermaster's Motion as a request for an interim re-appointment for two years, until such
14 time as the committee has completed its review.

15 VIII. RECOMMENDATIONS

- 16 • It would be appropriate to construe Watermaster's Motion as a motion for re-
17 appointment for two years.
- 18 • The Court cannot operate in a vacuum and needs additional information to oversee
19 the Judgment; re-appointment should be made conditional on Watermaster's
20 providing certain reconciliations and assurances, as outlined in Section VI.
- 21 • Under the Peace Agreement, certain provisions were set to commence or expire as
22 of the end of 2005; the Court's Order should reflect those provisions.
- 23 • The Court should direct Special Referee to conduct workshops with respect to the
24 issues to be addressed by Watermaster.
- 25 • The OBMP status reports have been helpful; Watermaster should be directed to

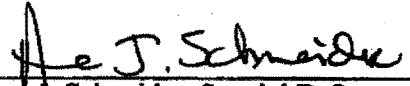
26
27 ¹¹Watermaster's "Unofficial Reference Version" of the Judgment includes an "Attachment
28 2" which is the "Rotation Schedule for Representatives to Watermaster". The attachment indicates
that it was "Approved by the Appropriative Pool September 26, 2000."

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continue to prepare regular six-month status reports and to file them with the Court on a timely basis.

- The Court should receive and file the State of the Basin Report - 2004, with direction to Watermaster as to the scope and emphasis of future reports.

Dated: January 20, 2006



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, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On January 24, 2006 I served the following:

1) SPECIAL REFEREE'S COMMENTS AND RECOMMENDATIONS CONCERNING MOTION TO RE-APPOINT THE NINE-MEMBER BOARD FOR A FURTHER FIVE-YEAR TERM

BY MAIL: 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, addresses as follows:

*See attached service list:
Mailing List 1*

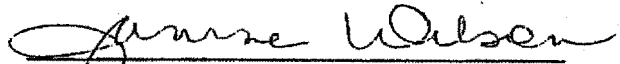
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 24, 2006 in Rancho Cucamonga, California.



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EXHIBIT 23

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

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010

ORDER RE-APPOINTING NINE-MEMBER BOARD FOR FURTHER FIVE-YEAR TERM

Date: Feb. 9, 2006
Dept: 8
Time: 2:00 p.m.

///

Introduction

On February 19, 1998, this Court appointed a nine-member board consisting of representatives from the Overlying (Agricultural) Pool, Overlying (Non-Agricultural) Pool, and the Appropriative Pool, and three municipal water districts to serve as Interim Watermaster. On September 28, 2000, this Court re-appointed the nine-member board for a full five-year term, which ended on September 28, 2005, but was extended to February 9, 2006, by order dated September 22, 2005. The motion before

1 this Court is for re-appointment of the nine-member board for another five-year term,
2 which would end on Thursday, February 10, 2011.

3 Special Referee Anne Schneider filed comments and recommendations
4 concerning the motion, recommending an interim two-year appointment subject to
5 several conditions. In turn, Watermaster filed comments and opposition to the Special
6 Referee's report, explaining that it seeks an unconditional appointment, reiterating that
7 it seeks a five-year term, and offering further support for its motion. The City of
8 Ontario and Cucamonga Valley Water District filed objections to the Special Referee's
9 Report, requesting a five-year re-appointment and raising issues concerning the role
10 of the Special Referee. Chino Basin Water Conservation District, Three Valleys
11 Municipal Water District and Inland Empire Utilities Agency filed joinders, supporting
12 the motion to re-appoint the nine-member board for a five-year term. The City of
13 Chino Hills filed a response to objections, joining in the motion for a five-year re-
14 appointment and objecting to all arguments concerning the role of the Special
15 Referee, on the basis that this issue is not presently before this Court. Monte Vista
16 Water District also filed a response to objections, urging this Court to adopt the
17 Special Referee's recommendation. This Court has considered all of these filings, in
18 addition to the stipulation offered by Watermaster, which is discussed next.

19 Watermaster filed a stipulation on behalf of itself, the City of Ontario and
20 Cucamonga County Water District. The stipulation provides that, upon notice, the
21 Special Referee and Technical Expert are welcome to attend Watermaster-
22 administered workshops on the "Peace II process," the plan for future desalters, and
23 related activities. The attendance by the Special Referee and the Technical Expert
24 would be deemed "informal," to relieve the parties of the requirement of a formal
25 record compiled by a court reporter. The stipulation further provides that a workshop
26 to be conducted by the Special Referee be set in July 2006, to address the Peace II
27 process, desalters, and related activities; and if necessary, a court hearing also will be
28 set. Finally the stipulation acknowledges that Watermaster was required to report on

1 a plan for future desalters on or before September 28, 2005, but Watermaster has not
2 yet complied with this requirement. In the stipulation, Watermaster commits to
3 meeting the report requirement by July 2006, and Watermaster agrees to produce
4 such a report at the workshop to be conducted by the Special Referee and Technical
5 Expert, presently contemplated to be held July 2006. This Court accepts the
6 stipulation and will incorporate some of its terms in its order.

7
8 Discussion

9 ///

10 Watermaster and the parties are to be commended for the remarkable
11 achievements in implementing the Optimum Basin Management Program ("OBMP")
12 over the last five years, which have not gone unnoticed by this Court. The Special
13 Referee also is to be commended for providing independent assessments of
14 Watermaster's effectiveness in implementing the OBMP and managing the basin. The
15 Court is particularly interested in concerns regarding the potential impacts of
16 Watermaster's plans for basin re-operation and hydraulic control, which were included
17 in the most recent Special Referee's report.

18 Watermaster and the parties are already aware of the importance to this Court
19 of development of future desalting capacity for the basin. This Court shares the
20 Special Referee's concern that Watermaster has not yet submitted a plan for future
21 desalters, and the Court intends to hold Watermaster to its commitment to have a plan
22 to present at the workshop to be conducted by the Special Referee in July. This Court
23 also shares the concern of the Special Referee regarding the absence in Watermaster
24 reporting of a clear reconciliation of replenishment with total pumping from the basin,
25 including desalter pumping; and in addition, the Court shares the concern that there
26 has been an absence in Watermaster reporting of a clear analysis of projected
27 requirements for recharge capability and the future availability of water for recharge.
28 Watermaster's control of storage and assessment of losses, and Watermaster's

1 obligation with respect to replenishment are also important to this Court, as well as the
2 progress being made with respect to Management Zone 1. Watermaster and the
3 parties are directed to address each of these concerns promptly, certainly no later
4 than the workshop in July 2006.

5 The Court hereby accepts the Special Referee's Comments and
6 Recommendations Concerning Motion to Re-Appoint the Nine-Member Board for a
7 further Five-Year Term, which is incorporated herein by reference. However, the
8 Court declines to accept the recommendation to appoint the nine-member board to a
9 two-year interim appointment. Instead, the Court will re-appoint the nine-member
10 board for a full five-year term.

11 Watermaster has acknowledged that it has not yet presented a plan to address
12 future desalting. While the Court appreciates the substantial challenges facing
13 Watermaster, as well as the tremendous accomplishments in implementing the OBMP,
14 Watermaster must continue to make progress towards future desalting up to the
15 40,000 acre-feet per year initially described by the OBMP and as provided in previous
16 Orders of this Court. The Court is also interested in Watermaster's answers to
17 questions raised in the Special Referee's report and how Watermaster will address a
18 number of issues, including those expressly reserved for Watermaster action under
19 the Peace Agreement and Watermaster's Rules and Regulations. Watermaster
20 updates regarding modifications to its Rules and Regulations or other actions under
21 the Peace Agreement should be included in future reports to this Court. The Court
22 also directs Watermaster, its legal counsel, staff and consultants to ensure that in
23 future reporting the reports are timely, transparent and responsive to the question of
24 whether Watermaster is implementing the Peace Agreement and the OBMP in a
25 manner consistent with the Judgment and the continuing Orders of this Court. The
26 Special Referee's report is largely an effort to assist Watermaster in this regard.

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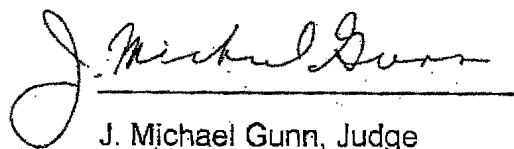
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Conclusion and Order

The State of Basin Report—2004 is received and filed. Watermaster's motion for re-appointment for another five-year term is GRANTED, subject to the Court's continuing jurisdiction under paragraph 16 of the Judgment.¹

The OBMP status reports have been helpful in monitoring progress in OBMP implementation; Watermaster is directed to continue filing those reports every six months. This Court accepts Watermaster's offer to invite the Special Referee and the Technical Expert to attend Watermaster-administered workshops on the "Peace II process," the plan for future desalters, and related activities. This Court also accepts Watermaster's suggestion of a workshop and Special Referee is directed to conduct a workshop in July 2006, to address the concerns discussed above and to report on the development of a detailed plan to reach the OBMP goal of 40,000 acre-feet per year of desalting capacity, to be installed in the southern part of the basin by the year 2020. Finally, Watermaster and the parties are reminded that this Court must approve any change in the composition of the nine-member board. IT IS SO ORDERED.

Dated: Feb. 9, 2006



J. Michael Gunn, Judge

¹ "Watermaster may be changed at any time by subsequent order of the Court, on its own motion, or on the motion of any party after notice and hearing."

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, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On April 29, 2008 I served the following:

**1) CUCAMONGA VALLEY WATER DISTRICT'S JOINDER TO WATERMASTER'S
RESPONSE TO COMMENTS OF SPECIAL REFEREE ON WATERMASTER
COMPLIANCE WITH DECEMBER 21, 2007 ORDER CONDITIONS 1 THROUGH 4**

BY MAIL: 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, addresses as follows:

See attached service list: Mailing List 1

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 29, 2008 in Rancho Cucamonga, California.


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Chino Basin Watermaster

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EXHIBIT 24

FILED-West District
San Bernardino County Clerk

AUG 27 2007

By — *Jim Taha* —
Deputy

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010

ORDER ON EX PARTE APPLICATION
FOR CONTINUANCE OF HEARING
ON MOTION FOR APPROVAL OF
LONG TERM PLAN
FOR SUBSIDENCE IN MZ 1

Date: Aug. 27, 2007

Dept: 8

Time: 8:30 a.m.

Good cause appearing,

IT IS HEREBY ORDERED that:

1. The hearing on the Motion for Approval of Watermaster's Long Term Plan for the Management of Subsidence is continued to November 15, 2007. (See Order Concerning OBMP Status Report 2006-02, Future Desalting Plans, and MZ-1 Long-Term Plan, p. 4, Ins. 13-15 [Watermaster encouraged to request a court date for conditional approval of Peace II before November 3, 2007.]) Any request to

1 present oral testimony at the hearing is to be made by October 25,
2 2007.

3 2. Watermaster is to schedule a Special Referee Workshop on October
4 3, 2007, for Special Referee Anne Schneider and Technical Expert
5 Joe Scalmanini to receive evidence on the issue of whether or not
6 Watermaster's proposed long-term plan for the management of
7 subsidence is a reasonable long-term approach to the issue of
8 subsidence in MZ1.

9 3. The Motion for Approval of Watermaster's Long Term Plan for the
10 Management of Subsidence will not be treated as a complaint for
11 declaratory relief. Chino Hills' remedy is to file opposition to
12 Watermaster's requested findings. All briefs in support or opposition
13 to Watermaster's requested findings, particularly findings nos. 4 & 5,
14 are to be filed by October 19, 2007. Reply briefs are to be filed by
15 November 2, 2007.

16 4. Special Referee Anne Schneider is to file a report on the October 3,
17 2007 evidentiary workshop by October 12, 2007. Comments or
18 objections to the report are to be filed by October 25, 2007.

19 5. Breach of confidentiality issues will not be considered at this time,
20 given Chino Hills' statement that it intends to file a separate action
21 by August 31, 2007.

22 ///

23
24 Dated: August 27, 2007



25 J. Michael Gunn, Judge
26
27
28

EXHIBIT 25

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3 Telephone: (916) 447-2166
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4

5 SPECIAL REFEREE
6
7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION
11

12 CHINO BASIN MUNICIPAL WATER
DISTRICT,

13
14 Plaintiff,

15 v.

16
17 THE CITY OF CHINO, et al.

18 Defendants.
19

CASE NO. RCV 51010

Judge: Honorable J. Michael Gunn

SPECIAL REFEREE'S COMMENTS
AND RECOMMENDATIONS
CONCERNING MOTION FOR
APPROVAL OF WATERMASTER'S
LONG TERM PLAN FOR
MANAGEMENT OF SUBSIDENCE

Date: November 15, 2007

Time: 1:30 p.m.

Dept: 8
20

21 I.

22 INTRODUCTION
23

24 This is an adjudication of groundwater rights in the Chino Basin. A stipulated judgment
25 was entered on January 30, 1978 ("Judgment"). Pursuant to the mandate in Article X Section 2
26 of the California Constitution, that all water be put to reasonable and beneficial use, the Court
27 adopted, and ordered the parties to comply with, a Physical Solution. (Judgment, ¶ 39, p. 23.)
28 Continuing jurisdiction was reserved to the Court "to make such further or supplemental orders

1 or directions as may be necessary or appropriate for interpretation, enforcement or carrying out
2 of this Judgment, and to modify, amend or amplify any of the provisions of this Judgment.”
3 (Judgment, ¶ 15, p. 12.) The Judgment also provides that all actions, decisions or rules of
4 Watermaster are subject to review by the Court on its own motion, or upon motion by any party,
5 Watermaster, the Advisory Committee, or any Pool Committee. (Judgment, ¶ 31, p. 16.)

6 The Judgment appointed a Watermaster “to administer and enforce the provisions of this
7 Judgment and any subsequent instructions or orders of the Court hereunder.” (Judgment,
8 paragraph 16, p. 12.) “The Watermaster operates on the one hand as an administrator and on the
9 other hand as an extension of the court. When functioning as an extension of the court the
10 Watermaster acts as a steward of the groundwater resources in the Chino Basin.” (Ruling, dated
11 February 19, 1998, p. 2-3.) Watermaster has filed a motion, under paragraph 31 of the
12 Judgment, requesting the Court to review and approve its recent action adopting a long-term
13 management plan for controlling subsidence in Management Zone 1 of Chino Basin (“MZ-1”).
14 The issue of subsidence in MZ-1 was first raised in connection with Watermaster’s development
15 of an optimum basin management program for Chino Basin under paragraph 41 of the Judgment.

16 II.

17 CHRONOLOGY OF SUBSIDENCE ISSUE

18 A. Adoption of OBMP

19 In February 1998, the Court ordered Watermaster to develop an optimum basin
20 management program for Chino Basin, and to submit it first to the Advisory Committee and then
21 to the Court. (Ruling, dated February 19, 1998, p. 10.) The Court approved the optimum basin
22 management program for Chino Basin (“OBMP”) on July 13, 2000. The Court found “the
23 OBMP consists of the OBMP Phase I Report and the OBMP Implementation Plan.” The Court
24 directed Watermaster to “adopt the goals and plans of the Phase I Report and implement them
25 through the Implementation Plan...” The Court further directed Watermaster to “proceed in a
26 manner consistent with the Peace Agreement and the OBMP Implementation Plan.” (Order
27 Concerning Adoption of OBMP, dated July 13, 2000, p. 5.)

28 ////

1 OBMP Implementation Plan Program Element 4 is to develop a long-term management
2 plan to reduce or abate the subsidence and fissuring problems in MZ-1:

3 The occurrence of subsidence and fissuring in Management Zone 1 is not
4 acceptable and should be reduced to tolerable levels or abated. The OBMP calls
5 for a management plan to reduce or abate the subsidence and fissuring problems
6 to the extent that it may be caused by production in MZ-1. There is some
7 uncertainty as to the causes of subsidence and fissuring and more information is
8 necessary to distinguish among potential causes. Therefore an interim
9 management plan will be developed to minimize subsidence and fissuring while
10 new information is collected to assess the causes and to develop an effective long-
11 term management plan.

12 (Peace Agreement, Exhibit B, [OBMP Implementation Plan] p. 26.)

13 **B. 2001 Court Orders**

14 In response to a petition for writ of mandate filed by City of Chino Hills against City of
15 Chino and a request that the matter be assigned to Honorable J. Michael Gunn, on December 19,
16 2001, the court issued two orders. The first order, signed by Honorable Joseph E. Johnston,
17 Supervising Civil Judge, construed the writ petition as encompassing two separate matters: a
18 mandamus proceeding brought under Public Utility Code sections 10101 through 10107 and a
19 motion brought under Paragraph 15 of the Judgment herein. The mandamus proceeding was
20 given case number RCV 59670 and was not assigned to Judge Gunn. The second matter, the
21 motion under Paragraph 15 of the Judgment, was deemed to be part of the ongoing proceedings
22 in this case (RCV 51010).

23 The second order, signed by Honorable J. Michael Gunn, required all parties to the
24 Judgment to appear on February 28, 2002, "to report on the status of the technical work
25 performed to date by Watermaster and others concerning subsidence and related issues." In
26 response to that order, Watermaster filed a Report of Activities Regarding Subsidence and a
27 Request for Finding and Further Order, dated January 29, 2002, and a Declaration of Mark
28 Wildermuth, dated January 30, 2002. City of Chino filed a Response of the City of Chino to the
29 Court's Order for Information, and Motion Pursuant to Paragraph 15 of the Judgment, dated
30 January 31, 2002, which included several exhibits, and the City of Chino Subsidence Study.¹

¹ This on-going matter has been continued annually by City of Chino. The most recent continuance was for six months, to February 15, 2008.

1 Monte Vista Water District filed a Motion to Strike Portions of City of Chino's [Purported]
2 Motion Pursuant to Paragraph 15 of the Judgment, dated February 14, 2002. On February 15,
3 2002, Watermaster filed a Motion for Continuance and Related Order on City of Chino Motion
4 and Subsequent Oppositions; Suggested Future Scheduling. City of Chino Hills filed an
5 Objection to the City of Chino Motion Pursuant to Paragraph 15 of the Judgment; Joinder, etc.,
6 dated February 18, 2002. City of Chino filed a Response to Monte Vista's Motion to Strike,
7 dated February 22, 2002. Watermaster filed a Report of Joinders to Watermaster's February 15,
8 2002 Motion for Continuance. On February 25, 2002, the Special Referee filed a Special
9 Referee's Report and Recommendation Concerning Motions Filed Related to Subsidence,
10 acknowledging the need for additional data related to subsidence.

11 C. 2002 Court Orders

12 On February 28, 2002, the court continued the hearing on the technical reports and
13 motions concerning subsidence stating "Watermaster shall convene the regularly scheduled
14 stakeholder process that has been agreed upon by the majority of the parties and report back to
15 the court by May 1, 2002, on any consensus that has been achieved on how best to further
16 implement OBMP Program Element 4." (Order Receiving Supplemental Desalter Report,
17 Supplemental OBMP Report, 24th Annual Report, and Initial State of Basin Report; Order
18 Continuing Hearing on Subsidence, dated February 28, 2002, p. 5.)

19 On June 17, 2002, Watermaster filed an Ex Parte Application for an Order Shortening
20 Time for the Transmittal of Subsidence Interim Plan and Motion to Schedule Workshop. Also
21 on June 17, 2002, Watermaster filed a Transmittal of Subsidence Interim Plan and Motion to
22 Schedule Workshop; Transmittal of ISOB. Exhibit "1" to the Transmittal is the Proposed
23 Watermaster Interim Plan for Management of Subsidence, which includes exhibits "A" through
24 "F."

25 Pursuant to the Court's June 19, 2002 Order, a workshop was held on August 29, 2002,
26 "for Watermaster to present to the Court, through the Special Referee, the details of the Interim
27 Plan [Proposed Watermaster Interim Plan for Management of Subsidence]." (*Id.*, at p. 2.) The
28 Special Referee's Report on Interim Plan Workshop and Recommendation Concerning

1 Subsidence Issues, dated September 17, 2002, was filed with the Court. Thereafter, Watermaster
2 Comments to Referee Report on Interim Plan and Motion for an Order to Proceed in Accordance
3 with the Interim Plan was filed with the Court. Attached to Watermaster's Comments and
4 Motion were two exhibits: Exhibit "A" is the Revised Interim Plan for the Management of
5 Subsidence. Exhibit "B" is the MZ-1 Interim Plan Monitoring Program Draft Work Plan. In
6 October 2002, the Court directed Watermaster to, among other things,

- 7 1) Implement the Interim Plan Monitoring Program for subsidence,
8 including all work related to the installation and monitoring of
9 piezometers and extensometers, ground level monitoring, aquifer
10 testing, and all such other actions required to study, analyze, and
11 interpret subsidence and fissuring phenomena in MZ-1, and to
12 determine causes in sufficient detail that they can be managed through a
13 long-term plan.
- 14 2) Continue to work with the MZ-1 Technical Committee to obtain
15 comments and recommendations on the scope, area of investigation,
16 and approach to the monitoring program, in furtherance of the objective
17 of having the Technical Committee serve in an advisory capacity to
18 assist Watermaster in the development of a long-term management plan
19 for subsidence in MZ-1.
- 20 3) Schedule a follow-up workshop for July 17, 2003, to present to the
21 Court through the Special Referee the progress made on
22 implementation of the Interim Plan.

23 (Order Concerning Watermaster's Interim Plan for Management of Subsidence, dated October
24 17, 2002, p. 10.)

25 **D. 2005 Workshop**

26 At the request of Watermaster, the Court allowed the workshop that was to be scheduled
27 for July 17, 2003, to be scheduled at a later date to permit more time for monitoring. (Order
28 Granting Motion to Continue July 17, 2003 Workshop Re MZ-1 Interim Subsidence Plan, dated
July 16, 2003; Order Receiving Watermaster's Status Reports Nos. 7 & 8; Order Continuing
Workshop on Interim Plan for Management of Subsidence, dated October 30, 2003.)

The Special Referee held the workshop on May 25, 2005. "The scope of the workshop
was limited to presentation of technical data and analysis completed to date related to [the
Interim Plan].... The presentation was made by Mr. Malone of Wildermuth Environmental, Inc.,
Watermaster Engineering Consultant." (Sp. Ref. Report on Progress Made on Implementation of
the Watermaster Interim Plan for Management of Subsidence, dated June 16, 2005, p. 1.) The

1 Special Referee concluded: "The workshop was very productive. Mr. Malone's presentation
2 was excellent. The Watermaster does not require court approval to direct the preparation of a
3 summary report on the MZ-1 technical work or to issue guidance criteria. The Watermaster,
4 however, should file with the court a motion for an order to set a schedule for the completion of a
5 long-term plan." (*Id.* at p. 9.)²

6 In February 2007, the Court ordered Watermaster to file a report on the status of
7 Watermaster's long-term plan for MZ-1 and the publication of guidance criteria. (Order Re:
8 Receiving OBMP Status Reports and Annual Reports and Further Action, dated February 16,
9 2007, p. 4.) Subsequently, the Court ordered Watermaster to submit a motion for court approval
10 of a long-term plan for MZ-1. (Order Concerning OBMP Status Report 2006-02, Future
11 Desalting Plans, and MZ-1 Long-Term Plan, dated May 24, 2007, p. 3.)

12 **III.**

13 **WATERMASTER'S MOTION FOR APPROVAL OF LONG -TERM PLAN FOR**
14 **MANAGEMENT OF SUBSIDENCE**

15
16 **A. Watermaster's Motion**

17 On August 2, 2007, Watermaster filed a Notice of Motion for Approval of Watermaster's
18 Long Term Plan for the Management of Subsidence; Points and Authorities in Support of Motion
19 for Approval of Watermaster's Long Term Plan for the Management of Subsidence; Exhibits and
20 Declaration Thereof. Attached to Watermaster's Points and Authorities are Exhibits "A"
21 through "K": Exhibit "A," consisting of the Long Term Plan, April 2006 Watermaster Staff
22 Report, February 2006 Wildermuth Environmental, Inc. Management Zone 1 Interim Monitoring
23 Program/MZ-1 Summary Report (prepared for MZ-1 Technical Committee), and Special
24 Referee's Report on Progress Made On Implementation of the Watermaster Interim Plan for
25 Management of Subsidence; Exhibit "B," consisting of Minutes for Joint Appropriative and
26 Non-Agricultural Pool meeting on March 9, 2006; Exhibit "C," consisting of Minutes for Joint

27 ² Watermaster filed the summary report and guidance criteria with the Court as part of its Motion for
28 Approval of Long-Term Plan for Management of Subsidence. (See Appendix "A" to Exhibit "A" of the motion.)

1 Appropriative and Non-Agricultural Pool meeting on April 13, 2006; Exhibit "D," consisting of
2 Minutes for Chino Basin Advisory Committee Meeting on April 27, 2006; Exhibit "E,"
3 consisting of Minutes for Chino Basin Watermaster Board Meeting on April 27, 2006; Exhibit
4 "F," consisting of Minutes for Chino Basin Watermaster Board Meeting on May 25, 2006;
5 Exhibit "G," consisting of a letter from Hatch and Parent to Mark Hensley of Jenkins & Hogin,
6 dated July 28, 2006, and proof of delivery of said letter; Exhibit "H," consisting of a June 28,
7 2007 Watermaster Staff Report; Exhibit "I," consisting of Minutes for Chino Basin Watermaster
8 Board Meeting on June 28, 2007; Exhibit "J," consisting of a memorandum from Wildermuth
9 Environmental, Inc. to Watermaster, dated April 4, 2007; Exhibit "K," consisting of a
10 Declaration by Sheri Rojo, CPA, summarizing Watermaster expenditures since July 2000,
11 related to subsidence management

12 Watermaster's motion is brought under paragraph 31 of the Judgment, which provides for de
13 novo review by the Court of all actions, decisions, or rules of Watermaster. "Watermaster's
14 finding or decision, if any, may be received in evidence at said hearing, but shall not constitute
15 presumptive or prima facie proof of any fact in issue." (Judgment, paragraph 31(d), p. 17.)
16 Because this is a motion under paragraph 31 of the Judgment, production of evidence is
17 required.³

18 Watermaster requests that the Court make the following findings:

- 19 1. The OBMP requires Watermaster to address subsidence in the Chino
20 Basin, but it does not specify particular actions to be taken.
- 21 2. The Interim Plan has successfully addressed subsidence on a short-term
22 basis.
- 23 3. The Long Term Plan proposes a reasonable approach to the issue of
24 subsidence on a long-term basis.
- 25 4. The Long Term Plan is consistent with the Judgment, the OBMP and
26 the Peace Agreement.
- 27 5. The Long Term Plan does not trigger the reimbursement provision of
28 section 5.4 (e) of the Peace Agreement.

(Watermaster Points and Authorities, p. 16-17.)

³ Evidence Code section 1401 requires authentication of a writing before it is received in evidence. No authentication was provided initially for Exhibits "A" through "J." Watermaster's subsequent filing includes a Declaration by Sherri Lynne Molino.

1 **B. Subsequent filings and Orders on Ex Parte Motions**

2 On August 24, 2007, City of Chino Hills filed an Ex Parte Application to Continue the
3 Hearing on Watermaster's Motion for Approval of Long Term Plan. Also on August 24, 2007,
4 Watermaster filed a Response to Chino Hills' Ex Parte Motion. On August 27, 2007, the Court
5 ordered a continuance of the hearing on Watermaster's Motion for Approval of Long Term Plan
6 to November 15, 2007. The Court also requested Watermaster to schedule a Special Referee
7 workshop on October 3, 2007, "to receive evidence on the issue whether or not Watermaster's
8 proposed long-term plan for the management of subsidence, is a reasonable long-term approach
9 to the issue of subsidence in MZ-1." (Order on Ex Parte Application for Continuance of Hearing
10 on Motion for Approval of Long Term Plan for Subsidence in MZ-1, dated August 27, 2007, p.1-
11 2.)

12 On September 18, 2007, City of Chino Hills filed Evidentiary Objections to
13 Watermaster's Motion and attached Exhibits "A" through "J." On September 25, 2007, City of
14 Chino Hills filed a Transmittal of Dennis Williams' Comments on Watermaster's Long Term
15 Plan. On October 2, 2007, Watermaster filed a Request to Cancel October 3, 2007 Special
16 Referee Workshop. Attached to the pleading, as Exhibit "A", is a Stipulation Re Long Term
17 Plan for Management Zone Number One (MZ-1) between Watermaster and City of Chino Hills.
18 The stipulation provides in part that "City of Chino Hills will withdraw its opposition to
19 Watermaster's request for approval of the Long Term Plan ...and Watermaster will amend its
20 motion...to delete a request for any findings regarding the appropriateness of available credits
21 arising under Watermaster Rules and Regulations Section 4.5 or 5.4 of the Peace Agreement."
22 By order dated October 2, 2007, the workshop was cancelled. Because the Special Referee and
23 Technical Expert had questions concerning the long-term plan and to expedite the evaluation of
24 the plan, an informal technical meeting took place at Watermaster's office on October 3, 2007,
25 instead of the formal workshop. The meeting was attended by Special Referee Anne Schneider,
26 Technical Expert Joe Scalmanini and experts from City of Chino Hills, City of Chino, the State
27 of California, and Watermaster.

28 ////

1 **C. Supplemental Filings**

2 On October 11, 2007, Watermaster filed a Supplemental Filing Re Subsidence Long-
3 Term Plan. Attached to the Supplemental Filing, as Exhibit "B", is a Declaration by Sherri
4 Lynne Molino and a revised long term plan for management of subsidence [Chino Basin
5 Optimum Basin Management Program Management Zone 1 Subsidence Management Plan dated
6 October 2007] ("Long Term Plan"). Also attached to the Supplemental Filing, as Exhibit "A," is
7 the Stipulation Re Long Term Plan for Management Zone Number One (MZ-1) between
8 Watermaster and City of Chino Hills ("Stipulation"), which was first filed with the Court on
9 October 2, 2007. As noted earlier, the stipulation provides in part that "City of Chino Hills will
10 withdraw its opposition to Watermaster's request for approval of the Long Term Plan ...and
11 Watermaster will amend its motion...to delete a request for any findings regarding the
12 appropriateness of available credits arising under Watermaster Rules and Regulations Section 4.5
13 or 5.4 of the Peace Agreement." The Supplemental Filing states that Watermaster is
14 withdrawing its request for Finding No. 5. City of Chino Hills has not filed any supplemental
15 pleadings. Watermaster contends the Stipulation itself is sufficient to withdraw City of Chino
16 Hills' opposition to its motion.

17 **IV.**

18 **COMMENTS ON WATERMASTER'S LONG-TERM PLAN FOR MZ-1 AND THE**
19 **PUBLICATION OF GUIDANCE CRITERIA**

20 **A. Revised Watermaster Long Term Plan**

21 As noted, above, Watermaster transmitted a revised Long Term Plan to the Court as Exhibit
22 "B" to its October 11, 2007 Supplemental Filing, which revised the Long Term Plan submitted
23 as Exhibit "A" to its August 2, 2007 motion. The Long Term Plan was revised to incorporate
24 elements of the Stipulation. The revisions also clarified the status of groundwater flow and
25 subsidence modeling, and added that further investigation of the potential effects of pumping in
26 the central and northern portions of MZ-1 may include additional monitoring, construction of
27 additional extensometers and peizometers, and groundwater flow and subsidence modeling.

28 (Long Term Plan, p.2-6)

1 The Long Term Plan is an extension of Watermaster's Interim Plan. Watermaster formulated
2 and implemented the Interim Monitoring Program to focus on cause-and-effect relationships
3 with regard to subsidence in southwestern MZ-1. The results of that Program were documented
4 in February 2006, in the "Management Zone 1 Interim Monitoring Program MZ-1 Summary
5 Report" which, among other details, included a Guidance Level (groundwater level in a specific
6 peizometer at Watermaster's Ayala Park peizometer and extensometer monitoring location) for
7 recommended maintenance of groundwater levels to minimize the risk of permanent subsidence
8 and ground fissuring while the long term plan was being developed. Watermaster also initiated
9 the collection of pertinent groundwater level and ground surface elevation data in other areas in
10 and adjacent to MZ-1.

11 The Long Term Plan seeks to continue the approach of the Interim Monitoring Program of
12 voluntary management of pumping in southwest MZ-1 (the Subsidence Management Area) in
13 order to implement groundwater level management above the Guidance Level determined via the
14 Interim Monitoring Program efforts. Except for purposeful lowering of groundwater levels as
15 part of the Interim Monitoring Program to ultimately derive input to the Guidance Level, the
16 achievement of elastic aquifer-system deformation appears to derive from the reduction of
17 pumping as part of the Interim Program, and associated maintenance of groundwater levels
18 sufficiently high to be above the Guidance Level.

19 The Long Term Plan also commits to continued monitoring and interpretation of data in and
20 around the southwest MZ-1 area in order to adaptively adjust the Guidance Level and/or expand
21 the Subsidence Management Area as appropriate into Central and Northern MZ-1, or other areas
22 of subsidence concern. The Long Term Plan commits to consider an injection feasibility study to
23 help determine if aquifer injection is a viable tool to manage subsidence, to design an
24 investigation in northern and central MZ-1 to address whether pumping in those areas has a
25 material impact on subsidence, to provide Watermaster assistance in designing pumping plans to
26 further refine the Guidance Level, and to cooperate with Chino Hills to evaluate the best
27 available options for Chino Hills (presumably in coordination with other well owners) to produce
28 a reasonable quantity of groundwater from MZ-1, with ultimate recognition of the physical

1 limitations within MZ-1. Pumping plans will be designed to purposefully maintain groundwater
2 levels above the Guidance Level. Finally, the Long Term Plan commits to ongoing monitoring,
3 interpretation, evaluation, and annual reporting to verify the protective nature of the plan as
4 related to permanent land subsidence and ground fissuring.

5 The Long Term Plan is stated to be an "adaptive" plan:

6 A key element of the MZ-1 [Long Term] Plan is its *adaptive* nature. As new data are
7 collected and periodically analyzed to ensure the on-going effectiveness of the plan,
8 the plan will be revised accordingly and approved through the Watermaster process.

9 (Long Term Plan, p.1-2). The Long Term Plan describes itself as both an "initial" and "current"
10 version of the plan (*Ibid.*), presumably reflecting the "adaptive nature" of the plan.

11 The Long Term Plan stresses the importance of the exchange of data between
12 Watermaster and the parties, and describes the monitoring that Watermaster will continue in the
13 "Managed Area" (Southern MZ-1) in cooperation with the parties. (Long Term Plan, p. 2-2, 2-3).
14 In addition to the continued monitoring of piezometric levels, aquifer-system deformation,
15 vertical ground-surface deformation, and horizontal ground-surface deformation in the
16 "Managed Areas", Watermaster will continue its monitoring efforts in Central MZ-1, the
17 "Southern Area", and the "Northern Area". (*Id.*, p. 2-3 to 2-5). Watermaster commits in the Long
18 Term Plan to further evaluation of Central MZ-1 and Northern MZ-1 pumping and subsidence
19 issues, and to "specifically design an investigation to address whether production in the Northern
20 and Central areas have a material impact on subsidence" in consultation with the MZ-1
21 Technical Committee. (*Id.*, p. 2-6).

22 Section 3 describes how Watermaster's Long Term Plan will be "adaptive":

23 A key element of the MZ-1 Plan is the verification of the protective nature of the
24 plan as related to permanent land subsidence and ground fissuring. This
25 verification is accomplished through continued monitoring and reporting by
26 Watermaster and revision of the MZ-1 Plan when appropriate. In this sense, the
27 MZ-1 Plan is adaptive....

28 At the end of March of each year, the MZ-1 Technical Committee will convene to
review all available data collected and analyses performed over the past year, and
to formally recommend revisions or additions to the MZ-1 Plan. These
recommendations will be run through the Watermaster process during May and,
if approved, will be budgeted for and implemented during the following fiscal
year.

1 (Id., p. 3-1)

2 Finally, Watermaster will produce an MZ-1 Annual Report at the conclusion of each fiscal
3 year (June 30). The Annual Report will include specified technical information and the "Revised
4 MZ-1 Plan". The Long Term Plan could be revised annually to include changes to the
5 "Managed Area", the list of "managed wells", and the defined "guidance level" (possibly
6 including additional guidance levels in other areas of MZ-1), as well as to change ongoing
7 monitoring efforts.

8 **B. Comments on the Long Term Plan**

9 OBMP Implementation Plan Program Element 4 required the Interim Plan to
10 "[f]ormulate a long-term management plan. The long-term management plan will include goals,
11 activities to achieve those goals, and a means to evaluate the success of the Plan." (OBMP
12 Implementation Plan, p. 26-27.) The Long Term Plan states that its goal is "to develop a
13 pumping and recharge plan to reduce to tolerable levels or abate future land subsidence and
14 ground fissuring." It appears that the Long Term Plan will include the development of a
15 pumping plan (see for example, the last three bullets on p. 2-6.) There is, however,
16 fundamentally nothing in the plan itself related to a recharge plan; recharge planning appears to
17 have been left to other processes. There is no definition of "tolerable levels" and "abatement"
18 when it comes to the ultimate objective. This latter point would seem to ultimately present a
19 challenge in that the continued monitoring is said to be necessary in order to "evaluate the
20 effectiveness of the plan to reduce to tolerable levels or abate future land subsidence and ground
21 fissuring". (Long Term Plan, p. 2-2). It is not clear how Watermaster will make this evaluation if
22 the target ("tolerable levels" vs. "abatement") is not specified.

23 Throughout the discussion of continued monitoring within the managed area, there are
24 references to monitoring of various wells, some on Table 2-2 and others generically described as
25 being in Central MZ-1 and in the Southeast Area. The location and distribution of all monitoring
26 wells should be shown on maps, as should all existing wells that are "subject to being classified
27 as Managed Wells." Finally, there remain some minor issues with Table 2-1. Chino Hills Well
28 14 is illustrated on Figure 2-1 as a "managed well," but is not included in the listing of managed

1 wells in Table 2-1. Also, based on examination of well construction details in Table 2-2, it
2 would appear that CIM Well 1A should be included as a managed well in Table 2-1.

3 There is a commitment that "by the end of Fall 2007, Watermaster will analyze and
4 compare the survey and InSAR data sets, and recommend a new scope and frequency of data
5 collection ... ". (Long Term Plan, p. 2-3) The timing is very short, and it is unclear, in light of
6 other timing (which is limited but mainly focuses on spring 2008), how such a recommendation
7 will be received and processed in the next few weeks.

8 There is some internal inconsistency in the Central MZ-1 discussion. The second bullet
9 concludes that current ground surface monitoring "has revealed a zone of potential future ground
10 fissuring". The next bullet says that data from monitoring of horizontal ground-surface
11 displacement can be used to design a program for *detailed* monitoring of horizontal strain across
12 this zone of potential ground fissuring, if deemed necessary by Watermaster. (Long Term Plan,
13 p. 2-3, 2-4) The section concludes that Watermaster will revise the Long Term Plan pursuant to
14 the process in Section 3 "if future data from existing monitoring ... indicate the potential for
15 adverse impacts due to subsidence". If monitoring has already "revealed a zone of potential
16 ground fissuring", it would appear that the "potential for adverse impacts due to subsidence" has
17 already been indicated.

18 Certain provisions of the Long Term Plan, while based on the Stipulation, appear to focus
19 on Chino Hills. Presumably, Watermaster will consult with all well owners in the Managed
20 Area to "evaluate the best available options for the City", as well as for the other well owners, "to
21 produce a reasonable quantity of groundwater from MZ-1". (Long Term Plan, p. 2-6) Since all
22 deep pumping has an interrelated effect on groundwater levels at the target PA-7 piezometer, it
23 would seem that any pumping plan will need to take into account the respective pumping by
24 other deep well owners.

25 **C. Reasonableness of Plan**

26 The Long Term Plan stops short of specifically defining its target, as described in the
27 stated goal of the plan, to reduce to tolerable levels or abate future land subsidence and ground
28 fissuring. However, the Long Term Plan establishes a Guidance Level to avoid new inelastic

1 (permanent) subsidence in southwest MZ-1, which is based on detailed investigation and
2 interpretation. The Guidance Level represents the best available target to avoid new inelastic
3 (permanent) subsidence in that area. It is reasonable to expect that implementation of the plan
4 with continued voluntary compliance by the parties will succeed in identifying whether new
5 inelastic subsidence is avoided, whether the Guidance Level needs to be revised and/or applied
6 to a larger area, and whether the same or some other numeric value(s) should be adopted to avoid
7 new inelastic subsidence.

8 Watermaster's Long Term Plan rests on two principles. The first principle is that
9 management of subsidence should be "adaptive in nature": "This means that while the Plan sets
10 out a set of actions to be taken by Watermaster, this plan of activities may change through time
11 as additional information is obtained and analyzed." (Watermaster Points and Authorities, p.13).

12 The second principle is that the parties will voluntarily cooperate in Watermaster's
13 monitoring efforts and will follow Watermaster's recommendations in the form of its Guidance
14 Criteria in operating deep wells within MZ-1. Watermaster believes the parties will voluntarily
15 cooperate: "Staff sees no evidence to suggest that the voluntary participation by the parties is
16 unsuccessful." (Watermaster Points and Authorities, p. 9). "At this point in time Watermaster has
17 no reason to believe that the parties will not make prudent management decisions based on the
18 information provided to them by Watermaster." (*Id.*, p. 12) "Watermaster believes that the
19 affected parties in MZ-1 are sufficiently concerned with the potential to cause subsidence that the
20 continuation of a voluntary program consistent with the approach utilized by the Interim Plan is
21 the most effective and efficient means to manage subsidence in MZ-1 on a long-term basis." (*Id.*,
22 p. 13). "Watermaster will not presume that any of the producers operating within MZ-1 will
23 disregard the guidance criteria for extended periods or in a manner that will cause unmitigated
24 harm." (*Id.*, p. 13-14).

25 Notwithstanding its reliance on the principles of "adaptive" management and voluntary
26 cooperation, Watermaster has "reserved whatever discretion it may have under the Judgment to
27 make constructive improvements." (Watermaster Points and Authorities, p. 14). The Stipulation
28 also provides:

1 “Watermaster’s [sic] reserves its authority to take further actions consistent with
2 the Judgment and the Peace Agreement to avoid or address an existing or
3 threatened emergency to prevent Material Physical Injury as may be authorized
4 by the Judgment or the Peace Agreement.”

4 (Stipulation ¶ 5). The scope of Watermaster’s discretion and authority is not at issue here.

5 V.

6 **ARGUMENTS AND EVIDENCE FOR WATERMASTER’S REQUESTED FINDINGS**

7 Requested Finding No. 1: The OBMP requires Watermaster to address subsidence in the
8 Chino Basin, but it does not specify particular actions to be taken.

9 Evidence: OBMP Implementation Plan Program Element 4 states that “an interim
10 management plan will be developed to minimize subsidence and fissuring while new information
11 is collected to assess the causes and to develop an effective long-term management plan.”
12 (OBMP Implementation Plan, p. 26.) The OBMP Implementation Plan contains a list of
13 activities to be included in the interim management plan. One of the activities is to “[f]ormulate
14 a long-term management plan. The long-term management plan will include goals, activities to
15 achieve those goals, and a means to evaluate the success of the plan.” (*Id.*, p. 26-27.)

16 Requested Finding No. 2. The Interim Plan has successfully addressed subsidence on a
17 short-term basis.

18 Evidence: The MZ-1 Summary Report states: “The current state of aquifer-system
19 deformation in south MZ-1 (in the vicinity of Ayala Park) is essentially elastic. Little, if any,
20 inelastic (permanent) compaction is now occurring in the area, which is in contrast to the
21 past...” (MZ-1 Summary Report, p. ES-1.) An April 4, 2007 technical memorandum from
22 Wildermuth Environmental Inc. states: “...during the spring 2005 to spring 2006 period, [two of
23 the benchmarks in MZ-1] recorded a light rebound of the land surface.” (See Watermaster
24 Points and Authorities, p. 10; Exhibit “J” to Watermaster’s Motion.)

25 Requested Finding No. 3. The Long Term Plan proposes a reasonable approach to the
26 issue of subsidence on a long-term basis.

27 Argument: Watermaster argues the Long Term Plan “follows the spirit of the Interim
28 Plan” (Watermaster Points and Authorities, p. 8, lns. 3-4.) Watermaster also argues:

1 ...the Interim Plan turns out to have charted exactly the right course to accomplish the
2 goals of the plan: to bring subsidence under control, to come to understand the
3 mechanisms of subsidence in the Chino Basin, and to determine what needs to happen on
4 a long term basis. Accordingly, the challenge presented for the plan is to maintain the
effectiveness of the solution that has been established by the parties through voluntary
cooperation rather than trying to remediate an existing problem.

5 (*Id.*, p. 10, lns. 21-26.)

6 Requested Finding No. 4. The Long Term Plan is consistent with the Judgment, the
7 OBMP and Peace Agreement.

8 Argument: Watermaster's Points and Authorities include argument showing that the
9 Long Term Plan is consistent with the OBMP. No argument is made with respect to the
10 Judgment or Peace Agreement. (See Watermaster Points and Authorities, p. 10.)

11 VI.

12 RECOMMENDATION

13 According to the stipulation filed by Watermaster, City of Chino Hills will withdraw its
14 opposition to Watermaster's motion and requested findings. As noted earlier, Watermaster
15 contends the stipulation itself is sufficient. There is support for Findings Nos. 1, 2, and 3.
16 Insufficient argument has been presented with respect to Finding No. 4. The request for Finding
17 No. 5 has been withdrawn.

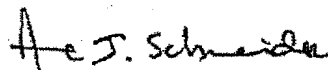
18 The Court should direct Watermaster to proceed with the Long Term Plan as presented,
19 and to report to the Court regarding implementation of and revisions to the plan as part of its
20 regular OBMP implementation status reporting.⁴ The Long Term Plan provides for the intended
21 (albeit voluntary) maintenance of groundwater levels above a Guidance Level that derives from
22 intensive investigation of the southwest MZ-1 area; the intensive investigation suggests that
23 increased subsidence can be avoided with this approach. The Long Term Plan also provides for
24 expanded monitoring and investigation of subsidence in other areas within and adjacent to
25 southwest MZ-1 to better understand cause-and-effect relationships between groundwater
26 pumping and subsidence, which may result in expanding the Subsidence Managed Area as
27 appropriate. The "adaptive" nature of the Long Term Plan, based on continued monitoring and

28 ⁴ Watermaster's OBMP Status Report 2007-01 has not yet been filed. It was due September 1, 2007.

1 interpretation of pumping, groundwater levels, and ground level data, is intended to result in
2 confirmation, revision, and/or expansion of the Guidance Level, again as appropriate. The Long
3 Term Plan provides that Watermaster will produce an MZ-1 annual report at the conclusion of
4 each fiscal year, and that the Long Term Plan can be revised based on that report. Watermaster
5 should be ordered to file the MZ-1 annual reports with the Court.

6 The reasonableness of the Long Term Plan rests on the "adaptive" nature of the plan
7 itself, and on Watermaster's belief that it is in the parties' interest to continue voluntarily to
8 operate within the guidance criteria and to cooperate in Watermaster's monitoring efforts. It
9 appears, overall, that the Long Term Plan is a reasonable plan to address subsidence and
10 fissuring in MZ-1. Risks of fissuring and subsidence are such that the Court can rest assured that
11 the parties would bring the issue back to the Court if the Long Term Plan were not adapted to
12 future circumstances.

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14 Dated: October 15, 2007

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17 Anne J. Schneider, Special Referee
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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, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On October 16, 2007, I served the following:

- 1) **SPECIAL REFEREE'S COMMENTS AND RECOMMENDATIONS CONCERNING MOTION FOR APPROVAL OF WATERMASTER'S LONG TERM PLAN FOR MANAGEMENT OF SUBSIDENCE**

BY MAIL: 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, addresses as follows:

See attached service list: Mailing List 1

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 16, 2007 in Rancho Cucamonga, California.



Janine Wilson
Chino Basin Watermaster

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EXHIBIT 26

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

THE CITY OF CHINO, et al.

Defendants.

CASE NO. RCV 51010

Judge: Honorable J. Michael Gunn

SPECIAL REFEREE'S
PRELIMINARY COMMENTS AND
RECOMMENDATIONS ON MOTION
FOR APPROVAL OF PEACE II
DOCUMENTS

Date: November 29, 2007
Time: 1:30 p.m.
Dept: 8

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1 I. INTRODUCTION

2 The purpose of this preliminary report is to set out for the court Watermaster's proposal
3 for approval of what it calls its "Peace II Measures". Watermaster filed a Motion for Approval
4 of Peace II Documents on October 25, 2007, with 15 main exhibits and attachments, including a
5 draft of its technical report prepared by Wildermuth Environmental Inc.¹

6 The court issued an Order to Show Cause on November 15, 2007, for any and all
7 interested parties to appear on November 29, 2007 "... to show cause why the Court should not
8 continue the hearing on Watermaster's Motion ... to a mutually agreed upon date in early 2008,
9 or, in the alternative, be prepared to have Mr. Wildermuth present to address the concerns of the
10 Court as hereinbefore stated." (11/15/2007 Order to Show Cause Why Court Should Not
11 Continue the Hearing on Motion For Approval of Peace II Documents p. 5, lns. 1-5) The court
12 expressed concern that there may not be "sufficient time for a thorough consideration of the
13 Motion before the end of the year ..." (*Id.* p. 2, lns. 10-11) and "... the technical review
14 supporting Basin Re-operation is not yet complete ..."
15 (*id.* p. 3, lns. 17-18). The court had received only a draft of the Technical Report. (A final technical report was filed with the court
16 November 15, 2007: "2007 CBWM Groundwater Model Documentation and Evaluation of the
17 Peace II Project Description Final Report (November 2007)" ("Final Technical Report").)

18 Watermaster has committed to make Mr. Wildermuth available to testify at the
19 November 29, 1007 hearing. Testimony at the hearing may resolve or explain many of the issues
20 and questions raised in these Preliminary Comments and Recommendations. Legal questions
21 can probably best be addressed by Watermaster filing a comprehensive response or
22 Memorandum of Points and Authorities, or both, following the hearing. It would be most useful
23 if Watermaster would structure its responses to address the issues as set out in these Preliminary
24 Comments and Recommendations.

25 Because of the very limited time that has been available to review so complex and
26

27 ¹ The first draft Technical Report was not available until about October 24, 2007, one day before Watermaster filed
28 its Motion. A revised draft Technical Report was made available November 10, 2007, but does not appear to have
been filed with the court.

Osc

1 extensive a set of documents, and because the November 29, 2007 hearing should provide
2 explanations and answers that we hope will resolve many issues, this is a preliminary report. It
3 is anticipated at this time that a supplemental or revised Comments and Recommendations will
4 be filed with the court following the hearing, receipt of Watermaster's responses and/or
5 Memorandum of Points and Authorities, and receipt of any additional responses or memoranda
6 which may be filed by the parties.

7 **II. BACKGROUND**

8 **A. Pleadings**

9 **1. Motion for Approval of Peace II Documents**

10 Watermaster filed a Motion for Approval of Peace II Documents, on October 25, 2007.
11 The motion has three exhibits: A, B & C. Exhibit A is Watermaster Resolution No. 07-05 and
12 Attachments A - L. Exhibit B is the Draft - 2007 CBWM Groundwater Model Documentation
13 and Evaluation of the Peace II Project Description, dated October 2007 ("Draft Technical
14 Report"). Exhibit C is the Declaration of Mark Wildermuth ("Wildermuth Declaration"). The
15 documents included in Exhibits A, B & C are described as the "Peace II Documents."

16 The Peace II Documents include three proposed amendments to the Judgment, a
17 proposed amendment to the Peace Agreement, a Purchase and Sale Agreement for water from
18 the Non-Agricultural Pool, the Supplement to the OBMP Implementation Plan, the Peace II
19 Agreement, proposed amendments to Watermaster's Rules and Regulations, the Project
20 Description, and two reports from Dr. David Sunding.

21 **2. Filings in Support of Motion**

22 On November 9, 2007, Fontana Union Water Company, San Antonio Water Company,
23 and Monte Vista Water District filed Joinders to Watermaster's motion. The City of Pomona
24 filed a Statement in Support of the motion, also on November 9, 2007. On November 13, 2007,
25 Inland Empire Utilities Agency ("IEUA") filed a Joinder to Watermaster's motion and
26 Declaration of Richard Atwater. Also on November 14, 2007, the City of Chino Hills, the City
27 of Upland, the Agricultural Pool, and Cucamonga Valley Water District filed Joinders to
28 Watermaster's motion.

1 On November 15, 2007, Western Municipal Water District filed a Joinder to
2 Watermaster's motion and Declaration of John Rossi. Also on November 15, 2007, the City of
3 Ontario filed a Joinder to the motion and Declaration of Kenneth Jeske. The third filing on
4 November 15, 2007, was Three Valleys Municipal Water District's Joinder to the motion and
5 Declaration of Jeff Kightlinger. On November 26, 2007, the City of Chino filed a Joinder and
6 Statement in Support of Watermaster Motion to Approve Peace II Documents.

7 **3. Watermaster's November 15, 2007 Supplemental Transmittal of Documents**

8 The fourth filing on November 15, 2007, was Watermaster's Transmittal of Supplemental
9 Documents. Watermaster's Transmittal of Supplemental Documents includes Exhibits A -G.
10 Exhibit A is the 2007 CBWM Groundwater Model Documentation and Evaluation of the Peace
11 II Project Description, Final Report, dated November 2007 ("Final Technical Report"). Exhibit
12 B is a second Declaration of Mark Wildermuth ("Wildermuth Declaration # 2"). Exhibit C is the
13 Declaration of Kenneth R. Manning. Exhibit D is a copy of the Jeff Kightlinger Declaration
14 filed by Three Valleys Municipal Water District. Exhibit E is the Declaration of Celeste Cantu.
15 Exhibit F is a letter to Kenneth R. Manning from Robert W. Bowcock. Exhibit G is the
16 Declaration of Mark Kinsey.

17 **4. Other Filings**

18 On November 19, 2007, the Chino Basin Water Conservation District filed a Response to
19 Watermaster's motion, supporting a continuance of the motion to some time in early 2008. On
20 November 26, 2007, Watermaster filed a Response to the Conservation District's comments.

21 **B. History of the Peace Agreement Process and the Court's Orders Regarding**
22 **Desalters**

23 **1. Adoption of OBMP and Peace Agreement**

24 In February 1998, Watermaster was directed to prepare an Optimum Basin Management
25 Program for Chino Basin (OBMP). The OBMP was divided into two phases. The first phase
26 was the adoption by the Advisory Committee and Watermaster of the Phase I Report, dated
27 August 19, 1999. The second phase was the adoption of an Implementation Plan. (Order
28 Concerning Adoption of OBMP, dated July 13, 2000, p. 2.) Together, the two documents (Phase

1 I Report and Implementation) constitute the OBMP. (*Id.* at p. 3) In June 2000, Watermaster
2 adopted the goals and plans of the Phase I Report, consistent with the Implementation Plan and
3 Peace Agreement. (*Ibid.*)

4 **2. Development of Peace II Documents**

5 In 2004, the parties began conducting a five-year review of OBMP implementation.
6 (Motion p. 3) A list of issues to be addressed was formulated and the parties commenced to
7 negotiate an update to the Peace Agreement. (*Id.* at p. 5) After additional technical work was
8 completed and public workshops held, a Non-Binding Term Sheet was developed. (*Id.* at p. 6)
9 The Term Sheet was presented to the pools, the Advisory Committee, and finally to the Board
10 for approval. (*Id.* at p. 7) Ultimately, the Peace II documents were developed and submitted to
11 the Court for approval.

12 **III. TECHNICAL ANALYSIS OF BASIN REOPERATION**

13 **A. Hydraulic Control and Basin Reoperation Concepts**

14 At least as early as during the preparation of the OBMP, it has been recognized that
15 development in the Basin and associated changes in land use, most notably the progressive
16 decline in agricultural land use and an associated decline in groundwater pumping in the
17 southern part of the Basin, would contribute to rising groundwater levels and an increase in
18 groundwater outflow toward the Santa Ana River, resulting in a decrease in the safe yield of the
19 Basin. Based on that recognition, an objective in managing the Basin has been to retain pumping
20 in the southern part of the Basin as agricultural land use declines. However, as municipal water
21 requirements have increased while agricultural water requirements have decreased, it has also
22 been recognized that groundwater quality in the southern part of the Basin constrains the simple
23 conversion of groundwater pumping in that area from agricultural to municipal supply. The
24 solution to retaining pumping in the southern part of the Basin and making use of that pumping
25 for municipal supply has thus far involved the installation of a network of wells and desalter
26 facilities that remove or otherwise exchange dissolved minerals (salt) and produce water quality
27 that can be used for municipal supply.

28 Concurrent with the ongoing increase in municipal water requirements in the Basin, it has

1 been recognized that there is an increasing amount of treated wastewater that could be recycled
2 for a number of uses in the Basin, most notably for non-potable water supply and for
3 groundwater recharge. However, the Basin Plan adopted by the Santa Ana Regional Water
4 Quality Control Board ("RWQCB") had established groundwater quality goals for the Basin that
5 could not be achieved if recycled water were used for groundwater recharge; in other words, the
6 groundwater basin lacked the assimilative capacity to receive recycled water, with its dissolved
7 mineral concentrations, without exceeding the groundwater quality goals in the Basin Plan. To
8 solve that constraint, Watermaster and the RWQCB negotiated revisions to the Basin Plan
9 whereby recycled water could be used in the Basin, for non-potable and groundwater recharge
10 purposes, as long as pumping in the southern part of the Basin were configured and operated in a
11 way that would "protect" downgradient water quality, most notably in the Santa Ana River and
12 Prado basin area. The concepts of hydraulic control and basin reoperation derive directly from
13 the configuration and operation of pumping in the southern part of the Basin to achieve that
14 "protection".

15 In summary, hydraulic control is simply the continuation of a certain amount of
16 groundwater pumping in the southern part of the Basin, nominally about 40,000 acre-feet per
17 year ("afy"), intended to be sufficient to avoid the recovery of groundwater levels as agricultural
18 pumping declines and to thus avoid increases in groundwater outflow that would contribute to a
19 decrease in safe yield, combined with the operation of desalters to manufacture water quality that
20 can be beneficially used for municipal water supply. The "control" nature of hydraulic control
21 derives from the purposeful placement and operation of wells in the southern part of the Basin to
22 sufficiently lower groundwater levels to intercept groundwater that flows southerly from the
23 Chino North Management Zone (that area generally north of the desalter well field) rather than
24 let it discharge to the Santa Ana River and Prado basin area. The "reoperation" concept simply
25 involves the planned purposeful removal of groundwater from storage to achieve the lowering of
26 groundwater levels to accomplish hydraulic control. Reoperation also recognizes that the
27 purposeful removal of groundwater from storage, and the associated lowering of groundwater
28 levels, will set up a hydraulic condition whereby surface water in the Santa Ana River will be

1 induced to recharge the Chino Basin, upstream of the Prado basin area. That induced recharge
2 has been termed "new yield", in that it represents a new component of recharge that potentially
3 adds to the overall yield of the Chino Basin.

4 **B. Previous Technical Work and Review of Watermaster Models**

5 For many years, extensive technical work has been conducted to conceptually describe
6 and technically analyze the Chino Basin. Of note in recent years have been the development and
7 application of a numerical groundwater flow model (Watermaster's 2003 Model) to analyze the
8 then-proposed Dry Year Yield Program (DYYP) in 2003, followed by an updating of that model
9 (Watermaster's Updated 2003 Model) and use of it for planning level analyses of future
10 hydraulic control alternatives in 2006, followed in turn by the development and use of an
11 Updated 2007 Model for analysis of a Baseline and two similar reoperation alternatives in
12 support of Watermaster's current Motion for approval of its proposed Peace II Documents. The
13 Final Technical Report includes documentation of the 2007 Model.

14 After extensive increases in monitoring, installation of new dedicated monitoring wells,
15 interpretation of subsurface drilling and logging data, very detailed investigation of subsidence-
16 related issues in MZ-1, and other efforts related to implementation of the OBMP over the last
17 several years, the 2007 Model is reported to reflect the most complete conceptualization of the
18 Basin and its boundary conditions, and to simulate historical basin conditions very well. It is
19 thus presented by Watermaster to be the most sophisticated tool with which to analyze
20 alternatives from which to select an "optimum" Basin operation strategy. This model should be
21 able to answer important questions discussed in these Preliminary Comments and
22 Recommendations, including such tasks as: use of the model for "optimization", assessment of
23 any alternatives to the proposed strategy, consideration of when hydraulic control would be
24 accomplished, analysis of whether timely replenishment of unachieved "new yield" would
25 interfere with the formation of hydraulic control, and analysis of whether replenishment of about
26 200,000 af additional overdraft (above the requested 400,000 af) after 2030 would affect
27 maintenance of hydraulic control.

28 Watermaster obtained peer review of its updated 2003 Model by Joe Scalmanini.

1 ("Review of Chino Basin Groundwater Flow Model 'Updated 2003 Model'" (March 2007).)
2 Watermaster's Motion implies that the "newly updated [2007] model" was peer reviewed. That
3 is not the case, although Mr. Scalmanini and Mr. Wildermuth have continued and are continuing
4 to consult on the 2007 Watermaster Model as directed by the court. (5/24/2007 Order)
5 Watermaster's Motion notes that, based on collaboration with Mr. Scalmanini and "upon the
6 recommendations in the Scalmanini Model Review Report", Mr. Wildermuth "performed
7 additional refinements to the model in order to improve its predictive power and the overall
8 confidence in the model results." (Motion p. 13, Ins. 1-3) There has been no "verification" of
9 the 2007 Model by Mr. Scalmanini, contrary to Watermaster's statement, however. Attachment
10 1 to these Preliminary Comments and Recommendations is a brief technical memorandum
11 prepared by Mr. Scalmanini that addresses model-related analyses pertinent to model review and
12 interpretation of the Final Technical Report, and compares certain 2007 Model results with
13 previously reported results. ("Summary of Model-Related Analyses Pertinent to Interpretation of
14 Final CBWM Technical Report", November 26, 2007)

15 **C. Technical Work in Support of Basin Reoperation**

16 **1. Importance of Technical Report for Basin Reoperation**

17 Watermaster's Motion stresses the importance of its technical work and its foundational
18 conceptualization and computer model. Watermaster has undertaken extensive technical
19 analysis to evaluate the concept of Basin reoperation. "The development of the policy aspects of
20 Basin Re-operation were guided at every step by the highest level of technical analysis . . ."

21 (Motion p. 7, Ins. 6-7) Watermaster has confidence in its model:

22 The Basin Re-operation strategy was developed using the results of the Chino
23 Basin groundwater flow model. The computer model of the Chino Basin has been
24 under development for many years and has evolved into a sophisticated computer
25 representation of the Basin. Over the years its results have been ground-truthed
26 against actual monitoring data.

25 (Motion p. 12, Ins. 4-7) The model and Final Technical Report are of the utmost importance to
26 Watermaster:

27 Perhaps the most important document that has been submitted to assist the Court
28 is the technical review of the Basin Re-operation Strategy that has been prepared
29 by Wildermuth Environmental . . .

1 (Id. p. 10, lns. 1-3)

2 **2. Watermaster Relies on Technical Report "Findings" of No Material Physical**
3 **Injury**

4 Watermaster's Motion states that Watermaster, based on the Technical Report:

5 ... has determined that the Basin Re-operation strategy as described in the Project
6 Description is a beneficial strategy to the Basin that will advance the OBMP goals
7 of yield enhancement and protection. . . Furthermore, the implementation of the
8 Basin Re-operation strategy will not result in Material Physical Injury [citing
9 Exhibit "C" Declaration of Mark Wildermuth].

8 (Motion p. 13, lns. 12-17) The Peace Agreement contractual standard of "Material Physical
9 Injury" is the criterion that is applied:²

10 Based on my knowledge of the Chino Basin and the analysis obtained from the
11 use of the 2007 Model, it is my professional opinion that the Basin Re-operation
12 strategy as described in the Project Description will not cause Material Physical
13 Injury.

13 (Wildermuth Declaration p. 9, lns. 11-13)

14 The conclusion that neither basin reoperation itself nor any of the consequences of basin
15 reoperation will cause "Material Physical Injury" are based on subjective analysis:

- 16 • Although increases in pump lift (lower water levels) are specifically called out as
17 "Material Physical Injury" in the Peace Agreement definition, the Technical Report states
18 there is no Material Physical Injury even though water levels will be lowered throughout
19 the basin and water levels in certain areas will drop by over 100 feet.³

20 ² Peace Agreement Section 1.1(y) defines "Material Physical Injury" as follows:

21 "Material Physical Injury" means material injury that is attributable to the Recharge, Transfer,
22 storage and recovery, management, movement or Production of water, or implementation of the
23 OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence,
24 increases in pump lift (lower water levels) and adverse impacts associated with rising groundwater.
25 Material Physical Injury does not include "economic injury" that results from other than physical
26 causes. Once fully mitigated, physical injury shall no longer be considered to be material;

24 ³ "From a production perspective, no Material Physical Injury is projected to occur from the declining groundwater
25 levels caused by Alternatives 1A and 1B." (Wildermuth Declaration p. 6, lns. 1-2) Further:

26 The projected groundwater elevation changes are not uniform across the basin, and therefore some
27 water agencies will experience greater lift and related energy expenses from Re-operation. That
28 said, the parties to the Judgment have indicated that they are willing to accept an increase in
energy expenses with the expectation of other financial gains and certainties made possible by
implementing the Peace II project description and other Peace II related agreements. Therefore, no
material physical injury is projected to occur from the decline in groundwater levels caused by
Alternatives 1A and 1B. In all cases, groundwater production is projected to be maintained in

- 1 • Safe yield declines significantly for both the Baseline and reoperation alternatives, but
2 there is no Material Physical Injury because the Baseline is "worse" than Alternatives 1A
3 and 1B.⁴
- 4 • Changes in groundwater levels caused by reoperation alternatives will "likely" result in
5 "broad-scale, small subsidence caused by the regional lowering of groundwater levels
6 ...", but that is not Material Physical Injury.⁵
- 7 • Maintaining a "weak" state of hydraulic control with the Baseline Alternative would
8 result in material physical injury, but maintaining a "robust" state of hydraulic control
9 with the reoperation alternatives would not result in material physical injury, even though
10 the "weak" versus "robust" criterion is subjective and has neither technical nor regulatory
11 (RWQCB) bases.⁶

12 IV. PROPOSED JUDGMENT AMENDMENTS

13 A. Proposed Amendment to Judgment Exhibit "I" (Engineering Appendix)

14 1. Watermaster's Motion

15 Watermaster's Motion asks the court to review proposed Judgment amendments under

16 Alternatives 1A and 1B although some changes in production and replenishment plans may be
17 required.

(Wildermuth Declaration #2 p. 5, lns. 20-27)

18 ⁴ "The safe yield in the Chino Basin is projected to decrease for the Baseline Alternative and Alternatives 1A and
19 1B. The safe yield decreases at a slower rate in Alternatives 1A and 1B than the Baseline Alternative. Alternatives
20 1A and 1B result in an increase in safe yield relative to the Baseline Alternative. . . There are no reductions in yield
projected for Alternatives 1A and 1B relative to the Baseline Alternative; thus, there is no material injury related to
safe yield changes. The safe yield changes associated with Alternatives 1A and 1B are consistent with the goal of
the OBMP to protect and enhance the safe yield of the Basin." (*Id.* p. 7, lns. 26-28, p. 8, lns. 1, 10-13)

21 ⁵ "My analysis found that there will be no new inelastic subsidence in the managed area of Management Zone 1 in
22 the Baseline Alternative and Alternatives 1A and 1B. East of managed area of Management Zone 1 there will likely
be some broad-scale, small subsidence caused by the regional lowering of groundwater levels that should not pose
23 challenges to either surface structures or underground utilities. There should be no Material Physical Injury due to
subsidence from the change in groundwater levels caused by Alternatives 1A or 1B." (*Id.* p. 8, lns. 23-28)

24 ⁶ "My analysis found that it may be possible to achieve a weak state of Hydraulic Control under the Baseline
Alternative where the state of hydraulic control is not robust and could be lost at any time due to a variety of
25 changes in Basin conditions such as changes in groundwater pumping, replenishment, and groundwater storage. A
weak state of hydraulic control or non-attainment of hydraulic control could result in the loss of the maximum
26 benefit objectives and subsequently either the loss of the use of recycled water in the basin or cause the cost of
recycled water use to be increased substantially to levels that would prohibit its use relative to imported water. The
27 Baseline Alternative will result in Material Physical Injury to the parties. Alternatives 1A and 1B result in
significantly greater reductions in groundwater levels in the Chino Creek Wellfield and a reliable state of hydraulic
28 control. Under this evaluation criterion no Material Physical Injury would occur with Alternatives 1A or 1B." (*Id.*
p. 7, lns. 14-25)

1 Judgment Paragraph 15. (Motion p. 8, lns. 10-11) Watermaster seeks court approval of the
2 amendment to Exhibit 'I' of the Judgment "as presented."⁷ (*Id.* p. 22, ln. 25) The proposed
3 Judgment Exhibit "I" amendment is Attachment "J" to Watermaster's Resolution 07-05, which
4 resolution is, in turn, Exhibit "A" to Watermaster's Motion. Watermaster's Motion makes only
5 the following statements with regard to the proposed Judgment Exhibit "I" amendment:

6 Attachment "J" is a proposed Judgment amendment that will authorize
7 Watermaster to initiate the Basin Re-operation strategy.

8 (*Id.* p. 8, lns. 8-9)

9 The Peace II document that is most relevant to the issue of Basin Re-operation is
10 the proposed amendment to Exhibit "I" of the Judgment. This document is
11 Attachment "J" to Resolution 07-05, and is the central document for which
12 Watermaster seeks Court approval.

13 (*Id.* p. 11, lns. 15-17)

14 Of foremost importance for the Court's analysis, the proposed amended Exhibit
15 "I" specifies that the additional 400,000 acre-feet of controlled overdraft will be
16 dedicated exclusively for the purpose of Desalter replenishment. (Proposed
17 Amended Judgment Exhibit "I" section 2.(b)[3].)

18 (*Id.* p. 14, lns. 1-3)

19 The proposed Judgment amendment regarding Re-operation describes measures
20 that will be taken in order to continually update and implement the Recharge
21 Master Plan in order to ensure that sufficient recharge capacity exists in the future
22 ..."

23 (*Id.* p. 15, lns. 23-25) Watermaster's Motion does not further discuss the proposed Judgment
24 Exhibit "I" amendment.

25 2. Proposed Amendment Would Authorize Overdrafting the Basin

26 The amendment would direct Watermaster to "secure and maintain Hydraulic Control"
27 through "controlled overdraft" by allowing the Basin to be overdrafted by 600,000 acre-feet
28 instead of the 200,000 acre-feet of overdraft currently authorized by the "Operating Safe Yield"
provisions in Exhibit "I" Paragraph 3 of the Judgment. (Motion Exh. A, Attachment "J", ¶ 2(b))
The additional 400,000 acre-feet of groundwater produced through the "controlled overdraft" for

⁷ Watermaster does not provide a redline version of Exhibit "I". The proposed changes are comprised of the addition of a new paragraph 2. Existing paragraph 2 is renumbered paragraph 3, and existing paragraph 3 is renumbered paragraph 4.

1 "re-operation" is to be "... made available under the Physical Solution for the express purpose
2 of satisfying some or all of the groundwater production by the Desalters until December 31, 2030
3 ("Period of Re-Operation")." (*Id.* at ¶ 2(b)[3]) The amendment allows the "controlled
4 overdraft" of 400,000 acre-feet to continue even if Hydraulic Control is "secured in any year
5 before the full 400,000 acre-feet has been Produced without Replenishment", subject to certain
6 requirements. (*Id.* at ¶ 2(b)[6]) The amendment would not, however, authorize more than the
7 additional 400,000 acre-feet of "cumulative un-replenished Production".

8 **3. The Proposed Judgment Exhibit "I" Amendment is Not Supported by the**
9 **Technical Report**

10 The proposed amendment to Judgment Exhibit "I" is not supported by the Technical
11 Report. The Technical Report states that 198,000 to 212,000 acre-feet more than the additional
12 400,000 acre-feet (i.e., approximately an additional 600,000 acre-feet) will be the actual
13 cumulative overdraft by 2030.⁸ Because what the Technical Report calls "new Santa Ana River
14 recharge" "... never reaches the assumed constant recharge in Table 7-6a and Table 7-6b", there
15 is a "shortfall":

16 The result of this shortfall is a reduction in storage by 2029/30 of about 198,000
17 acre-ft/yr and 212,000 acre-ft/yr for Alternatives 1A and 1B, respectively, above
18 the 400,000 acre-ft provided by Re-operation. This shortfall in induced recharge
19 should be mitigated preferably after 2030 to ensure that hydraulic control is
20 achieved as soon as possible.

19 (Technical Report pp. 7-13) The Declaration of Mark Wildermuth restates this point:

20 The result of this shortfall in Santa Ana River recharge is a reduction in storage in
21 excess of the 400,000 acre-ft provided for in the Re-operation schedules.

22 (Declaration of Mark Wildermuth p 5, lns. 11-12) Without specifically acknowledging this
23 "shortfall", Mr. Wildermuth states:

24 _____
25 ⁸ The Technical Report states that the "shortfall" of 198,000 to 212,000 acre-feet by 2029/30 is "reduction in
26 storage". It is not clear whether the 400,000 af is unreplenished production (also sometimes still referred to in
27 Watermaster's documents as "forgiveness" of replenishment assessments), or whether the 400,000 is also reduction
28 in groundwater storage. In any event, substantially more than 400,000 acre-feet will be removed from groundwater
storage by 2030, according to the Technical Report, if Watermaster follows the Attachment "E" schedules for
Reoperation Alternatives 1A and 1B. In Appendix "F" of the Technical Report, cumulative declines in storage for
Alternatives 1A and 1B with the Dry Year Yield Program between 2006 and 2030 are 610,000 and 660,000 acre-
feet.

1 The model analysis has shown that to reliably achieve Hydraulic Control, at least
2 400,000 acre-feet of controlled overdraft will be necessary. This amount is a
3 minimum amount that will be needed. It is possible that in the future we may
4 determine that additional controlled overdraft is necessary.

4 (*Id.* p. 9, lns. 1-4; emphasis added)

5 Watermaster's Motion does not discuss the Technical Report with regard to this issue; it
6 does not address this issue at all. If the Technical Report is correct, it appears that Judgment
7 Exhibit "I" would have to be amended to allow more than 600,000 acre-feet – not 400,000 acre-
8 feet – of additional overdraft; alternatively, the initial schedules in the Attachment "E" tables
9 would have to be revised to reflect corrected New Yield numbers.

10 Tables 7-6(a) and 7-6(b) are duplicates of Attachment "E" to Watermaster Resolution
11 07-05. The Motion does not refer to Attachment "E" (although it at least mentions every other
12 attachment and exhibit). Table 7-6(a)⁹ shows how the Re-Operation "Balance" of 400,000 acre-
13 feet is credited against desalter pumping. It includes "New Yield" as an additional credit against
14 desalter pumping, with "New Yield" ranging from 8,610 acre-feet in 2006/07 to 11,820 acre-feet
15 in 2029/30. It is assumed that "New Yield" will be available at a constant rate equal to thirty
16 percent of the desalter pumping rate.

17 Figure 7-7 shows the delayed inducement of "new yield". "New yield" does reach an
18 average of about 9,000 acre-feet per year, but not until 2039/40 through 2059/60. Figure 7-7
19 shows that there is no "new yield" at all until almost 2015, and that it doesn't approach 4,000 afa
20 until after 2020, and 6,000 afa until about 2025. The Technical Report notes that ". . . it [new
21 yield] never reaches the assumed constant recharge [11,820 afa] assumed in Table 7-6(a) and
22 Table 7-6(b)." (Technical Report pp. 7-13; emphasis added)

23 As a result of the Technical Report's conclusion that "new yield" does not yet exist and
24 will build up gradually after 2015 to only about 9,000 afa, the Table 7-6(a) credit for "new yield"
25 against desalter pumping is significantly overstated.¹⁰ "New yield" never reaches the 11,820 afa

26 ⁹ Table 7-6(a) shows desalter replenishment quantities for 2006/07 through 2029/30 with "Most Rapid Depletion of
27 the Re-Operation Account". Table 7-6(b) assumes "Proportional Depletion of the Re-Operation Account". The
28 "New Yield" quantities are the same in both. Peace II Agreement § 7.2(e)(i) says an "initial schedule" was to be
submitted to the Court along with Res. 07-05. Res. 07-05 indicates that these tables are the "schedule".

¹⁰ Watermaster assumed from 2000/01 through 2004/05 that 50 percent of desalter pumping was replenished by

1 assumed in Table 7-6(a) and, consequently, there is a "shortfall" in water to credit against
2 desalter pumping:

3 The result of this shortfall is a reduction in storage by 2029/30 of about 198,000
4 acre-ft/yr and 212,000 acre-ft/yr . . . above the 400,000 acre-ft provided by Re-
5 operation. This shortfall in induced recharge should be mitigated preferably after
6 2030 to ensure that hydraulic control is achieved as soon as possible.

6 (*Id.*, emphasis added)

7 **4. "Mitigation" for More Than 200,000 Acre-Feet of Additional Overdraft Is**
8 **Not Addressed**

9 Other than the sentence quoted above, there is no discussion in the Technical Report of
10 what "mitigation" would or could be. If Watermaster proposes to "mitigate" all or part of the
11 more than 200,000 af reduction in storage after 2029/30, any such "mitigation" should be
12 described, fully analyzed, and included in planning for new recharge capacity.

13 **5. Revising the Attachment "E" Initial Schedule Will Not Necessarily Remedy**
14 **this Problem**

15 One response that Watermaster may make is to simply revise the Attachment "E" tables
16 to reduce the "New Yield" quantities to be consistent with the Technical Report. There is no
17 technical or modeling analysis, however, that shows that mining 400,000 acre-feet without
18 reducing groundwater in storage by 198,000 to 212,000 additional acre-feet would achieve the
19 "robust" Hydraulic Control which Mr. Wildermuth has declared to be necessary.¹¹ It is also not
20 clear from Watermaster's Motion or the Peace II documents that the parties have based their
21 unanimous agreement on any version of the "Schedule" other than the version set forth in the
22 Attachment "E" tables.

23 **6. The Proposed Recharge Plan and Contingency Plan Provisions of the**
24 **Proposed Amendment to Judgment Exhibit "I" Do Not, as Written, Provide**
25 **the Intended Assurances**

25 Watermaster's Motion states that the parties recognize that:

26
27 "new yield", and assumed 30 percent since 2005/06. (Technical Report Table 7-3) Watermaster accounting should
28 be revised to reflect Technical Report Figure 7-7.

¹¹ See discussion, below, at Section VI.E.

1 ... at the end of the period of Basin Re-operation, a replenishment obligation
2 relative to the desalters will need to be satisfied.¹² During the period of Re-
3 operation demands on the Basin will continue to grow, and at the end of the Re-
4 operation period Watermaster's recharge capabilities may not be sufficient to
5 meet the desalter replenishment obligation unless this recharge capacity continues
6 to develop throughout the Re-operation period. The proposed Judgment
7 amendment regarding Re-operation describes measures that will be taken in order
8 to continually update and implement the Recharge Master Plan in order to ensure
9 that sufficient recharge capacity exists in the future, and these commitments are
10 further mirrored in the Peace II Agreement Article VIII.

11 (Motion p. 15, Ins. 17-26)

12 The measures to be taken are set forth in Paragraphs 2(b)(5) and (6) of the proposed
13 Judgment Exhibit "I" amendment. Paragraph 2(b)(5) commits Watermaster to update its
14 Recharge Master Plan, and obtain court approval of updates. The plan will apparently be the
15 document which will define the otherwise undefined "new equilibrium"¹³ to be reached:

16 (5) Watermaster will update its Recharge Master Plan and obtain court approval
17 of its update, to address how the Basin will be contemporaneously managed to
18 secure and maintain Hydraulic Control and operated at a new equilibrium at the
19 conclusion of the period of Re-operation. The Recharge Master Plan shall
20 contain recharge projections and summaries of the projected water supply
21 availability as well as the physical means to accomplish recharge projections.
22 The Recharge Master Plan may be amended from time to time with court
23 approval.

24 Watermaster does not include any deadlines for submittal of an updated Recharge Master
25 Plan to the court for approval.

26 The critical question is what happens if Watermaster either does not further carry out its
27 recharge planning process or does not implement the plan. Paragraph 2(b)(6) is obviously meant
28 to answer that question. It misses the mark, however, since it is not reflective of a key
conclusion in Watermaster's Technical Report. The Technical Report concludes that 400,000
acre-feet is the minimum amount of controlled overdraft that will be needed. Paragraph 2(b)(6)
links the remedy of "suspension" of the 400,000 acre-feet of controlled overdraft with Hydraulic
Control being "secured" before the full 400,000 acre-feet is mined. The Technical Report now

¹² Watermaster will have a replenishment obligation well in advance of the "end of the period of Basin Re-operation".

¹³ See discussion, below, at Section VI.F.

1 says that that will not happen.

2 Watermaster should consider amending Paragraph 2(b)(6). One possible approach is
3 shown in redline:

4 (6) Re-Operation and Watermaster's apportionment of controlled overdraft in
5 accordance with the Physical Solution will not be suspended ~~in the event that~~
6 ~~Hydraulic Control is secured in any year before the full 400,000 acre feet has~~
7 ~~been Produced without Replenishment~~, so long as (i) Watermaster has prepared,
8 adopted and the Court has approved a contingency plan that establishes
9 conditions and protective measures that will avoid unreasonable and unmitigated
material physical harm to a party or to the Basin and that equitably distributes the
cost of any mitigation attributable to the identified contingencies; and (ii)
Watermaster is in substantial compliance with a Court approved Recharge Master
Plan.

10 Of course, Watermaster may chose to pursue a different approach.

11 There are additional questions raised by Paragraph 2(b)(6). One obvious question is what
12 is a "contingency plan" and how would it differ from the Recharge Master Plan? The
13 "contingency plan" seems to be a form of mitigation plan, but only applies where there is
14 "material physical injury" (which Watermaster asserts will not occur with Basin Reoperation).
15 Under the "contingency plan", the costs of "any mitigation attributable to the identified
16 contingencies" must be "equitably" distributed. What does any of this mean? Watermaster
17 should fully explain the meaning and purpose of Paragraph 2(b)(6)(i) to make it possible to
18 evaluate whether it would be efficacious and whether it should be added to the Judgment.

19 Another question is what "substantial compliance" means in Paragraph 2(b)(6)(ii). Will
20 the court determine if this standard is being met? If Watermaster were not in "substantial
21 compliance, would "controlled overdraft" stop (be "suspended")? What would stopping or
22 "suspension" mean, in practical terms? Would the court be able to determine that "controlled
23 overdraft" had stopped or been suspended? In other words, is there a clear and enforceable
24 obligation here? Watermaster should answer these questions.

25 The assurances in Paragraphs 2(b)(5) and (6) are focused solely on the need in the future
26 to satisfy the "replenishment obligation relative to the desalters". Watermaster, however, has the
27 obligation to levy and collect sufficient assessments to replace production in excess of Safe Yield
28 or Operating Safe Yield. (Judgment ¶ 22, Exhibit "F" ¶ 7, Exhibit "G" ¶ 5, Exhibit "H" ¶ 7) The

1 Technical Report struggles with the parties' forecasted demands, and constrains future pumping
2 because recharge capacity is constrained. If pumping demands continue to increase as projected,
3 recharge capacity will have to increase (or pumping will have to be constrained). In any event,
4 Watermaster's recharge master planning must logically take into account all necessary future
5 recharge needs, not just recharge for desalter pumping. Given the projected substantial decline
6 in Safe Yield, Watermaster's ongoing "evaluation" should comprehensively assess recharge
7 needs and evaluate the feasibility of maintaining Safe Yield.

8 **B. Proposed Amendment to Judgment Paragraph 8 (Overlying Rights)**

9 **1. Watermaster's Motion**

10 Watermaster's Motion asks the court to approve the amendment to Judgment Paragraph 8
11 "as presented".¹⁴ (Motion p. 22, ln. 2) The proposed Judgment amendment is Attachment "H"
12 to Watermaster's Resolution 07-05. The Motion states:

13 The subject matters of Attachments "H" and "I" concern efforts to address the
14 problem of continued underutilization of Non-Agricultural Pool rights by
allowing additional transferability options.

15 (Motion p. 8, lns. 5-7)

16 Watermaster's Motion explains that the proposed Judgment Paragraph 8 amendment is
17 one of three elements related to the transfer of water from the Overlying (Non-Agricultural)
18 Pool. The Motion explains that the intention is to allow a "one time transfer" of water in
19 carryover storage accounts and an ongoing annual transfer of Overlying (Non-Agricultural) Pool
20 water.

21 There are two different transfers [of water from the overlying non-agricultural
22 pool] at issue – the one time transfer of the water held in storage, and the ongoing
23 transfer to the Appropriative Pool. The former requires a Judgment Amendment,
24 and the latter is done under the Peace Agreement [Resolution 07-05 Attachment
"G" Purchase and Sale Agreement], though the latter also requires a Judgment
25 Amendment in this instance because it is contemplated that the transferred water
26 may be distributed to the Appropriative Pool members.

27 (*Id.* p. 16, lns. 20-25)¹⁵

28 ¹⁴ Watermaster does not provide a redline version of Paragraph 8. The proposed change is to add the alternative disposition of water under (iii).

¹⁵ This statement is confusing. It suggests that the "one time transfer" requires a Judgment amendment (Paragraph 8 presumably), and that the "ongoing [annual] transfer to the Appropriative Pool" also requires a Judgment

1 The Motion offers no explanation of the need for the Judgment Paragraph 8 and Exhibit
2 "G" amendments other than that there is:

3 ... water currently held in storage by the Non-Agricultural Pool [and] there is
4 currently a yearly surplus of water from this Pool that could be put to a beneficial
use rather than allowed to cumulate in storage.

5 (*Id.* p. 17, lns. 4-6) Further:

6 Since the time of the Peace Agreement, the ability of the Non-Agricultural Pool
7 members to transfer amongst themselves has not proven sufficient to allow this
8 water to be put to maximum beneficial use pursuant to Article X, Section 2 of the
9 Constitution. The Parties have thus deemed it necessary to relax further the
transferability provisions in order to accomplish this policy objective.

9 (Motion p. 17, lns. 19-24)

10 The total quantity of the one time transfer, and the probable annual quantities are not
11 provided. There is no discussion of the 2001 amendments to Judgment Paragraph 8 and Exhibit
12 "G" to explain why they should be amended yet again.

13 2. 2001 Amendment to Judgment Paragraph 8

14 Judgment Paragraph 8 was amended in 2001 pursuant to Watermaster Motion, as
15 follows:

16 All overlying rights are appurtenant to the land and cannot be assigned or
17 conveyed separate or apart therefrom, except that *for the term of the Peace*
18 *Agreement* the members of the Overlying (Non-Agricultural) Pool shall have the
19 right to Transfer or lease their quantified production rights within the Overlying
20 (Non-Agricultural) Pool or to Watermaster in conformance with the procedures
21 described in the Peace Agreement between the Parties therein, dated June 29,
22 2000.

20 (4/19/2001 Order p. 2, lns. 20-26)¹⁶

21 Watermaster's 10/26/2000 Post-Order Memorandum explained that the amendment to

22 amendment (Exhibit "G" presumably) "... because it is contemplated that the transferred water may be distributed
23 to the Appropriative Pool members." Both the "one time transfer" and "ongoing transfer to the Appropriative Pool"
24 require both Judgment amendments. Both transfers allow water to go to Appropriative Pool members. (The
25 referenced Peace Agreement Section 5.3(e) is limited to transfers to Watermaster for storage and recovery or
26 desalter replenishment only.)

25 ¹⁶ This is the language of the Court Order. Watermaster has misquoted this language in its proposed revised
26 Judgment Paragraph 8. Resolution 07-05 Attachment "H" should be corrected to reflect the 2001 Paragraph 8
27 amendment. In its 10/26/2000 Post-Order Memorandum, Watermaster explained that:

27 The reference to the Peace Agreement is necessary because it ensures that the life of the
28 amendment is coterminous with the Peace Agreement ... if after thirty years, the Parties decide
not to renew the terms of the Peace Agreement, this amendment will also become ineffective.

28 (P. 5, lns. 15-16, 20-21)

1 Judgment Paragraph 8 was to allow Non-Agricultural Pool members to voluntarily transfer or
2 lease their quantified production rights to other members of the Non-Agricultural Pool or to
3 Watermaster:

4 However, the amendment is limited in its scope as it only allows the Transfers by
5 the members of the Non-Agricultural Pool to Transfer water to each other or to
6 Watermaster. When the Transferee is Watermaster, the Transfer must be for the
7 purpose of either: (i) Desalter Replenishment or (ii) for a Storage and Recovery
8 program. (Proposed Amendment to Judgment Exhibit "G"; Peace Agreement
9 Section 5.3(e).)

8 (10/26/2000 Post-Order Memorandum p. 6, lns. 7-11) This limitation in scope is stated to be
9 "most important" since:

10 Watermaster holds no residual power to acquire water rights from the Parties to
11 the Judgment or to dispose of them as its powers are prescribed by the Judgment.
(Judgment Paragraph 17.)

12 (*Id.* p. 6, lns. 3-5)¹⁷

13 In its current Motion, Watermaster argues that Peace Agreement Section 5.3(e)
14 essentially gave the parties the right to transfer overlying non-agricultural water:

15 off the adjudicated overlying land to other members of the Pool or to Watermaster
16 for use as Desalter replenishment or for use in a storage and recovery program. . .
17 This interpretation recognized the limitations on transferability of Non-
18 Agricultural Pool water, but as a matter of policy also recognized that the
19 Judgment did not intend that this water simply accumulate in storage and never be
20 available for use.

19 (Motion p. 17, lns. 14-19)¹⁸

21 ¹⁷ Watermaster has not addressed its previous caution that Watermaster's powers are prescribed by the Judgment
and do not include the power to acquire or dispose of water rights.

22 ¹⁸ The Peace Agreement alone could not give pool members the right to "transfer their water rights off the
23 adjudicated overlying land" without the 2001 amendment to Judgment Paragraph 8. The parties cannot now simply
24 "deem it necessary" to further relax the transfer of overlying Non-Agricultural Pool water without the further
25 amendment to Judgment Paragraph 8 and Exhibit "G". The Judgment did provide for the reallocation of overlying
(agricultural) water to the Appropriative Pool members. (Judgment Exhibit "H", ¶ 10) There is a somewhat
comparable provision for the Overlying (Non-Agricultural) Pool. The parties intended that the Overlying (Non-
Agricultural) rights would ultimately be exercised:

26 . . . by municipal systems within the Appropriative Pool. Inasmuch as the overlying right by
27 nature is appurtenant to the land and cannot be transferred, provision is made for an appropriator to
enter into and approve an agency agreement to produce water for delivery to the overlying land
pursuant to its overlying rights.

28 (Plaintiff's Post-Trial Memorandum p. 8, ¶ 6) Watermaster's Motion does not discuss this mechanism or indicate
why it has not been effective.

1 **3. Watermaster Offers No Evidence in Support of Its Motion to Amend**
2 **Judgment Paragraph 8**

3 The only reason Watermaster's Motion gives for further amendment to Paragraph 8 is
4 that transfers among Non-Agricultural Pool members have "not proven sufficient to allow this
5 water to be put to maximum beneficial use . . ." There are no declarations in support of this
6 statement, and no further explanation, for example, of why Watermaster has not sought to
7 acquire water from that pool for desalter replenishment. None of the volumes of water involved
8 that would be affected by these amendments are described, with the sole exception of the special
9 transfer quantity earmarked for Santa Ana Water Company and Vulcan Materials.

10 **4. The Proposed Amendment to Judgment Paragraph 8 Effectively Removes**
11 **the Appurtenancy Requirement of the Judgment for Overlying Non-**
12 **Agricultural Pool Water**

13 At least for the period of the Peace Agreement (until 2030), the proposed amendment to
14 Judgment Paragraph 8 would allow transfers of water from the Overlying Non-Agricultural Pool
15 in accordance with the revised Pooling Plan as set forth in Exhibit "G" (discussed below).
16 Exhibit "G" adds two new options to the list of potential transfers of Overlying Non-Agricultural
17 Pool water:

18 (iii) [transfers] in conformance with the procedures described in Paragraph I of
19 the Purchase and Sale Agreement for the purchase of Water by Watermaster from
20 Overlying (Non-Agricultural) Pool dated June 30, 2007; or (iv) to Watermaster
21 and thence to members of the Appropriative Pool in accordance with the
22 following guidelines and those procedures Watermaster may further provide in
23 Watermaster's Rules and Regulations . . .

24 (Resolution 07-05 Attachment "I", ¶ 9)

25 Essentially no appurtenancy limitations on Overlying Non-Agricultural water would
26 remain once Judgment Paragraph 8 and Exhibit "G" are amended as the parties probably
27 intend.¹⁹ Members of that pool could continue to transfer either to each other or to Watermaster;

28 ¹⁹ The reference in Judgment Exhibit "G" (ii) to Paragraph I of the Purchase and Sale Agreement would authorize
the one-time transfer designated as being "in furtherance of the Physical Solution and an aid of desalter
replenishment" of 8,530 acre-feet (less a ten percent dedication to Watermaster for desalter production) to the San
Antonio Water Company and Vulcan Materials. Provision (iv) is the much broader provision that should refer to the
Purchase and Sale Agreement Paragraphs (a)-(h) to allow Watermaster to purchase and make available to the
Appropriative Pool water from the Overlying Non-Agricultural Pool.

1 Watermaster could use the water for desalter replenishment or storage and recovery programs (if
2 allowed to do so by the Appropriative Pool),²⁰ or sell the water to Appropriative Pool
3 members.²¹ Watermaster does not address the issue of appurtenancy and what the consequences
4 would be of effectively removing that requirement. Appurtenancy is a fundamental aspect of
5 overlying groundwater rights.

6 **C. Proposed Amendment to Judgment Exhibit "G" (Overlying (Non-Agricultural) Pool**
7 **Pooling Plan)**

8 **1. Watermaster's Motion**

9 Watermaster's Motion asks the court to approve amendment to Judgment Exhibit "G" "as
10 presented".²² (Motion p. 22, lns. 26-27) The proposed Judgment amendment is Attachment "T"
11 to Watermaster's Resolution 07-05. As noted in IV.B, above, Watermaster wants to have
12 "additional transferability options" because of "the problem of continued underutilization of
13 Non-Agricultural Pool rights . . ." (*Id.* p. 10, lns. 5-7)

14 **2. 2001 Amendment to Judgment Exhibit "G"**

15 Judgment Exhibit "G" Paragraph 6 ("Assignment") was also amended in 2001, pursuant
16 to Watermaster Motion, as follows:

17 . . . and (b) the members of the pool shall have the right to Transfer or lease their
18 quantified production rights within the pool or to Watermaster in conformance
19 with the procedures described in the Peace Agreement between the Parties
therein, dated June 29, 2000, for the term of the Peace Agreement.

20 (4/19/2001 Order p. 3, lns. 6-9)

21 _____
22 ²⁰ The Purchase and Sale Agreement gives the Appropriative Pool the final decision as to whether Watermaster
23 purchases from the Overlying (Non-Agricultural) Pool (Paragraph C) for desalter or storage and recovery use, or
whether Watermaster (after two years) must purchase and make available the water to the Appropriative Pool
(Paragraph H).

24 ²¹ Watermaster separately is seeking through proposed Peace II Section 4.4 to allow any party to the Judgment to
25 intervene in the Overlying (Non-Agricultural) Pool. (Motion p. 18, lns. 24-27; p. 19, lns. 1-10) Watermaster does
26 not seek to amend the Judgment to allow a member of the Appropriative Pool to intervene in the Overlying (Non-
Agricultural) Pool, although such intervention would appear to be inconsistent with Exhibit "G" Paragraph 6.
Intervention in the Overlying (Non-Agricultural) Pool has been allowed in the past (Court Order 4/19/2001, p. 3),
but not for members of another pool. See Judgment ¶60 ("Intervention After Judgment").

27 ²² Watermaster does not provide a redline version of Exhibit "G". The proposed changes include breaking the
28 current Paragraph 5 (Assessments) into 5(a) and 5(b), and adding a new 5(c) "Special Project OBMP Assessment",
adding a new Paragraph 9 "Physical Solution Transfers" and subsections (a)-(h), and renumbering the current
Paragraph 9 as Paragraph 10.

1 **3. The Judgment Exhibit "G" Amendment Would Allow the Annual Purchase**
2 **and Transfer by Members of the Overlying (Non-Agricultural) Pool to**
3 **Watermaster and Thence to Appropriative Pool Parties**

4 The proposed Exhibit "G" Paragraph 9 would authorize members of the Overlying (Non-
5 Agricultural) Pool to transfer or lease "quantified Production rights and carry-over water held in
6 storage . . . in furtherance of the Physical Solution . . ." ²³ The transfer or lease would be within
7 the pool (¶ 9(i)), to Watermaster for storage and recovery or desalter replenishment (¶ 9(ii)), for
8 one specific sale (¶ 9(iii)), or ". . . to Watermaster and thence to members of the Appropriative
9 Pool in accordance with the following guidelines [Paragraph 9(a)-(h)] and those procedures
10 Watermaster may further provide in Watermaster's Rules and Regulations . . ." Subsections (a)-
11 (h) describe the process by which Appropriative Pool members would have the opportunity each
12 year to purchase "pro-rata shares" of the water made available by the Overlying (Non-
13 Agricultural) Pool to Watermaster for purchase. ²⁴

14 **4. The Judgment Exhibit "G" Amendment, as Drafted, Would Not Allow the**
15 **One-Time Purchase and Transfer to Watermaster and Thence to**
16 **Appropriate Pool Parties Contemplated in the Purchase and Sale Agreement**

17 Paragraph 8 allows transfer or lease in accordance with Exhibit "G". Exhibit "G" allows:
18 "... the discretionary right to Transfer or lease their quantified Production rights and carry-over
19 water held in storage accounts . . ." Exhibit "G" Paragraphs 9(a)-(h) exclusively deal with
20 annual transfers. Exhibit "G" references the Purchase and Sale Agreement only with reference
21 to the agreement Paragraph I earmark transfer. It is the Purchase and Sale Agreement that
22 provides for that earmark transfer and for the one-time transfer of water held in storage by the
23 Overlying (Non-Agricultural) Pool as of June 30, 2007. Exhibit "G" explicitly references only
24 the earmark transfer and does not explicitly authorize the main one-time transfer that is the
25 principal subject to the Purchase and Sale Agreement. Exhibit "G" Paragraph 9(iv) probably
26 should reference the Purchase and Sale Agreement, rather than just the Paragraph 9(a)-(h)

27 ²³ The price of water is set at "92% of the then-prevailing 'MWD Replenishment Rate'". "MWD Replenishment
28 Rate" does not appear to be defined. It is not defined in the Peace Agreement, Peace II Agreement, or Watermaster
Rules and Regulations.

²⁴ As discussed in Subsection 4, below, Paragraph 9(iv) probably was intended to refer to the Purchase and Sale
Agreement rather than to Watermaster Rules and Regulations, since only the Purchase and Sale Agreement would
authorize the one-time transfer to Watermaster for the benefit of Appropriative Pool members.

1 "guidelines" and Watermaster Rules and Regulations.

2 **5. The Judgment Exhibit "G" Amendment Would Allow the One-Time**
3 **Purchase and Transfer by Watermaster to One Appropriative Pool Party**
4 **and One Overlying (Non-Agricultural) Pool Party**

4 Watermaster's Motion is silent on this aspect of the proposed amendment. Exhibit "G"
5 Paragraph 9(iii) would allow Watermaster to "transfer" water as provided in Paragraph I of the
6 Purchase and Sale Agreement. Paragraph I of that agreement provides that Watermaster will
7 purchase 8,530 acre-feet of water "less a ten percent dedication to Watermaster for Desalter
8 Production" and immediately make that quantity of water available to the San Antonio Water
9 Company (a member of the Appropriative Pool) and Vulcan Materials (a member of the
10 Overlying (Non-Agricultural) Pool "... under terms established as between those parties."²⁵

11 **6. The Proposed Amendment to Exhibit "G" Paragraph 5(c) Would Impose a**
12 **Ten Percent Tithe on the Overlying (Non-Agricultural) Pool**

13 Exhibit "G" Paragraphs 9(a)-(h) set forth the process by which members of the Overlying
14 (Non-Agricultural) Pool can sell water each year that is allocated to them under the Judgment.²⁶

15 Exhibit "G" Paragraph 5 would also be amended as follows:

16 (c) Special Project OBMP Assessment. Each year, every member of this Pool
17 will dedicate ten (1) percent of their annual share of Operating Safe Yield to
18 Watermaster or in lieu thereof Watermaster will levy a Special Project OBMP
19 Assessment in an amount equal to ten percent of the Pool member's respective
20 share of Safe Yield times the then-prevailing MWD Replenishment Rate.²⁷

19 Pool members can choose to sell water each year or not.²⁸ However, Paragraph 5(c)
20 requires that pool members pay – in water or money – ten percent of their annual share of Safe
21 Yield as a "Special Project OBMP Assessment" whether water is transferred or not. There is no
22 discussion in Watermaster's Motion of this assessment. The assessments are not directed to be
23 used for desalter replenishment (as is the case for the ten percent deducted in the Purchase and
24

25 ²⁵ Paragraph I does not identify the source of the water, although proposed Exhibit "G" Paragraph 9(iii) suggests that
the source is Overlying (Non-Agricultural) Pool water.

26 ²⁶ It is apparently intended that all pool water accumulated through June 30, 2007, would be sold pursuant to the
Purchase and Sale Agreement, which would leave only annual water for future sales under Paragraphs 9(a)-(h).

27 ²⁷ The reference to "Operating Safe Yield" is in error. This pool has shares only in Safe Yield. (Judgment Exh. "G"
¶ 1)

28 ²⁸ Watermaster must first find that pool members are using recycled water to the extent possible. (¶ 9(g))

1 Sale Agreement for the one-time transfer).

2 The ten percent title applied to annual water goes directly to certain members of the
3 Appropriative Pool.²⁹ Peace II Paragraph 9.2(a) allocates the "Non-Agricultural Pool Special
4 Assessment" in differing quantities to seven named Appropriative Pool members for ten years.
5 After ten years, Peace II Paragraph 9.2(b) distributes the "water (or financial equivalent)" pro
6 rata to Appropriative Pool members that is "... in excess of identified Desalter replenishment
7 obligations. . ." (citing Paragraph 6.2), even though the annual transfer water ten percent
8 governed by Exhibit "G" Paragraph 5(c) makes no reference to use for desalter replenishment.³⁰

9 **7. The Proposed Judgment Exhibit "G" Paragraph 5(c) Amendment May Be**
10 **Prohibited by Judgment Paragraph 15(b)**

11 The proposed Paragraph 5(c) "Special Project OBMP Assessment" of ten percent of the
12 pool's annual share of Operating Safe Yield to the Appropriative Pool could be construed as a
13 reallocation of Safe Yield from the Overlying (Non-Agricultural) Pool to the Appropriative Pool.
14 The court's continuing jurisdiction does not allow the court to approve a reallocation of Safe
15 Yield. (Judgment ¶ 15(b))

16 **8. The Proposed Judgment Exhibit "G" Paragraph 9 Amendment Raises**
17 **Questions as to Watermaster's Power to Acquire Water Rights from Parties**

18 The proposed Paragraph 9 refers to "Transfer or lease [of] their quantified Production
19 rights and carry-over water held in storage accounts." As Watermaster stated in its 2000 Post-
20 Order Memorandum:

21 Watermaster holds no residual power to acquire water rights from the Parties to
22 the Judgment or to dispose of them as its powers are prescribed by the Judgment.
(Judgment Paragraph 17.)

23 (10/26/2000 Post-Order Memorandum p. 6, ins. 3-5) The balance of Paragraph 9 and (a)-(h)
24 refer to "pro rata share[s] of the Safe Yield", which may be equivalent to "rights".

25 ²⁹ It is not clear where the special monetary assessment goes for the first ten years.

26 ³⁰ Only the Purchase and Sale Agreement requires a ten percent "Dedication to Desalter Replenishment".
27 (Paragraph E) Overlying (Non-Agricultural) Pool members agree to dedicate ten percent of the "Storage Quantity"
28 (as of June 30, 2007) "... for replenishment of Desalter production without compensation." This dedication would
occur whether or not the Appropriative Pool allows Watermaster to acquire any additional portion of the "Storage
Quantity" for desalter replenishment.

1 **D. Watermaster Should Submit a Memorandum of Points and Authorities in Support**
2 **of Its Motion to Amend the Judgment**

3 The court, under its continuing jurisdiction, may be called upon to interpret, supervise,
4 and enforce the terms of the Judgment. It is necessary that the meaning of the proposed
5 Judgment amendments is clear. The need to clarify the meaning of proposed amendments was
6 raised in the context of the 2001 amendments to Judgment Paragraph 8 and Exhibit "G". The
7 court issued an order on September 28, 2000, granting Watermaster's motion to amend
8 Paragraph 8 and Exhibit "G" subject to the parties' filing post-hearing briefs "clarifying their
9 intent". (9/28/2000 Order p. 3) Watermaster filed its Post-Order Memorandum:

10 to create a historical record concerning the rationale and justification for the
11 changes to assist in future interpretation and construction of the Judgment and the
OBMP.

12 (Watermaster's Post-Order Memorandum (10/26/2000) p. 2, lns. 16-18) In this case,
13 Watermaster should provide the court with a detailed memorandum of points and authorities
14 which addresses in full all questions regarding the three proposed Judgment amendments.

15 **V. WATERMASTER RESOLUTION AND DOCUMENTS PROPOSED**
16 **FOR COURT APPROVAL**

17 **A. Watermaster Resolution No. 07-05**

18 **1. There Is No Evidence of Watermaster's Adoption of the Resolution or**
19 **Commitment to Peace II Measures**

20 Since Watermaster is not a party to the Peace II Agreement, Watermaster's commitment
21 to the Peace II measures is said to be found in its adoption of Watermaster Resolution No. 07-05.
22 Watermaster requests the Court to approve its adoption of the resolution and direct Watermaster
23 to proceed in accordance with its terms and the documents attached to the resolution. (Motion,
24 p. 23, lns. 4-5)

25 Preliminarily, it should be noted that Watermaster offers no evidence to "prove up" its
26 adoption of Resolution No. 07-05.³¹ Further, the only commitment or "resolution" on the part of
27 Watermaster is to transmit the Peace II documents to the Court for approval. (Resolution, ¶ 16)

28 ³¹ Statements made in moving papers are not evidence.

1 By way of contrast, Watermaster made several commitments in conjunction with the
2 original Peace Agreement. The Board "unanimously adopted the goals and plans of the Phase I
3 Report consistent with the Implementation Plan and Peace Agreement." The Board resolved that
4 it would "proceed in accordance with the OBMP Implementation Plan and the Peace
5 Agreement." The Board further resolved that it would "comply with the conditions described in
6 Article V of the Peace Agreement." Finally, the Board resolved that it would "adopt all
7 necessary policies and procedures in order to implement the provisions set forth in Article V [of
8 the Peace Agreement]. (Order Concerning Adoption of OBMP, dated July 13, 2000, p. 3, lns. 8-
9 17)

10 2. Terms of Resolution

11 Resolution 07-05 resolves and determines the following:³²

- 12 • Watermaster caused the completion of a preliminary engineering, hydrogeologic, and
13 technical evaluation of the physical impact to the Basin and to the Parties to the Judgment
that may result from implementation of the Peace II measures." (Resolution, p. 2, ¶ 1.)
- 14 • Joe Scalmanini of Luhdorff and Scalmanini Consulting Engineers transmitted his
15 technical review [of the preliminary evaluation]. (*Id.* at ¶ 2.)
- 16 • Watermaster caused the preparation of a specific project description ...for the purpose of
17 conducting a more refined engineering, hydrogeologic and technical evaluation of the
physical impacts to the Basin and to the Parties..."(*Id.* at ¶ 3.)
- 18 • Watermaster caused the completion of a macro socioeconomic analysis... (*Id.* at ¶ 4.)
- 19 • Watermaster caused an update of a previously completed socioeconomic analysis. (*Id.* at
20 ¶ 5.)
- 21 • Watermaster has caused the preparation of a supplement to the OBMP. (*Id.* at ¶ 9.)
- 22 • Watermaster has prepared a schedule summarizing the total quantity of groundwater that
23 will be produced through the proposed Basin Re-Operation to obtain Hydraulic Control
and which characterizes and accounts for all water that is projected to be produced by the
Desalters for the initial Term of the Peace Agreement...[Attachment "E".] (*Id.* at ¶ 10.)
- 24 • Western Municipal Water District's proposal for development and construction of
25 "Future Desalters" is the only one received in response to Watermaster's request for
proposals. (*Id.* at ¶ 11.)
- 26 • The Peace II measures consist of: Watermaster's election to amend Watermaster Rules

27 ³² Watermaster filed an unauthenticated copy of the resolution. The resolution is comprised of Paragraphs 1-5 and
28 Paragraphs 9-16. There are no paragraphs numbered 6-8.

1 and Regulations; Watermaster's execution and Court approval of Purchase and Sale
2 Agreement with the Non-Agricultural Pool; Watermaster's and the Court's approval of
3 the proposed amendments to the Judgment; Watermaster's approval of and agreement,
4 upon further order of the Court, to act in accordance with the Peace II Agreement;
5 Watermaster's and the Court's approval of the 2007 Supplement to the OBMP
6 Implementation Plan; Execution of the Second Amendment to the Peace Agreement, its
7 approval by Watermaster and an order from the Court directing Watermaster to proceed
8 in accordance with its terms. (*Id.* at ¶ 12.)³³

- 9 • The Overlying (Non-Agricultural) and Overlying (Agricultural) Pools have approved the
10 Peace II measures. (*Id.* at ¶ 13.)³⁴
- 11 • The Advisory Committee has approved the Peace II measures. (*Id.* at p. 14.)³⁵
- 12 • Watermaster is not committing to carry out any project within the meaning of CEQA
13 unless and until CEQA compliance has been demonstrated. (*Id.* at ¶ 15.)
- 14 • The Watermaster Board will transmit the resolution and Peace II documents to the Court
15 requesting the Court "to approve the proposed Judgment Amendments and to further
16 order that Watermaster proceed to further implement the 2007 Supplement to the OBMP
17 as provided in the Peace II Measures." (*Id.* at ¶ 16.)

18 **3. Does Watermaster have Standing under Paragraph 31 to Request Approval
19 of the Resolution?**

20 Watermaster requests approval of Resolution No. 07-05 under paragraph 31 of the
21 Judgment. Paragraph 31 "provides for review by the Court of all Watermaster actions, decision,
22 or rules" (Report and Recommendation of Special Referee, dated December 12, 1997, Part III, p.
23 10, Ins. 21-22)³⁶ Such review may be made by "the court on its own motion or on timely motion
24 by any party, the Watermaster (*in the case of a mandated action*), the Advisory Committee, or
25 any pool committee..." (Judgment, ¶ 31 [*italics added*]) Thus, when an Advisory Committee
26 recommendation is mandatory "(i.e., is approved by 80 or more of 100 votes)" (Report and
27

28 ³³ The resolution does not indicate that Court approval will be sought for amendments to Watermaster Rules and Regulations; this is inconsistent with Watermaster's motion, which does request Court approval for rule amendments. There is no evidence (declaration) to establish that: Watermaster has executed the Purchase and Sale Agreement; Watermaster has approved the proposed Judgment amendments; Watermaster has approved the Peace II Agreement and agreed to act accordingly; Watermaster has approved the 2007 Supplement to the OBMP Implementation Plan; the Second Amendment to the Peace Agreement has been executed by the parties and approved by Watermaster.

³⁴ There is no declaration to support the assertions concerning pool committee approval of Peace II measures.

³⁵ There is no declaration to support the assertion of Advisory Committee approval of Peace II measures. Moreover, Watermaster has not told the Court whether or not the approval by the Advisory Committee is a "mandated" action and the voting specifics, (i.e., votes cast in favor of or against the Peace II measures).

³⁶ Part III of this report by the Special Referee was "adopted and approved by the court and incorporated" into its Ruling, dated Feb. 19, 1998. (Ruling, p. 11, Ins. 21-23 and p. 12, ln. 1.)

1 Recommendation of Special Referee, *supra*, Part III, p. 20, Ins. 6-7), Watermaster "may apply to
2 the Court for review." (*Id.* at p. 20, Ins. 10-11, citing Judgment ¶ 31(b)."

3 Watermaster presents no evidence establishing its request for Court approval is based on
4 a mandated action by the Advisory Committee. There is, thus, a question as to Watermaster's
5 standing to bring this motion under Paragraph 31 of the Judgment. This may be remedied by the
6 submission of a declaration providing the voting specifics of the Advisory Committee's approval
7 of the Peace II measures.

8 4. De Novo Review under Paragraph 31

9 Assuming Watermaster has standing to bring the motion, the question becomes what type
10 of review is to be conducted. Paragraph 31 requires the Court to conduct a "de novo" review:

11 De Novo Nature of the Proceedings. ...[T]he Court shall require the moving
12 party to notify the active parties, the Watermaster, the Advisory Committee and
13 each Pool Committee, of a date for taking evidence and argument, and on the date
14 so designated shall review de novo the question at issue. Watermaster's findings
15 or decision, if any, may be received in evidence at said hearing, but shall not
16 constitute presumptive or prima facie proof of any fact in issue. (Judgment, ¶
17 31(d).)

18 The Court's role, therefore, is to receive and weigh evidence presented in support of and
19 against the action or decision being presented for review. This Judgment provision assumes that
20 Watermaster will have made some findings or a decision on the facts in issue. In this instance,
21 however, there is no evidence that Watermaster made any findings or reached any decision
22 regarding any factual issues related to the Peace II measures. Indeed, the only decision reflected
23 in Resolution No. 07-05 is Watermaster's decision to transmit the Peace II documents to the
24 Court, requesting Court approval of the proposed Judgment amendments and an order to
25 Watermaster to implement the provisions of the 2007 Supplement to the OBMP Implementation
26 Plan. (Resolution, ¶ 16)

24 5. The Court has Broad Continuing Jurisdiction to Ensure Beneficial Use

25 With limited exceptions not applicable here, under Paragraph 15 of the Judgment, the
26 Court retains and reserves "full jurisdiction, power and authority...as to all matters contained" in
27 the Judgment "to make such further or supplemental orders or directions as may be necessary or
28 appropriate for interpretation, enforcement or carrying out" the Judgment. In this instance the

1 Court has broad jurisdiction to review Watermaster actions and decisions. That jurisdiction
2 extends to an inquiry as to whether proposed changes are reasonable and beneficial:

3 Reservation of jurisdiction by the trial court is one method of addressing changing
4 conditions to ensure that the water supply supports the maximum number of
5 beneficial uses. . . By maintaining jurisdiction, the trial court can determine, on a
6 case-by case basis, whether new or changed uses are in fact reasonable and
7 beneficial.

8 (1 Slater, California Water Law and Policy (Nov. 2007), § 9.10[3], p. 9-76)

9 **6. Watermaster Inappropriately Urges a Limited Review by the Court**

10 Watermaster contends the Judgment does not provide "a detailed explanation" of the
11 standard of review. Watermaster urges the Court to adopt the standard stated in Paragraph 15 (d)
12 of the Judgment, which applies specifically to proposed modifications of the assessment formula
13 for the Appropriative Pool, and in Paragraph 16, which applies specifically to a motion to change
14 the Watermaster. Watermaster proposes to limit the Court's review to a determination of
15 whether there is a compelling reason to disapprove the Watermaster action or decision.
16 Watermaster argues that this standard is consistent with the nature of a stipulated judgment.
17 (Motion, p. 10, Ins. 11-23)

18 Giving deference to the parties by constricting the Court's review to the question of
19 whether there is a compelling reason to disapprove the action makes sense in the limited
20 circumstance of modifications to the assessment formula for the Appropriative Pool and a
21 change of Watermaster. However, there is nothing in the nature of a stipulated judgment, per se,
22 that would require a limited review by the Court in other circumstances. Indeed, with respect to
23 stipulated judgments in general, the Court is charged with exercising its discretion to ensure a
24 "just" judgment is entered:

25 While is it entirely proper for the court to accept stipulations of counsel that
26 appear to have been made advisedly, and after due consideration of the facts, the
27 court cannot surrender its duty to see that the judgment to be entered is a just one,
28 nor is the court to act as a mere puppet in the matter. (*California State Auto. Ass.
Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664, quoting *City of
Los Angeles v. Harper* (1935) 8 Cal.App.2d 553, 555.)

[Under Code of Civil Procedure section 664.6] a stipulated judgment is indeed a
judgment; entry thereof is a judicial act that a court has discretion to perform. . . .
[A court] may reject a stipulation that is contrary to public policy [citation], or
one that incorporates an erroneous rule of law [Citation]. (*Ibid.*, quoting Code of

1 Civ. Proc., § 664.6.)

2 In this instance the Court is charged with assuring the protection of the private rights of
3 the parties and the general public interest in the preservation of the resources of Chino Basin. In
4 the creation and organization of a Watermaster, Advisory Committee and pool committees under
5 the Judgment,

6 . . . [t]he public interests in the preservation of the water resource [Chino Basin]
7 was protected and assured in the sense that the Court's Watermaster is an
8 overlying district, which holds no rights to produce ground water but is the
9 importing agency bringing supplemental water into the basin. . . [T]here is a
balance created to assure the protection of the private rights of the parties and the
general public interest in the preservation of the resource.

10 (Plaintiff's Post-Trial Memorandum, dated July 11, 1978, p. 4, ¶ 2)

11 Finally, Watermaster concedes that, in reviewing the original Peace Agreement several
12 years ago, the Court analyzed whether the measures were consistent with and promoted the
13 Physical Solution under the Judgment. (Motion, p. 10, ln.26 and p. 11, lns. 1-2) That review
14 was not undertaken under a constricted "compelling reason" standard of review and Watermaster
15 did not argue that it should have been.

16 **7. What is the Court's Obligation under Paragraph 31?**

17 In reviewing a motion brought by Watermaster under Paragraph 31 of the Judgment, the
18 Court must: (1) weigh the evidence offered in support of the mandated action or decision; (2)
19 analyze whether the mandated action or decision is consistent with and promotes the Physical
20 Solution under the Judgment; (3) analyze whether the mandated action or decision is consistent
21 with the protection of the rights of the parties and the general public interest in preservation of
22 the water resources of Chino Basin; and (4) analyze whether the mandated action or decision is
23 contrary to the public policy requiring reasonable and beneficial use of water. (California
24 Constitution, Art. X, Sec. 2) Specific inquiries suggested for the Court are discussed in Section
25 VI, below.

26 **B. Project Description (Resolution No. 07-05, Attachment A)**

27 **1. This Document is a Non-Review Item**

28 The "Project Description" document is included in Watermaster's motion as Exhibit A,

1 Attachment A. The document "describes the actions to be taken pursuant to the Basin Re-
2 operation strategy in order to form the basis for the model review and CEQA analysis...."
3 Watermaster labels this document a "non-review item" submitted to assist the Court in its
4 review. (Motion, p. 9, lns. 20-26)

5 **2. Watermaster Anticipates CEQA Review for Desalter Expansion Only**

6 According to the document, it was prepared for use in, inter alia, "an environmental
7 impact report to be prepared as part of the expansion of the desalters." (Project Description, ¶ 1)
8 This suggests that the only CEQA review Watermaster anticipates is for expansion of the
9 desalters. Watermaster does not address the scope of CEQA review.³⁷ CEQA review apparently
10 will not cover recharge and storage and recovery expansion, which may explain why
11 Watermaster failed to submit the Project Description document to the Court earlier this year, as
12 requested: "The court is requesting the complete physical project description, integrating the
13 desalter, recharge and replenishment, and storage and recovery descriptions, to be submitted no
14 later than August 1, 2007..." (Order Concerning OBMP Status Report 2006-02, Future
15 Desalting Plans, and MZ-1 Long-Term Plan, dated May 23, 2007.)

16 **3. Other Documents Containing Project Descriptions**

17 It should be noted that the Peace II Agreement contains a provision labeled "Project
18 Description". (Peace Agreement, p. 6, ¶ 5.4) The Peace II Agreement project description is not
19 the same as the project description in this document. The project description in the Peace
20 Agreement only encompasses the addition of "up to 9 mgd to existing Desalters. ...[which] will
21 include production capacity from new groundwater wells that will be located in the Southerly
22 end of the Basin..." (*Ibid.*) The project description in the Project Description document
23 encompasses not only expansion of the desalter program, but also "the strategic reduction in
24 groundwater storage (re-operation) that, along with the expanded desalter program, significantly
25 achieves hydraulic control." (Project Description document, p. 4)

26 There is yet a third "Project Description," which is found in the Final Technical Report at
27

28 ³⁷ The Peace II Agreement addresses CEQA compliance briefly, and acknowledges that IEUA will be Lead Agency for CEQA review. (Peace II Agreement Article II) See discussion, below, at Section VI.H.

1 section 7.1. This description is nearly identical to that contained in the Project Description
2 document. There is, however, one element that is missing from the project description in the
3 Final Technical Report; that is, the mention of a need to expand artificial recharge capacity in the
4 basin to meet future replenishment obligations. This is perhaps explained by the fact that the
5 Project Description document indicates that expansion of artificial recharge capacity will occur
6 independently from the proposed project.

7 **C. Sunding Macro Analysis (Resolution No. 07-05, Attachment B)**

8 The "macro analysis" by Professor David Sunding, dated November 29, 2006, is titled
9 Analysis of Aggregate Costs and Benefits of Hydraulic Control, Basin Re-Operation and
10 Desalter Elements of Non-Binding Term Sheet ("Sunding Macro Analysis"). It is attached to
11 Watermaster's motion as Attachment B to Exhibit A to the motion. The analysis "measures the
12 economic costs and benefits of achieving hydraulic control...." The report concludes that,
13 "depending on the scenario chosen, the net benefits...range between \$283.1 million and \$438.8
14 million in 2006 dollars." (Sunding Macro Analysis p. 1) The gains are said to result from "the
15 ability to use recycled water for a fraction of recharge [cost] if hydraulic control is achieved, the
16 value of new yield, and the value of the forgiven desalter replenishment." (*Id.*, at p. 6)

17 Dr. Sunding made several assumptions about groundwater production for his study.
18 These assumptions are displayed in Table 2. The table shows groundwater production increasing
19 from 223,505 to 270,014 acre-feet for the study period. Operating safe yield is 145,000 acre-feet
20 through 2017, and 140,000 thereafter. New storm-water recharge is assumed to be 12,000 acre-
21 feet annually. (*Id.* p. 2) Dr. Sunding also assumed that with hydraulic control, a total of 12,500
22 acre-feet per year of new yield would result from Santa Ana River inflows. (*Id.*, at p. 4)³⁸

23 Dr. Sunding states that *without* hydraulic control, replenishment would have to be met by
24 the purchase of water from MWD; whereas, *with* hydraulic control, recycled water can be used
25 for 30% of the basin replenishment obligation. (*Id.* p. 3) In a footnote, Dr. Sunding
26 acknowledges that, *even without* hydraulic control, recycled water could be used for

27 _____
28 ³⁸ The Draft and Final Technical Reports do not support these assumptions. The value of Dr. Sunding's macro analysis perhaps should be reconsidered in view of the Draft and Final Technical Reports.

1 replenishment, if it is first treated. Dr. Sunding states that costs are not available for this option,
2 however, at this time. (*Ibid.*, fn. 2)

3 With regard to replenishment forgiveness, Dr. Sunding points out that the "option value"
4 of the water was not calculated. The "option value" pertains to the ascribed value of the "water
5 that is not available in the event of a major disruption in surface water supplies to the region."
6 (*Id.* p. 6, fn. 7) Dr. Sunding reports that Watermaster staff was not concerned about the
7 dewatering "since the percentage depletion of the aquifer envisioned through re-operation is
8 relatively small." (*Id.*) Watermaster should provide a technical assessment that quantifies water
9 in basin storage over time (which was done for 1933 to 1997 in the OBMP process), describes
10 Basin water levels, and projects future storage and water levels. A sense of history and
11 perspective is required to support Dr. Sunding's reliance on Watermaster staff, and this
12 information should be provided to the court.³⁹

13 **D. Sunding Micro Analysis (Resolution No. 07-05, Attachment C)**

14 The title of the Professor Sunding's "micro analysis," dated October 17, 2007, is Report
15 on the Distribution of Benefits to Basin Agencies from the Major Program Elements
16 Encompassed by the Peace Agreement and Non-Binding Term Sheet ("Sunding Micro
17 Analysis"). The report was filed with Watermaster's motion, as Attachment C to Exhibit A. The
18 analysis "measures the costs and benefits to various Chino Basin agencies of the program
19 elements encompassed by" the original Peace Agreement and the Peace II measures. (Sunding
20 Micro Analysis p. 1) The report examines net returns to the ten largest groundwater-producing
21 agencies, which account for 91% of Operating Safe Yield. (*Ibid.*)

22 Dr. Sunding's report shows that the original Peace Agreement and the Peace II measures
23 produce net benefits over \$904 million in present value terms. Eighty percent of the net benefits
24 result from the Peace II measures. (*Ibid.*) Two of the agencies – the City of Ontario and
25 Cucamonga Valley Water District – account for approximately half of the demand for basin water
26 over the 2007-2030 period of study. These two agencies stand to receive over half of the net
27

28 ³⁹ The court has previously asked for this information. (5/24/2007 Order)

1 benefits resulting from the agreements. (*Id.*, at p. 2)

2 Not surprisingly, nine of the ten agencies that receive benefits have filed papers in
3 support of Watermaster's motion for approval of the Peace II measures: Fontana Union Water
4 Company, San Antonio Water Company, and Monte Vista Water District filed Joinders to
5 Watermaster's motion, on November 9, 2007. The City of Pomona filed a Statement in Support
6 of the motion, also on November 9, 2007. On November 14, 2007, the City of Chino Hills, the
7 City of Upland, and Cucamonga Valley Water District filed Joinders to Watermaster's motion.
8 On November 15, 2007, the City of Ontario filed a Joinder to the motion and Declaration of
9 Kenneth Jeske. On November 26, 2007, the City of Chino filed a Joinder and Statement in
10 Support of Watermaster Motion to Approve Peace II Documents. The member agencies for
11 Metropolitan (IEUA, Western Municipal Water District, and Three Valleys Municipal Water
12 District) also filed papers in support of Watermaster's motion.

13 Two of Dr. Sunding's findings may explain why an increase in basin recharge capacity
14 was not considered in conjunction with the Peace II measures. One finding is that "policies that
15 increase Basin recharge capacity alter the distribution of net benefits." The other is that "policies
16 which lead [to] an increase in Basin safe yield are not only more valuable to agencies in the
17 Basin than an increase in recharge capacity, but the benefits are also distributed more equally."
18 (*Id.* pp. 4-5)

19 Dr. Sunding explains that the main factor associated with the increased net benefit
20 resulting from the Peace II measures is "the displacement of Tier 2 water with recycled water,
21 SAR in-flow, and in the period 2007-2024, with forgiveness for 400,000 AF of Basin over-draft
22 to attain hydraulic control." (*Id.* p. 29) Under Peace II measures "Tier 2 water purchases in the
23 year 2015 are 10,186 AF, which represents a substantial reduction from the 137,089 AF of Tier 2
24 water purchases that take place under baseline conditions ... and the 82,658 AF under Peace I
25 conditions." (*Id.* at p. 30) Major economic benefit will derive from the Peace II measures.

26 **E. Supplement to OBMP Implementation Plan (Resolution No. 07-05, Attachment D)**

27 **1. Watermaster Requests Court Approval under Paragraph 31**

28 Watermaster requests Court review and approval of this document under Paragraph 31 of

1 the Judgment. The title of the document is 2007 Supplement to the Implementation Plan
2 Optimum Basin Management Program for the Chino Basin. It is dated October 25, 2007, and
3 was filed with Watermaster's motion as Attachment D to Exhibit A. This document "describes
4 the activities that will be under taken pursuant to the Basin Re-operation strategy" as authorized
5 by the proposed Judgment amendments. (Motion p. 9, lns. 8-12)

6 **2. The 2007 Supplement Simply Updates the Implementation Status for Most of**
7 **the OBMP Program Elements**

8 The 2007 Supplement is said to be a "supplement to" the OBMP Implementation Plan "as
9 determined through the 2007 Peace II process." (2007 Supplement, p. 1) Like the original
10 OBMP Implementation Plan, the 2007 Supplement is organized into nine OBMP Program
11 Elements. The provisions under Program Element 1 (Comprehensive Monitoring Program),
12 Program Elements 3 & 5 (Water Supply Plan for Impaired Areas and Regional Supplemental
13 Water Program),⁴⁰ Program Element 4 (Comprehensive Groundwater Management Plan for MZ-
14 1), Program Elements 6 & 7 (Cooperative Programs with Regional Board and other agencies and
15 Salt Management Program), and Program Elements 8 & 9 (Groundwater Storage Management
16 Program and Storage and Recovery Programs) are basically "updates" to the "Implementation
17 Status" sections of the Program Elements in the original OBMP Implementation Plan. Indeed,
18 the discussion of these seven program elements should be included, instead, in Watermaster's
19 semiannual OBMP Implementation Status Reports.⁴¹

20 **3. OBMP Implementation Plan Program Element 2 is Modified by the Peace II**
21 **Agreement**

22 OBMP Program Element 2 is the Comprehensive Recharge Component. The original
23 OBMP Implementation Plan was based on the understanding that "[t]he volume of recycled
24 water that can be used in the Basin without TDS mitigation, is numerically tied to the average
25 annual quantity of storm flow that recharges the Basin." It was anticipated that the two new
26

27 ⁴⁰ The Peace II Agreement Section 5.2 requires inclusion of certain provisions in the 2007 Supplement. It does not
appear that the supplement fully reflects Section 5.2.

28 ⁴¹ Watermaster's OBMP Status Report 2007-01, due September 4, 2007, has not yet been filed with the court.

1 desalters described in the Implementation Plan, and the increase in storm water recharge, would
2 provide the mitigation for expanded use of recycled water. (OBMP Implementation Plan, p. 13
3 & 25)

4 The provisions in the 2007 Supplement pertaining to Program Element 2 (2007
5 Supplement, p. 3-8) appear to state a plan for implementation of the parties' agreement with
6 regard to recharge under the Peace II Agreement. The Peace II Agreement is based on the
7 proposal for re-operation of the basin for hydraulic control. The concept of re-operation for
8 hydraulic control was not included in the original Peace Agreement, and, ergo, was not included
9 in the original OBMP Implementation Plan. The 2007 Supplement thus introduces a new
10 concept to the OBMP Implementation Plan; this may be construed as a modification to the
11 OBMP Implementation Plan.

12 Watermaster did not supply a red-line version of Program Element 2 of the OBMP
13 Implementation Plan with proposed new provisions.. More importantly, however, the 2007
14 Supplement does not follow the provisions related to recharge contained in the Peace II
15 Agreement. (See Peace II Agreement, Art. VIII.) The Court should not approve this document
16 until the proposed modifications have been explained fully to the Court, and the Court is
17 satisfied that the 2007 Supplement accurately reflects the agreement of the parties. The standard
18 of review under Paragraph 31 of the Judgment is discussed in Section V. A. 7. above.

19 **F. Tables [7-6(a) and (b)] (Resolution No. 07-05, Attachment E)**

20 **1. Watermaster's Motion**

21 Although not labeled as such, these tables are duplicates of Tables 7-6(a) and 7-6(b) in
22 the Technical Report. The attachment contains no explanation of the tables, and no reference to
23 the Technical Report. There is no reference to Attachment E in Watermaster's Motion. The
24 Motion, however, requests that the court approve Watermaster's Resolution 07-05 and direct
25 Watermaster "... to proceed in accordance with the terms of the Resolution and documents
26 attached thereto ...", which include the Attachment E tables.

27 ////

28 ////

1 Resolution 07-05 does discuss the Attachment E tables, which it refers to as a
2 "schedule".⁴² The Resolution explains that the schedule includes a summary of the "...
3 cumulative total of groundwater production and desalting from all authorized Desalters and other
4 activities authorized by the 2007 Supplement to the OBMP Implementation Plan as amended as
5 provided in the Peace Agreement. . ." The schedule:

6 . . . (i) identifies the total quantity of groundwater that will be produced through
7 the proposed Basin Re-Operation to obtain Hydraulic Control, and (ii)
8 characterizes and accounts for all water that is projected to be produced by the
9 Desalters for the initial Term of the Peace Agreement (by 2030) as dedicated
water, New Yield, controlled overdraft pursuant to the Physical Solution or
subject to Replenishment.

10 (Resolution 07-05 p. 3, ¶ 10) The Resolution also indicates that Watermaster will: "... modify
11 its projections from time to time, as may be prudent under the circumstances." There is no
12 further discussion in Resolution 07-05 of the Attachment E tables.

13 2. The Tables Overstate New Yield

14 As discussed, above, in Section IV.A.4, the third column (New Yield) substantially
15 overstates the quantity of "new yield" that will be obtained through basin reoperation. If desalter
16 pumping is maintained at approximately 40,000 acre-feet (by 2013/14), and a full 400,000 acre-
17 feet of "controlled overdraft" is allowed as "replenishment allocation" for the CDA and
18 "Desalter III", then the "residual replenishment obligation" would be substantially increased over
19 that shown on the tables.⁴³ The statement in Resolution 07-05 that Watermaster will modify its
20 projected schedule "from time to time, as may be prudent under the circumstances" does not
21 adequately address the problems with the initial schedule.

22 ///

23
24 ⁴² Peace II Section 7.2(e)(i) states that an "initial schedule" was to be submitted to the court along with the
25 Resolution. Attachment "E" is, therefore, apparently the Watermaster's "initial schedule". Watermaster does not
indicate which of the two schedules it has chosen.

26 ⁴³ The New Yield and stormwater assumptions from 2000/01 through 2006/07 are shown on Table 7-3 of the
27 Technical Report. It appears from the tables and Figure 7-7 that New Yield has been overstated by a total of 37,043
28 acre-feet for that period, and stormwater by 24,000 acre-feet. The Exhibit "E" tables should include assessments for
these overestimates. Table 7-3 footnote 4 implies that only future values will be "trued up" with the model;
Watermaster accounting should be corrected back to 2000/01. This overstatement of New Yield should not be
considered an "error" for purposes of proposed new Section 3.3 of Watermaster Rules and Regulations.

1 **G. "Discretionary Actions to Amend Watermaster Rules and Regulations" (Resolution**
2 **No. 07-05, Attachment F)**

3 **1. Watermaster Requests Approval under Paragraph 31**

4 Exhibit A, Attachment F to Watermaster's motion is a document titled Discretionary
5 Actions to Amend Watermaster Rules and Regulations. Watermaster requests the Court to
6 approve the document under Paragraph 31 of the Judgment.

7 **2. Subject Matter of Proposed Amendments**

8 The proposed amendments to Watermaster Rules and Regulations seek to: (1) modify
9 Section 6.3 (c) and add a new section, Section 6.3 (d) to Article VI of the Rules, which pertains
10 to Safe Yield and Operating Safe Yield; (2) modify Section 9.6 of Article IX of the Rules
11 pertaining to transfers; (3) require Watermaster to ratify, by resolution, certain current
12 accounting practices; (4) require Watermaster to impose losses of 6% or 2%, depending on
13 whether or not the party has made contributions to OBMP implementation (the 2% loss will be
14 reduced to less than 1% once Hydraulic Control is achieved); modify Section 8.1(f)(iii) and
15 Section 8.2 (a), (b) (g) and (h) of Article VIII pertaining to storage; (5) add a new section,
16 Section 3.3, to Article III of the Rules pertaining to monitoring, which would establish a
17 limitations period with regard to correction of errors in documents the parties submit to
18 Watermaster and to information generated by Watermaster; (6) suggest Watermaster may make
19 further conforming changes to the Rules to eliminate any inconsistencies with the Peace II
20 measures.

21 **3. Watermaster Does Not Address the Considerations to be Made by the Court**

22 The argument in support of the proposed changes Watermaster's Rules and
23 Regulations is found in pages 20- 22 of Watermaster's motion. The gist of Watermaster's
24 argument is that the proposed rules are appropriate and are not opposed by any party.
25 Watermaster makes a conclusory statement that the proposed rules are inconsistent with the
26 Judgment or the Peace Agreement, but there is no analysis to support the conclusion.

27 As discussed in section V.A. above, the standard of review in paragraph 31 of the
28 Judgment requires the Court to: (1) weigh the evidence offered in support of and the mandated

1 action or decision; (2) analyze whether the mandated action or decision is consistent with and
2 promotes the Physical Solution under the Judgment; (3) analyze whether the mandated action or
3 decision is consistent with the protection of the rights of the parties and the general public
4 interest in preservation of the water resources of Chino Basin; and (4) analyze whether the
5 mandated action or decision is contrary to the public policy requiring reasonable and beneficial
6 use of water (California Constitution, Art X, Sec. 2).

7 Until Watermaster provides the Court with the analysis required under Paragraph 31 of
8 the Judgment, the proposed changes to Watermaster Rules and Regulations should not be
9 approved.

10 **H. Purchase and Sale Agreement – Overlying (Non-Agricultural) Pool (Resolution No.**
11 **07-05, Attachment G)**

12 **1. Watermaster’s Motion**

13 This agreement is reliant upon proposed amendments to Judgment Paragraph 8 and
14 Exhibit “G”.⁴⁴ Watermaster states that the Purchase and Sale Agreement “. . . will serve as the
15 implementation of the Judgment Amendments.” (Motion p. 17, lns. 1-2) As discussed, above,
16 however, the agreement covers only the one-time transfer of water held in storage by the
17 Overlying (Non-Agricultural) Pool as of June 30, 2007, as well as the agreement’s earmark
18 transfer; Judgment Exhibit “G” authorizes both the one-time transfer and annual transfers from
19 that pool, but Paragraphs 9(a)-(h) appear to apply only to annual transfers. Neither
20 Watermaster’s Motion nor the agreement indicate the actual quantity of water in storage as of
21 June 20, 2007.⁴⁵

22 **2. The Purchase and Sale Agreement Limits Watermaster’s Discretion by**
23 **Requiring Approval of the Appropriative Pool Before Watermaster Can**
24 **Purchase Water for Desalter Replenishment from the Overlying (Non-**
Agricultural) Pool

25 The agreement provides that the Overlying (Non-Agricultural) Pool will make a quantity
26

27 ⁴⁴ The Purchase and Sale Agreement is also discussed at Sections IV B and C, above.

28 ⁴⁵ The agreement includes a signature block only for the Overlying (Non-Agricultural) Pool. It is not clear whether
Watermaster will be a party to the agreement.

1 of water available to Watermaster from water held in storage as of June 30, 2007:

2 . . . Less a ten percent dedication for the purpose of Desalter replenishment [and]
3 less the quantity of water transferred pursuant to Paragraph I below [8,530 acre-
feet] . . .

4 (Purchase and Sale Agreement ¶ B) For the one-time transfer from pool storage, the ten percent
5 is “dedicated for desalter replenishment . . . without compensation” to Watermaster. (*Id.* ¶ E)⁴⁶

6 Watermaster can buy the one-time water at a set price for desalter replenishment or a
7 storage and recovery program if Watermaster gives written notice to the pool “. . . and only with
8 the prior approval of the Appropriative Pool . . .” (*Id.* ¶ C) (Paragraph H “Early Termination” is
9 not clear, and there is no definition of what “Early Termination” means in this agreement.) It
10 appears that the Appropriative Pool ultimately would be allowed to purchase the water, with
11 Watermaster serving as the intermediary purchaser from the Overlying (Non-Agricultural) Pool,
12 following the proposed Judgment Exhibit “G” Paragraph 9(a)-(h) process. (*Id.* ¶ H) The
13 Appropriative Pool could apparently refuse to approve Watermaster’s purchase of the one-time
14 water for desalter replenishment, however, and then direct Watermaster to buy the same water
15 for their own use. This arrangement raises the question of whether the agreement is intended to
16 limit the discretion Watermaster now has to purchase this water for desalter replenishment or
17 storage and recovery programs.⁴⁷

18 **L. Peace II Agreement (Resolution No. 07-05, Attachment K)**

19 **1. Watermaster’s Motion**

20 The Peace II Agreement is Attachment “K” to Watermaster’s Resolution 07-05. The
21 Motion requests approval of this document under Judgment Paragraph 31. The document title is
22 “Peace II Agreement: Party Support for Watermaster’s OBMP Implementation Plan, Settlement
23 and Release of Claims Regarding Future Desalters.”

24 The Peace II Agreement addresses issues that were deferred in 2000, when the Peace

25 _____
26 ⁴⁶ Ten percent of the earmark transfer of 8,530 af is also dedicated to Watermaster for desalter replenishment.
(Purchase and Sale Agreement ¶ I)

27 ⁴⁷ Further amendments of Exhibit “G” might be required. The second “Whereas” states that: “Watermaster is
28 evaluating its replenishment needs under the Judgment and several Storage and Recovery opportunities.” Pending
that evaluation, Watermaster arguably should not give up its discretion to purchase the one-time pool water for
desalter replenishment.

1 Agreement was negotiated: future desalters; additional regulation of the use of local storage;
2 continued MZ-1 recharge of 6,500 afa; "Early Transfer" over-allocation to the Appropriate
3 Pool; "Form 7 credits"; accounting errors; "the role of Watermaster in water quality issues"; and
4 Salt Credits. (Motion p. 3, Ins. 21-28, p. 4, Ins. 1-13)

5 The agreement reflects Watermaster's and IEUA's efforts to obtain the Basin Plan
6 amendment "... that will allow for the expanded use of all water supplies available to the Basin,
7 most particularly recycled water." (*Id.* p. 4, Ins. 23-24) Compliance with the Basin Plan
8 amendment requires Basin Reoperation to achieve and maintain Hydraulic Control; the Basin
9 Reoperation management strategy entails "... the controlled lowering of water levels throughout
10 the Basin in order to create an optimal operating level for the Basin, thereby allowing for the
11 achievement of Hydraulic Control. (*Id.* p. 5, Ins. 25-27)

12 The Peace II Agreement Article V contains the proposed plan to construct the next
13 increment of desalter capacity, which Watermaster states is "not an item requiring further Court
14 approval". (*Id.* p. 11, ln. 28) Article VIII of the agreement describes "... the measures
15 Watermaster will take to continue to develop recharge capacity of the Basin in preparation for
16 the time when the controlled overdraft period is complete." (*Id.* p. 11, Ins. 23-25) Articles VI
17 and VII address controlled overdraft, "New Yield Attributable to Desalters", replenishment
18 obligations for the desalters and credits against those obligations, "apportionment" of controlled
19 overdraft, and accounting for losses from storage accounts. Article X provides that obligations
20 arising from the Peace Agreement and OBMP Implementation Plan will have been satisfied by
21 completion of the 10,000 afa (9 mgd) desalter expansion provided for in the Peace II Agreement.

22 Watermaster's Motion touches on the principal elements of the Peace II Agreement.
23 Under Paragraph 31, Watermaster must provide evidence to support its proposed action, and
24 establish that the proposed action is consistent with the Judgment and its Physical Solution and
25 with California Constitution Article X, Section 2.⁴⁸ Watermaster's position is that the parties

26 ⁴⁸ As noted in Sections V.A and G, under Paragraph 31, the court must weigh the evidence in support of the
27 mandated action, analyze whether the action is consistent with the Judgment's Physical Solution and with protection
28 of the parties' rights and the general public interest in the preservation of basin resources, and whether the action is
contrary to the public policy mandates of California Constitution Article X, Section 2. Watermaster's Motion does
not clearly address these considerations in these terms.

1 must be allowed "to adapt their stipulated judgment to fit ongoing changing circumstances", if
2 doing so would be "protective of the Basin itself consistent with Art. X, sec. 2." (*Id.* p. 16, Ins.
3 2-3)

4 **2. Certain Peace II Agreement Provisions Require Further Explanation and**
5 **Analysis**

6 Future Desalters. Article X effectively declares that all future desalter obligations have
7 been met. If additional desalter capacity were necessary either to preserve Safe Yield or to
8 maintain Hydraulic Control, how would Watermaster proceed? If the Section 5.3 condition
9 subsequent is not satisfied, how will Watermaster proceed?

10 Recharge Commitment. Recharge commitments are included in Section 7.3 and Article
11 VIII. Section 8.3 is a "continuing covenant" which states that:

12 the annual availability of any portion of the 400,000 acre-feet set aside as
13 controlled overdraft as a component of the Physical Solution, is expressly subject
14 to Watermaster making an annual finding about whether it is in substantial
15 compliance with the revised Watermaster Recharge Master Plan pursuant to
16 Paragraphs 7.3 and 8.1 above.

15 Neither Paragraph 7.3 nor 8.1 include a deadline for returning to the court for approval of a
16 revised Recharge Master Plan. Will Watermaster commit to a schedule?

17 "Contingency Plan" Commitment. There is no description of what Watermaster means
18 by a "contingency plan". Section 7.3 implies that such a plan will provide mitigation for
19 material physical injury caused by Watermaster's proposed Basin Reoperation. Watermaster's
20 Technical Analysis, however, finds that no material physical injury will be caused by Basin
21 Reoperation. What is the "contingency plan" and when will Watermaster develop the plan?

22 Future Groundwater Production. As part of Article VIII on recharge, Section 8.2
23 provides for the Watermaster and parties to coordinate on projected water supply needs. There is
24 no discussion of the "caps" issue raised in the Technical Report. Does Watermaster intend to
25 address the potential need to "cap" future production if recharge capacity and replenishment
26 water availability cannot keep pace with future demand?

27 Interpool Intervention. Section 4.4 would allow intervention by a member of the
28 Appropriative Pool into the Overlying (Non-Agricultural) Pool. Why is this necessary, given the

1 availability of Judgment Exhibit "G" Paragraph 6(a)?

2 Initial Schedule. Section 7.2(e) provides that Watermaster:

3 may exercise its discretion to establish a schedule for Basin Re-Operation that
4 best meets the needs of the Parties to the Judgment and the physical conditions of
5 the Basin, including but not limited to such methods as "ramping up", "ramping
6 down", or "straightlining".

7 Watermaster's "initial schedule" is presumably Attachment "E" to Resolution 07-05. Which of
8 the two tables has Watermaster chosen? Has Watermaster chosen to use "Most Rapid
9 Depletion" or "Proportional Depletion"? Will Watermaster revise whichever table it decides to
10 use to reflect the Technical Report's reassessment of the volume of New Yield that will be
11 available?

12 Hydraulic Control Determination. The point at which Hydraulic Control would actually
13 be deemed to have been attained is not clear. Hydraulic Control can be found to exist now to
14 some extent, but would be more "robust" with increased mining of the basin. Watermaster's
15 Motion is silent on the issue of what the RWQCB would consider to be "Hydraulic Control" for
16 purposes of the 2004 Basin Plan Amendment, and no declaration has been provided on that
17 issue.

18 General. Other Peace II Agreement issues are noted throughout these Preliminary
19 Comments and Recommendations.

20 **J. Peace Agreement Second Amendment (Resolution No. 07-05, Attachment L)**

21 **1. Watermaster's Motion**

22 Watermaster proposes two amendments to the Peace Agreement: (1) Amend Section
23 5.4(d) (credits against future OBMP assessments) to limit the availability the credit to subsidence
24 issues;⁴⁹ and (2) increase the "cap" on the quantity of water held in "Local Storage" Agreements
25 from 50,000 acre-feet to 100,000 acre-feet (Sections 5.2(b) iv and vii) and remove the
26 "rebuttable presumption" that "Material Physical Injury" would not be caused by the storage

27 ⁴⁹ Watermaster does not provide a redline version of Section 5.4(d). The words "... including but not limited to
28 those facilities relating to [the prevention of subsidence] ..." would be replaced by the words: "... and specifically
relates to [the prevention of subsidence] ..."

1 (Section 5.2(b) v). (Motion p. 18, lns. 1-20) As to the OBMP credit amendment, "... the Court
2 should respect the desires of the parties and approve it." (*Id.* ln.11) As to the higher cap on
3 Local Storage accounts, the question for the court is "... whether there is any reason not to allow
4 this amendment."⁵⁰ (*Id.* lns. 15-16)

5 **2. Amendments to the Peace Agreement Should Be Held to the Same Standard**
6 **as Was the Peace Agreement Itself**

7 As noted in Watermaster's Motion, the court ordered Watermaster to proceed in a manner
8 consistent with the Peace Agreement and the OBMP Implementation Plan upon making the
9 finding that the Peace Agreement was consistent with the OBMP and was in furtherance of the
10 Judgment's Physical Solution and California Constitution Article X, Section 2. (Motion p. 3,
11 lns. 3-7, citing the Court's 7/13/2000 Order.) This was the correct standard in 2000, and is the
12 correct standard to be applied here. That said, there is no apparent reason that the amendment to
13 Section 5.4(d) should not be allowed.

14 **3. Watermaster Has Not Evaluated the Issue of Local Storage Limits as**
15 **Required by the Peace Agreement, Watermaster Rules and Regulations, and**
16 **the OBMP Implementation Plan**

17 Peace Agreement Section 5.2(b)(xi), Watermaster Rules and Regulations Section 8.2(j)
18 and OBMP Implementation Plan Program Element 8(b)(xi) provide that:

19 Watermaster shall evaluate the need for limits on water held in Local Storage to
20 determine whether the accrual of additional Local Storage by the parties to the
21 Judgment should be conditioned, curtailed or prohibited if it is necessary to
22 provide priority for the use of storage capacity for those Storage and Recovery
23 Programs that provide broad mutual benefits to the parties to the Judgment as
24 provided in this paragraph and section 5.2(c) of the Peace Agreement. [Peace
25 Agreement § 5.2(b)(xi).]

26 Watermaster's Motion does not indicate that any evaluation has occurred, and Watermaster's
27 Technical Report does not appear to address Local Storage or Carryover Storage water.

28 The implementation of Local Storage account limits was discussed extensively in the

⁵⁰ Watermaster also argues that if the amendment "... is uncontested, the Court should demand that a compelling
reason would need to be shown for the Court not to respect the unanimous wishes of the parties." (Motion p. 18,
lns. 19-20) Further: "Review of the proposed Peace Agreement amendments is brought under Paragraph 31 of the
Judgment, though the essential issue with regard to these amendments is whether they have the consent of all parties
to the Peace Agreement." (*Id.* p. 8, lns. 21-23) Amendment of the Peace Agreement does require the unanimous
consent of the parties. (Peace Agreement Section 14(b))

1 1999 OBMP Phase I Report.⁵¹ Watermaster has not reviewed for the court its reasons for
2 proposing the 50,000 acre-foot cap in the Peace Agreement, has not provided any technical or
3 modeling analysis of the storage issue or evaluated the need for increasing or decreasing the cap,
4 has not articulated the “trade-offs” between increased Local Storage and increased Storage and
5 Recovery programs, and has not revisited the issue of water being held in Local Storage accounts
6 for periods of time which frustrate the reasonable and beneficial use of water.⁵²

7 VI. FOUNDATIONAL ISSUES

8 A. Is the Technical Report Baseline Alternative Consistent with the Judgment and Its 9 Physical Solution?

10 1. Baseline Alternative

11 If there is an “elephant in the room” with respect to the Judgment and Watermaster’s
12 basin management pursuant to the Physical Solution, it is the following problem described in the
13 Technical Report:

14 The integrated regional water planning process for the Chino Basin area needs to
15 be improved to be consistent with the limitations in the groundwater system and
16 the regional facilities. In past planning studies, the parties have assumed that they
17 could pump as much as they desired from anywhere they wanted to pump in the
18 basin and that Watermaster would always be able to replenish overproduction
19 regardless of the magnitude of overproduction. This is best illustrated through the
20 process of developing the Baseline Alternative for the investigation of the Peace
21 II project description.

19 (Final Technical Report p. 8-1)

20 The Baseline Alternative is Watermaster’s baseline for analysis of its Basin reoperation
21 alternatives. The Technical Report explains that “Several iterations were required to develop a
22 feasible Baseline Alternative.” (Final Technical Report p. 8-2) The report describes the
23 iterations in detail, that groundwater production plans had to be “modified” several times and the
24

25 ⁵¹ See OBMP Phase I Report, pp. 2-12 *et seq.* and 4-32 *et seq.* The two “fundamental reasons why storage limits
26 should be considered” were that “accumulation in local storage accounts in quantities that cannot be put to a
27 reasonable beneficial use is in conflict with Section 2 of Article X of the California Constitution . . .” and the
28 “cumulative losses of water from local storage accounts can grow to be large . . .” (*Id.* p. 4-33)

⁵² Ironically, Watermaster seeks to increase the Local Storage account cap without addressing this historical
Watermaster concern, but seeks to amend the Judgment to remedy the problem of stranded Overlying (Non-
Agricultural) stored water.

1 replenishment plan had to be "adjusted". One "surprising result" was that: "... the safe yield
2 would decline from the 140,000 acre-ft/yr determined in the Judgment to slightly less than
3 120,000 acre-ft/yr by 2059/66." (*Id.*) Another "surprising result" was that the expanded future
4 groundwater production (even though "modified" several times to reduce future production)
5 "resulted in a large groundwater level depression centered in the ... north-central part of the
6 Basin ...", with groundwater elevations falling by over 100 feet in some well fields. (*Id.*) To
7 "... prevent individual model cells from drying up ...", future net groundwater production by
8 CVWD and the City of Ontario was further "capped" at certain levels.

9 The Baseline Alternative is used as the metric against which Watermaster assesses its
10 Reoperation Alternatives 1A and 1B. In order to be able to complete the simulation of Baseline
11 conditions, groundwater production projections had to be modified (and replenishment nudged
12 up to 104,000 afa, even though capacity right now is 61,000 afa). The "modifications" are
13 substantial. To fit within the 104,000 afa replenishment number, future production projections
14 were capped at 205,166 afa beginning in 2024/25 (Technical Report Table 7-8) versus the Black
15 and Veatch projections of 264,500 afa (*id.*, Table 7-1). (These projections include desalters and
16 "Pomona Nitrate".) Table 7-8 holds future pumping at the 205,166 afa level through 2059/60;
17 there is, therefore, no increase in production in the Baseline alternative after 2019/20.⁵³ When
18 the City of Ontario and CVWD production is further "capped" at 29,000 afa and 23,800 afa,
19 respectively, their projected pumping reflects an additional reduction to the Table 7-8 quantities.
20 It appears that, with those additional reductions, Baseline pumping would be constrained to just
21 189,000 acre-feet per year from 2024/25 on.⁵⁴

22 The Technical Report's Baseline Alternative projected pumping from 2024 through
23 2059/60 is apparently limited to 189,000 afa. This number does not appear to be discussed in the
24 text of the Technical Report, nor in Mr. Wildermuth's declarations. This is a full 75,500 afa less
25 than the Table 7-1 projections based on the parties' 2005 Urban Water Management Plans.

26 _____
27 ⁵³ By 2019/20, production projections reach a maximum of 207,257 afa (Table 7-8) and decline to 205,166 by
2024/25 and remain unchanged until 2059/60.

28 ⁵⁴ This total is 205,166 afa less the difference between the Table 7-8 totals for Ontario and CVWD (35,133 and
33,846) at 2024/25 and the caps (29,000 and 23,800); 205,166 less 16,179 equals 188,987.

1 **2. Baseline Alternatives Assumptions Have Not Been Agreed to by the Parties**
2 **or Watermaster**

3 The Technical Report and Mr. Wildermuth's declarations make it clear that the parties
4 have not agreed to these "modifications":

5 The production projections used in the initial evaluations of the planning
6 alternatives are shown by party in Table 7-8. These projections should be
7 characterized as "net" production projections. That groundwater production has
8 been reduced in the groundwater simulations from prior planning investigations
9 does not necessarily mean that total production would actually be reduced.
10 Watermaster and others could expand the replenishment capacity, or the
11 Appropriators could increase recharge capacity on their own through the
12 construction of aquifer storage and recovery (ASR) wells. ASR wells could be
13 used to inject treated SWP water when SWP water is available and there is
14 surplus treatment plant capacity.

15 (Final Technical Report p. 7-10)⁵⁵ Watermaster does not discuss these constraints, nor does it
16 attempt to translate these constraints into prospective recharge capacity requirements.

17 Mr. Wildermuth states that it "...was outside the scope of my investigation to optimize
18 the groundwater production patterns and associated replenishment." (Wildermuth Declaration p.
19 4, Ins. 2-3) More specifically as to the Baseline Alternative assumptions, Mr. Wildermuth
20 explains that he made what he believed to be reasonable assumptions on "some collateral
21 subjects" since he had to impose limits on pumping if he was only allowed to model "presently
22 planned for recharge capacity and expected availability of water ...":

23 I have also received several questions regarding some collateral subjects that were
24 included within the report but were in large part, beyond the scope of the study.
25 For example, questions have been raised as to several assumptions such as my
26 decision to limit certain groundwater production by some of the producers. I
27 never contemplated actually limiting the production of any specific party. To the
28 contrary, I simply made what I believe to be a reasonable assumption that given
the presently planned for recharge capacity and expected availability of water for
recharge, there would be physical limitations on how much water could be
produced by individual agencies. I began with the production expectations of the
parties that are reflected in their published urban water management plans. I then
adjusted those projections by what I understand the physical limitations on actual
production will be unless and until expanded recharge capability is provided.
This expanded recharge capability might be provided through more efficient use
of existing facilities, new recharge basins, and more expansive use of recycled
water. However, it is more likely that the most efficient and cost-effective
approach to expand recharge will be the use of ASR.

⁵⁵ The same production (and safe yield) projections were used in the simulations for Alternatives 1A and 1B.

1 (Id. p. 9, lns. 22-28)

2 The Technical Report's analysis thus substantially limited future projected pumping in
3 order to stay within "presently planned for recharge capacity and expected availability of water."
4 The suggested solution increasing recharge capacity over time has not been agreed to yet by
5 Watermaster and the parties. The Technical Report and supporting modeling work do not
6 disclose whether (and to what extent) recharge can be increased and still achieve and maintain
7 Hydraulic Control.⁵⁶ There has been no technical work or modeling presented in support of the
8 Peace II documents which demonstrates what would be required and the feasibility of increasing
9 recharge to the basin in order to allow pumping not to be constrained.

10 **3. Judgment "Fundamental Premise"**

11 The Judgment provides:

12 A fundamental premise of the Physical Solution is that all water users dependent
13 upon Chino Basin will be allowed to pump sufficient waters from the Basin to
14 meet their requirements. To the extent that pumping exceeds the share of the Safe
15 Yield assigned to the Overlying Pools, or the Operating Safe Yield in the case of
16 the Appropriative Pool, each pool will provide funds to enable Watermaster to
17 replace such overproduction.

18 (Judgment ¶ 42) This "fundamental premise" was discussed in detail in Watermaster's Post-
19 Trial Memorandum:

20 The Physical Solution is the heart of the Judgment. It is essential to
21 understanding of the Physical Solution that it be recognized that there is sufficient
22 water to meet the needs of all of the parties. This is because there are significant
23 imported water supplies available to supplement the native Safe Yield of the
24 basin. However, the supplemental waters are significantly more expensive than
25 local ground waters. Accordingly, the function of the Judgment, and of its
26 Physical Solution, is to provide an equitable and feasible method of assuring that
27 all parties share in the burden of the costs of importing the necessary
28 supplemental water to achieve a hydrologic balance within Chino Basin.

29 The Physical Solution provides the mechanics by which the management plan is
30 implemented. The basic concept of the Physical Solution is similar to that
31 adopted in the prior ground water adjudications in Southern California, i.e., the
32 parties are entitled to produce their requirements for ground water from the basin,
33 provided that they contribute, by Watermaster assessments, sufficient money to
34 assure purchase of supplemental water to replace any aggregate production in
35 excess of the Safe Yield. It is in the detailed formulation of that Physical Solution
36 that some of the most interesting features of the Judgment were developed.

37 ⁵⁶ See discussion, below, at Section VI.C.

1 (Post-Trial Memorandum (7/11/1978) p. 4, lns 21-28, p. 5, lns. 1-14)

2 **4. "Capping" Production Is Not Consistent with this Central Premise of the**
3 **Judgment's Physical Solution.**

4 If production must be "capped" because Watermaster is unable to recharge sufficient
5 quantities of water to replace overproduction, that eventuality must be fully analyzed and
6 considered. The "modifications" and "adjustments" required to reach a "Baseline Alternative"
7 which did not run wells dry strongly suggests that this fundamental premise – that Watermaster
8 will be able to obtain sufficient water and will have sufficient replenishment facilities to replace
9 overproduction – is now called into question.

10 Watermaster's Motion touts the proposed Basin Reoperation management strategy as a
11 strategy that will "... create an optimal operating level for the Basin, thereby allowing for the
12 achievement of Hydraulic Control ..." (Motion p. 5, lns. 26-27), that "... *optimizes* the Basin
13 ... makes the Basin work better, for all of the parties to the Judgment and for the future
14 generations that will depend on the Basin." (*Id.* p. 22, lns. 22-21)

15 Basin reoperation for Hydraulic Control is the focus of these claims,⁵⁷ but the
16 assumptions that had to be used in the technical work clearly do not support any conclusion that
17 there has been "optimization" of overall basin management. Indeed, the logical task to "optimize
18 the groundwater production patterns and associated replenishment" was outside the scope of the
19 Technical Report and modeling. As a result, every alternative rests on the arbitrary capping of
20 future groundwater production – which is not consistent with the Judgment's "fundamental
21 premise". This should be addressed; in no way should this issue be marginalized as a "collateral
22

23 ⁵⁷ It is not clear whether Watermaster's Technical Report has attempted to "optimize" for any parameter. Modeling
24 of reoperation alternatives indicates that "a more robust state of hydraulic control" can be rapidly achieved and
25 maintained. (Final Technical Report p. 8-5) Technical Report Section 8 does not discuss whether the use and
26 recharge of recycled water is optimized, nor does it mention recycled water. Section 7 discusses the fact that
27 Hydraulic Control is required by the RWQCB for IEUA's recycled water to be used for irrigation and groundwater
28 recharge without "mitigation":

Without hydraulic control, the IEUA and Watermaster will have to cease the use of recycled water
in the Chino Basin and will have to mitigate the effects of using recycled water back to the
adoption of the 2004 Basin Plan Amendment, which occurred in December 2004.

(*Id.* p. 7-2) In a sense, therefore, if the Peace II Measures optimize anything, they optimize the use of recycled water
through Hydraulic Control.

1 subject". If Watermaster "never contemplated actually limiting the production of any specific
2 party", but the Technical Report and modeling work assume production limitations, can the
3 analysis be valid?

4 **B. Why Is Safe Yield Projected to Continue to Decline and How Can Watermaster
5 Operate the Basin to Avoid This Result?**

6 **1. Watermaster's Motion**

7 Watermaster's Motion states that through the "Peace II Measures" Watermaster will
8 accomplish three things: (1) "... curtail the discharge of poorer water quality to the Santa Ana
9 River"; (2) "... [p]rovide planning and economic stability" for new desalter capacity; and (3)
10 "... preserve material quantities of Basin yield against projected declines..." (Motion p. 1, lns.
11 25-27) Based on Watermaster's Technical Report, the Motion reports that:

12 ... Watermaster has determined that the Basin Re-operation strategy as described
13 in the Project Description [Resolution 07-05 Attachment "A"] is a beneficial
14 strategy to the Basin that will advance the OBMP goals of yield enhancement and
protection and that Basin Re-operation is necessary in order to achieve Hydraulic
Control ... and will not result in Material Physical Injury.

15 (*Id.* p. 13, lns. 13-17; emphasis added) Watermaster argues: "The Basin Re-operation strategy is
16 consistent with the OBMP because it accomplishes the goal of yield protection and yield
17 maximization." (*Id.* p. 16, lns. 1-12; emphasis added)

18 The language in the first-quoted statement, above, that refers to preserving yield "against
19 projected declines" is the Motion's only reference to the Technical Report's "surprising result"
20 that safe yield is apparently for the first time – projected to decline, and to decline
21 substantially.⁵⁸ This is a startling change, but Watermaster's Motion does not address this issue.

22 **2. Technical Report and Analysis of the Projected Decline in Safe Yield**

23 In describing the "proposed project" of expanding the desalter program to 40,000 acre-
24 feet per year of desalter pumping and the strategic reduction in groundwater storage
25 (reoperation) to achieve Hydraulic Control, the Final Technical Report states:

26
27 ⁵⁸ "The first complete simulations of the Baseline Alternative produced a surprising result: the safe yield would
28 decline from the 140,000 acre-ft/yr determined in the Judgment to slightly less than 120,000 acre-ft/yr by 2059/60."
(Final Technical Report p. 8-2)

1 Through Re-operation and pursuant to a Judgment Amendment, Watermaster will
2 engage in controlled overdraft and use up to a maximum of 400,000 acre-ft to
3 offset desalter replenishment through 2030. After the 400,000 acre-ft is
4 exhausted and the period of Re-operation is complete, Watermaster will
5 recalculate the safe yield of the basin. The Re-operation period will have no
6 impact on the Operating Safe Yield or on the Parties' respective rights thereto.

Re-op
No
Impact

5 (Final Technical Report p. 7-4; emphasis added)

6 The effect of controlled overdraft of 400,000 acre-feet was not known until the many
7 baseline simulations were run:

8 Nineteen baseline simulations were required to obtain a Baseline Alternative that
9 was consistent with Chino Basin Judgment and the recharge capacity available to
10 the Watermaster for replenishment operations and allow sustainable production.
11 The hydrology incorporated in the new model and the production projection
12 resulted in a reduction in the future operating yield in the Baseline Alternative.

11 (Wildermuth Declaration #2 p. 3, lns. 15-18; emphasis added) It was in the "preliminary
12 simulations" of the Baseline Alternative that:

13 ... it was discovered that the safe yield of the basin was declining steadily from
14 about 140,000 acre-ft/yr to about 116,000 acre-ft/yr. Starting in 2010/11, the safe
15 yield was estimated each year and the associated replenishment obligation was
16 estimated based on the safe yield. . . Reducing the safe yield in the planning
17 alternatives results in a greater replenishment obligation than [previously]
18 estimated. . . The Baseline Alternative was simulated with the new time history
19 of the safe yield and the revised replenishment capacity.

USY:
↑ Reple

17 (Final Technical Report p. 7-11)⁵⁹

18 The Technical Report tersely accounts for the projected decline in Safe Yield, noting:

19 The safe yield declines due to the reductions in the deep percolation of applied
20 water and precipitation and the reduction in storm water recharge. The reduction
21 in recharge is caused by historical and projected changes in land use and
22 associated water use patterns from the conversion of agricultural and vacant land
23 uses to urban uses through 2025.

22 (Id. p. 7-19) Mr. Wildermuth expanded on this explanation:

23 The safe yield declines due to the reductions in the deep percolation of applied
24 water and precipitation and the reduction in storm water recharge. The reduction
25 in recharge is caused by historical and projected changes in land use and
26 associated water user patterns from the conversion of agricultural and vacant land
27 uses to urban uses through 2025. Since we published the Draft Report and
28 distributed it for comment, we have received some comments regarding some of
our observations and data in the report, particularly as it relates to the Baseline
Alternative. Concern has been expressed about certain conditions in the Basin
that will prevail regardless of whether Watermaster pursues Re-operation. The

⁵⁹ See Table 7-9 and Figure 7-13 which show the magnitude of the projected Safe Yield decline.

1 most prominent subject for discussion is the 2007 Model's prediction that
2 operating safe yield will be reduced from the present assumed levels. Recharge to
3 the Basin is being impacted by urbanization and the armoring of the Basin. The
4 potential reduction in operating safe yield is worse without Re-operation. With
5 Re-operation, the 2007 Model predicts that operating safe yield will be
6 approximately 8,600 to 9,000 acre-feet per year higher. Moreover, the model
7 does not take into account pro-active measures that might be prudently
8 undertaken by Watermaster to expand recharge capability through recharge
9 improvements including aquifer, storage and recovery projects.

6 (Wildermuth Declaration #2 p. 8, lns. 2-5, 15-25)

7 Mr. Wildermuth concludes that because "... the potential reduction in operating safe
8 yield is more without Re-operation", and because "... there are no reductions in yield projected
9 for Alternatives 1A and 1B relative to the Baseline Alternative ...", that "... there is no
10 material injury related to safe yield changes".⁶⁰ (*Id.* p. 8, lns. 10-12) Further: "In my opinion,
11 the safe yield changes associated with Alternatives 1A and 1B are consistent with the goal of the
12 OBMP to protect and enhance the safe yield of the Basin." (*Id.* p. 8, lns. 12-14)

13 Mr. Wildermuth does not offer his opinion as to whether the overall decline in safe yield
14 can be characterized as consistent with the OBMP goal of safe yield protection and
15 enhancement. There is no discussion or analysis of whether and how the safe yield decline can
16 be averted and the key OBMP goal met overall. By the same token, there is no discussion or
17 support for the Technical Report's claim that there will be no impact on the Operating Safe Yield
18 or on the parties' "respective rights thereto"; obviously, the Technical Report shows a continuous
19 decline in Safe Yield (and the model includes an ongoing decline in production rights in its
20 determination of replenishment obligations).

21 _____
22 ⁶⁰ Neither Mr. Wildermuth nor Watermaster's Motion point out that the Peace II Agreement Section 7.1 prohibits
23 incorporation of New Yield attributable to the desalters as Safe Yield until 2030:

23 New Yield Attributable to Desalters. Watermaster will make an annual finding as to the quantity
24 of New Yield that is made available by Basin Re-Operation including that portion that is
25 specifically attributable to the Existing and Future Desalters. . . Any subsequent recalculation of
26 New Yield as Safe Yield by Watermaster will not change the priorities set forth above for
27 offsetting Desalter production as set forth in Article VII, Section 7.5 of the Peace Agreement. For
28 the initial term of the Peace Agreement, neither Watermaster nor the Parties will request that Safe
29 Yield be recalculated in a manner that incorporates New Yield *attributable to the Desalters* into
30 the determination of Safe Yield so that this source of supply will be available for Desalter
31 Production rather than for use by individual parties to the Judgment.

27 Because the parties and Watermaster have agreed not to include New Yield in Safe Yield until after 2030, there
28 would be no difference between the Baseline Alternative and Alternatives 1A and 1B safe yield; the finding of no
Material Physical Injury rests on there being a difference.

1 **3. The OBMP's Focus on Maintaining Pumping in the Southern Chino Basin**
2 **Was to Preserve Safe Yield**

3 Watermaster's Motion notes that "... continued commitment to this element of the
4 OBMP [future desalters] was of major concern to the Court." (Motion p. 14, ln. 24) The court's
5 concern was directly related to maintaining safe yield – the focus at that time was not on
6 achieving hydraulic control.

7 The 1999 OBMP Phase I Report included detailed discussion of the need to maintain safe
8 yield by pumping and desalting in the Southern Chino Basin:

9 Agricultural production is projected to decrease about 40,000 acre-ft/yr when
10 current agricultural land use transitions to urban use. If the magnitude and spatial
11 distribution of current agricultural production is not replaced with new production
12 then the yield of the Chino basin will decrease by a comparable amount.

12 (1999 OBMP Phase I Report p. 2-17) Further:

13 Groundwater production in the southern half of the Basin will need to be
14 managed to ensure that safe yield is not reduced as agricultural areas convert to
15 urban uses. Losses in safe yield due to decreases in agricultural production in the
16 southern part of the Basin are distributed among the appropriators based on their
17 initial share of safe yield. Thus, the loss in yield is translated throughout the
18 Basin. Increasing production near the Santa Ana River could enhance existing
19 safe yield.

17 (*Id.* p. 2-37) The OBMP Implementation Plan Program Element 3 echoed this concern:

18 As urbanization of the agricultural areas of San Bernardino and Riverside
19 counties in the southern half of the Basin occurs, the agricultural water demands
20 will decrease and urban water demands will increase significantly. Future
21 development in these areas is expected to be a combination of urban uses
22 (residential, commercial, and industrial). The cities of Chino, Chino Hills, and
23 Ontario, and the Jurupa Community Services District (JCSD) are expected to
24 experience significant new demand as these purveyors begin serving urban
25 customers in the former agricultural area. Based on current estimates of
26 overlying agricultural pool production, it is expected that at least 40,000 acre-ft/yr
27 of groundwater will need to [be] Produced in the southern part of the Basin to
28 maintain the safe yield. . . There is approximately 48,000 acre-ft/yr of
 agricultural production in the southern part of the Chino Basin in the year 2000,
 and this production will reduce to about 10,000 acre-ft/yr in the year 2020 at
 build-out. This decline in agricultural production must be matched by new
 production in the southern part of the Basin or the safe yield in the Basin will be
 reduced. . . Groundwater production for municipal use will be increased in the
 southern part of the Basin to: meet the emerging demand for municipal supplies
 in the Chino Basin, maintain safe yield, and to protect water quality in the Santa
 Ana River. A preliminary facility plan (Revised Draft Water Supply Plan Phase I
 Desalting Project Facilities Report) was prepared in June, 2000, that describes the
 expansion of the Chino I Desalter and the construction of the Chino II Desalter to

1 be built in the JCSD service area (Attachment I). New southern Basin production
2 for municipal use will require desalting prior to use.

3 (OBMP Implementation Plan (Peace Agreement Exhibit "B") pp. 23-24) If basin reoperation will
4 not maintain Safe Yield, as forecast by the OBMP, Watermaster should provide a complete
5 technical analysis and explanation for that "surprising result".

6 **4. Watermaster Should Undertake a Complete Technical Analysis of the**
7 **Projected Safe Yield Decline**

8 As recently as December 2006, Watermaster's technical analysis of Peace II future
9 replenishment and desalter plans determined that all desalter pumping and desalter replenishment
10 plans then being evaluated produced Safe Yield estimates exceeding 152,000 afa. (Addendum to
11 the Draft April 2006 Report Analysis of Future Replenishment and Desalter Plans Pursuant to
12 the Peace Agreement and the Peace II Process, p. 3-3) The December 2006 Report notes that the
13 "... purpose of the OBMP desalting program is to maintain and enhance the safe yield of the
14 basin by controlling groundwater discharge to the Santa Ana River." Further:

15 The original desalting plan incorporated in the OBMP and the Peace Agreement
16 was meant to replace agricultural pumping, which in essence maintains the safe
17 yield. At full replenishment, the desalters are simply replacing agricultural
18 pumping and the yield will eventually be about 152,000 acre-ft/yr (equal to the
19 140,000 acre-ft/yr of safe yield per the Judgment and 12,000 acre-ft/yr of
20 additional yield from new stormwater recharge). The only way to generate
21 permanent additional new yield is to operate the basin at an increased operating
22 yield. With this operation, the storage in the basin will drop as the yield builds up
23 until a new equilibrium is reached. In implementation, this means doing less
24 replenishment and reducing the groundwater storage in the basin.

21 (*Id.* p. 4-1) This safe yield picture has changed, as described in Watermaster's Final Technical
22 Report.

23 Mr. Wildermuth attributes the surprising projected decline in Safe Yield to historical and
24 projected changes in land use and associated water use patterns. The Judgment actually defines
25 "Safe Yield" as:

26 The long-term average annual quantity of ground water . . . which can be
27 produced from the Basin under cultural conditions of a particular year without
28 causing an undesirable result.

(Judgment ¶ 4(x)) "Cultural conditions" is not a defined term, but logically includes land use

1 changes.

2 Land uses and associated water use patterns already have changed very substantially, as
3 described in the 1999 OBMP Phase I Report, Table 207. Watermaster has provided no
4 comparable analysis which might explain why "urbanization and armoring" of the basin are now
5 suddenly seen as causing a decline in Safe Yield. What "cultural conditions" have or will so
6 substantially change since the 1999 analysis, or even the December 2006 Report?

7 There are other potential causes that have been noted in previous Watermaster technical
8 work. For example, the 1999 Report discusses the linkage between Safe Yield and groundwater
9 storage:

10 Estimating groundwater storage within the Chino Basin is a critical exercise
11 because of the direct influence of storage upon the safe yield and reliability of the
12 aquifer. The safe yield of a groundwater basin approximates the average annual
13 recharge in a basin if the storage in the basin is large. The larger the storage, the
14 more reliable the basin will be in dry period. the amount of water in storage in
15 the Chino Basin is directly proportional to groundwater level.

16 (1999 OBMP Phase I Report p. 2-10; emphasis added)

17 The 1999 Report described the "time history of groundwater storage for the basin", from
18 1933 (6,300,000 af) through 1997 (5,300,000 af):

19 Groundwater storage decreased by about 1,000,000 acre-ft during the 64-year
20 period of 1933 to 1997. . . The lowest level of groundwater storage during the
21 period 1960 to the present occurred in 1977 at the end of a 33-year drought. Prior
22 to 1977, groundwater storage was falling at a rate of about 25,500 acre-ft/yr. The
23 decline in storage was due to drought and groundwater production in excess of
24 sustainable yield. The period of 1978 through 1983 was an extremely wet period.
25 The physical solution with the Chino Basin Judgment was implemented in 1978.
26 The end of the drought and the elimination of basin-wide overdraft caused an
27 increase in storage. Table 2-1 shows the change in storage relative to 1977 (the
28 lowest level of storage) for the period 1965 to 1997. The losses in storage that
occurred during the period 1965 to 1977 have been partially offset by gains in
storage that occurred after 1977.

(*Id.* p. 2-11)⁶¹

Watermaster's Technical Report indicates that the model has been used to calculate
change in storage (Final Technical Report p. 7-13), but discusses only the 198,000-212,000 af

⁶¹ See 1999 OBMP Phase I Report, Table 2-1 and Figures 2-25 and 2-26.

1 change in storage resulting from the "shortfall" in New Yield as of 2029/30. (Id.) Watermaster
2 should provide a complete technical analysis of projected change in storage attributable to basin
3 reoperation and subsequently maintaining Hydraulic Control (through 2059/60), and an
4 assessment of the relationship between projected changes in storage and the projected decline in
5 safe yield.

6 Finally, it is clear from the Technical Report Table 7-9 and Figure 7-13 that Watermaster
7 can and has projected safe yield on an annual basis. Watermaster should provide a complete
8 explanation of how it will adjust its replenishment obligations to reflect future declining safe
9 yield. If safe yield is not recalculated annually, Watermaster should propose how it will "true
10 up" for actual Safe Yield.⁶²

11 **C. To What Extent Can Recharge Be Increased to Maintain Safe Yield and Still
12 Achieve and Maintain Hydraulic Control?**

13 **1. The Technical Report Does Not Answer This Question**

14 The scope of the Technical Report was limited in several respects. The scope did not
15 include "... the planning, design, permitting and construction of expanded recharge facilities
16 ..."; those issues "... will be comprehensively addressed in the recharge master planning effort
17 that is contemplated by the Peace II Measures." (Wildermuth Declaration #2 p. 10, Ins. 10-13)
18 Because recharge capacity was constrained, the Technical Report and modeling have not
19 addressed the question of whether and to what extent replenishment can be increased without
20 interfering with achieving and maintaining Hydraulic Control.

21 **2. Watermaster Should Undertake a Complete Technical Analysis of the
22 Expanded Recharge Versus Hydraulic Control Question**

23 The Technical Report makes assumptions with regard to recharge capacity: (1) current
24 recharge capacity is 61,000 afa; (2) by mid-2008, 91,000 afa of recharge capacity will be
25 available to Watermaster; (3) by reducing periodic maintenance from three to two months, the
26

27 ⁶² When safe yield was increasing (rather than decreasing, as projected), the consequence was that basin storage
28 increased slightly. With declining safe yield, however, a lower safe yield must be reflected in determining
replenishment needs. If that is not done, basin overdraft will increase. Watermaster should commit to replenishing
in accordance with the declining safe yield, which can and should be recalculated annually.

1 91,000 afa of capacity will expand to 104,000 afa; (4) replenishment water will be available to
2 Watermaster 80 percent of the time; (5) replenishment for any overproduction (in excess of
3 Operating Safe Yield) in Dry Year Yield Program ("DYYP") "take" years has been included in
4 the evaluation of recharge capacity. (Final Technical Report pp. 7-7 *et seq.*) Using these
5 assumptions, basin reoperation apparently achieved and maintained Hydraulic Control.

6 If significantly more recharge capacity is made available, will substantially expanded
7 replenishment interfere with hydraulic control? If, for example, the assumptions that water for
8 replenishment will be available for ten out of twelve months in eight out of ten years are overly
9 optimistic, and substantially more recharge capacity is therefore required, would less frequent
10 but much larger replenishment volumes interfere with hydraulic control?

11 Watermaster and the parties have not committed to expand recharge facilities (except,
12 apparently, to increase recharge capacity to 91,000 afa by mid-2008).⁶³ Whether or not there is a
13 present commitment to plan and implement future expansions of recharge capacity, Watermaster
14 should at least perform the complete technical assessments and modeling needed to explain the
15 relationships between recharge capacity, replenishment volumes, safe yield, maintaining
16 hydraulic control, groundwater production, and groundwater levels.

17 **D. To What Extent Can Storage and Recovery Programs Be Undertaken and Still**
18 **Achieve and Maintain Hydraulic Control?**

19 **1. The Technical Report Does Not Answer This Question**

20 The Watermaster Resolution 07-05 Attachment "A" Project Description notes that there
21 currently is only one 100,000 af DYYP storage program with Metropolitan Water District of
22 Southern California ("Metropolitan"). Expanding the DYYP has been under consideration:

23 Metropolitan, the IEUA, and Watermaster are considering expanding this
24 program an additional 50,000 acre-ft to 150,000 acre-ft over the next few years.
25 Watermaster is also considering an additional 150,000 acre-ft in programs with
26 non-party water agencies. The total volume of groundwater storage allocated to
27 storage programs that could overlay the proposed project is about 300,000 acre-ft.

28 ⁶³ The Attachment "A" Project Description states at page 6 that expansion of recharge capacity "... will occur independently from the proposed project." The "required recharge capacity to meet future replenishment obligations is about 150,000 acre-ft, a capacity expansion of about 59,000 acre-ft/yr [over 91,000 afa current supplemental water recharge capacity]."

1 These storage programs, if not sensitive to the needs of hydraulic control, could
2 cause groundwater discharge to the Santa Ana River and result in non-compliance
3 with hydraulic control and a loss in safe yield. There have been no planning
4 investigations that articulate how the expansion from the existing 100,000 acre-ft
program to the future 300,000 acre-ft set of programs will occur and thus this
expansion is not included herein.

5 (Attachment "A" Project Description p. 6) Although confusing, this excerpt suggests that a total
6 400,000 af DYYP is under consideration, that Hydraulic Control and Safe Yield could be
7 affected, and that the Peace II documents and Watermaster's Technical Report do not include
8 any expansion of the DYYP because there are "no planning investigations that articulate how the
9 expansions will occur. . ."

10 The Technical Report repeats the quoted statement, adding:

11 The proposed project will be analyzed with the existing 100,000 acre-ft DYYP
12 because the facilities and operational plans to expand beyond the 100,000 acre-ft
program have not been described in sufficient detail for credible analysis.

13 (Technical Report p. 7-5) The 100,000 DYYP is included in the Baseline and Alternatives 1A
14 and 1B. (*Id.* p. 7-9) Table 7-7 "illustrates the put and take assumptions that have been
15 incorporated into the investigation . . ." (*Id.*), and Figure 7-6 "illustrates the time histories of
16 groundwater pumping, replenishment, and replenishment balance . . ." for Watermaster's
17 modeling simulations. (*Id.* p. 7-10) To run the simulations, Watermaster assumed that the:

18 . . . DYYP starts with a take period in fiscal 2008/09 for two reasons: first the
19 DYYP account has already been almost completely filled ($\approx 90,000$ acre-ft); and
20 it is likely, given the projected rainfall for 2007/08, that Metropolitan may make a
call on the DYYP water stored in the Chino Basin in 2008/09.

21 (*Id.*)

22 **2. Watermaster Should Provide Technical Analysis of the Limitations on**
23 **Future DYYP Expansion of Hydraulic Control Reoperation**

24 The concern has been clearly articulated that storage programs could interfere with
25 hydraulic control.⁶⁴ There appear to be "trade-offs" between maintaining hydraulic control and

26 ⁶⁴ This concern was raised with respect to placing the 50,000 af cap on Local Storage. Future evaluations of the cap
27 were to have included a determination of whether the ". . . accrual of additional Local Storage . . . should be
28 conditioned, curtailed or prohibited if it is necessary to provide priority for the use of storage capacity for those
Storage and Recovery Programs that provide broad mutual benefits to the parties. . ." (Peace Agreement §
5.2(b)(xi))

1 being able to expand storage and recovery programs.⁶⁵ As recently as 2000, the Peace
2 Agreement provided that Watermaster shall be guided by two criteria: (1) the "initial target" for
3 the Storage and Recovery Program is 500,000 af "in addition to the existing storage accounts";
4 and (2) Watermaster shall "... give first priority to Storage and Recovery Programs that provide
5 broad mutual benefits ..." (Peace Agreement § 5.2(c)(iv)).

6 If expanded Storage and Recovery Programs are not going to be pursued, Watermaster
7 should make that clear. If they are, Watermaster should undertake the necessary technical
8 analysis and modeling to at least provide a rough assessment of whether and to what extent
9 Storage and Recovery Programs can be expanded without interfering with maintenance of
10 Hydraulic Control. If the two conflict, Watermaster should explain how it will address that
11 conflict.

12 **3. Watermaster Should Address Whether Significantly Restricting the**
13 **Prospective Use of Chino Basin Groundwater Storage Space Is Consistent**
14 **with the Judgment, the Peace Agreement, and the OBMP**

14 The Judgment states:

15 11. Available Ground Water Storage Capacity. There exists in Chino Basin a
16 substantial amount of available ground water storage capacity which is not
17 utilized for storage or regulation of Basin Waters. Said reservoir capacity can
18 appropriately be utilized for storage and conjunctive use of supplemental water
19 with Basin Waters. It is essential that said reservoir capacity utilization for
20 storage and conjunctive use of supplemental water be undertaken only under
21 Watermaster control and regulation, in order to protect the integrity of both such
22 Stored Water and Basin Water in storage and the Safe Yield of Chino Basin.

20 12. Utilization of Available Ground Water Capacity. Any person or public
21 entity, whether a party to this action or not, may make reasonable beneficial use
22 of the available ground water storage capacity of Chino Basin for storage of
23 supplemental water; provided that no such use shall be made except pursuant to
24 written agreement with Watermaster, as authorized by Paragraph 28. In the

23 ⁶⁵ Dr. Sunding notes the hydraulic control - expanded DYYP "trade-off":

24 The Peace Agreement provides that there is Target Storage of 500,000 acre-feet *in excess* of then
25 existing storage, whereas this report only considers the Safe Harbor quantity of 500,000 acre-feet
26 of storage in total. In some sense, there is a tradeoff between the decision to pursue max-benefit
27 and the feasibility of obtaining the higher amount of storage. It should also be noted, however,
28 that the basin is at the limit of shift capacity for export, and expansion of recharge to achieve
greater storage is costly. Further, the PEIR only considered an additional 250,000 acre-feet of
storage.

(Sunding Macro Report p. 5, fn. 5; emphasis added) This footnote suggests that a reason not to expand the DYYP is
the cost of increased recharge capacity. (It is not clear what is meant by the statement that "the basin is at the limit
of shift capacity for export ...") These statements should be explained.

1 allocation of such storage capacity, the needs and requirements of lands overlying
2 Chino Basin and the owners of rights in the Safe Yield or Operating Safe Yield of
the Basin shall have priority and preference over storage for export.

3 (Judgment ¶¶ 11, 12) The Post-Trial Memorandum reiterated the importance of Chino Basin
4 storage space:

5 Ground Water Storage Contracts. The utilization of excess ground water storage
6 capacity has been recognized in the Judgment. The administration of activities of
7 storing water to utilize that capacity are provided for in underground storage
8 agreements pursuant to Watermaster regulations. This is an enormously
significant aspect of the adjudication, in view of the existence of approximately
2,000,000 acre feet of unused storage capacity within the basin, the largest
resource of its kind in Southern California.

9 (7/11/1978 Post-Trial Memorandum p. 7; emphasis added)

10 The importance of using Basin storage space was reiterated in the 1999 OBMP Phase I
11 Report. A "core value" was:

12 Groundwater Storage. Unused groundwater storage capacity in the Chino Basin
13 is a precious natural resource. The producers will manage the unused storage
14 capacity to maximize the water quality and reliability and minimize the cost of
water supply for all producers. The program will encourage the development of
regional conjunctive use programs.

15 (1999 OBMP Phase I Report p. 3-1; emphasis added) OBMP Goal No. 3, to enhance the
16 management of the Basin, included:

17 Optimize the use of local groundwater storage. Policies and procedures for local
18 storage, cyclic storage and other types of storage accounts will be created to
19 maximize drought protection and improve water quality, and to create an efficient
system to transfer water from producers with surplus water to producers that need
the water.⁶⁶

20 (*Id.* p. 3-3)

21 The OBMP Implementation Plan Program Element 9 calls on Watermaster to "develop
22 and implement" storage and recovery programs. Program Element 9 directs Watermaster to
23 "ensure that Basin water and storage capacity are put to maximum beneficial use while causing
24 no material physical injury." (OBMP Implementation Plan (Peace Agreement Exhibit "B") p.
25 37) Watermaster is required to "exercise Best Efforts" to undertake conjunctive use, seasonal

26
27 ⁶⁶ The Technical Report does not appear to address carry-over storage, local storage, or any storage other than
28 DYYP storage in terms of hydraulic control implications. If total water in non-DYYP storage accounts is on the
order of 200,000 af, how would pumping and use of that water affect the technical analysis of hydraulic control,
water levels, safe yield, and future expansion of the DYYP?

1 peaking, and dry year yield programs. (*Id.* p. 44)

2 If Watermaster's reoperation of the basin for Hydraulic Control results in Watermaster
3 not being able to carry out its Judgment and OBMP obligations, that is a serious problem. This
4 question needs to be fully analyzed and addressed from both the technical and legal perspectives.

5 **E. Can Hydraulic Control Be Achieved and Maintained with Only 400,000 Acre-Feet
6 of New "Controlled Overdraft"?**

7 **1. The Technical Report Does Not Answer this Question**

8 As discussed in Sections IV.A.3 and 4, above, the Technical Report's Alternatives 1A
9 and 1B with unreplenished desalter production of 400,000 af results in substantially greater
10 overdraft (decrease in groundwater storage) than 400,000 af. This was caused by overestimating
11 New Yield; when New Yield was determined to be substantially lower than anticipated, the
12 resulting "shortfall" in Santa Ana River recharge translated into a "reduction in storage in excess
13 of the 400,000 acre-ft provided for in the Re-operation schedules [Technical Report Tables 7-
14 6(a) and (b) and Resolution Attachment "E"]." (Wildermuth Declaration p. 5, lns. 11-12)

15 Mr. Wildermuth has also stated generally that:

16 The model analysis has shown that to reliably achieve Hydraulic Control, at least
17 400,000 acre-ft of controlled overdraft will be necessary. Having completed
18 extensive modeling analysis, it is my opinion that this amount is a minimum
19 amount that will be needed. It is possible that in the future we may determine that
additional controlled overdraft is necessary but we will not know for sure until we
initiate the proposed measures.

20 (Wildermuth Declaration #2 p. 9, lns. 5-9)⁶⁷

21 **2. Watermaster Should Provide Technical Analysis of Its Proposed Project with
22 Overdraft (Decrease in Groundwater Storage) Limited to 400,000 Acre-Feet
as a Result of Unreplenished Desalter Production**

23 Watermaster states in its Motion that: "[t]he development of the policy aspects of Basin
24 Re-operation were guided at every step by the highest level of technical analysis . . ." (Motion p.
25 7, lns. 6-7) Its technical review of its Re-operation Strategy is "[p]erhaps the most important
26

27 ⁶⁷ It is not clear whether Mr. Wildermuth is referring to the "shortfall" caused by having overestimated New Yield,
28 or to other issues. There is no discussion of alternative means of securing hydraulic control other than by further
mining the basin, such as by installing additional desalter wells closer to the river.

1 document that has been submitted to assist the Court . . ." (*Id.* p. 10, ln. 1)

2 It does not appear that Watermaster's technical work and modeling have actually
3 analyzed the proposed project with overdraft (decreases in groundwater storage) limited to
4 400,000 af as a result of unreplenished desalter production. Watermaster's Peace II Measure to
5 amend Judgment Exhibit "I", the "central document for which Watermaster seeks court approval,
6 limits additional controlled overdraft to 400,000 af. The technical analysis does not discuss the
7 decreases in groundwater storage that will result from 400,000 af of unreplenished desalter
8 pumping, however.

9 **F. Will a "New Equilibrium" Be Achieved at the End of the Basin Reoperation Period**
10 **(2030)?**

11 **1. Watermaster's Motion**

12 The concept that a "new equilibrium" will be realized at the end of the reoperation period
13 (2030) is not addressed in Watermaster's Motion. Watermaster notes only that ". . . at the end of
14 the period of Basin Re-operation, a replenishment obligation relative to the desalters will need to
15 be satisfied."⁶⁸ (Motion p. 15, lns. 17-18)

16 **2. The Technical Report Does Not Answer This Question**

17 Each planning alternative was evaluated for six parameters:

18 Each planning alternative was evaluated to determine changes in groundwater
19 level, changes in Santa Ana River discharges, changes in basin balance, hydraulic
control effectiveness, changes in safe yield, and potential subsidence.

20 (Final Technical Report p. 7-12) The projected achievement of a "new equilibrium" was not an
21 evaluation parameter. In fact, "new equilibrium" does not appear to be discussed in the
22 Technical Report.

23 Constraints placed on the scope of the technical work may simply have made any
24 assessment of a "new equilibrium" impossible. Mr. Wildermuth explains that it was outside the
25 scope of his investigation to "optimize groundwater production and replenishment projections"
26 (Wildermuth Declaration #2 p. 3, lns. 24-25), or to ". . . take into account pro-active measures
27

28 ⁶⁸ It is clear from Resolution Attachment "E" that replenishment of desalter pumping is required well before 2030.

1 that might be prudently undertaken to expand recharge capability . . ." (*id.* p. 8, lns 23-24).

2 Presumably, one key to achieving a "new equilibrium" is to have sufficient recharge capacity
3 and replenishment supplies available.

4 In addition, assumptions and constraints used in the technical and modeling analyses are
5 unlikely to persist after 2030 (or even that long). Groundwater production is unlikely to be
6 "capped" beginning in 2024/25 at 205,166 af. (See Technical Report Table 7-8) Controlled
7 overdraft of 400,000 af is described as a "minimum amount" needed for Hydraulic Control. If
8 more than 400,000 af is overdrafted, there will be an accrued replenishment obligation to be met
9 after 2030 to "mitigate" for a "shortfall" in assumed New Yield. (Technical Report p. 7-13)
10 Additional recharge and increases in basin storage (Local Storage, DYYP, and other conjunctive
11 use programs) also presumably factor into whether a "new equilibrium" can and will be realized.

12 **3. Analysis of a "New Equilibrium" Is Deferred to Future Updates of the**
13 **Recharge Master Plan**

14 Only the Peace II Agreement mentions a "new equilibrium". In discussing updating the
15 Recharge Master Plan, the agreement states:

16 Watermaster will update and obtain Court approval of its update to the Recharge
17 Master Plan to address how the Basin will be contemporaneously managed to
18 secure and maintain Hydraulic Control and subsequently operated at a new
equilibrium at the conclusion of the period of Re-Operation.

19 (Peace Agreement § 8.1)

20 **4. Whether and How a "New Equilibrium" Can and Will Be Achieved at the**
21 **End of the Basin Reoperation Period Should Be Addressed Before Basin**
Reoperation Is Approved

22 "New equilibrium" is completely undefined. There is no definition or description of
23 basin management after the "period of re-operation" concludes – if it does – in 2030. One of the
24 most important questions for Watermaster and the parties to address is whether "controlled
25 overdraft" of the basin will stop after an additional 400,000 af is mined. If the 400,000 is a
26 "minimum", presumably Watermaster and the parties will return to the court and seek approval
27 for additional mining.

28 However, given the very qualitative descriptors used to assess the state of hydraulic

1 control, e.g., "weak" and "robust", it is unclear how Watermaster will monitor and assess actual
2 conditions, and then determine whether some qualitative target has been achieved, or whether yet
3 more "controlled overdraft" will be "required" to achieve such a nonspecific condition. How
4 will the court be able to assess a future request for more mining without having a clear definition
5 of the "new equilibrium" that was to have been reached by 2030? A technical and legal
6 evaluation of the "new equilibrium" issue should be made available to the court before the court
7 issues its ruling.

8 **G. What Recharge Assurances Would Be Adequate?**

9 **1. Watermaster's Motion**

10 Watermaster's Motion states that the proposed amendment to Judgment Exhibit "I" and
11 the Peace II Agreement contain commitments to ensure that "sufficient recharge capacity exists
12 in the future . . ." ⁶⁹ (Motion p. 5, Ins. 24-25) The Motion does not reflect any Watermaster
13 commitment to actually develop additional recharge capacity in the future; the "commitment" is
14 to update and implement the recharge master plan, which may or may not call for increases in
15 recharge capacity. The Motion references Articles VII and VIII of the Peace II Agreement,
16 noting that they describe:

17 . . . the measures that Watermaster will take to continue to develop the recharge
18 capacity of the Basin in preparation for the time when the controlled overdraft
period is complete.

19 (*Id.* p. 11, Ins. 22-25)

20 No "measures" are described. Watermaster implies that no additional recharge facilities
21 may be needed until the end of the "Re-operation period", even though the Exhibit "E" tables
22 indicate otherwise:

23 The parties recognize that at the end of the period of Basin Re-operation, a
24 replenishment obligation relative to the desalters will need to be satisfied. During
25 the period of Re-operation demands on the Basin will continue to grow, and at the
26 end of the Re-operation period Watermaster's recharge capabilities may not be
27 sufficient to meet to the desalter replenishment obligation unless this recharge
capacity continues to develop throughout the Re-operation period. The proposed
Judgment amendment regarding Re-operation describes measures that will be
taken in order to continually update and implement a Recharge Master Plan in

28 ⁶⁹ See discussion of Judgment Exhibit "I" assurances, above, at Section IV.A.7.

1 order to ensure that sufficient recharge capacity exists in the future, and these
2 commitments are further mirrored in the Peace II Agreement Article VIII.

3 (*Id.* p. 15, lns. 17-26; emphasis added) (The Technical Report is clear that recharge capabilities
4 are not sufficient; to say they "may not be sufficient" is troublesome.) The only mention of
5 specific quantities of recharge is in regard to the agreement to physically recharge at least 6500
6 AFA in MZ-1 as part of Watermaster's replenishment water program, as set forth in the Peace II
7 Agreement Article VIII. (*Id.* p. 19, lns. 12-23)

8 The Motion does not discuss actual future additional recharge by Watermaster, the
9 "commitments" which are "mirrored" in Peace II Agreement Article VIII, the "continuing
10 covenant", or any other provisions in the Peace II Agreement. There is no useful discussion of
11 either the "contingency plan" or future recharge master plans, or of any mechanism through
12 which the court might enforce Watermaster's "commitment".

13 **2. Watermaster's Technical Report Does Not Analyze Future Recharge and**
14 **Replenishment Issues**

15 The Technical Report's discussion of the current constraints on recharge capacity is not
16 encouraging. The Technical Report states that:

17 For this investigation, the supplemental water recharge capacity in the basin was
18 estimated currently (2007) to be about 61,000 acre-ft/yr, which will reach about
19 91,000 acre-ft/yr when planned improvements are completed in mid-2008. The
future replenishment obligation exceeds the supplemental water recharge capacity
available to Watermaster by variable amounts that increase over time.

20 (Technical Report p. 7-7) There is no discussion of the "improvements" to be completed by
21 mid-2008. The Technical Report stretches the 91,000 afa to 104,000 afa:

22 In fact, the required replenishment capacity exceeds the assumed maximum
23 capacity of about 91,000 acre-ft/yr after 2026/27. The replenishment capacity
24 was increased to about 104,000 acre-ft/yr by reducing the duration of the annual
25 maintenance period from three to two months. Presumably, this can be
accomplished without any new facilities. This adjustment in replenishment
capacity was included in [the] final Baseline Alternative and Alternatives 1A and
1B.

26 (*Id.* p. 7-11) There is no support for the assumptions that annual maintenance periods can be
27 shortened or that 104,000 acre-feet per year of replenishment can be accomplished without any
28 new facilities. The Technical Report makes it clear that there are no plans to expand

1 replenishment capacity "... beyond the recharge improvements that are expected to be
2 completed in 2008." (*Id.* p. 7-10)

3 The scope of the technical work was restricted. Mr. Wildermuth stated that:

4 It was outside the scope of my investigation to optimize the groundwater patterns
5 and associated replenishment.

6 ... The model does not take into account pro-active measures that might be
7 prudently undertaken by Watermaster to expand recharge capability through
8 recharge improvements, including aquifer storage and recovery projects.

8 (Wildermuth Declaration #2 p. 3, lns. 24-25; p. 8, lns. 23-25) As a consequence of the
9 limitations on Mr. Wildermuth's analysis, presumably at Watermaster's direction,⁷⁰ no current
10 technical analysis or modeling is available to help the parties, the Watermaster, or the court
11 evaluate the potential to develop new recharge capacity or the effect that future increased
12 recharge would have on maintaining either hydraulic control or safe yield.

13 **3. Peace II Agreement Assurances Regarding Recharge Restrict Watermaster**
14 **Discretion**

15 Certain problems with the Peace II Agreement recharge assurances are discussed, above,
16 in Section IV.A.7. The comments on the need to revise proposed Exhibit "I" Paragraph 2(b)(6)
17 also apply to Peace II Agreement Paragraph 7.3.

18 There are at least two additional problems with Peace II Agreement Article VIII. The
19 first is that, although Watermaster is charged with updating its Recharge Master Plan and
20 obtaining court approval of plan updates,

21 The Recharge Master Plan will be jointly approved by IEUA and Watermaster. . .
22 With the concurrence of IEUA and Watermaster, the Recharge Master Plan will
23 be updated and amended as frequently as necessary with Court approval. . .

23 (Peace II Agreement Art. VIII, ¶ 8.1) In addition, "... capital improvements for recharge basins
24 that do or can receive recycled water . . . must be mutually approved". (*Id.* ¶ 8.1(b))

25 Presumably, it is IEUA's approval that is required. These provisions would hamstring
26 Watermaster's recharge master planning and implementation if IEUA does not give its approval.

27
28 ⁷⁰ Mr. Manning directed the technical work and presumably dictated its scope. (Manning Declaration ¶¶ 3, 4, 5)

1 It is Watermaster's responsibility to administer the Judgment's physical solution, which
2 requires the ability and discretion to provide for recharge capacity and replenishment.
3 Watermaster is the "steward of the Basin" and "arm of the Court charged with administering the
4 terms of the 1978 Judgment."⁷¹ The need for IEUA's approval should not stand in the way of
5 Watermaster exercising its full powers and discretion.

6 The second further problem with Article VIII stems from the provisions of the Section
7 8.3 "Continuing Covenant". Just as with Section 7.3 and proposed Judgment Exhibit "T"
8 Paragraph 2(b)(6), there is no guidance as to what is meant by "substantial compliance".
9 However, Section 8.3 does answer the question of who will determine whether there is
10 "substantial compliance". Section 8.3 provides that:

11 . . . the annual availability of any portion of the 400,000 acre-feet set aside as
12 controlled overdraft as a component of the Physical Solution is expressly subject
13 to Watermaster making an annual finding about whether it is in substantial
compliance with the revised Watermaster Recharge Master Plan pursuant to
Paragraphs 7.3 and 8.1 above.

14 (Peace II Agreement Art. VIII, § 8.3; emphasis added)

15 The "Long-term risks attributable to un-replenished groundwater production by the
16 Desalters" which Section 8.3 purports to address are of great concern.⁷² Watermaster's
17 "continuing covenant" does not provide satisfactory assurances that the long-term risks will be
18 avoided, although the court on its own motion can inquire into all Watermaster actions, including
19 its "annual finding" of "substantial compliance", and review *de novo* the question at issue.

20 (Judgment ¶ 31)

21 **4. The Peace II Agreement Recharge Assurances Do Not Expand Existing**
22 **Watermaster Recharge Obligations**

23 Watermaster is charged with carrying out the Judgment's Physical Solution, including
24 obtaining "supplemental water replenishment of Basin Water" from "any available source".
25 (Judgment ¶¶ 41, 49) In the Peace Agreement, "... the Parties expressly consent to
26 Watermaster's performance . . ." of certain actions, including approving all supplemental water

27 ⁷¹ *Id.* p. 2, ¶ 6.

28 ⁷² See discussion, above, at Section VI.F.

1 recharge to the Chino Basin. (Peace Agreement ¶ 5.1(a) [p. 20]) More specifically, Watermaster
2 is charged to "exercise its Best Efforts" to:

- 3 (i) protect and enhance the Safe Yield of the Chino Basin through
4 Replenishment and Recharge;
- 5 (ii) ensure there is sufficient Recharge capacity for Recharge Water to meet
6 the goals of the OBMP and the future water supply needs within the Chino
7 Basin . . .
- 8 (ix) coordinate, facilitate and arrange for the construction of the works and
9 facilities necessary to implement the quantities of Recharge identified in
10 the OBMP Implementation Plan.

11 (*Id.* ¶5.1(e) [pp. 20-21])

12 The OBMP Implementation Plan Program Element 2 includes the development and
13 implementation of a "comprehensive recharge program", and the need for such a program is
14 described in detail in the OBMP Phase 1 Report. The Implementation Plan discusses the benefits
15 of increasing stormwater recharge, the projected growth of annual replenishment obligations,
16 assumptions regarding the availability of replenishment water,⁷³ and the availability and need for
17 future replenishment. Because Watermaster cannot own recharge projects, but must arrange
18 through contracts for the construction and operation of recharge facilities, the OBMP
19 Implementation Plan provided for the preparation of recharge master plans.

20 The recharge master plan (Phase 2) was directed to produce a priority list of recharge
21 projects and provided that Watermaster would coordinate with the appropriate public agencies to
22 identify new supplemental water projects. Although surplus recharge capacity was stated to be
23 available, the plan warned:

24 The surplus recharge capacity could be used up quickly by future replenishment
25 needs and implementation of storage and recovery programs. The availability of
26 in-lieu recharge capacity for in-lieu replenishment . . . is not a certainty. In the
27 present mode of basin management, in-lieu recharge capacity is available on an ad
28 hoc basis and requires the cooperation of water supply agencies that have access
to supplemental water. If a substantial storage and recovery program is
implemented, a major component of it may be satisfaction of replenishment
obligations by in-lieu recharge.

(OBMP Implementation Plan p. 13)

⁷³ The OBMP Implementation Plan assumes replenishment water would be available seven out of ten years.
(OBMP Implementation Plan p. 13)

1 The parties to the Peace Agreement have approved Watermaster proceeding as
2 provided. . . Implementation measures that follow preparation of a Recharge
3 Master Plan will be predicated on the implementation actions and schedules that
4 are produced in the Master Plan and the Peace Agreement. However, a strong
5 financial motivation is created for the prompt funding of local recharge projects as
6 soon as possible because the members of the Appropriative Pool under the
7 Judgment will incur replenishment obligations if the safe yield of the Basin is not
8 enhanced by a sufficient quantity to cover the Chino I expansion, and the Chino II
9 Desalters as well as the individual over-production obligations.

6 (Id. p. 22)

7 Watermaster's existing obligations under the Judgment, Peace Agreement, and OBMP
8 are more clear-cut than the assurances included in Watermaster's proposed amendment to
9 Judgment Exhibit "I" and Peace II Agreement Articles VII and VIII. It is not clear that
10 Watermaster is adding to existing commitments.

11 **5. Recharge Assurances Are Critical, Given the Substantial Increase in**
12 **"Controlled Overdraft"**

13 "Forgiveness" of replenishment assessments for 400,000 acre-feet of desalter production
14 takes the pressure off of investing in additional recharge capacity. Just as the original 200,000 af
15 of Operating Safe Yield was allowed to "reduce the burden of assessment", the "forgiveness"
16 associated with controlled overdraft very substantially eases the burdens of reaching 40,000 acre-
17 feet of desalter pumping.⁷⁴

18 The justification for the original 200,000 acre-feet of mining is said to have been
19 "because of the relative uncertainty of the precise extent of safe yield", and because the basin has
20 "approximately eight million acre feet of water in usable storage". Provision was made for
21 "offsetting the limited mining by requiring the Appropriative Pool to take the burden of
22 reductions in the Safe Yield if such reduction should occur in the future. It was said the

23
24 ⁷⁴ (See Plaintiff's Post-Trial Memorandum (7/11/1978) p. 6, ¶ 2) The Sunding analyses support the notion that
25 "forgiveness" of replenishment assessments as part of basin reoperation provides a reasonable distribution of
26 benefits to parties to the Judgment. This is apparently not the case for increasing recharge capacity:

26 Among individual agencies in the Basin, the benefit of an increase in recharge capacity is
27 distributed exclusively to agencies on the extensive margin of water supply. . .
28 . . . policies which lead [to] an increase in Basin safe yield are not only more valuable to agencies
in the Basin than an increase in recharge capacity, but the benefits are also distributed more
equally.

28 (Sunding Report #2 pp. 5-6)

1 maximum amount of extraction (200,000 acre-feet) "would result in ground water changes in the
2 Basin of from zero to 16 feet, which is well within acceptable limits". (Plaintiff's Pretrial
3 Memorandum p. 12, lns. 4-22; Plaintiff's Post-Trial Memorandum p. 6, lns. 25-28; p. 7, lns. 1-8)

4 There are important distinctions to be drawn between the Judgment's allowance of
5 200,000 acre-feet of "controlled overdraft" as part of "operating safe yield" and the additional
6 400,000 afa of controlled overdraft Watermaster is now asking for. The 200,000 af was limited
7 to a maximum of 10,000 afa. (Judgment Exhibit "T" ¶ 2(c)) Watermaster has limited the
8 quantity allowed to 5,000 afa, and the 200,000 acre-feet will have been exhausted by 2017. With
9 projected desalter pumping of nearly 40,000 afa to continue indefinitely, unreplenished desalter
10 pumping will be five times the current 5,000 afa, or more.⁷⁵

11 Further, when the 200,000 acre-feet was allowed in 1978, the safe yield calculation was
12 not based on extensive data; safe yield has actually been larger than 140,000 for decades,⁷⁶ and
13 only now is again at about 140,000. A steady significant decline is now forecast. There are
14 vastly more data to support the Technical Report's declining safe yield projections than were
15 available in 1978 when safe yield was first estimated. A strong recharge program is essential to
16 offset the declining safe yield and the substantially increased annual overdraft of the basin.

17 **H. Are There Alternatives to Basin Reoperation for Hydraulic Control Which Would**
18 **Allow the Use and Recharge of Recycled Water Which Will Be Included in CEQA**
Analysis?

19 **1. CEQA Analysis Will Be Limited**

20 As discussed in Section V.B, above, Watermaster anticipates that only desalter expansion
21 will be subject to CEQA review. IEUA is the acknowledged Lead Agency for CEQA review.
22 (Peace II Agreement Article II)

23 **2. Watermaster Should Provide Full Analysis of Potential Adverse Effects of**
24 **Basin Reoperation for Hydraulic Control if the IEUA CEQA Review Is**
25 **Limited to Desalter Expansion**

26 Watermaster's Technical Report and Mr. Wildermuth's Declarations express conclusions

27 ⁷⁵ See Technical Report pp. 7-9, 7-13, and Tables 7-6(a) and 7-6(b).

28 ⁷⁶ See Technical Report Figure 7-13. Safe Yield can now be recalculated every year. Since Safe Yield is projected to significantly decline, annual recalculation or a reconciliation mechanism is essential.

1 that neither basin reoperation itself nor any of the consequences of basin reoperation will cause
2 "Material Physical Injury", the contractual standard set by the Peace Agreement. As noted
3 several times, however, Watermaster's actions must be consistent with the Judgment and its
4 Physical Solution, must be in the public interest, and must carry out the mandate of California
5 Constitution Article X, Section 2.

6 Analysis of whether the proposed Basin reoperation satisfies those more stringent tests
7 will likely be the only comprehensive analysis that is made of Watermaster's proposed program.
8 Because CEQA review will almost certainly be quite limited, unless Watermaster's technical
9 analysis is complete and "robust", there will be no adequate analysis of the consequences and
10 implications of Watermaster's proposed Basin reoperation strategy, and no comprehensive
11 evaluation of potential mitigation actions that should be identified and undertaken.

12 **3. Full Analysis Should Include Alternatives to Hydraulic Control for Recycled**
13 **Water Recharge**

14 Watermaster's Motion states that it is of "paramount importance" to reoperate the basin
15 to allow for increased use of recycled water. (Motion p. 16, lns. 15-16) Watermaster and the
16 parties have apparently determined that "optimizing" the use and recharge of recycled water is of
17 highest priority and value to the basin, and commitments have already been made to achieve
18 hydraulic control. (*Id.* p. 5, lns. 6-12)

19 The only mention found in the Peace II documents of any alternative to hydraulic control
20 for recycled water use was by Dr. Sunding. As an alternative to hydraulic control reoperation:
21 "... recycled water would have to be desalted prior to recharge. Costs are not available at this
22 time for this option." (Sunding Macro Analysis p. 3, ln. 2) If there are practical alternatives for
23 recycled water use that do not result in basin overdraft and do not change the entire gradient of
24 the basin, and possibly maintain safe yield and allow additional storage and recovery programs,
25 those alternative should be identified and evaluated. The economics of recycled water use and
26 recharge arguably should not be of paramount importance to Watermaster, given the
27 Watermaster's overall basin management obligations under the Judgment.

28 ////

1 **I. Is Basin Reoperation for Hydraulic Control Protective of the Basin Consistent with**
2 **California Constitution Article X, Section 2?**

3 Watermaster's Technical Report has raised important questions with regard to issues
4 Watermaster must address. The fact that safe yield has just been determined to be declining
5 significantly should by itself give Watermaster reason to reconsider its management priorities
6 and objectives. Watermaster should provide the court with a complete assessment of all basin
7 issues and options and at least identify and discuss the potential "trade-offs" that are involved in
8 pursuing one basin operation strategy versus another.

9 Watermaster was to file the 2006 State of the Basin Report by July 31, 2007. That report
10 was to include "a reconciliation of pumping and safe yield for each and every year since 1978
11 and for the combined period of years from 1978 to current." The reconciliation was to "provide
12 the court with a clear and complete basis for consideration of any re-operation proposals for
13 Chino Basin in connection with the Peace II Agreement process..." Further, the reconciliation
14 was to "clearly explain whether, and the extent to which, *safe yield* is being maintained and
15 overproduction is being replenished by Watermaster." (Order Concerning OBMP Status Report
16 2006-02, Future Desalting Plans, and MZ-1 Long-Term Plan, dated May 23, 2007, p. 3, ¶ 3.)
17 Watermaster has yet to provide the Court with the accounting reconciliation ordered six months
18 ago. It would behoove Watermaster to present this reconciliation to the Court at the hearing on
19 November 29, 2007.

20 The parties proclaim that they and Watermaster have unanimously decided to proceed
21 with the Basin reoperation strategy. They should put this decision into context for the court so
22 the court fully understands the potential "trade-offs" and the consequences of Basin reoperation.
23 The court requires that the decisions that have been made, and the consequences of Watermaster
24 proceeding as proposed, are put into context – both historical and prospectively. The 2006 State
25 of the Basin Report should put the Basin reoperation strategy in perspective. The State of the
26 Basin Report "is intended to be an engineering report on the physical state of the basin, in which
27 basin conditions are compared with a pre-OBMP baseline in order to measure changes in basin
28 condition, the effectiveness of the OBMP, and the effects of any reoperation of the basin."

1 (Order Re: Receiving OBMP Status Reports and Annual Reports and Further Action, dated
2 February 16, 2007, p. 3, lns. 11-14.)

3 VII. RECOMMENDATIONS

4 As noted in the Introduction, testimony at the November 29, 2007, hearing will, we hope,
5 address many of the questions raised herein. A preliminary recommendation is that Watermaster
6 conduct further technical analysis and modeling on a range of issues. Watermaster should
7 respond with either argument that additional analysis is not necessary, or provide the court with
8 the recommended technical analysis or a commitment to a schedule for completing the work and
9 submitting the further analysis to the court.

10 Questions have also been raised as to certain legal issues. Final recommendations cannot
11 be developed without the benefit of Watermaster's detailed, point-by-point responses to the
12 questions raised. Watermaster could submit a Memorandum of Points and Authorities in support
13 of its Motion, a specific response to these Preliminary Comments and Recommendations, or
14 both.

15 Watermaster and the parties acknowledge the great importance of the court's decision in
16 this matter. Watermaster cautioned:

17 The Basin Re-operation strategy is a very large project with significant
18 consequences that will have impacts for future generations. The initiation of a
project of this magnitude necessitates a high degree of caution.

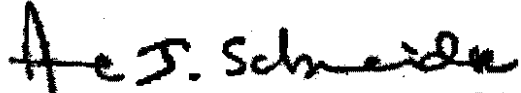
19 (Motion p. 12, lns. 8-10; emphasis added)

20 Watermaster's Motion makes it clear that the parties are very protective of areas that they
21 believe are within their contractual rights to pursue, and that they can change or amplify
22 agreements without court approval. It is the case that parties can contractually proceed in
23 various ways which do not raise the issue of whether Watermaster would be acting in a manner
24 that is consistent with the Judgment. However, there are certain areas, as Watermaster's Motion
25 acknowledges, which the court must continue to oversee with vigor.

26 Watermaster now seeks court approval pursuant to Judgment Paragraphs 15 and 31. The
27 court must inquire and satisfy itself that Watermaster's proposed reoperation is consistent with
28 the Judgment, consistent with the Judgment's physical solution, and consistent with the

1 fundamental premise that the groundwater basin must be protected in the public interest and
2 consistent with California Constitution Article X, Section 2. The court should direct
3 Watermaster to address the questions raised herein, including technical and legal analyses, before
4 the court rules on Watermaster's Motion.

5 Dated: November 27, 2007

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7 Anne J. Schneider, Special Referee

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ATTACHMENT 1

**SUMMARY OF MODEL-RELATED ANALYSES PERTINENT TO
INTERPRETATION OF FINAL CBWM TECHNICAL REPORT**

Summary of Model-Related Analyses Pertinent to Interpretation of Final CBWM Technical Report

TO: Anne J. Schneider
Ellison, Schneider & Harris

FROM: Joseph C. Scalmanini

DATE: November 26, 2007

PROJECT NUMBER: 05-6-111

In response to your request, following is a brief summary of model-related analyses that have been conducted by Chino Basin Watermaster, prior to the recently completed Watermaster 2007 Model, and are pertinent to interpretation of the 2007 CBWM Groundwater Model Documentation and Evaluation of the Peace II Project Description Final Report prepared by Wildermuth Environmental Inc. (WEI), November 2007. In large part, the following is based on review of two earlier WEI reports, both of which report the results of planning-level simulations, utilizing the earlier Updated Watermaster 2003 Model, of hydraulic control alternatives. Those two reports, the draft Analysis of Future Replenishment and Desalter Plans Pursuant to the Peace Agreement and Peace II Process, April 2006, and Addendum to the Draft April 2006 Report Analysis of Future Replenishment and Desalter Plans Pursuant to the Peace Agreement and Peace II Process, December 2006, are both referenced in WEI's 2007 Final Report and are available on Watermaster's website http://www.cbwm.org/rep_engineering.htm.

Watermaster's original analyses of future hydraulic control alternatives were documented in a draft report Analysis of Future Replenishment and Desalter Plans Pursuant to the Peace Agreement and the Peace II Process by Wildermuth Environmental Inc. (WEI) in April, 2006. The results of 13 scenarios were described and tabulated in that report after simulation of those scenarios with Watermaster's Updated 2003 Numerical Groundwater Flow Model. One scenario was run to examine the effect of not proceeding with desalters and the associated replacement pumping in the southern part of the Basin, and the other 12 scenarios involved some degree of either continuing pumping associated with Desalters I and II, or expanding those desalters and/or constructing an additional Desalter III. In order to examine the potential formation of hydraulic control, the 12 desalter scenarios were divided into four groups, each of which was simulated with different amounts of replenishment for the desalter pumping; each of the four groups included scenarios where all, half, or none of the desalter pumping was replenished. The focus of those analyses was to examine whether, at half replenishment of all

desalter pumping through the term of the Peace Agreement, hydraulic control would form, and to estimate resultant changes in groundwater storage and safe yield of the Basin.

None of the half-replenishment alternatives examined in the April 2006 WEI report showed complete formation of hydraulic control. As a result, subsequent analyses were conducted with Watermaster's Updated 2003 Model to examine two similar scenarios known as the West Desalter or Chino Creek alternative, which also focused on whether hydraulic control would form at half replenishment of all desalter pumping through the term of the Peace Agreement, and which also estimated resultant changes in groundwater storage and safe yield of the Basin. The results of the West Desalter/Chino Creek analyses were reported in Addendum to the Draft April 2006 Report Analysis of Future Replenishment and Desalter Plans Pursuant to the Peace Agreement and the Peace II Process by WEI in December, 2006. That report utilized a format similar to that of WEI's April 2006 report and included a summary Table 3-3 that carried forward the results of the 13 scenarios in the April 2006 report and added the results of the West Desalter/Chino Creek scenarios at half replenishment. A copy of that Table 3-3 is attached for reference.

Of interest in WEI's Table 3-3 with regard to the Watermaster's current proposal are several items. First, it is notable that, prior to analysis of Watermaster's current proposal with the recently completed 2007 Model, there was no analysis of any scenario that involved controlled overdraft of just 400,000 acre-feet (where "controlled overdraft" here means not replenishing a certain amount of desalter pumping). All the focus on reduced replenishment in the April and December 2006 WEI reports was on half-replenishment of desalter pumping. In the April 2006 analyses, half replenishment in the four analyzed alternatives ranged from 462,000 to 615,000 af. The resultant changes in groundwater storage (overdraft) as a result of half replenishment ranged between 334,000 and 376,000 af, which are in the general range of about 60 to 75 percent of the amount of water not replenished. (Presumably, the difference between groundwater storage decline and non-replenishment was the result of "new yield" contributing to recharge of the Basin.) Ultimately, however, the various alternatives analyzed in April 2006 did not fully achieve hydraulic control, so subsequent analyses were undertaken to modify the distribution of desalter pumping to achieve hydraulic control, i.e. analyze the addition of a West Desalter/Chino Creek well field to the Desalter I and II well fields.

A second notable result in Table 3-3 is that, at half replenishment, a combination of Desalters I and II with a new Chino Creek Desalter Well Field was projected to result in a decrease in groundwater storage of about 340,000 af. Total pumping and half replenishment (full replenishment and no replenishment were not reported in December 2006) were comparable to two of the previously analyzed (April 2006) alternatives, so it would appear that the amount of unreplenished production was about 490,000 af. It is difficult to exactly reconcile the numbers but the ultimate conclusion and recommendation from WEI in its December 2006 report were

that Watermaster incorporate provisions in the Peace II term sheet to "reduce the storage in the Basin to ensure hydraulic control ... the anticipated reduction in storage will be between 350,000 to 400,000 acre-ft" (emphasis added). That range is now in notable contrast to the proposed reoperation strategy that would reduce groundwater storage by more than 600,000 af.

A third notable result in Table 3-3 is that, with the exception of the No-Desalter alternative (which resulted in a decrease in safe yield, to about 135,000 afy), all desalter alternatives resulted in projected increases in the safe yield of the Basin. For all the half-replenishment scenarios, the safe yield was projected to increase into the general range of about 160,000 to 164,000 afy; for the West Desalter/Chino Creek scenarios, which were interpreted to achieve hydraulic control, the safe yield was projected to increase to about 161,000 afy. All the latter safe yield values are now in notable contrast to the proposed reoperation strategy that would result in a continuously declining safe yield, to about 127,000 afy, by the end of the Peace Agreement term (2030).

It is unclear how the current proposal to not replenish 400,000 af of desalter pumping was technically derived. The 2007 Model was not completed (calibrated and ready for analysis of basin operational alternatives) until late October 2007, and has only been used to simulate the effects of reoperation as now proposed. The 2007 Model has not been used to analyze anything other than what is currently proposed, and was not available to be used to "guide" the development of the ultimate proposed reoperation strategy. All previously simulated alternatives that achieved hydraulic control included "half" replenishment, which equated to not replenishing about 490,000 af of total desalter pumping. All previously simulated alternatives resulted in projected changes in groundwater storage that were less than about 375,000 af; the only two alternatives that achieved hydraulic control had projected decreases in groundwater storage of about 340,000 af. Ultimately, as noted above, WEI recommended that Basin storage be reduced to ensure hydraulic control, and noted that the anticipated reduction in storage would be between 350,000 and 400,000 af. It is unclear how those alternatives were reconfigured into the current proposal that would replenish more of the desalter pumping (not replenishing 400,000 af instead of 490,000 af), still achieve hydraulic control, but result in nearly twice as much depletion of groundwater storage (626,000 to 676,000 af instead of 340,000 af). It is illogical that increasing the replenishment of desalter pumping would result in lower groundwater levels and decreased groundwater storage. No explanation of these changes has been provided, but is needed to understand the significant changes in Basin response from the last technical analysis during formulation of the Basin reoperation strategy to the recent technical analysis (with the 2007 Model) of the proposed reoperation strategy.

Attachment: Table 3-3 from WEI, December 2006.

**Table 3-3
Summary of Yield and Storage Change Projections for Each Alternative¹**

Dewater Plan	Dewater Replenishment Plan	Safe Yield Based on Last Ten Years of Simulation, 2021 through 2030					Safe Yield for the Remaining Period of the Peace Agreement, 2031 through 2039				
		Pumping	Change in Storage	Replenishment	Safe Yield	Δ Safe Yield ²	Pumping	Change in Storage ³	Replenishment	Safe Yield	Δ Safe Yield ⁴
		(acre-ft)	(acre-ft)	(acre-ft)	(acre-ft/yr)	(acre-ft/yr)	(acre-ft)	(acre-ft)	(acre-ft)	(acre-ft/yr)	(acre-ft/yr)
Dewaterers I & II at 29.2 mgd	Full	2,810,000	17,000	1,071,000	156,800	3,600	6,279,000	33,000	2,392,000	156,800	4,800
	Half	2,810,000	-114,000	883,000	161,300	9,300	6,279,000	-355,000	1,930,000	158,760	7,780
	None	2,810,000	-270,000	694,000	164,600	12,600	6,279,000	-771,000	1,468,000	161,600	9,600
Dewaterers I, II at 29.2 mgd and Expanded II at 3.9 mgd	Full	2,653,000	53,000	1,122,000	158,400	6,400	6,359,000	90,000	2,485,000	158,560	8,560
	Half	2,653,000	-111,000	908,000	163,400	11,400	6,359,000	-356,000	1,977,000	160,960	8,960
	None	2,653,000	-286,000	694,000	167,300	15,300	6,359,000	-609,000	1,468,000	163,280	11,280
Dewaterers I, II at 29.2 mgd and Dewaterer III at 3.9 mgd	Full	2,653,000	61,000	1,122,000	158,200	7,200	6,359,000	108,000	2,485,000	158,200	7,200
	Half	2,653,000	-100,000	908,000	164,500	12,500	6,359,000	-334,000	1,977,000	161,920	9,920
	None	2,653,000	-277,000	694,000	168,200	16,200	6,359,000	-793,000	1,468,000	163,920	11,920
Dewaterers I, II at 29.2 mgd and Dewaterer III at 10.8 mgd	Full	2,622,000	78,000	1,088,000	161,200	9,200	6,298,000	165,000	2,431,000	161,200	9,200
	Half	2,622,000	-117,000	833,000	167,200	15,200	6,298,000	-376,000	1,816,000	164,240	12,240
	None	2,622,000	-395,000	578,000	170,900	18,900	6,298,000	-943,000	1,202,000	168,120	14,120
Dewaterers I and II at ___ mgd, Chino Creek Well Field A	Half	2,636,529	-163,110	907,504	162,891	10,891	6,343,888	-343,701	1,974,217	161,064	9,064
Dewaterers I and II at ___ mgd, Chino Creek Well Field B	Half	2,643,821	-101,564	907,504	163,473	11,473	6,353,258	-338,784	1,974,217	161,570	9,570
No Dewaterers	NA	2,220,000	-198,000	694,000	133,000	-19,000	6,348,000	-604,000	1,468,000	134,840	-17,160

Notes:
 1 - See Exhibit B-2 for modeling results summarized on this page.
 2 - Change in safe yield equals computed yield minus 153,000 acre-ft/yr (safe yield term judgment plus assumed near term water recharge of 12,000 acre-ft/yr)
 3 - Change in storage includes 60,000 acre-ft of controlled overbank payment to judgment and is not related to either dewatering or replenishment plans.
 4 - The operation of the operation of the dewater expansion is deferred until 2011 in this plan which is slightly later than the other dewater plan described in the April 2008 Report and results in slightly less yield for prior to 2011

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, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.


On November 27, 2007 I served the following:

- 1) **SPECIAL REFEREE'S PRELIMINARY COMMENTS AND RECOMMENDATIONS ON MOTION FOR APPROVAL OF PEACE II DOCUMENTS**

- BY MAIL: 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, addresses as follows:
See attached service list: Mailing List 1
- BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.
- BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.
- BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 27, 2007 in Rancho Cucamonga, California.


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10 CHINO BASIN MUNICIPAL WATER
11 DISTRICT

12 Plaintiff,

13 vs.

14 CITY OF CHINO, ET AL.

15 Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the
Honorable MICHAEL GUNN]

WATERMASTER RESPONSE TO
SPECIAL REFEREE'S PRELIMINARY
COMMENTS AND RECOMMENDATIONS
ON MOTION FOR APPROVAL OF
PEACE II DOCUMENTS

16
17
18 **I. Introduction**

19 On August 27, 2007, the Court held a hearing with regard to procedural issues regarding
20 Watermaster's Long Term Plan for the management of subsidence. At that hearing the issue of the
21 Peace II measures was discussed and Watermaster notified the Court of potential adverse
22 consequences if approval of the Peace II measures was not obtained by the end of the year. The
23 Court instructed Watermaster: "What you guys need to do is what you've done so well in the past,
24 and that is by consensus building, resolve some of these problems." (August 27, 2007 Reporter's
25 Transcript, 19:3-5.)

26 Watermaster followed this directive and on October 25, 2007 filed its *Motion for Approval of*
27 *the Peace II Documents*, and requested a hearing on this Motion for November 29, 2007. On
28 November 15, 2007, the Court issued an *Order to Show Cause Why The Court Should Not Continue*

Watermaster Response to Special Referee's Preliminary Comments and Recommendations on
Motion for Approval of Peace II Documents

1 *The Hearing On Motion for Approval of Peace II Documents* ("Motion"). On November 27, 2007,
2 the Special Referee filed her *Preliminary Comments and Recommendations on Motion for Approval*
3 *of Peace II Documents* ("Report"). On November 29, 2007, Watermaster appeared and presented
4 testimony and argument regarding approval of the Peace II measures and requesting the Court not to
5 continue the hearing.

6 Watermaster Counsel volunteered to respond to the Special Referee's Report within seven
7 days of the hearing and to further file a supplemental technical analysis from Mr. Wildermuth to
8 assist the Court in the evaluation of the potential physical consequences of implementing the Peace
9 II Measures within fourteen days. This pleading represents the fulfillment of the first of those
10 commitments, delayed only by the Watermaster's receipt of the Court Reporter's Transcript on
11 Tuesday, December 11, 2007.¹

12 Watermaster submits this Response to the Special Referee's Report in the hope that it will
13 provide clarification to the Court concerning the issues raised in the Report. Part VI of this Response
14 provides a line by line response to the myriad issues raised by the Referee.² Watermaster also
15 requests guidance in its relationship with the Court when presenting unopposed issues for
16 consideration.

17 **A. The absence of a traditional "case or controversy" has complicated**
18 **the current approval process**

19 Watermaster accepts and embraces that the Court has plenary power to approve Judgment
20 amendments and that the Court is charged with a duty to consider the public interest in its review of
21 Watermaster proposals.

22 Watermaster's legal existence springs from the Judgment. All of Watermaster's enumerated
23 powers originate within and arise from the Judgment. It is not a public agency or private entity that
24 has been formed under some general or special law. Its duty is "to administer and to enforce the
25 provisions of this Judgment and any subsequent instructions or orders of the Court hereunder."

26 _____
27 ¹ The Court has not issued an Order concerning the Order to Show Cause or the appropriate schedule.

28 ² The technical issues raised by the Referee are addressed in a separate document that is being prepared by Mark Wildermuth, which
will be filed at a later date.

1 (Judgment ¶ 16, lns.19-20.) As all special masters, Watermaster operates as an extension of the
2 Court and to meet the needs of the Court in carrying out its obligations under the Judgment and
3 Article X, Section 2 of the California Constitution.

4 Watermaster's function is not unique to this Judgment. Although there are nuances that are
5 peculiar to Watermaster's procedures and the depth and breadth of its role under the Judgment, each
6 of the adjudicated groundwater basins in California have a Watermaster with defined
7 responsibilities. (See Bloomquist, *Dividing the Waters: Governing Groundwater in Southern*
8 *California* (San Francisco: Institute for Contemporary Studies) (1992).) This is true whether the
9 Watermaster was organically established by stipulation and entry of Judgment or through an
10 adversarial process.

11 The traditional role of Watermaster and its interface with the Court is made more complex in
12 the Chino Basin by the existence of a Referee and her technical assistant who also serve as an
13 extension of the Court. No other adjudicated groundwater basin has both a Watermaster and a
14 referee and the Chino Basin Judgment does not provide for one. (*City of Pasadena v. City of*
15 *Alhambra* (Superior Ct. L.A. County, 1984 (Modified and Restated), No. Pasadena c-1323)
16 (Modified and Restated Raymond Basin Judgment); *Upper San Gabriel Valley Municipal Water*
17 *District v. City of Alhambra, et al.* (Superior Ct. L.A. County, 1972 (amended 1989), No. 924128)
18 (Amended Main San Gabriel Basin Judgment); *Southern California Water Co. v. City of La Verne,*
19 *et al.* (Superior Ct. L.A. County, 1998, No. KC0229152) (Modified Six Basins Judgment); *City of*
20 *Los Angeles v. City of San Fernando* (Superior Ct. L.A. County, 1979, No. 650079) (Upper Los
21 Angeles River Area Judgment); *Central and West Basin Water Replenishment District, etc., vs.*
22 *Charles E. Adams, et al.* (Superior Ct. L.A. County, 1991, No. 786,656) (Central Basin Judgment);
23 *California Water Service Company, et al. vs. City of Compton, et al.* (Superior Ct. L.A. County,
24 1980, No. 506,806 (West Coast Basin); *City of Barstow v. City of Adelanto* (Superior Ct. Riverside
25 County, 1994, No. Civ. 208568 (Mojave Basin); *California American v. City of Seaside, et al.*
26 (Superior Ct. Monterey County, 2006, No. M66343) (Seaside Basin).)

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1 In general, the appointment of a referee to investigate disputes and make reports to the Court
2 is within the Court's discretion – as is the appointment of Watermaster. Both Referee and
3 Watermaster serve at the pleasure of the Court.

4 The procedural complexity of the interface between the Referee and Watermaster takes on
5 greater importance in those situations such as the instant case where a Watermaster recommendation
6 is not opposed by any party and is actually affirmatively supported by the vast majority of
7 stakeholders. The customary definition of a "referee" is one that will "judge, umpire, mediate,
8 adjudicate or arbitrate." As there is no dispute or "case or controversy" to judge, umpire, mediate,
9 adjudicate or arbitrate, there is no process under the Judgment that allows Watermaster or the parties
10 to know or anticipate issues or concerns that may be articulated by the Referee and her technical
11 assistant prior to them being announced in response to a Watermaster motion in the Referee Report.
12 Because no party has contested Watermaster's request for approval of the Peace II Measures it is the
13 Referee's Report itself that actually serves to create the "case or controversy."

14 One would presume the reason for not having earlier pronouncements is that Courts typically
15 loathe to issue advisory opinions and that if there is no "case or controversy" there is no need for
16 an opinion. Hence the conundrum that arises where Watermaster, with the consent and support of the
17 parties, places a matter before the Court for approval without knowledge of potential issues that are
18 "at issue" and in need of rebuttal or further explanation.

19 The concerns that follow from this complexity are not academic. Over the past seven years,
20 the parties have made hundreds of millions of dollars in investments and implemented projects and
21 programs in furtherance of the Optimum Basin Management Program ("OBMP"). At the admonition
22 of the Court and under the direction of the nine-member Board, Watermaster has tirelessly worked
23 towards consensus, and in most cases it has achieved unanimity that has been the platform for
24 moving forward. During this same period there has not been a single contested matter that has been
25 heard by the Court.

26 Where the parties have labored long to achieve a broad consensus of support and in fact
27 obtained unanimity through related agreements, the Referee's criticism or suggestions, however
28

1 well-intended, can serve to instigate new rounds of negotiations and undermine the ability of the
2 Watermaster and the parties to move forward now and in the future. As with all contractual
3 negotiations, parties made concessions to obtain the benefits of the coordinated effort. Parties will be
4 discouraged from making compromises in favor of taking their chances in an adversarial process if
5 announcing a previously unformulated and undisclosed position of the Referee converts hearings for
6 approval from a prima facie showing on a stipulation to an adversarial hearing in which a portion of
7 negotiated benefits are denied a stakeholder group. In a world of water chaos and water conflict,
8 Watermaster's view is that consent of the parties represents compelling, un rebutted evidence that the
9 Peace II Measures are both consistent with the Judgment and in the public interest.

10 Watermaster requests guidance from the Court as to how Watermaster should integrate its
11 function with the role of the Referee and its burden of producing evidence and burden of proof
12 where consensus and non-opposition is put to the test by the Referee's Preliminary Report. Further,
13 Watermaster requests that the Court establish uniform procedural ground rules for those instances
14 where a report of the Referee will be required and to provide appropriate notice where the Referee
15 acts as an extension of the Court and as a quasi-adversary to Watermaster, also an extension of the
16 Court.

17 **B. The Watermaster structure itself is designed to avoid a "Tragedy of**
18 **the Commons"**

19 Watermaster's objective is to achieve the optimum management of the Basin as contemplated
20 by paragraph 41 of the Judgment and to meet the obligations of Article X, Section 2 of the California
21 Constitution. Wisdom and experience suggest that the best way to accomplish that is with the broad
22 support of the parties charged with the burden of implementation.

23 The Court has alluded to its lingering concern for the "tragedy of the commons" as a cause
24 for enhanced scrutiny of matters framed for Court approval through consensus. The implication is
25 that although consensus has been reached, the parties might each individually pursue their own self-
26 interest with the consent of the others to the cumulative detriment of the Basin. However, this
27 concern overlooks the limitations on the parties that arise from the injunction set forth in paragraph
28

1 13 of the Judgment which prohibits unauthorized withdrawals. More importantly, it undervalues the
2 Court's own active involvement under the Judgment and in its appointment of the nine-member
3 Board and recent history.

4 As a representative entity, three board seats for Watermaster are held by popularly elected
5 directors from municipal water districts, one of which is currently a retired Judge of the Superior
6 Court. Two other directors are currently appointed from City councils, also popularly elected. One
7 council member is a former Director of the California State Water Resources Control Board
8 ("SWRCB"). Another board member was appointed from the elected board of a special district. The
9 two board members that represent the Overlying (Agricultural) Pool also sit on the Board of the
10 Chino Basin Water Conservation District. The ninth member representing the Overlying (Non-
11 Agricultural) Pool is from private enterprise and has the benefit and experience of sitting on the
12 board of the Main San Gabriel Basin Watermaster.

13 As structured by the Court, this Board is not dominated by any interest or stakeholder group.
14 The various perspectives are diverse and allow for cross-checks and counter-balances. Moreover, the
15 Board is fairly representative of nearly a million people.

16 Unfortunately, as explained in more detail below, the Referee Report treats the unanimous
17 support for the Peace II measures as largely irrelevant and generally gives little or no weight to the
18 recommendations of Watermaster – the entity appointed by the Court to administer the Judgment.
19 For purposes of evaluating Watermaster's Motion to approve the Peace II Measures, we ask that due
20 consideration be given to the Court's prior decision to appoint Watermaster as the entity responsible
21 for administration of the Judgment and that great weight be given to unopposed Watermaster
22 proposals. Surely the history of the past seven years suggests this deference is warranted and it is not
23 inconsistent with the Court's desire to have further information and the need to make a record for
24 posterity.

25
26
27
28

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1 **C. Peace II and the Physical Solution**

2 **1. The Physical Solution contemplated the development of**
3 **management techniques not envisioned in 1978**

4 Paragraph 39 of the Judgment explains that the purpose of the Physical Solution provided by
5 the Judgment is to:

6
7 [E]stablish a legal and practical means for *making the maximum*
8 *reasonable and beneficial use of waters of the Chino Basin* by
9 providing optimum economic, long-term, conjunctive utilization of
10 surface waters, ground water and supplemental water, to meet the
11 requirements of water users having rights in or dependent upon Chino
12 Basin. (Judgment ¶ 39.)

13 One of the core tasks for Watermaster is to implement the OBMP. (Judgment ¶ 41.) As the
14 name suggests, the purpose of the OBMP is to find a way to manage the Chino Basin in an
15 "optimum" manner. The word "optimum" as it occurs in the Judgment is used in a non-technical
16 sense to simply refer to an attempt to manage the Basin in the best manner possible. Optimum Basin
17 management in this sense should take account of a variety of factors, including the requirements of
18 state law including Article X, Section 2 of the California Constitution, the public interest, and,
19 perhaps most importantly, the dictates of the 1978 Judgment.

20 In addition to the requirement to maximize the beneficial use of water, the Judgment notes
21 the need to

22 [P]rovide *maximum flexibility and adaptability* in order that
23 Watermaster and the Court may be free to use existing and future
24 technological, social, institutional and economic options to maximize
25 the beneficial use of the waters of the Chino Basin. (Judgment ¶ 40.)

26 Central to the Judgment is the priority extended to maximizing beneficial use and the
27 understanding that neither the world nor technology would remain frozen in 1978. Paragraph 40
28 contemplates that Watermaster's discretion would be supplemented as necessary by the Court under
its continuing jurisdiction to respond to requests similar to that made by Watermaster and the parties
through the Peace II Measures that seek to take advantage of improvements in management
strategies and an improved technical understanding.

1 As noted in previous Watermaster filings, the process to bring forward the Peace II Measures
2 began with a consideration of the provisions in the existing OBMP and the Peace Agreement that
3 required the further exercise of discretion by Watermaster, including the Court's requirement for
4 reporting on Watermaster's plans for Future Desalters.

5 **2. In its most general sense Basin Reoperation has legal and technical**
6 **precedent**

7 A form of controlled overdraft was expressly permitted by the Judgment and limited to a
8 cumulative quantity of 200,000 acre-feet, with an annual cap of 10,000 acre-feet. (Judgment, Exhibit
9 "T" at ¶ 2.) This was permitted by the Judgment for largely economic reasons to allow the parties
10 time to adjust to safe yield management. (Stark, July 11, 1978 Post Trial Memorandum, §C(2).)

11 In the instant case, Watermaster requests to increase that quantity by an additional 400,000
12 acre-feet. However, while there may be economic benefits, the primary reasons for pursuing the
13 strategy all relate to enhancing opportunities for beneficial use. The economic benefits are actually
14 earmarked for the desalting of groundwater and thus operate as a partial subsidy to off-set a portion
15 of the significant capital and operating costs. (Peace II Agreement, § 5.8(a)(2); § 7.2(a).)

16 More than three years ago, the analysis of monitoring data and modeling results collected and
17 analyzed by Watermaster indicated to Watermaster's consulting technical advisor, Mr. Wildermuth,
18 that the best way to manage the Chino Basin would be in a condition where water levels are lower
19 than they are now. In itself, this is not a remarkable result.

20 In one of the seminal cases in California water law, the California Supreme Court previously
21 recognized the value of lowering water levels in a groundwater basin in order to enhance the
22 recharge opportunities in that Basin. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d
23 199, disapproved on other grounds in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th
24 1224, 1248 [hereinafter *Barstow*].) In that case, the water to be mined from the Basin was given the
25 term "temporary surplus." (*Id.* at 280.) While this water could have perhaps been saved in storage
26 for use in a time of drought or other emergency, the long term management benefits were apparently
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1 deemed to outweigh an unknown and potential use for the water at some indeterminate time in the
2 future.

3 Further, the *San Fernando* court cited to another landmark groundwater case which also
4 recognized that the state's policy is to discourage waste and therefore held that the taking of
5 "temporary surplus" prevents the commencement of overdraft because it increases the total available
6 supply by eliminating waste which would occur if there was no storage space for precipitation. (*Id.*,
7 citing to *City of Pasadena v. City of Alhambra* (1949) 22 Cal.2d 908, 926, 929.)

8 Nor is this approach unique to groundwater. Viewed holistically, California water policy,
9 discourages locking up supplies in "cold storage" for future speculative uses. (*California Trout Inc.*
10 *v. State Water Resources Control Board* (1989) 207 Cal.App.3d 585, 619 ("[D]ue diligence does not
11 countenance a scheme placing water rights in cold storage for future use"); *cf. Central Delta Water*
12 *Agency v. State Water Resources Control Board* (2004) 124 Cal.App.4th 245, 267 (invalidating a
13 SWRCB grant of a permit where the end user remained undefined); *Nevada County & Sacramento*
14 *Canal Co. v. Kidd* (1869) 37 Cal. 282, 314 ("... [N]o man shall act upon the principle of the dog in
15 the manger, by claiming water by certain preliminary acts, and from that moment... prevent the
16 development of the resource by others."))

17 In fact, California Constitution Article X, Section 2 was adopted to maximize beneficial use
18 by requiring higher levels of efficiency, not discourage it. (*Allen v. California Water & Telephone*
19 *Co.* (1946) 29 Cal.2d 466, 483-484; see further Water Code Section 106 that proclaims domestic use
20 as the highest beneficial use.) Indeed, this primary directive is expressly set forth in the Judgment.
21 (See Judgment ¶¶ 39, 40 and 41.)

22 At the recommendation of its engineering consultant Mr. Wildermuth, Watermaster first
23 contemplated a strategy to dewater a portion of the basin through controlled overdraft to cut off
24 discharges of poor quality water to the lower Santa Ana River for the purpose of increasing the
25 efficiency of water use within the Basin by reducing the discharge of wastewater and promoting the
26 use of recycled water. The proposed strategy suggested that the de-watering would be largely benign
27 and without negative impact to the Basin or other parties.

1 **3. Basin Reoperation makes maximum beneficial use of available supplies**
2 As the primary benefit, the Basin Reoperation strategy will have the effect of gaining greater
3 flexibility in the expanded use of recycled water throughout the Basin. In addition, it was
4 hypothesized that consistent with earlier technical work that gave rise to the OBMP, that future
5 desalting would have yield enhancement benefits.

6 Accordingly, the proposed strategy as ultimately defined by the Peace II Measures would
7 provide:

- 8 • access to 400,000 acre-feet of groundwater that is otherwise unavailable to the
- 9 parties because of the limitations contained within the Judgment;
- 10 • preservation of safe yield beyond that which would occur in the absence of the
- 11 expanded desalting capacity;
- 12 • new and converted water supplies for domestic use;
- 13 • expanded use of recycled water.

14 Individually and collectively these benefits maximize the beneficial use of water and reduce
15 reliance upon imported water supplies. Watermaster proposed this basic management strategy to the
16 parties and over the course of many months explored the underlying assurances and agreements that
17 would be necessary for them to make the investments to accomplish the identified tasks which
18 became known as Basin Re-Operation.

19 **4. The exhaustive process that led to development of the Peace II measures**
20 **is evidence that due consideration has been given to all aspects of the proposed**
21 **strategy**

22 An initial publication of proposed terms led to public workshops, stakeholder and Board
23 input and a revised set of principles embodied in the Stakeholders Non-Binding Term Sheet ("Non-
24 Binding Term Sheet"), dated May 23, 2006 that was promptly filed with the Court. The term sheet
25 was subject to several requirements that Watermaster and the parties expected would be fulfilled
26 *prior* to the Non-Binding Term Sheet being translated into a suite of binding agreements.

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1 These steps included peer review of the 2003 Watermaster model that had been used to assist
2 in the evaluation of the efficacy of the proposed Reoperation and Hydraulic Control strategy.
3 Watermaster, of its own volition, suggested the Referee's technical assistant be called upon to
4 provide that peer review. The peer review of the 2003 Model was completed approximately ten
5 months later in March of 2007.

6 Contrary to the implications in the Referee's Report there has never been a requirement that
7 there be a "verification" of further refinements of the 2007 version of the Watermaster model. No
8 such obligation arises from the Non-Binding Term Sheet or Watermaster direction and the quoted
9 language does not appear in Watermaster pleadings or declarations. What Watermaster expected of
10 Mr. Wildermuth is that having obtained Mr. Scalmanini's peer review of the 2003 Watermaster
11 Model, that he would incorporate all of the recommendations made by Mr. Scalmanini's and that
12 Mr. Wildermuth would stay in constant contact with Mr. Scalmanini to ensure an expedited review
13 of the Court when the time came to review the Peace II Measures. Mr. Wildermuth reports that the
14 recommendations were incorporated and he communicated the changes to Mr. Scalmanini. (October
15 25, 2007 Declaration of Mr. Wildermuth, ¶ 4.)

16 To further expand its evaluation of the impact of the proposed Non-Binding Term Sheet upon
17 the broader community of the Inland Empire, the stakeholders required an analysis of the macro
18 economic benefits that would accrue to the Region. (Sunding, David, *Analysis of Aggregate Costs*
19 *and Benefits of Hydraulic Control, Basin Re-Operation and Desalter Elements of Non-Binding Term*
20 *Sheet*, November 29, 2006 (Resolution 07-05, Attachment "B").) Paragraph 40 of the Judgment
21 envisions a consideration of the economic consequences of its decisions as does the Engineering
22 Appendix Exhibit "I." This analysis suggested benefits as high as \$438.8 million in 2006 dollars
23 through the pursuit of the measures identified in the Non-Binding Term Sheet. (Resolution 07-05,
24 Attachment "B," p. 1.)

25 Watermaster and the stakeholders also endorsed causing a second economic analysis to be
26 completed that would evaluate:

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[T]he impacts (positive and negative) of implementing the OBMP and the Peace Agreement as well as those that may arise from Watermaster pursuing the suite of actions set forth in this Non-Binding Term Sheet, including but not limited to Watermaster assessments. This analysis will specifically address the potential distribution of costs and benefits among the parties that were initiated with the approval of the Peace Agreement in 2000. (Non-Binding Term Sheet, dated May 23, 2006, LE.)

This evaluation was also completed by Dr. Sunding and considered benefits more specific to each of the parties and was received as complete by Watermaster. (Sunding, David, *Report on the Distribution of Benefits to Basin Agencies from the Major Program Elements Encompassed by the Peace Agreement and Non-Binding Term Sheet*, October 17, 2007 (Resolution 07-05, Attachment "C").) The report was never intended or offered by Watermaster as the definitive report or as the final word on the allocation of benefits among the parties. It was intended as an aid to party decision-making.

Rather than rely upon Dr. Sunding's work alone, some of the parties actually engaged their own economic experts to provide input into the report and to each of the parties as to whether to approve the Peace II Measures as a package. The study itself generated further dialogue by the parties and the Watermaster Board, which authorized a collaborative effort among the stakeholders to further evaluate the distribution of *costs and benefits* associated with the initial implementation of the Peace Agreement and the proposed Peace II Measures. Of particular interest was the costs and obligations assumed by the Inland Empire Utilities Agency ("IEUA") through parallel financing efforts.

This focused process concluded with further refinements to the various agreements and resolved the fairness of cost-allocation from the perspective of the stakeholders. The refinements were approved by the Board and incorporated into the final version of the documents transmitted to the Court on October 25, 2007. (Watermaster Minutes, 9/27/2007; October 25, 2007 Motion for Approval of Peace II Documents and Attached Resolution.)

Over a period of almost 36 months, the process involved the negotiation of a complex set of agreements that arose from the give and take necessary to allow expanded desalting and controlled

1 overdraft to occur. In the end, the Peace II Measures involved many elements that will result in a
2 mix of increased costs, expanded obligations and associated benefits.

3 Further discerning whether the suite of benefits obtained by any single party exceeds their
4 relative commensurate increase in obligations should not be the inquiry. This follows from the fact
5 that each agency must evaluate its individual position in relation to the many other issues that it
6 faces.

7 Watermaster, the Referee and the Court should not seek to second guess the individual value
8 placed on specific benefits or the reason why a party may be willing to assume a specific burden.
9 For example, water supply augmentation may not be the driving consideration to all parties.
10 Similarly, procurement of the lowest cost water may be irrelevant to a party that desires access to
11 expanded production.

12 Rather the task of Watermaster in implementing the Judgment is to successfully carry-out the
13 provisions of the Judgment requiring the maximization of beneficial uses within the constraints
14 provided by the Judgment. The Judgment requires the replenishment of production in excess of each
15 party's relative share of Safe Yield. To require replenishment while attempting to secure Hydraulic
16 Control would actually work at cross-purposes with the intended strategy. Accordingly, where, as in
17 the instant case, the constraints contained with the 1978 Judgment do not comport with the modern
18 vision of basin management, Watermaster and the parties have rightfully appealed to the Court to
19 amend the Judgment as envisioned by paragraph 40.

20 The prudent character of their request is underscored by the significant effort that
21 Watermaster has demonstrated to link the benefits of the controlled overdraft water to the more
22 specific Herculean task ahead: expand and operate the next phase of Desalting without a present
23 commitment of third party funding. The Peace II Measures expressly require that first priority for the
24 use of Controlled Overdraft be the Desalter proposed by Western Municipal Water District
25 ("WMWD"), but *if and only if*, WMWD meets the requirements of locating wells within a defined
26 area that will maximize the achievement of Hydraulic Control. (Peace II Agreement, § 5.8(a).)

27 **II. Generalized Response to Referee Report**

1 The Referee Report raises many questions, to which Watermaster has prepared a
2 comprehensive response set forth below. The strongest comments were reserved for the alleged
3 failure to evaluate the Project proposed by Watermaster and to establish proper controls to ensure
4 that Watermaster fulfills its duties to complete its update to the Recharge Master Plan. As
5 Watermaster's oral argument stressed and this reply argues, the Referee misconstrued the purpose of
6 the Technical Report and misunderstood the integrated provisions of the documents.

7 There are always further questions that can be asked and there is always further technical
8 analysis that can be performed. A fundamental consideration is whether there is enough information
9 available to approve the Peace II Measures subject to the controls arising from the continuing
10 jurisdiction of the Court.

11 There are limitations based on practicality, and these practical considerations primarily relate
12 to time and expense. As the months and years drag by, the lost opportunities that come from failure
13 to implement management efforts that are known to be in the best interests of the Basin exact a cost
14 on the Watermaster parties and the communities they serve. The question is not whether every single
15 possible question has been analyzed and explained, it is not whether every bit of information has
16 been developed and refined to a scientific certainty – the question is rather whether the information
17 that has been developed is sufficient to make a reasonable and prudent decision about how to
18 proceed.

19 At some point, as the Court has alluded to in the past, the desire to gather more information
20 and perform additional studies can become paralysis through analysis. Further analysis at this point
21 becomes merely an excuse for inaction. While it is important to thoroughly analyze every question
22 and decision, so long as adequate controls exist, it is equally important to move forward and to begin
23 implementation.

24 Watermaster cannot purport to have a scientific certainty for Basin Reoperation and
25 Hydraulic Control and the physical impacts that may be attributable to the proposed project. But
26 Watermaster believes and the record reflects that after three years of consensus building, decades of
27 information development based upon historical experience and data gathering, the development of a
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1 Watermaster model, first peer reviewed in its 2003 form, then improved with input from the
2 Referee's technical assistant, further analysis conducted to examine the potential for material
3 physical harm, there is now sufficient information to allow Watermaster to reasonably and prudently
4 proceed with the Peace II Measures.

5 Moreover, the Court may rely upon the present status of the information with the comfort of
6 knowing that it may rely upon its powers under the Judgment to direct and review Watermaster
7 actions. As its agent, Watermaster can collect information, report to the Court and recommend
8 courses of action based on that information.

9 **III. Standard of Review**

10 The Referee Report asserts that: "Watermaster Inappropriately Urges a Limited Review by
11 the Court." (Report, 28:7.) The Referee notes Watermaster's "contention" that the Judgment does
12 not provide a detailed explanation of the standard of review under Paragraphs 15 and 31.
13 Watermaster merely argued that because of this, the Court could look to other standards in the
14 Judgment, and to the nature of a stipulated judgment itself, and infer that a general deference to the
15 parties is appropriate where there is no opposition. The Referee suggests this standard is
16 "inappropriate" but offers no standard in its place.

17 Rhetorically, the Referee asserts that Watermaster "concedes" that in reviewing the Peace
18 Agreement, the Court analyzed whether the measures were consistent with and promoted the
19 Physical Solution under the Judgment. (Report, 29:11.) However, this point was not presented as a
20 concession by Watermaster as if it somehow undermines its position that in an uncontested matter
21 Watermaster and the parties should be entitled to deference. In fact, Watermaster explicitly states
22 that it is one of the Court's roles to analyze Watermaster's Motion pursuant to Article X, section 2.
23 (Motion, 16:3.) It is true that the Court must consider whether any action of Watermaster is
24 consistent with the Physical Solution and the Judgment. The Physical Solution set forth in the
25 Judgment contemplates a long-term safe yield management approach strategy and authorized an
26 exception of approximately 200,000 acre-feet for largely economic reasons. Because Watermaster
27 does not propose to alter long-term safe yield management and expressly embraces it, the more
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1 precise issue Watermaster respectfully submits is whether the proposed exception – amounting to a
2 temporary excursion – for the purpose of effectuating Hydraulic Control and facilitating desalter
3 production is consistent with the Physical Solution.

4 Finally, the Referee presents a list of four factors that the Court “must” consider. These
5 include whether the evidence supports the Motion, whether the measures requested for approval
6 promote the Physical Solution under the Judgment,³ whether the measures are consistent with the
7 protection of the rights of the parties and the general public interest, and whether the measures are
8 contrary to Article X, section 2 of the California Constitution. (Report, 29:16-25.)

9 The Referee offers no citation for this list of factors, so it is not clear under what authority
10 the Court “must” use this list.⁴ However, Watermaster does not dispute they are all relevant inquiries
11 and the issues were described in Watermaster’s Motion and in the 1978 Plaintiff’s Post-Trial
12 Memorandum. Watermaster “concedes” that these factors should be considered by the Court.

13 However, to acknowledge the inquiries are legitimate does little to establish the guidelines
14 for how Watermaster responses will be weighed and evaluated against no opposition. Does
15 Watermaster shoulder a burden of proof beyond a prima facie showing when no evidence has been
16 presented to controvert Watermaster’s assertions, the joinders of the parties, the declaration and
17 testimony of the various witnesses and the reasonable interpretation (plain meaning) to be accorded
18 the written agreements?⁵

19 Assuming that substantial evidence is sufficient, Watermaster offers the following summary
20 as to the substantive areas identified by the Referee’s Report.

21 **A. Are the Peace II Measures Consistent with the Physical Solution**

22 As the term “physical solution” has developed as part of the common law of this state, it was
23 as a defense to the issuance of injunctive relief to protect senior water rights against infringement. In
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25 ³ The Referee does not indicate whether “consistency” with the Physical Solution is different from “promoting” the Physical Solution.

26 ⁴ The Report repeatedly references this list of factors and always cites back to this paragraph as the sole authority for the assertion.
(See, Report 35:18; 37:27-38:6; p. 40, fn 48.)

27 ⁵ The Referee Report offers no answer to this question and simply suggests that in the opinion of the Referee, Watermaster has not met
28 this unstated burden.

1 general, a physical solution exists as a complete defense to an injunction where a junior priority
2 cooperates with a senior right holder so as to avoid an injunction on the taking of water. (See *City of*
3 *Lodi v. East Bay Municipal Water District* (1936) 7 Cal.2d 316, 339-341; *Rancho Santa Margarita*
4 *v. Vail* (1938) 11 Cal.2d 501, 558-560.)

5 The concept of the physical solution recognizes that while water rights are property, which
6 are unique and which will support the issuance on an injunction, modification of historical water use
7 practices can be accomplished without hardship and in a manner that will support the broadest
8 possible number of beneficial uses. (See *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383; *Tulare*
9 *Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 2 Cal.2d 489, 573-574.) For a "physical solution"
10 outside of an agreement, the proposed measure must not result in substantial injury or material
11 expense to the senior water rights. (See *Peabody v. City of Vallejo*, 2 Cal.2d 351 at 383; *Tulare Irr.*
12 *Dist. v. Lindsay-Strathmore Irr. Dist.*, 2 Cal.2d at 573-574.)

13 "Physical Solution" is not a defined term of the Judgment. However, consistent with the
14 common law and prevailing definition of the term, Article III expressly enjoins producing
15 groundwater in excess of the parties' share of Operating Safe Yield *except pursuant to the Physical*
16 *Solution* or a storage water agreement. (Judgment ¶ 13.) Accordingly, no party may over-produce
17 (produce more than their allocated share) unless they do so pursuant to the stated Physical Solution.

18 Article VI is entitled "physical solution" and describes a program where no party is enjoined
19 from groundwater production in excess of their respective allocated shares so long as they pay
20 Watermaster assessments and reimburse Watermaster for the cost of securing replenishment water.

21 In relevant part, Article VI, paragraph 42 provides:

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23 To the extent that pumping exceeds the share of the Safe Yield
24 assigned to the Overlying Pools, or the Operating Safe Yield in the
25 case of the Appropriative Pool, each pool will provide funds to enable
26 Watermaster to replace such overproduction. (Judgment ¶ 42, lns. 9-
27 12.)

28 The parties' financial commitment to provide funds for the purchase of replenishment water
permits Watermaster to augment the native water supplies that initially constituted Safe Yield or

1 Operating Safe Yield that was apportioned among the parties. By providing a mechanism to secure
2 and finance the purchase of supplemental water in an amount equivalent to the overproduction, the
3 Physical Solution avoided substantial expense or material injury to the other users. Hence, no
4 limitation (injunction) on total groundwater production was required.

5 Against this backdrop, the question is whether the Peace II Measures are consistent with the
6 Physical Solution of limiting each party to their respective share of Safe Yield *unless* they provide
7 funds to Watermaster to purchase replenishment water? The answer is "yes." There is precedent for
8 the proposed action, there is no objection and Watermaster has carefully linked the use of the
9 controlled overdraft to reducing reliance upon imported water and preserving Safe Yield.

10 All of the evidence offered by Watermaster supports the consistency *and* the promotion of
11 the Physical Solution by the Peace II measures. This conclusion follows first from the existence of
12 consent. No junior (let alone senior) user has claimed that the Peace II Measures will cause them
13 unmitigated harm. The package of corresponding burdens and benefits, summarized to some degree
14 by Dr. David Sunding, and then supplemented by further dialogue among the stakeholders were
15 deemed sufficient for the parties to consent to the proposed actions.

16 It also follows from the fact that the change in the management strategy from the
17 replenishment of all production to one that temporarily authorizes controlled overdraft for a defined
18 period is consistent with the party objectives to reduce reliance on the purchase of imported water
19 for replenishment through the substantial increase in the use of recycled water.

20 The Judgment itself previously countenanced 200,000 acre-feet of controlled overdraft for
21 largely economic reasons where far less was known about the Basin hydrology and without the
22 benefit of the Watermaster Model and nearly thirty years of operating history. (See Judgment
23 Exhibit "I", ¶ 2) Surely if the Court authorized 200,000 acre-feet of controlled overdraft under the
24 circumstances then existing in 1978, the state of information and risk presented are no greater here.

25 Moreover, the economic benefit of the controlled overdraft is not lost on Watermaster.
26 Unlike unrestricted use of controlled overdraft that was authorized in the 1978 Judgment, the
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1 controlled overdraft now sought by Watermaster in connection with the Peace II Measures requires
2 that the water be dedicated to groundwater production by the Desalters.

3 In other words, this is *not* a situation where there is risk arising from the tragedy of the
4 commons. Instead, the water that is produced to meet the objectives of Reoperation and Hydraulic
5 Control is being earmarked for the parties assuming the greatest financial burden: the operation of
6 the Desalters. (Peace II Agreement, § 5.8(a)(2); § 7.2(a).) Furthermore, even within the general
7 category of the Desalter Production, WMWD will obtain "first priority" to the use of the controlled
8 overdraft only if they construct the wells in a defined location intended to promote Hydraulic
9 Control. (Peace II Agreement, § 5.8(a).)

10 The Peace II measures will promote the construction of the final increment of desalter
11 capacity, which was a "major concern" of the Court in 2000 when the original Peace Agreement was
12 approved. Basin Reoperation will halt the outflow of water from the Basin which will preserve yield,
13 another major goal of the Peace II Measures.

14 Watermaster's effort to operate the Desalters in concert with a yield preservation strategy has
15 already been endorsed by the Court. Without the economic benefit of subsidized groundwater
16 production from the Desalters, WMWD is not required to proceed with the expanded Desalter
17 production.

18 Basin Reoperation will also have the effect of inducing water into the Basin which will help
19 to mitigate for the anticipated reduction in Safe Yield.⁶ Conversely, there is no evidence in front of
20 the Court that would suggest that Basin Reoperation and Hydraulic Control are inconsistent with or
21 that do not promote the OBMP.

22 In the end, the Basin will remain subject to Safe Yield Operation. Over-production must be
23 replenished. The temporary excursion while the Watermaster pursues Hydraulic Control will last no
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26 ⁶ In his "Summary of Model-Related Analyses" attached to the Referee Report, Mr. Scalmanini attempts to imply that it is Basin
27 Reoperation that causes the decline in Safe Yield: "All the latter safe yield values are now in notable contrast to the proposed
28 reoperation strategy that would result in a continuously declining safe yield . . ." (p. 3 (emphasis added).) This implication is
contrary to the clear statement by Mr. Wildermuth in his Declaration that the decline in safe yield is due to changes in land use and
will occur whether or not Basin Reoperation is pursued. (November 15, 2007 Declaration of Mr. Wildermuth ¶ 16 (p. 8, lns. 2-5.)

1 more than 22 years and substantially less if the rate of depletion is as is projected by the Final
2 Report, given the substantial controls that Watermaster and the Court retain.

3 **B. Promotion of General Public Interest and Protection of Private Rights**

4 With regard to the promotion of the general public interest and protection of private rights,
5 the deference to the unanimity of the parties is especially appropriate. Many of the most active
6 parties in the Basin are the cities and other public agencies that serve water to the public. These
7 entities are governed by Boards and City Councils that are popularly elected. They act in a
8 representative capacity of the water using public, which fundamentally includes every one of the
9 nearly one million people who live and work in the Chino Basin. The unanimity of these public
10 entities is the best evidence there is that the measures proposed for approval are in the public
11 interest.

12 In addition, Declarations were provided by Celeste Cantu who is the general manager of the
13 Santa Ana Watershed Project Authority ("SAWPA"), the entity whose jurisdictional area
14 encompasses the entire Santa Ana Watershed, and by Jeff Kightlinger, the general manager of the
15 Metropolitan Water District of Southern California, an entity whose jurisdictional area encompasses
16 nearly all of Southern California. (November 15, 2007 Declaration of Celeste Cantu in Support of
17 Motion For Approval of Peace II Documents, ¶¶ 4-5; November 15, 2007 Declaration of Jeff
18 Kightlinger in Support of Motion For Approval of Peace II Documents, ¶¶ 8-10.) These provide
19 further evidence that the Peace II measures are in the general public interest. The Referee
20 acknowledges that: "Major economic benefit will derive from the Peace II measures." (Report,
21 33:25.)

22 With regard to the protection of private rights, the unanimity of the parties also provides
23 evidence to support granting Watermaster's Motion. The private rights in the Chino Basin are held
24 by the individual parties to the Judgment. Joinders to Watermaster's Motion have been filed by
25 nearly all of the appropriators and by the Agricultural and Non-Agricultural Pools. There have been
26 no objections by any parties in the Basin – the support for the Peace II measures is unanimous. What
27 better evidence can there be that there is no harm to the private rights in the Basin?
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C. Article X, section 2

All water in the State must be used consistent with Article X, section 2 of the California Constitution. As testified to by Mr. Wildermuth, the central purpose to pursuing the Basin Reoperation strategy is to achieve Hydraulic Control, which is a requirement in order to gain access to the Maximum Benefit Standards under the Basin Plan for the Santa Ana Region. (November 29, 2007 Reporter's Transcript, 92:20-93:17.) The Maximum Benefit Standards are named as they are because they are enacted under Water Code section 13241 and the State's antidegradation policy (SWRCB Resolution No. 68-16). Water Code section 13241 says that:

Each Regional Board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the *reasonable protection of beneficial uses* and the prevention of nuisance; however, it is recognized that it *may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses*. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing within the region.
- (f) *The need to develop and use recycled water.*

(Wat.Code § 13241, *emphasis added.*)

In 1991, this code section was amended by the addition of subdivision (f) which allows the Regional Board to consider the "need to develop and use recycled water" when setting water quality objectives in water quality control plans. (Wat.Code § 13241.) This amendment was made as part of

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1 the Water Recycling Act of 1991. The legislative history of this bill demonstrates that the need to
2 develop recycled water was to be considered when developing water quality objectives. In fact, the
3 bill applied the existing definition of reclaimed water, which is "water that as a result of treatment of
4 waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur," to
5 recycled water and declared that "reclaimed or recycled water is considered a valuable resource."
6 (Chapter 187, A.B. No. 673, An Act to Amend Sections 13050 and 13241, and to added Chapter 7.5
7 of the Water Code (1991).) Clearly, Water Code section 13241, which includes the need to take into
8 account the development of recycled water was developed to further the goals of Article X, section 2
9 of the California Constitution. Therefore, Maximum Benefit Standards, which are authorized under
10 this water code provision are in accordance with the state's mandate that "water resources of the
11 State be put to beneficial use to the fullest extent of which they are capable, and that the waste or
12 unreasonable use or unreasonable method of use of water be prevented." (Cal. Const., Art. X, § 2.)

13 Further, section 13241 of Water Code tracks the language of Article X, section 2 using the
14 terms "reasonable" and "beneficial use." That is, the Maximum Benefit Standards were enacted
15 under the authority of Article X, section 2 because a finding was made by the Regional Water
16 Quality Control Board (and approved by the SWRCB) that the Maximum Benefit Standards were
17 justified.

18 From a regulatory perspective, achieving Hydraulic Control facilitates the use of recycled
19 water in the Chino Basin. Recycled water is the most reliable supply available to the Basin because it
20 is the byproduct of municipal use, which continues consistently all year round every year. The
21 legislature has declared that "the use of recycled water is a cost-effective, reliable method of helping
22 to meet California's water supply needs." (Wat. Code 13576(f).) Historically this source of supply
23 has been wasted by the Chino Basin and largely allowed to discharge to the ocean. With the
24 regulatory approval from the RWQCB, based upon the promise of the Basin to achieve Hydraulic
25 Control, this source of supply is now available to the Basin.

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1 The evidence presented by Watermaster in its Motion and in its testimony draws a direct link
2 between Basin Reoperation and Article X, section 2. This evidence is uncontroverted, and no party,
3 not even the Special Referee, has suggested any inconsistency with Article X, section 2.

4 **IV. Joinders**

5 The Referee's Preliminary Report overlooks the significance of the joinders and declarations
6 filed in support of Watermaster's Motion. While most all other documents and issues are described
7 in great depth by the Report, the Report gives only a bald acknowledgement to each of the filings
8 made in support of Watermaster's Motion, without giving appropriate evidentiary weight to their
9 contents. (Report, 2:21-3:16.)

10 For example, the Report notes, "a letter to Kenneth R. Manning from Robert W. Bowcock,"
11 (Report, 3:15) without also noting that Mr. Bowcock wrote the letter in his capacity as Watermaster
12 representative of the Non-Agricultural Pool and that the letter constitutes a joinder of the Non-
13 Agricultural Pool in Watermaster's Motion. At a minimum, the pleading constitutes an evidentiary
14 admission by Mr. Bowcock and is relevant to the inquiry of whether private rights are impaired.
15 Given the importance of protecting private rights to the Court's analysis, it would seem important to
16 note that an entire pool of private rights holders joins in Watermaster's Motion. Without rebutting
17 evidence, the prima facie showing of Watermaster should be sufficient.

18 The only filing gaining any material consideration was the filing by the Chino Basin Water
19 Conservation District, asking the Court to continue the hearing in to 2008. (Report, 3:19.) However,
20 this filing was further resolved by stipulation and now the Chino Basin Water Conservation District
21 also supports the Court's approval of the Peace II Measures. (November 27, 2007, Stipulation
22 Between Chino Basin Watermaster and Chino Basin Water Conservation District Regarding
23 Approval of Peace II Documents.)

24 Later, the Referee intimates that support for the Peace II Measures should be devalued
25 because the joinders are motivated by the receipt of benefits. "Not surprisingly, nine of the ten
26 agencies that receive benefits have filed papers in support of Watermaster's motion" (Report,
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1 33:2-3.) However, the Referee fails to appreciate the irony of the remark and the very point of
2 consensus building that has been urged by the Court.

3 Parties do not support things they do not like. The existence and perception of broad benefits
4 is what makes the implementation of the Peace II Measures possible. From Watermaster's
5 perspective indeed, this is not surprising since nearly every agency in the Basin filed a joinder, as
6 well as all of the private interests as well. What better barometer that the public interest is being
7 met?

8 **V. Watermaster Standing**

9 Watermaster is puzzled that the Referee's Preliminary Report questions the standing of
10 Watermaster to ask the Court for review of a Watermaster action. (Report, 26:12-27:7.) Even though
11 Watermaster's Motion, signed by Watermaster General Counsel and approved for filing by the
12 Watermaster Board, recites the basis for Watermaster's authority to file, the Report intimates that
13 this is not sufficient and that additional declarations are needed to authenticate actions for which
14 there is no opposition.

15 These declarations are required even though no basis is given for doubting the veracity of
16 Watermaster and the Referee herself is on the service list and receives the minutes of the meetings in
17 which the basis for Watermaster's authority is confirmed. The Report even goes so far as to question
18 whether Watermaster actually adopted Resolution 07-05 (Report, 24:25-26) and suggests that the
19 signed copy submitted to the Court may not be authentic (Report, 25, fn 32). If the Court truly
20 desires Watermaster to further authenticate documents when there has been no party challenge to
21 their legitimacy, Watermaster will go to the unusual and uncustomary expense of supplementing the
22 filings for this purpose.

23 **VI. Miscellaneous Responses in Order of Appearance**

24 Page 1, line 25:

25 The Referee indicates that the Report is preliminary because of the limited time that has been
26 available to review so complex and extensive a set of documents. However, the Non-Binding Term
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1 Sheet was first published on May 23 of 2006. The general concepts of Basin Re-Operation and
2 Hydraulic Control have been under evaluation since 2005.

3 While it is true that the Court was only presented with the final Peace II documents for the
4 first time at the end of October 2007, the Referee and her technical assistant have been aware of and
5 working with the issues in Watermaster's Motion for more than two years. This is clearly no sneak-
6 attack perpetuated on the Court.

7 Page 5, lines 8-14:

8 In the description of the Basin Plan Amendments, the Referee references the concept of
9 Hydraulic Control and its purpose to "protect" downstream water quality. Whenever the word
10 "protection" is used, it is placed in quotation marks. Watermaster under appreciates the significance
11 of the quotations. Watermaster accepts that "protection" of water quality is the issue.

12 In addition, the Report notes the protection of the Santa Ana River and the Prado basin area,
13 but fails to mention that one of the interests to be "protected" is the Orange County Water District
14 ("OCWD"), the only water user located downstream from the Chino Basin. OCWD is a party to the
15 Chino Basin Judgment and is therefore one of the private interests the Court is charged to "protect."
16 Further, Celeste Cantu, the General Manager of SAWPA, inclusive of the Orange County Water
17 District, is supportive of the Peace II Measures. (November 15, 2007 Declaration of Celeste Cantu
18 in Support of Motion For Approval of Peace II Documents, § 4-5.)

19
20 Page 5, line 15:

21 The Report says that Hydraulic Control is "simply" the continuation of a certain amount of
22 groundwater pumping in the southern part of the Basin. This is an incorrect definition. The proposed
23 amendment to Judgment Exhibit "P" defines Hydraulic Control as the reduction of groundwater
24 discharge from the Chino North Management Zone to the Santa Ana River to *de minimus* quantities.
25 The definition of Hydraulic Control is silent as to how the condition is attained. According to Mr.
26 Wildermuth, the way to achieve the condition is through Basin Reoperation. (October 25, 2007
27 Declaration of Mr. Wildermuth ¶ 16; November 15, 2007 Declaration of Mr. Wildermuth ¶ 21.)

1 Page 7, lines 8-9:

2 The Referee states that: "There has been no 'verification' of the 2007 Model by Mr.
3 Scalmanini, contrary to Watermaster's statement." (Report, 7, lns. 8-9.) However, Watermaster is
4 unaware of any instance in which it inferred this. No citation to the quoted "verification" language
5 has been provided. Watermaster does contend that Mr. Scalmanini did perform peer review of the
6 2003 Model.

7 At Watermaster's request, Mr. Scalmanini completed and transmitted a report in March 2007
8 which reviewed Watermaster's model and provided recommendations. The testimony of Mr.
9 Wildermuth is that he incorporated these recommendations among other improvements into the 2007
10 Model. There is no controverting evidence.

11 Mr. Scalmanini's report found that Watermaster's model was adequate for planning purposes
12 and that there were additional refinements that could be performed to make it work better. Mr.
13 Wildermuth followed these recommendations. (October 25, 2007 Declaration of Mr. Wildermuth ¶
14 4; November 15, 2007 Declaration of Mr. Wildermuth ¶¶ 3-4; November 29, 2007 Reporter's
15 Transcript, 98:8-12.) Given the existence of Mr. Scalmanini's report and the testimony of Mr.
16 Wildermuth, there is substantial evidence that the 2003 Model was peer reviewed and improved with
17 recommendations from Mr. Scalmanini. (October 25, 2007 Declaration of Mr. Wildermuth ¶ 4;
18 Motion for Approval of Peace II Documents, 7:19-28.) A 2007 version of the model is improved
19 beyond that which was reviewed by Mr. Scalmanini. (Motion for Approval of Peace II Documents,
20 7:19-28.) There is no evidence rebutting the sufficiency of the 2007 Model.

21 Page 10:

22 The Report provides quotations from a limited number of locations in Watermaster's Motion
23 where the proposed amendment to Judgment Exhibit "T" is discussed. The veiled implication is that
24 Watermaster's Motion does not provide adequate discussion of the proposed amendment.

25 The amendment to Exhibit "T" is the amendment that authorizes Basin Reoperation. Basin
26 Reoperation is the primary subject of Watermaster's Motion and is the sole subject of the
27 Wildermuth technical report and testimony.

28

1 Pages 11 to 13:

2 The Referee Report contends that the amendment to Judgment Exhibit "T" is not supported
3 by the Technical Report. This assertion arises from the Referee's review of the Final Report
4 prepared by Mr. Wildermuth and the fact the model run *predicts* that if Watermaster proceeded with
5 the proposed Rapid Depletion as the Initial Schedule (Resolution 07-05, Attachment "E," Desalter
6 Replenishment with Most Rapid Depletion of the Re-Operation Account) an additional 200,000
7 acre-feet might be withdrawn if Watermaster wanted to achieve a robust state of Hydraulic Control.

8 The Referee incorrectly assumes that the mere filing on the Initial Schedule combined with
9 the Wildermuth Final Model modified the Project Description or impliedly authorized the taking of
10 more than 400,000 acre-feet for the purpose of Hydraulic Control. This is incorrect. As pointed out
11 in oral argument the Project Description has two primary features: the expansion of the desalting
12 capacity and the planned withdrawal of 400,000 acre-feet. (Peace II Agreement, Attachment "A",
13 Project Description at pp. 4-5.) The Project Description has not been changed. There is no document
14 in all the materials transmitted to the Court that contains such a modification.

15 The apparent confusion likely follows from the failure to appreciate that the Initial Schedule
16 was only provisional and a basis to allow Mr. Wildermuth to run an analysis regarding whether there
17 would be material physical injury. (Peace II Agreement, § 7.2(e).) The Referee suggests that there is
18 no basis to substitute a revised schedule as there is no indication that the parties would agree to
19 another schedule. (Report, 13:19-22.) However, the Peace II Measures contemplate that the Initial
20 Schedule will be replaced within one year of the approval following a negotiation between WMWD
21 and the members of the Appropriative Pool. (Peace II Agreement, § 7.2(a) & (e).) Watermaster has
22 retained discretion to then adopt the recommended resolution or present its own to the Court. (Peace
23 II Agreement, § 7.2.) All changes in the schedule would require updated technical data and Court
24 approval.

25 As Mr. Wildermuth explained in his testimony at the November 29 hearing, the purpose of
26 the Wildermuth technical analysis was to determine whether Material Physical Injury would result
27 from the controlled overdraft. (November 29, 2007 Reporter's Transcript, 94:7-13.) The technical
28

1 report analyzed the withdrawal of up to 600,000 acre-feet. Mr. Wildermuth also analyzed
2 withdrawal of 400,000 acre-feet, as is evidenced by his Power Point presentation that was introduced
3 into evidence at the November 29, 2007 Hearing. (Exhibit 2, November 29, 2007 Wildermuth
4 Testimony Evaluation for the Peace 2 Project Description; November 29, 2007 Reporter's
5 Transcript, 112-115.)

6 As Mr. Wildermuth testified, it is possible to achieve Hydraulic Control at the 400,000 acre-
7 foot level, and if withdrawing 600,000 acre-feet does not cause Material Physical Injury, then neither
8 will the withdrawal of 400,000 acre-feet. (Exhibit 2, November 29, 2007 Wildermuth Testimony
9 Evaluation for the Peace 2 Project Description; November 29, 2007 Reporter's Transcript, 115:6-8 (.
10 .. "my basic conjecture is if there's no material physical injury at 600,000, there's no material
11 physical injury at 400,000.") Accordingly, the lesser project is within what was studied assuming
12 that the Initial Schedule were followed. There is no evidence that has been presented to the Court to
13 challenge this opinion.

14 Moreover, it is a legal impossibility for the Initial Schedule to be followed because the
15 parties are expressly and unequivocally limited to the withdrawal of 400,000 acre-feet. The 400,000
16 acre-feet is being made available for an express purpose and under defined conditions. The
17 Judgment amendment itself limits the total quantity authorized.

18 The Referee notes that the Final Report *predicts* less New Yield and that this creates a
19 condition that is not addressed. This too is incorrect. A failure to achieve the "hoped-for" benefit of
20 New Yield does not invalidate the project, the Peace II Measures or any specific agreement.
21 Watermaster and the parties have properly contracted to account for the risks and benefits associated
22 with fluctuating New Yield. (Peace II Agreement, Art. VII) If there is less New Yield than desired,
23 Watermaster must either call upon the Controlled Overdraft account (to the extent there is some of
24 the 400,000 af remaining) or replenish groundwater production for the Desalters.

25 Page 14:

26 "Watermaster does not include any deadlines for submittal of an updated Recharge Master
27 Plan." (Report, 14:17-18.) The existing requirements are to update the Recharge Master Plan every
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1 five years. (Resolution 07-05, Attachment "D", 2007 Supplement to the Implementation Plan
2 Optimum Basin Management Program for the Chino Basin at p. 4.) The next installment would be
3 due in 2010, just two years away. The Referee does not explain why such additional deadlines are
4 needed or what their purpose would be.

5 As Mr. Manning testified, Watermaster is a decade ahead of its recharge needs. (November
6 29, 2007 Reporter's Transcript, 62:5-6.) Work on the next iteration of the Recharge Master Plan has
7 already begun.

8 The Referee further notes that: "The critical question is what happens if Watermaster either
9 does not further carry out its recharge planning process or does not implement the plan." (Report,
10 14:19-20.) We agree this is critical. However, the response is equally obvious. Watermaster and the
11 parties have been operating successfully for nearly eight years and this track record of success
12 provides a reasonable basis for the Court to assume that Watermaster will meet its obligations.

13 Through the Peace II Measures, Watermaster has supplemented the Court's review and
14 control in several ways set forth more fully below.

15 The Referee identifies Paragraph 2(b)(6) of the amended Exhibit "T" as the "obvious" answer
16 to this question. As explained by Mr. Slater at the hearing, however, this section is not at all intended
17 to answer this question. (November 29, 2007 Reporter's Transcript, 46:16-48:2.). Paragraph 2(b)(6)
18 was designed to provide assurances to investors and to WMWD that the availability of Controlled
19 Overdraft would not be curtailed if Hydraulic Control was achieved prior to using all 400,000 acre-
20 feet set aside for that purpose.

21 With reference to the Judgment amendment, the appropriate provision is actually paragraph
22 2(b)(5) which contemplates Watermaster Rules and Regulations. However, in fact, the answer to the
23 question is to be found in the proposed revisions to the Rules and Regulations. (Resolution 07-05,
24 Attachment "F," Watermaster's Rules and Regulations.)

25 Page 15, line 12:

26 Guidance for these expected Rules and Regulations is contained within the Supplement to the
27 OBMP. It sets forth specific conditions that are attached to the availability of the Controlled
28

1 Overdraft. (Resolution 07-05, Attachment "D", 2007 Supplement to the Implementation Plan
2 Optimum Basin Management Program for the Chino Basin.) The conditions include, among others,
3 the following:

- 4 1) Further desalter production facilities will emphasize production from the southern end of the
5 Basin;
- 6 2) Controlled overdraft must not cause material physical injury to any Party or the Basin;
- 7 3) A schedule for Re-Operation, including annual and cumulative quantities to be pumped will
8 be developed;
- 9 4) Watermaster will prepare an annual summary accounting of groundwater production and
10 desalting;
- 11 5) Watermaster must be in *substantial compliance* with its then existing recharge and
12 replenishment plans and obligations, and will make an annual finding whether or not it is in
13 compliance (emphasis added);
- 14 6) Groundwater produced by Desalters in connection with Re-operation to achieve Hydraulic
15 Control will be replenished through the water made available through controlled overdraft.

16 (Resolution 07-05, Attachment "D", 2007 Supplement to the Implementation Plan Optimum Basin
17 Management Program for the Chino Basin, Reoperation (a)-(f).)

18 In addition, these are further supported by Section 8.3 of the Peace II Agreement which
19 expressly links access to the Controlled Overdraft to continuing compliance with Watermaster's
20 Recharge Master Plan obligations. (Peace II Agreement, § 8.3 ("To ameliorate any long-term risks
21 attributable to reliance upon un-replenished groundwater production by the Desalters, the annual
22 availability of any portion of the 400,000 acre-feet set aside as controlled overdraft as a component
23 of the Physical Solution, is expressly subject to Watermaster making an annual finding about
24 whether it is in substantial compliance with the revised Watermaster Recharge Master Plan pursuant
25 to Paragraphs 7.3 and 8.1 above.").)

1 With regard to paragraph 2(b)(6) of the Judgment Amendment, the Referee asks what is a
2 "contingency plan" and how does it differ from the Recharge Master Plan.⁷ This was addressed by
3 Mr. Manning in his testimony. (November 29, 2007 Reporter's Transcript, 67:10-68:3.) In sum, the
4 Recharge Master Plan encompasses all strategies necessary to get water in the ground. The
5 contingency plan, on the other hand, would include strategies that would be used if there was a
6 problem with getting the water. For example, this might include implementation of additional
7 conservation measures, such as continuing to collaborate with IEUA on initiating conservation
8 measures, and working with cities to reduce demand. In addition, Watermaster might examine
9 recharge or pumping strategies that would shift the demand from one location where there is surplus
10 water to a drier location. (November 29, 2007 Reporter's Transcript, 67:17-25.)

11 Page 15, line 16:

12 With reference to distribution of the costs of the contingency plan, the Referee asks, "What
13 does any of this mean?" As Mr. Manning explained in his testimony, it means that the costs will be
14 distributed in a manner that is equitable to the parties. (November 29, 2007 Reporter's Transcript,
15 68:6-20.) For example, the parties may use pumping as an element in the equitable distribution of
16 costs. (November 29, 2007 Reporter's Transcript, 68:6-20.)

17 Page 15, lines 19 through 24:

18 The Referee asks whether there is a clear and enforceable obligation to update the Recharge
19 Master Plan. Paragraph 2(b)(5) of Exhibit "T" makes the update to the Recharge Master Plan a
20 mandatory duty. If Watermaster and the parties are not in compliance with this requirement, then the
21 controlled overdraft of the Basin must cease. Mr. Wildermuth testified that it is possible for there to
22 be an immediate course correction if Material Physical Injury were to develop. (November 29, 2007
23 Reporter's Transcript, 115:24-116:4.) The method to stop the controlled overdraft of the Basin
24 would be through the resumption of replenishment. The Court will be able to determine that the
25 controlled overdraft has been stopped simply through the reporting of the resumption of
26 replenishment in an amount sufficient to account for desalter production.

27
28 ⁷ This question is repeated by the Referee on page 41, line 21.

1 The Referee also questions the meaning of "substantial compliance" and the use of the term
2 "new equilibrium" in suggesting there are ambiguities in the commitments toward recharge and the
3 return the Basin. "Substantial compliance" is a customary legal term that is used to provided
4 flexibility and avoid hardship when evaluating good faith performance. (*People v. Green*, 125
5 Cal.App.4th 360, 371 (2004).)

6 Watermaster's substantial compliance in moving towards its Court approved Recharge
7 Master Plan goals will be first evaluated by Watermaster. (Judgment ¶ 31.) If any party contests the
8 finding, it may be appealed directly to the Court. (Judgment ¶ 31.) In this way, the Court maintains
9 control over the development of the Plan itself and Watermaster's ongoing progress.

10 Written agreements are accorded their "plain meaning." The term "equilibrium" means "state
11 of balance". (Webster's Dictionary 5th Edition) In the context of moving from a period of Basin Re-
12 Operation and Controlled Overdraft, to one of "new equilibrium" – the plain meaning is – an end to
13 the preceding phase of overdraft and a return to balance, or safe-yield management.

14 Page 16, line 4-7:

15 The Report indicates that Watermaster's recharge master planning must take in to account all
16 necessary future recharge needs, not just recharge for desalter pumping. The Peace II Measures set
17 forth requirements for the Recharge Master Plan requires that the cumulative pumping be considered
18 when calculating all recharge needs. (Resolution 07-05, Attachment "J" (Judgment Amendment to
19 Exhibit "I") § 2(b)(5).)

20 More importantly, the Referee expressed surprise and concern over the downward trends in
21 Safe Yield predicted by the Final Report. Watermaster shares this concern. Indeed it would be a
22 travesty if the Safe Yield of the Basin was materially diminished over the next several decades.
23 Watermaster and the parties have already invested heavily in measures to retard erosion of safe yield
24 and to increase yield through physical improvements, it would be both uncharacteristic and wholly
25 without precedent for Watermaster to ignore information suggesting that its earlier investments will
26 be undermined.

1 The Court must appreciate that information is very new and further evaluation and better
2 understanding of the causes and whether they can be reversed or mitigated by methods other than
3 expanded recharge is warranted. That said, Watermaster must point out that the gravity of the
4 predicted condition in the Final Report actually grows worse if the Peace II Measures are not
5 implemented. (November 15, 2007 Declaration of Mark Wildermuth, ¶ 17.)

6 There can be no better place to address the subject of declining yield than in the proposed
7 Recharge Master Plan process. The Recharge Master Plan must include "recharge projections and
8 summaries of the projected water supply availability as well as the physical means to accomplish
9 recharge projections." (Resolution 07-05, Attachment "J" (Judgment Amendment to Exhibit "F") §
10 2(b)(5).) It is reasonable to conclude that the Plan must use certain baseline assumptions regarding
11 Safe Yield in projecting the replenishment needs and the role recharge will play in meeting them.
12 Accordingly, Watermaster intends to include an assessment of Basin safe yield and proposed
13 strategies to address predicted declines within the Recharge Master Plan. A lesser commitment
14 would be irresponsible.

15 Page 17 to 19:

16 The Referee contends that Watermaster has offered no explanation for the need for the
17 Judgment amendments relating to the Overlying (Non-Agricultural) Pool besides the fact that under
18 the current rules, water continues to accumulate in the storage account for the Non-Agricultural Pool
19 with no apparent way to free this stranded resource. Mr. Manning testified to this at the hearing.
20 (November 29, 2007 Reporter's Transcript, 68:21-69:6.)

21 The Judgment did not contemplate that water would accumulate in storage because there is
22 no administrative way for the water to be used, and as described above such accumulation is
23 potentially in violation of Article X, section 2 of the California Constitution. Water should not be
24 held indefinitely in cold storage. (*California Trout Inc. v. State Water Resources Control Board* 207
25 Cal.App.3d 585, 619 (1989).)

26 Moreover, the liberation of the water serves important purposes to increase efficiencies;
27 storage and recovery, to off-set desalter production and to off-set other calls for imported water.
28

1 Page 17, footnote 16:

2 The Referee correctly identifies a typographical error (characterized as a "misquote") in the
3 amendment to Judgment Paragraph 8. Watermaster will cause the correction of the typographical
4 error to be fixed.

5 Pages 19-20:

6 The Referee alleges that Watermaster does not address the issue of appurtenance and the
7 consequences of removing that requirement from overlying rights. The Referee states that
8 appurtenance is a fundamental aspect of overlying rights. However, in other adjudications the
9 appurtenance requirement has been relaxed or even eliminated entirely in the context of furthering
10 the physical solution. For example, the Mojave Judgment allows stipulating parties (which includes
11 overlying landowners) to sell or transfer their base annual production right according to rules and
12 regulations set forth in the Judgment. (*City of Barstow v. City of Adelanto* (Superior Ct. Riverside
13 County, 1994, No. Civ. 208568 (Mojave Basin), Mojave Judgment at ¶ 34.) The Mojave Judgment
14 provides that transfers must be made in accordance with certain rules that protect the basin and the
15 transferee must provide notice to the basin's Watermaster. (Mojave Judgment at Exhibit F-1.)

16 In order to address this issue from a legal and policy standpoint, it is useful to examine the
17 history and policy reasons behind the appurtenancy requirement.

18 **1. Definition of Overlying Right: Nature of Connection to the Land**

19 In order to describe the appurtenance requirement, Courts have used the words "in
20 connection with" and "on" (*Katz v. Walkinshaw* (1903) 141 Cal. 116, 134), "for the benefit and
21 enjoyment of his land," and "upon the land." (*McClintock v. Hudson*, 141 Cal. 275, 277 (1903).) A
22 person who owns real property overlying a groundwater basin (an overlying owner) has a right to
23 extract groundwater from beneath his property (by means of wells) for use on his overlying land
24 within the watershed. (*Barstow*, 23 Cal.4th at 1240.) An overlying owner can pump water from one
25 point on the property and export it for use anywhere on the same parcel so long as the use occurs
26 within the watershed or drainage area of the basin. (SLATER, CALIFORNIA WATER LAW AND POLICY §
27 3.02 (2006 ed.).)

28

1 An overlying owner's right is correlative with all other overlying users' rights. The overlying
2 owner is limited to a proportionate, correlative, and reasonable share of the common supply. (*Katz*
3 *v. Walkinshaw*, 141 Cal. 116.) Absent an adjudication, the overlying owner is not entitled to a
4 specific quantity of water because, by definition, the amount of water to which the overlying owner
5 is entitled fluctuates with the present need of the landowner. (*Prather v. Hoberg* (1944) 24 Cal.2d
6 549, 559-60.) Rather, the correlative right is a shared right to some proportion of the water supply,
7 which is measured by the equal and mutual rights of the other overlying landowners. (*Barstow*, 23
8 Cal.4th at 1241.)

9 There is no requirement that the landowner immediately intend to use the water to vest title
10 of the right. The right is "part and parcel" of the land. (*City of Pasadena v. City of Alhambra* (1949)
11 33 Cal.2d 908, 925.) The overlying right consists of a present right to use water for existing and
12 prospective uses. (*Peabody v. City of Vallejo* (1935) 2 Cal.2d 351.) Thus, the right may remain
13 unexercised or "dormant," at least in times of surplus.

14 Generally, overlying rights may not be transferred. The export of groundwater from land
15 overlying a groundwater basin to land not overlying that basin is considered to be an appropriative
16 use of water. The right, however, is merely a provisional right to use surplus water in excess of the
17 cumulative needs of all overlying landowners who rely on the basin. (*City of Pasadena v. City of*
18 *Alhambra* (1949) 33 Cal.2d 908, 925; *Moreno Mut. Irr. Co. v. Beaumont Irr. Dist.* (1949) 94
19 Cal.App.2d 766.) If the water to be transferred is subject to existing needs – e.g., not surplus – it is
20 not subject to transfer. In the event an export of water will result in injury to an existing water right
21 user, it may be enjoined. (*Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal.2d 489, 524-
22 525; *Corona Foothill Lemon Co. v. Lillibridge* (1937) 8 Cal.2d 522.)

23 2. Rationale for Appurtenance Requirement

24 In exchange for the limitations imposed on overlying rights, overlying rights, like riparian
25 rights, have several shared benefits. Overlying rights are the highest priority right to any water
26 supply in most cases. In addition, these rights do not have to be used to be constitutionally protected
27 from forfeiture. (*Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.*, 3 Cal.2d 489.) The rationale for
28

1 this priority is that there is a preference for use within areas where this water originates. One of the
2 reasons that the common-law concept of riparian rights was adopted by the Supreme Court was the
3 existence of a policy preference for water uses occurring within a watershed. This allows the
4 maximum benefit of the local supply to be achieved. (Anderson, *Riparian Water Rights in*
5 *California, Governor's Commission to Review California Water Rights Law* (1977) at pp. 19-21.)

6 The appurtenance requirement for overlying uses was modeled after the riparian model of
7 water rights. The law and the policy reasons behind the appurtenance limitation were first described
8 by the California Supreme Court in *Katz v. Walkinshaw* (1903) 141 Cal. 116, 134: "The doctrine of
9 reasonable use ... limits the rights of others to such amount of water as may be necessary for some
10 useful purpose *in connection with* the land from which it is taken" (italics added). Later in the same
11 paragraph, Justice Shaw described the "inconvenience from attacks on the title to waters
12 appropriated for use on distant lands made by persons who claim the right to the reasonable use of
13 such waters on their own lands." *Id.*

14 In *Cohen v. La Canada Land & Water Co.* (1904) 142 Cal. 437, 439: the court found "it has
15 been established by these cases [*Katz* and subsequent cases] that the right of an owner of land to use
16 water percolating therein is a right only to a reasonable use thereof *for the benefit and enjoyment of*
17 *his land*" (italics added). The court in *Burr v. Maclay Rancho Water Co.* (1908) 154 Cal. 428, 436
18 noted:

19 The land being so situated that it has the natural advantages afforded
20 by the underlying water, the conditions are analogous to those
21 affecting land riparian to a stream, which, because of its situation with
22 reference to the stream, is given rights to the waters thereof, so far as
23 necessary for use *thereon*, which are paramount to the right of another
24 riparian owner to divert the water to lands not riparian. The
25 reasonable rule here would be to hold that the defendant's
26 appropriation for distant lands is subject to the reasonable use of the
27 water on lands overlying the supply, particularly in the hands of
28 persons who have acquired it because of these natural advantages, and
we therefore hold this to be the law of the case with respect to the
lands upon which no water has been used by the plaintiff. In the case
of either class of owners of overlying lands, the appropriator for use on
distant land has the right to any surplus that may exist. (Italics added.)

1 These two cases highlight that the appurtenance requirement prevents an overlying owner from
2 transferring water to distant land and in turn, protects all the overlying landowners who may have
3 purchased the land to take advantage of its location in relationship to a groundwater basin or water
4 body. Further, this preference may have also stemmed from the belief that the competing
5 appropriation system would "lead to a massive and immediate exploitation of our state's water
6 supplies." (SLATER at 3-12.) Today our common laws continue to prefer uses within the river or
7 basin. (*Id.* at 3-13.)

8 Although overlying rights and the requisite appurtenance requirements continue to exist
9 today, there are signs of change. In 1978, the Governor's Commission to Review California Water
10 Rights Law ("Governor's Commission") recognized that the major dam-building era in California
11 was over. Because water was becoming increasingly scarce due to rising construction costs and
12 opposition to large scale water projects, the Governor's Commission recognized the need to shift to
13 making more resourceful use of already developed water supplies, improving efficiency by
14 providing economic incentives for water conservation and establishing procedures to aid voluntary
15 transfers. (Governor's Commission to Review California Water Rights Law, Final Report 50-51
16 (Dec. 1978).)

17 In addition, instead of succumbing to the tragedy of the commons found in groundwater
18 basins, the concept of groundwater adjudications was developed in California. Through negotiation,
19 water producers entered into a series of negotiations, through which they were able to form
20 institutional structures that pooled public and private governance, to impose restrictions on
21 withdrawals, and to institute conservation measures. (Choe, Olivia S., *Appurtenance*
22 *Reconceptualized: Managing Water in an Era of Scarcity*, 113 Yale L.J. 1909, 1946 (2004).) Thus,
23 private actors were able "to impose constraints on themselves" within the public arena. And finally,
24 the negotiations among parties led to a better clarification of rights, which in turn allowed a market
25 to develop, leading to a transfer of rights to those using them at "a higher value." (*Id.*) It is important
26 to note that groundwater adjudications were not in existence when California adopted the overlying
27 rights system.

28

1 A review of the history of overlying rights reveals that the main public policy reasons behind
2 the appurtenance requirement include: (1) a preference for water uses occurring within a watershed
3 (to ensure water returns to its source); (2) protection of investment backed expectations that
4 accompany the purchase of overlying land; and (3) to prevent exploitation of our state's water
5 supplies. Though these are all valid reasons for the appurtenance requirement which accompanies
6 rights in the common law arena, none apply in the case of an adjudicated basin. Within the realm of
7 an adjudication, these policy reasons are no longer germane.

8 Here, Watermaster seeks to relax the inflexible appurtenance requirement to further the
9 beneficial use of water within the Basin. If water is transferred to Watermaster, it may use the water
10 for Desalter replenishment, in a Storage and Recovery Program, or transfer it to appropriators. All of
11 these programs ensure the Basin remains healthy and water is transferred to the highest beneficial
12 use, which overrides any preference for restricting water use to overlying land and therefore
13 ensuring water remains within a watershed. Lastly, relaxing the appurtenance requirement to allow
14 further transfers will not lead to the exploitation or transfer of water outside of the Basin. Instead, it
15 will have quite the opposite effect: the transfers will further protect the health of the Basin, by
16 providing water to replenish the Basin.

17 In sum, there are no practical or public policy grounds as to why the appurtenance
18 requirements of an overlying right should restrict Watermaster from allowing parties to transfer
19 overlying rights in accordance with Watermaster-imposed guidelines.

20 Page 20, footnote 21, line 25:

21 The Referee contends that section 4.4 of the Peace II Agreement is inconsistent with Exhibit
22 "G" paragraph 6 regarding assignment of Non-Agricultural Pool rights. Paragraph 6 of Exhibit "G"
23 refers to the situation where an appropriator is providing water to a Non-Agricultural Pool member
24 in lieu of that party pumping water. It says nothing about the situation where a member of the
25 Appropriative Pool (such as a city) owns overlying property and pumps water for an overlying use
26 on that property. This is the situation contemplated by section 4.4.

27 Pages 21-22:

28

1 The Referee contends that the amendment to Judgment Exhibit "G" will not allow the one-
2 time purchase of Non-Agricultural Pool water. As explained in Watermaster's Motion (Motion
3 16:23), the one-time transfer is intended to be conducted under the 2000 Judgment amendment that
4 allows the water to be transferred to Watermaster for use in a storage and recovery program or for
5 desalter replenishment. This aspect of the transfer does not require a further Judgment amendment.

6 The annual transfer, on the other hand, is a transfer intended primarily to distribute the water
7 to the members of the Appropriative Pool. Every year the members of the Non-Agricultural Pool can
8 determine how much of their available water they wish to make available for this transfer.

9 It is only in the situation where Watermaster is unable to use the one-time transfer water for
10 either a storage and recovery program or for desalter replenishment that the water will be distributed
11 to the members of the Appropriative Pool. (Resolution 07-5, Attachment "G," Purchase and Sale
12 Agreement, § H.) Section H of the Purchase and Sale Agreement specifies that if the water is unable
13 to be used in a storage and recovery program or for desalter replenishment, then the Purchase and
14 Sale Agreement will *terminate*. This is why section H is titled, "Early Termination." In the event that
15 the agreement terminates, then the water effectively becomes available to the Non-Agricultural Pool
16 for transfer under the annual transfer. Since the water will already have been paid for, the Purchase
17 and Sale Agreement automatically moves it in to the category of the annual transfer and specifies
18 that the water will be distributed according to the requirements of Paragraph 9(iv) of the amended
19 Exhibit "G."

20 It is only under the assumption that Exhibit "G" has been incorrectly drafted that the Referee
21 contends that the reference in Paragraph 9(iv) to Watermaster Rules and Regulations should instead
22 refer to the Purchase and Sale Agreement. (Report, 21:24; 21:27.) In fact, the reference to the Rules
23 and Regulations is correct.

24 Page 22, footnote 27:

25 The Referee correctly notes a typographical error in the reference of shares of Operating Safe
26 Yield with reference to the Non-Agricultural Pool. The correct reference should be to shares of Safe
27 Yield.

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1 Page 22-23:

2 The Referee labels the Special Project OBMP Assessment as a "tithe." The significance of
3 this label is never explained. However, the Referee does suggest that this assessment could be
4 construed as a reallocation of Safe Yield. This is incorrect. The assessment is a monetary assessment
5 based on the party's share of Safe Yield, just as are many Watermaster assessments. The Non-
6 Agricultural Pool member is given the option in any given year to pay the assessment in water rather
7 than money, but this is just a payment option and cannot be construed as a reallocation of rights to
8 Safe Yield.

9 Page 31, footnote 38:

10 The Referee recommends that the parties reconsider the Sunding analyses in light of new
11 information regarding New Yield. The purpose of the Sunding analyses were to provide the parties
12 with the best information and analysis of that information available at the time in order to assist their
13 decision making with regard to the Peace II document. It must be understood that as new
14 information is developed that the analyses will become dated. There was no intention by the parties
15 under the Non-Binding Term Sheet that the analyses would continue to be updated.

16 The analysis was in fact previously supplemented. Watermaster and the parties worked
17 collaboratively to present their views regarding the economic benefits and burdens that were not
18 directly addressed in Dr. Sunding's analysis. The process culminated in changes to the Peace II
19 Measures and broader satisfaction with the documentation. The fact that the parties are satisfied that
20 Dr. Sunding's analysis was one opinion and not the last word and further have found a way to work
21 through their differences should be sufficient.

22 Page 34, footnote 40:

23 The Referee suggests that the Supplement to the OBMP Implementation Plan does not fully
24 reflect Section 5.2 of the Peace II Agreement. Section 5.2 of the Peace II Agreement says that the
25 OBMP Implementation Plan will be supplemented to reflect that WMWD, City of Ontario, and
26 Jurupa Community Services District will exercise good faith and reasonable best efforts to arrange
27 for the design, planning and construction of Future Desalters. The Supplement to the OBMP
28

1 Implementation Plan describes the efforts underway by these three entities to arrange for the design,
2 planning and construction of the Future Desalters. (Peace II Agreement, Attachment "D," OBMP
3 Implementation Plan Supplement, p.8.)

4 Page 35, 13-15:

5 The Referee claims that the 2007 Supplement does not follow the provisions related to
6 recharge contained in the Peace II Agreement, referencing Article VIII of the Agreement. This is a
7 mysterious statement.

8 Section 8.1 of the Peace II Agreement specifies that the Recharge Master Plan will be
9 updated. (Peace II Agreement, § 8.1.) Page 4 of the 2007 Supplement says that the Recharge Master
10 Plan will be updated. (Peace II Agreement, Attachment "D," OBMP Implementation Plan
11 Supplement, p. 8.) Section 8.2 of the Peace II Agreement describes coordination between the parties
12 regarding the update. (Peace II Agreement, § 8.2.) Page 4 of the 2007 Supplement describes the
13 same coordination. (Peace II Agreement, Attachment "D," OBMP Implementation Plan Supplement,
14 p.8.) Section 8.3 of the Peace II Agreement is copied nearly verbatim into the 2007 Supplement
15 under the heading "Suspension" to the point where the 2007 Supplement contains a typographical
16 error in referencing a provision of the Peace II Agreement as located "above." (Peace II Agreement,
17 § 8.3.) Section 8.4 of the Peace II Agreement discusses the 6,500 acre-feet of Supplemental Water
18 recharge as does the 2007 Supplement at pages 4-5. (Peace II Agreement, § 8.4; Peace II Agreement,
19 Attachment "D," OBMP Implementation Plan Supplement, pp. 4-5.)

20 The 2007 Supplement also incorporates the provisions of the Judgment amendment relating
21 to Hydraulic Control and Basin Reoperation.

22 Page 35, lines 15-17:

23 The Referee says that the Court should not approve the 2007 Supplement until it is satisfied
24 that the Supplement accurately reflects the agreement of the parties. However, as the record reflects,
25 the documents embody the agreement of the parties, and the parties support approval of the
26 documents – this is the best evidence there is that the documents accurately reflect the agreement of
27 the parties.

1 In terms of a full explanation of the modifications to the Court, the 2007 Supplement does
2 not fundamentally modify the plan as set forth in 2000. Since 2000, Implementation of the OBMP
3 has moved from an anticipated set of actions, to actual on-the-ground implementation measures. The
4 most accurate manner for the 2007 Supplement to update the Implementation Plan is thus to indicate
5 what activities are actually underway, and to provide some indication of where they are going. In
6 addition to this, it is important that the Implementation Plan incorporate the concepts of Hydraulic
7 Control and Basin Reoperation as explicit OBMP goals. As described above, this was done under
8 Program Element 2 (pp. 3-8).

9 Page 36, footnote 42:

10 The Report states that Watermaster has not indicated which of the two schedules regarding
11 controlled overdraft have been chosen.⁸ The agreements themselves did not contemplate that the
12 parties would have chosen which schedule to use by the time of approval of the Peace II Documents.
13 Whichever schedule was to be chosen did not impact the Court's approval of the overall strategy.
14 However, just prior to the filing of Watermaster's Motion, the parties were able to commit to the
15 most rapid depletion schedule. Mr. Manning testified to this at the November 29 hearing. (November
16 29, 2007 Reporter's Transcript, 70:20-25.)

17 Page 36, footnote 43:

18 The Referee says that Watermaster accounting should be corrected back to 2000 to account
19 for shortfalls in storm water new yield and induced inflow. Notably, there is no recommendation to
20 correct for Mr. Wildermuth's opinion that Safe Yield has historically been greater than 140,000 acre-
21 feet. Watermaster appreciates the suggestion that corrections should be made where material – but
22 not only if they penalize the parties.

23 Page 38, lines 7-9:

24 The Referee demands an explanation of how the proposed Rules and Regulations
25 amendments are in the public interest, are consistent with the OBMP and are consistent with Article
26 X, section 2 of the California Constitution.

27
28 ⁸ This question is repeated at page 42, line 7-8.

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1 The Rules and Regulations amendments primarily concern accounting practices by
2 Watermaster. While aspects of the Peace II documents are of great significance going to the heart of
3 the Judgment and Watermaster's role, some are more mundane. The Rules and Regulations
4 amendments are more in the nature of the latter category.

5 The Referee articulates 5 amendments to the Rules and Regulations. (Report, 37:8-18.) Four
6 of these concern internal Watermaster accounting practices. While the parties are interested in these
7 issues because they may impact the assessments that any individual party pays, they are not issues
8 that impact OBMP Implementation, and it is folly to engage in the hyperbolic exercise of linking
9 them to the general public interest or to the State Constitution. They impact the allocation of costs
10 amongst the parties, and here, as elsewhere, the agreement of the parties should be determinative that
11 the amendments are appropriate.

12 The amendment that does not concern mere accounting practices is the amendment
13 concerning storage losses. The Rules and Regulations require that Watermaster will charge losses of
14 2% unless technical analysis shows that a different amount will be justified. Watermaster's technical
15 analysis shows that once Hydraulic Control is achieved, there will be no losses to the Santa Ana
16 River. Thus, losses will be reduced to less than 1%. However, in the absence of the OBMP, losses
17 would be much higher – in the 6% range. Thus, any party storing water in the Chino Basin who has
18 not contributed to OBMP implementation will be charged losses of 6%. This encourages investment
19 in OBMP Implementation and so furthers the Physical Solution under the Judgment.

20 Page 38, lines 19-21:

21 The Referee notes that Watermaster's Motion did not indicate the actual quantity of water in
22 storage by the Non-Agricultural Pool as of June 20, 2007. This is true. However, it is unclear why
23 this is relevant to the Court's analysis. The amount of water held in storage was testified to by Mr.
24 Manning. (November 29, 2007 Reporter's Transcript, 70:3-13.)

25 Page 39, footnote 47:

26 The Referee suggests that Watermaster should not give up discretion to purchase the one
27 time transfer for Desalter replenishment. However, Watermaster prefers the holistic management
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1 approach presented by the suite of actions contemplated by the Peace II Measures. Watermaster has
2 adequate tools to address Desalter replenishment in the near future.

3 Page 39, line 9:

4 The Referee says that there is no definition of "Early Termination" in the Purchase and Sale
5 Agreement. Early Termination is clearly defined by the terms of the paragraph for which it is the
6 heading. Early Termination occurs if Watermaster does not issue its Notice of Intent to Purchase in
7 accordance with Paragraph D of the agreement within twenty-four months of Court approval.

8 Page 41, lines 7-9:

9 The Referee wonders what Watermaster would do if it determines that additional desalter
10 capacity is necessary. The relevance of this question lies in the declaration in Article X of the Peace
11 II Agreement that the Peace Agreement commitments regarding future desalters has been met. The
12 commitment in the Peace Agreement and the OBMP was to construct 40,000 acre-feet of desalter
13 capacity. If the next increment of desalter capacity is constructed as planned, then this commitment
14 will be met.

15 The parties have committed to 40,000 acre-feet. If Watermaster determines that more is
16 needed in the future, then new commitments will be sought. But Watermaster intends to respect and
17 honor the commitments that have already been made.

18 The Referee also asks what Watermaster will do if WMWD reneges on its commitment.
19 Again, Watermaster respects the commitment WMWD has made with regard to the desalters.
20 WMWD who has already acted to approve the Peace II Measures, will lose \$5 million of available
21 funding if it does not proceed. (November 29, 2007 Reporter's Transcript, 32:21-25, 33:1-2.)
22 However, if WMWD is unable to fulfill its commitment, then Watermaster will seek other
23 alternatives.

24 Page 41, lines 15-16:

25 The Referee asks whether Watermaster will commit to a schedule for submission of the
26 updated Recharge Master Plan for Court approval. Watermaster has just started the process of
27 updating the Recharge Master Plan. It is unclear exactly what will be involved with this effort.

28

1 However, Watermaster will likely again require commitment equal to the successful completion of
2 prior efforts. The outdate for a completion of an update to the Recharge Master Plan is already June
3 of 2010, just 30 months away.

4 Page 41, lines 24-26:

5 The Referee asks whether Watermaster intends to revisit the potential need for caps on
6 production if recharge capacity and the availability of replenishment water do not keep pace with
7 demand. Given the Referee's discussion in Part VI.A. about the "fundamental premise" of the
8 Judgment prohibiting caps on production, the Referee and indeed many parties may be skeptical as
9 to whether such caps are consistent with the Judgment or even prudent. It may be that the continued
10 integrity of the Physical Solution is inextricably intertwined with Watermaster and the parties'
11 ability to provide sufficient recharge capacity and replenishment opportunities to support continued
12 reliance on the Basin. The feasibility of this strategy will depend on physical conditions and
13 economics. What may be physically possible may be economically infeasible. However, as of this
14 writing, Watermaster has no opinion as to the outermost boundary of the replenishment possibility
15 and thus whether caps will be required. As always, Watermaster will hold the protection of the Basin
16 above all other considerations.

17 Page 41, line 28 to page 42, line 1:

18 The Referee asks why section 4.4 of the Peace II Agreement is necessary given the
19 availability of the assignment provision of Judgment Exhibit "G" paragraph 6(a). The assignment
20 provision only applies where an appropriator is providing water to an existing Non-Agricultural Pool
21 member in lieu of groundwater pumping. It does not account for the situation where an appropriator
22 itself owns overlying land and pumps water for an overlying use on that land.

23 Page 42, lines 7-10

24 The Referee asks whether Watermaster intends to revise its schedule of controlled overdraft
25 as new information is obtained. At the November 29, 2007 hearing, Mr. Manning answered this
26 question in the affirmative. (November 29, 2007 Reporter's Transcript, 71:1-6.)

27 Page 43, line 22: Page 44, lines 4-6:

1 Watermaster's Motion does not indicate that any evaluation has occurred of the need for
2 further limits on water held in storage. There has been no articulation of the trade offs between
3 increasing local storage versus the storage and recovery program, and Watermaster has not revisited
4 the issue of water being held in Local Storage accounts rather than being put to beneficial use.
5 Mr. Manning Testified to the benefits of increasing the ability of the parties to utilize Local Storage.
6 Local storage is a natural strategy based upon the increasing demands on the system in light of the
7 issues facing the State Water Project. (November 29, 2007 Reporter's Transcript, 69:20-70:2.)
8 Page 45, lines 11-12, lines 22-55; Page 47-48:

9 The Report can be read as inferring that Wildermuth modified its model assumptions
10 inappropriately in order to make its baseline condition work properly. The Report suggests that
11 recharge capacity was simply "nudged up" for this purpose. However, as noted in other locations
12 throughout the Referee's Report the recharge capacity used in the model is 61,000 acre-feet per year
13 through 2008/09, 90,000 acre-feet per year 2009/10 through 2018, and then 104,000 acre-feet per
14 year 2019/20 through 2060/61. (See Report, 55:3-56:1.) These are legitimate expectations
15 concerning the development of recharge capacity. Recharge capacity was not simply "nudged up."

16 The Baseline Alternative "capped" production at 188,500 acre-feet. The Referee attempts to
17 characterize this as the "elephant in the room." (Report, 44:11.) The Referee also contends that the
18 parties have not yet agreed to increasing recharge capacity as an alternative to capping production.
19 Every alternative considered by Wildermuth rests on the arbitrary capping of production. A cap on
20 production is contrary to the "fundamental premise" of the Judgment. Thus, every alternative
21 violates the Judgment.

22 All of the above issues are presented as fundamental issues that challenge Watermaster's
23 technical analysis of Basin Reoperation. What the Report glosses over, however, is that these are
24 issues that plague the formulation of the *Baseline Alternative*. That is, the issue of production
25 potentially exceeding Watermaster's ability to replenish is an issue that exists whether or not
26 Watermaster's Motion is approved.

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1 For the purpose of the technical analysis of Basin Reoperation, Mr. Wildermuth however was
2 forced to instruct the model to respond to this issue in some manner. The method he chose was to
3 assume a cap on production. This does not mean that this would be the choice that Watermaster and
4 the parties would make if this problem arose as a real problem sometime in the future – it was
5 simply a necessary assumption in order to allow the model to perform the analysis that is germane to
6 the current issues in front of the Court.

7 Basin Reoperation and Hydraulic Control do not create the problem of production potentially
8 exceeding the ability to replenish. Because of the induced inflow that is caused by these strategies,
9 however, they may help to mitigate the problem. It may be tempting for the Court to think it
10 expedient to use the current approval process as a means to “leverage” the parties to solve problems
11 that are not raised by Watermaster’s Motion, and while it appears that this is the course favored by
12 some, Watermaster respectfully requests the Court to confine its review to its judicial function of
13 deciding the controversy in front of it, and not stray into thinking that it should attempt to solve all
14 problems now.

15
16 Page 49-50:

17 The Referee notes that Watermaster’s Motion does not account for the projected decline in
18 Safe Yield. This issue is closely connected to the issue of the Wildermuth modeling assumption of a
19 limitation on production. Safe Yield is projected to decline for reasons that are completely unrelated
20 to the Peace II measures. The information is new to Watermaster and not relevant to Watermaster’s
21 Motion. The short answer is that the condition is associated with the “Baseline condition” and is
22 improved by the Court’s approval of the Peace II Measures.

23 Watermaster’s Motion, and the Peace II measures generally, are a complicated and
24 substantial attempt to solve the most pressing set of issues currently facing the Basin – how to move
25 forward with the next increment of desalting capacity and achieve Hydraulic Control as required by
26 the basin Plan amendments. Just as the Peace Agreement left future issues to be resolved in the
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1 future, so now does Peace II leave some issues to be addressed with the Court's guidance in the
2 years ahead.

3 Page 55-56:

4 The Referee contends that the Technical Report has not considered how changes in recharge
5 patterns will impact Hydraulic Control. The Referee questions the ability to recharge and related
6 recharge effects to Hydraulic Control. (Report, 56:6-10.) Watermaster replenishes in arrears for
7 overproduction, or after "takes". Therefore water levels have been drawn down prior to
8 replenishment assisting in maintaining Hydraulic Control and then replenishment occurs. If, as the
9 Special Referee proposes, more recharge capacity is made available and less frequent much larger
10 recharge volumes occur, Hydraulic Control would actually benefit not be hindered.

11 Page 56, lines 13-16:

12 The Referee recommends that Watermaster should perform the complete technical
13 assessment to explain the relationships between recharge capacity, replenishment volumes, safe
14 yield, maintaining hydraulic Control, groundwater production and groundwater levels. However,
15 Watermaster rejects the notion that Watermaster must perfect its understanding of the Basin
16 completely before it moves forward with any substantial management of the Basin. If the Court
17 requires further refinement beyond that which has been provided, there is no reason why approval of
18 the Peace II Measures should be delayed with the Court receiving further updates on desired
19 information as it is made available.

20 Pages 57-60:

21 The Referee assumes that Hydraulic Control will limit storage opportunities and criticizes the
22 Motion for not acknowledging this. The Referee says that Watermaster must consider trade offs with
23 limiting availability of storage and impact on OBMP and Judgment. However, there is no trade off
24 with storage. In fact, as observed by Mr. Wildermuth, without Hydraulic Control it is not possible to
25 do large scale storage programs because without Hydraulic Control there would be adverse impacts
26 on the River. (November 29, 2007 Reporter's Transcript, 126:18-23.) Watermaster will have to
27 prudently structure its Storage and Recovery proposals to with Hydraulic Control in mind.

28

1 Furthermore, without Hydraulic Control there will be no access to the assimilative capacity created
2 by the Maximum Benefit Standards. In other words, the parties would be expending large sums of
3 money to construct treatment facilities for very little benefit. (November 29, 2007 Reporter's
4 Transcript, 93:15-17.)

5 Page 57: 5-6:

6 The Report says that 400,000 acre-feet of storage programs are under consideration. This is
7 incorrect. The quoted language clearly refers to increasing Dry Year Yield storage from the existing
8 100,000 acre-feet up to 300,000 acre-feet.

9 Page 70:

10 The Referee recommends that: "If there are practical alternatives for recycled water use that
11 do not result in basin overdraft and do not change the entire gradient of the basin, and possibly
12 maintain safe yield and allow additional storage and recovery programs, those alternatives should be
13 identified and evaluated. The economics of recycled water use and recharge arguably should not be
14 of *paramount* importance to Watermaster" (Report, 70:22-26.)

15 This recommendation appears to be based on assumptions not supported by the evidence. As
16 explained above, the alternative presented in the Peace II documents does *not* decrease safe yield,
17 and does *not* interfere with additional storage and recovery programs. In fact, as Mr. Wildermuth
18 testified, it is only with Hydraulic Control that storage and recovery programs as envisioned by the
19 OBMP as even possible. (November 29, 2007 Reporter's Transcript, 126:18-23.)

20

21 VII. Conclusion

22 The Referee's Preliminary Report pervasively minimizes economic considerations and party
23 support in its evaluation of the Peace II Measures. The parties to the Judgment do not have unlimited
24 financial resources. Proactively, the parties seek to implement proactive measures ahead of schedule
25 in anticipation of potential regional and statewide water shortages and drought.

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1 As noted by the Court at the August 27, 2007 hearing, the ability of the parties in the Chino
2 Basin to craft solutions that achieve the consensus of the many diverse interests in the Basin is one
3 of the chief virtues of the Watermaster process after the Peace Agreement. These parties are diverse:
4 some are private, some are public, some use the Basin as a water supply, others (such as the Chino
5 Basin Water Conservation District) are charged only with maintaining the health of the Basin. They
6 have both similar and divergent water supply and water management challenges. However, they are
7 bound together by a common goal: the implementation of the OBMP. And, it is their diversity of
8 identity and interests which acts as a safeguard against the "Tragedy of the Commons" that is of
9 concern to the Court.

10 While the governance model and processes that are "Watermaster" may be difficult for the
11 outsider to appreciate, under the continuing supervision of the Court, the model has effectuated
12 unprecedented change for the benefit of the Basin, the parties, the region and the state.

13 Far from contributing to an exploitation of resources, Watermaster has led both consensus
14 building and action. Rare are the circumstances where a party, let alone a region can embrace the
15 wide-spectrum of management activities embodied in the OBMP – without opposition – from any
16 significant stakeholder. There is simply no modern parallel.

17 For all these reasons, the Chino Basin Watermaster respectfully requests that this Court
18 acknowledge the tremendous effort expended by the parties to develop consensus, embrace the
19 offered concepts for improving the over-all efficiency of basin management, self-reliance and the
20 reduced importation of supplemental water. We ask the Court to approve the Peace II Documents
21 now before further delays contribute to a closing of the present window of opportunity.

24 Dated: December 14, 2007



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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, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On December 14, 2007 I served the following:

1) WATERMASTER RESPONSE TO SPECIAL REFEREE'S PRELIMINARY COMMENTS AND RECOMMENDATIONS ON MOTION FOR APPROVAL OF PEACE II DOCUMENTS

- BY MAIL: 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, addresses as follows:
See attached service list: Mailing List 1
- BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.
- BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.
- BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 14, 2007 in Rancho Cucamonga, California.


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7 SPECIAL REFEREE

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

10
11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,
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Plaintiff,

v.
THE CITY OF CHINO, et al.
Defendants.

CASE NO. RCV 51010
Judge: Honorable J. Michael Gumm
SPECIAL REFEREE'S FINAL
REPORT AND RECOMMENDA-
TIONS ON MOTION FOR
APPROVAL OF PEACE II
DOCUMENTS

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18 Operation Account"

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20 of the Re-Operation Account"

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1 I. PROCEDURAL CONTEXT

2 On October 25, 2007, Watermaster filed its *Motion for Approval of Peace II Documents*
3 ("Motion") with the court, and requested that a hearing on the Motion be set for November 29,
4 2007. Watermaster filed with its Motion a draft of its Technical report and the Peace II
5 documents. On November 15, 2007, the court issued an *Order to Show Cause Why Court*
6 *Should Not Continue the Hearing on Motion for Approval of Peace II Documents* ("OSC"). The
7 OSC stated that the court intended to continue the hearing on Watermaster's Motion "... absent
8 sufficient cause being shown by, among other things, testimony of Mark Wildermuth elicited on
9 November 29, 2007."¹ (OSC p. 4, lns. 24-25) The Chino Basin Water Conservation District
10 filed a *Response* to the OSC on November 19, 2006, and Watermaster filed a *Response to Order*
11 *to Show Cause and Conservation District* on November 26, 2007.

12 The Special Referee's *Preliminary Comments and Recommendations on Motion for*
13 *Approval of Peace II Documents* ("Preliminary Report") was filed on November 27, 2007. On
14 November 29, 2007, Watermaster and the Chino Basin Water Conservation District entered into
15 and filed a stipulation stating the Conservation District's support for the Court's approval of the
16 Peace II Measures in consideration for certain clarifications.² On December 13, 2007,

17
18 ¹ The Order stated in full:

19 The Court anticipates that a significant investment of time will be necessary to carefully review the
20 documents. The Court also is most interested in receiving the Special Referee's Report. Finally,
21 the Court has not yet received Wildermuth Environmental's final technical analysis and report.
22 For these reasons and because of the importance of the decision, the Court *motu proprio* intends to
continue the hearing on Watermaster's motion, absent sufficient cause being shown by, among
other things, testimony of Mark Wildermuth elicited on November 29, 2007. To aid the Court in
its preparation for the November 29, 2007 hearing, a declaration by Mark Wildermuth, showing all
of the changes made in the final Technical Report or a red-lined version of the report, would be
helpful.

23 (OSC p. 4, lns. 19-28)

24 ² These included that:

25 Watermaster will not request the Court's final approval of the Peace II Documents until the Court
26 has received a report from the Special Referee regarding Watermaster's Motion. . . Watermaster's
27 Motion shall not be construed as a present request for Court approval of the right to produce more
28 than 400,000 acre-feet of additional controlled overdraft. . . [T]he availability of the 400,000 acre-
feet of controlled overdraft is expressly conditioned upon Watermaster's continuing obligation to
develop and update the Recharge Master Plan. . . Watermaster will address any issues concerning
the reliability of imported water through the Recharge Master Plan effort. . . Watermaster will
address any issues concerning reduction in Safe Yield in accordance with the Judgment and pro-
rate the shortages among the members of the Appropriative Pool in accordance with their
respective shares of Operating Safe Yield.

1 Watermaster filed its Second Transmittal of Supplemental Documents, which included the
2 stipulation as Exhibit "A".³ The Referee's report was filed as a preliminary report due to the
3 exceedingly compressed time available between receipt of Watermaster's Motion on October 27,
4 2007, and the November 29, 2007 hearing. As noted in the Preliminary Report, it was
5 anticipated that testimony at the hearing could resolve or explain many of the issues and
6 questions raised in the Preliminary Report and that legal questions could be addressed through
7 Watermaster filing a Memorandum of Points and Authorities.

8 The court held a hearing on November 29, 2007, with testimony from Mr. Manning and
9 Mr. Wildermuth. The Reporter's Transcript was available December 11, 2007, and Watermaster
10 filed its *Response to Special Referee's Preliminary Comments and Recommendations on Motion*
11 *for Approval of Peace II Documents* ("Response") on December 14, 2007. The Watermaster
12 Response noted that: "The technical issues raised by the Referee are addressed in a separate
13 document that is being prepared by Mark Wildermuth, which will be filed at a later date."
14 (Watermaster Response p. 2, fn. 2) Mr. Wildermuth's Letter Report to Watermaster on the
15 subject "Evaluation of Alternative 1C and Declining Safe Yield" (December 18, 2007)
16 ("Wildermuth Letter Report") was filed with the court December 19, 2007.

17 II. REQUEST FOR COURT GUIDANCE AS TO SPECIAL REFEREE'S ROLE

18 A. Special Referee and Watermaster Relationship and Roles

19 Research has been conducted in the past on the appropriate time that should be allowed
20 for parties and Watermaster to respond to a Special Referee Report, and it was concluded that a
21 Special Referee report should be filed 30 days in advance of the court's hearing, with responses
22 in 20 days and an opportunity for any Special Referee response 5 days before a hearing on the
23 matter at hand. In this case, that has not been possible. Because of Watermaster's and the
24 parties' urgent desire to have the court rule by the end of 2007, every effort has been made to
25 provide the Preliminary Report before the November 29 hearing, and to provide this Final Report
26 and Recommendations as soon as humanly possible.

27 ³ Exhibit "B" was a Declaration from Ronald Craig on behalf of the City of Chino Hills, and Exhibit "C" was a
28 Declaration from Elden Horst for Jurupa Community Services District, both in support of approval of the Peace II
Measures.

1 But this is not the issue raised by Watermaster's Response. Watermaster asks the court
2 for guidance as to how it, as an arm or extension of the court, and the Special Referee, as an
3 extension of the court, are to work together, and what the respective roles of Watermaster and the
4 Special Referee are. The role of the Special Referee is to (1) provide the court with as full and
5 complete explanations as possible of what the Watermaster requests or of issues that have been
6 brought to the court; and (2) to make recommendations to the court as appropriate.
7 Watermaster's role under the Judgment is to operate as an extension of the court and "to meet the
8 needs of the court in carrying out its obligations under the Judgment and Article X, Section 2 of
9 the California Constitution." (Response p. 3, lns. 2-3)

10 Watermaster suggests that the respective roles of the Watermaster and Special Referee
11 are particularly difficult or markedly different where there is an unopposed motion supported by
12 all the parties. Whether a motion is unopposed or opposed, Watermaster and the Special Referee
13 each has a role to be carried out. The Special Referee may be less constrained than Watermaster
14 in raising questions and voicing concerns with the goal of clarifying and completing the record
15 for the court, because Watermaster has facilitated the years of intense negotiations that have
16 culminated in the unopposed Motion.⁴

17 A calm reading of the Preliminary Report will reveal that the Special Referee is not a
18 "quasi-adversary" or an adversary of any kind. The report does four things: (1) it raises
19 questions that have not been addressed by Watermaster's Motion; (2) it raises questions
20 concerning the Technical Report⁵ and the Technical Report's support for the Peace II measures;
21 (3) it lists the fundamental questions to be addressed in order for the court to be reassured that
22 Watermaster has fully evaluated the risks and consequences of Basin reoperation; and (4) it sets
23 out issues for Watermaster to respond to, with the goal of obtaining as complete a record as
24 possible for the court before the court rules on Watermaster's Motion. With the testimony

25 ⁴ Watermaster expresses the concern that, where the parties have reached unanimous agreement, "... The Referee's
26 criticism or suggestion, however well-intended, can serve to instigate new rounds of negotiations and undermine the
27 ability of the Watermaster and the parties to move forward now and in the future." (Response p. 4, ln. 26 to p. 5, ln.
28 2)

⁵ 2007 CBWM Groundwater Model Documentation and Evaluation of the Peace II Project Description, Final
Report, dated November 2007 ("Technical Report"), transmitted to the court on November 15, 2007, as Exhibit "A"
of Watermaster's Transmittal of Supplemental Documents.

1 offered at the hearing, and with Watermaster's Response, the record is far more substantive and
2 complete, and now provides a foundation for recommendations to the court, and for the court to
3 rule on Watermaster's Motion. This process, although almost impossibly compressed, has been
4 productive.⁶

5 **B. Burdens of Producing Evidence and Burden of Proof and Standard of Review**

6 Watermaster asks for court guidance regarding the respective roles of the Watermaster
7 and Special Referee with regard to Watermaster's burden of providing evidence and the burden
8 of proof "where consensus and non-opposition is put to the test by the Referee's Preliminary
9 Report."⁷ (Response p. 5, ln. 12) Watermaster asks the court to set:

10 procedural ground rules for those instances where a report by the Referee will be
11 required and to provide appropriate notice where the Referee acts as an extension
12 of the court and as a quasi-adversary to Watermaster, also as extension of the
13 court.

13 (*Id.* lns. 13-16)

14 Where Watermaster moves the court for approval of Judgment amendments and other
15 Peace II documents, Watermaster's view is that it should be able to make "a *prima facie* showing
16 on a stipulation", and that:

17 ... consent of the parties represents compelling, unrebutted evidence that the

18 ⁶ Watermaster was in a similar position in 2000, with regard to the court's approval of the Peace Agreement. In that
19 proceeding, Watermaster also had obtained the unanimous consent of the parties, and proposed Judgment
20 amendments were unopposed. Watermaster noted the Special Referee's recommendation that:

21 ... Watermaster provide clarification and invited the Parties to submit a post-order memorandum
22 to the court. This memorandum would then serve to create a historical record concerning the
23 rationale and justification for the changes to assist in future interpretation and construction of the
24 Judgment and the OBMP. Watermaster agreed to provide such a memorandum and the court so
25 ordered.

26 (Watermaster Post-Order Memorandum (10/26/2000) p. 2, lns. 15-18) Watermaster acknowledged that: "The
27 Special Referee's reports raise several subject areas that would benefit from the development of further clarification
28 and an appropriate record to aid in future judicial construction." (*Id.* p. 3, lns. 6-7)

⁷ Watermaster complains to the court:

25 Parties will be discouraged from making compromises in favor of taking their chances in an
26 adversarial process if announcing a previously unformulated and undisclosed position of the
27 Referee converts hearings for approval from a *prima facie* showing on a stipulation to an
28 adversarial hearing in which a portion of negotiated benefits are denied a stakeholder group. In a
world of water chaos and water conflict, Watermaster's view is that consent of the parties
represents compelling, unrebutted evidence that the Peace II Measures are both consistent with the
Judgment and in the public interest.

(p. 5, lns. 4-10)

1 Peace II Measures are both consistent with the Judgment and in the public
2 interest.

3 (Watermaster Response p. 5, lns. 6-9) Watermaster does not indicate whether this argument is
4 intended to apply both to the approvals it is seeking under Judgment Paragraph 15 and those it is
5 seeking under Judgment Paragraph 31.

6 The Preliminary Report discussed Watermaster's argument that the "compelling
7 evidence" standard of Judgment Paragraph 15(d) should apply to the Watermaster's proposed
8 Judgment amendments, and explained that application of the Paragraph 15(d) standard is limited
9 to issues not raised in Watermaster's Motion. (Preliminary Report pp. 28-29) For Paragraph 15
10 motions, the court's inquiry is whether a proposed amendment is in the public interest, protects
11 the rights of the parties under the Judgment, is consistent with and promotes the Judgment's
12 Physical Solution, and is consistent with California Constitution Article X, section 2.

How
acts to
@ it

13 For elements of Watermaster's Motion brought under Judgment Paragraph 31, that
14 paragraph itself sets out the standard of review. As noted in the Preliminary Report, the court
15 must weigh the evidence⁸ and must analyze whether the action or decision is consistent with and
16 promotes the Physical Solution, is in the public interest, and is not contrary to California
17 Constitution Article X, section 2.⁹ (*Id.* p. 29, lns. 16-25)

18 Watermaster "'concedes' that these factors should be considered by the Court."
19 (Response p. 16, ln. 12) Its Response addresses all of these standard of review issues.

20 ////

21 ////

22 ⁸ Watermaster complains that:

23 Unfortunately . . . the Referee Report treats the unanimous support for the Peace II measures as
24 largely irrelevant and generally gives little or no weight to the recommendations of Watermaster -
25 the entity appointed by the Court to administer the Judgment. For purposes of evaluating
26 Watermaster's Motion to approve the Peace II Measures, we ask that due consideration be given to
27 the Court's prior decision to appoint Watermaster as the entity responsible for administration of
28 the Judgment and that great weight be given to unopposed Watermaster proposals. Surely the
29 history of the past seven years suggests this deference is warranted and it is not inconsistent with
30 the Court's desire to have further information and the need to make a record for posterity.

(Response p. 6, lns. 16-24) It should be noted that it is the court who is charged with weighing the evidence.

⁹ Judgment Paragraph 31 only allows Watermaster to bring a Paragraph 31 motion "in the case of a mandated
action." This is why the Preliminary Report pointed out that Watermaster's Motion had not established that the
Paragraph 31 aspects of its Motion were "mandated actions". (Preliminary Report pp. 26-27)

1 III. LEGAL QUESTIONS RELATED TO PEACE II DOCUMENTS

2 A. Proposed Amendment to Judgment Exhibit "I"

3 1. Issues Raised in Preliminary Report

4 An initial issue raised in the Preliminary Report concerned Watermaster's Technical
5 Report and whether it supported the proposed amendment to allow a maximum of 400,000 acre-
6 feet of unreplenished desalter production. This issue is discussed in Section IV.A, below.
7 Watermaster presented evidence at the November 29, 2007 hearing that Watermaster would
8 further analyze a project with only 400,000 acre-feet of unreplenished desalter production.
9 Watermaster filed the Wildermuth Letter Report on December 19, 2007, to further address what
10 it refers to as "Alternative 1C".¹⁰

11 The Preliminary Report discussed Watermaster's concern that Basin reoperation must
12 proceed hand-in-hand with recharge planning and implementation. It will be necessary to "...
13 continually update and implement the Recharge Master Plan in order to ensure that sufficient
14 recharge capacity exists in the future. . ." (Watermaster Motion p. 15, lns. 24-25) Well before
15 the end of the "period of Basin Re-operation",¹¹ a replenishment obligation for the desalters will
16 have to be satisfied.¹² Demands on the Basin will continue to grow:

17 . . . and at the end of the Re-operation period Watermaster's recharge capabilities
18 may not be sufficient to meet the desalter replenishment obligation unless this
19 (Id. p. 15, lns. 19-22) Recharge capabilities will have to meet all Watermaster recharge
20 obligations, not just recharge needs for desalter replenishment.¹³

21 The proposed Judgment Exhibit "I" amendment requires Watermaster to update and
22 obtain court approval of its Recharge Master Plan with the purpose of addressing
23 . . . how the Basin will be contemporaneously managed to secure and maintain

24 ¹⁰ As noted in Section IV.A, it is recommended that further technical analysis and a new full report focused on
25 400,000 acre-feet be prepared and submitted to the court for approval.

26 ¹¹ The "period of Basin Re-operation" is defined as the period until December 31, 2030. (Proposed Judgment
27 Exhibit "I", ¶ 2(b)(3))

28 ¹² This is shown clearly on all versions of the Exhibit "E" tables as the "Residual Replenishment Obligation".

¹³ Watermaster agrees that "recharge water planning must take into account all necessary future recharge needs, not
just recharge for desalter pumping . . . and that the amendment to Exhibit "I", Paragraph 2(b)(5) ". . . requires that
the cumulative pumping be considered when calculating all recharge needs." (Response p. 32, lns. 15-18)

1 Hydraulic Control and [be] operated at a new equilibrium at the conclusion of the
2 period of Re-Operation.

3 (Motion Exh. A, Attachment "J" ¶ 2(b)(5))

4 The amendment also requires Watermaster to prepare, adopt, and obtain court approval of
5 a "contingency plan" and to be in "substantial compliance" with a court-approved Recharge
6 Master Plan. (*Id.* ¶ 2(b)(6)) The Preliminary Report asked questions about these provisions,
7 including the meaning of "new equilibrium", "contingency plan", and "substantial compliance".
8 The concept of "new equilibrium" was particularly troublesome and the Preliminary Report
9 recommended that a technical and legal evaluation of the issue should be made available to the
10 court.¹⁴

11 Finally, the Preliminary Report urged that Watermaster's proposed amendment to
12 Judgment Exhibit "T" must be consistent with the Judgment and its Physical Solution, must
13 promote the general public interest and not interfere with the rights of the parties, and must be
14 consistent with Article X, section 2 of the California Constitution.

15 2. Watermaster Response

16 Watermaster makes it clear that it is seeking only 400,000 acre-feet of "controlled
17 overdraft" notwithstanding its Technical Report's analysis of 600,000 acre-feet of unreplenished
18 desalter production based on substantially overstated New Yield projections.¹⁵ (*See, e.g.,*
19 *Response pp. 27-28*)

20 Watermaster addresses the specific questions raised in the Preliminary Report. At the
21 November 29, 2007 hearing, Mr. Manning described a "contingency plan" as "including
22 strategies that would be used if there was a problem getting water", as opposed to the Recharge
23 Master Plan, which "encompasses all strategies necessary to get water in the ground."¹⁶

24 (*Response p. 31, lns. 4-6*) The specific examples given by Mr. Manning were "conservation
25

26 ¹⁴ Preliminary Report pp. 61-63. "New equilibrium" is again discussed in Section VIII, below.

27 ¹⁵ *See* discussion in Section IV, below, of the 400,000 acre-foot technical analysis and issues related to the Exhibit
28 "E" Initial Schedule.

¹⁶ Mr. Slater added the explanation that a contingency plan would "cover the future eventuality of a Whoops . . ." (*Reporter's Transcript p. 47, lns. 22-24*)

1 measures” and recharge or pumping strategies to “shift demand from one location where there
2 may be additional sources of water to other places where there may not be.” (Reporter’s
3 Transcript p. 67, lns. 23-25) Watermaster has not described the “contingency plan” as a
4 “mitigation plan”.¹⁷ Watermaster has not indicated when it will prepare a “contingency plan”.

5 Updating the Recharge Master Plan is a key Watermaster obligation, and Watermaster
6 must be in “substantial compliance” with the updated plan.¹⁸ Watermaster clarifies that
7 Watermaster will decide whether it is in “substantial compliance in moving toward its court
8 approved Recharge Master Plan goals. . .” (Response p. 32; lns. 6-7) If a party contests the
9 Watermaster’s finding, appeal under Judgment Paragraph 31 is available: “In this way, the Court
10 maintains control over the development of the Plan itself and Watermaster’s ongoing process.”¹⁹
11 (*Id.* p. 32, lns. 8-9)

12 After the “period of reoperation”, the Peace II documents state that there will be a “new
13 equilibrium”. Watermaster has not defined the term, but states that its plain meaning is “state of
14 balance”, “an end to the preceding phase of overdraft and a return to balance, or safe-yield
15 management”. (Response p. 32, lns. 12-13)

16 On the overarching questions of whether the proposed amendment to Judgment Exhibit
17 “T” should be approved, Watermaster provided detailed argument that the amendment would be
18 consistent with the Judgment’s Physical Solution, would promote the public interest and protect
19 the rights of the parties, and would be consistent with California Constitution Article X, section
20 2. (Response pp. 16-23) Key points include:

22 ¹⁷ Proposed Exhibit “J” Paragraph 2(b)(6) provides that a “contingency plan” will establish “conditions and
23 protective measures that will avoid unreasonable and unmitigated material physical harm to a party or to the Basin
and that equitably distributes the cost of any mitigation attributable to the identified contingencies. . .” It is still not
clear what this language means.

24 ¹⁸ Peace II Agreement Section 8.3 sets out this obligation clearly:
25 Continuing Covenant. To ameliorate any long-term risks attributable to reliance upon un-
26 replenished groundwater production by the Desalters, the annual availability of any portion of the
27 400,000 acre-feet set aside as controlled overdraft as a component of the Physical Solution, is
expressly subject to Watermaster making an annual finding about whether it is in substantial
compliance with the revised Watermaster Recharge Master Plan pursuant to Paragraphs 7.3 and
8.1 above.

28 ¹⁹ Under Judgment Paragraph 31, the court on its own motion can review all Watermaster actions, decisions, or
rules.

- 1 • No party "has claimed that the Peace II Measures will cause them unmitigated harm".
2 (*Id.* p. 18, lns. 12-13) There can be no better evidence that there is no harm to the private
rights in the Basin than the unanimous consent of the Basin parties. (*Id.* p. 20, lns. 26-27)
- 3 • "The unanimity of . . . public entities is the best evidence there is that the measures
4 proposed for approval are in the public interest." (*Id.* p. 20, lns. 9-11)
- 5 • "The Peace II measures will promote the construction of the final increment of desalter
6 capability. . . (*Id.* p. 19, lns. 10-11)
- 7 • "Basin Reoperation will halt the outflow of water from the Basin which will preserve
8 yield. . ." ²⁰ (*Id.* lns. 12-13)
- 9 • "Basin Reoperation will also have the effect of inducing water into the Basin which will
10 help to mitigate for the anticipated reduction in Safe Yield." (*Id.* lns. 18-19)
- 11 • "[T]he central purpose to pursuing the Basin Reoperation strategy is to achieve Hydraulic
12 Control, which is a requirement in order to gain access to the Maximum Benefit
13 Standards under the Basin Plan for the Santa Ana Region." (*Id.* p. 21, lns. 3-5)
- 14 • Maximum Benefit Standards are in accordance with the Constitutional mandate of Article
15 X, section 2. (*Id.* lns. 9-12)
- 16 • ". . . [A]chieving Hydraulic Control facilitates the use of recycled water in the Chino
17 Basin. . . With the regulatory approval from the RWQCB [Regional Water Quality
18 Control Board], based upon the promise of the Basin to achieve Hydraulic Control, this
19 source of supply is now available to the Basin." (*Id.* lns. 18-19, 23-25)
- 20 • Consistency with and promotion of the Physical Solution ". . . follows from the fact that
21 the change in the management strategy from the replenishment of all production to one
22 that temporarily authorizes controlled overdraft for a defined period is consistent with the
23 party objectives to reduce reliance on the purchase of imported water for replenishment
24 through the substantial increase in the use of recycled water." (*Id.* p. 18, lns. 16-19)
- 25 • "[W]hile there may be economic benefits, the primary reasons for pursuing the strategy
26 all relate to enhancing opportunities for beneficial use. The economic benefits are
27 actually earmarked for the desalting of groundwater and thus operate as a partial subsidy
28 to off-set a portion of the significant capital and operating costs." (*Id.* p. 8, lns. 12-15)
- "In the end, the Basin will remain subject to Safe Yield Operation. The temporary
excursion while the Watermaster will pursue Hydraulic Control will last no more than 22
years and substantially less if the rate of depletion is as projected by the Final [Technical]
Report, given the substantial controls that Watermaster and the Court retain." ²¹ (*Id.* p.
19, ln. 22 to p. 20, ln. 2)

²⁰ This is overstated, as explained in Mr. Wildermuth's testimony. (Reporter's Transcript pp. 118-120)

²¹ It is not clear whether Watermaster is also arguing that mining the Basin is good public policy because it "discourages locking up supplies in 'cold storage' for future speculative uses." (See, e.g., Response p. 8, ln. 9.) This is a slippery slope; California Constitution Article X, section 2 certainly cannot be held up as promoting the mining of groundwater basins. Further, it is not clear how the "temporary surplus" allowed by the court in *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, is analogous to the instant case, where the intention is to achieve and maintain hydraulic control, which would be frustrated by recharging the storage space that will be vacated through Basin reoperation.

1 **3. November 29, 2007 Hearing**

2 Mr. Wildermuth

3 In his testimony, Mr. Wildermuth discussed the benefits of reoperating the Basin for
4 hydraulic control in terms of what would occur if Watermaster did not maintain hydraulic
5 control:

6 [W]e would have to demineralize the waste water. . . That's just a cost. We'd
7 have periods where we would have difficulty replenishing state project water. . .
8 [W]e would have to start demineralizing our waste water and dumping it into the
9 river to mitigate the [water quality] of the outflow from the Basin. . .

9 (Reporter's Transcript p. 90, lns. 4-7, 11-13)

10 Mr. Wildermuth provided an explanation of "new equilibrium":

11 . . . I think when we use the word equilibrium, what we are referring to is we are
12 operating in balance. No places are crashing. The levels aren't crashing
13 anywhere. And they aren't rising anywhere. And when we stop the Re-operating
14 scheme at end of 2030 we're going back to replenishment, we may have some
15 issues locally in balance because we can't get exactly you know, recharge in the
16 areas where levels might be going down. But over enough time, we would be.
17 Volumetrically, in the broad sense, we are in balance. There may be, from time
18 to time, some local places where we are out of balance a little bit. But
19 equilibrium in my mind is we are operating pursuant to the Judgment. We
20 recognize what the yield is. There is no overdraft, over some period of time. By
21 period of time, it's just we have periods of time where we don't have enough
22 replenishment water. We use the storage in the basin storage a while, and then
23 we backfill it when it's available, and we catch up.

18 (Reporter's Transcript p. 120, ln. 21 to p. 121, ln. 15; emphasis added)

19 **4. Recommendations**

20 The proposed amendments to Judgment Exhibit "I" would allow 400,000 acre-feet of
21 unreplenished desalter pumping. The risks of developing a reliance on mining of the Basin are
22 substantial. Watermaster recognizes the risks, and commits to recharge master planning and
23 implementation over time which is intended to assure that Watermaster will be able to enjoy a
24 "new equilibrium" when the period of Basin reoperation ends in 2030, or sooner, when it again
25 will be "operating pursuant to the Judgment".

26 Watermaster and the parties to the Judgment are all urging the court to approve the Peace
27 II Measures, including the Judgment Exhibit "I" amendment. Watermaster has presented a

28 ²² RWQCB requirements related to hydraulic control are discussed in Section V.A, below.

1 weighty list of factors that support Watermaster being allowed to proceed with Basin
2 reoperation. Because of the significant risks and outstanding questions, the court should only
3 approve the Peace II Measures subject to Watermaster submitting for court approval the
4 technical reports, recharge master plan updates and assurances, contingency plan, hydraulic
5 control evaluation standard, safe yield analysis, and new equilibrium assurances, as set forth in
6 the recommendations contained in this Special Referee Final Report and Recommendations .

7 **B. Proposed Amendments to Judgment Paragraph 8 and Exhibit "G"**

8 **1. Issues Raised in the Preliminary Report**

9 The Preliminary Report raised three basic sets of issues regarding Watermaster's
10 proposed amendments. First, no explanation was offered as to why these amendments are
11 needed, given the fact that these Judgment provisions were just amended in 2001. Second, as
12 drafted, the proposed amendments raised legal questions for which Watermaster should provide
13 explanation and clarification. Third, the proposed amendments would remove the appurtenancy
14 requirement, which is a fundamental aspect of overlying groundwater rights for the Peace
15 Agreement period, and it should be made clear to the court that these amendments will
16 essentially complete a transformation of the Overlying (Non-Agricultural) Pool rights from
17 overlying to transferable rights.

18 **2. Watermaster Response**

19 Watermaster argues that these Judgment amendments address the problem that "... under
20 current rules, water continues to accumulate in the storage account for the Non-Agricultural Pool
21 with no apparent way to free this stranded resource." (Response p. 33, lns. 17-19) This
22 accumulation is "potentially in violation of Article X, section 2 of the California Constitution.
23 Water should not be held indefinitely in cold storage."²³ (*Id.* lns. 22-24) Watermaster declares
24 that the Judgment provides "... no administrative way for the water to be used ..." (*Id.* ln. 22)

25 These points do not address the issue raised in the Preliminary Report. The question was
26 why the 2001 amendments to these Judgment provisions, which did provide an "administrative
27

28 ²³ This Constitutional argument makes sense in the context of the accumulated Overlying (Non-Agricultural) Pool storage account, where it does not in the context of mining to achieve and maintain hydraulic control.

1 way for the water to be used", are insufficient. The 2001 amendments allowed the Overlying
2 (Non-Agricultural) Pool to transfer or lease their quantified production rights, and carryover
3 water held in storage accounts, within the pool or to Watermaster for storage and recovery
4 programs or to offset desalter production. The question was why those amendments have not
5 been sufficient. Watermaster's answer appears to be that Watermaster does not need the storage
6 account water for desalter replenishment at this time:

7 The Referee suggests that Watermaster should not give up discretion to purchase
8 the one time transfer for Desalter replenishment. However, Watermaster prefers
9 the holistic management approach presented by the suite of actions contemplated
10 in the Peace II Measures. Watermaster has adequate tools to address Desalter
11 replenishment in the near future.

12 (Response p. 43, ln. 26 to p. 44, ln. 2)

13 Watermaster addresses most of the specific questions related to the proposed Judgment
14 amendments. The volume of water in storage is approximately 52,000 acre-feet as of July 2007.
15 (Reporter's Transcript p. 70, lns. 6-7) Water available in the future will range from 3,000 to
16 4,000 acre-feet annually. (*Id.* lns. 11-12) This information provides a sense of magnitude for the
17 court.

18 As to the mechanics of the proposed amendments, Watermaster explains that: (1) the
19 annual transfer is "intended primarily to distribute the water to the members of the Appropriative
20 Pool" (*id.* p. 39, lns. 6-7); and (2) the one-time transfer is still intended to be a transfer to
21 Watermaster for storage and recovery programs or for desalter replenishment, and "... it is only
22 in the situation where Watermaster is unable to use the one-time transfer water for [those
23 purposes] ... that the water will be distributed to the members of the Appropriative Pool." (*Id.*
24 lns. 9-11) It is clear, however, that the one-time transfer of the 52,000 acre-feet will be to the
25 Appropriative Pool, given Watermaster's statement, quoted above, that Watermaster "... has
26 adequate tools to address Desalter replenishment in the near future."

27 Watermaster discusses in detail the issue of appurtenancy and the consequences of
28 completely removing that requirement from overlying rights. (Response pp. 34-38) The fact
that the appurtenancy requirement will be further relaxed is a fact that the court should be made
aware of. Although the 2001 amendments already largely removed the appurtenancy

1 requirement for Overlying (Non-Agricultural) Pool rights, Watermaster argues that it "seeks to
2 relax the inflexible appurtenancy requirement to further the beneficial use of water within the
3 Basin." (*Id.* p. 38, lns. 8-9) The change is that Watermaster will be able to transfer the water to
4 the Appropriators, which is a further (and arguably complete) removal of the appurtenancy
5 requirement.²⁴

6 **3. November 29, 2007 Hearing**

7 Mr. Manning

8 In response to the question of whether there is a problem with Overlying (Non-
9 Agricultural) Pool water accumulating in storage, Mr. Manning testified that:

10 . . . it is a very serious problem. I think water that is stranded in the Basin
11 presents a real problem to the future generation of this valley. Water just sitting
and not being used for beneficial use in this basin, it should not occur.

12 (Reporter's Transcript p. 69, lns. 2-6) As noted, above, Mr. Manning testified that 52,000 acre-
13 feet was in pool storage as of June 2007, and 3,000 to 4,000 acre-feet of water would be
14 available for transfer from the pool each year. (*Id.* lns. 6-13)

15 **4. Recommendations**

16 The proposed amendments to Judgment Paragraph 8 and Exhibit "G" primarily allow the
17 transfer of 52,000 acre-feet of stored water and 3,000 to 4,000 acre-feet annually of water from
18 the Overlying (Non-Agricultural) Pool to Appropriators. Watermaster has drafted the proposed
19 amendments together with the "Purchase and Sale Agreement for the Purchase of Water by
20 Watermaster from Overlying (Non-Agricultural) Pool" dated June 30, 2007.²⁵ (Motion Exhibit
21 "A", Attachment "G") The proposed Judgment Exhibit "G" amendment references Paragraph I
22 of the Purchase and Sale Agreement, which provides for a one-time transfer of 8,530 acre-feet to

23
24 ²⁴ Watermaster consistently refers to the Overlying (Non-Agricultural) Pool as the "Non-Agricultural Pool". Given
the 2001 and proposed amendments, that appears to be appropriate.

25 ²⁵ Watermaster notes:

26 There are two different transfers [of water from the Overlying (Non-Agricultural) Pool] at issue -
the one time transfer of the water held in storage, and the ongoing transfer to the Appropriative
27 Pool. The former requires a Judgment Amendment, and the latter is done under the Peace
Agreement [Resolution 07-05 Attachment "G" Purchase and Sale Agreement], though the latter
also requires a Judgment Amendment in this instance because it is contemplated that the
transferred water may be distributed to the Appropriative Pool members.

28 (Motion p. 16, lns. 20-25)

1 Santa Ana Water Company and Vulcan Materials, which is labeled "Special Transfer Quantity".
2 The court is being asked to approve the "Special Transfer Quantity" without any explanation of
3 that transfer. It appears that the 52,000 acre-feet one-time transfer is decreased by the 8,530
4 acre-feet.

5 Given that more than 52,000 acre-feet of water is being held in storage by the members
6 of the Non-Agricultural Pool, it is clear that previous efforts to encourage and facilitate transfers
7 to Watermaster from the Overlying (Non-Agricultural) Pool have not worked to alleviate the
8 build-up in storage. However, if a dispute were to arise as to the meaning of these proposed
9 Judgment amendments, the record does not contain sufficient explanation for the court to resolve
10 questions of interpretation. Watermaster should, by February 1, 2008, prepare and submit to the
11 court a post-hearing brief to explain fully these proposed Judgment amendments.

12 IV. TECHNICAL ISSUES RELATED TO BASIN REOPERATION

13 A. Technical Analysis of 400,000 Acre-Feet of Additional Overdraft

14 1. Issues Raised in Preliminary Report

15 The Preliminary Report raised the concern that:

16 There is no technical or modeling analysis . . . that shows that mining 400,000
17 acre-feet without reducing groundwater in storage by 198,000 to 212,000
18 additional acre-feet would achieve the "robust" Hydraulic Control which Mr.
Wildermuth has declared to be necessary.

19 (Preliminary Report p. 13, Ins. 16-19) The Preliminary Report suggested that Watermaster
20 should provide technical analysis of its proposed project, which is limited to 400,000 acre-feet of
21 un replenished desalter production.²⁶ (*Id.* p. 60, Ins. 21-22) It also suggested that Watermaster

22 ²⁶ This was not the first time this issue was raised. Mr. Scalmanini's Report (Review of Chino Basin Numerical
23 Groundwater Flow Model (Updated 2003 Model) (March 2007)) ("Scalmanini Model Review Report") pointed out
this concern with respect to earlier analyses:

24 Interestingly, there has not yet been a model application to simulate a basin reoperation alternative
25 comprised of forgiveness of 400,000 acre-feet of the replenishment obligation associated with
desalter pumping over the Peace Agreement term. There are thus no model simulation results that
26 show expected hydraulic control resulting from such a potential basin reoperation alternative. . .
Thus, as regards model application and interpretation to date, there has been an analysis to show
27 the formation of hydraulic control with forgiveness of half the total West Desalter pumping
(535,000 af), but there has been no analysis to show whether hydraulic control might be achieved
with forgiveness of 400,000 af of replenishment obligation (37 percent of the total West Desalter
pumping).

28 (Scalmanini Model Review Report pp. 30-31)

1 could revise the initial Attachment "E" schedules (to reflect corrected New Yield numbers) (*id.*
2 p. 12, lns. 8-9), but that technical analysis of a revised schedule would be necessary to determine
3 whether mining only 400,000 acre-feet of groundwater would be enough to achieve hydraulic
4 control.

5 2. Watermaster's Response

6 Watermaster acknowledges that the Technical Report "... analyzed the withdrawal of up
7 to 600,000 acre-feet" (Watermaster Response p. 17, ln. 27 to p. 28, ln. 1), but that Mr.
8 Wildermuth, in his testimony at the November 29, 2007 hearing, provided an initial analysis of
9 only 400,000 acre-feet. Watermaster summarizes Mr. Wildermuth's testimony, stating that:

10 ... it is possible to achieve Hydraulic Control at the 400,000 acre-foot level, and
11 if withdrawing 600,000 acre-feet does not cause Material Physical Injury, then
neither will withdrawal of 400,000 acre-feet.²⁷

12 (*Id.* p. 28, lns. 6-8)

13 Watermaster categorically rejects any suggestion that the

14 mere filing of the Initial Schedule combined with the Wildermuth Final Model
15 modified the Project Description or impliedly authorized the taking of more than
400,000 acre-feet for the purpose of Hydraulic Control.

16 (*Id.* p. 27, lns. 8-10)

17 3. November 29, 2007 Hearing

18 Mr. Slater

19 Mr. Slater explained that Watermaster does not at this time intend to ask the court to
20 approve more than 400,000 acre-feet of "controlled overdraft":

21 So the fact that the initial schedule or subsequent iterations do not ultimately
22 match what [New Yield] shows up, the [400,000 acre-feet] bank account is called,
23 until there's nothing left in the bank; and at which point if there's nothing left in
24 the bank, we either have to come back to Your Honor, or your son or daughter,
25 and make the argument that we should be able to go further. But we have no
basis or evidence to suggest that we are going to be required to do that. And more
importantly, there is no public policy. Sorry. There is no will on the part of our
stakeholders to do that. They want, with all due respect to the model, they want
facts. They want real operation, and then we'll come back and look.

26 (Reporter's Transcript p. 38, lns. 6-18)

27 ²⁷ Watermaster concludes that the Special Referee's "... apparent confusion likely follows from the failure to
28 appreciate that the Initial Schedule was only provisional ...", and that "[a]ll changes in the schedule would require
updated technical data and court approval." (Watermaster Response p. 27, lns. 15-16 and 23-24)

1 Mr. Wildermuth

2 Mr. Wildermuth testified that his technical analysis focused on expansion of the desalter
3 program, evaluation of "material physical impacts" of the Watermaster's proposed project, and
4 determination of whether 400,000 acre-feet "was the appropriate value". (Reporter's Transcript
5 p. 94, lns. 2-13) Much of his testimony reflected the analysis in the Technical Report of the
6 rapid depletion schedule with overstated New Yield that resulted in 600,000 acre-feet – rather
7 than 400,000 acre-feet – of unreplenished desalter production. (Reporter's Transcript p. 100, lns.
8 23-24; p. 112, ln. 23 to p. 111, lns. 4-5) However, Mr. Wildermuth stated that:

9 ... my basic conjecture is if there's no material physical injury at 600,000, there's
10 no material physical injury at 400,000.

11 (Reporter's Transcript p. 115, lns. 5-8)

12 As to the effect of Basin reoperation on water levels and storage, Mr. Wildermuth
13 testified that the projected changes are all "survivable":

14 These water level changes are survivable. You know, there's a slight energy
15 increase some people will face with these. You know part of the Peace II
16 Agreement and the economic benefit is such that the increase in energy is spent
17 from pumping at a slightly lower level are more than offset by the economic
18 benefits.

19 The definition of material physical injury as it has been used in the OBMP says
20 that change in water levels is a material physical injury. Well, I think that can't
21 be a bright line.²⁸

22 (Reporter's Transcript p. 104, lns. 13-22)

23 Mr. Wildermuth testified that safe yield may approach 120,000 acre-feet in the future, but
24 that the safe yield decline "... is big in terms of yield perhaps, but in terms of the overall water
25 management picture, it's not that big." (Reporter's Transcript p. 107, lns. 18-20) Safe yield
26 declines both because of Basin hydrology and because of development "booms" since the
27 1970's, which have changed recharge; "... depending on where you were in the basin, that could

28 ²⁸ The effect of Basin reoperation on water levels seems not to be clear. The Technical Report reported pumping
depressions as large as 110 to 120 feet by fall 2053 (see, e.g., Technical Report p. 7-16), but Mr. Wildermuth's
testimony was that between 20 and 50 feet of groundwater level changes will occur, and he appeared to be referring
to the same timeframe and rapid depletion alternative. (Reporter's Transcript p. 102, lns. 1-5) In response to the
court's question, Mr. Wildermuth offered that "... the change in water level maps between the baseline or/and the
alternatives as separate maps would probably be useful. Because I think the other maps are misinterpreted..."
(Reporter's Transcript p. 117, lns. 20-23)

1 be a ten to thirty-year lag when the recharge changes and you see the change at the water table."
2 (Reporter's Transcript p. 108, lns. 1-10) In Mr. Wildermuth's opinion, it is "... sort of
3 laughable to talk about a material physical injury. We are actually making it better."²⁹

4 (Reporter's Transcript p. 108, ln. 25 to p. 109, ln. 1)

5 Regarding subsidence impacts, Mr. Wildermuth concluded that MZ-1 water levels will be
6 "well above what we call the subsidence threshold." (Reporter's Transcript p. 111, ln. 2) In
7 other parts of the Basin, there will be "some large scale, broad scale but very small subsidence"
8 which will not create a problem for infrastructure or above-ground structures, and that is "just the
9 way it is." (Reporter's Transcript p. 111, lns. 14-20)

10 A key question was whether just 400,000 acre-feet of unreplenished groundwater
11 production would be sufficient to achieve and maintain hydraulic control. Although Mr.
12 Wildermuth said he had not "fully exhausted or mined the information, ... we did mine the
13 information out of the model to get [the] hydraulic control answer. ..." (Reporter's Transcript p.
14 113, lns. 16-18) Mr. Wildermuth did not actually say that "robust" hydraulic control will be
15 achieved and maintained with 400,000 acre-feet of unreplenished desalter production, but his
16 testimony implies that is the case, and that conclusion appears to be supported by the final two
17 groundwater contour maps in Watermaster Exhibit "I".³⁰

18 4. Recommendations

19 Mr. Scalmanini prepared recommendations regarding formal documentation of the
20 400,000 acre-feet only project discussed by Mr. Wildermuth at the November 29, 2007 hearing.
21 His recommendations largely stem from the fact that Mr. Wildermuth's testimony and
22 Watermaster Hearing Exhibit 1 reflect the only simulation of what is actually proposed for Basin
23 reoperation - unreplenished desalter production limited to a total of 400,000 acre-feet. That

24
25 ²⁹ The Wildermuth Letter Report expands on this discussion slightly.

26 ³⁰ Mr. Wildermuth responded affirmatively when asked if model results, the Technical Report, and the "...
27 testimony here today reconfirm your earlier opinion that 400,000 acre feet needs to be withdrawn from the basin in
28 order to secure hydraulic control?" (Reporter's Transcript p. 115, lns. 10-15) This is not the same as affirmatively
stating that 400,000 acre-feet of unreplenished desalter production will achieve and maintain hydraulic control. The
Wildermuth Letter Report states that: "The model predictions for Alternative 1C demonstrate a more robust state of
hydraulic control [as compared to the Baseline], although not quite as robust as Alternatives 1A and 1B."
(Wildermuth Letter Report p. 6)

1 project requires complete, separate documentation.

2 The previous Technical Report provides documentation of the development and
3 calibration of the 2007 Watermaster Model. A new complete report should include a full
4 analysis of projected Basin yield and hydraulic control in support of the Judgment Exhibit "T"
5 amendment. The new report should essentially be a stand-alone version of Technical Report
6 Section 7, plus appropriate appendices, to completely document what Watermaster has analyzed
7 as the expected Basin response to its proposed reoperation strategy, including whether hydraulic
8 control is projected to occur, when it is projected to be achieved, whether hydraulic control will
9 be "robust" (and what that means in quantitative terms), and what the projected Basin yield
10 resulting from Basin reoperation will be over time. Tables equivalent to Table 4-4 of the April
11 2006 Watermaster Model Report and Table 3-3 of the December 2006 Watermaster Model
12 Report should be included.³¹

13 Mr. Scalmanini also recommends that the new report discuss and tabulate how
14 replenishment determinations will be made on a year-to-year basis. For example, the new report
15 should illustrate how replenishment obligations will be calculated given a declining safe yield,
16 and how credit for new yield will be based on model projections. The report should describe in
17 detail how Watermaster will be monitoring and interpreting actual Basin response to reoperation.
18 In addition to noting the measurement of water levels as part of the Hydraulic Control
19 Management Program plus any other monitoring, the new report should describe fully how to
20 quantify the two key factors: actual change in groundwater storage, and actual new yield.³²

21 The new report should discuss, in the context of the 400,000 acre-foot reoperation
22 project, constraints related to the availability of recharge capacity and water for recharge. The
23 report should include, for example, discussion of what quantity of recharge capacity and water
24 availability would be needed to overcome the potential imposition of pumping limits ("caps" on
25 production) discussed at length in Technical Report Section 7. Overall, the purpose of the new

26 ³¹ Those tables plot storage versus time through 2030; they should be extended through 2060. Change in
27 groundwater storage is a measure which can provide significant information, as well as historical context, for
Watermaster decision-making.

28 ³² This raises a question, discussed below in Section V, that a standard is needed against which Watermaster will be
able to demonstrate that it has achieved and is maintaining hydraulic control.

1 report would be to add to the record technical documentation in support of the actual proposed
2 Basin Reoperation Strategy (unreplenished desalter production limited to 400,000 acre-feet) at a
3 level of detail equivalent to Technical Report Section 7.

4 In addition to Mr. Scalmanini's suggestions, the new technical report should fully
5 evaluate whatever actions or strategies might increase the likelihood that hydraulic control will
6 be achieved and maintained with only 400,000 acre-feet of unreplenished desalter production.
7 There may be measures that Watermaster can adopt proactively to optimize the success of its
8 proposed project. One measure is the Peace II Agreement provision that future desalters will be
9 entitled to first priority to the new controlled overdraft only "[t]o the extent the groundwater
10 wells for the future Desalters pump at least fifty (50) percent groundwater from the southern end
11 of the Basin . . ."³³ (Peace II Agreement ¶ 7.2(a); see also ¶ 5.8(a))

12 Watermaster should prepare and submit to the court for approval a new technical report
13 which includes all of these issues by March 1, 2008. The Wildermuth Letter Report filed
14 December 19, 2007, referring to Mr. Scalmanini's recommendation, described above, notes:

15 We have also received an email from Joe Scalmanini, assistant to the Special
16 Referee, suggesting that a more detail report regarding Alternative 1C and other
17 related issues be prepared. Per your direction we will prepare the report requested
18 by Mr. Scalmanini in the first two months of 2008.

18 **B. Initial Schedule and Changes to the Schedule**

19 **1. Issues Raised in the Preliminary Report**

20 Watermaster's Motion provided no discussion of the two tables filed with its Motion as
21 Attachment "E" to Resolution No. 07-05. (Preliminary Report p. 35, ln. 21 to p. 36, ln. 12) The
22 Preliminary Report noted that the New Yield quantities shown on the tables were substantially
23 overstated, based on Watermaster's Technical Report.³⁴ (*Id.* p. 11, ln. 10 to p. 13, ln. 6) It was
24 suggested that Watermaster could revise the Attachment "E" tables to reduce New Yield
25 quantities to be consistent with the Technical Report.³⁵ (*Id.* p. 13, lns. 15-16) Either the

26 ³³ Watermaster has not explained why only 50 percent of new desalter wells will be required to be in the southern
27 end of the Basin, or provided supporting technical analysis.

27 ³⁴ The Attachment "E" tables are identical to Technical Report Tables 7-6(a) and 7-6(b).

28 ³⁵ As discussed, above, the recommendation was also made that Watermaster provide technical analysis of only
400,000 acre-feet of unreplenished desalter production (which would be based on New Yield quantities consistent

1 Attachment "E" tables would have to be revised to reflect corrected New Yield numbers, or
2 Watermaster would have to revise its proposed amendment to Judgment Exhibit "T".

3 The Preliminary Report also pointed out that Watermaster should account for credit
4 which it has taken during 2000/01 through 2006/07 for New Yield (and stormwater) which the
5 Technical Report indicates is overstated. (*Id.* p. 12, fn. 10; p. 36, fn. 43)

6 2. Watermaster's Response

7 Watermaster clarified that its Initial Schedule is the rapid depletion schedule
8 (Watermaster Response p. 42, lns. 14-15), which is the first Attachment "E" table, and Technical
9 Report Table 7-6(a).

10 Watermaster states:

11 . . . it is a legal impossibility for the Initial Schedule to be followed because the
12 parties are expressly and unequivocally limited to the withdrawal of 400,000 acre-
feet.

13 (*Id.* p. 28, lns. 14-15) The Initial Schedule ". . . was only provisional and a basis to allow Mr.
14 Wildermuth to run an analysis regarding whether there would be material physical injury."³⁶ (*Id.*
15 p. 27, lns. 15-17) Watermaster further explains that the Initial Schedule will be revised:

16 . . . The Peace II Measures contemplate that the Initial Schedule will be replaced
17 within one year of the approval following a negotiation between WMWD
18 [Western Municipal Water District] and the members of the Appropriative
Pool. . . Watermaster has retained discretion to then adopt the recommended
19 resolution or present its own to the Court. . . All changes in the schedule would
require updated technical data and Court approval.³⁷

20 (*Id.* p. 27, lns. 19-24) Watermaster's Response does not discuss the corrected table presented by
21 Mr. Wildermuth at the November 29, 2007 hearing.³⁸

22
23 with the Technical Report) to show that Hydraulic Control would be achieved without the additional 200,000 acre-
feet of unreplenished production that was the result of overstating New Yield numbers in the tables.

24 ³⁶ No explanation is given for why Mr. Wildermuth was directed to use New Yield numbers that were inconsistent
with his own modeling results and analysis.

25 ³⁷ Even though referred to in Peace II Section 7.2(e)(i) as an "initial schedule", the Peace II Agreement does not
26 mention replacement of the initial schedule in one year. It states only that Watermaster ". . . may approve and
request court approval of revisions to the initial schedule if Watermaster's approval and request are supported by a
27 technical report demonstrating the continued need for access to controlled overdraft. . ." (Peace Agreement §
7.2(e)(ii))

28 ³⁸ The corrected table, discussed below, was included in Watermaster Hearing Exhibit 1. A further revised
Alternative 1C table is included in the Wildermuth Letter Report, and is attached to this Report as Attachment 2.

1 As to the need to account for credit already taken by Watermaster for New Yield that the
2 Technical Report shows does not exist, Watermaster's view is as follows:

3 The Referee says that Watermaster accounting should be corrected back to 2000
4 to account for shortfalls in storm water new yield and induced inflow. Notably,
5 there is no recommendation to correct for Mr. Wildermuth's opinion that Safe
6 Yield has historically been greater than 140,000 acre-feet. Watermaster
7 appreciates the suggestion that corrections should be made where material – but
8 not only if they penalize the parties.³⁹

9 (Id. p. 42, lns. 18-22)

10 **3. November 29, 2007 Hearing**

11 Mr. Slater

12 Mr. Slater explained at the November 29, 2007 hearing that the Initial Schedule reflects
13 the initial allocation of "controlled overdraft" as between existing and future desalter operations:

14 . . . There were rules that were established that would allow a first priority, if you
15 will, for that controlled overdraft to be dedicated to the party who was strong
16 enough to step up and assume the capital burden and responsibility for
17 constructing the desalters. And that party thus far is the Western Municipal
18 Water District. . . So that 400, how it's used is subject to further negotiation . . .
19 the parties recognized that there would need to be a negotiation over the use of
20 that 400. And the agreement calls for the preparation today so the Court could
21 see what was called an initial schedule, and that it would be filed with the
22 Resolution.

23 (Reporter's Transcript p. 32, ln. 16 to p. 33, ln. 22) The negotiations Mr. Slater refers to will
24 affect the allocation of the 400,000 acre-feet between existing and future desalter operations.

25 As to the overstatement of New Yield in the Initial Schedule, Mr. Slater explained:

26 There's only 400. There is no more. So it is whatever we get out of new yield,
27 we get. But if we don't achieve new yield, what's the next thing in line? Our
28 bank account, our 400. So whatever we don't achieve in the form of enough
29 yield, it doesn't go missing. It's not a shortfall. These people suffer. If the new
30 yield doesn't show up, they have to hit the bank account. Or if there is no water
31 in the bank account, what do they have to do? Replenish.

32 (Reporter's Transcript p. 37, ln. 22 to p. 38, ln. 5) The Peace II Documents uniformly limit
33 un replenished desalter production to 400,000 acre-feet. As a result:

34 ³⁹ Watermaster and the parties have decided not to recalculate Safe Yield until 2011. It is not clear how recalculated
35 Safe Yield would be accounted for retroactively. At least with respect to stormwater and New Yield credits since
36 2000, corrections can be made; the Peace Agreement defines New Yield as "proven increases in yield in quantities
37 greater than historical amounts. . ." (Peace Agreement ¶ 1.1(aa); emphasis added) How Watermaster will address
38 recalculated Safe Yield is an issue for 2011.

1 . . . the initial schedule cannot violate that provision. [¶] So when the agreements
2 were executed, no one had any idea that the initial schedule would bump up to the
3 cap. But now that it has, under the runs, the initial schedule obviously cannot be
4 followed.

(Reporter's Transcript p. 36, lns. 3-8)

5 Mr. Manning

6 When asked if Watermaster will be revising the table to reflect Mr. Wildermuth's New
7 Yield estimates, Mr. Manning replied that Watermaster will do so. (Reporter's Transcript p. 71,
8 lns. 1-6)

9 Mr. Wildermuth

10 Mr. Wildermuth testified that, because new yield did not "materialize" as assumed in
11 Watermaster's project description, ". . . an unintentional extra pull down of storage of about
12 200,000 . . ." was created and "so we redesigned that schedule." (Reporter's Transcript p. 113,
13 lns. 1-3). Mr. Wildermuth described a revised Initial Schedule table ("Alternative 1A* Desalter
14 Replenishment with Most Rapid Depletion of the Re-Operation Account") which was included
15 in Watermaster's Hearing Exhibit 1 (attached as Attachment 1 to this report).

16 Watermaster counsel agreed to file a supplemental technical analysis by Mr. Wildermuth.
17 Watermaster filed the Wildermuth Letter Report with the court on December 19, 2007.⁴⁰

18 **4. Recommendation**

19 The initial schedule has been described as a "legal impossibility" that "obviously cannot
20 be followed". Watermaster should submit a corrected schedule to the court for approval which is
21 consistent with the revised table presented by Mr. Wildermuth at the hearing, or in his Letter
22 Report (Attachments 1 and 2 to this Report). This should be done by February 1, 2008. The
23 corrected schedule would not have to address the allocation of the 400,000 acre-feet between
24 existing and new desalter operations; the parties have committed to finalizing that allocation in a
25 revised schedule to be filed by the end of 2008. Watermaster should file a revised schedule with

26 ⁴⁰ Mr. Wildermuth indicated that his preliminary review of the 400,000 acre-feet only project with Alternative 1A*
27 assumptions had not taken into account that Watermaster may decide to deduct from the 400,000 acre-feet the
28 quantity of overstated new yield (and storm water) credited during the period 2000/01 through 2006/07. In response
to the question of whether hydraulic control would be retained if the 400,000 acre-feet were reduced by the amount
of the previous overstatement of new yield, Mr. Wildermuth replied: "No, it's really small."

1 the court by the end of 2008 for court approval.

2 Watermaster should be required to include with its revised schedule a reconciliation of its
3 overestimate of New Yield (including stormwater) and any other proposed revisions the
4 Watermaster may have arising from the comparison of earlier estimates of physical conditions
5 and actual experience. As noted in the Preliminary Report, it appears from Table 7-3 and Figure
6 7-7 of the Technical Report that, for the period 2000/01 through 2006/07, New Yield induced
7 from the Santa Ana River has been overstated by 37,043 acre-feet and stormwater by 24,000
8 acre-feet, for a total of 61,043 acre-feet. Watermaster should be directed to reconcile the New
9 Yield and stormwater estimates it used during the period 2000/01 through 2006/07, with actual
10 conditions as reflected in the Technical Report, or demonstrate good cause why this should not
11 be done.⁴¹ Watermaster's reconciliation should be based on a thorough analysis of actual
12 production and replenishment during the period in question. Watermaster should provide a
13 report to the court and obtain court approval by December 31, 2008, as to whether it will account
14 for this unreplenished overproduction as part of the 400,000 acre-feet of "controlled overdraft"
15 or actually replenish for that overproduction. If the former, the revised schedule should reflect
16 that approach; if the latter, Watermaster's report should include a schedule for replenishment or
17 indicate what water will be used to offset the overproduction.⁴² In summary, the reconciliation
18 should be holistic and "true-up" earlier estimates with data obtained from actual experience and
19 observed conditions.

20 Finally, because New Yield quantities will vary from year to year, Watermaster should be
21 required to update the schedule by December 31 of each year, and provide the court with
22 supporting technical analysis.⁴³ An annual updated schedule will provide Watermaster with

23
24 ⁴¹ This reconciliation will be complicated, given the September 2, 2004 First Amendment to Peace Agreement
which amended Peace Agreement Section 7.5(b). Before that amendment, stormwater was included in New Yield
and dedicated to desaliner replenishment. Thereafter:

25 The 12,000 acre-feet of storm flow Recharge determined by Watermaster to be part of New Yield
26 shall be allocated to the Appropriators according to their percentage of Safe Yield under the
Judgment. . .

27 There may be other complications that will factor into Watermaster's reconciliation.

28 ⁴² If Watermaster decides to use part of the 400,000 acre-feet to offset overestimated New Yield since 2000/01, that
would have to be taken into account in technical analysis of "Alternative 1C".

⁴³ As noted in Section IV.A, above, with regard to additional technical work to be done to support the 400,000 acre-

1 information that is essential for its operations.

2 V. STANDARD FOR EVALUATION OF HYDRAULIC CONTROL

3 A. Technical Assessment of Hydraulic Control

4 The Technical Report, the Wildermuth Letter Report, and Mr. Wildermuth's declarations
5 and testimony evaluate whether the various alternatives analyzed will achieve and maintain
6 hydraulic control. In order to obtain the benefits of the RWQCB's Basin Plan Amendment, and
7 to comply with the permit issued by the RWQCB, hydraulic control has to be demonstrated. Mr.
8 Wildermuth has evaluated whether various Basin reoperation alternatives achieve "robust" or
9 only "weak" hydraulic control. He testified that:

10 . . . We want to have . . . a robust hole. You don't want a shallow hole. You want
11 a deep hole. Reason is things change. . . You've got to have some strength to
12 this well field, to this depression. You also have to be able to monitor and
13 measure it. Difficult to monitor if it is shallow. But a more pronounced
14 depression is easier to measure.

13 (Reporter's Transcript p. 114, ln. 16 to p. 115, ln. 2)

14 The RWQCB 2004 Basin Plan amendment recognized that Watermaster and IEUA:

15 . . . have made clear commitments to the implementation of projects and
16 management strategies to achieve the "maximum benefit" objectives. . .
17 Watermaster and IEUA have indicated that the supervision of the Watermaster
18 program by the San Bernardino County Superior Court will insure that the
19 Watermaster and IEUA commitments are met.⁴⁴

18 (Attachment to RWQCB Resolution No. R8-2004-001, p. 61) One of the clear commitments as
19 of 2004 was to maintain and achieve hydraulic control.⁴⁵ Watermaster must obtain the court's
20 approval of the Peace II measures in order to meet the commitments it made in 2004, and to meet

21 feet only project, Watermaster's new technical report should address how it will quantify actual new yield in the
22 future.

23 ⁴⁴ The Attachment to Resolution No. R8-2004-001 also states at p. 53 that the OBMP: "includes the implementation
24 of management activities that would result in the hydraulic isolation of Chino Basin groundwater from the Orange
25 County Management Zone. . ." The OBMP, adopted well before 2004, addressed the pre-amendment Basin Plan.
(See Peace Agreement Exhibit "B" OBMP Implementation Plan, p. 25)

25 ⁴⁵ The Attachment to Resolution No. R8-2004-001 defines "Hydraulic Control" as ". . . eliminating groundwater
26 discharge from the Chino Basin to the Santa Ana River, or controlling discharge to *de minimus* levels." (P. 52) Mr.
27 Wildermuth testified that this definition

26 . . . was negotiated very carefully with the Regional Board. And what we have to do is make sure
27 that everything that we call Chino North does not make it into the Santa Ana River. Chino North
28 is, butts up against the 566 elevation line of Prado Reservoir. So we have to stop. That's the line
of demarcation. We stop there.

28 (Reporter's Transcript p. 119, lns. 4-10)

1 permit requirements imposed six months ago.

2 On June 29, 2007, the RWQCB adopted an order requiring Watermaster and IEUA to
3 implement "Chino Basin Maximum Benefit Commitments", one of which is to "... implement
4 measures necessary to maintain hydraulic control, i.e., eliminating, or controlling to *de minimus*
5 levels, the discharge of groundwater from the Chino Basin to the Santa Ana River." (Water
6 Recycling Requirements, RWQCB Order No. R8-2007-0039, p. 26) Watermaster and IEUA
7 must have plans to mitigate water quality effects "... from temporary failure to achieve or
8 maintain hydraulic control" and to "... correct loss of hydraulic control." (*Id.*) The RWQCB
9 determines whether hydraulic control is achieved or maintained. There appear to be no standards
10 or criteria that apply to that determination.

11 **B. Recommendations**

12 Mr. Wildermuth's "robust" criterion should be formalized and the concurrence of the
13 RWQCB should be obtained. This may require that the RWQCB's definition of "Hydraulic
14 Control" be restated with greater specificity. Watermaster should report to the court by July 1,
15 2008, on the development of standards or criteria which will be applied in the future to
16 demonstrate the achievement and maintenance of Hydraulic Control. That report should inform
17 the court of Watermaster's plans for mitigation of temporary failure to achieve or maintain
18 hydraulic control and to correct the loss of hydraulic control.

19 **VI. ASSURANCES REGARDING RECHARGE**

20 **A. Peace II Measures**

21 A key element of the proposed Peace II Measures is that Watermaster must develop
22 recharge capability throughout the Basin Reoperation period, to ensure that sufficient recharge
23 capability exists at the end of that period. There will have to be sufficient recharge capability to
24 meet desalter replenishment obligations and all other future recharge needs.

25 Watermaster and the parties have committed to prepare an updated Recharge Master Plan
26 by July 1, 2010. Mr. Slater firmly stated to the court:

27 "... We have a mandatory commitment to do the recharge master plan. Then that
28 is buttressed by a penalty of depriving us of the 400 if we don't stay in your good

1 graces.⁴⁶

2 (Reporter's Transcript p. 52, lns. 1-4) This is a clear and enforceable obligation, and "mandatory
3 duty":

4 If Watermaster and the parties are not in compliance with this requirement, then
5 the controlled overdraft of the Basin must cease. Mr. Wildermuth testified that it
6 is possible for there to be an immediate course correction if Material Physical
7 Injury were to develop. . . The method to stop the controlled overdraft of the
8 Basin would be through the resumption of replenishment. The Court will be able
9 to determine that the controlled overdraft has been stopped simply through the
10 reporting of the resumption of replenishment in an amount sufficient to account
11 for desalter production.

12 (Response p. 31, lns. 20-27)

13 **B. Recommendations**

14 Watermaster has committed to submitting an updated Recharge Master Plan to the court
15 for approval by July 1, 2010. A first recommendation is that Watermaster should submit a
16 detailed outline of the scope and content of its first Recharge Master Plan update to the court for
17 approval by July 1, 2008, and report its progress to the court again by January 1, 2009, and July
18 1, 2009.

19 The updated Recharge Master Plan and every subsequent update should be required to
20 include at least the following elements:

- 21 1. Baseline conditions must be clearly defined and supported by technical analysis.
22 As demonstrated by the Technical Report, the baseline definition encompasses
23 such factors as pumping demand, recharge capacity, total Basin water demand,
24 and availability of replenishment water.
- 25 2. Safe yield, although not to be formally recalculated until 2011, should be
26 estimated annually. Watermaster should develop a technically defensible
27 approach to estimating safe yield annually, since replenishment obligations
28 increase with declining safe yield.
3. Watermaster should evaluate measures that can be taken to lessen or stop the
 projected Safe Yield decline. All practicable measures should be evaluated in
 terms of their potential benefits and feasibility.

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⁴⁶ Mr. Manning testified, in response to the question of what measures Watermaster will be implementing to ensure that various interests in the Basin are protected as Basin reoperation proceeds, that: (1) Monitoring is key. (2) "In the short term, we can look at pumping patterns. We can look at conservation. We can look at recharge strategies in terms of where we recharge water. . ." (3) "In the long run, if we had to, worst case scenario, you could just do additional replenishment." (Reporter's Transcript p. 59, ln. 4 to p. 60, ln. 4) Watermaster should explain the last point in Mr. Manning's testimony.

- 1 4. Basin Reoperation will affect groundwater storage and water levels. The
2 Recharge Master Plan should provide for annual evaluations and reporting of
these variables.
- 3 5. Total demand for groundwater should be forecast for 2015, 2020, 2025, and 2030.
4 Availability of imported water for supply and replenishment, and availability of
5 recycled water should be forecast on the same schedule. The schedules should be
refined in each update. Projections should be supported by thorough technical
analysis.
- 6 6. Watermaster's Technical Report raised the issue that the Basin is a finite water
7 supply source. Because parties are enjoined from pumping more than their shares
8 of Safe Yield or Operating Safe Yield, unless Watermaster is able to replenish for
9 overproduction, Watermaster's success in planning and implementing a recharge
10 and replenishment program dictates how much groundwater will be allowed to be
11 pumped in the future. The Recharge Master Plan must include a detailed
12 technical comparison of current and projected groundwater recharge capability
13 and current and projected demand for groundwater. If, at any time,
14 Watermaster's recharge capacity either cannot meet or is projected not to be able
15 to meet replenishment needs, Watermaster should alert all parties of that fact.
16 The Recharge Master Plan should at that point guide Watermaster's efforts to
17 either provide sufficient recharge capability or undertake alternative measures.
18 The end result is that Watermaster must be able to resume Basin operation in
19 accordance with the Judgment and its Physical Solution at any time.

14 VII. DECLINING SAFE YIELD ISSUES

15 A. Technical Analysis Indicates Safe Yield is Declining

16 Watermaster's Technical Report indicated – for the first time – that safe yield would
17 decline, from 140,000 acre-feet per year to slightly less than 120,000 acre-feet per year by
18 2059/60. (Technical Report p. 8-2) Watermaster addressed this new information in its

19 Response:

20 More importantly, the Referee expressed surprise and concern over the downward
21 trends in Safe Yield predicted by the Final Report. Watermaster shares this
22 concern. Indeed it would be a travesty if the Safe Yield of the Basin was
23 materially diminished over the next several decades. Watermaster and the parties
24 have already invested heavily in measures to retard erosion of safe yield and to
increase yield through physical improvements, it would be both uncharacteristic
and wholly without precedent for Watermaster to ignore information suggesting
that its earlier investments will be undermined.

25 The Court must appreciate that information is very new and further evaluation
26 and better understanding of the causes and whether they can be reversed or
27 mitigated by methods other than expanded recharge is warranted. That said,
28 Watermaster must point out that the gravity of the predicted condition in the Final
Report actually grows worse if the Peace II Measures are not implemented.
(November 15, 2007 Declaration of Mark Wildermuth, ¶ 17.)
There can be no better place to address the subject of declining yield than in the
proposed Recharge Master Plan process.

1 (Response p. 32, ln. 20 to p. 33, ln. 7)

2 As discussed in Section IV.A. 3, above, Mr. Wildermuth has outlined the likely causes of
3 the projected decline in safe yield. The Wildermuth Letter Report includes a brief discussion of
4 the causes of declining safe yield, including why the decline was not predicted in prior
5 investigations.

6 **B. Recommendations**

7 The projected reduction in Safe Yield should be included in technical analysis in the
8 expanded Hydraulic Control report and the updated Recharge Master Plan.

9 **VIII. NEW EQUILIBRIUM**

10 **A. Technical Analysis of New Equilibrium**

11 Watermaster characterizes Basin Reoperation as a "temporary excursion" which will last
12 no longer than 22 years or substantially less. (Response p. 19, ln. 23 to p. 20, ln. 2) Reaching a
13 "new equilibrium" may not be as clear cut as this characterization suggests, however. Mr.
14 Scalmanini expressed concern in his Model Review Report that reaching a "new equilibrium" at
15 the end of Basin reoperation will not necessarily be straightforward:

16 Ultimately, it is beyond the scope of this review to comment on the technical or
17 other viability of basin reoperation schemes. However, in light of the long-term
18 fundamental basis for the judgment in the Chino Basin, that groundwater not be
19 chronically depleted, the observation of model output . . . clearly illustrates the
20 need for model application to examine projected basin conditions through
21 whatever is proposed for the balance of the Peace Agreement term and also,
22 assuming that some form of purposeful storage depletion is proposed, to examine
23 projected basin conditions beyond that term. The intent of such a simulation
24 would be to identify a subsequent basin reoperation scheme that would assure the
25 maintenance of hydraulic control but also assure that storage depletion is curtailed
26 and long-term sustainability is achieved. In other words, the Updated 2003
27 Model shows that reoperation to achieve hydraulic control will result in
28 continuous removal of groundwater from storage through and beyond the
achievement of hydraulic control. Logically, full replenishment of desalter
pumping and achievement of hydraulic control could undermine hydraulic control
by contributing to the recovery of purposely-depressed groundwater levels.
Further logic would suggest that sustainable reoperation after achievement of
hydraulic control might involve continued desalter pumping with more than half,
but not full, replenishment. After resolution of the boundary and other issues
delineated in this review, the model (presumably the 2007 Watermaster Model)
should be used to define the anticipated rates of desalter and other pumping, and
the associated replenishment of desalter pumping that will achieve long-term
groundwater sustainability. The results of that analysis would inform a
redetermination of safe yield at the end of the Peace Agreement term.

1 (Scalmanini Model Review Report pp. 35-36)

2 **B. Recommendations**

3 The return to "operating pursuant to the Judgment", with full replenishment of
4 overproduction, must be accomplished. How that will be accomplished, and a "new
5 equilibrium" created, should also be included in technical analysis in the expanded Hydraulic
6 Control report and the updated Recharge Master Plan.

7 **IX. CEQA**

8 **A. Scope of CEQA Review**

9 As noted in the Preliminary Report, Watermaster does not address the scope of CEQA
10 review; the Peace II Agreement only notes that IEUA will be lead agency. (Preliminary Report
11 p. 30, lns. 5-9) The concern expressed was that there is no assurance that there will be an
12 evaluation under CEQA of alternatives to, implications and effects of, and potential mitigation
13 for Basin reoperation without a full environmental impact report ("EIR") being prepared. The
14 cumulative effects of pursuing Basin reoperation – and what have been referred to as "trade-offs"
15 – will apparently not be analyzed if no new EIR is prepared.⁴⁷

16 Compliance with CEQA is an important part of the Peace II Agreement. The Peace II
17 Agreement states:

18 2.1 Project Description. The proposed project description regarding the
19 design, permitting, construction and operation of Future Desalter, securing
20 Hydraulic Control through Basin Re-Operation is set forth in Attachment "A" to
Watermaster Resolution 07-05 attached hereto as Exhibit "1."

21 2.3 Commitments are Consistent with CEQA. The Parties agree and
22 acknowledge that no commitment will be made to carry out any "project" under
the amendments to the OBMP and within the meaning of CEQA unless and until
the environmental review and assessment that may be required by CEQA for that

23
24 ⁴⁷ The Preliminary Report suggested that:

25 If there are practical alternatives for recycled water use that do not result in basin overdraft and do
26 not change the entire gradient of the basin, and possibly maintain safe yield and allow additional
storage and recovery programs, those alternative should be identified and evaluated. The
economics of recycled water use and recharge arguably should not be of *paramount* importance to
Watermaster. . .

27 (Preliminary Report p. 70, lns. 22-26) Watermaster responded: "This recommendation appears to be based on
28 assumptions not supported by the evidence." (Response p. 49, ln. 15) This was exactly the point; there is no
evidence in the record of alternatives to Basin reoperation, or "trade-offs" that may be the result of Basin
reoperation.

1 defined "project" have been completed.

2 (Peace II Agreement, Article II)

3 **B. Recommendation**

4 Watermaster should report to the court by April 1, 2008, on the status of existing
5 environmental documentation that might be used to support environmental review of desalter
6 expansion, and to provide the court with Watermaster's views as to the sufficiency of existing
7 environmental documentation, and the need for and scope of additional environmental
8 documentation for Basin reoperation. Watermaster should assure the court that its review,
9 approval, and participation in any project that is a "project" for CEQA purposes has been the
10 subject of all appropriate CEQA review.

11 **X. CONCLUSION**

12 Watermaster is an arm or extension of the court, and must carry out the Judgment's
13 Physical Solution, develop and provide for the implementation of the OBMP, and manage the
14 Basin accordingly. It is most successful when it works with the parties to achieve consensus.
15 The court has consistently urged Watermaster to proceed in this way. In carrying out its role,
16 Watermaster owes the court the duty to fully explain and discuss the actions for which it must
17 seek court approval, particularly as they pertain to proposed Judgment amendments. The Special
18 Referee, also serves the court to review and comment on motions to the court, and to make
19 recommendations for further explanation, discussion, or context where those are necessary in
20 order for the court fully to understand what the court is being asked to approve.

21 The majority of the questions and concerns raised in the Preliminary Report have been
22 addressed either through testimony at the November 29, 2007 court hearing or by Watermaster's
23 Response. Legal and technical questions remain, however, and this Report recommends that
24 Watermaster be required to submit to the court for approval the responses, Hydraulic Control
25 technical reports, Recharge Master Plan update and assurances, hydraulic control evaluation
26 standard, safe yield analysis, and new equilibrium assurances by specified dates, as
27 recommended in this Report. The court should approve Watermaster's Motion for Approval of

28 ///

1 Peace II Documents subject to Watermaster's timely compliance with the recommended
2 requirements set forth in this Report.

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4 Dated: December 20, 2007

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6 Annie J. Schneider, Special Referee

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ATTACHMENT 1

Alternative 1A^a
Desalter Replenishment with Most Rapid Depletion of the Re-Operation Account
 (see 447)

Time	Desalter Replenishment	New York	Replenishment		Balance	Residual Replenishment Allocation
			Allocation to Re-Operation	Allocation to ODR		
2006 / 2007	28,700	0	0	28,700	400,000	0
2007 / 2008	28,700	0	0	28,700	371,300	0
2008 / 2009	28,700	0	0	28,700	342,600	0
2009 / 2010	28,700	0	0	28,700	313,900	0
2010 / 2011	28,700	0	0	28,700	285,200	0
2011 / 2012	28,700	0	0	28,700	256,500	0
2012 / 2013	94,050	0	5,000	38,650	227,800	0
2013 / 2014	36,400	75	10,000	23,750	199,000	5,575
2014 / 2015	36,400	318	10,000		160,000	26,062
2015 / 2016	36,400	679	10,000		140,000	25,721
2016 / 2017	36,400	1,119	10,000		130,000	25,281
2017 / 2018	36,400	1,630	10,000		120,000	24,730
2018 / 2019	36,400	2,306	10,000		110,000	24,064
2019 / 2020	36,400	3,011	10,000		100,000	23,338
2020 / 2021	36,400	3,699	10,000		90,000	22,571
2021 / 2022	36,400	4,450	10,000		80,000	21,690
2022 / 2023	36,400	5,254	10,000		70,000	20,646
2023 / 2024	36,400	6,179	10,000		60,000	19,391
2024 / 2025	36,400	7,254	10,000		50,000	17,946
2025 / 2026	36,400	8,324	10,000		40,000	16,276
2026 / 2027	36,400	9,402	10,000		30,000	14,396
2027 / 2028	36,400	10,527	10,000		20,000	12,273
2028 / 2029	36,400	11,691	10,000		10,000	9,928
2029 / 2030	36,400	12,940	10,000		0	7,260
Totals	876,050	73,438	175,000	225,000		402,614

Source: Watermaster Hearing Exhibit "1" (November 29, 2007 Hearing)

ATTACHMENT 2

Table 1

**Alternative 1C - Desalter Replenishment with the
Most Rapid Depletion of the Re-Operation Account
(acre-ft/yr)**

Fiscal Year	Desalter Pumping	New Yield	Re-Operation			Residual Replenishment Obligation
			Replenishment Allocation for Desalter III	Replenishment Allocation to CDA	Balance	
2006 / 2007	26,350	0	0	26,350	400,000	0
2007 / 2008	26,350	0	0	26,350	373,650	0
2008 / 2009	26,356	0	0	26,356	347,300	0
2009 / 2010	26,356	0	0	26,356	320,944	0
2010 / 2011	28,965	0	0	28,965	294,588	0
2011 / 2012	31,574	75	0	31,500	265,822	0
2012 / 2013	34,182	442	5,000	28,740	234,129	0
2013 / 2014	36,791	962	10,000	25,828	200,389	0
2014 / 2016	39,320	1,629	10,000	4,554	184,554	0
2015 / 2016	39,320	2,255	10,000		150,000	23,137
2016 / 2017	39,320	2,771	10,000		140,000	27,065
2017 / 2018	39,320	3,275	10,000		130,000	26,549
2018 / 2019	39,320	3,767	10,000		120,000	26,046
2019 / 2020	39,320	4,289	10,000		110,000	25,553
2020 / 2021	39,320	4,764	10,000		100,000	25,037
2021 / 2022	39,320	5,198	10,000		90,000	24,566
2022 / 2023	39,320	5,570	10,000		80,000	24,122
2023 / 2024	39,320	5,854	10,000		70,000	23,750
2024 / 2025	39,320	5,959	10,000		60,000	23,466
2025 / 2026	39,320	5,834	10,000		50,000	23,361
2026 / 2027	39,320	5,698	10,000		40,000	23,466
2027 / 2028	39,320	5,546	10,000		30,000	23,622
2028 / 2029	39,320	5,478	10,000		20,000	23,774
2029 / 2030	39,320	5,594	10,000		10,000	23,841
					0	23,726
Totals	866,045	74,953	175,000	225,006		391,091

Source: Wildermuth Letter Report (December 19, 2007)

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, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

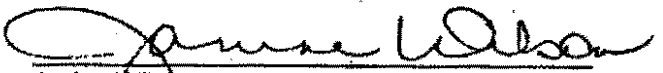
On December 20, 2007 I served the following:

- 1) **SPECIAL REFEREE'S FINAL REPORT AND RECOMMENDATIONS ON MOTION FOR APPROVAL OF PEACE II DOCUMENTS**

- BY MAIL: 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, addresses as follows:
See attached service list: Mailing List 1
- BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.
- BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.
- BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 20, 2007 in Rancho Cucamonga, California.


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EXHIBIT 29

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

DEC 21 2007

By John A. Taha
Deputy

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

THE CITY OF CHINO, et al.

Defendants.

CASE NO. RCV 51010

ORDER CONCERNING MOTION
FOR APPROVAL OF PEACE II
DOCUMENTS

Date: Submitted on Nov. 29, 2007
Dept. 8

I. Introduction

A. Watermaster's Filings

On October 25, 2007, Chino Basin Watermaster filed a Motion for Approval of Peace II Documents. Watermaster's motion requests Court approval of three proposed Judgment amendments, a proposed amendment to the Peace Agreement, a Purchase and Sale Agreement for water from the Overlying (Non-Agricultural) Pool, a Supplement to the Optimum Basin Management Program ("OBMP") Implementation Plan, a Peace II Agreement, and proposed amendments to Watermaster's Rules and Regulations. Watermaster requested a November 29, 2007 hearing on the motion.

On November 15, 2007, Watermaster filed a Transmittal of Supplemental Documents,

1 which included the 2007 CBWM Groundwater Model Documentation and Evaluation of the
2 Peace II Project Description, Final Report, dated November 2007. On December 13, 2007,
3 Watermaster filed its Second Transmittal of Supplemental Documents, which included several
4 stipulations.

5 Watermaster filed its Response to Special Referee's Preliminary Comments and
6 Recommendations on Motion for Approval of Peace II Documents on December 14, 2007. The
7 Watermaster's Response noted: "The technical issues raised by the Referee are addressed in a
8 separate document that is being prepared by Mark Wildermuth, which will be filed at a later
9 date." (Watermaster Response p. 2, fn. 2) Mr. Wildermuth's Letter Report to Watermaster on
10 the subject "Evaluation of Alternative 1C and Declining Safe Yield" (December 18, 2007) was
11 filed with the Court December 19, 2007.

12 B. Filings in Support of Watermaster's Motion

13 Numerous filings have been received in support of the Motion. On November 9, 2007,
14 Fontana Union Water Company, San Antonio Water Company, and Monte Vista Water District
15 filed Joinders to Watermaster's motion. The City of Pomona filed a Statement in Support of the
16 motion, also on November 9, 2007. On November 13, 2007, Inland Empire Utilities Agency
17 ("IEUA") filed a Joinder to Watermaster's motion and Declaration of Richard Atwater. Also on
18 November 14, 2007, the City of Chino Hills, the City of Upland, the Agricultural Pool, and
19 Cucamonga Valley Water District filed Joinders to Watermaster's motion.

20 On November 15, 2007, Western Municipal Water District filed a Joinder to
21 Watermaster's motion and Declaration of John Rossi. Also on November 15, 2007, the City of
22 Ontario filed a Joinder to the motion and Declaration of Kenneth Jeske. The third filing on
23 November 15, 2007, was Three Valleys Municipal Water District's Joinder to the motion and
24 Declaration of Jeff Kightlinger. On November 26, 2007, the City of Chino filed a Joinder and
25 Statement in Support of Watermaster Motion to Approve Peace II Documents.

26 On November 29, 2007, Watermaster and the Chino Basin Water Conservation District
27 entered into and filed a stipulation stating the Conservation District's support for the Court's
28 approval of the Peace II Measures in consideration for certain clarifications. Watermaster's

1 second transmittal, filed on November 29, 2007, included a Declaration from Ronald Craig on
2 behalf of the City of Chino Hills, and a Declaration from Eldon Horst for Jurupa Community
3 Services District, both in support of approval of the Peace II Measures.

4 C. Court's Order to Show Cause

5 An Order to Show Cause Why Court Should Not Continue the Hearing on Motion for
6 Approval of Peace II Documents ("OSC") was issued on November 15, 2007. The OSC stated
7 the Court intended to continue the hearing on Watermaster's Motion "... absent sufficient cause
8 being shown by, among other things, testimony of Mark Wildermuth elicited on November 29,
9 2007." (OSC p. 4, lns. 24-25) The Chino Basin Water Conservation District filed a Response to
10 the OSC on November 19, 2006, and Watermaster filed a Response to Order to Show Cause and
11 Conservation District on November 26, 2007.

12 D. Special Referee Reports

13 Special Referee Anne Schneider's Preliminary Comments and Recommendations on
14 Motion for Approval of Peace II Documents ("Preliminary Report") was filed on November 27,
15 2007. The Special Referee filed her Final Report and Recommendations on Motion for
16 Approval of Peace II Documents on December 20, 2007.

17 E. November 29, 2007 Court Hearing

18 The Court held a hearing on November 29, 2007, with testimony from Mr. Manning and
19 Mr. Wildermuth. The Reporter's Transcript was available December 11, 2007.

20 **II. Discussion**

21 An extraordinary effort has been made to get the motion, all of the supporting and
22 supplemental pleadings and other documents, and the Special Referee reports filed before the
23 end of 2007. The Court has considered all of the pleadings, declarations, reports and other
24 documents, as well as the testimony presented on November 29, 2007. It is obvious that
25 everyone involved in the "Peace II" process has been working diligently. Moreover, the Court is
26 appreciative of the way this case has been managed in recent years. The Court appreciates all of
27 your efforts, including but not limited to the parties, the attorneys, Watermaster and its attorney,
28 the Special Referee, and the Technical Expert's education of the Court in this complex matter.

1 A. Guidance Regarding the Roles of Watermaster and the Special Referee

2 Watermaster asserts that the traditional role of Watermaster and its interaction with the
3 Court is made more complex in Chino Basin by the existence of a Special Referee.
4 Watermaster states that no other adjudicated groundwater basin has both a Watermaster and a
5 Special Referee, and notes that the Judgment does not provide for a referee. (Watermaster
6 Response, *supra*, p. 3, Ins. 11-16.) Watermaster asks for guidance as to Watermaster's and the
7 Special Referee's roles.

8 1. Watermaster's Role

9 The Court accepts Watermaster's analysis of its role: "Watermaster's legal existence
10 emanates from the Judgment. All of Watermaster's enumerated powers originate within and
11 arise from the Judgment. It is not a public agency or private entity that has been formed under
12 some general or special law. Its duty is 'to administer and to enforce the provisions of this
13 Judgment and any subsequent instructions or orders of the Court hereunder.' [Citation.] As all
14 special masters, Watermaster operates as an extension of the Court and to meet the needs of the
15 Court in carrying out its obligations under the Judgment and Article X, Section 2 of the
16 California Constitution." (Watermaster Resp. to Sp. Ref. Prelim. Comments, p. 2, Ins. 22-25 and
17 p. 3, Ins. 1-3.) Although it is not stated in Watermaster's pleadings, it is important to note that it
18 is not Watermaster's duty to be an advocate for any, or for all, of the parties. Watermaster's
19 position with respect to the parties should be neutral.

20 2. Special Referee's Role

21 The Court also accepts the Special Referee's analysis of the role of a referee: "The role
22 of the Special Referee is to (1) provide the court with as full and complete explanations as
23 possible of what the Watermaster requests or of issues that have been brought to the court; and
24 (2) to make recommendations to the court as appropriate." (Sp. Rev. Fin. Report, p. 3, Ins. 4-6.)
25 The Special Referee's role in this case is discussed further below.

26 3. Courts Favor Referee in Water Law Determinations

27 The recommendation that trial courts obtain expert advice in water law decisions was
28 recognized by the California Supreme Court long ago: "... in view of the complexity of the

1 factual issues in water cases and the great public interests involved, [it has been recommended]
2 that the trial courts seek the aid of the expert advice and assistance provided for in that section
3 [former Water Code Section 24, now Water Code Section 2000]." (*City of Pasadena v. City of*
4 *Alhambra* (1949) 33 Cal.2d 908, 917.)

5 In this case, it was the parties who first suggested to the Court in the early 1990's that an
6 order of reference be made to Anne Schneider. That was in connection with motions entitled
7 Joint Motion to Interpret, Enforce, Carry-out, Modify, Amend or Amplify the Judgment Herein
8 (dated August 25, 1992) and California Steel Industries, Inc.'s Notice of Motion to Interpret,
9 Enforce, Carry-out, Modify, Amend, or Amplify Paragraph 7, Page 66 of Exhibit G of the 1978
10 Judgment (dated March 25, 1993).

11 Then in April 1997, the Court, on its own motion, ordered a reference to Anne Schneider
12 under Code of Civil Procedure Section 639, subdivision (d). In that instance, the reference to
13 Anne Schneider was made as an alternative to ordering a reference to the SWRCB under Water
14 Code Sections 2000 *et seq.*, in connection with a Motion for Order that Audit Commissioned by
15 Watermaster is not a Watermaster Expense and Motion to Appoint a Nine-Member Watermaster
16 Board. (Ruling and Order of Special Reference, dated April 29, 1997, pp. 7, & 10.)

17 4. Referee Status in this Case

18 In April 1998, the Court first ordered a reference to Anne Schneider in connection with
19 an uncontested matter: the development of an Optimum Basin Management Program for Chino
20 Basin ("OBMP"). Special Referee Schneider was asked "to report and make recommendations
21 to the court concerning the contents, implementation, effectiveness, and shortcomings of the
22 optimum basin management plan." (Ruling, dated Feb. 19, 1998, p. 9, lns. 12-16.) The Court
23 authorized the Special Referee "to conduct hearings, if necessary, to ensure the development of
24 all essential elements of the program." (*Id.* at p. 10, lns. 13-14.)

25 Since that appointment, the Special Referee has been providing expert advice and
26 conducting workshops either at the Court's request or the request of the parties or Watermaster,
27 as authorized in various court orders. For example, Watermaster requested that a workshop be
28 held to present to the Court through the Special Referee, the Interim Plan for Management of

1 Subsidence. (See Order Scheduling Workshop, dated June 19, 2002, p. 2, lns. 6-10.) The
2 Special Referee also has been requested to monitor the Peace II process and the plan for future
3 desalters and related activities. (Order Re-Appointing Nine-Member Board, dated Feb. 9, 2006,
4 p. 5, lns. 9-17.) It should be clear from this discussion that the Special Referee in this case does
5 not necessarily function as the typical referee described in Watermaster's Response to the
6 Special Referee's Preliminary Report, at page 4.

7 This Court has said on many occasions that the assistance provided by the Special
8 Referee is invaluable. It is the desire of the Court that the Special Referee continue to monitor
9 the contents, implementation, effectiveness and shortcomings (if any) of the OBMP. It is
10 suggested in the Special Referee's Final Report that because of Watermaster's involvement in
11 negotiations related to the OBMP "the Special Referee may be less constrained than
12 Watermaster in raising questions and voicing concerns...." (Sp. Ref. Final Report, p. 3, lns. 13-
13 16.) In participating in the parties' negotiations, Watermaster must not forget that its function is
14 to meet the needs of the Court in carrying out its obligations under the Judgment and Article X,
15 Section 2 of the California Constitution.

16 B. Findings Pertaining to Watermaster's Motion

17 Watermaster's motion requests review and court approval under paragraphs 15 and 31 of
18 the Judgment. Under paragraph 15, the Court reserves jurisdiction to make further or
19 supplemental orders "as may be necessary or appropriate for interpretation, enforcement or
20 carrying out" the Judgment and "to modify, amend or amplify" any of its provisions. Under
21 Judgment paragraph 31, in reviewing Watermaster decisions, "[T]he Court shall require the
22 moving party to notify the active parties....of a date for taking evidence and argument, and on
23 the date so designated shall review de novo the question at issue. Watermaster's findings or
24 decision, if any, may be received in evidence at said hearing, but shall not constitute presumptive
25 or prima facie proof of any fact in issue."

26 In addition to the testimony offered at the hearing on November 29, 2007, Watermaster
27 has presented several declarations and other documentary evidence in support of its motion. The
28 Court has considered all of the evidence presented by Watermaster and finds there is substantial

1 evidence to support Watermaster's implied findings that the proposed Judgment amendments
2 and other Peace II documents will promote the public interest, will protect the rights of the
3 parties, and are consistent with California Constitution Article X, section 2. The key points
4 relied upon by Watermaster, and which were proved to the Court, are enumerated on page 9 of
5 the Special Referee's Final Report and Recommendations on Motion for Approval of Peace II
6 Documents, and are incorporated herein by reference.

7 **III. Order**

8 **SUBJECT TO THE CONTINUING JURISDICTION OF THE COURT, AND TO THE**
9 **SATISFACTION OF THE CONDITIONS SUBSEQUENT LISTED BELOW,** the Court hereby
10 makes the following orders:

- 11 1. The amendments to Judgment Exhibit "F", Judgment Paragraph 8, and Judgment
12 Exhibit "G" are hereby approved.
- 13 2. Watermaster shall proceed in accordance with the second amendment to the Peace
14 Agreement.
- 15 3. Watermaster's adoption of Resolution 07-05 is approved and Watermaster shall
16 proceed in accordance with the terms of the resolution and the documents attached
17 thereto.
- 18 4. The Court hereby adopts the recommendations made in Special Referee's Final
19 Report and Recommendations on Motion for Approval of Peace II Documents, which
20 are incorporated herein by reference.
- 21 5. A hearing is set for Thursday, May 1, 2008, at 2:00 p.m. for the Court to review
22 Watermaster's compliance with the first four conditions listed below.

23 **Conditions Subsequent**

- 24 1. By February 1, 2008, Watermaster shall prepare and submit to the Court a brief to
25 explain the amendments to Judgment Paragraph 8 and Judgment "G".
- 26 2. By February 1, 2008, Watermaster shall prepare and submit to the Court for approval
27 a corrected initial schedule to replace Resolution No. 07-05 Attachment "E", together
28 with an explanation of the corrections made.


- 1 3. By March 1, 2008, Watermaster shall prepare and submit to the Court for approval a
2 new Hydraulic Control technical report that shall address all factors included in the
3 Special Referee's Final Report and Recommendations. The new Hydraulic Control
4 report shall include technical analysis of the projected decline in safe yield, and a
5 definition and analysis of "new equilibrium" issues.
- 6 4. By April 1, 2008, Watermaster shall report to the Court on the status of CEQA
7 documentation, compliance, and requirements, and provide the Court with assurances
8 that Watermaster's approval and participation in any project that is a "project" for
9 CEQA purposes has been or will be subject to all appropriate CEQA review.
- 10 5. By July 1, 2008, Watermaster shall prepare and submit to the Court a detailed outline
11 of the scope and content of its first Recharge Master Plan update, and shall report its
12 progress by January 1, 2009, and July 1, 2009.
- 13 6. By July 1, 2008, Watermaster shall report to the Court on the development of
14 standards and criteria by which the RWQCB will determine that hydraulic control is
15 achieved and maintained.
- 16 7. By December 31, 2008, Watermaster shall prepare and submit to the Court for
17 approval a revised schedule to replace the corrected initial schedule, which submittal
18 shall include a reconciliation of new yield and stormwater estimates for 2000/01
19 through 2006/07, and a discussion of how Watermaster will account for
20 unreplenished overproduction for that period.
- 21 8. By July 1, 2010, Watermaster shall prepare and submit to the Court for approval an
22 updated Recharge Master Plan. The updated Recharge Master Plan shall include all
23 elements listed in the Special Referee's Final Report and Recommendations.
- 24 9. Watermaster shall comply with all commitments it has made in the Peace II
25 Documents, whether or not specifically included in these conditions subsequent.

26 Watermaster is forewarned that a failure to comply with any of the above conditions subsequent
27 will render the Court's approval of Watermaster's motion null and void. A lack of compliance
28 with the conditions subsequent will also be seen as a failure by Watermaster, through its nine-

1 member Board, to perform its most important duty: to administer and to enforce the provisions of
2 this Judgment and any subsequent instructions or orders of the Court.

3 IT IS SO ORDERED.

4 Dated: December 21, 2007

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7 J. Michael Gunn, Judge

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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, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On December 21, 2007 I served the following:

1) ORDER CONCERNING MOTION FOR APPROVAL OF PEACE II DOCUMENTS

BY MAIL: 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, addresses as follows:

See attached service list: Mailing List 1

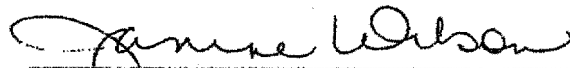
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 21, 2007 in Rancho Cucamonga, California.



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Chino Basin Watermaster

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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, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On October 30, 2008 I served the following:

- 1) **JOINT SUR-REPLY TO CUCAMONGA VALLEY WATER DISTRICT'S REPLY TO JOINT OPPOSITION TO CVWD'S MOTION TO DISCONTINUE THE APPOINTMENT OF THE SPECIAL REFEREE AND REPLY TO SPECIAL REFEREE'S RESPONSE**
- 2) **EVIDENTIARY OBJECTIONS TO CUCAMONGA VALLEY WATER DISTRICT'S REPLY TO SPECIAL REFEREE'S RESPONSE TO THE MOTION TO DISCONTINUE THE APPOINTMENT OF THE SPECIAL REFEREE AND DECLARATIONS SUBMITTED THEREWITH**
- 3) **NOTICE OF LODGING DOCUMENTS IN SUPPORT OF JOINT OPPOSITION TO CUCAMONGA VALLEY WATER DISTRICT'S MOTION TO DISCONTINUE THE APPOINTMENT OF THE SPECIAL REFEREE**
- 4) **EXHIBITS 1-29**

BY MAIL: 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, addresses as follows:
See attached service list: Mailing List 1


BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 30, 2008 in Rancho Cucamonga, California.



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