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FEE EXEMPT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT, Plaintiff, v. CITY OF CHINO et al., Defendants.	Case No. RCVRS 51010 Assigned for All Purposes to the Honorable Stanford E. Reichert **AGRICULTURAL POOL'S BRIEFING REGARDING 1998 RULING AND SEPARATION OF POWERS; [PROPOSED] ORDER DENYING THE MOTION OF APPROPRIATIVE POOL MEMBER AGENCIES RE: AGRICULTURAL POOL LEGAL AND OTHER EXPENSES FILED CONCURRENTLY HEREWITH**

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AGRICULTURAL POOL'S
BRIEFING REGARDING 1998 RULING AND SEPARATION OF POWERS

Neither the terms of the Peace Agreement nor the Judgment compel the relief the Appropriative Pool Member Agencies are seeking. Indeed, the doctrine of res judicata and a previous ruling in this matter expressly forbid it. In a 1998 ruling from this groundwater adjudication, Judge Gunn ruled that the functions and separation of power of the three Pools, Advisory Committee and Watermaster established by the Judgment are essential to the governance of the Basin and to avoid what he feared was a potential for the groundwater resources to fall victim to the "Tragedy of the Commons." (Exhibit A: February 19, 1998 Ruling, at fn. 1.)[1] Should the Tentative Ruling stand, a tragedy of the commons will follow with the powerful and well-funded members of the Appropriative Pool controlling all budgets and effectively eliminating projects and expenses they do not believe necessary. This tactic was attempted by the same attorney in this same adjudication in 1997 and stopped by Judge Gunn's ruling in 1998.

The evidence in the 2021 version of this controversy proves that through this litigation, the Appropriative Pool is attempting to wield unbridled power over the Overlying (Agricultural) Pool ("Agricultural Pool") and by extension the Basin's resources. Despite the clear and unambiguous terms of the Peace Agreement in addition to the practical construction by the parties for decades, the Appropriative Pool is refusing to pay the expenses of the Agricultural Pool even though they were incurred pursuant to a duly amended budget. The Appropriative Pool is

[1] In the February 19, 1998 Ruling ("1998 Ruling"), the Court noted that "one is reminded of the passage in 'The tragedy of the commons Revisited' by Beryl Crowe (1969) with reference to administrators of the commons: '...one writer postulated a common life cycle for all attempts to develop regulatory bodies. The life cycle is launched by an outcry so widespread and demanding that it generates enough political force to bring about establishment of a regulatory agency to insure the equitable, just, and rational 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." (Exhibit A: February 19, 1998 Ruling, at fn. 1.) (Emphasis added.)

refusing to pay for actions by the Agricultural Pool that advocate for responsible basin management, such as safe storage and safe yield. The Appropriative Pool doesn't like being held to the standards of basin management including a storage contest. The Appropriative Pool doesn't take kindly to being told to support a timely reset of the safe yield, so they choose to breach a contract and stop paying for the expenses of the Agricultural Pool—expenses openly and notoriously spent in furtherance of Basin management.[2] No portion of the Judgment, previous rulings of the Court, or the Peace Agreement supports what the Appropriative Pool Member Agencies are proposing as relief from this Court. As a consequence, there is no evidentiary or legal support for the Court's April 5, 2021 Tentative Ruling ("Tentative Ruling"), and it should be reconsidered and amended.

I. The Tentative Ruling Threatens to Upset Over 20 Years of Precedent and Watermaster Governance

What started as a meritless challenge to a contract has morphed into a Tentative Ruling that will erode the Chino Basin Watermaster governance structure – undermining the very foundation of groundwater management in the Chino Basin groundwater adjudication. The Court's Tentative Ruling granted the Motion of Appropriative Pool Member Agencies Re: Agricultural Pool Legal and Other Expenses ("Appropriative Pool Member Agencies Motion") by limiting the obligation of the Appropriative Pool under Section 5.4(a) of the Peace Agreement, despite the Appropriative Pool's twenty-one year old contractual obligation to pay all of the expenses incurred by the Agricultural Pool.

Contrary to the Judgment and the terms of the Peace Agreement, the Tentative Ruling incorrectly finds that expenses for the Agricultural Pool must be the following:

(1) for actions, programs, or projects initiated by Watermaster; and

(2) within a budget pre-approved following review through the Pool process including submission to and approval by the Advisory Committee to the Watermaster; and

[2] It is no secret that the Storage Contest concerned applications for local storage that the Appropriative Pool maintains exceeding the safe storage capacity in the Basin, and which were filed and have proceeded while the recent Safe Yield reset was pending. The Appropriative Pool Member Agencies have even acknowledged such in the Declaration of Scott Burton. (Burton Decl., ¶ 4.)

(3) consistent with the Peace Agreement and legitimate Agricultural Pool functions pursuant to Section 38 of the Restated Judgment; and

(4) reasonable.

The Tentative Ruling further orders "reimbursements to parties who paid assessments above the budget previously approved by the Advisory Committee to the Watermaster." If issued as a final order, the Tentative Ruling would effectively and unilaterally amend the Peace Agreement and eradicate the delicate balance of power in the Basin.

Judge Gunn ruled that the series of checks and balances on the powers wheeled by the three Pools, Advisory Committee, and Watermaster Board are critical to the function of Watermaster and the safety of the Basin. These principles embraced by Judge Gunn are incongruent with the Court's Tentative Ruling. The Agricultural Pool respectfully requests that the Court reconsider its tentative and hereby submits a proposed order for consideration and to that effect.

II. The February 19, 1998 Ruling and December 15, 1997 Report and Recommendation of Special Referee Clarify Each of The Respective Roles of the Watermaster and Advisory Committee and Provide Guidance as to Their Separate Functions

On April 29, 1997, Judge Gunn ordered a special referee for the purpose of receiving written recommendations regarding the facts and law relative to the respective roles of the Watermaster and the Advisory Committee and their relationship under the Judgment in order to give guidance for the future as well as to respond to motions brought before the Court. (Exhibit B: April 29, 1997 Ruling.) Among other questions, the April 29, 1997 Ruling requested that the Special Referee address the following: (1) an audit expense and how it related to the meaning of Paragraph 38 of the Judgment; (2) the appointment of a nine-member Watermaster Board, and the consideration of the checks and balances contained in the 1978 Judgment. (Exhibit C: December 15, 1997 Report and Recommendation of Special Referee ("1997 Report"), at p. 1.)

The Special Referee considered the Court's request and submitted the 1997 Report to the Court. The 1997 Report notes that the "Watermaster is appointed 'to administer and enforce the provisions of this Judgment and any subsequent instructions or orders of the Court

hereafter'...[t]he Watermaster's powers and duties are defined explicitly and exclusively with relationship to the Court, not the Advisory or Pool Committees..." (Exhibit C: 1997 Report, at 11:15-18.) The Special Referee determined that the "Advisory Committee review process [of Section 38(b) of the Judgment] by its terms covers only 'discretionary determinations made or to be made hereunder by Watermaster'; it does not necessarily cover all other action of the Watermaster that are not identified as 'discretionary determination.'" (*Id.* at 18:27-19-2.)

The Court considered the 1997 Report and issued its 1998 Ruling accepting and adopting the 1997 Report recommendations and incorporating by reference the entirety of the 1997 Report. (Exhibit A: 1998 Ruling, at 2:5-16.) Among the most important findings of the Special Referee was that the Watermaster and Advisory Committee serve "separate functions and should not be allowed to merge." (Exhibit C: 1997 Report, at 36:3.) Now, the Court is again asked to review the facts and law relative to the respective roles of the Watermaster and the Advisory Committee and their relationship under the Judgment. To quote the Bard, "what's past is prologue."[3]

III. The First Component of the April 2021 Tentative Ruling Unnecessarily and Inappropriately Finds That Expenses for the Agricultural Pool Must be for Actions, Programs, or Projects Initiated by Watermaster When the Agricultural Pool Only Exists as a Function of Watermaster

Relying upon the guidance provided by Judge Gunn's 1998 ruling, the Agricultural Pool posits that the Tentative Ruling should be reconsidered. All of the Agricultural Pool's invoiced expenses are approved through the regular Watermaster Budget Process in the same form and fashion as the other Pools—including legal fees, consultant fees, meeting fees and projects—consistent with the Peace Agreement and legitimate Agricultural Pool functions.

The Tentative Ruling inappropriately grants the Appropriative Pool Member Agencies Motion restricting the obligation of the Appropriative Pool under Section 5.4(a) of the Peace Agreement to payment of only those expenses incurred by the Agricultural Pool for actions, programs, or projects initiated by Watermaster. Such an interpretation of the contract is contrary to the clear language of the Peace Agreement, parties' mutual intentions at the time of

[3] William Shakespeare, *The Tempest*, Act 2, Scene I.

contracting, and the practices of all parties for more than 20 years.[4]

Even assuming that Section 5.4(a) restricts Agricultural Pool expenses to only those for actions, programs, or projects initiated by Watermaster—which the clear language does not—the Agricultural Pool expenses are for actions, programs, or projects initiated by Watermaster – and no evidence proves otherwise. The Agricultural Pool's existence is *ipso facto* a function of Watermaster. The Pool would not exist, let alone function, but for the Watermaster.

Assuming arguendo that the Appropriative Pool advocates that this portion of the Tentative Ruling applies only to the Agricultural Pool's Storage Contest, those expenses are the Agricultural Pool's use of a program established by Watermaster's own Rules and Regulations. Section 10.13 of the Watermaster Rules and Regulations establishes a process/program that gives parties the opportunity to contest proposed storage and transfer agreements before the Watermaster.

Pursuant to Paragraph 18(a) of the Judgment, Watermaster Rules and Regulations are reviewed and approved by the Advisory Committee. The Advisory Committee most recently approved the amendments to the Watermaster Rules and Regulations in 2019—and no changes were made to the contest provisions. Accordingly, the Appropriative Pool is not entitled to reimbursement for Storage Contest expenses or any other invoiced expense.

At no time before this dispute has any party asserted that Section 5.4(a) obligates the Appropriative Pool to pay only Agricultural Pool expenses initiated by Watermaster.[5] In the only

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[4] As stated in the Agricultural Pool's Opposition to the Appropriative Pool Member Agencies Motion ("Agricultural Pool Opposition"), Section 5.4(a) of the Peace Agreement requires, in unambiguous contractual terms, that all assessments and expenses of the Agricultural Pool are to be paid by the Appropriative Pool. (Peace Agreement, § 5.4(a).) This language is clear and explicit. There are no qualifications or conditions except in the event the total Agricultural Pool Production exceeds 414,000 acre-feet in any five consecutive year period. Specifically, the parties explicitly consent to Watermaster's performance of the obligations of Section 5.4, including the obligation for Watermaster to assess the Appropriative Pool for all Agricultural Pool expenses. (Agricultural Pool Opposition, at p.5.)

[5] Section 5.4(a) of the Peace Agreement clearly and explicitly requires the Appropriative Pool to pay all assessments and expenses of the Agricultural Pool. There is no ambiguity in the language used and the provision does not lead to absurd results. Nevertheless, even where ambiguity or uncertainty exist, the Court must look to the practical construction placed upon it by the parties before any controversy arises as persuasive. (*Rosen v. E. C. Losch, Inc.* (1965) 234 Cal.App.2d 324 ["Practical construction placed by parties upon instrument is best evidence of their intention."]; *California Bldg. Co. of San Diego v. Halle* (1947) 80 Cal.App.2d 229 ["The construction placed upon contract by parties is persuasive and law recognizes that the practical construction made by them is cogent evidence of their intent."].) Section 5.4 has been interpreted as plainly read with the Appropriative Pool paying all assessments

other dispute over Agricultural Pool expenses under Section 5.4(a) (i.e., the 2009 dispute), the Appropriative Pool disputed the payment of costs assessed to the Agricultural Pool for a State of California Regional Water Quality Control Board, Santa Ana Region requirement.

Even during the 2009 discussion the parties—without amending the Peace Agreement—agreed that the Agricultural Pool would "participate in the regular Watermaster Budget Process and present an annual budget in the same form and fashion as the other Pools. This will include: legal fees, consultant fees, meeting fees and projects. All of the budgets will be reviewed through the Pool process, approved and submitted by the Advisory Committee to the Watermaster." (Declaration of Justin Scott-Coe in Support of Appropriative Pool Member Agencies Motion, Exhibit A: 2009 Dispute Resolution Memo, at p. 1.)[6] Therefore there is no evidence of Agricultural Pool expenses that are not pursuant to "actions, programs, or projects initiated by Watermaster" and therefore there is no appropriate relief for the Appropriative Pool.

IV. The Second Component of the Tentative Inappropriately Finds that the Agricultural Pool Expenses must be Within a Budget Pre-Approved Following Review Through the Pool Process including Submission to and Approval by the Advisory Committee to the Watermaster when the Advisory Committee is Not Vested with this Authority.

The Tentative Ruling inappropriately requires expenses to be included within a pre-approved budget following review through the Pool process including submission to and approval by the Advisory Committee to the Watermaster. As the Agricultural Pool has previously briefed and argued before this Court, the Agricultural Pool uses the regular Watermaster budget process, presenting its budget and any amendments thereto for Committee review and approval in the same form as the other two Pools. (Agricultural Pool Opposition, at p. 6.)

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and expenses of the Agricultural Pool since 2000. The conduct of the parties and the Watermaster for 20 years following the execution of the Peace Agreement until this dispute arose in 2020 demonstrates that understanding. "Contractual parties' mutual intention to which the courts give effect is determined by objective manifestations of intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract, the object, nature, and subject matter of the contract, and the subsequent conduct of the parties." (*People v. Shelton* (2006) 37 Cal.4th 759.)

[6] The Tentative Ruling does not indicate whether it granted or denied Appropriative Pool Member Agencies' Request for Judicial Notice regarding Exhibit "1" 2009 Dispute Resolution Memo, nor does the Tentative indicate whether the Court sustained or overruled the Agricultural Pool's objection to the Appropriative Pool's presentation of the 2009 Dispute Resolution Memo. Accordingly, the Agricultural Pool requests a ruling by the Court on the Agricultural Pool's objection.

Relevant to the present dispute, on June 30, 2020, following standard Watermaster budget procedures, the Agricultural Pool amended its annual budget. (Agricultural Pool Opposition, at p. 6.) For many years, both the Appropriative Pool and the Agricultural Pool have retained legal counsel and technical experts and the associated expenses are included in the budget allocated to each Pool. (*Id.*, at 6:13-20.) Watermaster processes the invoices for legal services provided to each Pool in the same manner and invoices are paid only after they have been reviewed and approved by the respective Pool Chair who verifies that the work billed is responsive to the Pool's direction. (*Ibid.*) The Watermaster also briefed this Court as to how each of the Pool budget amendments work and explained how none are approved or even reviewed by the Advisory Committee.[7]

It is not in dispute that the Agricultural Pool followed the regular Watermaster Budget Process in the same form and fashion as the other Pools. It is also not disputed that on June 30, 2020 the Agricultural Pool, following standard Watermaster budget procedures, amended its annual budget.[8]

The Watermaster's assessment of Agricultural Pool costs is a non-discretionary obligation of the Watermaster imposed on it by the contracting parties of the Peace Agreement and the Court. The Advisory Committee cannot approve or disapprove such an assessment, nor can the Appropriative Pool. Therefore, there is no appropriate relief in response to this component of the Tentative Ruling.

A. The Appropriative Pool Member Agencies' Demand for Advisory Committee Approval is in Conflict with the Separations of Power in the Judgment Confirmed by the 1998 Ruling; and is Precluded by Res Judicata and Collateral Estoppel.

The Court's 1998 Ruling specifically ruled that the functions and separations of power of

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[7] "To the extent any Pool Committee's legal expenses exceed the budgeted amount, Watermaster follows the procedures described above. **Over the past several years, Watermaster has processed budget increases for each of the Pool Committee's legal services**. The budget increases have been approved in the sole direction of each of the Pool Committees and have **not been subject to the other two Pool Committees, Advisory Committee or Watermaster Board review**." (Watermaster Limited Opposition to Appropriative Pool Member Agencies Motion, at 7:16-21, citations omitted.) (Emphasis added.)

[8] It must be noted that the Agricultural Pool has been forced to continue to pay for opposition to litigation of clear and explicit contract language from its own fund despite an approved budget. Accordingly, the Agricultural Pool respectfully requests reimbursement of all expenses paid from the Agricultural Pool's own fund.

the three Pools, Advisory Committee and Watermaster established by the Judgment were essential to the governance of the Basin. The 1998 Ruling was a culmination of a dispute regarding whether the Watermaster could spend money on an audit over the objection of the Advisory Committee.

For some years prior to 1997, the Advisory Committee assumed the task of directing the performance of the Director of Watermaster services with respect to Watermaster functions. However, after fraudulent checks drawn upon Watermaster's account had been discovered in December 1996, the Chino Basin Municipal Water District Board of Directors ("Water District") as Watermaster voted to conduct a special audit against the advice and direction of the Advisory Committee. The Advisory Committee, by a 91.43% vote, directed Watermaster counsel to advise the Water District of the opposing position of the Advisory Committee and to file a motion if the Water District took action to retain an auditor. The Water District retained an auditor and subsequently completed the special audit. The Advisory Committee brought a motion to declare the cost of the special audit not a "Watermaster" expense. The Advisory Committee further brought a second motion to replace the Water District as Watermaster with a nine-member board.[9]

In the Court's 1998 Ruling, which is still in effect today and the law of the Basin, the Court permanently ended the practice of Advisory Committee directing Watermaster staff regarding Watermaster functions, specifically describing the balance of power and importance of an independent board in its consideration of appointing a nine-member Watermaster board, directing that the board "will function independently from the Advisory Committee." (Exhibit A: 1998 Ruling, at 4:1-11.)

V. The Third Component of the Tentative Inappropriately Finds that the Agricultural Pool Expenses must be consistent with the Peace Agreement and Legitimate Agricultural

[9] The filing of the two motions by the Advisory Committee as the de facto Watermaster in opposition to the Water District serving as Watermaster prompted the Water District to fire attorney Frederic Fudacz and Nossaman, Guthner, Knox & Elliott ("Nossaman Firm") from serving as counsel for the Watermaster. The Water District further sought disqualification of the Nossaman Firm, Mr. Fudacz, and John Ossiff from representing either Watermaster or the Advisory Committee. The Court found that as counsel to Watermaster, the Nossaman Firm owed its allegiance to the Water District, not to the Advisory Committee and granted the motion for disqualification in an April 29, 1997 ruling. (Exhibit B: April 29, 1997 Ruling.)

Pool functions pursuant to Section 38 of the Restated Judgment

Paragraph 38 of the Judgment does not compel the relief the Appropriative Pool requests, and the Tentative Ruling is contrary to Basin precedent. Remarkably, just over 24 years ago in this same matter, the same erroneous and ultimately failing argument regarding Paragraph 38 of the Judgment was made by the same attorney. The only difference in 1997 was that while making this argument, Frederic A. Fudacz of the Nossaman Firm represented the Watermaster instead of the City of Ontario.

In 1997, the Court appointed a Special Referee "to clarify each of the respective roles [of the Watermaster and the Advisory Committee] as well as the relationship between those roles in order to give guidance for the future as well as to respond to the immediate motions brought before the Court." (Exhibit C: 1997 Report, at 1:22-2:1.) The Special Referee specifically found that the Watermaster was not obligated to acquiesce to the will of the Advisory Committee and could disagree with either mandatory or other recommendations of the Advisory Committee. (*Id.* at p.5.) The Court agreed with the Special Referee's understanding of the independence of the Watermaster and Advisory Committee. The Court further found that because the Watermaster's "special audit was made in the general course of Watermaster business…it is a proper Watermaster expense" despite the Advisory Committee's vote greater than 80% to prohibit the Watermaster from conducting the special audit. (Exhibit A: 1998 Ruling, at 8:12-14.)

A. The Fudacz Footnote

During the 1997-98 litigation, the Court appointed Special Referee filed a brief that was referenced and relied upon by Judge Gunn. In footnote 5 of the filing with the Court, the Special Referee opined on this exact controversy writing that it may "not have been clearly understood that the **Watermaster can disagree with either mandatory or other recommendations of the Advisory Committee**." (Exhibit C: 1997 Report, at 5:11-15.) (Emphasis added.) "The advice to the Watermaster from [Mr. Fudacz as] legal counsel (which has since been recused) was that the Watermaster had no recourse if the Advisory Committee acted by 80% vote." (*Id.* at fn. 5.) "It seems [Mr. Fudacz as] legal counsel at that time specifically indicated to Watermaster services

staff that an 80% or greater vote by the Advisory Committee was a mandate and there was no advice that such a mandate could be appealed to the Court pursuant to the Judgment." (*Ibid.*)

Subsequent to the 1998 Ruling the Watermaster has continued to act in an independent manner, including regarding obligations established by the Peace Agreement. In advising the Board to assess the Appropriative Pool in August of 2020, the Watermaster staff acknowledged that, pursuant to Court Order, Watermaster is directed to administer the Judgment in accordance with the Peace Agreement, in which the Parties contractually agreed and "expressly consent to Watermaster's performance" of enumerated actions, including Section 5.4(a) requiring "all assessments and expenses of the Agricultural Pool including those of the Agricultural Pool Committee shall be paid by the Appropriative Pool." Subsequent to the Watermaster Board acting, the Appropriative Pool filed this litigation.

It is the Watermaster, not the Advisory Committee, that the Parties contractually agreed and "expressly consent[ed]" to perform enumerated actions that include Section 5.4(a): "During the term of this Agreement, all assessments and expenses of the Agricultural Pool including those of the Agricultural Pool Committee shall be paid by the Appropriative Pool." The Watermaster's assessment of all expenses of the Agricultural Pool to be paid by the Appropriative Pool is not a discretionary action by Watermaster for the Advisory Committee to recommend, review and act upon under Paragraph 38(b). It is an obligation imposed on the Watermaster by the contracting parties, which have "expressly consent[ed]" to such performance by Watermaster. Furthermore, Watermaster can disagree and act inconsistent with either mandatory or other recommendations of the Advisory Committee. (See 2012 Restated Judgment, ¶¶ 38(b)(1) and (c).)

It is clear that the Appropriative Pool Member Agencies' Motion is an attempt to prevent a non-discretionary assessment by the Watermaster that must again be rejected by the Court as it was 24 years ago. Not only are the Appropriative Pool Member Agencies attempting to amend a clear and explicit term of a 20-year-old contract, but they are attempting to do so with the same legal argument and the same attorney. It failed then and it must fail now.

Res judicata and collateral estoppel prevent this Court from relitigating this claim and issue. "Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, 'precludes relitigation of issues argued and decided in prior proceedings.'" (*Zevnik v. Superior Ct.* (2008) 159 Cal. App. 4th 76, 82, citations omitted.) In 1998, the Court and Special Referee rejected advice from attorney Frederic Fudacz and found that the Advisory Committee could not prevent the Watermaster from assessing costs stemming from non-discretionary actions. (Exhibit A: 1998 Ruling, at 8:12-14.) Now, the doctrines of res judicata and collateral estoppel compel this Court to again reject this argument from Frederic Fudacz and order that the Advisory Committee not prevent the Watermaster from assessing costs stemming from a non-discretionary action.

VI. The Fourth Component of the Tentative Finds that the Agricultural Pool Expenses must be Reasonable

By any metric, the Agricultural Pool expenses are reasonable. Certainly, compared to the legion of law firms litigating in opposition to the Agricultural Pool, the legal invoices of the Agricultural Pool are reasonable. Perhaps, the hourly rates of all active counsel in this matter should be used as a metric of what is reasonable. Perhaps the number of attorneys actively working against the two attorneys of record for the Agricultural Pool would assist in a determination as to what is reasonable. There are at least 11 attorneys representing the Appropriative Pool against the Agricultural Pool in this matter alone.[10] Is the number of attorneys on each side a barometer of what is reasonable? Should the court request the total of all legal expenses for all of the Appropriative Pool for the same time period to use as a comparison for the expenses of the Agricultural Pool's two attorneys?

The Agricultural Pool expenses including legal invoices are reasonable. Given that the hourly fee is the standard price structure in the legal profession, one of the most significant

[10] Attorneys representing the Appropriative Pool and Appropriative Pool Member Agencies in this matter include Thomas S. Bunn III, Thomas H. McPeters, Arthur G. Kidman, Andrew B. Gagen, Gene Tanaka, Steve Anderson, Robert E. Donlan, Shawnda M. Grady, Mark D. Hensley, Elizabeth M. Calciano, and John Schatz.

factors in determining a reasonable fee can be the amount of time spent. (*Cazares v. Saenz* (1989) 208 Cal.App.3d 279, 287-89.) In addition to the amount of time spent, Courts will also look to the number of attorneys billing for the same tasks considering the complexity of the tasks. (*Mikhaeilpoor v. BMW of North America, LLC* (2020) 48 Cal. App. 5th 240, 250 [The court awarded only a fraction of the fees requested, noting instances of multiple attorneys billing for tasks requiring only one lawyer and found that counsel had billed large amounts of time for tasks that recycled existing form documents.].) The Agricultural Pool legal invoices are reasonable especially given the Agricultural Pool's use of two attorneys to defend against an offensive of nearly a dozen attorneys seeking to frustrate the effectiveness of the Agricultural Pool.

Further, the invoiced Agricultural Pool expenses are reasonable as such expenses were incurred pursuant to an adopted budget and in the furtherance of legitimate Agricultural Pool functions consistent with the Judgment, Peace Agreement, and Watermaster Rules and Regulations. Any implication that expenses related to Agricultural Pool's Storage Contest—or any other Agricultural Pool expense—is somehow inconsistent with the Peace Agreement, legitimate Agricultural Pool function, or is unreasonable, is completely unfounded, legally unsupported, and offensive. The storage contest process is a process established in the Watermaster Rules and Regulations. (Watermaster Rules and Regulations, § 10.13.) The Agricultural Pool's Storage Contest seeks to protect the production rights of the members of the Agricultural Pool as well as the health and stability of the Basin itself. There has been no serious contention or evidence that Agricultural Pool has invoiced expenses to the Appropriative Pool that are inconsistent with the Peace Agreement or a legitimate Agricultural Pool function, and any flippant assertion to a "blank check" is utterly baseless and outrageous.[11]

VII. Allowing the Moving Parties to Present a Proposed Order Regarding Monies to Be Reimbursed Violates the Due Process of the Agricultural Pool.

During the April 30, 2021 hearing, counsel for Cucamonga Valley Water District Shawnda Grady requested and was allowed to submit a proposed order regarding reimbursement.

[11] During the April 30, 2021 hearing, counsel Tracy J. Egoscue's offer for in camera review of the Agricultural Pool's invoices was declined. The Agricultural Pool hereby respectfully renews this offer.

This ruling by the Court violates due process. A person may not be deprived of property without due process of law. (*Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist.* (2013) 935 F. Supp. 2d 968, 982.) "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" (*Community Youth Athletic Center v. City of National City* (2013) 220 Cal. App. 4th 1385, 1431, citation omitted.)

The Tentative Ruling orders "reimbursements to parties who paid assessments above the budget previously approved by the Advisory Committee to the Watermaster." Allowing the Appropriative Pool Member Agencies to present a proposed order regarding monies to be reimbursed violates due process. There is a lack of evidence to establish that any Agricultural Pool legal expense invoiced to the Appropriative Pool—in any amount—was for expenses incurred outside the scope of the Judgment, Peace Agreement, or Court's Tentative Ruling.[12]

In support of their brief, the only "evidence" the Appropriative Pool Member Agencies have provided the Court are statements made in the Declaration of Scott Burton ("Burton Decl.") asserting he had become "increasingly concerned" about expenses incurred by the Agricultural Pool in connection with the Storage Contests filed by the Agricultural Pool in May 2017, and that it has come to his attention that the Agricultural Pool incurred legal and expert expenses related to the Storage Contests, which "contributed to an overrun of the Ag Pool's Watermaster-approved budget for Fiscal Year ("FY") 2019-2020." (Burton Decl., ¶¶ 2 and 5.) Mr. Burton also states that "On August 25, 2020, the Watermaster Board voted to invoice the AP for approximately $167,000 that the Ag Pool incurred in legal and expert fees in excess of its budget for FY 2019-2020." (Burton Decl., ¶ 13.) As the evidence proves, and contrary to the Burton declaration, the Agricultural Pool did in fact amend its budget.

This "evidence" proffered by the Appropriative Pool is inappropriate and is insufficient to support an order of reimbursement of Agricultural Pool expenses. As stated above, the expenses at issue were part of a duly amended budget via a process that all Pools have at various times used to amend their own Pool budgets over the years. None of the amended Pool budgets were or are

[12] The Tentative Ruling acknowledges that "further questions exist regarding reimbursement amounts and procedures for reimbursements."

reviewed or approved by the Advisory Committee. Furthermore, evidence submitted at this late time violates the due process of the Agricultural Pool.

VIII. Conclusion

The Court should not permit this fundamental unraveling of the governance structure and balance of power in the Chino Basin. Section 5.4 of the Peace Agreement is not ambiguous and does not need to be defined or limited. However, to the extent the Court finds ambiguity in the provisions of the Peace Agreement, there is no legal remedy available for the Appropriative Pool.

As with the functions of the other two Pools, the Agricultural Pool retains legal counsel regarding Pool activities consistent with the Judgment, Peace Agreements and Watermaster Rules and Regulations. It is undisputed that the Agricultural Pool has followed the same Pool budget approval process as the other two Pools and all expenses at issue were invoiced pursuant to an adopted budget. Also similar to the other two Pools, the Agricultural Pool utilizes the regular Watermaster Pool budget process, including the occasional amendment.[13]

Furthermore, collateral estoppel and res judicata precludes the Court from relitigating the issues decided in the 1998 Ruling. As confirmed in the 1998 Ruling, requiring approval by the Advisory Committee is contrary to the functions and separations of power of the three Pools, Advisory Committee and Watermaster established by the Judgment as essential to the governance of the Basin. Paragraph 38 of the Judgment does not compel a contrary result. Finally, allowing the moving parties to present a proposed order regarding monies to be reimbursed violates due process.

Accordingly, Agricultural Pool respectfully requests that the Court reconsider the Tentative Ruling, deny the relief requested by the Appropriative Pool, and adopt the [Proposed] Order Denying the Motion of Appropriative Pool Member Agencies Re: Agricultural Pool Legal and Other Expenses filed concurrently with this brief.

[13] See Watermaster Limited Opposition to Appropriative Pool Member Agencies Motion, at 7:16-21.

Dated: May 14, 2021

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Exhibit A

February 19, 1998 Ruling

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO - WEST DISTRICT

CHINO BASIN MUNICIPAL WATER DISTRICT, Plaintiff, vs. CITY OF CHINO, Defendant.	Case No. RCV 51010 NOTICE OF RULING

TO: THE PARTIES HERETO AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 19, 1998, the Court ruled (a) on the pending motions to appoint a nine member board as Watermaster herein and to determine whether the cost of an audit constituted a Watermaster expense, and (b) on related matters. A

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true and correct copy of said ruling is attached hereto as Exhibit "A."

Respectfully submitted,

RICHARDS, WATSON & GERSHON,
Attorneys for Chino Basin
Watermaster Advisory Committee

Dated: February 23, 1998. By James L. Markman
James L. Markman

COPY

FILED West District
San Bernardino County Clerk

FEB 19 1998

Wanda DeVinney

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 "A"

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

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

Motion to Appoint Nine-Member Board as Watermaster

Unless there are compelling reasons to the contrary, upon noticed motion the court must grant a request to change the Watermaster if the motion is supported by a majority of the voting power of the Advisory Committee. (Judgment, ¶16.) In other words, to deny such a motion, the court must find reasons that "force" or "compel" denial of the motion.

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

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

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

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

1. Three members selected by the Overlying Pools;
2. Three members selected by the Appropriative Pool; and
3. The remaining three members would be nonpumper water districts: (a) Chino Basin Municipal Water District, (b) Western Municipal Water District, and (c) Three Valleys Municipal Water District.

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

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

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

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

Order Appointing Nine-Member Board as Interim Watermaster

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

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

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

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

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

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

representatives to June 30, 2001, and shall extend the term of another of its then current Watermaster Board representatives to June 30, 2002. At least 60 days prior to June 30, 2000, the Overlying (Agricultural) Pool and the Overlying (Non-Agricultural) Pool shall jointly extend the term of one of the three then-current Watermaster Board representatives of the two pools to June 30, 2001, and shall extend the term of another of the three then-current Watermaster Board representatives of the two pools to June 30, 2002. At least 60 days prior to June 30, 2000, the three Municipal Water Districts shall jointly extend the term of one of the three then-current Watermaster Board representatives of those three districts to June 30, 2001, and shall extend the term of another of the three then-current Watermaster Board representatives of those three districts to June 30, 2002.

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

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

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

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

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

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

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

Motion to Determine Audit Expense was not a Watermaster Expense

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

Court Monitoring of Optimum Basin Management Program

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

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[1] However, one is reminded of the passage in "The tragedy of the commons Revisited" by Beryl Crowe (1969) with reference to administrators of the commons: ". . . one writer postulated a common life cycle for all attempts to develop regulatory bodies. The life cycle is launched by an outcry so widespread and demanding that it generates enough political force to bring about establishment of a regulatory agency to insure the equitable, just, and rational 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.

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

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

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

Order Concerning Development of Optimum Basin Management Program

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

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

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

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

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

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

Guidelines for Watermaster and Advisory Committee

To provide guidance to the parties, Special Referee Schneider determined it is necessary for the court to provide an outline of the roles of the Watermaster and Advisory Committee. As noted in the Special Referee's Report and Recommendation, routine administrative functions of the Watermaster are performed independently, without review by the Advisory Committee. The Watermaster may acquire facilities and equipment (subject to certain limitations delineated in the Judgment[3]), may employ administrative, engineering, legal or other specialized personnel and consultants as it deems appropriate, may borrow money, and may enter into contracts for the performance of any powers granted in the Judgment. On the other hand, many Watermaster actions are subject to the approval of the Advisory Committee. For example, the Watermaster's annual budget is subject to Advisory Committee approval, the Watermaster's rules and regulations may only be adopted upon recommendation by the Advisory Committee, and the Watermaster may act jointly or in cooperation with State or Federal agencies to carry out the physical solution only upon recommendation or approval of the Advisory Committee. For further guidance as to the respective roles of the Watermaster and the Advisory Committee, the parties are directed to Part III of Special Referee Schneider's Report and Recommendation entitled "Watermaster Roles and Review of Watermaster Actions", found on pages 10 through 22, which is hereby

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[2] Initial installation of a web site cost one local attorney less than five hundred dollars, and maintenance or training of employees for updates costs approximately thirty-five dollars per hour. It would have been inappropriate for the 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.

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

Conclusion

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

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

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[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.

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

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

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

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

DATED: FEB 1 9 1998

J. Michael Gunn

J. MICHAEL GUNN, Judge

[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.

EXHIBIT "A"

Adjudicated Basins and Watermasters in California

Court Name	Final Decision	Watermaster	Location
Central Basin	1965	Dept. of Water Resources -- Southern District	Los Angeles County
Chino Basin	1978	Five people, Chino Basin Municipal Water District	San Bernardino County
Cucamonga Basin	--	Not yet appointed; operated as part of Chino Basin	San Bernardino County
Cummings Basin	1972	Tehachapi-Cummings County Water District	Kern County
Main San Gabriel Basin	1973	Nine-member board nominated by water purveyors and water districts, appointed by Superior Court.	Los Angeles County
Mojave Water Agency	1996	Mojave Water Agency	San Bernardino County
Puente	1985	Three consultants	Los Angeles County
Raymond Basin	1944	Raymond Basin Management Board	Los Angeles County
San Bernardino Basin Area	1969	One representative each from Western Municipal Water District and San Bernardino Valley Municipal Water District	San Bernardino and Riverside Counties
Santa Margarita River Watershed	1966	U.S. District Court appointee	San Diego and Riverside Counties
Santa Paula Basin	1996	Three-person Technical Advisory Committee from United Water CD, City of Ventura, and Santa Paula Basin Pumpers Association	Ventura County
Scott River Stream System	1980	Two local irrigation districts	Siskiyou County
Upper Los Angeles River Area	1979	An individual hydrologist appointed by the Superior Court	Los Angeles County
Warren Valley Basin	1977	Hi-Desert Water District	San Bernardino County
West Coast Basin	1961	Dept. of Water Resources -- Southern District	Los Angeles County

Source: Calif. Dept. of Water Resources *Water Facts, Number 3*, Jan. 1996.

http://www.agwa.org/adjud_basins.html

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 Rec-ommendation filed with Watermaster.	Scoping Rec-ommendation filed with court	Referee's Recom-mendation filed with court	OMBP filed with court	OSC Re: Status of Negotiations with Department of Water Resources.	OSC Re: Adoption and Implemen-tation of OMBP & Continuance of Nine-member board	End of Interim Appoint-ment (End of Nine-member Interim Water-master Board)

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ADVISORY COMMITTEE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO - WEST DISTRICT

CHINO BASIN MUNICIPAL WATER DISTRICT, Plaintiff, vs. CITY OF CHINO, Defendant.	Case No. RCV 51010 NOTICE OF REPRESENTATIVES APPOINTED TO NINE MEMBER WATERMASTER BOARD

TO: THE PARTIES HERETO AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that in accordance with the Court's ruling entered on February 19, 1998, following are the names of the representatives, including alternates, who have been appointed to serve on the Nine Member Watermaster Board commencing on March 1, 1998:

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REPRESENTATIVES	ENTITIES	PERSONS
Over-lying (Non-Agricultural) Pool	CSI	Steve Arbelbide
Overlying (Agricultural) Pool	Vineyards	Paul Hofer
	Dairies	Geoffrey Vanden Heuvel
Appropriative Pool	Cucamonga County Water District	Robert Neufeld (Regular) Jerome Wilson (Alternate)
	Monte Vista Water District	Josephine Johnson (Regular) William C. Walker (Alternate)
	City of Ontario	Gus James Skropos (Regular) Gerald A. DuBois (Alternate)
Municipal Water Districts	Chino Basin Municipal Water District	John L. Anderson (Regular) Terry Catlin (Alternate)
	Three Valleys Municipal Water District	A. A. Krueger (Regular)
	Western Municipal Water District	Donald Schroeder (Regular) Donald Harriger (Alternate)

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Respectfully submitted,

RICHARDS, WATSON & GERSHON,
Attorneys for Chino Basin
Watermaster Advisory Committee

Dated: February 23, 1996

By James L. Markman
James L. Markman

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO - WEST DISTRICT

CHINO BASIN MUNICIPAL WATER DISTRICT, Plaintiff, vs. CITY OF CHINO, Defendant.	Case No. RCV 51010 NOTICE OF NAMES AND POSITIONS OF WATERMASTER SERVICES STAFF

TO: THE PARTIES HERETO AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that in accordance with the Court's ruling entered on February 19, 1998, following are the names and positions of the Watermaster Services staff:

NAME	POSITION
Traci Stewart	Chief of Watermaster Services
Michelle Lauffer	Water Resources Specialist

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/ / / / /

NAME	POSITION
Mary Staula	Administrative Assistant
Jim Theirl	Engineering Associate I
Dora Chavarin	Secretary II

Respectfully submitted,

RICHARDS, WATSON & GERSHON,
Attorneys for Chino Basin
Watermaster Advisory Committee

Dated: February 24, 1998

By _____
James L. Markman

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Attorneys for Chino Basin Watermaster Advisory Committee

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO - WEST DISTRICT

CHINO BASIN MUNICIPAL WATER DISTRICT Plaintiff, Vs. CITY OF CHINO et al., Defendant.	Case No. RCV 51010 (Formerly Case No. 164327) **PROOF OF SERVICE** 1) NOTICE OF RULING 2) NOTICE OF REPRESENTATIVES APPOINTED TO NINE MEMBER WATERMASTER BOARD 3) NOTICE OF NAMES AND POSITIONS OF WATERMASTER SERVICES STAFF

I, Mary L. Staula, declare:

1. I am over the age of 18 and not a party to this action. My business address is Chino Basin Watermaster, 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California 91730.

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2. On today's date, I served the document identified below by placing a true and correct copy of same in sealed envelopes addressed to each of the addresses shown on the attached mailing List 1.

1) NOTICE OF RULING.

2) NOTICE OF REPRESENTATIVES APPOINTED TO NINE-MEMBER WATERMASTER BOARD.

3) NOTICE OF NAMES AND POSITIONS OF WATERMASTER SERVICES STAFF.

3. On today's date I served notice of matters identified above on all other active parties by mailing a postcard containing the information set forth on the attached page, in accordance with the Court's order of December 13, 1978, addressed to each of the addresses listed on the attached mailing List 2.

4. I then placed said envelopes and postcards for collection, processing and mailing by Chino Basin Watermaster personnel with the United States Postal Service on today's date, following Chino Basin Watermaster's ordinary business practices. Pursuant to these practices, with which I am familiar, addressed post cards are deposited in the ordinary course of business with the United States Postal Service on the same date they are collected and processed, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 24, 1998, at Rancho Cucamonga, California.

Mary L. Staula

Mary L. Staula
Chino Basin Watermaster

AAA AALIST1
ATTORNEYS OF RECORD & INTERESTED PARTIES
UPDATED 2/09/98

HAROLD ANDERSEN
MONTE VISTA IRRIGATION CO
2529 W TEMPLE ST
LOS ANGELES CA 90026-4819

CHET ANDERSON
SOUTHERN CALIFORNIA WATER CO
401 S SAN DIMAS CANYON RD
SAN DIMAS CA 91773

JOHN L. ANDERSON
CHINO BASIN WATERMASTER BOARD
12455 HOLLY AVE
CHINO CA 91710-2633

RICHARD ANDERSON
1365 W FOOTHILL BLVD STE 1
UPLAND CA 91786

RICHARD ANDERSON
BEST BEST & KRIEGER
P.O. BOX 1028
RIVERSIDE CA 92501

A W ARAIZA
WEST SAN BERNARDINO C W D
P.O. BOX 920
RIALTO CA 92376-0920

STEVE ARBELBIDE
CHINO BASIN WATERMASTER BOARD
417 PONDEROSA TR
CALIMESA CA 92320

RODNEY BAKER
P.O. BOX 438
COULTERVILLE CA 95311-0438

DANIEL BERGMAN
PYRITE CANYON GROUP INC
3200 C PYRITE ST
RIVERSIDE CA 92509

BOB BEST
NAT'L RESOURCES CONS SVS
25809 BUSINESS CENTER DR B
REDLANDS CA 92374

GERALD BLACK
FONTANA UNION WATER COMPANY
P.O. BOX 638
RANCHO CUCAMONGA CA 91729-06

PATTI BONAWITZ
CHINO BASIN MWD
P.O. BOX 697
RANCHO CUCAMONGA CA 91729-0697

GEORGE BORBA JR
7955 EUCALYPTUS AVE
CHINO CA 91710-9065

BEVERLY BRADEN
WEST END CONS WATER CO
P.O. BOX 460
UPLAND CA 91785

KATHRYN H K BRANMAN
MOBILE COMMUNITY MGMT CO
1801 E EDINGER AVE #230
SANTA ANA CA 92705-4754

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

RICK BUFFINGTON
STATE OF CALIFORNIA - CIM
P.O. BOX 1031
CHINO CA 91710

TERRY CATLIN
CHINO BASIN WATERMASTER BOARD (ALT)
2344 IVY COURT
UPLAND CA 91784

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

JEAN CIHIGOYENETCHE
CIHIGOYENETCHE GROSSBERG & CLOUSE FOR CBMWD
3602 INLAND EMPIRE BLVD STE C315
ONTARIO CA 91764

TERRY COOK
KAISER VENTURES INC
3633 E INLAND EMP BLVD STE 850
ONTARIO CA 91764

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

GEORGE COSBY
CALMAT PROPERTIES CO
3200 N SAN FERNANDO RD
LOS ANGELES CA 90065

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

DULCIE CROWDER
COUNTY OF SAN BERNARDINO
777 E RIALTO AVE
SAN BERNARDINO CA 92415-0763

STEVE CUMMINGS
155 BUCKNELL AVE
VENTURA CA 93003-3919

RICK DARNELL
SOUTHERN CALIFORNIA EDISON
8996 ETIWANDA AVE
ETIWANDA CA 91739-9697

ROBERT DEBERARD
CHAIRMAN-AG POOL
P.O. BOX 1223
UPLAND CA 91785-1223

ROBERT DELOACH
CUCAMONGA COUNTY WATER DIST
P.O. BOX 638
RANCHO CUCA CA 91729-0638

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

GERALD A. DUBOIS
CHINO BASIN WATERMASTER BOARD (ALT)
303 E B ST
ONTARIO CA 91764

DICK DYKSTRA
10129 SCHAEFER
ONTARIO CA 91761-7973

RALPH FRANK
2566 OVERLAND AVE # 680
LOS ANGELES CA 90064-3398

IRA FRAZIER
CALIFORNIA STEEL INDUSTRIES INC
P.O. BOX 5080
FONTANA CA 92334-5080

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

MARK GAGE P E
GEOMATRIX CONSULTANTS INC
100 PINE ST 10TH FL
SAN FRANCISCO CA 94111

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

ALLAN E GLUCK
N AMERICAN COMM REAL EST
123 S. FIGUEROA ST STE 190 B
LOS ANGELES CA 90012-5517

JOE GRINDSTAFF
MONTE VISTA WATER DISTRICT
P.O. BOX 71
MONTCLAIR CA 91763-0071

JACK HAGERMAN
CALIFORNIA INSTITUTION FOR MEN
4158 CENTER ST
NORCO CA 91760

DEBRA HANKINS
GENERAL ELECTRIC COMPANY
114 SANSOME ST14TH FL
SAN FRANCISCO CA 94104

RICK HANSEN
THREE VALLEYS M W D
3300 N PADUA AVE
CLAREMONT CA 91711-2061

DONALD HARRIGER
CHINO BASIN WATERMASTER BOARD (ALT)
P.O. BOX 5286
RIVERSIDE CA 92517-5286

CARL HAUGE
DEPT OF WATER RESOURCES
1020 9TH ST 3RD FL
SACRAMENTO CA 95814

SCOTT HENDRIX
ARROWHEAD WATER COMP
5772 JURUPA RD
ONTARIO CA 91761-3672

ATTORNEY AT LAW
HIGGS FLETCHER & MACK
401 W A STREET
SAN DIEGO CA 92101-7908

BOYD HILL
RICHARDS WATSON & GERSHON
333 S HOPE ST 38TH FL
LOS ANGELES CA 90071-1469

PAUL HOFER
CHINO BASIN WATERMASTER BOARD MEMBER
11248 S TURNER AVE
ONTARIO CA 91761

EDWIN JAMES
JURUPA COMMUNITY SERVICES DIST
8621 JURUPA RD
RIVERSIDE CA 92509-3229

KENNETH JESKE
CITY OF FONTANA
8353 SIERRA AVE
FONTANA CA 92335-3598

JOSEPHINE JOHNSON
CHINO BASIN WATERMASTER BOARD MEMBER
3635 RIVERSIDE DR
CHINO CA 91710

STEPHEN B JOHNSON
STETSON ENGINEERS INC
3104 E GARVEY AVE
WEST COVINA CA 91791

BARRETT KEHL
CHINO BASIN WATER CONS DIST
P.O. BOX 2400
MONTCLAIR CA 91763-0900

JEFFREY KIGHTLINGER
METROPOLITAN WATER DISTRICT
350 S GRAND AVE
LOS ANGELES CA 90071

VERN KNOOP
DEPT OF WATER RESOURCES
770 FAIRMONT AVE
GLENDALE CA 91203-1035

GENE KOOPMAN
CHAIRMAN-ADVISORY COMMITTEE
13898 ARCHIBALD AVE
ONTARIO CA 91761-7979

J KOPALD & L HAIT
KOPALD & MARK
8888 OLYMPIC BLVD
BEVERLY HILLS CA 90211

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

A. A. KRUEGER
CHINO BASIN WATERMASTER BOAI MEMBER
3736 TOWNE PARK CR
POMONA CA 91767

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

ARTHUR LITTLEWORTH
BEST BEST & KRIEGER
P.O. BOX 1028
RIVERSIDE CA 92501

ALAN MARKS
CTY OF SAN BRDO-CTY COUNSEL
157 W 5TH ST
SAN BERNARDINO CA 92415

MIKE MCGRAW
FONTANA WATER COMPANY
P.O. BOX 987
FONTANA CA 92334-0987

DAN MCKINNEY
REID & HELLYER
P.O. BOX 1300
RIVERSIDE CA 92502-1300

CINDI MILLER
METROPOLITAN WATER DISTRICT
P.O. BOX 54153
LOS ANGELES CA 90054-0153

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

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

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

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

ROBERT NEUFELD
CHINO BASIN WATERMASTER BOARD MEMBER
11217 TERRA VISTA "B"
RANCHO CUCAMONGA CA 91730

DANA OLDENKAMP
MILK PRODUCERS COUNCIL
3214 CENTURION PL
ONTARIO CA 91761

ROBERT OLISLAGERS
CNTY OF SAN BERNARDINO
7000 MERRILL AVE BOX 1
CHINO CA 91710-9027

BOB PAGE
DAILY BULLLETIN
P.O. BOX 4000
ONTARIO CA 91761

HENRY PEPPER
POMONA - PUBLIC WORKS DEPARTM
P.O. BOX 660
POMONA CA 91769-0660

JEFFREY PIERSON
UNITEX MGMT CORP/CORONA FARMS
3090 PULLMAN ST STE 209
COSTA MESA CA 92626

ROBB D QUINCEY
CHINO BASIN MWD
P.O. BOX 697
RCHO CUCA CA 91729-0597

LEE R REDMOND III
KAISER VENTURES INC
3633 E INLAND EMP BLVD STE 850
ONTARIO CA 91764

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

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

GLEN ROJAS
CITY OF CHINO
P.O. BOX 667
CHINO CA 91708-0667

MICHAEL RUDINICA
RBF & ASSOCIATES
14725 ALTON PARKWAY
IRVINE CA 92619-7057

MANAGER
RUTAN & TUCKER
611 ANTON BLVD STE 1400
COSTA MESA CA 92626

PATRICK SAMPSON
P.O. BOX 650
POMONA CA 91769

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

ANNE SCHNEIDER
ELLISON & SCHNEIDER
2015 H ST
SACRAMENTO CA 95814

DONALD SCHROEDER
CHINO BASIN WATERMASTER BOARD MEMBER
3700 MINTERN
RIVERSIDE CA 92509

DAVID SCRIVEN
KRIEGER & STEWART
3602 UNIVERSITY AVE
RIVERSIDE CA 92501

CHARLES SIHLER
CITY OF POMONA PUBLIC WORKS DE
P.O. BOX 660
POMONA CA 91769-0660

GUS JAMES SKROPOS
CHINO BASIN WATERMASTER BOARD MEMBER
303 E B ST
ONTARIO CA 91764

MARILYN SMITH
SECRETARY TO THE ONTARIO CITY COUNCIL
303 E "B" STREET
ONTARIO CA 91764

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

BILL STAFFORD
MARYGOLD MUTUAL WATER CO
9715 ALDER ST
BLOOMINGTON CA 92316-1637

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

MIKE STENBERG
PRAXAIR
5735 AIRPORT DR
ONTARIO CA 91761

ED STRAUB
CALIFORNIA SPEEDWAY
P.O. BOX 9300
FONTANA CA 92334-9300

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

LENNA TANNER
CITY CLERK - CITY OF CHINO
P.O. BOX 667
CHINO CA 91708-0667

GREG TAYLOR
METROPOLITAN WATER DISTRICT
P.O. BOX 54153
LOS ANGELES CA 90054-0153

JIM TAYLOR
CITY OF CHINO HILLS
2001 GRAND AVE
CHINO HILLS CA 91709-4869

MICHAEL TEAL
CITY OF ONTARIO
1425 S BON VIEW AVE
ONTARIO CA 91761-4406

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

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

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

SUSAN TRAGER
LAW OFFICES OF SUSAN M TRAGER
2100 MAIN ST STE 104
IRVINE CA 92714-6238

HAROLD TREDWAY
10841 PARAMOUNT BLVD
DOWNEY CA 90241

ARLAN VAN LEEUWEN
FAIRVIEW FARMS
6829 PINE AVE
CHINO CA 91709

GEOFFREY VANDEN HEUVEL
CHINO BASIN WATERMASTER BOARD MEMBER
7551 KIMBALL AVE
CHINO CA 92710-9269

ERICK VAUGHN
ANGELICA RENTAL SERVICE
P.O. BOX 1209
BREA CA 92822-1209

WILLIAM C. WALKER JR.
CHINO BASIN WATERMASTER BOARD (ALT)
3768 E GRAND AVE
POMONA CA 91766

JAMES WARD
THOMPSON & COLGATE
P.O. BOX 1299
RIVERSIDE CA 92502

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

DENNIS WEHSELS
STATE OF CA DEPT OF CORRECTION
P.O. BOX 942883
SACRAMENTO CA 95814

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

CHARLES R. WHITE
DEPT WATER RESOURCES-SO DIST
770 FAIRMONT AVE
GLENDALE CA 91203-1035

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

MARK WILDERMUTH
WATER RESOURCES ENGINEER
415 N EL CAMINO REAL
SAN CLEMENTE CA 92672

JEROME WILSON
CHINO BASIN WATERMASTER BOARD (ALT)
6035 FALLING TREE LN
ALTA LOMA CA 91737

********** NOTICE OF RULING **********

TO: ALL ACTIVE CHINO BASIN PARTIES, CASE NO. RCV 51010

WHEN: February 19, 1998

WHERE: SAN BERNARDINO SUPERIOR COURT, DEPARTMENT H,
8303 N. HAVEN AVE, RANCHO CUCAMONGA, CA 91730-3862

WHAT: RULING ON MOTION TO APPOINT NINE-MEMBER BOARD AS WATERMASTER, TO DETERMINE WHETHER THE COST OF AN AUDIT CONSTITUTED A WATERMASTER EXPENSE, AND RELATED MATTERS
NOTICE OF REPRESENTATIVES APPOINTED TO NINE MEMBER WATERMASTER BOARD

A COPY OF THE RULING MAY BE OBTAINED BY CONTACTING CHINO BASIN WATERMASTER.

TRACI STEWART (909) 484-3888 CHIEF OF WATERMASTER SERVICES

********** NOTICE OF RULING **********

TO: ALL ACTIVE CHINO BASIN PARTIES, CASE NO. RCV 51010

WHEN: February 19, 1998

WHERE: SAN BERNARDINO SUPERIOR COURT, DEPARTMENT H,
8303 N. HAVEN AVE, RANCHO CUCAMONGA, CA 91730-3862

WHAT: RULING ON MOTION TO APPOINT NINE-MEMBER BOARD AS WATERMASTER, TO DETERMINE WHETHER THE COST OF AN AUDIT CONSTITUTED A WATERMASTER EXPENSE, AND RELATED MATTERS
NOTICE OF REPRESENTATIVES APPOINTED TO NINE MEMBER WATERMASTER BOARD

A COPY OF THE RULING MAY BE OBTAINED BY CONTACTING CHINO BASIN WATERMASTER.

TRACI STEWART (909) 484-3888 CHIEF OF WATERMASTER SERVICES

00020
ACTIVE PARTIES
MAILING LIST "2"
UPDATED 2/24/98

00060
A. B. & G. CATTLE COMPANY
6655 KIMBALL AVE
CHINO, CA 91710-9121

00360
ABBONA TRUST
JAMES & ANNA ABBONA
3150 CHINO HILLS PARKWAY
CHINO HILLS, CA 91709

00730
J.B.'S CALVES
JEAN AGUERRE
6655 KIMBALL AVENUE
CHINO, CA 91710-9130

00760
LOUIS AGUERRE
14022 CYPRESS AVE.
CHINO, CA 91710-9005

00970
ARROWHEAD MTN. SPRING WATER CO
SCOTT HENDRIX
5772 JURUPA
ONTARIO, CA 91761

01180
RAY ALBERS
8649 MERRILL AVENUE
CHINO, CA 91710-9234

01200
JAKE ALEWYN
14361 GROVE AVENUE
CHINO, CA 91710-9120

01720
STUEVE BROTHERS FARMS
EDGAR STUEVE
8300 PINE AVE
CHINO, CA 91710-9239

02200
ANDERSON FARMS
JOHN ANDERSON
12455 HOLLY AVE
CHINO, CA 91710-2633

02690
RUBEN ANGUIANO
613 WOOD STR
SANTA ANA, CA 92703

02760
XAVIER APHESSETCHE
7262 BICKMORE AVE
CHINO, CA 91710-9102

03440
LEWIS AUKEMAN
12391 SCHLEISMAN
MIRA LOMA, CA 91752-2725

03740
B & G HAY COMPANY, INC.
8775 E RIVERSIDE DR
ONTARIO, CA 91761-6703

03800
RAYMOND BACHOC
13331 WALKER AVE
ONTARIO, CA 91761-7978

04040
WARREN BAIN
6420 HARRISON AVE
CORONA, CA 91720-9634

04320
BANGMA DAIRY
ATTN - MARTIN BANGMA
8847 SCHAEFER AVE
ONTARIO, CA 91761-7974

04520
ANTHONY BARBA
4844 HAMNER ST
ONTARIO, CA 91761-7809

05080
SUNSHINE DAIRY
URSULA BARTEL
2774 MOUNTAIN VIEW DR
LA VERNE, CA 91750

05090
BARTH FARMS
ROBERT BARTH
13150 ARCHIBALD AVE
ONTARIO, CA 91761

05120
ROLAND BARTHELEMY
16500 CHINO-CORONA RD
CHINO, CA 91710

05160
BASQUE AMERICAN DAIRY
JEAN GASTELLUBERY
8484 SCHAEFFER AVE
ONTARIO, CA 91761-7947

05200
DONALD BASSLER
14 CHERRY HILL LN
NEWPORT BEACH, CA 92660

05260
MILDRED BATES
14867 WALTERS
CORONA, CA 91720-9645

06200
HANK BEKENDAM
13051 BAKER AVE
ONTARIO, CA 91761-7903

06360
EUGENE BELLO
500 N EUCLID AVE
UPLAND, CA 91786-4734

06490
MARVIN BELVILLE
1242 PROSPECT DR
POMONA, CA 91766-4216

06960
BERQUIST PROPERTIES, INC.
MICHAEL PERRY
6511A KIMBALL AVE
CHINO, CA 91710

07280
BEN BIDART
5452 RIVERSIDE DR
CHINO, CA 91710

07320
MICHAEL BIDART
600 S INDIAN HILL BLVD.
CLAREMONT, CA 91711-5440

07400
WESLEY BINNELL
1516 S CUCAMONGA AVE
ONTARIO, CA 91761-4511

08340
PETE BOERSMA
12531 SCHLEISMAN AVE
MIRA LOMA, CA 91752

08800
GARRET BOOTSMA
7721 EDISON AVE
CHINO, CA 91710-9253

09080
GEDRGE BORBA
7955 EUCALYPTUS AVE
CHINO, CA 91710-9065

09200
JOHN BORBA
65 HARFORD PLACE
UPLAND, CA 91786

09280
JOSEPH BORBA
14651 GROVE AVE
CHINO, CA 91710-9064

09330
PETE BORBA ESTATE
MARY BORBA PARENTE, EXECUTRIX
8559 EDISON AVE
CHINO, CA 91710-9242

09840
JOHN BORGES
13580 CLOVERDALE RD
CORONA, CA

09900
MANUAL BORGES
6821 HAMNER AVE
CORONA, CA 91720-9632

10120
JOHN BOS
28724 STOCKDALE HIGHWAY
BAKERSFIELD, CA 93312

10240
TONY BOS
P.O. BOX 1150
CLINT, TX 79836

10280
PETER BOSCH
13567 WHISPERING LAKES LN
ONTARIO, CA 91761-7968

10290
FRANK BOSCHMA
7171 CLEVELAND
CORONA, CA 91720-9625

10360
HENRY BOSCHMA
13350 HAVEN AVE
ONTARIO, CA 91761-7810

10440
JENNIE GOEDHART
7310 CLEVELAND AVE
CORONA, CA 91720-9625

10520
GERRIT BOSMA
13805 AVENUE 160
TIPTON, CA 93272

10560
JACOB BOSMA
318 SPRING COVE RD
BLISS, ID 833145010

10800
MARTIN BOSNYAK
20074 LIMECREST DR
COVINA, CA 91724

11120
BOUMA DAIRY
MARTIN BOUMA
1311 MONTICELLO ST
ONTARIO, CA 91762

11480
BOYS REPUBLIC
DALE MCDOWELL
3493 GRAND AVE
CHINO, CA 91709

11960
BRIANO BROTHERS
ALBERT BRIANO
13955 ROAD 80
TIPTON, CA 93272

12420
ROBERT BRINKERHOFF
8512 KIMBALL AVE
CHINO, CA 91710-9230

12600
MRS. WALTER BRITSCHGI
7812 CHINO AVE
ONTARIO, CA 91761-7919

14260
CABLE AIRPORT INC.
PAUL CABLE
1749 W 13TH ST
UPLAND, CA 91786-2199

14490
CALIFORNIA STEEL INDUSTRIES INC
STEVE ARBELBIDE
ENGINEERING
P.O. BOX 5080 14000 SAN BERNARDINO AVE
FONTANA, CA 92335

15080
CARDOZA TRUST/INVESTMENT
TONY CARDOZA, PARTNER
7475 ARCHIBALD AVE
CORONA, CA 91720

15180
DONALD CADLINI
6349 LEE COURT
CHINO, CA 91710-3724

15250
SWAN LAKE MOBILE HOME PARK
DAVID STARNES
MOBILE COMMUNITY MGMT
1801 E EDINGER AVE SUITE 230
SANTA ANA, CA 92705

15880
ROBERT & ELVIRA CHACON
P.O. BOX 105
CHINO, CA 917080105

16130
DAVID CHEZ
1735 KELLEY AVE
UPLAND, CA 91786

16330
CHINO BASIN MWD
DOUG DRURY
P.O. BOX 697 9400 CHERRY AVE BLDG A
RANCHO CUCAMONGA, CA 91729-0697

16510
CHINO VALLEY INVESTMENT
DENISE MIERSMA
15916 MOUNTAIN AVE
CHINO, CA 91710

16520
CHINO WATER COMPANY
WILLIAM BEACH, BOARD PRESIDENT
11910 BENSON
ONTARIO, CA 91762-4748

16560
CITY OF CHINO
GIL ALDACO
PUBLIC WORKS SERVICE CENTER
5050 SCHAEFER
CHINO, CA 91710

17000
PIERCE FAMILY, INC.
350 E 25TH ST
UPLAND, CA 91784

17240
ARTHUR CLARKE
8822 KIMBALL AVE
CHINO, CA 91710-9230

17290
CLASSIC DEVELOPMENT CORP.
MICHAEL HAXBY, V.P.
17662 MITCHELL NORTH STE. 200
IRVINE, CA 92714

17440
COELHO DAIRY
ISABEL COELHO
2930 WALKER AVE
ONTARIO, CA 91761-7125

17720
SHELBY COLLINSWORTH
10529 E EUCALYPTUS AVE
ONTARIO, CA 91761-7963

17840
CALMAT (CONROCK)
SCOTT J. WILCOTT
EXEC. VP, LAW AND PROPERTY
P.O. BOX 2950
LOS ANGELES, CA 90051

17860
CONSOLIDATED FREIGHTWAYS
11888 MISSION BLVD
MIRA LOMA, CA 91752-1099

18200
CORONA FARMS PARTNERS
JEFF PIERSON
3090 PULLMAN ST STE 209
COSTA MESA, CA 92626

18640
DIMAS COSTA
14451 BON VIEW
CHINO, CA 91710-9106

19060
W R CRAMER RANCH
JIM TRASK, MGR.
11418 68TH ST
MIRA LOMA, CA 91752-2701

19400
CROSSROADS AUTO DISMANTLERS
HANK CAMPBELL
12421 RIVERSIDE AVE
MIRA LOMA, CA 91752-1004

19760
CUCAMONGA COUNTY WATER DISTRICT
ROBERT DELOACH
P.O. BOX 638
RANCHO CUCAMONGA, CA 91729-0638

20160
JOAQUIM DA COSTA
23561 ROAD 168
TULARE, CA 93274

20720
DE BERARD BROS.
R.H. DE BERARD
P.O. BOX 1223
UPLAND, CA 91786-0918

20960
FRED DE BOER
9155 RIVERSIDE DR
ONTARIO, CA 91761-7301

21040
SIDNEY DE BOER
8865 KIMBALL AVE
CHINO, CA 91710-9230

21080
ANDREW DE BOS
14300 SCHLEISMAN RD
CORONA, CA 91720-9613

21200
DICK DE GROOT
7993 SCHAEFER
ONTARIO, CA 91761-7959

21320
ERNEST DE GROOT
7587 EDISON AVE
CHINO, CA 91710-9253

21440
JAKE DE GROOT
14080 HAVEN AVE
ONTARIO, CA 91761

21560
HENRY DE HAAN DAIRY
HENRY DE HAAN
9029 SCHAEFER AVE
ONTARIO, CA 91761-7975

21680
MARTIN DE HOOG
8311 EDISON AVE
CHINO, CA 91710-9212

21760
MITCH DE HOOG
8381 EDISON AVE
CHINO, CA 91710-9212

21840
GEORGE VANDER DUSSEN
6871 SUMNER AVE
CORONA, CA 91720

22080
JACK DE JONG
9811 EDISON AVE
CHINO, CA 91710-9249

22640
ABRAHAM DE VRIES
15524 GROVE AVE
CHINO, CA 91710-9222

22720
CASE DE VRIES
10869 EUCALYPTUS AVE
ONTARIO, CA 91761-7964

24000
DI TOMMASO RANCH
TONY DI TOMMASO
1317 N FIRST AVE
UPLAND, CA 91786

24450
CHARLES DIXON
9301 REMINGTON AVE
CHINO, CA 91710-9243

24720
MIKE DOLAN
2735 S CITRUS AVE
WEST COVINA, CA 91791-3407

24760
NELLIE DONKERS
7990 EDISON AVE
CHINO, CA 91710-9253

24840
DOTTA BROS.
3023 RIVERSIDE TERRACE
CHINO, CA 91710-2965

24960
DOUMA BROTHERS
FRED & HERM DOUMA
135 MAPLE AVE
RIPON, CA 953662327

25100
PHILLIP DOUMA
9983 HILLSIDE RD
ALTA LOMA, CA 91701

25400
LAUREN DUHALDE
9859 EUCALYPTUS AVE
CHINO, CA 91710-9218

25520
JOHN DUITS
13450 S BON VIEW AVE
ONTARIO, CA 91761-7969

25760
WILLIAM DURRINGTON
8107 KIMBALL AVE
CHINO, CA 91710-9271

25880
DICK DYKSTRA
10129 SCHAEFER
ONTARIO, CA 91761-7973

25920
MRS. JOHN DYKSTRA
11111 EDISON AVE
ONTARIO, CA 91761-7824

25960
PETE AND JOHN DYKSTRA
11091 EDISON AVE
ONTARIO, CA 91761-7824

26020
ANDY DYT
6207 ARCHIBALD
CORONA, CA 917209600

26090
COR DYT TRUST
PATTI LEKKERKERKER
15950 EUCLID AVE
CHINO, CA 91710

26200
CARLOS ECHEVERRIA
9711 EUCALYPTUS AVE
CHINO, CA 91710-9218

26240
JUAN ECHEVERRIA DAIRY
JUAN ECHEVERRIA
8762 KIMBALL AVE
CHINO, CA 91710-9230

26280
PABLO ECHEVERRIA
7481 CLEVELAND AVE
CORONA, CA 91720-9624

26580
EL PRADO GOLF COURSE
DENNIS JOBERT
6555 PINE AVE
CHINO, CA 91710-9192

26880
ENGELSMA DAIRY
JAKE ENGELSMA
8011 KIMBALL
CHINO, CA 91710-9231

27480
EXCELSIOR FARMS
WALTER D RANNEY
7401 HAMNER AVE
CORONA, CA 91720-9630

27960
VELMA FERNANDEZ
8321 SCHAEFER AVE
ONTARIO, CA 91761-7947

28040
FRANK FERREIRA
13950 S HAVEN AVE
ONTARIO, CA 91761-2616

28080
JOE FERREIRA
14400 GROVE AVE
CHINO, CA 91710-9221

28120
NARCIE FERREIRA
5009 BRAMBLE CT
ALTA LOMA, CA 917372474

28180
BILL FIEN
2975 S 2200 E
WENDELL, ID 833553147

28440
JOSEPH & MARY FILIPPI TRUST
MARY FILIPPI
P.O. BOX 2
MIRA LOMA, CA 91752

28880
FLAMINGO DAIRY
VALERIE MC CUNE-OFFICE MGR
14970 CHANDLER AVE
CORONA, CA 91718-1295

28980
LEWELLYN FLORY
4800 STONE AVE
RIVERSIDE, CA 92509-4001

29180
FONTANA WATER COMPANY
MIKE MC GRAW
P.O. BOX 987
FONTANA, CA 92334

29240
FOSS BROTHERS DAIRY
GERALD R. FOSS, PARTNER
6641 RIVERSIDE DR
CHINO, CA 91710-9098

29680
BEATRICE FREITAS
12940 HILLCREST DR
CHINO, CA 91710

30050
FULLMER CATTLE COMPANY
DEBRA J. FULLMER, OWNER
16600 HELMAN AVE
CORONA, CA 91720

30240
GALLEANO WINERY, INC
DONALD GALLEANO
4231 WINEVILLE AVE
MIRA LOMA, CA 91752-1412

30500
PETE GARCIA
13462 OAKS AVE
CHINO, CA 91710-5317

31410
GLEN GILSTRAP
8312 GRAPEWIN
CORONA, CA 91720-9633

31680
JOHN GODINHO
13380 CITRUS AVE
CORONA, CA 917209215

32130
INLAND EMPIRE DAIRY
CANDIDO & MARIA COSTA
7316 SCHAEFER AVE
CHINO, CA 91710

32200
HENRY GORZEMAN
12586 SCHLEISMAN
CORONA, CA 91720-9627

32240
GORZEMAN DAIRY
JOE GORZEMAN
12451 BELLEGRAVE AVE
MIRA LOMA, CA 91752-1548

32440
ALBERT GOYENETCHE
16130 EUCLID AVE
CHINO, CA 91710

33240
GERRITT GREYANUS
31 N ROLLING HILLS DR
POMONA, CA 91766

34320
MARY HANSEN
235 OLD RANCH RD
SEAL BEACH, CA 90740

34400
HARADA BROS.
ATTN GEORGE & STEVE
12774 CLOVERDALE RD
CORONA, CA 91720-9615

34440
JAMES HARADA
9490 EDISON AVE
CHINO, CA 91710-9214

34720
HERMAN HARINGA
8552 KIMBALL
CHINO, CA 91710-7978

34760
RUDY HARINGA
7322 CHINO AVE
ONTARIO, CA 91761-7913

34800
WILLIAM HARINGA
14842 E KEYES RD
PENAIR, CA 95316-9607

34970
JIMMY HARRIS
7360 SUMNER AVE
CORONA, CA 91720-9623

35730
ELSIE HEIM
13456 S WALKER
ONTARIO, CA 91761-7978

35780
MR. JIM HEIDA
6101 HARRISON ROAD
CORONA, CA 91720-9635

36520
HEIN HETTINGA
17094 CUCAMONGA
CORONA, CA 91720-9506

36560
PETE HETTINGA DAIRY
PETE HETTINGA
11101 E. EUCALYPTUS AVE
ONTARIO, CA 91761-7966

36720
WILBER HETTINGA
5240 HAMNER
ONTARIO, CA 91761-7809

36730
HARVEY HETTINGA
11111 EAST EUCALYPTUS AVENUE
ONTARIO, CA 91761-7966

36960
HIGGINS BRICK CO.
RON HIGGINS
15920 POMONA RINCON RD.
CHINO, CA 91710

37160
NORTHVIEW DAIRY
FRANK HILARIDES
10601 EAST RIVERSIDE DRIVE
ONTARIO, CA 91761-7819

37240
ASTOR & PHILLIPS
ESTATE OF JOHN HILARIDES
800 WILSHIRE BLVD. SUITE 1500
LOS ANGELES, CA 90017-2612

37640
EDWARD HOEKSTRA
HILLCREST DAIRY
11255 BELLGRAVE
MIRA LOMA, CA 91752-9606

37800
HOFER RANCH
PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761-7688

37920
DICK HOFSTRA
4405 GETTYSBURG ST
CHINO, CA 91710-3211

37960
MARIE HOFSTRA
13849 GROVE AVENUE
ONTARIO, CA 91761

38060
WARREN HOGG
8271 CHINO AVENUE
ONTARIO, CA 91761-7928

38160
HAROLD HOHBERG
7716 CHINO AVE.
ONTARIO, CA 91761-7918

38600
JEFF HOLMES
8087 EAST SCHAEFER AVENUE
ONTARIO, CA 91710

39000
HOOGENDAM DAIRY
MARVIN HOOGENDAM
12871 SCHLEISMAN ROAD
CORONA, CA 91720-9626

39840
WILLIAM IDSINGA
8391 PINE AVENUE
CHINO, CA 91710-9239

40200
MARCELINE INDABURU
15970 EUCLID
CHINO, CA 91710-9115

41540
JOHNSON BROTHERS, INC.
RON THOMAS
13610 SOUTH ARCHIBALD
ONTARIO, CA 91761-7999

41800
OLD ENGLISH RANCHO
JOHNSTON, E.W., EXECUTOR
1550 EAST LOCUST STREET
ONTARIO, CA 91761-7798

42200
JONGSMA DAIRY
HANK OR JORGE JONGSMA
1710 NORTH WARREN ROAD
SAN JACINTO, CA 92582-2093

42360
COW-WEST DAIRY
HAROLD JONGSMA
8050 HELLMAN AVE
CORONA, CA 91720-9610

42440
JOHN JONGSMA
9928 EDISON AVENUE
CHINO, CA 91710

42560
JAMES AND NONA JORRITSMA
8061 EDISON AVENUE
CHINO, CA 91710-9212

42640
JURUPA COMM. SVCS. DIST.
EDWIN JAMES
8621 JURUPA ROAD
RIVERSIDE, CA 92509-3297

42800
KAISER VENTURES, INC.
LEE REDMOND III
3633 INLAND EMPIRE BLVD, SUIT
ONTARIO, CA 91764-4922

43040
KASBERGEN DAIRY
GEORGE KASBERGEN
12400 LIMONITE AVE
MIRA LOMA, CA 91752-2402

43760
KNEVELBAARD DAIRIES
JOHN KNEVELBAARD
15673 5 1/2 AVE
HANFORD, CA 93230

43840
KNUDSEN BROTHERS
ROBERT KNUDSEN
13130 SOUTH BAKER AVENUE
ONTARIO, CA 91761-7903

44200
GERRIT KOETSIER
1442 E DEERFIELD CT
ONTARIO, CA 917617134

44400
J.N. KONING ESTATE
VICTOR KONING
1471 ELECTRA BAY
LAKE HAVASU CITY, AZ 86404-2407

44560
KONING TRUST
JOHN KONING
16656 HELLMAN AVE
CORONA, CA 917209722

44760
SOPHIE KOOLHAAS
14717 HAVEN AVENUE
CHINO, CA 91710-9223

44840
SILAS KOOPAL
16050 MOUNTAIN AVE
CHINO, CA 91710-9124

44920
GENE KOOPMAN
13898 ARCHIBALD AVENUE
ONTARIO, CA 91761-7979

44960
TENA KOOPMAN
26900 CALIFORNIA AVENUE
HEMET, CA 92545-9062

45400
KROES DAIRY
JAKE KROES
14561 S HAVEN AVE
CHINO, CA 91710-9223

45760
PERRY KRUCKENBERG
130 NORTH GIRARD STREET
HEMET, CA 92544-4627

46250
RONALD V. LA BRUCHERIE
12953 S. BAKER AV.
ONTARIO, CA 91761

46450
KELLY LAM
123 WEST GARVEY
MONTEREY PARK, CA 91754

46820
MACLIN MARKETS INC
GREGORY HAHN
7407 RIVERSIDE DR
ONTARIO, CA 91761-6712

47320
CORONA DAIRY RANCH
6313 ARCHIBALD AVENUE
CORONA, CA 91720-9656

47600
TOM WORTHINGTON
7556 EUCALYPTUS AVE
CHINO, CA 91710-9011

47880
HENRIETTA LEE
8750 HILLCREST ROAD
BUENA PARK, CA 90621

48000
LEENDERT LEKKERKERK
15779 MOUNTAIN AVE
CHINO, CA 91710-9124

48080
WALT LEKKERKERKER
15822 EUCLID AVENUE
CHINO, CA 91710-9162

49360
MIGUEL GOMEZ
13134 SOUTH EUCLID AVENUE
ONTARIO, CA 91761-7943

49470
LOS SERRANOS COUNTRY CLUB
ATTN: KEVIN SULLIVAN
15656 YORBA AVENUE
CHINO, CA 91709

49480
CARLOS LOURENCO DAIRY
MARY LOURENCO
8681 ARCHIBALD
CORONA, CA 91720-9650

49600
C.P. LOURENCO ESTATE
MARY PEDRO
EXECUTOR
26017 ROAD 100
TULARE, CA 93274

50040
JOHN LUSK
17550 GELLETE AVENUE
IRVINE, CA 92713

50760
MARQUEZ DAIRY
ARTHUR MARQUEZ
7360 PINE AVENUE
CHINO, CA 91710

50880
MARQUINE TRUST
BERNARD BIDART
5452 RIVERSIDE DRIVE
CHINO, CA 91710

50940
FRANK MARTIN
7080 SUMNER AVE.
CORONA, CA 91720-9201

51320
TONY MARTIN
10129 EDISON AVENUE
CHINO, CA 91710-9213

51560
MARYGOLD MUTUAL WATER CO
BILL STAFFORD
9715 ALDER STREET
BLOOMINGTON, CA 92316-1602

52880
GOLDEN WEST DAIRIES
ENOS MELLO
2781 BLACK HORSE DRIVE
ONTARIO, CA 917619196

53400
LOUISE MICHEL
P.O. BOX 394
NORTHRIDGE, CA 91324

53560
HARRY MIERSMA
6828 ARCHIBALD AVENUE
CORONA, CA 91720-9665

53960
MARIE MINABERRY
8120 HARRISON
CORONA, CA 91720-9320

54040
SPACE CENTER MIRA LOMA, INC.
ATTN- MICHAEL THIES
3401 ETIWANDA AVE BLDG 503
MIRA LOMA, CA 91752-1133

54100
MIRA LOMA THOROUGHBRED FARM
12071 BELLEGRAVE AVENUE
MIRA LOMA, CA 91752-1547

54260
MOCHO AND PLAA INC
12421 BELLEGRAVE AVENUE
MIRA LOMA, CA 91752-1548

54280
MONTE VISTA WATER DISTRICT
JOE GRINDSTAFF
P.O. BOX 71
MONTCLAIR, CA 91763-0071

54320
MONTE VISTA IRRIGATION CO.
HAROLD ANDERSEN
2529 W TEMPLE STREET
LOS ANGELES, CA 900264819

54400
ELIZABETH MONTES
13172 S. BAKER
ONTARIO, CA 91761-7904

54440
JACK MOONS
5310 HELLMAN AVE
CHINO, CA 91710-9224

54500
JOHN MOORE
13315 S. BON VIEW AVE.
ONTARIO, CA 91761-7969

54790
LOUIS MORENO
16532 JOHNSON AVENUE
CHINO, CA 91710-9227

54890
MOTION PICTURES ASSOCIATES INC
HELEN COHEN
223 WEST ALAMEDA, #101
BURBANK, CA 91502-2575

55480
MUTUAL WATER COMPANY OF
TERRI HORN
GLEN AVON HEIGHTS
9643 MISSION BOULEVARD
RIVERSIDE, CA 92509-2691

55960
HANS NEDEREND
13752 BON VIEW AVENUE
CHINO, CA 91710-9160

56540
GEORGE NOBLE
10460 60TH STREET
MIRA LOMA, CA 91752-2633

56560
NORCO, CITY OF
ATTN - JOE SCHENK
P.O. BOX 428
NORCO, CA 91760-0428

56960
JIM NYENHUIS
8711 REMINGTON AVE.
CHINO, CA 91710-9243

57080
MARION OKUMURA
8010 SCHAEFFER AVE
ONTARIO, CA 91761B218

57260
MARY OLIVEIRA
5009 YORKSHIRE DRIVE
CYPRESS, CA 90630

57320
ALBERT OLSON
15757 MOUNTAIN AVE
CHINO, CA 91710-9124

57360
ANTON OMLIN
14739 ARCHIBALD AVE
CHINO, CA 917109201

57420
ONTARIO CHRISTIAN SCHOOL ASSN
ELEANOR DEN HARTIGH
931 WEST PHILADELPHIA ST
ONTARIO, CA 91761-4997

57440
ONTARIO, CITY OF
ATTN-MIKE TEAL
MUNICIPAL SERVICE CENTER
1425 SO. BON VIEW AVENUE
ONTARIO, CA 91761-4405

57640
OOSTEN FAMILY TRUST
ATTN: RICHARD LORENZ
8405 ARCHIBALD AVENUE
CORONA, CA 91720-9648

57760
ORANGE COUNTY WATER DIST
BRYAN BAHARIE
541 N MAIN ST STE 104-363
CORONA, CA 91720

58240
ADELINE ORTEGA
13512 CITRUS AVENUE
CORONA, CA 917209633

58280
BERNARD ORTEGA
13512 CITRUS AVENUE
CORONA, CA 91720-9633

58360
OSTERKAMP DAIRY
JOSEPH OSTERKAMP
8301 ARCHIBALD AVE
CORONA, CA 91720-9649

58960
MARY PARENTE
8559 EDISON AVENUE
CHINO, CA 91710-9242

59210
JAY PARK
8406 CHINO AVENUE
ONTARIO, CA 91761

59600
PAYNE RANCH
MARGO MCCANTY PAYNE
8800 MCCARTY ROAD
CORONA, CA 91720

60720
PIERCE FAMILY CORPORATION
TERESA CORTEZ
3765 EUCALYPTUS AVENUE
CHINO HILLS, CA 91709

61040
VIRGINIA PINE
1306 FERNWOOD CIRCLE
CORONA, CA 91720-1288

61400
GEORGE PLANTENGA
6500 HAMNER AVENUE
CORONA, CA 91720-9632

61760
POMONA CEMETERY ASSOCIATION
MELODY MCCLURE
P.O. BOX 1
POMONA, CA 91769-0001

61880
CITY OF POMONA
CHUCK SIHLER
PUBLIC WORKS
P.O. BOX 660
POMONA, CA 91769-0660

63960
R & V DAIRY
LOUIS REITSMA
8007 CHINO AVE
ONTARIO, CA 91761-7924

64520
GEORGE RILEY
14330 BON VIEW AVENUE
CHINO, CA 91710-9108

64760
JOHN ROCHA
7363 PINE AVENUE
CHINO, CA 91710-9258

65280
ELIZABETH ROHRS
113 GRAND CANAL STREET
BALBOA ISLAND, CA 92662

66000
ANGELINE ROUKEMA
JOHN VANDER POEL
14780 SCHLEISMAN
CORONA, CA 91720

66280
BRAD LEAL
12741 CLOVERDALE ROAD
CORONA, CA 91720-9617

66560
PETE VERHOVEN
8790 AVENUE 152
TIPTON, CA 93272-9751

66960
SAN ANTONIO WATER COMPANY
RAY WELLINGTON
139 NORTH EUCLID AVENUE
UPLAND, CA 91786-6036

67000
COUNTY OF SAN BERNARDINO
JAMES JENKINS
DEPARTMENT OF AIRPORTS
7000 MERRILL AVE BOX 1
CHINO, CA 91710-9016

67001
S.B. CNTY. AIRPORTS DEPT
ROBERT OLISLAGERS
CHINO AIRPORT
7000 MERRILL AVENUE, BOX 1
CHINO, CA 91710-9016

67002
SAN BDNO. CO. GENERAL SVS.
MS. DULCIE CROWDER
DEPT OF COMMUNITY & CULTURAL RESOURCES
777 EAST RIALTO AVENUE

67003
CITY OF CHINO HILLS
KEN HACKMAN
14575 PIPELINE AVENUE
CHINO, CA 91710-5699

67004
COUNTY OF SAN BERNARDINO
MS. CROWDER-COMM & CULT RES DIR
777 E RIALTO STREET
SAN BERNARDINO, CA 924150763

67040
EDMUNDO SANCHEZ
13115 S ONTARIO AVENUE
ONTARIO, CA 91761-7955

67120
SANTA ANA RIVER WATER CO.
ATTN: ARNOLD RODRIGUEZ
10530 54TH STREET
MIRA LOMA, CA 91752-2331

67260
LEGACY RANCH, INC.
PETE PARRELLA
15709 EUCLID AVENUE
CHINO, CA 91710-9291

67840
FRED SCHAKEL, SR.
5815 SUMNER AVENUE
CHINO, CA 91710

68520
MADELEINE SCHMIDT
2862 SOUTH CAMPUS AVENUE
ONTARIO, CA 91761-6707

68580
ESTHER SCHONEVELD
14683 RIVER ROAD
CORONA, CA 91720-9606

68640
JOHN SCHONEVELD, SR.
14058 ARCHIBALD AVENUE
ONTARIO, CA 91761-7999

68680
JOHN SCHONEVELD
10115 EUCALYPTUS AVENUE
CHINO, CA 91710-9218

68760
HAROLD SCHUH
14307 SAN ANTONIO
CHINO, CA 91710-9026

69080
RENE PEAUROI
12000 EAST END AVENUE
CHINO, CA 91710-1597

69120
STANDARD FEEDING CO.
JOHN DEJONG
13751 S. HAVEN STREET
ONTARIO, CA 91761-7810

69800
SHADY GROVE DAIRY FARM
MR. MIKE MUSSER
13485 S BON VIEW AVENUE
ONTARIO, CA 91761-7969

69850
BERT SHAMEL
11 SAN SIMEON
LAGUNA NIGUEL, CA 92677-2715

71080
JACK SILVEIRA
9261 ROYAL PALM BLVD
GARDEN GROVE, CA 928412025

71160
JOE SIMAS, SR.
6160 HARRISON AVENUE
CORONA, CA 91720

71440
JIM SINNOTT
7684 RIVERSIDE DRIVE
ONTARIO, CA 91761

71800
HUBERT SLEGERS
6263 GARFIELD
CHINO, CA 91710-2729

71820
JAKE SLEGERS
11400 HARREL STREET
MIRA LOMA, CA 91752-1408

71840
LENWOOD SLEGERS
10401 S RIVERSIDE DRIVE
ONTARIO, CA 91761-7817

72960
SOUTHERN CALIF. EDISON CO.
RICHARD DARNELL
MANAGER OF OPERATIONS
8996 ETIWANDA
ETIWANDA, CA 91739-9697

73000
H.G. STARK YOUTH TRAINING SCH.
ANTHONY R. KOLATH
CHIEF ENGINEER
P.O. BOX 800
ONTARIO, CA 91761

73040
SOUTHERN CALIFORNIA WATER CO.
HELEN LONG
REGION III HEADQUARTERS
2143 CONVENTION CTR WY ST 110
ONTARIO, CA 91764

73100
ANGELICA RENTAL SERVICE
ERICK VAUGHN
P.O. BOX 1209
BREA, CA 928221209

73280
FRANK SOUZA
16185 EUCLID AVENUE
CHINO, CA 91710-9114

73800
ZIPPORA STAHL
P.O. BOX 526
JEROME, ID 83338

74200
EVERETT STARK
7653 KIMBALL AVE
CHINO, CA 91710-9229

74240
STATE DEPT OF FISH & GAME
GLENN F. BLACK
4775 BIRD FARM RD
CHINO, CA 91709-3175

74280
CALIF. INSTITUTE FOR MEN
L. JACK HAGERMAN
CHIEF OF PLANT 3
P.O. BOX 128
CHINO, CA 91710-0128

74360
CALIF. INSTITUTION FOR WOMEN
R. PETE HALL
CHIEF ENGINEER
16756 CHINO-CORONA ROAD
FRONTERA, CA 91720-9507

74520
STELLINGWERF FAMILY TRUST
STAN STELLINGWERF, TRUSTEE
18022 SUMMER AVENUE
ARTESIA, CA 90701

74680
STERK FAMILY TRUST
6683 CHINO AVENUE
CHINO, CA 91710-9003

74770
STERLING BUILDERS, INC.
DAVE GILBERT
270 BRISTOL ST #101-236
COSTA MESA, CA 92626

74955
STEVE STILES
13606 SOUTH GROVE AVENUE
ONTARIO, CA 91761

75520
HENRY STRUIKMANS
8535 EDISON AVENUE
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Exhibit B

April 29, 1997 Ruling

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 Judgment[1] 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.**

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

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

Background of Audit Dispute

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

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

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

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

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

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

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

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

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

Contentions

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

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

> (b) Advisory Committee. The Advisory Committee shall have the duty to study, and the power to recommend, review and act upon all **discretionary determinations** made or to be made hereunder by Watermaster.
>
> (1) * * * * * * * *
>
> (2) Committee Review. In the event Watermaster proposes to take any discretionary action, other than approval or disapproval of a Pool Committee action or recommendation properly transmitted, or execute any agreement not theretofore within the scope of an Advisory Committee recommendation, notice of such intended action shall be served on the Advisory Committee and its members at least thirty (30) days before the Watermaster meeting at which such action is finally authorized. (Judgment, ¶ 38(b), underline added.)

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

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

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

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

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

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

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

MOTION TO APPOINT NINE-MEMBER BOARD

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

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

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

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

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

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

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

Furthermore, Water Code section 2000[3] provides that "In any suit brought in any court of competent jurisdiction in this State for determination of rights to water, the court may order a reference to the board [State Water Resources Control Board], as referee, of any or all issues involved in the suit." Not only have constitutional challenges to this section been unsuccessful, our Supreme Court has indicated a preference for such references.

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

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

MOTION TO DISQUALIFY

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

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[3]**Water Code section 2000 was preceded by Water Code section 24.**

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

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

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

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

MOTION FOR APPOINTMENT OF INTERIM WATERMASTER AND RELATED MOTION TO STRIKE

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

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

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

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

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

ORDER OF REFERENCE

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

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

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

DATED: April 29, 1997.

J. MICHAEL GUNN, JUDGE

Exhibit C

December 15, 1997 Report and Recommendation
of Special Referee

SCHNEIDER
RE APPT
COURT DOCS.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

WEST DISTRICT

CHINO BASIN MUNICIPAL WATER DISTRICT, Plaintiff v. CITY OF CHINO, et al., Defendants.	Case No. RCV 51010 (Specially Assigned to the Honorable J. Michael Gunn) REPORT AND RECOMMENDATION OF SPECIAL REFEREE TO COURT REGARDING: (1) MOTION FOR ORDER THAT AUDIT COMMISSIONED BY WATERMASTER IS NOT A WATERMASTER EXPENSE, AND (2) MOTION TO APPOINT A NINE-MEMBER WATERMASTER BOARD

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TABLE OF REFERENCED BRIEFS[1]

1. City of Ontario:

Notice of Motion and Motion of Advisory Committee, and the City of Ontario, for the Appointment of the Honorable Don A. Turner as Interim Watermaster and to Modify Paragraph 18 of the Judgment to Provide for Compensation to the Interim Watermaster; Memorandum of Points and Authorities; Declarations of Traci Stewart, Mary Staula, Michelle Lauffer, and Robert E. Dougherty in Support Thereof (filed with Court on 3/25/97) **referenced as "City of Ontario Brief"**

2. Advisory Committee:

Notice of Motion and Motion for Appointment of Nine Member Board as Watermaster; Memorandum of Points and Authorities in Support Thereof; Declaration of Traci Stewart (filed with Court on 2/3/97) **referenced as "Advisory Committee Brief 1"**

3. Advisory Committee:

Notice of Motion and Motion for Order of Court that Audit Commissioned by the Chino Basin Municipal Water District Board is not a Watermaster Expense; Declaration of Traci Stewart (filed with Court on 1/28/97) **referenced as "Advisory Committee Brief 2"**

4. Chino Basin Municipal Water District:

Opposition to Motion for Order of Court that Audit Commissioned by the Chino Basin Municipal Water District Board is not a Watermaster Expense; Declarations of Larry Rudder, George Borba and Bill Hill in Support Thereof (filed with Court on 2/24/97)
referenced as "CBMWD Brief 1"

5. Monte Vista Water District:

Referee's Requested Brief Regarding Identified Issues; Declaration of Langdon Wood Owen in Support of Monte Vista Water District's Brief (submitted to Special Referee on 8/18/97) **referenced as "MVWD Brief 2"**

6. Chino Basin Municipal Water District:

Memorandum of Points and Authorities re: Motion to Appoint Nine Member Watermaster Board (submitted to Special Referee on 8/18/97) **referenced as "CBMWD Brief 3"**

7. Jurupa Community Services District:

Jurupa Community Services District's Response to Special Referee Anne Schneider's July 18. 1997 Request for Briefs with respect to Specified Issues (submitted to Special Referee on 8/18/97) **referenced as "Jurupa Brief"**

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[1]Numerous briefs were prepared by the parties and filed with the Court or submitted to the Special Referee. Abbreviated references to these briefs are contained in the Written Report and Recommendation by the Special Referee. This index provides the complete titles of the referenced briefs.

8. Chino Basin Municipal Water District:

Opposition to Motion for Appointment of Nine Member Board as Watermaster; Memorandum of Points and Authorities in Support Thereof (filed with Court on 3/4/97) **referenced as "CBMWD Brief 2"**

9. Monte Vista Water District:

Memorandum of Points and Authorities of Monte Vista Water District in Partial Opposition to Chino Basin Watermaster's Motion for Appointment of Nine-Member Board as Watermaster; Declaration of P. Joseph Grindstaff (filed with Court on 3/5/97) **referenced as "MVWD Brief 1"**

I. INTRODUCTION

A. Scope of Reference and Restatement of Issues

On April 29, 1997, the Honorable J. Michael Gunn, pursuant to California Code of Civil Procedure Section 639(d), ordered a special reference for the purpose of receiving written recommendations from the appointed Special Referee, Anne J. Schneider, regarding the facts and law relative to particular matters which had been raised by the parties to the January 2, 1978[1] Judgment in the matter of *Chino Basin Municipal Water District v. City of Chino* (Case No. RCV 51010) (Ruling and Order of Special Reference, April 29, 1997 [hereinafter "Order of Special Reference"]). The special reference was made as a result of the following motions which remain before the Court: (1) Motion for Order That Audit Commissioned by Watermaster Is Not a Watermaster Expense; and (2) Motion to Appoint Nine-Member Watermaster Board. After reviewing the motions and opposition thereto and conducting a hearing regarding the same, the Order of Special Reference requests that the Special Referee address the following:

> 1. The Special Referee shall consider the Motion for Order that Audit Commissioned by Watermaster is not a Watermaster expense and make a recommendation as to how to proceed with resolving the motion. The Special Referee is specifically requested to consider and give an opinion on the meaning of Paragraph 38(b) of the Judgment and its relationship to Paragraph 41 of the Judgment.
>
> 2. The Special Referee shall consider the Motion to Appoint a Nine-Member Watermaster Board and make a recommendation as to how to proceed with resolving the motion. The Special Referee is specially requested to consider the checks and balances contained in the 1978 Judgment and to consider the advantages and disadvantages of a public entity watermaster versus a private entity watermaster.

(Order of Special Reference at 10.)

The thrust of these issues is to question the roles of the Watermaster and the Advisory Committee and how those roles are related to one another. The recommendations of the Special Referee are intended to clarify each of the respective roles as well as the relationship between those roles in order to give guidance for the future as well as to respond to the immediate motions brought

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[1]The January 2, 1978 Judgment (hereinafter "Judgment") is an adjudication of groundwater and storage rights in the Chino Basin and a bound copy of the Judgment is in the current file of the Court, which has continuing jurisdiction over the Judgment.

before the Court.

B. Report on Briefing and Hearing

After receiving notice of the special reference the Special Referee conducted a conference call to ascertain recommendations from the parties as to how to proceed. It was determined that additional briefing was necessary and that a subsequent opportunity to be heard would be granted to the parties in order to fully understand the issues presented. On July 18, 1997, the Special Referee provided the parties with additional issues to be briefed and a briefing schedule. The parties presented their initial briefs on August 18, 1997, and reply briefs on September 8, 1997. On October 21, 1997, a hearing was conducted at the office of the Watermaster staff, during which additional questions were raised and discussed. Counsel for certain parties and the parties themselves had an opportunity to fully discuss all issues raised during the October 21 hearing.[2] The original transcript from this proceeding is hereby made a part of this recommendation and lodged with the Court.[3]

C. Urgency of Resolution

It has become apparent that the resolution of the motion to appoint a nine-member Watermaster board must be resolved as expeditiously as possible. Chino Basin is suffering from both overdraft and water quality issues that continue to remain unresolved as a result of conflicts between the parties and the discrepancy of opinion with regard to the Watermaster's and the Advisory Committee's roles. The Court has recognized the urgency of the issues presented by the motion to appoint a new Watermaster (Order of Special Reference at 6) and the parties agree that the "process has ground to a halt" (TR 136:25). The urgency appears to stem from the poor condition of the basin itself, the inability of the Watermaster and the Advisory Committee to resolve essential issues, and the inability of the Watermaster to move forward in light of the interim appointment of the California Department of Water Resources (hereinafter "DWR"). Although the Court can resolve the issue with

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[2]On November 10, 1997, Special Referee received the Declaration of Gerald S. Thibeault, Executive Officer of the Regional Water Quality Control Board, from counsel for Monte Vista Water District. This declaration has not been considered by the Special Referee as the matter had been submitted at the close of the October 21 hearing.

[3]All references to the transcript from the hearing conducted on October 21, 1997, shall be "TR page:line."

regard to the appointment of a new Watermaster, the underlying issues as to the condition of the basin and the proper roles of the Watermaster and Advisory Committee are not so easily resolved. Extensive discussion, however, between the parties and the Special Referee occurred during the October hearing regarding the respective roles of the Advisory Committee and Watermaster which will be further explicated herein and which should assist further cooperative resolution of the impending issues regarding Chino Basin management, as well as provide assistance to the Court as the ultimate "check" on the parties.

D. Brief Factual Background

Since issuance of the Judgment in 1978, the Chino Basin Municipal Water District (hereinafter "CBMWD") has been the Watermaster for the Chino Basin. Over the past few years it appears that the Advisory Committee has assumed the task of directing the performance of the Director of Watermaster services, currently Traci Stewart, with respect to Watermaster functions. (Order of Special Reference at 6. *See also* Advisory Committee Brief 1 at 1-2, CBMWD Brief 2 at 2, MVWD Brief 2 at 2.) Mr. Markman, spokesman for the moving parties, explained:

> . . . the advisory committee and the watermaster entered into an agreement, as you know, the famous facilities and services agreement which essentially delegated over to the advisory committee supervision of the staff to do all this stuff. And that operated that way for a while. Then we had staff operating under direction of the advisory committee by contract, and we had a lawyer . . . in the middle trying to work with the staff directed by the advisory committee but still theoretically under the direction of Chino Basin Municipal Water District, all of which created chaos.

(TR at 42:19 to 43:5.)

In December 1996, CBMWD discovered fraudulent checks had been drawn upon the Watermaster's account. (Order of Special Reference at 2.) By that time, it appeared there was no longer any cooperation between the Advisory Committee and the Watermaster. Additional concerns were expressed regarding Watermaster expenditures which had been directed by the Advisory Committee and reluctantly processed by CBMWD as the Watermaster. (City of Ontario Brief, Decl. of T. Stewart and M. Lauffer.) Accordingly, CBMWD requested a special audit be conducted, which the Advisory Committee refused to approve.

The parties appear to agree that there have been no significant disputes between the Watermaster and the Advisory Committee until recently. (TR at 126:12 to 133:6.) When a dispute

arose as to whether a special audit should be conducted or not, the Advisory Committee was acting as the *de facto* Watermaster. Subsequently, when at CBMWD's and others' request the Watermaster staff had a special audit conducted, the Advisory Committee brought a motion as the *de facto* Watermaster seeking Court determination that the special audit was not a proper Watermaster expense. At the same time, the Advisory Committee sought a Court order changing the Watermaster.

One hearing participant (Mr. Teal, City of Ontario) described the historical relationship of the Advisory Committee and Watermaster up until the issue of replacing the Watermaster arose:

> I've been involved in this process since 1978 and beyond, and one of the things that needs to be recognized is that throughout the 18 years prior to 1996, the pools and the advisory committee essentially, on 98 percent or more of the actions, have been a hundred percent consensus. . . And one of the reasons why we were able to reach consensus . . . was that we were very intimately involved in protecting each other's interests. . . We were very careful in protecting everyone's interest, mainly because we all had a fear that if we didn't, then this adjudication would not work, that we would be back in court. And everybody had a fear that suddenly this Pandora's box would be opened again. And none of us wanted that because we all had something to lose. . . What has stalled the [Optimum Basin Management Program] process, of course, is we all got hung up on who the new watermaster was going to be. Well, for 18 years basically the watermaster functioned as the advisory group, and we did it through consensus building because, again, we were all afraid that the judgment wouldn't work if we didn't build a consensus.

(TR at 126:12 to 129:6.)

The parties appear to concur that the only time the Watermaster has disagreed with a recommendation of the Advisory Committee has lead to the current motion to appoint a new Watermaster. (TR at 64:4 to 67:20.) The underlying issue that triggered the current motion appears to have been the participation of the Watermaster in the question of payment for the groundwater put through a "desalter" facility.[4] Mr. Kidman, the spokesperson for the opposing parties, stated:

> There was a proposal by one member of the watermaster board at that time, Chino Basin Municipal Water District, that said that they would support moving forward with that, allowing that production [of groundwater to be run through the desalter] to take place without assessment under the watermaster. It was that attempt at

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[4]It seems the motion to elect a nine-member board Watermaster stems from the Watermaster not agreeing with the Advisory Committee with regard to the special audit. The parties have indicated the initialization of the special audit triggered the filing of the motion to change the Watermaster. However, the first motion to change the Watermaster stemmed from the desalter project, as explained. That initial motion was a request to have the Advisory Committee act as the Watermaster.

independence that brought this whole house of cards down around all of us.

(TR at 66:13-19.) Mr. Markman, spokesperson for the moving parties, concurred, stating: "I agree that frames the issue perfectly." (TR at 66:21-22.) Mr. Grindstaff, Monte Vista Water District, added further detail:

> The entire reason we're sitting here today is because during the process of getting water for the desalter,. . . . one of the members of the watermaster board came to a meeting of the ag pool and said, If we can't get water for this desalter, then I want to work with you in the ag pool, and we're going to have enough votes so it won't be a mandated action. . . That was the major issue, in fact, when the first motion was made to replace watermaster was that someone from watermaster had the nerve to actually come into the basin and say we're going to take an action or we're going to work with somebody to take an action that might be opposed by a majority of the advisory committee.

(TR at 64:18 to 65:7.)

The remarkable placidity of the Watermaster over the 18-year period from 1978 to 1996, appears in large part to be attributable to the fact that there have been extensive negotiations to achieve consensus on issues. (TR at 126:12 to 127:16.) It may also not have been clearly understood that the Watermaster can disagree with either mandatory or other recommendations of the Advisory Committee.[5]

In an attempt to resolve the continuing deadlock between the Advisory Committee and the CBMWD and to obtain additional time for the special reference, the Court appointed DWR as interim Watermaster "subject to the [DWR's] acceptance and agreement on mutually acceptable terms." (Order of Special Reference at 9.) Further, the Court ordered the Advisory Committee and CBMWD to jointly negotiate terms and conditions and present them for approval to the Court no later than June 18, 1997. (*Id.*) DWR was to act as interim Watermaster until the Court had acted upon the report of the Special Referee. The parties have not been able to come to a resolution with regard to the interim appointment of DWR. (TR at 14:4-11.) The negotiation process with DWR continues,

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[5]It is unclear from the record how much influence legal counsel's advice had. The advice to the Watermaster from legal counsel (which has since been recused) was that the Watermaster had no recourse if the Advisory Committee acted by 80% vote. (CBMWD Brief 1, Decl. of L. Rudder ¶¶ 6 and 10.) It seems legal counsel at that time specifically indicated to Watermaster services staff that an 80% or greater vote by the Advisory Committee was a mandate and there was no advice that such a mandate could be appealed to the Court pursuant to the Judgment. (*Id.*)

but with no certainty that it will be finalized. (TR at 17-18.) In the meantime, CBMWD continues to be recognized as an interim Watermaster (TR at 14), notwithstanding the fact that essentially all Watermaster functions currently appear to be under Advisory Committee control.

The Advisory Committee (as the *de facto* Watermaster), in February 1997, brought its motion to remove CBMWD as Watermaster and replace CBMWD with a nine-member Watermaster board. The Judgment provides for particular procedures in the event the Advisory Committee or another party wishes to replace the Watermaster. The procedural requirements have been met by the Advisory Committee. (Advisory Committee Brief 1.) In addition, the Advisory Committee sought an order from the Court declaring the special audit conducted by CBMWD was not a proper Watermaster expense. (Advisory Committee Brief 2.)

II. COMPELLING REASON ANALYSIS

A. The Court is Required to Make a New Watermaster Appointment Upon Motion Supported by a Majority of the Advisory Committee Unless "There is a Compelling Reason to the Contrary"

The Judgment is clear with regard to the process by which the Watermaster may be replaced. The Judgment provides as follows:

> 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. Unless there are compelling reasons to the contrary, the court shall act in conformance with a motion requesting the Watermaster be changed if such motion is supported by a majority of the voting power of the Advisory Committee.

(Judgment at ¶ 16, emphasis added.) In light of the fact that all parties agree the Advisory Committee has moved the Court to replace the Watermaster with a majority vote, the inquiry is limited to whether there is "compelling reason to the contrary." During the subsequent briefing requested by the Special Referee as well as the hearing conducted in October, the parties opposed to the appointment of the nine-member board as Watermaster provided the following reasons as bases for denying the motion to appoint the nine-member board:

1. The purpose and objective of the Judgment overrides all other considerations (citing Judgment ¶¶ 15-17, 39-41) and the replacement nine-member board undermines the purpose and objective of the Judgment itself. The purpose and objective of the Judgment is basin management. (MVWD Brief 2 at 6.) A "producer panel" Watermaster would violate the structure of the Judgment

as it has always been the intention of all parties that the Watermaster be independent, neutral, and objective. (MVWD Brief 2 at 7-8 and Decl. of L. Owen.)

2. Appointing the basin producers as the Watermaster eliminates the "checks and balances" between Watermaster and the Advisory and Pool Committees. (MVWD Brief at 7.)

3. The Judgment does not contemplate a Watermaster consisting of more than one public or private entity. There would be a morass of bureaucracy if numerous entities, consisting of numerous boards of directors, had to coordinate their voting and meetings to act effectively (especially to run the day-to-day business). (MVWD Brief 2 at 8.)

4. The most compelling reason to deny the motion is the present condition of the groundwater of the Chino Basin. (CBMWD Brief 3 at 2, Decl. of J. Grindstaff.) The present condition of Chino Basin is "deplorable." (*Id.*)

5. The purpose of vesting Watermaster with the discretionary power to develop the fundamentally important program (the Optimum Basin Management Program for Chino Basin) with only the advice of the Advisory Committee was to promote objectivity and avoid the inherent self-interest and bias of the Advisory Committee members. (Jurupa Brief at 3.) A Watermaster board controlled by northern basin interests who have unimpaired water quality compared to southern basin entities whose water quality is impaired will create self interest and bias in implementing Article X, Section 2 of the California Constitution. (Jurupa Brief at 5.)

6. There is evidence of a pattern of mismanagement policies and procedures for expenditures not being followed by the Watermaster, the basin being overdrawn and the quality of the water greatly diminished. (CBMWD Brief 2 at 3-4; *see also* Order of Special Reference.)

The term "compelling reasons" must be interpreted based upon the understanding and intent of the Court and not that of the parties. (Russell v. Superior Court (1957) 252 Cal.App.2d 1, 8.) Implied in such a requirement that "compelling reasons" be established is that the Court find reasons which "force" or "compel" the Court to deny the motion based on the ordinary and popular sense of the term.

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B. The Most Compelling Reason Not to Appoint the Nine-Member Board as Watermaster Asserted by Parties Opposing the Motion is that the Advisory Committee Would Control the Watermaster and the Watermaster will not Carry Out the Separate Functions Given to it Under the Judgment

Parties opposing the appointment of a nine-member Watermaster board rely heavily on the proposition that the Judgment provides for inherent "checks and balances" between the Advisory Committee and the Watermaster which would be eliminated by the appointment of the suggested nine-member Watermaster board. As stated during the hearing, the question is whether "the tyranny of the majority govern[s] under this judgment, or is it necessary that under those areas that are clearly discretionary — is it necessary to have some independent checks and balances?" (TR at 78:14-18.) The implicit question is whether appointment of the nine-member board will allow the Advisory Committee to continue to govern the Chino Basin.

Six members of the nine-member board would be three appropriative pool members and three overlying pool members, two from the overlying (agricultural) pool and one from the overlying (nonagricultural) pool. (TR at 87:22-25.) The other three seats are proposed for nonpumper water districts (CBMWD, Western Municipal Water District, and Three Valleys Municipal Water District).

The parties in opposition to the motion contend the nine-member board would not be independent and that the producer majority cannot be expected to administer the Judgment objectively, since they have financial interests in producing water as inexpensively as possible from the basin. (TR at 139:23 to 141:4.) Alternative vote-counting was suggested, however: Producers who draw water from the northern portion of the basin will have three votes on the proposed nine-member board and those three votes could well combine with the votes of the one member from the overlying (nonagricultural) pool, the one member from Three Valleys Municipal Water District, and the one member from Western Municipal Water District. Therefore, an alternative majority was also postulated which would be able to control the proposed nine-member board.[6] (TR 87:22 to 88:14.)

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[6]Mr. Kidman suggested a further consideration that could affect voting patterns of the nine-member board, one that could at some point precipitate the need for modification of the Judgment:

> One of the problems in the judgment . . . is that there is a strong tendency for the rich

(continued...)

The parties opposed to the appointment of the nine-member board do not provide direct evidence that the nine-member board will fail to be independent of the Advisory Committee. Although they assert that the nine-member board would not disagree with the Advisory Committee, that there would be "a natural tendency for the producer members of the Watermaster committee to follow the directions and the positions of those who appoint them and those who they represent" (TR at 90:12-15), it was conceded that it was conceivable that the nine-member board configuration would disagree with the Advisory Committee. (TR at 90:19-22.) In fact, it was also suggested that the inclusion of two more nonproducer public agencies (Western Municipal and Three Valleys Municipal Water Districts), along with CBMWD, will improve the current situation (TR at 85:9-17) and that these public agencies provide protections from minority views. It was also suggested that these three public agencies are in the best position to seek assistance from the Court. (TR at 86:10-17.)

Overall, because there is no evidence with regard to how the nine-member board would vote and whether their pecuniary interests would control their voting, there is no evidence to indicate that any "checks and balances" of the Judgment would be compromised by the nine-member board Watermaster. The parties seem to agree that the best way to ensure that the essential function of the Watermaster will be carried out was not so much dependent on who the Watermaster may be as on

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[6](...continued)

> to get richer and the poor to get poorer. That is, representation on the advisory committee and so on gets to be established according to . . . how many water rights a party holds and to how much water a party produces or overproduces. And it's that second part especially that allows the rich to get richer and the poor to get poorer because those entities that are in a part of the basin where they can't produce because water quality is not suitable get fewer votes as a result and those that happen to be in a sweet part of the basin, where they can even overproduce their water right if they wanted to and take advantage of the underproduction of the others, get more votes. The system gets stacked against the parties that are in the lower-quality part of the basin. And appointing a watermaster panel that's composed of a majority, numerical majority, of producers, given the way the voting rights are stacked, is hardly a solution . . . that gives some people, who would like to see cleanup occur, confidence that it will.

(TR at 141:22 to 142:18.)

additional court oversight and guidance. Mr. Kidman, representing opposing parties, stated:

> Could it work? Possibly. You asked that. I think so. It could work. The best way to make sure it worked is to make sure that we have an order that does outline what the really essential functions of the watermaster will be and specifically charges whoever is appointed to carry them out and establishes report-back procedures, opportunities where those that may disagree that everything is just fine have the ability to come in and . . . make sure their position is heard as to whether or not everything is going just fine.

(TR at 141:11-21.)

Finally, opposing parties did not provide an alternative at the hearing.[7] (TR at 139:16 to 141:21.) Given the proposed composition of the nine-member board and the concerns raised by parties in opposition to the appointment, it seems prudent and necessary to provide a gauge upon which this Court can determine whether the nine-member board is properly carrying out its Watermaster roles in the event the Court grants the motion.

III. WATERMASTER ROLES AND REVIEW OF WATERMASTER ACTIONS

A. Introduction

There are four general categories of Watermaster actions identified in the Judgment: There are Watermaster functions to administer the Physical Solution and to serve the Court in that regard; there is one action under Paragraph 41 explicitly identified as "discretionary"; there are numerous actions which the Watermaster is directed to take upon recommendation or advice of the Advisory Committee or with Advisory Committee approval; and there are all other actions which do not fall within one of these three categories. These categories are important for purposes of determining which processes provided in the Judgment for review of Watermaster actions apply to a particular action. There are two Court review processes available: Paragraph 31 provides for review by the Court of all Watermaster actions, decisions, or rules; and Paragraph 15 provides for motions to the Court for "further or supplemental orders or directions" or to "modify, amend or amplify" the Judgment. There are also two procedural routes, discussed *infra*, that provide for Advisory

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[7]There has been some suggestion in the briefing and in closing remarks during the hearing that a five-member board consisting of two members from CBMWD, one from Three Valleys Municipal Water District, one from Western Municipal Water District, and one from some other entity such as DWR should be considered. (TR at 144:18-23.) This suggestion is incomplete and would require additional consideration by the parties which may further delay appointment of a new Watermaster.

Committee review and can lead to Court review: the Paragraph 38(b), 38(b)[2], 38(c) process; and the 38(b)[1], 38(c) process.

By analyzing the Judgment in terms of these categories of Watermaster action and avenues of review, it is possible to assess how appropriately to handle issues not explicitly covered by the Judgment, such as the special audit costs. In the case of the special audit, that action of the Watermaster to incur the expense is not an action to carry out the Physical Solution, does not fall within the explicit "discretionary" category, and is not covered by any provision explicitly requiring Advisory Committee recommendation or approval; therefore, it is within the "other action" category. As such, it is reviewable by the Court upon a Paragraph 31 motion, it does not fall within the purview of Paragraph 38(b), or the Subparagraph 38(b)[1] Advisory Committee mandate process, and does not require further order of the Court or any change in the Judgment such as the Paragraph 15 process would provide.

B. The Watermaster Has Duties and Powers to Administer and Enforce the Provisions of the Judgment and, Pursuant to the Judgment and Further Direction of the Court, to Administer and Implement the Physical Solution

The Watermaster is appointed "to administer and enforce the provisions of this Judgment and any subsequent instructions or orders of the Court hereafter." (Judgment at ¶ 16.) The Watermaster's powers and duties are defined explicitly and exclusively with relationship to the Court, not the Advisory or Pool Committees:

> 17. Powers and Duties. Subject to the continuing supervision and control of the Court, Watermaster shall have and may exercise the express powers, and shall perform the duties, as provided in this Judgment or hereafter ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction.

This special relationship between the Court and Watermaster is most fully described in the Physical Solution provisions of the Judgment and provisions related to carrying out the Physical Solution. The Court expressly:

- Adopted an order to parties "to comply with the Physical Solution." (Judgment at ¶ 39.)
- Appointed the Watermaster "to administer and enforce" the Judgment. (Judgment at ¶ 60.)

Under the Judgment, the Watermaster's duties and powers that are subject to the Court's continuing jurisdiction (Judgment at ¶ 17) are extensive:

- The Watermaster can seek Court review by motion requesting the Court under its continuing jurisdiction to ". . . make such further or supplemental orders or directions as may be necessary or appropriate for interpretation, enforcement or carrying out of this Judgment, and to modify, amend or amplify any of the provisions of this Judgment." (Judgment at ¶ 15.)

- Subject to that continuing supervision and control of the Court, ". . . Watermaster shall have and may exercise the express powers, and shall perform the duties, as provided in this Judgment or hereafter ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction." (Judgment at ¶ 17.)

- The Watermaster is to be assisted in performing its functions under the Judgment by pool Committees, representing the pools created under the Physical Solution, and the Advisory Committee. (Judgment at ¶ 32.)

- The purpose of the Physical Solution provisions ". . . is to establish a legal and practical means for making the maximum reasonable beneficial use of the waters of Chino Basin by providing the optimum economic, long-term, conjunctive utilization of surface waters, ground waters and supplemental water, to meet the requirements of water users having rights in or dependent upon Chino Basin." (Judgment at ¶ 39.) Maximizing the beneficial use of Chino Basin waters makes it "essential that this Physical Solution provide maximum flexibility and adaptability in order that Watermaster and the Court may be free to use existing and future technological, social, institutional and economic options . . ." (Judgment at ¶ 40.)

- Groundwater ". . . reservoir capacity utilization for storage and conjunctive use of supplemental water [must] be undertaken only under Watermaster control and regulation, in order to protect the integrity of both such Stored Water and Basin Water in storage and the Safe Yield of Chino Basin." (Judgment at ¶ 11.)[8]

- With Advisory and Pool Committee advice and assistance, the Watermaster is to establish the procedures and administer the withdrawal and supplemental water replenishment of basin water as required to accomplish "full utilization of the water

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[8]The Judgment enjoins storage or withdrawal of stored water "except pursuant to the terms of a written agreement with Watermaster and [that] is [in] accordance with Watermaster regulations." (Judgment ¶ 14.) The Court must first approve, by written order, the Watermaster's execution of "Ground Water Storage Agreements." (Judgment ¶ 28.) The Advisory Committee's role is limited to giving its approval before the Watermaster can adopt "uniformly applicable rules and a standard form of agreement for storage of supplemental water." (*Id.*) However, groundwater storage rules and the standard form of agreement must be "uniformly applicable", which intrinsically leaves to the Watermaster the decision to execute agreements and, ultimately, to the Court (and notably not the Advisory Committee) the authority to approve those agreements. The Judgment's injunction against unauthorized production (Judgment ¶ 13) and injunction against unauthorized storage or withdrawal of stored water (Judgment ¶ 14) are integral parts of the Judgment's Physical Solution, and the requirement for direct Court approval of Watermaster storage agreements is another manifestation of the Watermaster's and Court's special relationship.

resources of Chino Basin," which encompasses preservation of both the water quantity and quality of basin resources. (Judgment at ¶ 41.)

- Watermaster is required to undertake socioeconomic impact studies of the assessment formula (set forth in Exhibit H to the Judgment) and its possible modification for the appropriator pool no later than ten years from the "effective date of this Physical Solution." (Judgment at Exhibit H, ¶ 8.)[9]

Exhibit I to the Judgment, the "Engineering Appendix," sets forth the parameters the Watermaster "shall consider . . . in the process of implementing the physical solution for Chino Basin":

> 1. Basin Management Parameters. In the process of implementing the physical solution for Chino Basin, Watermaster shall consider the following parameters:
>
> (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.
>
> (b) Water Quality. Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster.
>
> (c) Economic Considerations. Financial feasibility, economic impact and the cost and optimum utilization 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 at Exh. I, ¶ 1.)

The Watermaster's special relationship to the Court in carrying out the Physical Solution also was discussed at the hearing. The parties during the hearing described the Watermaster as an "arm of the Court" and as such can take matters to the Court, funded by all the producers, to address anything that may alarm the Watermaster. (TR at 40:11-21.) This role is described as being separate from the ministerial or day-to-day activities of the Watermaster. (TR at 75:1-15.) This role is further described as one of a public advocate, to ensure independent review of what is occurring in the basin. (TR at 81:10-15.) When asked whether the role of the Watermaster was to be a "steward of a basin resource including water quality," the response was "yes", including that the Watermaster should

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[9]We do not have information on whether this Watermaster task has been accomplished, but the 15 percent/85 percent assessment formula appears not to have been changed. (TR at 29:22-25.)

ensure that there is not a waste or unreasonable use of basin water. (TR at 83-84.) Accordingly, the parties agree that the Watermaster is a steward of Chino Basin groundwater resources and this role may involve taking positions adverse to the Advisory Committee. (*See* TR at 110-111.)

C. Only One Watermaster Function Is Explicitly Identified as "Discretionary," to "Develop an Optimum Basin Management Program" for the Chino Basin

Although there is reference in Subparagraph 38(b)[2] to "any discretionary action" of Watermaster, there in fact is only one area in which the Watermaster is explicitly granted "discretionary powers" under the Judgment, and that is to develop an Optimum Basin Management Program. (Judgment at ¶ 41.)

The "any discretionary action" phrase in Subparagraph 38(b)[2] implies that there are Watermaster actions in addition to development of the Optimum Basin Management Program that are also "discretionary actions." The "any discretionary [Watermaster] action" phrase in Subparagraph 38(b)[2] appears to serve as a "catch-all" provision, intended to ensure that the Advisory Committee will have notice if the Watermaster ever proposes to take an action which has "slipped through the cracks" and is not otherwise expressly subject to Advisory Committee or Pool Committee review. Paragraph 40 raises the prospect of the Watermaster taking an action which could be described as "any discretionary action":

> 40. Need for Flexibility. It is essential that this Physical Solution provide maximum flexibility and adaptability in order that Watermaster and the Court may be free to use existing and future technological, social, institutional and economic options, in order to maximize beneficial use of the waters of Chino Basin. To that end, the Court's retained jurisdiction will be utilized, where appropriate, to supplement the discretion herein granted to the Watermaster.

The Court might "supplement the [Watermaster's] discretion" under Paragraph 40, and leave to the Watermaster the decision as to how to exercise that supplemental discretion. Any "discretionary action" the Watermaster might take in that context would be subject to the Paragraph 38(b)[2] process. Other than when the Court might supplement the Watermaster's discretion, every conceivable Watermaster action appears to have been anticipated in the Judgment and Advisory or Pool Committee participation provided for.

The overall process of developing an Optimum Basin Management Program is, essentially,

a collaborative process that involves the Watermaster, Advisory Committee, Pool Committees, and the Court. However, since the power to develop an Optimum Basin Management Program is granted to the Watermaster with only the advice of the Advisory and Pool Committees, the Watermaster's role can fairly be described as providing impetus for that collaborative process and carrying it through to completion.

D. Numerous Watermaster Functions Under the Judgment Explicitly Require Advisory Committee Approval or are Required to be Undertaken Upon Recommendation or Advice of the Advisory Committee, and Are Not Identified As "Discretionary"

1. Advisory Committee Recommendation or Advice

The Watermaster can take certain actions only upon the recommendation or advice of the Advisory Committee.

- The Watermaster shall make and adopt rules and regulations upon the recommendation of the Advisory Committee. (Judgment at ¶ 18.)
- Subject to prior recommendation or approval of the Advisory Committee, the Watermaster may act jointly or cooperatively with other agencies of the United States or the State of California to carry out the Physical Solution. (Judgment at ¶ 26.)
- The Watermaster may, with the concurrence of the Advisory Committee or the affected Pool Committee and in accordance with Paragraph 54(b), conduct studies related to implementation of the management program for the Chino Basin. (Judgment at ¶ 27.)
- Watermaster shall submit an administrative budget recommendation to the Advisory Committee, who shall review and submit its recommendations back to the Watermaster, and thence a hearing shall be held to adopt the administrative budget for the year. (Judgment at ¶ 30.)
- Watermaster is to implement Pool Committee policy recommendations for administration of the particular pools. (Judgment at ¶ 38(a).)
- Watermaster must act consistent with an Advisory Committee recommendation that has been approved by 80 or more votes, but has the right to bring the issue before the Court. (Judgment at ¶¶ 38(b)[1] and 38(c).)
- As to the Optimum Basin Management Program itself, the Advisory Committee can "act upon all discretionary [Watermaster] determinations," as well as "study," "recommend," and "review" them. (Judgment at ¶ 38(b).)
- Watermaster must give notice and conduct a meeting prior to executing an agreement not within the scope of an Advisory Committee recommendation. (Judgment at ¶ 38(b)[2].)
- The "respective pooling plans" direct how the Watermaster shall levy and collect

annual replenishment assessments (Judgment at ¶ 45) and production assessments. (Judgment at ¶ 51.)

- The Watermaster "may accomplish replenishment of overproduction from the Basin by any reasonable method," subject to Paragraph 19's direction that the Watermaster not acquire real property interests or "substantial capital assets," Paragraph 25's limitation on the Watermaster's authority to enter into contracts involving the Chino Basin Municipal Water District, and Paragraph 26's provision that the Watermaster's authority to act jointly or cooperate with other entities to "fully and economically" carry out the Physical Solution is "subject to prior recommendation or approval of the Advisory Committee." (Judgment at ¶ 50.)

- The parties agree that one of the Watermaster's duties is to carry out the direction of the Advisory Committee as provided in the Judgment. (TR at 109:24.)

2. Pool Committee Requirements

The Pool Committees also can require Watermaster implementation of their "actions and recommendations." (Judgment at ¶ 38(a).) For most purposes, these need not be considered separately from Advisory Committee recommendations and advice, since any disputed direction from a Pool to the Watermaster would be made through the Advisory Committee. However, the Pool Committees have extensive authority as to the allocation and approval of "special project expenses" incurred in administration of the Physical Solution.[10] Judgment Paragraph 54 provides in part:

> (b) Special Project Expense shall consist of special engineering 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.
>
> . . . 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 Pool Committee, or pursuant to written order of the Court.[11]

(Judgment at ¶ 54.) These provisions will be central in development of implementation and financing elements of the Optimum Basin Management Program.

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[10]The Watermaster is directed to allocate and assess "general Watermaster administrative expenses" to the respective pools "as based upon generally accepted cost accounting methods." (Judgment at ¶ 54.) This Watermaster function fits within the "other action" category.

[11]The Paragraph 54 "pursuant to written order of the Court" language implies that the Watermaster could, through the Paragraph 15 motion procedure, propose a special project expense be undertaken and obtain Court approval for allocation of the costs of the expense.

E. Many Other Watermaster Functions under the Judgment Do Not Require Advisory Committee Approval or Recommendation, and Are Not Identified as "Discretionary"

1. Watermaster Functions in the Normal Course of Business

The Judgment expressly sets forth particular functions of the Watermaster which delineate the day-to-day affairs of the Watermaster:

- Watermaster may acquire facilities and equipment other than any interest in real property or substantial capital assets. (Judgment at ¶ 19.)
- Watermaster may employ or retain administrative, engineering, geologic, accounting, legal or specialized personnel and consultants as deemed appropriate. (Judgment at ¶ 20.)
- Watermaster shall require the parties to install and maintain in good operating condition necessary measuring devices. (Judgment at ¶ 21.)
- Watermaster is to levy and collect all assessments as provided for in the pooling plans and Physical Solution. (Judgment at ¶ 22.)
- Watermaster may invest funds in investments which are authorized for public agencies. (Judgment at ¶ 23.)
- Watermaster may borrow money. (Judgment at ¶ 24.)
- Watermaster may enter into contracts (other than with CBMWD) without the prior recommendation and approval of the Advisory Committee and written order of the Court for the performance of any powers granted in the Judgment. (Judgment at ¶ 25.)
- Watermaster conducts the accounting for the stored water in Chino Basin. (Judgment at ¶ 29.)

In addition, Watermaster is specifically required to levy and collect assessments each year pursuant to the respective pooling plans in amounts sufficient to purchase replenishment water to replace production by any pool during the preceding year which exceeds that pool's allocated share of safe yield or operating safe yield. (Judgment at ¶ 45.) Watermaster shall also file an annual report containing details as to operation of each of the pools and a certified audit of all assessments and expenditures and a review of Watermaster's activities. (Judgment at ¶ 48.)

2. Watermaster Functions Related to Administering the Pool Committees

The Watermaster was directed to cause producer representatives to be organized to act as Pool Committees for each of the pools created under the Physical Solution. The Pool Committees' responsibility is to develop policy recommendations for administration of the particular pools, which

are transmitted to the Watermaster for action. Basically:

- The Watermaster administers the three "operating pools" to carry out the "fundamental premise of the Physical Solution . . . that all water users dependent upon Chino Basin will be allowed to pump sufficient waters from the basin to meet their requirements . . . , and each pool will provide funds to enable Watermaster to replace such overproduction." (Judgment at ¶ 42.)

- The Watermaster administers the three pools which are responsible for and must pay for the ". . . cost of replenishment water and other aspects of this Physical Solution." (Judgment at ¶ 43.)

- The Watermaster can levy and collect annual replenishment assessments (Judgment at ¶ 45) and production assessments (Judgment at ¶ 51).

3. Watermaster Functions Related to Administering the Physical Solution

Watermaster functions particularly related to administering the Physical Solution include:

- The Watermaster is directed to "seek to obtain the best available quality of supplemental water at the most reasonable cost for recharge in the Basin" (Judgment at ¶ 49) and to "accomplish replenishment of overproduction from the Basin by any reasonable method . . ." (Judgment at ¶ 50).

- The Watermaster has the power to "institute proceedings for levy and collection of a Facilities Equity Assessment" upon recommendation of the Pool Committee, and the Judgment suggests that: "To the extent that the use of less expensive alternative sources of supplemental water can be maximized by the inducement of a Facilities Equity Assessment . . . it is to the long-term benefit of the entire basin that such assessment be authorized and levied by Watermaster." (Judgment at Exh. H, ¶ 9(a).)

F. The Judgment Provides for Specific Notice and Review Processes

1. The Paragraphs 38(b), 38(b)[2], and 38(c) Process

Judgment Paragraphs 38(b), 38 (b)[2], and (c) provide:

> (b) Advisory Committee. The Advisory Committee shall have the duty to study, and the power to recommend, review and act upon all discretionary determinations made or to be made hereunder by Watermaster.
>
> > [2] Committee Review. In the event Watermaster proposes to take any discretionary action . . . notice of such intended action shall be served on the Advisory Committee and its members at least thirty (30) days before the Watermaster meeting at which such action is finally authorized.
>
> (c) Review of Watermaster Actions. Watermaster (as to mandated action), the Advisory Committee or any pool committee shall be entitled to employ counsel and expert assistance in the event Watermaster or such pool or Advisory Committee seeks court review of any Watermaster action or failure to act. . .

(Judgment at ¶¶ 38(b), (b)[2], and (c).) This Advisory Committee review process by its terms covers only "discretionary determinations made or to be made hereunder by Watermaster"; it does not

necessarily cover all other actions of the Watermaster that are not identified as "discretionary determinations." Subparagraph 38(b)[2] provides that "any discretionary action" (with two exceptions which are not relevant)[12] requires notice to the Advisory Committee; the Advisory Committee, upon receiving notice, would presumably directly seek Court review under Paragraph 31.

2. Subparagraphs 38(b)[1] and 38(c) Process

a. Application of 38(b)[1] Process

Judgment Subparagraphs 38(b)[1] and 38(c) provide:

> [1] Committee Initiative. When any recommendation or advice of the Advisory Committee is received by Watermaster, action consistent therewith may be taken by Watermaster; provided, that any recommendation approved by 80 votes or more of the Advisory Committee shall constitute a mandate for action by Watermaster consistent therewith. If Watermaster is unwilling or unable to act pursuant to recommendation or advice from Advisory Committee (other than such mandatory recommendations), Watermaster shall hold a public hearing, which shall be followed by written findings and decision. Thereafter, Watermaster may act in accordance with said decision, whether consistent with or contrary to said Advisory Committee recommendation. Such action shall be subject to review by the court, as in the case of all other Watermaster determinations.
>
> (c) Review of Watermaster Actions. Watermaster (as to mandated action), the Advisory Committee or any pool committee shall be entitled to employ counsel and expert assistance in the event Watermaster or such pool or Advisory Committee seeks court review of any Watermaster action or failure to act. . .

The Subparagraph 38(b)[1] Advisory Committee mandate procedure applies expressly to situations in which "any recommendation or advice of the Advisory Committee is received by Watermaster." In situations where the Advisory Committee has already given recommendations and advice, it can thus insist, or mandate, that its recommendations or advice be taken if it has 80 or more

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[12]Subparagraph 38(b)[2] requires Watermaster to give notice to the Advisory Committee of "any discretionary action, other than approval or disapproval of a Pool committee action or recommendation properly transmitted." (Judgment at ¶ 38(b)[2], emphasis added.) It must also notify the Advisory Committee under this subparagraph if it proposes to execute any agreement not theretofore within the scope of an Advisory Committee recommendation since the Watermaster generally can "cooperate" with other agencies only upon "prior recommendation or approval of the Advisory Committee." (Judgment at ¶ 26.) A Pool Committee action or recommendation that was "properly transmitted" would already have been noticed to the other two pools and would have had Advisory Committee review if "any objections" had been raised. (Judgment at ¶ 38(a).)

votes.[13]

b. The Ramifications of Paragraph 38(c)

The Judgment fully anticipates that the Watermaster and Advisory Committee will not agree at all times. (TR at 40:14 *et seq.*) Subparagraph 38(b)[1] makes it clear that the Watermaster may or may not decide to take action that is consistent with the recommendation or advice of the Advisory Committee. Except when an Advisory Committee recommendation is "mandatory" (i.e., is approved by 80 or more of 100 votes), a procedure is provided for the Watermaster to take independent action. (Judgment at ¶ 38(b)[1].) Even where the Advisory Committee recommendation is "mandatory", the Judgment anticipates that the Watermaster might still disagree. In such an event, the Watermaster can "employ counsel and expert assistance" (as a Watermaster expense) (Judgment ¶ 38(c)), and "as to any mandated action" may apply to the Court for review. (Judgment ¶ 31(b).)

When the Watermaster brings a motion to the Court to review a "mandated action", its legal and expert costs in seeking Court review are a "Watermaster expense to be allocated to the affected pool or pools." (Judgment at ¶ 38(c).) The Advisory and Pool Committees enjoy the same benefit when they seek Court review of "any Watermaster's action, decision or rule." (*Id.*) However, when any individual party exercises its right to seek Court review, it must shoulder its own legal and expert

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[13]Judge Turner, in his 1989 Order, stated:

> The Advisory Committee takes actions on all matters considered by the various pools and submits its recommendations to the Watermaster. The Advisory Committee is the policy making group for the basin. Any action approved by 80% or more of the Advisory Committee constitutes a mandate for action by the Watermaster consistent therewith.

(Statement of Decision and Order Re Motion for Review of Watermaster Actions and Decisions Filed by Cities of Chino and Norco and San Bernardino County Waterworks District No. 8 [hereinafter "Judge Turner Order"] at 3:4-9.) This statement was made in Judge Turner's introductory remarks to his Order and thus is properly characterized as dicta. As discussed herein, the Advisory Committee, Pool Committee, and Watermaster roles in terms of policy decision is perhaps best described as collaborative. There is no question the Advisory Committee is implicitly intended to propose policy, but it does not have an exclusive role in that regard. Further, it is clear that the mandate by 80% or more votes of the Advisory Committee can be appealed to the Court by the Watermaster, and applies only where the Watermaster action is to be subject to recommendations or advice of the Advisory Committee.

costs. This is viewed by several parties to be a significant factor that should be weighed in considering the independence of the Watermaster. (TR at 41:9-23, 43:15-20, 75:10-16, 76:5 to 77, and 100:11-18.) They argue that the Watermaster can bring before the Court issues which may not be raised by a party (for financial or other reasons). (*Id.*)

Of course, the Watermaster must first agree to speak for the party by bringing a motion to the court consistent with the party's interests for this function to have value. As discussed *supra*, the Watermaster apparently has not historically played this role. Further, the Watermaster can only bring a motion on "mandated" actions (unless the Watermaster seeks review of the Judgment by way of Paragraph 15), hence a party would still have to bring its own motion on other, non-mandated Watermaster actions, unless a Pool Committee or Advisory Committee brought the matter to the Court's attention.

3. Court Review Under Paragraph 31

Paragraph 31 provides for review of all Watermaster actions, decisions or rules:

> 31. Review Procedures. All actions, decisions or rules of Watermaster shall be subject to review by the court on its own motion or on timely motion by any party, the Watermaster (in the case of a mandated action), the Advisory Committee, or any pool committee as follows:
>
> > (b) Noticed Motion. Any party, the Watermaster (as to any mandated action), the Advisory Committee or any pool committee may, by a regularly noticed motion, apply to the court for review of any Watermaster's action, decision or rule . . .

(Judgment at ¶¶ 31 and 31(b).) The Paragraph 31 review is not limited to whether a Watermaster action is "discretionary" or whether such action was the subject of Watermaster recommendations or advice; Paragraph 31 review could therefore be pursued whether or not a Paragraph 38(b)[1] Advisory Committee mandate were involved.

The Paragraph 31 review procedure would apply to "other actions" of Watermaster, such as the special audit. The costs of the special audit were properly reviewable under the Section 31 procedure, although not subject to the Paragraph 38(b)[1] Advisory Committee mandate or the Paragraph 38(b) study, recommendation, review and action process for "discretionary" determinations.

4. Court Review Under Paragraph 15

An independent review process is provided by the Judgment. Paragraph 15 of the Judgment provides for continuing jurisdiction, such that full jurisdiction, power and authority are retained and reserved to the Court as to all matters except: (1) the redetermination of safe yield during the first ten years of operation of the Physical Solution, (2) the allocation of safe yield as set forth in Paragraph 44, (3) the determination of specific quantitative rights and shares of the declared safe yield or operating safe yield, and (4) the amendment or modification of Paragraphs 7(a) and (b) of Exhibit H during the first ten years of operation of the Physical Solution. As indicated in Paragraph 15:

> Continuing jurisdiction is provided for the purpose of enabling the Court, upon application of any party, the Watermaster, the Advisory Committee or any Pool Committee, by motion and, upon at least 30 days' notice thereof, and after hearing thereon, to make such further or supplemental orders or directions as may be necessary or appropriate for interpretation, enforcement or carrying out of this Judgment, and to modify, amend or amplify any of the provisions of this Judgment.

(Judgment at ¶ 15.)

This review provision does not limit any party, the Watermaster, the Advisory Committee or a Pool Committee in seeking review of any action or failure to act. This provision allows the Watermaster, any party, a Pool Committee or the Advisory Committee to bring to the attention of the Court any contention it may have with regard to the Physical Solution or the Judgment itself as well as day-to-day affairs conducted by the Watermaster. In addition, it grants the Watermaster the right to bring to the attention of the Court any activity of the Pool Committee or Advisory Committee which it deems inappropriate.

IV. STATUS OF THE "OPTIMUM BASIN MANAGEMENT PROGRAM"

A. The Court Recommended in 1989 That Within Two Years of that Date the Watermaster Prepare an Integrated Optimum Basin Management Program Document

The Watermaster is granted discretionary power to develop an Optimum Basin Management Program which includes both water quantity and quality considerations (Judgment at ¶ 41), indicating that the Judgment contemplated the resolution of the continuing water quality problems in the Chino Basin. In 1989, three members of both the Appropriative Pool and the Advisory Committee brought a "Motion for Review of Watermaster Actions and Decisions," pointing out ". . . a great many areas in which they considered the activities of the Watermaster less than perfect." (Judge Turner Order

at 4.) Judge Turner "recommended" that the Watermaster produce the Optimum Basin Management Program within two years. (Judge Turner Order at 10; *see also* TR at 130:16-20.) Judge Turner's 1989 Order states:

> The Moving Parties contend that the Watermaster has failed to develop an adequate Optimum Basin Management Plan (OBMP). The Watermaster, on the other hand, says that it has an excellent working OBMP although it has not been reduced to a single document. . . As indicated above, there are studies under way trying to at least define the problem and work out possible solutions. The Court finds no defect in the OBMP, although the Court does recommend that within two years the OBMP be reduced to a single integrated document approved by the Advisory Committee.

(Judge Turner Order at pp. 8-10.)

Judge Turner recognized the pervasive water quality problems with regard to nitrate buildup from dairy farms and agricultural activities. (Judge Turner Order at 9.) Judge Turner also noted that the fundamental idea behind the Judgment was to guarantee sufficient water for all legitimate users and that the water be of good quality. (Judge Turner Order at 4.) Judge Turner relied on the Santa Ana River nitrate management study to provide assistance in evaluating the nitrate problem (Judge Turner Order at 5) and recognized there was no easy solution. (Judge Turner Order at 9.) Although Judge Turner ordered that the Optimum Basin Management Program be placed into one document and contemplated that the ongoing efforts regarding the nitrate problems would at least partially resolve the water quality issues raised, this has not been the case.

The parties have presented sufficient evidence to indicate that the water quality in the Chino Basin has dramatically worsened over the last ten years. The Chino Basin has been identified as the single area with the most critical water quality problem in the Santa Ana River watershed. (MVWD Brief 1, Decl. of J. Grindstaff ¶ 9.) According to the 1990 nitrogen-TDS study, by the year 2000, contamination was expected to have spread over much of the basin. However, the Advisory Committee has been informed that the contamination is worse than projected, and the basin has already achieved the level of contamination projected for the year 2000. (*Id.* at ¶ 16.)

All parties seem to agree that water quality is a central matter of dispute. (TR at 82.) The parties acknowledge that for completion of the Optimum Basin Management Program it is important to look at what has been done and what problems remain (TR at 118:9-15). There are some basic critical issues that need to be resolved in terms of basin cleanup, issues which are related to the

transition of land use from agriculture to urban uses (TR at 31:19-23), and issues related to how contamination of the lower end of the basin is impacting producers (TR at 32:1-4). There seems to be no disagreement that the key issue is how to clean up the lower part of the basin, and how to allocate the multi-million dollar cost of that cleanup. (TR at 33:7-11, 34:23 to 35:3 and 35:11-22.) As Mr. Koopman, representing the overlying (agricultural) pool noted: "Our water is going bad faster than anybody ever imagined." (TR at 146:2-3.)

B. No Optimum Basin Management Program Has Been Developed, Although Extensive Planning Studies Have Been Undertaken and Efforts Have Been Made to Address Implementation Issues

1. The "Task Force Plan" Is Not the Optimum Basin Management Program

One of the questions addressed at the hearing was whether there is an "optimum basin management program" in existence at this time. Various parties addressed that question and the answer was that there is not a single document that is the "Optimum Basin Management Plan." (TR at 1:18 to 26:18.) The "Chino Basin Water Resources Management Task Force, Chino Basin Water Resources Management Study Final Summary Report (September 1995)" ("Task Force Plan" or "Plan") was identified as a document that had been prepared as an initial step in the development of a management plan for the Chino Basin. (TR at 21:10 to 22:21.)

The Task Force Plan is the "culmination of a planning effort" by the Santa Ana Watershed Project Authority (SAWPA), CBMWD, Western Municipal Water District (WMWD), Metropolitan Water District of Southern California (Metropolitan) and the Chino Basin Watermaster. (Plan at 1-1.) The impetus for developing the Plan is identified as the Chino Basin Judgment, paragraph 41, and Judge Turner's Order. (Plan at pp. 1-2.) SAWPA initiated the effort in 1988, and a "Chino Basin Groundwater Management Task Force" ("Task Force") was created January 1, 1990, by "Project Agreement No. 13" between CBMWD and WMWD "as member agencies of SAWPA." Its purpose was "to formulate an operational plan for managing the overall water resources of the Chino Basin." (*Id.*) Apparently, "Project Agreement No. 13" created a 25-member Task Force made up of 21 representatives of the Advisory Committee and one representative each from SAWPA, Metropolitan, CBMWD and WMWD, and an engineering committee of 9 members, 5 of whom were representatives

of the Advisory Committee. (Plan at 1-3 to 1-4.) It is not clear to what extent or whether CBMWD participated in the development of the Plan in its role as Watermaster, rather than in its role as a member of SAWPA.

It is clear, however, that the Task Force Plan does not itself constitute the "optimum basin management program" that the Watermaster is directed to develop by Judgment Paragraph 41. The Task Force Plan and even its transmittal letter, make it clear that the effort it reflects does not constitute the "optimum basin management program":

> The recommended plan thus provides the Task Force with the initial direction it will need to move forward with the additional planning studies required to formulate and adopt a final overall basin management plan for the Chino Basin.

(Letter dated September 22, 1995 from Dennis Smith, Montgomery Watson, to Mr. Mark Norton, SAWPA Project Manager.) The Task Force Plan's final recommendations reflect the fact that the Plan is not the "optimum basin management program":

> Because there are many overlapping issues, and sometimes conflicting objectives between the programs, it is recommended there be some continuing method of coordinating the various programs to ensure consistency with the direction for the preferred [plan] . . . developed under this study. This can be accomplished through the preparation of an Implementation Plan, developed under the direction of and/or with input from a task force or committee representing similar interests as the Chino Basin Water Resources Management Study Task Force. It is desirable that such an effort proceed relatively soon to help guide implementation of the various elements that are already under active planning.

(Plan at 6-11.)

The Task Force viewed the Watermaster's role as limited:

> Some actions such as revising storage rules and regulations and expanding replenishment facilities and operations can be accomplished principally through the Watermaster. However, implementation of many of the other elements can most effectively be achieved only through a combination of voluntary cooperation and new agreements and/or institutional and financial arrangements. . . significant development work has been ongoing for a number of years (e.g. the current Chino Desalter Program; Chino Basin MWD's development work together with the local agencies toward a water reclamation program; and all of Metropolitan's efforts toward a Conjunctive Storage Program). Each of these efforts is expected to continue, and involve some of the same agencies as well as the Watermaster in different combinations.

(*Id.*)

There is a sense of urgency that pervades the Task Force Plan. Although not all agreed that a "tragedy of the commons" scenario is facing the Chino Basin, the Task Force Plan's forecast

certainly suggests exactly that prognosis:

> . . . if projects are left to be implemented only by individual water agencies as needed to meet water supply requirements, and the full burden of costs are born by the individual purveyor, implementation will likely be postponed as long as possible, and/or other options developed where possible. An obvious example would be for a water purveyor to seek new well locations further north in the basin, and/or deepen existing wells. Such near term solutions are understandable and justified from a local agency perspective, but can have adverse long term implications to overall basin management. Moving production further north will tend to have an adverse impact on basin yield, while deepening pumping wells tends to accelerate downward migration of constituents. In either case, the beneficial impact of removing and exporting greater quantities of salt and nitrate are not realized, and long term water trends would be more adverse than projected under this study. Therefore to facilitate development of the projects included in the plans, implementation strategies should consider various institutional, legal and financial incentives, as has been done with the Chino Desalter program. . . .

(Plan at 6-5.)

The issues, according to the Task Force Plan, encompass both water quality and water quantity. The water quantity problem is discussed in considerable detail, and is characterized as "an unacceptable condition":

> The projected long-term declines in storage and water levels is clearly an unacceptable condition, in addition to the fact that the physical solution to maintaining water levels within the Chino Basin under the judgment is not being met.

(Plan at 3-8.) The projected calculated decline in storage for the 1990 to 2040 period is 1.645 million acre feet with maximum water level declines of 140 feet in the southeastern part of the basin. Modeled declines are 1.2 million acre feet. (Plan at 3-5.) The Task Force Plan calls into question the adequacies of current basin replenishment efforts. (Plan at 3-9; Judgment, ¶¶ 42, 45.) As to the future: "All four alternative plans would result in a long-term decline in storage in the basin. . . . Thus the basin would be underreplenished. . . ." (Plan at 6-1.)

No complete resolution of water quality problems is suggested. Instead, the Task Force Plan notes:

> The Chino Basin has experienced on-going water quality degradation for many years. This degradation is demonstrated by increasing salinity and nitrate concentrations in pumped groundwater. This trend is expected to continue in the future.

(Plan at ES-3.)

The water quality problem is daunting:

It is also apparent from reviewing the water quality projections that a major

> commitment to extraction and treatment of degraded groundwater is needed under all four plans just to maintain the overall basin quality near current levels due to the long-term continuing negative (net increase) salt and nitrogen balance resulting primarily from past and continuing agricultural land use practices.

(Plan at 6-5.)

2. The Next Phase of the Task Force Plan Work, to Develop an Implementation Plan, Has Not Been Pursued

The Task Force Plan identifies a "Phase III" in which a ". . . a Final Management Plan will be selected for implementation." (Plan at 1-3.) The anticipated task to develop that final plan included developing "operating plan details," a "financial plan," as well as an "Implementation Plan." *(Id.)* The Plan states: "Phase III will be undertaken after the Task Force has reached agreement on the best management approach for the Chino Basin." *(Id.)* According to one hearing participant, Mr. Grindstaff of Monte Vista Water District:

> It [Task Force Plan] was adopted, but it had alternatives in it, and the next stage was to actually develop a plan that we would follow. And the advisory committee voted against funding the development of an Implementation Plan.

(TR at 23:8-12.) Mr. Ed James, who was chief of Watermaster services at the time of the Task Force Plan, concurred:

> . . . the study was to comply with Judge Turner's request, and it looked at the ideas and we looked at water quality and various management schemes. . . . The problem is, the program ended in 1994, and since then we have not implemented the next phase. And that's kind of where we are at this point.

(TR at 23:19 to 24:4.)

3. Implementation Actions Have Been Identified

The Task Force Plan suggested that an Implementation Plan would include both water supply and water quality elements. "Preferred plan" elements included:

- At least 5% water conservation.
- Retaining production in the southern half of the basin and/or increasing production to the maximum extent possible as agricultural pool production is reduced.
- Limit continued accumulation of local storage accounts by underproducers in order to decrease their replenishment obligation and the accumulation of storage and possibly cap local storage accounts, and provide incentives to reduce excess storage accounts that exist now.

- Expand spreading capabilities in order to meet future replenishment obligations.
- Expand reclaimed water use.
- Increase production of high nitrate and high TDS groundwater with treatment and removal facilities (desalters).
- Consider a conjunctive storage program agreement with Metropolitan up to an additional 300,000 acre feet in the basin.

(Plan at pp. 6-6 to 6-9.)

The Judgment includes guidance as to what should be included in an Optimum Basin Management Program. The purpose and objective of the Physical Solution is to:

> . . . establish a legal and practical means for making the maximum reasonable beneficial use of the waters of Chino Basin by providing the optimum economic, long-term conjunctive utilization of surface waters, ground waters and supplemental water. . . .

(Judgment, ¶ 39.) With the flexibility to ". . . be free to use existing and future technological, social, institutional and economic options. . ." (Judgment ¶ 40), the Watermaster is directed to consider certain "basin management parameters" in implementing the Physical Solution; these "basin management parameters" are set forth in Judgment Exhibit I, the "Engineering Appendix." Those parameters include:

- Pumping patterns should be such 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 I, ¶ 1(a).)
- "Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster." (Judgment Exhibit I, ¶ 1(b).)
- "Financial feasibility, economic impact and the cost and optimum utilization 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 I, ¶ 1(c).)

This is not a comprehensive list. An initial task for the new Watermaster logically would be to develop a scope of the contents of the Optimum Basin Management Program.[14]

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[14]Judgment Exhibit H, Paragraph 8, directs the Watermaster to undertake socioeconomic impact studies by no later than ten years from the date of the Judgment. This work has apparently (continued...)

4. The Parties Stated at the Hearing That They Could Agree to a Scope of an Optimum Basin Management Program

The parties at the hearing indicated (haltingly) that they could at least agree on what needs to be included in the Optimum Basin Management Program. (TR at 30:3 to 31:12.) There was also extended discussion of the varying views of the basin management planning process status, as well as the dynamic nature of the planning process itself. Mr. Teal for the City of Ontario expressed the concern that:

> . . . one of the impressions here that's been left is that somehow the basin management process is in chaos, when in fact there is some very critical issues that need to be resolved in terms of basin cleanup and the transition from agricultural to urban. And so in fact the basin hasn't really been in chaos. We consider the basin management planning process to be a dynamic process, to be an ongoing process, as we develop a better model of the basin to better identify what are the losses, how is the contamination of the lower end of the basin, how is that impacting the producers. There is very critical economic issues here that need to be recognized.

(TR at 31:17 to 32:5.) In Mr. Teal's view, the Task Force Plan:

> . . . was to start the process of that basin management planning so that we could identify what the problem is and we feel we've identified the contamination problem. We have a working model now. We know generally that, yes, there are losses to the basin, and we need to correct that through storage limits. And. . . we think we have a plan now for storage limits. We need to now develop a plan of how we are going to clean up the lower part of the basin, which is going to cost multiple millions of dollars.

(TR at 33:2-11; *see also* TR 127:11 to 133:6.)

5. The Parties Indicated at the Hearing That They Would Not Oppose Independent Legal and Technical Oversight on Behalf of the Court of the Watermaster's Efforts to Scope and Produce the Optimum Basin Management Program

In response to the suggestion that the Court require a process to assure that the necessary planning is indeed occurring and that the Optimum Basin Management Program will be produced within a reasonable amount of time, no matter who the Watermaster may be, Mr. Markman, representing the moving parties, stated:

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[14](...continued)
not been done (TR at 29:20-25) and should be considered in the scoping process.

> I think if the referee wants to recommend to the court that as part of your package someone with a fresh look comes in and looks at the process — — where it is and what it needs to accomplish and how it can move — — as a report to the court, I don't think we would resist that. We're not hiding the ball. And that might be helpful to the new Watermaster board as well.

(TR at 28:21 to 29:3.) Mr. Kidman, representing the opposing parties, agreed: "A plan and a time frame both ought to be mandated." (TR at 29:5-6.)

V. IN THE EXERCISE OF ITS CONTINUING JURISDICTION, THE COURT CAN ORDER THE WATERMASTER TO EXERCISE ITS POWER TO PREPARE A COMPLETE OPTIMUM BASIN MANAGEMENT PROGRAM AND TO PERFORM THAT DUTY PURSUANT TO A PROCESS AND IN ACCORDANCE WITH A SCHEDULE SET BY THE COURT

The Court retained and reserved continuing jurisdiction ". . . for the purpose of enabling the Court, upon application of any party, the Watermaster, the Advisory Committee or any Pool Committee . . . to make such further or supplemental orders or directions as may be necessary or appropriate . . ." to interpret, enforce or carry out the Judgment or to modify, amend or amplify the Judgment provisions. (Judgment at ¶ 15.) The Court is authorized to exercise its retained jurisdiction ". . . where appropriate, to supplement the discretion herein granted to the Watermaster." (Judgment at ¶ 40.) Further, the Court can act on its own motion to review "all actions, decisions or rules of Watermaster." (Judgment at ¶ 31.) Paragraph 17 further describes the Watermaster's powers and duties as subject to the Court's continuing supervision and control, and directs that the Watermaster shall have the powers and duties ". . . as provided in this Judgment or hereafter ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction." (Judgment at ¶ 17.) If the Watermaster does <u>not</u> act, presumably the Court has the authority under Paragraphs 17, 31 and 40 to issue necessary supplemental orders directing the Watermaster to carry out the Physical Solution under the Judgment. Basically, at the time the Court appoints a new Watermaster, the Court's authority to "make such further or supplemental orders or directions as may be necessary or appropriate for interpretation . . . or carrying out of this Judgment . . ." and to ". . . supplement the discretion herein granted to the Watermaster . . ." encompasses clarification of the Watermaster's roles and explicit direction to the Watermaster to prepare the Optimum Basin Management Program within a limited period of time.

The Court's Order in this instance, however, would not remove such Watermaster activities

from the Advisory Committee's review. The recommended Court orders as set forth *infra*, are logically characterized as within the "discretionary powers to develop an Optimum Basin Management Program" (Judgment at ¶ 41), or as a "supplement to the discretion herein granted" (Judgement at ¶ 40). If further Order of this Court were to direct that the Watermaster should prepare the Optimum Basin Management Program without being subject to Advisory Committee review and action, the issue of modification of the Judgment would be raised. Changing the relationship of the Advisory Committee and the Watermaster with respect to the Watermaster's development of the Optimum Basin Management Program under its discretionary powers, and the Advisory Committee's power to review and act upon all discretionary determinations made by the Watermaster, would constitute a Judgment modification. As discussed *supra*, there is no motion before the Court to make such a modification, and the Court cannot modify the Judgment on its own motion. However, the recommended Order of the Court in the matter at bar does not envision a change in the structural relationship between the Watermaster and Advisory Committee, but rather a clarification of the roles of the Watermaster, and explicit direction to the Watermaster to prepare the Optimum Basin Management Program within a limited period of time.

VI. RECOMMENDATION FOR INTERIM APPOINTMENT

A. The Special Referee Recommends that the Court Appoint the Nine-Member Board as Watermaster, for an Interim Period of 24 Months, Commencing January 1, 1998

The principal motion before the Court is to appoint the nine-member board as Watermaster. Opposing parties fear that the nine-member board will be controlled by the Advisory Committee; this may occur, but this predilection is not sufficient basis for concluding that there is a compelling reason not to appoint the nine-member board as Watermaster at this time. The events leading up to the motion and the stalemate that has ensued speak loudly, however, to the need for additional Court guidance and oversight of the Watermaster and its Optimum Basin Management Program and process.

The court has retained jurisdiction to supplement the discretion granted to the Watermaster under the Judgment, and it is the recommendation of the Special Referee that the Court exercise its retained jurisdiction to issue the orders recommended herein. The important independent functions

of the Watermaster envisioned in the Judgment do not appear effectively to have been carried out by the existing Watermaster and may not be effectively carried out by the nine-member board.

However, it is crucial to break the current deadlock; continuing at loggerheads will not address the problems that have arisen since the Advisory Committee essentially usurped the role of the Watermaster as to day-to-day activities, nor will it further preparation of the Optimum Basin Management Program. The fact that the Watermaster has not prepared the Optimum Basin Management Program reflects systemic failure of the Judgment and its Physical Solution, and that failure must weigh heavily in the decision to appoint a new Watermaster.

It is the Special Referee's recommendation that the Court appoint the nine-member board as Watermaster, but only for an interim, two-year period. Further, the nine-member board should be required to prepare the Optimum Basin Management Program before the end of the interim period. The proposed requirements and schedule are intended to provide the Court with a means to gauge the success of the new Watermaster. If the nine-member board functions successfully, it will have provided the Court with an Optimum Basin Management Program before the end of the two-year period.

B. The Special Referee Recommends that the Court Set Aside its Order Appointing DWR as Interim Watermaster, but Direct the Nine-Member Board to Provide a Report to the Court by June 1, 1998, on All Aspects of Appointment of DWR to Serve as Watermaster, Should it Become Necessary to Replace the Nine-Member Board with DWR after the Interim 24-Month Period

If the Court agrees with the recommendation to appoint the nine-member board, the current interim appointment of DWR should be set aside. The Court's Order appointing DWR as interim Watermaster required that the Advisory Committee and Chino Basin Municipal Water District first enter into an agreement with DWR. (Order of Special Reference at p. 9.) That has not been accomplished. (TR at 14:8 to 18:25.)

Mr. Kidman, representing parties who oppose the motion to appoint the nine-member board, professed to speak for the "whole basin" against appointment of DWR:

> . . . I don't think that there's anybody in the whole basin that's very interested in seeing a loss of local control or at least some measure of maintaining local control. And having a state receiver, in effect, appointed is not something that any of us are really looking forward to.

(TR at 19:7-12.) Notwithstanding that sentiment, DWR already serves as watermaster for several groundwater basins. Its appointment offers a neutral, proven option to carry out Watermaster functions in the Chino Basin. Because of the uncertainty as to whether the nine-member board will successfully fulfill the Watermaster's duties under the Judgment and exercise its powers for the benefit of the entire Chino Basin, it is prudent to have identified an available and competent replacement which could immediately be appointed, if necessary, in two years. Although a "private entity" Watermaster is not prohibited by any provision of the Judgment, identifying an acceptable private entity is problematic.

Further, the Judgment provides that the Court may change the Watermaster on its own motion or on the motion of any party, but, absent compelling reasons to the contrary, the Court must "act in conformance with" a motion to appoint a new Watermaster that is supported by only a "majority of the voting power of the Advisory Committee." (Judgment at ¶ 16.) If the nine-member board appointment is determined by the Court after the two years not to have been successful, the Court could on its own motion immediately appoint DWR as Watermaster. If a majority of the voting power of the Advisory Committee were to then propose an alternative appointment, it would be up to the Court to decide if continuing disruption caused by experimenting with another Advisory Committee-proposed Watermaster would constitute "compelling reason" not to act in conformity with any such further Advisory Committee proposal.

VII. RECOMMENDATION FOR COURT OVERSIGHT AND SCHEDULE

The Special Referee Recommends:

1. **That the Court order that the parties submit recommendations to the Watermaster as to the scope and level of detail of the Optimum Basin Management Program by March 1, 1998, and that the Watermaster file a written recommendation with the Court by April 1, 1998;**

2. **That the Court direct the Special Referee to review the Watermaster's Optimum Basin Management Program scoping recommendations for technical and legal sufficiency, that the Special Referee use an independent technical expert as necessary, and that the Special Referee provide timely written assessments to the Court on the Watermaster's progress;**

3. **That the Court order that the Watermaster exercise its discretionary powers to develop the Optimum Basin Management Program which encompasses the Implementation Plan elements recommended by the Task Force and submit the Optimum Basin Management Program to the Court by no later than July 1,**

1999, or show cause as to why it cannot do so; and

4. That the Court hold a hearing to consider whether to approve and order full implementation of the Optimum Basin Management Program or consider why the Optimum Basin Management Program has not been completed and filed with the Court, and that a status report shall be provided to the Court by all parties as to the continuance of the nine-member board as Watermaster.

The Advisory Committee is not envisioned by the Judgment as the "lead" in developing the Optimum Basin Management Program, but rather as an active participant with important oversight roles. The Special Referee recommendation is intended to compel the Watermaster to newly assert itself to provide the impetus needed to develop the Optimum Basin Management Program and to take the lead role as the Judgment intended. The Watermaster has not, to date, carried out that role. The Advisory Committee has, in effect, usurped that role through the Task Force Plan process.[15] From a practical standpoint, the Judgment can perhaps best be interpreted as anticipating that development of the Optimum Basin Management Program will largely be a collaborative process. Of course, the

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[15]The Advisory Committee position implicitly is that it should prepare the Optimum Basin Management Program or the essentially equivalent Implementation Plan. The Task Force Plan recommended that:

> . . . there be some continuing method of coordinating the various programs to ensure consistency with the direction for the Preferred Water Resources Management developed under this study. This can be accomplished through the preparation of an Implementation Plan. . .

(Plan at pp. 6-11.) The Task Force further suggests that an Implementation Plan can be ". . . developed under the direction of and/or with input from a task force or committee representing similar interests as a Task Force." (*Id.*) Given the makeup of the Task Force, this is tantamount to suggesting that the Advisory Committee develop the Implementation Plan. The question of whether the Watermaster should even be the entity to develop the Optimum Basin Management Program was raised in the course of the hearing. Mr. Markman suggested that "an independent watermaster" might perform certain review functions:

> It [the Watermaster] is a cog in the process that ultimately brings these issues to the Court. We think it is useful to have a watermaster review the optimum basin management plan. And if it agrees with the minority that opposes that plan, it has two ways of bringing the matter up to the Court, depending on what the vote was, and paying for legal counsel to support that position.

(TR at 43:11-19.)

Court ultimately resolves all issues regarding the Optimum Basin Management Program and implementation of the Physical Solution generally. (Judgment at ¶ 15.)

As discussed herein, the provisions related to the Physical Solution define the most important aspect of the Watermaster's special relationship with the Court. Developing the Optimum Basin Management Program to guide implementation of the Physical Solution is, in turn, the most important Watermaster task in carrying out the Physical Solution for the long term.

The purpose of the recommended Court oversight and schedule is to provide the Court with a means to gauge the nine-member board's efforts to develop the Optimum Basin Management Program. The particular elements of the program are discussed *supra*, and include both water quantity and water quality actions. Although at the time the Judgment was entered, the full extent of the quantity and quality challenges may not have been fully appreciated, the concept was clearly set forth in the Judgment that the Watermaster would develop an Optimum Basin Management Program that would include both water quantity and quality considerations: "Both the quantity and quality of said water resources may thereby be preserved and the beneficial utilization of the Basin maximized." (Judgment at ¶ 41.) As the Judgment intended and the Task Force Plan confirmed, the full range of problems to be addressed includes every aspect of groundwater basin management, including all implementation and financing decisions.

VIII. RECOMMENDATION FOR PAYMENT OF COSTS OF SPECIAL AUDIT

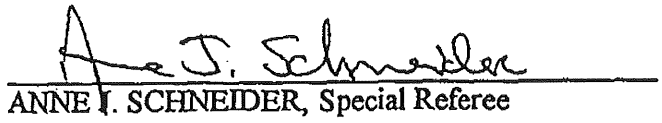
The Special Referee recommends that the Court find that the special audit is a Watermaster expense. The audit conducted by CBMWD, acting as the Watermaster, is not explicitly defined in the Judgment as a discretionary act, nor is it an action that is explicitly recognized as subject to Advisory Committee recommendation or approval. The record reflects that the special audit was conducted in response to substantial increases in annual budget expenditures, allegations of fraud or theft, and CBMWD recognition that it had lost all control over the Watermaster services staff. It also appears that the special audit was conducted to gain some understanding of what activities were then occurring at the Watermaster staff level. The recommendation of the Special Referee is that the Court find that the special audit was made in the general course of business and was a proper Watermaster expense.

IX. CONCLUSION

The Special Referee strongly urges that the Watermaster and Advisory Committee were intended to serve separate functions and that they should not be allowed to merge. The intention of the recommendations is to prevent this merger, fully recognizing the risks inherent in the nine-member board appointment. Continued Court review and supervision is imperative.

DATED: December 12, 1997

Respectfully submitted,



ANNE J. SCHNEIDER, Special Referee

PROOF OF SERVICE

I declare that:

I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within action. My business address is ELLISON & SCHNEIDER; 2015 H Street; Sacramento, California 95814-3109; telephone (916) 447-2166.

On December 12, 1997 I served the attached:

REPORT AND RECOMMENDATION OF SPECIAL REFEREE TO COURT REGARDING : (1) MOTION FOR ORDER THAT AUDIT COMMISSIONED BY WATERMASTER IS NOT A WATERMASTER EXPENSE, AND (2) MOTION TO APPOINT A NINE-MEMBER WATERMASTER BOARD

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

See attached service list and:

Honorable J. Michael Gunn via facsimile

I declare under penalty of perjury that the foregoing is true and correct. and that this declaration was executed at Sacramento, California, on December 12, 1997

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CHINO BASIN WATERMASTER
Case No. RCVRS 51010
Chino Basin Municipal Water District v. City of Chino, et al.

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 May 14, 2021 I served the following:

1. AGRICULTURAL POOL'S BRIEFING REGARDING 1998 RULING AND SEPARATION OF POWERS

2. [PROPOSED] ORDER DENYING THE MOTION OF APPROPRIATIVE POOL MEMBER AGENCIES RE: AGRICULTURAL POOL LEGAL AND OTHER EXPENSES FILED CONCURRENTLY HEREWITH

/ X / 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.

/ X / 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 May 14, 2021 in Rancho Cucamonga, California.

Janine Wilson

By: Janine Wilson
Chino Basin Watermaster

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