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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT H

HON. J. MICHAEL GUNN, JUDGE

CHINO BASIN MUNICIPAL
WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO,

Defendant.

Case No. RCV-51010

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

re: Motion to Continue Hearing Date
Motion to Disqualify Counsel
Motion to Appoint Nine-Member Panel

Tuesday, June 18, 1996

APPEARANCES:

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& CLOUSE

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Pro Tempore Reporter, C-10294

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1 RANCHO CUCAMONGA, CALIFORNIA; TUESDAY, JUNE 18, 1996;

2 A.M. SESSION

3 DEPARTMENT H

HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5
6 (Appearances as noted on the appearance pages.)

7
8 (Heather R. Paris, C.S.R., Pro Tempore Reporter,
9 C-10294)

10 THE COURT: Chino Basin Municipal Water District
11 versus the City of Chino. All right. Very slowly and
12 carefully as soon as we find out -- if we have not
13 received your business card, please give it to the
14 Bailiff. Hold it up in the air and the Bailiff will come
15 up and get it. Now, all of you have not checked in with
16 the Clerk. Whoever has not checked in with the Clerk, why
17 don't you go ahead.

18 (Brief pause.)

19 THE COURT: All right. Let's start with
20 Mr. Cihigoyenetcche and we will work our way around and get
21 your names.

22 MR. CIHIGOYENETCHE: Morning, Jean
23 Cihigoyenetcche on behalf of Chino Basin Municipal Water
24 District.

25 MR. GUTIERREZ: Jimmy Gutierrez on behalf of the
26 City of Chino.

1 MR. KENNEDY: Steven M. Kennedy on behalf of
2 Three Valleys Municipal Water District.

3 MR. KIDMAN: Arthur G. Kidman on behalf of Monte
4 Vista Water.

5 MR. HENSLEY: Mark D. Hensley on behalf of the
6 City of Chino Hills.

7 MR. FUDACZ: Fred Fudacz with Nossaman, Guthner,
8 Knox & Elliot --

9 THE COURT: How do you pronounce that?

10 MR. FUDACZ: Fudacz. I'm stuck with that.

11 MS. LEVIN: Marilyn H. Levin for the Office of
12 the Attorney General representing the State of California.

13 THE COURT: What was your first name?

14 MS. LEVIN: Marilyn Levin.

15 MR. ALVAREZ-GLASMAN: Arnold M. Alvarez-Glasman
16 for the City of Pomona.

17 MR. OSSIFF: John Ossiff of Nossaman, Guthner,
18 Knox & Elliot for Chino Basin Watermaster.

19 MR. DOUGHERTY: Robert E. Dougherty representing
20 the City of Ontario.

21 MR. McPETERS: Thomas H. McPeters representing
22 Fontana Union Water Company and Monte Vista Irrigation
23 Company, not the district.

24 MR. RYAN: Timothy J. Ryan for the Fontana Water
25 Company.

26 MR. TANAKA: Gene Tanaka of Best, Best, and

1 Krieger on behalf of Kaiser Resources, Cucamonga County
2 Water District, Jurupa Community Services District, and
3 Western Municipal Water District.

4 THE COURT: Excellent. Okay. Not all of you
5 were here last time. I know Mr. Gutierrez and
6 Mr. Cihigoyenetché. I don't think I know Mr. Kennedy. I
7 know Mr. Fudacz was here last time, also, if my memory is
8 correct.

9 Anyway, let me, since not everybody was here
10 last time, expose some potential conflicts. I see no
11 problem with me doing this case. I'm prepared. I have
12 got a lot of hours in this case, but there are some
13 potential conflicts.

14 I have talked them over with Judge Kayashima.
15 He, Judge Kayashima, being the supervising judge, doesn't
16 think it prevents me from sitting on this case, but they
17 should be disclosed. And then I would accept late
18 affidavits if somebody had a problem.

19 I notice George Borba on the proof of service
20 that somebody had floating around here. I think it was
21 Mr. Cihigoyenetché's mailing list. Judge Borba is exactly
22 right below this courtroom here; and she -- I think that's
23 her uncle.

24 MR. GUTIERREZ: That's correct.

25 THE COURT: There's also a Georgie Borba.

26 MR. CIHIGOYENETCHE: I don't know.

1 THE COURT: Anyway, when it said George Borba, I
2 don't know which one it is. I know there's a George Borba
3 related to our judge.

4 There's potential conflict number one.

5 Also, my sister worked for who? I left a
6 message on her phone.

7 THE BAILIFF: She called in and said her job
8 title was administrative assistant to public affairs; and
9 she's certified grade level two.

10 THE COURT: With whom, Southern California Water
11 District?

12 THE BAILIFF: She just said you asked for her
13 title.

14 THE COURT: I think it's Southern California
15 Water District -- Water Company. Is anybody familiar with
16 that? They're not a party to this suit.

17 Then my brother-in-law -- everybody is related
18 around here, right, and property owners and such. My
19 brother-in-law is on the board at Three Valleys Water
20 District. So does anybody see a problem with that? I
21 don't take direction from any of them. I make my own
22 decisions. I think I can do this case, but if someone
23 sees a problem, I would entertain late affidavits.

24 MR. KENNEDY: Your Honor, on behalf of Three
25 Valleys Municipal Water District, we'll waive any
26 conflict.

1 THE COURT: Mr. Cihigoyenetché?

2 MR. CIHIGOYENETCHE: No, your Honor.

3 THE COURT: Hearing no problem, I'll give an
4 intended. I'll then let the attorneys argue against the
5 intended and offer any suggestions. Along with the
6 intended I'm going to voice some concerns that I have and
7 let you address those.

8 Okay. The Motion to Disqualify an Attorney Due
9 to Conflict of Interest should be the first thing
10 determined by the Court. Although intriguing, I found
11 this to be an illusion. In that Nossaman represents the
12 Watermaster, he was instructed to give advice to the Chief
13 of Watermaster Services, which was Traci Stewart. The
14 Advisory Committee and Stewart want the nine-member panel
15 appointed. Chino Basin Municipal Water District, although
16 the present Watermaster, is fulfilling the duties of the
17 office and has a very able and capable attorney,
18 Mr. Cihigoyenetché. So I don't see that there is a
19 conflict of interest in that respect.

20 Okay. Let's handle that motion first. Okay.
21 Who wants -- obviously, Mr. Cihigoyenetché, you want to
22 argue that.

23 MR. CIHIGOYENETCHE: Yes, your Honor, I would.

24 Your Honor, we would argue that indeed there is
25 a conflict of interest that has substantial significance
26 in this case to the extent that Nossaman's office has

1 found itself in the capacity of a dual representation. We
2 have to start with the basic tentative. If you ask me if
3 there's monetary damage or material damage, I would have
4 to honestly represent to the Court there is not. The law
5 does not require evidence of that. The problem that we're
6 faced with here is that dual role.

7 The dual representation has, basically, affected
8 a relationship; that is the attorney/client relationship,
9 which should remain inviolate according to the California
10 Supreme Court, en banc. And the problem can be clearly
11 illustrated by this very case, your Honor. For example,
12 we have one attorney who is acting and submitting
13 documents as Watermaster counsel. We have him playing
14 another role as bringing a motion on behalf, and at the
15 advice of, the Advisory Committee, which is in direct
16 conflict with the position taken by the Watermaster.
17 That's undisputable.

18 We have made known this conflict and our
19 objection to this dual role of representation, but what
20 the Supreme Court, in all its decisions, illustrates is
21 that the primary concern is to maintain inviolate the
22 attorney/client relationship. That is the basic premise
23 of our entire judicial system is that the attorney and the
24 client have an unbridled communication whereby the client
25 can disclose all of the information to the attorney. And
26 to affect or in somehow impede that relationship is so

1 basic or fundamental to our judicial system that we won't
2 look to the practical effects of representation or not,
3 we're going to disqualify right there ab initio without
4 any further discussion. And this case is the perfect
5 example why.

6 In this case, number one, as an example, last
7 week after the hearing -- or two weeks ago after the
8 hearing, if you will recall, I raised some concern on the
9 part of the Watermaster as to payment or satisfaction of
10 certain invoices and obligations. And the Court
11 justifiably said you hadn't reviewed the petitions and
12 weren't in a position to rule. After the hearing we went
13 back and Larry Rudder, who is the financial officer for
14 Chino Basin as well as the Treasurer for Watermaster asked
15 me the question, do I pay them or do I not pay them? I
16 recommended to Mr. Ruder to contact -- or send a request
17 for legal opinion to Mr. Fudacz, which he did.

18 He sent that letter to Mr. Fudacz saying, I want
19 a legal opinion as to what I do with respect to paying
20 these particular invoices. And a legal opinion was
21 offered, pay some, not necessarily pay all of them in
22 light of the circumstances pending before the Court. But
23 the important fact is that that communication was
24 transmitted to Mr. Fudacz by the Watermaster in a
25 representation of the attorney/client situation.

26 And what we have here is that very letter being

1 in turn transmitted to the Advisory Committee, attached to
2 the Declaration of Traci Stewart and submitted to the
3 Court under the letterhead of Mr. Fudacz to support the
4 contention that the Watermaster, Chino Basin, is acting
5 punitively in paying some invoices and not the others. In
6 other words, attorney/client information was channeled
7 through the adverse party. That is a direct conflict of
8 interest; and it also places any future Watermaster which
9 this Court may appoint in a very precarious position.

10 The Court, by setting this precedent, has said
11 that the attorney for the Watermaster quote, unquote has
12 also the capacity to channel any confidential information
13 directly back to the Advisory Committee which can be used
14 against the Watermaster for any purpose that the Advisory
15 Committee sees fit. That violates the entire tenant of
16 what the Supreme Court and the Appellate Courts have
17 iterated and reiterated.

18 And you'll see it couldn't be better said than
19 in the Truck Insurance Case, which I quoted. You know the
20 pages 1056 and 1057. The Court states, "In contrast to
21 representation undertaken adverse to a former client,
22 representation adverse to a present client must be
23 measured not so much against the similarities in
24 litigation, as against the duty of undivided loyalty,
25 which an attorney owes to each of his clients." It has
26 citations.

1 If this duty of undivided loyalty is violated,
2 public confidence in the legal profession and the judicial
3 process is undermined. And that tenant is fundamental to
4 the Supreme Court's ruling. And this basic principle is
5 reiterated in the Supreme Court case that I cited in my
6 pleadings. I think I cited it as Splatt. I think it's
7 actually Flatt.

8 Basically, we're not talking about practical
9 effects of what might happen. I will agree with that.
10 This transcends beyond the mere decision of the
11 Watermaster here. It goes to some fundamental principles
12 of the judicial system that are directly affected.

13 Nobody can argue that Mr. Fudacz has taken the
14 middle of the road of two adverse roads. He should have
15 taken two precautions. Number one, secured the written
16 waiver of any conflict of interest from the Watermaster
17 and the Advisory Committee and proceeded as he wished.
18 Number two, and probably most logically, he could have
19 said, I represent the position of Watermaster. You are
20 asking me to take an advisory role and I have to remain
21 neutral. I recommend you seek independent counsel to
22 represent your interests.

23 Under Professional Conduct Rule 3-310, he should
24 have taken one of those three roads, and he didn't. We
25 find ourselves in a very compelling decision and it's then
26 going to affect this. I would implore the Court to

1 reconsider.

2 THE COURT: Do you find it any different than a
3 corporation who has general counsel and a dispute arises,
4 and the President, in performing his duty as President of
5 the corporation, consults with the attorney. The
6 President is then ousted by the board of directors of the
7 corporation. Do you think the corporation now has to get
8 new general counsel?

9 MR. CIHIGOYENETCHE: No. But I think the
10 position taken by the opposing party citing that
11 corporation law speaks for itself. It is interesting to
12 note in that direct quotation -- and I forget what page it
13 falls on. It's right here on page nine of the response
14 papers. The citation states the Meehan case. It states
15 the attorney for a corporation represents it, it's
16 stockholders, and it's officers in their representative
17 capacity.

18 In this position, Chino Basin is submitting its
19 position to the Court in its representative capacity as
20 Watermaster. The individual officers are not bringing
21 this action independent of the position of Watermaster.
22 Now, I have brought it on behalf of Chino Basin Municipal
23 Water District because the documents have been filed in
24 the name of Watermaster by Mr. Fudacz. Basically, he has
25 used that as his own identification.

26 Even in the representative capacity that counsel

1 represents both the corporation and stockholders and the
2 officers, it would be similar to general counsel
3 representing an individual stockholder and suing a board
4 member or trying to eliminate a board member at the
5 retention of the stockholder and using information he
6 obtained in his confidential relationship with that
7 shareholder to oust the board member at the whim of the
8 shareholder. That would be a direct conflict of
9 interest.

10 THE COURT: Let's hear from Mr. Nossaman. I
11 would be interested in a second for both of you to --
12 well, I mean, the Nossaman firm.

13 MR. FUDACZ: Mr. Nossaman is dead, your Honor.

14 MR. CIHIGOYENETCHE: I'll submit.

15 MR. FUDACZ: He's not going to be making any
16 appearance today.

17 THE COURT: I was looking for some divine
18 intervention about midnight last night when I was still
19 going over the paperwork.

20 Interestingly enough, it appears that the
21 Watermaster is an employee of the advisory group and the
22 relationships are -- although not obfuscated, tend to flow
23 through the producers, etc. Let's hear from them.

24 MR. FUDACZ: We obviously agree with your
25 Honor. It's hard not to get a little personally involved
26 in this motion. I try to avoid making that too apparent.

1 This motion is simply a tactic. It's an attempt to
2 disrupt the will of the majority of the producers, the
3 parties to this litigation, to appoint a new Watermaster.

4 There is really no dispute about what happened
5 here and how Watermaster counsel operates. There is no
6 dispute. Everything we have done in connection with this
7 case has been at the specific direction of the Chief of
8 Watermaster Services, which is the chief executive officer
9 of our client, Watermaster. We have received no
10 countervailing instruction from the Watermaster board.

11 We don't represent Chino Basin Municipal Water
12 District. Mr. Cihigoyenetcche represents Chino Basin
13 Municipal Water District. We represent the Office of
14 Watermaster. That is an instrumentality of our Judgment
15 and of this Court. There isn't any adversity of interest
16 as between Watermaster and the Advisory Committee in that
17 regard.

18 The only function -- the only rational for
19 having a Watermaster is to administer this Judgment and to
20 do that properly. And because the Watermaster has
21 authority to name -- rather, the Advisory Committee has
22 the authority to name Watermaster at any time, it really
23 is the obligation of the Watermaster board to go along
24 with that. If there's any doubt about that, there is the
25 80 percent mandate operative here.

26 We have seen a 96.56 percent vote of the

1 Advisory Committee to name a new Watermaster board as
2 Watermaster in this basin. And under the Judgment, the
3 Watermaster is obliged to go along with any decision of
4 the Advisory Committee that support it by more than an 80
5 percent vote. I would submit this motion is an improper
6 attempt to avoid that mandate insofar as confidential
7 information is concerned.

8 With regard to a motion before this Court, there
9 is no confidential information. I mean, Watermaster is an
10 extension of this Court itself. To say that somehow
11 there's information that should be withheld from this
12 Court is totally inconsistent to the notion of a
13 Watermaster. It's clear our firm has followed acting
14 consistently with the direction of the Advisory
15 Committee.

16 The Advisory Committee is the policy-making body
17 for this basin. That's been already determined by Judge
18 Turner in the 1989 decision. It is the Board of
19 Directors. The Watermaster is in the position of an
20 ousted president trying to use corporation counsel to get
21 his job back. Clearly, that is improper.

22 And as the policy-making body, the Advisory
23 Committee has the responsibility and the duty to control
24 the staff and control counsel and make sure that what they
25 do is consistent with the policy that we dictate. That's
26 what happened here. That's why we filed this motion. The

1 very method by which we were selected indicates that.

2 When our firm -- when I was selected as
3 Watermaster counsel, I wasn't interviewed by the
4 Watermaster Board. They have never given me one
5 instruction. I was interviewed and selected in an
6 Advisory Committee meeting, a public meeting. When I was
7 selected, I was told to follow the instructions of the
8 Chief of Watermaster Services; and we have done so.

9 THE COURT: As a matter of fact, I think you
10 were special counsel and resigned in the spring and low
11 and behold on July 1st you became general counsel to
12 the --

13 MR. FUDACZ: That's correct.

14 THE COURT: -- Chino Basin -- well, to the --

15 MR. FUDACZ: Watermaster.

16 THE COURT: Okay. Before I get to
17 Mr. Cihigoyenetché, does anybody else wish to be heard on
18 this issue?

19 (No response.)

20 THE COURT: Okay. No one. I'm going back to
21 Mr. Cihigoyenetché.

22 MR. CIHIGOYENETCHE: Briefly in reply.

23 First of all, there seems to be some feeling
24 that Chino Basin Municipal Water District is battling
25 vehemently to maintain the position of Watermaster.
26 That's simply not true. The position is stated in our

1 papers. We are willing to assume the position of
2 Watermaster if that's the finding of the Court. We are
3 ready to make an ordinary and good transfer of authority
4 to the appropriate body.

5 The only thing we object to is the intermingling
6 of Advisory Committee members and Watermaster members.
7 That's our position. But, the issue is not who counsel
8 takes direction from; the issue is the fiduciary
9 relationship between the attorney and the client. Despite
10 who tells him what to do, to follow counsel's logic would
11 be to say that if the Advisory Committee instructs him to
12 do something, no matter what, he is obligated to do it.

13 There is nothing in the adjudication that
14 dictates how counsel is supposed to conduct its affairs.
15 It would be improper to do that. It is counsel's
16 responsibility to recognize the conflict of interest in
17 the fiduciary relationship and to advise all parties of
18 that conflict of interest and to conduct himself
19 accordingly. He has failed to do so.

20 A majority vote has no significance to the
21 breach of fiduciary relationship. If they had a majority
22 and they instructed him to go rob a bank, he would not do
23 that, nor would that make it right. That's exactly the
24 point. It seems a little fishy, that's exactly the point
25 I'm trying to make. He needs to try to make that
26 distinction, not the Advisory Committee who are not

1 attorneys. He is supposed to advise them.

2 Number two, they argue that by virtue of the
3 services agreement between the Watermaster and the
4 district they're supposed to take their counsel and advice
5 from them. Yet, at the same time, and I believe it's also
6 an exhibit to the motion, part of Exhibit H to the
7 response, April 29th of 1996, Ms. Stewart wrote a letter
8 to the district stating that the services agreement was
9 terminated unilaterally by the committee. Is it in effect
10 terminated? What effect is that?

11 Number two, that agreement, as aptly cited in
12 the responsive papers, deals with all district employees.
13 Now, that also is a double-edged sword for counsel.
14 Number one, he was never a district employee. He is not
15 on district payroll. He did not work at the services of
16 Chino Basin Water District.

17 First of all, that agreement does not apply to
18 counsel. Secondly, if it does apply, he is even in a
19 worse situation because now he has admitted away he is a
20 district employee. He has a fiduciary obligation as
21 attorney or house counsel, if you will, to Chino Basin
22 Water District not to taking the actions. So he is in
23 double jeopardy in that situation. The point of the
24 matter is, they're arguing both sides of the story because
25 they're in an extricable conflict of interest they can't
26 get out of. And I believe that it would be in the best

1 interests of all served that the State of California
2 rulings be upheld.

3 THE COURT: Okay. You write very well. I was
4 impressed with that. And it was well-argued. This kind
5 of reminds me of in law school when you're told that the
6 father comes to you with a check and asks you to represent
7 his son and you have to make it clear to him, of course,
8 that you are representing the son thereafter and you're
9 not representing the father even though he gave you the
10 money.

11 Mr. Fudacz -- or the Nossaman checks may have
12 come from the Chino Basin Municipal Water District, but I
13 don't find that dispositive of the issue. An
14 interesting -- it is an interesting issue and an issue
15 that had to be brought up. I feel that there was not a
16 conflict of interest. And I'm so ruling on that issue.

17 Next, the Motion to Continue. I'm not sure you
18 waived that or not?

19 MR. CIHIGOYENETCHE: It is probably moot by now.

20 THE COURT: You're going to waive that.

21 Then we have the Motion to Approve the
22 Nine-Member Panel. That's a more perplexing issue and an
23 issue that caused the Court great concern. And I'm going
24 to voice some of my concerns. And I'll give you an
25 intended, but it's not a hard and fast intended at this
26 time until after you have argued.

1 First of all, on the issue of checks and
2 balances. I, as all of you probably have, have gone back
3 several times and read the 1978 decision and also the
4 Turner ruling. Even looking at the title, Chino -- City
5 of Chino versus the Chino Basin Municipal Water District,
6 the parties involved -- inherent in the whole case has
7 been the fact that these are interested parties. And
8 checks and balances seems to have disinterested parties
9 being at checks and balances against one another. In this
10 case you don't have that.

11 Does that mean you don't need a check and
12 balance? Does that mean that Howard Wiener, who was the
13 one who originally wrote the decision as to this case,
14 intended for there to be a check and balance or did Judge
15 Turner, another legal luminary in our past in this county,
16 did he intend for a check and balance? I am not so sure
17 that they did, and for this reason:

18 They have the board of directors of a
19 corporation, for example, you have then often times the
20 president of the corporation is also chairman of the
21 board. Your board sets policies. The president executes
22 the policy of the board. Tangentially, there is a check
23 and a balance. The board could decide to oust the
24 president because they don't feel the president is doing
25 an adequate job. That president may still be a member of
26 the board of directors because the shareholders have voted

1 on the -- the board of directors.

2 This issue is intriguing. And I will most
3 intently listen to your arguments on the issue of checks
4 and balances. Chino Basin Municipal Water District has
5 brought up the -- brought up this subject in their papers
6 in that they don't want anybody from the advisory group
7 being a member of the Watermaster.

8 My tentative is it's analogous to a corporate
9 situation; and it is permissible. That although there is
10 some crossover from the advisory group to the Watermaster,
11 there is both good and bad to that. The good is that
12 the -- the Watermaster would have direct lineage to the
13 advisory group who is setting policy and better able to
14 advise the other members of the Watermaster as to the
15 intent of the advisory group.

16 Finally on this issue, the ruling in the 1978
17 ruling says that the Court, unless there is compelling
18 reasons, shall change the Watermaster if a majority of
19 the -- of the advisory group so vote. Not an 80
20 percent. The Watermaster takes its direction at 80
21 percent from the advisory group, but the Court takes its
22 direction at a majority. That was the ruling, absent
23 compelling reasons otherwise. The compelling reasons
24 otherwise, obviously, that's where your checks and
25 balances come in. Is that a compelling reason? And I'll
26 hear argument on that.

1 Another compelling reason might be that there
2 was one member of the Watermaster that hadn't been
3 selected when the papers were given to me, and then
4 somebody was speculating it would be a certain
5 individual. And I don't know if that individual has, in
6 fact, been selected. One of the water companies -- by the
7 way, if that person be a felon, speak now or forever hold
8 your peace. Now would be a time to bring that up. There
9 might be compelling reasons in that area. So if there is
10 a complete list, I would want to see to that.

11 And Mr. Cihigoyenetché, at the end I may even
12 have a ruling that's intended to be in your client's favor
13 on the nunc pro tunc and interim, also. The other
14 arguments seem to be irrelevant. If I would have selected
15 somebody better, if there is somebody that would be more
16 suitable, it seems to me that I am -- I have to be within
17 the parameters of the Judgment.

18 The Judgment says the advisory group selects the
19 Watermaster with a majority vote; and the Court has to
20 follow that vote, absent compelling reasons. And so far,
21 I don't see compelling reasons. I am intrigued by the
22 concept that Mr. Cihigoyenetché, among other people, the
23 Chino Basin Municipal Water District has brought up on the
24 issue of crossover or checks and balances. So with that,
25 those thoughts in mind and those concerns voiced, who
26 wants to argue first?

1 Do we want to start with Mr. Cihigoyenetché?

2 MR. CIHIGOYENETCHE: Briefly. I don't have much
3 to add to my pleadings. I think -- I think there is a
4 little bit of a misconception when I read the adjudication
5 or maybe I am under a misconception. When I read the
6 adjudication, I think we have the roles reversed as to who
7 advises who and who takes action. When I read the various
8 provisions of the adjudication, it says, the Watermaster
9 shall, upon approval by the Advisory Committee in several
10 paragraphs under required duties that the Watermaster
11 does, which tends to indicate to me that the Watermaster
12 basically sets the course for policy and the Advisory
13 Committee reacts or recommends whether that policy is
14 appropriate as far as they're concerned or not.

15 And I'm trying to articulate that I think the
16 Watermaster is the initiating body, and the Advisory
17 Committee basically responds to what the Watermaster
18 initiates. That's because the adjudication basically
19 enumerates the specific authorities that the parties have,
20 not the least of which is the retainer of counsel. The
21 reason the Advisory Committee has no right to obtain
22 counsel, the Watermaster does. That's enumerated. To
23 that extent, I think it is imperative that you maintain
24 the neutrality of the position of Watermaster.

25 As we have cited in our papers, that might be a
26 nine-member board comprised of -- I don't know who. Chino

1 Basin's position is the nine-member board, at all costs,
2 should not include the advisory board members. It may be
3 Chino Basin; it may be somebody else. We don't object to
4 that. The problem is they're policing themselves. The
5 reason for the adjudication was the overdraft by the
6 producers in the Chino Basin.

7 THE COURT: Initially.

8 MR. CIHIGOYENETCHE: Initially. And nothing has
9 changed except the imposition of the adjudication. And
10 Chino Municipal Basin Water District's position as
11 Watermaster has prevented any further abuses. The risk
12 we're taking if we put the Advisory Committee or
13 proceedings back in charge is we go back to the position
14 we were in in the first place; and we have some people
15 overdrafting; and we have no checks or balances or no one
16 to supervise it.

17 They're policing themselves under no scrutiny
18 whatsoever, probably not even by this Court. If they come
19 in with a substantial vote, once again, as pointed out, of
20 course, they came out with a 90 percent vote, they're
21 voting themselves into power. That shouldn't be any
22 Advisory Committee. The compelling reason should be
23 looking behind the scenes, looking for the true intent
24 behind this.

25 There really was no serious deficit or
26 dereliction on the part of Chino Basin Municipal Water

1 District. At best, perhaps, a disagreement to the conduct
2 of one person on the board, but that's it. I think it is
3 imperative we maintain the neutrality. I will defer to my
4 colleagues.

5 THE COURT: Mr. Gutierrez, you seem to have
6 stood up a millisecond ahead of the other counsel.

7 MR. GUTIERREZ: Your Honor, as you know, the
8 City of Chino opposes a nine-member board. I want to
9 articulate to you the best way I can the real reasons we
10 would believe the Court should not approve this request.
11 And to some extent you touched on them. I know you read
12 my moving papers. This is a meaningful position.

13 I'd like to start out first with the fact that
14 at this point in time the appropriators take out about 75
15 percent of the water from the basin; and the
16 appropriators, for the most part, are public entities. As
17 you know, public entities are charged with displaying all
18 their activities. I'm sure you have read in the paper all
19 the criticisms of the local paper against a number of
20 public entities for not bringing matters forth to the
21 public. Yet, the Brown Act specifically requires any item
22 that effects a public entity to place -- to place those
23 items on a public agenda, act on them in public, and allow
24 for public input.

25 One important reason why we object to this
26 particular appointment is because that process was totally

1 bypassed. There was -- and there is also another fact.
2 That is that this particular motion was not even sent to
3 some of the parties that are parties to this action. The
4 City of Chino Hills, for example, isn't even listed on the
5 proof of service. They succeeded to the interest of
6 County Water Works 8. And I don't think they knew about
7 the motion until I made them aware of it.

8 The City of Upland still receives it's notices
9 through Don Marony. I think everybody knows he hasn't
10 been the city attorney for some time.

11 Likewise with the City of Norco. They receive
12 their notices through John Harper, who is still the city
13 attorney, but he changed his address years ago. I think
14 everybody knows that.

15 Those parties were never notified. I want to
16 point out that one of the basis of our objection is
17 because this process was not respected. Let me get back
18 to what I think is a more fundamental reason. The Court
19 correctly states that the Judgment says that the Court
20 shall appoint the Watermaster selected by the Advisory
21 Committee, unless there are compelling reasons to the
22 contrary. Well, your Honor, I think there are compelling
23 reasons.

24 And the essential reason is that this proposal
25 that is before the Court eliminates or changes the
26 structure that I think was intended by this Judgment.

1 Obviously, all of us have a different opinion about what
2 was intended and what the language means, but I think that
3 one fair reading of the Judgment is that the -- that the
4 intent, if you will, of the Judgment was to provide for a
5 Watermaster who was -- other than the parties to the
6 Judgment -- a Watermaster who was someone other than
7 someone that had the right to extract and buy water from
8 the basin.

9 As Mr. Fudacz's papers point out, there is
10 nothing in the Judgment that precludes the Court from
11 appointing parties. That's correct. I have to agree with
12 that.

13 On the other hand, if you read the structure of
14 the Judgment, it goes on and on and talks about the powers
15 of the Watermaster and what they do. It talks about the
16 parties to the Advisory Committee of an advise and consent
17 procedure. It gives the Advisory Committee certain powers
18 to bring forth their objections if they're not satisfied.
19 But nowhere in the judgement does it says that the parties
20 have an interest in being the Watermaster. I think for
21 good cause. That is this:

22 That I think what was intended was this -- and I
23 may be wrong. I think that the language and the absence
24 of certain language specifies one element was desired to
25 be eliminated from the decision-making process of the
26 Watermaster. That is interest. By -- at the current time

1 the Chino Basin Municipal Water District Board has been
2 the Watermaster for 18 years and continues to be the
3 Watermaster until the Court rules to the contrary.

4 The Chino Basin Board, under the Judgment, has
5 no interest in extracting water. It has no rights. It
6 has the right to purchase it, but has no pumping rights,
7 per say. Everybody else in this courtroom does, your
8 Honor. My feeling and my belief is that what was
9 originally intended was that that factor not be allowed.

10 Now, to have a board comprised of the parties
11 introduces the factor of their own selfish, competing
12 interests in the decision-making process. And I think a
13 board of the parties are going to live to regret that
14 decision. Also, your Honor, I think that something else
15 is important. That is the motion that's before this
16 Court. If you will, the motion before this Court, as I
17 read it, is by the Advisory Committee. That motion to you
18 states a number of reasons why this change needs to be
19 made. Yet, there is nothing in the record that supports
20 that those reasons were the case. The only record before
21 the Court is a transcript of the January 25th meeting that
22 discussed what the reasons were for making this change.

23 And for those reasons I think it can fairly be
24 represented as being that some employees of some of the
25 members of the Advisory Committee believed that the
26 Watermaster process was being interfered with by one

1 member of the Chino Basin Board.

2 And secondly, that some of those employees of
3 some of those entities did not want public scrutiny; they
4 did not want elected officials, saying that would
5 politicize the process. In effect, they wanted to avoid
6 public scrutiny.

7 At no time during that entire discussion at the
8 January 25th meeting was there any statement, your Honor,
9 that there was an intent to take these grievances before
10 the Chino Basin Board. It was a vote solely as it is, yet
11 we have the motion before you replete with reasons. None
12 of those reasons were ever discussed, your Honor.

13 I think if we're looking for compelling reasons,
14 we can see on the one hand there really is a change in
15 structure here; that we're going to a situation whereby as
16 an interest becomes a factor of the decision-making
17 process and where spurious reasons -- and I will use that
18 strong term -- are advanced as a reason for the change.
19 There's nothing in the record that supports those
20 reasons.

21 Also, your Honor, I recognize that the moving
22 papers state that the requirement of a majority vote and a
23 super majority vote have taken place. I think the process
24 to get that vote was tainted. First of all, I have
25 already set out by way of declaration, by way of minutes
26 of the January 25th meeting, and the meetings that led to

1 this particular vote, that the agenda items did not fully
2 discuss these items. The agenda items did not give a
3 public entity time to place these items, as required by
4 the Brown Act, on an agenda and vote upon them.

5 In the January 25th meeting the reasons were all
6 personal. The question that I have in my mind is always
7 this, what is it about the structure that currently
8 exists -- or what was it about the Chino Basin Board's
9 activities that created the necessity to change? None was
10 ever articulated. It was all personal. And yet here we
11 are in an attempt to change the structure. Judge Turner,
12 in his decision -- I've forgotten the date of the
13 decision --

14 THE COURT: '89.

15 MR. GUTIERREZ: -- chastised the City of Chino
16 who actually brought those motions in that court because
17 they failed to go through the practices of the Advisory
18 Committee to get input on the issue they wanted and
19 instead went straight to court. The Judge felt you need
20 to go through those practices. Yet here, your Honor,
21 there was never any attempt by those members -- or those
22 employees of the members of the Advisory Committee to take
23 the issue they thought they had with respect to structure
24 or the issue they thought they had with interference by
25 one board member to the Chino Basin Board. They didn't do
26 that. They bypassed that.

1 I think there's much more involved here than
2 simply the will of the majority. I think it is the will
3 of a minority. If you look at the proposed nine-member
4 board, you will see that there is a transfer of authority
5 from what the Judgment provides. The Judgment provides
6 for a very clear basis of calculating the authority of all
7 the members as they're represented on the Advisory
8 Committee, yet the proposed nine-member board is giving
9 authority to parties that don't even have an interest in
10 the Judgment.

11 Specifically, the Chino Basin Municipal Board is
12 given 11 percent interest. They have no interest in the
13 judgement. The Three Valleys Municipal Water District,
14 likewise, they have no interest. Although, I understand
15 they represent the City of Pomona and the interest is
16 probably equated. The same thing is true for Western
17 District Municipal. They're not a party. Yet, they have
18 a 3 percent interest.

19 There are three at-large members that have 33
20 percent of the voting power. If we would theorize, they
21 could be from the appropriator's pool who really have the
22 authority under the Judgment and add those to the one
23 that's delegated specifically to the appropriator's pool.
24 Then the appropriators have a total of 44 percent of the
25 voting power. Yet, the appropriators currently under the
26 Judgment have approximately 75 percent of the voting

1 power. So there's a complete shift of the power to
2 parties that are not interested.

3 It's not coincidental that those parties that
4 did not have authority to vote and now have authority to
5 vote are fully supporting this proposal. I think, your
6 Honor, the rational is just as to acquire power and to
7 avoid public scrutiny. I think that the transcripts that
8 I provided to you of the January 25th meeting have clearly
9 stated that those members who moved this very motion, who
10 moved this very proposal stated, we do not want the
11 politicians involved. Of course not. They don't want
12 public scrutiny, your Honor, there's much more to this
13 than suggests.

14 I would suggest you deny the motion to appoint a
15 nine-member panel and direct the Advisory Committee to go
16 back and select -- or go through a process that complies
17 with the Brown Act that gives everybody specific notice
18 and that results in the selection of someone that is truly
19 neutral in the sense that they have no interest in the
20 water rights under the Judgment.

21 Your Honor, I think that is the preferred
22 policy. I think that gives everybody equal footing. And
23 it gives an opportunity to correct the wrongs that were
24 created in this process. I think those reasons are
25 compelling, your Honor. I think we owe it to the public.
26 Ultimately, it's the public that pays.

1 I would submit it, your Honor.

2 THE COURT: You seem to have gotten to the
3 second page of some of my concerns.

4 One of the thoughts that I had is that -- and
5 I'll let you argue in just a second so you all can
6 argue -- was that you have a committee overlying a
7 committee. And if we were to send this to the Wharton
8 School of Business or USC Graduate School or UCLA -- one
9 of the colleges, I doubt if they would recommend this as
10 an optimum procedure. Yet you have so many interested
11 parties involved.

12 One of the things that concerned me with having
13 so many committees is arriving at a consensus, and that
14 you guys might want to limit -- if you did, in fact, have
15 a nine-member board, limit it to maybe a year and then
16 have a review date.

17 Also, then another thought that occurred to me
18 is on the unusual issue of notice. I thought about that,
19 too. The Daily Bulletin has had no fewer than three
20 articles about it. There is an editorial and two articles
21 in it. If the cities were interested, I'm sure they would
22 have read those articles.

23 Sure, it's not legal notice pursuant to the Code
24 of Civil Procedures, but they are papers of general
25 jurisdiction. And perhaps, in this case it would be
26 within my power to find that there has been adequate

1 notice of this hearing today. The thought occurred to me,
2 though; and it is interesting that you brought it up, that
3 perhaps I should send everybody to a meet and confer
4 conference at someplace such as Chaffey Auditorium -- if
5 it's still available. It might be under renovation.

6 We could have everybody meet and confer on these
7 issues of checks and balances. Make sure there is
8 adequate notice. Have you guys update the mailing list
9 and find out what the real problems are. Because nobody
10 really addresses what the real problems are in their
11 moving papers.

12 I think there are some issues mentioned about a
13 lawsuit one time. The Chino Basin Municipal Water
14 District was a defendant. The Chino Basin Municipal Water
15 District says that the -- that the Watermaster attorney
16 should defend it. And after the Watermaster attorney
17 comes in and has a Motion for Summary Judgment granted,
18 then Chino Basin Municipal Water District still uses that
19 attorney and pays it out of Watermaster funds. There was
20 that one dispute that I noted in there.

21 Generally speaking, I was wondering where -- you
22 know the commercial -- where's the beef? What is the real
23 problem driving these people in this case? Nobody has
24 really been forthright to the Court in their moving papers
25 as to what the real controversy is requiring the people to
26 come to court and request a dramatic change in the

1 Watermaster at this late date.

2 Another concern that I want the attorneys to
3 address, too, is what provisions -- say I made this
4 change. Is there insurance in place? Certainly there
5 would be a transition period necessary where insurance and
6 vehicle transfers could be made. There are a number of
7 concerns. There would have to be some type of transition
8 period or else we might not have an orderly transfer of
9 power. If I, in fact, made that decision today.

10 Okay. You were next. You were standing up.
11 And I'll hear you. Can you each give your name again
12 before you start talking.

13 MR. KIDMAN: My name is Art Kidman. I represent
14 Monte Vista Water District. Monte Vista Water District
15 has filed a partial opposition to the motion by the
16 Advisory Committee to appoint the nine-member board. The
17 basis for that, that is the nine-member panel to be
18 Watermaster, the basis for Monte Vista's opposition is
19 that after the Advisory Committee decided that they wanted
20 to do the nine-person panel, then the people to populate
21 that panel were selected. And that is --

22 That selection violated the understanding that
23 Monte Vista had at the time they were part of this 96
24 percent vote. I think today that we would not be anywhere
25 near a 96 percent vote. The reason why Monte Vista is
26 concerned about it is the interlocking membership of the

1 Advisory Committee and the nine-member panel as currently
2 proposed.

3 Now, before I give you what I think are my three
4 compelling reasons why this appointment should not be made
5 in the manner proposed, I want to indicate that I, too,
6 was pouring over some of these papers at midnight last
7 night and was very surprised to see how far Mr. Fudacz and
8 Mr. Nossaman, if you will, were willing to go in their
9 argument that this is really a private enterprise that
10 the -- that it's like a Wednesday night poker game.

11 They set rules 18 years ago for that poker
12 game. The private parties get to decide who plays, who
13 operates under this private agreement; the game is
14 determined, what game they're going to play; and the chips
15 in the game are the water rights. All of this is done as
16 though it's simply a private arrangement.

17 And the Advisory Committee is the board of
18 directors in that the Watermaster is really the executive
19 for this board of directors. And that turns everything
20 totally upside down, and not only in this case, but at
21 every water rights adjudication I can think of, in every
22 single case that has recommended use of continuing
23 jurisdiction of the Court and a Watermaster, the
24 Watermaster is not the executive for the Advisory
25 Committee.

26 The Watermaster is an arm of this Court, just

1 like any other special master. The Watermaster works for
2 the Court. The Watermaster doesn't work for the Advisory
3 Committee. And this whole process -- the whole argument
4 today has turned all of that upside down. And one of the
5 things that -- since I didn't really realize how far the
6 Nossaman firm was prepared to go in argument on this
7 point; and I didn't really realize how far the Court might
8 be willing to go in accepting this construction that the
9 Advisory Committee is a board of directors and that the
10 Watermaster is an executive of the Advisory Committee --

11 THE COURT: All right. Listen to this phrase on
12 page 12 of the Judgment of 1978. "Watermaster may be
13 changed at any time by subsequent order of the Court on
14 its own motion or on the motion of any party after notice
15 and hearing. Unless there are compelling reasons to the
16 contrary, the Court shall" -- emphasize added -- "shall
17 act in conformance with the motion requesting the
18 Watermaster be changed if such motion is supported by a
19 majority of the voting power of the Advisory Committee."

20 MR. KIDMAN: What I would like to request --
21 it's your will when we're done today listening to all the
22 arguments, you took this matter under advisement and that
23 you give us a chance to really brief what the proper
24 function and office of a Watermaster is under all the
25 precedent in this state because I think we have sort of
26 gotten pretty far afield from this. Let me give you the

1 three compelling reasons.

2 THE COURT: Before you go to those, let me
3 respond to your statement. I am not bound by the Judgment
4 of 1978 and '89.

5 MR. KIDMAN: You have continued jurisdiction.
6 You have discretion under the Judgment to say that you are
7 compelled, as has been suggested, somehow mandated, to do
8 the will -- to do the bidding of the Advisory Committee.
9 I think that is upside down, but let me give you the
10 compelling reasons anyway.

11 THE COURT: Okay. Let me respond to that.

12 I don't do anybody's bidding, but I follow
13 judgments. And I believe in stare decisis. And I'll
14 follow the cases on the stare decisis. And when you have
15 two very fine judges as you have had precede me in this
16 case, Judge Wiener, now a justice and a retired justice
17 and Judge Turner, two very, very fine judges, I am not
18 going to second-guess them at this late stage in the
19 game. They have got a Judgment here. And it's very easy
20 to look to the Judgment. If a new lawsuit is filed, it's
21 a different matter. We're dealing with this lawsuit and
22 this Judgment. And this Judgment has been in place, as
23 you say, for 18 years. Okay.

24 MR. KIDMAN: Your Honor, I'm prepared to go and
25 work within the judgement.

26 THE COURT: All right.

1 MR. KIDMAN: The question of what reasons are
2 compelling or not compelling is something that is of
3 discretion for the Court to determine. I don't think that
4 you are bound, absolutely, to follow the advice of the
5 Advisory Committee no matter what the vote was.

6 THE COURT: You've given no compelling reason.
7 I'm listening for your compelling reasons. I'm interested
8 in that meet and confer. I actually envision sending all
9 you guys to -- I haven't totally abrogated the thought
10 from my mind. I don't even know if Chaffey Auditorium is
11 still available.

12 MR. GUTIERREZ: We would volunteer the City of
13 Chino City Counsel Chambers. It's adequate.

14 THE COURT: I envision sending you to some large
15 area. We will send you all there and say, you guys meet
16 and confer. You're saying they have had since January. I
17 had heard that argument. And that if they haven't done it
18 now, they'll never do it.

19 Mr. Gutierrez has very aptly brought up the
20 subject of notice of this very hearing. There are a lot
21 of concerns I have why -- maybe this is not right. Yet on
22 cutting the other way, we have a new fiscal year starting
23 July 1st. This might be the perfect time to make this
24 move. And specifically, in thinking in terms of the
25 taxpayers, if we're having crossovers, crossovering with a
26 new fiscal year that is going to necessitate additional

1 accounting that might not otherwise be required. I have
2 thought of a lot of other things on this matter. Go
3 ahead. Let's hear your compelling reasons.

4 MR. KIDMAN: Number one, first of all, under our
5 water rights law in California, water rights are not
6 private chattels. They are not poker chips in a Saturday
7 night game to be dealt with by rules that are decided at
8 the beginning of each hand. Water is a public resource,
9 the use of which is subject to the state Constitution, our
10 highest law; also, to statutes and Court decisions.
11 Article X, Section 2 of the Constitution provides that
12 because of the water scarce conditions prevailing in this
13 state, "the general welfare" -- I'm quoting -- "the
14 general welfare requires that the water resources be put
15 to beneficial uses to the fullest extent of" --

16 THE COURT REPORTER: I'm sorry, Counsel, can you
17 start over and slow down.

18 MR. KIDMAN: More slowly. "The general welfare
19 requires that the water resources of this state be put to
20 beneficial use to the fullest extent of which they are
21 capable. And that the waste and unreasonable use of or
22 unreasonable method of use of water be prevented" -- and
23 this is the key phrase -- "and that the conservation" --
24 and I think in our current nomenclature, if we were to
25 write this today instead of 1914 or 1927 when it was
26 written, we would say management rather than conservation,

1 but the provision says that -- "the conservation of such
2 waters is to be exercised with a view to the reasonable
3 and beneficial use thereof in the interest of the people
4 and the public welfare." That is the end of my
5 quotation.

6 There is nothing in that Constitutional
7 provision that says that the conservation or management of
8 water in the State of California is to be done in the
9 interest of the water users in Chino Basin as determined
10 by a majority vote of the Advisory Committee. The charge
11 of this Court and the charge of this Court's Watermaster
12 is to make sure that the management of the waters of this
13 basin are carried out in the interest of the people of the
14 State of California and for the public welfare.

15 This is not a Saturday night poker game. This
16 is an issue where the highest public interests of the
17 State of California are involved. And the parties are
18 before this Court to get the Court's assistance in
19 carrying out that highest public interest. To a point,
20 these private water rights holders, to make these
21 important public decisions, I think, becomes -- creates a
22 great potential for miscarriage of those important public
23 policies. There needs to be somebody neutral, not
24 involving members of the Advisory Committee, in between
25 the Court and the producers who are represented on the
26 Advisory Committee. That is the check and balance. I

1 think the Constitution requires it.

2 THE COURT: An intriguing concept, but where in
3 the Judgment does it say that?

4 MR. KIDMAN: I'm sure that it's not possible for
5 any of us to argue, even Mr. Fudacz, that this takes
6 precedence over the Constitution of California.

7 Secondly, my second reason is, even if these are
8 private -- if there is some private water right aspect of
9 the case because of the use of water that has been made in
10 the basin heretofore, and that's something like private
11 property, even if it is that, the Constitution of the
12 United States and the Constitution of the State of
13 California both require that before any of those property
14 rights can be taken or affected, we must have due process
15 of law.

16 Now, our position is that there is a fundamental
17 precept of due process that is being violated by the idea
18 that the same party does the reviewing that has made the
19 decision that is being reviewed or where you have the
20 potential that four or five members of your
21 Watermaster -- even six members of your Watermaster could
22 all be members of the Advisory Committee.

23 That doesn't seem like due process. What if the
24 vote is 99 percent and one? Does that mean that your
25 property rights get to be taken away without due process?
26 I don't think so.

1 THE COURT: Let's go back to the original
2 lawsuit and -- you have some interesting arguments. What
3 you're suggest is that the Court, through the
4 Constitution, has the inherent power to modify the
5 Judgment. But if it's modified in one aspect, it might
6 necessitate modification in others. But let's go back to
7 the original Judgment. And at that time part of the
8 reason that -- that I gather -- that Chino Basin Municipal
9 Water District was selected as the Watermaster was that
10 they had facilities in place. They had staff in place and
11 something was needed right away. Therefore, the parties
12 stipulated that Chino Basin Municipal Water District, they
13 had 70 percent of the activity in the area at that time,
14 they would be the Watermaster. And because they had this
15 organization in place, they could do the payroll; they
16 could do the accounting; and they could be -- they could
17 hit the ground running. Am I correct or am I wrong?

18 MR. KIDMAN: Excuse me, your Honor, I am not in
19 a position to give you all of that background. I can say
20 that I think it's important to understand the intentions
21 of the parties at the time that they entered into the
22 Stipulated Judgment. But what you are really faced with
23 here is a dilemma that other courts have already faced and
24 there are precedents.

25 Is it stipulated jurisdiction or just a contract
26 that needs to be enforced by the Court according to it's

1 terms or is it a Court Judgment? And especially where
2 this continued jurisdiction, as is proper in this sort of
3 case, can the Court either interpret the internal
4 provisions of that Judgment or modify it in some way to
5 carry out justice or carry out the interest expressed by
6 the highest law of the state? There is precedent; and we
7 can talk about that. Does the Watermaster work for the
8 Court or does it work for the producers? I think we could
9 go through that. We didn't, because I didn't realize that
10 anybody had that much question about what the proper
11 function of a Watermaster should be in a case like this.
12 I haven't briefed it, but I'd sure love to.

13 The -- there's been some talk about checks and
14 balances. And one reason that was advanced why we don't
15 need checks and balances in this case is because the
16 Advisory Committee has some kind of absolute authority to
17 replace the Watermaster at whim or will at any time that
18 it wants. Well, that argument is --

19 THE COURT: Subject to 30 days' notice.

20 MR. KIDMAN: -- pretty ridiculous.

21 THE COURT: Wouldn't you agree that was in the
22 judgement?

23 MR. KIDMAN: That's akin to saying that under
24 the Constitution of the United States we don't need checks
25 and balances between our three great branches of
26 government because the President appoints the Supreme

1 Court. Therefore, the Court should not have any function
2 to review the decisions of the executive branch. That's
3 the argument that's being made here, your Honor. It's not
4 a good argument. There needs to be independent
5 enforcement here, some independent enforcement between
6 your Watermaster and the producers, who are the parties
7 and who are subject to that Judgment.

8 The third and last argument I want -- compelling
9 reason that I want to try to advance here is that there
10 needs to be some check -- some independent -- some way to
11 deal with the possibility of political intrigue,
12 gamesmanship, and double-cross, because here we had over
13 96 percent of the Advisory Committee, including Monte
14 Vista Water District, that were in favor of this thing.
15 And now Monte Vista Water District and others, who
16 probably comprise between 5 to 30 percent of this
17 Judgment, are standing here in opposition.

18 There was -- I know it's kind of a strong
19 statement -- but there was a double-cross here. There
20 were promises and understandings that, yes, we will have
21 this nine-member Advisory Committee; and that was a
22 compromise. It's been thoroughly pointed out there were
23 lots of different alternatives looked at.

24 There was an understanding that at least brought
25 some of those 96 percent into agreement; and that was that
26 we would not have members of the Advisory Committee

1 sitting on the Watermaster panel. Now, that somehow got
2 lost right away from the translation here. And that's why
3 you have opposition to this when previously there was 96
4 percent in favor.

5 THE COURT: So are we down to the 71 percent
6 that's been suggested by the briefs?

7 MR. KIDMAN: Well, I think by the time you get
8 done hearing the people, we're down that far.

9 THE COURT: That's still greater than 50
10 percent, still 51 percent of the Advisory Committee is
11 wanting a change.

12 MR. KIDMAN: Still, correct.

13 THE COURT: Then I still look back to page 12,
14 the Court must take the Advisory Committee's decision,
15 absent compelling reasons.

16 MR. KIDMAN: I'll go back.

17 THE COURT: And your compelling reasons --
18 you're trying to bootstrap your compelling reasons. And I
19 disagree with your analogy of the President appointing the
20 Supreme Court. Marbury versus Madison gave judicial
21 review of the President. This is a different situation.
22 This Court created a Watermaster and wrote a Judgment.
23 And in its wisdom it put in that Judgment an inherent
24 check and balance. That was the compelling reasons.

25 MR. KIDMAN: That's what's being destroyed by
26 what's being proposed, your Honor. What this proposal is

1 doing is turning the Judgment on it's head and turning the
2 whole concept of water law on it's head and putting the
3 Watermaster Advisory Committee above the Court saying that
4 you must follow -- and the reason you must follow is
5 apparently because 18 years ago people agreed you should
6 follow unless there were compelling reasons. And that
7 went into a Stipulated Judgment that was approved by the
8 Court.

9 Well, they don't get to, by agreement, confer
10 that kind of jurisdiction or take away that kind of
11 jurisdiction. The Court is the one that has the ultimate
12 responsibility under the words that you quoted. The Court
13 is the one that has the responsibility to appoint the
14 Watermaster. It can do that on the motion of any party.
15 The Watermaster is the servant of the Court to administer
16 this Judgment.

17 The Advisory Committee is to bring to bear upon
18 the Court's appointed Watermaster the feelings and the
19 advice of the producers. The producers aren't the Board
20 of Directors; they're an Advisory Committee. That's why
21 it's called an Advisory Committee, to bring the points of
22 view forward to the Watermaster, the points of view of the
23 water producers to the Watermaster. It's not -- it's
24 being turned upside down here, your Honor. I'll be glad
25 to answer any questions you might have.

26 THE COURT: I might have some later. Right now

1 I think I have taken out a machine gun and been blasting
2 away. Who's next? We're running short of time.

3 MR. HENSLEY: Mark Hensley for the City of Chino
4 Hills.

5 Briefly, for two reasons I would request the
6 Court either deny the motion or grant a 60-day continuance
7 here -- or continue the motion for 60 days.

8 The first reason is, I represent the City of
9 Chino Hills which incorporated in 1991, some 12 or 13
10 years after the Judgment was rendered. I did not have any
11 knowledge of these proceedings until approximately two
12 weeks ago when I heard of them through an employee at the
13 city. We had not been served with any of the papers. I
14 did not have any knowledge of prior hearings that were
15 being held on this matter.

16 At that time I contacted Mr. Fudacz. He has
17 provided me with some of the documentation. I still don't
18 have all of the pleadings relating to this. In
19 conjunction with not having all the pleadings, this goes
20 back to adjudication of 1978, some 18 years ago, I need
21 the opportunity to review those documents and review the
22 adjudication. I have a client, a public entity; I would
23 have to properly notice a meeting with my client to
24 discuss these issues. I really haven't had an opportunity
25 to do that meaningfully at this point in time.

26 The other issue that is clear is if this doesn't

1 get continued -- and I favor your idea of sending us
2 somewhere to discuss this matter further, I think if you
3 don't do that what's going to happen is you're going to
4 have 12 attorneys in front of you on a daily basis and
5 more motions will be brought. In the position being taken
6 in January or today, part of that can be contributed to
7 what Mr. Gutierrez has described. There wasn't adequate
8 notice of that January meeting and what was going to
9 occur; so public agencies or entities really didn't fully
10 understand what was going to occur. In fact, didn't until
11 well after the fact, perhaps, understand what was
12 occurring.

13 I can say as I stand here, I still don't have
14 all the information I need to talk to my client
15 meaningfully about what's occurring; and I would suggest
16 that we do continue this for some period of time to allow
17 the parties to get together. I think it is a compelling
18 reason to give us that time to do that. Otherwise, the
19 Watermaster function, the basin itself, is going to be
20 dragged down by continuing court proceedings rather than
21 some meaningful discussions in trying to resolve these
22 issues. That's all I have to say.

23 THE COURT: All right. Thank you.

24 Who's next?

25 MR. FUDACZ: Hopefully, I am, your Honor.

26 THE COURT: Okay. Feeling the sting of certain

1 attacks.

2 MR. FUDACZ: It's hard to sit there after this
3 wave of counsel comes on with these allegations.

4 First of all, the double-cross -- the Monte
5 Vista double-cross; you heard Mr. Kidman talk about that.
6 It's interesting that after Monte Vista voted in the
7 Advisory Committee to approve the nine-member panel there
8 was an election held for representatives and the Monte
9 Vista representative voted for an Advisory Committee
10 member. If they're concerned about having Advisory
11 Committee members, why did they vote for one? That seems
12 a very strange opposition to take.

13 Notice. Everyone in this lawsuit has received
14 notice. They have had designated representatives under
15 the Judgment. Every party is required to have a
16 designated representative for service. Those parties have
17 been served. We have filed the declarations to that
18 effect.

19 As to the notice of the meeting. Notice has
20 been given pursuant to the rules and regulations of
21 Watermaster. There isn't any declaration before your
22 Honor to indicate that that didn't happen. What the
23 people are complaining about is they don't like the rules
24 we have been playing under for 18 years. They never
25 bothered -- they never had the initiative to come in and
26 say, we ought to change those rules. And now at the last

1 moment they come into the Court and say somehow we didn't
2 have notice. They are people that have been attending
3 meetings for 18 years and did have notice and participated
4 in this and clearly don't have any standing to raise this
5 issue.

6 When all is said and done, I think your Honor is
7 quite right in how to analyze this problem. It really
8 comes down to a very simple proposition. The Judgment.
9 The document that controls all the activities of the
10 parties. And indeed the Court under its continuing
11 jurisdiction says that Watermaster is to be appointed by
12 the Advisory Committee where it acts with the majority
13 vote. Paragraph 16 is very clear. Watermaster can be
14 changed at any time.

15 And two, the Court must -- shall act in
16 conformance with the motion to change Watermaster that's
17 supported by a majority vote of the Advisory Committee
18 unless the Court finds compelling reasons to the
19 contrary. And I would submit to your Honor, when the
20 Court made that decision it had the Constitution in mind;
21 and all of these considerations about water law and the
22 west that Mr. Kidman articulated, that's the document we
23 have been living with for 18 years and has served us
24 relatively well.

25 In that Judgment, there is no restriction on who
26 the Advisory Committee can nominate as the Watermaster.

1 There is nothing that says a party to the litigation that
2 just happens to be on the Advisory Committee can't also be
3 on the Watermaster board. There is nothing that says that
4 that Advisory Committee has to be all politicians.
5 There's nothing, in fact, that says it has to be
6 independent of producers as indicated by counsel's
7 arguments.

8 What the Court -- what the judgement does say is
9 that the Watermaster, who works by the Advisory Committee,
10 which is a representative assembly to the parties to the
11 litigation -- parties to this adjudication of water
12 rights. It is clear that the Advisory Committee has acted
13 in accordance with paragraph 16.

14 Your Honor should appreciate the remarkable
15 achievement of the parties to this adjudication in coming
16 up with this nine-member panel vote. They got everyone
17 around the table after months of meetings, and we say four
18 months of meetings, but this thing has been brewing for
19 years now, the concerns about Chino Basin.

20 The fact it really isn't neutral has never been
21 pursued, but has been festering since 1992, if not
22 earlier. In fact, there was a suggestion by Chino Basin
23 that somehow they should be accorded 18,000 acre feet of
24 water to support an operation that they have in the
25 basin. 18,000 acre feet of water that might otherwise go
26 to other parties to this Judgment. 18,000 acre feet of

1 water has to be worth 40 million dollars. That's why
2 we're here today.

3 In light of this, everyone that's talked to you
4 today, perhaps with the exception of the City of Chino,
5 has agreed we need a change. The question is just what
6 the change should be. I would submit this consensus,
7 almost 97 percent, was relatively remarkable. And it
8 shows that the process did work. Initially, there was a
9 proposal to have the Advisory Committee appointed as
10 Watermaster, which I think the Advisory Committee could
11 have done under the judgement.

12 The parties to the judgement -- the Advisory
13 Committee is just the parties to this Judgment acting in
14 their own representative interests. They try to
15 accommodate those dissenters and that process of
16 accommodation, which we extended over four months, which
17 everyone had a right to participate in and resulted in
18 this nine member proposal. A proposal that's widely
19 representative of the interest in the basin.

20 It last -- each pool has a representative on
21 it. The three water districts that operate in this basin,
22 and clearly have an interest in what goes on and that are
23 publicly elected bodies, they're represented and on the
24 Advisory Committee. They don't have a vote, even though
25 they are parties to the Judgment and certainly Chino Basin
26 is a party to the Judgement.

1 Notwithstanding what Mr. Gutierrez says, if you
2 just look at the caption, they're the Plaintiff in the
3 Complaint that brought the action. Certainly they're a
4 party to the action. Given this remarkable consensus that
5 reflects the effects and the good will of a lot of folks
6 in this basin, there should be a very strong showing
7 before this Court that upsets that consensus. What we
8 find is essentially four or five parties not attacking the
9 basic premise of change, but having a very narrow
10 objection to the proposal.

11 Chino Basin MWD and Monte Vista are saying there
12 shouldn't be advisory members on the Watermaster board,
13 but the city of Ontario, on the other hand, says, well,
14 the Advisory Committee members aren't represented well
15 enough on the board. I heard Mr. Gutierrez say that
16 today, too. So we see that the objections, not only are
17 they limited, they're narrow, but the people that are
18 objecting can't even agree on what they want. And now
19 they're asking for more time to work this out. It seems
20 absurd in light of the process that we have undertaken.

21 THE COURT: Speaking of time. Suppose -- and I
22 am going to hear from everybody before I make my
23 decision -- suppose that I agreed with the new
24 nine-member panel. Could they have all the necessary
25 insurance and all the transfers of title completed by July
26 1st -- actually by close of business on June the 30th?

1 MR. FUDACZ: That process is already under way.
2 We have the Chief of Watermaster Services in the
3 audience. She can address that for your Honor. Already
4 that transition has started to take place.

5 The Watermaster staff has moved. We have an
6 interim services agreement. We're processing the PERS
7 application. All of that has been done. We thought we
8 had a consensus. We didn't really expect this
9 opposition. And I'm not going to surmise on what's
10 creating the opposition, but it is very limited.

11 That process is in place. We can do it. If we
12 don't have a change in Watermaster -- if you submit to the
13 kind of temptation to -- let's talk about it some more,
14 that's when we're going to have the problems, because that
15 interim services agreement expires on July 1, 1996. The
16 status of staff at that point is somewhat up in the air;
17 and we have a very confused state of affairs.

18 THE COURT: Hold that thought. I have to give
19 my court reporter a break.

20 MR. FUDACZ: Indeed she's been working overtime.

21 THE COURT: We will be in recess until 11
22 minutes after 10.

23 **(A recess was taken at this time.)**

24 THE COURT: Okay. We're back on the record. I
25 don't see anybody that did not come back.

26 THE BAILIFF: The attorney from the City of

1 Pomona. He said this doesn't have anything to do with
2 him.

3 THE COURT: The City of Pomona representative is
4 now gone. Does anybody know anybody else who is not
5 here?

6 (No response.)

7 THE COURT: Okay. Mr. Fudacz.

8 MR. FUDACZ: In recommencing, your Honor, I'd
9 like to address the so-called checks and balances
10 concern. A concern that has been based by Chino Basin MWD
11 and the City of Chino that somehow there shouldn't be
12 parties to the litigation that happen to be on the
13 Advisory Committee also on this new nine-member board.
14 The notion is that somehow the new nine-member board
15 simply reflects the will of the Advisory Committee and
16 you'd have to have the fox in the chicken coop argument.
17 This simply isn't the case.

18 First of all, the nine-member board is
19 distinctly different than the Advisory Committee. It
20 should be noted at the outset that while there are
21 Advisory Committee members on it as presently constituted,
22 there's an election every year. And it's certainly within
23 the ambit of the parties to elect a board that has one or
24 two or none of the parties that are also on the Advisory
25 Committee.

26 In addition, this nine-member board represents

1 different parties that aren't represented on the Advisory
2 Committee. The Advisory Committee has 23 members from the
3 various pools. It doesn't have as voting members any of
4 the three water districts that have an interest in the
5 basin and are parties to the Judgment. This nine-member
6 board does allow those parties to have representation; and
7 indeed Chino Basin, itself, will have a representative.

8 THE COURT: What about the that is then; this is
9 now argument? Chino Hills was only thought of as some
10 future development in those days. If, in fact, they have
11 even received proper notice to be here today.

12 MR. FUDACZ: You know, I am not exactly clear on
13 the evolution. I believe they were represented by
14 Community Services District who had the water rights.
15 We're talking about water rights adjudication. And they
16 were initially a party to this. They succeeded to the
17 water rights, gave notice of the Judgment, intervened, and
18 went through the court process to become a party. And
19 they became subject to all the Judgment. I know their
20 representative. He attends all the meetings. If he were
21 in the crowd I would recognize him.

22 MR. CIHIGOYENETCHE: He's not.

23 MR. FUDACZ: Terry Kimbro. He has been involved
24 in the process. I think the problem that Chino Hills is
25 pointing out is a lack of communication, perhaps, between
26 their representative and some other parties, perhaps their

1 city attorney to this matter. That isn't an impediment in
2 what we have done. That is an internal problem for the
3 particular party. And the Judgment is very clear.

4 We have 400 parties. Your Honor, if we had to
5 supervise every city and water district and agricultural
6 enterprise to make sure all these people are attending the
7 meetings --

8 THE COURT: You might have to wear a black robe.

9 MR. FUDACZ: I might have to be a judge, exactly
10 right. The Judgment anticipated that problem. It's very
11 specific that these parties have the responsibility to
12 keep Watermaster informed as to who they want notice to be
13 served on. That is the way the game has been played for
14 18 years.

15 THE COURT: You've been around a long time in
16 the developments down in the Chino Basin. Why do you
17 think the Judgment was written with continuing
18 jurisdiction of the Court? Do you think that now retired
19 Justice Wiener -- do you think that Judge Don Turner, they
20 thought about the development of -- future development of
21 Chino Hills? What other developments have taken place
22 since 1978 and 1989 that we don't -- haven't even been
23 brought to our attention? Do you think there is
24 continuing jurisdiction of the Court so this Judgment can
25 be modified? No one has asked that the Judgment be
26 modified. And that's not an issue before the Court, but

1 that's one that definitely intrigued me since this motion
2 has been filed, the that was then, and this is now
3 argument.

4 MR. FUDACZ: Right.

5 THE COURT: How do you address that?

6 MR. FUDACZ: You're absolutely, right, your
7 Honor. It's very common. In fact, I represent the San
8 Gabriel Basin Watermaster. And the Court has continuing
9 jurisdiction there. And there have been amendments to
10 deal with changing conditions. When you have a judgement
11 that's a living and breathing document like we have here,
12 it's apt to change; and there are developments. Change
13 has to take place in accordance with the dictates of the
14 Judgment. What the Judgment provides for in here, it is
15 contemplated from the very outset that there might be a
16 change in Watermaster, and that was provided for.

17 THE COURT: Could that -- could change not be a
18 compelling interest to go along with one of the arguments
19 that was proffered earlier? Could not the change in the
20 population, the demographics, etc., could that not be a
21 compelling circumstance not to appoint the nine-member
22 panel as presently constituted?

23 MR. FUDACZ: I don't think it is a compelling
24 consideration. If you're going to change the judgement,
25 you're going to have to come into court and make a motion
26 to change the Judgment and do that in accordance with the

1 provisions of the document we have before us. Obviously,
2 it is a living, breathing document. It's not clear to me
3 how that change -- the emergence of Chino Hills is a
4 compelling consideration one way or another on the
5 nine-member board. They have -- they sit on the Advisory
6 Committee. They have an opportunity to vote for all of
7 the representatives that are at-large on this nine-member
8 board.

9 THE COURT: At first I thought nobody wanted
10 Rudy Favila in there. I noted he was next in line
11 according to the percentage there.

12 MR. FUDACZ: Precisely.

13 THE COURT: I was wondering about Ontario. And
14 I'll talk to Ontario about that. I got the impression
15 that they were somewhat underrepresented. I'm not
16 positive on that.

17 MR. FUDACZ: That's certainly something that can
18 be provided -- we provided elections take place every year
19 and -- you know, frankly, there are all kinds of political
20 currents.

21 THE COURT: Not that I'm suggesting Rudy
22 Favila. I just noticed that was a name in there. Believe
23 me, I'm not suggesting anybody.

24 MR. FUDACZ: One thing you should understand,
25 your Honor, this nine-member board votes in a very
26 different way than the Advisory Committee votes. The

1 nine-member board is proposed as a one-person, one-vote
2 board. It's distinctly different than the Advisory
3 Committee, which I can't even begin to explain to you the
4 complicated formula that you have to go through to
5 calculate the votes there.

6 Suffice it to say, 75 percent of the votes are
7 in the appropriate. That isn't the case with the
8 nine-member vote. The composition voting power is
9 different. It is independent in the sense of the Advisory
10 Committee.

11 Having said that, the Court clearly should
12 understand that it was never the intent of the Judgment
13 that Watermaster be some independent supervisory agency
14 over the Advisory Committee. That just wasn't the case.
15 The supervising agency in -- entity in this Judgment is,
16 your Honor, this Court.

17 The Judgment is very clear that the Advisory
18 Committee is the policy-making body; and that's been found
19 by Judge Turner. And it's the producers, as a result,
20 that have had control over that through their
21 representative, but subject to the continuing jurisdiction
22 of the Court. And the scheme that's been envisioned is
23 one of checks and balances where all the parties, be they
24 public entities, private agricultural producers or
25 industrial concerns, they all have different interests.

26 They all have their water rights that are at

1 stake. They have agreed to a system where essentially
2 they tax themselves. You have to understand these parties
3 voluntarily agreed to assessments whereby if they produce
4 water above their water right allotment they are
5 assessed. And then that money is collected and used to
6 buy water to correct the overdraft.

7 Having agreed to that scheme, they obviously
8 wanted to have control over the situation and not have
9 kind of a taxation without representation scheme. Again,
10 the supervising entity is the Court as contemplated by the
11 judgement. And there's certainly not Constitutional
12 impediment with having the Court supervising all these
13 activities.

14 In sum, I think it's -- the Court should
15 recognize this proposal for what it is, a remarkable
16 achievement. Any time, in this kind of situation, when
17 you have gotten 97 percent of the vote, the parties have
18 really shown a lot of goodwill. They have compromised;
19 and this court proceeding has tested that compromise. And
20 we have seen some backing away from positions. In that
21 meeting when we were able to get everyone together and
22 good will prevailed, we did have a compromise, a good --

23 THE COURT: What did we back away to?

24 MR. FUDACZ: What?

25 THE COURT: What percentage do you think?

26 MR. FUDACZ: Probably 80 percent or something.

1 They say 75. We still have a remarkable consensus.

2 THE COURT: I know we're in the heat of the
3 summer and water evaporates quickly, but if I sent you
4 back to meet and confer, Mr. Gutierrez being authorized by
5 the City of Chino to volunteer their auditorium --

6 MR. GUTIERREZ: The City Counsel Chambers is
7 adequate for this group.

8 THE COURT: What if I sent you to meet and
9 confer? I know your argument would be they have had since
10 January. There have been several meetings but nobody can
11 get together. Then all of the sudden you dropped it on
12 the Court's lap for really short notice for something as
13 monumental as what everybody is contemplating. Nobody can
14 agree. Even if we took your 96 percent, absent the Chino
15 vote of 3.44, was it?

16 MR. CIHIGOYENETCHE: Correct, your Honor.

17 THE COURT: Even if it was 96 percent, that 96
18 percent can't agree on what the change should be. And
19 it's -- I have gotten the impression -- maybe it won't be
20 Chaffey Auditorium, maybe at some other large area where
21 we can get everybody together and hash this thing out once
22 and for all with proper notice to everyone. Clearly this
23 is supposed to be a noticed proceeding. And --

24 MR. FUDACZ: There has been notice.

25 THE COURT: The last time you were all here -- I
26 know you were here; Mr. Cihigoyenetcche was here -- I went

1 over the notice. In going over the notice again last
2 night I looked and I saw that Three Valleys is -- wasn't
3 on that one notice that I looked at. They're here. Chino
4 Hills wasn't even contemplated when the Judgment was
5 made. They're here. Who is missing? And even with the
6 fact they're here, have they really been given adequate
7 notice? Chino Hills says, no. They only found out a few
8 weeks ago.

9 MR. FUDACZ: Terry Kimbro, Chino Hills, is on
10 the proof of service, 14575 Pipeline Avenue, Chino.

11 MR. HENSLEY: Mark Hensley. City of Chino
12 Hills.

13 THE COURT: There are a couple of proofs of
14 service floating around.

15 MR. HENSLEY: That's a county address from when
16 it was where the county offices were. That's why we don't
17 have them. I suspect the address is wrong.

18 THE COURT: I need to designate one of you to
19 redo the list with input from everyone and maybe have the
20 Watermaster publish a notice in the local newspaper of the
21 next meeting -- a formal legal notice of either a meet and
22 confer or a continued court appearance or both. That
23 thought is definitely going through my mind.

24 MR. FUDACZ: Can I address that, your Honor?

25 THE COURT: That's why I bring it up. I knew
26 you would with the amount of vehement opposition thereto.

1 MR. FUDACZ: Obviously, the reason is the
2 Judgment is very specific about this. It places the
3 obligation on the parties to keep their notice -- the
4 designation of addresses and where notices are to be
5 sent -- current with the Watermaster. The Watermaster
6 can only deal with what the parties have given us. That's
7 provided for under the Judgment. To the extent the
8 parties don't provide that notice, they are the ones that
9 have violated the Judgment, not Watermaster staff in
10 sending out the notices.

11 If that were the case -- we have 400, 500
12 parties. It's not only Chino Hills and the City of
13 Ontario. They know what's going on. I mean, clearly they
14 read the papers. The thing has been brewing since January
15 at a high visibility level.

16 We also have hundreds of farmers and
17 agricultural concerns. They move all the time. And we
18 are always trying to update the list. It's a very
19 difficult task. That was contemplated at the time the
20 Judgment was entered into; and the obligation was placed
21 on the parties to keep their notice of addresses current
22 with the Watermaster.

23 And all we have done is send out notice in
24 accordance with their dictates to exactly who they
25 represented. If that's inaccurate, that's because they
26 have failed to notify Watermaster appropriately. It is

1 obviously a problem whenever you have a huge number of
2 parties to a piece of litigation. I would submit that the
3 Judgment should control that. If we delay things, your
4 Honor, there are going to be some serious consequences.

5 THE COURT: What, other than the accounting?

6 MR. FUDACZ: We have -- we have the interim
7 services agreement. We also, right now, unfortunately,
8 have a situation where monies are still being disbursed by
9 Chino Basin Municipal Water District.

10 THE COURT: I note your fee hadn't been paid.

11 MR. FUDACZ: My fee hadn't been paid. That
12 isn't my largest concern at all. My concern is that it
13 has interfered with the operation of the basin.
14 Literally, Watermaster staff has gone out and had to use
15 their own money to help effect the move in anticipation of
16 this transition.

17 We can argue about who is right and who is
18 wrong, but what it does indicate is there is an unhealthy
19 adversarial between Chino Basin Municipal Water District
20 and Watermaster and its staff; and things aren't getting
21 done that should be getting done because of that. Until
22 this Court acts in accordance with the will of the parties
23 in this Judgment to install a new Watermaster, we're going
24 to continue to have this problem.

25 THE COURT: Do I really know what the will of
26 the parties is? They want change.

1 MR. FUDACZ: They want change. In consensus
2 with the Chief, we had 19 noticed meetings that considered
3 this in a period of four months. This is not something
4 that was lightly considered.

5 THE COURT: Did Chino Hills go to those?

6 MR. FUDACZ: You bet they were there. I think
7 at every one.

8 THE COURT: How about Monte Vista?

9 MR. FUDACZ: Monte Vista was at every one.
10 Ontario and Chino Basin Municipal Water District was
11 certainly invited to every one.

12 And now if the Court has any concern about this,
13 if problems come up with this nine-member board, if it
14 doesn't function properly for some reason, you will hear
15 about it. We have a situation with Watermaster that can
16 be changed at any time. And I suspect that if there is a
17 problem that you will hear about it immediately. I don't
18 anticipate that.

19 Frankly, I don't understand this whole
20 controversy. In the greater scheme of things in this
21 basin, this is not that significant of a matter. There
22 will be significant matters before your Honor, but who
23 Watermaster is given the control exercised by the Advisory
24 Committee isn't of astronomical importance except for the
25 fact it interferes with the day-to-day administration of
26 this basin because of uncertainty. That's the important

1 thing.

2 We have got to get beyond that to address the
3 real issues like getting a desalter agreement to clean up
4 the water coming in, dealing with storage limits in this
5 basin. This basin is a huge resource. It should be
6 utilized for the benefit of all the people in this basin
7 in terms of the storage capacity that it has.

8 THE COURT: Didn't Judge Wiener --

9 MR. FUDACZ: He talked about that. That's in
10 the judgement.

11 THE COURT: The water level goes up, the salts
12 get mixed in.

13 MR. FUDACZ: That could happen. That storage
14 space is a resource that could generate money for this
15 basin that would help offset the cost of water to the
16 basin. We need to address that. We need to do well with
17 inspections.

18 THE COURT: Didn't those need to be addressed
19 since 1978? What's so different?

20 MR. FUDACZ: If we can get a new arrangement, a
21 new Watermaster, I think the parties are very able.

22 THE COURT: You're going to have the same
23 executive, Traci Stewart, right?

24 MR. FUDACZ: That's correct.

25 THE COURT: It was Traci Stewart before, Traci
26 Stewart after?

1 MR. FUDACZ: Correct.

2 THE COURT: You're talking about a nine-member
3 board. According to the judgement, they get \$25 a
4 meeting. And there's no --

5 MR. FUDACZ: Everybody's been wanting to get on
6 that board, your Honor.

7 THE COURT: Clearly, the compensation, in terms
8 of per meeting, is not a major factor here. I wonder
9 about accounting and such as an extra expense. When we're
10 talking 40 million dollars in water, that seems
11 insignificant in comparison. And we are at an inopportune
12 time at the beginning of summer here. It is hot outside
13 and water is going to be important. Let me go on.

14 MR. FUDACZ: We are at --

15 THE COURT: I want to go to Mr. Tanaka. He was
16 involved with the Kaiser -- California Steel Industries.

17 Mr. Tanaka, Mrs. Schneider -- wasn't it
18 Mrs. Schneider the special Watermaster that was appointed
19 the last time?

20 MR. FUDACZ: Yes, your Honor.

21 THE COURT: This came before Judge Liesch. And
22 Judge Havens heard this case before on some issues
23 regarding Kaiser being able to sell the land but not the
24 water rights, etc. Anyway, let's hear from you. And then
25 I'm going to hear from everybody. You'll all have a
26 chance to be heard.

1 MR. TANAKA: Does your Honor have any specific
2 questions you would like me to address in connection with
3 the prior Kaiser proceedings?

4 THE COURT: I was impressed with the way you
5 handled it before. And the fact that -- in looking over
6 events that have happened in the past -- and there was a
7 special -- special Watermaster, not only a Watermaster,
8 but a special Watermaster. And I believe it was a woman
9 by the name of Schneider if my memory is correct.

10 MR. TANAKA: That's correct.

11 THE COURT: She was able to advise -- she was a
12 specialist in this area as to what changes might be
13 necessary. And going to my that was then, and this is now
14 statement, can you address those --

15 MR. TANAKA: Sure.

16 THE COURT: -- issues?

17 MR. TANAKA: Well, your Honor is entirely
18 correct. We did have a special Watermaster, if you will,
19 or advisor come in, in part because the Court felt the
20 issues were so complex and involved that it was necessary
21 to have somebody to devote a lot of attention to it. But
22 concurrent with that, as your Honor may have noted with
23 the papers that were filed, we also have had to wrestle
24 with service issues and notice issues. And I would say
25 that we followed the Judgment and proceeded that way
26 because the Judgment spells all those issues out. That

1 was the approach we took and tried to adhere to.

2 And your Honor has raised the issue of a meet
3 and confer. I would point out that this is not like a
4 discovery proceeding where the parties are before the
5 Court. And there is not -- other than the Code of Civil
6 Procedure, there's not really a method to resolve these
7 situations. To the contrary, the Judgment has layer upon
8 layer of opportunities to deal with and address the
9 process. And if that process has been followed and is
10 followed in the future, presumably, there's opportunity
11 for the parties to work together and reach consensus if
12 they have or have not.

13 Your Honor, I was going to be very, very brief.
14 I didn't want to repeat what everybody else has said and
15 what's in my papers. You have heard a lot. I just wanted
16 to emphasize the diversity of interests that have
17 supported and continued to support the motion for the
18 nine-member panel.

19 I represent Kaiser, which is a member of the
20 overlying non-agricultural pool. They have water rights
21 in the basin.

22 I represent Western, which, as I understand, is
23 not on the Advisory Committee in a voting capacity, but
24 they would be on the nine-member panel.

25 And finally, I represent Jurupa Community
26 Services District and Cucamonga County Water District

1 which are water districts in the basin.

2 And all four of those entities have supported
3 and continued to support the motion. That's a reflection
4 of the type of consensus Mr. Fudacz was referring to that
5 still stands behind the motion. Unless your Honor has any
6 other questions, I would submit at this point.

7 THE COURT: What do you have to say about this
8 being a Judgment that has a life of its own to be modified
9 due to a change in circumstances and, specifically, I'm
10 thinking about the attorney from Chino Hills saying, well,
11 we didn't even come into existence until 1991. What do
12 you have to say about that?

13 MR. TANAKA: I would agree with Mr. Fudacz and
14 with your Honor; it is a living document. It can be
15 modified. I think the fact that it is living and can be
16 modified is an argument in favor of why the process has to
17 play through. If there is no opportunity to modify the
18 document, then we would be dealing with an entirely
19 different situation.

20 Having set out the parameters on how to modify
21 the Judgment, just as they set out the parameters on how
22 to choose the Watermaster, those should be followed. And
23 that opportunity was there and is there and will be there
24 for all of the parties to which there is a change. And
25 that's exactly, in an analogous way, what played out with
26 Kaiser and C.S.I.

1 THE COURT: You think that's a separate
2 proceeding? That issue is not before the Court, even
3 though it is a living document; and I'm incumbent upon the
4 attorneys to bring the motion to modify the Judgement.
5 They haven't seen fit up until now. The only issue before
6 the Court is the approval or non-approval of the
7 nine-member panel. And with reference back, specifically,
8 to paragraph 16, but taking into consideration the whole
9 Judgment as the Court should and how the whole judgement
10 reflects back onto paragraph 16 --

11 MR. TANAKA: That is correct, your Honor. If
12 there weren't an opportunity to change the Judgment, then
13 we might be in a different situation. When that spells it
14 out, that's the procedure that should be followed out by
15 everybody, as the procedure for Watermaster must be
16 followed.

17 THE COURT: Who's next?

18 MS. LEVIN: Marilyn Levin, Deputy Attorney
19 General, representing the State of California. What I
20 wanted to say, also, in addition to Gene is very brief.

21 I agree with -- I should first tell you that the
22 State of California owns property in the Chino Basin. I
23 represent the various departments -- correctional
24 departments as well as CalTrans and the Department of Fish
25 and Game. All of those parties were part of the original
26 Judgment. We are a member of the agricultural pool, the

1 overlying rights to water in the basin.

2 THE COURT: You would actually have a member on
3 the nine-member panel?

4 MS. LEVIN: That is correct.

5 THE COURT: Okay.

6 MS. LEVIN: Based on the arguments that were
7 made today, I felt compelled that I had to say a few
8 words. I agree with a number of people who have made
9 statements to the Court. That's why I wanted to clarify.
10 The first thing I want to say is I do agree with
11 Mr. Fudacz. And we have filed a Memorandum of Points and
12 Authorities and a Declaration in Support of Appointing the
13 Nine-Member Board at this time. I agree that this
14 particular nine-member board, at this particular time, is
15 a remarkable achievement. And I agree that there is a
16 diversity of interests on the board; and that this Court
17 should grant the motion.

18 I agree with your Honor, however, that -- and
19 what some of the other parties have said is that you do
20 have some authority; the Watermaster is an extension of
21 the Court; and you can, independently, look at compelling
22 reasons why, at some future date, either another
23 nine-member board composed of different members or another
24 suggestion for example, is having the Advisory Committee
25 as the Watermaster, which the State of California opposed
26 at the first vote, but would be in your jurisdiction and

1 your ability to review and determine whether or not there
2 was a compelling reason not to appoint the Advisory
3 Committee as the Watermaster.

4 However, at this particular time, the members of
5 the nine-person board and the votes that have been
6 taken -- there has been adequate notice. All the diverse
7 parties that have been a part of the judgement have had an
8 opportunity to review what was going on at the meetings
9 and vote. And it is appropriate, at this point, not to
10 send this out for a meet and confer; I agree with
11 Mr. Tanaka. At this point, to use the word, I think it
12 would be disastrous for Chino Basin.

13 Mr. Fudacz is right. This has been brewing for
14 more than four months. It has been brewing for years.
15 There is consensus. Your honor mentioned something early
16 on at 8:30; and that is that you were thinking about
17 limiting it to one year.

18 There is nothing in the papers that say that,
19 but the State of California has always taken the position,
20 let's see how this works. In reality, the Watermaster has
21 functioned as Mr. Fudacz has described it. Over the years
22 the Advisory Committee, in reality, has been the
23 policy-making board of the Chino Basin. Let's see how
24 this works with this particular nine-member board for a
25 year; and let's have a review date.

26 I agree with Mr. Tanaka. There is no reason to

1 meet and confer because the Judgment itself has the layer
2 upon layer of the agricultural pool meetings, the
3 appropriative pool meetings, the notice of the Advisory
4 Committee, and then the notice of the Watermaster board.

5 Very few people probably over the 18 years have
6 ever attended the Watermaster meeting at which the
7 recommendations of the Advisory Committee have been
8 adopted. That's the reality of how this judgement has
9 operated in the past. However, I don't disagree that at
10 some future point this nine-member board or some other
11 vote taken by the Advisory Committee where perhaps they
12 put all of themselves in as the members, it may not be --
13 it may be appropriate to look at that at a future time.

14 THE COURT: Let me interrupt one second. What
15 do you think about this strict construction view that this
16 Judgment says that the Watermaster is appointed for a
17 5-year term? And one way of looking at it is that 5-year
18 term started in 1993 and would expire in 1998. How do
19 I -- if I am to strictly construe this contract without a
20 modification, without the Court having the power to modify
21 this judgement -- did I call it a contract? I meant
22 Judgment -- without the Court having the power to modify
23 this Judgment, if I strictly construe I'm limited to five
24 years, there is some question of whether that five years
25 started in '93 or '90 or now.

26 But do I even have the power to reduce this to

1 one year, which is intriguing?

2 MS. LEVIN: Actually, I think everyone here is
3 somewhat circumspect in making any statements. They don't
4 want to affect how this basin is going to be operated.
5 Quickly, I remember reading two of the passages. And one,
6 is the Watermaster is appointed for a 5-year term.
7 However, there are provisions that allow a vote of the
8 Advisory Committee to change the Watermaster with the
9 appropriate vote. And the Court, of course, is compelled
10 to adopt that change.

11 It seems to me it's not limited to that 5-year
12 term because for practical reasons if there were some
13 major problem with the Watermaster, you're not going to be
14 relieved of any jurisdiction since the Watermaster is an
15 extension of the Court to change that.

16 THE COURT: How about this? The Court, on it's
17 own motion, could change the Watermaster; and the Court
18 could notice it now for one year from now. Would the
19 Court have to give notice to whom they wish to -- as to
20 whom they wish to replace the Watermaster with?

21 MS. LEVIN: That's an interesting question, your
22 Honor. If you granted the motion subject to certain
23 conditions, and perhaps it were a 5-year term subject to
24 review in a year, that would give parties enough notice --
25 enough time that if the board were going to be only
26 appointed for a year there could be a noticed motion and

1 that would be brought before the Court. I'm trying to
2 figure out some practical way to approach that. I don't
3 know if I have an answer, specifically, to your question.

4 THE COURT: Maybe you have told me that the meet
5 and confer idea is not such a bad idea.

6 MS. LEVIN: No. I have actually said the
7 opposite. I think all of us know how this Judgment
8 operates; and all pools have been meeting and conferring.
9 Nothing -- it isn't like a discovery situation, nothing of
10 any substance will come out of a meet and confer except
11 total chaos in the Chino Basin.

12 THE COURT: Continue standing. I'm going to
13 interrupt.

14 MS. LEVIN: I'd like someone else to jump up. I
15 am supporting Mr. Fudacz's motion that the nine-member
16 board be appointed today --

17 THE COURT: All right.

18 MS. LEVIN: -- because of the possible chaos in
19 the Chino Basin.

20 THE COURT: No matter what I do, nobody has
21 given me any opposition to Mr. Cihigoyenetché's motion for
22 a nunc pro tunc as far as the Chino Basin Municipal Water
23 District. No one, including Mr. Fudacz. Mr. Fudacz's
24 paper suggests that the Court will find reasons for
25 change. Nobody has, other than Mr. Cihigoyenetché -- has
26 moved the Court to make that change. Yet nobody has

1 opposed it. And I presume that there is no -- there is
2 proper notice and, perhaps, a waiver, then, on everyone
3 that at least the Municipal Water District -- the Chino
4 Basin Municipal Water District.

5 MR. CIHIGOYENETCHE: They call them the CBMWD.

6 THE COURT: It will be an interim appointment.
7 We have some housekeeping to do. Let me, while you're
8 making that argument, ask anybody if they have any
9 objection.

10 Mr. Fudacz?

11 MR. FUDACZ: I must express a little bit of
12 concern and perhaps start out with a clarification. We
13 have made as part of our motion, a request that the Court
14 essentially appoint Chino Basin MWD as Watermaster nunc
15 pro tunc to the point in time where this new nine-member
16 board is --

17 THE COURT: Let me --

18 MR. FUDACZ: -- is put in place.

19 THE COURT: Every judge is a little nervous at a
20 nunc pro tunc. What is out there floating around that I
21 don't know about? What contracts are there that have been
22 signed? What disputes are going to arise? Nobody saw fit
23 to come to the Court. And then all of the sudden three
24 years later they're coming to the Court and saying, we
25 want a nunc pro tunc.

26 Is there something floating around out there

1 that I should know about? Speak now or forever hold your
2 peace or should I have that part of this notice for the
3 meet and confer, if I have a meet and confer.

4 MR. FUDACZ: I would suggest this was a very
5 unfortunate circumstance. I don't exactly know what
6 happened. I wasn't here at the time. I don't know what
7 happened that caused this failure. Essentially, what we
8 have had is a de facto Watermaster. A Watermaster acting
9 at the sufferance of the committee.

10 THE COURT: On April 25th I approved a report of
11 the Watermaster.

12 MR. FUDACZ: Precisely.

13 THE COURT: It was unopposed. The parties came
14 into court; and it was unopposed.

15 MR. FUDACZ: And those reports -- each year
16 those reports have been circulated throughout the basin --
17 the agendas.

18 THE COURT: That was 94/95, by the way, wasn't
19 it, Mr. Cihigoyenetché?

20 MR. CIHIGOYENETCHE: 93/94.

21 MR. FUDACZ: We are behind.

22 THE COURT: The processes under the Judgment
23 have been ongoing. There have been countless meetings of
24 the various pools as Ms. Levin has pointed out. There is
25 process beyond your wildest dreams. You have pointed out
26 the fact that this isn't the -- some McKenzie consultant

1 wouldn't come out and devise a scheme this way. We have
2 advisory meetings. We have standing committees of the
3 Advisory Committee. We have three pool meetings. We have
4 Watermaster meetings. It looks bizarre from the outside.

5 THE COURT: Unless you are proposing a
6 nine-member Watermaster to overlay --

7 MR. FUDACZ: The reason is, your Honor, is
8 that's what the parties feel comfortable with. That has
9 allowed us to avoid coming in here with regularity.
10 Honestly, the thing has worked remarkably well. Despite
11 this cumbersome procedure, the parties have really striven
12 to achieve consensus; and most everything has been done in
13 that fashion. And the process, you can go through the
14 records, it is unbelievable the amount of process we have.

15 THE COURT: Unless you're giving me something
16 new, let someone else speak. I want to hear from Ontario,
17 for sure.

18 MR. DOUGHERTY: Robert Dougherty representing
19 Ontario, your Honor. I think we have to separate several
20 things.

21 First off, should the Chino Basin continue in
22 the future to be Watermaster? And then the second issue
23 is who should be appointed as the new Watermaster? I
24 think on the issue of replacing Chino Basin, what it
25 amounts to is 15 -- or 18 years ago when this Judgment was
26 first entered, I was there. I was part of the team that

1 negotiated on behalf of Ontario. I did not submit a
2 declaration on my own as to those facts. As to the
3 request for the new Watermaster, Lloyd Michael and
4 Mr. DePeal (phonetic spelling), who were also there and
5 could indicate that at the time Chino Municipal Basin
6 Water District was picked for several reasons, none of
7 which had any relation to do with this check or balance
8 concept that is now being discussed before the Court.

9 Chino Basin was the plaintiff. They were the
10 plaintiff more or less by consensus because we knew as
11 producers we had to have a managed basin. We had to have
12 them for several reasons. Number one, the water level and
13 ground water quality problems. We also wanted to be able
14 to bring in Metropolitan Water District water at the time
15 and store it in this basin for several reasons. One, is
16 it would help with the water table level. Second, it
17 would provide for water that would be available in dry
18 years.

19 Metropolitan Water District would not store
20 water in an unmanaged basin, one not adjudicated, for the
21 simple reason there was no control. If they put it in and
22 anyone could pump it out, it would certainly not be a wise
23 thing. That was one of the reasons why all of the
24 procedures in the basin were gone through. We have the
25 agricultural interests, the municipalities, the overlying
26 land owners that used to, for industrial purposes, get

1 together and ultimately, under the leadership of Don
2 Stark, who unfortunately was killed a number of years ago
3 in an accident, were able to put something together that
4 everyone agreed to. And we agreed to it in the form of a
5 Stipulated Judgment with the ultimate authority being the
6 Court.

7 So instead of likening this whole thing to the
8 Constitution of the United States, I kind of look at the
9 Court as a benevolent dictatorship with the advice of and
10 consent of the Advisory Committee. Where does that put
11 the Watermaster in this whole scheme of things? The
12 Watermaster was supposed to be able to be the body that
13 implemented the day-to-day actions. And we picked Chino
14 Basin for the reason they were there; they had the
15 facilities; they had the staff; they had the attorney who
16 put the whole thing together, more or less, Don Stark.
17 And they did not have their own agenda. They were simply
18 there to handle it for the best interests of all the
19 producers.

20 Eighteen years later we find that we have a
21 change of circumstance; and that change being that, at
22 least in the perception of some of the parties, Chino
23 Basin Municipal Water District has developed an agenda of
24 its own. Whether that perception is correct or incorrect,
25 we have got at least 96 percent of the producers as
26 represented by the Advisory Committee saying, we no longer

1 wish to have Chino Basin Municipal Water District as our
2 Watermaster.

3 Now, I think that in and of itself that vote of
4 no confidence is a compelling reason, if we had to have
5 one, for the Court to replace Chino Basin Municipal Water
6 District as the Watermaster. The Judgment says that there
7 has to be compelling reasons why the Court would not
8 follow that direction. Chino Basin has now shown up
9 today, they are arguing against the nine-member board.

10 And, in effect, I think what they're really
11 arguing against is their replacement as Watermaster,
12 because technically, if they're not the Watermaster, and
13 if they are not producing water from the basin, which --
14 and if they have no water rights, which they do not, they
15 really have no standing to urge this Court to appoint any
16 entities or group of entities or persons as the
17 Watermaster. They should simply bow out and go away, but
18 they haven't done that. So I submit that the Court should
19 replace Chino Basin as the permanent Watermaster.

20 Now, when it gets to this nine-member board,
21 what we have seen in the past is something that started
22 out 18 years ago that we thought we could all live with at
23 the time and has changed; and it has changed because we do
24 not have Chino Basin Municipal Water District as a
25 representative in the sense that they are advocating the
26 same interests as the producers in the basin. And we

1 believe that that is important to avoid further conflict.

2 In other words, if we had this nine-member board
3 as presently constituted, we have entities that -- and
4 it's been explained, I think, in some detail by
5 Mr. Fudacz -- that really don't represent producers. It
6 contains representative entities that have no water rights
7 in the basin. It also contains one spot for Chino Basin
8 Municipal Water District, the very entity that 96 percent
9 of the parties want to have replaced.

10 We believe that to avoid future conflict that it
11 is necessary that whatever board or group that the Court
12 appoints, and it is in your discretion to make the
13 appointment, whatever group you appoint should represent
14 fairly all of the producers in the basin. Certainly,
15 we're not talking about checks and balances because as I
16 said, you are the ultimate authority. If any party does
17 not care for what the Watermaster does, they can come to
18 the Court; and the Court can change what is done. So we
19 would submit that -- that the nine-member board as
20 presently constituted is not what Ontario supports, but we
21 do definitely wish to see the Chino Basin replaced.

22 THE COURT: Could you live with the nine-member
23 board for a year? It seems like either or. To me at this
24 point it's either the nine-member board or Chino Basin
25 Municipal Water District. That's what's been thrust into
26 my hands to decide, to pick one or the other.

1 MR. DOUGHERTY: Am I correct on that your other
2 alternative, your Honor, is to throw it back open to the
3 parties to reopen negotiations? That was our original
4 suggestion in our responding papers.

5 THE COURT: So you would agree I should send you
6 guys back to meet and confer --

7 MR. DOUGHERTY: I agree you could.

8 THE COURT: -- at the City Counsel Chambers --

9 MR. DOUGHERTY: I agree you could.

10 THE COURT: -- in Chino.

11 MR. DOUGHERTY: And it certainly is your
12 decision on what to do. Ultimately, though, when we read
13 the judgement -- what is in the Judgment itself, you can
14 appoint the Watermaster and change the Watermaster on your
15 own motion. I just want to address one point. This is
16 the issue that was brought up by the City of Chino Hills.
17 My recollection -- and I know Mr. Michael is in the
18 audience. Perhaps he can correct me if I'm wrong. I do
19 recall that Chino Hills incorporated in the area that I
20 think was served by County Water Works District Number 8.
21 And I believe that's referred to in Exhibit 8 of the
22 Judgment, on page 61, as the West San Bernardino County
23 Water District.

24 MS. STEWART: Not with San Bernardino.

25 MR. DOUGHERTY: I thought they represented an
26 allocated, as a water right -- as a predecessor. I could

1 be mistaken in that. I have nothing further.

2 THE COURT: 1.75 of the -- no, 1.175 of the safe
3 yield. If it was not the West San Bernardino County Water
4 District, then it was the predecessor. They have a 925.5
5 appropriative acre fee.

6 MR. HENSLEY: I'm told it was Pomona Valley
7 Water and Park Water that is now what is Chino Hills.
8 Your Honor, I have been told that what was Pomona Valley
9 and Park Water Company are the predecessors of what is now
10 the City of Chino Hills insofar as water rights are
11 concerned.

12 MR. DOUGHERTY: There was another entity between
13 those Water Works Number 8 which succeeded to those
14 interests, and there has been several successions in
15 that.

16 THE COURT: You want change, but you're not
17 opposed to meeting and conferring. You don't want the
18 nine-member panel as presently constituted. If you had to
19 choose between the Chino Basin Municipal Water District
20 and the nine-member panel, how does the City of Ontario
21 vote?

22 MR. DOUGHERTY: On a permanent basis? On a
23 permanent basis, I believe we would pick, definitely, the
24 nine-member board. On an interim, we would prefer to see
25 Chino Basin because they are in place; and the issue of
26 composition of a new board be revisited.

1 THE COURT: Okay. Yes, sir.

2 MR. McPETERS: I represent Fontana Unified Water
3 Company who is the third largest appropriator in the pool
4 and Monte Vista Irrigation Company which is the smallest
5 appropriator in the pool. Both of those entities strongly
6 support the motion. Both of those entities fully
7 understand the issues. We are opposed to a meet and
8 confer. I had some involvement with the Chino Basin
9 Judgment as a younger, if not young, lawyer.

10 THE COURT: I'm getting older by the minute here
11 myself.

12 MR. McPETERS: There are not many in this room
13 that I recognize, but I would say in support of the
14 judgement; that was greatest meet and confer proceeding
15 that I have seen. The attorneys met in subcommittees
16 assigned to issues. The number of parties were in the
17 hundreds. It was a -- the Judgment is a remarkable
18 achievement and has worked very well. So I support the
19 Judgment as written.

20 I think the Court should proceed to appoint the
21 Watermaster. This is not something that has been lightly
22 taken by any of the parties, you know, to this
23 proceeding. The issues have been brewing for a long
24 time. The only changed circumstance, as I can see it, is
25 the relationship between the present Watermaster and the
26 Advisory Committee. That has undergone a series of

1 tensions in recent years.

2 It is difficult for me to understand what a meet
3 and confer would do. With respect to balance of
4 interests, which I have heard a lot about this morning, my
5 observation over 30 years, is that nobody should worry
6 about people with water rights not looking after their
7 interests. I have been reading water rights opinions back
8 into the 1860s; and they are clearly the most litigious
9 group, you know, in society, prior to the automobile
10 industry, but they don't need any checks and balances.
11 That's what this Judgment is.

12 I have never seen anything with so many checks
13 and balances. Every provision is a compromise and was
14 hashed over by these people. There's a long history of
15 looking out for your own interests in water. It's law
16 based on self help. Everything is based on what you did
17 and who did it first and how long you did it.

18 THE COURT: I notice there was even some
19 bombings up north. Talk about self help.

20 MR. MCPETERS: I have read opinions in this
21 area -- they're representatives are not in this room.
22 They had nothing to do with this. There have been gun
23 fights and murders all documented over water rights and
24 how to dip buckets into streams and at different places
25 along the way.

26 The balancing of interest, I think, is nobody

1 can come up with anything that is any more balanced than
2 is what is already there. These people are well-informed
3 as to their rights. They're well-informed as to their
4 issues; and they have a history of standing up for what
5 they believe in. It's worked remarkably well because of
6 that. It's complex and maybe the Wharton School people
7 would not recommend it, but the Wharton School people
8 would have never been able to get this judgement. They'd
9 still be talking about it because it wouldn't be
10 acceptable to the parties.

11 People with water rights will not give up too
12 much control. They just simply won't. So this is a
13 well-balanced Judgment; there are interested people
14 well-grounded in what the issues are. There are no
15 changed circumstances.

16 THE COURT: So even if I send them out for a
17 meet and confer I could probably make an interim decision
18 for a year and they still wouldn't have arrived at a
19 decision because they're strong-willed. Would that be
20 your position?

21 MR. MCPETERS: They are strong-willed. And they
22 have learned a long time ago if you have a water right,
23 you must protect it. And you protect it against other
24 people's use and other things you do. They know you can
25 lose them or have degradation of quality if you don't. So
26 I think it's exceedingly well-balanced, exceedingly

1 well-balanced.

2 If it weren't for the good statesmanship of
3 people like Don Stark, who had a tremendous influence on
4 this whole process -- and there were others who understood
5 and had been fighting these water wars, you know, for a
6 long time. They understood the process. This was not the
7 first Judgment that they participated in. Those lawyers
8 who put that together, including Mr. Dougherty, were
9 participants in most of the water adjudication in our area
10 and some of them going back into -- participants in
11 adjustments going back as far as 1924, 1930.

12 They were smart people. They were skilled
13 people. And they did a good job. This is one of the
14 better judgments. They took the time to do what it took
15 to get it. It works well. It should continue to work
16 well. And let's not worry about the parties running rough
17 shot one over the other. That's not going to happen, your
18 Honor.

19 THE COURT: The City of Fontana -- or the
20 Fontana area is growing like, perhaps, the Chino Hills
21 area. I don't know which one has grown the most; both of
22 them have grown by leaps and bounds. So you would still
23 favor --

24 MR. MCPETERS: Yes, Fontana Union is a neutral
25 water company and serves it's stockholders. It doesn't
26 serve the City of Fontana. The City of Fontana, I would

1 say, is served by Mr. Ryan's company, Fontana Water
2 Company, which is an investor-owned public utility. They
3 are one of the major stockholders of Fontana Union, but,
4 from what they do with their water when they get it
5 delivered is up to them. They don't get it until Fontana
6 Union says they can have it. And Fontana Union will tell
7 them how much.

8 THE COURT: Speaking of protecting water rights.

9 MR. McPETERS: Yes. That's correct. So you
10 find these relationships, you know, throughout. You find
11 a mixture of private and public. And a lot of the
12 entities that are referred to as public here at one time
13 were private.

14 Water was not developed by the public in the
15 State of California. Water was developed by the pioneers
16 through private mutual water companies and people like
17 Cucamonga County Water District, for example, was formed.
18 And on the date they were formed they did not have any
19 water rights, but over the years they acquired water
20 rights by folding in mutual water companies. I think I
21 participated in the sale of roughly 15 of those mutual
22 water companies to Cucamonga Water District selling them
23 all to Mr. Michael. So many of these City of Ontario --
24 all of these people acquired water rights from this
25 collection of mutual water companies.

26 Rancho Cucamonga at one time had about 25 mutual

1 water companies, and they don't exist anymore. So this is
2 all judge made self help; look after your own interest,
3 you know, field of law, and it's gotten over into the
4 public sector, but the idea of looking after your own
5 water rights is an old tradition and it will continue,
6 your Honor.

7 THE COURT: Okay.

8 MR. RYAN: Thank you, your Honor.

9 THE COURT: Then there was.

10 MR. RYAN: Last but not least. I sat her for a
11 reason.

12 Your Honor, I'm Timothy Ryan representing
13 Fontana Water Company, a party in this action, and one of
14 the largest appropriators, a member of the appropriative
15 pool. I'll be very brief because I can say you can put
16 the Fontana Water Company down as being in full agreement
17 with all of the arguments and comments of counsel
18 Mr. Fudacz and Mr. Tanaka and Mr. McPeters.

19 Fontana Water Company believes that the issue
20 before this Court, the beginning and end of the analysis,
21 would be Section 16 of the Judgment, which as this Court
22 has already indicated in it's tentative, is unequivocal
23 and clear with respect to the power conferred upon the
24 Advisory Committee to change the composition of
25 Watermaster at any time and directs this Court, as a
26 matter of fact, to act in conformance with the majority

1 vote of that Advisory Committee.

2 Had there been any intent to put any
3 restrictions or limitations upon the ability of the
4 Advisory Committee to name the Watermaster, the Court
5 surely could have spelled those restrictions and/or
6 limitations out in the Judgment. And as we know, it did
7 not do so. So the Fontana Water Company would strongly
8 urge this Court to appoint a nine-member board and do so
9 forthwith. And we agree that it would be futile to order
10 the parties back to a meet and confer session. Thank you.

11 THE COURT: What if I did this. What if I took
12 the reverse perversion of Mr. Dougherty's suggestion and
13 appointed the nine-member board, ordered a meet and confer
14 for November, ordered a review in court in January; and
15 because I think enough lead time is necessary so that we
16 don't ever get in a situation where we're two weeks before
17 the end of a fiscal year, which I am now in, and have 12
18 or 13 attorneys come into Court with such a monumental
19 problem for me to make the decision on.

20 What do you have to say about that?

21 MR. RYAN: Well, I would -- as any attorney, I
22 would like to see the proposal in writing.

23 MR. GUTIERREZ: He wants notice, your Honor.

24 MR. RYAN: Having not considered that proposal,
25 your Honor, I would again say that Fontana Water Company
26 is here today to express it's support for an immediate

1 change in accordance with the vote of the Advisory
2 Committee. And to the extent any problems arise --

3 THE COURT: There will be.

4 MR. RYAN: -- subsequent to that appointment,
5 the Judgment has adequate means which any party, any
6 agreed party can come back into court and seek review of
7 any actions taken by that Watermaster and/or at any time
8 file a motion to change the Watermaster. So that could
9 take place prior to November or prior to the end of the
10 next fiscal year should any party feel that another change
11 is necessary.

12 THE COURT: We're never waiting to the last
13 minute again I can guarantee you that.

14 MR. RYAN: I have taken that feeling.

15 THE COURT: This has taken it's toll on me.

16 Let me address Mr. Gutierrez a second. You
17 think that if I did have a meet and confer that would be
18 okay -- you know, once before I said you were authorized
19 by the City of Chino, I was being facetious. You think
20 that's within your authority?

21 MR. GUTIERREZ: Definitely, your Honor.

22 THE COURT: It seems like Traci Stewart is a
23 common thread that goes through all of the management of
24 the Chino Water Basin; am I correct? Does anybody
25 disagree with that?

26 (No response.)

1 THE COURT: It really doesn't matter who -- if I
2 had an interim Watermaster, it doesn't matter who the
3 interim Watermaster is, pretty much things -- there is
4 going to be a smooth transition. And not too much is
5 going to happen other than on the policy level. There's
6 going to be no dramatic upheavals in personnel.
7 Especially the people whose immediate job is dependent
8 upon the Watermaster, for example, that are working in
9 this new building that has been leased or whatever it has
10 been. So all we're talking about is the nine-member board
11 versus the Board of Directors of the Chino Basin Municipal
12 Water District; right? We're just replacing one --

13 MR. GUTIERREZ: Not necessarily, your Honor. I
14 don't think that's the only option. My point is one, it
15 would be my view that if we're going to fight this, we
16 need a general not a committee. We already have the
17 Advisory Committee. I think it should be one person. I
18 think that's something we would like an opportunity to
19 discuss.

20 THE COURT: And that you shall, with the
21 proposition to the Court, that thought has gone through my
22 mind. What is also going through my mind -- and I know
23 you guys want to be heard. We have beat this to death by
24 now. We have a document that two very fine judges have
25 participated in writing and interpreting. And -- on short
26 notice it's -- it seems either I find a compelling reason

1 or I don't find a compelling reason. If I don't find a
2 compelling reason, then the nine-member board is the one.

3 Is there a compelling reason? Several people
4 have argued. And there he is standing up again. This
5 argument is the Constitution supersedes the document. And
6 the document should be construed as a whole. This is a
7 living document. The Court has the ultimate supervision.
8 The Watermaster works for the Court, not for the litigants
9 here in the Court. Is there anything else?

10 MR. KIDMAN: I'm glad you understand the points
11 that were made earlier. I won't repeat them.

12 THE COURT: Okay.

13 MR. KIDMAN: I think, though, that in
14 considering this matter in -- in the all or nothing way is
15 a disservice to some of the positions that we can take.
16 There is another alternative, at least, that's been
17 advocated here. That is there's nothing wrong with the
18 nine-member panel. Not even anything wrong with the
19 composition of a nine-member panel having six producer
20 representatives, three of those of ours, three of them
21 representing each pool, and three additional
22 representatives representing each of the municipal water
23 districts.

24 My client does not object to that composition.
25 They do object to the appointment of the same person to
26 sit on the Advisory Committee and to sit on this

1 nine-person committee. So at least one other alternative
2 is there. And that, I think, the Court has within it's
3 discretion would be to say, I'll appoint the nine-member
4 committee, but, Folks, go back and appoint -- make sure
5 there's not interlocking appointments here of the same
6 person on both panels.

7 That is the reason why -- Monte Vista is here.
8 I know Mr. Fudacz took a lot of umbrage with the idea of a
9 double-cross. It wasn't him, I'm sure -- I hope he
10 doesn't think I'm accusing him of the double-cross, but it
11 still occurred.

12 It is true what he said that the Monte Vista
13 representative did vote for somebody to serve on the
14 Advisory -- or excuse me, on the Watermaster panel who was
15 already then serving on the Advisory Committee, but that
16 was with the understanding that the person would withdraw
17 and resign from the Advisory Committee. And I don't even
18 think that person was the double-crosser. The people
19 involved, I know, and I wouldn't accuse them of that. I
20 think that what they said is, we'll resign from the
21 Advisory Committee if all the others that are appointed
22 from the Advisory Committee resign. When that didn't
23 happen, they stayed.

24 So we have a situation here where you have the
25 great potential for a conflict of interest. If people
26 don't like checks and balances, let's talk about conflict

1 of interest where you have the same person reviewing the
2 decision that they have already recommended.

3 THE COURT: I was surprised you didn't bring up
4 the fox in the chicken house.

5 MR. KIDMAN: It's not in the Constitution, your
6 Honor.

7 THE COURT: I am intrigued by that check and
8 balance argument as being a compelling interest --
9 compelling reason.

10 MR. KIDMAN: I think just to say we started
11 asking these questions after some of us already had our
12 peace. We think that you can manage the interim
13 administration questions, insurance, and so on, and
14 housing, and making sure that people that have gone in
15 their pocket can be reimbursed, those can be done on an
16 interim basis. It's not all that red hot that you have to
17 make this all-or-nothing decision today. It can be -- you
18 can find an interim arrangement; and we can deal with some
19 of these issues more fully.

20 THE COURT: You're saying you would agree with a
21 meet and confer?

22 MR. KIDMAN: Yes.

23 MR. CIHIGOYENETCHE: I would concur, your
24 Honor. And I would concur on what he says. And I find it
25 somewhat inequitable and unfair if I can say this. In the
26 bantering about of the fact that we're not making the

1 payments as Watermaster; and the innuendo is we're mucking
2 up the whole works just so we can make sure everything is
3 screwed up. That's not the case. When I was here in
4 April, I asked for authority and some direction and the
5 Court couldn't give it to me. And I understand why. I
6 don't dispute that.

7 Then we went to Mr. Fudacz who gave us the
8 instructions in writing. He advised us to pay some of
9 them and not all of them. Here we are again getting it
10 back in our face. I think that's grossly inequitable. I
11 think in the attempt to meet the demands, our position
12 remains the same. We don't have any vested interest in
13 being Watermaster. We gain nothing monetarily or
14 proprietary by being Watermaster. If we weren't, we
15 wouldn't spend the money of being here today.

16 We are Watermaster. In that position we do have
17 a responsibility to this Court when we see something we
18 feel is amiss to bring it to your attention; and the Court
19 can do with it what it will. I will concur with
20 Mr. Kidman, a meet and confer will be agreeable; and in
21 the interim, we would be acceptable to maintaining status
22 quo.

23 MR. GUTIERREZ: Can I add one other thought,
24 your Honor?

25 THE COURT: Sure.

26 MR. GUTIERREZ: Status quo. I think we should

1 maintain the status quo. There hasn't been anything said
2 by anyone today that compels a change. There is no reason
3 why Chino Basin cannot continue to serve for the interim
4 period until we get an opportunity to meet and confer
5 through the existing Judgment process and come to some
6 better resolution and bring it back to you.

7 The second thing is, I think it's very
8 significant that once light has been shed on the
9 development that brought this motion forth some of the
10 parties who apparently agreed have bailed out. And I
11 think that that's because, as Mr. McPeters stated, once
12 the parties really saw how this was affecting their
13 interests, they decided to take a second look.

14 And the most -- without casting aspersions,
15 Mr. Teal of the City of Ontario was the one that led the
16 charge of the January 25th meeting to displace the Chino
17 Basin Board. Mr. Teal has since been replaced in that
18 capacity by the City of Ontario. And the City of Ontario
19 is arguing, we don't want this nine-member board. And I
20 think, there are other parties that would do likewise once
21 they have an opportunity to do so.

22 I can represent to the Court that I have
23 communicated with some of the parties who had no idea that
24 this was going on. They're not here because, frankly,
25 they haven't had a chance to look at it. I think the
26 bottom line is there's nothing that says status quo should

1 not go forward. Let the parties revisit this with full
2 notice to one another so next time we come before the
3 Court the Court doesn't have to arbitrate such a dispute.

4 THE COURT: How much additional money are we
5 talking about maintaining the status quo if I have a meet
6 and confer but change Watermaster in the fall?

7 MR. GUTIERREZ: I can't respond to that. It
8 would have to be Mr. Cihigoyenetcche or Mr. Fudacz.

9 MR. FUDACZ: Your Honor, maybe I should suggest
10 that you might want to hear from Traci Stewart on this
11 subject. She is essentially the one that runs the
12 day-to-day operations of the Watermaster, if that would be
13 helpful.

14 THE COURT: This not an evidentiary hearing.
15 Perhaps one would be required under certain
16 circumstances. I notice she had a declaration. I had
17 read her declaration which was submitted by you.

18 What would she add?

19 MR. FUDACZ: Well, I think to the extent you
20 have concerns about --

21 THE COURT: I assume that everybody is happy
22 with the job she is doing, and that the Chino Basin
23 Municipal Water District hired her and had her in place
24 and the new people would hire her and have her in place.
25 I assume everybody -- she is acceptable to everybody and
26 that is the one common thread that goes through all of

1 this. Although, I don't know, how long has Traci Stewart
2 been doing this job?

3 MR. FUDACZ: It was in her declaration.

4 MS. STEWART: Two years.

5 THE COURT: So after 1993 when the date was
6 missed to have somebody come back and ask for judicial
7 permission for a Watermaster, so she's not responsible for
8 that?

9 MR. FUDACZ: No, not at all.

10 THE COURT: That thought just went through my
11 mind in looking over this with selecting a Watermaster,
12 when the previous Watermaster failed to come to court and
13 ask for permission, somebody was asleep at the switch,
14 obviously.

15 I'm intrigued by this idea of having everybody
16 get together. I know that definitely in reading your
17 points and authorities you're against it. I have read it
18 and predicted you would say that. You told me what you
19 were going to tell me. And now you're going to tell me
20 again. We're running out of time here. There's other
21 people; and I have got to do their cases today. I know
22 what your position is on that.

23 The compelling reason would be the -- the issue
24 of checks and balances. Whether or not one of the
25 Advisory Committee should be a member, also, of the
26 Watermaster, whether that's advisable or not. I think you

1 guys are going to have to meet and confer and actually
2 really discuss that issue when you know what I'm focusing
3 on.

4 I know the State of California is opposed to
5 it. Everybody is opposed to everything on this case. It
6 seems like there are some additional items that need to be
7 briefed.

8 Does this judgement need to be modified? Is it
9 advisable to have a check and balance? A strict
10 interpretation of the Judgment -- if I strictly construe
11 the Judgment, it does not appear to me right now that it's
12 necessary, but it might be necessary. That idea certainly
13 intrigued me. Nobody briefed it thoroughly, if at all.
14 And if there are going to be crossovers, then fine, but
15 let's discuss it first amongst yourselves. Meet and
16 confer on that issue.

17 Should the Chino Basin Municipal Water District
18 still be the Watermaster in the interim? The idea -- I
19 toyed with the idea of having the nine member be the
20 interim. I don't think you guys can agree on anything,
21 but you haven't met and conferred at my direction, yet,
22 and the specific issues that I'm concerned about. And it
23 could be that if there is no consensus, if there is no
24 agreement, then I'm just going to strictly construe the
25 Judgment was written by two very fine legal scholars and
26 accede to the wishes of the Advisory Committee, because

1 that's what the Judgment says, "absent compelling
2 reasons."

3 Nobody has thoroughly briefed the compelling
4 reasons of checks and balances. That's the issue that I'm
5 concerned about. Is it advisable? Is there a compelling
6 reason to have a member of the Advisory Committee not on
7 the Watermaster?

8 Now, it would appear that if I just turn you
9 guys loose now you would never get together. What days
10 are this auditorium that has generously been offered
11 available? I am going to have Mr. Gutierrez -- I was
12 going to have you prepare the Judgment here today -- the
13 ruling here today.

14 MR. GUTIERREZ: Your Honor, it is available most
15 of the time during the day and the evenings. There is a
16 schedule for the City Counsel and Recreation Commission.
17 Absent those, it's widely available.

18 THE COURT: And the daytime would probably be
19 best?

20 MR. GUTIERREZ: And we have the ability to
21 videotape the meetings; and we have microphone systems, so
22 it should be very easy for everyone to hear and get a
23 transcript or tapes of the meetings.

24 MR. FUDACZ: We do have Watermaster facilities.
25 They are available for this purpose. And we --

26 THE COURT: I am anticipating a large crowd

1 might want to hear what is said. The facility should be
2 made available. If people wish to show, they can show, if
3 they don't, then they have been forewarned.

4 I would direct the Watermaster, out of the
5 Watermaster's budget, to publish a notice of the date and
6 time of this meeting which we'll determine in a second,
7 and also the date and time of the next court appearance.
8 And that should be in a paper of general jurisdiction in
9 this area.

10 We're at the beginning of the summer. I'm
11 reluctant to have you come back to court and make any
12 changes until after the summer is over, but I want you to
13 meet in 60 days. Have the meet and confer in 60 days.
14 And have you come back to court -- actually, I want you to
15 meet before 60 days. Everybody check their calendars and
16 look at July 31st.

17 Mr. Gutierrez, get on the phone and clear it
18 with the City of Chino, July 31st at 10:00 in the morning.

19 MR. DOUGHERTY: That's one bad date.

20 THE COURT: Let's get another date. That whole
21 week is bad for you, Mr. Dougherty?

22 MR. DOUGHERTY: I'll be here Monday the 29th,
23 but I'll be --

24 THE COURT: How about July 29th? Everybody
25 check their schedules right now. And I will grant the
26 Motion to Appoint the Chino Basin Municipal Water

1 District, nunc pro tunc, very trepidatiously, because I
2 don't know what's out there, since nobody has opposed to
3 it, but I want to -- I might vacate that order if
4 something comes up at the -- at this meeting on the meet
5 and confer. Okay?

6 MR. FUDACZ: Your Honor, I'm unaware that there
7 are any problems with appointing them nunc pro tunc. I
8 think it's simply a housekeeping matter. We did not
9 oppose that. We just all assumed they were able to
10 function, and now we're trying to dot our I's and cross
11 our T's in that regard.

12 THE COURT: In case there is something I don't
13 know about out there, I'll retain jurisdiction to vacate
14 that order if there's something that's been concealed that
15 I don't know about. Otherwise, you need -- you've been
16 functioning -- you need to do some housekeeping and clean
17 up what was just an inadvertence, I assume, in making this
18 ruling.

19 MR. CIHIGOYENETCHE: Yes, your Honor.

20 THE COURT: And I will approve that for the
21 interim. You have got 30 days -- your 30 days' notice.
22 It's notice that it is not a 5-year appointment. And I
23 will review that appointment on the next court appearance
24 date.

25 MR. FUDACZ: Your Honor, can we set that date
26 now so we know?

1 THE COURT: We definitely are. We're waiting on
2 Mr. Gutierrez.

3 Mr. Cihigoyenetcche, you're going to get with
4 Mr. Gutierrez to make sure the judgement reflects this.

5 MR. CIHIGOYENETCHE: Very well.

6 THE COURT: So the Judgment will be prepared by
7 you.

8 MR. CIHIGOYENETCHE: So if I understand
9 correctly, you are appointing Chino Basin until further
10 order of the Court?

11 THE COURT: Correct. But I am also giving you
12 notice that that further order of the Court could change
13 at the next court appearance.

14 MR. CIHIGOYENETCHE: I understand that, your
15 Honor.

16 THE COURT: So nobody is going to -- I don't
17 want you accepting this decision and leaving this
18 courtroom and then coming back at the next court
19 appearance and saying, Judge, you gave us a 5-year
20 appointment pursuant to the judgement. I don't want that
21 to happen. That's not my intent. And I'll state that
22 right now.

23 MR. FUDACZ: Your Honor, as a matter of clarity,
24 could we have the order submitted to at least the parties
25 here?

26 THE COURT: Approved as to form and content?

1 MR. FUDACZ: Correct.

2 THE COURT: I want Mr. Gutierrez and
3 Mr. Cihigoyenetché to work on it to begin with because
4 Mr. Cihigoyenetché is concerned -- I am concerned that it
5 come from his hand that this is not a 5-year appointment.

6 Have you cleared the date, Mr. Gutierrez?

7 MR. GUTIERREZ: Yes, your Honor. I have dates
8 in July and August -- actually, any date. July 18th is
9 available.

10 THE COURT: July 29th?

11 MR. GUTIERREZ: That date is available.

12 THE COURT: 10:00 in the morning. That's to be
13 the City of Chino -- and you call it the Counsel
14 Chambers?

15 MR. GUTIERREZ: The City of Chino City Counsel
16 Chambers, 13220 Central Avenue, Chino.

17 THE COURT: I am assuming there's no charge for
18 the use of those chambers?

19 MR. GUTIERREZ: No charge, your Honor.

20 THE COURT: All right. Then the next court
21 appearance will be in late September. That will give you
22 guys sufficient time to have another meet and confer if
23 your first meet and confer winds up in frustration.

24 The next court appearance, give me a date,
25 Wanda, will be in late September. September the 25th.
26 And so that we don't have somebody waiting for a name

1 change like we have been waiting now because they weren't
2 quite ready, let's have that at 10:00 in the morning
3 instead of 8:30. I'll specially set it.

4 Is there anything else?

5 MR. FUDACZ: That week isn't -- I'm going to be
6 on vacation.

7 THE COURT: The 25th of September? Let's make
8 it the 3rd of October or the 2nd of October.

9 MR. FUDACZ: Is there a way to do it earlier?
10 I'd rather do it earlier than later.

11 THE COURT: September the 18th?

12 MR. FUDACZ: That's good for me.

13 THE COURT: A good date for us, Wanda?

14 THE CLERK: Yes.

15 THE COURT: September 18th. Mr. Gutierrez,
16 you're going to work with Mr. Cihigoyenetché on the
17 ruling. It will be sent to the other attorneys for
18 approval as to form and content.

19 MR. CIHIGOYENETCHE: Notice to all parties, I
20 presume?

21 THE COURT: Now, we're going to have the
22 attorney for Chino Hills --

23 What was your name again?

24 MR. HENSLEY: Mark Hensley.

25 THE COURT: You're going to work on updating a
26 mailing list.

1 MR. HENSLEY: Yes, your Honor.

2 THE COURT: Bearing in mind any new entities
3 that might have come into existence since 1978. You'll
4 give that -- circulate that mailing list amongst the
5 attorneys for their approval as to form and content.
6 After you received their approval back at your office,
7 then you'll mail the original to the Court.

8 MR. HENSLEY: Yes, your Honor.

9 THE COURT: It will be typed, okay?

10 MR. HENSLEY: Yes, your Honor.

11 THE COURT: At least 10 point pica, right?

12 Is there anything that I have not covered at
13 this time?

14 MS. STEWART: Our agreement expires on the 30th
15 of June.

16 THE COURT: I will assume the Watermaster is
17 going to enter an interim agreement on that. The order is
18 to include the Watermaster is ordered to pay the Nossaman
19 fee -- not Mr. Nossaman.

20 MR. FUDACZ: He is dead.

21 THE COURT: We'll get his burial expenses in
22 there -- including the Nossaman firm's expenses, unless
23 they're contested. Let's clean up any accounts payable.

24 MR. CIHIGOYENETCHE: I would assume on the
25 interim services agreement that would be more in the line
26 of extension of the existing agreement?

1 THE COURT: I think that would be appropriate
2 rather than enter into a new long-term agreement that
3 would bind -- assuming that I change the Watermaster. And
4 I will indicate to you I'm inclined to change the
5 Watermaster. So this is a Judgment that nobody is going
6 to be happy with, but a Judgment that I see fit at this
7 time. I will see everybody in September. You'll see each
8 other the 29th of July, 10:00, at the Chino City Counsel
9 Chambers.

10 MR. CIHIGOYENETCHE: Thank you, your Honor.

11 THE COURT: Briefs by September the -- well,
12 actually, make them by August the 30th if anybody wants to
13 submit briefs for the September hearing.

14 (Proceedings in the above-entitled matter
15 were concluded.)

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