

1 CUCAMONGA, CALIFORNIA; WEDNESDAY, SEPTEMBER 9, 1998;

2 A.M. SESSION

3 DEPARTMENT H (RC) HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5 (Appearing for the City of Chino,

6 MR. JIMMY L. GUTIERREZ, Attorney at Law;

7 appearing for Monte Vista Water District,

8 MR. ARTHUR G. KIDMAN, Attorney at Law;

9 appearing for the Watermaster, MR. WAYNE

10 K. LEMIEUX, Attorney at Law; also appearing,

11 MS. ANNE SCHNEIDER, Attorney at Law.)

12 (Heather R. Moore, C.S.R., Official Reporter, C-10294)

13

14 THE COURT: Let's go on the record in the case

09:52:5515 of Chino Basin Municipal Water District, case number

09:52:5516 RCV-51010. We'll start with Mr. Gutierrez. Let's have,

09:53:0417 first of all, the attorney's names for the record.

09:53:0618 MR. GUTIERREZ: Jimmy Gutierrez appearing for

09:53:0819 the City of Chino.

09:53:1020 MR. KIDMAN: Good morning. Arthur Kidman for

09:53:1221 Monte Vista Water District.

09:53:1522 MR. LEMIEUX: Good morning. Wayne Lemieux for

09:53:1723 the Watermaster.

09:53:1924 MS. SCHNEIDER: Good morning. Anne Schneider,

09:53:2125 special referee to your Honor.

09:53:2426 THE COURT: Thank you.

HEATHER R. MOORE, C.S.R. (909)945-4187

09:53:25 1 Mr. Lemieux, this is the first time he's been  
09:53:28 2 here, but his scintillating reputation has preceded him.  
09:53:33 3 MR. LEMIEUX: Thank you, your Honor.  
09:53:34 4 THE COURT: Who do we have in the audience  
09:53:35 5 today?  
09:53:37 6 MR. NEUFELD: Robert Neufeld, chairman,  
09:53:40 7 Watermaster Board of Directors.  
09:53:43 8 MS. STEWART: Traci Stewart, Chief of  
09:53:45 9 Watermaster Services.  
09:53:47 10 MR. KRUEGER: Vice Chair Andrew Krueger from  
09:53:49 11 Three Valleys Municipal Water District.  
09:53:52 12 MR. HILL: Randy Hill, District Engineer of  
09:53:54 13 Monte Vista Water District.  
09:53:58 14 MR. WILDERMUTH: Mark Wildermuth consultant to  
09:54:01 15 Watermaster.  
09:54:03 16 MR. DeLOACH: Robert DeLoach, Cucamonga County  
09:54:05 17 Water District, and presently the chairman of the Advisory  
09:54:08 18 Committee.  
09:54:09 19 THE COURT: Okay. In fact, I read about Mr. --  
09:54:13 20 not Mr. Neufeld, it was Mr. -- Krueger.  
09:54:19 21 MR. KRUEGER: Krueger. From Monte Vista.  
09:54:21 22 THE COURT: I think we had you on the web site  
09:54:23 23 even prior to our last ruling in here. Omniscient person  
09:54:27 24 that you are. Exactly as I ruled.  
09:54:32 25 Okay. There are a couple of preliminary matters  
09:54:36 26 that I want to do. And what I want to do is -- since Anne

09:54:41 1 Schneider was in Los Angeles yesterday, I had her spend  
09:54:45 2 the night so she could be here so we could go over some  
09:54:51 3 things that are at least of concern to me.

09:54:59 4                   You have the 19th and 20th annual reports.  
09:55:03 5 Those should be received and filed. Certain points need  
09:55:07 6 to be clarified. One thing I want to clarify in my own  
09:55:16 7 mind -- I'll give you what my thought is and you can tell  
09:55:24 8 me where I'm all wet or maybe I'm not.

09:55:27 9                   The annual reports are filed on November -- have  
09:55:3110 to be filed by November 15th. We might need to adjust  
09:55:3511 that. According to the judgment, they're filed November  
09:55:3812 15th. Your fiscal year ends June 30th. So immediately  
09:55:4513 following June 30th on November 15th you would have an  
09:55:4814 annual report due; is that correct?

09:55:5215                   MR. LEMIEUX: Yes, your Honor.

09:55:5316                   THE COURT: I am reading that correctly. Does  
09:55:5517 that date need to be adjusted?

09:55:5718                   MR. LEMIEUX: I think history is -- tells us  
09:56:0119 that it probably does. You think it's enough time, but it  
09:56:0420 just hasn't worked out. And we need some more time. And  
09:56:0821 we would be happy to study that and come back with a  
09:56:1222 recommendation. I don't want to put too much time in  
09:56:1623 here. I would recommend to the Court the actual  
09:56:2024 appropriate time.

09:56:2125                   THE COURT: As you'll find out later, I intend  
09:56:2426 to continue this hearing until November the 5th at

09:56:29 1 probably 10:00 in the morning depending on if that's  
09:56:34 2 convenient with everybody. And that might be one of the  
09:56:36 3 issues that you can notice for that day.

09:56:42 4 Mr. Lemieux, I'm probably going to pick on you.  
09:56:46 5 I picked on Mr. Gutierrez. I picked on Mr. Kidman.  
09:56:49 6 There's probably nobody else to pick on as far as giving  
09:56:53 7 service. I will have you give service. And I will  
09:56:56 8 probably make you personally responsible for preparing the  
09:57:01 9 finished product.

09:57:0710 MR. LEMIEUX: Yes, your Honor. Since your Honor  
09:57:2411 has dropped that in my lap, can -- when we come back on  
09:57:2812 the 5th -- this is beyond what we're talking about  
09:57:3113 today -- would you have a problem with that motion that we  
09:57:3514 bring on the 5th including a request to allow us to serve  
09:57:4115 parties by electronic means, email and web site?

09:57:4616 THE COURT: I am glad you mentioned that. We  
09:57:4917 had mentioned that too. And omniscient as you are, it  
09:57:5518 would have to be a noticed motion for some time in the  
09:57:5719 future, but it seems to me if you have been reading me,  
09:58:0320 which apparently you have, there are a lot of people.

09:58:0821 And I have ordered the Internet. And that's the  
09:58:1122 direction that we're headed. I don't know if we're there  
09:58:1623 yet. I have some questions I want to ask Traci Stewart  
09:58:2024 about the Internet. It seems to me it could be set up  
09:58:2525 where notice was given that the onus was on the people to  
09:58:2926 look up the motions on the Internet and if they wanted a

09:58:33 1 hard copy, obviously, we would have to provide it or the  
09:58:36 2 Watermaster would have to provide it.

09:58:38 3 There does seem to be a lot of efficiencies by  
09:58:43 4 using that. Mail is expensive and we're killing trees  
09:58:48 5 and a lot of people are probably throwing this stuff away.  
09:58:51 6 If they really want it -- my concern is if they really  
09:58:56 7 want it they get it. Also my concern is that this is not  
09:59:00 8 used as an artifice to circumvent disclosure in certain  
09:59:10 9 circumstances. As you noticed from the written material  
09:59:1210 that I handed to you earlier today, the whole spirit of  
09:59:1811 this process since I have been writing these rulings has  
09:59:2312 been an openness, not only with each other, but with the  
09:59:2913 public.

09:59:3014 And one of the reasons that I -- if you notice,  
09:59:3315 I don't know if you have any tracking device on the  
09:59:3716 Internet, but if you notice, I have been accessing that.

09:59:4117 MR. LEMIEUX: Have you received our cookies?

09:59:4418 THE COURT: No, I haven't accessed your cookies.  
09:59:4719 I understand there is a cookie cutter where you can  
09:59:5020 actually remove the cookies.

09:59:5421 I do look at it. Actually, I was most  
09:59:5822 impressed. I was reading one of those where the  
10:00:0123 Agricultural Committee donated, was it \$20,000? Very  
10:00:0724 impressive and in the spirit of the judgment.

10:00:1225 I do read those. It gives me an idea of what  
10:00:1626 you guys are doing without me having an ex-parte

10:00:20 1 communication. But one of these days maybe we'll all go  
10:00:25 2 over. I would love to see the Watermaster building. I  
10:00:29 3 had Heather deliver a picture.

4 Did you get the picture?

5 THE COURT REPORTER: I took it with the last  
6 transcript.

10:00:36 7 MR. LEMIEUX: Can we arrange a tour of the  
10:00:38 8 facilities some time of year where it's pleasant, not only  
10:00:42 9 to Watermaster but the spreading grounds and all of the  
10:00:4610 major water facilities for the area?

10:00:4911 THE COURT: I have thought about that. It would  
10:00:5112 give me a better idea of what's going on. I would have to  
10:00:5413 be quiet the whole time. It would be difficult to have a  
10:00:5714 court reporter going. And I think these proceedings as  
10:01:0015 they are right now should be court reported any time I am  
10:01:0616 having interaction.

10:01:0717 MR. LEMIEUX: That is something we did with some  
10:01:0918 other adjudicated basins where the Judges were able --

10:01:1419 THE COURT: Maybe I will take the court  
10:01:1620 reporter, and if I do have a question it could be  
10:01:1821 reported, the question and the answer, because -- well,  
10:01:2522 actually, I think I mentioned to the people some time ago  
10:01:3023 that's where I have gotten Anne Schneider's name. I was  
10:01:3424 looking at Bancroft Whitney and it said, per Schneider.  
10:01:4125 That's how Anne Schneider was looked up. I was reading  
10:01:4526 some information that was available and then I had Judy,

10:01:52 1 the legal research attorney that worked for us at that  
10:01:55 2 time, contact you and you sent us three articles that you  
10:02:00 3 had written which I have looked at.

10:02:03 4 I am trying to educate myself all along too,  
10:02:06 5 which brings us -- perhaps, I'll sidetrack some of my  
10:02:10 6 notes here. I gave you guidelines regarding compensation  
10:02:14 7 that I handed out earlier today. Has everybody that needs  
10:02:18 8 a copy received a copy of that?

10:02:21 9 (No response.)

10:02:2310 THE COURT: In a second I am going to invite  
10:02:2711 everybody that has any questions and I am going to have  
10:02:3212 Anne Schneider give me her views on what is needed to  
10:02:3913 supplement any scoping plan. And what I want to do first  
10:02:4614 of all, though, I think, is I'll -- actually, I'll answer  
10:02:5115 any questions you have on the guidelines regarding  
10:02:5416 compensation. I wrote it last night on my own personal  
10:02:5817 PC, which also accesses the Watermaster. I have one here.

10:03:0218 And Mr. Gutierrez --

10:03:0319 MR. GUTIERREZ: I have a comment on it.

10:03:0620 And my comment is merely an observation about  
10:03:1021 some obvious things. After we received this I asked some  
10:03:1422 questions of Mr. Neufeld, Mr. Krueger and Traci Stewart.  
10:03:1923 And the observation is, at least on my part, is that those  
10:03:2324 nine persons who serve as the Watermaster Board are in  
10:03:2725 effect doing the work of the Court for the Court under the  
10:03:3126 judgment and under the most recent ruling as is Anne

10:03:35 1 Schneider and Mr. Scalminini.

10:03:37 2 Today I understand the costs to Watermaster  
10:03:40 3 which are born to everybody and paid directly by the  
10:03:43 4 producers exceeds \$100,000 for the work Ms. Schneider has  
10:03:46 5 done and Mr. Scalminini has done. The budget that I  
10:03:52 6 understand exists for the Watermaster Board members and  
10:03:55 7 their expenses is about \$36,000. And my question is, if  
10:03:59 8 we didn't have the Board there donating their time and  
10:04:02 9 being actively involved there would be an expense anyway  
10:04:0610 and it would be absorbed by the people that ultimately use  
10:04:1411 the water. So I think in the big picture of things the  
10:04:1412 cost is not an issue from my point of view. I think the  
10:04:2013 way in which the Court is comfortable in dealing with  
10:04:2414 those alternates.

10:04:2815 I haven't attended all of the meetings. I have  
10:04:2816 noticed at some of them by and large most of the Board  
10:04:3117 members are there and they spend a lot of time.

10:04:3318 THE COURT: Recently there were some  
10:04:3619 allegations -- in fact, way back when. I am just going by  
10:04:4020 memory, now, one of the Board members was accused of  
10:04:4521 having infrequent participation in their meetings.

10:04:4822 MR. GUTIERREZ: On the Board, your Honor?

10:04:5023 THE COURT: This is on material that was filed  
10:04:5224 with the Court about a year or two ago.

10:04:5625 MR. GUTIERREZ: I am talking about since you  
10:04:5826 made the appointment in February under the ruling of the

10:05:00 1 new Watermaster Board. And there is a lot of work taking  
10:05:05 2 place. I don't want your concerns, which are legitimate,  
10:05:08 3 to be obscured by the bigger picture that the work needs  
10:05:10 4 to be done, is being done, and is being progressed. And  
10:05:15 5 the other reality is six of those members are elected  
10:05:18 6 officials, three from the Producers and three from the  
10:05:22 7 three water districts. And I don't believe they're being  
10:05:25 8 compensated.

10:05:27 9           And all of those elected officials are being  
10:05:3110 asked to donate their time. I will speak more about  
10:05:3611 counsel members then I will about district members. They  
10:05:4012 have all kinds of committees to attend. And it is very  
10:05:4313 dumb for them to go -- to some extent to not deal with  
10:05:4814 compensation or some of their time and their expenses it  
10:05:5215 becomes a disincentive to them being actively involved,  
10:05:5616 recognizing that they have a lot of work to do on other  
10:05:5917 issues.

10:06:0018           I want to put that in perspective. I don't see  
10:06:0319 an objection. Overall I think it is a question of what  
10:06:0620 the Court feels comfortable with as far as compensation.

10:06:1021           THE COURT: If you look at Paragraph 18 of the  
10:06:1322 judgment, which I called your attention to, you have got  
10:06:1523 to do it correctly. The judgment is the judgment. You  
10:06:1924 can modify their salary and pay them \$16 a meeting or give  
10:06:2325 them \$19.95 a day or \$24.95 a day, but if you got to  
10:06:2926 \$25.50 instead of the \$25.00, then you have to modify the

10:06:33 1 judgment and that is by amendment and that was my point.

10:06:37 2 If you want to do it, I am not opposed to it. I  
10:06:41 3 think \$25 a day is ridiculous. I use that word in there.  
10:06:46 4 I am not opposed to them being fairly compensated. On the  
10:06:50 5 other hand, it is a quasi-judicial position they're  
10:06:54 6 holding. And you might know what a cut in salary I took  
10:07:02 7 when I took this job. I make about 1/8th of what I did  
10:07:06 8 when I was in private practice. We all do not expect to  
10:07:10 9 be paid what private industry is paying. If these were  
10:07:1510 members of the board of directors of Intel I think they  
10:07:1911 would be paid substantially more. I don't know what a  
10:07:2312 school board -- the compensation is for a member of a  
10:07:2813 school board.

10:07:3014 You requested -- I found it to be reasonable the  
10:07:3315 \$125 and \$250. The only problem I saw was the mileage was  
10:07:4416 nickel and diming it. A little like mice nibbling away at  
10:07:4917 the cheese. Actually, Mr. Krueger, I looked up his  
10:07:5318 qualifications. He's an engineer. I checked on a lot of  
10:07:5619 you people.

10:07:5820 Mr. Neufeld, I checked on yours. They're very  
10:08:0221 fine people. And I don't think -- they don't want to  
10:08:0622 be -- the mileage from --

10:08:0823 Mr. Neufeld, you live in Rancho Cucamonga?

10:08:1224 MR. NEUFELD: Yes, sir.

10:08:1325 THE COURT: You gotta' make less than a buck on  
10:08:1826 mileage going to a meeting. I live in Upland. I drive to

10:08:24 1 work every day. I don't turn in an expense statement for  
10:08:28 2 mileage to and from work. But if I fly up to San  
10:08:33 3 Francisco -- tomorrow I will be going to a judges'  
10:08:35 4 convention.

10:08:37 5                   Once a year we have a judges' convention. I  
10:08:40 6 will be going to that. I don't get paid for Saturday and  
10:08:42 7 Sunday. The County is picking up the tab for the hotel  
10:08:52 8 and probably not full compensation for meals in San  
10:08:56 9 Francisco where it is very expensive to eat but a lot of  
10:08:59 10 the expenses associated with that.

10:09:06 11                   I found out through the paralegal they're an  
10:09:08 12 appendage of the Court for some purposes. And I thought  
10:09:12 13 they should be compensated equal to a judicial officer.  
10:09:21 14 Even to the point I thought they should be compensated for  
10:09:21 15 the meetings. We have judges' meetings once a month in  
10:09:26 16 San Bernardino. We have to drive in there in our own  
10:09:26 17 personal car. We don't get compensated for the car.  
10:09:29 18 Nobody puts a chit in for anything.

10:09:32 19                   This is different. I put it doesn't equate. I  
10:09:37 20 am not opposed to -- I want good quality people on this to  
10:09:42 21 preserve this. I want you people to succeed. I have said  
10:09:46 22 that before or I wouldn't put the time into it. Believe  
10:09:49 23 me, every time you guys come here I put a lot of time into  
10:09:54 24 this. A lot of time. I missed Mark McGwire's 62nd home  
10:09:59 25 run last night.

10:10:02 26                   That's just how I feel. I wanted to put in

10:10:05 1 there that I respect the people that are currently on the  
10:10:09 2 Board. They volunteered. They knew it was \$25. This  
10:10:12 3 happened subsequent to them volunteering.

10:10:14 4 There are going to be people in the future. I  
10:10:17 5 don't know who they are. You don't know who they are.  
10:10:19 6 And these people don't know who they are. There is the  
10:10:22 7 potential for abuse. And what you put before the Court  
10:10:29 8 and the vehicle that you used is inappropriate.

10:10:33 9 The judgment -- for whatever reason, the people  
10:10:3710 who entered into that judgment initially agreed to it,  
10:10:4011 though the \$25 maximum was what -- where they wanted to  
10:10:4612 set the fee, where now we have a different board composed  
10:10:5013 of different people. We have the nine people. I want  
10:10:5314 good people on it. And I want them to be compensated. I  
10:10:5515 don't want them to have a gravy train.

10:10:5916 This is not something where somebody is going to  
10:11:0317 be encouraged to have excess meetings. I didn't limit  
10:11:0618 you, as you may have noticed, to the eight meetings a  
10:11:1019 month, because there is going to be some scrambling at  
10:11:1320 times. And if more than eight meetings were necessary, I  
10:11:1721 hope they're not, if more than eight meetings were  
10:11:2022 necessary, I didn't want to limit this group, because at  
10:11:2323 this very important time there is going to be a lot of  
10:11:2624 scrambling.

10:11:2825 Is there any more questions on what I have  
10:11:3226 written?

10:11:34 1 MR. LEMIEUX: I take it, your Honor, you wish us  
10:11:37 2 then to present -- if Watermaster wants to proceed with  
10:11:40 3 compensation changes, we present it as an amendment to the  
10:11:44 4 judgment?

10:11:45 5 THE COURT: Yes. By some legal process to get  
10:11:48 6 it properly before the Court.

10:11:50 7 MR. LEMIEUX: And if the Court has reserved  
10:11:52 8 November 5th as a date for us to come back and such a  
10:11:57 9 motion is to be made, we'll try to make it on that date.

10:12:0210 THE COURT: 10:00 in the morning or 1:30 in the  
10:12:0411 afternoon?

10:12:0512 MR. LEMIEUX: 10:00 is a great time for me,  
10:12:0713 but --

10:12:0814 THE COURT: Okay.

10:12:1015 MR. GUTIERREZ: It doesn't matter.

10:12:2316 THE COURT: Okay. I wanted to point out that --  
10:12:2517 I don't know if I have or not -- if I am repeating myself,  
10:12:2918 I apologize. I got up at 5:00 and went to bed at about  
10:12:3219 2:00 and I was working on some other things, trying to  
10:12:3620 read some of the reports, but -- I want to note that the  
10:12:3921 filing of the report and approval of the filing of the  
10:12:4222 report is not to be considered as approval of any specific  
10:12:4623 item contained within the report. So number 19 and  
10:12:5024 number 20, I don't want any judicial imperator attached to  
10:12:5525 any one item in there. I noticed, for example, there was  
10:12:5826 an intervention.

10:13:05 1                   These people are approved as intervenors and  
10:13:08 2                   there is no reason why, there is no wherefor, no anything  
10:13:14 3                   in there. So I don't want anybody to construe that I am  
10:13:21 4                   articulating at this time any approval of that. And so is  
10:13:34 5                   there anything contained in reports number 19 and 20 that  
10:13:37 6                   require specific approval? Otherwise, I'll approve the  
10:13:42 7                   filing of the reports. If there is, you're going to have  
10:13:45 8                   to notice it properly.

10:13:46 9                   MR. LEMIEUX: Yes.

10:13:4710                   THE COURT: Notice it properly and have it  
10:13:5011                   properly before the Court and give people notice.

10:13:5312                   MR. LEMIEUX: Excuse me, your Honor?

10:13:5313                   THE COURT: I noticed one of the -- as a matter  
10:13:5614                   of fact, on the notice of today's meeting it said, at the  
10:14:0015                   very end it said compensation --

10:14:0216                   MR. LEMIEUX: Yes.

10:14:0317                   THE COURT: It didn't say an increase in  
10:14:0518                   compensation, anything like that. I am not so sure that's  
10:14:0819                   adequate notice, but anyway.

10:14:1020                   MR. LEMIEUX: Your Honor --

10:14:1121                   THE COURT: Nothing has happened today anyway,  
10:14:1322                   so --

10:14:1423                   MR. LEMIEUX: Your Honor, for the notice of  
10:14:1524                   ruling for today's ruling, would it be proper to say that  
10:14:1925                   the 19th and the 20th reports have been received and  
10:14:2226                   filed?

10:14:23 1 THE COURT: Yes.

10:14:24 2 MR. LEMIEUX: Which doesn't indicate approved of  
10:14:26 3 their content. And likewise the production reports were  
10:14:30 4 received and filed and perhaps stop there?

10:14:33 5 THE COURT: Okay. And then --

10:14:37 6 MR. LEMIEUX: Then the burden will be on us to  
10:14:39 7 identify anything that's -- any of those documents that  
10:14:45 8 would require Court approval. And we'll file a separate  
10:14:50 9 motion.

10:14:5010 THE COURT: One of the questions I had is all  
10:14:5011 production being reported, page 12 and 13, regarding the  
10:14:5612 court accounting of water reporting, how complete is the  
10:15:0013 water reporting? One of the things, Mr. Lemieux, you're  
10:15:0514 right there with the -- not Mr. Lemieux, Wildermuth.

10:15:1415 In reading your report, and you're recognized as  
10:15:2016 an expert in this field and know far more than I do, the  
10:15:2717 general tenor of the report reads, hey, we know what we're  
10:15:3118 doing. This is one of the inferences that one can take  
10:15:3419 from it, not totally, and not the major aspect of your  
10:15:4020 report by any means. We know what we're doing. And we  
10:15:4521 know what the production levels are, just leave us alone  
10:15:4922 we'll get the job done. Don't get in our way. That we'll  
10:15:5823 discuss in a little bit.

10:16:0124 You might want to be thinking about that.  
10:16:0325 That's how I saw it when I was reading it. And, again, I  
10:16:0726 am not an expert. I am going to be asking Anne Schneider

10:16:13 1 about it in a second on the record. That was the general  
10:16:17 2 tenor I got, hey, Judge -- and I got that in one of the  
10:16:22 3 reports. It might have been your report in response to  
10:16:26 4 the late listing of the minutes on the Internet -- is that  
10:16:35 5 we're busy trying to get this Optimum Basin Management  
10:16:40 6 Plan out, Judge, and just don't mess with us. We have got  
10:16:44 7 to get this stuff done.

10:16:46 8 And we don't have time to do your silly computer  
10:16:49 9 things. And there is a reason for it. And as we're now  
10:16:5310 starting to find out, you're going to save a lot of money  
10:16:5711 giving notice on the -- I'll ask Traci Stewart this. I am  
10:17:0112 going to call on you, even though you're not an attorney.

10:17:0613 How long does it take you to put the minutes  
10:17:0814 into the computer as far as -- you have a web server  
10:17:1215 there, do you, now?

10:17:1516 MS. STEWART: The minutes are typed into the  
10:17:1717 computer. Initially, in order to put them up on the web  
10:17:2118 what has to happen is the format of them has to be  
10:17:2419 reformatted because the language the web server utilizes  
10:17:2820 doesn't allow for the same type of formatting you're able  
10:17:3321 to use in a word processing program that you develop the  
10:17:3722 minutes in. That's the first step. And once they are put  
10:17:4023 into the proper format, then usually what we do, and we're  
10:17:4524 going to be training somebody else to do this, we put them  
10:17:4925 up on the web and you have to -- there is a process you  
10:17:5326 have to go through in order to do that, essentially.

10:17:56 1 THE COURT: About how long are we talking about?

10:18:00 2 MS. STEWART: Timewise, probably depending on  
10:18:03 3 the length of the minutes, it probably is like an hour per  
10:18:06 4 set of minutes, I would say. It does take time to go  
10:18:10 5 through and reformat and get it accumulated and put it up  
10:18:15 6 on the web. You can do -- if you have more of them  
10:18:19 7 accumulated then the process of putting them up is  
10:18:21 8 quicker. So you could do probably five sets of minutes in  
10:18:26 9 two hours, two-and-a-half hours, that wouldn't be that  
10:18:3010 much of a problem. As far as notice on the web, we have  
10:18:3611 asked people for their email addresses and whether they  
10:18:3912 have access.

10:18:4013 There are a number of parties that don't report  
10:18:4414 it. I am not certain that that's going to be adequate or  
10:18:4915 approve constructive notice. In the past we had the post  
10:18:5316 card where whenever we were going to be filing something  
10:18:5617 that was significantly different we would notice everybody  
10:19:0118 with a post card. And that's what the -- we have -- I  
10:19:0519 don't know when it goes back to, '78 or '79, where we're  
10:19:0920 able to notice most people for pending motions before the  
10:19:1321 Court by post card and there are probably a hundred and  
10:19:1722 some that request everything.

10:19:2023 THE COURT: Well, if they request everything,  
10:19:2224 maybe they can find it on the Internet in the future, some  
10:19:2525 of those 140, also some combination with Facsimile. There  
10:19:3226 are getting to be more and more, as a result of this, more

10:19:35 1 and more of them may feel they have got to come into the  
10:19:40 2 soon-to-be 21st Century, right? I think there could be  
10:19:49 3 some economies in the long run in that area. I have been  
10:19:56 4 looking. And I sat there accessing it numerous times  
10:20:00 5 wondering when are they going to be putting the minutes  
10:20:04 6 on.

10:20:04 7 One of the things I looked for and haven't seen  
10:20:11 8 that I would like to see is when you have a consent  
10:20:16 9 calendar, and then going with this onus, because, you know  
10:20:1610 as -- what's one of my expressions, Mike, when we have got  
10:20:2111 the criminal defendant bs'ing me? See this. Take a long  
10:20:2512 look. Does this look like the face of a fool? I have  
10:20:3013 been around. I know what can be done with consent  
10:20:3214 calendars.

10:20:3315 The public has got their perceptions. I read an  
10:20:3616 article in the paper this past week where somebody was  
10:20:3917 accusing somebody -- it was an editorial. I read it  
10:20:4318 someplace, consent calendars can be abused. And if  
10:20:5019 something has to be put on a consent calendar, when the  
10:20:5320 minutes are drafted there should be no reason why the  
10:20:5721 consent calendar items couldn't be included in the minutes  
10:21:0222 going with this openness we discussed.

10:21:0623 Let me go to another couple of my notes here. I  
10:21:1024 have dealt with compensation. If that is a motion before  
10:21:1425 the Court I didn't construe it to be a motion. It is a  
10:21:1826 document that is probably improperly filed but it is in

10:21:22 1 the court file. If it is a motion, it is denied without  
10:21:24 2 prejudice to remaking it and I have given you some  
10:21:29 3 guidelines on that.

10:21:31 4 We discussed production summaries. I want to  
10:21:34 5 know if they're complete. And I am going to direct  
10:21:37 6 Mr. Lemieux when he is preparing the final draft of the  
10:21:44 7 scoping plan to consult with Anne Schneider and authorize  
10:21:52 8 Anne Schneider to talk directly with Mr. Lemieux in that  
10:21:58 9 respect. One of the comments -- actually, they say if you  
10:22:1910 have a good idea somebody will steal it from you. I think  
10:22:2311 it was Kathy that said the Watermaster Board members and  
10:22:2812 employees should be like Cesar's wife, beyond reproach.  
10:22:3513 And so I will steal it from you. Thank you, Kathy.

10:22:4014 That along with the compensation issue, I was  
10:22:4315 really concerned as to how it was written, but we're going  
10:22:4616 to redo that. Enough said on that. Regarding the scope  
10:22:5617 of work. First of all, I want to acknowledge the hard  
10:23:0118 work that has obviously gone into the preparation of the  
10:23:0419 report. I am quite pleased with the amount of effort that  
10:23:0920 is being expended. The sense that I get from looking at  
10:23:1321 everything and reading your Internet is that you guys are  
10:23:2122 busier than bees, not bees, but ants at a picnic.

10:23:2623 I think later on today I want to get into some  
10:23:3024 comment of how you can improve your scope specifically  
10:23:4425 with respect to defining the problems faced by the  
10:23:4726 Watermaster and the goals envisioned by the Watermaster.

10:23:57 1 And again going back I think there are certain things that  
10:24:01 2 are very obvious to you people. In fact, in the legal  
10:24:05 3 field we often -- Mr. Gutierrez and I might be talking to  
10:24:08 4 each other and Mr. Lemieux, I have never met him before  
10:24:13 5 today, or Mr. Kidman, and one expression attorneys use,  
10:24:18 6 even though I am a Judge and I have lost my license to  
10:24:22 7 practice law as a result, we say we're intellectual idiots  
10:24:26 8 on the law, something that is so obvious to us is not so  
10:24:30 9 obvious. And we have difficulty explaining that to  
10:24:34 10 others. And engineers are not immune.

10:24:37 11 My father was an engineer. If I can project a  
10:24:39 12 moment. I was talking to my wife about it last night. We  
10:24:43 13 were talking about the kids going back to school.  
10:24:47 14 Yesterday was the first day of school and I was laughing.

10:24:50 15 I asked my dad one time to help me with math and  
10:24:53 16 that was it. He was an engineer. You take this and move  
10:24:57 17 it over here and that and this. And he really was not a  
10:25:01 18 communicator.

10:25:04 19 Engineers, they know it. They know it. He was  
10:25:07 20 a brilliant man, but sometimes communicating it to other  
10:25:11 21 people was difficult. And the problem here that I see is  
10:25:15 22 communicating to the Court and laying out some objectives  
10:25:19 23 that perhaps are more quantifiable than what you have so  
10:25:23 24 far expressed. The public, through this Court, have some  
10:25:27 25 means of measuring your success.

10:25:31 26 And again, the whole purpose of bringing Anne in

10:25:45 1 here today is to help you succeed. I want this to work.  
10:25:48 2 I have got too much time in it now to have you guys fail.  
10:25:55 3 But, anyway, we'll get to that in a minute.

10:26:09 4 Okay. The engineering reports mentioned in the  
10:26:17 5 optimum management scope of work were to be completed by  
10:26:22 6 August of this year. From a review of the summaries of  
10:26:22 7 those reports it appears the reports may contain specific  
10:26:27 8 analysis that the people represented by this Court and  
10:26:32 9 this process would be interested in seeing. The contents  
10:26:3610 of those reports should be included within the scope of  
10:26:4011 work -- within the goals identified to solve the problems.  
10:26:4812 And as a result of that I am going to continue this  
10:26:5113 hearing until November the 5th at 10:00 as we discussed so  
10:26:5614 that you can more adequately address those items in the  
10:26:5915 scope.

10:27:0816 Again, I want to end it on a more positive note.  
10:27:1217 I am very pleased with the amount of effort that's been  
10:27:1618 expended. I want to get you more focused in directions  
10:27:2119 that I think are what I want. I am going to have a moment  
10:27:2620 where we're going to -- I am going to have Anne Schneider  
10:27:2921 address some of these points as she sees them and allow  
10:27:3322 you guys to add your input.

10:27:3923 I think you guys have come a long way from a  
10:27:4524 couple of years ago. It has been over two-and-a-half  
10:27:4825 years ago, more than that when we started this process.  
10:27:5226 Mr. Kidman was present. Mr. Gutierrez was present. Traci

10:27:55 1 Stewart was present. As well as some of the rest of you.

10:27:59 2 It has been a long, arduous process. We're  
10:28:03 3 going to do it. I think that the main concern is defining  
10:28:15 4 what the problems are at this point. And I think that was  
10:28:18 5 Mr. Scalminini's approach. That old saying, if you don't  
10:28:26 6 know where you're going -- if you don't have a  
10:28:29 7 destination, then how can you plot a course or chart a  
10:28:33 8 course when you're sailing? And you might get lost in the  
10:28:36 9 storm in the process.

10:28:3810 Where are we? I read one report in there, or  
10:28:4311 one comment, that it costs over a billion dollars to clean  
10:28:4712 it up. If we are so far gone in this process, tell me  
10:28:5513 what we're going to do to at least manage this uncleanable  
10:29:0214 situation. I noticed in one of the reports, I think it  
10:29:0615 was page 17 of the report of the -- the 19th or the 20th.  
10:29:1216 I have got it dog-eared here. And it really kind of  
10:29:2217 concerned me in that I wondered what efforts were being  
10:29:2718 employed in the area of clean-up it was on page 17, going  
10:29:3119 into 18. And if you look on page 18 it says, Chino Basin  
10:29:4220 desalter. And this is for your 95/96, I think.

10:29:5221 MR. LEMIEUX: Is that of the annual report, your  
10:29:5422 Honor?

10:29:5523 THE COURT: Yes. Under F it says, in September  
10:29:5724 of 1996 Western Municipal -- W.M.W.D., Western Municipal  
10:30:0325 Water District filed an MPA, Memorandum of Points and  
10:30:0826 Authorities, regarding the desalter agreement. The

10:30:13 1 Memoranda of Points and Authorities says that W.M.W.D.  
10:30:18 2 supports the desalter agreement; however, it contends that  
10:30:21 3 12,000 acre feet of replenishment water only offsets  
10:30:26 4 current salt and Nitrate contributions. Watermaster  
10:30:30 5 general counsel at that time anyway, Fudacz, was to  
10:30:34 6 directly respond. And he said, well, the Watermaster  
10:30:38 7 parties didn't necessarily include that.

10:30:40 8 They contemplated as agriculture moves out of  
10:30:44 9 the area and the demand becomes an urban demand rather  
10:30:47 10 than an agricultural demand -- which when I read something  
10:30:53 11 like that, you know, what does that mean? It means we  
10:31:06 12 have done something. We promise you. Trust us. And  
10:31:10 13 that's not what we're looking for. At least I don't  
10:31:13 14 think. That's not what I expect.

10:31:19 15 Mrs. Schneider -- I never really asked you if it  
10:31:24 16 is Ms. or Mrs. It is Mrs. You have a ring on your finger  
10:31:30 17 there. What comments do you have at this time since we  
10:31:33 18 hired you to assist the Court in this endeavor?

10:31:37 19 MS. SCHNEIDER: Thank you, your Honor.

10:31:38 20 I filed comments on the draft OBMP scope of  
10:31:43 21 work. And Mr. Lemieux filed a response to those comments.  
10:31:49 22 And attached to those responses were Mr. Wildermuth's  
10:31:53 23 responses in response to Mr. Scalminini's letter. And I  
10:32:00 24 think those documents set up the concern, the picture of  
10:32:02 25 the concern that I had and tried to express in the  
10:32:06 26 comments, but I can try to express that maybe more clearly

10:32:10 1 now.

10:32:13 2           The tremendous amount of work that's gone into  
10:32:16 3 the scope of the OBMP, and obviously you have remarked on  
10:32:24 4 that, the concern is that when you scanned back and ask a  
10:32:30 5 very fundamental question, I am not sure that the work --  
10:32:35 6 the task work that's outlined in that scoping document  
10:32:39 7 ever addresses the basic question. And the basic question  
10:32:43 8 is, why are we doing this? It has to be not an exercise  
10:32:50 9 without a purpose just to satisfy some judgment provision  
10:32:5610 or your ruling. And I am concerned that there is not a  
10:33:0111 definition of the problem nor an indication that  
10:33:0612 meaningful and useful -- and I emphasize useful -- goals  
10:33:1213 will be set so that the overall process really does answer  
10:33:1714 the question of whether there is a way to improve quality  
10:33:2315 meaningfully in this basin or not.

10:33:3116           The scope sounds like it will address those  
10:33:3617 issues, particularly the engineering tasks, one, two, and  
10:33:4118 three, and the sections one, two, and three of the OBMP  
10:33:4619 which already, presumably, are drafted because the  
10:33:5120 timeline, at least, indicated they would be completed by  
10:33:5421 the end of August. Reviewing those in conjunction with  
10:33:5922 the draft scope as amended by Mr. Wildermuth, I think,  
10:34:0423 would allow us and you to determine if there is really any  
10:34:1124 meat that is the subject of this process. When Joe  
10:34:1925 Scalminini and I suggest that there isn't a statement of  
10:34:2226 the problem, it is because we really couldn't find

10:34:27 1 anywhere in all the work all these years a true definition  
10:34:32 2 of what the problems are in a way that we could find, at  
10:34:36 3 least, or use. And when we set this, Mr. Wildermuth's  
10:34:42 4 response, which is attached to Mr. Lemieux's response, is  
10:34:45 5 that the scope of work presumes the -- I am quoting. The  
10:34:49 6 scope of work presumes the reader has the understanding of  
10:34:52 7 problems in the basin. And this presumption has led to  
10:34:55 8 the comment, I guess, that we made.

10:34:57 9           The management problems in the Chino Basin are  
10:35:0010 just that, management problems. Most of the producers  
10:35:0211 know or have knowledge of the water level and water  
10:35:0512 quality problems of the basin. The real challenge is to  
10:35:0813 develop institutional arrangements to address these  
10:35:1314 problems. And the purposes of engineering the tasks two  
10:35:1715 and three are to get everyone on the same page. And he  
10:35:2116 goes on. And I think that it may well be that the scope  
10:35:2617 is absolutely adequate, but it is essentially impossible  
10:35:3018 to tell that without being able to look at the work  
10:35:3319 product from -- that is embodied in these first three  
10:35:3920 engineering task memos and the draft -- first three  
10:35:4221 sections of the OBMP itself.

10:35:4522           I think that the issue may already have been  
10:35:4923 addressed in addition by the drafting that presumably has  
10:35:5324 been accomplished. And I guess it makes sense to continue  
10:35:5925 this until November 5th if one of the things that can be  
10:36:0426 accomplished in this intervening period is to review those

10:36:09 1 work product memos and draft sections and see if they do  
10:36:15 2 what the outline suggests they will do. Now, the  
10:36:19 3 engineering task memo, number one, and the corresponding  
10:36:24 4 Section I of the OBMP is going to develop criteria. And  
10:36:29 5 part of the criteria development is to set goals. It  
10:36:34 6 amounts to defining what the problem is and deciding what  
10:36:39 7 the goal of the whole process is.

10:36:41 8           The concern that Joe Scalminini and I share is  
10:36:48 9 that at least so far there was some statement of the  
10:36:5210 goals. And the goals are very, very general except for  
10:36:5811 several of the water quality goals. They are program  
10:37:0212 goals, they're not basin goals. And so I think in other  
10:37:0713 words that it would not slow down the process at all, but  
10:37:1314 it might avoid unnecessary effort or perhaps useless  
10:37:2015 effort if we could not move forward to approve the scope  
10:37:2616 until there was some assessment of what it actually means.  
10:37:3117 Since that work is presumably accomplished already, that  
10:37:3418 assessment can be more meaningful having looked at that  
10:37:3819 work.

10:37:3920           So that's the conclusion I suggest could be  
10:37:4221 reached here. I don't believe that that should slow down  
10:37:4722 anything. I guess I want to emphasize that because the  
10:37:5123 timeline is tight. There is no reason the drafting  
10:37:5524 schedule, either engineering task memos or the sections of  
10:37:5925 the OBMP would be effected, but it would allow a review.

10:38:0426           THE COURT: Mr. Lemieux?

10:38:06 1 MR. LEMIEUX: Your Honor, a continued hearing  
10:38:07 2 date of November 5th is compatible with what we think it  
10:38:11 3 will take to complete the first three tasks and get that  
10:38:17 4 in front of the Advisory Committee and get it in front of  
10:38:20 5 Watermaster and bring it back to you. We expect to have  
10:38:23 6 that done sometime in October. We'll still have our time  
10:38:25 7 for a noticed motion. I have a couple of questions,  
10:38:29 8 however.

10:38:30 9 When we say, identify the problems for the OBMP,  
10:38:3710 we sometimes get confused with the larger question of  
10:38:4011 identify our problems. We have more problems than  
10:38:4312 hydrological.

10:38:4613 THE COURT: Hydrologic would be what I would add  
10:38:5014 at this point. I would think probably institutional is  
10:38:5615 going to be with us forever.

10:38:5816 MR. LEMIEUX: We'd like to put that off until we  
10:39:0117 get the hydrological pinned down.

10:39:0418 The second thing we have is in some ways we have  
10:39:0719 to know the scope and level of service. The scope and  
10:39:1020 level of detail and -- I ended up without a verb here. We  
10:39:1721 have to know the Court's ruling on the scope and level of  
10:39:2022 detail until we can move on to other parts of the report.  
10:39:2423 The Court's February ruling put a stringent series of  
10:39:2824 deadlines. If we're going to be putting off a decision on  
10:39:3425 the scope until November, can we have some extra time  
10:39:3726 between now and November to do the other -- an extra 60

10:39:41 1 days to do the other work as well?

10:39:43 2 I am having a hard time articulating a good  
10:39:47 3 length for an extension because obviously some of the work  
10:39:51 4 is proceeding with or without the scope being completed.  
10:39:54 5 Some of the work is going to depend on how the scope  
10:39:58 6 finally turns out. If the scope turns to the left or  
10:40:02 7 makes a U-turn, that could throw everything off. What I  
10:40:08 8 am asking the Court is for perhaps leave for us to suggest  
10:40:12 9 a new schedule of events based upon the scope not being  
10:40:1710 approved until November and we'll just add 60 days to  
10:40:2111 every date, but we'll come back and make a suggestion  
10:40:2512 where we need more time.

10:40:2713 THE COURT: I will revisit the issue in  
10:40:3014 November. Right now the way I see it is a long time ago I  
10:40:3415 set some guidelines out as to when -- not actually  
10:40:3916 guidelines, I set some dates as to when things should be  
10:40:4417 done. A failure to do those should not be an excuse to  
10:40:4918 continue. I will listen. Engineering reports one, two,  
10:40:5419 three -- Roman numeral one, two, and three have to be in  
10:40:5820 there.

10:40:5921 MR. LEMIEUX: They're well in hand. And we'll  
10:41:0222 be very specific. If we need time on technical matters  
10:41:0723 we'll provide --

10:41:0824 THE COURT: One area is your 97/98 report is  
10:41:1225 going to be due on the 15th, about 10 days after your  
10:41:1526 meeting. Let me know on the 5th what is reasonable. If

10:41:21 1 the judgment needs to be amended, you would put that in a  
10:41:25 2 noticed judgment.

10:41:27 3 MR. LEMIEUX: We would certainly get that filed  
10:41:29 4 well in advance of the 5th, sometime in October, early  
10:41:33 5 October. That will be our statement of what is  
10:41:36 6 reasonable.

10:41:37 7 THE COURT: I am disinclined to continue any  
10:41:39 8 dates on the Optimum Basin Management Plan. That just  
10:41:44 9 invites further sliding down the line. And I have got  
10:41:48 10 some very --

10:41:49 11 MR. LEMIEUX: We'll accept the burden of having  
10:41:51 12 to justify it then. The special referee in her response  
10:41:56 13 to the proposed scope commented on maybe a half a dozen  
10:42:02 14 things. And some of them I recognized are tied up in the  
10:42:06 15 comment she's made about identifying problems before you  
10:42:10 16 set the goals. Some of those comments, I think, can be --  
10:42:14 17 some parts of her comments can be dealt with today, I'm  
10:42:18 18 hoping. For example, Ms. Schneider made a comment on the  
10:42:22 19 web site. We responded to it.

10:42:25 20 THE COURT: A positive one too. I noted that.  
10:42:28 21 You said okay, Judge, in fact, Josephine Johnson on  
10:42:34 22 your -- in reading your Internet, had thought I was right  
10:42:40 23 on that too. I never met the woman. Tell her thank you.

10:42:44 24 MR. LEMIEUX: I will take it that's behind us  
10:42:47 25 now. We won't address that again unless we don't do what  
10:42:51 26 we say. You'll notice on our response on progress reports

10:42:54 1 we're concerned we cycle into it a little better. Today  
10:42:58 2 is the 9th. If our first progress report is due on the  
10:43:02 3 15th, one of the things we would want to talk about is  
10:43:06 4 what went on today.

10:43:08 5 Our comments suggest we cycle progress reports  
10:43:11 6 commencing September 30th -- rather September 15th. If  
10:43:17 7 there is not a problem with that, I would suggest we also  
10:43:20 8 put -- make that the case and put that behind us.

10:43:29 9 THE COURT: We're at the 9th right now.

10:43:3210 MR. LEMIEUX: We're going to meet this afternoon  
10:43:3411 and talk about the progress report next due, but it's  
10:43:3712 going to be a little tight to get it to you by the 15th.

10:43:4713 THE COURT: I can live with the 30th. If --  
10:43:4714 What do you think?

10:43:5015 MS. SCHNEIDER: I think there have been some  
10:43:5016 questions about the ruling and what it means as to the  
10:43:5317 progress reports. And I didn't know if clarification of  
10:43:5618 that ruling would be in order. I think the Court may want  
10:44:0219 to clarify that the Watermaster would make regular  
10:44:0520 progress reports. I am not sure what the role of special  
10:44:0921 referee is, but I assume that we can comment on the  
10:44:1322 progress reports --

10:44:1623 THE COURT: I was giving you 30 days. As a  
10:44:1824 matter of fact, if that goes to -- then that winds up  
10:44:2125 being really tight for you to make comments and get them  
10:44:2526 to the Court. If they do it by the 30th then by October

10:44:30 1 the 29th or 30th.

10:44:35 2 MS. SCHNEIDER: So I would comment on the  
10:44:37 3 quarterly reports then?

10:44:40 4 THE COURT: Yes. Is that too burdensome?

10:44:43 5 MS. SCHNEIDER: No. That sounds logical. I  
10:44:45 6 think the other question, though, is what the prospect is  
10:44:51 7 for having the engineering task memos in draft or the  
10:44:59 8 draft OBMP sections to review when they become available  
10:45:05 9 rather than have to wait until they have gone all the way  
10:45:09 10 through knowing they're still in draft and subject to  
10:45:12 11 Watermaster review.

10:45:13 12 THE COURT: I previously authorized today you  
10:45:15 13 and Mr. Lemieux communicating and having --

10:45:19 14 MS. SCHNEIDER: It was on that issue?

10:45:22 15 THE COURT: Well, on all issues. If there is  
10:45:24 16 something you need early, then I would hope that you would  
10:45:29 17 ask Mr. Lemieux and Mr. Lemieux would cooperate in  
10:45:35 18 obtaining whatever information you asked for.

10:45:37 19 MS. SCHNEIDER: My request to be able to see  
10:45:39 20 things earlier rather than later is in the spirit of  
10:45:44 21 trying to give meaningful feedback when it could be most  
10:45:48 22 easily taken, or ignored as the case may be. It is much  
10:45:53 23 easier to take an idea if it is a good one early on in the  
10:45:57 24 process rather than after it has been through the approval  
10:46:00 25 processes and is solidified.

10:46:02 26 MR. LEMIEUX: Let me address the first one.

10:46:04 1 That will get us well on the way. Two of the three  
10:46:07 2 chapters have been prepared by Mr. Wildermuth. He is  
10:46:11 3 ready to hand them over to us in a minute. The September  
10:46:15 4 30th, we'll attach that. We think the third chapter by  
10:46:19 5 Montgomery will also be ready and we'll address that.

10:46:23 6 MS. SCHNEIDER: Which one is Montgomery writing?

10:46:27 7 MR. WILDERMUTH: Montgomery is doing three.

10:46:30 8 MR. LEMIEUX: Since this is simply filed with  
10:46:31 9 the Court and the special referee, I take it we won't have  
10:46:3510 to serve these documents on all the parties because we  
10:46:4111 will be serving notices of motion whenever there is any  
10:46:4512 action taken?

10:46:4813 THE COURT: The problem I am wondering about,  
10:46:5014 and let me think aloud a second, because in the area of an  
10:46:5515 ex-parte communication, if you're filing something with  
10:46:5716 the Court --

10:46:5917 MR. LEMIEUX: Yeah.

10:47:0018 THE COURT: -- everyone -- what do you have to  
10:47:0219 say about that, Mr. Kidman? You're an expert  
10:47:0720 Constitutional scholar.

10:47:0921 MR. KIDMAN: I think everyone needs to have  
10:47:1222 notice by one form or another.

10:47:1523 MR. LEMIEUX: I am trying to avoid publishing  
10:47:1824 the first three chapters and the progress report and then  
10:47:2125 an annual report and then the final report, so by the time  
10:47:2726 we get down to the document people have seen it so often

10:47:31 1 that you have the other tendency, I have seen this before  
10:47:34 2 and you throw it away.

10:47:39 3 THE COURT: I don't --

10:47:40 4 MR. LEMIEUX: How would it be if I filed a  
10:47:42 5 progress report and filed a notice to the parties that the  
10:47:44 6 progress report is on file with the Court -- was filed  
10:47:48 7 such and such a date with the Court containing the  
10:47:51 8 following. If you want a copy go get it or go to a web  
10:47:56 9 site. That will save a lot of paper.

10:47:5810 THE COURT: What do you think, Mr. Kidman?

10:47:5911 MR. KIDMAN: I think that would provide the  
10:48:0112 notice that the Constitution requires.

10:48:0613 MR. LEMIEUX: Notice of filing plus access in a  
10:48:0814 couple of places.

10:48:0915 THE COURT: Okay.

10:48:1016 MR. LEMIEUX: So then we can start turning this  
10:48:1417 documentation over to Ms. Schneider.

10:48:1818 THE COURT: Let me interrupt you one moment,  
10:48:2019 Mr. Lemieux. On the comment that Traci Stewart said that  
10:48:2520 they had a file and they used to send out post cards. In  
10:48:2921 the file maybe it can indicate that they have responded  
10:48:3522 pursuant to this notice. You can serve us by facsimile.  
10:48:4023 You can serve us by web site. It might be on an OSC why  
10:48:4524 you should not be served with a web site and have them --  
10:48:4925 they'll be served with a web site unless they respond.

10:48:5326 MR. LEMIEUX: That's what I was trying to gauge,

10:48:55 1       how to present that to you to tell them from now on it is  
10:49:00 2       electronic unless you do something effective or tell them  
10:49:03 3       they have to do something effective to make it electronic.

10:49:07 4               THE COURT: Let them know they want to be served  
10:49:10 5       personally, hard copy, via the mail or facsimile, in the  
10:49:16 6       alternative. I think give them the alternative but put  
10:49:20 7       the burden on them to contact -- should it be the  
10:49:24 8       Watermaster themselves? It probably should be the  
10:49:27 9       Watermaster.

10:49:2910              MR. LEMIEUX: We'll try to work a program out  
10:49:3111       here.

10:49:3112             THE COURT: I will leave that up to you.

10:49:3313             MR. LEMIEUX: Maybe we can make the standard  
10:49:3514       protocol is we file the cover sheet, but if you want the  
10:49:4215       exhibit, which is where the bulk is most of time, you  
10:49:4616       either go on the web or get them by email or order it up  
10:49:5117       on FAX, make that electronic. We'll try to work out a  
10:49:5718       program and make that part of the November 11th motion and  
10:50:0119       make it sensible from beginning to end.

10:50:0220             THE COURT: Yeah. Let me follow up on that just  
10:50:0721       a second. What you want to do -- I don't know if you want  
10:50:1122       to do it or not. If you set up an OSC why they should not  
10:50:1523       be served by Internet and they don't respond, obviously  
10:50:2224       they have been served every time by Internet. In that  
10:50:2625       notice, though, somehow make a provision that they could  
10:50:3126       contact in writing so that there is no mistake in

10:50:40 1 telephonic communications, they could contact the  
10:50:43 2 Watermaster in writing with -- that they wish to either  
10:50:54 3 receive the notice by mail or facsimile. Too bad we  
10:51:05 4 couldn't have a little check for them to -- the only thing  
10:51:08 5 is if you put a check you want to be served by Internet  
10:51:12 6 facsimile or mail then they're all going to check off  
10:51:16 7 mail.

10:51:17 8 MR. LEMIEUX: I prefer not to get too deep into  
10:51:20 9 that until we talk to the staff and work out the technical  
10:51:2410 kinks. We'll present that in the form of an OSC or  
10:51:2911 motion.

10:51:2912 THE COURT: Good.

10:51:2913 MR. LEMIEUX: We also responded to the  
10:51:3214 definition of goals and interests to be addressed. Those  
10:51:3515 were main headings in our paper. I think I am pushing the  
10:51:3916 envelope if I suggest we go forward with that until we  
10:51:4217 present the listing of problems.

10:51:4418 We have also responded to comments on whether we  
10:51:4719 were willing to fund monitoring programs or other projects  
10:51:5220 with the response. And I think that response can stand on  
10:51:5721 its own two feet without respect to the further  
10:52:0122 elaborations of basin problems. Those two responses  
10:52:0523 basically say like everyone else, we're going to try to  
10:52:1024 get the federal government and state government to pay for  
10:52:1525 these, but we realize they're not going to pay for  
10:52:1826 everything. And at some point in time wise business

10:52:21 1 judgment has to be exercised and we have to get on with  
10:52:24 2 our lives without --

10:52:26 3 THE COURT: Maybe Santa Ana Water might think  
10:52:30 4 Traci Stewart invited somebody up. And if I am to believe  
10:52:33 5 their Internet again, somebody didn't think that was a  
10:52:37 6 good idea. They weren't organized yet. That's my own  
10:52:40 7 paraphrasing. There was some comment on one of the  
10:52:44 8 minutes that I read on their web site that she had invited  
10:52:49 9 some people from Orange County up to participate in  
10:52:5310 discussions and financially participate. It probably is  
10:52:5711 never too early to get money.

10:52:5912 MR. GUTIERREZ: The point we were trying to make  
10:53:0113 clear in there is if a problem has been identified and  
10:53:0414 needs a solution that monitoring in general, or in  
10:53:0715 particular, or other things in general, the failure to  
10:53:1016 obtain state or federal funds is not going to cause the  
10:53:1417 Watermaster to stop addressing the problem.

10:53:1918 THE COURT: Exactly. Exactly.

10:53:2119 MR. LEMIEUX: I take it those issues that have  
10:53:2420 been raised by the special referee have now been answered  
10:53:2821 adequately and we won't address that again when we come  
10:53:3222 back here unless we're wrong.

10:53:3423 MS. SCHNEIDER: Your Honor, I think that the  
10:53:3524 funding of monitoring programs question has been  
10:53:3925 addressed. The question of the adequacy of monitoring in  
10:53:4326 the past and now for the future is probably integrally

10:53:51 1 tied to the problem of defining what the basin problems  
10:53:54 2 are.

10:53:54 3 MR. LEMIEUX: Yes, I agree.

10:53:56 4 MS. SCHNEIDER: And the ability to find those  
10:53:58 5 would be a function of how good those data are.

10:54:02 6 THE COURT: We need to know among other things  
10:54:04 7 that she's mentioned who's not -- who should have a  
10:54:07 8 monitoring device and who is not reporting, even if they  
10:54:14 9 do have a monitoring device, I understand that.

10:54:1810 MS. SCHNEIDER: Your Honor, I am -- you're  
10:54:2011 talking about production reporting?

10:54:2312 THE COURT: Yeah. I think that that in the past  
10:54:2813 may have been given a tertiary importance maybe. It seems  
10:54:3614 to me there is a lot of people out there that aren't  
10:54:3915 reporting. Well, there are some people that aren't  
10:54:4216 reporting that should be reporting.

10:54:4917 MR. LEMIEUX: We'll make a note of that.

10:54:4918 And that was --

10:54:4919 THE COURT: Going back to what you were saying.

10:54:5420 MR. LEMIEUX: That will come back on November  
10:54:5421 5th. Something about that. As far as funding issues, I  
10:54:5822 hope that we agree those have been dealt with.

10:55:0023 We talked about management consents, special  
10:55:0324 referee comments on management consents and we responded  
10:55:0825 on page five. This is kind of a -- I am not sure if we  
10:55:1526 answered inadequately or if you need additional

10:55:19 1 information.

10:55:20 2 MS. SCHNEIDER: Your Honor, I'm not sure. I  
10:55:22 3 think that one of the concerns that have been expressed by  
10:55:25 4 one or more of the parties that when the OBMP scope  
10:55:30 5 cut-off date occurred that some ideas may not have been  
10:55:34 6 included or new ideas might be brought up in the future.  
10:55:38 7 And I think the main concern is that this is an evolving  
10:55:43 8 document. And if new ideas came in it could be included.  
10:55:46 9 I cast no intended as a cut off.

10:55:49 10 MR. LEMIEUX: That's what we tried to affirm in  
10:55:51 11 our response.

10:55:52 12 MS. SCHNEIDER: In that vein, I think the  
10:55:55 13 comment we had Mr. Lemieux respond to on the Mission  
10:56:00 14 statement phrase within the provisions of judgment are  
10:56:03 15 also in the same vain. In other words, there isn't a  
10:56:05 16 limitation implied or expressed if they removed that  
10:56:10 17 phrase as they indicated they would from the Mission  
10:56:13 18 statement so that just like a new idea coming along for  
10:56:17 19 implementation to be considered, a management concept to  
10:56:21 20 be considered, if the judgment had to be amended in some  
10:56:25 21 fashion to accommodate implementation under the OBMP that  
10:56:30 22 was not off the table at any time.

10:56:32 23 THE COURT: That's an interesting comment too.  
10:56:34 24 One -- I mean, the vehicle you use to get the increase in  
10:56:40 25 compensation to the Board member -- is there some problem  
10:56:44 26 with amending this judgment? Somebody said, let's not

10:56:49 1 amend this judgment; is there some --

10:56:54 2 MS. SCHNEIDER: I think that is an issue, your  
10:56:56 3 Honor.

10:56:57 4 THE COURT: Where is -- I guess that lady lives  
10:56:59 5 in Ontario. Where's the beef?

10:57:04 6 MS. STEWART: It's in Chino.

10:57:05 7 THE COURT: I saw the parades. She actually  
10:57:08 8 lives in Chino.

10:57:11 9 MR. LEMIEUX: I think it depends on the  
10:57:1310 amendment. It is a little like amending the Bill of  
10:57:1611 Rights to solve some perceived modern problem that we can  
10:57:2012 all agree is a problem. There is still a reluctance to  
10:57:2513 get into it. We're all concerned about you're opening up  
10:57:2814 a Pandora's box and what else is going to fall out?

10:57:3415 The Court has suggested an amendment is needed  
10:57:3816 for compensation. Frankly, we'll go back to the  
10:57:4117 Watermaster and present them the option of leaving their  
10:57:4618 compensation the way it is or amending the judgment. I  
10:57:5019 don't know if the Watermaster will say let's amend the  
10:57:5420 judgment or not. We're going to ask them that. They may  
10:57:5821 say that is too dangerous.

10:58:0022 THE COURT: The Stringfellow issues actually  
10:58:0323 resulted in an amendment of the judgement. I notice that  
10:58:0724 Judge Kayashima years ago had approved -- Watermaster went  
10:58:1125 to Judge Kayashima and said, hey, on this dirty water we  
10:58:1726 need to amend the judgment and it was.

10:58:19 1 MR. LEMIEUX: We're operating under a new system  
10:58:22 2 here since the first of the year. And I would suggest  
10:58:25 3 that coming to court and talking to you, you talking to  
10:58:29 4 us, is a learning experience. And that's very helpful for  
10:58:34 5 us to get our feet on the ground and have strong opinions  
10:58:39 6 on whether or not to amend the judgment. I think what  
10:58:43 7 you're seeing right now is that until we have a little  
10:58:46 8 better sense of what's going on, nobody's going to be  
10:58:49 9 advocating any large changes to anything.

10:58:5310 THE COURT: Uh-huh. Yeah. I can understand the  
10:58:5611 insecurities. We're -- there is a rich history of  
10:59:0112 bickering.

10:59:0213 MR. LEMIEUX: There may be a billion dollars at  
10:59:0414 stake or more. We're trying to be very careful about  
10:59:0715 this.

10:59:1016 But as amplified by our dialogue, the management  
10:59:1617 concept in our document would be generally okay. I think  
10:59:2118 the role of legal counsel is not effected by additional  
10:59:2519 research on the problems of the basin unless legal counsel  
10:59:3020 is a problem of the basin. Legal counsel.

10:59:3321 THE COURT: We have already passed that issue.  
10:59:3522 It was about a year ago, over a year ago.

10:59:3923 MR. LEMIEUX: And finally we make a statement on  
10:59:4224 implementation that is meant to convey the impression that  
10:59:4825 we understand that our job isn't done when the OBMP is  
10:59:5426 written.

10:59:55 1 MR. GUTIERREZ: Implementation will also be an  
10:59:57 2 issue.

10:59:58 3 THE COURT: Monitoring will always be important.  
11:00:01 4 You have got to have a base and then the next year you  
11:00:06 5 compare it and you compare it. If there is a problem you  
11:00:11 6 go back and trace to see where we have plumes, the G.E.  
11:00:14 7 Flat Iron, we have Stringfellow, Lockheed, the dairy  
11:00:16 8 problem, you have some problems with TDS. That's more  
11:00:20 9 difficult to get rid of than some of the other plumes.  
11:00:27 10 Percolate. There is no known system for migration. No  
11:00:33 11 known system.

11:00:36 12 MS. STEWART: Perchlorate.

11:00:37 13 THE COURT: All I know is what I read, me and  
11:00:40 14 Will Rogers. I know there is a problem in that area. I  
11:00:43 15 have been reading that right now. Apparently from what my  
11:00:47 16 reading has indicated, maybe you guys are the experts. I  
11:00:51 17 should be asking you. What I read is there is no known  
11:00:55 18 way of getting it out of the ground yet, out of the water.

11:01:00 19 MR. LEMIEUX: There is some reason to wonder if  
11:01:03 20 there is a problem.

11:01:05 21 THE COURT: Another article I read, it has been  
11:01:07 22 quite some time, but about the fuel storage units and what  
11:01:15 23 they're doing with those rather than pulling them out.  
11:01:19 24 The remediation. There's a lot of -- more than enough to  
11:01:23 25 read in this area, isn't there?

11:01:26 26 MR. LEMIEUX: Yes.

11:01:26 1 MS. SCHNEIDER: Your Honor, I want to go back  
11:01:28 2 briefly to Mr. Lemieux's implementation response. I think  
11:01:32 3 there might be some misunderstanding of what I wrote in my  
11:01:36 4 comments.

11:01:37 5 MR. LEMIEUX: Okay.

11:01:38 6 MS. SCHNEIDER: My comment was in any event, the  
11:01:42 7 1995 final summary report for the Chino Basin Water  
11:01:46 8 Resources Management study did many of the things that are  
11:01:50 9 included in the scope for this OBMP, but it stopped before  
11:01:5510 it got to implementation measures. It says so. It says  
11:02:0011 the next important thing to be done is implementation.  
11:02:0512 What I was suggesting is don't redo all of the work in the  
11:02:0813 '95 report. That's about 10 percent of the report. Then  
11:02:1114 put 90 percent into where that effort stopped, which is  
11:02:1515 implementation.

11:02:1616 That was the gist of what I was trying to say.  
11:02:2217 And I apologize if I wasn't clear. I just had been a  
11:02:2718 broken record, I guess, urging that the focus be on  
11:02:3019 implementation once the problems --

11:02:3420 MR. LEMIEUX: We misunderstood that --

21 THE COURT REPORTER: One at a time, please.

11:02:4122 MR. LEMIEUX: When we bring back the next  
11:02:4423 application to this, we'll clearly state we intend to  
11:02:4824 implement. We were taking a little different angle. I  
11:02:5325 take it then the matters presented then commented on by  
11:02:5526 the special referee and then responded to by us would

11:02:59 1 still need attention. After the problems are amplified,  
11:03:05 2 we'll go back and revisit goals. These are the titles I  
11:03:10 3 have put here. The definition of goals, the interests to  
11:03:13 4 be addressed, and at the same time, we'll re-examine the  
11:03:19 5 implementation strategy.

11:03:22 6 THE COURT: Problem definition fits within  
11:03:24 7 those.

11:03:24 8 MR. LEMIEUX: Problem definition would be --  
11:03:26 9 item one is problems. Then we'll go back and look at  
11:03:29 10 goals. Re-examine the interests to be addressed and the  
11:03:34 11 implementation schedule. It's quite possible what we have  
11:03:38 12 presented in terms of goals and interests and  
11:03:40 13 implementation will hold up.

11:03:43 14 MS. SCHNEIDER: Right.

11:03:44 15 MR. LEMIEUX: But we will bring that back to the  
11:03:47 16 Court and tell you that we think our earlier goals are  
11:03:50 17 correct and may have blind luck or great skill, but we'll  
11:03:55 18 explain that. And if there is a need to modify then based  
11:03:59 19 on the identification of problems, we'll also present that  
11:04:02 20 to the Court, but we won't address all of the other issues  
11:04:07 21 that were in the exchange.

11:04:09 22 THE COURT: Good. Good to have you on board,  
11:04:12 23 Mr. Lemieux.

11:04:14 24 MR. LEMIEUX: Thank you.

11:04:14 25 THE COURT: Mr. Kidman, I met somebody who knows  
11:04:17 26 you about six months ago. He used to be associated with

11:04:28 1 South Coast Plaza.

11:04:30 2 MR. KIDMAN: Mr. Henway (phonetic spelling)?

11:04:31 3 THE COURT: Of the Fair Association.

11:04:33 4 MR. KIDMAN: Yeah. Jim Henway.

11:04:36 5 THE COURT: He had some good things to say about

11:04:39 6 you.

11:04:42 7 MR. KIDMAN: Thank you for passing that along.

11:04:50 8 THE COURT: Was it productive today hopefully?

11:04:54 9 MR. LEMIEUX: Yes.

11:04:57 10 THE COURT: Is there anything else we need to

11:04:59 11 discuss before I adjourn this issue?

11:05:03 12 MR. GUTIERREZ: I have two issues. I will keep

11:05:05 13 them short and summarize them and then I will explain

11:05:08 14 them. I believe we should be giving consideration to two

11:05:13 15 issues. One is when we conclude those motions some clear

11:05:18 16 direction to the Watermaster Board because what we have is

11:05:22 17 a conglomeration of a lot of ideas that are disjointed.

11:05:27 18 THE COURT: Precisely my thoughts when I was

11:05:29 19 reading the reports.

11:05:31 20 Go ahead.

11:05:32 21 MR. GUTIERREZ: Secondly, I think we should be

11:05:35 22 giving some thought to have the governments of the

11:05:37 23 Watermaster evolving from something that it was to

11:05:44 24 something that you have ordered to something that has

11:05:44 25 taken place to something that needs to be maybe evolved

11:05:48 26 further. Let me go back and explain those.

11:05:51 1 THE COURT: Okay.

11:05:51 2 MR. GUTIERREZ: What you have done by your  
11:05:54 3 February ruling is you set a new organization into motion,  
11:05:58 4 and that -- you have seen the product of that. I think it  
11:06:02 5 is largely good. There is much more cooperation and  
11:06:08 6 openness and I think it is all positive. But you're  
11:06:12 7 asking a very large group of parties with diverse  
11:06:16 8 interests to address very, very, major issues. And that's  
11:06:21 9 the reason why I suggest that we really need to be looking  
11:06:24 10 at some very specific direction.

11:06:28 11 I have observed that in the discussions we have  
11:06:32 12 had at the Watermaster level that everyone understands  
11:06:36 13 your ruling differently. People will say, I think  
11:06:40 14 Judge Gunn meant this. Other people say, I think  
11:06:45 15 Judge Gunn meant this. We really don't know what you  
11:06:48 16 meant. We're guided by a few words that pertain to the  
11:06:52 17 issues we're dealing with now.

11:06:55 18 I think that in this regard what Mrs. Schneider  
11:07:01 19 and Mr. Scalminini have suggested about identifying  
11:07:04 20 problems is good, but I'd like to ask them if they can be  
11:07:09 21 more specific as far as what they mean. And meaning no  
11:07:13 22 disrespect, but in reading Ms. Schneider's  
11:07:16 23 recommendations, I don't understand some of it. It just  
11:07:20 24 doesn't make sense to me. And I will be specific about  
11:07:23 25 that. And I'd like to ask her to do more.

11:07:27 26 For example, we have already discussed, as far

11:07:31 1 as the definition of problems we're dealing with,  
11:07:34 2 hydrological problems only. And I understand that and  
11:07:38 3 that makes perfect sense. However, there are some  
11:07:41 4 non-hydrological problems that impact hydrological  
11:07:45 5 problems. I will use one example. The question is the  
11:07:49 6 question of storage. That's not necessarily a  
11:07:52 7 hydrological issue. It is an adjustment of water rights  
11:07:56 8 among the parties. The discussion we had had in the past  
11:07:59 9 prior to these motions, and it really hasn't been  
11:08:0210 discussed in the documentation that's been served, is how  
11:08:0611 much storage capacity is there in the basin? How do we  
11:08:1012 divide that?

11:08:1113 THE COURT: How much leaks out through the Santa  
11:08:1414 Ana River Project Authority?

11:08:1515 MR. GUTIERREZ: All those issues which are not  
11:08:1816 hydrologic that have impact on it. I am thinking those  
11:08:2217 kinds of issues are legitimate as far as problems that  
11:08:2518 need to be decided. They're not necessarily hydrological,  
11:08:2919 but they effect this and the big picture because they deal  
11:08:3420 with the interest of the parties. And at some point in  
11:08:3721 time we discussed that at Watermaster level there are  
11:08:4122 going to be differences on how to resolve this of these  
11:08:4823 key problems because those problems effect the parties  
11:08:5024 differently. At this point in time we have chosen to  
11:08:5425 understand there will be differences and not address the  
11:08:5726 differences.

11:09:01 1                   One of the thoughts I had is that I can foresee  
11:09:03 2                   for example on how we spread the costs to implement the  
11:09:09 3                   plan that we may need to have two proposals to the Court.  
11:09:14 4                   One might be a majority proposal, one might be a minority  
11:09:18 5                   proposal. I can see on some issues we're not going to  
11:09:23 6                   agree. And that needs to be brought before the Court to  
11:09:28 7                   fashion its own proposal with the substance of  
11:09:31 8                   Mrs. Schneider's and Mr. Scalminini. I am just saying  
11:09:35 9                   that's an example that becomes a real problem in the  
11:09:39 10                   implementation.

11:09:40 11                   Also, one of the things that Ms. Schneider  
11:09:43 12                   suggested in her report was the reference to the  
11:09:48 13                   complexity of data -- and I forgot how she phrased it. I  
11:09:52 14                   marked it in here. I think there was a suggestion that  
11:09:55 15                   maybe we do a better job to collect data such as how much  
11:10:00 16                   water is being drawn by everyone. It didn't come across  
11:10:05 17                   to me in the form of a recommendation. The reason I am  
11:10:11 18                   asking that is because the various workshops when there  
11:10:13 19                   can be five to twenty people discussing it with different  
11:10:16 20                   interests and different views and different understandings  
11:10:19 21                   of what has been written, we're not going to know how to  
11:10:24 22                   address that. Are we going to be penalized if we don't?  
11:10:27 23                   How can we measure results without the product? The big  
11:10:32 24                   picture I am presenting to you here is the need for  
11:10:36 25                   some -- as specific a direction as we can get. So that's  
11:10:40 26                   issue one.

11:10:41 1 Issue two that I have is the question of the  
11:10:45 2 evolution of governments. What the Court has done by this  
11:10:48 3 ruling is created a form of government which includes the  
11:10:54 4 Court, the Watermaster Board, and Ms. Schneider and  
11:10:57 5 Mr. Scalminini as advisors to the Court. And the  
11:11:05 6 relationship between Ms. Schneider and Mr. Scalminini and  
11:11:08 7 the Watermaster Board isn't clear. You have just  
11:11:12 8 discussed giving authorization to Mr. Lemieux to  
11:11:16 9 communicate with her and vice versa. That's fine and  
11:11:2010 good, but I would point out that Mr. Lemieux is the  
11:11:2311 attorney for the Watermaster Board and he takes direction  
11:11:2612 from a majority which does not necessarily represent the  
11:11:3013 interests of other parties or the views of other parties.

11:11:3314 And so the question amongst others that I have  
11:11:3615 is what opportunity will the rest of us have to  
11:11:3916 communicate with Ms. Schneider? And how do we communicate  
11:11:4417 with her?

11:11:4518 THE COURT: I am not going to limit any of the  
11:11:4819 attorneys if they have a problem.

11:11:5020 MR. GUTIERREZ: Up to this point I have not  
11:11:5221 communicated with her. I considered her to be an arm of  
11:11:5522 the Court.

11:11:5623 THE COURT: Watermaster is an arm of the Court.

11:11:5824 MR. GUTIERREZ: I understand that. It's an open  
11:12:0025 process. And so that relationship is not that clear. On  
11:12:0326 your February ruling you indicated that the only reference

11:12:06 1 that I recall with respect to the development of the  
11:12:09 2 Optimum Basin Management Plan was that Anne Schneider was  
11:12:12 3 authorized to conduct hearings on what was taking place.  
11:12:15 4 So my -- all I am saying is that there is an issue there  
11:12:19 5 amongst others with respect to the communication and how  
11:12:23 6 do we advise one another of those communications and what  
11:12:27 7 do we make of them. This obviously is all evolutionary by  
11:12:32 8 what we have given the Court and what the Court has given  
11:12:36 9 us back.

11:12:3710 We're now moving into a new direction. We  
11:12:4011 haven't thought through a lot of these issues. I think  
11:12:4312 the point is going to arrive where we're going to need to  
11:12:4613 deal with these issues, and the bigger question to me is  
11:12:5014 this. When we're working in committees on trying to  
11:12:5415 develop a plan there are going to be differences. There  
11:13:0016 is not going to be guidance because you can't foresee at  
11:13:0417 this point in time what kind of problems we're going to  
11:13:0618 have in the future or if we find other hydrological  
11:13:1019 problems we haven't thought of before we're going to be  
11:13:1220 dealing with those.

11:13:1421 My question is what government structure is  
11:13:1622 there? Do we go to Ms. Schneider? That's not clear. Or  
11:13:2123 do we file a motion and bring it to the Court? We don't  
11:13:2424 have to resolve all of those now. I think it is important  
11:13:2725 to give some consideration to them so at least we make it  
11:13:3026 easier on all of us.

11:13:32 1                   If you set a timeline and everybody is working  
11:13:35 2                   hard on it, they continue to work on it. Some of these  
11:13:40 3                   are going to require the assistance either from yourself  
11:13:44 4                   or Ms. Schneider. And the question is how do we do that?  
11:13:48 5                   Obviously, let me think aloud here a second. It is a very  
11:13:53 6                   delicate subject and one to which any party can file  
11:14:02 7                   objections with the Court and we would have to address  
11:14:05 8                   those objections.

11:14:09 9                   THE COURT: What I -- as a backdrop let me take  
11:14:1110                   you back to -- I think it was last time all the attorneys  
11:14:1511                   were here that I had reminded the attorneys that one of  
11:14:2012                   the things that Judge Turner in his 1989 decision had  
11:14:2613                   commented on was that there was, perhaps, a lack of  
11:14:3214                   consensus within the parties to the judgment. And I would  
11:14:4215                   hope that things the way they were set up, you have the  
11:14:4816                   overlying agricultural, overlying non-agricultural pool,  
11:14:5217                   the appropriative pool all effecting -- the Advisory  
11:14:5718                   Committee, all effecting Watermaster. That within that  
11:15:0119                   framework a certain amount of problems could be resolved  
11:15:0520                   through consensus building and diplomacy.

11:15:1221                   To that end let me take you to Anne Schneider  
11:15:1722                   and how I view her. And, again, someone could file  
11:15:2223                   objections and correct me where I'm wrong. She is a  
11:15:2624                   special master. If there would be a lawyer/client  
11:15:3325                   privilege it would be with the Court. Let there be no  
11:15:3726                   mistake about it. She is to advise me on the adequacies

11:15:41 1 and inadequacies of the implementation of the judgment in  
11:15:47 2 this scoping plan, for example. I lean heavily upon her  
11:15:53 3 advice.

11:15:55 4           The way I attempted to set it up, though, I feel  
11:16:01 5 very uncomfortable communicating about Watermaster to any  
11:16:08 6 individual outside the courtroom and without a court  
11:16:11 7 reporter going. So as far as that, let there be no  
11:16:16 8 mistakes about it. I don't want to talk to any attorney  
11:16:20 9 individually.

11:16:2310           Now, if they go to Anne Schneider, Anne  
11:16:3111 Schneider the way I have envisioned it could talk to them,  
11:16:3512 since she is an appendage of the Court, that does create a  
11:16:4513 delicate issue that I would be willing to address.

11:16:4514           MS. SCHNEIDER: Your Honor?

11:16:4515           THE COURT: Yes.

11:16:4516           MS. SCHNEIDER: The question has been raised,  
11:16:5017 Watermaster staff was suggesting that a meeting be held  
11:16:5518 with Watermaster staff and Mr. Scalminini and me and the  
11:17:0019 representatives of the parties. And I indicated that I  
11:17:0420 didn't think that was appropriate. And I think what  
11:17:0821 Mr. Gutierrez is suggesting is maybe we consider one or  
11:17:1322 more hearings that would be for the purpose of making more  
11:17:1723 specific the recommendations that I have had to make less  
11:17:2224 specific because of time constraints and maybe offer the  
11:17:2825 opportunity for the parties to directly talk with  
11:17:3326 Mr. Scalminini as well.

11:17:35 1                   The recommendations can be much more specific.  
11:17:39 2                   And if that would be helpful, which would make sense to  
11:17:43 3                   me, then it should be arranged for, but I do believe that  
11:17:49 4                   this processes would best be served by not communicating  
11:17:54 5                   with any parties individually and to do it through a  
11:17:58 6                   noticed hearing. And perhaps if we just start some set of  
11:18:03 7                   hearings that would be helpful.

11:18:06 8                   I think that if it isn't a problem I would like  
11:18:11 9                   to be able to talk with Mr. Lemieux just on the basis that  
11:18:1710                   there is procedural work to be done. As long as that  
11:18:2011                   doesn't become substantive in any fashion. Perhaps there  
11:18:2512                   is a line that can be drawn.

11:18:2713                   MR. LEMIEUX: Well, I see my role as very  
11:18:3214                   similar to the special referee since we all have the same  
11:18:3815                   client, that's the Court. You have delegated some  
11:18:4216                   responsibility to the special referee and Mr. Scalminini  
11:18:4517                   and some responsibility to the Watermaster and Chief of  
11:18:5118                   Watermaster operations. And I and maybe some other worker  
11:18:5519                   bees for the Watermaster are working for you as  
11:19:0120                   distinguished from the parties -- from somebody that's out  
11:19:0521                   there drilling a well, they're not working for you. The  
11:19:1022                   group I have just describe, the Watermaster Special  
11:19:1323                   referee's job is to try to watch the basin. They happen  
11:19:1724                   to have other interests as well. That's just  
11:19:1925                   happenstance.

11:19:1926                   So I think there is a reason to distinguish

11:19:25 1 between my conversations with the special referee and the  
11:19:29 2 conversations of an attorney representing the parties.

11:19:35 3 THE COURT: Hang on a second. Let me think  
11:19:38 4 aloud a second. I can envision pursuant to the judgment  
11:19:41 5 the Advisory Committee tells Watermaster to do something  
11:19:50 6 maybe consistent with the days -- the Fudacz days is how I  
11:19:54 7 drew a distinction there, but the Watermaster could have  
11:20:01 8 been informed by the Advisory Committee to do X and the  
11:20:05 9 Watermaster in their independent judgment, the Board of  
11:20:09 10 Directors of Watermaster acting as Watermaster, determine  
11:20:14 11 that Y is the most appropriate cause of action and they  
11:20:19 12 would come to the Court. The Advisory Committee would  
11:20:23 13 also presumably be represented at that hearing. And so I  
11:20:28 14 don't see myself having direct lines of communication with  
11:20:34 15 Mr. Lemieux even though you would have a different --

11:20:38 16 MR. LEMIEUX: Maybe I should --

11:20:39 17 THE COURT: -- status than the others.

11:20:42 18 MR. LEMIEUX: I wouldn't say that. I am also, I  
11:20:44 19 think, a little uncomfortable talking to you ex-parte,  
11:20:48 20 although analytically I'm not sure why. I should mention  
11:20:51 21 to the Court that our office does not represent the  
11:20:54 22 Advisory Committee.

11:20:56 23 THE COURT: Most definitely we have been through  
11:20:58 24 that. That was Mr. -- why Mr. Fudacz is no longer here,  
11:21:03 25 the lines being blurred at one time. I ruled on that. I  
11:21:08 26 ruled there was a conflict of interest.

11:21:10 1 MR. LEMIEUX: I attend their meetings and I  
11:21:12 2 answer questions and some of my best friends are Advisory  
11:21:16 3 Committee members.

11:21:17 4 THE COURT: Well --

11:21:18 5 MR. LEMIEUX: There is no professional  
11:21:19 6 relationship there.

11:21:20 7 THE COURT: Okay. If somebody sees a problem  
11:21:25 8 with --

11:21:26 9 Mr. Kidman?

11:21:3010 MR. KIDMAN: Well, I'm not standing to raise a  
11:21:3311 problem. What I think though is that the -- we have had  
11:21:3912 some history here that's made it a little difficult to get  
11:21:4213 reorganized. And that history in one sense is that the  
11:21:4814 Watermaster and the Watermaster Advisory Committee became  
11:21:5315 partisans in the process rather than representative of the  
11:21:5816 judgment and of the Court. And consequently when they  
11:22:0217 become partisans of the process and I have to appear with  
11:22:0618 other counsel here in front of the Court then it becomes  
11:22:1019 very awkward for the Court.

11:22:2220 I see this as being a product of the types of  
11:22:2721 interest that are involved. If we look at the public  
11:22:3322 interest, on the one hand, and look at special interests  
11:22:3623 and take those two things with all of the types of  
11:22:4124 connotations that they have, I would say that it's not  
11:22:4625 necessarily true that the majority of special interests  
11:22:5326 taken collectively through the Watermaster or the

11:23:00 1 Watermaster Advisory interests, Advisory Committee, it's  
11:23:04 2 not necessarily true that the collection of those special  
11:23:06 3 interests equal the public interest. And you're -- this  
11:23:12 4 whole process, you, the Watermaster, everybody is having a  
11:23:17 5 great deal of difficulty getting readjusted to the idea  
11:23:22 6 that the public interest is what's to be foremost for the  
11:23:28 7 Watermaster. Once that's done, and I think the process is  
11:23:31 8 underway for the public interest to be what the  
11:23:35 9 Watermaster is about, and to the extent that the parties  
11:23:4110 then find themselves in dispute under the judgment, the  
11:23:4511 parties come here rather than using the Watermaster or the  
11:23:5112 Watermaster Advisory Committee as their representative to  
11:23:5513 you. I think that's where the system kind of broke down  
11:23:5914 is that we got the idea somewhere this should be  
11:24:0615 government by majority rule, and that is by a majority of  
11:24:1016 the special interests rather than a majority that is  
11:24:1717 looking at what the public interest should be.

11:24:2018 So the process is painful to readjust because  
11:24:2519 people have been used to working under the old system as  
11:24:2920 they are assisting. And I believe they are from what's  
11:24:3321 been said here today as well as the papers that have come  
11:24:3722 before you in connection with today. It would become more  
11:24:4323 uncomfortable for Mr. Lemieux to operate as he probably  
11:24:4824 should and as the Watermaster should as your assistant in  
11:24:5325 administering this judgment rather than as a partisan that  
11:24:5726 it comes in here and takes sides in disputes. Hopefully

11:25:01 1 we'll get to a point where -- if matters are not resolved  
11:25:05 2 by substantial consent and there is an agreed minority,  
11:25:10 3 that that argument would take plays between the parties in  
11:25:16 4 front of you, if that becomes necessary, rather than  
11:25:20 5 having an -- that argument between the parties and you  
11:25:25 6 getting advice from the Watermaster here is how we see  
11:25:30 7 this issue to be resolved. Rather than the Watermaster  
11:25:33 8 itself being a party to the dispute, I think it is going  
11:25:38 9 to take awhile longer for it to re-evolve.

11:25:4210 THE COURT: What if the Advisory Committee,  
11:25:4611 going back to my example, says X, Watermaster then decides  
11:25:5412 not X, then that becomes my decision. Under the terms of  
11:26:0413 the judgment, of course, there are certain dates, etc.  
11:26:1314 Under those circumstances, I shouldn't be communicating  
11:26:1615 ex-parte with Mr. Lemieux, are we agreed?

11:26:2516 MR. KIDMAN: It seems to me in the adversary  
11:26:2817 process if there is that dispute it is not a dispute  
11:26:3218 between the Watermaster and the Advisory Committee. It is  
11:26:3519 a dispute somewhere between parties under the judgment.

11:26:3820 The Watermaster and the Advisory Committee are  
11:26:4321 assistants, arms of the Court, they should not be  
11:26:4722 partisans in that dispute. They are merely there to make  
11:26:5223 recommendations. You know, where there is a consensus,  
11:26:5724 where there is substantial agreement, their recommendation  
11:27:0025 can be, let's say rubber-stamped by the Court. Where  
11:27:0326 there is dispute the dispute shall be between the

11:27:06 1 underlying parties in front of you with assistance.

11:27:12 2 THE COURT: I will take your comment under  
11:27:14 3 advisement. I just go back to the time the nine-member  
11:27:20 4 board Watermaster was appointed and we had a divergence of  
11:27:26 5 opinion on that one. I don't know. When a specific issue  
11:27:31 6 comes up, I will trust that there will be sufficient  
11:27:38 7 motions made of the Court, maybe a Motion to Disqualify.  
11:27:42 8 Who knows. I think the noticed motion procedure, if it  
11:27:48 9 comes to the point where something has to go before the  
11:27:5110 Court, I'll go back and maybe be more appreciative of Anne  
11:27:5711 Schneider's comments. She should be communicating as an  
11:28:0012 advisor to me.

11:28:0213 MR. LEMIEUX: I'm simply not going to approach  
11:28:0414 the Court ex-parte because of the problems you recognized.  
11:28:0815 However, I am going to attach a percentage, just a wild  
11:28:1416 guess. I would guess that 95 percent of the time the  
11:28:1717 Watermaster Advisory Committee and all the parties are in  
11:28:2018 absolute agreement on everything and at that point  
11:28:2319 ex-parte contact to the special referee can be very  
11:28:2720 useful.

11:28:2921 THE COURT: And I think under those  
11:28:3222 circumstances what guidelines would be appropriate? Would  
11:28:3823 it be that for example, in your resolution, which is a  
11:28:4724 slow and cumbersome process and maybe not facilitative of  
11:28:5225 what we're trying to do, in that resolution, Gene Koopman,  
11:29:0226 I believe, signed the resolution, hey, this is okay with

11:29:02 1 the Advisory Committee and go do it.

11:29:06 2 MR. LEMIEUX: Let's try to work something out  
11:29:06 3 too. We're working on a general subject to parties and  
11:29:11 4 Court filings. Let's see if we can obtain a consensus  
11:29:15 5 over here.

11:29:15 6 THE COURT: What would be appropriate?

11:29:17 7 MR. LEMIEUX: On contact with the special  
11:29:18 8 referee, it is complicated and it covers all of us. It is  
11:29:22 9 just not me talking to the special referee, it is the  
11:29:2610 chief of operations and the engineers and I don't know  
11:29:2911 where to draw the line.

11:29:3112 MS. SCHNEIDER: That is a difficulty. I think  
11:29:3313 it would be extremely difficult to review and comment  
11:29:4014 effectively without access to Watermaster staff and  
11:29:4315 consultants and for that reason I felt it would be very  
11:29:4816 helpful to be able to talk to Mr. Lemieux as well, but --

11:29:5817 THE COURT: The way I originally saw it was you  
11:30:0018 would talk to people, write a report. And I would  
11:30:0419 consider that report. Everybody else has got a copy of  
11:30:0720 that report as far as recommendations go so they would be  
11:30:2221 able to voice their opposing views. Then again, I see it  
11:30:2822 as certain things that I -- you might ask for direction  
11:30:3223 from me. And that I think maybe Mr. Lemieux, Mr. Kidman,  
11:30:4224 Mr. Gutierrez, everybody, maybe we should discuss this  
11:30:5025 some more at our next meeting instead of to where the  
11:30:5326 lines are and what is permissible.

11:31:00 1 I tell you one thing. I don't want to talk to  
11:31:03 2 Mr. Scalminini and I haven't. I have appointed him and he  
11:31:09 3 has impressive qualifications. And I am leaning on his  
11:31:12 4 reports. Just in the same breath, Mr. Wildermuth I have  
11:31:16 5 not contacted. I have read his report. I never met the  
11:31:22 6 gentlemen from Monte Vista that I understand by the  
11:31:25 7 general tenor of the Internet, I understand he got some  
11:31:30 8 commendation. It seemed like it was a good-bye  
11:31:33 9 commendation. I assume he is no longer with you.

11:31:3910 MR. KIDMAN: The general manager, Joe Grindstaff  
11:31:4311 is at Santa Ana WaterShed.

11:31:4712 THE COURT: Anyway, I always enjoyed, he  
11:31:5113 obviously was -- his declaration was considered in giving  
11:31:5714 great weight by the Court in the last decision. Anyway,  
11:32:0015 let's discuss this next time. The court reporter needs a  
11:32:0316 break.

11:32:0517 Is there other things that we should be  
11:32:0718 discussing, in which case I will give her a break and  
11:32:1119 we'll come back?

11:32:1220 MR. GUTIERREZ: I don't have anything.

11:32:1321 MR. LEMIEUX: I think we should be talking about  
11:32:1522 lunch.

11:32:1723 MS. STEWART: I want a little bit of  
11:32:1924 clarification. What did you mean by you wanted more  
11:32:2225 information with regard to the consent calendar and the  
11:32:2426 minutes? You want some sort of expert listed in the

11:32:28 1 minutes? That was the thing we were a little confused on.

11:32:32 2 THE COURT: I'm not sure what is in your consent

11:32:35 3 calendar. That's always --

11:32:38 4 MS. STEWART: In other words, instead of seeing,

11:32:40 5 consent calendar approved, motion made, you'd like to see

11:32:44 6 what those items were in that?

11:32:46 7 THE COURT: And probably a little more

11:32:48 8 descriptive than compensation.

11:32:52 9 MS. STEWART: Okay.

11:32:5310 THE COURT: That doesn't tell me anything.

11:32:5811 MR. LEMIEUX: Thank you, your Honor.

11:32:5912 THE COURT: Thank you.

11:33:0113 MR. GUTIERREZ: Thank you, your Honor.

11:33:0314 MS. SCHNEIDER: Thank you.

11:33:0415 THE COURT: That's everybody?

16 (Proceedings in the above-entitled matter  
17 were concluded.)

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1 SUPERIOR & MUNICIPAL COURTS OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF SAN BERNARDINO  
3 DEPARTMENT H (RC) HON. J. MICHAEL GUNN, JUDGE  
4 CHINO BASIN MUNICIPAL )  
WATER DISTRICT, )  
5 )  
Plaintiff, )  
6 )  
vs. ) Case No. RCV 51010  
7 )  
CITY OF CHINO, et al., )  
8 )  
Defendants. )  
9 )  
\_\_\_\_\_ )  
10 )

11 REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS  
12 Re: Plaintiff's Motion to Approve Scope and  
Level of Detail Plan for the OBMP  
13 Wednesday, September 9, 1998

14 APPEARANCES:  
For the City of Chino: Law Offices of Jimmy L. Gutierrez  
15 BY: MR. JIMMY L. GUTIERREZ  
Attorney at Law  
16 1216 Central Avenue  
Chino, CA 91710  
17  
For Monte Vista: McCormick, Kidman & Behrens  
18 BY: MR. ARTHUR G. KIDMAN  
Attorney at Law  
19 Imperial Bank Building  
695 Town Center Drive  
20 Suite 1400  
Costa Mesa, CA 92626-1924  
21  
For the Watermaster: Lemieux & O'Neil  
22 By: MR. WAYNE K. LEMIEUX  
200 North Westlake Boulevard  
23 Suite 100  
Westlake Village, CA 91362-3755  
24  
Also present MS. ANNE SCHNEIDER  
25 Special Referee: Attorney at Law  
26  
Reported by: HEATHER R. MOORE, C.S.R.  
Official Reporter, C-10294

1 SUPERIOR & MUNICIPAL COURTS OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF SAN BERNARDINO  
3 DEPARTMENT H (RC) HON. J. MICHAEL GUNN, JUDGE

4  
5 CHINO BASIN MUNICIPAL )  
WATER DISTRICT, )  
6 Plaintiff, )  
7 vs. ) Case No. RCV 51010  
8 CITY OF CHINO, et al., )  
Defendants. )  
9 \_\_\_\_\_ )

10  
11 STATE OF CALIFORNIA )  
12 COUNTY OF SAN BERNARDINO ) ss

13  
14 I, Heather R. Moore, Official Reporter of the Superior  
15 & Municipal Courts of the State of California, for the  
16 County of San Bernardino, do hereby certify that the  
17 foregoing pages numbered 1 through 60, comprise a full,  
18 true and correct computer-aided transcription of the  
19 proceedings held in the above-entitled matter on  
20 Wednesday, September 9, 1998.

21  
22 Dated this 1st day of October, 1998.

23  
24  
25 \_\_\_\_\_ C.S.R.  
26 Official Reporter, C-10294

1 HEATHER R. MOORE, C.S.R.  
2 8303 Haven Avenue, Department "H"  
3 Rancho Cucamonga, California 91730  
4 (909)945-4187  
5 C-10294

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October 1, 1998

I N V O I C E

To: Watermaster Services  
Re: Chino Basin Municipal Water District  
versus the City of Chino  
Case Number: RCV 50101

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Enclosed please find a certified copy of the Reporter's Transcript of Oral Proceedings for the date of Wednesday, September 9, 1998. The original has been lodged with the court.

Original & 1 copy

Total cost:	\$248.00
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T H A N K Y O U !