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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION  
DEPARTMENT R-8 HON. J. MICHAEL GUNN, JUDGE

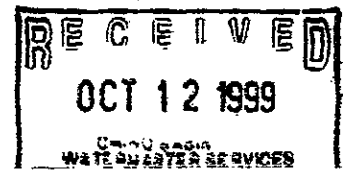
CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO,

Defendant.



Case No. RCV 51010

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS  
Thursday, September 30, 1999

APPEARANCES:

For Cucamonga County Water District:	Best, Best & Krieger MR. GENE TANAKA Attorney at Law
For the City of Chino:	Law Offices of Jimmy L. Gutierrez MR. JIMMY L. GUTIERREZ and MR. JAMES E. ERICKSON Attorneys at Law
For the City of Pomona:	Alvarez-Glasman & Colvin BY: MR. JESS SENECA Attorney at Law

(Appearances continued on next page.)

Reported by: HEATHER R. MOORE, C.S.R.  
Official Reporter, C-10294

COPY

APPEARANCES: (Continued)

For Monte McCormick, Kidman & Behrens  
Vista Water By: MR. ARTHUR G. KIDMAN  
District: Attorney at Law

For the State Office of the Attorney General  
of California: By: MS. MARILYN H. LEVIN  
Deputy Attorney General

For Watermaster Lemieux & O'Neil  
Services: By: MR. WAYNE K. LEMIEUX  
Attorney at Law

For the Reid & Hellyer  
Agricultural By: MR. DAN G. MC KINNEY  
Pool: Attorney at Law

1 CUCAMONGA, CALIFORNIA; THURSDAY, SEPTEMBER 30, 1999;

2 1:30 P.M.

3 DEPARTMENT R-8

HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5 (MR. GENE TANAKA, Attorney at Law;

6 MR. JIMMY L. GUTIERREZ and MR. JAMES E. ERICKSON,

7 Attorneys at Law; MR. JESS SENEAL, Attorney at

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

9 MS. MARILYN H. LEVIN, Deputy Attorney General;

10 MR. WAYNE K. LEMIEUX, Attorney at Law;

11 MR. DAN G. MC KINNEY, Attorney at Law.)

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

13 THE COURT: Let's go on the record in the matter  
14 of Chino Basin Municipal Water District versus the City of  
15 Chino, case number RCV 51010. We need to start with  
16 everybody's name for the record. Let's start with  
17 Mr. Tanaka over on the left, and we'll work through  
18 Mr. Gutierrez on down through the first row, and then  
19 we'll go with the second row and so on.

20 MR. TANAKA: Gene Tanaka on behalf of Cucamonga  
21 County Water District.

22 MR. GUTIERREZ: Jimmy Gutierrez and James  
23 Erickson on behalf of the City of Chino.

24 MR. SENEAL: Jess Senecal, your Honor, special  
25 counsel for the City of Pomona.

26 MR. KIDMAN: Arthur Kidman on behalf of Monte

1 Vista.

2 MS. LEVIN: Marilyn Levin, Deputy Attorney  
3 General on behalf of the State of California.

4 MR. LEMIEUX: Wayne Lemieux on behalf of the  
5 Watermaster.

6 MR. MC KINNEY: Dan McKinney on behalf of the  
7 Overlying Agricultural Pool.

8 THE COURT: Any other attorneys in the second --  
9 well, what would be the first audience row? Anybody else  
10 wish to announce their presence?

11 (No response.)

12 THE COURT: I passed out a tentative. And I  
13 have told everybody to rip the one page out. Those are  
14 some notes to myself in there. Ms. Levin's paperwork was  
15 stamped in the 28th of September. I have looked at it,  
16 but I want to look at it more thoroughly. Perhaps on the  
17 November 18th date that I have in there we might discuss  
18 it further.

19 One of the primary concerns that I went to bed  
20 sleeping -- well, thought about before I went to bed to  
21 sleep last night was the employees. If we put this new  
22 time line in, the employees don't have a whole lot of time  
23 should an untoward event happen to the Watermaster as  
24 proposed. I am not presaging anything by that comment.  
25 It may be that we would have to move the June 30th, 2000,  
26 date. So I don't want anybody to think that this is a

1 last word on the time line, because I might have to make  
2 some adjustments.

3 Ms. Levin seemed to have some good ideas, but I  
4 didn't really -- I have been in trial. I have done a lot  
5 of reading, as usual, and even found your Rand study most  
6 interesting. I wished I had that the first time everybody  
7 came in here. It would have helped me to understand  
8 things that I assimilated piecemeal since.

9 The tentative is pretty self-evident. I intend  
10 to grant the request of the Watermaster to continue the  
11 hearing on the five-year appointment of the Watermaster to  
12 allow the phasing of the Optimum Basin Management Program  
13 as outlined. It seems like there is no opposition to that  
14 from what I have read. I only received, actually, three  
15 pleadings, Mr. Kidman's, one from Pomona, and Ms. Levin's.

16 Did somebody else turn something in on that?  
17 Oh, yes, Mr. Lemieux.

18 MR. LEMIEUX: Your Honor, we received a filing  
19 from the Chino Basin Water Conservation District. We  
20 noticed very late in the game that it had the wrong file  
21 number, so there is a filing by them -- I hate to  
22 characterize someone else's argument, but it seems to be  
23 in agreement with the general tenor of the arguments you  
24 have made.

25 THE COURT: Would you make a copy of that and  
26 provide it to this Court?

1           Has everybody else received a copy of that,  
2       because I haven't. And they will be a key player. If I  
3       read what's been done accurately, there are two bound  
4       volumes, the one is the Appendix, and the other -- it  
5       would appear that -- from Mr. Wildermuth's work it would  
6       appear that they're a key player if facilities are going  
7       to be owned by somebody. The Flood Control District also  
8       is an interesting player, which maybe we should start  
9       giving some documents to -- Jon Mikels is the supervisor  
10      in this area, and Fred Aguirre, right? Maybe they should  
11      be given some copies, especially of the bound ones. I  
12      found those most interesting.

13           Also, one of the things as I was reading over  
14      there is there is an argument that there is a million acre  
15      feet of water missing through maybe going out the other  
16      end of Prado to the Santa Ana River and through wells.  
17      When they go out to inspect wells they find new wells and  
18      maybe some underreporting. I think that will be addressed  
19      in the implementation as to what's going to be done about  
20      that. I mean, it makes a big difference as to how much  
21      water is down there. It goes from -- the overdraft is 50  
22      feet in some places and 200 in others.

23           Mr. Wildermuth, is that still the case? That  
24      was once the case.

25           MR. WILDERMUTH: Are you talking about  
26      overdraft?

1 THE COURT: Yeah.

2 MR. WILDERMUTH: It's about 90 acre feet.  
3 That's not water draft. That's how much water has been  
4 depleted from storage over a known period of time.

5 THE COURT: Through known or unknown sources?

6 MR. WILDERMUTH: It has been production.

7 THE COURT: It's been production?

8 MR. WILDERMUTH: Yes.

9 THE COURT: Do we have an accurate estimate of  
10 how much is going out the other side?

11 MR. WILDERMUTH: How much is leaking out the  
12 river, Sir?

13 THE COURT: Right.

14 MR. WILDERMUTH: No. We don't have the  
15 information to accurately calculate it.

16 THE COURT: I know -- I am trying to assimilate.  
17 There is a lot to assimilate.

18 MR. WILDERMUTH: If you put water in, it makes  
19 the water level higher, the ground level water higher.

20 THE COURT: Yes, makes the pumping back in 1978  
21 almost a half million dollars cheaper, or less expensive.  
22 But if you bring it up, does it also go up faster?

23 MR. WILDERMUTH: It will increase leakage out  
24 the bottom. We think we know what it is, but we don't  
25 really have enough data to really accurately calculate it.

26 THE COURT: Okay. The other -- it was a well

1 written report that you had.

2 MR. WILDERMUTH: Thank you.

3 THE COURT: I enjoyed reading it, which was the  
4 majority of part one, right?

5 Does anybody have any comments to make for the  
6 record?

7 Mr. Tanaka.

8 MR. TANAKA: Your Honor, if I may be heard on  
9 the tentative?

10 THE COURT: Sure.

11 MR. TANAKA: Your Honor, I'd like to address the  
12 point in your tentative about accepting the report as a  
13 final report as opposed to just a draft that's subject to  
14 later revision. I think there are two very important  
15 reasons why it should only be accepted as a draft. The  
16 first deals with where all of the parties are in this  
17 process. Your Honor, if it is accepted as a final report,  
18 it then becomes binding. Even if it is contingent on the  
19 other part, Phase II being accepted, and that means then  
20 as I would read procedure, our ability to challenge this  
21 report starts now, and the statute of limitations would  
22 start as well.

23 If we don't challenge the report now, then we  
24 risk coming back later on and having the argument made,  
25 you have waived your ability to challenge any of the  
26 aspects of Phase I. It is a statute of limitation



1 preservation of rights issue. So if it is accepted as a  
2 draft subject to later revision, everybody has reserved  
3 their rights. If and when Phase II gets approved, there  
4 is no need to worry whether or not anyone has a challenge.  
5 If we're in a position later on and we want -- we decide  
6 we're going to challenge Phase I and Phase II, we have  
7 waived our rights as to Phase I, so it puts a pressure on  
8 us to have to make a decision and preserve our rights. I  
9 think it will force parties to make a decision as to the  
10 litigation.

11 THE COURT: The litigation will probably come in  
12 the implementation phase, which is forthcoming.

13 MR. TANAKA: Not necessarily, your Honor. If we  
14 as a group can agree on Phase II, then I don't think the  
15 parties that have reached agreement are going to litigate.  
16 If we don't know whether we're going to reach agreement or  
17 not on Phase II, but we'll be waiving our rights as to  
18 Phase I if we sit on our hands, it puts tremendous  
19 pressure on us to decide whether to litigate earlier.

20 THE COURT: Let me think aloud. If I lodged it,  
21 and we termed it was lodged -- let me tell you what my  
22 main concerns are. I want to get on to the second phase.  
23 And if, as Mr. Kidman said in his paperwork, we keep on  
24 rehashing Phase I, we're never going to get on to  
25 Phase II. If we lodged the report, would that not  
26 preserve your rights, and then we'll file it coterminously

1 with the second phase?

2 MR. TANAKA: I think it would as long as it is  
3 not viewed as being lodged and final. See, the concern,  
4 your Honor, is if it is a final report not subject to  
5 later revision, then a party cannot later say, well, I  
6 waited for a year or half a year or however long to  
7 challenge it because it now knows what that report is and  
8 it should challenge it. If we don't challenge it now, we  
9 waive our rights. And I think everybody would rather  
10 waive that decision because there is a hope and  
11 expectation we will reach agreement on Phase II.

12 MR. LEMIEUX: Your Honor, would the problem be  
13 solved if your order calls it a final report but says  
14 exactly what Gene is addressing? Even though this is a  
15 final report, this doesn't start the statute of the  
16 limitations running. The parties can challenge this part  
17 of the report at some time in the future. In fact, if  
18 that's acceptable to the Court, what I -- I was going to  
19 propose for all of this anyway is that we'll prepare a  
20 proposed order and circulate it among the attorneys to  
21 nitpick that particular sentence if that approach is  
22 acceptable.

23 THE COURT: I have got it right on here. I am  
24 the one that typed that up. It is right on this computer  
25 right here. I can change anything in about --

26 MR. TANAKA: Before we get too far off track,

1 let me state my second reason as well. It is a separate  
2 and independent reason, your Honor, and that goes to CEQA.  
3 The problem I have is if it's a final report not subject  
4 to later revision, then I think it becomes a decision.  
5 And I agree with your Honor that -- or I would probably  
6 agree with your Honor that the Court is not subject to  
7 CEQA and Watermaster by extension is not as well.

8 THE COURT: It says right in the Public  
9 Resources Code, but go ahead.

10 MR. TANAKA: But I think by the same token, I am  
11 as concerned as the public agencies sitting around here  
12 and involved in Watermaster are. And if later on down the  
13 road they choose to implement this Phase I that's now been  
14 approved today and they send out the CEQA review and say,  
15 "We're considering a decision, and here's the decision.  
16 We're doing our CEQA compliance now." I think that it is  
17 highly likely that some later Court is going to come along  
18 and tell that public agency if they get sued, "Your result  
19 was already predetermined. There was a report that was  
20 final. You had discretion in preparing that report. It  
21 became an order of the Court. You have no choice but to  
22 accept this report, so your CEQA review is meaningless."

23 The problem is if we make a decision today that  
24 it is final, then we are forever condemning the future  
25 agencies when they make their decisions to be tagged with  
26 predetermining their results of CEQA down the road,

1 whether it be a year, two, three, or four years. That's  
2 the concern I have.

3 THE COURT: Let's hear from Mr. Kidman.

4 MR. KIDMAN: Thank you, your Honor. On the  
5 first point relative to whether lodging would be a good  
6 solution to this, I don't think that any of us want to get  
7 hung up on terminology or semantics. We had suggested  
8 that it ought to be received and filed as something the  
9 public agencies do. I don't know if that's a proper thing  
10 for the Court. It seems to me that the idea ought to be  
11 that this report, along with the comments as you suggest,  
12 should be accepted by the Court in some form, and that  
13 part of the order to go forward into Phase II ought to  
14 include a requirement that the Watermaster prepare  
15 responses to the comments that were received.

16 Right now -- often times we see in the  
17 environmental process, to use something that we're talking  
18 about right now, the idea that you do a draft report, then  
19 you get comments, then there are responses to the  
20 comments, and those three things then become the final.  
21 So that type of a pattern might work rather well and still  
22 preserve the objections that the parties have. And while  
23 your Honor is correct, Monte Vista's position is, we ought  
24 to put this down now and get on with it and not keep  
25 coming back and revising it and rehashing it, that is the  
26 Phase I report. Even Monte Vista has some questions and

1 issues that they're not quite satisfied with in the  
2 Phase I report. They made comments. The others have made  
3 comments. And there needs to be some synthesis of those  
4 comments by way of responses.

5 As to the CEQA issue, I believe, and would  
6 assert, that Mr. Tanaka is perhaps precipitating this  
7 issue prematurely. And in the Court's mind and the  
8 schedule the Court has tried to adopt, to look at that  
9 issue, I believe, is premature. That is the CEQA issue  
10 itself. Even if it were applicable to the Court and to  
11 the Watermaster and so forth, it has another exemption for  
12 planning and feasibility studies. That is, there is not a  
13 requirement to do CEQA analysis at the stage in the  
14 process where you're looking at what the plan is, what the  
15 goals should be, what the overall scheme is.

16 THE COURT: Let me ask you a question.

17 MR. KIDMAN: It is only when particular projects  
18 are proposed to implement that scheme that -- and those  
19 projects have a potential to have impact on the  
20 environment, only at that point. Even if CEQA is  
21 applicable, it is their project. And only when there is a  
22 project is the CEQA processing engaged. Now, I don't know  
23 about the NEPA part of this, but the -- the idea that we  
24 need to jump right in here and figure out what we have to  
25 do to comply with CEQA, I think, is probably something  
26 that gets left a little while down, at least until

1 Phase II when we have an implementation plan or maybe we  
2 are focusing on actually going out there and making some  
3 physical changes in the environment --

4 THE COURT: This is what I envision.

5 MR. KIDMAN: There is another point that I  
6 really want to bring to the Court's attention, and it is a  
7 new additional point. And I'll identify it for you. And  
8 I can talk about it now or we can try to resolve these two  
9 at the same time. And that is that part of the Phase I  
10 report puts some emphasis on the need for actuary charge  
11 facilities and the need for the Chino Basin to begin to  
12 get the benefit of getting more water put into the ground  
13 water basin, because what has happened over a period of  
14 time, and somewhat randomly, is there has been a lot of  
15 urban hardscape, rooftops, roadways, driveways, parking  
16 lots --

17 THE COURT: The Army Corps of Engineers?

18 MR. KIDMAN: That's right. Flood control  
19 facilities too. Those things have all added up to less  
20 native recharge getting into the Chino Basin than once  
21 occurred, and less getting in there would be optimal under  
22 what this plan is envisioning. An impediment to that has  
23 come to my attention just in the last two weeks. I have  
24 had only one conversation with Mr. Lemieux about it, and  
25 it is as follows:

26 The State Water Resources Control Board, which

1 has control over surface water and appropriations in  
2 California, has noticed a hearing for the early part of  
3 December with comments and requests to be part of that  
4 hearing due by November 5th. This hearing that's been  
5 noticed would set aside, or at least examine whether to  
6 set aside, a determination by the State Water Resources  
7 Control Board that the Santa Ana River is fully  
8 appropriated. And the notice describes the current state  
9 of affairs that under prior case law there is a  
10 requirement for a certain quantity of water to the Prado  
11 dam, and so long as that amount of water goes by, those  
12 who are upstream in the watershed are permitted to take as  
13 much water as they need and put it to use. Well, here is  
14 the problem. The Orange County Water District has made an  
15 application to appropriate a huge amount of additional  
16 water over and above that minimal amount that is required  
17 to go past Prado.

18 Should that come to pass, that means that there  
19 would be a limitation on the amount, or possibly could be  
20 a limitation on the amounts of native flow in the Santa  
21 Ana water shed, including the native flow coming into the  
22 Chino Basin that we could try to capture and put into  
23 recharge basins and Chino Basin. Now, that's kind of a  
24 long story.

25 THE COURT: That started in the '70's or '60's.  
26 That was in the '60's.

1 MR. KIDMAN: But my -- the point is that here's  
2 an outside externality that's impinging now upon the  
3 ability of the Chino Basin to -- or possibly impinging on  
4 the ability of the Chino Basin to get enough recharge  
5 water from native sources to do the Optimum Basin  
6 Management Plan that's envisioned. We don't have a way  
7 right now under the Watermaster setup for the Watermaster  
8 to intervene in and become part of the State Water  
9 Resources Control Board process to try to assert and  
10 preserve the rights and the future needs of the Chino  
11 Basin. That simply is not available. Really the best I  
12 can say for in effect, the Court, for your Honor, to  
13 intervene in the State Board proceeding.

14 THE COURT: How about the Conservation District?

15 MR. KIDMAN: I think the people we need to try  
16 to address -- what is the proper way for the Chino Basin  
17 to get itself represented in this basin? And that's a far  
18 more urgent issue than the question of CEQA compliance.

19 THE COURT: The original lawsuit was against --  
20 the Chino Basin Municipal Water District versus the City  
21 of Chino. Okay. It was again in the '60's.

22 Does anybody have a copy of that judgment that  
23 was rendered in that?

24 MR. KIDMAN: I am sure we can come up with that.  
25 We can.

26 THE COURT: 1965.



1 UNIDENTIFIED SPEAKER: '69.

2 MR. KIDMAN: We're talking about the Orange  
3 County case?

4 THE COURT: Sure. If you're to believe the Rand  
5 study of it, which I think that Marilyn Levin attached to  
6 her pleadings, it talks about that. And they had to get  
7 that adjudication done before this adjudication could be  
8 appreciated. And I was thinking it was a done deal then,  
9 but maybe it is not, and maybe we need to take a look at  
10 that adjudication.

11 MR. KIDMAN: What's happened, physically, your  
12 Honor, is at the time of the Orange County judgment there  
13 was a requirement for a certain amount of water to go past  
14 the Prado dam. As I said, there has been tremendous  
15 development in the Inland Empire and Chino Basin in the  
16 meantime. As a consequence, there is far more run off  
17 going past Prado now than there ever was back in the day  
18 of the judgment. That leads the Orange County Water  
19 District to the State Water Resource Control Board to get  
20 some more of that water.

21 There is probably enough water, I would guess,  
22 to be able to easily satisfy the needs of their Optimum  
23 Basin Management Plan on the one hand and provide quite a  
24 bit more guarantee to Orange County. Chino Basin needs to  
25 get in the game.

26 MR. LEMIEUX: Your Honor, if Mr. Kidman wasn't a

1 friend, I would have protested earlier. He is perhaps  
2 talking about something that should be brought up in  
3 another hearing.

4 MR. KIDMAN: I totally agree. We need to have  
5 another hearing.

6 MR. MC KINNEY: May I address that briefly?

7 Orange County is jumping right in. I have to  
8 agree with Mr. Tanaka. This is the point. This is an  
9 evolving situation factually. The Agricultural Pool filed  
10 a number of objections to the Optimum Basin Management  
11 Plan. We're very concerned that the study isn't complete.

12 If there is a CEQA review at some point in  
13 time -- and there may or may not be -- more studies will  
14 augment this and increase our knowledge. I too am very  
15 concerned this report will be somehow deemed final and  
16 we'll now not be allowed to object. As you can see, we  
17 have raised a number of things that haven't been looked at  
18 closely. The Optimum Basin Plan, I don't think we would  
19 disagree, needs to be federally funded. We disagree with  
20 the costs.

21 And I am -- I am not too optimistic that we can  
22 all come to an understanding -- an agreement on the  
23 solutions in Phase II. I would hate to be in a situation  
24 where we are forced to litigate Phase I. This is final.  
25 We all disagree. Let's fight over this thing when Phase  
26 II is final.

1           If there's enough federal subsidies to fund  
2 Phase II, we're not going to argue much. We agree on the  
3 solutions needed. We don't agree on the factual basis for  
4 it. And so I too would want to put on the record, the  
5 Agricultural Pool is in opposition to some of the factual  
6 findings in the study and thinks further study is  
7 necessary. We would accept it as a draft report, and  
8 let's get on to Phase II.

9           THE COURT: It is time to get moving is my  
10 thought, whether we deem it lodged, or whatever  
11 terminology you want to use. But I want to get on with  
12 Phase II. And I think we can draft, redraft, draft  
13 redraft, redraft, redraft, amend, redraft, and we're never  
14 going to get anything done. And this has been years.  
15 It's time to get moving, as Mr. Kidman has even recognized  
16 in his moving papers.

17           On CEQA, eventually, I think, that's a done  
18 deal. It is going to have to happen at some point or  
19 another. The Court -- I recognize, and I have got a copy  
20 of 21000, et seq., around here someplace of the Public  
21 Resources Code. I know I am exempt, but the agencies  
22 aren't. And this whole Optimum Basin Management Program,  
23 I think the success of it is dependent upon building  
24 consensus, as I said before, instead of litigating. It  
25 was recognized.

26           I found the reading interesting, again, in that

1 Rand study way back in the '70's how many hundreds of  
2 thousands of dollars were spent litigating and spinning  
3 wheels and getting nothing accomplished but lining the  
4 pockets of lawyers and nothing got accomplished with the  
5 water. We can continue to do that, or you guys can do a  
6 consensus to stay out of the courtroom and go through the  
7 give and take, which is what my desire is. I don't want  
8 to -- I will, but I don't want to remove local control of  
9 the water. But it could be that people just keep on  
10 stalling and stalling and spinning wheels, and finally  
11 this Court gets frustrated and says, okay, bring in the  
12 Department of Water Resources. I don't want to do that.

13 I am not presaging I am going to do that. My  
14 thought is at this time that we have had a lot of work  
15 done. I looked at those amounts of times, what was it,  
16 the 37 meetings here and the 10 there? And I read those  
17 reports. And I am thinking there are a lot of hours that  
18 have been put into this, and people in good faith --  
19 Marilyn Levin mentioned it in her paperwork also -- these  
20 people have really worked hard. And I don't want to snub  
21 that effort.

22 I hope this thing succeeds; otherwise, I would  
23 have appointed the Department of Water Resources a long  
24 time ago. It was by no small coincidence that I had the  
25 two factious sides negotiating the terms with the  
26 Department of Water Resources. You might have figured

1 that out a long time ago. Some of you are that smart.

2 The thing is we need that as a contingency plan  
3 in case people say, "Okay, we don't have the money. We  
4 don't have the money. We can't do anything." And talk is  
5 cheap.

6 And we have gone around and everybody has made  
7 their speeches, and it is back to business as usual. And  
8 it is not going to be business as usual.

9 MR. KIDMAN: Your Honor, the way I read your  
10 tentative ruling is you expect a report about 30 days from  
11 now, October 28th, to be precise, on how the CEQA issues  
12 are to be addressed?

13 THE COURT: I ordered some briefing. Briefing.  
14 Not a report. Some briefing on whether it --

15 MR. LEMIEUX: Oh, all right.

16 THE COURT: That would be the time. If some of  
17 you think it is premature, you can voice it at that time.

18 MR. LEMIEUX: For the Court's information, the  
19 parties have started to discuss the CEQA issue. And I  
20 believe some of the public agencies, and especially those  
21 most likely to be involved in the construction projects  
22 such as Inland Empire, are talking amongst themselves to  
23 find the best lead agency -- at least we asked them to do  
24 that. And there are environmental consultants that are  
25 around and starting to develop proposals. Perhaps on the  
26 28th we can bring you back our views on how CEQA can be

1 implemented, and even whether there is an agreement as to  
2 the parties as to who is going to be the lead agency and a  
3 time frame, but I think the 28th would be a little short  
4 to get too specific.

5 THE COURT: Well, I want to keep a short leash  
6 on this. And also I think Marilyn Levin's time line might  
7 deserve some further study, in which case I would have to  
8 move out the time of which contract -- we're getting close  
9 to June the 30th. For the Watermaster to function, they  
10 might have to engage or enter into a contract that extends  
11 beyond that date.

12 In addition, it seems to me, we have got a  
13 plethora of agencies interacting and sometimes not  
14 interacting and acting independently. And it seems like  
15 somehow we have got to coordinate all the efforts in this  
16 area because we can't build consensus in one area and not  
17 in other areas. The Corps of Engineers, according to  
18 Mr. -- I was reading Mr. Wildermuth's portion of the  
19 study -- and the Corps of Engineers comes in and puts  
20 concrete flood control channels in so the water is going  
21 out not going down into the ground. Flood control has a  
22 separate certificate filed with the Secretary of State.  
23 It is not part of San Bernardino County, although they  
24 kind of function with San Bernardino County -- San  
25 Bernardino County, I think, funds them.

26 They would say, "We're not going to pay for any

1 recharge facilities, that's the Conservation District's  
2 problem." And the Conservation District has their own  
3 problems. And the Watermaster is reacting with all of  
4 these agencies also. It just seems that somehow consensus  
5 is the only way to work this thing out.

6 MR. SENEAL: Your Honor, could I be heard very  
7 briefly on the City of Pomona's behalf?

8 We don't want to slow things down. I can  
9 represent that to the Court. We agree with the Court's  
10 analyzation that coordination is going to be imperative  
11 here, but we do subscribe, as we said in our moving papers  
12 and response, if the Court's order would specifically say  
13 that these rights are reserved, that would dispose of what  
14 I think is the issue raised by Mr. Tanaka. As to lodged  
15 or accepting it as received, that's all we were asking  
16 for. If you do that, then we're in a position to move  
17 forward, I think, diligently.

18 THE COURT: I have got no problem with that as  
19 long as it doesn't mean that the committees are still  
20 going to work on Phase I and not work on Phase II. We  
21 need to get on -- as Mr. Kidman says, we need to get on  
22 with Phase II.

23 MR. SENEAL: My illustration is purely, your  
24 Honor, that I may have absolutely no problem with Phase I.  
25 Now, if somebody else is going to pay for a portion of the  
26 particular item, when I find out how it is going to be

1 paid for, I may have a problem. It is those kinds of  
2 uncertainties that I think cause us concern about this  
3 being lodged and then maybe having somebody initiate  
4 administrative proceedings.

5 THE COURT: Ms. --

6 MS. LEVIN: I would like to echo a part of that.  
7 And I think Mr. Tanaka raised it in his comments to the  
8 Watermaster and so did I, not necessarily to the Court. I  
9 think some of the problems we're talking about today might  
10 be solved if in your order, possibly one, you would drop  
11 the words "final report," and just on line 24 say, "The  
12 Court, however, accepts the OBMP Phase I report including  
13 the Appendix A as a report in compliance with the Court's  
14 Order to Show Cause." I had put that language in my  
15 proposed order. It is just some possible language.

16 Or, "The Court receives and files the OBMP Phase  
17 I report dated August 19th and Appendix A." Along with  
18 what Pomona has said, I agree that possibly the sentence  
19 could be added to your ruling that says, "the Court  
20 recognizes that the parties have filed comments and/or  
21 made objections during the development of the OBMP and  
22 that the Watermaster has retained these comments for the  
23 record." "The Court recognizes that the parties reserve  
24 their rights to comment on or object to the OBMP during  
25 the development of Phase II of the OBMP, at the time the  
26 document is considered for approval." There was some



1 discussion in the Watermaster meetings, and I don't think  
2 my including that language will mean the parties will want  
3 to go back and start on --

4 THE COURT: Rehash --

5 MS. LEVIN: -- Phase I. What some of them do  
6 want to do is, one, they objected to some of the comments  
7 and language in Phase I, and are, as Mr. Kidman suggested,  
8 hoping that some of the comments will be included or  
9 revised during a Phase II process. And so, I possibly  
10 even envisioned as part of the Phase II program that  
11 the entire document will be submitted to you, possibly  
12 even that includes some of Phase I. So my suggestion is  
13 to avoid both the CEQA issues as well as our concerns  
14 about this being a Phase I final report, that you delete  
15 the word "final" from that and then add a sentence  
16 regarding the fact that the parties reserve their rights.  
17 I think as I had said that might avoid any potential  
18 litigation that the parties may be forced to engage in now  
19 if it is considered a final report.

20 THE COURT: What if it said, "the Court accepts  
21 it as a provisional --"

22 MR. LEMIEUX: Good word.

23 THE COURT: "-- compliance with the Court's  
24 order."

25 Mr. Gutierrez was up first. Then I will go to  
26 you, Mr. Kidman.

1 MR. GUTIERREZ: I was just standing very close  
2 to Mr. Senecal because I wanted to display my agreement  
3 with what he had suggested to the Court. But I want to go  
4 just one step further, and that is that you are to be  
5 commended for having done something which has taken a long  
6 time to do that no one else could do, and that is subdue  
7 the ranker that existed between all of us. We made great  
8 progress in working together. And the report that has  
9 been prepared to date is a very, very good report.

10 The problem with the report as far as real  
11 analysis is that the most important component is missing.  
12 That is, how is it going to be paid for? Once we know  
13 that, it is very easy for us to know what our real  
14 position is. It's hard to know what our real position is  
15 now. And I think if you would proceed with your  
16 suggestion to make this provisional, we all have an  
17 opportunity to reflect back on Phase I once we know what  
18 the financial element is all about, which is going to be  
19 the crux of this.

20 There are some differences among us, but if we  
21 can work those out in the Phase II report, then Phase I  
22 disagreements may actually go away.

23 THE COURT: There is supposedly a guy within one  
24 of the utility agencies that is an expert on financing --  
25 what's his name? He used to be with another organization.

26 MR. GUTIERREZ: Atwood {sic}?

1 MR. LEMIEUX: Richard Atwater. He also worked  
2 for the Watermaster as a financial consultant and is still  
3 working for us.

4 MR. KIDMAN: Your Honor --

5 THE COURT: What's wrong with consulting with  
6 him, assuming -- and I will let you be heard. You read my  
7 notes, which were supposed to have been to myself. That's  
8 one of the thoughts I had, is financing is a major, major,  
9 major problem that's going to have to be solved. I have  
10 heard -- I think possibly through Anne Schneider, maybe  
11 through some -- one of the -- either her or  
12 Mr. Scalminini, that he has some expertise and that he is  
13 now with another organization. It would be nice to be  
14 able to consult with him on this issue.

15 MR. LEMIEUX: And we are. And we're tapping his  
16 expertise.

17 MR. KIDMAN: Thank you, your Honor. I want to  
18 just emphasize that at least in my understanding, Phase II  
19 of this process is going to require more than simply a  
20 financing plan and a cost apportionment plan. Those are  
21 two things that have to be there. But there is also a  
22 need to identify more specific actions that will be taken,  
23 prioritize them, and schedule them. All of those things  
24 are part of Phase II that is not covered in Phase I.

25 So I think the parties probably have a lot of  
26 resources to be able to bring in the financial consult

1 that's necessary. There are a lot of agencies involved  
2 who build tens of millions -- hundreds of millions of  
3 dollars worth of facilities over the years. It can be  
4 done, but everything has to be taken in the right order.

5 Secondly, I wanted to emphasize what you're not  
6 hearing today. Understand, no one is here today saying  
7 that the Watermaster or any party or group of parties have  
8 been dragging their feet. Nobody is here saying that you  
9 ought to just cut this thing off right now and appoint the  
10 Department of Water Resources as the Watermaster.

11 That's -- that's not here. Every single party, best I can  
12 tell, is sort of in agreement. This first step ought to  
13 be taken -- put behind us, whatever reservation or, you  
14 know, the disagreement they want to make, everybody seems  
15 to be pretty much in accord with that, and Monte Vista is  
16 as well.

17 We think -- Monte Vista thinks that there needs  
18 to be some continual incentive, and that the incentive  
19 that the Court has put out there is that if this job  
20 doesn't get done, get done in a satisfactory way, that we  
21 will lose local control.

22 THE COURT: You read me like a book.

23 MR. KIDMAN: I saw that note.

24 That incentive is an important incentive. And  
25 we still have some skepticism about whether or not these  
26 parties collectively can manage this resource in the

1 overall public interest, but the first step is being  
2 taken. Let's accept it and try to move on to the second  
3 step and reserve judgment on the idea, is somebody else  
4 more suitable to be the Watermaster here?

5 The last thing -- I would just like to leave  
6 this note, because there's been plenty of things written  
7 on this. Consensus is a difficult thing. And there is  
8 some opinion saying that consensus is the absence or  
9 antithesis of leadership. If consensus is a requirement,  
10 it provides a very, very strong veto to the minority.  
11 That is, anybody that decides they want to disagree or  
12 their interest hasn't been adequately addressed has the  
13 ability to withhold agreement, and therefore, stifle or  
14 choke off consensus.

15 So I think there needs to be some articulation  
16 by the Court that consensus doesn't necessarily mean  
17 unanimity, but what you want to get is a reasonable plan  
18 that most people are able to buy into. And the Court,  
19 obviously, will have the ability to reserve and rule on  
20 whether or not it is unfair to some parties. And the  
21 Court has probably the authority, in my view, at least, to  
22 require recalcitrance to go along with it under the  
23 authority under Article 10, Section 2 of the California  
24 Constitution to advance the reasonable and beneficial use  
25 of water to -- of this State to the greatest extent which  
26 they're capable.

1           One last thing is that this matter that I  
2 brought up is sort of out of order. And I recognize it is  
3 out of order, but is of some urgency. And before we get  
4 done today I sure would like to hear the Court's thought  
5 on how we can get Chino Basin's voice heard in the process  
6 that's going on through the State Water Resources Control  
7 Board.

8           THE COURT: Ms. --

9           MS. LEVIN: I didn't know that Mr. Kidman was  
10 going to raise this last argument -- or second to last  
11 argument that he raised again. One of the things the  
12 court referee said in her comments specifically was that  
13 the authority of the Court and the issue of the  
14 jurisdiction of the Court is premature at this time, if  
15 this report is filed as a report or accepted as a report.  
16 And as I understood her letter and comment, she really  
17 wasn't looking for the record to include in this ruling  
18 today any --

19          THE COURT: Approval?

20          MS. LEVIN: -- any additional approval -- or  
21 even responding to Mr. Kidman's suggestion regarding  
22 whether the Court has authority or jurisdiction to order  
23 recalcitrant parties -- I think that it would be really  
24 premature and would do a disservice to this group if any  
25 kind of language like that were added to this ruling. I  
26 am not sure Mr. Kidman was suggesting that.

1 THE COURT: I don't think he is suggesting that.  
2 I think everybody knows what the threat is from the very  
3 first time everybody came in here. Nobody wants the State  
4 to take this over, and that's a big threat I have. I know  
5 it. You guys know it.

6 And so if you don't get consensus, you don't  
7 move forward. You just turn it over to the Department of  
8 Water Resources and it saves me a lot of time. But I  
9 recognize you guys want to work this out. I am willing to  
10 work with you, and I am flexible up to a point. If  
11 somebody is just going to drag their feet and drag their  
12 feet, that's one of the things I am concerned about.

13 I wanted -- when Mr. Kidman was up, I wanted to  
14 mention that way back last December you had pretty much  
15 everything you have got now done, which causes me a little  
16 bit of concern that Phase II will be done on time. So I  
17 have got to keep everybody's feet to the fire here.

18 MR. LEMIEUX: I am going to disagree. An awful  
19 lot has been accomplished since last December. And I  
20 don't think we want to hear all of it from Mr. Wildermuth,  
21 because a lot of it was on his back. I am not  
22 disagreeing --

23 THE COURT: In fact, he's got his little stamp  
24 down at the bottom. I recognized that. Also  
25 Mr. Scalminini -- I wanted to let everybody know before I  
26 forget, Mr. Scalminini had some very scintillating things

1 to say about the efforts that were being made, so --

2 MS. LEVIN: I was going to say one other thing.  
3 That is maybe, Mr. Tanaka, it would be more appropriate  
4 for him to respond, because he has looked at the CEQA  
5 issue. I was thinking that if your ruling does just  
6 accept or receive and file this report, then I am  
7 wondering whether or not there is any need at this time to  
8 require that the parties brief the CEQA issue. What I am  
9 concerned about is that an analysis of the pros and cons  
10 of whether CEQA does or does not apply is an internal  
11 analysis that the various water agencies and Watermaster  
12 have gone through. But when you file in court you really  
13 have to take a position it wouldn't be an internal  
14 memorandum, and whatever position you might take might  
15 work against you at a later point.

16 To me it would seem premature to have briefing  
17 and a hearing on the CEQA issue if Phase I is just  
18 accepted, but I don't know if Mr. Tanaka agrees because I  
19 have not researched this issue.

20 THE COURT: The OSC assumes that I have  
21 actually -- as you recall, when Anne Schneider was  
22 appointed, that's my tentative, you come to show cause why  
23 it should not be the case. I think CEQA is eventually  
24 going to apply to this, and --

25 MR. LEMIEUX: I would think, your Honor, it  
26 would be useful to come before the Court in about a month



1 and spend time devoted only to the CEQA issue, because I  
2 think, in addition to the technical questions of when do  
3 you have to do it? What does it cover? Who has to do it?  
4 We have some concerns to bring you on timing. How long is  
5 it going to take? What's the realistic view of this  
6 process?

7 That's going to be important information for you  
8 to have when it comes to deciding how we find the closest  
9 thing down. So in a month from now if it is just a brief  
10 on those issues rather than resolving them, that would be,  
11 I think, very well spent.

12 THE COURT: I can promise that.

13 MR. TANAKA: Maybe there is a middle ground  
14 here, your Honor. I think the group is starting to gel on  
15 some views on CEQA. And, perhaps, we'll reach a decision  
16 at the next meeting as to what we intend to do on CEQA.  
17 So if we come back in a month as your Honor and  
18 Mr. Lemieux would suggest, it won't require battling  
19 briefs as Ms. Levin is worried about. Here's what we plan  
20 to do and why we think it is legal. And if there are any  
21 points of disagreement we can hash that out, but it will  
22 narrow the dispute for your Honor.

23 THE COURT: There is nobody from the  
24 Conservation District here?

25 (No response.)

26 THE COURT: Sir, what's your name?

1 MR. VANDEN HUEVEL: Geoffrey Vanden Huevel. I  
2 am a director on the Chino Basin Water Conservation Board,  
3 and I am representing the Board of Directors.

4 THE COURT: I read your name quite a bit.

5 MR. VANDEN HUEVEL: Sorry.

6 THE COURT: In fact, your name was mentioned  
7 along with Paul Hofer's name one time to me that -- I  
8 think by Anne Schneider -- that I know the two of you were  
9 aligned on some issue or something like that.

10 MR. VANDEN HUEVEL: That would be a pretty good  
11 guess. Paul is a farmer. We are two agricultural  
12 representatives on the Watermaster Board. And he is a  
13 good common sense guy, so whenever I can agree with him, I  
14 feel like I am on pretty good ground.

15 THE COURT: I read your name on the minutes. I  
16 read the minutes too. So it is nice to meet you.

17 MR. VANDEN HUEVEL: Nice to meet you too.

18 THE COURT: Okay. I will keep the tentative  
19 schedule the way it is now with the caveat that I want to  
20 maybe get something from Ms. Levin on how her schedule  
21 differs from the schedule that I have set forth and what  
22 can be done to perhaps my schedule to be more  
23 accommodating. I have taken the dates that you have given  
24 me and tried to work back on them. But apparently in  
25 doing that it really does leave the employees in a very  
26 insecure position, and that's nothing I have ever wanted

1 to do in this case. That's the one thing I really thought  
2 about last night. The employees might read this and take  
3 too harsh a view of it and go out looking for another job.  
4 And that's not going to do any good.

5 Yes.

6 MR. KIDMAN: Your Honor, being the one that's  
7 talked about keeping the pressure on, I might say that if  
8 we're extending, in effect, the time for the final OBMP  
9 until April or another six months, that it may be useful  
10 to extend that June 30th deadline for a similar amount of  
11 time and that would help the issue that you have brought  
12 up.

13 THE COURT: I think we can discuss that November  
14 18th, but that's something -- that's the one thing that  
15 weighed heavily on my mind when I went to bed last night,  
16 was these employees are going to think that -- they're  
17 going to read this and jump to conclusions and think  
18 they're going to be out and go out looking for another job  
19 and maybe not do the job they're hired to do right now.  
20 And that's the furthest thing from my mind. I wouldn't  
21 have put all this work or brought Mr. Scalminini or Anne  
22 Schneider in if I wanted to boot the Watermaster out and  
23 bring the Department of Water Resources in. Au contraire.

24 But you have to have a continued plan. And I  
25 think the Department of Water Resources should know that  
26 when they read the paperwork. I hope they know it. Maybe

1 not to expend a whole lot of effort in this area, but  
2 these are the things that need to be done if worse comes  
3 to worse. Also I think that the players need to know that  
4 if they -- their goal is just to spin wheels and keep  
5 stalling in the hopes they're going to wear me down, those  
6 of you who know me know, that's the wrong strategy.

7 So that's -- I have tried to word it very  
8 carefully as I did before when I put two people  
9 negotiating with the Department of Water Resources, give  
10 you guys an out, let you know that I mean business.

11 Yes.

12 MS. STEWART: Traci Stewart, Chief of  
13 Watermaster Services. I spoke with the Department of  
14 Water Resources last week. I tried to contact the  
15 representative that we had been working with this past  
16 year, and he's on sabbatical until January of 2000. So I  
17 was referred to Mr. David Anderson (phonetic spelling), I  
18 guess, who is his superior. And in speaking with him  
19 about it, their sense is that the Court might, in fact,  
20 appoint the Department of Water Resources at some point,  
21 but they felt that if the Court wasn't firm that they were  
22 going to appoint the Department of Water Resources, that  
23 perhaps when the Court was firm, that a transition period  
24 at that point in time would make more sense. And so  
25 that's when Mr. Anderson asked me to represent today if  
26 the Court asked if we had made the contact like we

1 promised in our motion to the Court --

2 THE COURT: That's actually nothing new. In  
3 their original letter in response to your letter  
4 essentially that was the tenor of that letter, if you can  
5 understand the same term used many times with the dual  
6 intended --

7 MS. STEWART: Uh-huh.

8 THE COURT: I don't know that they're the best  
9 organization to take over as Watermaster. And I certainly  
10 am of the present opinion that I can't just appoint them,  
11 they have to accept the appointment. That's why I  
12 underlined "invited" in there. I don't think I can force  
13 the Department of Water Resources to do that task. In the  
14 past I was under the impression that they would accept the  
15 appointment. In fact, there are some financial benefits  
16 to them taking over. They can put as little as 50 percent  
17 of their charges as a charge back. I am aware of that. I  
18 think we mentioned that a long time ago in here as a  
19 matter of fact.

20 You guys want control. I am still willing to,  
21 work with you. It has been going on for a number of  
22 years. Now, that's the general theme. You guys want  
23 local control.

24 And I have got a Sword of Damocles of the  
25 Department of Water Resources hanging above them if  
26 nothing is done. Something appears to be getting

1 accomplished. It has taken a long time. And maybe my  
2 original projections were unrealistic about the amount of  
3 time it would take to get this accomplished. Certainly,  
4 there have been a lot of meetings.

5 And Mr. Wildermuth has certainly put a lot of  
6 work in there in reading that stuff over. But I want to  
7 keep the dates that I have set in there with the proviso  
8 that I am thinking about the employees and the uncertainty  
9 that would be created by keeping the time line vis-a-vis  
10 the employees. But the other time lines look good, and I  
11 still want to discuss the CEQA issue on the 18th. So that  
12 might not be very palatable to some people, but I think it  
13 is something eventually we're going to come to grips with.  
14 And, actually, in getting all the agencies to get along  
15 with each other, if you're going to wind up with a CEQA  
16 issue, it is better to think about it now so you don't  
17 have to go back and redo something later too. I will  
18 await your pleadings, but the thought is out there that I  
19 think that.

20 Oh, let me discuss one other thing. We have a  
21 research attorney here that used to work with Orange  
22 County. And then, actually, I found out just recently --  
23 she is on vacation. She didn't help me on this. But I  
24 found out just recently she was on the Advisory Committee  
25 at one time. Her name is Paula Martinez. Does anybody --  
26 somebody is nodding.

1 MS. LAUFFER: Many, many years ago in the late  
2 '70's.

3 THE COURT: What do you guys think about that?  
4 We have another research attorney that is quite  
5 capable.

6 MR. KIDMAN: Just jumping out there without  
7 knowing much about it, I can certainly say that I would  
8 waive any objections on behalf of Monte Vista, if that's  
9 what you're looking for.

10 THE COURT: What if I used her only as a  
11 secondary, in case the other one was ill. There is  
12 another one that is quite capable. If somebody is  
13 uncomfortable, I feel uncomfortable. I could use her if  
14 necessary, but I would use the other one. There are two  
15 that I could use, one is on vacation now and used to work  
16 in Orange County and was a member of the advisory  
17 committee.

18 She did not work on this. I have held her in  
19 abeyance, and it is something that's being discussed  
20 internally here whether or not it would be appropriate to  
21 use her. She has CEQA experience. Then again, I think  
22 Ms. Schneider's office has somebody that -- with quite a  
23 bit of CEQA experience there too. And plus the one that  
24 used to be next door to me that's come back temporarily  
25 that is available is the one that worked with me on this  
26 from the very get go, so I would just as soon work with

1 her. But I have to let the head of the research attorneys  
2 know which one I want, and I wanted to consult with you.

3 If it makes no difference to you, I am going to  
4 take the one that originally worked on this with me, Judy  
5 Schurrer is her name. She makes my phone calls, discusses  
6 things with Anne Schneider. She is my immediate contact.  
7 This time I used -- actually, I had Wanda call Mr. Tanaka.  
8 I noticed something --

9 Was it you that called?

10 THE CLERK: Yes.

11 MR. TANAKA: I can address those issues, if you  
12 want.

13 THE COURT: Why don't you explain what I had you  
14 look up? I didn't talk to you directly.

15 MR. TANAKA: The clerk's office called and  
16 wanted to know about three people that appeared on the  
17 service list. The first was Robert Dougherty. And it is  
18 our understanding Mr. Dougherty should remain on the list.  
19 He is still attorney of record for Ontario on this issue.

20 Secondly, Mr. James Ward, who is now a justice.  
21 We got Watermaster Services to contact his office. If  
22 they say they no longer have a party to the action,  
23 they'll be removed.

24 And finally, the third one was Crawford Canyon  
25 Water District. And the question was, "Should they be  
26 added to the list?" Apparently, they're not part of this



1 basin or adjudication, so they will not be added.

2 THE COURT: Thank you. And thank you for  
3 looking that up.

4 Along those lines, a couple of years ago I  
5 thought we might be able to save some trees if we started  
6 getting e-mail addresses and e-mailing certain people if  
7 they will accept notice by e-mail. I don't think it is  
8 legal notice per the Code of Civil Procedure. If somebody  
9 would voluntarily accept notice that way it would save a  
10 lot of paperwork; is there somebody you're taking the  
11 paperwork to?

12 MS. STEWART: We do it all in-house. Unless  
13 there is a special need for colored printing or special  
14 binding, we do it all in-house. And we have asked for  
15 e-mail addresses whenever we have sign-in sheets, but  
16 there are a number of people that participate who don't  
17 have e-mail addresses. We haven't gotten to where we  
18 suggested they receive notice that way. We have made a  
19 serious effort to have everything up on the web, the  
20 agendas and the minutes to the best of our ability.

21 THE COURT: That would save a little bit of  
22 money, wouldn't it? How many mailings do you do? There  
23 are 1,300 people -- I have variously heard 400 mailings.

24 MS. STEWART: When we served the Appendix A and  
25 the OBMP, it ended up being about 140 that received notice  
26 on that. And what we have, there is an order on file that

1 dates back, I believe, in the late '70s, early '80s where  
2 we're allowed to notice the other active parties who  
3 haven't requested full notice by using a post card. So in  
4 this particular proceeding, which started as a result of  
5 your February 19th ruling, we noticed everybody, but it  
6 was in progress. And then we noticed the hearing dates on  
7 the post card to remind the people, and that comes in  
8 under 500 total, you know, including the 140. So we have  
9 kept them apprised in that manner as well as with the web  
10 site and such.

11 THE COURT: The web site goes back quite a ways.  
12 It is more extensive than what I envisioned. Although  
13 still the draft minutes I would love to see put on sooner,  
14 but then maybe delete some of the past ones. That's  
15 getting to be quite a voluminous web site, isn't it?

16 MS. STEWART: The challenge we have experienced,  
17 your Honor, is in meeting the meeting schedule, that  
18 leaves very little time between meetings in order to  
19 prepare draft minutes and be prepared for the next set of  
20 meetings and still get the agenda and materials out for  
21 the meeting. It is quite a task.

22 THE COURT: I think Anne Schneider convinced me  
23 not to go off to the desalter. I wanted to see the  
24 desalter and she says, "Don't bug them now. They're  
25 really working hard." So I didn't. Eventually I would  
26 like to see the desalter out in Riverside.

1 MS. STEWART: We can do that.

2 THE COURT: You have been busy. We had this  
3 date coming up.

4 MR. TANAKA: As we're wrapping matters up, I  
5 just wanted to make sure the fact didn't get lost in all  
6 the discussion. I was under the impression that your  
7 Honor was contemplating revising the tentative, at least  
8 to the extent that he refers to the report as being deemed  
9 provisional. And I wanted to make sure that -- to  
10 determine whether that was his Honor's pleasure.

11 THE COURT: It is. It is. I don't want to  
12 foreclose any rights that anybody might have. I want the  
13 thing to move forward though. I don't want people to be  
14 rewriting and redrafting what's already been done.

15 Ms. Levin, your wording seems appropriate.

16 MS. LEVIN: Thank you, your Honor. I have --

17 THE COURT: That's why you will probably do the  
18 next notice of ruling.

19 MS. LEVIN: I didn't know if you wanted me to  
20 real briefly explain what I would suggest in terms of the  
21 timetable.

22 THE COURT: I received it on the 28th. Today is  
23 the 30th.

24 MS. LEVIN: It is actually -- it was actually in  
25 my comments at the public hearing. I just wrote out the  
26 comments as well, because it is easier to see a time line

1 when it is in writing. And that written comment was not  
2 included in the Appendix, so that's why I sent it over to  
3 the Court. And it is really simple.

4 And that is my only problem was March 15th was  
5 the deadline for comments on the draft OBMP. And in my  
6 opinion, we -- and then you have March 31st as the final  
7 OBMP submitted to the Court. It is that deadline, the 15  
8 days --

9 THE COURT: Yes.

10 MS. LEVIN: -- doesn't allow the parties to  
11 circulate the comments, to look at everyone else's  
12 comments and see them, possibly respond to them, agree to  
13 them, disagree with them, and then have them somehow  
14 incorporated, as Mr. Kidman had mentioned, into some sort  
15 of final. And then after the final comments are  
16 incorporated, the committee -- the numerous committees and  
17 the advisory committee and the Watermaster then has to  
18 consider the final OBMP. And then it has to be submitted  
19 to the Court.

20 So in my comments, I was just saying that that  
21 15-day period, I think I suggested that it almost had to  
22 be -- I said -- between the final comments and  
23 consideration by Watermaster to send it to the Court --  
24 almost had to be another 45 days. And then after it was  
25 considered by Watermaster, then it would be sent to the  
26 Court. And all of us would file pleadings with our

1 suggestions or comments. And then usually you like a fair  
2 amount of time, possibly 30 days, so I had come up with  
3 consideration by the Watermaster by April 28th, and filing  
4 of the pleadings with the Court -- I cut it down to May  
5 12th, and then a hearing on May 31st. I understand your  
6 concern that that leaves, you know, two days or one day  
7 for the interim appointment. So all I can say is in your  
8 consideration of revising the time schedule, that the time  
9 frame of the final comments being received and the time  
10 the Watermaster has to consider it, the parties need time  
11 to look at everyone else's comments, incorporate those  
12 comments in a revised final, essentially, and then send it  
13 to the Court. And that is what I was concerned about. It  
14 wasn't pushing back the schedule of final -- the final  
15 being circulated to all the parties. It was the time  
16 between the comment period.

17 THE COURT: The only concern I have, and it is  
18 probably going to have to be whatever it is, but the June  
19 30th date was selected because that's the end of the  
20 fiscal year, and insurance contracts, various things  
21 were -- would terminate on June 30th, and if another  
22 organization were to take over, they would want to start  
23 with a clean slate. Well, on November 18th, I think we  
24 can discuss that it could very well be that the only  
25 realistic possibility at that time is to move that date  
26 out, because I am not going to leave the employees with

1 that degree of uncertainty that they can't do their job  
2 adequately, so that they go out looking for employment  
3 elsewhere.

4 MS. LEVIN: And I don't think any parties  
5 here -- recognizing we would get the Court's pleasure  
6 extending the time line -- well, I will only speak for the  
7 State. I know the State would not have a problem  
8 extending the interim appointment in the same amount of  
9 time as you have given the parties to complete this  
10 process.

11 THE COURT: Why don't we have that an item we'll  
12 discuss on the 18th. You know preliminarily what my  
13 thoughts are, and something is going to have to be done.  
14 You have some good suggestions, and a two-week period is  
15 probably too short. I am concerned about the employees,  
16 as I always have been. It may not sound like it by the  
17 harsh language of the judgment. And this is an industry  
18 where they can obtain employment quickly -- substitute  
19 employment, so they're going to need a long time, if, in  
20 fact, that was to ever occur. I hope it doesn't.

21 Okay. Ms. Levin, you're going to prepare notice  
22 of the Court's ruling just with the modifications that we  
23 discussed. It is going to be a provisional filing.

24 MS. LEVIN: It is going to be a provisional  
25 report?

26 THE COURT: The Court will accept it as a

1 provisional filing. I will revisit the time line on  
2 November the 18th.

3 MS. LEVIN: Would you like the State to prepare  
4 a proposed ruling and circulate it among the attorneys  
5 here and the Court and you issue --

6 THE COURT: Send it for approval as to form and  
7 content. If they don't respond within five business days,  
8 you send it to the Court and I will sign it.

9 Does that sound fair to everybody?

10 MR. GUTIERREZ: Sounds good.

11 MR. TANAKA: Yes, your Honor.

12 THE COURT: Is there anything else we need to  
13 discuss? Be sure and rip that one page out of your  
14 tentative ruling, please. That's not part of the filing.

15 MS. LEVIN: Now that you have given me this job,  
16 I need some clarification. Do you want me to change your  
17 time line at all between March 15th --

18 THE COURT: Not right now.

19 MS. LEVIN: Not right now.

20 THE COURT: Put in there, I will revise it, the  
21 issue of the time line on the 18th.

22 MS. LEVIN: The same thing with the CEQA  
23 section?

24 THE COURT: Yes. I am really of the opinion  
25 that eventually we're going to have to bite the bullet on  
26 this issue of CEQA.

1 MR. KIDMAN: Your Honor, again on the point of  
2 this Santa Ana River issue, I am extremely concerned about  
3 the time line that's there. The hearing is scheduled --

4 THE COURT: November 5th.

5 MR. KIDMAN: December.

6 THE COURT: With the State Water Control Board.

7 MR. KIDMAN: The schedule --

8 THE COURT: I thought you told me November 5th.

9 MR. KIDMAN: Filings have to be in by November  
10 the 5th. Those filings really are expected to include  
11 written testimony, income and expense declarations. It is  
12 not just putting in a notice of intent to appear.

13 Consequently, if Chino Basin is going to participate, that  
14 issue needs to be addressed soon. And I am wondering if  
15 the Court has any dates in the first couple of weeks of  
16 October that we might shoot at for trying to form a game  
17 plan and submit it to the Court.

18 THE COURT: Well, for this case I would always  
19 make time available.

20 The 7th and 8th I am going to be gone. The 11th  
21 is a Court holiday.

22 MR. LEMIEUX: Your Honor, I would like to offer  
23 that the Watermaster is the first place that this ought to  
24 be discussed. I have asked Traci to come up here and tell  
25 me when the next Watermaster meeting is, rather than --

26 MS. STEWART: Watermaster, the board, doesn't



1 meet until October 28th, in the morning. I was going to  
2 check and see if your schedule is still 1:30 for the  
3 October 28th hearing.

4 THE COURT: I am going to vacate that date.  
5 That's a good point. The October 28th date I would  
6 vacate. There is no point in it in light of the  
7 tentative.

8 MR. KIDMAN: May I tell you that I am at least  
9 of two minds and maybe more as to whether the Watermaster  
10 on its own could even make the filing that needs to be  
11 made here without authority from the Court to do it? The  
12 Watermaster has very delineated authorities under the  
13 judgment, and it does not include the -- I can be  
14 corrected -- the ability to intervene and participate in  
15 administrative proceedings before the State Water  
16 Resources Control Board.

17 THE COURT: Wouldn't that have to be a noticed  
18 motion with notice to everybody before I did something  
19 like that? I just can't --

20 MR. KIDMAN: I think so. That's why I am so  
21 anxious about the schedule. We have one month to deal  
22 with this.

23 MR. LEMIEUX: I am just trying to reserve for  
24 the Watermaster the opportunities to give you the benefit  
25 of its views on it. I am not suggesting the Watermaster  
26 can hold a hearing and decide to intervene with the State

1 Board. I agree with Mr. Kidman that's something that  
2 probably requires your action. I would like to give the  
3 Watermaster the chance to tell you what they feel about  
4 this before you hold your hearing. Maybe that's  
5 impossible.

6 THE COURT: If we have that short of time frame,  
7 maybe they should come and tell me at the hearing.

8 MR. LEMIEUX: Maybe that's the only thing we can  
9 do.

10 THE COURT: I don't know what everybody deems  
11 appropriate. If I show up at a meeting and we have got a  
12 court reporter and we have the whole entourage, it is  
13 difficult, very difficult.

14 MR. TANAKA: I think, if I am not mistaken, the  
15 thought is to get a hearing date from your Honor 20 days  
16 out so that the motion can be served timely under the Code  
17 of Civil Procedure. Mr. Kidman will serve the motion.  
18 The parties will have an opportunity to respond. And  
19 we'll have a hearing before your Honor as to what  
20 direction that your Honor decides to go.

21 THE COURT: October 20th is 20 days out. 1:30.  
22 I always like to do Watermaster things at 1:30. I am  
23 usually photocopying something during my lunch hour.

24 MR. TANAKA: I don't mean to -- the difficulty  
25 that creates is Mr. Kidman will probably have to get the  
26 draft done today and in the mail today.

1 THE COURT: You want it more than 20 days out?

2 MS. STEWART: Keep the 28th.

3 MR. KIDMAN: I will be very direct. I am not  
4 volunteering on this, but the Court -- for the Chino Basin  
5 Watermaster and Chino Basin this is an important concern.  
6 And I am not sure it is Monte Vista's concern or whether  
7 it is appropriate for the Watermaster, but we need to get  
8 heads together. We waive notice or whatever and make a  
9 decision what's the appropriate participation, if any, and  
10 who it should be.

11 THE COURT: I think it is consistent with my  
12 general philosophy of what needs to be done to effectuate  
13 an Optimum Basin Management Plan effectively. And so I  
14 agree with your comments, but we need to have a hearing --  
15 somebody said, "Let's keep the 28th as a date," and we'll  
16 change what we're going to do.

17 MR. LEMIEUX: I didn't know we had a hearing  
18 scheduled for the 28th. My notes were the hearing was on  
19 November 18th for the CEQA matter. The 28th was just the  
20 filing of briefs.

21 THE COURT: The 28th was originally a date we  
22 were going to appoint a five-year Watermaster.

23 MR. LEMIEUX: Oh.

24 THE COURT: I was vacating that date. But maybe  
25 I shouldn't vacate it and instead we would have a hearing  
26 as suggested by Mr. Kidman.

1 MR. KIDMAN: That's probably the best we can do.  
2 That will give us a short week to get something prepared  
3 if the decision were to go forward.

4 THE COURT: Who is going to give notice of that?  
5 We already have one notice going out through Ms. Levin's  
6 office which is going to take a little bit of time, but  
7 probably she is not the appropriate person to do this one.

8 Maybe you are.

9 MR. KIDMAN: I will take the responsibility  
10 for -- to give notice of the hearing, but I am -- I am  
11 going to say that I am going to try to get some legal  
12 heads together, even today, to at least talk about what  
13 the general thought is about how Chino Basin should  
14 participate in this thing, and then we'll take 20 days.  
15 So by the 8th of -- or thereabouts, we'll be getting our  
16 notice of motion and what-not out. So we have roughly a  
17 week, a little bit more, maybe, to at least get some  
18 preliminary consideration into how to tackle this thing.

19 THE COURT: While I have got you here. Did you  
20 know that there was an article about the San Gabriel Basin  
21 in the paper?

22 MR. KIDMAN: The San Gabriel Basin?

23 THE COURT: You're involved in that, right?  
24 They're in the newspaper today.

25 MR. KIDMAN: I haven't seen it yet.

26 THE COURT: It is in our local paper.

1 MR. KIDMAN: There was an editorial on CNBC  
2 about it a couple of days ago.

3 THE COURT: I don't want to waste any more time  
4 of anybody. Is there anything else that we need to  
5 discuss?

6 MS. LEVIN: Are we vacating October 28th?

7 THE COURT: We're going to have October 28th  
8 still as an appearance date. It was vacated for the  
9 purposes I originally had set it for and --

10 MS. LEVIN: Right.

11 THE COURT: -- that was for a full five-year  
12 appointment of the Watermaster. And I will vacate it for  
13 that purpose, but maybe we need to keep that date on  
14 calendar then.

15 So you will notice that then?

16 MR. KIDMAN: Yes, your Honor.

17 THE COURT: Put "Watermaster hearing," Okay?  
18 Is there anything else?

19 MR. NEUFELD: Yes, sir. Your Honor, if I may?

20 I am Robert Neufeld, Chairman of the Board of  
21 Watermaster Services. I know you have had a chance to  
22 listen to the attorneys talk, and they have been very  
23 eloquent in presenting their positions. But I would like  
24 to present a position and comment to you about my fellow  
25 Board of Director members. And I speak unanimously on  
26 their behalf, that we are committed to making the date

1 imposed by the Court and making the plan happen. And we  
2 are the decision makers that are charged with that  
3 responsibility.

4 So we want to assure you that we will be working  
5 toward that goal. We have been from the very beginning.  
6 And we know that there are some major obstacles that will  
7 be placed in front of us as we move toward attaining that  
8 goal you are requesting. We are committed to making it  
9 happen within the time line you have asked for.

10 THE COURT: Well, it is nice to meet you.

11 Okay. Anybody else wish to be heard?

12 (Proceedings in the above-entitled matter  
13 were concluded.)

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