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FEB 19 1998

Wanda DeVinney

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

**CHINO BASIN MUNICIPAL
WATER DISTRICT,**

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants.

CASE NO. RCV 51010

RULING

Introduction

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

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

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

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

17 Motion to Appoint Nine-Member Board as Watermaster

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Motion to Determine Audit Expense was not a Watermaster Expense

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

15 Court Monitoring of Optimum Basin Management Program

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

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

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

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

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

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

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

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

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

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

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

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

5 Guidelines for Watermaster and Advisory Committee

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

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

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

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

2 Conclusion

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

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

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

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

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

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

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

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6 **DATED:** FEB 19 1998

J. Michael Gunn
J. MICHAEL GUNN, Judge

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

EXHIBIT "A"

Adjudicated Basins and Watermasters in California

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

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

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

TIMELINE

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

	<u>REPRESENTATIVES</u>	<u>ENTITIES</u>	<u>PERSONS</u>
1			
2	Over-lying (Non-	CSI	Steve Arbelbide
3	Agricultural) Pool		
4	Overlying (Agricultural) Vineyards		Paul Hofer
5	Pool		
6		Dairies	Geoffrey Vanden Heuvel
7	Appropriative Pool	Cucamonga County	Robert Neufeld
8		Water District	(Regular)
9			Jerome Wilson
10			(Alternate)
11		Monte Vista Water	Josephine Johnson
12		District	(Regular)
13			William C. Walker
14			(Alternate)
15		City of Ontario	Gus James Skropos
16			(Regular)
17			Gerald A. DuBois
18			(Alternate)
19	Municipal Water	Chino Basin	John L. Anderson
20	Districts	Municipal Water	(Regular)
21		District	Terry Catlin
22			(Alternate)
23		Three Valleys	A. A. Krueger
24		Municipal Water	(Regular)
25		District	
26		Western Municipal	Donald Schroeder
27		Water District	(Regular)
28			Donald Harriger
			(Alternate)
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Respectfully submitted,

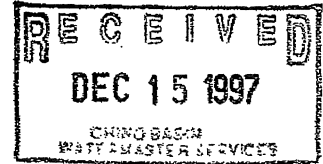
RICHARDS, WATSON & GERSHON,
Attorneys for Chino Basin
Watermaster Advisory Committee

Dated: February 23, 1996

By James L. Markman
James L. Markman

SCHNEIDER
RE APPT
COURT DOCS.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO
WEST DISTRICT



CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff

v.

CITY OF CHINO, et al.,

Defendants.

Case No. RCV 51010
(Specially Assigned to the Honorable J.
Michael Gunn)

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

ENTIRE DOCUMENT IS AVAILABLE UPON
REQUEST AND/OR ON WEBSITE.
PAGES 10-22 ARE REFERENCED IN THE
2/19/1998 RULING APPOINTING NINE-MEMBER
BOARD, AND ARE ATTACHED.

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

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

9 (TR at 141:11-21.)

10 Finally, opposing parties did not provide an alternative at the hearing.⁷ (TR at 139:16 to
11 141:21.) Given the proposed composition of the nine-member board and the concerns raised by
12 parties in opposition to the appointment, it seems prudent and necessary to provide a gauge upon
13 which this Court can determine whether the nine-member board is properly carrying out its
14 Watermaster roles in the event the Court grants the motion.

15 **III. WATERMASTER ROLES AND REVIEW OF WATERMASTER ACTIONS**

16 **A. Introduction**

17 There are four general categories of Watermaster actions identified in the Judgment: There
18 are Watermaster functions to administer the Physical Solution and to serve the Court in that regard;
19 there is one action under Paragraph 41 explicitly identified as “discretionary”; there are numerous
20 actions which the Watermaster is directed to take upon recommendation or advice of the Advisory
21 Committee or with Advisory Committee approval; and there are all other actions which do not fall
22 within one of these three categories. These categories are important for purposes of determining
23 which processes provided in the Judgment for review of Watermaster actions apply to a particular
24 action. There are two Court review processes available: Paragraph 31 provides for review by the
25 Court of all Watermaster actions, decisions, or rules; and Paragraph 15 provides for motions to the
26 Court for “further or supplemental orders or directions” or to “modify, amend or amplify” the
27 Judgment. There are also two procedural routes, discussed *infra*, that provide for Advisory
28

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

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

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

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

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

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

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

- 25 • Adopted an order to parties "to comply with the Physical Solution." (Judgment at
26 ¶ 39.)
- 27 • Appointed the Watermaster "to administer and enforce" the Judgment. (Judgment at
28 ¶ 60.)

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

- 3 • The Watermaster can seek Court review by motion requesting the Court under its
4 continuing jurisdiction to "... make such further or supplemental orders or directions
5 as may be necessary or appropriate for interpretation, enforcement or carrying out of
6 this Judgment, and to modify, amend or amplify any of the provisions of this
7 Judgment." (Judgment at ¶ 15.)
- 8 • Subject to that continuing supervision and control of the Court, "... Watermaster
9 shall have and may exercise the express powers, and shall perform the duties, as
10 provided in this Judgment or hereafter ordered or authorized by the Court in the
11 exercise of the Court's continuing jurisdiction." (Judgment at ¶ 17.)
- 12 • The Watermaster is to be assisted in performing its functions under the Judgment by
13 pool Committees, representing the pools created under the Physical Solution, and the
14 Advisory Committee. (Judgment at ¶ 32.)
- 15 • The purpose of the Physical Solution provisions "... is to establish a legal and
16 practical means for making the maximum reasonable beneficial use of the waters of
17 Chino Basin by providing the optimum economic, long-term, conjunctive utilization
18 of surface waters, ground waters and supplemental water, to meet the requirements
19 of water users having rights in or dependent upon Chino Basin." (Judgment at ¶ 39.)
20 Maximizing the beneficial use of Chino Basin waters makes it "essential that this
21 Physical Solution provide maximum flexibility and adaptability in order that
22 Watermaster and the Court may be free to use existing and future technological,
23 social, institutional and economic options ..." (Judgment at ¶ 40.)
- 24 • Groundwater "... reservoir capacity utilization for storage and conjunctive use of
25 supplemental water [must] be undertaken only under Watermaster control and
26 regulation, in order to protect the integrity of both such Stored Water and Basin
27 Water in storage and the Safe Yield of Chino Basin." (Judgment at ¶ 11.)⁸
- 28 • With Advisory and Pool Committee advice and assistance, the Watermaster is to
establish the procedures and administer the withdrawal and supplemental water
replenishment of basin water as required to accomplish "full utilization of the water

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

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

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

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

1. Basin Management Parameters. In the process of implementing the physical solution for Chino Basin, Watermaster shall consider the following parameters:

(a) Pumping Patterns. Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin’s waters that no producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized recharge of replenishment water, insofar as such result may be practically avoided.

(b) Water Quality. Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster.

(c) Economic Considerations. Financial feasibility, economic impact and the cost and optimum utilization of the Basin’s resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters.

(Judgment at Exh. I, ¶ 1.)

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

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

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

4 **C. Only One Watermaster Function Is Explicitly Identified as “Discretionary,” to**
5 **“Develop an Optimum Basin Management Program” for the Chino Basin**

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

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

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

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

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

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

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

10 **1. Advisory Committee Recommendation or Advice**

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

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

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

- 3 • The Watermaster “may accomplish replenishment of overproduction from the Basin
4 by any reasonable method,” subject to Paragraph 19’s direction that the Watermaster
5 not acquire real property interests or “substantial capital assets,” Paragraph 25’s
6 limitation on the Watermaster’s authority to enter into contracts involving the Chino
7 Basin Municipal Water District, and Paragraph 26’s provision that the Watermaster’s
8 authority to act jointly or cooperate with other entities to “fully and economically”
9 carry out the Physical Solution is “subject to prior recommendation or approval of the
10 Advisory Committee.” (Judgment at ¶ 50.)
- 11 • The parties agree that one of the Watermaster’s duties is to carry out the direction of
12 the Advisory Committee as provided in the Judgment. (TR at 109:24.)

13 2. Pool Committee Requirements

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

20 (b) Special Project Expense shall consist of special engineering or other studies,
21 litigation expense, meter testing or other major operating expenses. Each such project
22 shall be assigned a Task Order number and shall be separately budgeted and
23 accounted for.

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

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

29 ////

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

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

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

4 **1. Watermaster Functions in the Normal Course of Business**

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

- 7 • Watermaster may acquire facilities and equipment other than any interest in real
8 property or substantial capital assets. (Judgment at ¶ 19.)
- 9 • Watermaster may employ or retain administrative, engineering, geologic, accounting,
10 legal or specialized personnel and consultants as deemed appropriate. (Judgment at
11 ¶ 20.)
- 12 • Watermaster shall require the parties to install and maintain in good operating
13 condition necessary measuring devices. (Judgment at ¶ 21.)
- 14 • Watermaster is to levy and collect all assessments as provided for in the pooling plans
15 and Physical Solution. (Judgment at ¶ 22.)
- 16 • Watermaster may invest funds in investments which are authorized for public
17 agencies. (Judgment at ¶ 23.)
- 18 • Watermaster may borrow money. (Judgment at ¶ 24.)
- 19 • Watermaster may enter into contracts (other than with CBMWD) without the prior
20 recommendation and approval of the Advisory Committee and written order of the
21 Court for the performance of any powers granted in the Judgment. (Judgment at
22 ¶ 25.)
- 23 • Watermaster conducts the accounting for the stored water in Chino Basin. (Judgment
24 at ¶ 29.)

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

31 **2. Watermaster Functions Related to Administering the Pool Committees**

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

1 are transmitted to the Watermaster for action. Basically:

- 2 • The Watermaster administers the three “operating pools” to carry out the
3 “fundamental premise of the Physical Solution . . . that all water users dependent upon
4 Chino Basin will be allowed to pump sufficient waters from the basin to meet their
5 requirements . . . , and each pool will provide funds to enable Watermaster to replace
6 such overproduction.” (Judgment at ¶ 42.)
- 7 • The Watermaster administers the three pools which are responsible for and must pay
8 for the “. . . cost of replenishment water and other aspects of this Physical Solution.”
9 (Judgment at ¶ 43.)
- 10 • The Watermaster can levy and collect annual replenishment assessments (Judgment
11 at ¶ 45) and production assessments (Judgment at ¶ 51).

12 3. Watermaster Functions Related to Administering the Physical Solution

13 Watermaster functions particularly related to administering the Physical Solution include:

- 14 • The Watermaster is directed to “seek to obtain the best available quality of
15 supplemental water at the most reasonable cost for recharge in the Basin” (Judgment
16 at ¶ 49) and to “accomplish replenishment of overproduction from the Basin by any
17 reasonable method . . .” (Judgment at ¶ 50).
- 18 • The Watermaster has the power to “institute proceedings for levy and collection of
19 a Facilities Equity Assessment” upon recommendation of the Pool Committee, and
20 the Judgment suggests that: “To the extent that the use of less expensive alternative
21 sources of supplemental water can be maximized by the inducement of a Facilities
22 Equity Assessment . . . it is to the long-term benefit of the entire basin that such
23 assessment be authorized and levied by Watermaster.” (Judgment at Exh. H, ¶ 9(a).)

24 F. The Judgment Provides for Specific Notice and Review Processes

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

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

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

[2] Committee Review. In the event Watermaster proposes to take any
discretionary action . . . notice of such intended action shall be served on the
Advisory Committee and its members at least thirty (30) days before the
Watermaster meeting at which such action is finally authorized.

(c) Review of Watermaster Actions. Watermaster (as to mandated action), the
Advisory Committee or any pool committee shall be entitled to employ counsel and
expert assistance in the event Watermaster or such pool or Advisory Committee seeks
court review of any Watermaster action or failure to act. . .

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

1 necessarily cover all other actions of the Watermaster that are not identified as "discretionary
2 determinations." Subparagraph 38(b)[2] provides that "any discretionary action" (with two
3 exceptions which are not relevant)¹² requires notice to the Advisory Committee; the Advisory
4 Committee, upon receiving notice, would presumably directly seek Court review under Paragraph
5 31.

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

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

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

9 [1] Committee Initiative. When any recommendation or advice of the
10 Advisory Committee is received by Watermaster, action consistent therewith
11 may be taken by Watermaster; provided, that any recommendation approved
12 by 80 votes or more of the Advisory Committee shall constitute a mandate for
13 action by Watermaster consistent therewith. If Watermaster is unwilling or
14 unable to act pursuant to recommendation or advice from Advisory
15 Committee (other than such mandatory recommendations), Watermaster shall
hold a public hearing, which shall be followed by written findings and
decision. Thereafter, Watermaster may act in accordance with said decision,
whether consistent with or contrary to said Advisory Committee
recommendation. Such action shall be subject to review by the court, as in the
case of all other Watermaster determinations.

16 (c) Review of Watermaster Actions. Watermaster (as to mandated action), the
17 Advisory Committee or any pool committee shall be entitled to employ counsel and
expert assistance in the event Watermaster or such pool or Advisory Committee seeks
court review of any Watermaster action or failure to act. . .

18 The Subparagraph 38(b)[1] Advisory Committee mandate procedure applies expressly to
19 situations in which "any recommendation or advice of the Advisory Committee is received by
20 Watermaster." In situations where the Advisory Committee has already given recommendations and
21 advice, it can thus insist, or mandate, that its recommendations or advice be taken if it has 80 or more
22

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

1 votes.¹³

2 **b. The Ramifications of Paragraph 38(c)**

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

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

17
18 ¹³Judge Turner, in his 1989 Order, stated:

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

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

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

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

12 3. Court Review Under Paragraph 31

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

14 31. Review Procedures. All actions, decisions or rules of Watermaster shall be
15 subject to review by the court on its own motion or on timely motion by any party,
16 the Watermaster (in the case of a mandated action), the Advisory Committee, or any
pool committee as follows:

17 (b) Noticed Motion. Any party, the Watermaster (as to any mandated
18 action), the Advisory Committee or any pool committee may, by a regularly
noticed motion, apply to the court for review of any Watermaster's action,
decision or rule . . .

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

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

28 4. Court Review Under Paragraph 15

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

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

14 (Judgment at ¶ 15.)

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

22 IV. STATUS OF THE "OPTIMUM BASIN MANAGEMENT PROGRAM"

23 A. The Court Recommended in 1989 That Within Two Years of that Date the 24 Watermaster Prepare an Integrated Optimum Basin Management Program 25 Document

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