

FEE EXEMPT

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FILED - West District  
San Bernardino County Clerk  
MAR 30 2000  
by Justin King  
Dover

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

11 CHINO BASIN MUNICIPAL WATER DISTRICT, ) CASE NO. RCV 51010  
12 Plaintiff, ) Judge: Honorable J. MICHAEL GUNN  
13 v. )  
14 THE CITY OF CHINO, ) JOINT STATEMENT OF THE  
15 Defendants. ) PARTIES OF LEGAL ISSUES  
16 \_\_\_\_\_ )  
17 AND RELATED CROSS-ACTIONS. ) Date: April 6, 2000  
Time: 1:30 PM  
Dept: R8

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19 I. INTRODUCTION

20 On March 16, 2000, a hearing was held in this court to determine the status of progress  
21 toward the implementation phase of the Chino Basin Optimum Basin Management Program  
22 (OBMP). The Court determined that there was a need to hold a further status hearing in order to  
23 ascertain whether there are any outstanding legal issues that need to be addressed and to define  
24 such issues.

25 Counsel for interested parties met on March 22, 2000, and agreed to exercise best efforts  
26 to explore an expedited process for a negotiated resolution of the outstanding issues that might  
27 delay or impede Watermaster's successful compliance with prior orders of this Court. The  
28 Watermaster Board met in a special session on March 29, 2000, and approved this exploration

1 and authorized legal counsel to facilitate a joint statement of the legal issues. All parties hereto  
2 agree that the key legal issues are stated below.

3 **II. JOINT STATEMENT OF LEGAL ISSUES**

4 **A. ISSUE NO. 1: Does the Watermaster or the Court have the power to impose and**  
5 **implement the Optimum Basin Management Program and under what conditions?**

6 The resolution of this issue may involve the consideration of various contentions made by  
7 the parties, each of which may have some bearing on the power of Watermaster, whether it be  
8 acting alone, with the consent of some or all parties or pursuant to order of the Court.  
9 Specifically, the power to *impose* the OBMP over the objection of one or more parties is at the  
10 heart of this issue. However, resolution of companion contentions may be inextricably  
11 intertwined and therefore, require legal determinations regarding Watermaster and the rights of  
12 individual parties to execute agreements, own property, water rights and facilities.

13 Examples of specific questions that might be the basis for contentions by the parties and  
14 are relevant to the resolution of this issue include but are not limited to the following:

15 Who has the authority to compel implementation of the OBMP?

16 Does any other entity have authority to compel implementation of the OBMP provisions?

17 What is the Court's authority to implement the OBMP?

18 What is the Court's authority to modify the Judgment?

19 To what extent is Watermaster's authority limited by the Advisory Committee?

20 What are the circumstances under which the Court can appoint a Watermaster that is  
21 opposed by the Advisory Committee?

22 Can a party remove itself from the Judgment?

23 Can Watermaster own and/or operate OBMP facilities?

24 Can existing public agencies own and/or operate OBMP facilities?

25 Does the Judgment authorize Watermaster to protect against land subsidence?

26 To what extent must the OBMP process coordinate with government agencies including  
27 but not limited to the Department of Toxic Substances Control, the Regional Water Quality  
28 Control Board, and the State Water Resources Control Board?

1 Can the State Water Resources Control Board reduce the rights of Chino Basin parties  
2 adjudicated by this Court, not now used but prospectively useable to implement the OBMP?

3 Can the legislature augment or limit the authority of Watermaster?

4 Can the legislature augment or limit the authority of existing public agencies in the Basin  
5 to implement the OBMP?

6 Can the Watermaster curtail require shift in production?

7 **B. ISSUE NO. 2: What legal limitations are there on the allocation of costs under the**  
8 **Optimum Basin Management Program?**

9 Although related to the power of Watermaster to impose the OBMP (Issue No. 1), the  
10 parties have identified the allocation of costs as a separate and independent issue from the  
11 Watermaster's power to impose and implement the OBMP. Parties may contend that there are  
12 legal limitations on the power of Watermaster to allocate costs under the OBMP. For example, to  
13 what extent should the specific form of allocation take into account the tensions between  
14 competing philosophies of general vs. special benefit?

15 Examples of specific questions that might be the basis for contentions by the parties and  
16 are relevant to the resolution of this issue include but are not limited to the following:

17 How are costs to be apportioned?

18 To what extent must the general vs. special benefit reflect equal access to water  
19 quality/quantity vs. choice of location?

20 Can the Overlying Ag-pool be exempt from OBMP assessments?

21 Can Overlying Ag pool be assessed for salt removal? Does the 1996 agreement disallow  
22 such assessments?

23 Can Watermaster assess the parties for clean-up of the Basin?

24 Can Watermaster assess Overlying Ag-pool for capital improvements and expenditures to  
25 increase safe yield?

26 Can Kaiser be assessed any further than it already has?

27 Can costs of replenishment be apportioned across management zones?  
28

1 Can the Court authorize the Watermaster to impose assessments other than the specific  
2 assessments described in the Judgment?

3 Can the California Legislature augment or limit the power of the Watermaster to  
4 implement the OBMP?

5 Can the California Legislature augment or limit the power of the public agencies with  
6 boundaries overlying the basin to implement the provisions of the OBMP?

7 To what extent are limitations imposed by Proposition 218?

8 Can any party be required to purchase water from the desalters and at what price?

9 **C. ISSUE NO. 3: What legal limitations are there on the Watermaster's and the**  
10 **parties' acquisition, allocation, transfer or use of the basin's storage capacity or**  
11 **recharge activities?**

12 Arguably resolution of this issue may turn on the determinations made within the Court's  
13 evaluation of Issue No. 1. However, the fact that the Watermaster may have the power to impose  
14 and implement the OBMP may not itself be determinative of the specific nuances that may arise  
15 when addressing the power of Watermaster and the parties with regard to storage rights and  
16 recharge activities. Parties may wish to raise contentions grounded in rights or powers that may  
17 have accrued under the law.

18 Examples of specific questions that might be the basis for contentions by the parties and  
19 are relevant to the resolution of this issue include but are not limited to the following:

20 Who has the right to control the basin's storage capacity?

21 Can Watermaster lease the storage capacity to parties outside the basin in order to create a  
22 revenue stream for the OBMP?

23 What are the priorities for usage of storage space under the Judgment?

24 Is Watermaster's classification of recently controlled storm water as new water  
25 allowable?

26 What is the correct method of calculating safe yield?

27 Are there legal preferences for methods of recharge?

28

1 **D. ISSUE No. 4: What legal limitations are imposed on the transfer of water and water**  
2 **rights?**

3 The successful implementation of the OBMP will require certainty and clear guidelines  
4 for future conduct. Some Parties may contend that successful OBMP implementation and lasting  
5 “peace” requires a contemporaneous determination of the rights and procedures regarding the  
6 transfer, lease and exchange of water.

7 Examples of specific questions that might be the basis for contentions by the parties and  
8 are relevant to the resolution of this issue include but are not limited to the following:

9 In general, what rights do the parties have?

10 What are the rights of overlying pools to transfer water and water rights?

11 What are the allowable transfer procedures?

12 Is it allowable to transfer unallocated safe yield from the overlying ag pool to the  
13 appropriative pool?

14 What legal limitations are imposed on the parties ability to export native, imported, and  
15 reclaimed water?

16 **III. CONCLUSION**

17 The parties acknowledge the contentious history of this matter. However, the lawyers for  
18 the interested parties, including legal counsel for Watermaster, have begun regular meetings in an  
19 effort to negotiate a settlement so that Watermaster can comply with the orders of this Court and  
20 the established schedule. Toward this end, the Watermaster Board has approved a  
21 recommendation for the lawyers to outline a process for expedited settlement negotiations that  
22 would involve lawyers, principals and technical representatives, and to report on progress at an  
23 April 4, 2000, special Watermaster Board meeting.

24 While the parties understand and appreciate the Court’s desire to have any material legal  
25 issues decided prior to the entry of a Court determination regarding Watermaster’s compliance,  
26 all parties are deeply concerned that a premature determination of legal issues and the time spent  
27 briefing them would have a serious and negative impact on the potential success of a consensual  
28 negotiating process. The parties are in agreement that there is no immediate need for resolution

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of these issues in order for meaningful negotiations to go forward at this time. Moreover, the parties believe that the legal issues identified herein are not presently ripe for determination. Accordingly, the parties, including Watermaster, respectfully request that this Court consider and respect demonstrated progress in arms length bargaining that is designed to occur within the Court's schedule for the OBMP.

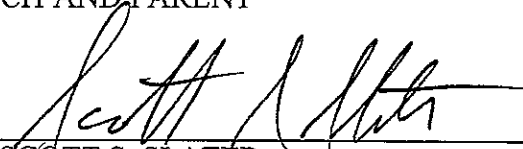
The parties would like this Court to reserve any decision concerning the legal issues to be briefed until the parties have an opportunity to be heard at the scheduled status report on April 6, 2000, and in papers that may be filed prior to that hearing. The parties are willing to maintain close contact with the Court and to report on the progress of substantive negotiations to either the Court or the Court Referee and to appear, if necessary, for a further status report on April 13, 2000, and thereafter as the Court may deem appropriate.

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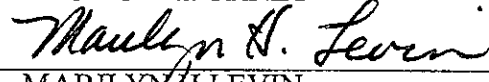
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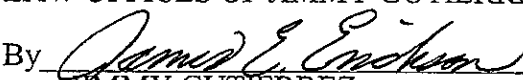
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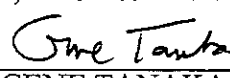
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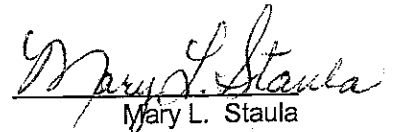
I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On March 30, 2000, I served the documents identified below by placing a true and correct copy of same in sealed envelopes for overnight delivery by United States Postal Service mail at Rancho Cucamonga, California, to each of the addresses listed on the attached Attorneys Service List and Mailing List 1:

***JOINT STATEMENT OF THE PARTIES OF LEGAL ISSUES  
for hearing April 6, 2000, 1:30 PM, Dept. R8***

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Rancho Cucamonga, California, on March 30, 2000.

  
Mary L. Staula

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ROBERT NEUFELD  
CBWM BD  
14111 SAN GABRIEL CT  
RCH CUCA CA 91739

JOE ODETTE  
STATE OF CALIFORNIA CIM  
P O BOX 128  
CHINO CA 91710-0128

DANA OLDENKAMP  
MILK PRODUCERS COUNCIL  
3214 CENTURION PL  
ONTARIO CA 91761

ROBERT OLISLAGERS  
SBC DEPT OF AIRPORTS  
7000 MERRILL AVE BOX 1  
CHINO CA 91710-9027

SANDY OLSEN  
WALNUT VALLEY WATER DISTRICT  
271 S BREA CANYON RD.  
WALNUT CA 91789

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

HENRY PEPPER  
CITY OF POMONA  
505 S GAREY AVE  
POMONA CA 91766

JEFFREY L. PIERSON  
UNITEX/CORONA FARMS  
2 HEXHAM ST  
IRVINE CA 92612

ROBB QUINCEY  
INLAND PACIFIC WATER COMPANY  
8300 UTICA AVE 3<sup>RD</sup> FL  
RCHO CUCA CA 91730

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

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

DAVE RINGEL  
MONTGOMERY WATSON  
P.O. BOX 7009  
PASADENA CA 91109-7009

ARNOLD RODRIGUEZ  
SANTA ANA RIVER WATER CO.  
10530 54TH ST  
MIRA LOMA CA 91752-2331

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

WAYNE SALMI  
PRAXAIR  
5735 AIRPORT DR.  
ONTARIO CA 91761

PATRICK SAMPSON  
P O BOX 660  
POMONA CA 91769

DIANE SANCHEZ  
DWR  
770 FAIRMONT AVE  
GLENDALE CA 91203-1035

JOSEPH SCALMANINI  
LUHDORF & SCALMININI  
555 FIRST ST  
WOODLAND CA 95695

JOE SCHENK  
CITY OF NORCO  
PO BOX 428  
NORCO CA 91760-0428

DAVID SCRIVEN  
KRIEGER & STEWART  
3602 UNIVERSITY AVE  
RIVERSIDE CA 92501

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

BILL STAFFORD  
MARYGOLD MUTUAL WATER CO.  
9725 ALDER ST  
BLOOMINGTON CA 92316-1637

DAVID STARNES  
MCMGMT CO\SWAN LAKE  
1801 E EDINGER AVE STE 230  
SANTA ANA CA 92705

L HATT  
STERN & GOLDBERG  
9150 WILSHIRE BLVD STE 100  
BEVERLY HILLS CA 90210

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

KEVIN SULLIVAN  
LOS SERRANOS COUNTRY CLUB  
15656 YORBA AVE  
CHINO CA 91709

LENNA TANNER  
CITY OF CHINO  
PO BOX 667  
CHINO CA 91708-0667

JIM TAYLOR  
POMONA  
148 N HUNTINGTON BLVD  
POMONA CA 91768

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

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

DAVID THOMPSON  
GENERAL ELECTRIC CO  
640 FREEDOM BUSINESS CTR  
KING OF PRUSSIA PA 19406

JOHN THORNTON  
PSOMAS & ASSOCIATES  
3187 RED HILL AVE STE 250  
COSTA MESA CA 92626

SUSAN TRAGER  
LAW OFFICES OF SUSAN M TRAGER  
2100 SE MAIN ST STE 104  
IRVINE CA 92614-6238

ARLAN VAN LEEUWEN  
FAIRVIEW FARMS  
6875 PINE AVE  
CHINO CA 91710-9165

GEOFFREY VANDEN HEUVEL  
CBWM BD  
7551 KIMBALL AVE  
CHINO CA 91710

ERICK VAUGHN  
ANGELICA  
1575 N CASE ST  
ORANGE CA 92867-3635

ERIC WANG  
SUNKIST GROWERS INC  
760 E SUNKIST ST  
ONTARIO CA 91761

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

MARK WARD  
AMERON  
13032 SLOVER AVE  
FONTANA CA 92335-6990

FRANK WARREN  
STATE OF CALIFORNIA YCF  
15180 EUCLID AVE  
CHINO CA 91710

RAY WELLINGTON  
SAWCO  
139 N EUCLID AVE  
UPLAND CA 91786-6036

CHARLES WHITE  
DWR  
770 FAIRMONT AVE  
GLENDALE CA 91203-1035

MICHAEL WHITEHEAD  
SAN BABRIEL VALLEY WC  
P O BOX 6010  
EL MONTE CA 91734

MARK WILDERMUTH  
WE INC.  
415 N EL CAMINO REAL STE A  
SAN CLEMENTE CA 92672

JEROME WILSON  
CBWM BD/ALT  
6035 FALLING TREE LN  
ALTA LOMA CA 91737