

BEFORE THE CHINO BASIN WATERMASTER

BOARD OF DIRECTORS

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In Re)
)
PUBLIC HEARING ON THE)
OPTIMUM BASIC MANAGEMENT)
PROGRAM, PHASE I REPORT.)
_____)

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

DATE AND TIME: WEDNESDAY, SEPTEMBER 15, 1999
9:15 A.M.

PLACE: ONTARIO CITY COUNCIL CHAMBERS
303 EAST "B" STREET
ONTARIO, CA

REPORTED BY: WINIFRED S. KRALL, C.S.R. #5123

OUR JOB NO.: WK-24007

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4 APPEARANCES
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6 THE BOARD OF DIRECTORS:

7 ROBERT NEUFELD, CHAIRMAN
8 A. A. KRUEGER, VICE-CHAIRMAN
9 JOSEPHINE JOHNSON, SECRETARY-TREASURER
10 PAUL HOFER, MEMBER
11 GEOFFREY VANDEN HEUVEL, MEMBER
12 PATRICK KING, MEMBER
13 STEVE ARBELBIDE, MEMBER

14 ALSO PRESENT:

15 TRACI STEWART, CHIEF OF WATERMASTER
16 WAYNE K. LEMIEUX, GENERAL COUNSEL
17 MARK WILDERMUTH, ENGINEERING CONSULTANT
18 ANNE SCHNEIDER, SPECIAL REFEREE
19 BARBARA BRENNER, ASSISTANT TO SPECIAL REFEREE
20 JOSEPH SCALMANINI, TECHNICAL EXPERT
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1 ONTARIO, CALIFORNIA

2 WEDNESDAY, SEPTEMBER 15, 1999, 9:15 A.M.

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5 THE CHAIRMAN: I'd like to call to order this

6 special meeting of the Board of Directors of the Chino

7 Basin Watermaster. Before we begin, let's have some

8 introductions so that everybody knows who the parties are

9 and who's present. I'm Robert Neufeld representing the

10 Cucamonga County Water District and Chairman of the

11 Board.

12 To our far right is Paul Hofer, representing the

13 ag interests, and to his left is Geoffrey Vanden Heuvel,

14 also with the ag interests.

15 Next to us here, our host for the day,

16 Dr. Pat King, who represents the City of Ontario. Andy

17 Krueger from the Three Valleys Municipal Water District.

18 Josephine Johnson from the Monte Vista Water District.

19 Steve Arbelbide from the overlying non-ag pool. Right?

20 And then some staff.

21 A couple of special guests that we'd also like to

22 introduce for those of you that may not have had the

23 opportunity to meet them. Anne Schneider, who is the

24 special referee for Judge Gunn. Anne, if you'd kind of

25 raise your hand or something so people at least know who

1 you are.

2 To her left is her assistant Barb Brenner. Barb,
3 welcome. And to her right also, her technical expert,
4 Joe Scalmanini. And most of you know Joe. He's been
5 involved in quite some details with our process in
6 developing the OBMP.

7 We're going to call this meeting to order, and
8 then I'll have some additional announcements. But I'd
9 like to ask that everybody stand and join Dr. Pat King in
10 the pledge to our flag.

11 DR. KING: Please join me in the Pledge of
12 Allegiance.

13 (Pledge of Allegiance)

14 THE CHAIRMAN: By way of format today, we do not
15 have a great list of speakers. The board members that
16 are present along with legal counsel and with the members
17 of the Court's representatives met prior to this meeting.
18 A couple of issues were discussed at that meeting, and
19 they've become the format for this particular process.

20 Number one is that we have received and have on
21 file all of the written comments that were prepared by
22 the interested parties regarding the OBMP, sections 1
23 through 4. The copies will be received and filed as an
24 attachment to the document that is submitted to the
25 Court.

1 Because we have a rather limited number of people
2 that have requested to speak today, we have agreed that
3 we will increase the time allotment from five minutes to
4 ten minutes, but we will be very strict on that ten
5 minutes.

6 We hope, too, that during the process of these
7 public comments that we do not hear a rehash of those
8 items that we have discussed time and time again at the
9 meetings and that are a part of the documents that are on
10 file.

11 If you have new issues or if you have issues that
12 have not been addressed to the satisfaction of the group
13 that you are representing, we will more -- be more than
14 welcome to hear those particular comments. So we ask a
15 little bit of a self-indulgence on your own part when you
16 step forward to address the group.

17 When you do come forward to address the group,
18 please state your name, the group that you represent, and
19 if you have any additional introductory comments that
20 you'd like to make, that's the time to do so. But once
21 you start that particular introduction of yourself, the
22 time clock will start.

23 As we approach the nine-minute mark, you will be
24 given an indication that you have one minute left.
25 Hopefully we won't have to get to that particular point.

1 But at the end of ten minutes you will be gaveled down,
2 and there will be no further comments. So please agree
3 in advance that you will accept those particular terms.

4 The questions that will be allowed by the Board
5 here to you as part of your comments will be held until
6 the end of your comments. That way, it will not
7 interrupt the thought processes or the flow of your
8 particular presentation. That will not be included in
9 the time that you are allowed for your presentation, but
10 board members will be available to ask questions at that
11 particular time.

12 Finally, it is the intent of this Board today to
13 make a decision based upon the submittal of this OBMP to
14 the Court.

15 Another issue that came up in our premeeting this
16 morning, we believe that with the opportunity for the
17 public hearing today and with the written comments that
18 have been submitted, that we will be in a position at the
19 end of this particular hearing to take that under
20 advisement. However, if there are any significant issues
21 that are raised, we do reserve the right to continue to
22 the meeting of the 23rd, which we had noticed would be a
23 meeting to discuss issues that are raised as a part of
24 this public hearing process.

25 With that, does any member of the Board have any

1 additional comments that they'd like to make at this
2 time? Hearing none, then, we'll move forward.

3 What I'll do is I'll announce the first speaker,
4 and then the second speaker will be, like, on deck, so
5 please be prepared. We will go in the order in which we
6 have the names on here.

7 The first speaker today will be Frank
8 Brommenschenkel on behalf of the ag pool, and the second
9 speaker will be Steven Lees, also on behalf of the ag
10 pool.

11 Mr. Brommenschenkel.

12 MR. BROMMENSCHENKEL: Chairman, Members of the
13 Watermaster, my name is Frank Brommenschenkel. I have
14 been asked to prepare some comments as far as the report
15 itself as to inconsistencies and maybe items that may
16 conflict with other reports.

17 I was the original chief of watermaster services
18 for the Santa Paula -- or the Chino Basin Watermaster
19 back when the adjudication process was completed. Since
20 then, I've been through two other adjudication processes
21 in Ventura County, the Santa Paula Basin and the Fox
22 Canyon Groundwater Management Agency, and have been
23 involved as staff person there also.

24 The primary thrust of my comments are section 2,
25 although there are some other comments that overlap into

1 some of the other areas.

2 On page 2-12 under the heading Losses From
3 Storage, rising water is considered to be one of the
4 components of base outflow, but Carol's original estimate
5 was 6800 acre-feet of subsurface outflow, and it's
6 indicated in this report on page 2-29.

7 The OBMP task memorandum, element No. 6 on page 2,
8 indicates that little or no groundwater escapes from the
9 basin as rising water, with the south end of the basin
10 being hydrologically closed, causing the accumulation of
11 mineral salts. And in other sections of the memorandum,
12 it speaks of rising waters. So there's kind of a
13 question there. Is there rising water? Is the basin
14 closed on the south end? There seems to be some
15 conflicting information.

16 On page 4-28 it is indicated that there is only --
17 the only groundwater leaving is the consumptive use and
18 the discharge of recycled water. And these are just some
19 additional comments about the inconsistency of the
20 information in the report.

21 Then on page 4.31, it is indicated that rising
22 water to the river will cause degradation. If the basin
23 is closed at the south end, can there be losses of stored
24 water or losses of high TDS water? And another question
25 would be, is subsurface outflow considered the same as

1 rising water?

2 Then on page 2-13 it is indicated that the annual
3 rising water estimates and respective storage estimates
4 are shown graphically on figure 2.34 and 2.35. When
5 these figures actually show the location of production
6 within the basin. And to obtain estimates on rising
7 water would seem more reasonable to use groundwater
8 levels to estimate pressures in the lower end of the
9 basin, which would then cause rising water to the
10 Santa Ana River.

11 Also, on page 2-13, there's a reference to an
12 unpublished model, and it seemed a little bit out of the
13 ordinary to reference something in a report like this
14 that wasn't actually published.

15 Then another item, the first paragraph on top of
16 page 2-16, it is indicated the production reports are not
17 received by all the members of the agricultural pool.
18 And as I recall, in accordance with the judgment on
19 page 26, paragraph 47, it indicates that each party is
20 required to report as prescribed to the Watermaster.

21 And on page 2-15, it is indicated that a third of
22 the reports were not complete. I believe that was '97
23 and '98. And so apparently the judgment, as far as that
24 is concerned, isn't being enforced.

25 With the potential production discrepancy of

1 26,000 acre-feet that relates back to the production
2 reports and what has been estimated by land use, it seems
3 questionable how that amount of a discrepancy wouldn't
4 have caused a little bit more concern to this point in
5 time, and probably had -- had some concerns as far as the
6 transfer of water from the agricultural pool in light of
7 subsidence and those sort of things. In obtaining
8 production by water-duty methods, it would seem that that
9 would be a logical way to have gone ahead and completed
10 those reports.

11 The second-to-the-last sentence on page 2-18 reads
12 that maps are useful in characterizing water quality
13 degradation associated with non-point source loading from
14 agriculture, and that seems to be a little bit of a
15 slanted statement. I think if locations of assumed water
16 quality degradation could have been added in, and
17 probably referencing the time period from 1933 to '93
18 would have made it a little clearer, a little fairer
19 statement.

20 But I think that's an unfair statement for the
21 following reasons: Other TDS and nitrate sources are
22 identified in the report over the years. The flow of
23 water is towards the lower end of the basin, contributing
24 to the water quality problem. The report tries to take
25 into consideration the type of nitrates and the source

1 and finds levels to be less in the upper areas of the
2 basin, which is good as far as nitrates and TDS.

3 The problem with this approach is that the upper
4 area of the basin has had reduced water levels over the
5 years, increasing the chance of nitrate in the area being
6 held in the vadose zone, probably not being detected at
7 this point in time.

8 The variants in TDS and nitrate concentrations in
9 the lower end of the basin are an indication that only
10 certain layers of the lower end of the basin have been
11 degraded. There is no indication in the report at what
12 elevations the water sampled actually came from. If
13 surface sanitary seals are not in place, there could be
14 water moving down the annulus of various wells, getting
15 into the water that is being sampled, and not necessarily
16 representative of what is actually in the groundwater.
17 And the extent of the contamination and the location of
18 contamination as resulted, I think, is a little bit
19 suspect.

20 Because of the clay lenses in the lower end of the
21 basin, the contributions from dairies may be in a
22 perched zone separated by clay lenses that -- from the
23 main part of the basin. And until more specific
24 elevation and contributions from the dairies can be
25 confirmed, actual damage to the main part of the basin, I

1 think, at this point is a little bit unknown.

2 Maybe proper well construction and abandonment
3 needs to be addressed to keep dairy waste portion
4 concentrated in what may be the upper perched zones and
5 to keep them from blending into the main part of the
6 basin.

7 The higher nitrates and TDS in the lower zone
8 water may be a result of activities, really, from the
9 north that have gradually been pushed down to the
10 southern end of the basin; in other words, the lower
11 water.

12 In the report that I received, there were several
13 figures and stuff that were missing, but I have been
14 provided with those this morning, and with thanks to
15 Michelle and Traci.

16 On table 2.8 referenced in the last paragraph on
17 page 2-19, purports to be calculated with the assumption
18 that 50 percent of the manure was hauled out of the basin
19 after 1973. The actual numbers used in table 8 from 1974
20 forward are about 66 percent of the total rather than
21 50 percent. As a result, the total TDS and nitrate
22 loading are overstated in that table by 14 percent.

23 In the case of TDS, they are overstated by
24 approximately 2 million pounds. Then on the top of
25 page 2 point -- or 2-20, it is indicated that

1 verification of exports were not completed until the
2 1890s (sic). However, there's nothing in the report that
3 says anything about the verification results.

4 In the nitrate section on page 2-20 it's inferred
5 that the concentrations in the northern sections of the
6 basin, particularly the management zones 1 and 3 have
7 remained relatively constant.

8 THE CHAIRMAN: One minute.

9 MR. BROMMENSCHENKEL: There is no mention that
10 this area of the outcrop -- there is no mention that this
11 area of the outcrop area of the basin where substantial
12 recharge occurs and the general movement of water to the
13 south, flushing lower quality water to the southerly end
14 of the basin.

15 The comment that was made in the first sentence on
16 the top of page 2-22 summarizes the generalized opinion
17 of observing nitrate concentrations in figure 2.43 that
18 nitrate impacts are from ag waste disposal areas. These
19 conclusions should be clarified.

20 It is acknowledged that all water moves towards
21 Prado Dam, so the quality at the lower end of the basin
22 would have a -- higher levels of constituents such as TDS
23 and nitrates. Dairy waste loading is a factor,
24 considering the type of nitrate that has been found and
25 indicated in the report. However, loading from other

1 land uses upstream have contributed to water quality
2 problems in the lower end of the basin. Singling out our
3 target groups may not be appropriate if the individual
4 contributions of other sources have not been equally
5 identified.

6 THE CHAIRMAN: Mr. Brommenschenkel, thank you very
7 much. That's the end of your time.

8 Are there any comments or questions from members
9 of the Board?

10 MR. VANDEN HEUVEL: Yeah.

11 THE CHAIRMAN: Mr. Vanden Heuvel.

12 MR. VANDEN HEUVEL: Mr. Brommenschenkel, I'd --
13 you know, just kind of following kind of your testimony
14 here, I think you pointed out a number of things in this
15 report that caused some concern, raise some further
16 question. Have you been able to -- is the -- would it be
17 possible to completely answer all of these questions in a
18 relatively short period of time? Or is addressing the
19 questions that you have raised something that would take,
20 you know, years of monitoring to determine?

21 MR. BROMMENSCHENKEL: Some of it could be answered
22 relatively quickly, but there's other items that probably
23 are going to take a longer period of time and a little
24 more collection of data, particularly in the southern end
25 of the basin.

1 THE CHAIRMAN: Additional comments? Questions?

2 Thank you, Mr. Brommenschenkel. Appreciate your
3 comments.

4 Next speaker will be Steven Lees. On deck is
5 Robert DeLoach.

6 MR. BROMMENSCHENKEL: Could I submit a copy of
7 this report?

8 THE CHAIRMAN: You certainly may.

9 MR. LEE: Good morning, Chairman and Members of
10 the Board. My name is Steve Lee, as you indicated, and I
11 am associated in representing the ag pool committee of
12 the Chino Basin. I work for the law firm of Reid &
13 Hellyer.

14 Just by way of introduction, I don't wish to
15 review many of the items which Mr. Brommenschenkel
16 indicated in his report, but just to encourage the
17 members of the Board to take a quick glance and look at
18 that. It raises many of the things which I was going to
19 address and, as I stated, I will not repeat many of the
20 things he said.

21 On behalf of the ag pool, the ag pool does greatly
22 appreciate the considerable effort that's been put forth
23 in the OBMP. The ag pool's always supported the
24 construction of facilities that are necessary to maximize
25 the beneficial water use within the Chino Basin.

1 And just by way of review, I've been asked by the
2 ag pool just to review a couple of things, just to show
3 in the past years that have gone by the considerable
4 effort and expense which the ag pool has done to -- has
5 engaged in to assist in getting to a proper resolution on
6 where we need to be and the direction we need to be
7 going.

8 For example, as the Board is well aware, the ag
9 pool has provided over 12,000 acre-feet for Desalter One,
10 which has been a considerable benefit. The agricultural
11 industry has also provided a zero percent interest loan
12 for the desalter. And the flood control basin was
13 financed with USDA funds with the assistance of the ag
14 pool, even though the flood control district primarily,
15 as members of the Board are aware, benefits the municipal
16 users and the urban runoff as opposed to the agricultural
17 runoff.

18 Fourthly, the agriculture assisted greatly in the
19 introduction and use of the composter. The composter, as
20 the Board is aware, accepts municipal sludge in addition
21 to agricultural materials and waste. And without the
22 agricultural and primarily the dairy industry, this never
23 would have got off the ground and never would have
24 worked. It's a great benefit to primarily the urban
25 users in the area. So it's been a great benefit.

1 Again, as Mr. Brommenschenkel indicated, the ag
2 pool maintains the safe yield of the basin. And without
3 agricultural use of the poor quality groundwater in the
4 lower portion, or south portion of the basin, the rise in
5 degraded water would require much tighter regulation,
6 regulations of the sewer waste discharge through
7 municipal entities and would have a great impact.

8 I know the report, the draft of the report, has
9 mentioned this phenomena in 4-16, but as
10 Mr. Brommenschenkel has indicated, it needs more than a
11 passing reference. It needs some detailed analysis and
12 further studies. And those items are -- again, that
13 primarily relate to section 2 of the report are indicated
14 in his written notes, which is submitted to the Board.

15 And just by way of review once again, many of
16 the -- the premise for the basis of the report is a lot
17 of the cause or the situation where we're faced with
18 today as a result of the agricultural practices that have
19 been engaged in in the past. And I wish to point out
20 that in many of the cases, this is conduct or actions of
21 the agricultural industry that took place many, many
22 years ago. And the practices which have been engaged in
23 in the last 15, 20 years, in particular by the dairy
24 industry, have been very minimal. They've cleaned up
25 their act. And much of the -- as Mr. Brommenschenkel

1 indicated, much of the waste does not even get to the
2 groundwater and is not nearly the significant impact that
3 maybe it's been inferred that it could be or has been,
4 and that needs to be looked at.

5 And just in conclusion, the ag pool disputes the
6 factual reports set forth in sections 1 through 4, and
7 particularly in section 2. And would just direct your
8 attention to the written notes of Mr. Brommenschenkel.

9 If the OBMP must assess blame for the water
10 quality problems in the basin, it should be based upon a
11 more complete study of the basin. And in any case, it is
12 the position of the ag pool that it has made its required
13 contribution for water quality, that further projects
14 intending to maximize water quantity are worthwhile
15 projects in which the ag pool wishes to participate and
16 be an active participant in.

17 In conclusion, section 5 requires much more study
18 and analysis and should not be submitted for Court
19 approval at this time. Sections 1 through 4 also require
20 further analysis, as I've indicated earlier, and as
21 Mr. Brommenschenkel has indicated, specifically relating
22 to section 2, and it should be revised. If the report --
23 if they are submitted for Court approval, it should be as
24 a report.

25 And lastly, as I've indicated, the ag pool

1 industry, particularly the dairy industry and those who
2 are producing and engaged in agricultural practices the
3 last 20 years, shouldn't be penalized for, in some
4 cases -- and much of the responsibility lies on the
5 earlier agriculture producers such as the citrus industry
6 and practices which were engaged in 30 to 50 years ago.
7 And definitely they're willing and able to participate in
8 solving the problem and reaching a just resolution.

9 And I would conclude with that remark. Thank you.

10 THE CHAIRMAN: Great, Mr. Lees. Thank you for
11 your comments.

12 Any comments or questions for Mr. Lees? Thank
13 you, sir. Appreciate it.

14 Next speaker will be Robert DeLoach. Mr. DeLoach,
15 before you begin your remarks, the next scheduled speaker
16 is Mark Potter. Terri, has he arrived yet?

17 TERRI STEWART: No, he hasn't.

18 THE CHAIRMAN: Okay. Then what we'll do, we'll
19 just move him down the list, so the next scheduled
20 speaker will be Pat Glover from the City of Chino.

21 Mr. DeLoach.

22 MR. DeLOACH: Mr. Chairman, my name is Robert
23 DeLoach. I'm the general manager of Cucamonga County
24 Water District. On behalf of our board of directors, I
25 am pleased to submit to you our written comments as well

1 as the oral comments this morning regarding the OBMP.

2 The comments that I will make this morning will
3 mirror very closely those that were already submitted to
4 the Board for your consideration in written form this
5 past week.

6 The OBMP as presently constructed represents an
7 ambitious and worthwhile long-range plan for the
8 Chino Basin, something that we have supported from the
9 beginning. We support the effort and recognize that we
10 are trying to do something with the OBMP that is long
11 overdue and, without the cooperation of all the agencies
12 involved, certainly will not be a success.

13 As outlined in our written comments, we believe
14 there are limitations on implementation of the OBMP.
15 These limitations deal with the jurisdiction of the Court
16 and the rights previously established under the judgment.
17 It is our opinion that as presently constituted, full
18 implementation of the OBMP will require specific actions
19 and approvals beyond the scope of the judgment.

20 Either the plan must be tailored to fit the
21 judgment, the judgment must be modified, or quite
22 possibly both.

23 The district, as outlined, has four major areas of
24 concern that are articulated in much more detail in our
25 written submittal to the Board. And I'd like to just

1 summarize those for you this morning.

2 First the implementation of almost
3 400-million-dollar plan is beyond the jurisdiction of the
4 Court, in our opinion, in that it contemplates financing
5 a plan largely by appropriators based on their production
6 within the basin. As such, when the OBMP requires that
7 appropriators fund a massive cleanup project for a
8 problem that is almost entirely caused by others and
9 benefitting other parties, we believe this is an
10 unenforceable action, or liability without causation.

11 Secondly, we believe that certain provisions of
12 the OBMP are contrary to the terms of the judgment. I
13 believe there has already been ample discussion at the
14 Watermaster Board level and the various committee levels
15 regarding Watermaster's ability to own, operate, and
16 construct capital facilities. In addition to these
17 examples, the Watermaster's subsidies for manure removal
18 and water meters are other aspects of the OBMP that will
19 need further clarification in the future or eliminated
20 entirely to conform with the judgment.

21 Third, the district disagrees with Watermaster
22 legal counsel and his interpretation of the CEQA review
23 process with respect to the OBMP.

24 The OBMP is subject to CEQA review by the public
25 agencies who will be charged with implementation of the

1 plan. It is our view that the review must be conducted
2 once any public agency commits to the project, which in
3 some instances is probably about now, and not after the
4 plan has been developed.

5 Our primary concern is that conducting CEQA review
6 after the program has or plan has been adopted preempts
7 the review process required and may be in violation of
8 CEQA and quite possibly NEPA, where we use federal
9 monies.

10 Fourth, the proposed financial plan contained in
11 section 5 is at the least not realistic as far as ease of
12 application. Many of the financial mechanisms that are
13 spelled out in section 5 regarding G.O. bonds, standby
14 charges, and fees will certainly require voter approval.
15 Additionally Watermaster must determine the nexus between
16 any new feeder charge and the corresponding water rate
17 increase with the benefits derived from the OBMP. We're
18 concerned that none may exist, given the fact that as
19 proposed, there's a disconnect between the benefits of
20 the cleanup and the parties who will be required to pay
21 for it.

22 We also remain concerned that the problem of
23 addressing the cleanup in the lower end of the basin has
24 been wrongfully characterized for many years as a
25 Watermaster problem, rather than a problem for those who

1 have contributed most to the present state of the basin
2 in terms of water quality.

3 In conclusion, while we continue to be supportive
4 of the OBMP process, we believe in its present form it is
5 too ambitious if the continuing jurisdiction of the Court
6 and the judgment are to be the mechanisms by which this
7 plan must be implemented. We will, however, work with
8 all the agencies involved, all the parties to the
9 judgment to see that the desired outcome is achieved.

10 Thank you for this opportunity, Mr. Chairman.

11 THE CHAIRMAN: Mr. DeLoach, thank you very much.

12 Any comments or questions of Mr. DeLoach? Thank
13 you, sir.

14 Next speaker will be Pat Glover, public works
15 director for the City of Chino. And Mr. Potter has
16 arrived, so he will be the next speaker.

17 MR. GLOVER: Thank you, Chairman, Members of the
18 Board.

19 The City of Chino appreciates -- once again, my
20 name is Pat Glover, public works director, City of Chino,
21 as was pointed out by the Chairman.

22 The City of Chino does appreciate the ability to
23 vocalize their comments on the OBMP, as well as submit
24 the written correspondence that you have. The City is in
25 basic support of the document. However we have concerns

1 about various elements contained in the OBMP as it is
2 submitted for your review.

3 First is with storage limits. We feel that the
4 storage limits should be based on the ability to use, not
5 as listed in section 4-37. Also we believe the
6 assignment of groundwater losses should occur
7 immediately. We feel that that best reflects the true
8 workings of the basin rather than giving a three-year
9 grace period. We also believe that transfers of water
10 rights for replenishment purposes should be made only
11 within the management zone, in the same management zone.

12 And our majority -- the greatest concern of ours
13 deals with the lack of financial components identified to
14 fund the majority of the cost which is focused around the
15 desalting effort. We realize that the cost of desalting
16 is very expensive. We're currently participating in a
17 SAWPA desalter. We're on a take or pay for desalted
18 water, and we realize that it is a costly endeavor.

19 Without clear numbers for us to evaluate the cost
20 benefits of purchasing desalted water, being in the
21 southern portion of the basin, we realize we're the most
22 likely candidate to buy additional desalted water beyond
23 our current 20 percent obligation through the desalter
24 that was built by SAWPA.

25 We feel that the report has a huge hole in it.

1 And to put all our eggs in the desalter basket without
2 having a clear picture of the financial -- the potential
3 financial obligations for all those who are going to be
4 purchasing that desalted water, we feel that the OBMP
5 misstates the -- I think it's overly optimistic in
6 section 4 -- on page 4-20 when it says that it was
7 demonstrated during discussions on this program element
8 that equitable cost sharing could be achieved. We don't
9 believe that was demonstrated, and we just wanted to
10 verbalize that in front of you today.

11 Lastly, Chino is very concerned with the health of
12 the basin. I think we've demonstrated that through past
13 action. We've purchased 20 percent of our water through
14 the desalter, as I mentioned earlier. We have a very
15 aggressive take or pay for recycled water use with IEUA,
16 and we've invested considerable amounts of our own
17 funding to research subsidence, and we've shared that
18 information with Mr. Wildermuth. And so I think these
19 actions demonstrate Chino's willingness to participate in
20 the program.

21 And I stand ready to answer any questions.

22 THE CHAIRMAN: Thank you, Mr. Glover.

23 Any questions of Mr. Glover?

24 THE CHAIRMAN: Mr. Vanden Heuvel.

25 MR. VANDEN HEUVEL: Yes. Mr. Glover, your points

1 about the location of recharge, what I'm wondering, Chino
2 has raised this a number of times. And as a matter of
3 practice, the Watermaster has been approving a lot of
4 transfers of water which, you know, clearly would be in
5 conflict with what the City of Chino is proposing here.
6 And what I'm wondering is, does the City of Chino have
7 any plans to put a little bit more, you know -- I guess
8 the adage is if you can't beat something with nothing.

9 Is there a policy -- can we anticipate that the
10 City of Chino would be asserting a little bit stronger
11 position with regards to matching recharge to where the
12 actual pumping overdraft is occurring to the point where,
13 you know, actually, you know, an issue would be raised
14 with regards to this?

15 MR. GLOVER: Well, in looking at the RAM tool and
16 how the water flows in management zone 1, we realize that
17 recharging management zone 1 and pumping out in
18 management zone 1 is a potential balance point, and
19 that's what we're trying to achieve. While the proximity
20 of recharge with our location of our wells, there's some
21 difficulties in putting it right next to our well field
22 due to some of the percolation rates. I think you and I
23 have talked about that in the past, possible -- looking
24 at the prison site for possible recharge basins which are
25 very close not only to the area of subsidence but also

1 some of our well fields.

2 We feel that if recharge was going to occur up
3 maybe in the Monte Vista district, there would be some
4 potential benefits for water being taken out in our well
5 field.

6 MR. VANDEN HEUVEL: If I could just follow up.
7 You've addressed the issue of actually wet water
8 recharge. What I'm wondering is, Are you signaling
9 through these comments that what is currently basically a
10 rubber stamp on transfers of water between regions in the
11 basin, that the City has an objection to that and may at
12 some point exercise whatever remedies you have to raise a
13 question on those types of transfers?

14 MR. GLOVER: I don't know that we want to go quite
15 that far. We have been looking -- when we purchased
16 water for replenishment charge purposes, we do look to
17 our management zone in order to kind of practice what we
18 preach. We could go outside of our zone and buy water,
19 but we've tried to stay away from that. We did it many
20 years ago, but we've focused on our own management zone
21 in the past few years.

22 MR. VANDEN HEUVEL: I guess this is a significant
23 issue, and I'm trying to understand, you know, how
24 important is it to Chino? Is it something you're raising
25 that you want us to consider? Or is there, at some point

1 in time, you know, a point at which your feelings are
2 strong enough that you'll actually seek to come up with a
3 different result?

4 MR. GLOVER: Well, we did comment many times and
5 also to Mr. Wildermuth quite extensively how we feel that
6 part of the subsidence issue does involve keeping
7 replenishment in our individual zone. There's a balance
8 between input and out-take. So we have made the comment
9 formally that we don't think transfers for replenishment
10 should occur outside the management zone. I don't
11 know -- I'm not going to pound on the podium, but we have
12 put that in writing and also verbalized it many times.

13 THE CHAIRMAN: Any additional questions?

14 Mr. Glover, before you leave, you had indicated
15 that you supported recharge in the northern part of the
16 management zone 1. Have you conducted the studies to
17 determine if in fact you would receive any benefit from
18 that recharge? It appears to me that being downstream of
19 a couple of other agencies in that area that if recharge
20 takes place up there, that you may not receive any
21 benefit at all. And if that is the case, have you looked
22 at -- you mentioned briefly looking at the possibility of
23 recharge in the prison area down there. But have you
24 done any detailed studies on both of those issues?

25 MR. GLOVER: We have looked at potential for

1 recharge at the prison site. However, it didn't go much
2 farther than -- the soil down there is not very
3 permeable. We felt that it was not a good spot for
4 recharge. We have done some looking at possible
5 injecting in some of our older wells and some of our
6 high-nitrate wells that are there that aren't pumping
7 water.

8 So yes, we have done some experimentation in that
9 area. Nothing more than maybe looking at the RAM tool as
10 far as replenishment north of our well fields. We do
11 have a concern about how that would work, and we've
12 talked to Mr. Wildermuth about that because it's kind of
13 a double-edged sword. While we want to put water in up
14 there, we realize that there's the potential to move
15 pollution down closer to our wells also. So while we
16 support replenishment within our management zone, we do
17 so very cautiously because there's potential impacts that
18 haven't fully been investigated.

19 THE CHAIRMAN: Great. I really appreciate your
20 comments. Any other questions? Thank you.

21 Next speaker will be Mark Potter from the Chino
22 Basin Water Conservation District, and following that
23 will be Mr. Art Kidman from the Monte Vista Water
24 District.

25 MR. POTTER: Good morning. My name is Mark

1 Potter. I'm from the law firm of Brunick, Alvarez &
2 Battersby. We represent the Chino Basin Water
3 Conversation District.

4 The comments that we had have been submitted in
5 the written report, and I am not going to rehash those
6 now. I will be very brief. There are certain policy
7 issues that we would like the Watermaster to resolve. We
8 think that once these policy issues have been resolved,
9 that the implementation of the OBMP will run much more
10 smoother and satisfactorily.

11 The only other thing that I would add is that, as
12 I'm sure that the Watermaster is aware, the opportunities
13 for recharge -- acquiring recharge basins are
14 diminishing. The district is thoroughly committed to
15 conserving water and to acquiring new recharge basins.

16 We would implore that the members of the
17 Watermaster Board and the agencies begin the process of
18 trying to acquire new recharge basins before the
19 implementation of the OBMP. It's a situation that we
20 think that cannot wait until the implementation of the
21 OBMP.

22 THE CHAIRMAN: Okay. Any comments of Mr. Potter?
23 Questions?

24 Mr. Potter, thank you very much.

25 I understand that we need a brief period to set up

1 for Mr. Kidman's presentation here, and what we'll do is
2 we'll take a five-minute recess at this time. And we
3 will reconvene on the hour for Mr. Kidman's presentation.

4 (Recess in proceedings from 9:55 to 10:05 a.m.)

5 THE CHAIRMAN: Mr. Kidman, if you'd introduce
6 yourself and then begin your remarks, please.

7 MR. KIDMAN: Thank you, Mr. Chairman. My name is
8 Arthur Kidman. I am legal counsel for Monte Vista Water
9 District in connection with these proceedings.

10 Monte Vista Water District is very glad that the
11 OBMP is in process. They have three main concerns that
12 they want to emphasize: that the plan needs to be a real
13 plan for management of the basin; that there needs to be
14 equitable cost apportionment; and that there needs to be
15 efficient governance in the public interest.

16 Monte Vista agrees with many of the points that
17 have been raised in the written comments submitted by
18 other parties, and I'll just check off a few of those.

19 They agree that, like many of the other parties,
20 that Phase I, the Phase I report, should not be approved
21 as a plan but should be submitted to the Court with the
22 recommendation to receive and file as a report.

23 Secondly, they agree with the ag pool for the City
24 of Ontario and the regional water quality control board
25 that the OBMP water quality -- addresses water quality

1 problems in the basin that have multiple sources and
2 causes and that costs of basin cleanup need to be shared
3 broadly and fairly. Like the Chino Basin Water
4 Conservation District, the City of Ontario, and the State
5 of California, Monte Vista agrees that implementation of
6 the OBMP should be based upon voluntary incentive/
7 disincentive programs including attractive pricing
8 systems.

9 With respect to wet water recharge, Monte Vista
10 strongly agrees with the City of Chino that the OBMP must
11 emphasize actual physical recharge, with real wet water
12 and recharge needs to be coordinated to address OBMP
13 objectives regarding localized overdraft, subsidence, and
14 water quality improvement. Chino Basin Water
15 Conservation District also seems to agree with this
16 point.

17 With respect to the Watermaster role, like the
18 Chino Basin Water Conservation District, Monte Vista
19 believes that the Watermaster's role is limited and does
20 not include execution of physical capital projects. In
21 this regard, legally I agree with Mr. Tanaka and the
22 Cucamonga County Water District that the OBMP
23 implementation poses CEQA issues for the public agencies
24 which undertake projects to implement the OBMP.

25 Finally, Monte Vista agrees again with Mr. Tanaka

1 on behalf of Cucamonga County Water District that
2 implementation of the OBMP poses serious issues regarding
3 the nature and extent of the Court's jurisdictional
4 authority over these parties under the current judgment.
5 These challenges to the Court's authority put a premium
6 on consensus building in connection with the OBMP.

7 In contrast to the apparent position of Cucamonga,
8 however, we believe that proper husbandry of the Chino
9 Basin as a public resource under article 10, section 2 of
10 the California Constitution is not dependent upon total
11 agreement of the parties. Ultimately under the
12 Constitution, the Court can and should compel those who
13 make use of the groundwater resource of the Chino Basin
14 to equitably participate to restore and maintain that
15 resource.

16 We think the OBMP has many good things in it but
17 is incomplete with respect to management zone No. 1. And
18 I apologize for the time that it took to set this up.
19 Let's see here.

20 (Discussion off the record)

21 The OBMP seems to endorse increased wet water
22 recharge in management zone No. 1. There's an indication
23 that an additional 18,000 acre-feet of annual recharge is
24 necessary, and there are some basins that are identified
25 in the northern part of management zone No. 1.

1 However, the OBMP does not address what the future
2 role of in-lieu operations and water transfers will be.
3 And we believe that they may need to be significantly
4 rethought relative to the -- implementing some of the
5 aspects of the plan.

6 This graphic shows some plumes of nitrates. And
7 I'd like to draw your attention to those that are located
8 here in the northern and western portions of the basin.
9 There's a lot of emphasis given to groundwater quality
10 concerns in the south end of the basin and very little,
11 if any, given to how we address the issues of
12 contamination in other parts of the basin. We think the
13 OBMP has a serious deficiency in that regard.

14 And finally, just to complete the graphics, we
15 think -- this shows some of the depressions in
16 groundwater elevation and shows that there are some
17 relationships between that and water quality. And we
18 think that there needs to be plans put in place that will
19 encourage the extraction of the poor quality water and
20 the wet water recharge with good quality or higher
21 quality water so that we improve the overall quality of
22 the basin.

23 Now, I want to talk about a couple of governance
24 issues because that's an important thing to the client.
25 The OBMP misstates the relationship between the

1 Watermaster and the advisory committee on the very first
2 page of the report. The advisory committee, I submit, is
3 not the policy-making body under the judgment. This is a
4 pretense that's gone on for a long time in this basin and
5 should cease.

6 Judge Gunn has made it very clear that in his
7 estimation when he -- on page 3 of his order that led to
8 where we are today, if the appointment of a nine-member
9 Board would permit the advisory committee to control the
10 Watermaster and/or deprive the Watermaster of its ability
11 to administer the judgment independently and objectively,
12 surely that would be a compelling reason to deny the
13 motion for appointment of the nine-member Board.

14 He goes on on page 4 to talk about what will
15 happen if it appears to the Court that the proposed
16 nine-member Board is unable to function as an
17 independent -- and I submit that word there, I believe,
18 is independent of the producers, independent of the
19 advisory committee -- functioning in the public interest
20 which he went to a great deal of effort to emphasize in
21 this order. So I think there's a problem about
22 governance right away on the very first page of the
23 Optimum Basin Management Plan.

24 The Optimum Basin Management Plan also misstates
25 the origins of the OBMP requirement and talks about this

1 very, very difficult period of time that Chino Basin
2 Watermaster has gone through over the last four or five
3 years. But -- and talks about that as though that's
4 where this came from.

5 Well, it didn't. In July of 1989, Judge Turner,
6 the prior judge assigned to this case, very specifically
7 ordered that an OBMP be prepared. Nothing was done for
8 many, many years in that regard. Now -- using the word
9 nothing, that's an overstatement.

10 THE CHAIRMAN: One minute, Mr. Kidman.

11 MR. KIDMAN: Things were done, but it didn't get
12 to a point of having a plan that was satisfactory to
13 Judge Gunn and so that's why he came back and ordered it
14 again.

15 We think that implementation of the OBMP will
16 require some substantial new thinking outside of the box.
17 Certain past and current management practices are more
18 beneficial to basin users than they are to the basin
19 itself as a resource. And these include in-lieu
20 replenishment practices and the transfer of water rights
21 to offset overproduction.

22 Clearly Judge Gunn is using the OBMP to evaluate
23 the performance of the nine-person Watermaster. Monte
24 Vista supports the nine-person Watermaster with some
25 tweaks relative to the municipal water district

1 representatives, because -- they think that there ought
2 to be more continuity for those members because they have
3 less opportunity to be involved with the Watermaster and
4 basin operations on a day-to-day basis.

5 THE CHAIRMAN: Mr. Kidman, thank you very much for
6 your comments. Your time has expired.

7 MR. KIDMAN: Thank you very much, Mr. Chairman.

8 THE CHAIRMAN: Thank you. Any comments or
9 questions of Mr. Kidman?

10 Next speaker will be Ken Jeske from the City of
11 Ontario, and on deck will be Henry Pepper from the City
12 of Pomona.

13 MR. JESKE: Thank you, Mr. Chairman, Board
14 Members. Ken Jeske. I'm the public works director for
15 the City of Ontario. Thank you for the opportunity to
16 comment.

17 The City of Ontario has participated in the
18 development of the OBMP for the Chino Basin. This effort
19 has proceeded with a lot of discussion, as we know, and
20 with the development of a lot of technical information.
21 The Watermaster staff, the consultants, and all of the
22 parties, both present here and present at the meetings
23 and submitted comments, should be complimented and
24 commended for the work done to date.

25 It's apparent, however, that much effort and

1 decision is yet needed on the funding and the
2 implementation portions of the plan. Therefore, the
3 special referee has recommended a phased process to
4 prepare an implementation plan. Ontario strongly
5 supports this two-phase process allowing time for full
6 implementation and funding planning and desires to be on
7 record stating that.

8 Also for the record, work has already begun on the
9 Phase II of this plan. Committees have been formed to
10 address some of the more significant issues. For
11 example, committees on recharge, which by the way is
12 including discussions of transfers and also on the
13 desalters including discussions on funding, have already
14 been put in place and already starting.

15 Ontario would encourage the Board, however, not to
16 make determination to change the direction of the report
17 to date based on comments received on those issues at
18 this meeting without full discussion and full completion
19 of those committees completing their work.

20 Ontario has previously submitted comments on the
21 draft OBMP in a letter dated July 6 and then a subsequent
22 letter dated September 7th which were submitted as part
23 of this hearing. I'm not going to go into all the
24 points. Some of them we have heard referenced by other
25 speakers. but we do want to ensure that they're

1 incorporated into this hearing.

2 Sections 1 through 4 of the OBMP describe projects
3 and programs which a majority of the parties believe are
4 necessary for implementation of the plan. Funding and
5 implementation, however, are yet to be determined and may
6 affect the final scope of some of the projects or many of
7 the projects.

8 Therefore, Ontario strongly recommends submittal
9 of the Phase I sections as a report, not as a final
10 adopted plan without opportunity for amendment as we look
11 at funding or as we discuss some of the issues that
12 you've heard raised in this particular hearing.

13 The process of developing the final Phase II
14 reports should include the opportunity to address many of
15 the legal authorities, some of which we've heard today
16 such as those previously raised by Cucamonga County Water
17 District and most recently by Monte Vista Water District,
18 as well as provide the opportunity for comments,
19 objections, or comments of the parties to the final
20 Phase II proposal as that moves forward.

21 The City of Ontario wishes to reserve its right to
22 raise such legal and substantive issues during the
23 Phase II process on those items.

24 Thank you very much for allowing us to comment.

25 THE CHAIRMAN: Thank you, Mr. Jeske. Any comments

1 or questions of Mr. Jeske? Appreciate that.

2 Next speaker will be Henry Pepper from the City of
3 Pomona, and following that will be Marilyn Levin from the
4 State of California attorney general's office.

5 MR. PEPPER: Thank you, Mr. Chairman and Members
6 of the Board. I'm Henry Pepper, the utility services
7 director for the City of Pomona. On behalf of the City
8 of Pomona let me take this opportunity at the public
9 hearing today to recognize the Watermaster Board and
10 staff for their Herculean efforts these past many months
11 to begin to bring resolution to issues impacting Chino
12 Basin for decades. This has been a daunting task, will
13 continue to be a daunting task due to the myriad
14 competing interests. And the Board staff and consulting
15 firms continue to demonstrate that they are up to the
16 challenge.

17 To reiterate the concerns that the City of Pomona
18 has had over the years:

19 No. 1, pumping. We need to be assured that our
20 pumping rights will not be curtailed and that there will
21 be adequate replenishment water if need be.

22 No. 2, leases and transfers of water. Pomona's
23 ability to lease and/or transfer any annual
24 underproduction of water or water in storage should not
25 be adversely impacted.

1 Storage limits, number three. Such limits should
2 not be imposed, but if they are deemed necessary for the
3 prudent management of the basin, Pomona should be justly
4 compensated.

5 No. 4, losses. Any annual losses should be fairly
6 apportioned.

7 No. 5. Cost allocation financing plan. At a cost
8 of approximately 6 million dollars without any assistance
9 Pomona built an anion exchange plant and related
10 facilities which opened in 1992 to treat high nitrate
11 Chino Basin groundwater and put it to beneficial use.

12 Pomona should receive credit for this bold move
13 and any cost allocation financing plan being developed
14 for further basin remediation, and, in fact, this
15 expenditure should be deemed Pomona's total capital
16 contribution toward basin cleanup.

17 No. 6, governance or membership. The current
18 method of rotating membership on the Watermaster board
19 should be retained to allow parties to participate fully.

20 Thank you for this opportunity to provide input
21 into the public hearing process. We've provided copies
22 of these comments to the staff.

23 THE CHAIRMAN: Thank you, Mr. Pepper. Any
24 comments or questions of Mr. Pepper? Appreciate your
25 comments.

1 Marilyn Levin, state attorney general's office.

2 MS. LEVIN: Thank you. I'm Marilyn Levin, deputy
3 attorney general of the California Office of the Attorney
4 General. Our office represents the State of California
5 and all state agencies and departments with lands
6 overlying the Chino Basin. Our office represented the
7 State of California in the original Chino Basin judgment
8 in 1978, and we're very involved in developing the
9 present judgment and are fully aware of the background of
10 the judgment and the water and it being a water rights
11 adjudication.

12 The State is a party to the judgment. The state
13 agencies that produce water and/or own land in the basin
14 include the Department of Corrections, the Department of
15 Fish and Game, the Department of Transportation,
16 Caltrans, and the Department of Toxic Substances Control.

17 The State of California's rights were not
18 specifically defined in the judgment, but we agreed to
19 become a member of the agricultural pool. Throughout the
20 various meetings over the last few months I think the
21 State of California has indicated all of the various
22 proposals that the State has made and the things that the
23 State has done in the basin. Specifically the latest is
24 the development of an ion exchange plant that we are
25 constructing on our facility. And I won't go into all of

1 the positive aspects that the State has brought to the
2 basin and will continue to do that.

3 The State and the California Department of
4 Corrections filed comments on various drafts of sections
5 1 through 4 of the OBMP. The latest comments were filed
6 on September 7th in response to Phase I of the OBMP.

7 I'm not going to go through all of the comments.
8 Many of the comments that were mentioned here today
9 specifically are Kidman's comments, the ag pool comments
10 with respect to the history of this judgment, the
11 problem -- the overlying problem of the nitrates in the
12 basin, placing blame on various parties within the basin
13 on cleaning up the nitrate problem. I'm not going to go
14 into that. All of that information is in my comments.

15 I would like to call attention, and if the Board
16 would like additional information that has not been
17 discussed, I recently read a Rand study that was prepared
18 in 1978 that was sent to, of all things, our first
19 speaker, and I met him for the first time today, Frank
20 Brommenschenkel. And that study should be very helpful
21 to this Board if you're looking to the history of the
22 problems in this basin and what the parties expected.
23 There is also information in the plaintiff's post-trial
24 memorandum that was developed in 1978. I have copies of
25 both of those and can submit them for the record.

1 Specifically, though, today what I would like to
2 do is much more boring, and that is procedural. I'd like
3 to commend all the parties, as other people have done,
4 and to point out to the referee that the parties have
5 engaged in hard work and dedication and extremely
6 time-consuming effort to develop the OBMP and this
7 Phase I report. I think it's important to know that the
8 parties are working to reach a consensus -- and we may
9 have to revise our pleadings -- without extensive
10 litigation on legal and procedural issues -- all of which
11 we agree with and we don't want to raise now; they could
12 be premature -- on the main elements of the basin
13 management program.

14 I think it's important to let the Court know
15 through the Watermaster that many of the parties support
16 some of the statements in the Phase I report, but many of
17 the parties object to some of the conclusions and facts
18 contained in the report, specifically the state of the
19 basin or placing blame on some of the parties.

20 Because of these objections and concerns, it's
21 impossible, though we'd like to, for many of the parties
22 to approve or adopt the elements of the program developed
23 to date because the financing elements have not been
24 finalized and the parties have been unable to assess,
25 including the State of California, any financial impacts

1 specifically on the State. And as you know, my comments
2 have mentioned that we're in the agricultural pool and
3 there were certain beliefs we had in being part of the
4 agricultural pool, and that was being able to pump water
5 with very low or fairly low assessment.

6 Therefore in the State's opinion it's premature at
7 this time for the Watermaster or the committees to vote
8 to adopt or approve the OBMP.

9 The Court referee has recognized some of these
10 concerns in her memorandum. So specifically what I would
11 like to recommend is that the Watermaster, after hearing
12 all the comments, should respectfully modify the Court
13 referee's recommendation only slightly.

14 While feeling very pleased that the Court -- that
15 the Court referee suggested that it would be appropriate
16 to give the parties additional time, I would suggest that
17 the Watermaster receive the Phase I Optimum Basin
18 Management Program dated August 19 as a report subject to
19 the comments and objections received and with the
20 recognition that the language in the document may be
21 revised and/or updated as part of the development of
22 Phase II. Therefore, it doesn't necessarily have to be
23 called a draft report but it's received subject to
24 potential revisions.

25 Two, recognize that the parties reserve all rights

1 to comment and/or oppose the Phase I report and the
2 Phase II implementation program and to raise any legal or
3 procedural issues with respect to the OBMP.

4 Three, recognize that the parties -- and this
5 would be in-court findings, possibility under a court
6 order -- that the parties are respectfully seeking
7 additional time, from October 28th to May 31st, 2000, to
8 prepare and agree to an implementation plan through
9 continued consensus -- I feel like I'm Bill Clinton
10 here -- to continue consensus building within the basin
11 in order to avoid costly litigation. I'm not sure that
12 we emphasized that as much.

13 Some of us were involved in the extremely
14 contentious litigation a few years ago that brought us to
15 where we are. Some of the parties may be willing to go
16 to that place. Many parties are not.

17 I think we need to let the Court know that we
18 really need this extra time not because we're delaying --
19 and I hope I'm not being naive -- but that we really need
20 the additional time to build the consensus necessary.
21 This is the first time that a lot of the parties, even
22 though they were asked to before, have aired their very
23 specific concerns. And we need to get those out.

24 Recognize -- and the Court should recognize --
25 that this is the schedule proposed by the parties. And

1 this is my schedule, you don't have to adopt it, but this
2 is what I'm suggesting. Develop the draft implementation
3 program between September 30th, and I moved the date up
4 to February 4th because we need time to circulate and
5 comment. So my dates would be September 30 through
6 February 4th to develop -- to develop the Phase II.

7 Circulate the OBMP, the entire OBMP, including the
8 proposed voluntary implementation program by
9 February 4th. Final comments on the OBMP including
10 Phase II submitted to the Watermaster by March 3rd.
11 Comments circulated to the parties, and this is what we
12 didn't have in this phase, by March 10th. And then
13 additional time to read those comments and respond to
14 them by the pool and advisory committee between March
15 10th and
16 April 21st. Then consideration by the Watermaster of the
17 program and the comments by April 28th, and additional --

18 THE CHAIRMAN: One minute.

19 THE WITNESS: Okay.

20 Filing pleadings with the Court, you need
21 additional time, on May 12th with the court hearing set
22 for May 31.

23 Hope this is not too many dates. This is
24 important. Set a status conference hearing on
25 January 18th with the Court so that the Court has

1 continuing input and can evaluate whether there's delay
2 or whether we're really moving forward on this final
3 part.

4 Continue the hearing currently set for
5 October 28th to May 31st and same thing with the hearing
6 on DWR. And then after that, on June 9th, the hearing
7 should be set on the appointment of the nine-member
8 Board. At that time the Court could evaluate.

9 Essentially it's an eight-month extension, but I
10 think that the Watermaster could put pleadings together
11 that could convince the Court that we're not delaying.

12 I conclude by urging the Watermaster to urge the
13 Court to adopt this revised schedule as reasonable. And
14 thank you for the opportunity to comment.

15 THE CHAIRMAN: Thank you, Ms. Levin.

16 Any comments or questions?

17 MR. VANDEN HEUVEL: Yeah.

18 THE CHAIRMAN: Marilyn, excuse me. If you'd
19 return to the podium. We do have a question.

20 Mr. Vanden Heuvel.

21 MR. VANDEN HEUVEL: Yeah. I was wondering whether
22 the State had an opinion with regards to the CEQA issues
23 raised in one of the briefs that was filed.

24 MS. LEVIN: To be honest, we haven't evaluated it
25 on our own. But I have read the comments of Mr. Gene

1 Tanaka and my first -- upon first blush, I agree with his
2 comments. And so I would probably support those, but I
3 would have to do my own independent research on that.

4 Any other questions?

5 THE CHAIRMAN: Any other comments or questions?
6 Appreciate that. Thank you very much.

7 That concludes the list of speakers that we have.
8 Is there any last-minute additions, anybody wishing to
9 address this Board at this time?

10 Mr. Brommenschenkel.

11 MR. BROMMENSCHENKEL: I thought ten minutes was an
12 awfully long time, a lot more time than I really needed.
13 I just would like to conclude some of the things that I
14 was trying to address and make one other further point as
15 far as the report is concerned.

16 And it refers to table 4-12 on page 4-27 where
17 there is a comparison there between the amount of
18 nitrates and TDS being added as far as an acre of dairy
19 area versus an acre of residential housing. And it's
20 kind of like an apples-and-oranges comparison there, and
21 there was a 70 percent reduction in the amount of TDS and
22 nitrates being added. And it's kind of the gist of our
23 comments in general that there's connotations in the
24 report there that infer that the contributions of ag are
25 monumentally greater than what they are in the other

1 parts of the basin. And the other parts of the basin in
2 some cases are being played down a little bit more than
3 what they really should be.

4 And because of some of the things that I have
5 outlined, I think it would be good that this is not used
6 as a technical source document at this point in time. It
7 is a good reference document. There's an awful lot of
8 work that has gone into it, and I would hate to be the
9 person who was responsible for putting it all together.
10 I mean, it has been a heck of a task, and like anything
11 else, it's easier to tear apart than it is to put
12 together. Thank you.

13 THE CHAIRMAN: Thank you very much. Any
14 additional comments?

15 MR. VANDEN HEUVEL: Mr. Chairman.

16 THE CHAIRMAN: Yeah.

17 MR. VANDEN HEUVEL: I'm sorry. I was going to ask
18 Ms. Levin if she would definitely include those reports,
19 the Rand report and the other report that you referred
20 to, make those available to the Watermaster as part of
21 this hearing record.

22 THE CHAIRMAN: Was that in the affirmative,
23 Ms. Levin?

24 MS. LEVIN: Yes, I will do that.

25 THE CHAIRMAN: Thank you very much. Okay.

1 At this time what we're going to do is we're going
2 to close the public hearing portion of this particular
3 meeting, invite the special referee and her staff if they
4 have any comments at this time, it would be appropriate
5 for you to comment, Ms. Schneider.

6 MS. SCHNEIDER: Thank you, Mr. Chairman. My name
7 is Anne Schneider, and I'm special referee to the
8 Superior Court related to the Chino matter. I have very
9 few comments.

10 I submitted in writing comments on August 13th and
11 recommended a schedule which was included in the notice
12 of motion and motions submitted by the Watermaster to the
13 Court. So the issues as to the phasing of this
14 proceeding to complete the OBMP and the dates, which
15 Ms. Levin questioned a moment ago, are matters to be
16 discussed with the Court on the 30th.

17 I do have a reaction to some of the comments that
18 were in writing and orally made today, and that's that
19 it's encouraging that most of the comments are looking
20 ahead to a next phase of implementation.

21 As I wrote in my comments, I think it's extremely
22 important to reach closure on the first four chapters and
23 to move ahead and to get to the implementation issues
24 that are so difficult and to not use any more energy on
25 these chapters and to use all of your energy on the next

1 phase's efforts.

2 I agree with the comment that was made, that there
3 is always a premium on consensus building. And whether
4 that's due to questions that are raised as to the Court's
5 authority and power or just a matter of logic and
6 expedience, I commend you for the effort you've made and
7 the continuing effort you'll have to make to keep
8 building consensus.

9 Anyway, I do recommend that you somehow reach
10 closure on the first four chapters, and I encourage every
11 effort to be made to finish the work of finding an
12 implementation plan in Phase II if the Court allows you
13 to proceed in that fashion.

14 THE CHAIRMAN: Thank you. Before you leave, let
15 me ask if there's anybody that has any questions. Would
16 anybody like to ask any questions of Ms. Schneider?
17 Ma'am, thank you very much. I really appreciate that.

18 Before we begin our deliberations on this
19 particular process, I'd like to thank everybody for
20 adhering to the procedures that we had today. It
21 certainly is helpful when you have a public hearing where
22 you can have people that will adhere to the timelines. I
23 realize that some people were actually cut off, but in
24 order to try to expedite this process, I think that
25 today's hearing indicates that everybody was certainly

1 willing to work towards the accomplishment or toward the
2 goal that we have tried to accomplish as members of the
3 Board for the past 18 months.

4 I'd like also to thank my fellow board members and
5 the members of staff of the Chino Basin Watermaster for
6 their participation in this particular process. It has
7 been a long process, and I agree with Ms. Schneider that
8 it is time to move forward, that we need to get working
9 on Phase II of this implementation part of the plan, and
10 that the time has now come, as I stated about a month ago
11 at one of our Board meetings, to fish or cut bait.

12 It's time for this Board to decide what we're
13 going to do regarding the Phase I report, whether it's to
14 be filed with the Court as a report, whether it's to be
15 filed in any other form, or whether it's to be modified
16 prior to the time that it is filed with the Court,
17 remembering that we do have a hearing date with the Court
18 at the end of this particular month. With that, what I'd
19 like to do is open it up to discussion from the members
20 of the Board.

21 Mr. Vanden Heuvel.

22 MR. VANDEN HEUVEL: Yeah. I think that this was a
23 very useful hearing, and I think a lot of issues got
24 raised. I take a lot of -- put a lot of stock, though,
25 in the special referee's comment that we need to focus

1 our energy on moving ahead.

2 And I think that the parties have done a very good
3 job of pointing out, if we didn't already know, that
4 section 1 through 4 isn't perfect. I think we as policy
5 makers responsible to the public have to decide, are we
6 going to make perfection our standard, or are we going to
7 try to move on and make things better. And I for one
8 believe that, you know, we need to move ahead. And I
9 agree with the advice of the special referee that that's
10 where we need to put our energy.

11 I think what we come away with, then, is that we
12 need to draw some closure to this and say this is good
13 work, it's not perfect work, make sure that the record is
14 complete, completely notes all of the comments and
15 reservations that all of the various parties have on
16 this, and that we not adopt this as a finding but simply
17 as a progress report and move it on to the Court as such.

18 And so I would move that the Watermaster, making
19 note of all of the objections that have been raised and
20 concerns, nonetheless move ahead and accept sections 1
21 through 4 as a report and forward it on to the Court.

22 THE CHAIRMAN: We have a motion. Is there a
23 second?

24 THE VICE CHAIRMAN: Second.

25 MS. JOHNSON: You say you would receive and file

1 as a report. Is that what you're --

2 MR. VANDEN HEUVEL: Right.

3 THE CHAIRMAN: Procedurally here,
4 Mr. Vanden Heuvel has made a motion that this be filed
5 with the Court, sections 1 through 4, as a report, for
6 receive and file purposes, and it's been seconded by
7 Mr. Krueger.

8 Is there any further discussion?

9 MR. VANDEN HEUVEL: Yes.

10 THE CHAIRMAN: Yes. Mr. Vanden Heuvel.

11 MR. VANDEN HEUVEL: Now that the motion's been
12 made, I made some notes, and I do want to make some
13 comments about some of the objections, I think, just so
14 that the record of the Board that we did it -- at least
15 there's some comments.

16 I think agriculture raised a lot of issues as to
17 some of the detail in section 2, and I think that there's
18 merit to a lot of what they're saying. And so I think we
19 definitely have noted that, and the record would reflect
20 that.

21 I think Chino raised and Monte Vista raised some
22 issues with regards to location of recharge, types of
23 recharge, transfers that are very valid and important,
24 and we need to remember as we move into the next phase to
25 deal with those. Monte Vista also raised important

1 governance questions. And, you know, one of the
2 observations that I have made for myself is that we have
3 created an incredibly inefficient governance structure
4 for the Watermaster. You know, I understand kind of why
5 it happened, but it's a very difficult governance
6 structure to try to get to a decision. And I think we're
7 all wrestling with that, and Monte Vista raised some
8 questions that I think are worth pondering as we move
9 forward. Is this the way we want to do business 30 or 40
10 or 50 years from now? Do we want to leave this structure
11 in place, or do we deal with this? So I think they made
12 some important governance issues.

13 I think Cucamonga made some very powerful
14 arguments about CEQA that we're going to need to deal
15 with very soon as we move forward into the next phase.

16 I think the State raised some issues with regards
17 to schedule, and I appreciate the effort that they did in
18 going into that level of detail on schedule. I think
19 we're kind of on schedule, and I think we've bitten off
20 an awful lot. Even if we set May as our deadline rather
21 than February, you know, we can move as fast as we can
22 move. And you need deadlines to get people to make
23 decisions. But these are huge issues.

24 Some of the major elements that need to be
25 implemented are just going to take more time, and I think

1 we need to do the best job that we can. We've been given
2 some deadlines. Let's do our best. And if we're doing
3 our best, then if we can't make deadlines, we throw
4 ourselves on the judge's indulgence and ask for more
5 time. I don't think getting more refined on that
6 schedule is going to move the process forward.

7 I think the conservation district raised some
8 issues about ownership of facilities. Those are policy
9 issues. I don't know whether we -- my sense is we've got
10 a consensus, but we probably need to try to close that
11 loop sometime. But I think, again, you're into a
12 Phase II.

13 I think the encouraging thing is with a few minor
14 exceptions I didn't hear a lot of objections to the
15 program elements. You know, you got the sections 1
16 through 4, but then you end up, well, what are we going
17 to do. And I didn't hear a lot of folks -- I heard
18 concerns about costs, financing, equity, that sort of
19 thing. But as far as, you know, the need, what we've
20 kind of all agreed we need to do, that's -- I heard
21 pretty strong or at least support and, by silence, assent
22 to most of those program elements.

23 Those are my observations of kind of the hearing
24 today, and I think all that being said, you get to a
25 conclusion that with all those things noted, at least I'm

1 prepared to close the book, so to speak, on this first
2 phase and move on to the next one.

3 DR. KING: I very much agree with what was just
4 said. I would like to thank all of the agencies involved
5 here for responding in writing with your objections in
6 advance. It was really helpful to me to be able to go
7 through all of these complicated issues and helped me
8 understand where you're coming from.

9 I think that most of the comments were basically
10 supportive of what we're doing, and it's not a perfect
11 document, as was mentioned, and it is a daunting task.
12 But it's the best imperfect plan that we have right now,
13 and we just can't paralyze the process waiting for the
14 perfect plan to come along. A lot of time and effort has
15 gone into this, and I would support very much moving
16 ahead.

17 THE CHAIRMAN: Additional comments?

18 THE VICE CHAIRMAN: I think --

19 THE CHAIRMAN: Mr. Krueger.

20 THE VICE CHAIRMAN: I appreciate all the comments
21 that have been submitted in writing and verbally today,
22 and I do recommend that all these comments be considered
23 as going along with the original report in submitting to
24 the Court so the Court has full access to everything
25 that's been said and the written comments.

1 THE CHAIRMAN: Thank you, Mr. Krueger.

2 Ms. Johnson.

3 MS. JOHNSON: I would thank everybody for their
4 comments, and I would just say that I think that this
5 is -- the Board and everyone that's worked on this, we
6 have a hundred percent intention of carrying this through
7 and completing it. And the mechanisms will happen and we
8 foresee good results, and the results will be better than
9 going through -- and our documents aren't perfect right
10 now, but they will be sooner or later. Thank you.

11 THE CHAIRMAN: Mr. Arbelbide.

12 MR. ARBELBIDE: I'd like to thank all those that
13 came today to participate and speak before us and present
14 those thoughts and concerns. And I just have one thing
15 to say, is that if you'll come back with some possible
16 solutions, some compromising type positions so we can
17 move forward, I think that will benefit us all.

18 THE CHAIRMAN: Mr. Hofer.

19 MR. HOFER: Only to thank the people that have
20 showed up today that have put so much time and effort
21 into this whole process. It's, as Mr. King said, it's
22 daunting but we can't let it paralyze us. We do have to
23 move forward. It isn't perfect, I agree. The technical
24 parts will take more refining. They will always be
25 refined. We will come up with better processes as we

1 move along. That will always be in flux. But to have
2 more or less an agreement on the policy and where we're
3 going I think is wonderful.

4 THE CHAIRMAN: Thank you, Mr. Hofer.

5 Finally, I'd like to add that it's important for
6 the record and for the special referee to understand that
7 in the public arena, the CEQA process obviously takes a
8 great deal of importance to us that sit in that
9 particular area. Understanding how that process works is
10 absolutely critical to the implementation of the plan.
11 And the timing that is involved to get through the CEQA
12 process is an area that has been raised many times in the
13 discussions that we've had.

14 And understanding the reality of getting through
15 the CEQA process and also the possibility that we may
16 have to be involved in the federal NEPA process, could
17 add some considerable time to the actual implementation.

18 I think the general consensus opinion is that for
19 the public agencies, that when we get into the CEQA
20 process, in developing the actual projects themselves, we
21 must go through that hearing process which can take an
22 extremely incredible amount of time, as I'm sure you can
23 appreciate. And that that could have a significant
24 impact on the final timeline that we established for the
25 implementation process.

1 I've been told that the CEQA process can take
2 between six and eighteen months, sometimes even longer
3 for the federal process before we actually have their
4 approval to proceed with these particular projects. And
5 while we are committed to working towards getting the
6 plan implemented, the actual implementation may be
7 delayed because of that particular legal process that
8 we're required to go through.

9 Now, I want to make sure that the record reflects
10 that we are concerned about that, but that we are also
11 committed to going forward with phase 2, to meet the time
12 lines that have been suggested by the special referee.

13 Any additional comments from members of the Board?

14 If not, this special hearing of the Watermaster --

15 MR. KRUEGER: Call for the vote.

16 THE CHAIRMAN: Call for the vote. You're right.

17 Thank you, Mr. Krueger. Appreciate that. We'll call for
18 the vote at this time.

19 Mr. Hofer?

20 MR. HOFER: Yes.

21 THE CHAIRMAN: Mr. Vanden Heuvel?

22 MR. VANDEN HEUVEL: Yes.

23 THE CHAIRMAN: Mr. King?

24 DR. KING: Yes.

25 THE CHAIRMAN: Mr. Krueger?

1 MR. KRUEGER: Aye.

2 THE CHAIRMAN: Mr. Arbelbide?

3 MR. ARBELBIDE: Yes.

4 THE CHAIRMAN: Ms. Johnson?

5 MS. JOHNSON: Yes.

6 THE CHAIRMAN: I vote aye. We will forward the
7 report to the Court on the 30th to be received as a
8 report. We thank you very much for your time and all
9 your efforts. We stand adjourned.

10 (The proceedings concluded at 10:50 a.m.)

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4 REPORTER'S CERTIFICATE
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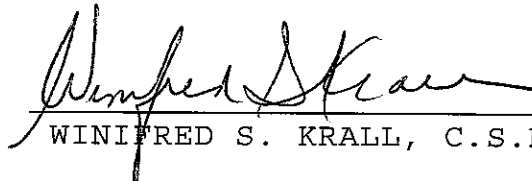
7 I, Winifred S. Krall, a certified shorthand
8 reporter licensed by the State of California, hereby
9 certify:

10 That the foregoing oral proceedings, taken down by
11 me in stenotype, were thereafter reduced to printing by
12 computer-aided transcription under my direction;

13 That this printed transcript is a true record of
14 the foregoing oral proceedings.

15 I further certify that I am not in any way
16 interested in the outcome of this action and that I am
17 not related to any of the parties thereto.

18 Witness my hand the 16th day of September, 1999.
19

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21 
22 WINIFRED S. KRALL, C.S.R. #5123
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