

Exhibit 19

2001 Watermaster
Rules and Regulations

**CHINO BASIN WATERMASTER
RULES AND REGULATIONS**

June 2001

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**ARTICLE I
GENERAL PROVISIONS**

1.0 Title.

This document shall be known and may be referred to as the “Chino Basin Watermaster Rules and Regulations” adopted pursuant to the Judgment.

1.1 Definitions

As used in these Rules and Regulations, these terms, including any grammatical variations thereof shall have the following meanings.

- (a) “Active Parties” means all parties to the Judgment other than those who have filed a written waiver of service of notices with Watermaster, pursuant to Paragraph 58 of the Judgment. [Judgment ¶ 4(a).]
- (b) “Agricultural Pool” shall have the meaning of Overlying (Agricultural) Pool as used in the Judgment and shall include all its members. [Peace Agreement § 1.1(a).]
- (c) “Agricultural Pool Committee” shall mean the designated representatives and alternates who serve on behalf of the Agricultural Pool.
- (d) “Annual or Year” means a fiscal year, July 1 through June 30 following, unless the context shall clearly indicate a contrary meaning. [Judgment ¶ 4(b).]
- (e) “Annual Production Right” means the total amount of water available to the Appropriative Pool in any year from all available sources (e.g., Carry-Over Water, assigned share of Operating Safe Yield, Transfers, New Yield, water Recaptured from Storage, land-use conversions, Early Transfer) which Watermaster shall determine can be Produced by the members of the Appropriative Pool free of a Replenishment Obligation.
- (f) “Answer” means the written response that may be filed to a Complaint or the reply to a Contest pursuant to the provisions of Article X.
- (g) “Applicant” means a person that files an Application for Watermaster approval of an action pursuant to Article X.

- (h) “Application” means a request filed by any person pursuant to the provisions of Article X, seeking (i) Watermaster approval of Recharge, Transfer, Recapture or Qualifying Storage operations or activities or (ii) for Watermaster approval of a credit or reimbursement.
- (i) “Appropriative Pool” shall have the meaning as used in the Judgment and shall include all its members. [Peace Agreement § 1.1(b).]
- (j) “Appropriative Right” means the annual Production right of a Producer from the Chino Basin other than pursuant to an Overlying Right. [Judgment ¶ 4(c).]
- (k) “Basin Water” means Groundwater within the Chino Basin which is part of the Safe Yield, Operating Safe Yield, New Yield), or Replenishment Water in the Basin as a result of operations under the Physical Solution decreed in the Judgment. Basin Water does not include “Stored Water” under the Judgment and the Peace Agreement. [Judgment ¶ 4(d).]
- (l) “Best Efforts” means reasonable diligence and reasonable efforts under the totality of the circumstances. [Peace Agreement § 1.1(d).] Note: a rule of construction applies to this definition. See section 1.2(e) below.
- (m) “CBWCD” means the Chino Basin Water Conservation District. [Peace Agreement § 1.1(e).]
- (n) “Carry-Over Right” means the annual unpumped share of Safe Yield and Operating Safe Yield that is reserved to be pumped first the following year by the members of the Non-Agricultural Pool and the Appropriative Pool respectively. [Based on the Judgment Exhibit “G” ¶ 7 and Exhibit “H” ¶ 12.]
- (o) “Carry-Over Water” means the un-Produced water in any year that may accrue to a member of the Non-Agricultural Pool or the Appropriative Pool and that is Produced first each subsequent Fiscal Year or stored as Excess Carry-Over. (Judgment Exhibit H ¶ 12.)
- (p) “CEQA” means the California Environmental Quality Act, Public Resources Code Sections 21000 et seq; 14 California Code of Regulations 15000 et seq. [Peace Agreement § 1.1(f).]
- (q) “Chino Basin” or “Basin” means the Groundwater basin underlying the area shown on Exhibit “B” to the Judgment and within the boundaries described on Exhibit “K” to the Judgment. [Judgment ¶ 4(f) and Peace Agreement § 1.1(g).]

- (r) “Chino Basin Watershed” means the surface drainage area tributary to and overlying Chino Basin. [Judgment ¶ 4 (g) and Peace Agreement § 1.1(h).]
- (s) “Chino I Desalter,” also known as the SAWPA Desalter, means the Desalter owned and operated by PC14 with a present capacity of approximately eight (8) million gallons per day (mgd) and in existence on the Effective Date. [Peace Agreement § 1.1(i).]
- (t) “Chino I Desalter Expansion” means the planned expansion of the Chino I Desalter from its present capacity of approximately eight (8) mgd to a capacity of up to fourteen (14) mgd. [Peace Agreement § 1.1(j).]
- (u) “Chino II Desalter” means a new Desalter not in existence on the Effective Date with a design capacity of approximately ten (10) mgd, to be constructed and operated consistent with the OBMP and to be located on the eastside of the Chino Basin. [Peace Agreement § 1.1(k).]
- (v) “Committee(s)” means any of the Pool Committees or the Watermaster Advisory Committee as the context may compel.
- (w) “Complainant” means a party to the Judgment that files a Complaint pursuant to Article X.
- (x) “Complaint” means a claim filed by a party to the Judgment with Watermaster pursuant to the provisions of Article X.
- (y) “Contest” means an objection filed by a party to the Judgment pursuant to the provisions of Article X.
- (z) “Contestant” means a party to the Judgment that files a Contest pursuant to the provisions of Article X.
- (aa) “Court” means the court exercising continuing jurisdiction under the Judgment. [Peace Agreement § 1.1(l).]
- (bb) “Cyclic storage” as used in various related Watermaster documents, means the pre-delivery of Replenishment water pursuant to an agreement with Watermaster.
- (cc) “Date of Execution” means the first day following the approval and execution of the Peace Agreement by the last Party to do so which date is August 1, 2000. [Peace Agreement § 1.1(m).]

- (dd) “Desalter” and “Desalters” means the Chino I Desalter, Chino I Desalter Expansion, the Chino II Desalter, related facilities and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin Water, including extraction wells, transmission facilities for delivery of groundwater to the Desalter, Desalter treatment and delivery facilities for the desalted water including pumping and storage facilities, and treatment and disposal capacity in the SARI System. [Peace Agreement § 1.1(n).]
- (ee) “Direct Recharge” means the storage of water by percolation in spreading grounds or by injection through wells. [Judgment ¶ 50(a).]
- (ff) “Early Transfer” means the reallocation of Safe Yield in accordance with the Peace Agreement where water from the Agricultural Pool is made available to the Appropriative Pool on an annual basis. [Peace Agreement § 1.1(o).]
- (gg) “Effective Date” refers to the Effective Date of the Peace Agreement and means October 1, 2000. [Peace Agreement § 1.1 (p).]
- (hh) “Excess Carry-Over Water” means Carry-Over Water which in aggregate quantities exceeds a party’s share of Safe Yield in the case of the Non-Agricultural Pool, or the assigned share of Operating Safe Yield in the case of the Appropriative Pool, in any year.
- (ii) “Future Desalters” means enlargement of the Chino I Desalter to a capacity greater than the Chino I Expansion or enlargement of the Chino II Desalter and any other new Desalter facilities that may be needed to carry out the purposes of the OBMP over the term of the Peace Agreement. [Peace Agreement § 1.1(q).]
- (jj) “General law” means all applicable state and federal laws. [Peace Agreement § 1.1(r).]
- (kk) “Groundwater” means all water beneath the surface of the ground. [Judgment ¶ 4 (h) and Peace Agreement § 1.1(s).]
- (ll) “Groundwater Storage Agreement” means either a Local Storage Agreement or an agreement in connection with a Storage and Recovery Program.
- (mm) “Hydrologic Balance” means the maintenance of total inflow at a level generally equivalent to total outflow as measured over an appreciable period of time that is

sufficient to account for periodic changes in climate and watershed, basin and land management conditions.

- (nn) “IEUA” means the Inland Empire Utilities Agency, referred to in the Judgment as Chino Basin Municipal Water District. [Peace Agreement § 1.1(t).]
- (oo) “In-lieu Recharge” means taking supplies of Supplemental Water in lieu of pumping groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, as provided in Exhibit “H” Paragraph 11 of the Judgment. [Peace Agreement § 1.1(u).]
- (pp) “Initial Operating Safe Yield” means the Operating Safe Yield first established by the Judgment; i.e. 54,834 acre-feet. [Judgment Exhibit “E”.]
- (qq) “Judgment” means the Judgment dated January 27, 1978, in San Bernardino County Case No. 164327 (redesignated as San Bernardino County Case No. RCV 51010) as amended by Order regarding Procedures for Petitions in Intervention dated July 14, 1978; Order regarding Groundwater Storage Agreements dated January 5, 1979; Order Approving Amendments to Judgment Dated December 1, 1995; Order for Amendments to the Judgment Regarding Changes in Pooling Plans and Appropriate Pool Representation on the Advisory Committee, dated September 18, 1996; Order regarding Watermaster’s Annual Report dated March 31, 1999; Order regarding Compensation of Watermaster Board Members dated March 31, 1999; Order regarding Adoption of the OBMP dated September 28, 2000; and other such amendments. [Peace Agreement § 1.1(v).]
- (rr) “Local Imported Water” is water from any origin, native or foreign which was not available for use or included in the calculation of Safe Yield of the Chino Basin at the time the Judgment was entered. [Based on Judgment ¶ 49(c).] Local Imported Water is reported by Watermaster in its annual report.
- (ss) “Local Storage” means water held in a storage account pursuant to a Local Storage Agreement between a party to the Judgment and Watermaster. Local Storage accounts may consist of: (i) a Producer’s unproduced Excess Carry-Over Water or (ii) a party to the Judgment’s Supplemental Water, up to a cumulative maximum of fifty thousand (50,000) acre-feet for all parties to the Judgment stored in the Basin on or after July 1, 2000 or (iii) that amount of Supplemental Water previously stored in the Basin on or before July 1, 2000 and quantified in accordance with the provisions and procedures set forth in Section 7.2 of these Rules and Regulations, or (iv) that amount of water which is or may be stored in the Basin pursuant to a Storage

Agreement with Watermaster which exists and has not expire before July 1, 2005.
[Peace Agreement § 1.1(x).]

- (tt) “Local Storage Agreement” means a Groundwater Storage Agreement for Local Storage.
- (uu) “Material Physical Injury” means material injury that is attributable to the Recharge, Transfer, Storage and Recovery, management, movement or Production of water, or implementation of the OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence, increases in pump lift (lower water levels) and adverse impacts associated with rising Groundwater. Material Physical Injury does not include “economic injury” that results from other than physical causes. Once fully mitigated, physical injury shall no longer be considered to be material. [Peace Agreement §1.1(y).]
- (vv) “Metropolitan Water District or MWD” means the Metropolitan Water District of Southern California. [Peace Agreement § 1.1.(2).]
- (ww) “Minimal Producer” means any producer whose Production does not exceed ten (10) acre-feet per year. [Judgment ¶ 4(j).]
- (xx) “New Yield” means proven increases in yield in quantities greater than historical amounts from sources of supply including, but not limited to, capture of rising water, capture of available storm flow, operation of the Desalters and related facilities, induced Recharge and other management activities implemented and operational after June 1, 2000. [Peace Agreement § 1.1(aa).]
- (yy) “Non-Agricultural Pool” shall have the meaning as used in the Judgment for the Overlying (Non-Agricultural) Pool and shall include all its members. [Peace Agreement § 1.1(bb).]
- (zz) “OBMP” means the Optimum Basin Management Program, which consists of the OBMP Phase I Report and the OBMP Implementation Plan, which shall be implemented consistent with the provisions of Article V of the Peace Agreement. [July 13, 2000 Court Order.]
- (aaa) “OBMP Assessments” means assessments levied by Watermaster for the purpose of implementing the OBMP. [Peace Agreement § 1.1(cc).] Note: a rule of construction applies to this definition. See section 1.2(f) below.
- (bbb) “OBMP Implementation Plan” means Exhibit “B” to the Peace Agreement.

- (ccc) “OCWD” means the Orange County Water District. [Peace Agreement § 1.1(dd).]
- (ddd) “Operating Safe Yield” means the annual amount of Groundwater which Watermaster shall determine, pursuant to criteria specified in Exhibit “T” to the Judgment, can be Produced from Chino Basin by the Appropriative Pool parties free of Replenishment obligation under the Physical Solution. [Judgment ¶ 4(l) and Peace Agreement § 1.1(ee).]
- (eee) “Overdraft” means a condition wherein the total annual Production from the Basin exceeds the Safe Yield thereof, as provided in the Judgment. [Judgment ¶ 4(m) and Peace Agreement § 1.1(ff).]
- (fff) “Overlying Right” means the appurtenant right of an owner of lands overlying Chino Basin to Produce water from the Basin for overlying beneficial use on such lands. [Judgment ¶ 4(n).]
- (ggg) “PC14” means Project Committee No. 14, members of SAWPA, composed of IEUA, WMWD, and OCWD, pursuant to Section 18 of the SAWPA Joint Exercise of Powers Agreement which now constitutes the executive Authority through which SAWPA acts with respect to the Chino I Desalter and other facilities, programs and projects. [Peace Agreement § 1.1(ll).]
- (hhh) “Party” or “Parties” means a Party to the Peace Agreement. [Peace Agreement § 1.1(gg).]
- (iii) “Party” or “parties to the Judgment” means a party to the Judgment. [Peace Agreement § 1.1(hh).]
- (jjj) “Peace Agreement” means the agreement dated June 29, 2000 among various parties to the Judgment identified therein and approved by Watermaster as it existed on that date and without regard to any subsequent amendment thereto unless such amendments are approved by each Party to the Peace Agreement, Watermaster and the Court.
- (kkk) “Person” means any individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature including but not limited to the State of California and the Department of Water Resources. [Judgment ¶ 4(o).]

- (lll) “Physical Solution” shall have the meaning of the Physical Solution as described the Judgment.
- (mmm) “Produce” or “Produced” means to pump or extract groundwater from the Chino Basin. [Judgment ¶ 4(q) and Peace Agreement §1.1 (ii).]
- (nnn) “Producer” means any person who Produces water from the Chino Basin. [Judgment ¶ 4(r) and Peace Agreement § 1.1 (jj).]
- (ooo) “Production” means the annual quantity, stated in acre-feet, of water Produced from the Chino Basin. [Judgment ¶ 4(s) and Peace Agreement § 1.1(kk).]
- (ppp) “Public Hearing” means a hearing of Watermaster held pursuant to the Judgment other than as provided in Article X herein.
- (qqq) “Qualifying Storage” means the storage of Supplemental Water, Excess Carry-Over Water after July 1, 2005 or to participate in a Storage and Recovery Program.
- (rrr) “Qualifying Storage Agreement” means an agreement with Watermaster to store Supplemental Water, Excess Carry-Over Water after July 1, 2005 or to store water by participation in a Storage and Recovery Program.
- (sss) “Recapture” and “Recover” means the withdrawal of water stored in the Basin under a Groundwater Storage Agreement.
- (ttt) “Recharge” and “Recharge Water” means the introduction of water into the Basin, directly or indirectly, through injection, percolation, delivering water for use in-lieu of Production or other method. Recharge references the physical act of introducing water into the Basin. Recharge includes Replenishment Water but not all Recharge is Replenishment Water. [Peace Agreement § 1.1(nn).] Note: a rule of construction applies to this definition. See section 1.2(g) below.
- (uuu) “Recycled Water” means water which, as a result of treatment of wastewater, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource, referred to as “reclaimed water” in the Judgment. [Judgment ¶ 4(u) and Peace Agreement § 1.1 (pp).]
- (vvv) “Replenishment Obligation” means the quantity of water that Watermaster must purchase to replace Production by any Pool during the preceding Fiscal Year which exceeds that Pool’s allocated share of Safe Yield or Operating Safe Yield in the case of the Appropriative Pool. The quantity of a Producer’s Over-Production and the

Replenishment Obligation is determined after Watermaster takes into account any Transfers of water or any Recovery from storage in the same year, and takes into account the Appropriative Pool obligation as a result of the implementation of the Peace Agreement, if any. [Judgment ¶ 45.]

- (www) “Replenishment Water” means Supplemental Water used to Recharge the Basin pursuant to the Physical Solution, either directly by percolating the water into the Basin or indirectly by delivering the water for use in-lieu of Production and use of Safe Yield or Operating Safe Yield. [Judgment ¶ 4(v) and Peace Agreement § 1.1(oo).]
- (xxx) “Responsible Party” means the owner, co-owner, lessee or other person(s) designated by multiple parties interested in a well as the person responsible for purposes of filing reports with Watermaster pursuant to the Judgment ¶ 4(w). [Judgment, ¶ 4(w).]
- (yyy) “Rules and Regulations” means these Chino Basin Watermaster Rules and Regulations as authorized pursuant to the Judgment, initially adopted by the Watermaster on February 15, 2001 and as they may be amended from time to time. They are to be distinguished from the previous Watermaster Rules and Regulations and the Uniform Groundwater Rules and Regulations that were repealed and replaced by the same action adopting and approving these Rules and Regulations.
- (zzz) “Safe Yield” means the long-term average annual quantity of groundwater (excluding Replenishment Water or Stored Water but including return flow to the Basin from use of Replenishment or Stored Water) which can be Produced from the Basin under cultural conditions of a particular year without causing an undesirable result. [Judgment ¶ 4(x) and Peace Agreement § 1.1(qq).]
- (ab) “Salt Credits” means an assignable credit that may be granted by the Regional Water Quality Control Board and computed by Watermaster from activities that result from removal of salt from the Basin, or that result in a decrease in the amount of salt entering the Basin. [Peace Agreement § 1.1 (rr).] Salt Credits may be used by individual members of the Appropriative Pool to facilitate implementation of the OBMP as a whole and as an off-set against potential impacts associated with discrete projects.
- (ac) “SAWPA” means the Santa Ana Watershed Project Authority. [Peace Agreement § 1.1(ss).]
- (ad) “SBVMWD” means San Bernardino Valley Municipal Water District. [Judgment ¶ 4(y).]

- (ae) “Sphere of Influence” has the same meaning as set forth in Government Code Section 56076.
- (af) “Storage and Recovery Program” means the use of the available storage capacity of the Basin by any person under the direction and control of Watermaster pursuant to a Court approved Groundwater Storage Agreement but excluding “Local Storage,” including the right to export water for use outside the Chino Basin and typically of broad and mutual benefit to the parties to the Judgment. [Peace Agreement §1.1(uu).]
- (ag) “Stored Water” means Supplemental Water held in storage, as a result of direct spreading, injection or in-lieu delivery, for subsequent withdrawal and use pursuant to a Groundwater Storage Agreement with Watermaster. [Judgment ¶ 4(aa) and Peace Agreement § 1.1(vv).]
- (ah) “Supplemental Water” means water imported to Chino Basin from outside the Chino Basin Watershed and Recycled Water. [Judgment ¶ 4(bb) and Peace Agreement § 1.1(ww).]
- (ai) “Transfer” means the assignment (excepting an assignment by a member of the Non-Agricultural Pool or the Agricultural Overlying Pool), lease, or sale of a right to Produce water to another Producer within the Chino Basin or to another person or entity for use outside the Basin upon the person’s intervention in conformance with the Judgment. [Peace Agreement § 1.1 (xx).]
- (aj) “TVMWD” means Three Valleys Municipal Water District (referred to in the Judgment as Pomona Valley Municipal Water District). [Peace Agreement § 1.1(yy).]
- (ak) “Uniform Groundwater Rules and Regulations” (UGRR) means the Uniform Groundwater Rules and Regulations that were in effect on December 31, 2000.
- (al) “Watermaster” means Watermaster as the term is used in the Judgment. [Peace Agreement §1.1 (zz).]
- (am) “Watermaster Resolution 88-3” means the resolution by the Chino Basin Watermaster establishing the procedure for transferring unallocated Safe Yield water from the Agricultural Pool to the Appropriative Pool on an annual basis, adopted on April 6, 1988 and rescinding Resolution 84-2 in its entirety. [Peace Agreement § 1.1(aaa).]

- (an) “Watermaster Rules and Regulations” means the Watermaster Rules and Regulations that were in effect on December 31, 2000.
- (ao) “WMWD” means Western Municipal Water District. [Judgment ¶ 4(cc) and Peace Agreement § 1.1 (bbb).]

1.2 Rules of Construction

- (a) Unless the context clearly requires otherwise:
 - (i) The plural and singular forms include the other;
 - (ii) “Shall,” “will,” “must,” and “agrees” are each mandatory;
 - (iii) “may” is permissive;
 - (iv) “or” is not exclusive;
 - (v) “includes” and “including” are not limiting; and
 - (vi) “between” includes the ends of the identified range.
- (b) The masculine gender shall include the feminine and neuter genders and vice versa.
- (c) Reference to any agreement, document, instrument, or report means such agreement, document, instrument or report as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.
- (d) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part and in effect from time to time, including any rules and regulations promulgated thereunder. [Peace Agreement § 1.2.]
- (e) “Best Efforts” as defined in section 1.1(l) above, shall be construed to mean that indifference and inaction do not constitute Best Efforts. However, futile action(s) are not required. [Peace Agreement § 1.1(d).]
- (f) OBMP Assessments as defined in section 1.1(aaa) above, shall be deemed Administrative Expenses under Paragraph 54 of the Judgment. OBMP Assessments do not include assessments levied as provided in Section 5.1(g) of the Peace Agreement. Upon the expiration of the Peace Agreement, no conclusion of “general

benefit” may be drawn based upon the manner in which the assessments have been made during the term of the Peace Agreement. [Peace Agreement § 1.1(cc).]

- (g) The definition of the terms Recharge and Recharge Water in section 1.1(tt) above, shall not be construed to limit or abrogate the authority of CBWCD under general law. [Peace Agreement § 1.1(nn).]
 - (h) The right of a party to receive a credit if Watermaster compels a Groundwater Production facility to be shut down and/or moved under section 4.5 below, shall not be construed in determining the extent of Watermaster’s authority under the Judgment, if any, to compel the shut-down of a well.
 - (i) These Rules and Regulations should not be construed as placing any limitation on the export of Supplemental Water other than as may be provided in the Judgment, except as may be necessary as a condition to prevent Material Physical Injury (*see specifically* section 8.3 below).
- 1.3 Consistency with Judgment and Peace Agreement. These Rules and Regulations shall be construed consistent with the Judgment and the Peace Agreement. In the event of a conflict between these Rules and Regulations and the Judgment or the Peace Agreement, the Judgment and/or the Peace Agreement shall prevail. In the event of a conflict between the Peace Agreement and the Judgment, the Judgment shall control.
- 1.4 No Prejudice. No provision of these Rules and Regulations shall be used to construe the power and authority of the Advisory Committee or the Watermaster Board inter-se under the Judgment.
- 1.5 Amendment of Rules. These Rules and Regulations may be amended by Watermaster only upon the prior approval of the Watermaster Advisory Committee.
- 1.6 Repeal of Existing Rules and Regulations. Watermaster’s existing Rules and Regulations and the the Uniform Groundwater Rules and Regulations shall be repealed upon the adoption of these Watermaster Rules and Regulations. However, all other rules and regulations, which includes the Rules for the Advisory Committee and for each of the three Pools, shall remain in effect.

ARTICLE II ADMINISTRATION

- 2.0 Principal Office. The principal office of Watermaster shall be the Chino Basin Watermaster business office, currently located at 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California 91730; telephone number 909-484-3888, or at such other location or locations as may be designated from time to time by Watermaster Resolution and filed with the Court.
- 2.1 Records. The minutes of Watermaster meetings shall be open to inspection and maintained at the principal office. [Based on Judgment ¶ 37(d).] Copies of minutes may be obtained upon payment of the duplication costs thereof. Copies of other records may be obtained on the payment of the duplication costs thereof and pursuant to Watermaster policy. Watermaster shall maintain a website. Watermaster Staff shall publish those records and other matters that it deems to be of interest to the parties to the Judgment, the general public or the Court on its website.
- 2.2 Regular Meetings. Regular meetings shall be held at the principal office of Watermaster pursuant to Watermaster policy at such time(s) as may be contained in the necessary notice(s) thereof. [Based on Judgment ¶ 37 (b).] As a matter of policy, Watermaster shall generally operate in accordance with the provisions of the California Open Meetings Law (Brown Act). However, in the event of conflict, the procedures set forth in these Rules and Regulations shall control.
- 2.3 Special Meetings. Special meetings may be called at any time by a majority of the Watermaster Board by delivering notice thereof at least twenty-four (24) hours before the time of each such meeting in the case of personal delivery (including faxes and electronic mail), and ninety-six (96) hours in the case of mail. [Based on Judgment ¶ 37 (c).]
- 2.4 Adjournment. Any meeting may be adjourned to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously posted forthwith on or near the door of the place where the meeting was held. [Based on Judgment ¶ 37 (e).]
- 2.5 Public Meetings/Hearings. All meetings, whether regular or special, shall be open to the public unless they are properly designated as a confidential session. Whenever a Public Hearing shall be required therein, written notice of such public hearing containing the time, date and place of Public Hearing, together with the matter to be heard thereat, shall be given to all Active Parties and each such person who has requested, in writing, notice of such

meeting, at least ten (10) days prior to said Public Hearing. At such Public Hearing, evidence shall be taken with regard to only the matters noticed, unless a sufficient urgency shall exist to the contrary, and full findings and decisions shall be issued and made available for public inspection. Notwithstanding the provisions of this section 2.5, the provisions of Article X shall control when applicable.

2.6 Confidential Sessions.

- (1) The Watermaster Board may hold confidential sessions authorized by this Rule. A confidential session may be held by the Watermaster Board and, at a minimum, the chairs of the three Pools (Appropriative, Agricultural and Non-Agricultural) to, in a manner consistent with the Judgment:
 - (i) meet with counsel to discuss or act on pending or threatened litigation involving Watermaster; or
 - (ii) discuss personnel matters of Watermaster employees involving individual employees; or
 - (iii) discuss contract negotiations involving Watermaster.
- (2) Minutes shall not be taken for confidential sessions of the Watermaster Board, but a confidential memorandum shall be prepared to describe attendance and votes on decisions.
- (3) Notice of confidential sessions of the Watermaster Board shall be as provided in section 2.7.
- (d) A report on any action taken at the confidential session of the Watermaster Board shall be given both immediately following the conclusion of the confidential session and at the next regular meeting of the Watermaster Board.
- (4) The Advisory Committee may hold a confidential session on any matter authorized by its own resolution.

2.7 Notice. Notices shall be given in writing to all Active Parties and each such person who has requested notice in writing, and shall specify the time and place of the meeting and the business to be transacted at the meeting. Notice may be provided by either facsimile or electronic mail delivery if the party so consents to such delivery. [Based on Judgment ¶ 37(c).] Delivery of notice shall be deemed made on the date personally given or within ninety-six (96) hours of deposit thereof in the United States mail, first class, postage prepaid,

addressed to the designee and at the address in the latest designation filed by such person. Copies of all notices shall be published on the Watermaster website. Watermaster will maintain a current list of the names of active parties and their addresses for the purpose of providing service, and will maintain a current list of the names and addresses of all parties to the Judgment. [Judgment ¶ 58.]

- 2.8 Quorum. A majority of the Board acting as Watermaster shall constitute a quorum for the transaction of the affairs or business. [Based on Judgment ¶ 35.]
- 2.9 Voting Procedures. Only action by affirmative vote of a majority of the members of the Watermaster Board present and acting as Watermaster shall be effective. All actions may be adopted by voice vote, but upon demand of any member of a Board acting as Watermaster, the roll shall be called and the ayes and noes recorded in the minutes of the proceedings. Every member of a Board acting as Watermaster, in attendance, unless disqualified by reason of an opinion of the Watermaster counsel that the member of the board has a conflict of interest, shall be required to vote.
- 2.10 Conflict of Interest. Watermaster is an interest based governing structure in which various interests must be represented in decision-making. It is expected and preferred that each interest be allowed to participate in Watermaster decisions except as provided in these Rules and Regulations. Each member of the Watermaster Board or the Advisory Committee shall vote on matters before the Board or Advisory Committee unless that member has a conflict of interest as described in this Rule or other provision of general law. No member of the Watermaster Board or Advisory Committee may vote, participate in meetings or hearings pertaining to, or otherwise use his or her position to influence a Watermaster decision in which he knows or has reason to know he has both a direct personal and financial interest.
- (a) Subject to the qualification provided for in section 2.10(b) herein, a member of the Watermaster Board or Advisory Committee is deemed to have a direct personal and financial interest in a decision where it is reasonably foreseeable that the decision will have a material effect on the Watermaster member, members of his or her immediate family, or the Watermaster member's other business, property, and commercial interests.
- (b) To be classified as a direct personal and financial interest, the particular matter must be distinguishable from matters of general interest to the respective pool (Appropriative, Non-Agricultural, or Agricultural) or party to the Judgment, which the Watermaster member has been appointed to represent on the Watermaster Board or Advisory Committee. The member must stand to personally gain discrete and particular advantage from the outcome of the decision beyond that generally realized by any other person or the interests he or she represents. Moreover, Watermaster

representatives are expressly intended to act in a representative capacity for their constituents. A member of the Board or Advisory Committee shall not be considered to have a discrete and particular financial advantage unless a decision may result in their obtaining a financial benefit that is not enjoyed by any other person. In those instances where the Board member or Advisory Committee member does have a conflict of interest, that respective interest may be represented by that interest's designated alternate and the Board or Advisory Committee member with the identified conflict of interest may address the Board or Committee or participate in the hearing or meeting as a party to the Judgment.

- 2.11 Minutes. The secretary (or in the absence thereof any person so designated at said meeting) shall cause the preparation and subscription of the minutes of each meeting and make available a copy thereof to all Active Parties and each person who has filed a request for copies of all minutes or notices in writing. The minutes shall constitute notice of all actions therein reported. Unless a reading of the minutes is ordered by a majority of the members of the Board acting as Watermaster, minutes may be approved without reading. [Based on Judgment ¶ 37(d).] Watermaster shall publish a copy of its minutes on the Watermaster website.
- 2.12 Rules of Order. Except as may be provided herein, the procedures of the conduct of any meeting shall be governed by the latest revised edition of Roberts' Rules of Order. However, such rules, adopted to expedite the transaction of the business in an orderly fashion, are deemed to be procedural only and failure to strictly observe such rules shall not affect the jurisdiction or invalidate any action taken at a meeting that is otherwise held in conformity with law.
- 2.13 Compensation. Members of Watermaster shall receive compensation from Watermaster for attendance at meetings, regular or special, in an amount as approved by the Court together with reasonable expenses related to the respective activities thereof, subject to applicable provisions of law. [Based on Judgment ¶ 18 (as amended).]
- 2.14 Employment of Experts and Agents. Watermaster may employ or retain such administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as it may deem appropriate and shall require appropriate bonds from all officers and employees handling Watermaster funds. Watermaster shall maintain records for purposes of allocating costs of such services as well as of all other expenses of Watermaster administration as between the several pools established by the Physical Solution of the Judgment. No member of the Watermaster Advisory Committee or any Pool Committee may be employed or compensated by Watermaster for professional or other services rendered to such committee or to Watermaster other than as provided in section 2.13 above. [Based on Judgment ¶ 20.]

- 2.15 Acquisition of Facilities. Watermaster may purchase, lease, acquire and hold all necessary facilities and equipment; provided, that it is not the intent of the Judgment that Watermaster acquire any interest in real property or substantial capital assets. [Judgment ¶ 19 and Peace Agreement § 5.1(h).]
- 2.16 Investment of Funds. Watermaster may hold and invest all Watermaster funds in investments authorized from time to time for public agencies of the State of California, taking into consideration the need to increase the earning power of such funds and to safeguard the integrity thereof. [Based on Judgment ¶ 23.]
- 2.17 Borrowing. Watermaster may borrow from time to time, amounts not to exceed the annual anticipated receipts of Watermaster during such year. [Judgment ¶ 24.]
- 2.18 Contracts. Watermaster may enter into contracts and agreements for the performance of any of its powers pursuant to the Judgment.
- 2.19 Cooperation with Other Agencies. Watermaster may, subject to the prior recommendation of the Advisory Committee, act jointly or cooperate with agencies of the United States of America, and the State of California or any political subdivisions, municipalities, districts or any person to the end that the purpose of the Physical Solution of the Judgment may be fully and economically carried out. [Based on Judgment ¶ 26.]
- 2.20 Annual Administrative Budget. Watermaster shall submit to the Advisory Committee, after Pool Committee review and approval, an administrative budget and recommendation for action for each subsequent Fiscal Year on or before March 1. The Advisory Committee shall review and submit the budget and their recommendations to Watermaster on or before April 1, next following. Watermaster shall hold a public hearing on the budget which was approved by Advisory Committee at an April meeting of each year and adopt the annual administrative budget which shall include the administrative items for each committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to make a proper allocation of expenses among the several pools, together with Watermaster=s proposed allocation. The budget shall contain such additional comparative information or explanation as the Advisory Committee may recommend from time to time. Expenditures within the budgeted items may thereafter be made by Watermaster in the exercise of its powers, as matter of course. Any budget transfer in excess of 20% of a budget category, or modification of the administrative budget during any year shall be first submitted to the Advisory Committee for review and recommendation. [Based on Judgment ¶ 30.]
- 2.21 Annual Report. Watermaster shall prepare and make available an annual report, which shall be filed on or before January 31 of each year and shall contain details as to the operation of each of the pools, a certified audit of all assessments and expenditures pursuant to the

Physical Solution of the Judgment and a review of Watermaster activities. [Based on Judgment ¶ 48.] The annual report shall generally include an update on the status of the parties' efforts to implement the OBMP. On a biannual basis, the annual report shall include an engineering appendix which contains a more specific "state of the Basin" report including an update on the status of individual OBMP related activities such as monitoring results and Watermaster's analysis of Hydrologic Balance. The annual report shall also include a compilation of any amendments to these Rules and Regulations made by Watermaster during the prior twelve (12) months and serve as notice to the Court of the amendments.

- 2.22 Studies. Watermaster may, with concurrence of the Advisory Committee or affected Pool Committee and in accordance with Paragraph 54(b) of the Judgment, undertake relevant studies of hydrologic conditions, both quantitative and qualitative, and operating aspects of implementation of the Chino Basin OBMP. [Judgment ¶ 27.]
- 2.23 Demonstrated CEQA Compliance. Watermaster shall not approve any request made under the Judgment or these Rules and Regulations where the proposed action also constitutes a "project" within the meaning of CEQA unless the Watermaster finds that the person requesting Watermaster approval has demonstrated CEQA compliance.
- 2.24 Notice of Litigation. Watermaster shall provide reasonable notice to the parties to the Judgment of any threatened or existing litigation affecting Watermaster or that challenges the legality, validity, or enforceability of the Judgment, the Peace Agreement, the OBMP Implementation Plan or the Rules and Regulations.
- 2.25 Defense of Judgment. Watermaster shall reasonably defend the Judgment, the Peace Agreement, the OBMP Implementation Plan and these Rules and Regulations against challenges brought by persons who are not parties to the Judgment. These costs incurred by Watermaster in defending the Judgment, the Peace Agreement, the OBMP Implementation Plan and these Rules and Regulations shall be considered a Watermaster general administrative expense. However, the State of California shall not be obligated to reimburse Watermaster for any legal or administrative costs incurred in such defense. [Peace Agreement § 4.1.]
- 2.26 Written Reports. All reports required to be provided by Watermaster under these Rules and Regulations shall be provided in written form unless the context requires otherwise.
- 2.27 Interventions. Watermaster will receive and make recommendations regarding petitions for intervention and accumulate them for filing with the Court from time to time. [Judgment ¶ 60 and Order re Intervention Procedures, July 14, 1978.]
- 2.28 Advisory Committee and Pool Administration. Administration of each of the three Pools is not governed by these Rules and Regulations. Each of these entities has its own rules and

shall thereby be governed by those rules. The Advisory Committee shall also be governed by its own rules and procedures. However, when these Rules and Regulations make express reference to the Advisory Committee and the context requires such a construction, these Rules and Regulations shall control.

ARTICLE III MONITORING

- 3.0 Scope. Watermaster will carry out the monitoring activities described under Program Element 1 of the OBMP and as described in the OBMP Implementation Plan. Monitoring procedures not described by this Article III shall be implemented through the development of appropriate Watermaster policies and procedures as necessary. Any such policies and procedures adopted by resolution or minute action shall be reported to the Court in Watermaster's annual report.
- 3.1 Meters. This section sets forth Watermaster's rules and procedures for monitoring Groundwater Production by metering.
- (a) Reporting. Any person Producing in excess of ten (10) acre-feet per year shall install and maintain in good operating condition, at the cost of each such person except as provided in (b) below, such meters as Watermaster may deem necessary. Any such measuring device shall be subject to regular inspection and testing as the Watermaster may, from time to time, require, but at a minimum every two years. [Judgment ¶ 21.]
 - (b) Watermaster shall provide a meter testing service with a complete line of carefully calibrated test equipment. Any Producer may request an evaluation of any or all of its water meters at any time. Watermaster shall only pay for tests initiated by Watermaster and for all tests on meters owned by Watermaster
 - (c) Agricultural Pool Meters.
 - (i) Any assessment levied by Watermaster on the members of the Agricultural Pool to fund the installation of meters which is set forth in the Judgment, paragraph 21 regarding metering, shall be paid by the Appropriative Pool. Members of the Agricultural Pool, shall have no obligation to pay for or assume any duty with regard to the installation of meters. The obligation to install and maintain and replace meters on wells owned or operated by members of the Agricultural Pool shall be that of the Watermaster. [Peace Agreement § 5.6(a).]

- (ii) Agricultural Pool meters shall be installed within thirty-six (36) months of the Date of Execution. Watermaster shall be responsible for providing the meter, as well as paying the cost of any installation, maintenance, inspection, testing, calibrating and repairing. The members of the Agricultural Pool shall provide reasonable access during business hours to a location reasonably appropriate for installation, inspection, testing, calibrating and repairing of a meter. [Peace Agreement § 5.6(b).] However, the State of California reserves its right to continue to install, operate, maintain, inspect, test and repair its own meters on wells owned or operated by the State, unless it consents to installation by Watermaster in which case Watermaster assumes the cost. [Peace Agreement § 5.6(c).]
- (iii) Watermaster shall test every Agricultural Pool meter other than those owned by the State of California on an active well under Watermaster's jurisdiction at least once every two years.

3.2 Reporting by Producers. Each party, or Responsible Party Producing water from the Basin, shall file with Watermaster on forms provided therefore, a quarterly report of the total water Production of that Producer during the preceding calendar quarter, together with such additional information as Watermaster and/or the affected Pool Committee may require. The report shall be due on the 15th day of the month next succeeding the end of each respective calendar quarter, i.e., April 15, July 15, October 15 and January 15, except for minimal Producers, whose reports are due annually by July 15. [Judgment ¶ 47.] Watermaster shall annually estimate the quantity of water Produced by "minimal producers" by any reasonable means, including but not limited to the use of a water duty factor dependent upon the type of use and/or acreage.

ARTICLE IV ASSESSMENTS, REIMBURSEMENTS AND CREDITS

- 4.0 Scope. This Article sets forth Watermaster's rules and procedures regarding, assessments, reimbursements and credits.
- 4.1 Assessments. Watermaster shall levy assessments against the parties (other than Minimal Producers complying herewith) based upon Production during the preceding Production period. The assessment shall be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool. [Based on Judgment ¶ 53.] Assessments shall cover the cost of

Replenishment Water and the expenses of Watermaster administration which shall be categorized as either (a) general, or (b) special project expense.

- (a) General Administrative Watermaster Expense shall include office rental, general personnel expense, supplies and office equipment and related incidental expense and general overhead. [Judgment ¶ 54(a).]
- (b) Special Project Expense shall consist of special engineering, economic or other studies, litigation expense, meter testing or other major operating expenses. Each such project shall be assigned a task order number and shall be separately budgeted and accounted for. [Judgment ¶ 54(b).]
- (c) General Watermaster administrative expense shall be allocated and assessed against the respective pools based upon allocations made by the Watermaster, who shall make such allocations based upon generally-accepted cost accounting methods. [Judgment ¶ 54.]
- (d) Special project expense shall be allocated to a specific pool, or any portion thereof, only upon the basis of prior express assent and finding of benefit by the appropriate Pool Committee, or pursuant to written order of the Court. [Judgment ¶ 54.]
- (e) Minimal Producers shall be exempted from payment of assessments upon filing of the Production reports referred to in section 3.2 hereof and payment of an annual five dollar (\$5.00) administrative fee with the annual Production report. [Based on Judgment ¶ 52.] In addition, any Minimal Producer who is a member of the Appropriative Pool or the Non-Agricultural Pool and who has no quantified right to Produce water, shall pay a replenishment assessment upon the water that it Produces.
- (f) Notwithstanding the foregoing, Watermaster shall levy assessments for the 6,500 acre-feet per year as provided in section 5.1(g) of the Peace Agreement and the cost and allocation of this Supplemental Water shall be apportioned pro rata among the members of the Appropriative Pool under the Judgment according to the Producer's assigned share of Operating Safe Yield. [Peace Agreement § 5.1(g)(ii) (inclusion of word "Operating" to correct mis-phrasing of Peace Agreement as required by the context in the Peace Agreement).]

4.2 OBMP Assessments. Watermaster Assessments for implementation of the OBMP shall be considered a Watermaster Administrative Expense pursuant to paragraph 54 of the Judgment.

4.3 Assessment - Procedure. Assessments shall be levied and collected as follows:

- (a) Notice of Assessment. Watermaster shall give written notice of all applicable assessments to each party as provided in the Judgment not later than October 31 of each year [Judgment ¶ 55(a).];
- (b) Payment. Each assessment shall be payable on or before thirty (30) days after the date of invoice, and shall be the primary obligation of the party or successor owning the water Production facility at the time written notice of assessment is given, even though prior arrangement for payment by others has been made in writing and filed with Watermaster [Judgment ¶ 55(b).]; and
- (c) Delinquency. Any delinquent assessment shall incur a late charge of ten (10%) percent per annum (or such greater rate as shall equal the average current cost of borrowed funds to the Watermaster) from the due date thereof. Delinquent assessments and late charge may be collected in a show-cause proceeding instituted by the Watermaster, in which case the Court may allow Watermaster's reasonable cost of collection, including attorney's fees. [Judgment ¶ 55(c).]

4.4 Assessment Adjustments. The Watermaster shall make assessment adjustments in whole or in part for assessments to any Producer as a result of erroneous Production reports or otherwise as necessary for the reporting period as either a credit or debit in the next occurring assessment package unless otherwise decided by Watermaster.

- (a) All assessments will be based on the assumption that appropriate, timely filed and pending Applications will be approved by Watermaster. If any such Applications are not approved, a supplemental assessment may be levied.
- (b) Assessment adjustments may be necessary due to overstated Production, understated Production, or errors in the assessment package discovered after the assessments have been approved.
- (c) Watermaster may cause an investigation and report to be made concerning questionable reports of Production from the Basin.
- (d) Watermaster may seek to collect delinquent assessments and interest in a show-cause proceeding in which case the Court may allow Watermaster its reasonable costs of collection, including attorney's fees. [Judgment ¶ 55(c).] Alternately, Watermaster may bring suit in a court having jurisdiction against any Producer for the collection of any delinquent assessments and interest thereon. The court, in addition to any delinquent assessments, may award interest and reasonable costs including attorney's fees.

4.5 Credits Against OBMP Assessments and Reimbursements. Watermaster shall exercise reasonable discretion in making its determination regarding credits against OBMP Assessments and reimbursements, considering the importance of the project or program to the successful completion of the OBMP, the available alternative funding sources, and the professional engineering and design standards as may be applicable under the circumstances. However, Watermaster shall not approve such a request for reimbursement or credit against future OBMP Assessments under this section where the Producer or party to the Judgment was otherwise legally compelled to make the improvement. [Peace Agreement § 5.4 (d).]

- (a) Any party to the Judgment may make Application for credits against OBMP assessments or for reimbursement by filing a timely Application pursuant to the provisions of this section and Article X of these Rules and Regulations.
- (b) A party to the Judgment is eligible to be considered for credits or reimbursement for those documented capital, operations and maintenance expenses, including the cost of shutting down and/or relocating Groundwater Production facilities, that are reasonably incurred in the implementation of any project or program that carries out the purposes of the OBMP upon approval of the request by Watermaster. [Peace Agreement § 5.4(d).] The purposes of the OBMP shall be those goals set forth in the Phase I Report as implemented through the OBMP Implementation Plan in a manner consistent with the Peace Agreement including, but not limited to, the prevention of subsidence in the Basin. [July 13, 2000 Court Order.]
- (c) Any Producer that Watermaster compels to shut down and/or move a Groundwater Production facility that is in existence on August 1, 2000 shall have the right to receive a credit against future Watermaster assessments or reimbursement up to the reasonable cost of the replacement Groundwater Production facility, including the legal rate of interest on California Judgments. [Peace Agreement § 5.4 (e).] In its sole discretion, Watermaster may determine to issue full reimbursement upon approval of the Application or to issue a credit against future Watermaster assessments. However, in the event Watermaster elects to provide a credit in lieu of reimbursement, it must have fully compensated the Producer for the reasonable cost of the replacement Groundwater Production facility through any combination of credits and reimbursements within five years from the date of the Application, unless the Producer consents in writing to a longer period. Note: this section is subject to a rule of construction. See section 1.2(h) above.
- (d) An Application to Watermaster for reimbursement or a credit against OBMP Assessments shall be considered timely, if and only if, the Application has been approved by Watermaster in advance of construction or the offer by a party to dedicate

the facility to carry out the purposes of the OBMP as described in (b) above. [Based on Peace Agreement § 5.4(d).]

- 4.6 Agricultural Pool Assessments and Expenses. During the term of the Peace Agreement, all Assessments and expenses of the Agricultural Pool including those of the Agricultural Pool Committee shall be paid by the Appropriative Pool. This includes but is not limited to OBMP Assessments, assessments pursuant to paragraphs 20, 21, 22, 30, 42, 51, 53, 54 (both general administrative expenses and special project expenses), 55, and Exhibit F (Agricultural Pool Pooling Plan) of the Judgment except however in the event the total Agricultural Pool Production exceeds 414,000 acre-feet in any five consecutive year period as defined in the Judgment, the Agricultural Pool shall be responsible for its Replenishment Obligation pursuant to paragraph 45 of the Judgment. [Peace Agreement § 5.4 (a).]
- 4.7 Replenishment Assessments. Watermaster shall levy and collect assessments in each year, pursuant to the respective pooling plans, in the amount of the Replenishment Obligation (including any Desalter Replenishment) for any pool during the preceding year. [Based on Judgment ¶ 51.]
- 4.8 Desalter Replenishment Assessments and Credits. The price of Desalted water to a purchaser of Desalted water does not include the cost of Replenishment. The source of Replenishment shall be those provided in Article VII herein and Article VII of the Peace Agreement. However, a purchaser of Desalted water may elect to obtain a reduced Assessment levied by Watermaster by dedicating by Transfer, or assignment, some or all of its Production rights to Watermaster for the purpose of satisfying Desalter Replenishment. The amount of the credit granted by Watermaster shall be equal to the value of the cost of Replenishment Water then available from the MWD as interruptible, untreated water or the then prevailing value of the avoided Replenishment Obligation, whichever is less. For purposes of determining Replenishment assessments, water Produced by the Desalters shall be considered Production by the Appropriative Pool.
- 4.9 Consistency with Peace Agreement. The procurement of Replenishment Water and the levy of Assessments shall be consistent with the provisions of section 5.4(a) of the Peace Agreement.
- 4.10 Salt Credits. Salt Credits shall be held in trust for the benefit of the individual members of the Appropriative Pool according to section 5.5 of the Peace Agreement. Watermaster shall assign each member's proportionate share of Salt Credits to the member of the Appropriative Pool upon request by the member. This rule establishes no basis for the allocation of Salt Credits. Such procedures shall be developed in the Appropriative Pool Rules at the time Salt Credits become available for assignment.

4.11 OBMP Committee. Watermaster shall establish a subcommittee (OBMP Committee) for the purpose of coordinating fund raising efforts in furtherance of the OBMP.

- (a) The subcommittee shall hold a regularly scheduled meeting a minimum of once every quarter.
- (b) Prior to each subcommittee meeting, Watermaster shall prepare a summary of the funds, loans or grants secured for the purpose of implementing the OBMP over the past three months and distribute any information it may possess regarding the availability of other potential funds, loans or grants.

ARTICLE V PHYSICAL SOLUTION

5.0 Scope. This Article generally sets forth the standards for Watermaster implementation of the Physical Solution established by the Judgment, including the application of these standards to Watermaster conduct and decisions under the Judgment, these Rules and Regulations and the OBMP.

5.1 Physical Solution. It is essential that this Physical Solution provide maximum flexibility and adaptability to use existing future, technological, social, institutional and economic options to maximize beneficial use of the waters of the Chino Basin. [Judgment ¶ 40.]

5.2 Watermaster Control. Watermaster, with the advice of the Advisory and Pool Committees, is granted discretionary powers in order to develop its OBMP. [Based on Judgment ¶ 41.]

5.3 Basin Management Parameters. Watermaster shall consider the following parameters in implementing the Physical Solution under Articles VI - X of these Rules and Regulations:

- (a) Pumping Patterns. Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin's waters that no Producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized Recharge of Replenishment Water, insofar as such result may be practically avoided. [Judgment Exhibit "I".]
- (b) Water Quality. Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster. [Judgment Exhibit "I".]

- (c) Economic Considerations. Financial feasibility, economic impact and the cost of optimum use of the Basin's resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters. [Judgment Exhibit "F".]

**ARTICLE VI
SAFE YIELD AND OPERATING SAFE YIELD**

- 6.0 Scope. This Article sets forth the rules and procedures that are applicable to Watermaster's regulation, control, and management of Safe Yield and Operating Safe Yield.
- 6.1 Annual Production Right. The Annual Production Right shall be calculated by Watermaster pursuant to the Judgment and the Peace Agreement.
- 6.2 New Yield. The Judgment provides that Safe Yield may need to be periodically adjusted based on more accurate and updated data and based on evidence of increased capture of native water and increased return flow from use of Replenishment or Stored Water. Safe Yield can only be re-determined periodically when long-term data or evidence is developed in support thereof. In order to encourage maximization of Basin Water under the Physical Solution, New Yield shall be accounted for by Watermaster in interim periods between re-determinations of Safe Yield.
 - (a) Proven increases in yield in quantities greater than the historical level of contribution from certain Recharge sources may result from changed conditions including, but not limited to, the increased capture of rising water, increased capture of available storm flow, and other management activities. These increases are considered New Yield.
 - (b) To the extent the New Yield arises from conditions, programs or projects implemented and operational after July 1, 2000, it is available for allocation by Watermaster as a component of the Annual Production Right for each member of the Appropriative Pool.
 - (c) As part of the documentation for the assessments and annual report for each year, Watermaster will provide a summary and analysis of the historical recharge and whether there are changed conditions that have resulted in a quantity of New Yield.

- (d) Pursuant to the Peace Agreement, any New Yield shall first be assigned to offsetting Desalter Replenishment Obligations in the immediately following year and as reasonably required to satisfy expected future Replenishment Obligations arising from the Desalter. If there is water in the Watermaster Desalter Replenishment Account to satisfy the Desalter Replenishment Obligation for the year, the New Yield shall be made available to the Appropriative Pool to satisfy a Replenishment Obligation consistent with section 6.3(c) herein.
- (e) New Yield is expected to result from a variety of conditions, including but not limited to enhanced Basin management, increased stormwater Recharge, induced Recharge from operation of the Desalters, injection, and changes in land use patterns. Watermaster has established an initial baseline quantity of stormflow Recharged in the Basin under historical conditions in the amount of 5,600 acre-feet per year. Any party to the Judgment may request Watermaster to re-examine this initial estimate of the baseline quantity and to adjust the quantity in accordance with best available technology and substantial evidence.

6.3 Accounting of Unallocated Agricultural Portion of Safe Yield.

- (a) In each year, the 82,800 acre-feet being that portion of the Safe Yield made available to the Agricultural Pool under the Judgment, shall be made available:
 - (i) To the Agricultural Pool to satisfy all demands for overlying Agricultural Pool lands;
 - (ii) To land use conversions that were completed prior to October 1, 2000;
 - (iii) To land use conversions that have been completed after October 1, 2000; and
 - (iv) To the Early Transfer of 32,800 acre-feet from the Agricultural Pool to the Appropriative Pool in accordance with their pro-rata assigned share of Operating Safe Yield.
- (b) In the event actual Production by the Agricultural Pool exceeds 414,000 acre-feet in any five years, the Agricultural Pool shall procure sufficient quantities of Replenishment Water to satisfy over-Production obligations, whatever they may be.
- (c) In the event actual Production from the Agricultural Pool does not exceed 82,800 acre-feet in any one year or 414,000 acre-feet in any five years but total Production from all the uses set forth in section 6.3(a) above, exceeds 82,800 acre-feet in any year, the members of the Appropriative Pool shall procure sufficient quantities of

Replenishment Water to satisfy over-Production obligations, whatever they may be. The cost of the Replenishment Water, if any, shall be borne by the Appropriators as follows:

- (i) For Fiscal Years 2001-2002 through Fiscal Year 2005-2006, the cost of Replenishment Water shall be borne by Appropriators in accordance with their proportionate assigned share of Operating Safe Yield. Thereafter, the Appropriative Pool shall reconsider its method for apportioning the cost of Replenishment Water, if any; and
- (ii) Notwithstanding 6.3(c)(i) *if* the sum of the actual Production from the Agricultural Pool, plus the 32,800 acre-feet from the Early Transfer, plus the land use conversions, exceeds the sum of 82,800 acre-feet plus any New Yield not dedicated to Desalter Replenishment pursuant to section 7.4(b) herein by more than 10,000 acre-feet in any Fiscal Year after 2003-2004, the Appropriative Pool shall establish the basis for apportioning the cost of Replenishment Water, if any. Therefore, the Appropriative Pool's reconsideration of the method of allocating the cost of the Replenishment Water attributable to this section may occur earlier than 2006-2007. Watermaster's allocation of Replenishment Obligations pursuant to Section 6.3(c)(i) shall not prejudice a member of the Appropriative Pool from requesting another method of allocation under the last sentence of 6.3(c)(i) above or this section 6.3(c)(ii) on the basis of benefits received including consideration of any necessary amendments of the Peace Agreement as may be required.

6.4 Conversion Claims. The following procedures may be utilized by any Appropriator:

- (a) Record of Unconverted Agricultural Acreage Watermaster shall maintain on an ongoing basis a record, with appropriate related maps, of all agricultural acreage within the Chino Basin subject to being converted to appropriative water use pursuant to the provisions of this subparagraph.
- (b) Record of Water Service Conversion. Any Appropriator who undertakes to permanently provide water service to any portion of a legal parcel subject to conversion shall report such change to Watermaster. Watermaster shall ensure that when a partial conversion occurs, that the water use on the acreage is properly metered. For all or any portion of the legal parcel that is proposed for conversion, Watermaster shall thereupon verify such change in water service and shall maintain a record and account for each Appropriator of the total acreage involved. Should, at any time, all or any portion of the converted acreage return to agricultural overlying

use, Watermaster shall return such acreage that returns to agricultural use to unconverted status and correspondingly reduce or eliminate any allocation accorded to the Appropriator involved.

- 6.5 Recalculation of Safe Yield. The Safe Yield shall be recalculated in year 2010/11 based upon data from the ten-year period 2000/01 to 2009/10.

ARTICLE VII RECHARGE

- 7.0 Scope. This Article sets forth the standards that are applicable to Watermaster's review of Recharge actions by all persons that may be subject to the Judgment as well as Watermaster's efforts to administer, direct, and arrange for Recharge in accordance with the Judgment.

7.1 In General.

- (a) Watermaster shall administer, direct and arrange for the Recharge of all water in a manner pursuant to the Judgment, the Peace Agreement and the OBMP; and in a manner that causes no Material Physical Injury to any party to the Judgment or the Chino Basin. Nothing herein shall be construed as committing a Party to provide Supplemental Water upon terms and conditions that are not deemed acceptable to that party. This means that no party to the Judgment shall be individually and independently obligated to purchase or acquire Supplemental Water on behalf of another party to the Judgment. [Peace Agreement § 5.1(e).] Applications to engage in Recharge activities shall be processed in accordance with the provisions of Article X using the forms provided by Watermaster attached hereto as Appendix 1.

- (b) Watermaster shall exercise its Best Efforts to:
 - (i) Protect and enhance the Safe Yield of the Chino Basin through Replenishment and Recharge [Peace Agreement § 5.1(e).];
 - (ii) Ensure there is sufficient Recharge capacity for Recharge water to meet the goals of the OBMP and the future water supply needs within the Chino Basin [Peace Agreement § 5.1(e).];
 - (iii) Evaluate the long term Hydrologic Balance within all areas and subareas of the Chino Basin;
 - (iv) Make its initial report on the then existing state of Hydrologic Balance by July 1, 2003, including any recommendations on Recharge actions which may be necessary under the OBMP. Thereafter Watermaster shall make written reports on the long term Hydrologic Balance in the Chino Basin every two years;
 - (v) Use and consider the information provided in the reports under (iv) above, when modifying or updating the Recharge Master Plan and in implementing the OBMP;
 - (vi) Evaluate the potential or threat for any Material Physical Injury to any party to the Judgment or the Chino Basin, including, but not limited to, any Material Physical Injury that may result from any Transfer of water in storage or water rights which is proposed in place of physical Recharge of water to Chino Basin in accordance with the provisions of section 5.3 of the Peace Agreement [Peace Agreement § 5.1(e).];

- (vii) Cooperate with owners of existing Recharge facilities to expand/improve/preserve Recharge facilities identified in the Recharge Master Plan; arrange for the construction of the works and facilities necessary to implement the quantities of Recharge identified in the OBMP Implementation Plan [Peace Agreement § 5.1(e)(ix)] and cooperate with appropriate entities to construct and operate the new Recharge facilities that are identified in the Recharge Master Plan;
 - (viii) Ensure that its Recharge efforts under the Recharge Master Plan are consistent with the Judgment, and the Peace Agreement;
 - (ix) Establish and periodically update criteria for the use of water from different sources for Replenishment purposes [Peace Agreement § 5.1(e)(v).];
 - (x) Ensure a proper accounting of all sources of Recharge to the Chino Basin [Peace Agreement § 5.1(e)(vi).];
 - (xi) Recharge the Chino Basin with water in any area where Groundwater levels have declined to such an extent that there is an imminent threat of Material Physical Injury to any party to the Judgment or the Basin [Peace Agreement § 5.1(e)(vii).];
 - (xii) Maintain long-term Hydrologic Balance between total Recharge and discharge within all areas and sub-areas [Peace Agreement § 5.1(e)(viii).]; and
 - (xiii) Use water of the lowest cost and the highest quality, giving preference as far as possible to the augmentation and the Recharge of native storm water. [Peace Agreement § 5.1(f).]
- (c) Table 1 to the OBMP Implementation Plan shall serve as the Watermaster Recharge Master Plan until amended by Watermaster. Watermaster will evaluate whether any modifications to the Recharge Master Plan shall be required on or before July 1, 2001. Thereafter, Watermaster will update the Recharge Master Plan, in a manner consistent with the Peace Agreement, a minimum of every five years thereafter or earlier if warranted because of changed conditions. The fact that the first of the Watermaster reports under section 7.1(b)(iv) will not be made available until July 1, 2003 shall not alter Watermaster's obligations to prepare and evaluate the Recharge Master Plan as provided in this section 7.1(c).

- (d) Watermaster shall not own Recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. [Peace Agreement § 5.1(h).]
- (e) Watermaster may own and hold water rights in trust for the benefit of the parties to the Judgment. Subject to this exception, Watermaster shall not own land or interests in real property. [Peace Agreement § 5.1(h).] Watermaster shall obtain Court approval prior to acquiring any water rights in trust for the benefit of the parties to the Judgment. In addition, Watermaster shall conform all existing permits to ensure that title is held in trust for the benefit of the parties to the Judgment.
- (f) Watermaster shall arrange, facilitate and provide for Recharge by entering into contracts with appropriate persons, which may provide facilities and operations for physical Recharge of water as required by the Judgment and the Peace Agreement, or pursuant to the OBMP. Any such contracts shall include appropriate terms and conditions, including terms for the location and payment of costs necessary for the operation and maintenance of facilities, if any. [Peace Agreement § 5.1(h).]
- (g) Watermaster shall provide an annual accounting of the amount of Recharge and the location of the specific types of Recharge. [Peace Agreement § 5.1(j).]

7.2 Recharge of Supplemental Water. All Recharge of the Chino Basin with Supplemental Water shall be subject to Watermaster approval obtained by Application made to Watermaster in accordance with provisions of Article X. [Peace Agreement § 5.1 (a).] In reviewing any such Application, Watermaster shall comply with the following.

- (a) Watermaster will ensure that any person may make Application to Watermaster to Recharge the Chino Basin with Supplemental Water pursuant to Article X, including the exercise of the right to offer to sell In-Lieu Recharge Water to Watermaster as provided in the Judgment and the Peace Agreement in a manner that is consistent with the OBMP and the law. [Peace Agreement § 5.1 (b).]
- (b) Watermaster shall not approve an Application by any party to the Judgment under Article X if it is inconsistent with the terms of the Peace Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. [Peace Agreement § 5.1 (b).]
- (c) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Recharge of Supplemental Water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Recharge of Supplemental Water must be denied. [Peace Agreement § 5.1 (b).]

7.3 Sources of Replenishment Water. Supplemental Water may be obtained by Watermaster from any available source. Watermaster shall, however, seek to obtain the best available quality of Supplemental Water at the most reasonable cost for recharge in the Basin. It is anticipated that Supplemental Water for Replenishment of Chino Basin may be available at different rates to the various pools to meet their Replenishment Obligations. If such is the case, each pool will be assessed only that amount necessary for the cost of Replenishment Water to that pool, at the rate available to the pool, to meet its Replenishment Obligation. In this connection, available resources may include, but are not limited to:

- (a) Maximum beneficial use of Recycled Water, which shall be given a high priority by Watermaster [Judgment ¶ 49(a).];
- (b) State Project Water subject to applicable service provisions of the State's water service contracts [Judgment ¶ 49(b).];
- (c) Local Imported Water through facilities and methods for importation of surface and Groundwater supplies from adjacent basins and watersheds [Judgment ¶ 49(c).]; and
- (d) Available supplies of Metropolitan Water District water from its Colorado River Aqueduct. [Judgment ¶ 49(d).]

7.4 Sources of Desalter Replenishment Water. Notwithstanding the provisions of section 7.3 above, replenishment for the Desalters shall be provided from the following sources in the following order of priority [Peace Agreement § 7.5.]:

- (a) Dedications by purchasers of Desalted water through Transfer or assignment, some or all of their Production rights to Watermaster for the purpose of satisfying Desalter replenishment. Such dedications shall result in a reduction in replenishment assessments as provided in section 4.8 of these Rules and Regulations.
- (b) Watermaster Desalter replenishment account composed of 25,000 acre-feet of water abandoned by Kaiser Ventures pursuant to the "Salt Offset Agreement" dated October 21, 1993, between Kaiser Ventures and the RWQCB, and other water previously dedicated by the Appropriative Pool.
- (c) New Yield that may be made available to Watermaster through a combination of management programs, actions or facilities. On an annual basis, and beginning on July 1, 2003, Watermaster will credit the Desalter's replenishment account with any New Yield it determines has been developed after June 1, 2000;
- (d) Safe Yield of the Basin; and

- (e) Additional Replenishment Water purchased by Watermaster the costs of which shall be levied as an assessment by Watermaster.

7.5 Method of Replenishment. Watermaster may accomplish Replenishment by any reasonable method, including spreading and percolation, injection of water into existing or new facilities, in-lieu procedures and acquisition of unproduced water from members of the Non-Agricultural and Appropriative Pools. [Judgment ¶ 50.]

7.6 Accumulations. In order to minimize fluctuations in assessment and to give Watermaster flexibility in the purchase and spreading of Replenishment Water, Watermaster may make reasonable accumulations of Replenishment Water assessment proceeds. Interest earned on such retained funds shall be added to the account of the pool from which the funds were collected and shall be applied only to the purchase of Replenishment Water. [Judgment ¶ 56.]

7.7 In-Lieu and Other Negotiated Procedures. To the extent good management practices dictate that recharge of the Basin be accomplished by taking surface supplies of Supplemental Water in lieu of Groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, the following in-lieu procedures or other additional procedures as may be negotiated by Watermaster and approved by the Watermaster Advisory Committee shall prevail [Judgment Exhibit "H" ¶ 11.]:

- (a) Designation of In-Lieu Areas. In-lieu areas may be designated by order of Watermaster upon recommendation or approval of the Watermaster Advisory Committee. Watermaster has previously designated the entire Chino Basin as an in-lieu area. In-lieu areas may be enlarged, reduced or eliminated by subsequent order; provided, however, that designation of an in-lieu area shall be for a minimum fixed term sufficient to justify necessary capital investment. However, should in-lieu Area No.1, which has been established by the Court, be reduced or eliminated, it shall require prior order of the Court.

- (b) Method of Operation. Any member of the Appropriative Pool Producing water within a designated in-lieu area who is willing to abstain for any reason from Producing any portion of its share of Operating Safe Yield in any year, may offer such unpumped water to Watermaster on a form to be provided therefor. In such event, Watermaster shall purchase said water in place, in lieu of spreading Replenishment Water, which may be otherwise required to make up for over Production. The purchase price for in-lieu water shall be the lesser of:

- (i) Watermaster's current cost of Replenishment Water, plus the cost of spreading; or
- (ii) The cost of supplemental surface supplies to the Appropriator, less
 - a) said Appropriator's average cost of Groundwater Production, and
 - b) the applicable Production assessment where the water is Produced.

ARTICLE VIII STORAGE

8.0 Scope. This Article sets forth Watermaster's obligations and responsibilities regarding the management, regulation and control of storage within the Basin.

8.1 In General.

- (a) Watermaster Control. A substantial amount of available Groundwater storage capacity exists in the Basin that is not used for storage or regulation of Basin Waters. It is essential that the use of storage capacity of the Basin be undertaken only under Watermaster control and regulation so as to protect the integrity of the Basin. Watermaster will exercise regulation and control of storage primarily through the execution of Groundwater Storage Agreements. [Judgment ¶ 11.]
- (b) Categories of Groundwater Storage Agreements. There are different categories of storage and different types of Groundwater Storage agreements. Only those Groundwater Storage agreements defined as "Qualifying Storage agreements" require *new* Watermaster approval. The agreements identified in section 8.1(f)(iii) herein do not require new Watermaster approval. Qualifying Storage agreements will be processed by Watermaster in accordance with the forms provided by Watermaster and attached hereto as Appendix 1.
- (c) Court Notification and Approval. Before it is effective, any Storage and Recovery Agreement entered into pursuant to a Storage and Recovery Program shall first receive Court Approval. With respect to all other Groundwater Storage Agreements, Watermaster shall notify the Court after approval.
- (d) Relationship Between Recapture and Storage. Recapture of water held in a storage account will generally be approved by Watermaster as a component of and coincident

with a Groundwater Storage Agreement for Qualifying Storage. However, an Applicant for Qualifying Storage may request, and Watermaster may approve, a Groundwater Storage Agreement where the plan for recovery is not yet known. In such cases, the Applicant may request Watermaster approval of the Qualifying Storage only and subsequently submit and process an independent Application for Recapture under the provisions of Article X.

- (e) Storage of Safe Yield as Carry-Over Water. Any member of the Appropriative Pool or member of the Non-Agricultural Pool who Produces less than its assigned share of Operating Safe Yield or Safe Yield, respectively, may carry such unexercised right forward for exercise in subsequent years. Watermaster shall be required to keep an accounting of Carry-Over Water in connection with said Carry-Over Rights. The first water Produced in any subsequent year, shall be deemed to be in exercise of that Carry-Over Right. If the aggregate remaining Carry-Over Water available to any member of the Appropriative Pool, or member of the Non-Agricultural Pool with Safe Yield, in a given year exceeds its assigned share of Operating Safe Yield after its demands are met, such Producer shall, as a condition of preserving such Excess Carry-Over Water execute a Local Storage Agreement with Watermaster. A member of the Appropriative Pool shall have the option to pay the gross assessment applicable to said Carry-Over Right in the year in which it occurred. [Judgment Exhibit “G,” and Exhibit “H” ¶ 12.]

- (f) Storage of Supplemental Water. The rules and procedures for the storage of Supplemental Water are set forth as follows.
 - (i) Supplemental Water. Each party, its officers, agents, employees, successors, and assigns, has been enjoined and restrained from storing Supplemental Water in Chino Basin for withdrawal, or causing withdrawal of water stored, except pursuant to the terms of a Groundwater Storage Agreement with Watermaster. Any Supplemental Water recharged by any person within Chino Basin, except pursuant to these Rules and Regulations and a Groundwater Storage Agreement, is deemed abandoned and shall not be considered Stored Water. [Judgment ¶ 14.]

 - (ii) Application for Storage of Supplemental Water. Watermaster will ensure that any person, including but not limited to the State of California and the Department of Water Resources may make Application to Watermaster to store and Recover water from the Chino Basin as provided herein in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an Application to store and Recover water if it is inconsistent with the terms of the Peace Agreement or will cause any Material Physical Injury to any

party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the storage and Recovery of water shall be reasonably and fully mitigated as a condition of approval. In the event the Material Physical Injury cannot be mitigated, the request for storage and Recovery must be denied. [Peace Agreement § 5.2 (a) (iii).] Applications for the storage of Supplemental Water shall be processed in accordance with the provisions of Article X.

- (iii) Pre-existing Groundwater Storage Agreements. In accordance with the Peace Agreement, pre-existing Groundwater Storage Agreements are revived and extended as follows:
 - a) Any Local Storage Agreement that would have expired pursuant to its terms on or before July 1, 2000 and which is determined to have water in storage account is revived and extended by these Rules and Regulations until July 1, 2005 subject to the limitations set forth in these Rules and Regulations; and
 - b) In addition, a Producer that has a Local Storage Agreement for Supplemental Water that will expire after July 1, 2000 pursuant to its terms and that has Supplemental Water in a storage account as of its original date of termination, shall be revived and extended by these Rules and Regulations to July 1, 2005. The extension shall only be valid for that quantity of Supplemental Water that is then in the storage account at the end of the term set forth in the Local Storage Agreement.

- (iv) Quantification of Supplemental Water Held in Local Storage on July 1, 2000.
 - a) Quantification of Groundwater Held in Local Storage. Upon the request of any Producer, Watermaster shall quantify the amount of Groundwater held in Local Storage by that Producer. Groundwater held in Local Storage by a party to the Judgment, the majority of whose stock is owned by another party to the Judgment, may be treated as the Stored Water of the majority shareholder for purposes of quantification of the amount of such Groundwater as Supplemental Water under this section 8.1(f)(iv) only.
 - b) Procedure for Quantification. On or before May 1, 2001, any party may submit a request to Watermaster for the quantification of water held in Local Storage as Supplemental Water. Watermaster shall evaluate pursuant to d) below all written requests filed by any

Producer and shall make its determination regarding each request on or before May 31, 2001. Watermaster shall provide a minimum of thirty (30) days advance written notice to all parties of the date to submit requests. Watermaster shall consider all written requests concurrently.

- c) Limitations. Watermaster's quantification of Groundwater in Local Storage pursuant to a Local Storage Agreement as of July 1, 2000 as Supplemental Water and Supplemental Water held in Local Storage as provided in section 8.1(f)(iii) above shall not be subject to the 50,000 acre-foot limitation on Supplemental Water held in Local Storage set forth in the Peace Agreement, section 5.2(b)(iv)(1) and these Rules and Regulations. However, all other Supplemental Water held in a Local Storage Account not quantified as such by Watermaster by May 31, 2001 shall be conclusively presumed to be Basin Water which shall also be subject to a Local Storage Agreement. While a party that obtains a quantification of Supplemental Water pursuant to this section is exempt from the 50,000 acre-foot limitation on the cumulative quantity of Supplemental Water that may be held in Local Storage, the exemption is limited. First, a party that obtains a Watermaster determination that quantifies some quantity of Groundwater as Supplemental Water pursuant to this Section shall not be entitled to replace the Supplemental Water Produced from Local Storage with new Supplemental Water without regard to the 50,000 acre-foot limitation on Local Storage of Supplemental Water. This means that the 50,000 acre-foot limitation applies to all Supplemental Water that is physically Recharged and stored in the Basin under a Local Storage Agreement after July 1, 2000. A Producer shall not have the right to replace the Groundwater quantified as Supplemental Water under this Section with other Supplemental Water following its initial Transfer or Recapture from Local Storage. Second, the recovery of the Supplemental Water stored under this provision by any Producer shall not cause Material Physical Injury to any party to the Judgment or the Basin.
- d) Calculation. For users of Supplemental Water, the quantity of Supplemental Water held by a Producer in Local Storage as of July 1, 2000 is deemed to be the lesser of:

- 1) the quantity of water held by the Producer in Local Storage ;
or
- 2) the quantity of Supplemental Water used by the Producer
prior to July 1, 2000.

(g) Rules and Procedures in General

- (i) Any person desiring to store Supplemental Water in the Basin shall make appropriate Application therefor with the Watermaster pursuant to the provisions of this Article and Article X. Supplemental Water stored or Recharged in the Basin, except pursuant to a Groundwater Storage Agreement with Watermaster, shall be deemed abandoned and not classified as Stored Water. [Judgment ¶ 14.]
- (ii) Guidelines and Criteria. Any person, whether a party to the Judgment or not, may make reasonable beneficial use of the available groundwater storage capacity of Chino Basin for storage of Water pursuant to written agreement with the Watermaster as provided herein. [Judgment ¶12.]
- (iii) In the allocation of storage capacity, the needs and requirements of lands overlying Chino Basin and the owners of rights in the Safe Yield or Operating Safe Yield of the Basin shall have priority and preference over storage for export. [Judgment ¶12.]
- (iv) It is an objective in management of the Basin's waters that no Producer shall be deprived of access to the Basin's waters by reason of unreasonable pumping patterns, nor by regional or localized Recharge of Replenishment Water, insofar as such result may be practically avoided. [Judgment Exhibit "I" ¶ 1(a).]
- (v) Maintenance and improvement of water quality shall be given prime consideration. [Judgment Exhibit "I" ¶ 1(b).]
- (vi) Financial feasibility, economic impact and the cost and optimum utilization of the Basin's resources and the physical facilities of the parties to the Judgment shall be considered equal in importance to water quantity and quality parameters. [Judgment Exhibit "I" ¶ 1(c).]

(h) Contents of Groundwater Storage Agreements. Each Groundwater Storage Agreement shall include but not be limited to the following components [Judgment Exhibit "I" ¶ 3.]:

- (i) The quantities and the term of the storage right, which shall specifically exclude credit for any return flows;
- (ii) A statement of the priorities of the storage right as against overlying, Safe Yield uses, and other storage rights;

- (iii) The delivery rates, together with schedules and procedures for spreading, injection or in-lieu deliveries of Supplemental Water for direct use;
 - (iv) The calculation of storage water losses and annual accounting for water in storage; and
 - (v) The establishment and administration of withdrawal schedules, locations and methods.
- (i) Accounting. Watermaster shall calculate additions, extractions and losses of all Stored Water in Chino Basin, and any losses of water supplies or Safe Yield of Chino Basin resulting from such Stored Water, and keep and maintain for public record, an annual accounting thereof. [Judgment ¶ 29.]
 - (j) No Material Physical Injury. Watermaster will ensure that any party to the Judgment may Recapture water in a manner consistent with the Peace Agreement, the OBMP, the Judgment and these Rules and Regulations. Watermaster shall not approve a Recapture plan if it is inconsistent with the terms of Peace Agreement or will cause Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Recapture of water by any person shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Recapture must be denied.

8.2 Local Storage: Special Considerations. Under a Local Storage Agreement with Watermaster, every party to the Judgment shall be permitted to store its Excess Carry-Over Water and Supplemental Water in the Chino Basin according to the following provisions:

- (a) Until July 1, 2005, Watermaster shall ensure that: (a) the quantity of water actually held in local storage under a Local Storage Agreement with Watermaster is confirmed and protected and (b) each party to the Judgment shall have the right to store its Excess Carry-Over Water. Thereafter, a party to the Judgment may continue to Produce the actual quantity of Excess Carry-Over Water and Supplemental Water held in its storage account, subject only to the loss provisions set forth herein. All Producers with a Local Storage Agreement for either Excess Carry-Over Water or Supplemental water shall be deemed to have received an extension of the applicable term in each of their respective Local Storage Agreements as provided in section 8.1(f)(iii)(a-b) above. However, such extensions shall be subject to the limitations set forth herein; e.g. the requirement that Local Storage does not cause Material Physical Injury, and the 50,000 acre-foot limitation on the cumulative total of Supplemental

Water that may be placed in Local Storage after July 1, 2000. However, a Producer that obtains a determination regarding a request for classification of some quantity of Groundwater as Supplemental Water pursuant to section 8.1 above, shall also be deemed to have received an extension of their Local Storage Agreement until July 1, 2005, but only for that Supplemental Water actually stored in the Basin as of July 1, 2000. A Producer shall not have the right to replace the Groundwater classified as Supplemental Water pursuant to section 8.1 with other Supplemental Water following its initial Production from Local Storage without regard to the 50,000 acre-foot limitation.

- (b) Until July 1, 2005 or for such additional period as Watermaster, in its discretion, may establish, any party to the Judgment may make Application to Watermaster for a Local Storage Agreement pursuant to the provisions of this Article and Article X, whereby it may store Supplemental Water in the Chino Basin. [Peace Agreement § 5.2(b)(ii).]
- (c) In accordance with Article X, Watermaster shall provide written notice to all interested parties of the proposed Local Storage Agreement prior to approving the agreement.
- (d) Watermaster shall approve the storage of Supplemental Water under a Local Storage Agreement so long as: (1) the total quantity of Supplemental Water authorized to be held in Local Storage under all then-existing Local Storage Agreements, other than amounts classified as Supplemental Water under the procedure set forth in section 8.1 above, for all parties to the Judgment does not exceed the cumulative total of 50,000 acre-feet; (2) the party to the Judgment making the request provides their own Recharge facilities for the purpose of placing the Supplemental Water into Local Storage; (3) the agreement will not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed agreement with conditions that mitigate any threatened or potential Material Physical Injury. [Peace Agreement § 5.2(b)(iv).]
- (e) There shall be a rebuttable presumption that the Local Storage Agreement for Supplemental Water does not result in Material Physical Injury to a party to the Judgment or the Basin. [Peace Agreement § 5.2(b)(v).]
- (f) In the event more than one party to the Judgment submits a request for an agreement to store Supplemental Water pursuant to a Local Storage Agreement, Watermaster shall give priority to the first party to file a bona fide written request which shall include the name of the party to the Judgment, the source, quantity and quality of the Supplemental Water, an identification of the party to the Judgment's access to or ownership of the Recharge facilities, the duration of the Local Storage and any other

information Watermaster shall reasonably request. Watermaster shall not grant any person the right to store more than the then-existing amount of available Local Storage. The amount of Local Storage available for the storage of Supplemental Water shall be determined by subtracting the previously approved and allocated quantity of storage capacity for Supplemental Water from the cumulative maximum of 50,000 acre-feet. [Peace Agreement § 5.2(b)(vii).] This means Watermaster shall not approve requests for the storage of Supplemental Water in excess of the cumulative total of 50,000 acre-feet limitation. Priorities among the parties to the Judgment shall be on the basis that the completed Applications filed first in time under the provisions of Article X shall have a priority in right up to the amount of the quantity approved by Watermaster.

- (g) Any Producer that does not have a Local Storage Agreement extended by the terms of section 8.1 above, may file an Application with Watermaster for a Local Storage Agreement to place Excess Carry-Over Water in a Local Storage account. The Excess Carry-Over Water may be held in Local Storage without regard to the 50,000 acre-foot cumulative limitation on Supplemental Water until July 1, 2005. Thereafter, or at such later date that Watermaster may, in its discretion, establish, Producers shall obtain a Local Storage Agreement with Watermaster to store Excess Carry-Water in a Local Storage Account.
- (h) After July 1, 2005, Watermaster shall have discretion to place reasonable limits on the further accrual of Excess Carry-Over Water and Supplemental Water in Local Storage. However, Watermaster shall not limit the accrual of Excess Carry-Over Water for Fontana Union Mutual Water Company and Cucamonga County Water District when accruing Excess Carry-Over Water in Local Storage pursuant to the *Settlement Agreement Among Fontana Union Water Company, Kaiser Steel Resources Inc., San Gabriel Valley Water Company and Cucamonga County Water Districts* dated February 7, 1992, to a quantity less than 25,000 acre-feet for the term of the Peace Agreement. [Peace Agreement § 5.2(b)(x).]
- (i) Watermaster shall evaluate the need for limits on water held in Local Storage to determine whether the accrual of additional Local Storage by the parties to the Judgment should be conditioned, curtailed or prohibited if it is necessary to provide priority for the use of storage capacity for those Storage and Recovery Programs that provide broad mutual benefits to the parties to the Judgment as provided in this paragraph and section 5.2(c) of the Peace Agreement. [Peace Agreement § 5.2(b)(xi).]
- (j) Watermaster shall set the annual rate of loss from Local Storage for parties to the Judgment at zero until October 1, 2005. Thereafter the rate of loss from Local Storage for parties to the Judgment will be 2% until recalculated based upon the best available

scientific information. Watermaster may, at its sole discretion, set the rate of loss from storage for parties who are not parties to the Judgment. Losses shall be deducted annually from the storage accounts. [Peace Agreement § 5.2(b)(xii).]

- (k) Watermaster shall allow water held in storage to be Transferred pursuant to the provisions of section 5.3 of the Peace Agreement as provided in Article X. Storage capacity is not Transferable. [Peace Agreement § 5.2(b)(xiii).]
- (l) Monetary payment shall not be accepted as a form of mitigation for Material Physical Injury where the injury is not confined to a specific party or parties. Where the Material Physical Injury is confined to a specific party or parties, monetary payment may be accepted as a form of mitigation, if acceptable to the affected party or parties.
- (m) Applicants for Local Storage of Supplemental Water agreements shall submit such Application prior to initiation of the placement of the Supplemental Water into storage except as provided in sections 8.1 and 8.2 above.
- (n) Any Supplemental Water stored or recharged in the Basin, except pursuant to a Local Storage Agreement for Supplemental Water with Watermaster, shall be deemed abandoned and not classified as Stored Water. [Judgment ¶ 14.]

8.3 Groundwater Storage and Recovery Program; Special Considerations. The parties, through Watermaster, may initiate a regional Storage and Recovery (sometimes called “conjunctive use”) Program, for the mutual benefit of the Appropriators and the Non-Agricultural Pool in the Chino Basin according to the following provisions:

- (a) Watermaster will ensure that no person shall store water in, and recover water from the Basin, other than pursuant to a Local Storage Agreement, without a Storage and Recovery agreement with Watermaster [Peace Agreement § 5.2(c)(i).];
- (b) A proposed Applicant for a Storage and Recovery Program must submit the information set forth in Article X to Watermaster prior to Watermaster’s consideration of an Application for a Storage and Recovery agreement;
- (c) As a precondition of any project, program or contract regarding the use of Basin storage capacity pursuant to a Storage and Recovery Program, Watermaster shall first request proposals from qualified persons [Peace Agreement § 5.2(c)(iii).];
- (d) Watermaster shall be guided by the following criteria in evaluating any request to store and recover water from the Basin by a party to the Judgment or any person under a Storage and Recovery Program.

- (i) The initial target for the cumulative quantity of water held in storage is 500,000 acre-feet in addition to the existing storage accounts. The 500,000 acre-feet target may be comprised of any combination of participants and is in excess of up to an additional 50,000 acre-feet of Supplemental Water and Excess Carry-Over Rights that may be stored under Local Storage Agreements.
- (ii) Watermaster shall prioritize its efforts to regulate and condition the storage and recovery of water developed in a Storage and Recovery Program for the mutual benefit of the parties to the Judgment and give first priority to Storage and Recovery Programs that provide broad mutual benefits.
[Peace Agreement § 5.2(c)(iv).];
- (e) The members of the Appropriative Pool and the Non-Agricultural Pool shall be exclusively entitled to the compensation paid for a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (collectively “compensation”) with the benefits of such compensation to be spread as broadly as possible as directed by the Non-Agricultural and the Appropriative Pools [Peace Agreement § 5.2(c)(v).];
- (f) The compensation received from the use of available storage capacity under a Storage and Recovery Program, may be used to offset the Watermaster’s cost of operation, to reduce any assessments on the parties to the Judgment within the Appropriative and Non-Agricultural Pools, and to defray the costs of capital projects as may be requested by the members of the Non-Agricultural Pools and the Appropriative Pool [Peace Agreement § 5.2(c)(vi).];
- (g) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by storage and recovery of water, whether Local Storage and recovery or pursuant to a Storage and Recovery Program, shall be reasonably and fully mitigated as a condition of approval [Peace Agreement §§ 5.2(a)(iii) and 5.2(c)(viii) (labeled “(xiii)”.)];
- (h) Watermaster reserves discretion to negotiate appropriate terms and conditions or to deny any request to enter into a Storage and Recovery Program Agreement. With respect to persons who are not parties to the Judgment, Watermaster reserves complete discretion to ensure that maximum compensation, as defined in section (e) above, is received. Watermaster shall base any decision to approve or disapprove any proposed Storage and Recovery Program Agreement upon the record as provided in Article X. However, it may not approve a proposed Storage and Recovery Program

Agreement unless it has first imposed conditions to reasonably and fully mitigate any threatened or potential Material Physical Injury [Peace Agreement § 5.2(c)(ix).];

- (i) Any party to the Judgment may seek review of the Watermaster's decision regarding a Storage and Recovery Program Agreement as provided in Article X;
- (j) Nothing herein shall be construed as prohibiting the export of Supplemental Water stored under a Storage and Recovery Program and pursuant to a Storage and Recovery Agreement; and
- (k) The Parties shall indemnify and defend the State of California and the members of the Agricultural Pool against any lawsuit or administrative proceedings, without limitation, arising from Watermaster's adoption, approval, management, or implementation of a Storage and Recovery Program.

8.4 Recapture.

- (a) All Recapture of water held in a storage account under a Groundwater Storage Agreement shall be subject to the requirement that the Recovery of the water not result in Material Physical Injury to a party to the Judgment or the Basin.
- (b) Recapture of water held in a Local Storage Account that pre-exists the adoption of these Rules and Regulations and that was extended by Watermaster in accordance with Article V of the Peace Agreement and these Rules and Regulations until July 1, 2005, shall be in accordance with the provisions of the plan for Recapture previously approved by Watermaster. Any amendments to an approved Recapture plan shall require additional Watermaster's approval under the provisions of Article X .
- (c) A person with an approved plan for Recapture shall have the right to process amendments to the previously approved plan in accordance with the provisions of Article X.

ARTICLE IX TRANSFERS

9.0 Scope. Any Transfer shall be made only in accordance with the Judgment, the Peace Agreement section 5.3, the OBMP and this Article IX.

9.1 In General. Watermaster will ensure that any party to the Judgment may Transfer water in a manner that is consistent with the Judgment, the Peace Agreement, the OBMP and the law. Watermaster shall approve a Transfer if it is consistent with the terms of the Peace

Agreement, and will not cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Transfer of water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Transfer must be denied. Upon receipt of written request by Watermaster, a party to the Judgment shall exercise Best Efforts to provide Watermaster with a preliminary projection of any anticipated Transfer of Production within the Year.

9.2 Application to Transfer. A party to the Judgment may make Application to Watermaster to Transfer water as provided in the Judgment under the procedures set forth in Article X.

(a) Watermaster shall provide reasonable advance written notice to all the Active Parties of a proposed Transfer, prior to approving the Transfer as provided in Article X.

(b) Watermaster shall approve the Transfer of water as provided in the Judgment so long as the individual Transfer does not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed Transfer with conditions that fully and reasonably mitigate any threatened or potential Material Physical Injury.

(c) There shall be a rebuttable presumption that the Transfer and the Production by the transferee does not result in Material Physical Injury to a party to the Judgment or the Basin.

(d) Watermaster shall base any decision to approve or disapprove any proposed Transfer upon the record after considering potential impacts associated with the individual Transfer alone and without regard to impacts attributable to any other Transfers. [Peace Agreement § 5.3(b)(v).] However, nothing herein shall be construed as impairing or restraining Watermaster's duty and discretion with regard to cumulative impacts in the context of section 9.3.

(e) Transfers which occur between the same parties in the same year shall be considered as a single Transfer for the purpose of determining Material Physical Injury.

9.3 Integrated Watermaster Review. In reviewing Transfers under these Rules and Regulations, Watermaster shall exercise reasonable discretion. Watermaster shall review each proposed Transfer based upon the record before it and considering the potential impacts of the proposed Transfer alone. However, Watermaster shall also consider the cumulative impacts of Transfers generally when carrying out its responsibilities to implement the OBMP and Recharge and monitoring programs authorized by these Rules and Regulations or the Judgment.

- (a) Watermaster will evaluate the cumulative physical impact of Transfers on the Basin, if any, by July 1, 2003, and a minimum of once every two years thereafter.
- (b) Watermaster will take the results of its evaluation into account when carrying out its obligations under section 7.1 of these Rules and Regulations.

9.4 Transfer of Non-Agricultural Pool Production Rights. Watermaster shall approve the Transfer or lease of the quantified Production rights of Non-Agricultural Producers within the Non-Agricultural Pool subject to the provisions of section 9.2(b) above. The right to Transfer within the pool includes the right to lease water to other members of the Non-Agricultural Pool. In addition, the parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program.

9.5 Early Transfer.

- (a) Pursuant to the Peace Agreement, Watermaster approved an Early Transfer of water to the Appropriative Pool in an amount not less than 32,800 acre-feet per year. The quantity of water subject to Early Transfer under this section shall be the greater of (i) 32,800 acre-feet or (ii) 32,800 acre-feet plus the actual quantity of water not Produced by the Agricultural Pool for that Fiscal Year that is remaining after all the land-use conversions are satisfied pursuant to section 5.3(h) of the Peace Agreement.
 - (i) The Transfer shall not limit the Production right of the Agricultural Pool under the Judgment to Produce up to 82,800 acre-feet of water in any year or 414,000 acre-feet in any five years as provided in the Judgment. [Peace Agreement § 5.3(g)(ii).]
 - (ii) The combined Production of all parties to the Judgment shall not cause a Replenishment assessment on the members of the Agricultural Pool. The Agricultural Pool shall be responsible for any Replenishment obligation created by the Agricultural Pool Producing more than 414,000 acre-feet in any five-year period. [Peace Agreement § 5.3(g)(iii).]
 - (iii) The Appropriative Pool shall procure sufficient quantities of Replenishment Water to satisfy Replenishment Obligations pursuant to § 6.3(c) of these Rules and Regulations.

- (iv) Nothing herein shall be construed as modifying the procedures or voting rights within or by the members of the Agricultural Pool. [Peace Agreement § 5.3(g)(v).]

- (b) The amount of water converted from agricultural use to urban use prior to execution of the Peace Agreement was 2.6 acre-feet per acre, with 1.3 acre-feet per acre being allocated collectively to all members of the Appropriative Pool with an assigned share of Operating Safe Yield and 1.3 acre-feet per acre being allocated to that Appropriator providing service for that urban use. The rate of 2.6 acre-feet per acre shall be changed to a total of 2.0 acre-feet per acre, all of which shall be allocated upon the conversion of the land use to that party to the Judgment which is a member of the Appropriative Pool, on the Effective Date of the Peace Agreement, and whose Sphere of Influence or authorized service area contains the land (“purveyor”). Upon such conversion of water use the purveyor will pledge that the amount of water needed for such urban land use, when such urban land use is established, up to 2.0 acre-feet of water per acre of land per year will be made available for service for such converted land by purveyor under its then existing standard laws, regulations, rules and policies, or for service arranged by such purveyor, subject only to prohibition of such service by a federal, state agency or court with jurisdiction to enforce such prohibition. The owner of such converted land shall have the right to enforce such pledge by specific performance or writ of mandate under the terms of the Peace Agreement. No monetary damages shall be awarded.

9.6 Voluntary Agreement. The members of the Agricultural Pool, including the State of California, shall have the right to engage in a voluntary agreement with an Appropriator which has a service area contiguous to or inclusive of the agricultural land, to provide water allocated from the Agricultural Pool to the overlying land for agricultural use on behalf of the member of the Agricultural Pool unless otherwise prohibited by general law. The Appropriator providing service shall be entitled to a pumping credit to offset Production pursuant to the Peace Agreement section 5.3(i).

9.7 Assignment of Overlying Rights. In addition to the Voluntary Agreement under section 9.6 above, should an Appropriator take an assignment of rights from a Non-Agricultural Pool member, the agreement shall provide that the Appropriator may undertake to provide water service to such overlying land, but only to the extent necessary to provide water service to said overlying lands. Watermaster shall make available to members of the Non-Agricultural Pool and/or Appropriative Pool, a standard form which shall be completed and filed with Watermaster. Any assignment, lease and/or license shall be ineffective unless provided on the standard form approved by Watermaster and filed with Watermaster. [Based on Judgment Exhibit “H” ¶ 13; Exhibit “G” ¶ 6.]

ARTICLE X
APPLICATIONS, CONTESTS AND COMPLAINTS

- 10.0 Purpose. This Article sets forth the Watermaster rules and procedures for processing requests by a person for: (i) Watermaster approval of Recharge and Transfer; (ii) Qualifying Storage and Recapture; (iii) amendments to previously approved Applications; (iv) reimbursement or a credit for costs incurred by a party to the Judgment in furtherance of the OBMP; and (v) a Complaint for redress arising from an alleged Material Physical Injury to a party to the Judgment or the Basin. However, the procedures described in this Article X shall not be construed to apply to Watermaster actions, decisions, or rules other than as expressly set forth herein. All proceedings hereunder shall be conducted in an expeditious manner.
- 10.1 Notice and Opportunity to be Heard. Watermaster shall provide reasonable notice and opportunity to be heard to any person requesting Watermaster review or approval of any matter arising under this Article.
- 10.2 Judicial Review.
- (a) The Complaint procedures set forth in this Article X are not intended to constitute an exclusive remedy or constitute a requirement that a party to the Judgment exhaust this discretionary remedy. However, a party to the Judgment may elect to avail itself of the procedures set forth herein by filing a Complaint and requesting relief from any actual or threatened Material Physical Injury to any person or to the Basin where the alleged injury arises from the Recharge, Transfer or Qualifying Storage or Recapture of water by any person other than Watermaster.
 - (b) Once a party to the Judgment elects to pursue redress under the provisions of this Article, it shall exhaust this process until conclusion unless there is a sudden, unexpected event or emergency that causes a need for immediate judicial review or in the event that the Watermaster has failed to take action on a longstanding request. Thus, other than in the event of an emergency or where Watermaster has engaged in undue delay, a party to the Judgment may not seek judicial review of a Watermaster action on a pending Application or Complaint until the Watermaster Board has taken final action under the provisions of this Article. However, the procedures described in this Article X shall not preclude any party from seeking judicial review of any action, decision or rule of Watermaster in accordance with paragraph 31 of the Judgment.

10.3 Applications for Watermaster Approval: In General. Any party to the Judgment requesting approval by Watermaster for the Recharge, Transfer, Qualifying Storage or Recapture of water in the Basin, or reimbursements or credits against OBMP Assessments, or any person requesting approval of an agreement to participate in a Storage and Recovery Program, may make Application to Watermaster as provided in these Rules and Regulations.

- (a) Requests for Watermaster approval shall be processed by Application to the Watermaster.
- (b) All Applications shall be submitted to Watermaster in compliance with the requirements set forth in this Article. Approved forms for use by persons requesting Watermaster approval pursuant to this section are attached hereto as Appendix 1. Watermaster shall have no obligation to process incomplete Applications.
- (c) No person shall obtain a right to engage in the activities subject to an Application to Watermaster under these Rules and Regulations or the Judgment unless and until the proposed action is approved by Watermaster as provided herein.
- (d) Upon approval by Watermaster, the person shall have the right to proceed in accordance with the terms and conditions of the Watermaster approval. The rights of a party shall be construed consistent with the Judgment and subject to the terms and conditions set forth in Watermaster's approval.

10.4 Recharge Applications. Any party to the Judgment may make a request for Watermaster approval to engage in Recharge by submitting an Application to Watermaster that includes the following information.

- (a) The identity of the person proposing to engage in Recharge;
- (b) The quantity of water to be Recharged;
- (c) The quality of water to be Recharged;
- (d) The duration of the Recharge;
- (e) The method of the Recharge; and
- (f) The facilities to be used in the Recharge, and their location.

10.5 Transfer Applications. Any party to the Judgment may request Watermaster's approval for a Transfer by submitting an Application to Watermaster. A party to the Judgment that Produces water may in the same Fiscal Year request approval of a Transfer to offset all or a

portion of its Replenishment Obligation, subject to the Watermaster's authority to approve or reject the Application under the provisions of this Article. An Application for Transfer shall include the following information:

- (a) The identity of the transferee and transferor;
- (b) The maximum quantity of water to be Transferred;
- (c) The duration of the Recovery of the quantity of water Transferred;
- (d) The location of the Production facilities from which the water will be Transferred, if known;
- (e) The location of the Production facilities from which the Transferred water will be Recaptured and Produced, if known; and
- (f) The rate of extraction at which the Transferred water will be Recaptured and Produced.

10.6 Qualifying Storage Agreements. A party to the Judgment may request Watermaster's approval of a Local Storage Agreement to store Supplemental Water, or, after July 1, 2005, a party to the Judgment may request Watermaster's approval of the accumulation of Excess Carry-Over Water in the event the party's aggregate Carry-Over Water exceeds its share of assigned Operating Safe Yield or Safe Yield. Prior to July 1, 2005, a party to the Judgment shall also be required to obtain a Local Storage Agreement to store Excess Carry-Over Water, and Watermaster shall approve such agreements under uniform terms and conditions. In addition, so long as there is then less than 50,000 acre-feet of Supplemental Water that was placed in Local Storage after July 1, 2000, a party to the Judgment's request to store Supplemental Water under a Local Storage Agreement shall be approved by Watermaster. The Applicant may include a plan for Recapture within the request for approval of the Qualifying Storage or subsequently identify the proposed plan for Recapture under an independent Application for Recapture or combine the request for subsequent approval in an Application for Transfer.

- (a) Any party to the Judgment may file an Application to store Supplemental Water pursuant to a Local Storage Agreement. The Application shall include the following information:
 - (i) The identity of the person(s) that will Recharge, Store and Recover the water;
 - (ii) The quantity of Supplemental Water to be Stored and Recovered;

- (iii) The proposed schedule and method for the Recharge of water for Storage, if any;
 - (iv) The proposed schedule for Recovery, if any;
 - (v) The location of the Recharge facilities through which the Stored water will be Recharged, if any;
 - (vi) The location of the Production facilities through which the Stored water will be Recovered, if known; and
 - (vii) The water levels and water quality of groundwater in the areas likely to be affected by the storage and Recovery.
- (b) Each Producer shall have the right to store its un-Produced Carry-Over Water in the Basin. Excess Carry-Over Water placed into Local Storage after July 1, 2005 shall require a Local Storage Agreement with Watermaster. A Producer may file an Application prior to July 1, 2005 for a Local Storage Agreement for Excess Carry-Over Water that will be placed into Local Storage after July 1, 2005. Such an Application shall include the following information:
- (i) The identity of the person(s) that will store and Recover the Carry-Over Water;
 - (ii) The quantity of Carry-Over Water to be stored and Recovered;
 - (iii) The proposed schedule for the Recovery, to the extent known;
 - (iv) The location of the Production facilities through which the stored Carry-Over Water will be Recovered, to the extent known; and
 - (v) The water levels and water quality of Groundwater in the areas likely to be affected by the Production of the stored Carry-Over Water.

10.7 Storage and Recovery Program. Any person may request Watermaster's approval of an Agreement to participate in a Storage and Recovery Program by submitting an Application to Watermaster that, at a minimum, includes the following information:

- (a) The identity of the person(s) that will Recharge, store and Recover the water as well as its ultimate place of use;

- (b) The quantity of water to be Stored and Recovered;
- (c) The proposed schedule for the Recharge of water for storage, if any;
- (d) The proposed schedule and method for Recovery;
- (e) The location of the Recharge facilities through which the Stored Water will be Recharged;
- (f) The location of the Production facilities through which the Stored Water will be Recovered;
- (g) The water levels and water quality of the Groundwater in the areas likely to be affected by the Storage and Recovery, if known; and
- (h) Any other information that Watermaster requires to be included.

10.8 Recapture. Any person may file an Application for approval of its Recovery of water held in storage. Recapture of water may be approved by Watermaster as a component of and coincident with a request for approval of Qualifying Storage or a Transfer. However, an Applicant for Qualifying Storage may request, and Watermaster may approve, a Groundwater Storage Agreement where the plan for Recovery is not yet known. An Application for Recapture shall include the following information:

- (a) The identity of the person(s) that Recharged and stored the water;
- (b) The identity of the person(s) that will Recover the water as well as its ultimate place of use;
- (c) The quantity of water to be Recovered;
- (d) The proposed schedule for Recovery;
- (e) The location of the Production facilities through which the Stored Water will be Recovered;
- (f) The existing water levels and water quality of the Groundwater in the areas likely to be affected by the Recovery; and
- (g) Any other information that Watermaster requires to be included.

10.9 Credits Against OBMP Assessments and Reimbursements. Any Producer, including the State of California, may make Application to Watermaster to obtain a credit against OBMP Assessments or for reimbursements by filing an Application that includes the following information:

- (a) The identity of the party to the Judgment;
- (b) The specific purposes of the OBMP satisfied by the proposed project;
- (c) The time the project is proposed to be implemented and a schedule for completion;
- (d) The projected cumulative project costs; and
- (e) The specific capital or operations and maintenance expenses incurred in the implementation of any project or program, including the cost of relocating Groundwater Production facilities.

10.10 Watermaster Summary and Notification of a Pending Application. Upon Watermaster's receipt of an Application for Recharge, Transfer, Storage, Recapture or for a credit or reimbursement, Watermaster shall prepare a written summary and an analysis (which will include an analysis of the potential for Material Physical Injury) of the Application and provide Active Parties with a copy of the written summary and advance notice of the date of Watermaster's scheduled consideration and possible action on any pending Applications. The notice shall be accompanied by the Watermaster summary and analysis and it shall reasonably describe the contents of the Application and the action requested by the Applicant. Watermaster shall provide the following minimum notice to the Active Parties:

- (a) Applications for Recharge: 30 (thirty) days.
- (b) Applications for Transfer: 30 (thirty) days.
- (c) Applications for Storage and Recovery: 90 (ninety) days.
- (d) Local Storage Agreement or Recapture: 30 (thirty) days.

10.11 All Applications Considered by Pool Committees. All Applications shall be considered by the Pool Committees. Following its completion of the summary and analysis and the issuance of the required notice as provided in section 10.10, Watermaster Staff shall place the Application on the first available Pool Committee Agenda for each of the respective Pool Committees for consideration, discussion, recommendations or proposed conditions. The Application shall not be considered by the Advisory Committee until at least twenty-one (21) days after the last of the three Pool Committee meetings to consider the matter.

- 10.12 Watermaster Investigations of Applications. Watermaster may, in its discretion, cause an investigation of the Groundwater or the portion of the Basin affected by a pending Application. Any party to the proceeding may be requested to confer and cooperate with the Watermaster, its staff or consultants to carry out such investigations.
- 10.13 Contesting an Application. Following consideration of an Application by each Pool Committee, a Contest to the Application may be filed by any party to the Judgment. Contests to Applications filed by parties to the Judgment or other persons requesting Watermaster's approval pursuant to this Article shall be submitted in writing a minimum of fourteen (14) days prior to the date scheduled for Advisory Committee consideration and possible action. The Contest shall describe the basis for the Contest and the underlying facts and circumstances. Watermaster shall provide notice of the Contest to the Active Parties.

10.14 Contents of a Contest.

- (a) Each Contest shall include the name and address of the Contestant and show that the Contestant has read either the application or the related notice.
- (b) If the Contest is based upon the allegation that the proposed action may result in Material Physical Injury to a party to the Judgment or the Basin, there shall be an allegation of the specific injury to the Contestant or to the Basin which may result from the proposed action and an identification of any then available evidence to support the allegation. If the Contest identifies documentary evidence other than Watermaster records or files, the Contestant shall serve copies of the documentary evidence on Watermaster and the Applicant seven (7) days prior to the hearing. *If relevant* to the Contest, the Contestant shall provide Watermaster with the location of the Contestant's extraction and place of use. The location shall be described with sufficient accuracy so that the position thereof relative to the proposed action may be determined. *If relevant* to the Contest, the Contestant shall describe the Contestant's purpose of use.
- (c) If a Contest is based upon other grounds it shall summarize the grounds of the Contest.
- (d) The Contest shall set forth any conditions or amendments to the proposed action which, if agreed upon, would result in withdrawal of the Contest.
- (e) If Watermaster finds the Contest fails to comply with this provision, it may reject the Contest and deny the request for hearing if the Contestant fails to correct the defect and file a proper Contest within five (5) business days of the Watermaster's rejection. In any instance where a rebuttable presumption is applicable, the Watermaster shall include a statement in the rejection of the Contest that the Contestant has failed to reference any potential substantial evidence to overcome the presumption of no Material Physical Injury.

10.15 Extensions of Time and Continuance for Good Cause. An Applicant or Contestant may request an extension of time to file a Contest and Answer or for a continuance of a scheduled hearing and the request may be granted by Watermaster staff where good cause exists.

10.16 Applicant May Answer the Contest. An Applicant or project proponent may elect to file a written Answer to any Contest.

- (a) Contents. An Answer shall be responsive to the allegations contained in the Contest.

- (b) Time for Filing. Answers shall be filed at least seven (7) days prior to the scheduled hearing. If the Applicant intends to rely on documentary evidence other than Watermaster records or files, the Applicant shall serve copies of the documentary evidence upon Watermaster and the Contestant a minimum of three (3) days prior to the hearing.

10.17 Uncontested Applications by Parties to the Judgment.

- (a) The Advisory Committee and Board shall consider and may approve any uncontested Application. No hearing shall be required for an uncontested Application by a party to the Judgment unless there is good cause to hold a hearing. Where good cause appears, the Advisory Committee and the Board may deny, condition, or continue an *uncontested* Application. However, Watermaster shall not deny an Application until it has referred the matter to a hearing officer. In the case of a proposed denial or conditional approval, and upon the request of the Applicant, Watermaster shall schedule an appropriate and timely hearing in general conformity with this Article X.
- (b) An uncontested Application shall be considered at the first regularly scheduled meeting of the Advisory Committee following the expiration of the Contest period.
- (c) The Advisory Committee shall consider the Application, the staff Summary and Analysis and staff report and any rebuttable presumption that may be applicable and make any determinations under the Judgment in accordance with the provisions of section 10.25 herein.
- (d) Following consideration by the Advisory Committee, the matter shall be transmitted to the Board for consideration. The Board shall also consider the Application, the staff summary and Analysis and staff report and any rebuttable presumption that may be applicable, as well as the Advisory Committee action consistent with the Judgment. The Board's determination shall be made in accordance with the provisions of section 10.25 herein.
- (e) In each case where Watermaster the Advisory Committee or Board denies or conditions an uncontested Application made by a party to the Judgment, it must support its determination by substantial evidence and act in a manner that is consistent with the Judgment and the Peace Agreement.

10.18 Contested Applications. In each case where a Contest is filed, the matter shall be set for hearing by Watermaster staff in coordination with the hearing officer and the parties to the proceeding.

- 10.19 Applications by Persons not Parties to the Judgment. In its sole discretion, Watermaster may review, consider, process and decide upon Applications made by persons not parties to the Judgment. However, Watermaster may not approve or conditionally approve such an Application without first holding a hearing in accordance with this Article X.
- 10.20 Complaints in General. Any party to the Judgment may file a Complaint with Watermaster alleging that the conduct of another person is causing or will cause Material Physical Injury in violation of these Rules and Regulations, the Judgment and the Peace Agreement.
- (a) The Complaint shall identify the name of the Complainant, the specific action or conduct that is causing or will or may cause Material Physical Injury, and any recommended mitigation measures or conditions that might avoid or reduce the alleged Material Physical Injury.
 - (b) Upon receipt of the Complaint by Watermaster, it shall prepare a summary of the allegations and serve the summary along with a notice of the Complaint to the parties to the Judgment within 30 (thirty) days from filing.
 - (c) Any party to the Judgment may file an Answer to the Complaint within 14 (fourteen) days of the date of the notice of Complaint or other time as may be prescribed in the Watermaster notice of the Complaint.
 - (d) Watermaster shall schedule a hearing on the Complaint within 30 (thirty) days of the notice of the Complaint.
 - (e) A party to the Judgment's failure to appear or Contest a hearing on the approval of an Application of any matter before Watermaster shall not be a bar to the party's right to file a Complaint as provided herein. However, a party shall not be permitted to file a Complaint if it knew or should have known of a particular harm that that party would suffer and had a reasonable opportunity to object at the time of the original approval process but did not file such a Contest.
 - (f) Any party to the Judgment may request an extension of time to file an Answer or to continue the hearing, which may be granted for good cause by Watermaster.
 - (g) Any party to a Complaint proceeding that intends to rely upon documentary evidence at the hearing, other than Watermaster documents or files, shall serve copies of the evidence upon Watermaster and the other parties to the proceeding a minimum of seven (7) days in advance of the hearing.

- (h) Watermaster may, in its discretion, cause an investigation of the injury alleged to exist by the pending Complaint. Any party to the proceeding may be requested to confer and cooperate with the Watermaster, its staff or consultants to carry out such investigations.

10.21 All Complaints Considered by Pool Committees. All Complaints shall be considered by the Pool Committees. Following consideration by the respective Pool Committees, if the Complaint is not dismissed any person(s) directly impacted by the Complaint may file an Answer in accordance with the provisions of section 10.16 and the Complaint shall be set for hearing.

10.22 Designation of Hearing Officer for Applications, Contests and Complaints. The Watermaster Board shall develop and maintain a panel of five individuals that have technical expertise and some familiarity with the Basin. The hearing officer shall be selected by the mutual agreement of each side. If mutual agreement cannot be reached, each side to any hearing on an Application or Complaint shall rank their preferred hearing officer from one (1) to five (5). The panel member receiving the highest total score shall be selected by the Watermaster Board as the Hearing Officer, unless he or she is unable to serve in which case the panel member receiving the next highest rank shall be selected. Ties shall be broken by vote of the Watermaster Board. Watermaster may add or remove new members to the five member panel from time to time or as circumstances may warrant. There shall be only two sides in any hearing and intervenors shall be assigned to a side.

10.23 Duty of the Hearing Officer. The hearing officer shall conduct the hearings in accordance with the provisions of this Article. It shall be the responsibility of the hearing officer to compile the record, develop proposed findings and recommendations supported by substantial evidence in the record within thirty days of the hearing and transmit the record to the Advisory Committee and thereafter the Watermaster Board for further action. The hearing officer shall have and shall exercise the power to regulate all proceedings in any matter before it, and to take and do all acts and measures necessary or proper for the efficient performance of its duties.

10.24 Procedure at Hearings on Applications, Contests and Complaints

- (a) Parties Recognized at Hearing. Only the Applicant(s), Contestant(s), Watermaster staff and other party or parties to the Judgment which the hearing officer, in its discretion, allows to intervene as Applicant or Contestant, may be allowed to appear at the hearing.
- (b) Appearances. Persons appearing on their own behalf shall identify themselves at the beginning of the hearing. When a person is represented by an agent or attorney, such

agent or attorney shall likewise enter an appearance before the hearing officer and thereafter will be recognized as fully controlling the case on behalf of that party to the proceeding.

- (c) Conduct of Hearings. Hearings shall be open to the public. The hearing officer has and shall exercise the power to regulate all proceedings in any manner before it, and to do all acts and take all measures necessary or proper for the efficient performance of its duties. The hearing officer may rule on the admissibility of evidence and may exercise such further and incidental authority as necessary for the conduct of the proceedings.
- (d) Evidence. The hearing need not be conducted according to technical rules of evidence and witnesses. Any relevant, non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions.
- (e) Rebuttable Presumption. A rebuttable presumption under these Rules and Regulations means that the presumption shall be sufficient to approve an Application, unless a party to the Judgment opposing the Application produces substantial evidence to rebut the presumption. Once the party to the Judgment opposing the Application produces substantial evidence in support of their contention that an action may cause Material Physical Injury to a party to the Judgment or the Basin, the presumption shall be deemed rebutted.
- (f) Official Notice. Before or after submission of a matter for decision, official notice may be taken by the Hearing Officer of such facts as may be judicially noticed by the courts of this State.
- (g) Evidence by Reference. Public records of Watermaster which are relevant to the subject of the hearing and books, reports or other papers and pleadings which have been prepared by Watermaster and submitted previously to the Court, may in the discretion of the hearing officer, be received into evidence as exhibits without the need of supplying copies to Watermaster or other parties to the proceeding.
- (h) Examination of Witnesses. Each party to the proceeding shall have the right to call and examine witnesses and introduce exhibits. Watermaster staff and consultants may participate in the hearing as appropriate, using their technical knowledge and experience for the primary purpose of developing a full, fair and accurate record, including the questioning of any witness or the agents for any party to the proceeding

- (i) Order of Procedure. There shall be an opening statement by Watermaster staff, summarizing the subject matter and purpose of the hearing and the procedures to be followed. The designated hearing officer will then ask all persons wishing to participate in the hearing to identify themselves. Staff shall present any written reports, or summary of any findings resulting from an investigation of the Application or the Complaint. The Applicant or the Complainant shall then proceed in the case in chief, followed by the Contestant(s) or the Respondents. The Applicant and the Complainant will then be afforded an opportunity to present any responsive evidence. The hearing officer may allow further response as the interests of justice may require. Questions from the hearing officer or Watermaster staff shall be appropriate at any time.
- (j) Opening Statements and Closing Briefs. Prior to presenting their case, any party to the proceeding may file a written opening statement, or may make an oral opening statement, the length of which may be prescribed by the hearing officer. At the close of the hearing, if the hearing officer deems it advisable, time will be allowed for the filing of written briefs.
- (k) Record. The record of the hearing shall consist of all documents submitted for consideration as well as all testimony presented. Tape recordings of all testimony shall be made. Any party, at that party's sole expense, may have a court reporter present at the hearing.
- (l) Completion of Record. The Hearing Officer may request assistance from Watermaster staff and general counsel in completing the record, proposed findings and recommendations. The Hearing Officer shall transmit his or her proposed findings to the Advisory Committee within thirty days of the close of the hearing. The proposed findings of the hearing officer shall be based upon substantial evidence in the record.

10.25 Watermaster Determinations.

- (a) Watermaster shall consider and may approve, deny, or condition any contested Application. Prior to rendering a determination on a contested Application or a Complaint, both the Advisory Committee or the Board may also each remand the matter for further findings by the hearing officer a maximum of one time each. The hearing officer shall conduct any additional hearings and complete its review and rehearing and transmit its subsequent report to the Advisory Committee within thirty days from the date of notice from Watermaster of the need for additional findings.

- (b) A contested Application or a Complaint shall be considered at the first regularly scheduled meeting of the Advisory Committee following the transmittal of the record, proposed findings of fact and recommendations by the hearing officer and no later than 30 days from the date of the hearing. The Advisory Committee shall consider the Application, the staff summary and analysis and staff report, any rebuttable presumption, the Contest, Answer, the record, proposed findings of fact and any recommendations of the hearing officer. The Advisory Committee may amend, modify, accept or reject the report of the hearing officer, or it may direct the hearing officer to conduct a re-hearing to receive additional evidence, direct the filing of additional briefs or request oral argument.
- (i) The findings and decision adopted by the Advisory Committee shall be supported by citations to substantial evidence in the record.
- (ii) If the Advisory Committee fails to base its decision on substantial evidence in the record or fails to consider the proposed findings of fact developed by the Hearing Officer, subject to the right of the Advisory Committee to remand for further findings, any Advisory Committee mandate shall not be binding on the Watermaster Board. This provision shall not be considered in construing the power of the Watermaster Board or the Advisory Committee that may exist under the Judgment.
- (c) Following consideration by the Advisory Committee, the matter shall be transmitted to the Board for consideration within the next thirty (30) days. The Board shall also consider the Application, the staff summary, analysis and staff report, any rebuttable presumption that may be applicable, the Contest, the Answer, the record, the proposed findings of fact and recommendations of the hearing officer, as well as the Advisory Committee action consistent with the Judgment. The Watermaster Board may amend, modify, accept or reject the report of the hearing officer, or it may direct the hearing officer to conduct a re-hearing to receive additional evidence, direct the filing of additional briefs or request oral argument. If the Board directs the hearing officer to conduct a re-hearing, then the proposed findings of fact and any recommendations shall be transmitted to the Advisory Committee for re-consideration prior to transmittal to the Board.
- (d) Watermaster Action. In acting upon a Complaint, or by approving, denying or conditioning in whole or in part any Application under this Article, the determinations made by the Watermaster Advisory Committee and Board shall be based upon substantial evidence in the record developed by the hearing officer and then before the Advisory Committee and Board. In making such determinations, the Advisory Committee and Board shall act in a manner consistent with the Judgment,

the Peace Agreement and these Rules and Regulations. Each shall support its determinations by written findings. Each shall consider all relevant evidence presented and give due consideration to the policies and purposes set forth in the Judgment as well as Article X, section 2 of the Peace Agreement and the OBMP Implementation Plan.

- (e) No Restriction on Rights to Judicial Review Following Determination by Watermaster. Nothing herein shall be construed as imposing any limitation on any party's rights to seek judicial review of a Watermaster decision under this Article pursuant to paragraph 31 of the Judgment once Watermaster has rendered a decision on the respective Application or, in the case of a Complaint, to seek judicial review of a Watermaster decision where a party to the Judgment has elected to pursue Watermaster review of an action under this Article.
- (f) Emergency Review. In the event of a sudden, unforeseen and unexpected emergency impacting the health, safety and welfare of a party to the Judgment or the Basin, the party to the Judgment may seek immediate judicial review in accordance with the provisions of the Judgment and the Local Rules.
- (g) Undue Delay. Absent a Watermaster determination that extraordinary circumstances exist, Watermaster shall render its final decision on any Application filed under this Article within 180 days from the date the Application is deemed complete by Watermaster Staff. In the event Watermaster fails to offer a satisfactory response to repeated requests by a party to the Judgment to approve, deny or condition an Application or to rule on a Complaint, a party to the Judgment may request judicial review of the matter prior to the final Watermaster action.
- (h) Effective Date of Watermaster Action.
 - (i) For purposes of judicial review, any action determination or rule of Watermaster shall be the date on which the decision is filed.
 - (ii) For the purposes of determining the date on which an approved Application pursuant to Article X shall be considered effective, the approval shall relate back to date the completed Application is filed.

10.26 Application, Contests, Complaints Fees and Expenses.

- (a) Each party to the proceeding shall bear its own costs and expenses associated with the proceeding.

- (b) Watermaster's summary and analysis and participation in any hearing under this Article X shall be considered a general Watermaster administrative expense.
- (c) Upon request by the Agricultural Pool, Non-Agricultural Pool, or Appropriative Pool, the parties shall renegotiate this section 10.26. This renegotiation shall consider, but shall not be limited to, the adoption of a Court-approved resolution to address potential costs, fees and procedures incurred by parties to the Judgment and Watermaster in resolving frivolous and repetitiously unsuccessful similar contests.
- (d) Nothing herein shall be construed as precluding the right or claim by any party to the Judgment to request a reviewing Court under paragraph 31 of the Judgment to award litigation fees and costs to the extent such fees and costs may be available under general law.

APPENDIX 1

APPENDIX 1

FORMS

- Form 1 Application for Local Storage Agreement**
- Form 2 Application for Recharge**
- Form 3 Application for Sale or Transfer of Right to Produce Water from Storage**
- Form 4 Application or Amendment to Application to Recapture Water in Storage**
- Form 5 Application to Transfer Annual Production Right or Safe Yield**
- Form 6 Application by a Party to the Judgment to Participate in a Storage & Recovery Program**
- Form 7 Application for Reimbursement or Credit Against OBMP Assessment**
- Form 8 Standard Local Storage Agreement**
- Form 9 Voluntary Agreement for Service to an Agricultural Pool Party by an Appropriative Pool Party**
- Form 10 Standard Form Regarding Provision of Service to a Non-Agricultural Pool Party by an Appropriative Pool Party**
- Form 11 Notice of Land-Use Conversion**

APPLICATION FOR LOCAL STORAGE AGREEMENT

APPLICANT

Name of Party, Date Requested, Date Approved, Street Address, Amount Requested, Amount Approved, City, State, Zip Code, Telephone, Facsimile

TYPE OF WATER TO BE PLACED IN STORAGE

- [] Excess Carry Over [] Local Supplemental or Imported [] Both

PURPOSE OF STORAGE - Check all that may apply

- [] Stabilize or reduce future water costs/assessments. [] Facilitate utilization of other available sources of supply. [] Facilitate replenishment under certain well sites. [] Preserve pumping right for a changed future potential use. [] Other, explain

METHOD AND LOCATION OF PLACEMENT IN STORAGE - Check and attach all that may apply

- [] Recharge (Form 2) [] Transfer of Right to Water in Storage (Form 3) [] Transfer from another party to the Judgment (Form 5)

METHOD AND LOCATION OF RECAPTURE FROM STORAGE - Check and attach all that may apply

- [] Pump from my wells (Form 4) [] Transfer to another party to the Judgment (Form 3)

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

Blank lines for water quality and levels response

MATERIAL PHYSICAL INJURY

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that may be caused by the action covered by the application? Yes [] No []

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the action does not result in Material Physical Injury to a party to the Judgment or the Basin?

Blank lines for mitigation measures response

ADDITIONAL INFORMATION ATTACHED

Yes [] No []

Applicant

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____ Agreement # _____

APPLICATION
FOR
RECHARGE

APPLICANT

Name of Party _____			Date Requested _____	Date Approved _____
Street Address _____			_____ Acre-feet Amount Requested	_____ Acre-feet Amount Approved
City _____	State _____	Zip Code _____	Projected Rate of Recharge _____	Projected Duration of Recharge _____
Telephone: _____			Facsimile: _____	

SOURCE OF SUPPLY

Water from:

- State Water Project
- Colorado River
- Local Supplemental Source: _____
- Recycled Water
- Other, explain _____

METHOD OF RECHARGE

- PERCOLATION
 - Basin Name _____
 - Location _____
- INJECTION
 - Well Number _____
 - Location (attach map) _____
- EXCHANGE
 - Facility Name _____
 - Share of Safe Yield _____
 - Carry Over Right _____
 - Water in Storage _____
 - Pumping Capacity (cfs) _____

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

MATERIAL PHYSICAL INJURY

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that may be caused by the action covered by the application? Yes [] No []

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the action does not result in Material Physical Injury to a party to the Judgment or the Basin?

ADDITIONAL INFORMATION ATTACHED Yes [] No []

Applicant

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____ Agreement # _____

**WATER TRANSFER INFORMATION NEEDED
FOR THE WATER ACTIVITY REPORTS AND
THE ASSESSMENT PACKAGE**

FISCAL YEAR 20__ - 20__

DATE REQUESTED: _____ AMOUNT REQUESTED: _____ Acre-Feet

SALES PRICE: \$ _____ / Acre-Foot
(Needed for Assessment Package)

IF 85/15 RULE APPLIES, 15% GOES TO:
Seller Buyer N/A

TRANSFER FROM (SELLER / TRANSFEROR):

TRANSFER TO (BUYER / TRANSFEREE):

Name of Party

Name of Party

I declare under penalty of perjury that the date, quantity, \$/AF, and party to receive the 15% credit in the Assessment Package entered above is accurate, and if asked to do so, my city/agency/company would provide copies of documentation to validate the transaction.

Seller / Transferor Representative Signature

Buyer / Transferee Representative Signature

Seller / Transferor Representative Name (Printed)

Buyer / Transferee Representative Name (Printed)

**THIS PAGE IS TO BE KEPT CONFIDENTIAL UNTIL
THE FISCAL YEAR IS OVER AND THE
WATER ACTIVITY REPORTS ARE CREATED.**

CONSOLIDATED WATER TRANSFER FORMS:

FORM 3: APPLICATION FOR SALE OR TRANSFER OF RIGHT TO PRODUCE WATER FROM STORAGE

FORM 4: APPLICATION OR AMENDMENT TO APPLICATION TO RECAPTURE WATER IN STORAGE

FORM 5: APPLICATION TO TRANSFER ANNUAL PRODUCTION RIGHT OR SAFE YIELD

FISCAL YEAR 20__ - 20__

DATE REQUESTED: _____

AMOUNT REQUESTED: _____ Acre-Feet

TRANSFER FROM (SELLER / TRANSFEROR):			TRANSFER TO (BUYER / TRANSFEREE):		
Name of Party			Name of Party		
Street Address			Street Address		
City	State	Zip Code	City	State	Zip Code
Telephone			Telephone		
Facsimile			Facsimile		

Have any other transfers been approved by Watermaster between these parties covering the same fiscal year? Yes No

PURPOSE OF TRANSFER:

- Pump when other sources of supply are curtailed
- Pump to meet current or future demand over and above production right
- Pump as necessary to stabilize future assessment amounts
- Other, explain _____

WATER IS TO BE TRANSFERRED FROM:

- Annual Production Right (Appropriative Pool) or Operating Safe Yield (Non-Agricultural Pool)
- Storage
- Annual Production Right / Operating Safe Yield first, then any additional from Storage
- Other, explain _____

WATER IS TO BE TRANSFERRED TO:

- Annual Production Right / Operating Safe Yield (common)
- Storage (rare)
- Other, explain _____

IS THE 85/15 RULE EXPECTED TO APPLY? (If yes, all answers below must be "yes.") Yes No

Is the Buyer an 85/15 Party? Yes No

Is the purpose of the transfer to meet a current demand over and above production right? Yes No

Is the water being placed into the Buyer's Annual Account? Yes No

IF WATER IS TO BE TRANSFERRED FROM STORAGE:

Projected Rate of Recapture

Projected Duration of Recapture

METHOD OF RECAPTURE (e.g. pumping, exchange, etc.):

PLACE OF USE OF WATER TO BE RECAPTURED:

LOCATION OF RECAPTURE FACILITIES (IF DIFFERENT FROM REGULAR PRODUCTION FACILITIES):

WATER QUALITY AND WATER LEVELS

Are the Parties aware of any water quality issues that exist in the area? Yes No

If yes, please explain:

What are the existing water levels in the areas that are likely to be affected?

MATERIAL PHYSICAL INJURY

Are any of the recapture wells located within Management Zone 1? Yes No

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that may be caused by the action covered by the application? Yes No

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the action does not result in Material Physical Injury to a party to the Judgment or the Basin?

SAID TRANSFER SHALL BE CONDITIONED UPON:

- (1) Transferee shall exercise said right on behalf of Transferor under the terms of the Judgment, the Peace Agreement, the Peace II Agreement, and the Management Zone 1 Subsidence Management Plan for the period described above. The first water produced in any year shall be that produced pursuant to carry-over rights defined in the Judgment. After production of its carry-over rights, if any, the next (or first if no carry-over rights) water produced by Transferee from the Chino Basin shall be that produced hereunder.
- (2) Transferee shall put all waters utilized pursuant to said Transfer to reasonable beneficial use.
- (3) Transferee shall pay all Watermaster assessments on account of the water production hereby Transferred.
- (4) Any Transferee not already a party must Intervene and become a party to the Judgment.

ADDITIONAL INFORMATION ATTACHED

Yes No

Seller / Transferor Representative Signature

Buyer / Transferee Representative Signature

Seller / Transferor Representative Name (Printed)

Buyer / Transferee Representative Name (Printed)

TO BE COMPLETED BY WATERMASTER STAFF:

DATE OF WATERMASTER NOTICE: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____

APPLICATION BY A PARTY TO THE JUDGMENT
TO
PARTICIPATE IN A STORAGE & RECOVERY PROGRAM

APPLICANT

Name _____		Date Requested _____	Date Approved _____
Street Address _____		_____ Acre-feet Amount Requested	_____ Acre-feet Amount Approved
City _____	State _____	Zip Code _____	
Telephone: _____		Facsimile: _____	

TYPE OF WATER TO BE PLACED IN STORAGE

- Recycled Imported Both

METHOD AND LOCATION OF PLACEMENT IN STORAGE - Check and attach all that may apply

- Recharge (Form 2)
 Transfer of Right to Water in Storage (Form 3)
 Transfer from another Party to the Judgment (Form 5)

METHOD AND LOCATION OF RECAPTURE FROM STORAGE - Check and attach all that may apply

- Pump from wells (Form 4)
 Transfer to another party to the Judgment (Form 3)

FEASIBILITY PLAN TO ACCOMPLISH STORAGE & RECOVERY PROGRAM ATTACHED? Yes No

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

MATERIAL PHYSICAL INJURY

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that may be caused by the action covered by the application? Yes No

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the action does not result in Material Physical Injury to a party to the Judgment or the Basin?

ADDITIONAL INFORMATION ATTACHED

Yes [] No []

Applicant

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____

APPLICATION
FOR
REIMBURSEMENT OR CREDIT
AGAINST OBMP ASSESSMENT

APPLICANT

REQUESTING

Name of Party

Credit []

Reimbursement []

Street Address

Date Requested

Date Approved

City

State

Zip Code

Telephone: _____

Facsimile: _____

DESCRIPTION OF PROJECT OR PROGRAM FOR WHICH REIMBURSEMENT OR CREDIT IS SOUGHT

(Include a description of how the project/program accomplishes or contributes to the accomplishment of the goals of the OBMP as well as time of implementation and schedule for completion – see Sections 4.9 & 10.9 of the Rules & Regulations)

MATERIAL PHYSICAL INJURY

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that may be caused by the project/program? Yes [] No []

If yes, what are the proposed mitigation measures, if any that might be reasonably imposed to ensure the project/program does not result in Material Physical Injury to a party to the Judgment or the Basin?

PROJECTED PROJECT OR PROGRAM COSTS

(a) Capital: _____ (b) Operations and Maintenance: _____

(c) Cumulative Project or Program Cost: _____

\$ AMOUNT OF CREDIT OR REIMBURSEMENT REQUESTED _____

ADDITIONAL INFORMATION ATTACHED Yes [] No []

Applicant

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____

**STANDARD
LOCAL STORAGE AGREEMENT # _____**

THIS AGREEMENT is made and entered into this _____ day of _____, by and between Chino Basin Watermaster, (herein "Watermaster") and _____, (herein "Local Storage Party") pursuant to the Judgment entered January 27, 1978 and the Peace Agreement and Implementation Plan dated June 29, 2000.

STORAGE AUTHORITY. The authority is hereby granted to the above Storage Party, pursuant to the terms and conditions hereof, to store _____ acre-feet of water in the Chino Basin and to recapture the same for reasonable beneficial use as indicated on the forms or attachments below: The right to store water under this Local Storage Agreement is not transferable or assignable.

Excess Carry Over Local Supplemental or Imported Both

STORAGE APPROVAL. In submitting the Application for Local Storage, Applicant presented the following forms in addition to Form 1:

- Form 2 Application for Recharge
- Form 3 Application for Sale or Transfer of Right to Produce Water in Storage
- Form 4 Application or Amendment to Application to Recapture Water in Storage
- Form 5 Application Transfer Annual Production Right or Safe Yield
- Form 6 Application by a Party to the Judgment to Participate in a Storage & Recovery Program
- Form 7 Application for Reimbursement or Credit Against OBMP Assessments

All additional forms are included herein by reference and deemed approved or conditioned as attached.

TERM OF AGREEMENT. This Agreement shall continue in effect coterminous with the Peace Agreement unless or until the Agreement is modified, amended or terminated by Watermaster action. Except for losses or other factors as Watermaster may establish, any water in storage at the time of termination of this Agreement shall remain to the credit of Storage Party for subsequent recapture in its normal operations, i.e., termination of the Agreement shall affect termination of the right to place water in storage, but shall not impair the integrity of water stored or the right to recapture the same. Local Storage Agreements do not require court approval.

This Agreement and all provisions thereof are applicable to and binding upon not only the parties hereto, but also upon their respective heirs, executors, administrators, successors, assigns, lessors and licensees and upon the agents, employees and attorneys in fact of all such persons.

The following standard terms and conditions are deemed incorporated in any local storage agreement approved by Watermaster.

ASSIGNMENT OF STORAGE CAPACITY. Storage capacity is not assignable. Water in storage may be assigned, sold, leased or transferred as herein or subsequently approved.

LOSSES ATTRIBUTABLE TO STORED WATER. Pursuant to the Peace Agreement, losses may be applied to water stored hereunder after July 1, 2005.

RECAPTURE. Storage Party may recapture Stored Water by the direct extraction of groundwater from Chino Basin as herein approved by Watermaster. Each Storage Party shall apply to Watermaster in writing using Form 4 at least thirty (30) days prior to commencement of direct recapture if Form 4 is not included herewith, or if the recapture plan is different than that originally submitted to Watermaster. Watermaster shall determine whether significant adverse impacts will result to the Chino Basin and to other producers by reason of such production and shall either confirm, deny, or modify such proposed extraction schedule.

PROCEDURES AND ACCOUNTING FOR WATER STORED. Watermaster shall maintain a continuing account of water stored in and recaptured from Storage Party's account, which shall be available for review upon reasonable notice by Storage Party.

REPORTS TO WATERMASTER. Storage Party shall file with Watermaster such reports, forms, or additional information as is reasonably required by Watermaster in order to provide full information as to storage, losses and recapture of Stored Water hereunder.

WATERMASTER'S RIGHT OF INSPECTION. Watermaster shall have the right to inspect at reasonable times the records and facilities of Storage Party with relation to storage and recapture of water in the Chino Basin.

NOTICE. Any notices may be given by mail and postage prepaid addressed as follows:

Watermaster	Chino Basin Watermaster 8632 Archibald Avenue, Suite 109 Rancho Cucamonga, CA 91730
Storage Party	As set forth on the application.

ADDITIONAL CONDITIONS OR TERMS. In granting approval of this storage agreement, Watermaster placed the following additional conditions in the agreement:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers.

WATERMASTER

STORAGE PARTY

Watermaster Approval

Applicant

**NOTICE
OF
VOLUNTARY AGREEMENT REGARDING
PROVISION OF SERVICE TO AN AGRICULTURAL POOL PARTY
BY AN APPROPRIATIVE POOL PARTY**

PLEASE TAKE NOTICE that pursuant to the Peace Agreement dated June 29, 2000, _____ ("Appropriative Pool Party") is undertaking to provide water service to _____ ("Agricultural Pool Party"), commencing on _____ and continuing in effect until further notice, the quantity of water necessary to provide water service to said Agricultural Pool Party for use on its overlying lands in each fiscal year. Said water is only for use on Agricultural Pool Party's overlying lands. Watermaster is hereby requested to reduce (assign) the Production reported for the Appropriative Pool Party by a corresponding quantity of water each year, and to record such Production as Production in the Agricultural Pool.

To be valid, appropriate meters must be installed and this form must be signed by the Agricultural Pool Party and the Appropriative Pool Party.

AGRICULTURAL POOL PARTY

APPROPRIATIVE POOL PARTY

By: _____

By: _____

(print or type above name)

(print or type above name)

Watermaster Received & Filed

Date:

Exhibit 20

Court's December 13, 1978
Order to re Ex Parte
Application re Notice
Procedure

DONALD D. STARK
A PROFESSIONAL CORPORATION
SL 201
2061 BUSINESS CENTER DRIVE
IRVINE, CALIFORNIA 92715
(714) 752-8971

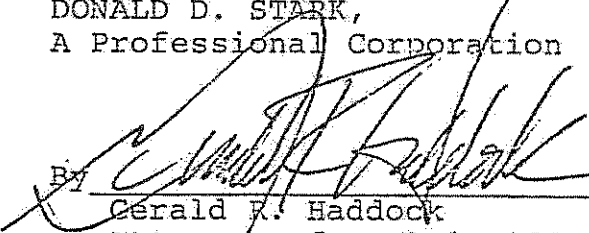
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B. Proposed Order of Notice Requirements for Court Hearings.

Notice to active parties, other than those who have requested the discontinuance of service, may be given on a computerized card format, measuring approximately 4"x6", and using layman's language such as set forth in Exhibit "A", attached hereto and incorporated herein by this reference which is proposed as the notice to be sent in connection with the hearing to be heard on January 5, 1979. All notices to attorneys of record shall continue to be in proper format containing such exhibits and proposed orders as shall be presented before the Court and sent to all attorneys of record other than those who may have requested the discontinuance of service.

DATED: December 13th, 1978.

DONALD D. STARK,
A Professional Corporation

By 
Gerald R. Haddock
Attorneys for Plaintiff
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WATER DISTRICT

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ORIGINAL FILED

DEC 13 1978

V. DENNIS WARDLE
COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
)
) Plaintiff,)
)
) v.)
)
) CITY OF CHINO, et al.)
)
) Defendants.)

No. 164327

ORDER RE NOTICE PROCEDURES

Upon Ex Parte Application by Plaintiff Chino Basin Municipal
Water District, and good cause appearing therefore, IT IS HEREBY
ORDERED that plaintiff may serve notice of hearings re Watermaster
matters to be brought before this Court, upon all active parties by
mailing a computerized card, measuring approximately 4"x6", and
using layman's language and format as presented herewith to this
Court. All service upon attorneys of record shall continue to be
in standard form containing copies of all documents and proposed

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WATSON S. JONES
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orders to be filed with this Court.

DATED: December 13, 1978.

DON A. TURNER
Judge of the Superior Court

* * * * * N O T I C E O F H E A R I N G * * * * *

TO - ALL ACTIVE CHINO BASIN PARTIES, CASE NO. 164327

WHEN - JANUARY 5, 1979, 1.30 P.M.

WHERE - SAN BERNARDINO SUPERIOR COURT, DEPARTMENT 2
351 NORTH ARROWHEAD AVENUE, SAN BERNARDINO, CALIF.

WHAT - THE FOLLOWING ITEMS ARE FOR APPROVAL.

1. FIRST ANNUAL WATERMASTER REPORT.
2. 1977/78 PRODUCTION SUMMARY.
3. FORM OF LOCAL STORAGE AGREEMENT.
4. M.W.D. CYCLIC STORAGE AGREEMENT.
5. INTERVENTIONS AND ASSIGNMENTS.

YOUR PRESENCE AT THIS HEARING IS NOT REQUIRED, BUT YOUR ATTENDANCE IS WELCOME.

NOTE - FILING WITH THE DIVISION OF WATERRIGHTS IS NO LONGER NECESSARY, JUST RETURN THEIR FORMS INDICATING YOU REPORT TO THE CHINO BASIN WATERMASTER.

FRAN BROMMENSCHENKEL
987-1712

Exhibit 21

Reporter's Transcripts of
Proceedings,
September 9, 1998

1 CUCAMONGA, CALIFORNIA; WEDNESDAY, SEPTEMBER 9, 1998;
2 A.M. SESSION
3 DEPARTMENT H (RC) HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5 (Appearing for the City of Chino,
6 MR. JIMMY L. GUTIERREZ, Attorney at Law;
7 appearing for Monte Vista Water District,
8 MR. ARTHUR G. KIDMAN, Attorney at Law;
9 appearing for the Watermaster, MR. WAYNE
10 K. LEMIEUX, Attorney at Law; also appearing,
11 MS. ANNE SCHNEIDER, Attorney at Law.)
12 (Heather R. Moore, C.S.R., Official Reporter, C-10294)

13

14 THE COURT: Let's go on the record in the case
09:52:5515 of Chino Basin Municipal Water District, case number
09:52:5516 RCV-51010. We'll start with Mr. Gutierrez. Let's have,
09:53:0417 first of all, the attorney's names for the record.

09:53:0618 MR. GUTIERREZ: Jimmy Gutierrez appearing for
09:53:0819 the City of Chino.

09:53:1020 MR. KIDMAN: Good morning. Arthur Kidman for
09:53:1221 Monte Vista Water District.

09:53:1522 MR. LEMIEUX: Good morning. Wayne Lemieux for
09:53:1723 the Watermaster.

09:53:1924 MS. SCHNEIDER: Good morning. Anne Schneider,
09:53:2125 special referee to your Honor.

09:53:2426 THE COURT: Thank you.

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

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

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

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

09:55:27 9 The annual reports are filed on November -- have
09:55:31 10 to be filed by November 15th. We might need to adjust
09:55:35 11 that. According to the judgment, they're filed November
09:55:38 12 15th. Your fiscal year ends June 30th. So immediately
09:55:45 13 following June 30th on November 15th you would have an
09:55:48 14 annual report due; is that correct?

09:55:52 15 MR. LEMIEUX: Yes, your Honor.

09:55:53 16 THE COURT: I am reading that correctly. Does
09:55:55 17 that date need to be adjusted?

09:55:57 18 MR. LEMIEUX: I think history is -- tells us
09:56:01 19 that it probably does. You think it's enough time, but it
09:56:04 20 just hasn't worked out. And we need some more time. And
09:56:08 21 we would be happy to study that and come back with a
09:56:12 22 recommendation. I don't want to put too much time in
09:56:16 23 here. I would recommend to the Court the actual
09:56:20 24 appropriate time.

09:56:21 25 THE COURT: As you'll find out later, I intend
09:56:24 26 to continue this hearing until November the 5th at

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

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

09:57:07 10 MR. LEMIEUX: Yes, your Honor. Since your Honor
09:57:24 11 has dropped that in my lap, can -- when we come back on
09:57:28 12 the 5th -- this is beyond what we're talking about
09:57:31 13 today -- would you have a problem with that motion that we
09:57:35 14 bring on the 5th including a request to allow us to serve
09:57:41 15 parties by electronic means, email and web site?

09:57:46 16 THE COURT: I am glad you mentioned that. We
09:57:49 17 had mentioned that too. And omniscient as you are, it
09:57:55 18 would have to be a noticed motion for some time in the
09:57:57 19 future, but it seems to me if you have been reading me,
09:58:03 20 which apparently you have, there are a lot of people.

09:58:08 21 And I have ordered the Internet. And that's the
09:58:11 22 direction that we're headed. I don't know if we're there
09:58:16 23 yet. I have some questions I want to ask Traci Stewart
09:58:20 24 about the Internet. It seems to me it could be set up
09:58:25 25 where notice was given that the onus was on the people to
09:58:29 26 look up the motions on the Internet and if they wanted a

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

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

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

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

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

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

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

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

4 Did you get the picture?

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

10:00:36 7 MR. LEMIEUX: Can we arrange a tour of the
10:00:38 8 facilities some time of year where it's pleasant, not only
10:00:42 9 to Watermaster but the spreading grounds and all of the
10:00:46 10 major water facilities for the area?

10:00:49 11 THE COURT: I have thought about that. It would
10:00:51 12 give me a better idea of what's going on. I would have to
10:00:54 13 be quiet the whole time. It would be difficult to have a
10:00:57 14 court reporter going. And I think these proceedings as
10:01:00 15 they are right now should be court reported any time I am
10:01:06 16 having interaction.

10:01:07 17 MR. LEMIEUX: That is something we did with some
10:01:09 18 other adjudicated basins where the Judges were able --

10:01:14 19 THE COURT: Maybe I will take the court
10:01:16 20 reporter, and if I do have a question it could be
10:01:18 21 reported, the question and the answer, because -- well,
10:01:25 22 actually, I think I mentioned to the people some time ago
10:01:30 23 that's where I have gotten Anne Schneider's name. I was
10:01:34 24 looking at Bancroft Whitney and it said, per Schneider.
10:01:41 25 That's how Anne Schneider was looked up. I was reading
10:01:45 26 some information that was available and then I had Judy,

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

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

10:02:21 9 (No response.)

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

10:03:0218 And Mr. Gutierrez --

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

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

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

10:03:37 2 Today I understand the costs to Watermaster
10:03:40 3 which are born to everybody and paid directly by the
10:03:43 4 producers exceeds \$100,000 for the work Ms. Schneider has
10:03:46 5 done and Mr. Scalminini has done. The budget that I
10:03:52 6 understand exists for the Watermaster Board members and
10:03:55 7 their expenses is about \$36,000. And my question is, if
10:03:59 8 we didn't have the Board there donating their time and
10:04:02 9 being actively involved there would be an expense anyway
10:04:06 10 and it would be absorbed by the people that ultimately use
10:04:14 11 the water. So I think in the big picture of things the
10:04:14 12 cost is not an issue from my point of view. I think the
10:04:20 13 way in which the Court is comfortable in dealing with
10:04:24 14 those alternates.

10:04:28 15 I haven't attended all of the meetings. I have
10:04:28 16 noticed at some of them by and large most of the Board
10:04:31 17 members are there and they spend a lot of time.

10:04:33 18 THE COURT: Recently there were some
10:04:36 19 allegations -- in fact, way back when. I am just going by
10:04:40 20 memory, now, one of the Board members was accused of
10:04:45 21 having infrequent participation in their meetings.

10:04:48 22 MR. GUTIERREZ: On the Board, your Honor?

10:04:50 23 THE COURT: This is on material that was filed
10:04:52 24 with the Court about a year or two ago.

10:04:56 25 MR. GUTIERREZ: I am talking about since you
10:04:58 26 made the appointment in February under the ruling of the

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

10:05:27 9 And all of those elected officials are being
10:05:31 10 asked to donate their time. I will speak more about
10:05:36 11 counsel members then I will about district members. They
10:05:40 12 have all kinds of committees to attend. And it is very
10:05:43 13 dumb for them to go -- to some extent to not deal with
10:05:48 14 compensation or some of their time and their expenses it
10:05:52 15 becomes a disincentive to them being actively involved,
10:05:56 16 recognizing that they have a lot of work to do on other
10:05:59 17 issues.

10:06:00 18 I want to put that in perspective. I don't see
10:06:03 19 an objection. Overall I think it is a question of what
10:06:06 20 the Court feels comfortable with as far as compensation.

10:06:10 21 THE COURT: If you look at Paragraph 18 of the
10:06:13 22 judgment, which I called your attention to, you have got
10:06:15 23 to do it correctly. The judgment is the judgment. You
10:06:19 24 can modify their salary and pay them \$16 a meeting or give
10:06:23 25 them \$19.95 a day or \$24.95 a day, but if you got to
10:06:29 26 \$25.50 instead of the \$25.00, then you have to modify the

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

10:06:37 2 If you want to do it, I am not opposed to it. I

10:06:41 3 think \$25 a day is ridiculous. I use that word in there.

10:06:46 4 I am not opposed to them being fairly compensated. On the

10:06:50 5 other hand, it is a quasi-judicial position they're

10:06:54 6 holding. And you might know what a cut in salary I took

10:07:02 7 when I took this job. I make about 1/8th of what I did

10:07:06 8 when I was in private practice. We all do not expect to

10:07:10 9 be paid what private industry is paying. If these were

10:07:15 10 members of the board of directors of Intel I think they

10:07:19 11 would be paid substantially more. I don't know what a

10:07:23 12 school board -- the compensation is for a member of a

10:07:28 13 school board.

10:07:30 14 You requested -- I found it to be reasonable the

10:07:33 15 \$125 and \$250. The only problem I saw was the mileage was

10:07:44 16 nickel and diming it. A little like mice nibbling away at

10:07:49 17 the cheese. Actually, Mr. Krueger, I looked up his

10:07:53 18 qualifications. He's an engineer. I checked on a lot of

10:07:56 19 you people.

10:07:58 20 Mr. Neufeld, I checked on yours. They're very

10:08:02 21 fine people. And I don't think -- they don't want to

10:08:06 22 be -- the mileage from --

10:08:08 23 Mr. Neufeld, you live in Rancho Cucamonga?

10:08:12 24 MR. NEUFELD: Yes, sir.

10:08:13 25 THE COURT: You gotta' make less than a buck on

10:08:18 26 mileage going to a meeting. I live in Upland. I drive to

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

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

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

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

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

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

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

10:10:33 9 The judgment -- for whatever reason, the people
10:10:37 10 who entered into that judgment initially agreed to it,
10:10:40 11 though the \$25 maximum was what -- where they wanted to
10:10:46 12 set the fee, where now we have a different board composed
10:10:50 13 of different people. We have the nine people. I want
10:10:53 14 good people on it. And I want them to be compensated. I
10:10:55 15 don't want them to have a gravy train.

10:10:59 16 This is not something where somebody is going to
10:11:03 17 be encouraged to have excess meetings. I didn't limit
10:11:06 18 you, as you may have noticed, to the eight meetings a
10:11:10 19 month, because there is going to be some scrambling at
10:11:13 20 times. And if more than eight meetings were necessary, I
10:11:17 21 hope they're not, if more than eight meetings were
10:11:20 22 necessary, I didn't want to limit this group, because at
10:11:23 23 this very important time there is going to be a lot of
10:11:26 24 scrambling.

10:11:28 25 Is there any more questions on what I have
10:11:32 26 written?

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

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

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

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

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

10:12:0814 THE COURT: Okay.

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

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

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

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

10:13:47 10 THE COURT: Notice it properly and have it
10:13:50 11 properly before the Court and give people notice.

10:13:53 12 MR. LEMIEUX: Excuse me, your Honor?

10:13:53 13 THE COURT: I noticed one of the -- as a matter
10:13:56 14 of fact, on the notice of today's meeting it said, at the
10:14:00 15 very end it said compensation --

10:14:02 16 MR. LEMIEUX: Yes.

10:14:03 17 THE COURT: It didn't say an increase in
10:14:05 18 compensation, anything like that. I am not so sure that's
10:14:08 19 adequate notice, but anyway.

10:14:10 20 MR. LEMIEUX: Your Honor --

10:14:11 21 THE COURT: Nothing has happened today anyway,
10:14:13 22 so --

10:14:14 23 MR. LEMIEUX: Your Honor, for the notice of
10:14:15 24 ruling for today's ruling, would it be proper to say that
10:14:19 25 the 19th and the 20th reports have been received and
10:14:22 26 filed?

10:14:23 1

THE COURT: Yes.

10:14:24 2

10:14:26 3

MR. LEMIEUX: Which doesn't indicate approved of their content. And likewise the production reports were received and filed and perhaps stop there?

10:14:30 4

10:14:33 5

THE COURT: Okay. And then --

10:14:37 6

10:14:39 7

10:14:45 8

MR. LEMIEUX: Then the burden will be on us to identify anything that's -- any of those documents that would require Court approval. And we'll file a separate motion.

10:14:50 9

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10:15:0013

10:15:0514

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

10:15:1415

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10:16:0726

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

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

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

10:16:46 8 And we don't have time to do your silly computer
10:16:49 9 things. And there is a reason for it. And as we're now
10:16:53 10 starting to find out, you're going to save a lot of money
10:16:57 11 giving notice on the -- I'll ask Traci Stewart this. I am
10:17:01 12 going to call on you, even though you're not an attorney.

10:17:06 13 How long does it take you to put the minutes
10:17:08 14 into the computer as far as -- you have a web server
10:17:12 15 there, do you, now?

10:17:15 16 MS. STEWART: The minutes are typed into the
10:17:17 17 computer. Initially, in order to put them up on the web
10:17:21 18 what has to happen is the format of them has to be
10:17:24 19 reformatted because the language the web server utilizes
10:17:28 20 doesn't allow for the same type of formatting you're able
10:17:33 21 to use in a word processing program that you develop the
10:17:37 22 minutes in. That's the first step. And once they are put
10:17:40 23 into the proper format, then usually what we do, and we're
10:17:45 24 going to be training somebody else to do this, we put them
10:17:49 25 up on the web and you have to -- there is a process you
10:17:53 26 have to go through in order to do that, essentially.

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

10:18:00 2 MS. STEWART: Timewise, probably depending on
10:18:03 3 the length of the minutes, it probably is like an hour per
10:18:06 4 set of minutes, I would say. It does take time to go
10:18:10 5 through and reformat and get it accumulated and put it up
10:18:15 6 on the web. You can do -- if you have more of them
10:18:19 7 accumulated then the process of putting them up is
10:18:21 8 quicker. So you could do probably five sets of minutes in
10:18:26 9 two hours, two-and-a-half hours, that wouldn't be that
10:18:30 10 much of a problem. As far as notice on the web, we have
10:18:36 11 asked people for their email addresses and whether they
10:18:39 12 have access.

10:18:40 13 There are a number of parties that don't report
10:18:44 14 it. I am not certain that that's going to be adequate or
10:18:49 15 approve constructive notice. In the past we had the post
10:18:53 16 card where whenever we were going to be filing something
10:18:56 17 that was significantly different we would notice everybody
10:19:01 18 with a post card. And that's what the -- we have -- I
10:19:05 19 don't know when it goes back to, '78 or '79, where we're
10:19:09 20 able to notice most people for pending motions before the
10:19:13 21 Court by post card and there are probably a hundred and
10:19:17 22 some that request everything.

10:19:20 23 THE COURT: Well, if they request everything,
10:19:22 24 maybe they can find it on the Internet in the future, some
10:19:25 25 of those 140, also some combination with Facsimile. There
10:19:32 26 are getting to be more and more, as a result of this, more

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

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

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

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

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

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

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

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

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

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

10:24:50 15 I asked my dad one time to help me with math and
10:24:53 16 that was it. He was an engineer. You take this and move
10:24:58 17 it over here and that and this. And he really was not a
10:25:01 18 communicator.

10:25:04 19 Engineers, they know it. They know it. He was
10:25:07 20 a brilliant man, but sometimes communicating it to other
10:25:11 21 people was difficult. And the problem here that I see is
10:25:15 22 communicating to the Court and laying out some objectives
10:25:19 23 that perhaps are more quantifiable than what you have so
10:25:23 24 far expressed. The public, through this Court, have some
10:25:28 25 means of measuring your success.

10:25:32 26 And again, the whole purpose of bringing Anne in

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

10:26:09 4
10:26:17 5 Okay. The engineering reports mentioned in the
10:26:22 6 optimum management scope of work were to be completed by
10:26:22 7 August of this year. From a review of the summaries of
10:26:27 8 those reports it appears the reports may contain specific
10:26:32 9 analysis that the people represented by this Court and
10:26:36 10 this process would be interested in seeing. The contents
10:26:40 11 of those reports should be included within the scope of
10:26:48 12 work -- within the goals identified to solve the problems.
10:26:51 13 And as a result of that I am going to continue this
10:26:56 14 hearing until November the 5th at 10:00 as we discussed so
10:26:59 15 that you can more adequately address those items in the
10:27:08 16 scope.

10:27:08 16
10:27:12 17 Again, I want to end it on a more positive note.
10:27:16 18 I am very pleased with the amount of effort that's been
10:27:21 19 expended. I want to get you more focused in directions
10:27:26 20 that I think are what I want. I am going to have a moment
10:27:29 21 where we're going to -- I am going to have Anne Schneider
10:27:33 22 address some of these points as she sees them and allow
10:27:39 23 you guys to add your input.
10:27:45 24
10:27:48 25 I think you guys have come a long way from a
10:27:52 26 couple of years ago. It has been over two-and-a-half
years ago, more than that when we started this process.
Mr. Kidman was present. Mr. Gutierrez was present. Traci

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

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

10:28:38 10 Where are we? I read one report in there, or
10:28:43 11 one comment, that it costs over a billion dollars to clean
10:28:47 12 it up. If we are so far gone in this process, tell me
10:28:55 13 what we're going to do to at least manage this uncleanable
10:29:02 14 situation. I noticed in one of the reports, I think it
10:29:06 15 was page 17 of the report of the -- the 19th or the 20th.
10:29:12 16 I have got it dog-eared here. And it really kind of
10:29:22 17 concerned me in that I wondered what efforts were being
10:29:27 18 employed in the area of clean-up it was on page 17, going
10:29:31 19 into 18. And if you look on page 18 it says, Chino Basin
10:29:42 20 desalter. And this is for your 95/96, I think.

10:29:52 21 MR. LEMIEUX: Is that of the annual report, your
10:29:54 22 Honor?

10:29:55 23 THE COURT: Yes. Under F it says, in September
10:29:57 24 of 1996 Western Municipal -- W.M.W.D., Western Municipal
10:30:03 25 Water District filed an MPA, Memorandum of Points and
10:30:08 26 Authorities, regarding the desalter agreement. The

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

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

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

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

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

10:32:10 1 now.

10:32:13 2 The tremendous amount of work that's gone into
10:32:16 3 the scope of the OBMP, and obviously you have remarked on
10:32:24 4 that, the concern is that when you scanned back and ask a
10:32:30 5 very fundamental question, I am not sure that the work --
10:32:35 6 the task work that's outlined in that scoping document
10:32:39 7 ever addresses the basic question. And the basic question
10:32:43 8 is, why are we doing this? It has to be not an exercise
10:32:50 9 without a purpose just to satisfy some judgment provision
10:32:56 10 or your ruling. And I am concerned that there is not a
10:33:01 11 definition of the problem nor an indication that
10:33:06 12 meaningful and useful -- and I emphasize useful -- goals
10:33:12 13 will be set so that the overall process really does answer
10:33:17 14 the question of whether there is a way to improve quality
10:33:23 15 meaningfully in this basin or not.

10:33:31 16 The scope sounds like it will address those
10:33:36 17 issues, particularly the engineering tasks, one, two, and
10:33:41 18 three, and the sections one, two, and three of the OBMP
10:33:46 19 which already, presumably, are drafted because the
10:33:51 20 timeline, at least, indicated they would be completed by
10:33:54 21 the end of August. Reviewing those in conjunction with
10:33:59 22 the draft scope as amended by Mr. Wildermuth, I think,
10:34:04 23 would allow us and you to determine if there is really any
10:34:11 24 meat that is the subject of this process. When Joe
10:34:19 25 Scalminini and I suggest that there isn't a statement of
10:34:22 26 the problem, it is because we really couldn't find

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

10:34:57 9 The management problems in the Chino Basin are
10:35:00 10 just that, management problems. Most of the producers
10:35:02 11 know or have knowledge of the water level and water
10:35:05 12 quality problems of the basin. The real challenge is to
10:35:08 13 develop institutional arrangements to address these
10:35:13 14 problems. And the purposes of engineering the tasks two
10:35:17 15 and three are to get everyone on the same page. And he
10:35:21 16 goes on. And I think that it may well be that the scope
10:35:26 17 is absolutely adequate, but it is essentially impossible
10:35:30 18 to tell that without being able to look at the work
10:35:33 19 product from -- that is embodied in these first three
10:35:39 20 engineering task memos and the draft -- first three
10:35:42 21 sections of the OBMP itself.

10:35:45 22 I think that the issue may already have been
10:35:49 23 addressed in addition by the drafting that presumably has
10:35:53 24 been accomplished. And I guess it makes sense to continue
10:35:59 25 this until November 5th if one of the things that can be
10:36:04 26 accomplished in this intervening period is to review those

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

10:36:41 8 The concern that Joe Scalminini and I share is
10:36:48 9 that at least so far there was some statement of the
10:36:52 10 goals. And the goals are very, very general except for
10:36:58 11 several of the water quality goals. They are program
10:37:02 12 goals, they're not basin goals. And so I think in other
10:37:07 13 words that it would not slow down the process at all, but
10:37:13 14 it might avoid unnecessary effort or perhaps useless
10:37:20 15 effort if we could not move forward to approve the scope
10:37:26 16 until there was some assessment of what it actually means.
10:37:31 17 Since that work is presumably accomplished already, that
10:37:34 18 assessment can be more meaningful having looked at that
10:37:38 19 work.

10:37:39 20 So that's the conclusion I suggest could be
10:37:42 21 reached here. I don't believe that that should slow down
10:37:47 22 anything. I guess I want to emphasize that because the
10:37:51 23 timeline is tight. There is no reason the drafting
10:37:55 24 schedule, either engineering task memos or the sections of
10:37:59 25 the OBMP would be effected, but it would allow a review.

10:38:04 26 THE COURT: Mr. Lemieux?

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

10:38:30 9 When we say, identify the problems for the OBMP,
10:38:37 10 we sometimes get confused with the larger question of
10:38:40 11 identify our problems. We have more problems than
10:38:43 12 hydrological.

10:38:46 13 THE COURT: Hydrologic would be what I would add
10:38:50 14 at this point. I would think probably institutional is
10:38:56 15 going to be with us forever.

10:38:58 16 MR. LEMIEUX: We'd like to put that off until we
10:39:01 17 get the hydrological pinned down.

10:39:04 18 The second thing we have is in some ways we have
10:39:07 19 to know the scope and level of service. The scope and
10:39:10 20 level of detail and -- I ended up without a verb here. We
10:39:17 21 have to know the Court's ruling on the scope and level of
10:39:20 22 detail until we can move on to other parts of the report.
10:39:24 23 The Court's February ruling put a stringent series of
10:39:28 24 deadlines. If we're going to be putting off a decision on
10:39:34 25 the scope until November, can we have some extra time
10:39:37 26 between now and November to do the other -- an extra 60

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

10:39:43 2 I am having a hard time articulating a good
10:39:47 3 length for an extension because obviously some of the work
10:39:51 4 is proceeding with or without the scope being completed.
10:39:54 5 Some of the work is going to depend on how the scope
10:39:58 6 finally turns out. If the scope turns to the left or
10:40:02 7 makes a U-turn, that could throw everything off. What I
10:40:08 8 am asking the Court is for perhaps leave for us to suggest
10:40:12 9 a new schedule of events based upon the scope not being
10:40:17 10 approved until November and we'll just add 60 days to
10:40:21 11 every date, but we'll come back and make a suggestion
10:40:25 12 where we need more time.

10:40:27 13 THE COURT: I will revisit the issue in
10:40:30 14 November. Right now the way I see it is a long time ago I
10:40:34 15 set some guidelines out as to when -- not actually
10:40:39 16 guidelines, I set some dates as to when things should be
10:40:44 17 done. A failure to do those should not be an excuse to
10:40:49 18 continue. I will listen. Engineering reports one, two,
10:40:54 19 three -- Roman numeral one, two, and three have to be in
10:40:58 20 there.

10:40:59 21 MR. LEMIEUX: They're well in hand. And we'll
10:41:02 22 be very specific. If we need time on technical matters
10:41:07 23 we'll provide --

10:41:08 24 THE COURT: One area is your 97/98 report is
10:41:12 25 going to be due on the 15th, about 10 days after your
10:41:15 26 meeting. Let me know on the 5th what is reasonable. If

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

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

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

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

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

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

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

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

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

10:43:32 10 MR. LEMIEUX: We're going to meet this afternoon
10:43:34 11 and talk about the progress report next due, but it's
10:43:37 12 going to be a little tight to get it to you by the 15th.

10:43:47 13 THE COURT: I can live with the 30th. If --
10:43:47 14 What do you think?

10:43:50 15 MS. SCHNEIDER: I think there have been some
10:43:50 16 questions about the ruling and what it means as to the
10:43:53 17 progress reports. And I didn't know if clarification of
10:43:56 18 that ruling would be in order. I think the Court may want
10:44:02 19 to clarify that the Watermaster would make regular
10:44:05 20 progress reports. I am not sure what the role of special
10:44:09 21 referee is, but I assume that we can comment on the
10:44:13 22 progress reports --

10:44:16 23 THE COURT: I was giving you 30 days. As a
10:44:18 24 matter of fact, if that goes to -- then that winds up
10:44:21 25 being really tight for you to make comments and get them
10:44:25 26 to the Court. If they do it by the 30th then by October

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10:46:5917 MR. LEMIEUX: Yeah.

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

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

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

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

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

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

10:47:58 10 THE COURT: What do you think, Mr. Kidman?

10:47:59 11 MR. KIDMAN: I think that would provide the
10:48:01 12 notice that the Constitution requires.

10:48:06 13 MR. LEMIEUX: Notice of filing plus access in a
10:48:08 14 couple of places.

10:48:09 15 THE COURT: Okay.

10:48:10 16 MR. LEMIEUX: So then we can start turning this
10:48:14 17 documentation over to Ms. Schneider.

10:48:18 18 THE COURT: Let me interrupt you one moment,
10:48:20 19 Mr. Lemieux. On the comment that Traci Stewart said that
10:48:25 20 they had a file and they used to send out post cards. In
10:48:29 21 the file maybe it can indicate that they have responded
10:48:35 22 pursuant to this notice. You can serve us by facsimile.
10:48:40 23 You can serve us by web site. It might be on an OSC why
10:48:45 24 you should not be served with a web site and have them --
10:48:49 25 they'll be served with a web site unless they respond.

10:48:53 26 MR. LEMIEUX: That's what I was trying to gauge,

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

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

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

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

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

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

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

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

10:51:2912 THE COURT: Good.

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

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

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

10:52:26 3 THE COURT: Maybe Santa Ana Water might think
10:52:30 4 Traci Stewart invited somebody up. And if I am to believe
10:52:33 5 their Internet again, somebody didn't think that was a
10:52:37 6 good idea. They weren't organized yet. That's my own
10:52:40 7 paraphrasing. There was some comment on one of the
10:52:44 8 minutes that I read on their web site that she had invited
10:52:49 9 some people from Orange County up to participate in
10:52:53 10 discussions and financially participate. It probably is
10:52:57 11 never too early to get money.

10:52:59 12 MR. GUTIERREZ: The point we were trying to make
10:53:01 13 clear in there is if a problem has been identified and
10:53:04 14 needs a solution that monitoring in general, or in
10:53:07 15 particular, or other things in general, the failure to
10:53:10 16 obtain state or federal funds is not going to cause the
10:53:14 17 Watermaster to stop addressing the problem.

10:53:19 18 THE COURT: Exactly. Exactly.

10:53:21 19 MR. LEMIEUX: I take it those issues that have
10:53:24 20 been raised by the special referee have now been answered
10:53:28 21 adequately and we won't address that again when we come
10:53:32 22 back here unless we're wrong.

10:53:34 23 MS. SCHNEIDER: Your Honor, I think that the
10:53:35 24 funding of monitoring programs question has been
10:53:39 25 addressed. The question of the adequacy of monitoring in
10:53:43 26 the past and now for the future is probably integrally

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

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

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

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

10:54:18 10 MS. SCHNEIDER: Your Honor, I am -- you're
10:54:20 11 talking about production reporting?

10:54:23 12 THE COURT: Yeah. I think that that in the past
10:54:28 13 may have been given a tertiary importance maybe. It seems
10:54:36 14 to me there is a lot of people out there that aren't
10:54:39 15 reporting. Well, there are some people that aren't
10:54:42 16 reporting that should be reporting.

10:54:49 17 MR. LEMIEUX: We'll make a note of that.

10:54:49 18 And that was --

10:54:49 19 THE COURT: Going back to what you were saying.

10:54:54 20 MR. LEMIEUX: That will come back on November
10:54:54 21 5th. Something about that. As far as funding issues, I
10:54:58 22 hope that we agree those have been dealt with.

10:55:00 23 We talked about management consents, special
10:55:03 24 referee comments on management consents and we responded
10:55:08 25 on page five. This is kind of a -- I am not sure if we
10:55:15 26 answered inadequately or if you need additional

10:55:19 1 information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11:01:38 6 MS. SCHNEIDER: My comment was in any event, the
11:01:42 7 1995 final summary report for the Chino Basin Water
11:01:46 8 Resources Management study did many of the things that are
11:01:50 9 included in the scope for this OBMP, but it stopped before
11:01:55 10 it got to implementation measures. It says so. It says
11:02:00 11 the next important thing to be done is implementation.
11:02:05 12 What I was suggesting is don't redo all of the work in the
11:02:08 13 '95 report. That's about 10 percent of the report. Then
11:02:11 14 put 90 percent into where that effort stopped, which is
11:02:15 15 implementation.

11:02:16 16 That was the gist of what I was trying to say.
11:02:22 17 And I apologize if I wasn't clear. I just had been a
11:02:27 18 broken record, I guess, urging that the focus be on
11:02:30 19 implementation once the problems --

11:02:34 20 MR. LEMIEUX: We misunderstood that --

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

11:02:41 22 MR. LEMIEUX: When we bring back the next
11:02:44 23 application to this, we'll clearly state we intend to
11:02:48 24 implement. We were taking a little different angle. I
11:02:53 25 take it then the matters presented then commented on by
11:02:55 26 the special referee and then responded to by us would

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

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

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

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

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

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

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

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

11:04:28 1 South Coast Plaza.

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

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

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

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

11:04:39 6 you.

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

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

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

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

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

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

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

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

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

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

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

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

11:05:29 19 reading the reports.

11:05:31 20 Go ahead.

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

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

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

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

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

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

11:05:51 1 THE COURT: Okay.

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

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

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

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

11:07:31 1 as the definition of problems we're dealing with,
11:07:34 2 hydrological problems only. And I understand that and
11:07:38 3 that makes perfect sense. However, there are some
11:07:41 4 non-hydrological problems that impact hydrological
11:07:45 5 problems. I will use one example. The question is the
11:07:49 6 question of storage. That's not necessarily a
11:07:52 7 hydrological issue. It is an adjustment of water rights
11:07:56 8 among the parties. The discussion we had had in the past
11:07:59 9 prior to these motions, and it really hasn't been
11:08:02 10 discussed in the documentation that's been served, is how
11:08:06 11 much storage capacity is there in the basin? How do we
11:08:10 12 divide that?

11:08:11 13 THE COURT: How much leaks out through the Santa
11:08:14 14 Ana River Project Authority?

11:08:15 15 MR. GUTIERREZ: All those issues which are not
11:08:18 16 hydrologic that have impact on it. I am thinking those
11:08:22 17 kinds of issues are legitimate as far as problems that
11:08:25 18 need to be decided. They're not necessarily hydrological,
11:08:29 19 but they effect this and the big picture because they deal
11:08:34 20 with the interest of the parties. And at some point in
11:08:37 21 time we discussed that at Watermaster level there are
11:08:41 22 going to be differences on how to resolve this of these
11:08:48 23 key problems because those problems effect the parties
11:08:50 24 differently. At this point in time we have chosen to
11:08:54 25 understand there will be differences and not address the
11:08:57 26 differences.

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

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

11:10:41 1 Issue two that I have is the question of the
11:10:45 2 evolution of governments. What the Court has done by this
11:10:48 3 ruling is created a form of government which includes the
11:10:54 4 Court, the Watermaster Board, and Ms. Schneider and
11:10:57 5 Mr. Scalminini as advisors to the Court. And the
11:11:05 6 relationship between Ms. Schneider and Mr. Scalminini and
11:11:08 7 the Watermaster Board isn't clear. You have just
11:11:12 8 discussed giving authorization to Mr. Lemieux to
11:11:16 9 communicate with her and vice versa. That's fine and
11:11:20 10 good, but I would point out that Mr. Lemieux is the
11:11:23 11 attorney for the Watermaster Board and he takes direction
11:11:26 12 from a majority which does not necessarily represent the
11:11:30 13 interests of other parties or the views of other parties.

11:11:33 14 And so the question amongst others that I have
11:11:36 15 is what opportunity will the rest of us have to
11:11:39 16 communicate with Ms. Schneider? And how do we communicate
11:11:44 17 with her?

11:11:45 18 THE COURT: I am not going to limit any of the
11:11:48 19 attorneys if they have a problem.

11:11:50 20 MR. GUTIERREZ: Up to this point I have not
11:11:52 21 communicated with her. I considered her to be an arm of
11:11:55 22 the Court.

11:11:56 23 THE COURT: Watermaster is an arm of the Court.

11:11:58 24 MR. GUTIERREZ: I understand that. It's an open
11:12:00 25 process. And so that relationship is not that clear. On
11:12:03 26 your February ruling you indicated that the only reference

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

11:12:37 10 We're now moving into a new direction. We
11:12:40 11 haven't thought through a lot of these issues. I think
11:12:43 12 the point is going to arrive where we're going to need to
11:12:46 13 deal with these issues, and the bigger question to me is
11:12:50 14 this. When we're working in committees on trying to
11:12:54 15 develop a plan there are going to be differences. There
11:13:00 16 is not going to be guidance because you can't foresee at
11:13:04 17 this point in time what kind of problems we're going to
11:13:06 18 have in the future or if we find other hydrological
11:13:10 19 problems we haven't thought of before we're going to be
11:13:12 20 dealing with those.

11:13:14 21 My question is what government structure is
11:13:16 22 there? Do we go to Ms. Schneider? That's not clear. Or
11:13:21 23 do we file a motion and bring it to the Court? We don't
11:13:24 24 have to resolve all of those now. I think it is important
11:13:27 25 to give some consideration to them so at least we make it
11:13:30 26 easier on all of us.

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

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

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

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

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

11:16:23 10 Now, if they go to Anne Schneider, Anne
11:16:31 11 Schneider the way I have envisioned it could talk to them,
11:16:35 12 since she is an appendage of the Court, that does create a
11:16:45 13 delicate issue that I would be willing to address.

11:16:45 14 MS. SCHNEIDER: Your Honor?

11:16:45 15 THE COURT: Yes.

11:16:45 16 MS. SCHNEIDER: The question has been raised,
11:16:50 17 Watermaster staff was suggesting that a meeting be held
11:16:55 18 with Watermaster staff and Mr. Scalminini and me and the
11:17:00 19 representatives of the parties. And I indicated that I
11:17:04 20 didn't think that was appropriate. And I think what
11:17:08 21 Mr. Gutierrez is suggesting is maybe we consider one or
11:17:13 22 more hearings that would be for the purpose of making more
11:17:17 23 specific the recommendations that I have had to make less
11:17:22 24 specific because of time constraints and maybe offer the
11:17:28 25 opportunity for the parties to directly talk with
11:17:33 26 Mr. Scalminini as well.

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

11:18:06 8 I think that if it isn't a problem I would like
11:18:11 9 to be able to talk with Mr. Lemieux just on the basis that
11:18:17 10 there is procedural work to be done. As long as that
11:18:20 11 doesn't become substantive in any fashion. Perhaps there
11:18:25 12 is a line that can be drawn.

11:18:27 13 MR. LEMIEUX: Well, I see my role as very
11:18:32 14 similar to the special referee since we all have the same
11:18:38 15 client, that's the Court. You have delegated some
11:18:42 16 responsibility to the special referee and Mr. Scalminini
11:18:45 17 and some responsibility to the Watermaster and Chief of
11:18:51 18 Watermaster operations. And I and maybe some other worker
11:18:55 19 bees for the Watermaster are working for you as
11:19:01 20 distinguished from the parties -- from somebody that's out
11:19:05 21 there drilling a well, they're not working for you. The
11:19:10 22 group I have just describe, the Watermaster Special
11:19:13 23 referee's job is to try to watch the basin. They happen
11:19:17 24 to have other interests as well. That's just
11:19:19 25 happenstance.

11:19:19 26 So I think there is a reason to distinguish

11:19:25 1 between my conversations with the special referee and the
11:19:29 2 conversations of an attorney representing the parties.
11:19:35 3

11:19:38 4 THE COURT: Hang on a second. Let me think
11:19:41 5 aloud a second. I can envision pursuant to the judgment
11:19:50 6 the Advisory Committee tells Watermaster to do something
11:19:54 7 maybe consistent with the days -- the Fudacz days is how I
11:20:01 8 drew a distinction there, but the Watermaster could have
11:20:05 9 been informed by the Advisory Committee to do X and the
11:20:09 10 Watermaster in their independent judgment, the Board of
11:20:14 11 Directors of Watermaster acting as Watermaster, determine
11:20:19 12 that Y is the most appropriate cause of action and they
11:20:23 13 would come to the Court. The Advisory Committee would
11:20:28 14 also presumably be represented at that hearing. And so I
11:20:34 15 don't see myself having direct lines of communication with
11:20:38 16 Mr. Lemieux even though you would have a different --
11:20:39 17 MR. LEMIEUX: Maybe I should --
11:20:42 18 THE COURT: -- status than the others.
11:20:44 19 MR. LEMIEUX: I wouldn't say that. I am also, I
11:20:48 20 think, a little uncomfortable talking to you ex-parte,
11:20:51 21 although analytically I'm not sure why. I should mention
11:20:54 22 to the Court that our office does not represent the
11:20:56 23 Advisory Committee.
11:20:58 24 THE COURT: Most definitely we have been through
11:21:03 25 that. That was Mr. -- why Mr. Fudacz is no longer here,
11:21:08 26 the lines being blurred at one time. I ruled on that. I
ruled there was a conflict of interest.

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

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

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

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

11:21:26 9 Mr. Kidman?

11:21:30 10 MR. KIDMAN: Well, I'm not standing to raise a
11:21:33 11 problem. What I think though is that the -- we have had
11:21:39 12 some history here that's made it a little difficult to get
11:21:42 13 reorganized. And that history in one sense is that the
11:21:48 14 Watermaster and the Watermaster Advisory Committee became
11:21:53 15 partisans in the process rather than representative of the
11:21:58 16 judgment and of the Court. And consequently when they
11:22:02 17 become partisans of the process and I have to appear with
11:22:06 18 other counsel here in front of the Court then it becomes
11:22:10 19 very awkward for the Court.

11:22:22 20 I see this as being a product of the types of
11:22:27 21 interest that are involved. If we look at the public
11:22:33 22 interest, on the one hand, and look at special interests
11:22:36 23 and take those two things with all of the types of
11:22:41 24 connotations that they have, I would say that it's not
11:22:46 25 necessarily true that the majority of special interests
11:22:53 26 taken collectively through the Watermaster or the

11:23:00 1 Watermaster Advisory interests, Advisory Committee, it's
11:23:04 2 not necessarily true that the collection of those special
11:23:06 3 interests equal the public interest. And you're -- this
11:23:12 4 whole process, you, the Watermaster, everybody is having a
11:23:17 5 great deal of difficulty getting readjusted to the idea
11:23:22 6 that the public interest is what's to be foremost for the
11:23:28 7 Watermaster. Once that's done, and I think the process is
11:23:31 8 underway for the public interest to be what the
11:23:35 9 Watermaster is about, and to the extent that the parties
11:23:41 10 then find themselves in dispute under the judgment, the
11:23:45 11 parties come here rather than using the Watermaster or the
11:23:51 12 Watermaster Advisory Committee as their representative to
11:23:55 13 you. I think that's where the system kind of broke down
11:23:59 14 is that we got the idea somewhere this should be
11:24:06 15 government by majority rule, and that is by a majority of
11:24:10 16 the special interests rather than a majority that is
11:24:17 17 looking at what the public interest should be.

11:24:20 18 So the process is painful to readjust because
11:24:25 19 people have been used to working under the old system as
11:24:29 20 they are assisting. And I believe they are from what's
11:24:33 21 been said here today as well as the papers that have come
11:24:37 22 before you in connection with today. It would become more
11:24:43 23 uncomfortable for Mr. Lemieux to operate as he probably
11:24:48 24 should and as the Watermaster should as your assistant in
11:24:53 25 administering this judgment rather than as a partisan that
11:24:57 26 it comes in here and takes sides in disputes. Hopefully

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

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

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

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

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

11:27:12 2 THE COURT: I will take your comment under
11:27:14 3 advisement. I just go back to the time the nine-member
11:27:20 4 board Watermaster was appointed and we had a divergence of
11:27:26 5 opinion on that one. I don't know. When a specific issue
11:27:31 6 comes up, I will trust that there will be sufficient
11:27:38 7 motions made of the Court, maybe a Motion to Disqualify.
11:27:42 8 Who knows. I think the noticed motion procedure, if it
11:27:48 9 comes to the point where something has to go before the
11:27:51 10 Court, I'll go back and maybe be more appreciative of Anne
11:27:57 11 Schneider's comments. She should be communicating as an
11:28:00 12 advisor to me.

11:28:02 13 MR. LEMIEUX: I'm simply not going to approach
11:28:04 14 the Court ex-parte because of the problems you recognized.
11:28:08 15 However, I am going to attach a percentage, just a wild
11:28:14 16 guess. I would guess that 95 percent of the time the
11:28:17 17 Watermaster Advisory Committee and all the parties are in
11:28:20 18 absolute agreement on everything and at that point
11:28:23 19 ex-parte contact to the special referee can be very
11:28:27 20 useful.

11:28:29 21 THE COURT: And I think under those
11:28:32 22 circumstances what guidelines would be appropriate? Would
11:28:38 23 it be that for example, in your resolution, which is a
11:28:47 24 slow and cumbersome process and maybe not facilitative of
11:28:52 25 what we're trying to do, in that resolution, Gene Koopman,
11:29:02 26 I believe, signed the resolution, hey, this is okay with

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

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

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

11:29:17 7 MR. LEMIEUX: On contact with the special
11:29:18 8 referee, it is complicated and it covers all of us. It is
11:29:22 9 just not me talking to the special referee, it is the
11:29:26 10 chief of operations and the engineers and I don't know
11:29:29 11 where to draw the line.

11:29:31 12 MS. SCHNEIDER: That is a difficulty. I think
11:29:33 13 it would be extremely difficult to review and comment
11:29:40 14 effectively without access to Watermaster staff and
11:29:43 15 consultants and for that reason I felt it would be very
11:29:48 16 helpful to be able to talk to Mr. Lemieux as well, but --

11:29:58 17 THE COURT: The way I originally saw it was you
11:30:00 18 would talk to people, write a report. And I would
11:30:04 19 consider that report. Everybody else has got a copy of
11:30:07 20 that report as far as recommendations go so they would be
11:30:22 21 able to voice their opposing views. Then again, I see it
11:30:28 22 as certain things that I -- you might ask for direction
11:30:32 23 from me. And that I think maybe Mr. Lemieux, Mr. Kidman,
11:30:42 24 Mr. Gutierrez, everybody, maybe we should discuss this
11:30:50 25 some more at our next meeting instead of to where the
11:30:53 26 lines are and what is permissible.

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

11:31:39 10 MR. KIDMAN: The general manager, Joe Grindstaff
11:31:43 11 is at Santa Ana WaterShed.

11:31:47 12 THE COURT: Anyway, I always enjoyed, he
11:31:51 13 obviously was -- his declaration was considered in giving
11:31:57 14 great weight by the Court in the last decision. Anyway,
11:32:00 15 let's discuss this next time. The court reporter needs a
11:32:03 16 break.

11:32:05 17 Is there other things that we should be
11:32:07 18 discussing, in which case I will give her a break and
11:32:11 19 we'll come back?

11:32:12 20 MR. GUTIERREZ: I don't have anything.

11:32:13 21 MR. LEMIEUX: I think we should be talking about
11:32:15 22 lunch.

11:32:17 23 MS. STEWART: I want a little bit of
11:32:19 24 clarification. What did you mean by you wanted more
11:32:22 25 information with regard to the consent calendar and the
11:32:24 26 minutes? You want some sort of expert listed in the

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

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

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

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

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

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

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

11:32:48 8 descriptive than compensation.

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

11:32:53 10 THE COURT: That doesn't tell me anything.

11:32:58 11 MR. LEMIEUX: Thank you, your Honor.

11:32:59 12 THE COURT: Thank you.

11:33:01 13 MR. GUTIERREZ: Thank you, your Honor.

11:33:03 14 MS. SCHNEIDER: Thank you.

11:33:04 15 THE COURT: That's everybody?

16 (Proceedings in the above-entitled matter

17 were concluded.)

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

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

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26
Reported by: HEATHER R. MOORE, C.S.R.
Official Reporter, C-10294

1 SUPERIOR & MUNICIPAL COURTS OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN BERNARDINO
3 DEPARTMENT H (RC) HON. J. MICHAEL GUNN, JUDGE
4

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

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

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

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

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

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4 (909)945-4187
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6
7
8 October 1, 1998

9 I N V O I C E

10
11 To: Watermaster Services
12 Re: Chino Basin Municipal Water District
13 versus the City of Chino
14 Case Number: RCV 50101

15
16 Enclosed please find a certified copy of the
17 Reporter's Transcript of Oral Proceedings for the date
18 of Wednesday, September 9, 1998. The original has been
19 lodged with the court.

20 Original & 1 copy

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24 Total cost: \$248.00
25 Less deposit: \$252.00
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