

1 RANCHO CUCAMONGA, CALIFORNIA; THURSDAY, FEBRUARY 19, 1998;

2 P.M. SESSION

3 DEPARTMENT H (RC) HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5 (As listed on the cover pages.)

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

7 THE COURT: Let's go on the record in the matter  
8 of Chino Basin Municipal Water District versus the City of  
9 Chino, case number RCV-51010. Why don't we take this time  
10 right now to announce everybody who is present. We'll  
11 start with Mr. Cihigoyenetché over there. Then I will  
12 give you guys some time to read these things. Let me get  
13 one other interjection in there.

14 I had a glitch on page three, so I just really  
15 quickly made a new page three. On page three where it  
16 says, three pools, what I mean is two from the  
17 Agricultural. I was correct later in the judgment.  
18 You're going to have to assume I am going to get to the  
19 point where it's three from the pools, but it is two from  
20 the Agricultural Pool and one from the Non-Agricultural  
21 Pool.

22 With that thought in mind, let's start getting  
23 everybody's name for the record. If somebody comes in  
24 subsequently call it to my attention.

25 Mr. Cihigoyenetché.

26 MR. CIHIGOYENETCHE: Jean Cihigoyenetché on

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1 behalf of Chino Basin Municipal Water District.

2 MR. GUTIERREZ: Jimmy Gutierrez on behalf of the  
3 City of Chino.

4 MR. CHELEDEN: Chris Cheleden, Burke, Williams &  
5 Sorensen on behalf of Chino Hills.

6 MR. LEE: Steven Lee, Reid & Hellyer, on behalf  
7 of the Agricultural Pool Committee of Chino Basin.

8 THE COURT: Mr. Guterrez, pick up a page three  
9 and insert it.

10 MR. ADAMS: Richard Adams of Alvarez-Glasman and  
11 Colvin on behalf of the City of Pomona.

12 MR. KIDMAN: Art Kidman on behalf of Monte Vista  
13 Water District.

14 MS. LEVIN: Marilyn Levin, Deputy Attorney  
15 General, representing the State of California, member of  
16 the Agricultural Pool.

17 MR. McPETERS: Thom McPeters appearing for San  
18 Antonio Water Company, West End Consolidated Water  
19 Company, Monte Vista Irrigation Company, and Fontana Union  
20 Water Company.

21 MR. MARKMAN: James Markman, Chino Basin  
22 Watermaster Advisory Committee.

23 MR. TANAKA: Gene Tanaka, Best, Best, and  
24 Krieger, for the Cucamonga County Water District and  
25 Western Municipal Water District.

26 MR. RYAN: Timothy Ryan on behalf of the Fontana

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1 Water Company.

2 MR. DOUGHERTY: Afternoon. Robert Dougherty of  
3 Covington & Crowe on behalf of the City of Ontario.

4 THE COURT: Are there any other attorneys to  
5 announce their presence?

6 (No response.)

7 THE COURT: Okay. We have Traci Stewart, Chief  
8 of Watermaster Services here, too, right?

9 When this is over I am going to have somebody  
10 give notice. I had Mr. Cihigoyenatche give notice  
11 before. Mr. Tanaka has had to give notice. Mr. Kidman  
12 has had to give notice.

13 Who from a large firm have I --

14 MR. MARKMAN: We'll volunteer to give notice.  
15 I will give notice.

16 THE COURT: You will be giving notice.

17 (Steven Kennedy enters the courtroom.)

18 THE COURT: Mr. Kennedy is now present; is that  
19 Steven Kennedy?

20 MR. KENNEDY: That's correct.

21 THE COURT: Mr. Kennedy, there is, somewhere  
22 around here, a ruling; insert the single page in place of  
23 page three.

24 MR. KENNEDY: Thank you.

25 THE COURT: What I will do is I -- is 15 minutes  
26 enough for you guys to read that, or do you want more

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1 time? You want me to wait until 2:00? What is reasonable  
2 here?

3 (No audible response.)

4 THE COURT: Certainly not what you wrote in that  
5 order, your Honor.

6 Why don't I give you until five to 2:00 and you  
7 can read those and we'll talk again. Okay? Does  
8 everybody know that they're going to insert the new page  
9 three in place of the old page three? Anybody not know  
10 that? I will be back at five till 2:00.

11 (Brief pause.)

12 THE COURT: Okay. Has anybody left that was  
13 previously here?

14 No one has left. I received a letter from the  
15 Department of Water Resources. And it was a proof of  
16 service that started with Mr. Kidman. Let's see --

17 Is there anybody that didn't receive a copy of  
18 this letter from the Department of Water Resources?

19 MS. STEWART: We received it yesterday.

20 THE COURT: Anybody wish to be heard?

21 MR. MARKMAN: James Markman for the Advisory  
22 Committee, your Honor.

23 The Advisory Committee, as a matter of fact, the  
24 Appropriative Pool, and as far as virtually all the  
25 parties, there is a unanimous concurrence which caused me  
26 to file what I filed in the proposed order. The scheme of

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1 things, the emphasis on the optimum basin management plan,  
2 the continued work of the referee with technical expertise  
3 is looked upon as something that is productive and  
4 positive and was supported so much so that, although I  
5 have to tell you, my client doesn't agree with the  
6 referee's take on the audit expense, which is the reason  
7 we submitted an order that was without prejudice, so that  
8 if something like that ever comes up again we can contest  
9 it again; and we do in all due respect think the referee  
10 was quite incorrect on her narrow view on what constitutes  
11 a discretionary act, but decided to present to this Court  
12 a no whimpering, no whining attitude and to go forward and  
13 solve this problem professionally, working together. No  
14 Watermaster Board can do that if any segment of this water  
15 community in this courtroom wants to be obstreperous or  
16 dive back into the personal animosities or other things  
17 that were going on when I got into this case 10 months  
18 ago.

19           While all that is true, the one concession, or  
20 deviation, if you would, your Honor, that all the  
21 producers were looking for is, we're big boys. We can go  
22 do this. Don't hold a sword of Damocles over our head and  
23 tell these nine people who are going to take on that  
24 rather momentous task they are there on an interim basis.  
25 And don't automatically have DWR walk in, which is really  
26 an alternative that nobody supported. And so while I

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1 concur a great deal with what the Court has said,  
2 obviously, because it concurs with the position I was  
3 directed to take, we would like the Court to seriously  
4 consider this interim designation and the idea of going  
5 out to negotiate a contract with DWR, which means they  
6 will come in with state employees and replace the  
7 Watermaster staff.

8 I will represent after trying to do it the other  
9 way for six months, where the state supervises other  
10 people's employees, that will not work. They can't solve  
11 their personnel problems. Mr. Sandino did a yeoman's  
12 job. I disagree we were close to resolving those  
13 problems.

14 Rather than having all these negatives and  
15 waiving the carrot -- knowing this group -- and your Honor  
16 knows them better than I do.

17 THE COURT: Perhaps that's why the sword of  
18 Damocles is in there.

19 MR. MARKMAN: It may be. What we have seen is a  
20 coming together in the spirit of taking the referee's  
21 report and coming before the Court and saying, we're going  
22 to absorb it and not contest it, even though there are  
23 several producers that don't agree with some of it, and  
24 some who don't agree with most of it. We would like to  
25 take the task on because it makes sense. And the time  
26 lines make sense. And having the continued referee's

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1 supervision makes sense; but I can tell the Court, my  
2 client, the Advisory Committee, or the massive substantial  
3 majority of producers agrees with the sword of Damocles  
4 part of this.

5 THE COURT: I feel there is a compelling  
6 interest. Nobody is more concerned with the employees  
7 than me. I think Mr. Dougherty would concur on that. I  
8 think it was him at the one meeting that says, why are we  
9 going to have negotiations with the Chino Basin Municipal  
10 Water District? And I said, there are some employees to  
11 consider; and the very first time you guys were in here  
12 when we first started this case a couple of years ago I am  
13 the one that said, don't fire any of the employees. I  
14 don't want wholesale firing of employees or people fired  
15 for spite or tactical advantage; remember that,  
16 Mr. Dougherty?

17 MR. DOUGHERTY: Yes, your Honor.

18 THE COURT: But you miss one very important  
19 point. I put in there in the ruling that I have full  
20 confidence in this nine-member board Watermaster to  
21 accomplish its goals. And I have every intention at the  
22 end of the interim period to make a full five-year  
23 appointment; but I will allow everybody to be heard that  
24 wants to be heard. I am resolute in my opinion that there  
25 needs to be some control because of the past.

26 MR. MARKMAN: Your Honor, we concur with that.

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1 That's the reason why even though there were some papers  
2 filed about the Court having the authority to authorize  
3 this kind of reference, we embrace the referee's  
4 participation. Nobody wants to contest that. No matter  
5 what happens, no matter how this board performs, I am  
6 saying the board will perform, not the producers, because  
7 it is their money that is going to be negotiated, involved  
8 in these solutions and the optimum base management plan.

9 No matter what, there will be reports to the  
10 Court. The Court will have the opportunity to make a  
11 decision whether or not to change the Watermaster Board.  
12 All of that is true. In the order I prepared, you would  
13 have been given a number of six months to do that. All of  
14 that remains true whether or not you are predisposed to  
15 select the next Watermaster, which would be DWR.

16 The way we feel is, no offense, but guys, we  
17 don't want you in here. And secondly, to call -- just to  
18 characterize these people that are going to have to do  
19 this work as interim, we think, creates a disincentive  
20 more than an incentive. It doesn't change what will  
21 occur. If it doesn't work, we'll be back before the Court  
22 probably long before the day that motion is due to be  
23 filed to see if this board performed. All we would ask is  
24 if there has got to be a change, don't predetermine now  
25 what it will be or what form it will take.

26 THE COURT: I think that's left open in this,

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1 too. The hearing on October 28th, 1999, I worded that  
2 very carefully so all options were open and even the June  
3 of 2000 --

4 MR. MARKMAN: That's true --

5 THE COURT: All offers are still on the table;  
6 and that's why I had the September 30th date to report  
7 back on negotiations. I just want to know what  
8 considerations there are at that time.

9 MR. MARKMAN: In the meantime you're ready to  
10 implement --

11 THE COURT: It doesn't mean that. What the  
12 status of things still are, as far as whether the  
13 Department of Water Resources would be willing to take  
14 it. If you guys are getting along and if this is working,  
15 you think I am going to try to fix it?

16 This has been a lot of work. I know you guys  
17 have put a lot of work in. In fact, I was impressed in  
18 reading the transcript -- you were a significant player at  
19 the time of the hearing that Anne Schneider had. I read  
20 that transcript. Mr. Kidman was a significant player.

21 So I am aware of all your positions; and I even  
22 put that in the order. I am very aware you want local  
23 control; and local control you shall have, if you take  
24 care of business. And in the past, it is my opinion  
25 that -- and I state the reasons in the order and the  
26 ruling, why I think that maybe perhaps there has been a

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1 failure to take care of business at times.

2 I reread Judge Turner's order. And he suggested  
3 it, but it was a strong suggestion I got from the order,  
4 that an optimum basin management program be developed  
5 within two years. Everybody left and nothing happened.  
6 We have had failed filings of annual reports with the  
7 Court, November 15th comes around and no reports. The  
8 last one we got, I believe, was two years old, wasn't it?

9 For me to at this point in time take into  
10 consideration the Declaration of Mr. Grindstaff and the  
11 deterioration of the water in the basin, for me just to  
12 turn you guys lose and in another 10 years have you come  
13 back and say, give us a couple of more years and we'll  
14 come up with an optimum basin management program --

15 MR. MARKMAN: Of course we didn't ask for that.  
16 We provided for the referee's vigilance. We supplied  
17 scoping dates, hearing dates, reporting back dates.  
18 Everybody understands that there is no open ended right  
19 available to anyone here anymore.

20 THE COURT: No. As a matter of fact, let me  
21 interrupt you. If you read it carefully, you read in  
22 there, I gave Anne Schneider the ability to conduct  
23 hearings on her own --

24 MR. MARKMAN: Right.

25 THE COURT: -- without me meddling in your  
26 affairs, because I thought that you guys could best take

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1 care of business with her intervention at that level. And  
2 reading over, I believe it was the 1989 order, where the  
3 judge that wrote the opinion at that time felt that you  
4 guys should have straightened out some things on the local  
5 level before coming to the Court. I put a lot of time  
6 into this, and everything that was put in there, even the  
7 warning to the employees -- it is not a sword of Damocles  
8 to look upon. They should be thinking, we have the right  
9 to earn another five-year commitment here.

10 And if they look at it from a negative  
11 standpoint, like well, the judge is doing something to us,  
12 when this judge is the one that was thinking about them  
13 from the very get-go. I didn't want people fired. And  
14 when I appointed the Department of Water Resources I  
15 intentionally left you a loophole in there. You think  
16 that was by coincidence? Everything I did on this case  
17 had a reason. And this has a reason. And I even gave you  
18 a time line.

19 MR. MARKMAN: We understand. I am not  
20 questioning you. I am just trying to talk you out of your  
21 reasoning.

22 THE COURT: You are very persuasive. And I was  
23 very impressed with the briefs. I incorporated a lot of  
24 your dates and time lines, Mr. Markman, but, I decided to  
25 deviate slightly from your proposed order. And strangely  
26 enough, I am going with the recommendation of the referee

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1 that we've all got confidence in at this point.

2           Although you disagree with some of her findings  
3 on the special audit, her recommendation was to have some  
4 control over the situation; and control I intend to have.  
5 Hopefully you can have your hearings. It is my hope that  
6 on October 28th, 1999, I make a full five-year  
7 appointment. And this is a lot of work. It is a lot of  
8 work for me. It is a lot of work for you guys. I hope  
9 you guys are successful on this. I know what's in store  
10 for me if you aren't successful. I am going to do as much  
11 as I can right now to make sure you guys are successful.

12           That request is denied. I will hear anybody  
13 else, though, if they want to --

14           Mr. Dougherty.

15           MR. DOUGHERTY: Afternoon. Robert Dougherty on  
16 behalf of Ontario. I won't belabor it. I concur with  
17 Mr. Markman's remarks. And I respect your statements. So  
18 I just basically want to state some matters for the  
19 record.

20           I did concur in the proposed order that  
21 Mr. Markman submitted. Even though we had a number of  
22 serious concerns with the referee's report, we thought  
23 that the terms of the order were such that Ontario could  
24 live with and work with it. However, we must not concur,  
25 respectfully, with your proposed ruling for several  
26 reasons.

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1           First off, of course, is the issue of the  
2 Department of Water Resources. I have yet to hear anyone  
3 in this room, from the standpoint of the producers, who  
4 want them, even should this nine-member board fall flat on  
5 its collective face. We have had a number of proposals in  
6 the last couple of years, none of which seriously included  
7 the Department of Water Resources. We recognize the Court  
8 does have the power to change the Watermaster, basically,  
9 at any time or upon motion; but to actually say that this  
10 is it, people, if you don't make it work then you're going  
11 to be faced with the nine-member board. Ontario cannot  
12 concur with that.

13           We also believe --

14           THE COURT: You mean the Department of Water  
15 Resources?

16           MR. DOUGHERTY: I am sorry?

17           THE COURT: You're going to be faced with the  
18 nine-member board. It is what you have now.

19           MR. DOUGHERTY: As far as the referee's report  
20 is concerned, we are also of the mind that the mandatory  
21 and discretionary analysis is not correct; that it is not  
22 in accordance with the judgment; and that there are a  
23 great number of discretionary actions that are included in  
24 the purview of the judgment that have not been recognized  
25 by the referee as such. And she sort of assigned them to  
26 this category of other.

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1 I don't know how you get an other. You either  
2 have something mandatory or discretionary. What is this  
3 other? In the middle? We don't know.

4 I guess for the record, at this point, although  
5 we were prepared to accept Anne Schneider as the referee  
6 under the terms of the order that Mr. Markman had  
7 submitted, we're just going to, and again, this is for the  
8 record, object to her appointment.

9 THE COURT: Sure. Let me point out one thing to  
10 you, too. And your objections will be recorded.

11 Look very carefully at the terms, because I  
12 changed that a little bit because of what I thought you  
13 guys wanted but perhaps you didn't state. In other words,  
14 you have a nine-member board. So that should be three  
15 year terms, right? So you always have two-thirds of them  
16 in there. And I think you put two year. Check that over  
17 and see. I will revisit that issue. If that's not  
18 exactly what you meant, what I have in the order, and the  
19 way I assumed it was, initially, you had one period, but  
20 after that if you're going to have this rotating board  
21 you --

22 MR. DOUGHERTY: I am understanding, your Honor,  
23 for the first period of time, the two-year period, during  
24 the time that the optimum basin management plan is in  
25 development, that the same members would serve, correct?

26 MR. MARKMAN: Well, yeah. I probably didn't

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1 draft that clearly. I don't know how to draft it  
2 clearly. There is an initial term. When the board is  
3 appointed it would get this task done and create longevity  
4 for itself.

5 After that, the terms provide one-third are  
6 replaced annually. By extending the term of one-third of  
7 the board for two years and one-third for one year,  
8 thereafter, there will always be annually one-third of  
9 that board turning over.

10 THE COURT: Precisely my point. So they're  
11 three year terms, then?

12 MR. MARKMAN: No. They end up being two-year  
13 terms; each year one-third turn over.

14 THE COURT: Let's look at the math of that. I  
15 will revisit that and try to accomplish what you  
16 intended. It seems to me if you're going to be replacing  
17 them they should be three year terms then, right?

18 We will take a look at that again. That's the  
19 one part of the order that I will -- I will try to  
20 accomplish what you guys intended. That's not a problem  
21 with me as far as the order is concerned. I was trying to  
22 state it how I thought you wanted it. And Traci Stewart  
23 keeps on --

24 MS. STEWART: The motion was two years.

25 THE COURT: I thought you were saying victory  
26 back there. Maybe you were trying to do something else.

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1 MS. STEWART: That dates both of us.

2 THE COURT: I will try to do what you guys want  
3 in that vein. Let's all think about the math. It seems  
4 like if you do it -- initially, I know I have got what you  
5 guys want. It seems like if you're replacing one-third of  
6 them it would be for three year terms. Well, read my  
7 order.

8 Think about it and get back with me on that.  
9 That's not my intended to change what you intended. I  
10 think what I wrote is what you wanted after the initial  
11 period.

12 You see the math, now?

13 MR. MARKMAN: Yes.

14 THE COURT: If you think about it again and you  
15 think it is wrong come back and see me.

16 Mr. Cihigoyenette, you wish to be heard?

17 MR. CIHIGOYENETTE: Briefly. My concerns are a  
18 little bit different than the comments that preceded  
19 mine. I want to clarify and make sure we're on the same  
20 wavelength with respect to these employees. There is a  
21 statement here, pages six and seven of the decision, that  
22 talks about the ordinary transition of employees from  
23 Chino Basin to Watermaster, I presume. And there is a  
24 directive to Chino Basin to cooperate and assist in the  
25 ordinary transition, and the language states, while  
26 maintaining all of their employment credits and benefit

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1 programs.

2 THE COURT: Okay. What I meant in that -- I  
3 know where you're headed. You think maybe I was ordering  
4 Chino Basin to be in charge of their benefits from  
5 henceforth. That's not what I meant. What I meant is  
6 somebody had told me -- I believe it was Traci Stewart. I  
7 am not sure -- they already worked it out with the State  
8 of California.

9 As far as the PERS and retirement, everything  
10 would transfer over and then the employee would get the  
11 credits they had from before; and that's what I meant. I  
12 didn't mean to impose upon the Chino Basin Municipal Water  
13 District any further entanglements. And I'm sure you  
14 don't want any more. And I am very aware of that.

15 MR. CIHIGOYENETCHE: That's correct. Are we to  
16 assume the new employer of these individuals would be the  
17 Watermaster --

18 THE COURT: Correct.

19 MR. CIHIGOYENETCHE: -- for purposes of worker's  
20 compensation, things of that nature?

21 THE COURT: Yeah. It will be a nine-member  
22 board Watermaster.

23 MR. CIHIGOYENETCHE: Did you want to address  
24 that?

25 MR. GUTIERREZ: I would like to address that.  
26 Jimmy Guitierrez, for the record.

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1           It is just a suggestion. I really don't have  
2 any thoughts, except I see problems. That is, what is the  
3 status of the employer? And is Watermaster the employer?  
4 Because you start out in your ruling by stating that the  
5 Watermaster Board, nine-member board as Watermaster, is an  
6 extension of the Court. Is that to say the Court is the  
7 employer? Or is it to say that the referee or the special  
8 master, which is this board, is the employer? If so,  
9 what's the status of that entity? Is it an association?  
10 Is it a partnership? What is it?

11           And I think at some point in time we have to  
12 deal with the question of the status of the employer and  
13 also the status of the employees. Especially since, in  
14 your judgment it says, I am saying I am not giving a  
15 guarantee for the year 2000 as far as employment. So  
16 we're going to create a legal problem between the employer  
17 and employees if we don't define that. Such as public  
18 employees, they have Constitutional rights to their status  
19 as employees. And I think that requires greater  
20 attention.

21           I don't necessarily have any great thoughts on  
22 it, except I wanted to point it out to the Court; and  
23 that's perhaps something that the Court might want to  
24 reserve jurisdiction on and hear from the parties.

25           THE COURT: Keep thinking about that. I  
26 actually had some thoughts similar to yours, but what I am

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1 very quick to point out is that -- and even why I put the  
2 October 28th date, well in advance of June the 30th of  
3 2000, was in consideration of the employees, so they will  
4 know what they're facing, should the situation among the  
5 agencies deteriorate to the point where it was when you  
6 first came into court and a change in Watermaster becomes  
7 apparent in the future, they would know that well in  
8 advance that they might have to start looking around for  
9 another job, if, in fact, the new Watermaster did not  
10 absorb them.

11 MR. GUTIERREZ: If that --

12 THE COURT: Wait a minute. But I know that  
13 you're wondering, well, what continued expectation they  
14 would have. And that's -- they have no continued  
15 expectation. And that's why I put that in the order. It  
16 is something that is going to have to be worked out.

17 And you gentlemen are licensed to practice law.  
18 And there are some very bright people in this room right  
19 now. And I am sure you will be able to figure it out. I  
20 know you're very experienced in that area, Mr. Guterrez.  
21 And Mr. Kidman is getting ready to stand up.

22 And I have been impressed with his legal  
23 acumen. So a lot of you can get up and come up with  
24 things. There is Mr. Tanaka, who writes beautifully. You  
25 guys will come up with something in that area. I don't  
26 know. I am sure there are things that I have not thought

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1 of. They're secondary to what had to be accomplished.

2 Mr. Kidman?

3 MR. KIDMAN: Thank you, your Honor.

4 Art Kidman for Monte Vista Water District. I am  
5 sure that it would be unseemly to be totally delighted  
6 with everything that you have in your order, but I would  
7 say that we're close to that. For my client we're  
8 particularly grateful to have the relationship between the  
9 Watermaster and the Advisory Committee defined. We came  
10 through a period of time where we had gotten to the point  
11 that the Advisory Committee had complete dominance over  
12 the Watermaster and everything but the most administrative  
13 kinds of decisions. And we have a -- some people  
14 advocating that if it was administrative, it was  
15 discretionary, and that meant that the Advisory Committee  
16 had dominance.

17 And I think in your order and the report of the  
18 referee you have that relationship more clearly defined  
19 and more appropriately defined. The second thing, and  
20 probably the big thing, is my client and others here were  
21 most anxious that we get to a point where we have an  
22 optimum basin management plan that specifically addresses  
23 issues of water quality. There has been the tendency in  
24 the basin for those that had access to sweet water to  
25 basically say, well, we have got ours, those of you that  
26 don't have sweet water, solve your own problem. It is not

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1 our problem. Now we have the management of the commons,  
2 really, delegated to be a problem that everyone has to  
3 address and for that, again, I wanted to express gratitude  
4 from my client.

5           The area where we sense it would be unseemly to  
6 agree with everything of concern is this nine person  
7 Watermaster being composed of a majority of producers.  
8 And in that regard, I am totally impressed with the  
9 footnote number one at the bottom of page eight. And we  
10 would submit that the administration of the Chino Basin is  
11 well into the third and fourth phase that's outlined there  
12 where the commons are being -- have been being managed for  
13 the benefit of a few rather than for the benefit of all.

14           And it is that tendency that is illustrated in  
15 the third and fourth phases of footnote number one. I  
16 have seen it in other basins and am concerned about it.  
17 And I have been concerned about it in my prior appearances  
18 and in my arguments to the referee. But having said  
19 concerns and reservations, I understand from the way the  
20 order is written that the Court shares those. And so we  
21 have a very short leash on this nine-person board, who,  
22 first of all, has some supervision and oversight coming  
23 from the referee; and secondly, has a short period of time  
24 to demonstrate performance before the sword of Damocles,  
25 as Mr. Markman puts it, begins to fall.

26           And finally, if there is that sword of Damocles,

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1 I think it motivates everyone. I am not happy with -- I  
2 believe my client's not happy with the idea of a  
3 nine-person board because of the tendency for people to  
4 try to manipulate the commons to their own advantage  
5 rather than manage it for the public benefit.

6           Nevertheless, that's better than having the  
7 state of California do it, in our view. But having the  
8 state of California as an alternative, as a motive, I  
9 welcome. So there are three things that make me feel  
10 better about the idea that we will have the cat -- excuse  
11 me, the fox guarding the hen house here in the nine-person  
12 board. You know, we do have a short leash with whoever  
13 the referee is having oversight. We do have the short  
14 time frame for performance to be demonstrated and periodic  
15 reports in the interim.

16           And thirdly, the possibility that if performance  
17 is not had, then there will be an unpalatable alternative  
18 for all. So we support the order; we have some  
19 reservations, but we do support it. Thank you, very much,  
20 your Honor.

21           THE COURT: Thank you, Mr. Kidman.

22           Anybody else wish to add anything?

23           MR. ADAMS: Richard Adams on behalf of the City  
24 of Pomona. Obviously, we concur with what Mr. Markman has  
25 said and what Mr. Dougherty said. And at the risk of  
26 beating a dead horse, I would like to add another spin on

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1 this concept of the interim nine-member Watermaster and  
2 the effect on the employees.

3 I am sure you would agree it is important for  
4 the Watermaster to be able to hire and retain competent  
5 personnel to carry out the responsibilities of the  
6 Watermaster. And I think it is a miracle and very  
7 admirable that the staff hung on through all this turmoil  
8 and have been with us. You look at the way this is  
9 worded, the possibility of the Department of Water  
10 Resources coming in and them not picking up the  
11 responsibilities --

12 THE COURT: There is a possibility of anything  
13 on Exhibit A happening should this thing fall apart.  
14 That's why I put Exhibit A on there. I have considered a  
15 lot of different alternates.

16 MR. ADAMS: My only point is that probably the  
17 employees may look at this as we still have a lot of job  
18 insecurity in the future, and it might be that they look  
19 someplace else. And if they did, who would take a job  
20 that might only last a year, year and a half. You would  
21 end up having to hire temporaries or somebody like that at  
22 a much higher rate. I think it would make it difficult.  
23 It might be motivating for the nine-member board to work  
24 out the problems. It may be motivating for employees to  
25 look elsewhere.

26 THE COURT: My thought is if the employees have

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1 such an attitude they think that way, maybe we don't need  
2 them anyway. If they have a positive attitude, we all  
3 have a problem, let's roll up our sleeves and work our way  
4 out of this. I have got a job. If I do a good job, then  
5 I will have a job.

6 If they're down at the mouth and they want to  
7 talk bad about this, we probably don't want them anyway,  
8 because they're not taking care of business. And it is a  
9 distraction. They have got no more guarantee than anybody  
10 else in life. You have no more guarantee than these  
11 people with the City of Pomona. Mr. Gutierrez with the  
12 City of Chino has no more guarantee than what these  
13 employees have, and they have got no less.

14 Mr. Kidman with his client; Ms. Levin with the  
15 State of California; Mr. Kennedy with the Three Valleys  
16 Water District; Mr. Tanaka with Best, Best, and Krieger.  
17 All of us go to work every day, and we have to do our  
18 job. And if we don't do it, then an untoward event can  
19 happen. We might be a member of the unemployed.

20 They have no judicial protection other than what  
21 I have indicated in the order. I think in the past some  
22 people thought, we can't fire anybody, no matter what,  
23 because Judge Gunn would have gotten upset. I would have  
24 certainly taken a jaundiced look at any termination;  
25 you're right. I warned you at the very start. Don't let  
26 the employees be victims of your antipathy toward each

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1 other; but this is a new era. We're supposed to be  
2 looking at it with optimism. If the employees can't do  
3 it, maybe they should look elsewhere.

4 MR. ADAMS: I don't want to suggest they  
5 shouldn't. In the case of yourself, myself, and  
6 Mr. Markman, we have a little bit more control over our  
7 situation of employment by the product of work than maybe  
8 these employees do. They have the nine-member board that  
9 may or may not succeed. And I am just concerned in that  
10 direction of having this kind of a sword of Damocles, as  
11 the gentlemen put it.

12 THE COURT: If this optimum basin management  
13 program, as it is listed in the prior orders -- I call it  
14 a program instead of a plan; and I remain consistent with  
15 that. If we understand that, then this judge is going to  
16 be happy because something positive is going to be  
17 happening instead of making it a cesspool. As Gene  
18 Koopman said -- what did he say, Jesus water? Was that in  
19 the transcript of the hearing Anne Schneider did? You can  
20 walk on it; that's what I got from that. I read that  
21 someplace, either -- I am pretty sure it was the hearing  
22 that the special master did, but, we gotta clean it up.

23 Everybody has got to roll up their sleeves. And  
24 that's the way I feel about it. We have all got a  
25 problem. We can pitch in and work, or we can get down at  
26 the mouth. If people are counterproductive, I don't want

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1       them around, to be honest. And I don't think anybody in  
2       this community wants them around.

3                 MR. ADAMS: Thank you, your Honor.

4                 THE COURT: Anybody else? Mr. McPeters?

5                 MR. McPETERS: Your Honor, I am having some  
6       trouble between what your Honor is saying and what is  
7       written in here. Quite specifically --

8                 THE COURT: Okay.

9                 MR. McPETERS: -- page 4, line 7, it says the  
10      Court will appoint --

11                THE COURT: Page 4, line 7.

12                MR. McPETERS: I was taking your Honor's  
13      comments as meaning anything that's on Exhibit A is  
14      possible.

15                THE COURT: We can probably put consider, "will  
16      consider appointing". Maybe I should have been more  
17      specific. I think it is still an open question of what's  
18      going to happen. That is over two years from now.

19                MR. McPETERS: I didn't want to read this as it  
20      seems to say you will appoint the Department of Water  
21      Resources.

22                THE COURT: They're the leading contender at  
23      this point should the nine-member board fail.

24                MR. DOUGHERTY: Robert Dougherty. Could you  
25      perhaps interlineate that and say "may appoint" instead of  
26      "will"? I think that is bothersome.

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1 THE COURT: I will. I will give you that much.

2 Anybody else wish to be heard? Before I let you  
3 go, is that Mr. Krueger in the moustache?

4 What's your name, sir?

5 MR. SIHLER: Sihler. I am with the City of  
6 Pomona.

7 THE COURT: City of Pomona.

8 It was kind of interesting, Mr. Kennedy. I was  
9 looking at web pages of Watermasters and I -- Three  
10 Valleys has a web page in there.

11 MR. KENNEDY: That's true.

12 THE COURT: Interestingly enough, Mr. Krueger  
13 has already got -- is he your designee for the  
14 Watermaster?

15 MR. KENNEDY: The Three Valleys Board appointed  
16 him as their representative.

17 THE COURT: Omniscient person he is, he is  
18 listed in the web page that he is the designee for Three  
19 Valleys as Watermaster. Interesting.

20 Watermaster, we termed it in this judgment as  
21 one word capitalized when we're talking about the  
22 Watermaster. If we just talking in general, watermasters,  
23 we use lower case. How I have done it, if he wants to  
24 clean up his web page a little bit -- speaking of web  
25 pages, some guy dropped this off. Traci Stewart can have  
26 this. Anybody who wants a copy of this can have it. It's

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1 not a mandate, just some guy that does web pages. What I  
2 would suggest you do is talk to several people.

3 MS. STEWART: We just developed a computer  
4 master plan as part of the agenda to develop a web page.

5 THE COURT: In that same vein, Anne Schneider's  
6 name was misspelled in your minutes. I look forward to  
7 checking up on the Watermaster minutes on the web.

8 Finally, if anybody wants to, I would like to  
9 have my picture taken with some of you people. My wife  
10 asked me to get a picture. Well, I don't have any  
11 pictures at home. So anybody, Traci Stewart, you want to  
12 come up and get your picture taken with me. I have the  
13 camera. So all of you guys, if you would. If you don't  
14 want to, you don't have to.

15 (Proceedings in the above-entitled matter  
16 were concluded.)

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HEATHER R. MOORE, C.S.R.

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 WATER )  
DISTRICT, )  
6 Plaintiff, )  
7 vs. ) Case No. RCV-51010  
8 CITY OF CHINO, )  
9 Defendant. )  
10 \_\_\_\_\_ )

11 REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

12  
13 Thursday, February 19, 1998

14  
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25 Official Reporter, C-10294

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HEATHER R. MOORE, C.S.R.

1     Appearances:   (continued)

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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

5 CHINO BASIN MUNICIPAL )  
WATER DISTRICT, )  
6 Plaintiff, )  
7 vs. ) Case No. RCV-51010  
8 CITY OF CHINO, )  
Defendant. )  
9 \_\_\_\_\_ )

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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 28, comprise a full,  
18 true, and correct computer-aided transcription of the  
19 proceedings held in the above-entitled matter on  
20 Thursday, February 19, 1998.

21 Dated this 16th day of March, 1998.

22

23

24 \_\_\_\_\_ C.S.R.

25 Official Reporter, C-10294

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HEATHER R. MOORE, C.S.R.

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C-10294

March 17, 1998

To: MR. BOYD HILL, Attorney at Law  
re: Chino Basin Municipal Water District  
vs. City of Chino, case number RCV-51010

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Enclosed please find the reporter's transcript of oral proceedings for the date of Thursday, February 19, 1998.

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HEATHER R. MOORE, C.S.R.

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C-10294

March 26, 1998

To: Watermaster Services  
re: Chino Basin vs. City of Chino, RCV-51010

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