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1           IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2                           FOR THE COUNTY OF SAN BERNARDINO

3 CHINO BASIN MUNICIPAL WATER    )

4 DISTRICT,                        )

5                                        )

6                           Plaintiff,    )

7                                        )

8           vs.                        )           No. RCV 51010

9                                        )

10 CITY OF CHINO, et al.,         )

11                                        )

12                           Defendants.    )

13                                        )

14                                        )           TRANSCRIPT OF PROCEEDINGS

15                                        )                           Ontario, California

16                                        )                           Thursday, May 4, 2000

17 Reported by:

18 ANGELICA M. SCOTT

19 CSR No. 10076

20 JOB No. 566137

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3

4 CHINO BASIN MUNICIPAL WATER )  
   DISTRICT,                     )

5                                     )                     )  
                                   Plaintiff,             )

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                                   vs.                     )             No. RCV 51010

7                                     )                     )  
                                   CITY OF CHINO, et al.,     )

8                                     )                     )  
                                   Defendants.             )

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16                     Transcript of Proceedings taken at  
17                     3500 Porsche Way, Suite 200, Ontario,  
18                     California, beginning at 9:35 a.m. and  
19                     ending at 12:07 p.m. on Thursday, May 4,  
20                     2000, before ANGELICA M. SCOTT, Certified  
21                     Shorthand Reporter No. 10076.

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1 APPEARANCES:

2

3 Special Referee:

4 ANNE SCHNEIDER

5

6 Also Present:

7 STEVE ARBELBIDE

8 RICH ATWATER

9 GERALD BLACK

10 LES BOSTON

11 FRANK BROMMENSCHENREL

12 BILL BRUNICK

13 TOM BUNN

14 TERRY CATLIN

15 JEAN CIHIGOYENETCHE

16 DAVID CROSLEY

17 ROBERT DE BERARD

18 DAVID DE JESUS

19 ROBERT DE LOACH

20 TOM DODSON

21 JAMES ERICKSON

22 BOB FENSTRA

23 MICHAEL FIFE

24 JIMMY GUTIERREZ

25 JACK HAGERMAN

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1 APPEARANCES (Continued):  
2  
3 PAUL HOFER  
4 KEN JESKE  
5 JOSEPHINE M. JOHNSON  
6 BARRETT KEHL  
7 STEVE KENNEDY  
8 ART KIDMAN  
9 PAT KING  
10 MARK KINSEY  
11 A.A. KRUEGER  
12 MICHELLE LAUFFER  
13 MARILYN LEVIN  
14 JEFFREY J. LEWIS  
15 DAN MCKINNEY  
16 TOM MCPETERS  
17 MIKE MAESTAS  
18 GARTH MORGAN  
19 ROBERT NEUFELD  
20 HENRY PEPPER  
21 J. ARNOLD RODRIGUEZ  
22 DIANE SANCHEZ  
23 JOE SCALMANINI  
24 JOHN SCHATZ  
25 JUDY SCHURK

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1 APPEARANCES (Continued):

2

3 SCOTT SLATER

4 TRACI STEWART

5 GENE TANAKA

6 ROB TURNER

7 GEOFFREY VANDEN HENVEL

8 RAY WELLINGTON

9 MARK WILDERMUTH

10 KAREN WILLIAMS

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1 Ontario, California, Thursday, May 4, 2000

2 9:35 a.m. - 12:07 p.m.

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4 MR. SLATER: We're sending around a sign-up sheet.  
5 I'm going to ask each of you to sign up your name and  
6 the entity that you're appearing on behalf of. And  
7 secondly, we have a court reporter, and we encourage  
8 you, please, before you speak, to offer your name.

9 I am Scott Slater and the counsel for the  
10 Watermaster. The purpose of today's meeting really was  
11 to respond to a court order for a workshop wherein the  
12 court special referee could get a status report on the  
13 progress of various items and the coordination among the  
14 parties and the Watermaster to complete the OBMP. The  
15 referee Ms. Schneider and her assistant Joe Scalmanini  
16 is here.

17 And, Anne, would you like to -- are you ready  
18 to get started? Do you need anything from us or --

19 MS. SCHNEIDER: No, I think that's a good  
20 introduction, Scott. My name is Anne Schneider, and I'm  
21 special referee to the court in the matter of Chino  
22 Basin Municipal Water District vs. City of Chino, et al.  
23 We're here pursuant to order of the Court dated April 6,  
24 this year, and this is intended to be a workshop to hear  
25 a status report from Mr. Slater and others as to

0007

1 negotiations that he has been conducting.

2 I understand from Mr. Slater that he will  
3 introduce a series of attorneys who will discuss the  
4 elements of agreement that have been reached and that we  
5 have been negotiating the framework agreement in the  
6 form of the memorandum that was provided to me on May  
7 3rd for some number of weeks, and that we have had a  
8 confidentiality agreement but have reached agreement and  
9 have reduced this memorandum in accordance with the  
10 agreement with all the negotiating parties.

11 So with that, Mr. Slater, I really would  
12 appreciate it if you would conduct this workshop, and I  
13 believe Mr. Scalmanini and I may have questions from  
14 time to time. And if it would be appropriate, I think  
15 it would be logical to ask questions as you proceed  
16 rather than try to hold them until the end.

17 MR. SLATER: Well, great then. Again, Scott  
18 Slater -- I think what we'd like to do is share with you  
19 what we've been up to for the last several weeks in the  
20 negotiation process and the shorthand for what we think  
21 we've been doing is developing a strategy that would  
22 enable the adoption and implementation of the OBMP in a  
23 consensus, unanimously-supported effort. And on  
24 Tuesday -- actually, Wednesday morning, at about 1:00,  
25 we reached a point where all the parties who had been

0008

1 participating in the process were in a position to  
2 support a consensus or support a consensus statement of  
3 principles which we hope will lead to the execution of a  
4 more comprehensive contract and the adoption of and  
5 implementation of the OBMP.

6           There is going to need to be additional work  
7 done both in the drafting and by the various committees  
8 of the Watermaster and the Watermaster Board in bringing  
9 this to its conclusion. I think what we'd like to do is  
10 to turn to various lawyers to describe the nature of the  
11 agreement and the issues that were being resolved,  
12 issues presented and how they were resolved under the  
13 agreement, and we have a proposed script that we intend  
14 to follow.

15           And with that, I think we'd like to turn first  
16 to the subject of conditions precedent and peace and  
17 allow Mr. McPeters and Jean Cihigoyenette to discuss  
18 respectively SAWPA and the funding mechanism and  
19 environmental compliance, including the progress to date  
20 on environmental review. It may be that the lawyers  
21 call upon their staffs and consultants to provide some  
22 of the responses. Please, if you have questions, allow  
23 the presentation to be made on each segment and then  
24 we'll work through it. Tom?

25           MR. MCPETERS: I don't know whether to stand behind



0009

1 the referee. It's crowded everywhere. My name is Tom  
2 McPeters. I'm in these proceedings as a representative  
3 of Fontana Union Water Company and San Antonio Water  
4 Company. Many people here know a lot about the subject  
5 that has been assigned to me to describe. What we did  
6 as part of this process was try and understand what I  
7 consider to be -- it's an editorial comment on my  
8 part -- a parallel process that's at work here. SAWPA  
9 is the acronym that we use. I'm sure everybody knows  
10 that that's Santa Ana Water Project Authority. SAWPA  
11 was granted or authorized in the Prop 13 bond issue some  
12 \$235 million. The process is it's in the bond issue,  
13 but that's where it sits until the legislature  
14 appropriates it. The process that's under way is to  
15 cause some portion of the money to be appropriated  
16 shortly. The time line for causing some \$121 million of  
17 that money is May and June. Discussions are in process  
18 with the governor's office to include \$121 million in  
19 the budget, and it's expected to be in the budget in  
20 June.

21           The first layer was pass the bonds. That was  
22 done. The second layer is get the bonds into the State  
23 Water Resources Control Board account. That is under  
24 way. The third layer was to develop a process for the  
25 State Water Resources Control Board and SAWPA to

0010

1 administer and manage these funds.

2           There have been a series of drafts back and  
3 forth of a memorandum of understanding between the State  
4 Board and SAWPA. Yesterday afternoon in Sacramento the  
5 State Board adopted the final version of that memorandum  
6 of understanding. We have all seen various drafts of  
7 that, and essentially it states how the State Board and  
8 SAWPA will interact on the funding of projects and for  
9 us, a critical part of that is what is identified in the  
10 memorandum is a stake-holder process. SAWPA will need  
11 to submit to the State Board requests for funding of  
12 projects, and a major component of that funding is that  
13 there be a stake-holder process that supports this  
14 list. So we now have that in place.

15           The plan is that the stake-holder process or  
16 the application for funds would start in July. I'm sure  
17 that all these time lines will slip, you know, somewhat,  
18 but we're on a very fast track to have the application  
19 for funding into SAWPA who will determine a prioritized  
20 list of funding and then go to the State Board with  
21 their list for funding.

22           You will hear, as all of us have heard, that  
23 out of this \$235 million or so, \$87 million is earmarked  
24 for the Chino basin. I knew when I heard that that was  
25 not a legislative term, so I tried to chase it down. So

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1 where does that come from. It's not in the Prop 13  
2 language. Where it comes from is SAWPA has for many  
3 years produced reports and plans for the Chino basin,  
4 and they have consistently used, in their funding,  
5 projections. And what they were going to try to get  
6 funded by the State is a figure of \$87 million or  
7 sometimes a little higher, sometimes a little lower, but  
8 for many years they have had a budget, if you will. And  
9 all of their papers and when they -- when they went to  
10 participate in this process that ultimately resulted in  
11 them getting \$235 million, that figure was carried over  
12 into those negotiations. You can't find it, you know,  
13 in the \$235 million, but it's consistently in all of  
14 SAWPA's papers, and we are convinced that this is the  
15 amount that is set aside. So that's the figure that we  
16 are working with.

17           We are assuming that the \$87 million has been  
18 internally prioritized, if you will, at that level for  
19 the Chino basin. Chino basin -- excuse me -- SAWPA.  
20 SAWPA has conducted a parallel process to water quality  
21 problems in the basin, so you find lots of papers and  
22 reports in SAWPA dealing with the same subject matters,  
23 even the same physical facilities. For example, in the  
24 SAWPA reports they have maps and projected de-salters,  
25 they have the same de-salters that are being talked

0012

1 about in the OBMP process. So my editorial comment is  
2 there has been a parallel process going, and now it's  
3 going to come together.

4 So the work for this group and the Watermaster  
5 and everybody else interested is to engage in the  
6 process of getting these projects approved so if -- and  
7 I'm not going to tell Watermaster how all this has to be  
8 done, but let's just assume there's an OBMP adopted and  
9 it says there's going to be a Jurupa east de-salter,  
10 which I expect is the case. Well, that's the same  
11 Jurupa east de-salter, give or take some specifications,  
12 that's in SAWPA's planning, you know, already. So those  
13 two have to get together.

14 So SAWPA was going to go ahead, basically, and  
15 do this, but this group never convened. I think that's  
16 important to understand. It's been going on for years.  
17 So we're on the same track as SAWPA. We have every  
18 reason to believe, that being the case, that when the  
19 process has gone through, that the project or projects  
20 that we are interested in with the east de-salter or  
21 what we've now come to call the Jurupa east de-salter  
22 will be part of that project is approved.

23 The person seeking the funds is who is going to  
24 have to file the application. And as you'll hear at  
25 some course during the evening it is not proposed that

0013

1 the Watermaster build the de-salter and own and operate  
2 the de-salter, and that's been discussed a lot. What  
3 has happened, people who are in the Chino basin, the  
4 public agencies are coming together, and they will  
5 identify themselves to propose and to fund the building  
6 of the Jurupa east de-salter. The Watermaster needs to  
7 ensure that it is the right size and that it's put in  
8 the right place and will do what Watermaster wants  
9 done. There have been enough conversations for people  
10 to be comfortable that that is not a problem, but that  
11 is what the Watermaster needs to do. It needs to make  
12 sure its OBMP and the funds that are requested and the  
13 projects that are requested in SAWPA match their OBMP,  
14 and there's every indication that it would.

15 I want to say a word about SAWPA. SAWPA is a  
16 creature of a joint powers agreement of several public  
17 agencies, but it doesn't do its work on a  
18 full-participation membership. It's a simplification,  
19 but I say there is no SAWPA, but what I'm trying to say  
20 when I make that simple statement is that when a project  
21 comes up, any one, two, three, four, five, six, seven  
22 agencies give it a project number and they say, "That is  
23 our project."

24 The existing de-salter, for example, one which  
25 I say is always 30 days away from operation, is called

0014

1 by all of us as the SAWPA de-salter. Well, it's not a  
2 SAWPA de-salter in the sense of all of the members.  
3 There are three agencies within it that created a  
4 project. I think it has a number 14.

5 Is that right, Jean?

6 MR. CIHIGOYENETCHE: That is correct.

7 MR. MCPETERS: Okay. Project 14. So there are  
8 three owners/operators, if you will, who assumed  
9 responsibilities. The rest of the JPA members did not.  
10 So when the Jurupa east de-salter is proposed, it will  
11 be a subgroup, if you will, of entities within SAWPA,  
12 and I don't know how many of them will be or which one  
13 it will be. I have, you know, some ideas as to who one  
14 will be or two will be, but it could be three.

15 For example, Orange County is one of the  
16 sponsors, if you will, of the existing SAWPA de-salter  
17 or Project 14. It has not been determined yet, except  
18 discussions are going on as to who will be a participant  
19 in this de-salter. You'll hear more about that, I'm  
20 sure, from the persons who intend to do that today.

21 And while I'm speaking about de-salters, it is  
22 understood that there are other projects that are of  
23 interest to all of us other than de-salters, and a major  
24 project would be under the area of recharge, and some of  
25 these projects clearly qualify under the guidelines, if

0015

1 you will, or the purposes of the Prop 13 funds. There  
2 should be a paradigm shift, and whether anybody signs  
3 anything or does anything or anything else, nothing is  
4 going to happen unless there is an application filed in  
5 July, it might slip schedule to August because that  
6 process is going on, and there's \$87 million available  
7 to the fund.

8           So if all of you went home and agreed to never  
9 speak to each other ever again, that process would go  
10 on, and it would result in a de-salter. But we're  
11 trying to coordinate it. I have less understanding of  
12 the capital costs and planning for the water recharge  
13 part of this because that's not been my personal focus,  
14 you know, in the process, but anything that's in the  
15 bond issue, the things that could be funded are listed  
16 there in broad category, and in this memorandum of  
17 understanding there is a -- they've even made it more  
18 broad. They've condensed categories in this MOU that  
19 I'm referring to that was adopted yesterday. There is  
20 room in that list for everything that the Watermaster  
21 has been studying in the OBMP to be funded. There's  
22 room.

23           The paradigm shift I'm referring to is that  
24 this is a stake-holder process; therefore, what you want  
25 has got to be sufficiently identified to be able to go

0016

1 forward in this stake-holder process. Since about 600  
2 different entities and people will be notified by SAWPA  
3 of this stake-holder process, there's going to be a  
4 truckload of documents and requests that come in to  
5 SAWPA, and SAWPA is going to develop a priority list,  
6 you know, out of that process. So it behooves all of us  
7 to get there early, get there with the most complete  
8 product, get there with the product that most closely  
9 aligns with SAWPA's longstanding goals or cleanup of the  
10 basin and their plans and to support it. And that is  
11 just as much work within a short time frame as the work  
12 that has gone into this process in recent times. We  
13 have to get specific.

14 One of the things in the MOU -- and it will  
15 lead to Jean's presentation -- is the EIR review, and in  
16 the memorandum of understanding it's very clear that the  
17 projects that are going to be prioritized by SAWPA must  
18 have EIR approval, and while sitting in court and  
19 listening to others discuss our EIR process as being  
20 behind, when I'm at SAWPA they say you guys are way  
21 ahead. Nobody else that's involved in the process has  
22 even started an EIR process. So without any EIR, SAWPA  
23 is not going to submit the approval, is basically what  
24 we say, and that's dealt with in the memorandum of  
25 understanding, but we're the only party who would apply



0017

1 for funds that have started an EIR process. That's all  
2 I know.

3 MR. SLATER: Thank you, Tom. Question?

4 MS. SCHNEIDER: I have a question. The MOUs  
5 drafted with reference to 121 million -- I'm fairly  
6 clearly understanding now the \$87 million, but I'm not  
7 sure I understand the 121 million.

8 MR. McPETERS: Well, like this is why they sent me  
9 and Jean and some others down there to trace this part  
10 while they did something else. None of the numbers ever  
11 have a real good record, you know, with them. Like I  
12 said, the \$87 million is not in Prop 13. But we trace  
13 that down. The 121 million, we also trace that down.  
14 What that is is discussions between SAWPA and the  
15 governor's office was their estimate of what was  
16 reasonable to spend or the ability to use \$121 million  
17 in the basin over a period of three years. So that was  
18 SAWPA's decision, that they could not see funding  
19 projects, spending the money of more than 121 million in  
20 three years, and they used three years based on their  
21 general understanding that the State Board -- and it may  
22 be an MOU -- I may have missed this point, but generally  
23 the State Board did not want projects approved if they  
24 weren't going to really be done and paid for in a period  
25 of three years.

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1           So the intent would be to repeat this process  
2 with respect to the remainder of the funds. They simply  
3 could not see how they could spend on all the projects  
4 they knew more than 121 million in three years. So  
5 that's where that number came from.

6           MR. SLATER: Any other questions?

7           MS. SCHNEIDER: Well, I guess the question is the  
8 87 is part of the 121 and the 121 is generally going to  
9 SAWPA; is that correct?

10          MR. McPETERS: The statute allocates it to SAWPA.  
11 The bond issue allocates it to SAWPA.

12          MS. SCHNEIDER: But the condition precedent in the  
13 agreement is that legislature appropriated the money,  
14 the 121 million, to SAWPA, and I guess the group is  
15 trusting in the information that you received that the  
16 87 is part of the 121.

17          MR. McPETERS: We're not trusting. We -- I think  
18 we are certain because that number has been consistently  
19 used and is liberally spread in minutes and project  
20 description and so on at SAWPA, and we've directly  
21 confirmed it with SAWPA, so it is there.

22          MR. SLATER: No further questions? I think, then,  
23 the next speaker will be Jean Cihigoyenette to address  
24 the condition precedent of environmental review and tell  
25 us where we are in the environmental review.

0019

1 MR. CIHIGOYENETCHE: Thank you, Scott.

2 I'm Jean Cihigoyenette. I'm general counsel  
3 for Inland Empire Utilities Agency, participant in the  
4 recent meetings we've had ongoing here at Best Best &  
5 Krieger. I have to echo a comment made by Mr. McPeters  
6 just a moment ago, and I attended meetings with him at  
7 SAWPA with Mr. Grindstaff, who's the manager there, who  
8 indicated that although the court and the special  
9 referee probably justifiably so has been concerned about  
10 the EIR process proceeding probably with less alacrity  
11 than we would have liked, we are head and shoulders  
12 above anyone else competing with the bond money at SAWPA  
13 right now, and that becomes especially critical in light  
14 of the fact that in order to get an appropriation of  
15 those monies -- in other words, put those monies in the  
16 bank, a hard and fast project needs to be on the table.  
17 So we are in the lead in that respect, which brings us  
18 to the issue of where is the EIR as we speak today.

19 Well, I'm happy to tell you that the EIR is  
20 going to do its final reviews today and tomorrow. It  
21 should be into the printer over the weekend, and we  
22 expect to distribute the draft EIR early next week,  
23 probably Tuesday. We expect the State Clearing House to  
24 have the draft EIR in their possession by next Thursday  
25 which will be May the 11th. We have requested a 30-day

0020

1 review process. The Department of Fish and Game has  
2 agreed to the 30-day review process. The regional board  
3 has agreed to the 30-day review process, and we are  
4 still awaiting word from Department of Health as to that  
5 issue.

6 We will go, then, through the comment period,  
7 and we have scheduled a meeting at Inland Empire Utility  
8 Agency for June 29th of 2000 for final consideration and  
9 approval of the environmental impact report. The  
10 document itself must be ready in final form ten days  
11 before that date, hence June 19th of 2000. I have asked  
12 Mr. Dodson and Mr. Morgan to be present today, whom I'm  
13 sure you are familiar with, to answer any technical  
14 questions you may have regarding the environmental  
15 process.

16 MS. SCHNEIDER: Well, the -- let me just ask -- the  
17 final consideration and adoption by Inland Empire on  
18 June 29th, that is the day for the OBMP and final EIR  
19 hearing at court so that's a tight schedule. I guess  
20 one of my questions has to do with the agreement that's  
21 now before you and whether there are elements in that  
22 agreement that will require any revisions in the EIR.  
23 So the question is, has the EIR been drafted to  
24 accommodate everything that has now been included in  
25 this agreement, the framework agreement?

0021

1 MR. CIHIGOYENETCHE: I believe that it has. I  
2 don't know what additional information -- Mr. Dodson  
3 would need to finalize that document.

4 MR. DODSON: I've received a copy this morning and  
5 have read the whole document. This is Tom Dodson,  
6 D-o-d-s-o-n. My expectations, since it's supposed to be  
7 consistent with the OBMP, is that there shouldn't be any  
8 revisions that will be necessary for implementation and  
9 review of the environmental document. We'll make  
10 careful review of the agreement, MOU, whatever its  
11 proper term is, before noon today and be sure that we  
12 don't have any additional issues that have to be  
13 incorporated into the environmental document.

14 As everyone is aware, it's a program, document,  
15 it's dealing with literally all of the programs, the  
16 nine programs that are outlined in the OBMP. It  
17 addresses them in broad scope, but it provides a genuine  
18 wealth of information, I think, for the various issues  
19 in this basin. As a result, I think it's all-inclusive  
20 at this point, all the persuaded issues that were  
21 identified in the OBMP itself, in terms of programs,  
22 activities, and those activities and facilities that  
23 could cause physical changes in the environment. That's  
24 my belief at this point, so I don't expect any change in  
25 schedule at all. We run into something, I'll pass it

0022

1 back to Jean and he can get it back to you folks very  
2 quickly, but I don't expect anything.

3 MS. SCHNEIDER: Mr. Slater, when you were  
4 discussing various provisions in the framework  
5 agreement, were you aware of any provisions that are  
6 outside of what was in the draft implementation plan  
7 that was submitted in February? I assume as the project  
8 description driving in the environmental document.

9 MR. SLATER: Not presently aware.

10 MR. DODSON: I would also say that the key is keep  
11 in mind the agreement represents an agreement to carry  
12 forward certain things, but the crux of the issue is not  
13 to address different issues that were not contained in  
14 the OBMP but do they have any physical consequences, in  
15 other words, any differences between the two. And I  
16 didn't perceive any in my quick review of the document  
17 this morning.

18 MR. KIDMAN: I question -- Art Kidman -- is this  
19 document that you're working intended to be a  
20 programmatic EIR? Will there be subsequent EIRs for  
21 more specific elements? What is the thought on that?

22 MR. DODSON: Well, the way we have structured this  
23 document -- and I'd like to go back to Mr. McPeters'  
24 comment about the environmental process. We have  
25 incorporated a suite of mitigation measures that we

0023

1 believe will result in being able to mitigate any of the  
2 potential significant adverse impacts in the project.  
3 To answer your question specifically, it's a  
4 programmatic document. Each time a specific project is  
5 proposed in the future by any entity that participates  
6 in the OBMP and adopts the OBMP and certifies the EIR  
7 for their own purposes, they should be -- whether it's a  
8 SAWPA or a local water purveyor that wants to put in a  
9 recharge basin or use it in a particular basin for  
10 recharge, they should be able to go compare their  
11 particular project from their engineering design plans,  
12 compare it to the contents of this programmatic  
13 document, make a judgment whether that project falls  
14 within the scope of the analysis and the conclusions,  
15 and based upon that set of findings, determine whether  
16 they can act within the scope and under the certified  
17 EIR, prepare a negative declaration as a follow-up to  
18 identify additional mitigation measures or if they  
19 define a significant impact that goes beyond what was  
20 identified in this document, then they would have to  
21 prepare a subsequent EIR.

22           In point of fact, I believe that we've crafted  
23 a document with sufficient scope that a de-salter could  
24 probably be built totally within the scope of this  
25 project as long as we didn't run into a specific problem

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1 such as an Indian village that you set the site down on  
2 or you've got an endangered species for which you can't  
3 get an incidental take permit and no jeopardy biological  
4 opinion. That may be more than you wanted to know, but  
5 the program process is set up so that you may not have  
6 to do a lot of environmental work for all of your future  
7 projects.

8 MS. SCHNEIDER: Are your EIR identifying any  
9 mitigation measures that would constrain the OBMP  
10 implementation plan?

11 MR. DODSON: That's an interesting question. The  
12 answer is no in the long term. In the short term, yes,  
13 and that's being done on purpose. And pardon me for  
14 taking just a moment to explain kind of the arcane  
15 things in sequence that I think apply to what's going  
16 on, but I think it's important for you to understand.

17 The goal was being able to create the OBMP and  
18 any environmental impact report for the OBMP is to  
19 create a process for review of future projects under the  
20 program can be carried out in as timely a fashion as  
21 possible to utilize the shortened review process that  
22 sequence permits. You have two choices when preparing a  
23 document. You can establish a performance-based  
24 mitigation measure -- and this goes to answer your  
25 question -- that may constrain a particular facility at



0025

1 a particular location, not the program as a whole but,  
2 for example, using recycled water at a particular  
3 location, directly above a what is called a water  
4 quality anomaly or contaminated plume. Wouldn't be  
5 necessarily wise. The OBMP says do your modeling, show  
6 if you're going to impact that plume, if you're going to  
7 impact that plume, relocate or do another environmental  
8 document to say we're going to cause this adverse impact  
9 anyway.

10           So to answer your question, it doesn't  
11 constrain implementation of the OBMP in any fashion in  
12 the longer term. What it does is it will facilitate the  
13 implementation of a large number of projects very  
14 rapidly, but if a specific project comes through the  
15 process that exceeds the performance thresholds such as  
16 the requirement that you not create a jeopardy opinion  
17 for an endangered species, then under those  
18 circumstances an agency still has the ability to adopt  
19 or implement a project that would cause that impact,  
20 they'd have to do a subsequent EIR to do so and approve  
21 it.

22           So the answer to your question long term is no,  
23 it doesn't constrain it. In the shorter term, by  
24 establishing this mitigation measure protocol, it could  
25 constrain a specific project to do a follow on an

0026

1 environmental document before it takes action to do  
2 that.

3 MR. SLATER: Okay. I think that -- thank you. I  
4 think that explains the conditions precedent. I think  
5 there is also, if you look at the memorandum of  
6 understanding, there are provisions related to peace  
7 which are essentially self-explanatory. The parties are  
8 going to agree to work together and attempt to implement  
9 the OBMP, and if necessary, take up the subject of  
10 pursuing modifications to the judgment and again, state  
11 and emphasize if that should be necessary.

12 So with that, if there are any additional  
13 questions, I think we're ready to proceed for the next  
14 subject which is recharge and transfers, and I had Art  
15 Kidman, Jim Markman, and Jeff Lewis.

16 Art, do you want to --

17 MR. KIDMAN: I'll start off. Jim's not here so I  
18 don't know if Jeff has anything he wants to add on here,  
19 but I'll try to -- there's actually a couple things I  
20 want to cover before I get into recharging, with your  
21 permission.

22 For the record, Art Kidman is my name, and I  
23 represent the Monte Vista Water District. I want to  
24 say, first of all, that the Watermaster has done well to  
25 hire Mr. Slater. There has been a remarkable

0027

1 transformation of the assembled group that we have  
2 before us today as a result of Scott's labors. I can  
3 say personally that the esteem with which I hold many of  
4 those that have participated so far has gone way up as a  
5 result of working together with them rather than having  
6 been forced into the adversary position that often times  
7 prevails when we have to go to court. So I think that  
8 the Watermaster did well.

9 I think indirectly and for the record, the  
10 court has done well to bring Ms. Schneider and  
11 Mr. Scalmanini here because it has provided a  
12 significant motivation and impetus to having the parties  
13 brought together.

14 Second item I wanted to mention before we get  
15 into recharge is that I was part of a -- sort of an  
16 informal subcommittee that appointed itself in a sense  
17 with some concurrence from others and that included  
18 Mr. De Loach and Rich Atwater and Traci Stewart, myself,  
19 represented or undertook to try to represent the Chino  
20 basin in general in some discussions with the Orange  
21 County Water District which probably should have been  
22 set as part of the table-setting process because the  
23 relationship with Orange County Water District and the  
24 relationship to what we call the Orange County judgment  
25 of the 1969 judgment is pretty important to the OBMP.

0028

1 And it's important for two or three reasons.

2           One is that we need to be able to be sure that  
3 we can't develop local waters that is in watershed  
4 waters of the Santa Ana River watershed in order to  
5 manage the Chino basin. We need to have local supplies  
6 that we can try to increase the management potential  
7 within the basin. So that's something that is being  
8 addressed.

9           A second item is there is a lot of thought of  
10 being able to use Chino basin for its storage, resource  
11 in a conjunctive-use program and the ability to import  
12 water to the basin, store it, and have it recovered and  
13 then shipped outside the basin is absolutely key to any  
14 kind of a conjunctive-use storage program, and we need  
15 to have a concurrence of Orange County Water District in  
16 that regard.

17           The hot button issue for Orange County Water  
18 District is the possibility that we might try to do what  
19 I just described with local water. We have reached  
20 a -- that's overstating. And I'll go back.

21           Actually, the call, what we have today before  
22 us in memorandum of agreement or memorandum of  
23 understanding, in my view, is overstating what we have.  
24 What we have is a memorandum of some principles that the  
25 parties have agreed that they will continue to work

0029

1 together toward a definitive agreement, and I believe  
2 that everyone is in good faith in that regard.

3           With Orange County Water District, a little bit  
4 of the same circumstance. We've had one discussion,  
5 we've had one, and we have some idea that there may be  
6 some settlement principles that will allow Chino basin  
7 and Orange County Water District to move forward, and  
8 that Chino basin will have the flexibility it needs in  
9 that regard within the watershed to use this resource  
10 both as a possibility of improving the resource itself  
11 but also to be in a conjunctive-use program that might  
12 actually regenerate some revenue, want to come in and  
13 assist in the management program's home basin.

14           Leaving, then, Orange County Water District  
15 issues to talk about recharge. Recharge means different  
16 things to different people. You can even see from what  
17 is before us in terms of this memorandum of principles  
18 that it means different things to different people. One  
19 thing that it means is who's going to be the gatekeeper,  
20 who will control recharge in the basin, whether it is a  
21 party to the judgment or an outsider who comes into the  
22 judgment. The answer is that we want the Chino basin  
23 Watermaster to be the gatekeeper on controlling who does  
24 what recharge and where within the Chino basin.

25           The second kind of thing that recharge means is

0030

1 the physical facilities, that is, how are we going to  
2 deal with having the necessary recharge basins on  
3 diversion structures, capture facilities in order to  
4 increase the recharge in the basin. And the answer  
5 there is that we will expect the Chino basin Watermaster  
6 to be contracting with other agencies, not only  
7 facilities itself, just as Mr. McPeters was indicating  
8 would be the case with the de-salters, but that  
9 Watermaster would contract with others who would have  
10 the responsibility for owning and operating the actual  
11 physical facilities.

12           The third item and the one that's been most  
13 important to my client in which we have advocated is  
14 that despite the fact that Chino basin today is not  
15 being operated in an overdraft condition overall, that  
16 is, the parties have sufficient water rights under the  
17 judgment and whatever water rights that they're able to  
18 acquire from others by way of internal transfers within  
19 the basin, that the total amount of water being  
20 extracted doesn't exceed the safe yield.

21           However, we have learned that through the OBMP  
22 process, that the basin doesn't operate as a unity, and  
23 that there are some areas of the basin, even though the  
24 parties are conducting themselves within the judgment  
25 will still have, let's say, a local overdraft. And so

0031

1 the commitment that is embedded in the memorandum of  
2 principles is that the Watermaster will have the  
3 responsibility to acquire physical wet recharged water  
4 and see to it that that physical wet recharged water is  
5 physically put into the basin. And for the first  
6 five-year period, there is a commitment or a definition  
7 of 6500-acre feet per year generally in the north and  
8 middle portion of management zone number one where there  
9 is a need -- a current need identified to get some  
10 physical wet water recharge.

11           Aside from that, everything else will remain  
12 the same. That is, parties will still be able to  
13 transfer water, parties will be able to still continue  
14 to operate under their traditional water rights under  
15 the judgment, and there would be no specific constraint  
16 related to that recharge. The recharge costs will be  
17 spread across all of the parties to the judgment  
18 according to their -- that is, all the parties in the  
19 appropriative pool according to their water rights.  
20 Then that's the big issue for recharge that Monte Vista  
21 has felt.

22           There's a flip side issue that has been talked  
23 about a great deal because sort of the opposite of wet  
24 water recharge has been paper transfer of stored water  
25 or unused production allowance for carryover that went

0032

1 from year to year. There's those transfers among the  
2 parties that, in essence, allowed parties to overproduce  
3 their production right without incurring a recharge  
4 responsibility. And so there has been a tension between  
5 these internal transfers and the idea of wet water  
6 recharge. This issue is addressed in the memorandum of  
7 principles by way of a couple of principles that have  
8 been addressed.

9           Number one is that transfers will go through  
10 the Watermaster, there will be notice. There will be a  
11 transparency when a transfer between the parties or  
12 among the parties, and this is primarily appropriative  
13 pool issues. Transfers among the parties will be  
14 transparent. There will be notice, and the Watermaster  
15 will then be required when it -- when a transfer is  
16 proposed, to get the word out to all of the parties, and  
17 there will be a presumption that there is no harm from  
18 any transfer, but the notice is given. And if a party  
19 feels there is harm, there is to be some physical  
20 disadvantage as a result of the proposed transfer that  
21 in that case, there could be a hearing process involved  
22 through the Watermaster, subject to court review, to  
23 determine whether or not there is harm, that is, whether  
24 the presumption of no harm is overcome by evidence  
25 that's presented by the party.



0033

1           So I think that covers the major elements that  
2 we were concerned about and then recharge and transfers.  
3 A great deal of discussion time went into various other  
4 aspects of transfers of water and others we've been  
5 talking about.

6           MR. SLATER: Thank you, Art.

7           MS. SCHNEIDER: Were those memoranda of principles,  
8 as you call it, as silent as to discussion that is in  
9 the draft OBMP implementation plan, should the reader  
10 assume that the elements of that plan are still on the  
11 table? In other words, the OBMP implementation plan  
12 does talk about a potential volume of recharge capacity  
13 to be created in the basin that doesn't show up in the  
14 principles agreement. Mr. Kidman, you said that other  
15 than that 6500-acre foot per year in Zone 1 for the  
16 period of time that is contemplated, everything remains  
17 the same. Is remains the same what's in the OBMP  
18 implementation plan or what we have now?

19          MR. KIDMAN: That's actually an issue that we --  
20 that fell through the -- let's say the first draft. We  
21 identified that issue. The intention that I've been  
22 assured is the intention of the group is that the  
23 five-year period is not a period of when that's done,  
24 everything's over. That's a period when we'll take a  
25 look at it again. The intention of my party's --

0034

1 MS. SCHNEIDER: Let me interrupt though. Is the  
2 6500 a year in Zone 1 the entirety of recharged --

3 MR. SLATER: The answer to that is no.

4 MR. KIDMAN: Right. The intention is that that's  
5 a current need that's identified -- is identified in the  
6 OBMP. The intention of going on further, I think the  
7 framework then is that is set here that when the  
8 additional physical recharge is identified to take place  
9 in other portions of the basin and that will depend on  
10 circumstances that exist at that time because that need  
11 for physical wet water recharge will vary according to  
12 overproduction and particular areas of the basin. It  
13 will also vary dependent on whether or not an active  
14 conjunctive-use program comes into the basin. The  
15 intention is to treat that as a socialized cost that  
16 would be used as a basin-wide resource and therefore  
17 basin-wide cost to do that region.

18 MR. SLATER: I think I would supplement  
19 Mr. Kidman's answer by also saying that there are  
20 commitments made on page 2 of the MOU to engage in  
21 efforts to maximize a safe yield, through proper  
22 replenishment, leading to future processes, what  
23 specific replenishment activities there will be, but  
24 there is no effort or desire to constrict or reduce the  
25 level of recharge that is contemplated. In fact, I

0035

1 think what was done was to raise the baseline to say  
2 that at a minimum, a specific 6500-acre feet was going  
3 to go in a specific location. You'll note, for example,  
4 page 2, item 5, there's a commitment to giving  
5 preference as far as possibly augmentation of native  
6 storm water. On item 6, that there is a commitment to  
7 avoid physical injury, material physical injury to the  
8 parties in the basin, and item 7 is a desire to achieve  
9 balance.

10 MS. SCHNEIDER: When I look at these provisions on  
11 recharge, my impression was it was largely intended --  
12 my question is: Was it largely intended to be a  
13 restatement of the recharged policy and principles?

14 MR. SLATER: I think that's accurate.

15 MS. SCHNEIDER: But then the question, given your  
16 latest comment, would be: Are you now going to have as  
17 your implementation plan proposal just policy and  
18 principles with the sole exception of the 6500 you  
19 identified for Zone 1? I'm just asking because I can't  
20 tell how to read this in conjunction with your draft  
21 implementation plan.

22 MR. SLATER: I think the answer is that this  
23 document does not constrain or limit what happens so  
24 long as this minimum baseline doesn't change. It is an  
25 enabler. It's not a restriction.

1 MS. SCHNEIDER: I can appreciate that this is an  
2 enabler as to the 6500, but I am sure that there's a  
3 pretty big gap between statement of policy; that is,  
4 more recharge of other places from time to time would be  
5 a good idea and a plan that sets forth capacities and  
6 times and agreements that back that discussion up with  
7 agreements to make it similar.

8 MR. SLATER: This is not -- this does not preclude  
9 the discussions, the efforts, et cetera. This sets a  
10 minimum. We were told to be able to continue to make  
11 progress on execution of commemorative agreement to  
12 implement various recharge activities. This sets the  
13 baseline and creates a commitment among the parties.  
14 Watermaster still has work to do.

15 MR. KIDMAN: The party that I represent has been  
16 extremely intent on trying to make sure we get some  
17 physical recharge going. I would say, once again, in  
18 the basin at one time, I'm told there was a pretty  
19 active recharge program, and that's generally fallen by  
20 the wayside with the development of a water market  
21 internal with the basin. However, the belief is that  
22 while the basin overall currently operates in a balance,  
23 there is imbalance in certain areas. This addresses the  
24 worst of that. As time goes on and additional urban  
25 growth takes place, as everyone anticipates within the

0037

1 Chino basin, the entire basin is going to come -- rather  
2 than being in a surplus situation, it will come into a  
3 deficit situation, and we believe that the judgment  
4 itself, as well as the OBMP, will then come into play  
5 because the only choice an overproducing party will have  
6 at that point in time will be to pay the Watermaster for  
7 recharge and actually have that recharge take place.

8           The guiding principle for the client that I  
9 represent has been we need to do the actual physical  
10 recharge that the OBMP calls for, but that's a document  
11 over the period of time, and it indicates what's going  
12 to be taking place within the basin over a period of  
13 time. It might be pushing too hard to say we have to  
14 come to agreement now on how we're going to address  
15 those future issues. Again, no one knows how quickly  
16 development is going to take place, when we're going to  
17 run out of flexibility that's currently enjoyed by the  
18 ability to transfer water internally. No one knows  
19 whether or not we're going to be able to actually get  
20 physical water into the basin to conjunctive-use  
21 programs. No one knows whether or not some ideas that  
22 the recharge agencies have of how they can increase the  
23 yield of the basin, when those will go into place.

24           We have two things that I think should provide  
25 assurance on us. Number one is the judgment itself

0038

1 requires parties that overproduce out of the  
2 appropriative pool. When they overproduce and they  
3 can't find transfer water from somebody else, they have  
4 to buy a recharge water, and this document makes it, I  
5 think, far more clear that the Watermaster is going to  
6 do physical wet water recharge when that happens.

7           The other thing is a commitment here. At least  
8 the commitment in that 6500, which certainly provides a  
9 precedent, that when we don't have recharge required  
10 under the judgment itself and there is a basin need or a  
11 localized need and that constantly localize is spread  
12 across and shared by all of the appropriative pools  
13 rather than focus on the party that -- or parties that  
14 happen to be in that locality. The reason for that is  
15 that basin water -- the basin has been operated legally  
16 as though it is a unity, and that all water rights are  
17 equal, and that all water rights are plunkable and  
18 interchangeable and transferrable. And if we move to a  
19 regime where a water producer in a particular locality,  
20 because of the physical detriments of that locality  
21 have -- if that party were required to pay a  
22 disproportion of share of recharge in this instance or  
23 if it's water quality or subsidence or some other issue,  
24 if that were to occur, then the water rights would no  
25 longer be equal. So the idea is when we have these

0039

1 local detriments, we're going to try to treat them as a  
2 mansion for the whole basin.

3 MR. BUNN: My name is Tom Bunn. I'm an attorney  
4 for the City of Pomona. I just wanted to say briefly  
5 that one of the reasons we've had difficulty answering  
6 your latest question is we never explicitly discussed it  
7 in our group. Nobody ever said, to my recollection, how  
8 is this 6500-acre feet going to fit into the program  
9 that's outlined in the OBMP document. So that's why  
10 we're struggling. I think we were operating under an  
11 implicit understanding, though, at least my client was,  
12 that we did not, by the adoption of this, intend to  
13 overrule any recharge program that's set forth in the  
14 OBMP document now. Rather, we were intending to fill in  
15 a gap as it were both as the specific facilities and as  
16 to the principles to be used when determining where the  
17 recharge facilities should be, what criteria we use for  
18 establishing those.

19 So my answer to your question would be except  
20 to the extent that it's inconsistent with this,  
21 everything in the draft OBMP document is endorsed by our  
22 group. I don't know how everybody else feels about  
23 that. I don't see nods or shakes.

24 MS. SCHNEIDER: There are some people shaking their  
25 heads yes.

0040

1           MR. SLATER: Well, I guess I would be curious if  
2 anybody disagrees with that. I think the effort is to  
3 reach out and grab what had already been done and to  
4 make use of that and be able to go forward and not to  
5 contradict, restrict, and limit in any way.

6           MS. SCHNEIDER: We're working on a -- Mr.  
7 Scalmanini is pointing out to me that we're coming from  
8 -- to the first track -- not very well informed  
9 obviously, as to what you've accomplished in the second  
10 track, but in the first track, the summary document, the  
11 OBMP implementation draft plan itself are talking, for  
12 instance, about 80,000-acre feet of recharge. My  
13 question is when the 6500 acre a year is identified  
14 here, is that part of the 80,000? Is it in addition to  
15 the 80,000? Is it perhaps a concrete step much more  
16 concrete than additional work on the recharge plans but  
17 consistent with what you anticipate will come out when  
18 work on the recharge plans that's the subject of your  
19 MOA on recharge?

20           MR. SLATER: I think the -- Gene?

21           MR. TANAKA: Gene Tanaka for Cucamonga Water  
22 District. The answer is the 6500-acre feet is part of a  
23 larger number that you've identified. The tension that  
24 I think that you are wrestling with is you have an OBMP  
25 that looks 20, 30, even more years down the road. You



0041

1 have an MOA or a memorandum that will be turned into a  
2 binding agreement that locks down parties today.  
3 Difficulty is the two are not going to exactly be  
4 congruent. What we try to do is carve out from the OBMP  
5 what we can lock down now and done that. The rest of  
6 our assumption is that as time goes by, actions will be  
7 taken consistent with that, but to sit here today,  
8 commit to \$200 million of facilities in specific  
9 locations which may not even be available in 20 years,  
10 that's too difficult. So what we've done is this is a  
11 minimum document, this is consistent with the OBMP, and  
12 it commits the parties as a first concrete step to  
13 moving forward on the OBMP.

14 MR. SCALMANINI: I'm Joe Scalmanini. Along those  
15 lines, then, is there still a commitment to do phase two  
16 of the recharge master plan so the game plan ends up in  
17 place to do a full-blown 80,000, whatever it turns out  
18 to be over time?

19 MR. TANAKA: Yes. I think Scott sort of hit it on  
20 the head. We all assume that we're going to go forward  
21 with the OBMP, and to the extent that we have problems,  
22 we were trying to wrestle with them here and now. So if  
23 you don't -- as Tom Bunn said, if you don't see it in  
24 here, if we had problems, we were going to try to  
25 identify with it and lock it down in this agreement.

0042

1 Everything else we view as consistent.

2 MS. SCHNEIDER: Were there problems with the  
3 policies that are now restated in this section on  
4 recharge that had to be locked down?

5 MR. TANAKA: I'm not aware of any. If others had  
6 problems with the policy, I suggested that they speak to  
7 you, but I'm not -- what we did need to do is identify,  
8 for example, who's going to own the de-salters. That  
9 was an issue that had to be pinned down by us.

10 MS. SCHNEIDER: Let me ask a question. You  
11 identify that the Watermaster will not own recharge  
12 facilities, but you don't identify who will own the  
13 recharge facilities. I guess one of the things you said  
14 is it has been an issue for a long time. If you wait  
15 10, 20, 30 years, there's opportunities now that won't  
16 be realized by what, a conservation district, San  
17 Bernardino County Flood Control, there are areas that  
18 could be used for recharge that if identified and locked  
19 down in some fashion now, will be available in 10, 20,  
20 30 years. And if you don't act now, they won't be  
21 available. You have to move buildings to recharge  
22 water. So I guess our concern has been that we  
23 understand some of these things are going to move  
24 forward in a good -- with a reasonable schedule because,  
25 frankly, the memorandum of agreement on recharge is an

0043

1 agreement to do a whole bunch more studying of the  
2 issue. There's not an element of implementation in it.  
3 So the good news in your memorandum here is that there's  
4 actually a commitment to do something. Other than  
5 additional studies so --

6 MR. SLATER: There are --

7 MS. SCHNEIDER: This is good news. It's just --

8 MR. SLATER: 4-B, for example, is ensure that there  
9 is sufficient recharge capacity. That's a commitment.  
10 That's not an obligation to study. That's ensure that  
11 there is.

12 MS. SCHNEIDER: But do I read that together with  
13 the other documents so that there's a commitment to  
14 something like 80,000-acre feet of recharge --

15 MR. TANAKA: Let me give you an example of how you  
16 would see recharge work. One of the key elements for  
17 the appropriators is that they plan to capture the  
18 recharge to pay replenishment obligation to handle  
19 replenishment fees for the de-salters, and they're  
20 linked together. If they don't, they've got to pay for  
21 it. So that is a driving force to get them to go ahead  
22 and push forward with recharge, and it's a lot cheaper  
23 than having to purchase the water later. So implicit in  
24 a lot of this is a lot of action by the parties. The  
25 difficulty in attention by identity, you're absolutely

0044

1 correct, that if we don't move, we're going to miss  
2 opportunities. We understand that we need to.

3 We also probably appreciate the other side to  
4 require an agency today to commit to a project that's  
5 going to be realized in 10 or 15 years at a sum  
6 uncertain is also difficult, and that's the tension  
7 between these two documents.

8 MR. SLATER: And Gene's point is well taken that  
9 the entire premise is that if new water is not  
10 developed, there will be a significant financial  
11 obligation incurred to provide replenishment to the  
12 de-salters.

13 Art Kidman?

14 MR. KIDMAN: I wanted to say that, also, during  
15 this process, one alternative that came up and got  
16 serious discussion was the possibility of using some  
17 property that's owned by the City of Upland for  
18 recharge. It's in item 8 on page 3. There's three  
19 different spreading facilities or areas that are  
20 identified there looking to put this current implement  
21 of recharge that are preferred. They're really listed  
22 in the order of preference. The concept, though, is  
23 that actually, while we need additional 80,000, let's  
24 say, the number of recharge overall, we've actually got  
25 some capacity available in different facilities owned by

0045

1 different organizations already. That, plus the  
2 possibility of entering into an arrangement with Upland  
3 Water District and others for a conjunctive-use  
4 program and take within the basin naturally means that  
5 we're going to be developing recharge capacity.  
6 Everybody expects that, desires it in fact, because it  
7 might be a significant source of revenue to the whole  
8 program.

9           So again, it might be pushing too hard to try  
10 to lock down too much at this time. I think a lot of  
11 progress was made. I detected no dial whatsoever in  
12 Upland's offer to find a way to use their facility which  
13 really has been operated as a retention basin and for  
14 flood control purposes, not as a recharge facility but  
15 perhaps the possibility exists that with the relatively  
16 modest capital investment, could be that facility could  
17 be enhanced into a good recharge facility. So people, I  
18 believe, were in good faith in making these commitments  
19 to actually do reactivate a physical wet water recharge  
20 program in the basin. This is the first step. It's  
21 obvious that additional work will be required as  
22 physical things change in the basin.

23           MR. SLATER: Okay. Any further question on the  
24 subject of recharge or transfers? If not I think we're  
25 moving to the next subject area which is storage and its

0046

1 shorthand or longhand conjunctive use. We have three  
2 parties or principals who will be providing comment on  
3 that. Gene Tanaka, Dan McKinney, and Marilyn.

4 MR. TANAKA: Hi. Gene Tanaka again. I want to  
5 echo comments made by some of the other -- all of the  
6 other speakers today. A lot of good things have come  
7 out of the last several weeks, and I think it's a credit  
8 to everyone sitting here around the table in the  
9 conference room. I think really the theme in key, what  
10 we need to do, is build on that. That's really what we  
11 should do. There's a lot of momentum. I'd like to see  
12 that momentum move forward.

13 I'm going to talk about storage, and I think  
14 Art Kidman pointed out that it's really the linchpin for  
15 what may add when the appropriators get together and  
16 have a deal. What it does is it unlocks the potential  
17 of conjunctive use to help fund and build all the  
18 projects that we need to do for the basin, and in  
19 exchange the -- and the appropriators are then willing  
20 to assume the responsibilities of paying for it and  
21 back-stopping it.

22 Let me ask you to take a look at your  
23 memorandum, page 3, section on storage. There's four  
24 principle parts to this agreement on storage. First,  
25 sections 3 and 6 concern the appropriators. This would

0047

1 provide that there's no limit on storage, there's no  
2 loss of rights -- excuse me -- there's no loss of  
3 storage capacity until 2005 and then it runs at  
4 2 percent after that. And an important point, it's  
5 subject to recalculation according to best science.

6 Part two is section 7 and 8, and this deals  
7 with the Watermaster, and I'd like to step aside for a  
8 second and point to how this agreement seeks to do what  
9 the OBMP wants us to do in a larger sense. It's an  
10 example of what I was trying to articulate a few minutes  
11 ago. Section 7 and 8 deal with the Watermaster's  
12 involvement in conjunctive use. It favors it, it  
13 encourages it, and it's really for us the key to what we  
14 see happening. It sets a target for 500,000-acre feet  
15 in addition to the conjunctive use available to the  
16 parties.

17 An example of how this would work is the  
18 appropriators need this to happen whether it's with Met  
19 or some other third party. They will work very hard to  
20 ensure that because that's what makes this deal go, and  
21 it's that kind of commitment that may not be legally  
22 locked down, but it's something that's going to happen  
23 for this deal to work, and that's how this process  
24 works, and I hope resolves the tension that you have  
25 between the agreement and the OBMP in a general sense.

0048

1           The third part is sections 10 through 12, and  
2 this is the deal that I've made. They are giving up  
3 their rights to receive the benefits from conjunctive  
4 use, but it's important to know that they've also  
5 indicated a willingness to support the process, and I  
6 take that as a real commitment. I had a very good  
7 conversation with Geoff Vanden Henvel at the end of the  
8 negotiating session on Tuesday night, and he indicated  
9 this genuine interest for going forward. I take him at  
10 his word. I believe it. I think that's the sort of  
11 thing that will make this process work.

12           Finally, sections 4 and 10 come back to a point  
13 that Art Kidman raised as to his section, and that is  
14 the Watermaster's committed to making sure that this  
15 works from a science point of view, from an  
16 environmental point of view, and that's what this is all  
17 about, and that's really the agreement.

18           MR. SLATER: Thank you, Gene. Dan?

19           MR. McKINNEY: Just very briefly. Dan McKinney.  
20 As Gene commented, agricultural pool has elected that  
21 change for assessment being paid that during the term of  
22 the agreement it will not seek a share of any money  
23 received by conjunctive use. Agricultural pool  
24 recognizes that that's perhaps two-thirds of the storage  
25 of capacity basin that was based on safe yield, but it's



0049

1 more interested in, we've discussed many times,  
2 peaceably and slowly going out of business than getting  
3 involved in the enterprise that is being required for  
4 the conjunctive-use program. They're committed to  
5 support conjunctive-use program, and you'll see two  
6 paragraphs that read similar. One, they'll use their  
7 best efforts to support it. Paragraph 10 and paragraph  
8 11 says it will be bound by the covenant of good faith  
9 and fair dealing that it will not behind the scenes in  
10 any way interfere with it.

11 Paragraph 12 waive any rights for any  
12 compensation that may be received during the term of  
13 this agreement for storage rights and conjunctive use.  
14 Now, these are conditions on the fact that the  
15 conjunctive-use program will not have any material  
16 impact to any member of the agricultural pool, no injury  
17 will occur that's not actually mitigated. We're not  
18 giving up our rights to having available water in our  
19 wells and things like that. In other words, there  
20 should be no injury or harm done to the Agricultural  
21 Pool's ability to use its water. So long as that  
22 doesn't occur, they have no objection to move forward  
23 with the appropriative pool.

24 MR. SLATER: Thanks, Dan. Marilyn?

25 MS. LEVIN: Marilyn Levin, California Attorney

0050

1 General's office. I think Dan has summarized the  
2 position of the Ag Pool very well, and I really don't  
3 have much to add. I think one of the reasons that we  
4 are supporting these principles is that there is some  
5 end point to the agreement. There's a 30-year term with  
6 one roll-over and possibly a 60-year term. So that the  
7 State of California's long-term interest in the basin  
8 continue. We're going to be supporting what's going on  
9 here, but we're also going to be involved in the  
10 continuing management of the basin. In 60 years or 30  
11 years the State of California can see what's going on,  
12 and if they want to get involved in any benefits of  
13 conjunctive use, they can at that time. In exchange,  
14 they're willing to have their cost paid for and to  
15 essentially have the 1978 terms of the judgment continue  
16 for the next 30 or potentially 60 years. It was clear  
17 to everyone, I believe, that the State of California  
18 filed comments opposing conjunctive use when there was a  
19 first go-around in the '80s, and we're willing, through  
20 these principles, to look again at the conjunctive-use  
21 program and in good faith support it as long as there's  
22 no material injury to the agricultural pools, to the  
23 basin. And so we are willing to look carefully. We  
24 aren't going to step aside and ignore what's going on.  
25 We are going to watch carefully.

0051

1           But what I want to say is that -- I think I've  
2 said this to the court -- the way this will work is if  
3 everyone works together voluntarily to understand the  
4 importance of this basin as a resource. And I think I  
5 say again what Art has said, Scott Slater has done a  
6 good job, an excellent job, and his firm, in getting  
7 everyone to come to the table to stare at each other  
8 face to face and to try to continue to identify the  
9 problems and work out the problems, and so I think  
10 that's why these principles are important, you know, to  
11 everyone in the room. I think in terms of storage,  
12 that's probably all I have to say.

13           MR. SLATER: Thank you, Marilyn. Any questions?  
14 Okay. No questions? Joe?

15           MR. SCALMANINI: In paragraph 8 there's reference  
16 to short-term conjunctive use -- what is that?

17           MR. SLATER: Traci?

18           MS. STEWART: Traci Stewart, chief of Watermaster  
19 Services. That's the project that we did in the early  
20 '90s with Metropolitan over about a six-week period  
21 where we put approximately 4800-acre feet in the ground,  
22 and it is centered around a connection or intertie that  
23 was made at Cucamonga reservoir one, I think it is, and  
24 a well that they have there so that water could actually  
25 be returned to the upper feeder through that. And the

0052

1 water has been sitting in the ground since the early  
2 '90s and is labeled as a short-term conjunctive-use  
3 water, so that is something that the producers felt was  
4 a high priority to see if we could move that forward and  
5 allow Metropolitan to use that water in some way.

6 MR. SCALMANINI: Use it meaning taking every bit?

7 MS. STEWART: That's correct. The take has  
8 occurred very minimally.

9 MR. SCALMANINI: And in paragraph 10 there's  
10 reference to a conjunctive use and storage project  
11 that's already approved by Watermaster. What is that?

12 MR. SLATER: The intention there was to provide,  
13 particularly the State of California and others, in  
14 confident that the support followed Watermaster approval  
15 and that the -- it's a sequence.

16 MR. MCKINNEY: Dan McKinney. The concept there was  
17 we would not have to support a project unless it has met  
18 the goals of the OBMP.

19 MR. SCALMANINI: I got the impression -- was there  
20 a -- was approved by Watermaster --

21 MR. SLATER: I attribute that one to a drafting.

22 MR. BUNN: This is Tom Bunn. I'd just like to  
23 make one comment that I didn't hear from Mr. Slater,  
24 maybe he made it to you privately. We have  
25 intentionally not to best word this document so if the

0053

1 document could have been better worded in expressing  
2 what we meant, we didn't bother with it unless there was  
3 a substantive problem. So there may be a number of that  
4 kind of ambiguous wording.

5 MS. SCHNEIDER: We understand that. It's just that  
6 you also wrote a code. I'm trying to decode.

7 MR. BUNN: You're absolutely right. And you have  
8 to do it but --

9 MR. SLATER: Okay. I think we're ready for the  
10 next subject which is generally the de-salters. We have  
11 a team of John Schatz, Jim Gutierrez, Jim Erickson, Ken  
12 Jeske, Bob Dougherty. Who wants to go first?

13 MR. SCHATZ: John Schatz, counsel for Urban  
14 Community Services District. I think the de-salters,  
15 many have recognized the de-salters -- if not they sent  
16 piece one of the fund meant 58 pieces of this whole OBMP  
17 process for a number of these, the three primary ones it  
18 has to do with the maintaining safety, water quality  
19 aspect control, well water becoming more pervasive. It  
20 also replenishment option recycled water credits and so  
21 forth. I wanted to talk briefly about the financial  
22 aspects related to the \$375 number that appears in the  
23 MOA.

24 The parties included Jurupa because these type  
25 of contracts are typically take or pay or also directed

0054

1 towards creating an incentive to continue to buy the  
2 water. We're looking for price certainty and this  
3 number derived out of some work that I believe Black &  
4 Beach generated, and we talk about an issue of 350 to  
5 375. Probably the most important thing to say about  
6 this is this is really ONM operation maintenance portion  
7 of it. We fully expect, as explained by Tom McPeters,  
8 that with the availability of the Prop 13 funds and also  
9 with I think more than just a promise but a very strong  
10 likelihood of a beneficial conjunctive-use program  
11 probably involved Metropolitan Water District of  
12 Southern California, that this has made this piece of  
13 the puzzle much easier to reach. I think the parties  
14 are very confident, frankly, without the availability of  
15 outside money, this would have been much more difficult  
16 to deal with because there would have been a lot of  
17 dollars within the basin would have to be put on the  
18 table in order to fund the capital facilities in form of  
19 the de-salters related pipelines and so forth. I don't  
20 want to understate it, but I think that, frankly, this  
21 was one of the two difficult we're each given in the  
22 availability of the money and the fact that we are  
23 moving forward now. As explained by Tom McPeters, SAWPA  
24 has a leg up because there is a specific line item  
25 within the Proposition 13, and it's a very strong

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1 likelihood, if not a certainty, that money's available,  
2 so that did make this process much easier.

3 MR. SLATER: Jim? Oh, Ken. Sorry.

4 MR. JESKE: Ken Jeske, public works record for the  
5 City of Ontario and not an attorney. The only one we're  
6 hearing from.

7 MR. BUNN: Not officially.

8 MR. JESKE: Not a wanna-be either. We understand  
9 most attorneys are wanna-be engineers so --

10 I think you referred -- and since I'm not an  
11 attorney, I will say this -- you've heard in a number of  
12 these issues recharge stored de-salters credits. A  
13 couple of questions I've heard, real quickly, have to do  
14 with what's required in this memorandum of understanding  
15 and ultimately in the OBMP, but from the parties that  
16 are going to operate and conduct these activities, not  
17 only are there some requirements in the agreements which  
18 are some of the written requirements, but there is also  
19 a number of financial and operating incentives, and it's  
20 those types of incentives that are ultimately going to  
21 drive the timing and drive the project and ensure that  
22 the OBMP moves forward and is implemented in a timely  
23 manner.

24 And as a result, through this agreement, we're  
25 already increasing the partnerships in one of the key

0056

1 and cornerstone projects which is the de-salter  
2 project. The City of Ontario is now committed through  
3 this process to be a partner in the initial phases and  
4 initial steps that starts the process of committing to  
5 the water prices and the water takes and the water usage  
6 from a de-salter project which can increase the scope  
7 and size of the first phase and get it moving in an  
8 earlier process and again, provide that financial and  
9 operating center to make it happen. We believe through  
10 this process you will see a partnership evolve and  
11 involving a couple of regional agencies such as IEUA,  
12 perhaps Western, an agency such as Jurupa, Ontario, and  
13 the partnership to make these projects move forward on a  
14 fast-track basis. Need to for the funding. Again, the  
15 financial incentives are there to make it happen, and  
16 they're included in the environmental implementation.

17 I was also encouraged through the process on  
18 how technically you had a number of the operating people  
19 in the agencies getting together independently to  
20 determine how they could make these facilities work at  
21 the lowest cost to fit it within the project funding  
22 availability through Prop 13, so there's been a number  
23 of discussions technically on how to work within each  
24 other's and part of each other's constructed facilities  
25 together to make it more of a minimal cost. I want to



0057

1 assure you those processes are started, ongoing, and are  
2 very beneficial.

3           Finally, I was asked to report on how the  
4 replenishment would work because that is an item and you  
5 start pumping additional wells for the de-salter. Part  
6 of this agreement sets forth the framework for where  
7 that water will come from and how it's accounted for in  
8 the process and how it's funded and paid for. There's a  
9 priority schedule under the de-salters and then commits  
10 the parties to continue to look to Metropolitan for  
11 subsidies, which they have given in the past for these  
12 types of projects and commit that resource to the  
13 replenishment water is a first priority for the  
14 de-salter.

15           Secondly, it moves forward -- and we heard  
16 Mr. Tanaka represent the new captured yield from the  
17 proper engineering and scientific locates of the oil  
18 field from the de-salter as well as new safe yield  
19 determination and new projects which enhance safe yield  
20 to be permitted to replenished water and then finally  
21 there's an ultimate backstop that goes to the  
22 appropriative pool and as part of the agreements with  
23 the agricultural pool to ensure that there is water  
24 there to pump and sell at a competitive price to  
25 financial incentive to make the whole system work.

0058

1 MR. SLATER: Thank you. Jimmy?

2 MR. GUTIERREZ: Yes. Good morning, everyone. I'm  
3 Jimmy Gutierrez representing the City of Chino. Also  
4 with me is Jim Erickson and David Crosley. I'd like to  
5 begin by thanking everybody for their participation. I  
6 think that what was demonstrated was a real combined  
7 genius to get us to this point and certainly Anne  
8 Schneider's and Joe Scalmanini's efforts was not -- were  
9 clearly recognized, as was recognized a participation of  
10 Judge Gunn.

11 I'd like to address three issues with respect  
12 to the de-salters, the first one being the potential for  
13 an OBMP assessment, the second one for what is  
14 accomplished by the use of de-salted water, and the  
15 third is an intangible -- and I think is being  
16 recognized at this point in time. One of the issues  
17 that arose as how we're going to finance it, and with  
18 everyone getting together, we have a hierarchy of  
19 financing. The last one -- and this is not  
20 insignificant -- is a fact that all of the parties have  
21 agreed that if it becomes necessary, we will assess  
22 ourselves. It didn't start out with that priority, but  
23 I think through, frankly, the vision and the leadership  
24 of Cucamonga County Water District, Bob De Loach, and  
25 Gene Tanaka, we were made aware -- again, I want to

1 underscore that it is there and if there is any concern  
2 on the part of yourself and/or Judge Gunn that the  
3 parties are not committed to reaching into their pockets  
4 that, in fact, it is not the case because we are  
5 committed and certainly, those of us on the south end of  
6 the basin who have the greatest need of water problems,  
7 problems with land subsidence, I think if we're happy,  
8 the court should be happy as well with that.

9           The second issue is that the availability of  
10 de-salted water presents an opportunity to solve the  
11 ultimate goals of the OBMP. Again, those of us on the  
12 south end of the basin will have the added quantity of  
13 water that we need. Especially with the agriculture and  
14 urbanized land, we will have water available for us.

15           Secondly, the water quality will be improved  
16 and thirdly, and not insignificant to Chino and Chino  
17 Hills, we will help alleviate the problem of land  
18 subsidence by being in a deep well position and taking  
19 de-salted water. And currently Chino and Chino Hills  
20 are working cooperatively to see how we can move water  
21 from our combined water systems and Ontario making their  
22 transmission lines available to us for that purpose.  
23 Whether or not we take them up on it is yet to be seen,  
24 but at least the offer has been made.

25           The third and last thing is what you see by

0060

1 this document is clearly a consensus. But what you  
2 don't see by this document is something that's  
3 intangible, which hopefully is coming through here  
4 today, and that is a real spirit of cooperation and a  
5 real spirit of good whim, which, at least I believe,  
6 will continue to provide the common ground that creates  
7 the motivation for us to implement the OBMP and to  
8 construct the de-salters. Thank you.

9 MR. SLATER: Thank you, Jimmy. Questions?

10 MR. SCALMANINI: Just being what you told me a  
11 long time ago, that we haven't gotten along for 25  
12 years, has that all changed?

13 MR. KRUEGER: I'll take a buy on that.

14 MR. SCALMANINI: Just -- and this might be word at  
15 11:00 in the morning -- is the Jurupa west de-salter an  
16 appropriate name? I always had Jurupa on the east side  
17 but really there's a east, west, and a SAWPA.

18 MR. SLATER: That's correct. East, west de-salter.

19 MR. SCALMANINI: It almost sounds like it's kind of  
20 addressed at Ken. Ken, when you talk about, I don't  
21 know, the incentive, I guess, to take the de-salting  
22 water and if I read whatever F-1, A-6, it says if IEUA  
23 and Western District can secure sufficient funding to,  
24 in effect, plume the water through these various places,  
25 then they'll have the right to purchase the water under

0061

1 the same above.

2 MR. SLATER: I can sort of say it is the drafting.  
3 Ken, you want to explain how that -- what happened?

4 MR. JESKE: That is in the drafting. Actually, in  
5 the drafting of the wording. Actually, the City of  
6 Ontario was up on item one.

7 MR. SLATER: It should be Jurupa and Ontario and he  
8 did tell me that, and I just didn't strike the right  
9 keys.

10 MS. SCHNEIDER: I have a follow-up on a question  
11 that I have tried to understand that conditions  
12 precedent, especially the 121 million legislative  
13 appropriation, that I guess my question is how does the  
14 money that you anticipate getting in that legislative  
15 appropriation relate to the capital costs versus the  
16 transportation facilities in this subparagraph 6 on  
17 page 7?

18 MR. SLATER: I think I'll give you a generic answer  
19 and then others who have better knowledge of the  
20 specifics. I think the thought was \$87 million --  
21 around \$87 million would be available for Chino, of  
22 which approximately 60 would be associated with the  
23 de-salters. The idea was going back to something Art  
24 Kidman mentioned, equality and fairness and allowing as  
25 many people to take the salt and water as possible, was

0062

1 the goal. And at the other hand, there is a commitment  
2 being made by Western and the agency to provide water at  
3 a contract price, and in order for them to meet that  
4 guarantee and that desire on the part of the people to  
5 buy the water at a specific contract price, the  
6 assumption that relate to the capital that's going to be  
7 invested to make that happen.

8           So the idea was to take the capital as far as  
9 possible and make it available to as many people as  
10 possible and that would include transportation and the  
11 specifics of that -- what was necessary for the  
12 de-salter. As the de-salter and what would be necessary  
13 for transportation, I don't know.

14           MR. MCPETERS: Part of this political process,  
15 since names are being dropped, I'm not in all these  
16 conversations but the at least two agencies who have  
17 indicated that they will build and fund the de-salter  
18 are Western and IEUA. I don't want to speak finally for  
19 them. It's important to note that that's two of the  
20 membership of SAWPA. I have great confidence in  
21 whatever this political process is that when the seven  
22 agencies who allocate the funds to make up SAWPA,  
23 they're going to have a proposal to fund the de-salter  
24 by two and maybe three members of their group. I  
25 somehow or another sense that that's better position to

0063

1 be in than someone bringing a project from the other end  
2 of the county or something. So the two agencies that  
3 I'm aware of that talk so far as to the builder of the  
4 de-salter and want the funds taken upon SAWPA, they are  
5 part of the same.

6 MR. SLATER: Also, I think there was a meeting  
7 yesterday. Jean, can you give us a report?

8 MR. CIHIGOYENETCHE: Well, there -- once again,  
9 Jean Cihigoyenetcche of Inland Empire. The current  
10 de-salter which is always referred to as the SAWPA  
11 de-salter is not really the SAWPA de-salter. Although  
12 the project was managed and designed by SAWPA, it's  
13 owned and operated by three separate agencies including  
14 Inland Empire, Western, and Orange County Water  
15 District. These three entities have combined a separate  
16 JPA known as -- and operate under an agreement called  
17 Project Committee 14. All very mysterious but that's  
18 how they name these projects.

19 Rich Atwater sat down and met with Mr. Mills  
20 from Orange County and Mr. Harriger, and it was agreed  
21 that the Jurupa de-salter or new de-salter, whatever  
22 name you want to affix to that, will be subsumed within  
23 Project Committee 14 agreement, and it will be managed  
24 and operated accordingly as the current de-salter is  
25 including capital and ONM.

0064

1           We've coined a term of art, "back stopping"  
2 here during these meetings. "Back stopping" means what  
3 happens if this project goes completely upside down,  
4 who's going to cover it. And the way the current  
5 de-salter is that it's split evenly between our agency,  
6 Orange County and Western.

7           MR. SLATER: Thank you, Jean. Any other  
8 questions?

9           MR. SCALMANINI: I have a couple. I'll just say  
10 page 7, item B-1, it says, "The design and construction  
11 of other de-salters should produce and send high TDS and  
12 and nitrate to the de-salters." Is there some  
13 particular reason that that is in there? There's a few  
14 ways to interpret it. One is the first de-salter  
15 wouldn't need to do that which --

16           MR. SLATER: The interpretation you should take  
17 away is that the de-salters are supposed to carry out  
18 the purposes of the OBMP which is to treat water with  
19 high salts.

20           MR. SCALMANINI: And this is global and I certainly  
21 hear the commitment -- what I guess I might ask, should  
22 I read in this that in contrast to all the numbers, I'll  
23 call it a ramped up de-salter capacity to go from zero  
24 to, I forget now, 40,000-acre year in open time --  
25 coincident with a reduction in agricultural pool water



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1 pump into the south end of the basin that the resulting  
2 capacity would go in and ultimately reach that goal, but  
3 in order to accomplish things like maintenance of safe  
4 yields, that the water needs to then be beneficially  
5 used in the basin. This reads a lot about people shall  
6 have the right to purchase, shall have first priority to  
7 and words like that for water, but it begs the question  
8 from me, you know, what if they built the de-salter and  
9 nobody came to participate, if the water is not taken,  
10 then it doesn't work. You can de-salter but safe yields  
11 is not maintained.

12 MR. GUTIERREZ: I can answer that. I think Chino  
13 and Chino Hills is in that situation. We're taking  
14 de-salter now at a higher pace and 38-per-acre foot.  
15 One of our issues was there had to be an incentive to  
16 allow us to take it so that the OBMP could implement --  
17 be implemented recognizing that your virtual -- your  
18 scenario would come to fruition if it wasn't possible  
19 for that to take place.

20 So the approach that we took was that those of  
21 us who need to take water, want to take water is simply  
22 this: That we take it at virtually the same cost that  
23 we expend now than what's envisioned by this agreement,  
24 the 375 level that's accomplished, but also there's  
25 another scenario that's a scenario where if we're not in

0066

1 overdraft and we don't need to take the water from the  
2 de-salter, we could still take the water from the  
3 de-salter and subtract cost for replenishment water so  
4 we get it at same cost we would get it elsewhere.

5           That financial aspect in the pricing is what  
6 makes it possible for us to do that because the water  
7 needs will be there in the future so that if in the  
8 future when the need is there, those of us that are in  
9 that area to take water can basically take the cookie  
10 cutter that's been developed for the first de-salter and  
11 create either an expansion of the existing SAWPA  
12 de-salter or a third de-salter, and that's what was  
13 planned, that's what was envisioned. I think that's  
14 what everyone understands, and that's what we intend to  
15 do. Does that answer your question?

16           MR. LEWIS: Jeff Lewis, City of Chino Hills.  
17 Echoing Jim's remarks, right now Chino Hills has the  
18 contractual obligation to buy water from -- I know it's  
19 not the correct term -- the SAWPA de-salter that's going  
20 to be going on shortly in that it is also envisioned  
21 that perhaps with a future expansion that the City of  
22 Chino Hills could also be buying de-salted water from it  
23 with respect to the east de-salter. However, provided,  
24 making sure it could get to us, if you put that on line  
25 and you have the capacity to get that to us, of course

0067

1 we wouldn't be able to buy it but right now with the  
2 existing de-salter that's going to be on line, yes,  
3 there's already an obligation for us to be buying that  
4 water.

5 MS. SCHNEIDER: I wonder if someone could tell me  
6 what you mean on page 8, the C-1 and 2, what does it  
7 mean for the Watermaster to recover value from safe  
8 yield? What do you mean by that?

9 MR. SLATER: I'm going to be very careful because  
10 this is code to some degree, and I don't want to  
11 prejudice other further negotiations, but I think the  
12 comment is that the first effort will be to obtain a  
13 subsidy for Metropolitan for the cost of replenishment,  
14 and that's the first obligation. The second  
15 obligation -- if that were to fail, then the parties  
16 agree to make safe yield and all of its components,  
17 including augmentation that might occur by virtue of new  
18 water storm, water-enhanced recharge, to place that all  
19 at risk as well as any additional yield that might be  
20 made available by a recalculation to safe yield. So  
21 safe yield is meant broadly, and the choice of the words  
22 "value" was about the best we could do on Tuesday night,  
23 but the concept is that safe yield would be used and  
24 then replenishment obligations calculated in accordance  
25 with that.

0068

1 MS. SCHNEIDER: So basically your obligation is  
2 increased allocated better.

3 MR. SLATER: Exactly.

4 MS. SCHNEIDER: So you're not trading value out of  
5 safe yield. You're agreeing to spread the replenishment  
6 obligation.

7 MR. SLATER: In the event that new -- yes. And I  
8 don't want to break it out into all the individual  
9 steps, but there are those people who believe very  
10 strongly, and there are certainly, as Gene Tanaka said,  
11 a number of times to develop recharge capacity because  
12 that's the best way to augment the yield, and parties  
13 feel strongly that storm water could be made available.

14 MS. SCHNEIDER: And you do that before using --  
15 I'm not sure what unpaid balance from a general  
16 assessment on the appropriative pool means. Do you use  
17 that to buy water?

18 MR. TANAKA: Gene Tanaka. Let me try and give my  
19 understanding of it. The notion is that there are --  
20 that if and when we do the safe yield analysis, there  
21 will be lots of opportunities to increase the safe yield  
22 in place. The in-flow from the Santa Ana River, the  
23 reducing the loss out of the Santa Ana River, the storm  
24 water recharge and notion is, first and foremost, if we  
25 can increase that safe yield, we will apply that to

0069

1 replenishment. Ultimately that's the appropriated  
2 water, but it's the Delta increase we want to use first.  
3 And then the last question you asked about the last  
4 piece, if that fails, the water is not there, the  
5 incorporate is paid.

6 MR. SLATER: Any other questions? I think we need  
7 a little break for our court reporter. So if we can  
8 maybe take ten minutes, we'll come back and close up  
9 with the presentation.

10 (Recess.)

11 MR. SLATER: We have three reports to make. The  
12 two left regarding the agreement, the next subject area  
13 is the subject of credits and term, and we've asked Tom  
14 Bunn, Gene Tanaka, and Dan McKinney to provide their  
15 perspectives on that.

16 Who wants to go first? Tom?

17 MR. BUNN: I'm glad. Now I can point at the same  
18 direction with the referee and the court reporter. I  
19 felt like I was having to speak out of two sides of my  
20 mouth, but I didn't think I was going to have to do that  
21 today.

22 I'm Tom Bunn. I'm an attorney for the City of  
23 Pomona, and I'd like to request the opportunity, as  
24 others have, to give my thoughts on this whole process  
25 before I talk about the specifics that have been

0070

1 assigned to me. My firm first got involved in the Chino  
2 basin -- we're kind of a newcomer -- just before phase  
3 one of the OBMP was presented to the court to approval.  
4 So that was one of our first tasks, which was to read  
5 phase one and give comments on it and figure out whether  
6 we were going to support it before the court. And we  
7 read it, and we talked to our client and others and said  
8 well, this all looks good but how is it going to affect  
9 the City of Pomona. And there was perhaps some silence,  
10 and then, well, that's going to be worked out in phase  
11 two.

12           So you might remember, when we got to court we  
13 said we support what's in this document, but we can't  
14 say that we're going to sign onto the OBMP until we  
15 figure out how it's going to affect us. And we made  
16 that clear in both our written materials and it was just  
17 cynical who stood up and made that point to the court.  
18 So I was eagerly awaiting phase two and the  
19 implementation plan came out, and we read that over, and  
20 I remember being profoundly disappointed because it was  
21 obvious that so much work had gone into the preparation  
22 of phase two, and it was obviously on track, but my  
23 questions still weren't answered, how it's going to  
24 affect the City of Pomona.

25           So, again, we had a lot of trouble figuring out

0071

1 how to direct our comments in order to support the  
2 process, recognize the amount of work that had gone into  
3 it but at the same time let it be known that there were  
4 still a lot of questions that we had to have answered.

5           And then there was some thought -- obviously  
6 one of the foremost questions in our mind is who's going  
7 to pay for this. And some people said, well, let's wait  
8 until Black & Beach comes out with their cost  
9 allocation, and then we'll have something to deal with,  
10 and we can deal with that. And, again, I'm not trying  
11 to denigrate the work that they did at all, but I read  
12 over Black & Beach's stuff and first of all, I didn't  
13 understand much of it, but, again, I didn't see that it  
14 helped with the issues that we were having. And it  
15 wasn't just who was going to pay for it. There were  
16 other issues that were coming up, what are we going to  
17 do about the people who already have water rights in  
18 storage and that's said to be we have more rights than  
19 there is water, what are we going to do with that, what  
20 are we going to do about the transfers. Pomona butted  
21 heads with Monte Vista a couple of times on  
22 interpretation of the judgment, and it didn't appear  
23 that we were making any progress to work that out. This  
24 process that has started with the appointment of the new  
25 Watermaster attorney has, in my mind, done what we

0072

1 needed to do, that what I wrote down here in my notes is  
2 no more deferral of issues.

3 I've had the sense that all the hard issues --  
4 a lot of the work was being done, but all of the hard  
5 issues were being pushed to the back, and I, like  
6 everybody else in the room, kept looking at the calendar  
7 and looking at what needed to be resolved and saying how  
8 are we going to get from point A to point B. I believe  
9 that we've mostly done that in this last couple of  
10 months, and I credit Mr. Slater not only for recognizing  
11 the need and starting a process that would address that  
12 need but also for dealing even-handedly with the parties  
13 so that we all stayed at the table, and we were able to  
14 work in good faith with each other.

15 I also credit all the parties for working  
16 together. I'm amazed that we've come up with what we've  
17 come up with, and it may be that the only reason that  
18 we've done it is that the taxpayers of California are  
19 going to pay for a good part of the program.

20 MR. SLATER: Here here.

21 MS. SCHNEIDER: But we've done it anyway.

22 MR. McPETERS: I don't feel let off the hook  
23 somehow.

24 MR. BUNN: Well, I think you flipped that over.  
25 Without Prop 13 I'm sure we'd be here today. I think



0073

1 there are a couple other advantages. We identified a  
2 bunch of legal issues, part of which at the court's  
3 request. In my personal opinion, I think we've made it  
4 unnecessary to deal with most of those legal issues, not  
5 that we've resolved them but because we've made the  
6 policy decisions that have made them unnecessary. I may  
7 be wrong. I haven't gone back and looked at the list  
8 since we've come up with this document and there may be  
9 one or two laying out there but at least the significant  
10 ones we have been able to punt on. And finally, there  
11 was quite a question raised early on about how the  
12 Watermaster could implement the OBMP over a party's  
13 objection, and somebody suggested that perhaps we defer  
14 the question of Watermaster authority until we see the  
15 degree of consensus that we have.

16           And I think, Ms. Schneider, that you either  
17 made that suggestion or you bought off on it that  
18 perhaps we could wait on the question of Watermaster  
19 authority, and I think we've largely solved that  
20 problem, too, because we had the parties agreeing to the  
21 OBMP and its unanimous approval of the people on the  
22 table.

23           I was a little uncomfortable when we had our  
24 discussion a few minutes ago about how the 6500-acre  
25 feet of recharge works into the 80,000. And I thought

0074

1 to myself, you know, we didn't talk about that, and we  
2 should have, but we took kind of another approach. We  
3 didn't start with the OBMP documents so much. In fact,  
4 I didn't even bring a copy of it to most of our  
5 sessions. We started with the issues that mattered to  
6 the various parties, without which they would not buy  
7 off on this document.

8           And during the break I heard -- I overheard one  
9 of the conversations, and I heard Andy Krueger saying  
10 that we still have a lot of work to do, but maybe most  
11 of the arguments are behind us, and I apologize for  
12 listening in on your conversation, but that's exactly  
13 the way that I feel about what we've done.

14           Now I'll get off the soap box and talk about  
15 credits a little bit.

16           Early on it was apparent that a number of  
17 parties either had engaged in or were about to engage in  
18 projects that would benefit the basin. And the  
19 quest- -- and further the overall goals of the OBMP.  
20 And the question was to what extent they should get  
21 credit for those projects. It was recognized that that  
22 can be a difficult calculation because there are  
23 different methods of determining benefits, and then you  
24 have should we look at just the party's one project or  
25 should we look at how the parties' overall activities

0075

1 have benefited or not to the basin. A lot of tough  
2 questions.

3           And early on the City of Chino suggested we cut  
4 through a lot of that by separating projects into two  
5 parts. One of them were the projects that were actually  
6 called for specifically in the OBMP or in a later  
7 document, and those would get a hundred percent credit  
8 for their costs, and then there were the projects that  
9 weren't called for in the OBMP but accomplished the  
10 goals of the OBMP. And assuming that everyone agreed to  
11 that, the proposal was that they get credit for 50  
12 percent of their costs, and that we avoid the difficult  
13 line drawing questions.

14           When we started discussing the City of Pomona  
15 in particular, it became apparent that that 50 percent  
16 number was way too high. In our case and perhaps in  
17 some other cases, that would have resulted in at least  
18 some years totally letting Pomona off the hook from  
19 payment of OBMP assessments, and it was agreed that that  
20 wasn't the intent that Pomona, along with the other  
21 players, had to contribute to the projects that were  
22 done by all, and they couldn't say we've already done  
23 our share. So there was a good deal of negotiation, and  
24 what we came out with was that for future projects the  
25 parties would apply to the Watermaster for credit, in

0076

1 advance of construction, and the Watermaster would  
2 decide the degree to which a credit was deserved.

3           And in exercising its discretion, Watermaster  
4 takes certain factors into account. Pomona requested  
5 that our particular project be evaluated as part of  
6 these settlement negotiations. And so we did.  
7 Pomona -- I realized when I read this provision on  
8 paragraph G-4 on page 9, it doesn't say what we're  
9 getting a credit for. We had -- we had a line that said  
10 that, and then we struck it out, but Pomona has built an  
11 ion exchange plant, and the cost of that worked out to  
12 be -- we worked it out as 78,000 -- \$78 an acre foot or  
13 a little bit over a million dollars a year for the life  
14 of the project. The credit that ended up being  
15 negotiated was \$66,667 a year, which, as you can see, is  
16 way less than 50 percent of a million. And it is only a  
17 credit. If the credit ever exceeds the amount of the  
18 OBMP assessment, we don't get the difference, just that  
19 Pomona gets a credit up to that amount.

20           We also spent considerable time discussing  
21 whether this financial deal would be a model for future  
22 deals and deciding, I think, pretty much that it would  
23 not. There are a number of reasons that we believe  
24 Pomona's situation is unique, and that's one of the  
25 reasons that we asked to have that done as part of the

0077

1 settlement negotiations. The principal one is that in  
2 our water treatment plan, we basically take the salts  
3 entirely out of the basin. Pomona is not in the Chino  
4 basin, that service area for the most part. And we take  
5 virtually all of those salts outside of the basin and  
6 even the ones that portion of our service area that's  
7 within the Chino basin, our sewers still take the return  
8 flow out of the basin.

9           So that was discussed extensively as a reason  
10 for putting Pomona in there as a special case, and I  
11 think that we -- the agreement here is not that this  
12 number or this percent will be the percent that's used  
13 in future cases, and that's why we expressed it as a  
14 dollar amount, but the principle is that parties are  
15 entitled to credit for removing nitrates and salts from  
16 the basin, they may be entitled to credit for other  
17 things as well that accomplish the purposes of the OBMP,  
18 but they will go to the Watermaster and make application  
19 for that, and then Watermaster will decide the extent  
20 for which credit is granted.

21           MR. SLATER: Thank you, Tom. Gene? Dan?

22           MR. MCKINNEY: On the issues of credits, there's a  
23 few other credit issues. One of them is the salt  
24 credits that will be generated by the de-salters. We  
25 have agreed that the salt credits for the existing SAWPA

0078

1 de-salter have already been dealt with in the 1996 SAWPA  
2 agreement, and that those credits will be continued to  
3 be allocated in the accordance with that agreement so  
4 they're not dealt with here, but salt credits for the  
5 future de-salters will belong to the appropriative  
6 form.

7           We have agreed -- I should also indicate in  
8 paragraph E-7, you saw reference to another credit and  
9 maybe it could have gone here, but that in the event an  
10 appropriative -- an agricultural pool member takes water  
11 from appropriative pool for any reasons because their  
12 wells are no longer usable, the appropriative pool  
13 member would receive a replenishment credit against that  
14 water that's served, and that's a provision that has not  
15 been in the judgment, it made sense and we've agreed to  
16 work towards that with restrictions identified in there,  
17 and the intent is not to increase the agricultural  
18 production unnecessarily.

19           The paragraph 2 makes reference to another year  
20 of unallocated safe yield that's been held in reserve.  
21 As you can see from the agreement at section E-5, the  
22 agreement 883 gave the appropriative pool, an advance  
23 use of an unallocated safe yield that went to the  
24 appropriative pool -- agricultural pool. But instead of  
25 waiting five years, they got it early, early transfer

0079

1 agreement we refer to that as.

2           We've agreed that going forward, they're  
3 actually pegging that number at 32,800-acre feet per  
4 year, and they're going to get it each year in the year  
5 that it would have been incurred. That's based on a  
6 projection that agriculture is unlikely to increase its  
7 use over 50-000 acre feet per year. It hasn't hit that  
8 number except once in 12 or 14 years, and so that's a  
9 reasonable estimate going forward, and so they've picked  
10 that number as a number that the appropriative pool can  
11 depend on each year, and you see that in paragraph E-5.  
12 You see under the confirmation of rights that in the  
13 event the agreement's terminated, they will not have  
14 that continued year in reserve. That year's been given  
15 to them right now under paragraph 2.

16           Under the subject of term, the term of the  
17 agreement will be 30 years. We picked the 30 years  
18 because of the funding that's going to be necessary for  
19 this agreement.

20           Paragraph 4 deals with renewal of this  
21 agreement. The parties discussed in great detail how  
22 this agreement was to be renewed, and I think everyone  
23 agreed that the agreement would be renewed at the  
24 request of either the appropriative pool or the  
25 agricultural pool, and that there would be a concurrence

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1 on this or agreement in the 25th year so that either  
2 side could plan for the 30th year in the event it did  
3 not occur in the 25th year but that in the 25th year, if  
4 either side asked for an extension of the agreement, it  
5 would automatically occur for one more 30-year period so  
6 that if either the appropriative pool or agricultural  
7 pool chooses to extend this agreement, this agreement  
8 would in effect have a 60-year term.

9 On -- your agenda says "metering." On the  
10 subject of metering, the judgment anticipated meters  
11 would be installed initially by the agricultural pool.  
12 We've agreed that the Watermaster will install the  
13 meters which will be owned by the -- individually-owned,  
14 operated, maintained, inspected, calibrated and such by  
15 the Watermaster. The metering program thus far has been  
16 a difficult process. The meters fail pretty regularly,  
17 and as part of this agreement, the Watermaster will take  
18 on that responsibility, and that's in Section K.

19 MR. SLATER: Thank you, Dan. Gene?

20 MR. TANAKA: Nothing really to add.

21 MR. SLATER: Questions?

22 MS. SCHNEIDER: I have one question. I just  
23 couldn't understand G-2. There is a 35-plus thousand  
24 acre foot unallocated safe yield under produce transfer  
25 for 1999, 2000. So is that 32,800, does that just start



0081

1 in 2000? Because that's the only one.

2 MR. MCKINNEY: Yes. So the new 32,800 will begin  
3 in the year 2000 -- maybe Traci can speak to that.

4 MS. STEWART: The year that says NG to '99, 2000  
5 and then the allocation occurs against that year for the  
6 35,000 occurs to cover that year too. We'll be doing it  
7 in the 2000, 2001 assessment package.

8 MR. MCKINNEY: Because under the way it would have  
9 been accounted for before, until the year is completely  
10 over and the accounting done, the transfer was not made  
11 to the appropriative pool, and so we are still holding  
12 essentially the year in reserve at this point. This  
13 year they will receive the rights they would be entitled  
14 to for this year, and they'll get the year that's being  
15 held in reserve. But when the agreement is terminated,  
16 there is no reserve, and we've made that clear at the  
17 end, there will be no water rights transferred after the  
18 agreement is terminated.

19 MR. SLATER: Marilyn?

20 MS. LEVIN: Marilyn Levin, State of California.  
21 Another part of that with respect to credits or SE-5 and  
22 as part of the early transfer of the 32,800-acre feet in  
23 that that agreement there was an agreement also that the  
24 transfer wouldn't cap the production right of the  
25 agricultural pool under the judgment, and that was an

0082

1 important part of the -- of this whole credit analysis,  
2 and so that's been included, you know, to the benefit of  
3 the agricultural pool as well.

4 MR. MCKINNEY: I should speak to that so nobody's  
5 confused. The agricultural pool is still entitled to  
6 use its full 32,800-acre feet in any given year. We're  
7 just projecting that each year there will be 32,800 feet  
8 available to the appropriative pool. If there's not,  
9 the appropriative pool would have to make it up, not the  
10 agricultural pool.

11 MR. SLATER: I think that brings us to what I'll  
12 call the confirmation of rights, which is Marilyn and  
13 Dan.

14 MR. MCKINNEY: Let me address that first. We were  
15 just discussing section one. At the termination of this  
16 agreement, the assessments will no longer be paid for by  
17 the appropriative pool for the agricultural pool, but  
18 the rights of future transfers the water will terminate  
19 immediately. There will be no one year held in reserve,  
20 and that there will be no further rights for five  
21 years. Basically what we're doing here is settling a  
22 dispute in interpretation of the judgment, what happens  
23 if the early transfers stop and we're essentially going  
24 back to the agricultural pool's interpretation of the  
25 judgment which is the rolling five-year average will

0083

1 begin at that point, and the appropriative pool will not  
2 be entitled to a transfer of water rights for five years  
3 to give the agricultural pool its five years to use its  
4 414,000 acre feet.

5 MR. SLATER: Marilyn?

6 MS. LEVIN: With respect to the State of  
7 California, and we do need a little word smithing here  
8 at 1:00 at night. First was that the rights of the  
9 State of California under the '78 judgment were -- would  
10 be reconfirmed more clearly in the subsequent  
11 agreement. In the judgment on page 8 there's a  
12 paragraph that was set aside for the State of California  
13 and for the State that would be very important, you  
14 know, to reconfirm that, reconfirm how the judgment has  
15 operated since 1978 to the year 2000, and that that type  
16 of operation by the State of California would continue  
17 the varying diverse uses of the State of California, and  
18 that the parties would not challenge that into the  
19 future. So that was an important provision for the  
20 State to confirm those rights.

21 And secondly, more than once probably the State  
22 Water Resources Control Board and the regional boards  
23 wanted -- and probably Fish and Game in its trustee  
24 capacity -- Fish and Game has filed comments on the EIR,  
25 and they wanted me to reconfirm that with respect to

0084

1 this -- these agreements and this judgment, the State of  
2 California was representing the producing agencies, the  
3 agencies that produce water in the Chino basin. And  
4 that by signing this agreement I wasn't trying to -- I  
5 wouldn't be representing the regional board of the State  
6 Water Resources Control Board or Fish and Game in any of  
7 their trustee capacity or regulatory capacity. So  
8 that's what we would want.

9 MR. SLATER: Thank you, Marilyn.

10 Questions? With that I think I guess I'd like  
11 to -- we have a report from Michael Fife because one of  
12 the issues that still remained for a report was the  
13 status of the DWR response to the possibility of  
14 transitioning responsibilities for Watermaster's  
15 responsibility to Department of Water Resources. And,  
16 Michael, do you have that?

17 MR. FIFE: Yeah. Just to give some more context to  
18 that for everybody, as an alternative to the process  
19 that we've been talking about today, the court  
20 instructed Watermaster to develop a contingency plan  
21 with the Department of Water Resources for the transfer  
22 of Watermaster functions to the Department of Water  
23 Resources. Watermaster worked with DWR to develop a  
24 draft framework agreement that attempted to articulate  
25 some of the issues that would need to be addressed, were

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1 such a transition to happen. We submitted that draft  
2 framework agreement to DWR in March, and according to  
3 the court's time line, they were to respond to that  
4 submittal by April 27th. We received that response last  
5 week, and I'm now transmitting that response to you. It  
6 was a verbal response, and their response covers two  
7 main points.

8           The first and primary point is that DWR  
9 continues to not favor this alternative. They would  
10 prefer to see Watermaster and the OBMP process remain  
11 under local control. If the alternative were to be  
12 pursued, their response is that the agreement does  
13 adequately cover the issues that would need to be  
14 addressed, and while details still need to be worked  
15 out, the draft agreement fairly represents DWR's means  
16 and concerns.

17           MR. SLATER: Any questions?

18           MR. BUNN: What draft agreement were you  
19 referring?

20           MR. FIFE: It was a draft agreement between  
21 Watermaster and DWR that just spelled out things like  
22 what would happen to Watermaster's staff, funding,  
23 issues like that.

24           MR. SLATER: If I might, then, in summation, I  
25 would say that, first of all, again, I'm only a

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1 short-timer here. I've only been here working with this  
2 group for several months. The reputation for historical  
3 infighting within the area is legendary, and it was with  
4 some trepidation and concern that I initially accepted  
5 my employment, but I will say that the effort, the  
6 absolute enthusiasm, the momentum that has been gained,  
7 the problem-solving abilities brought to this process by  
8 all participants has been just overwhelming. I think  
9 that I was surprised, pleased, happy. This has been a  
10 really rewarding process to get us to where we are, and  
11 I think the momentum that is being built will continue  
12 to carry us through and a really formidable group of  
13 people and interests that are coalesced here, and I  
14 really see great things to come.

15           With that, we have a draft set of principles  
16 that need to be moved into the next phase which is a  
17 detailed contract agreement. We need to make sure that  
18 that happens, and there's a second piece of that which  
19 is marrying up what this agreement means and does with  
20 an ongoing process for the OBMP and making sure that the  
21 two documents are congruent and that this form of  
22 agreement really does what we intended it to do, which  
23 is to enable the future, to enable and not restrict and  
24 bring peace. And to the extent that there are or need  
25 to be modifications to the judgment, I think we need to

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1 grapple with that in the next couple of weeks.

2           So I'm not asking you all to pull out your  
3 calendars and schedule up meetings, but I think  
4 certainly that the group that has begun needs to keep at  
5 the task and we'll be talking about what needs to be  
6 done sequentially and when very soon. So I would expect  
7 it probably is going to continue as soon as next week if  
8 that's possible.

9           MS. SCHNEIDER: I'd like to thank you very much for  
10 your very intensive effort. I will be reporting to  
11 Judge Gunn orally, and I expect that he also will be  
12 pleased that so much effort is going in, and that there  
13 is a memorandum of principles, if you will, that is the  
14 basis for moving ahead. I feel very encouraged that you  
15 can meet the deadline still, and I urge you to do  
16 whatever you need to do on the order that you've been  
17 doing it to meet those deadlines. Obviously there's  
18 great financial incentive now, as well as the court's  
19 time line. So thank you very much. I think it's been a  
20 very helpful workshop today.

21           MR. SLATER: Thank you. Thank you all.

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4 I, the undersigned, a Certified Shorthand  
5 Reporter of the State of California, do hereby certify:

6 That the foregoing proceedings were taken  
7 before me at the time and place herein set forth; that  
8 any witnesses in the foregoing proceedings, prior to  
9 testifying, were placed under oath; that a verbatim  
10 record of the proceedings was made by me using machine  
11 shorthand which was thereafter transcribed under my  
12 direction; further, that the foregoing is an accurate  
13 transcription thereof.

14 I further certify that I am neither  
15 financially interested in the action nor a relative or  
16 employee of any attorney of any of the parties.

17 IN WITNESS WHEREOF, I have this date  
18 subscribed my name.

19

20 Dated:

21

22

23

24

ANGELICA SCOTT

25

CSR No. 10076