

BEFORE THE CHINO BASIN WATERMASTER

BOARD OF DIRECTORS

--oOo--

In Re )  
 )  
OPTIMUM BASIN MANAGEMENT PROGRAM )  
 )  
Special Referee Workship, Rules )  
and Regulations. )  
 )

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

DATE AND TIME: THURSDAY, MARCH 8, 2001  
10:15 A.M.

PLACE: LAW OFFICES OF  
BEST, BEST & KRIEGER  
3500 EAST PORSCH WAY  
SUITE 200  
ONTARIO, CA 92764

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

OUR JOB NO.: WK-24371

1 ATTENDEES

2 BOARD MEMBERS

3 ROBERT NEUFELD CHINO BASIN WATERMASTER BOARD CHAIRMAN

4 TERRY CATLIN CHINO BASIN WATERMASTER BOARD

5 VICE-CHAIRMAN

6 STEVE ARBELBIDE CHINO BASIN WATERMASTER BOARD MEMBER

7 DAVID DE JESUS CHINO BASIN WATERMASTER BOARD MEMBER

8 PAUL HOFER CHINO BASIN WATERMASTER BOARD MEMBER

9 JOSEPHINE JOHNSON CHINO BASIN WATERMASTER BOARD MEMBER

10 MICHAEL McGRAW CHINO BASIN WATERMASTER BOARD MEMBER

11 POOL COMMITTEE REPRESENTATIVES

12 RICH ATWATER INLAND EMPIRE UTILITIES AGENCY

13 GERALD J. BLACK FONTANA UNION WATER COMPANY

14 JAMES BRYSON FONTANA WATER COMPANY

15 DAVE CROSLEY CITY OF CHINO

16 ROBERT DEBERARD AGRICULTURAL POOL

17 MARK KINSEY MONTE VISTA WATER DISTRICT

18 KEN JESKE CITY OF ONTARIO

19 MARILYN LEVIN STATE OF CALIFORNIA, ATTORNEY

20 GENERAL'S OFFICE

21 MIKE MAESTAS CITY OF CHINO HILLS

22 CAROLE McGREEVY JURUPA COMMUNITY SERVICES DISTRICT

23 DANA OLDENKAMP AGRICULTURAL POOL CHAIRMAN

24 MAX RASOULI CITY OF POMONA

25 ARNOLD RODRIGUEZ SANTA ANA RIVER COMPANY

26 HENRY PEPPER CITY OF POMONA

27 RAY WELLINGTON SAN ANTONIO WATER COMPANY

28 ATTORNEYS

29 JEAN CIHIGOYENETCHE ATTORNEY, INLAND EMPIRE UTILITIES

30 AGENCY

31 ROBERT DOUGHERTY SPECIAL COUNSEL, CITY OF ONTARIO

32 JAMES E. ERICKSON ATTORNEY, CITY OF CHINO

33 MICHAEL FIFE GENERAL COUNSEL CHINO BASIN

34 WATERMASTER

35 BURTON J. GINDLER ATTORNEY, FONTANA WATER COMPANY

36 BOYD HILL ATTORNEY, MONTE VISTA WATER DISTRICT

37 STEVE KENNEDY ATTORNEY THREE VALLEYS MUNICIPAL WATER

38 DAN McKINNEY SPECIAL COUNSEL TO THE AGRICULTURAL

39 POOL

40 TOM McPETERS ATTORNEY, FONTANA WATER COMPANY

41 DISTRICT

42 JOHN SCHATZ SPECIAL COUNSEL, JURUPA COMMUNITY

43 SERVICES DISTRICT

44 SCOTT SLATER GENERAL COUNSEL, CHINO BASIN

45 WATERMASTER

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ATTENDEES

ATTORNEYS (CONTINUED)

MICHELLE STAPLES ATTORNEY, SANTA ANA RIVER WATER  
COMPANY  
GENE TANAKA ATTORNEY, CUCAMONGA COUNTY WATER  
DISTRICT

STAFF

TRACI STEWART CHIEF OF WATERMASTER SERVICES  
KAREN WILLIAMS OFFICE MANAGER/ACCOUNTANT  
MICHELLE LAUFFER WATER RESOURCES SPECIALIST  
DAVE ARGO BLACK & VEATCH  
MARK WILDERMUTH WILDERMUTH ENVIRONMENTAL INC.

SPECIAL GUESTS

ANNE SCHNEIDER SPECIAL REFEREE  
JOE SCALMANINI TECHNICAL EXPERT  
JUDY SCHURR SPECIAL ASSISTANT

INTERESTED PARTIES

PATRICK KING STATE SENATOR NELL SOTO  
DIANE SANCHEZ DEPARTMENT OF WATER RESOURCES

INDEX OF SPEAKERS

Page Line

JOHN SCHATZ - Article 1 ..... 8 4  
ROBERT DOUGHERTY - Article 2 ..... 10 21  
DAN McKINNEY - Article 3 ..... 16 24  
MARILYN LEVIN - Article 4 ..... 23 3  
BOYD HILL - Article 5 ..... 35 11  
TOM McPETERS - Article 6 ..... 37 2  
GENE TANAKA - Article 7 ..... 46 16  
JEAN CIHIGOYENETCHE - Article 7 ..... 49 3  
CAROLE McGREEVY - Article 8 ..... 58 14  
RAY WELLINGTON - Article 8 ..... 60 7  
MARK KINSEY - Article 9 ..... 69 10  
BURTON GINDLER - Article 10 ..... 81 16  
GENE TANAKA - Article 10 ..... 84 10

1 ONTARIO, CALIFORNIA, THURSDAY, MARCH 8, 2001, 10:15 A.M.

2 --o0o--

3 MR. SLATER: We want to welcome the Referee and  
4 her assistants. Thank you for coming.

5 MS. SCHNEIDER: Thank you. This is the duly-  
6 noticed workshop for the Special Referee for the Court to  
7 hear presentations on the rules and regulations that have  
8 been drafted.

9 We have a court reporter here. We've tried very  
10 hard to help create a record for the future as to the  
11 Peace Agreement, the OBMP, and this is the rules and  
12 regulations process. And the next thing coming up will  
13 be the desalter agreement process itself.

14 Thanks to Best, Best and Krieger again for use  
15 of their offices. It's very convenient for me.

16 I also want to start off by thanking everyone  
17 for the tremendous amount of work they've put into this  
18 rules and regulations process. I have a number of  
19 questions, and I have some concerns. I don't want that  
20 to overshadow the fact that I am very, very happy that so  
21 much effort has gone in, so much work product is now  
22 completed and in good form. So in and amongst my  
23 concerns and questions, don't be misled into thinking  
24 that I have a huge concern about the whole process.  
25 Right now it's working very well, and I'm sure that it

1 entails a huge amount of your energies and time, and I  
2 appreciate it, and I think the work is well done.

3           The Watermaster filed a motion to continue the  
4 court hearing set for today until April 19th at  
5 2:00 o'clock, and we anticipate still that motions will  
6 be filed and those motions will be for approval of the  
7 revised rules and regs. There still needs to be a  
8 motion, I believe, on the 23rd annual report, and then we  
9 probably need closure on the post-order memorandum. And  
10 there should be a report on the status of Western  
11 Municipal's continuing resolution that is still out  
12 there. We need to have them rescind this conditional  
13 execution of the Peace Agreement, and a report on that is  
14 an integral part of the April 19th hearing.

15           In filing the motion to continue, the  
16 Watermaster told the Court that the parties hadn't  
17 reached agreement. This is near the end of February.  
18 There was not a term sheet. There were not desalter  
19 agreements. I'm not sure if there's a facilities plan  
20 decision yet.

21           The desalter agreements are as key component of  
22 this whole process as the rules and regs, the OBMP, or  
23 the Peace Agreement so that I'm sure the Court is  
24 extremely concerned that all of these pieces be moving  
25 forward. And right now it sounds like huge energy has

1 gone into trying to get a term sheet and desalter  
2 agreements. I sure hope that continues and reaches a  
3 successful conclusion very quickly.

4 I know from the motion that the Watermaster  
5 Board itself asked for written statements from all the  
6 participating parties as to what outstanding issues were  
7 still to be resolved with regard to the desalter  
8 agreements. And I just spoke to Scott Slater. He says  
9 that he has received some information pursuant to that  
10 Watermaster Board request.

11 In the end, though, for today I think there are  
12 two main issues, and I see you're prepared to do a  
13 presentation on the rules and regs. And I hope to be  
14 able to ask some questions and obtain some clarification.  
15 That's one of the tasks for today.

16 But the second task is extremely important. I'm  
17 very interested to know how things stand with the  
18 desalter agreement discussions and would like to hear at  
19 least a preliminary report on that pending a compilation  
20 of a written report in response to the Watermaster Board.  
21 So that's what I'm here to do today, and I hope that can  
22 be accomplished in a couple of hours. Thank you.

23 MR. SLATER: If I can start, again Scott Slater  
24 on behalf of Watermaster. We understood the primary  
25 focus of this workshop today would be, one, to present

1 the rules and to answer questions; and, secondly, to move  
2 into a discussion of the desalter operation, the progress  
3 towards termination, and ideally a rescission of the  
4 Western resolution. The Referee will recall that Western  
5 is the only party that conditionally executed the Peace  
6 Agreement, and that conditionality is predicated on  
7 certain agreements and representations being made for the  
8 desalter.

9           With regard to the rules and regulations, we  
10 really want to start where we began this process last  
11 February, which was in a stakeholder-driven process. We  
12 shared responsibilities. And I would like to turn to the  
13 stakeholders themselves to present the rules and  
14 regulations which are, I think, known and understood to  
15 be an extension of the stakeholder process, which is the  
16 Peace Agreement, the launching pad for the OBMP, and that  
17 these rules and regulations are really the result of some  
18 bargaining and a consensus-driven, problem-solving  
19 technique that we've tried to use to bring us here.

20           The result has been a compilation which is  
21 definitely complex and a bit of a camel. I don't view  
22 those necessarily as criticisms, however, because  
23 complexity is another word for thoughtfulness. And even  
24 a camel has its utility in the right environment. So  
25 with that, I would like to begin and start with John

1 Schatz, who I believe will begin the presentation with  
2 explaining what's in Article 1 and what we were up to.  
3 John.

4 JOHN SCHATZ: Thank you. I'm John Schatz,  
5 special counsel for Jurupa Community Services District.  
6 I provided the court reporter with a card with my  
7 business address.

8 I'm going to address briefly Article 1, which is  
9 the General Provisions including the definitions. This  
10 is by far the longest section in the rules and probably  
11 the most extensively reviewed because, obviously, a lot  
12 of things flow from the definitions that are used as  
13 terms of art in these rules and regulations.

14 The definitions are directed to eliminating  
15 inconsistencies between the Judgment and the Peace  
16 Agreement. And where appropriate, we've included  
17 citations or references to the Judgment and Peace  
18 Agreement, obviously directed to avoiding re-creating or  
19 redefining defined terms as they are defined in those two  
20 seminal documents.

21 They are also intended to provide a hierarchy of  
22 interpretive preference in the event of and to avoid  
23 conflict between the Judgment and Peace Agreement. You  
24 have these enormous inconsistencies throughout all these  
25 documents as you flow from one to the next.



1           We were particularly careful about the rules not  
2 be used for evidentiary purposes to argue for or against  
3 Watermaster powers. There was quite a bit of discussion  
4 throughout the review and creation of the rules, the  
5 revised rules, and of course the intent would be that the  
6 existing rules and regulations and the uniform  
7 groundwater rules and regulations would be repealed when  
8 the revised rules are adopted.

9           So quite simply, that's an overview of the  
10 definitions.

11           MS. SCHNEIDER: What are we going to call these  
12 rules? Are they going to be the "Revised Rules and  
13 Regulations" or --

14           MR. SLATER: I think that the answer to that is  
15 that -- the answer and desire is to have a single  
16 document that supplanted and replaced the existing rules  
17 and regulations as well as the uniform groundwater rules  
18 and regulations. So to the extent that there was  
19 anything on the books regarding those two subjects, that  
20 we would repeal those and substitute in the Chino Basin  
21 Watermaster rules and regulations.

22           The intention was that the advisory committee  
23 and the pool committee rules and regs would be  
24 unaffected.

25           MS. SCHNEIDER: This is a real basic question,

1 but your definition AJ defines Watermaster rules and  
2 regulations as those in effect on December 31, 2000. Is  
3 that the old rules and regs?

4 MR. SLATER: Yes, that's correct.

5 MS. SCHNEIDER: Sort of a basic question. I  
6 wasn't clear what we're going to call these, and I don't  
7 think that it's intended to have some confusion about  
8 those that were in effect at the end of 2000. But some  
9 clarification there. Are the pool and advisory committee  
10 rules still separate and viable and not part of this?

11 MR. SLATER: The answer to that question will  
12 require some -- an additional look-up. Our assumption to  
13 this point is that the advisory committee rules and the  
14 pool committee rules would be unaffected by these rules  
15 and regulations so that they would be independently  
16 viable and there would be no need to move on these rules.

17 MS. SCHNEIDER: But these rules were never  
18 intended to include those?

19 MR. SLATER: That's correct.

20 On to Article 2. Mr. Dougherty.

21 MR. DOUGHERTY: Good morning. I'm Bob  
22 Dougherty, and I'm special counsel for the City of  
23 Ontario.

24 Article 2, Administration, combines the meetings  
25 and procedures sections of Sections 2 and 3 of the old

1 Watermaster rules and regs, and certain portions of those  
2 old rules dealing with water measuring devices and  
3 reporting were relocated.

4           We've got some of the significant changes listed  
5 there. First off, the principal office, it used to be  
6 that they had to be changed by rules amendment; now it  
7 could be done by resolution.

8           Records. Now that we're in the information age,  
9 minutes and other records deemed to be of general  
10 interest are to be posted to the Watermaster website.  
11 And unfortunately when I printed this thing out using my  
12 little color thing on my -- I never figured we might not  
13 have a color printer here. So the website address is  
14 www.cbmw -- I'm sorry -- cbwm.org.

15           Regular meetings. Generally as a matter of  
16 policy, the Ralph M. Brown Act will be followed. That  
17 was not in the prior rules.

18           Special meetings. We also have given in to the  
19 information age and have provided for notice by fax and  
20 e-mail in addition to regular mail and personal service.

21           Public hearings and meetings. What we have now  
22 done is carved out an exception for confidential  
23 sessions, and those exceptions, as far as the  
24 confidential sessions, are detailed in Section 2.6.

25           Notice. Again, Article 2 -- Section 2.7, we can

1 give notice by fax, by e-mail, and then copies of all  
2 notices are also to be posted to the Watermaster website.  
3 May we have the next slide, please.

4 Conflict of interest. This was a brand-new  
5 section. And keeping in mind that we are an  
6 interest-based body, both in the Watermaster Board and  
7 the advisory committee, the conflict of interest  
8 provisions were narrowly drawn. So essentially somebody  
9 has to add a peculiar-to-themselves, pecuniary interest  
10 before they would be disqualified from voting on the  
11 matter.

12 Again, minutes, posted to the website.

13 Compensation used to be a fixed amount for  
14 meetings. Now the compensation of the board members are  
15 to be determined by the Court.

16 And now we get down to 23, 24, 25, and 26.  
17 These are all brand-new sections relating to -- first one  
18 is CEQA 2.23. A project must complete CEQA and must  
19 demonstrate CEQA compliance before it can be approved.

20 Then the last three deal with -- next two deal  
21 with litigation. And then, of course, the last one just  
22 clarifies that all reports need to be written.

23 MR. SLATER: If there are no questions, we'll go  
24 on to Article 3. Any questions?

25 MS. SCHNEIDER: We have one question about the

1 annual report. That ties into some other issues, but we  
2 wanted to address that.

3 MR. SCALMANINI: I guess just practicality, now  
4 that it includes everything up to and including a  
5 state-of-the-Basin report, is this practical and  
6 realistic to be mandated to be out by -- to be out by  
7 January 31?

8 MR. DOUGHERTY: I can't answer that. Maybe  
9 Traci --

10 MS. STEWART: I think so because it's for the  
11 preceding year, the preceding fiscal year.

12 MR. SCALMANINI: So you're going to write a  
13 Basin status report on a fiscal year basis?

14 MS. STEWART: Okay. So you're suggesting it  
15 will include the state of the Basin in a manner different  
16 than what's in the annual report or different than what's  
17 in the status report that will be filed with the Court?

18 MR. SCALMANINI: Well, if you're going to get  
19 into describing hydrogeologic conditions in the Basin and  
20 status of efforts to implement the OBMP in this annual  
21 report, which I envision to be clerical type stuff, I  
22 don't envision it being done on a, quote, fiscal year  
23 basis. But that's a possibility. That would build you  
24 some time to get to the January 31st date.

25 But otherwise if I was going to do one of those

1 on a calendar year or water year -- conventional water  
2 year basis, I think about it probably taking a little bit  
3 more time to do that than January 31st. I wouldn't write  
4 a rule that says I shall prepare one and get it out by  
5 January 31st. Just a thought.

6 MR. SLATER: So the question, is if we're going  
7 to operate in that fashion, to provide a meaningful  
8 report, is 31 days enough?

9 MR. SCALMANINI: Yes. That is the question.  
10 I'll answer it if you want.

11 MS. STEWART: 31 days. -- the rules with regard  
12 to the state of the Basin -- yeah. I didn't think that  
13 we were talking about this. This says we generally --  
14 that generally describes hydrologic conditions in the  
15 Basin and the status of efforts to implement the OBMP.

16 So if you look in one of our annual reports,  
17 there'll be, for example, a heading will say meter  
18 installation program or monitoring program. And in the  
19 case of, like, the monitoring program, it will have water  
20 quality, and then it will say, we had anticipated  
21 collecting 200 samples, and of the 200 samples  
22 anticipated, all were collected and some of the following  
23 years were collected. You see that I mean?

24 And so that would be a general description of  
25 the state of the activities, and then the hydrologic

1 conditions basically would be added to that.

2 MR. SCALMANINI: That's the part.

3 MS. STEWART: But I figure if we're thinking of  
4 anything more extensive in the annual report -- but we  
5 had talked about maybe some sort of an engineering report  
6 could be done every couple of years in conjunction with  
7 evaluating the -- like for example, the hydrologic  
8 balance subareas and things.

9 MR. SCALMANINI: Well, we probably won't resolve  
10 it right this second. But what you just described mostly  
11 is the status of activity. We took X samples. We put so  
12 many meters, et cetera. That's not the state of the  
13 Basin. That's the state of activities, putting in  
14 facilities and taking samples.

15 So going back -- and I didn't go back to look it  
16 up, but we talked once about the fact that the OBMP, as  
17 far as management talked about it as a living, evolving  
18 thing with time. And we could save it for later. I  
19 wrote it on the very last page as far as a report and  
20 what might be in it. But it would seem that the state of  
21 the Basin involves more than how many meters went in this  
22 past year and those kinds of things. That's getting the  
23 information. It's the interpretation that gets to the  
24 state of the Basin.

25 The bottom line of my comment is that I question

1 whether you can practically do that. I wrote  
2 "practically impossible" in the margin by January 31, and  
3 I'm suggesting that you ought to build in more time to do  
4 that.

5 MS. STEWART: Or maybe change the phraseology in  
6 this particular portion and then talk about some of the  
7 other things that we'll be preparing and how we might be  
8 able to pull them together into components of the  
9 state-of-the-Basin report. Something like that.

10 MR. SCALMANINI: At this point I'll say I don't  
11 care. I think it's important to report on the state of  
12 the Basin on some frequency. I'm not here to tell you  
13 what it needs to be. But this says it's going to be this  
14 report --

15 MS. STEWART: Right.

16 MR. SCALMANINI: -- and practically I don't  
17 think that can happen in this amount of time.

18 MR. SLATER: I think we understand your  
19 concerns. So as we approach the deadline of the court  
20 hearing and the preparation of our pleadings, we'll  
21 attempt to respond to that.

22 I think we're on to Article 3, which is  
23 Monitoring. And is that Dan McKinney?

24 MR. MCKINNEY: Yes, it is. Dan McKinney, Reid &  
25 Hellyer, for the agricultural pool. We don't have an



1 overhead for Monitoring because this is a very simple,  
2 very short section and pretty much just tracks the Peace  
3 Agreement.

4 Article 3. It implements the groundwater  
5 production reporting and monitoring requirements of the  
6 Peace Agreement and the Judgment. Section 3.1(a)  
7 requires that any persons producing more than  
8 10 acre-feet per year must install and maintain meters.  
9 Minimum producers are exempted. This section provides  
10 for Watermaster inspection and testing at least every two  
11 years.

12 3.1(b) provides producers access to Watermaster  
13 to evaluate the accuracy of meters and clarifies that  
14 only meter tests initiated by the Watermaster are at  
15 Watermaster expense.

16 Section 3.1(c) again tracks the Peace Agreement  
17 almost exactly. It requires the cost of the meters be in  
18 the agri- -- appropriative pool and that the meters be  
19 installed by the Watermaster. Requires meters be  
20 installed within 48 months. I understand that's  
21 different than the Peace Agreement, but that tracks a  
22 previous court order that we have to have it in within  
23 48 months. So we're correcting that in the rules. It's  
24 to be done by the Watermaster except for the State and,  
25 again, has the provision that the State can opt to do it

1 themselves.

2           Section 3.2 just requires quarterly reports on  
3 groundwater production to be submitted on specified  
4 forms, and the quarterly reports must include additional  
5 information that the Watermaster, affected pool committee  
6 may require.

7           That's Section 3. Any questions?

8           MS. SCHNEIDER: I have a couple questions. I  
9 don't understand why it's 48 months instead of 36. What  
10 pool -- where are you referring to?

11           MR. MCKINNEY: I'll defer to Traci on that. She  
12 was the one that found it while we were working on it.

13           MS. STEWART: I think we were thinking that by  
14 the time we got the rules and regulations done, it would  
15 really -- and we would also add the budget and the  
16 agreements in place, that we would be 48 months into --  
17 from the beginning. So we put that in. But if you want  
18 to put in 36 months, that's fine, we're actively doing  
19 the meter installation.

20           MS. SCHNEIDER: Can you do it in 36 months?

21           MS. STEWART: From what date is the question?

22           MS. SCHNEIDER: Are you doing it now?

23           MS. STEWART: We are working on it, that's  
24 right.

25           MS. SCHNEIDER: From the theoretical effective

1 date of these regulations, which is October, 36 months  
2 from then?

3 MS. STEWART: Last October?

4 MS. SCHNEIDER: Uh-huh.

5 MR. NEUFELD: Yeah. This coming October.

6 MS. STEWART: Yeah. These rules and regulations  
7 will be in effect after probably April 19th of this year;  
8 right?

9 MS. SCHNEIDER: Well, we're going back to  
10 Article 1.

11 MS. STEWART: We're working on it. We will be  
12 reporting on -- and we would just take out a reference to  
13 the month.

14 MR. SLATER: I think, if I may, the parties all  
15 recognize the commitment made was 36 months from the date  
16 that the Peace Agreement was executed. That was the  
17 initial commitment. However, in refining that and in  
18 view of the schedules that were contemplated in the OBMP  
19 and the appropriate rollout, it was felt that 48 months  
20 from the execution of the Peace Agreement was probably  
21 more reflective of the actual time that was necessary.  
22 However, it is clearly a discrepancy between the Peace  
23 Agreement and the --

24 MS. SCHNEIDER: If it's something that you can  
25 do in 36 months from the date of execution, I'd leave it

1 at 36 months.

2 MS. STEWART: If not, we can report to the Board  
3 on where we are and what's up and why.

4 MS. SCHNEIDER: Well, I guess that's always  
5 true, but --

6 MR. SLATER: Restated, we will make best efforts  
7 to do it in 36 months, and if there is some -- we come to  
8 learn of some reason why we cannot achieve that, we will  
9 report to the Board.

10 MS. SCHNEIDER: In 3.2 it's referencing forms.  
11 Seem to have a collection of forms that I couldn't look  
12 at, but there don't seem to be forms for production. Is  
13 there an intention with these rules and regs to have a  
14 comprehensive set of forms?

15 MR. MCKINNEY: They're not finished yet.

16 MS. SCHNEIDER: Will we receive one of those  
17 forms?

18 MS. STEWART: The production request form, I  
19 believe, is generated by our computer system right now.  
20 I mean, was not -- was never a form that was part of our  
21 forms.

22 MS. SCHNEIDER: Then maybe this needs to be  
23 restated.

24 MS. STEWART: Does it say it includes  
25 production?

1           MS. SCHNEIDER: It requires each party to file  
2 with Watermaster on the forms you provide.

3           MS. STEWART: But we provide them with -- for  
4 example, some pools receive different forms than other  
5 pools. And it's just part of our process.

6           MR. SLATER: Restated, there are some forms that  
7 the parties acknowledge will require court approval.  
8 There are others which are forms that may differ among  
9 the pools. The forms that Mr. McKinney was referencing  
10 are those forms that have been in the past approved by  
11 the Court, forms regarding things like transfers and  
12 storage and recapture. And then there are those that  
13 would be provided by Watermaster and not contemplated to  
14 be subject to the court approval process, and that would  
15 relate to production.

16           MS. SCHNEIDER: I'm not so focused on the court  
17 approval process as I am on the comprehensive nature of  
18 the regs. So if you're referring to a form in here, I  
19 would think it would be attached or part of it in some  
20 fashion. Or call it something else.

21           MR. SLATER: I think the parties recognize or  
22 acknowledge the importance of having a single-cookbook  
23 approach where all documents that are relevant to  
24 operating the Judgment are contained.

25           MR. MCKINNEY: Anything further?

1           MR. SCALMANINI: Two quick questions. One is --  
2 one regarding the testing of meters which doesn't need to  
3 be considered here. But the title of the article is  
4 Monitoring. And under the groundwater measurement  
5 systems, we monitor a lot of things, water level, water  
6 quality, subsidence. This only deals with monitoring  
7 production basically.

8           I was just wondering, are there any other rules  
9 for monitoring anything else, or is it limited to just  
10 production?

11          MR. MCKINNEY: Good questions.

12          MS. STEWART: Yeah. We can get to it.

13          MR. SCALMANINI: And then at the very end of 3.2  
14 it talks about minimal producers reporting annually by  
15 July 15. Minimal producers are either somebody who  
16 produces less than 10 or less than 5 acre-feet depending  
17 on which definition you use.

18          MS. STEWART: 10.

19          MR. SCALMANINI: And so if they don't have  
20 meters, I was just curious, what do they report and on  
21 what basis do they report?

22          MS. STEWART: Water duty, crops, and animals.

23          MR. SLATER: Thank you.

24          MR. MCKINNEY: Thank you.

25          MR. SLATER: Which I believe takes us on to

1 Article 4. And Assessments, Reimbursements, and Credits.  
2 Marilyn.

3 MS. LEVIN: Marilyn Levin with the State of  
4 California. And I'm reporting on this section with Ken  
5 Jeske from the City of Ontario. We worked together to  
6 report on this section.

7 This section sets forth the rules and procedures  
8 which will fund all the proposed facilities and  
9 activities under the OBMP. What we've tried to do in  
10 this section, we have addressed assessments,  
11 reimbursements, and credits. Basically we've also tried  
12 to stick close to the definitions in the Judgment.  
13 There's two types of assessments in the Judgment, and  
14 these rules are consistent with those definitions.

15 Watermaster is going to levy assessments against  
16 parties based on production. The assessments are going  
17 to cover both cost of replenishment and the expenses  
18 incurred in implementing the OBMP.

19 The OBMP is going to be considered or deemed to  
20 be a Watermaster administrative expense pursuant to  
21 paragraph 54 of the Judgment. Under this section there's  
22 also a provision for collecting the assessments that --  
23 providing a procedure for notice of assessments as well  
24 as payment and delinquency provision and mechanisms for  
25 adjustments, if necessary, errors in reporting.

1           Ken specifically identified the items of  
2   importance in this section.  And they include -- there's  
3   a method for apportioning the cost of purchasing of an  
4   annual 6500 acre-feet of supplemental recharge in  
5   Management Zone 1.  This was negotiated among the  
6   parties, and a formula is in this section for allocating  
7   those costs.

8           So two important things occurred here.  One,  
9   that there's going to be recharging in Management Zone 1.  
10   And two, how it's going to be paid for.

11           Another important provision that was negotiated  
12   and based on the Peace Agreement are credits against OBMP  
13   assessments for those parties that are assessed and  
14   reimbursement for those parties that are not assessed.  
15   Or those can apply to both -- sorry -- reimbursement can  
16   apply to both, those people who are assessed or can get  
17   reimbursement.  Obviously reimbursement can only apply to  
18   those parties which are not assessed under the Judgment.

19           This section includes provisions for parties to  
20   receive either the credit against future assessment or  
21   reimbursement -- and this is the important part -- for  
22   qualifying projects undertaken independently by a party.  
23   And so the rules and regs set forth certain factors that  
24   the Watermaster would be looking for when a party comes  
25   forward.  One is the importance of the project to



1 completion of the OBMP and so we would look back to the  
2 goals of the OBMP. Two, available alternative funding  
3 sources. Three, engineering and design standards.

4           An important concept under this is that  
5 Watermaster can condition the funding alternatives  
6 request. In other words, if a party subsequently gets  
7 funding from the State, which is always giving out money,  
8 or the federal government, that therefore Watermaster can  
9 condition any type of reimbursement or assessment  
10 basically to be turned back or reconsidered if the  
11 parties get subsequent funding from a different source.

12           Watermaster is not going to approve or shall not  
13 approve requests where legally compelled. Watermaster  
14 didn't want parties coming forward if someone has put in  
15 some sort of facility that they're required, legally  
16 required to put in basically from the regional board,  
17 let's say, on water quality issues.

18           Another important provision is the shutting down  
19 potential by shutting down or relocation of groundwater  
20 production facilities. There is a provision in process  
21 for a specific credit or reimbursement where the  
22 Watermaster compels a party to shut down or relocate  
23 existing groundwater production facilities.

24           The parties negotiated, and the credits or  
25 reimbursement will be up to the reasonable cost of the

1 replacement of groundwater production facilities. And  
2 then there's another provision that even though the  
3 Watermaster has discretion to give a credit or  
4 reimbursement, the Watermaster must fully compensate  
5 producer for the reasonable cost for replacement  
6 groundwater production facility within five years.

7           This is another very important provision  
8 relating to the overlying ag pool assessment. The  
9 provision is that the appropriative pool will pay all  
10 assessments and expenses for the ag pool except -- and  
11 this is again important for the Basin -- in the event  
12 that the total ag pool production exceeds 414,000  
13 acre-feet in any five consecutive years, then the ag pool  
14 is responsible for its replenishment obligation.

15           Watermaster is going to levy and collect  
16 assessments for replenishment based upon the pooling  
17 plans. And probably the last most important provision in  
18 this section is that there is a provision for desalter  
19 replenishment assessments and credits.

20           First of all, the concept is the price of  
21 desalter water does not include the cost of  
22 replenishment. The sources of replenishment are listed  
23 in Article 7 -- someone else will be discussing that in  
24 these rules and regulations -- and Article 7 of the Peace  
25 Agreement.

1           This section or this provision includes language  
2 to allow purchasers of desalter water to dedicate by  
3 transfer or assignment production rights for purposes of  
4 satisfying desalter replenishment. The amount of the  
5 credit given is going to be equal to the value of the  
6 cost of the replenishment water rate from Met. And I  
7 know the terms have changed but we had certain terms that  
8 Met utilized.

9           Any such replenishment obligation is an  
10 obligation of the appropriative pool and is determined  
11 pursuant to the Peace Agreement and the rules.

12           The last three real quickly. Salt credits are  
13 held in trust for the benefit of the appropriative pool  
14 members. We are setting forth an OBMP Committee to keep  
15 getting those Federal and State funds. And minimal  
16 producers are excluded from assessments.

17           MR. SLATER: Thank you, Marilyn.

18           MS. SCHNEIDER: I have a few questions.

19           MS. LEVIN: I speak for the whole group.  
20 Whoever can answer them, just jump in.

21           MS. SCHNEIDER: I think better than any other  
22 place this article raises what I call a fundamental  
23 question for me, which is, there seems not to be an  
24 accounting article in this set of rules and regs that  
25 would put in one place accounting provisions that are now

1 pretty much spread through the regulations, and for that  
2 matter, the Peace Agreement. It seems to be one big  
3 right now in my view of what is put together here to not  
4 have the accounting procedures. And I'm talking for  
5 water produced and in storage to be set forth in a  
6 comprehensive, clear-cut way somewhere in these  
7 regulations. I suggest a separate article, but this is  
8 the closest to it you get.

9           The reason for the accounting is that it's a key  
10 function of Watermaster. And it's important that the  
11 Watermaster's accounting itself be both clear and  
12 accessible and every detail of the accounting for the  
13 water pumped and stored be clear and accessible.

14           In one of your forms, 11, there's the concept  
15 that there will be procedures and accounting for water  
16 stored and Watermaster shall maintain a continuing count  
17 of water stored in and recaptured from every account.  
18 There are accounting provisions in the rules now for  
19 accounting for unallocated ag portion of the safe yield,  
20 sources of recharge, amount of recharge, and location of  
21 the types of recharge, carryover water, water in storage,  
22 and in addition extractions and losses. I have just a  
23 few of them.

24           But if you go through, it makes sense to me, and  
25 I would recommend that you put together a separate

1 accounting article that then would be extremely helpful  
2 because you have a lot of newly defined -- new defined  
3 terms. You have new components of what is the  
4 appropriative rights now. This is, to me, appears to be  
5 a difficult accounting task but certainly not an  
6 insurmountable one. But the accounting task can add  
7 definition and clarity to the rest of this document.

8           And I had thought that this was so compelling  
9 and logical a thing to do, when I was reading it, I just  
10 kept looking for it. I was quite shocked actually that  
11 it wasn't here. I don't know that you need to do a  
12 narrative description of every component including that  
13 you could have a paragraph section in the rules that  
14 references an attachment which contains a sample. I have  
15 no idea how you might want to go about it.

16           But this is the one, I would call, glaring  
17 omission. But it's not just -- I'm not suggesting this  
18 just from the standpoint of thinking that it is something  
19 that most rules and regs would cover. More importantly  
20 in my mind now is that it would help interpret the rest  
21 is what is a very complex document. It is a bit of a  
22 camel, but there's no reason not to stick another road  
23 map on the camel. And I would think that one of the  
24 hallmarks of this Watermaster's efforts is to make things  
25 accessible and clear. And I think this needs to be

1 added.

2           But I do have some specific questions about this  
3 section that is there. There are -- there is sort of a  
4 set of provisions that talk about shutting down wells and  
5 there's provisions on salt credits, and both of those  
6 seem to hold out for some later time the development of,  
7 I guess, rules and regulations to address those issues.  
8 And is that the sense here, that you have a placeholder  
9 and later on will come back and develop rules and regs on  
10 salt credits? Is that the idea?

11           MR. SLATER: Yeah. I think that is particularly  
12 true with regard to salt credits. They are a commodity,  
13 if you will, that is controlled primarily by the regional  
14 board and not Watermaster per se. But the parties  
15 collectively recognize that they would rather take credit  
16 generally amongst themselves to be able to take greatest  
17 advantage of how the credits will ultimately be deployed.  
18 And not having full knowledge about how it may be best to  
19 use them, they have decided to punt until an opportunity  
20 comes or arises to be able to assign and allocate them.  
21 The Watermaster must hold them in trust, and it does  
22 recognize that the time will come, perhaps soon, that it  
23 will need to address that with more robust and definite  
24 rules.

25           MS. SCHNEIDER: So where it says on page 25,

1 rule establishes no basis for allocation of salt credits,  
2 what do you intend, then? That further rules and regs  
3 will be further amended to provide procedures for this?

4 MR. SLATER: That's correct. We do know there  
5 is a -- there are three general statements. One is that  
6 the salt credits were held in trust by Watermaster.  
7 There is an assignment to each member of the  
8 appropriate pool. Upon request by the member, if there  
9 is no pending request, then presumably initiation of that  
10 pending request would trigger the requirement for  
11 Watermaster to then come forward and develop rules.

12 MS. SCHNEIDER: Should there be some reference  
13 to form 9 here? Form 9 is applications for reimbursement  
14 or credit, the salt credit.

15 MR. SLATER: The question is, should salt  
16 credits fall within the purview of Article 10 such that  
17 when a party comes forward, they have to follow that  
18 process.

19 MS. SCHNEIDER: 'Cause it's clearly not, but it  
20 probably needs to say.

21 MR. SLATER: Okay. It's a good question that I  
22 think we need to run down. I think initially the  
23 expectation was that it would not follow the process of  
24 Article 10, but I could be corrected by the stakeholders.  
25 I think the general impression was that there would be

1 separately developed rules to develop that. I've seen a  
2 lot of shaking heads around the table.

3 MS. SCHNEIDER: I won't look.

4 MR. SLATER: The answer is --

5 MS. STEWART: No. It would probably be  
6 something that we will develop the procedures for when we  
7 have salt credits, but I don't think it's anticipated it  
8 will be covered by rules and regulations other than  
9 recognition that it's there, was my understanding. And  
10 it would be the appropriative pool because it's an  
11 appropriative pool item.

12 MR. KINSEY: She's agreeing with you, Scott.

13 MR. DOUGHERTY: Maybe the intent was to  
14 implement by a uniform methodology amongst all the  
15 appropriators in that pool, so a methodology that will  
16 apply uniformly to everybody that's affected. And that  
17 implementation may take the form of resolutions,  
18 something along that line.

19 MR. SLATER: So it might not be necessary to  
20 have a formal rule on the subject. It might be handled  
21 at the appropriative pool committee.

22 MS. SCHNEIDER: Or it could be in appropriative  
23 pool rules.

24 On the -- I was trying to understand the form 9,  
25 the application for reimbursement together with, say,



1 page 24. This talks about credits against assessments.  
2 There is a provision C at the top of page 24 that talks  
3 about having a right to receive a credit. And I'm just  
4 confused. It seems that you either apply to get  
5 something or you have a right to get something. But I'm  
6 not sure why you apply for something you have a right to.  
7 What is the -- is there a two process issue here?

8 MR. SLATER: Yes. It would be the difference  
9 between a discretionary and administrative style of  
10 approval. In other words, you're entitled to something  
11 upon demonstration of proof versus Watermaster reserves  
12 complete discretion on whether to grant it.

13 And on the compulsion -- there is the compulsion  
14 question. There is a clear right to receive  
15 reimbursements upon proof of the cost, acceptable proof  
16 of what cost is, versus discretionary action on the part  
17 of Watermaster to grant any credit or reimbursement at  
18 the same time.

19 MS. SCHNEIDER: Maybe that's just an issue for  
20 the form.

21 MR. SLATER: Correct.

22 MS. SCHNEIDER: Joe, do you have anything?

23 MR. SCALMANINI: I had two things. One  
24 question, one comment. I think it would be useful if  
25 either in the definitions or here on the subject of salt

1 credits that there's some equation that just describes  
2 what they're a credit against. They're assigned by the  
3 regional boards but it doesn't say what you get a credit  
4 against. That needs clarifying.

5 The other is, what's the definition of the term  
6 production period?

7 MS. STEWART: I think it's what's in the  
8 Judgment or in the rules where it says that the  
9 production period is established by Watermaster. So it  
10 makes more sense, for example, with minimal producers to  
11 have a production period be the fiscal year, then that's  
12 the established production period. But if it makes sense  
13 to have it be quarterly, which is how we're doing it in  
14 most cases, then it's quarterly. In some cases we're  
15 actually doing it monthly based on meter turnover and  
16 things like that.

17 MR. SCALMANINI: Do you levy assessments on a  
18 monthly, quarterly, or annual basis?

19 MS. STEWART: We levy assessments on an annual  
20 basis.

21 MR. SCALMANINI: What this says in 4.1 is shall  
22 levy assessments based on production during the preceding  
23 production period. And the definitions don't define  
24 production period. They imply the production, that it's  
25 annual, but the previous section of this, 3.2 up on

1 meters, says that you will report production quarterly.  
2 So there's some confusion as to how often and on what  
3 basis the assessments will be levied.

4 MS. STEWART: Maybe we should put a parenthesis  
5 on the end of period. I mean the period.

6 MR. SCALMANINI: Well, I'll let you edit it.  
7 I'm just saying it's not clear what the production period  
8 is.

9 MR. SLATER: On to the next article, which I  
10 believe is Article 5, and that's Boyd, Boyd Hill.

11 MR. HILL: Yes. Good morning. Boyd Hill,  
12 McCormick, Kidman & Behrans. We represent Monte Vista  
13 Water District. The intent of Article 5 is to avoid any  
14 argument that all of the rules and regulations and the  
15 administration of the physical solution including the  
16 OBMP, Optimum Basin Management Plan, is not circumscribed  
17 by or embraced within the purposes and objectives of the  
18 physical solution that are referenced in paragraph 39 of  
19 the Judgment. And I'll paraphrase briefly from  
20 paragraph 39.

21 The purpose of the physical solution is to  
22 establish a legal and practical means for making the  
23 maximum reasonable, beneficial use of water to the Chino  
24 Basin to meet the requirements of the water users having  
25 rights in or dependent upon the Chino Basin waters by

1 providing the optimum economic long-term conjunctive  
2 utilization of surface waters, groundwaters, and  
3 supplemental waters.

4           Those purposes and objectives are set forth more  
5 fully and more clearly in Exhibit I, paragraph 1,  
6 entitled Basin Management Parameters, and those are set  
7 forth in full in Section 5.3. Briefly skimming those,  
8 the Chino Basin is a common supply for all parties and  
9 agencies. An objective that no producer be deprived of  
10 access to the waters. Maintenance and improvement of  
11 water quality and financial feasibility and protection of  
12 the physical facilities of the parties are those  
13 objectives and parameters. And that's the primary intent  
14 of Article 5.

15           The secondary intent is to -- however, within  
16 those parameters, to give the broadest possible latitude,  
17 broadest possible flexibility to use social,  
18 technological, institutional, and economic options, and  
19 that's referenced in paragraph 5.1. I might note that on  
20 the second line there we're missing an "and" between  
21 existing and future. It was meant to incorporate both  
22 existing and future options.

23           And that's it, unless there are any questions.

24           MS. SCHNEIDER: I don't have any. Thank you.

25           MR. SLATER: Thank you, Boyd. That brings us to

1 Article 6. Tom McPeters, are you taking that?

2 MR. McPETERS: That's what they told me. I  
3 didn't volunteer. My lawyer Hugh Rodham said that I  
4 didn't have to answer any questions about Article 6.

5 MS. SCHNEIDER: Send his fee back.

6 MR. McPETERS: This is one of the more important  
7 concepts in the agreement. I know that the Referee and  
8 Mr. Scalmanini have read Article 6 word by word and  
9 understand it. I'm trying to express what it means in  
10 terms of the parties and the process. And basically the  
11 appropriators are expressing their faith, if you will, in  
12 the effect of the OBMP. There is a lot of money going to  
13 be spent, a lot of activity, and it's supposed to produce  
14 a better Basin and more yield for the Basin, more usable  
15 water supply for everyone. So I've stated and others  
16 have stated that new yield is to some extent a measure, a  
17 gauge of the effectiveness of the OBMP process.

18 There was a new definition included in the rules  
19 and regulations called annual production right. And it  
20 was necessary because there were so many references and  
21 it needed a comprehensive, superhensive definition to be  
22 able to make all of the references work. There's nothing  
23 new in the definition other than the inclusion of the new  
24 yield component. Otherwise all the things that are  
25 included in the definition are things that are in the

1 Judgment or flow from the Judgment and practice.  
2 Carry-over water, things like that. It was a term that  
3 was needed for referencing various points in the  
4 Judgment.

5 In terms of what I call the deal that was made  
6 here, the appropriators are supplying the water or  
7 standing responsible for the replenishment associated  
8 with operation of the desalters. And I've put in here  
9 the quantity of that replenishment obligation. And it  
10 comes to at least 22,900 acre-feet when all of these  
11 desalters and expansions are operational. I know  
12 Mr. Scalmanini has already done his math and looked at  
13 the million-gallon-per-day figure and see that these  
14 figures are somewhat less than that. These figures that  
15 are in here are not the full capacity of the facilities  
16 that have been ascribed but appear to be the contract  
17 figures, what the takers have agreed to now. So you  
18 would come to higher figures if you did calculations on  
19 the maximum capacity. This seemed to be the reasonable  
20 way to state it for the purposes of this discussion.

21 The point is that it comes to about 5.5 million  
22 dollars per year at the present replenishment rate and if  
23 these desalters have greater capacity and the take-or-pay  
24 contracts take the full capacity, then this figure  
25 actually increases.

1           The appropriators expect to be able to receive  
2 some relief, if you will, from the replenishment  
3 obligation by the development of new yield, which we've  
4 described or we've had described to us as coming from a  
5 variety of purposes. Our engineers have described where  
6 that new yield might come from and how it relates to the  
7 OBMP, such as, for example, inducing flow from the  
8 Santa Ana River by the operation of desalters. That'd  
9 just be one. Then recharge is the easiest charge to  
10 understand. Development of recharge facilities is being  
11 addressed.

12           The challenge to the Watermaster will be to  
13 implement the OBMP quickly and also to develop  
14 methodology on how to measure the new yield. The term  
15 that the parties used were proven increases where you  
16 can't increase it if you don't set a baseline for it to  
17 begin with. And that challenge is understood. So the  
18 appropriators have endorsed the program and have in  
19 effect agreed to buy the replenishment water and now  
20 they're going to try and make the OBMP work effectively  
21 to increase new yield.

22           There were alternatives, and I know everyone in  
23 the room has participated in some discussion about this.  
24 One of the alternatives would have been to deal with the  
25 safe yield figure. But the election was made by the

1 participants to not take that simplistic of an approach.  
2 Safe yield is in general a long-term concept that's based  
3 on averages.

4           The parties participant wanted something that  
5 more directly related to the annual activity of the OBMP  
6 and the water so they elected to use the concept of new  
7 yield as opposed to staying within the strict confines of  
8 the Judgment where safe yield is defined. So the  
9 anticipation is that there will be very close tracking on  
10 a year-by-year basis of the new yield available to supply  
11 replenishment water for the desalter with dollars  
12 providing for the rest of the obligation.

13           That is basically the concept. And general  
14 thought was that this was a more elegant system, that it  
15 tracked the OBMP efforts; it will keep the parties  
16 focused on causing the OBMP to be implemented and work  
17 hard as opposed to doing a more simple solution. The  
18 cost to the appropriators is huge, and they've got to  
19 cause this OBMP to work or else it's going to be a bad  
20 decision on their part. So it's both an expression of  
21 faith and a challenge.

22           There are some other things that are in this  
23 particular article. It's just a recognition of fact that  
24 you can have a replenishment obligation will arise  
25 because of certain circumstances on the early transfers,



1 and there's just a mechanism in here that where the  
2 parties have agreed how they would meet that particular  
3 replenishment obligation, which has nothing to do with  
4 the desalters but it's in this article.

5 So they tried to work it out how they would deal  
6 with allocations amongst themselves. It's a two-tier  
7 system. They have one set of allocation rules for about  
8 five years and then it's open. It's opened up.

9 I know there are probably questions since we've  
10 asked questions about all those other things. I won't  
11 follow Mr. Rodham's advice.

12 MS. SCHNEIDER: In the tradition of a few  
13 questions, I do have a few. I was concerned that there  
14 isn't a provision in here that reflects the Peace  
15 Agreement provision that there will be a recalculation of  
16 safe yield at 20.10, 20.11. Is it logical to include  
17 that provision to give that reassurance here?

18 MR. McPETERS: We've been dealing with this for  
19 many, many months. We have long agendas. We go back and  
20 forth. I give them my view. The Peace Agreement has  
21 that provision in it. The Watermaster Board itself has  
22 passed a resolution that had the same time period. We're  
23 not going to redo the safe yield for ten years. So my  
24 mind, it was all pretty well laid out. I think for this  
25 presentation, I think it's anticipated. I don't recall.

1 I guess it doesn't state it flat-out in this rule. I  
2 would see it would not harm anything or add anything to  
3 the actual facts or what's in play. The Board has said  
4 they're not going to do it for ten years. Parties  
5 generally have agreed with that. I don't know why we  
6 didn't have that particular rule in other than the way  
7 negotiations go in writing something like this.

8 MS. SCHNEIDER: I actually would like to suggest  
9 that I think it would be helpful to -- we're very close  
10 to a Judgment modification question here with the  
11 creation of new yield and undefined provisional safe  
12 yield. I think that by putting in a bookend where safe  
13 yield will be recalculated at 20.10, 20.11 allows the  
14 interpretation to be made that what you have set up with  
15 new yield, provisional safe yield concepts is leading  
16 towards a determination of safe yield that is consistent  
17 with the Judgment. And if you don't complete that  
18 picture, I'm not sure that that interpretation is as  
19 strong.

20 MR. McPETERS: Well, I certainly would have no  
21 objection to doing that. I think everybody has agreed  
22 it's just in different places in the Peace Agreement and  
23 the Board. I would have no objection to doing that. I  
24 would say for myself, being in rules and being a  
25 resolution of the Board, if some circumstance

1 developed -- I don't have anything in mind when I say  
2 this -- that an earlier determination of safe yield seems  
3 indicated, I would think the parties could bring that to  
4 the Board and ask for it. So I don't think its being a  
5 rule and being a resolution, I don't believe that it is  
6 absolutely a fact it couldn't be done before that time.  
7 It's not likely but --

8 MS. SCHNEIDER: Concern is that the definitions  
9 have created a question and that's as to your need for a  
10 Judgment modification.

11 MR. McPETERS: I understand the question.

12 MS. SCHNEIDER: I worry that provisional safe  
13 yield is not a defined term, yet you use it three or four  
14 times. I guess I suggest it could be redrafted to avoid  
15 using that undefined term. It would be better to stick  
16 with new yield for it.

17 MR. McPETERS: I think that was used two times,  
18 once in the definition, once in the section calling it  
19 provisional safe yield.

20 MS. SCHNEIDER: I have it a couple of times on  
21 page 27.

22 MR. McPETERS: Yeah.

23 MR. SLATER: If I can add, I think there is no  
24 disagreement, none, among the stakeholders about where we  
25 want to end up and the tool that we're using maybe that

1 we can express what we're up to a little more cleanly  
2 which tends to keep us a little closer to the edge on the  
3 appropriate side of not needing to have a Judgment  
4 amendment. If that's a comment, I'm sure we can take a  
5 look at that. I think clearly we intended, as provided  
6 in the OBMP, which is an attachment to the Peace  
7 Agreement, that safe yield would be golden for a period  
8 of time and instead of doing a full-on safe yield  
9 analysis, it would be approved project by project as to  
10 what the augmentation was going to be and that --

11 MR. McPETERS: More direct cause and effect was  
12 what people were looking for. More direct cause and  
13 effect.

14 MS. SCHNEIDER: I have a question going back to  
15 the annual production right definition.

16 MR. McPETERS: Yes.

17 MS. SCHNEIDER: I just think there's a technical  
18 problem with that because appropriative right is defined  
19 as with regard to annual production right, appropriative  
20 right by meeting the annual production right.

21 MR. McPETERS: Yes.

22 MS. SCHNEIDER: I think if you go to page 61,  
23 the table in the Judgment, it has the quantified  
24 production right numbers there. That won't equal your  
25 annual production right. I'm not sure which definition

1 to change, but I guess I'm suggesting that something is  
2 inconsistent so maybe --

3 MR. McPETERS: I'm not a good one to answer that  
4 question.

5 MS. SCHNEIDER: I don't know that it needs to be  
6 debated. Just needs to be clarified.

7 MS. STEWART: Actually that was one of the  
8 reasons that we did it, put it in is partly because of  
9 your earlier question about how do you reconcile the  
10 10,000 acre-feet and the 200,000 acre-foot limitations  
11 with regard to operating yield. And so we looked at it,  
12 and we looked at what the assigned share of operating  
13 safe yield was on page 61, which is what that actually  
14 is, and we realized that what we needed was a definition  
15 that explained that the annual amount that's available to  
16 the parties is a summation of their portion, of their  
17 assigned portion of the operating safe yield, any of the  
18 new yield, any of the water that's reallocated from the  
19 agricultural pool, any water that they received from land  
20 use conversion. And so that particular definition, the  
21 annual production right, is a summation of all of the  
22 water that's available to the appropriative pool in the  
23 year.

24 MS. SCHNEIDER: And your annual production right  
25 is not equal to appropriative yield.

1 MS. STEWART: That's correct.

2 MS. SCHNEIDER: Look at your definition of  
3 appropriative rights. It means annual production.

4 MR. SLATER: I think the point is definitional,  
5 well-taken, and we can fix it.

6 MS. SCHNEIDER: Those are small points. I have  
7 no more questions.

8 MR. SLATER: I think we're on to the next  
9 article. Gene.

10 MR. TANAKA: Thanks, Scott. Gene Tanaka. We  
11 represent Cucamonga County Water District.

12 MR. SCALMANINI: Gene, before you start, did you  
13 want to put in any good slings in as Mr. Peters did?

14 MR. TANAKA: Well, I can start with the fact I'm  
15 a lawyer.

16 Jean Cihigoyenette is going to help me do this  
17 presentation. I'm going to talk about the specifics of  
18 Article 7. Jean is going to talk about an example of how  
19 we're actually ahead of this process and putting in play  
20 recharge now and putting it in play consistent with the  
21 general concept of Article 7.

22 There's really two important points I want to  
23 emphasize in Article 7. The first is the water supply  
24 issue here, enhancing water supply. And the second is  
25 protecting Chino Basin.

1           Now, the first issue, water supply, ties in with  
2 what Mr. McPeters said, which is this is an opportunity  
3 for the appropriators to go out, get new yield, put it  
4 into the Basin, and benefit everybody. The second piece,  
5 protecting the Basin, comes from recharge, and I think  
6 credit should go to Monte Vista because they pushed this  
7 issue very well and very hard, and the result of which is  
8 we have built in protections for the hydrological balance  
9 of the Basin.

10           Let's start with the first part. That would be  
11 implementing the recharge master plan to enhance the  
12 water supply. Watermaster's committed to exercising best  
13 efforts to ensure sufficient recharge, to meet the OBMP,  
14 and to arrange for the construction of recharge  
15 facilities. The rules and regs got so specific as to say  
16 that that will consist of the facilities outlined in  
17 Table 1 of the OBMP, which is significant because that is  
18 the laundry list of all the facilities that are supposed  
19 to be used under the OBMP.

20           And finally under Table 1, if those estimates  
21 are correct, we anticipate increasing safe yield really,  
22 which will then be new yield until the new calculation is  
23 done, of 16,000 acre-feet. That's a lot of water. And  
24 it's a strong incentive for the appropriators to get.

25           Let's talk about the second piece, which is

1 maintaining the hydrological balance and protecting the  
2 Basin. Again Watermaster's obligated to use best efforts  
3 to evaluate the long-term balance. They're supposed to  
4 report on the hydrological balance by 7-1-03, July 1 of  
5 2003. And then every two years thereafter follow up and  
6 report on the balance.

7           And finally, if -- Watermaster is obligated to  
8 use best efforts to recharge when the groundwater levels  
9 have declined and there's an imminent threat of material  
10 physical injury.

11           Two other points just to wrap up. The first is  
12 recharge is subject to the material physical injury test.  
13 Second, the sources of desalter replenishment water.  
14 This ties in with the comments that Marilyn Levin made  
15 earlier and some of the other presenters have made, which  
16 is the desalter production will be replenished. First  
17 there'll be a transfer of production rights by purchasers  
18 of desalted water in exchange for reducing their  
19 replenishment assessment. The second is that we're  
20 taking 25,000 acre-feet abandoned by Kaiser. Third we  
21 use new yield. Fourth we use safe yield, and finally if  
22 there is a shortfall, the replenishment water will be  
23 purchased by the Watermaster. So that really covers the  
24 sources of the water. And if there are no questions,  
25 Jean can go ahead and start.



1           MR. SLATER:  Actually why don't we have Jean  
2 make his presentation and we'll ask questions.

3           MR. CIHIGOYENETCHE:  Good morning.  Jean  
4 Cihigoyenette on behalf of Inland Empire Utilities  
5 Agency.  In furtherance of the prevention of material  
6 physical injury to the Basin, I thought it would be  
7 interesting to give you a practical example of something  
8 that's already in the works.

9           Recently our agency proposed a 4,000 acre-foot  
10 recharge project in Management Zone 3.  The environmental  
11 process was initiated, and that process prompted a  
12 meeting of all interested parties over at SAWPA to  
13 discuss that recharge project.  We've had two meetings  
14 thus far, and it's been determined that as opposed to  
15 pursuing the -- we're going to continue pursuing the  
16 4,000 acre-foot project.  But we're going to evaluate the  
17 effects of recharge on a more comprehensive and regional  
18 basis.  We're going to incorporate more parties and  
19 invite two other agencies including Fontana Water and  
20 City of Ontario who may be interested in this particular  
21 process.  And so we're approaching it on a more regional  
22 and comprehensive basis.  The rules are already being  
23 implemented to a degree at this point in time.

24           MR. TANAKA:  Any questions?

25           MS. SCHNEIDER:  You talked about the reference

1 on page 32 to Table 1 of the implementation plan.

2 MR. TANAKA: Correct.

3 MS. SCHNEIDER: I think that I misread C, and  
4 therefore it's susceptible to some misreading, to be  
5 taking Table 1 as the recharge master plan. And it isn't  
6 clear from how this is written, I don't think, that  
7 you're going to go forward and complete the recharge  
8 master plan. I do believe it's just a wording question,  
9 and I'd like confirmation that I'm reading it correctly.

10 MR. TANAKA: Your interpretation is correct,  
11 that there is -- if there's any confusion, it's not  
12 intended. The Table 1 is the broad parameters of the  
13 recharge master plan. We wanted a quick, simple, easy  
14 way of hardwiring into the rules and regs our obligation  
15 without simply attaching and incorporating the entire  
16 recharge master plan, or for that matter, the entire  
17 OBMP.

18 So, note, the commitment is still and always is  
19 to implement the recharge master plan. Table 1 is our  
20 effort in the rules and regs to lock that down.

21 MR. SCALMANINI: Gene, let me pursue the same  
22 subject, okay, 'cause I also had trouble reading the same  
23 thing, independently. And it says that the table will  
24 serve as the recharge master plan unless and until  
25 amended. What I remember was that Table 1 was -- I will

1 call it the easily identified list which also served  
2 another purpose of identifying how certain, I'll call,  
3 shortfalls or recharge in the Basin could be fixed at the  
4 time the OBMP was put together.

5 But I think it's program element 2 of the OBMP  
6 says there is a time frame, I think it's 36 months, that  
7 there will be a recharge master plan developed. Table 1  
8 is really a master plan.

9 MR. TANAKA: Correct.

10 MR. SCALMANINI: So when I read unless and  
11 until, you know, then I thought, wait a minute, are we  
12 doing this or aren't we. So you understand the idea of,  
13 we've got things identified. I think Mark would call  
14 them the, you know, easily identified things that we know  
15 we can do in the Basin. And we being you. And so that's  
16 fine. And it can be called something. And there is this  
17 other piece of work that was going to on go, field  
18 investigations and geologic study, et cetera, that would  
19 culminate in a document. I'll call it a report or  
20 whatever. You can call it a recharge master plan. That  
21 gives you the impression that might not happen.

22 MR. TANAKA: Same response. I agree with you.  
23 And probably what should happen is in the rules and regs  
24 we've got to be careful when we use a term recharge  
25 master plan and tie that to Table 1 because Table 1 is

1 only a part of the recharge master plan. So we just need  
2 to correct the language.

3 MS. SCHNEIDER: On designation of in-lieu areas,  
4 is it your sense that the Watermaster can designate  
5 in-lieu areas except for in-lieu Area 1 which is in the  
6 Judgment?

7 MR. TANAKA: I don't know. Actually I'd have to  
8 defer to others. I haven't even thought about it.

9 MS. SCHNEIDER: There is a provision in the  
10 middle of page 35 that talks about in-lieu Area 1 is  
11 established by the Court. If it would be reduced or  
12 eliminated, it requires prior court approval. Sort of  
13 begs the question of the designation of any in-lieu area.

14 MS. STEWART: I believe that where this comes  
15 from, actually says Watermaster may expand or reduce or  
16 do anything to in-lieu areas, except if they want to  
17 eliminate in-lieu Area 1, then they would need to go back  
18 to the Court. And they have actually taken action in the  
19 early '90s to make the entire Basin an in-lieu area.

20 MS. SCHNEIDER: Who is "they"?

21 MS. STEWART: Watermaster. This is in the  
22 admitted actions and things from the pools and the Board.

23 MS. SCHNEIDER: So does this reflect what the  
24 Watermaster has already done?

25 MS. STEWART: This is basically -- this is

1 reflective of what is currently in the Judgment. So if  
2 Watermaster wanted to take action in the future to reduce  
3 the in-lieu areas of the full Basin to some portion of  
4 the Basin, other than reduce in-lieu Area No. 1, they  
5 could do that again by action within the committees and  
6 the boards. This is how it's designated, I believe, in  
7 the Judgment.

8 MR. TANAKA: Where are the exhibits? Correct me  
9 if I'm wrong, but as I recall, the Court has set in-lieu  
10 Area No. 1. And I think the notion is-- and it  
11 presently covers almost the entire Basin, if not the  
12 entire Basin.

13 MS. STEWART: No. In-lieu Area No. 1 is  
14 essentially Management Zone 1.

15 MR. SLATER: You were correct in your initial  
16 premise. The basis is correct.

17 MR. TANAKA: The Court has the authority to  
18 reduce it or eliminate it, and then Watermaster would  
19 only be entitled to that expanded.

20 MS. STEWART: Watermaster can establish in-lieu  
21 areas.

22 MR. KINSEY: Page 76.

23 MS. STEWART: Thank you.

24 MR. SLATER: It's Exhibit A to the -- page 76 of  
25 the Judgment. This was intended to reflect, as I

1 understand it, there is in-lieu Area 1. Watermaster upon  
2 recommendation from the advisory committee can add to it.  
3 And then similarly contract so long as it doesn't  
4 contract below what initial in-lieu Area 1 is. So it has  
5 discretion to move and contract, expand and contract  
6 beyond 1 but not to reduce less than 1.

7 MS. SCHNEIDER: Okay. On the same page, 385,  
8 there's a reference in B, method of operation, to form.  
9 Is that going to be form 4, the application for indirect  
10 recharge?

11 MS. STEWART: I believe so.

12 MS. SCHNEIDER: I have some questions about  
13 every one of these forms, and I'm not sure when to  
14 address them.

15 MS. STEWART: We haven't addressed them.

16 MS. SCHNEIDER: You mean the Watermaster Board  
17 hasn't addressed forms yet?

18 MS. STEWART: Nor has the working committee.

19 MR. SLATER: The status of the forms is that  
20 there is not -- the stakeholders have not come to an  
21 agreement on the appropriate -- whether the forms that  
22 have been circulated in the draft do the job. They have  
23 been circulated for input, and they are the best  
24 representation of where we are today. But I think the  
25 parties and Watermaster have not approved the forms yet.

1 And I think they would be -- parties would be happy to  
2 receive input from Referee about their concerns or issues  
3 regarding the forms, find that to be very useful to  
4 moving this process along.

5 MS. SCHNEIDER: Maybe since we're on it, let me  
6 ask a few questions about the forms. It is the idea that  
7 the Watermaster needs to obtain factual information to be  
8 able to make a finding and determination on approving a  
9 transfer, for example,

10 MR. SLATER: The answer to that is yes. There  
11 needs to be sufficient information in the application  
12 that's provided by the applicant that will provide a  
13 record for decision by the advisory committee and the  
14 Board. It is understood that the forms should accomplish  
15 that.

16 MS. SCHNEIDER: There is a presumption that  
17 there's no material physical harm unless someone raises  
18 the question. Is that correct?

19 MR. SLATER: There is a presumption as to  
20 certain measures that in recharges, transfers, as an  
21 example, certain forms of storage, as an example, that  
22 there is a rebuttable presumption that the activity would  
23 not result in physical injury. Other types of  
24 applications, the presumption exists, for example,  
25 storage recovery program, which is the broader.

1           MS. SCHNEIDER: But the sense is that these  
2 forms would provide a way to give the Watermaster the  
3 information that it might need to make that factual  
4 determination approving a recharge --

5           MR. SLATER: Yes.

6           MS. SCHNEIDER: -- calculating a transfer.

7           MR. SLATER: We have to preserve that function  
8 as well as the function of providing notice to all the  
9 parties in the Judgment about potential impact of what  
10 may occur as a result of a transfer either to the  
11 individual parties or to the Basin as a whole.

12           MS. SCHNEIDER: I guess the picture I was  
13 beginning to have of this is that a proposal could be  
14 made for recharge or transfer, whatever, and if no one  
15 happened to object, there would be a presumption that  
16 would apply and the approval would be given. And yet the  
17 Watermaster would have not necessarily made a record  
18 based on findings and facts as to why that approval makes  
19 sense for that particular transaction and the Basin as a  
20 whole. Yet some of these forms give the sense that there  
21 is a more general inquiry.

22           So the forms -- for example, form 10 talks about  
23 material physical injury and asks, Is the applicant aware  
24 of any potential material physical injury to a party that  
25 may be caused by the action covered by the application.



1 Yes or no. And it says if yes, what are the proposed  
2 mitigation measures. It never says if no, give us facts  
3 to explain why not. And it's those facts that would be  
4 the basis for a reason of Watermaster approval of a  
5 request for action.

6 So that's a very basic kind of comment, but  
7 it's -- I also didn't take the time, but I don't believe  
8 the forms reflect the text of the rules yet either.

9 This is like the accounting provision which is  
10 not in the rules, an opportunity to put more of the  
11 puzzle together and yet a different way that when cross-  
12 referenced with what's in the regulations and the  
13 accounting procedures, would help to clarify, make  
14 accessible what's going on. So I would urge that some  
15 considerable effort be made to make these forms better.  
16 I realize it's still in the early circulation period.

17 MR. SLATER: On behalf of the parties and  
18 Watermaster, any comments, any more specific comments  
19 that the Referee makes, that we come away from this  
20 workshop with, after reading those, as soon as we acquire  
21 those, we will take those comments into consideration.

22 MS. SCHNEIDER: I think when we're through with  
23 these presentations and my interruptions, maybe we could  
24 talk a little bit about a schedule for that.

25 MR. HILL: Excuse me. May I interject for a

1 second. I think that was one of your concerns were one  
2 of the reasons why we actually had a provision put into  
3 the rules and regulations about a Watermaster staff  
4 report before action was taken on these things. So it  
5 would require the Watermaster as well to analyze all of  
6 those.

7 MR. SLATER: To amplify Boyd's comments, when we  
8 get to Article 10 and we move to the process of who's  
9 doing what, when, and how, I believe Jean or Burt will  
10 explain the staff report and how that fits in.

11 MR. GINDLER: Jean will be glad to explain that.

12 MR. SLATER: Ready for Article 8, then, and  
13 storage. We have Carole and Ray both?

14 MS. MCGREEVY: I'm going to do the general  
15 statement and then turn it over to Ray Wellington.

16 I'm Carole McGreevy from Jurupa Community  
17 Services District. Section 8 deals with the storage of  
18 the Basin. Watermaster has the responsibility to manage  
19 and control storage within the Basin and also, as the  
20 Referee pointed out, to do the accounting for the storage  
21 in the Basin.

22 Rules and regulations ensures this is done in  
23 compliance with the Judgment and the Peace Agreement.  
24 Currently we have 201,365 acre-feet of existing stored  
25 water. This is broken up between the appropriative pool

1 and the non-ag pool.

2 Future supplemental water storage is limited to  
3 50,000 acre-feet until the year 2005.

4 Section 8 protects existing storage for both  
5 local and supplemental agreements. Any agreements that  
6 would have expired prior to July 1st, 2005 -- that's  
7 2000, sorry -- will be extended to July 30, 2005. This  
8 is not tied to the 50,000 acre-foot limitation.

9 All future storage and recovery of any kind will  
10 require Watermaster Approval. Any material physical  
11 injury must be mitigated. If mitigation is unable to  
12 occur, approval will not be given.

13 There are five components to be included within  
14 the storage agreement: How much and for how long,  
15 priority versus safe yield use, how it's to be delivered,  
16 accounting of losses and amount of storage, and schedule  
17 for withdrawal.

18 If supplemental water is stored without an  
19 approved agreement, the water is then considered to be  
20 abandoned.

21 A request for quantification of supplemental  
22 water in local storage must be submitted to Watermaster  
23 by May 1, 2001, and the Watermaster will respond by  
24 May 31st. If no request is made to Watermaster for  
25 quantification, it will be considered that this water is

1 Basin water.

2 Storage of unused safe yield and operating safe  
3 yield water is done with a local storage agreement. Once  
4 again, this has to be approved by Watermaster. And if it  
5 exceeds the carryover right, this will be the first water  
6 that is used in the subsequent year.

7 MR. WELLINGTON: My name is Ray Wellington. I  
8 serve as general manager, San Antonio Water Company, and  
9 as one of the two representatives on the advisory  
10 committee for the major producers.

11 As Ms. McGreevy has just covered, those were the  
12 general provisions in the Section 8, and there are some  
13 special considerations for certain areas in storage that,  
14 being local storage specifically having to do with excess  
15 carry-over water, which is the cumulative unproduced  
16 water of the producers in the Basin. Also for the  
17 supplemental water, which of course is the imported or  
18 recycled water. And thirdly, for the groundwater storage  
19 and recovery program or the major program that we would  
20 more commonly call conjunctive use.

21 Under the issue of excess carry-over water, the  
22 document protects existing and additional carry-over  
23 water stored and held through October 1, 2005, without  
24 any specific limitations unless there are extenuating  
25 circumstances that arise. If such storage is subject to

1 limitations, they would be -- they would be set in  
2 accordance with material physical injury criteria  
3 contained in the rules.

4           After October 1st, 2005, any such storage would  
5 be subject to the loss provisions that are addressed in  
6 the rules. These provisions are adjusted based upon  
7 technological information from the monitoring analysis.  
8 And any such storage applications submitted after that  
9 date would be considered in accordance with the  
10 procedures set forth predominantly in Section 10 of the  
11 rules and regulations.

12           On the subject of supplemental water, such  
13 stored water after July 1, 2000, is subject to  
14 limitations under the material physical injury provision  
15 and a cumulative cap of 50,000 acre-foot primarily for  
16 the benefit of the parties to the Judgment in order to  
17 manage smaller local storage issues of interest in the  
18 Basin. Any applications for local storage of  
19 supplemental water would be received on a first in time,  
20 first in consideration basis. And after October 1st,  
21 2005, the applications are subject to reasonable  
22 limitations to be set by Watermaster, the loss  
23 provisions, and any reasonable mitigation that may be  
24 required in order to avoid material physical injury.

25           On the larger program, groundwater storage and

1 recovery, Watermaster is to request proposals from  
2 qualified persons and to follow the criteria set forth in  
3 this section that no more than one-half million  
4 gallons -- excuse me -- half million acre-feet of storage  
5 within the Basin would be used. This allows for  
6 conjunctive use, but it also allows us an opportunity to  
7 gather further data, as we're doing now, in order to  
8 assess the condition and capability of the Basin to take  
9 more than that, which we anticipate there is some  
10 capacity for that.

11 Any such program must provide mutual benefits to  
12 the parties to the Judgment and any compensation received  
13 from such programs would accrue to the benefit of the  
14 parties of the appropriative and non-ag pools in the  
15 form of reduced costs and reduced assessments to the  
16 waters.

17 Watermaster retains full discretion to negotiate  
18 and/or deny any request for storage and recovery and to  
19 impose conditions that fully mitigate any threatened or  
20 potential of material physical injury.

21 The last item in this section deals with the  
22 recapture of water that is in storage. Shows any type of  
23 recapture of water must conform to a recapture plan that  
24 has been reviewed and approved by the Watermaster. And  
25 if it's necessary, on the part of the party to amend the

1 plan or collectively, if there is some concern about the  
2 threat of physical injury and it gets amended, then that  
3 amended plan must be in place before they can extract the  
4 water.

5 And Carole and I would be happy to answer  
6 questions.

7 MS. SCHNEIDER: I have a question that goes to  
8 sections in Article 10 where it's talking about the  
9 process of getting the qualifying storage agreements.  
10 And I'm going to page 54 and 55. I guess my question is  
11 that, am I correct that there seems to be an existing  
12 approval, preapproval, if you will, of these carry-over  
13 water storage agreements and local storage of  
14 supplemental water in the article?

15 MR. WELLINGTON: That is correct. It protects  
16 water that is already in storage or that could be added  
17 to storage while we're going through some of the  
18 adjustment process and implementing the OBMP in the early  
19 stages.

20 MS. SCHNEIDER: So is it, then, the case that  
21 the Watermaster doesn't have discretion, if he feels, if  
22 he is advised that the water is in storage or will be  
23 going into storage, and it then has to approve and give a  
24 storage agreement for that water.

25 MR. WELLINGTON: Your observation is generally

1 correct as long as there is no threatened or potential  
2 material physical injury. That is the underlying factor  
3 that we're all sensitive to in this negotiation process.  
4 And if either through Watermaster staff's review of this  
5 issue of storage, that will arise along the way or if any  
6 other party raises, then it would be looked at to see  
7 whether there would be some type of harm that would arise  
8 should they be either continued or expanded.

9 MS. SCHNEIDER: I'm looking at page 55, first B  
10 in the middle of that page. It says each producer shall  
11 have a right to store its unproduced carry-over water at  
12 least until 2005. On page 54 in the middle of 10.6, the  
13 party shall be deemed to have Watermaster approval to  
14 store all of that carry-over water, and later on  
15 supplemental water. And reading those, I'm confused  
16 because I thought there was a material physical injury  
17 issue that would be addressed for every storage  
18 agreement, and yet there seems to be some conflict  
19 between the right to get the agreement and the approval  
20 that has to be given and the application of the harms  
21 provisions.

22 MR. WELLINGTON: I understand your --

23 MS. SCHNEIDER: I'm trying to ask a question.

24 MR. WELLINGTON: I understand your understanding  
25 of what you're reading. All of us in the negotiation



1 process all have a very clear understanding of most of  
2 the provisions of the Judgment indicating the Watermaster  
3 shall not extend approvals for harm to the Basin. That's  
4 why I said what I did in my presentation.

5 MR. SLATER: If I can amplify, as part of the  
6 desire to protect existing investments and balance that  
7 with the desire to open up opportunities for a more  
8 regional storage and recovery program and balance that  
9 with potentially trying to protect against material  
10 physical injury to the Basin, what the parties landed on  
11 really is a two-pass treatment of storage. The first is  
12 that type of storage which is broad and regional in  
13 character and the second which is local. The type that  
14 is broad and regional in character is referred to as a  
15 storage and recovery program. And that will be premised  
16 on initially an RFP and an application process which it  
17 takes a look at from the beginning, the impacts of  
18 storage and recovery and starting from ground zero.

19 Watermaster has complete discretion in how that  
20 is treated, processed, and ultimately negotiated in all  
21 parts. There are no rights, if you will. No one has a  
22 right, no party to the Judgment, no outsider has a right  
23 to any such programs.

24 Then we follow this former branch, which is that  
25 which is local storage. And local storage is unbundled

1 into various components. One component that seems to be  
2 very near and dear to the parties is water which is  
3 simply not produced. And that is water which is part of  
4 carry-over, which is derived from the Judgment, and it is  
5 an absolute right to carry-over to be produced in the  
6 following year. Where the carry-over accumulates, it  
7 would require Watermaster approval.

8           What this says is that the right of a party to  
9 continue to place water into that is carry-over in form  
10 or substance is golden until 2005. After 2005  
11 Watermaster is going to have the right to restrict the  
12 parties' ability to accumulate storage through their  
13 carry-over and subject it to yes or no tests and  
14 conditionalities.

15           The second bucket, if you will, or bundle in the  
16 local storage reference is that form of storage which is  
17 supplemental water. And there are caps on that amount.  
18 And we had to develop a baseline from which that cap  
19 could be applied and tested. So the first test was to  
20 investigate, provide for an investigation of the Basin  
21 and to allow the parties to come forward on a uniform  
22 basis to quantify how much supplemental water they had  
23 within their existing storage accounts. That will occur  
24 by May 1st -- sorry. Is the application by May 31?

25           The application must be submitted by May 1st,

1 and then Watermaster is duty bound to apply uniform  
2 standards in defining how much supplemental water is  
3 presently in storage. After that is set, any new  
4 applications for supplemental water is subject to the  
5 rigorous tests and conditionality of Watermaster. The  
6 parties can review that, but it's capped at a cumulative  
7 total of 50,000 acre-feet.

8           So when we say what doesn't require a new  
9 agreement, really what we're talking about is  
10 functionally carry-over is accumulated and water, the  
11 capture of water from an existing storage agreement which  
12 is already protected. If it's new water going into the  
13 account, it's going to have to meet the test of the local  
14 storage and potentiality of running up against the cap.

15           It sounds -- admittedly it's complex. Not  
16 backing away from that. It is intended to reflect  
17 historic investments in prioritizing that form of  
18 storage, notice I'm saying storage not for capture, that  
19 form of storage which is thought to raise the least  
20 concern.

21           And Ray mentioned when a party pulls water out  
22 of storage, they're bound by whatever prior approval  
23 Watermaster gave. And so they have an approval. Of  
24 course if it's a recapture plan, they must recapture in  
25 accordance with that plan, even though their storage is

1 golden, when they pull it out, they've got to abide by  
2 the prior agreement, which if they want to modify that,  
3 they need new Watermaster approval as to that element.

4 MS. SCHNEIDER: If you go to the first bullet up  
5 there. What we're taking about is not supplemental water  
6 but carry-over water. All carry-over water that's there  
7 now and that is added until October 2005, will there be  
8 storage agreements executed for those?

9 MR. SLATER: There will not be.

10 MS. SCHNEIDER: Never?

11 MR. SLATER: Because as a class of potential  
12 projects, it is viewed as being benign.

13 MS. SCHNEIDER: So what is the without specific  
14 limitations unless extenuating circumstances arise mean?

15 MR. SLATER: Well --

16 MR. WELLINGTON: Basically if you discover --  
17 we're trying to look ahead. We have tried to take some  
18 of the past patterns into effect. If we discover between  
19 now and 2005 that we've got a problem directly related to  
20 that excess carry-over, we have an obligation  
21 collectively to address it. That's what we mean without  
22 limitations. In other words, we're allowed to go ahead  
23 in a past pattern because it seems that there is nothing  
24 that would be detrimental to continuing that past  
25 pattern, minor bits of storage, 'cause it represents a

1 small portion of the overall Basin water capability. But  
2 if we identify that there is an extenuating circumstance,  
3 we have an obligation under the Judgment language that we  
4 cannot ignore that.

5 MS. SCHNEIDER: Right. So that accommodates the  
6 Judgment requirement that the Watermaster does allow  
7 storage.

8 MR. SLATER: Moving on the next item, which is  
9 transfers. I believe Mark Kinsey is going to take that.

10 MR. KINSEY: Again, my name is Mark Kinsey with  
11 Monte Vista Water District. We had a discussion  
12 yesterday when we were going over this whether or not I'd  
13 be saying good morning or good afternoon to everybody. I  
14 know I was going making eye contact with people  
15 predicting that it was going to be good afternoon. But  
16 we did make it good morning.

17 I'd like to thank everybody to be here today.  
18 Before we start talking about Article 9, transfers, I  
19 want you to know that this is really a joint effort  
20 between the City of Pomona and Monte Vista Water  
21 District. We were asked to briefly summarize Article 9  
22 of the rules and regulations.

23 By way of introduction, I think it's important  
24 to point out that transfers really are one of the  
25 cornerstones of the Peace Agreement. They provide an

1 opportunity for the parties in Chino Basin to  
2 collectively optimize the local resources that are within  
3 this Basin.

4 Transfers is really a broad description that may  
5 include the assignment, sale, or lease of a party's  
6 current year production rights, otherwise known as  
7 operating safe yield. I think they may have even changed  
8 that to annual production rights through this process or  
9 it may include water taken from the local storage  
10 accounts. So it's really a large encompassing concept.

11 Under Article 9 what we do is we implement the  
12 provisions of Section 3.5 of the Peace Agreement.  
13 Article 9 provides process to review and approve  
14 transfers and really incorporates transfers into the  
15 overall management framework established in the OBMP and  
16 the Peace Agreement.

17 We're talking about basically two types of  
18 transfers in Article 9. The first one is the annual  
19 transfer of overlying agricultural pool rights to the  
20 appropriative pool. These have been termed early  
21 transfers in the Peace Agreement.

22 The second type of transfers really would be the  
23 appropriative and non-appropriative agricultural pools.  
24 Early transfers are found in Sections 9.5 and 9.7 of the  
25 rules and regulations. It is really a clarification of

1 the process that's been under way since 1988.

2           In 1988 the appropriative pool and overlying  
3 agricultural pool established a process for the annual  
4 transfer of unproduced agricultural production rights.  
5 That process provided for a one-year lag in the  
6 completion of the transfer and it gave here as an  
7 example. An example would be that unpumped agricultural  
8 rights from fiscal year 1998-99 would be transferred to  
9 become part of the appropriative pool production rights  
10 for fiscal years 2000-2001. That was the one-year lag.

11           What the Peace Agreement has done is a couple  
12 things. One is that it eliminated that one-year lag in  
13 terms of that transfer. It also established a minimum  
14 annual transfer of 32,800 acre-feet through the  
15 appropriative pool. Next slide, please.

16           Article 9 also provides specific language that  
17 does a number of things. It confirms that early transfer  
18 will not affect the production rights of the agricultural  
19 pool. That will remain at 414,000 acre-feet in any  
20 consecutive five-year period.

21           The agricultural replenishment pool obligation  
22 which was talked about earlier today will be based on  
23 actual production over a five-year consecutive period.  
24 If it exceeds 414,000 acre-feet, the agricultural pool  
25 will be assessed for replenishment deliveries.

1           Article 9 also establishes an accounting  
2 procedure and process for the appropriative pool to  
3 offset Basin overproduction that may occur from the early  
4 transfer provisions of the Peace Agreement. I believe  
5 that is discussed in more detail in Article 6 of the  
6 rules and regulations.

7           For those transfers that are under the  
8 appropriative and overlying non-agricultural pool, what  
9 we're basically talking about is transfer of production  
10 rights within these pools, and they're really general for  
11 a couple of purposes. One is supplemental party's  
12 production rights or to offset the party's overproduction  
13 within the Basin. Again, the transfers may include  
14 assignment, lease, or sale of the party's current year  
15 production rights or water from storage. They also may  
16 be long-term or short-term in nature. We may have an  
17 assignment of someone's operating safe yield which is for  
18 a five, ten consecutive year period. There may be a  
19 one-time transfer between those parties.

20           Non-overlying agricultural pool may transfer  
21 rights to the business pool itself, and it also may  
22 transfer rights to the Watermaster to offset desalter  
23 overproduction to allow that to become a local resource  
24 that could be utilized for the purpose of offsetting  
25 overproduction from the desalters.



1           The review and approval process in transfers is  
2 more clearly defined in Article 10 of the rules and  
3 regulations. Again, the overall ability of the process  
4 is a detailed and very transparent process that would  
5 provide opportunities -- the parties the opportunity to,  
6 one, understand the extent of the transfer, better  
7 understand its potential impact with regards to the  
8 Basin, and it provide comments if they have concerns  
9 relative to that process.

10           Then also Article 9 provides for the integrated  
11 review of transfers as part of the Watermaster's recharge  
12 planning procedures that are established in Article 7 of  
13 the rules and regulations.

14           It just basically, in summary, I think that  
15 Article 9 implements and clarifies transfer provisions of  
16 the Peace Agreement, that it incorporates recommendations  
17 that we understand have been made by Special Referee to  
18 provide a transparent and open review and approval  
19 process for transfer. It also provides a method to  
20 address potential for overproduction of agricultural  
21 rights due to the transfer process. Finally it  
22 integrates transfer -- I believe it integrates transfers  
23 into the overall management frame of the Judgment. Glad  
24 to answer any questions.

25           MS. SCHNEIDER: I have a real quick question.

1 In the Peace Agreement the overlying non-ag transfers  
2 could be among that pool and to the Watermaster; is that  
3 correct?

4 MR. KINSEY: It's allowed to be transferred  
5 within the non-ag overlying pool amongst those parties,  
6 or it can be transferred to Watermaster for the purpose  
7 of offsetting desalter overproduction and I believe for  
8 storage and recovery programs.

9 MS. SCHNEIDER: It looked more limited. I just  
10 wondered if the regulations had changed by unnecessarily  
11 limiting what was already approved. It looked more  
12 limited than that, to me. And was there a reason --

13 MR. KINSEY: We did not intend to further limit.  
14 In fact the rep from the non-ag pool was here. That was  
15 a bargained-for item, so we will check the discrepancy,  
16 yes.

17 MS. SCHNEIDER: I don't think I have other  
18 questions. I have questions about the forms, but I can  
19 see that those can be held and given to me later.

20 MR. KINSEY: Characterize those as work in  
21 progress.

22 MR. SCALMANINI: In 9.2 and 9.3, there are  
23 references to, in 9.2, the Watermaster shall base any  
24 decision to approve or disapprove any proposed transfer,  
25 likewise alone and without regard to impacts attributable

1 to other transfers.

2           And the next paragraph says, Watermaster shall  
3 also consider the cumulative impact of transfers  
4 generally when carrying out his responsibilities to OBMP.  
5 It seems like you can't have it both ways.

6           MR. SLATER: Well, we try. And often the camel  
7 resulted in an effort to split hairs and to preserve the  
8 expectations of the parties under the Peace Agreement.  
9 The concept is that as a general matter, the impact of  
10 transfers is going to be considered regularly, routinely,  
11 and brought forward. So as part of -- I may use the  
12 wrong words and Traci will probably kick me under the  
13 table here -- but the state of the Basin, if you will, in  
14 taking a look at what's happening in the Basin, the  
15 Watermaster is going to evaluate what the cumulative  
16 impact of transfers are. That's what Mark was speaking  
17 of.

18           But when examining individual transfers, we have  
19 a baseline against which it's going to examine those  
20 impacts. It's going to be examined with regard to those  
21 impacts that that transfer results in. And if there are  
22 measures that need to be taken to address transfers  
23 generally, that will be done in the global process and  
24 not burden any individual transaction with the  
25 consequences of a global cost.

1           If each individual transfer gets examined on its  
2 own merits, but if Watermaster determines that all these  
3 transfers taken collectively are causing results, it's  
4 going to address that in a global way and not cause two  
5 individual parties to the transaction to assume that  
6 responsibility.

7           MR. SCALMANINI: You started to answer my  
8 follow-up question, which is in that Section 9.3 when it  
9 talks about an evaluation, it doesn't really say what an  
10 evaluation is. Just says it's going to evaluate the  
11 transfer. And I guess the way I wrote the question  
12 myself, what's the intent of the evaluation and what  
13 happens if the, quotes, cumulative physical impact,  
14 unquotes, of a transfer is negative?

15           MR. SLATER: I think a partial -- part of the  
16 answer I'm going to duck because the part of the answer  
17 is you won't know what the remedy is until we understand  
18 what the impact may be. But one could draw a connection  
19 between the other activities that Watermaster is carrying  
20 out through the OBMP including recharge and there may be  
21 recharge strategies which are designed to cure and remedy  
22 defects or impacts that occur from the transfers, but  
23 there may be other items which are better tools to solve  
24 the problem.

25           MS. SCHNEIDER: Is 9.3 intended to address who

1 has the burden of making the case? Is that part of the  
2 problem?

3 MR. SLATER: 9.2(d).

4 MR. TANAKA: 9.2(d). That language came from  
5 the Peace Agreement. And there was -- there was an  
6 effort to balance the need of the importance to the  
7 parties to have their transactions proceed and to protect  
8 the Basin. So it is part and parcel of the presumptions  
9 that go with these transfers.

10 MR. SLATER: If I can also amplify. The point  
11 is that an opportunistic contestant could unfairly -- I'm  
12 trying to -- leg work set for some of the regions. An  
13 opportunistic contestant could bollix up the process by  
14 strategically picking locations and parties against to  
15 raise objections. And again the desire from a fairness  
16 perspective was to say that cumulative impacts are going  
17 to be addressed cumulatively, globally by all parties to  
18 the Judgment, and we're not going to require any  
19 individual two parties to assume those burdens.

20 And so the Watermaster was making the decision  
21 it's going to be -- regarding transfers, it's going to  
22 focus on those projects specifically.

23 MR. TANAKA: Can I make an analogy,  
24 transportation. Traffic congestion is a problem.  
25 Theoretically every project that adds one car will add to

1 that problem. And so you would take a look at that  
2 transaction. You could stop every single house being  
3 built because it adds one more car to the road. That was  
4 what we wanted to avoid.

5 And then the flip side is what Scott's saying,  
6 if you have a Basin-wide problem in transportation, in  
7 your case, with the injury to the Basin, you need to  
8 address it globally.

9 MR. HILL: One more point, and I think it  
10 directly addresses your question, is 9.2(b) talks about  
11 Watermaster -- and that's directly repeated from 5.3(a)  
12 of the Peace Agreement. Watermaster shall -- actually in  
13 5.3(b) it's phrased in the negative. Watermaster shall  
14 not approve a transfer if it's inconsistent with the  
15 terms of the agreement or will cause material physical  
16 injury to any party to the Judgment or the Basin. So I  
17 think the cumulative impacts gets almost drawn into the  
18 impact to the Basin and prevents --

19 MR. SCALMANINI: That's individually without  
20 regard to impacts attributed to other transfers?

21 MR. SLATER: Let me just say, I tried to be  
22 careful in my response to maintain the hair-splitting  
23 effect we brought to this. I think it is true that  
24 Watermaster has an obligation not to approve transfers  
25 where there is going to be material physical damage to a

1 party or the Basin, and there are clearly ways without  
2 regard to the cumulative impact of that and you could  
3 evaluate that. And we've already made such a showing  
4 that there would be an injury, that quality would be a  
5 factor for sure. And there are others that are  
6 commonly --

7 MR. SCALMANINI: Two things come to mind. One  
8 relates to the pump house. Whoever gets there first  
9 could get his transfer application, no cumulative impact.  
10 For the next guy, he may not. So that's to be worked  
11 out.

12 MR. SLATER: That actually -- I think our hope  
13 is this tool will stop that from happening because we'll  
14 be examining and there'll be periods of time and then  
15 we'll bring the data base forward and then everybody will  
16 be acting pursuant to that new data base. So there's a  
17 fairness in that.

18 MR. SCALMANINI: Closing thing on the subject of  
19 the evaluation, it says in 9.3(b) that Watermaster will  
20 take the results of the evaluation into account when  
21 carrying out his obligations under Section 6.1, which is  
22 where it calculates annual production right. Is that  
23 what that really meant, though?

24 MR. SLATER: 7.1. It was a typo and it's been  
25 corrected.

1           MR. SCALMANINI: Didn't make it on mine.

2           MR. SLATER: 7.1 is recharge. That corroborates  
3 my point.

4           MR. SCALMANINI: Right. One correction has to  
5 do with 9.6, the voluntary agreement, which goes through  
6 a discussion of somebody being voluntarily let somebody  
7 else provide water on the ground. Shouldn't there be  
8 some kind of a closing condition that says, if the ag  
9 pumper reduces pumping to an equivalent amount.

10          MS. STEWART: What kind of a meter is that that  
11 has to be installed. It has to be applied for  
12 agricultural use.

13          MR. SCALMANINI: I think I follow that. The  
14 point is that the ag pool is engaged in a voluntary  
15 agreement to have the appropriator provide water to that  
16 land. Right?

17          MR. SLATER: Yes, correct.

18          MR. SCALMANINI: But it never says that the ag  
19 pumper has to stop pumping.

20          MR. SLATER: I believe the answer to that -- and  
21 Dan McKinney's over there, and he can embellish on it.

22          MR. McKINNEY: We're assuming that this is land  
23 that is not otherwise can be provided with water.

24          MR. SCALMANINI: Excuse me?

25          MR. McKINNEY: We've always assumed that the



1 voluntary agreement would only apply in a situation where  
2 they couldn't produce water on their own land; that they  
3 need to go to an appropriator to produce water.

4 MR. SLATER: Joe's asking for clarification now.

5 MR. SCALMANINI: -- assumptions. These are  
6 rules.

7 MR. SLATER: I was going to suggest maybe we  
8 give the court reporter a break. And we know, we  
9 recognize that we still have the desalters to do.

10 (Recess in proceedings from 12:08 to 12:31 p.m.)

11 MR. SLATER: We're already running up against an  
12 expected time to complete this workshop so we want to  
13 move it along. I think we're ready to take Article 10,  
14 then move into the desalters. I think to bring on  
15 Article 10 we've got Gene and Burt.

16 MR. GINDLER: Good March 8 everyone. My name is  
17 Burton Gindler. I am a senior counsel with the  
18 Los Angeles office of Morrison, Foerster, and we're  
19 special counsel to the San Gabriel Valley Water Company  
20 and its Fontana Water Company division. And I would like  
21 to make a few preliminary remarks on Article 10 which  
22 deals with applications, contests, and complaints. And  
23 then Gene Tanaka will follow up with some of the more  
24 details.

25 As the first point indicates, the procedures set

1    forth in Article 10 are one of the keys in protecting the  
2    Basin. I would like to add just a personal note to that,  
3    and that is my experience in the course of these  
4    negotiations makes clear to me that Article 10 also  
5    provides what I would call a due process type protection  
6    to the persons involved so that everybody would be  
7    treated fairly and furthermore so that everyone would  
8    believe they were being treated fairly. The appearance  
9    obviously is as important as the fact.

10            Now, when Scott opened these discussions today,  
11    he mentioned quite specifically the fact that compromises  
12    were a key element of this document. And one of them is  
13    right at the end of the document, Section 10.26. And  
14    it's such a neat example of how these things work that I  
15    thought I'd just take a few minutes to explain that  
16    particular compromise, and it deals with the question of  
17    frivolous contests.

18            There is another phrase in there called  
19    something like repetitiously unsuccessful similar  
20    contests, which I have trouble saying and remembering,  
21    but I include that as part of the frivolous contests.  
22    And there were two views among the negotiators on  
23    frivolous contests. There were those of us who said, we  
24    don't want to be put to the expense and the time of  
25    having frivolous contests filed against us. And we think

1 that if you have a substantial filing fee and if you will  
2 have sanctions for frivolous contests against people who  
3 pursue them -- the outline says prevent frivolous  
4 contests, but I think maybe strongly discourage might be  
5 a better term.

6           So that was our view. Then there were those of  
7 them who said, that's not right. In the first place, if  
8 you have a substantial filing fee, it might discourage  
9 somebody from making a filing of contest that has merit.  
10 And why should we assume that people will file frivolous  
11 contests in the first place. Let's assume that everybody  
12 is a good person.

13           So the compromise that was worked out appears in  
14 that last bullet, that there is no filing fee and no  
15 sanctions for frivolous contests. But if experience  
16 shows that frivolous contests raises a problem and it's  
17 something we have to be concerned about, that it makes  
18 clear there will be a reopener to consider various issues  
19 including the matter of filing fees and/or sanctions for  
20 frivolous contests. I believe that the document in fact  
21 says it would be by way of a court-approved resolution of  
22 Watermaster.

23           The second thing that we put in was a prevention  
24 that made clear that if a frivolous proceeding was  
25 initiated before the Court, the Court has its own

1 authority to impose sanctions and nothing in this  
2 document was designed to suggest that the Court shouldn't  
3 exercise that power in an appropriate situation.

4           So what was a, you know, we want X and you can't  
5 have X was resolved in the matter that I'm not sure  
6 everybody is a hundred percent happy with but everybody's  
7 perfectly willing to live with it. I think now Gene is  
8 prepared to pursue the details of how the applications,  
9 conflicts, and complaints will be pursued.

10           MR. TANAKA: Thanks, Burt.

11           As Burt alluded to, the negotiations that went  
12 on in Article 10 -- and I think Article 10 was perhaps  
13 the hardest fought part of these rules and regs -- and I  
14 think it was the hardest fought because that's really  
15 where the rubber meets the road. And the Referee's and  
16 the consultants' questions sort of highlighted that too,  
17 because it is here that we're going to see the material  
18 physical injury test applied on the one hand to protect  
19 the Basin. On the other hand, we have the transactions  
20 that the parties feel very strongly they want to make  
21 sure that they can still continue to do. And they want  
22 to make sure it will proceed. That was where all this  
23 tension gets worked out.

24           First and foremost I'd like to point out that  
25 this is broad. There was a lot of discussion on how

1 broadly will Article 10 be. And ultimately we ended up  
2 sweeping pretty broadly to cover recharge and transfer  
3 applications, qualified storage, recapture applications  
4 for reimbursement or credit and complaints of material  
5 physical injury. So Article 10 covers a lot of  
6 territory.

7 My comments are going to divide into four  
8 pieces. First we're going to talk about the application  
9 process. Second we're going to talk about the contest  
10 procedure. Third we're going to talk about the complaint  
11 process. And finally we're going to end up talking about  
12 the hearing. That's sort of how I, in my mind and in  
13 this outline, divided up the discussion.

14 Let's start with the application process.  
15 That's right down here on 2. First of all, an  
16 application is filed. And then the second point is we  
17 get the Watermaster summary and analysis of the  
18 application with 30 days' notice. This is the section  
19 that Boyd Hill was referring to. This is where the  
20 Watermaster will take that application and analyze it and  
21 summarize it. We spent a lot of time fighting over  
22 whether it should just be summary, whether it should just  
23 be notice, whether it should be analysis, and this was  
24 the compromise we reached.

25 At the end if you look at Section 10.10, 10.10,

1 you can see that we've built in that the Watermaster is  
2 going to provide its own analysis. Some of the parties  
3 that didn't have the resources to fully analyze this but  
4 still had concerns were very adamant that this was  
5 important to be in there because they wanted to take  
6 advantage of the knowledge and the resources of the  
7 Watermaster to take a first cut at it, because not every  
8 party can afford to do that.

9           Then we had the pool committees reviewing each  
10 application so we can get their input, and finally we had  
11 the advisory committee and Watermaster Board deciding  
12 uncontested applications. They will also decide  
13 contested matters, but I'm trying to keep to the format.  
14 And so the advisory committee, Watermaster Board  
15 interface on uncontested applications. Go to the next  
16 slide, please.

17           The contest procedures. Where there's a fight,  
18 where there's an issue, the effort was made to ensure  
19 that all of the issues get aired, analyzed, and  
20 discussed. So the contest is filed. It's based on the  
21 concept of material physical injury. Then 14 days -- it  
22 has to be filed 14 days before the advisory committee  
23 considers it. And then the contestant is required to  
24 produce all of its, his, hers, its documentary evidence  
25 seven days before the hearing.

1           The applicant has the option of answering that  
2   contest, but it is required to produce its documentary  
3   evidence three days before the hearing. So the idea is  
4   that by the time we get up onto the hearing, we will now  
5   have had a Watermaster summary and notice 'cause it's  
6   provided for all applications and analysis, and we will  
7   have had the allegations by the contesting party, and  
8   then we're going to have all the documentary evidence  
9   available and produced.

10           Now, following along on a different track, but  
11   very similar is the complaint process to protect the  
12   Basin. That's the provisions right down here. Now, the  
13   complaint process is not -- is triggered by a situation  
14   that a party or parties are aware of that are causing  
15   material physical injury to the Basin. It's not  
16   necessarily tied to an application. So if the  
17   circumstances are whatever they are and they're causing  
18   injury, a party can pull down this process and file a  
19   complaint.

20           When that happens, any party may answer 14 days  
21   after notice, and again Watermaster summarizes and  
22   provides notice just like any other application process.  
23   The contestant produces documentary evidence seven days  
24   before the hearing. Hearing is set 30 days after  
25   Watermaster receives notice of the complaint. And again,

1 pool committees input into the process under Rule 10.21.

2           Now, finally we get to the hearing process,  
3 which I've described as a full-blown adjudicative  
4 process. It is about as close to -- it is blowing up an  
5 administrative hearing to the closest to court  
6 proceedings as you're going to find, I think. And what  
7 you've got there is it applies to contested applications  
8 and complaints of material physical injury. The hearing  
9 officer is selected from the panel. The panel must  
10 consist of individuals with both expertise technically  
11 and familiarity with the Basin. We did not want to have  
12 people coming in, while they may be technically  
13 knowledgeable, but completely unfamiliar with the Basin.

14           Next the Hearing Officer will receive evidence,  
15 hear argument, and will prepare a record, make findings  
16 based on substantial evidence. The parties may be  
17 represented by counsel. They make arguments,  
18 cross-examine witnesses. And there's provisions to  
19 submit briefs as well.

20           Finally, the advisory committee, Watermaster  
21 Board will consider the application and complaint and  
22 base their decisions upon substantial evidence in the  
23 record.

24           It's very important, and we spent several days  
25 on the next bullet point, the respective powers of the



1 advisory committee and Watermaster. They remain the same  
2 as they are in the Judgment. The hearing officer is an  
3 addition, if you will. He or she will provide proposed  
4 findings and will conduct the hearing. That record and  
5 proposed findings will then be transmitted to the  
6 advisory committee and the Watermaster Board to decide  
7 pursuant to the powers under the Judgment.

8           And finally there's no restriction on the right  
9 to judicial review. Judgment provides that if the  
10 parties are dissatisfied, they can appeal it to the  
11 Superior Court for de novo review.

12           That's really it, unless there's any questions.

13           MR. SLATER: Thank you, Gene and Burt.  
14 Appreciate it.

15           MS. SCHNEIDER: Of course I have some questions.  
16 I was confused by Article 10 about Section 10.25(d).

17           MR. TANAKA: I'm sorry. What section?

18           MS. SCHNEIDER: 10.25(d). And I guess my  
19 initial question is a very mundane question. It appeared  
20 to me, and I don't really think that it was intended, but  
21 it reads to me that you have redefined Watermaster for  
22 purposes of this subsection to be something that is, in  
23 paren, advisory committee and Watermaster Board.

24           Watermaster is defined here and other places as  
25 the Watermaster Board. So literally, Mr. Tanaka, if you

1 read -- to me, if you read 10.25(d), it indicates that  
2 Watermaster is for this subsection purposes, some new  
3 combination of the advisory committee and the Watermaster  
4 Board. Is that intended?

5 MR. TANAKA: No. It's -- well, it sounds like  
6 the point you raise is again an issue of drafting to make  
7 sure we clarify this.

8 MS. SCHNEIDER: I think so.

9 MR. TANAKA: And the Watermaster's action will  
10 be first -- I guess as I think about it, we have sort of  
11 lumped together advisory committee and the Board as  
12 making the decision. But if you think about the  
13 Judgment, the Judgment talks about -- in Section E talks  
14 about paragraph 31 of the Judgment. That's really taking  
15 a review from the Watermaster Board's decision. So I  
16 think we'd have to clarify that.

17 The point we're trying to make is there are two  
18 bodies that are involved in the decision-making process,  
19 the advisory committee and the Watermaster Board. And  
20 that relationship is exactly the same as it is presently  
21 under the Judgment and it's intended to stay the same.  
22 So to the extent that subsection E is really talking  
23 about, under paragraph 31, an appeal of the Watermaster  
24 Board -- excuse me; "E" -- a Watermaster Board decision,  
25 and we should clarify that.

1 MS. SCHNEIDER: Okay. Maybe I should describe  
2 my understanding of the process, then, that if something  
3 is contested -- I don't think this implies if it's  
4 uncontested. If it's contested, it goes through the  
5 pools. Each pool looks at the question.

6 MR. TANAKA: Correct.

7 MS. SCHNEIDER: And then the advisory committee  
8 looks at it.

9 MR. TANAKA: Correct.

10 MS. SCHNEIDER: And then it goes to the  
11 Watermaster Board.

12 MR. TANAKA: Correct.

13 MS. SCHNEIDER: And there's nothing, then, in  
14 10.25(d) that's intended to change that order of  
15 proceeding?

16 MR. TANAKA: Correct.

17 MS. SCHNEIDER: I do think that needs some  
18 redrafting.

19 MR. TANAKA: I agree.

20 MS. SCHNEIDER: I have one other question. I  
21 didn't bring the package with me, but the February 15th  
22 agenda package from the Watermaster, it had some  
23 transactions in it as examples -- I don't have it with  
24 me -- where it indicated in a notice format that a  
25 transfer had been proposed. No one had objected, and

1       therefore the Watermaster approved the transfer. One of  
2       my questions, it appeared to be as if these rules and  
3       regulations were in effect.

4               MR. SLATER: If I can answer that.

5               MS. SCHNEIDER: That's just my preliminary  
6       question.

7               MR. SLATER: They were not presumed to be in  
8       effect. The parties in Watermaster have pledged to act  
9       consistent with the Peace Agreement on a go-forward  
10      basis. We've been challenged by the absence of having  
11      rules and regulations which specify with some clarity  
12      what Watermaster staff is supposed to do. So the staff  
13      and the advisory committee and the Board have essentially  
14      followed a path of distributing the information, running  
15      it through the various committees. These rules and  
16      regulations would require more in the form of notice,  
17      clearly defined notice, clearly defined process, clearly  
18      defined summary, analysis, and ultimately a staff report  
19      before Watermaster would act and existing process and --  
20      wouldn't be inconsistent with existing process. It just  
21      hasn't been done.

22              MR. HILL: In 10.17(b), I believe, that has  
23      that.

24              MS. SCHNEIDER: You're pretty much answered my  
25      main follow-up question. I don't know what 10.17(b) is.

1 MS. STEWART: . . . shall be considered at the  
2 first regularly scheduled meeting of the advisory  
3 committee following the expiration of the contest period.  
4 That's what it says here.

5 MS. SCHNEIDER: My follow-up question was, going  
6 back to the items in the February 15th agenda package, it  
7 seemed that the Watermaster approval was based on the  
8 presumption of no harm and no one had brought up an issue  
9 with whatever those transactions were. And my question  
10 was, if you were trying to follow these regs, where was  
11 the Watermaster report contemplated in Section 10.10? I  
12 think the answer I just heard was it isn't there. It  
13 certainly means more than the conclusionary paragraph  
14 relying solely on a presumption. And is that correct,  
15 Scott?

16 MR. SLATER: Yeah. It is correct to say that  
17 Watermaster will not operate on the bare presumption  
18 alone, that the bare presumption -- that the presumption  
19 itself must be supplemented by an application which  
20 satisfies the criteria set forth in the application,  
21 proper notice, proper staff summary and analysis, and at  
22 a minimum before the action is taken, having been  
23 processed through the pool committees and the staff  
24 report which may include reference to the presumption and  
25 may impact the decision but it wouldn't be a fair

1 presumption, which is what we've been operating under.

2 MS. SCHNEIDER: The presumption doesn't replace  
3 the 10.10 report by any means?

4 MR. SLATER: Correct.

5 MR. HILL: Just to clarify, I said a report, and  
6 I was referring to 10.17(d), not to what Gene said he  
7 thought I was referring to, which was 10.10. 10.17(d)  
8 does talk about a staff report.

9 MR. SLATER: There are again separate  
10 requirements. The notice and application is accompanied  
11 by a summary and analysis. That's to ensure that the  
12 world gets notice of what's happening. But before the  
13 Watermaster acts, there will be a staff report which is  
14 reflective of the matter that's before the advisory  
15 committee and the Board.

16 MS. SCHNEIDER: Thank you, Mr. Tanaka.

17 MR. SLATER: Should we now turn to the desalter  
18 component?

19 MS. SCHNEIDER: Yes.

20 MR. SLATER: The first half of our report was  
21 really one that I'm proud to say that we've applied  
22 effort and achieved or received some proof from our  
23 effort. The trilogy of our program since we came  
24 together last February for the first time really in this  
25 process was we wanted to have the OBMP and the Peace

1 Agreement put together. We needed to have the rules and  
2 regulations, and the last piece of this trilogy in my  
3 mind was the desalter agreements which were going to  
4 effectuate the intention of the parties and their  
5 risk-sharing.

6           We have been challenged by the fact that Western  
7 Municipal elected to condition its execution of the Peace  
8 Agreement by a resolution which created a list of  
9 concerns that it had that must be satisfied before it  
10 would rescind its resolution. Since its initial  
11 execution of the Peace Agreement in August, there have  
12 been several extensions by Western not rescinding its  
13 resolution but again extending its conditionality.

14           And the parties to that process, which is a more  
15 narrow group than all parties to the Judgment, have been  
16 working on trying to develop the necessary contractual  
17 agreements, whether they be a term sheet or more complete  
18 contracts between purchasers and sellers since at least  
19 August of last year. They have -- I stand before you  
20 today without a promise of a term sheet, and I think that  
21 there are several reasons for that, the first of which  
22 has been there is the ongoing distraction of doing other  
23 things including these rules and regulations. Other  
24 processes related to the Prop 13 funding. There has been  
25 an effort to garner some Met funds, so there are some

1 excuses, there are some pitfalls that were frankly  
2 unanticipated.

3           The project is being managed by IUA and by  
4 Western through the auspices of SAWPA, and it was SAWPA's  
5 decision to hire a consultant, bring him on board.  
6 Directions were given to develop facility plans and cost  
7 parameters that all of the parties sometime in, I guess,  
8 September or October decided were necessary before they  
9 would execute the type of commitment that Western was  
10 looking for to rescind its resolution.

11           So Western insisted on certain conditionality  
12 being satisfied. That in turn then required further  
13 development of the facilities plan and financial plan,  
14 and when those efforts were undertaken, they were  
15 misguided. And the effect of the initial round of the  
16 facilities plan was that the plans that the consultants  
17 came back with were not responsive to the parameters of  
18 the Peace Agreement or really what the parties wanted.  
19 So we lost several months.

20           The facilities plan was then run through several  
21 iterations, and finally we got a compatible list of  
22 approximately 10 alternatives. And that was generated in  
23 late January and in February.

24           Now I'm pleased to say that the facilities plan  
25 has really been narrowed. It was narrowed initially to



1 probably three alternatives, and as of yesterday  
2 afternoon I can report that all but one of the parties  
3 involved completely support alternative 10. And Dave  
4 Argo is here if you want to have a further description of  
5 what's involved in alternative 10. That would be all of  
6 the purchasers are wed now to alternative 10.

7           Western is not wed in the same way to  
8 alternative 10. It has said it is willing to go forward  
9 under the premise that alternative 10 satisfies the needs  
10 of the parties, but it wants to subject the alternative  
11 10 to some further analysis to make sure that there's not  
12 goldplating going on in that facilities plan. And  
13 secondly it, on its own, wants to keep alternative 9  
14 alive. Why? Because alternative 9 results in about  
15 5 1/2 million dollars less in capital expenditures.

16           The parties had identified a 75 million dollar  
17 target as the capital required to construct the desalter  
18 facilities as sort of the benchmark cap, and  
19 alternative 9 comes in at about 69 million and change.  
20 So it's simply a cheaper project. So Western has  
21 indicated that it wants to, on its own, without sending  
22 the thing out, anything out to further consulting, try to  
23 sit down and work with the parties to consider whether  
24 alternative 9 could be massaged and managed in a way to  
25 meet the parties' needs.

1           While they have made that statement and request,  
2 all of the purchasers collectively responded that they do  
3 not believe alternative 9 can satisfy the request because  
4 of its inability to deliver water on the terms, schedule,  
5 locations that the purchasers required and as to be made  
6 consistent with the Peace Agreement

7           One of the primary challenges relates to a  
8 phasing for the city of Chino in terms of when it would  
9 take deliveries and then, as I'll describe in a second,  
10 that creates layering problems and party problems for the  
11 State of California about their ability to participate.

12           So all the parties other than Western believe  
13 that alternative 10 is the way to go. Western says  
14 provisionally okay but we're reserving our right to work  
15 out Article 9.

16           Once the facilities plan is understood in that  
17 context, the question of financing, what are the  
18 financial consequences and do they meet the parameters  
19 negotiated in the Peace Agreement. The answer to that,  
20 at least to this point in time, having gone through  
21 several iterations by Smith Barney, cost accounting, peer  
22 review is that alternative 10 does meet the specs and  
23 requirements of the Peace Agreement, and that means that  
24 the product price will be less than the cap of 375 as  
25 adjusted.

1           So in my view -- again in my own view as general  
2 counsel and in providing the services as a facility date,  
3 not the opinion of the Board or the advisory committee,  
4 but in my independent view, the bases -- I'm sorry -- the  
5 impediments that were identified to coming to a term  
6 sheet in the contract were facilities plan and price.  
7 Both of those impediments seem now in my view to be  
8 overcome. And it is a question primarily of risk sharing  
9 and whether the initial group of sellers is willing to  
10 abide by their early commitment regarding the price  
11 structure or whether or not there will be some  
12 reallocation of risks among -- on the seller's side.

13           That has led, I think, some of the parties to  
14 consider for example, whether Western would revisit the  
15 potential of overs and unders with regard to the 375,  
16 assume greater responsibility and back out, or limit  
17 Western's role. And to the extreme there has been a  
18 suggestion that Western itself might need to remove  
19 itself from the process entirely and have its option, if  
20 you will, putted to other parties who would then step up  
21 and assume its role on a go-forward basis.

22           So in my view we're where we need to be for all  
23 the things to converge and the contracts to be let, and  
24 I'm very disappointed to see that there's no  
25 representative from Western even here today, given that

1 it's their resolution. But I do note that Jean is here  
2 from the Inland Empire and the purchasers group.

3           We had one other issue, which I want to protect  
4 the State's position. I'm sure Marilyn's also ready to  
5 indicate that. We had some question about who the proper  
6 parties were going to be to this round of agreements.  
7 And we have, it seems to me, a pathway to resolve that.  
8 The State of California wanted to preserve its right to  
9 purchase desalted water. And it has agreed to layer, if  
10 you will, its request, to make its request through the  
11 City of Chino and the City of Norco as a customer so that  
12 they would receive the rights as a customer as opposed to  
13 an independent -- developing an independent relationship  
14 with Western and IUA, which would create a whole cadre of  
15 legal and engineering issues.

16           And the State has both graciously and wisely  
17 focused on the relationship with the other agencies as  
18 customers. And again Marilyn is here, but conditionally,  
19 provided that they can reach their own term sheet with  
20 the supplying agencies, they will subordinate and back  
21 out of the direct agreements for the desalters.

22           To be sure, there's legal work to be done on  
23 nuances and contract drafting but none that are beyond  
24 the realm of what's typically done in a commercial  
25 context. With that, I'm prepared to answer questions,

1 and I know that the parties involved in the process and  
2 consultants are here as well.

3 MS. SCHNEIDER: It sounds as if everyone is of  
4 one mind in this group.

5 MR. SLATER: That would be accurate.

6 MS. SCHNEIDER: How long will the SAWPA Prop 13  
7 funds be out there? Is there a risk of losing funding at  
8 all?

9 MR. SLATER: Well, I think Jean would like to  
10 answer that. Jean.

11 MR. CIHIGOYENETCHE: Last week, this week,  
12 Tuesday morning I was at SAWPA, and I posed that very  
13 question to Joe Grindstaff, the manager there. And he  
14 stated to me that he felt the 56 million dollars  
15 earmarked for this project was safe. The basis of my  
16 question was, what are our time parameters now, Joe.  
17 We're running up against it, as far as I was concerned.  
18 And he said I think we're safe. That money is there and  
19 it's earmarked for the project and we're not in danger of  
20 losing that. Nevertheless, I would suggest that we move  
21 with all haste. We are all on the same page now, I  
22 believe, with the exception of some -- one party. And we  
23 have been working diligently towards an end. We've  
24 expended a lot of money in the feasibility process.  
25 We looked at nine alternatives, ten

1 alternatives. Finally we rested on one, it appears, and  
2 we're moving forward. We have every intention of moving  
3 forward with all alacrity at this point in time.

4 MS. SCHNEIDER: Given that you just can't seem  
5 to get a definitive agreement from Western, at least yet,  
6 can you go ahead and put together the -- I would assume  
7 you would be moving toward desalter agreements and not  
8 just term sheets now. Can you move forward and create  
9 desalter agreements so at least there's something to look  
10 at?

11 MR. SLATER: I think the answer to that is yes,  
12 we can. We're really at a point of no return here.  
13 because I don't think we want two styles of agreements,  
14 one with Western participating and one without them. And  
15 there may be nuances related to backing out their risk or  
16 replacing their risk in the operation.

17 But the short answer is we've been reluctant to  
18 do that but because the decision point seems to be upon  
19 us about how we're going to deal with Western's  
20 participation or not, we ought to be able to move not  
21 only to term sheets, but quickly to form contracts.  
22 Quickly in a commercial context, 90 days to -- 30 to  
23 90 days before we could probably have really viable  
24 contracts. What do you think, Jean?

25 MR. CIHIGOYENETCHE: I would agree with that.

1 And maybe within that, I belong to the purchasers group,  
2 and Jurupa specifically has a meeting scheduled for this  
3 coming Monday; is that correct? And so I would suspect  
4 that we are going to determine who the parties to this  
5 agreement are going to be and what share of risk or  
6 allocation of risk is going to be. Once that's  
7 established, the agreement can come on the heels of that.  
8 That time frame is easily doable.

9 MR. SLATER: We have a report from the sellers  
10 next Wednesday. We have ongoing meetings. We're back to  
11 having ongoing meetings given the delays in the  
12 preparation of the facilities plan and the financial  
13 report. Parties believe that it is better to hold. And  
14 so we are again scheduled for a meeting next Wednesday at  
15 which one of the report items from the sellers group will  
16 be reallocating the risk or seeking replacement or  
17 putting, if you will, again, Western's operation to some  
18 other entity.

19 MS. SCHNEIDER: If this issue is resolved one  
20 way or another as to Western, either in or out, will  
21 Western in your view execute the Peace Agreement, remove  
22 its contingency?

23 MR. SLATER: I wish I could answer that honestly  
24 and accurately. To date I have been mystified so as  
25 to -- I understood their primary obligations to be

1 financial, and consequently if the risk was removed,  
2 there ought to be no reason that I'm aware of that would  
3 cause them to continue with their conditional evolution.  
4 I'm not aware of any issue that they've raised.

5 MS. SCHNEIDER: Would you like to add to that?

6 MR. CIHIGOYENETCHE: I have to echo Scott's  
7 sentiments. From my own personal view I don't know why  
8 they wouldn't execute the Peace Agreement but the most  
9 onus aspect of that agreement dealing with Western is the  
10 financial backstopping of the desalters. If it is agreed  
11 between the parties to eliminate that responsibility, I  
12 would suspect that they would sign it. But I certainly  
13 don't speak for them, nor do I profess to know their  
14 thought process.

15 MR. SLATER: It is true if one were going to  
16 check the recorded reasons for not executing, they are  
17 exclusively related to the financial consequences of the  
18 desalter. Thus it would have to be a newly identified  
19 cause or concern. And in all the dialogue we've had,  
20 they do support the Peace Agreement, they do support the  
21 OBMP. And it is -- I don't think I'm saying this out of  
22 school. They were concerned about the prior financial  
23 relationships in which they, to take a paraphrase, they  
24 may have taken a bath financially and do not want to  
25 repeat that experience. They're very sensitive about



1 that.

2 MS. SCHNEIDER: So you would be making some form  
3 of report to the Court.

4 MR. SLATER: Again, I think we're duty bound to  
5 do that. It's unfortunate we don't have a term sheet to  
6 report to you today, and the report to the Court would be  
7 I think that the time has come. We have the facilities  
8 plan which in our -- in the view of all parties but one  
9 meets the objectives, the financial plan meets the  
10 objectives. And it is time for Western to choose.

11 MS. SCHNEIDER: Of course, the Court is going to  
12 be very concerned that this piece is still not worked  
13 out. And I think that when you make a presentation on  
14 the status on April 19th, that the Court is going to be  
15 looking for some way to make something happen here.  
16 Whether that's something like a court-supervised  
17 settlement conference, which none of you liked the idea  
18 of last time around, or something, I would think there  
19 would be extreme concern. So if it were possible even to  
20 create a term sheet by that time, that would be a great  
21 positive step. Well, thanks, Scott.

22 I think we should talk about the process from  
23 now until April 19th in terms of the rules and regs. I  
24 think -- I hope that it has been helpful in the past for  
25 the Special Referee to file a report and recommendation,

1 I think we call it, with the Court that is set around the  
2 outlines or identifies questions and concerns related to  
3 the rules and regulations and forms.

4           And I would like to try to do that by the week  
5 of the 19th of March. I've mentioned some fundamental  
6 concerns I have about the forms, for example, or what I  
7 felt was a gap on any description of accounting. You've  
8 answered many of my questions by saying that you were  
9 going to revise, clarify some of the specific language.  
10 I would -- I think that very close to the week of the  
11 19th, that is the deadline for filing the motion with the  
12 Court -- you have to do that, as I understand, 26 days  
13 before the hearing. So there's not a big amount of time.  
14 So I would hope that whatever tinkering, I would call it,  
15 slight redrafting for clarification purposes or whatever  
16 else you might decide as a result of this workshop needs  
17 to be done could be started and work done. I know  
18 everyone is quite tired of working on this document, but  
19 it's close. I in turn will write down whatever I have  
20 left that hasn't been addressed so that perhaps that can  
21 be of assistance.

22           I can see that having rules and regulations in  
23 place is going to be helpful. And I right now think it  
24 might be best to recommend to the Court that there be a  
25 provisional approval of the rules and regs and maybe have

1 a very short list of additional drafting on forms, for  
2 instance, if those can't be done by the time the motion  
3 has to be filed for the April 19th. So that there would  
4 be a subsequent hearing, I guess, on final approval of  
5 the rules and regs. But you would have a provisional  
6 approval and be able to operate under some rules and  
7 regs. That's something that I will think about and would  
8 appreciate any thoughts right now.

9 MR. SLATER: If I might, I think that we need  
10 desperately to have some further definition of the  
11 operative pursuant to the regs. The parties are  
12 reasonably comfortable with what we have, recognizing  
13 that it is maybe even Tom Frankenstein as opposed to  
14 smooth camel. And we need to do some reiterations and  
15 after working with the document, but we need to be better  
16 and have a set of rules and regulations that more closely  
17 match the Peace Agreement commitments and the OBMP  
18 challenges.

19 MS. SCHNEIDER: So is the concept of provisional  
20 approval with a very discrete list of additional tasks  
21 workable?

22 MR. SLATER: I would say it would be highly  
23 preferred to the alternative. I would encourage any  
24 comment from the parties. But I do think we need to get  
25 on with the rules so -- I'm just one voice.

1           MS. SCHNEIDER: I think it's extremely important  
2 that the main focus of your efforts now be able to move  
3 to the desalter agreements. I think that's key. There  
4 are at the same time some problems with these rules and  
5 regulations. They would be better if certain changes and  
6 additions are done. The concept would be to give you  
7 some breathing room but with a limited set of tasks  
8 following a provisional improvement so that you can  
9 really turn -- I understand that you have frequent and  
10 long and intense meetings. And I'd like those to be on  
11 the desalter agreements just so you can finish.

12           MR. SLATER: That is acceptable to Watermaster  
13 counsel, and I would make that recommendation to the  
14 Board so --

15           MR. McPETERS: How long, because there is so  
16 many meetings and so many pieces, you know, to work on,  
17 what sometimes seems like a long time really gets  
18 compressed. I agree we need -- we should adopt these  
19 rules, and I agree that we need to continue to work. But  
20 I didn't get a sense of how much time we had, in your  
21 view, to continue to work.

22           MS. SCHNEIDER: I don't have some predetermined  
23 date in mind. You have a process that's in May that's  
24 going to result in May 31. I don't know how time-  
25 consuming that's going to be. Is that a fairly

1 administrative process?

2 MS. STEWART: There are a number of those  
3 things that are still out there.

4 MS. SCHNEIDER: So probably July 1st. I think  
5 it's important not to go too long at the same time  
6 because you want to finish with this. I guess I'm  
7 mindful of the limited amount of time and energy everyone  
8 has.

9 MR. McPETERS: I am just trying to make a point,  
10 I guess, that the deadlines that are -- come up from time  
11 to time have not affected the commitment to do the work.  
12 The work goes on at full tilt. There is no slacking off  
13 when -- just because we have more time. It's just a very  
14 time-consuming task, very time-consuming. And July is  
15 better than June, August would be better than July. But  
16 whatever that deadline is, we can't work any more than  
17 what we're doing.

18 MS. SCHNEIDER: Well, maybe the Watermaster  
19 paper should make a recommendation on that. I think the  
20 structural approach makes sense to me. And I'm  
21 interested in your reaction to that.

22 MR. SLATER: We can run down the date  
23 considering all the items that are left. Traci's  
24 coaching me that we might be able to get it done by  
25 March 19 -- or April 19.

1 MS. STEWART: April 19.

2 MR. SLATER: She has more faith in our ability  
3 to move. I do take into account that there are other  
4 things that Watermaster staff and general counsel and the  
5 parties are going to be focused on. So maybe we should  
6 do a little time planning thing where all the measures  
7 are and come up with a realistic date that we can meet.  
8 We can do that in the papers.

9 MS. SCHNEIDER: I just say it would be more  
10 progress to have a term sheet by April 19 and final minor  
11 variations in the rules.

12 MR. SLATER: I don't see any party objecting to  
13 the structural proposal.

14 MS. SCHNEIDER: I appreciate your comments that  
15 this is an iterative process. There is just so much  
16 energy. And except for today's report on Western, it  
17 does seem that the pieces are coming together and it's  
18 pretty clear what has to be done. I do believe it's  
19 terribly difficult work and you ought to be continuously  
20 congratulated on continuing these efforts. I don't think  
21 you're doing it 'cause the deadline's hanging over your  
22 head. I think you're working full tilt. I hope you can  
23 sustain that level of energy.

24 I appreciate your providing me with this  
25 briefing today and do enjoy the occasional chance to ask

1 questions and get answers. I don't have an opportunity  
2 to sit in on your discussions. It wasn't as much in code  
3 this time as it was for the Peace Agreement so I'm doing  
4 better. I'm moving up your learning curve. But anyway,  
5 thank you very much.

6 MR. SCALMANINI: Western notwithstanding, does  
7 the, I'll call it, engineering and predesign work  
8 associated with alternative 10 continue forward?

9 MR. SLATER: I think that's the answer, yes. So  
10 it's just -- if one viewed this in the commercial  
11 context, there is the developer of the idea who's created  
12 this project, spent the money, and so on to getting it to  
13 place Y along the pathway. And now it would be up to  
14 somebody to come in, step in and take it over for the  
15 rest of the way. That would be my understanding. Now,  
16 if Western's going to have some conditionality associated  
17 with that, I would suspect, but that needs to be  
18 explored.

19 Okay. Well, on behalf of Watermaster and the  
20 parties, we thank you for the opportunity to explain  
21 this, and we look forward to your report.

22 (The proceedings concluded at 1:18 p.m.)

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REPORTER'S CERTIFICATE

I, Winifred S. Krall, a certified shorthand reporter licensed by the State of California, hereby certify:

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

That this typewritten transcript is a true record of the foregoing oral proceedings.

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

Witness my hand the 15th day of March, 2001.

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



