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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT NO. S-32

HON. JOHN P. WADE, JUDGE

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

NO. RCVRS 51010

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

August 11, 2009

APPEARANCES:

(See next page)

REPORTED BY:

BETTY J. KELLEY, C.S.R.
Official Reporter, C-3981

COPY

1 SAN BERNARDINO.

2 CALIFORNIA TUESDAY, AUGUST 11, 2009

3 A.M. SESSION

4 DEPARTMENT S-32 HON. JOHN P. WADE, JUDGE

5 (Betty Kelley, CSR, Official Reporter.)

6

7

THE COURT: Good morning, ladies and gentlemen.

8

Counsel wish to give their appearances, please

9

MR. FIFE: Good morning, your Honor. Michael

10

Fife on behalf of Chino Basin Watermaster.

11

MR. ERICKSON: Good morning, your Honor. Jim

12

Erickson on behalf of City of Chino.

13

MR. LEE: Good morning, your Honor. Steven Lee

14

of Reid & Helter on behalf of the Agricultural Pool of

15

the Chino Basin.

16

MS. WILLIS: Jill Willis on behalf of Cucamonga

17

Valley Water District.

18

MR. KENNEDY: Steve Kennedy on behalf of Three

19

Valleys Municipal Water District.

20

MS. TRAN: Tram Tran on behalf of Monte Vista

21

Water District.

22

MR. COTTI: John Cotti for the City of Chino

23

Hills.

24

MS. NOVAK: Jennifer Novak, Deputy Attorney

25

General, for the State of California and Department of

26

Corrections.

1 THE COURT: All right. The first order of
2 business, before we get on with the presentation, is
3 Watermaster's motion for the Court to approve the
4 template storage and recovery agreement, which is an
5 outline sort of proposed agreement that can be filled in
6 later after this auction situation takes place.

7 MR. Fife, anything you want to add to this?

8 MR. FIFE: Nothing to add, your Honor. I just
9 wanted to call your attention to the fact that we did
10 submit a revised proposed order last Tuesday. This was
11 the result of some further negotiations between the
12 parties. We know of no objection at this point by any
13 party to the proposed order and I'm happy to answer any
14 questions you might have.

15 THE COURT: The only thing that arose -- and
16 apparently there are no objections, it all having gone
17 through this process -- but there were comments by
18 someone and I forgot to make a note as to who it was.
19 who filed some comments?

20 MR. FIFE: Those comments were by the
21 agricultural pool, represented by Mr. Lee, who is in the
22 courtroom today.

23 THE COURT: I remember that. Did you consider
24 those comments in drafting the proposed amended
25 agreement?

26 MR. FIFE: We did, your Honor. And we worked

1 closely with the agricultural pool. And my understanding
2 is with the revisions as they are in the final revised
3 order, the agricultural pool has no objections to the
4 proposed order.

5 THE COURT: Mr. Lee, would you concur in that?

6 MR. LEE: That's correct, your Honor. I would
7 agree with the statements.

8 THE COURT: Thank you for that. All right.
9 Then the motion is approved.

10 MR. FIFE: Thank you, your Honor.

11 THE COURT: All right. would you call the first
12 witness, sir, if you wish.

13 MR. FIFE: Yes, your Honor. Before we start
14 with that testimony, I wanted to just make a couple very
15 brief comments. We would like to thank you for your
16 months supervising the case. I think everybody has been
17 very appreciative of your oversight of the case.

18 There are a few procedural issues that would be
19 helpful to watermaster and the parties if we covered, and
20 I think the appropriate place to discuss those would
21 probably be after the testimony this morning. But I
22 wanted to briefly just highlight them so that maybe you
23 could give them some thought as we go through the
24 testimony this morning.

25 One of the situations that we encountered prior
26 to you being assigned to the case, the transition from

1 the previous judge to you, we went through a period of a
2 few months where there were some objections to judges who
3 had been assigned and we had a few months where the case
4 essentially had no judge. It's very difficult right now
5 for Watermaster to be in that situation because we are
6 making a lot of progress in implementing the OBMP. And
7 many of the items, such as the one you've just approved,
8 require Court approval in order to allow us to move
9 forward, so it's very difficult to not have a judge.

10 And so we were thinking that one of the things
11 that might facilitate the transition would be if we had a
12 case management order that articulated where the case is
13 now and gave some guidance for the interim period between
14 now and when we have a new judge in the event that that's
15 perhaps a lengthy period. I would propose that we would
16 draft a proposed order, circulate it amongst the the
17 parties and perhaps submit it to you sometime in
18 September and perhaps schedule a hearing to consider it.
19 Again, this is just an idea and we can discuss it after
20 the testimony this morning.

21 The other idea that we would like to discuss
22 with you is whether there could be some sort of
23 facilitation or perhaps liaison role of you between us,
24 Watermaster, and the Presiding Judge to perhaps allow
25 some input from the parties and Watermaster into who the
26 next judge might be. That might avoid some of the

1 inefficiencies that we found last time where a judge was
2 assigned and then objected to and then another judge was
3 assigned and objected to. If we were able to have some
4 input to the Presiding Judge, it might make things more
5 efficient.

6 So again, just an idea that we'd like to discuss
7 with you and see what kind of options might exist.

8 The third issue is that, again, anticipating
9 that there might be a space of time in which we don't
10 have a judge, we're trying to look at all the issues at
11 Watermaster right now and anticipate which ones might
12 need Court approval in the near future, perhaps in
13 October or November, and perhaps try to tee those up for
14 some sort of provisional approval or something like that
15 and maybe come to you with a request for an order
16 shortening time and again have a short hearing in
17 September, maybe, to deal with those. So that's the
18 third issue we'd like to discuss with you after the
19 testimony this morning.

20 THE COURT: All right. We'll go through that
21 then.

22 MR. FIFE: So with that, we'll call Mr. Malone
23 to the stand. Again, testimony this morning will be
24 about program element seven, eight and nine. Mr. Malone
25 will handle program element seven, then we'll call
26 Mr. Manning and Miss Rojo, both Watermaster staff, who

1 together will cover program elements eight and nine.

2 THE COURT ATTENDANT: If you'll face the clerk
3 and raise your right hand, please.

4 THE CLERK: Do you solemnly state that the
5 evidence you shall give in the matter now pending before
6 this Court shall be the truth, the whole truth, and
7 nothing but the truth, so help you God?

8 THE WITNESS: Yes, I do.

9 THE CLERK: Thank you.

10 THE COURT ATTENDANT: Please be seated.

11 THE WITNESS: May I stand?

12 THE COURT: If you wish.

13 THE COURT ATTENDANT: Will you state and spell
14 your name for the record, please.

15 THE WITNESS: Andrew Malone, M-a-l-o-n-e.

16 THE WITNESS: Good morning, your Honor.

17 THE COURT: Good morning, sir.

18 THE WITNESS: What I have prepared for you today
19 is a rather short presentation on program element seven,
20 which is the Salt Management Program in the OBMP. And
21 these are the basic steps I'm going to take you through
22 today is first of all, talk a little bit about some of
23 the physics behind the salinity problem, which is not
24 unique to the Chino Basin, talk a little bit about the
25 physics, talk about TDS, and I'm going to use TDS a lot.
26 And what it really means is salt. It stands for total

1 dissolved solids. When we get analytical reports back
2 from the lab, that's what they say. TDS in milligrams
3 per liter are the units, and we'll talk about the current
4 state of the basin with respect to TDS.

5 So what does the basin look like with respect to
6 salt in the ground water? And then we'll talk about salt
7 management in the OBMP, which is this program element
8 seven, and we'll lead you through some of the elements
9 within PE/7.

10 And then lastly, we're going to talk about the
11 maximum benefit argument that Chino Basin Watermaster
12 made to the State of California, the Regional Water
13 Quality Control Board, which is the main regulatory
14 agency that's responsible for managing salt in the
15 watershed, and how we made this argument. And actually
16 the OBMP, this program element was incorporated into the
17 basin plan and we'll talk about that at the end of the
18 presentation.

19 So going into just the basic physics here, what
20 this is is this is called a free body diagram. And
21 whenever we try to create a computer simulation model of
22 how salt works in the ground water and surface water
23 system, we generate something like this and break it down
24 into its basic components. And I'm not going to ask you
25 to understand everything here but I just wanted to show
26 you this.

1 What we do is we look at how water and the salt
2 in the water is routed through the surface water system.
3 And a lot of that water is used for irrigation in
4 agricultural or in irrigation for urban environments.
5 And what happens when you irrigate is that the plants use
6 some of the water, they don't really use too much of the
7 salt, and the rest of the water returns through the
8 ground surface, through the unsaturated zone and down
9 ultimately into the saturated zone, which is our aquifer.
10 But it returns at a more highly concentrated form because
11 the plants use up the water.

12 So what happens is then we pump the water back
13 out and reapply it to the land surface, and that process
14 can turn into a positive feedback loop and continue to
15 concentrate salts in the ground water basin. And that's
16 particularly a problem in the Santa Ana River Watershed
17 where a lot of our ground water basins are closed
18 systems. There's not a whole lot of flushing that occurs
19 in the ground water system because we have mountains and
20 falls that provide barriers and make our ground water
21 basins more or less like cereal bowls. And so it's a
22 problem. It's a pernicious problem, and it occurs
23 wherever you pump water and use it on the ground surface
24 and we have returns to the system.

25 Looking at what the basin looks like today, what
26 you're seeing here is a map of the Chino Basin. And what

1 each one of these dots represents is TDS concentration at
2 a well. So the water was sampled from the well and sent
3 to the laboratory and we got a result back. And what the
4 different symbology for each well means is what the
5 concentration is.

6 And the small blue dots and the green dots,
7 that's pretty good quality water. It's less than 500
8 milligrams per liter. You can pump that water and with
9 just a little bit of disinfection, you can actually serve
10 it for drinking water purposes. So the beneficial use
11 for drinking water is available up here in the northern
12 part of the basin.

13 As you recall from past presentations, ground
14 water flows from the north to the south, so as it's being
15 pumped and reapplied to the land surface and makes its
16 way down here to the bottom end of the basin where we
17 have a lot of agricultural land uses here that are
18 contributing salt to the system, the water quality gets
19 worse.

20 And when you get down here, the yellow dots
21 represent everything from 500 to a thousand milligrams
22 per liter. At a thousand milligrams per liter, you've
23 lost the beneficial use for drinking water. So anything
24 in orange or red, you cannot use for drinking water
25 unless you treat it and take the salt out or you blend it
26 with some other low TDS source water.

1 I told you before that we do these model
2 projections of what the TDS is going to do in our ground
3 water basin. What we're looking at here is a TDS
4 projection, 100-year of TDS projection from the year 2000
5 to 2100. And you can see that we started about 320
6 milligrams per liter and we move out, it's deflating in
7 large part due to this feedback cycle I was describing.

8 And we show out here at 2100 that we're at about
9 430 milligrams per liter. And what's built in, some of
10 the assumptions that are built into this are that we're
11 doing a lot of salt management strategies that I'm going
12 to be talking about in the OBMP where we're bringing on
13 desalters and we're exporting salt, we're bringing in low
14 TDS, other sources of low TDS water and recharging the
15 aquifer.

16 This is a graphic that shows you the entire
17 Santa Ana River Watershed. The Chino Basin is right in
18 this area here. And what we're showing are TDS
19 concentrations in all the different ground water basins
20 across the water shed. The really dark colored ones are
21 very high TDS, have a very high TDS concentration, and
22 the light colored ones that are up near the mountain
23 fronts and get a lot of storm water recharge, they're the
24 lighter colored, they're the lower TDS concentrated
25 basins. So I am showing you this here just to make the
26 point that there are a lot of basins besides the Chino

1 Basin where we have high TDS problems that we're dealing
2 with as a watershed. It's not just constrained to what's
3 going on here in the Chino Basin.

4 So these are some of the main elements in
5 program element seven of the OBMP. First is to minimize
6 TDS loading from fertilizers and dairy waste. As you
7 know, we have a big agricultural land use in the basin.
8 And an example of this for dairy waste would be to -- you
9 know, they have to do something with the manure and to
10 apply it to the ground at agronomic rates so you're not
11 applying so much that a lot of that salt is leaching out
12 of the dairy waste and making its way to the ground water
13 basin.

14 The regional board has a new permit for dairies.
15 It's not brand new. It's been several years now. But
16 they have a lot of these requirements for how the dairies
17 deal with their wastes.

18 And just as urban land uses are taking over the
19 agricultural land uses, this is happening just naturally.

20 Building desalters in the southern part of the
21 basin. We have talked about this in past presentations
22 to you. There are a lot of wells down there that are
23 pumping the high TDS water in the southern end of the
24 basin and using reverse osmosis to take the salt out of
25 the water and then they export the salt out of the basin
26 through a brine pipeline. And then what's left over, the

1 product water is very low TDS water and it can be used
2 for drinking water uses.

3 So that's a big part of the salt management
4 program for the basin in the OBMP.

5 To maximize storm water capture and recharge.
6 Storm water is typically very low in TDS. And so we have
7 projects where we're trying to maximize the storm water
8 capture and recharge.

9 Water -- Imported water from the state water
10 project is very low in TDS, usually around 250 to 300.
11 So utilizing that water for artificial recharge is a part
12 of the OBMP.

13 And then this part down here, to minimize TDS in
14 recycled water. An example of that would be to try to
15 get the industrial discharges of high TDS waste water out
16 of the sewer system and put it into these brine lines and
17 take it out of the basin. That would be an example of
18 something that IEUA is working on now.

19 This is a map of the whole watershed again, and
20 the Chino Basin is right here. And this is showing some
21 of our salt management strategies. What you're seeing in
22 the small red -- yellow squares are the desalters, the
23 Chino I and Chino II Desalter facilities, and our wells
24 are generally down in this area pumping water that goes
25 to these desalter facilities that are again using reverse
26 osmosis and nitrate removal facilities to reduce the salt

1 content of the water and then the brine gets piped into
2 these brine lines that come down to the ocean, come down
3 to a treatment plant down here, gets treated and then
4 ultimately discharged to the ocean. So these brine lines
5 are a way of exporting salt out of the basin.

6 This right here is a nonreclaimable line that's
7 taking waste water out of the basin, but this is mostly
8 industrial discharges that is taking those brines out of
9 the basin into L.A. County where they're treated and then
10 discharged.

11 Can you go back.

12 These little blue splotches right here are the
13 recharge basins, the artificial recharge basins where
14 we're trying to maximize the storm water capture in the
15 upper part of our basin. And we also bring in low TDS
16 imported water and we discharge it to these basins here,
17 too. Now, we're starting to do recycled water, recharge
18 of some of these basins for water supply reliability and
19 to augment our supplemental water supplies. Recycled
20 water quality is typically higher in TDS because it's
21 already gone through a cycle and added a mineral
22 increment to the concentration of the water. And so we
23 have to blend with other low TDS sources in order to
24 comply with the basin plan. I'll be talking a little bit
25 more about that later.

26 This diagram right here is a pretty good simple

1 graphic that explains the OBMP in a lot of different
2 ways. So what this is supposed to represent is the Chino
3 Basin from the mountains down to the Santa Ana River, and
4 we're splicing through it here to take a look at what the
5 system looks like.

6 And I think the main thing from a salt
7 management perspective to note here is that we have in
8 this upper part of the basin, where we're getting storm
9 water recharge to the system, that we have very high
10 quality ground water, low TDS ground water that you saw
11 on that previous map, and then as you move down toward
12 the southern end of the basin, you get lesser quality
13 water, higher TDS, higher nitrate water. And this is
14 where we put our desalter facilities. And we pump this
15 ground water here, and then this is our desalter where
16 it's treated and the brine gets exported out the brine
17 line. And then we use that water for drinking water down
18 here in the southern end of the basin.

19 What you're also seeing here is the Santa Ana
20 River, which is a source of recharge to the basin. So
21 what these desalters do is that they lower the ground
22 water levels here and enhance the recharge from the Santa
23 Ana River into the basin so it's a yield enhancement
24 project here to have these desalters here, too. So not
25 only are we addressing a water quality problem, but we're
26 also addressing a water supply problem, too. So if we

1 didn't have these desalters here -- and this is a major
2 point -- if we didn't have them here, these agricultural
3 uses that used to pump a lot of ground water here,
4 they're starting to move out and we get less pumping and
5 this ground water level could creep back up and actually
6 so high that the ground water system could feed the
7 surface water system here in the Santa Ana River and
8 start getting some of this lower quality water into the
9 Santa Ana River, which flows down to Orange County and is
10 used for drinking water down there.

11 So we're also, through this program, we're
12 protecting downstream beneficial uses by putting these
13 desalters in here and lowering water levels to the point
14 where we're protecting the quality of water in the Santa
15 Ana River.

16 Can you go back. I'm not quite finished yet.

17 The other thing that you see up here in the
18 northern part of the basin are these artificial recharge
19 basins where we've done a lot of improvements to help
20 capture storm water recharge. We have an imported water
21 pipeline coming in here, and then you're seeing your
22 waste water treatment plant here discharging some of its
23 recycled water into these basins for artificial recharge
24 to the system.

25 We also have a lot of our municipal wells up
26 here in the northern end of the basin that are

1 purposefully trying to draw down water levels here right
2 now. This is called basin reoperation where we're trying
3 to draw down water levels so we decrease this hydraulic
4 gradient towards this area so we can have what's called
5 hydraulic control here.

6 This whole concept of bringing water levels down
7 is called hydraulic control of our basin, and it's a term
8 that we use all the time. So bringing water levels down
9 throughout the entire basin helps us achieve hydraulic
10 control down here at the southern end of the basin and it
11 also frees up some storage space here to operate storage
12 and recovery programs in the main part of the basin.

13 So in a lot of ways this graphic here explains a
14 lot of the OBMP not only from a water quality perspective
15 but from a water supply perspective.

16 So how did the OBMP get incorporated into the
17 basin plan is what I want to talk about next.

18 The basin plan is the main regulatory document
19 that the regional board uses to manage salt and water
20 quality in general throughout the watershed. And from
21 time to time they amend the basin plan with new
22 information. And in 2004 it was a major basin plan
23 amendment that did a lot of these things right here that
24 I'll step through.

25 First of all, it established basin boundaries,
26 new ground water basin boundaries based on the most

1 up-to-date hydrogeologic information, and the OBMP had
2 done a lot of that work. So the basin plan just took
3 what the OBMP had for its new management zones and
4 brought them into the basin plan.

5 It also established new water quality objectives
6 for each one of these new management zones. And what it
7 did was it based it on what water quality was like in the
8 Chino Basin in 1968 . And that was consistent with the
9 state's antidegradation policy, that from 1968 forward
10 we're supposed to not degrade our basins. So that's what
11 became our new water quality objective was what was water
12 quality like in 1968.

13 So we went through that process of
14 characterizing it, looking at the historical data and
15 characterizing what the basin looked like from a TDS
16 perspective in 1968, and that became our water quality
17 objective that the regional board would then regulate to
18 from that point forward.

19 We also looked at current ambient water quality.
20 What's the current TDS concentration in the basin? And
21 the reason why that's important to the regional board is
22 they compare current ambient to the water quality
23 objectives. And this gives them their finding of what's
24 called assimilative capacity.

25 And can you go to the next?

26 What happened in the Chino Basin is that these

1 were the water quality objectives that we came up for in
2 1968. 293, 255, 262 for the main part of the basin.
3 Very good quality water. Better quality in fact than
4 imported water a lot of times and definitely better than
5 recycled water quality. So our current ambient water
6 quality of the basin had degraded a little bit and had
7 gone up into the 320 range, somewhere around in there.

8 So what the regional board said is you have no
9 assimilative capacity. When current ambient quality is
10 worse than your water quality objectives, no assimilative
11 capacity. And that really takes away a lot of
12 flexibility the regional board has on how they regulate
13 it. When you have no assimilative capacity, the regional
14 board cannot permit any discharges to the ground water
15 basin at TDS concentrations higher than the water quality
16 objectives. You just simply can't do it without some
17 sort of offset program, some sort of mitigation. So that
18 was a big problem for the basin stakeholders here because
19 they had all these plans to do recycled water recharge
20 and imported water recharge. It was a big part of the
21 OBMP. So this became a major issue that we had to deal
22 with and negotiate with the regional board.

23 And that brings us to this maximum benefit
24 concept. So I just talked in here -- This is the other
25 slide that describes how the regional board uses these
26 findings of the assimilative capacity in order to

1 regulate discharges to the ground water basin.

2 So what we did -- How could we use recycled
3 water for a recharge source here? What we did is we went
4 back to the state's antidegradation policy. 6816 is the
5 state's antidegradation policy, and we also looked in the
6 California water Codes related to setting water quality
7 objectives and what we learned was this. That water
8 quality objectives can be changed and the way we want
9 them changed is we want them higher. They can be changed
10 if you can show these two things here. That, if by
11 changing them, that you will not unreasonably affect your
12 beneficial uses.

13 And the most sensitive beneficial use for us is
14 drinking water. So if we change the water quality
15 objectives, will we affect beneficial uses negatively?
16 We have to show that we'll not.

17 The second one here is that by changing these
18 objectives, it's consistent with the maximum benefit to
19 the people of the state. So we had to show these two
20 things here.

21 And with maximum benefit -- I'll show you the
22 next slide here -- we went back to the OBMP and we looked
23 at all these things we were doing here. Building
24 desalter facilities, so we're removing salt and making a
25 source of water that really wasn't usable. Now we're
26 making it into a usable supply. Nitrate removal

1 facilities, the same thing.

2 Doing storage and recovery programs and storm
3 water capture programs and using recycled water for reuse
4 and for recharge. All these things were making us more
5 reliant on our own local water resources and less reliant
6 on imported water from the north, from the Delta or from
7 the Colorado River.

8 So it was clearly a benefit not only to the
9 basin stakeholders but also a benefit to people in
10 Northern California and to people in the Colorado River
11 watersheds and you could even include Mexico in that,
12 too. So there was international benefits to what we were
13 doing here to make ourselves more reliable on our local
14 water resources.

15 And then we were also establishing hydraulic
16 control of the ground water basin, again protecting
17 Orange County, protecting downstream beneficial uses
18 through these desalter facilities in particular.

19 So with all of this here, we could clearly
20 demonstrate that our activities were to the maximum
21 benefit to the people of the state and people outside of
22 the state even.

23 So the regional board bought into that argument
24 and said, "Yes, you have demonstrated maximum benefit.
25 Yeah, you can go on to the next one".

26 The next thing, beneficial uses in the basin.

1 Are we protecting beneficial uses in the basin? And I
2 showed you this chart here that showed that water quality
3 is degrading. But again, this 500-milligram-per-liter is
4 a limit that we don't want to exceed here because the
5 beneficial uses begin to be impacted at 500 and at a
6 thousand. That's where drinking water beneficial use
7 goes away.

8 So we were showing here that without doing our
9 recycled water projects, we were protecting beneficial
10 uses through all these desalter programs and storm water
11 recharge programs. So then the regional board wanted to
12 see what happens when you add the recycled water projects
13 to your simulation.

14 And what we showed here is this is with recycled
15 water. So without recycled water, with recycled water,
16 we show over about a hundred-year period that we maybe
17 have 30 to 40 milligrams per liter extra degradation but
18 we still don't impact beneficial uses negatively. So we
19 still protect our basin in beneficial uses. So this was
20 the second part that we were able to demonstrate to the
21 regional board as part of our maximum benefit argument.

22 The regional board is very happy with -- they
23 want people to do these forward projections, tell them
24 where water quality's going and then they will help us
25 out by raising our water quality objectives.

26 So this is what the regional board gave us is

1 they combined all three of those management zones into
2 one. This is where we do most of our recycled water
3 recharge. And they gave us a TDS objective of 420.
4 Again, remember the current ambient water quality is
5 around 320. So they gave us about a hundred milligrams
6 per liter of this assimilative capacity which then gave
7 us -- gave them and us more flexibility to comply when
8 we're doing recycled water recharge.

9 But when they did that, when they gave us that,
10 this maximum benefit water quality objective, strings are
11 attached to that, too, commitments to do certain projects
12 and requirements. They write those requirements and
13 projects into the basin plan. So that's how the OBMP
14 became incorporated into the basin plan, and those
15 commitments are now being watched by the Regional Water
16 Quality Control Board. And I'll talk about those
17 commitments now.

18 I think I've covered this, the benefits of doing
19 the maximum benefit.

20 The commitments are generally these. To
21 continue to do ongoing monitoring and analysis. The
22 regional board likes to see those projections, those
23 model projections but they also want to see the
24 monitoring data. They want to see if the models are
25 actually predicting it correctly. So there's a
26 commitment to continue to do ground water and surface

1 water monitoring in the basin plan.

2 Expansion of desalters. There's a certain
3 schedule and trigger points for as water quality
4 degrades, to bring on more desalting over time. So
5 expansion of the desalters are some commitments.

6 To improve the artificial recharge facilities so
7 we can bring in the storm water and the imported water,
8 low TDS sources. That was a commitment.

9 The blending of the recycled water. Yes, we can
10 bring in the recycled water, but we have to blend it with
11 low TDS storm water and imported water to get a certain
12 concentration at that 420 milligrams per liter.

13 To do some waste water improvements. Again,
14 trying to get the industrial discharges out of the sewer.
15 The IEUA right now has some legislation where we're
16 trying to get the self-regenerating water softeners
17 outlawed because those bring in a lot of high TDS water
18 into the sewer system. And so that's something that
19 they're trying to do.

20 And then this hydraulic control. This concept
21 of hydraulic control, not only to do it with the
22 desalters but to prove it with a monitoring program. So
23 we have a very comprehensive water level monitoring
24 program in the southern end of the basin that is required
25 by the regional board, and we report on it annually.

26 So I think from the Court's perspective, that

1 following these commitments is probably the most
2 important thing with regard to the salt management plan,
3 and you have the regional board also looking at these as
4 well.

5 I believe that's it. This model here, we're
6 calling it a model now because it's really the first time
7 that maximum -- this maximum benefit argument has been
8 made in the state, and there's been a couple of others
9 that have followed here in the watershed. But the Chino
10 Basin was really the first one to do it.

11 Salt management plans are something that the
12 state board wants everyone to do, every region to do
13 throughout the state. And they, in their recycled water
14 policy and the Little Hoover Commission Report right
15 here, they are calling out what we've done here in the
16 Chino Basin as an example that other regions should
17 follow. Especially making these maximum benefit
18 arguments and getting the stakeholders to commit to
19 doing, you know, good, smart salt management programs.

20 Unless you have any questions, that's all I
21 have.

22 THE COURT: No, that was a good presentation.
23 Thank you, sir.

24 THE WITNESS: Thank you.

25 THE COURT: Next person.

26 MR. FIFE: Our next witness will be Mr. Manning

1 about the storage program.

2 THE COURT ATTENDANT: would you stand here, face
3 the clerk and raise your right hand, please.

4 THE CLERK: Do you solemnly state that the
5 evidence you shall give in the matter now pending before
6 this Court shall be the truth, the whole truth, and
7 nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you.

10 THE COURT ATTENDANT: Are you going to be
11 standing?

12 THE WITNESS: I'm going to stand.

13 THE COURT ATTENDANT: would you state and spell
14 your name for the record, please.

15 THE WITNESS: Kenneth Manning, K-e-n-n-e-t-h,
16 M-a-n-n-i-n-g. I'm the CEO of the Chino Basin
17 Watermaster.

18 Your Honor, Sheri Rojo, the Assistant General
19 Manager and CFO at Watermaster, and I are going to kind
20 of tag team program elements eight and nine.

21 As you can tell, the storage and recovery have
22 some overlap, so we felt that it made more sense if we
23 talked about them in general and then Sheri will follow
24 up with some more details about how we actually do manage
25 to keep track of all of the storage programs within the
26 Chino Basin.

1 Going back to some of the discussions that we've
2 had in previous presentations to the Court, I wanted to
3 remind the Court that Chino Basin in its judgment -- in
4 the evolution of judgments in 1978, Chino -- the Chino
5 judgment was in fact very unique. It recognized and
6 implemented some strategies that had not been implemented
7 in previous judgments.

8 It gave watermaster planning oversight in the
9 Chino Basin, something that was unique to that judgment
10 in 1978.

11 Since then, other judgments have implemented
12 that, seeing that it worked out very well within our
13 basin.

14 Older judgments did not contemplate storage. So
15 if you go back to judgments prior to 1978, many of them
16 are still struggling today with trying to recreate what
17 we have implemented within our judgment. So storage
18 programs within our judgment were unique in 1978 and are
19 still in the way we implement them, still very much
20 unique.

21 The other thing that the judgment did provide
22 for as it relates to storage was it provided for
23 watermaster keeping track of loss as it relates to
24 storage so that we kept a real time credit and debit on
25 what was going on within our basin. So there were no
26 artificial numbers created based upon no losses when in

1 fact they were being created.

2 So -- The other key elements within the judgment
3 that we want to point out is that it consolidated control
4 of storage underneath Watermaster. This provided a
5 mechanism by which there was control. The individual
6 parties to the basin could not be competing with each
7 other. They had to go through Watermaster, and approval
8 had to be created.

9 This required written authority by the
10 Watermaster, as it is stated within the judgment. So
11 Watermaster has a document that we have, and everyone of
12 the parties who have storage agreements have to go
13 through and get those approved through Watermaster.
14 Watermaster must make a finding of no material physical
15 injury to the parties or to the basin.

16 Now, that doesn't mean that there is no
17 repercussions to how you extract the water, how you put
18 water in. But what it means is you must talk with each
19 other and discuss how you're going to mitigate any
20 identifiable kinds of problems that were created based
21 upon the way you extract water in or put water into
22 storage.

23 Let me distinguish between storage and recovery
24 versus local storage. First of all, local storage was
25 created in the judgment. The judgment created this
26 program where parties to the basin could actually use

1 water or store water depending upon where they were going
2 to be getting water. we'll get into that in a little
3 bit.

4 Also what that did it also offsets
5 overproduction. So if a producer in one year uses the
6 ground water more than they have rights to, they can use
7 water and storage to offset that production.

8 It also provides revenue for parties. So if a
9 party doesn't have enough water in storage, they can sell
10 it back and forth and create revenue. That revenue goes
11 to the party to use for that infrastructure.

12 So let's say if Ontario has water in storage and
13 they sell it to Fontana, they create revenue that allows
14 them to build additional wells or put in pipes or put in
15 the kinds of infrastructure they need to serve their
16 citizenry. So it provides internal mechanisms with which
17 they can generate the revenue.

18 It also provides options so in times of drought
19 we can draw upon our storage accounts or we can use other
20 water from other sources. Sometimes our basin parties
21 have access to other basins, the Cucamonga Basin or other
22 basins they might be able to draw water from or they have
23 imported water capability, treated water that's delivered
24 from the Metropolitan Water District or in some cases
25 they'll be using recycled water to use as an offset to
26 some of their potable water needs, and that's becoming

1 available now.

2 Storage and recovery programs were created
3 through the Peace Agreement. So in the year February,
4 2000, the parties recognized that there was a need to
5 bring maybe -- that our storage capability within the
6 Chino Basin could be a regional asset that could be used
7 by others. And by doing so, we could also then have some
8 benefit to the Chino Basin that could be realized in
9 general by all of the parties.

10 It provided a mechanism to utilize stranded
11 water. I'll explain a little bit about how some of the
12 stranded water is going to be utilized in a few minutes,
13 but it allows in this case where water is accumulating
14 and there is no use for it, that we can redistribute that
15 water out and use it in a storage and recovery program.

16 In this particular case, that creates revenue
17 for infrastructure for everybody. So if Watermaster is
18 creating the infrastructure for the use by everybody in
19 the basin, it allows other mechanisms by which that can
20 be done.

21 In the OBMP implementation plan, they were very
22 specific in terms of what Watermaster was -- what our
23 charge was. It was to develop a storage and recovery
24 program that will benefit all the parties in the basin
25 and assure that basin water and storage capacities are
26 put to maximum beneficial use while causing no material

1 physical injury to any producer or to the basin. That's
2 the definition by which watermaster is operating storage
3 and recovery programs.

4 Current storage and recovery programs we have
5 within the basin. We currently have within the
6 Metropolitan Water District a storage and recovery
7 program where they're storing a hundred thousand acre
8 feet of water in the basin, and we put -- they bring
9 water and put it in the basin.

10 It can be done in two different ways, either
11 what's called in lieu -- it will be explained a little
12 bit later -- or in wet water. They can actually deliver
13 water, put it into the ground and it goes into the
14 account. Water has gone in in their case using both
15 different methods. And we have that hundred thousand
16 acre-foot agreement in place right now and as a matter of
17 fact during this drought condition, Metropolitan Water
18 District is drawing 33,000 acre foot per year from their
19 storage account and utilizing it in the basin.

20 And so our parties are utilizing the ground
21 water instead of taking Metropolitan water, which makes
22 that water then available to other places like San Diego
23 or San Fernando Valley, et cetera.

24 We also have a cyclic storage agreement with MWD
25 of 10,000 acre foot. Even though that's with the same
26 agency, Metropolitan Water District, it's different in

1 that in Metropolitan's dry year yield account, decisions
2 about who puts water in the basin and when it can be
3 taken out, Met decides when water can be taken out of
4 that account and used.

5 In the cyclic storage account, we make the
6 decision of when we're going to use it. So it's just a
7 reversal of the program, but it gives us latitude in
8 being able to take water. Currently that agreement has
9 zero water in it. The storage account is there but
10 there's no water in the account because we have taken all
11 that water out.

12 We are currently reviewing an expansion with the
13 Metropolitan Water District to expand the dry year yield
14 program to a 150,000 acre feet. So we have a current
15 operating of 100,000. They want to expand it to 150.
16 They think the program is working very well, and we're
17 now working with them in expanding that program.

18 We're also requesting the Court's approval, and
19 you gave that earlier this morning, for a storage and
20 recovery water auction, and that's approximately 40,000
21 acre feet we're talking about.

22 This brings us into the auction issue, the
23 questions in terms of water that we're talking about
24 being auctioned off. Some of the basic questions that we
25 are answering for people, what water is being auctioned?

26 In this particular case, it's what I referred to

1 earlier as stranded water. In the case of the overlying
2 non-ag parties, over a period of time, operations within
3 the Chino Basin by those parties has diminished. So
4 they're not pumping the amount of water that they have
5 rights to within the Chino Basin. They only have the
6 ability to trade that water internally within that pool.
7 So if Vulcan Materials wants to trade with Sunkist, for
8 instance, they could trade that within their group but
9 they couldn't trade it with producers.

10 So in this particular case, because the overall
11 use of that water is going down, we're getting stranded
12 water every year. We're getting additional water added
13 to a storage account which has no use. So we're having
14 approximately -- right now in that account is
15 approximately 40,000 acre feet of stranded water. What
16 the parties have done is they've decided that 10 percent
17 of that would be dedicated to desalter replenishment, so
18 approximately 4,000 acre feet. The other 90 percent
19 would be used in the particular auction.

20 The next question, who might buy the water? In
21 this particular case, we have identified three potential
22 groups of users who might be interested in buying the
23 water. One of them is in basin users. For instance, a
24 good example might be Fontana Water. They have no water
25 rights within the Chino Basin, but they pump from the
26 ground water. Every drop of water, virtually, they pump

1 has to be replenished. Access to this water could give
2 them an asset to draw from for production in the future.
3 So they would be a natural within-basin type user that
4 might be interested in the water. Others also.

5 Regional partners. The Metropolitan Water
6 District is always looking for new water. This would
7 give them 40,000 acre feet of new water plus a storage
8 account on top of the existing storage accounts that they
9 have where they could actually put more water.

10 Other regional partners might be western
11 Municipal water, even San Diego or Castaic Lake, other
12 places that are within the system that might be able to
13 use the shifting of water as the mechanism to use this
14 40,000 acre feet.

15 The actual molecules never leave the basin but
16 they use water that would have been delivered to our
17 basin in lieu of us using them.

18 The other would be investment firms, and we've
19 seen some activity of people calling us from investment
20 companies, including developers who have requirements to
21 prove that they have access to water in order for them to
22 be able to have large developments within Southern
23 California. So developers and investment firms from New
24 York who are looking for good places that might have a
25 better return than they might get on the open market
26 today, and they think that this water source might

1 provide them with an opportunity to do that. So we're
2 getting some interest from all three of those kinds of
3 classes of investors and we're anxious to see how this
4 pans out.

5 What will the money be used for? We have a very
6 narrowly defined use for the proceeds from this auction
7 and it will go to a broad based mutual benefit program.
8 That is, as I explained before, that it would go to
9 something that everybody in the basin has responsibility
10 to do. And in this case, we're using it to finance
11 facilities from the court-ordered Recharge Master Plan.

12 What we're finding as we develop the recharge
13 master plan is we have a lot of facilities within our
14 basin, almost enough to be able to deal with the future
15 needs of our basin, but they're not necessarily in the
16 right location and they're not necessarily efficient
17 enough to capture as much rain water or recycled water as
18 we might need in the future.

19 And we've anticipated there's probably somewhere
20 between a hundred and 200 million dollars worth of
21 capital projects that are going to be identified within
22 the Recharge Master Plan that the parties are going to be
23 responsible for financing. This money that's received
24 from the auction will go to offset part of that cost of
25 the 100 to 200 million dollars of investments. So that's
26 where it's going to go.

1 And with that, any questions you might have on
2 this part of the presentation. If not, I'll turn it over
3 to my colleague. Sheri Rojo.

4 THE COURT: Let's take -- Before we do, let's
5 take a little break. We'll be in recess here until 20
6 minutes to 11, okay?

7 (Recess.)

8 THE COURT: All right. The next witness,
9 please.

10 MR. FIFE: Thank you, your Honor. We'll call
11 Sheri Rojo.

12 THE COURT ATTENDANT: If you'll stand here, face
13 the clerk and raise your right hand.

14 THE WITNESS: I do.

15 THE CLERK: Thank you.

16 THE COURT ATTENDANT: Please state and spell
17 your name for the record, please.

18 THE WITNESS: Sheri Rojo, S-h-e-r-i, Rojo,
19 R-o-j-o.

20 Good morning, your Honor. I am the Chief
21 Financial Officer and Assistant General Manager at
22 Watermaster. And this morning, Ken spoke on the storage
23 and recovery programs that we have currently in progress.
24 And I'd like to take a few minutes to just talk about the
25 storage accounts that are held in the basin for the
26 parties that are to the judgment.

1 First of all, we get questions as to why storage
2 accounts are so important and what's the relevancy of
3 them. What we have are storage accounts. We have a
4 carry-over storage account, and we'll get into discussing
5 the different types of storage accounts, but having a
6 carry-over storage account allows for annual flexibility
7 for the producers. So in any given year if they've
8 overproduced more than their allotment, they can just
9 pull from this carry-over account.

10 Now, we also have local supplemental storage
11 accounts, which generally tends to be water that's none
12 native to the basin so it's been brought in from outside
13 sources.

14 Having these storage accounts allows Watermaster
15 to be somewhat drought proofed, and it protects us from
16 loss of imported water. So in years when there's low
17 supply of water, producers can just pump more from the
18 ground, and if they pump more than their right, then they
19 can just take it out of storage to cover their
20 overproduction.

21 The storage balances offer an asset. Ken was
22 talking earlier that parties that have water in storage
23 are allowed to sell that water to other parties in the
24 basin and generate revenue for themselves. They can
25 generate a stream of cash flow but it also, if they use
26 that in a future year, just by holding onto that storage

1 account, they can offset future anticipated costs that
2 they may have as well. So either source of cash flow or
3 offsetting of costs.

4 We have three ways that I know of that we can
5 get water into storage. Two are listed here.

6 The first one is simply underproduction. So if
7 we have an annual safe yield that's allocated to a party
8 in the basin and that party does not produce all of that
9 right, then the water just stays in the ground through
10 the natural ways of the water getting in the ground.

11 We also have what's called wet water recharge.
12 You'll see that terminology occasionally and Andy spoke
13 about the recharge basins and showed you the blue dots on
14 the map, Andy Malone.

15 But what we have here is a picture of actual
16 recharge basins that are full of water. We have channels
17 that come down from the north. We get imported supplies
18 or we get recycled water. We put them in the recharge
19 basins and the water percolates down into the ground
20 water, and that allows for different types of recharge.

21 We also have what's called in lieu recharge. So
22 that the MWD, the dry yield program that Mr. Manning
23 spoke of, deals with in lieu recharge. And that's an
24 exchange from an appropriator in this case, from MWD, so
25 instead of an appropriator pumping their right, they get
26 water given to them on the surface from Met, and in

1 exchange, they give Met the water that was in their
2 storage account for that water. Watermaster has five
3 different storage accounts that we currently keep track
4 of.

5 The first two, annual carry-over and excess
6 carry-over storage accounts held by both the
7 appropriative pool and the non-agricultural pool.

8 The annual carry-over deals with the annual
9 fluctuations in annual production rights. So if -- That
10 is, that generally tends to be smaller balances that
11 people would keep in that storage account, with larger
12 balances from year to year getting transferred into an
13 excess carry-over account. You can think of the annual
14 carry-over account as being maybe a cup and the excess
15 carry-over as being a bucket for water potential storage
16 that the parties have. And again, that's for both of
17 those two different pools.

18 Supplemental storage and recycled storage, those
19 are exclusive to the appropriative pool.

20 The supplemental storage again deals with
21 non-native basin water. So usually that's what we tend
22 to think of. So if we get imported water deliveries from
23 Met that are not for recharge purposes but let's just say
24 the appropriators get together, they want to put water in
25 the ground, so they contract to get some water brought
26 in, that water gets put into the ground through the

1 recharge basins and divvied out and allocated into their
2 storage accounts individually.

3 We also have started this last year -- This
4 information we'll go over in another second as well --
5 but the recycled water storage has now its own storage
6 account just for tracking purposes to keep track of how
7 much recycled water is going into the ground. But that
8 water becomes part of the supplemental storage account
9 that the appropriators are free to trade amongst
10 themselves.

11 The difference between the supplemental storage
12 and the excess carry-over, because the supplemental is
13 non-native water, they can actually enter storage and
14 recovery deals on their own if they have water in that
15 account.

16 And then we also keep track of storage and
17 recovery accounts through MWD. And right now we have the
18 dry year yield account, and we would also keep track of
19 the cyclic storage account if we had water in it.
20 Watermaster's responsible to track and report the
21 balances and the activity in these accounts.

22 And you'll find it in two different places. The
23 first place we put this -- we track it is in the
24 assessment package. That's an annual summary of the
25 production and water activity of the basin is all found
26 in the assessment package.

1 The assessment package will show transfers to
2 and from storage accounts because of over or
3 underproduction so waters coming in and going out of
4 storage accounts. Transfers to cover the sale and lease
5 of rights. So when appropriators sell water to another
6 appropriator, that's listed in there and it goes in and
7 out of the storage accounts accordingly.

8 We record the capture of recycled water, storm
9 water and imported water. And they all get put into
10 different types of storage accounts, depending on what
11 the water came in for. Recycled water goes into the
12 recycled water accounts. Storm water goes into their
13 annual account, and imported water is either used for
14 recharge purposes to meet a replenishment obligation that
15 we had if appropriators have overproduced and were able
16 to buy water or if we buy imported water and we don't
17 have a replenishment obligation, then we'll put that into
18 appropriators -- allocate that and put that into
19 appropriators' supplemental accounts.

20 So we record the recharge of the supplemental
21 water into the storage accounts depending on what the
22 intent of the water's for.

23 And then we also record the in lieu storage, the
24 puts and the takes. That's the water that comes in and
25 goes out of the storage programs.

26 What you're looking at is a page that comes

1 directly from the assessment package here. This is a
2 page that all appropriators get. We have workshops that
3 cover our assessment package as we prepare it. We're
4 just about to have a workshop coming up. And the intent
5 of this demonstration here is to show you that all of the
6 appropriators are listed. And on this page we have three
7 of their four storage accounts in different groups, and
8 it's fully transparent in that all appropriators know
9 what all other appropriators have in their storage
10 accounts and all of the activity that goes on in each of
11 the accounts. The additions and subtractions to the
12 accounts and the accounting for losses is all shown in
13 the assessment package and everybody knows what everybody
14 else has. So all the parties are aware of what each
15 person has.

16 Not only do we show it in one collective page
17 with all of the appropriators listed, we also generate
18 individual storage activity, you know, water activity in
19 production detail that we give to each of the
20 appropriators individually.

21 So there's the four different accounts for their
22 different storages.

23 THE COURT: How often do these come out?

24 THE WITNESS: Annually. Annually, good
25 question.

26 We reconcile -- Our year end is June 30th and it

1 takes us a while to get all of the transfers and the
2 transactions processed and in there. We generate what's
3 called a water activity report, Watermaster does, so once
4 we think we have all the information in there, we
5 generate what's called a water activity report.

6 THE COURT: What's the delay time on this
7 report? In other words, there's got to be a cut-off
8 period sometime for information before it's released so
9 what's that transition?

10 THE WITNESS: We're working on that now. We
11 hope to have this assessment package workshop. We're
12 hoping to have the workshop in September and then the
13 assessment package will be in the October agendas for
14 approval.

15 THE COURT: Okay.

16 THE WITNESS: So we're actually in the process
17 now. We sent out the water activity reports. And what's
18 happened in the past with these water activity reports is
19 we'll get quarterly production reports from a party and
20 we'll go to put together an assessment package and we'll
21 say, "Okay, here's the summary of all our water
22 activities but they don't necessarily reconcile", so for
23 some reason maybe they added a well that we didn't have
24 added into our system because maybe we weren't notified
25 on time or there's discrepancies in production.

26 So now what we do is we send out a confirmation

1 at the end of the year. We call it a water activity
2 report, and those have just been sent out about a week
3 and a half ago. So this is all the water transactions
4 that you have. This is your production with all these
5 different wells. This is the transfers among all the
6 different parties. This is the water assignments that
7 you had, all the different things that could happen that
8 affect the water that comes in and out of their accounts.

9 So that report, they have to sign off on that.
10 And once they sign off on that and we get all those
11 back -- and it sometimes takes a while to work out some
12 of those discrepancies -- then we're able to generate the
13 assessment package that you'll see come through in
14 October.

15 But this here just summarizes what the
16 appropriative pool gets, and the non-ag pool gets a very
17 similar one, and it just summarizes in the different
18 columns, in annual accounts or excess carry-over
19 accounts, their local supplemental and then their
20 recharged recycled water so it comes in with all the
21 pluses and minuses and then their ending balances are
22 listed across the bottom. So it's pretty clear, and
23 we're able to work out a lot of the bugs through the
24 water activity report system that we're doing now.

25 THE COURT: Now, does everyone get a copy of
26 everybody else's?

1 THE WITNESS: Uh-huh, yes, sir.

2 THE COURT: Okay.

3 THE WITNESS: And we all go through it. In the
4 assessment package workshop, not just at the individual
5 appropriator level of detail, but we go through the whole
6 package every time. We talk about what all the different
7 columns are in the assessment package so people know what
8 they're being charged for, what their sources of water
9 are, this is the amount of storm water that we captured
10 on your behalf, this is the amount of recycle water that
11 came in on your behalf. So everybody is sitting in a
12 room and mostly they look at their line to know what
13 their -- you know, what their impact is but then they can
14 also see everybody else's. So they take them back to
15 their offices and they're able to digest them and make
16 decisions accordingly.

17 THE COURT: And they can see comparisons of what
18 the other people are doing?

19 THE WITNESS: Exactly, working together.

20 And that pretty much summarized what I have, if
21 you have any other questions.

22 THE COURT: No, I'm done with my questions.
23 Thank you, ma'am.

24 THE COURT: Mr. Fife, is that the end of the
25 presentation?

26 MR. FIFE: That is all. We've gone through all

1 nine elements now.

2 THE COURT: Now, you -- and I appreciate that.
3 Let's talk about these matters that you brought up
4 earlier. And I have some information for you that may
5 impact how you deal with this transition that's going to
6 take place.

7 I had a conversation with the supervising judge
8 this morning about what's going to happen shortly after,
9 I believe, what is the first part of October.

10 The -- They're reducing the number of civil
11 judges in this courthouse from seven to five, which will
12 have a huge impact on all the judges remaining. And
13 that's, of course, all due to budgetary problems that
14 everybody is having.

15 What the intent at this time is that this case
16 will be -- all the cases we all have will be reassigned
17 by number. And, of course, this one has a number and I
18 don't know who is going to get that number. I don't
19 think anybody does at this point. So it will go to one
20 of the judges in this area unless it is taken out of this
21 courthouse and taken to either Rancho Cucamonga or
22 perhaps to Victorville. Those are the three courthouses.
23 I think it's unlikely that it would go to Victorville
24 because they're quite pressed for time and resources
25 there even more so than here perhaps.

26 At any rate, the only reason that I could

1 foresee that there would be a delay in having a new judge
2 assigned is that there would be a desire on the part of
3 some of the parties to object to the judge assigned. And
4 that's why I think there was a delay previously. I'm not
5 so sure that at this point there's a real ability to make
6 a legal objection to a person unless you've got actual
7 prejudice instead of perceived prejudice. At any rate,
8 somebody might try and then you'd have to go through that
9 hearing process and that could account for a delay. And
10 of course, everybody has the legal right to do that so
11 that's possible.

12 As far as input into the next assigned judge,
13 you've got about 45 days. And I would suggest -- I can't
14 impact this process at all. What I suggest you do is
15 contact the Presiding Judge directly, Judge James
16 McGuire, contact him directly and ask him if he would be
17 willing to have some sort of joint meeting to get the
18 input of the parties as to who might be assigned. If he
19 doesn't want to do that, then you're not going to get it
20 done. But that's my suggestion. And because of the
21 nature of this and because if you stress to him that you
22 don't want a delay period in between assignments, then
23 perhaps he would be open to doing that, which would be
24 kind of outside the norm. But he might want to do that.
25 He's a very reasonable man. So that's my suggestion in
26 that regard.

1 MR. FIFE: Thank you, your Honor.

2 THE COURT: So having said that, going on to
3 your concern about a case management order, what did you
4 envision this management order might contain?

5 MR. FIFE: We hadn't specifically contemplated
6 what the order would actually say. We were thinking of
7 things in terms of part of what you've been looking at
8 over this multi-month process of whether watermaster is
9 in compliance with its commitments under the OBMP,
10 whether it is in compliance with deadlines that have been
11 set out say in the December 21, 2007 order, things like
12 that, so when the next judge comes in, he can very easily
13 look at the order and know that watermaster is on track
14 with the OBMP, it is on track with its deadlines, here
15 are the next deadlines it has coming up.

16 In the last hearing you excused us from a couple
17 of the deadlines so we could put that in there so that
18 it's memorialized and he knows that we've been excused
19 from a deadline, not that we're simply missing a
20 deadline. So things like that just so that the next
21 judge has a very simple way of orienting himself to the
22 status of this case.

23 THE COURT: That could be helpful especially if
24 you run it through the process with all the parties so
25 that they have input and that there's, you know, an
26 opportunity to present objections or additions or

1 amendments, whatever.

2 MR. FIFE: Absolutely, we would run it through
3 the whole process.

4 THE COURT: That could be helpful because in one
5 document then you might have some sort of synopsis for
6 the next judge coming in to have a way to know what's
7 pending and what's not and so forth.

8 My intention, if I get an opportunity to do
9 this, is to whenever I find out who would be my
10 replacement, to try to present to the person what I know
11 at this time and to give them the idea of how to go about
12 getting as close to up to speed as possible. So that's
13 part of what I've been trying to accomplish here.

14 MR. FIFE: And we appreciate that.

15 THE COURT: I think that that would be a good
16 idea. If you can do those things, then the next judge
17 would have something, more or less a briefer way, a more
18 efficient way to get up to speed along with the materials
19 that I've created for him or her. So that's probably a
20 good idea and probably worth contemplating doing that.

21 MR. FIFE: Okay.

22 THE COURT: And you also mentioned a hearing on
23 some pending matters. Did you have something in
24 particular in mind?

25 MR. FIFE: We don't particularly. It was more
26 of just sort of a warning that we're going through a

1 review of everything, and if something comes up, we might
2 be coming to you with a motion for an order shortening
3 time. And if that happens, the reason for it is that
4 we've found something that we really could use your input
5 on before we lose you at the end of September.

6 THE COURT: Probably it's a good idea to do some
7 review and see if there are any loose ends that need to
8 be tied up before I leave.

9 MR. FIFE: Right.

10 THE COURT: All right. Well, I'll tell you
11 what. I can put you down for September 17th if you want
12 to shoot for that date. That's a little over a month
13 from now. But that's about the only date that I have
14 available.

15 MR. FIFE: Okay. Would that be in the morning
16 at the same time?

17 THE COURT: At 9:30. I have a couple of other
18 things on calendar but I can probably rush through those
19 and we can get you started as close to 9:30 as possible
20 if we need to. If for some reason that's not possible,
21 you just let us know and we'll take it off calendar. But
22 that gives you a date that I'll reserve for hearings on
23 what comes up.

24 MR. FIFE: Okay. That would be perfect. And
25 we'll endeavor to have the proposed case management order
26 in to you well in advance of that. And if nothing else,

1 we can then get your input on that at that date and
2 time.

3 THE COURT: All right.

4 MR. FIFE: And we'll provide notice to
5 everybody.

6 THE COURT: All right.

7 MR. FIFE: Thank you, your Honor. Again, we
8 really appreciate your oversight for the last several
9 months. We appreciate all your good work, and we're
10 sorry to see you going.

11 THE COURT: Thank you. Nice of you to say.
12 Have a good afternoon.

13 MR. FIFE: Thank you.

14 (Whereupon the foregoing proceedings in the
15 above-entitled matter were concluded.)
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT NO. S-32

HON. JOHN P. WADE, JUDGE

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

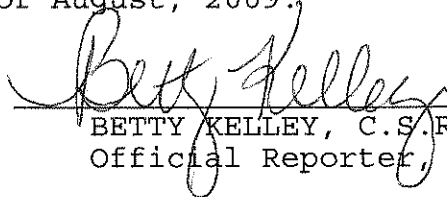
NO. RCVRS 51010

REPORTER'S CERTIFICATE

COUNTY OF SAN BERNARDINO)
) ss
STATE OF CALIFORNIA)

I, BETTY J. KELLEY, C.S.R., Official Reporter
of the Superior Court of the State of California, for
the County of San Bernardino, do hereby certify that the
foregoing pages 1 through 50, inclusive, comprise
a full, true and correct transcript of the proceedings
held in the above-entitled matter reported by me on
August 11, 2009.

DATED this 17th day of August, 2009.


BETTY KELLEY, C.S.R.
Official Reporter, C-3981