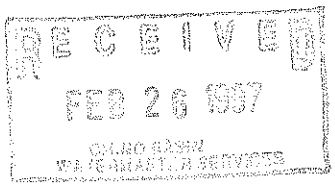


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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO, WEST JUDICIAL DISTRICT
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11 CHINO BASIN MUNICIPAL WATER DISTRICT,)	Case Number: RCV 51010
12 Plaintiffs,)	CITY OF CHINO'S OPPOSITION TO THE
13 vs.)	ADVISORY COMMITTEE MOTION TO
14 CITY OF CHINO,)	PREVENT PAYMENT OF AUDIT FROM
15 Defendants.)	ASSESSMENTS PAID BY THE PARTIES
16)	Date: March 3, 1997
		Time: 8:30 a.m.
		Dept: H

17 NOW COMES THE CITY OF CHINO which hereby opposes the Motion of the
18 Advisory Committee requesting an order that the Watermaster audit may not be paid from
19 the assessments of the parties to the judgment.
20

21 INTRODUCTION

22 The City of Chino believes that an independent audit should be performed of the
23 procedures and the practices of the employees of the Chin Basin Municipal Water District
24 who currently administer the funds of the parties to this judgment which include assessment
25 paid by the City of Chino.

26 The City of Chino has expressed its concerns about those practices and procedures
27 on several occasions. Most recently, the City of Chino has become concerned about the
28 loss of funds, allegedly by the theft of bank employees. However, no evidence has been

1 perform the duties, as provided in this Judgment or hereafter ordered or
2 authorized by the Court in the exercise of the Court's continuing
3 jurisdiction.

4 With respect to that court mandate, CBMWD is exclusively authorized to perform
5 audits of the "expenses of Watermaster administration as between the several pools."
6 Paragraph 20 of the Judgment states:

7 **Watermaster may employ or retain such administrative, . . . accounting,**
8 **legal or other specialized personnel or consultants as may be deemed**
9 **appropriate in the carrying out of its powers . . . Watermaster shall**
10 **maintain records for . . . all other expenses of Watermaster administration**
11 **as between the several pools established by the Physical Solution.**

12 As to the exercise of these powers, including the exercise of the power to conduct an
13 audit, the Judgment only permits the Advisory Committee to request Court review of
14 Watermaster actions or decisions thereon. (See paragraph 31).

15 Therefore, there is no room for the suggestion of the Advisory Committee that it
16 possess such powers. If that were the case, the Judgment would not have granted such a
17 power to CCMWD as Watermaster. If that were the case, the Judgment would not have
18 limited the Advisory Committee to seek review of CBMWD's decision to conduct the audit. If
19 that were the case, the Judgment would have granted such a power to the Advisory
20 Committee. It does not.

21 **II.**

22 **THE POWER TO PERFORM AN AUDIT IS NOT DISCRETIONARY**

23 The Advisory Committee's reliance on Paragraph 38(b) is grossly exaggerated,
24 although its reliance on that paragraph is the basis of its attempt to usurp the power granted
25 to the Watermaster, CBMWD, by the court.

26 Paragraph 38(b) merely states as follows:

27 **The Advisory Committee shall have the . . . power to recommend, review**
28 **and act upon all discretionary determinations made or to be made**

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hereunder by Watermaster.

The meaning of the term "discretionary" is defined part VI of the Judgment relating with the Physical Solution. Specifically, paragraph 41 provides as follows:

Watermaster, with the advice of the Advisory and Pool Committees, is granted discretionary powers in order to develop an optimum basin management program for Chino Basin including both water quantity and quality considerations.

Therefore, the discretionary determinations contemplated in paragraph 38(b) relate to the policy considerations inherent in the development of a basin management program. They do not relate to the enumerated powers of the Watermaster regarding the administration of the judgment such as the performance of an audit of the activities of the employees of CBMWD.

CONCLUSION

Unless the audit is performed at the expense of the assessments paid by the parties, any independent Watermaster will shrink from its duty under the Judgment and the effectiveness of any independent Watermaster will have been compromised irreparably.

February 24, 1997

Jimmy L. Gutierrez, A Professional Corporation,

By: _____


Jimmy L. Gutierrez

Attorney for the City of Chino