JIMMY L. GUTIERREZ (State Bar No. 59448) 1 A Professional Corporation 12616 Central Avenue 2 Chino, California 91710 (909) 591-6336 Telephone: 3 (909) 628-9803 Fax: 4 Attorney for City of Chino 5 6 7 SUPERIOR COURT OF CALIFORNIA 8 COUNTY OF SAN BERNARDINO, WEST JUDICIAL DISTRICT 9 10 Case Number: RCV 51010 CHINO BASIN MUNICIPAL WATER 11 DISTRICT, CITY OF CHINO'S OPPOSITION TO THE 12 ADVISORY COMMITTEE MOTION Plaintiffs. PREVENT PAYMENT OF AUDIT FROM 13 ASSESSMENTS PAID BY THE PARTIES 14 March 3, 1997 Date: CITY OF CHINO. 8:30 a.m. Time: 15 Dept: Defendants. 16 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 INTRODUCTION 21 The City of Chino believes that an independent audit should be performed of the 22 procedures and the practices of the employees of the Chin Basin Municipal Water District 23 who currently administer the funds of the parties to this judgment which include assessment 24 paid by the City of Chino. 25 The City of Chino has expressed its concerns about those practices and procedures 26 on several occasions. Most recently, the City of Chino has become concerned about the 27 loss of funds, allegedly by the theft of bank employees. However, no evidence has been

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offered which rules out theft by persons charged with the administration of those funds.

However, the most troubling aspect of the alleged theft of funds is that the employee of CBMWD responsible for the administration of funds (Traci Stewart) has asserted that the loss of funds is unconnected to her administration, yet she has failed or refused to conduct an independent investigation of the alleged theft and she has attempted to derail any such audit.

Since the funds in question are public, an audit should be performed. Furthermore, the only way to assure the independence of the audit is to allow it as a proper cost against the assessments paid by all of the parties. The issue should be addressed; and the opposition to the audit itself is proof enough that it should be performed.

1.

THE JUDGMENT AUTHORIZES CHINO BASIN MUNICIPAL WATER DISTRICT TO ORDER AN AUDIT AND ITS COST IS A PROPER EXPENSE OF THE PARITES TO THE JUDGMENT

The judgment in this case dated January 30, 1978 (hereafter "Judgment") appointed the Board of Directors of the Chino Basin Municipal Water District (hereafter "CBMWD") as Watermaster to administer this Judgment on behalf of the Court, not on behalf of the parties to the Judgment. Further, the Judgment grants various enumerated powers exclusively to CBMWD as Watermaster, none of which are granted to the Advisory Committee. (See paragraphs 17 through 30).

Paragraph 16 of the Judgment states:

CBMWD, acting by and through a majority of its board of directors, is hereby appointed Watermaster, to administer and enforce the provisions of the judgment and any subsequent instructions or orders of the Court hereunder.

Paragraph 17 of the Judgment states:

Subject to the continuing supervision and control of the Court, Watermaster shall have and may exercise the express powers, and shall perform the duties, as provided in this Judgment or hereafter ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction.

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

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

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

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

II.

THE POWER TO PERFROM AN AUDIT IS NOT DISCRETIONARY

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

Paragraph 38(b) merely states as follows:

The Advisory Committee shall have the . . . power to recommend, review and act upon all <u>discretionary determinations</u> made or to be made

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 <u>discretionary determinations</u> 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

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