



1 **CIHIGOYENETCHE, GROSSBERG & CLOUSE**
2 **Jean Cihigoyenette (Bar No. 105227)**
3 3602 Inland Empire Boulevard, Suite C-315
4 Ontario, CA 91764
5 (909) 483-1850

6 Attorneys for Plaintiff,
7 **CHINO BASIN MUNICIPAL WATER DISTRICT**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10
11 **CHINO BASIN MUNICIPAL WATER**)
12 **DISTRICT,**)
13) **Plaintiff(s),**)
14 vs.)
15 **CITY OF CHINO, et al.,**)
16) **Defendant(s).**)

CASE NO. RCV 51010

OPPOSITION TO MOTION FOR ORDER OF COURT THAT AUDIT COMMISSIONED BY THE CHINO BASIN MUNICIPAL WATER DISTRICT BOARD IS NOT A WATERMASTER EXPENSE; DECLARATIONS OF LARRY RUDDER, GEORGE BORBA & BILL HILL IN SUPPORT THEREOF

DATE: March 3, 1997
TIME: 8:30 a.m.
DEPT: H

Specially assigned to the Honorable Judge J. Michael Gunn

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20 **TO ALL PARTIES HEREIN AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:**

21 **Plaintiff, CHINO BASIN MUNICIPAL WATER DISTRICT, herein submits its Opposition**
22 **to the Motion for Order of Court that audit commissioned by the Chino Basin Municipal Water**
23 **District is not a Watermaster expense.**

24 **I.**

25 **INTRODUCTION**

26 **The motion presently before the court arises from a decision by the Watermaster to conduct**
27 **an audit of the Watermaster affairs. The action by the Watermaster was prompted by a genuine and**
28

1 well founded concern that the Advisory Committee had usurped the administrative authority of the
2 Watermaster, was conducting Watermaster business in total disregard of generally accepted
3 accounting standards and was following procedures created by the Advisory Committee on an ad hoc
4 basis as the need served them.

5 Although the Chief Financial Officer for the Chino Basin Municipal Water District ("District")
6 and Watermaster, Mr. Larry Rudder voiced his concerns to the Advisory Committee about these
7 problems, he was ignored and basically instructed that if the Advisory Committee had an 80% or
8 greater vote they could act as they saw fit apparently not caring whether that action was within
9 approved policies and procedures or not. The culmination to these problems came when \$26,000.00
10 was stolen from the Watermaster checking account. The details of the incident are discussed more
11 thoroughly below.

12 Accordingly, the Watermaster decided to set a meeting to discuss the propriety of a complete
13 audit by an independent third party with no ties to either the District or any of the Advisory
14 Committee pools. On or about January 2, 1997, the Watermaster sent notice of a meeting of the
15 Watermaster to be held on January 9, 1997. At that meeting public testimony was taken including
16 comments from several attorneys representing members of the Advisory Committee including the City
17 of Chino and the City of Ontario. General counsel for Watermaster did not appear at that hearing.

18 During the course of the hearing, it became apparent through comments made by guest
19 speakers that any action or inaction on the part of the Watermaster could expose it to litigation as
20 well as result in a Grand Jury investigation of the affairs of Watermaster. Therefore, that meeting was
21 adjourned until January 14, 1997 so as to allow general counsel for Watermaster to be present and
22 discuss, in closed session, potential litigation which might arise relative to these issues.

23 The adjourned meeting reconvened on January 14, 1997 at which time the first order of
24 business by Chairman George Borba was to open the meeting to further public comment. Although
25 there were numerous persons present including representatives of the Advisory Committee and
26 various Pool Committees, no one came forward to address the Board. The meeting was then
27 adjourned to closed session for conference with legal counsel as to the issue of threatened litigation
28 only. No vote on any issue was taken in closed session. When the Board came out of closed session

1 after consulting with their counsel Mr. John Ossif regarding threatened litigation, and having had no
2 individuals come forward to speak on the issue of conducting the audit, a vote was made by the
3 Board to conduct the audit. (Declaration of George Borba, Exhibit E).

4 On January 17, 1997, Watermaster gave notice of a special meeting to be held on January 23,
5 1997. The purpose of the meeting was to review proposals submitted by accounting firms qualified
6 to perform the audit. During the course of the January 23 meeting, once again testimony was
7 solicited at the public hearing which addressed the pros and cons of conducting the audit itself.
8 Everyone present was granted ample opportunity to address the Watermaster Board. Members of the
9 Watermaster Board expressed grave concern to Mr. Fudacz, who was present at this meeting,
10 regarding his conflict of interest in representing the Advisory Committee and the Watermaster who
11 were in a definite adversarial position. Watermaster Board was desirous of conducting an
12 independent third party audit and the Advisory Committee was contesting an independent third party
13 audit to the best of its ability. Mr. Fudacz purported to represent both parties in that argument.

14 The Watermaster voted, by unanimous vote of those Directors present, to retain the firm of
15 Soren, McAdam & Bartells to perform the audit.

16 The audit has since been completed and the results are submitted to the court for review. The
17 audit was restricted to Watermaster affairs and therefore are a legitimate Watermaster expense under
18 the Judgment.

19 II.

20 THE JUDGMENT CONFERS EXCLUSIVE

21 AUTHORITY FOR THE AUDIT IN THE WATERMASTER

22 A. The Separation of Powers and Checks and Balances Provided for 23 in the Judgment Have Been Ignored.

24 The motion presently pending before the court is a perfect example of the fact that the
25 Advisory Committee has established itself as the only authority under the Judgment and their belief
26 that if they act by an 80% or greater vote, compliance by the Watermaster is mandated. Since 1978
27 the District has acted as Watermaster with relatively few issues being brought to the court for
28 resolution. However, within the last two years and, not surprisingly, concurrently with the

1 Watermaster's concern and inquiry over the ever increasing Watermaster budget, the District has
2 been deemed by the Advisory Committee a hindrance to the conduct of Advisory Committee affairs
3 and therefore should be summarily dispatched as Watermaster. The Advisory Committee's offensive
4 to usurp the authority of the Watermaster, and subsume that authority under their own, began,
5 coincidentally, with former Watermaster Chairman Bill Hill questioning the ever expanding
6 Watermaster budget. A copy of the Declaration of Bill Hill is attached hereto as Exhibit "A" and
7 incorporated herein by this reference.

8 As a result of the aggressive grasp of power by the Advisory Committee, and the ill-advised
9 acquiescence to that Committee's representations by the Watermaster, the separation of authority and
10 responsibility between the Advisory Committee and the Watermaster has all but disappeared. In
11 order to respond to the subject motion of the Advisory Committee as well as other pending motions
12 and motions recently considered by the court, the terms of the Judgment must be revisited.

13 **B. The Judgment Establishes Separate and Distinct Bodies as Well as**
14 **Checks and Balances Between Them.**

15 The office of Watermaster was created to administer the day to day management of the Chino
16 Basin's water resources. In the opinion of many, the District was appointed to fill that position not
17 only because it had the resources to do so, but also because it was a neutral party which had no
18 overlying rights to the groundwater. Since, as the Judgment states, the safe yield of the basin had
19 been exceeded for several years by production which was "... open, notorious, continuous, adverse,
20 hostile and under claim of right by producers" (ultimately the Pooling Committees and Advisory
21 Committee) the District would be the most logical entity to monitor and preserve the finite resources
22 of the basin.

23 At the same time, the court recognized the proprietary rights of the overlying owners as well
24 as owners of appropriative rights in the basin. The court recognized the importance of including
25 those persons in the long term policy making process relative to the management of the basin. Also,
26 and as further evidence of the court's concern of overproduction of the basin, an injunction was
27 issued preventing these parties from overproduction of groundwater in the basin. (Judgment, Section
28 III, Paragraph 13).

1 In furtherance of its goals and objectives, the court, in the Judgment, appointed the District as
2 Watermaster “. . . to administer and enforce the provisions of this judgment and any subsequent
3 instructions or orders of the court hereunder.” (Judgment, Section V, Paragraph 16). Accordingly,
4 the court extended exclusive authority in the Watermaster to do numerous acts including the
5 following:

6 Purchase, lease, acquire and hold all necessary facilities and equipment (Judgment, Section V,
7 Paragraph 19); employ or retain such administrative, engineering, geologic, accounting, legal or other
8 specialized personnel and consultants (Judgment, Section V, Paragraph 20); cause the parties to
9 install and maintain measuring devises (Judgment, Section V, Paragraph 21); levy and collect all
10 assessments provided for in the pooling plans and physical solution (Judgment, Section V,
11 Paragraph 22); hold and invest any and all Watermaster funds and investments authorized from time
12 to time for public agencies of the State of California (Judgment, Section V, Paragraph 23); borrow
13 from time to time amounts not exceeding the annual anticipated receipts of Watermaster during the
14 year (Judgment, Section V, Paragraph 24); enter into contracts for the performance of any powers
15 granted under the Judgment with certain exceptions (Judgment, Section V, Paragraph 25); calculate
16 additions, extractions and losses and maintain an annual account of all stored water in Chino Basin,
17 and any losses of water supplies or safe yield of Chino Basin resulting from stored water (Judgment,
18 Section V, Paragraph 29); adopt an annual budget subject to review by the Advisory Committee
19 (Judgment, Section V, Paragraph 30).

20 Decisions by the Watermaster that fall within the above-referenced categories are reviewable
21 only by the court when petitioned to do so. Nowhere does the Judgment empower the Advisory
22 Committee or any of the Pooling Committees to overrule a decision by the Watermaster in the above-
23 referenced categories. (Judgment, Section V, Paragraph 31).

24 The Judgment also created Pool Committees as referenced above which in turn would create
25 an Advisory Committee to assist the Watermaster. However, the authority of the Advisory
26 Committee is strictly defined in the Judgment.

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1 "The Advisory Committee shall have the duty to study, and the power
2 to recommend, review and act upon all discretionary determinations
3 made or to be made hereunder by Watermaster." (Judgment, Section
4 V, Paragraph 38(b)). (Emphasis added).

Discretionary matters are referred to in the Judgment at Section VI, Paragraph 41 as follows:

5 "Watermaster, with the advice of the Advisory and Pool Committees, is
6 granted discretionary powers in order to develop an optimum basin
7 management program for Chino Basin, including both water quantity
8 and quality considerations. Withdrawals and supplemental water
9 replenishment of basin water, and the full utilization of the water
10 resources of Chino Basin, must be subject to procedures established by
11 and administered through Watermaster with the advice and assistance
12 of the Advisory and Pool Committees composed of the effective
13 producers. Both the quantity and quality of said water resources may
14 thereby be preserved and the beneficial utilization of the basin
15 maximized." (Emphasis added).

16 The Advisory and Pool Committees therefore were vested with authority in the decision-
17 making process with regard to the overall basin management and the long term goals and objectives
18 of "withdrawals and supplemental water replenishment of basin water, and the full utilization of the
19 water resources of Chino Basin . . ." (Judgment, Section VI, Paragraph 41). Nowhere are the
20 Advisory or Pool Committees vested with the authority to involve themselves in the day to day
21 administrative responsibilities of the Watermaster. This contention is further enforced by other
22 paragraphs of the Judgment which extend authority to those committees, including the
23 recommendation or approval that the Watermaster may act jointly or cooperate with other agencies
24 (Judgment, Section V, Paragraph 26); allow the Watermaster to undertake relevant studies of
25 hydrologic conditions, both quantitative and qualitative, and operating aspects of implementation of
26 the management program for Chino Basin (Judgment, Section V, Paragraph 27); and to approve
27 adoption by the Watermaster of uniformly applicable rules and a standard form of agreement for
28 storage of supplemental water (Judgment, Section V, Paragraph 28). Hence the Judgment establishes
the authority of the Advisory Committee in long term management decisions only.

The court further recognized that the Watermaster, Advisory Committee and Pool
Committees were separate and distinct bodies under the Judgment and fully anticipated that these
bodies would have conflicting interests and differences of opinions on issues concerning the basin.
This is evidenced by the establishment of terms and vacancies of office of the Pool and Advisory

1 Committees (Judgment, Section V, Paragraph 33); the allocation of voting authority for those bodies
2 (Judgment, Section V, Paragraph 34); as well as establishing compensation for members of those
3 committees and establishing rules and procedures whereby those committees will conduct their
4 meetings. (Judgment, Section V, Paragraphs 36 and 37). Nowhere does the Judgment extend the
5 Advisory or Pool Committee's authority to act beyond the enumerated powers set forth in that
6 document all of which fall within the definition of "discretionary determinations".

7 The importance of independence between these bodies is reinforced at Section V, paragraph
8 36 of the Judgment where it is stated "no member of any Pool or Advisory Committee shall be
9 employed by Watermaster or compensated by Watermaster for professional or other services
10 rendered to such Pool or Advisory Committee or to Watermaster . . ." Finally, the Judgment
11 recognizes the potential conflict between the Watermaster, Advisory and Pool Committees by
12 specifically allowing those Committees to petition the court for a review of Watermaster actions as
13 well as mandated Advisory Committee actions and to retain counsel to assist them in that regard.
14 (Judgment, Section V, Paragraph 38(c)). Nowhere else in the Judgment, and under no other
15 circumstances are the Advisory or Pool Committees authorized to retain counsel on their behalf.

16 It is apparent therefore that the court, through the Judgment, envisioned separate and distinct
17 bodies in the form of the Watermaster, Advisory and Pool Committees all of which may have
18 competing interests under the Judgment. The court empowered the Watermaster to retain general
19 counsel. The court further envisioned conflicts of interest between the various bodies and provided a
20 review procedure to resolve those issues. Moreover, the court extended the right to counsel to the
21 Advisory and Pool Committees under those specific circumstances so as to allow them to voice their
22 opposing positions.

23 **C. The Judgment Expressly Authorizes the Watermaster to Conduct**
24 **an Audit of Watermaster Affairs.**

25 Although the moving papers state that the decision to conduct an audit of Watermaster affairs
26 was done by the District and not the Watermaster, such assertion is patently false. The decision to
27 conduct the audit was made at a duly noticed meeting of the Watermaster. Moreover, there is ample
28 authority in the Judgment which would entitle the Watermaster to proceed accordingly. As stated

1 above, Section V, paragraph 20 of the Judgment clearly empowers the Watermaster, and the
2 Watermaster only, to retain the services of accounting professionals to assist them in the function of
3 Watermaster business. Section V, paragraph 25 of the Judgment empowers the Watermaster, and the
4 Watermaster only, to enter into contracts such as retaining an auditor, to assist them in conducting
5 the business of the Watermaster and Section VI(c), paragraph 48 of the Judgment requires the
6 Watermaster to prepare an annual report containing “. . . details as to operation of each of the pools
7 and a certified audit of all assessments and expenditures pursuant to this Physical Solution and a
8 review of Watermaster activities.” (Emphasis added).

9 Not only is it the prerogative of the Watermaster to conduct an audit, it is their responsibility.
10 It is the Watermaster who is ultimately accountable for the resources and funds of the basin. The
11 decisions of the Watermaster are subject to review by the court. The day to day administrative
12 responsibilities are vested exclusively within the Watermaster and those decisions are not
13 discretionary decisions as defined by the Judgment. Therefore, not only is the decision to conduct an
14 audit within the sole purview of the Watermaster, neither the Advisory or Pool Committees are
15 vested with the authority to overrule such decision by 80% vote or otherwise.

16 III.

17 THE AUDIT ADDRESSES WATERMASTER

18 BUSINESS ONLY AND, THEREFORE, IT

19 IS AN APPROPRIATE WATERMASTER EXPENSE.

20 As stated in the declaration of Larry Rudder attached hereto as Exhibit “B” and incorporated
21 herein by this reference, there are numerous factors which justify the audit called for by the
22 Watermaster in this case. It is apparent that the staff of Watermaster Services have failed to follow
23 written or approved policies and procedures in the day to day operations of the Watermaster affairs.
24 Allegations were made, supported by evidence, to indicate that the Chief of Watermaster Services
25 had hired persons under the guise of independent contractors who, in fact, were acting as employees.
26 This in turn creates a potential liability to the Watermaster for unreported payroll tax and benefit
27 liability as to these individuals. Moreover, outside engineering firms have complained about the
28 employment arrangement claiming that it has interfered with their own contract for services with the

1 Watermaster. This too exposes the Watermaster to potential liability.

2 Additionally, the Director of Watermaster Services, Traci Stewart who is a District employee
3 has paid herself a monthly car allowance yet has not reported that to the District for inclusion on her
4 payroll records. Appropriate procedures would require bi-weekly reporting for tax purposes.

5 Finally, a substantial sum of money was stolen from the checking accounts of the
6 Watermaster. Even more disconcerting is that, when a new bank account was opened on behalf of
7 Watermaster a fraudulent demand for funds was immediately made from the new account to the pre-
8 existing account. The Director of Watermaster Services together with the Advisory Committee
9 seemed to believe that these events are relatively insignificant since the bank has replaced the money
10 that was stolen. However, that does not change the fact that the money was stolen in the first place
11 and that the related fraudulent activity more than warranted a complete audit to review the policies
12 and procedures of the Director of Watermaster Services and her staff in regard to the management of
13 Watermaster bank accounts.

14 Yet another ground for conducting the audit is the fact that the annual budget appropriations
15 for the Watermaster has increased 67.2% over the last three years. Moreover, as Mr. Rudder testifies
16 in his declaration, over the past six years the Watermaster budget has increased by over 700%. When
17 Mr. Rudder attempts to deal with these procedural problems, the Advisory Committee simply
18 dismisses everything he has to say, asserting their 80% mandate authority. It is clear that the
19 Advisory Committee is ignoring the separation of powers in the Judgment and in essence checks and
20 balances no longer exist. With this information in hand, it would seem a breach of fiduciary duty at
21 the most and negligence at the least should the Watermaster fail to call for an audit.

22 Finally, the recently completed audit serves as the best example of why the audit was
23 imperative. A copy of the audit is attached hereto as Exhibit "C" and incorporated herein by this
24 reference.

25 **A. All Notice Requirements for the Watermaster Meeting Were Adhered to.**

26 The moving party herein, the Advisory Committee, asserts that the actions of the Watermaster
27 are null and void in light of the fact that the Watermaster failed to comply with paragraph 38(b)(2) of
28 the Judgment. However, their reliance on that provision is misplaced.

1 Initially, the authorities cited by the moving party requires thirty days notice only when the
2 Watermaster anticipates taking discretionary action. As stated previously, discretionary action is
3 referred to in paragraph 41 of the Judgment and deals with policy issues concerning the management
4 plan for the basin.

5 The decision to conduct an audit is not a discretionary decision under the definition of the
6 Judgment. Rather, it is strictly an administrative act the authority for which is vested completely with
7 the Watermaster by virtue of the Judgment. (Judgment, Section V, Paragraphs 20, 25; Section VI,
8 Paragraph 48).

9 The appropriate notice requirements, which moving party has elected to ignore, are those
10 found in the Chino Basin Watermaster Rules and Regulations. Specifically, Section 2.06 provides as
11 follows:

12 "Public meetings/hearings: all meetings, whether regular or special,
13 shall be open to the public. Whenever a public hearing shall be
14 required herein, written notice of such public hearing containing the
15 time, date and place of hearing, together with the matters to be heard
thereat, shall be given to all active parties and each such person who
has requested, in writing, notice of such meeting at least ten (10) days
prior to said public hearing."

16 Moreover, Section 2.04 of the Chino Basin Watermaster Rules and Regulations allows the
17 Watermaster to call special meetings on twenty-four (24) hours notice by personal service or ninety-
18 six (96) hours notice in case of service by mail. A copy of the Chino Basin Watermaster Rules and
19 Regulations are attached hereto as Exhibit "D" and incorporated herein by this reference.

20 IV.

21 THE SUBJECT MOTION SHOULD BE DENIED

22 BASED UPON COUNSEL'S CONFLICT OF INTEREST.

23 As the court is aware, in May of 1996, a motion was brought by the District which acts as
24 Watermaster. The motion sought disqualification of the law firm Nossaman, Guthner, Knox & Elliott
25 as well as attorneys Frederick Fudacz and John Ossif. The court is respectfully requested to take
26 judicial notice of the District's Motion for Disqualification of Counsel, Memorandum of Points and
27 Authorities in support thereof, Declarations of Jean Cihigoyenette and Bill Hill filed with the Court
28 on June 3, 1996.

1 Although the court declined to disqualify the attorneys at that point in time, the issue present
2 itself once again in the context of the motion presently before the court. In addition, and as set forth
3 in the declaration of George Borba attached hereto as Exhibit "E" and incorporated herein by this
4 reference, a serious conflict of interest exists which is confirmed by virtue of the retainer agreements
5 attached to Mr. Borba's declaration and which were not previously available to the court in
6 considering this issue.

7 In addition to the testimony of Mr. Borba in Exhibit "E", counsel for the District sent
8 correspondence to Mr. Fudacz outlining the District's position on the conflict of interest. A copy of
9 said correspondence is attached to the declaration of George Borba.

10 Mr. Fudacz has stated repeatedly that he is counsel for Watermaster. Despite this, his direct
11 involvement is in representing the Advisory Committee having not even attended a Watermaster
12 meeting throughout the years of service that he has rendered. When pressed on the issue however,
13 Mr. Fudacz falls back on the position that he ultimately represents the court with respect to the
14 Watermaster. That position is untenable however, since the Judgment nowhere authorizes the
15 appointment of an attorney to represent the court with respect to Watermaster affairs.

16 Moreover, the Judgment states that although the Watermaster has the authority to retain
17 counsel it is not required to do so. More importantly, the Judgment does not empower the Advisory
18 Committee to retain general counsel but, rather, allows the appointment of counsel on their behalf
19 should they seek review by the court of Watermaster decisions. In essence, they have no authority to
20 retain an attorney to be present at Advisory Committee meetings. Counsel's retainer agreement was
21 with the Watermaster and not the Advisory Committee. Counsel obviously recognizes that these are
22 two distinct bodies in that previously he had a separate retainer agreement with the Advisory
23 Committee directly.

24 The checks and balances and separation of powers in the Judgment clearly recognize the
25 potential for conflict of interest. That is the reason that Judgment provides for the retaining of
26 independent counsel to represent the Advisory Committee should that committee appeal any ruling of
27 the Watermaster. Nowhere in the Judgment does it state that Watermaster's general counsel shall
28 also represent the Advisory Committee. It is obvious from the language of the Judgment that the

1 court in preparing the Judgment recognized the potentiality for conflict of interest and accommodate
2 that situation by allowing the retention of separate counsel to represent the Advisory Committee.

3 In the present case, Mr. Fudacz has elected to represent all parties emphasizing his efforts in
4 favor of the Advisory Committee, and stating that he represents the Watermaster or the court itself
5 when those arguments are convenient to his position.

6 These issues were discussed at the January 23, 1997 meeting of the Watermaster Board. At
7 that time, members of the Board expressed grave concern about the conflict of interest they perceived
8 Mr. Fudacz as holding. During the course of that meeting Mr. Fudacz himself recognized the
9 potentiality for adverse interest between the Advisory Committee and each of the pools, which would
10 also apply to the Watermaster. The minutes of the January 23, 1997 meeting state, in pertinent part,
11 as follows:

12 Grindstaff: "Just one aside, it seems to me that that Judgment does provide for counsel for
13 the Advisory Committee if needed, and for each of the Pools, so it is possible
14 that the Pools could sue each other; could go to court and ask, and have
15 different points of view."

16 Fudacz: "Oh, there is no question about that."

17 Further, those same meeting minutes reveal a statement by Mr. Fudacz as to what his role as
18 Watermaster attorney or, alternatively attorney on behalf of the court actually is.

19 "And, our responsibility is to the court, and to enforce and uphold the
20 Judgment. There is liability, exposure if we don't adhere to the
21 Judgment."

22 It is that very liability with which the Watermaster Board is concerned. Had Mr. Fudacz
23 fulfilled his obligations as he has defined them, he would have told the Advisory Committee that they
24 had no authority over administrative issues. He would have advised them that their role was simply
25 one in policy making relative to the overall basin management. He would have advised Traci Stewart,
26 the Director of Watermaster Services that she did not have the authority to sign a multi-year lease
27 agreement for office space on behalf of the Watermaster through an act of the Advisory Committee.
28 Indeed, he should have told the Advisory Committee that they had no authority to mandate the
renting or acquiring office space, furniture or even hiring employees.

Mr. Fudacz has clearly aligned himself with the majority of the Advisory Committee. He

1 relies upon the thirty day notice requirement of the Judgment to advise the Watermaster Board that
2 they cannot call a meeting to consider an audit, when in fact the applicable notice provision is set
3 forth in the Rules and Regulations of the Watermaster which he fails to cite or advise on. The only
4 Watermaster Board meeting which his firm did attend, was done so that the purported mandated
5 action taken by the Advisory Committee to prevent the audit could be communicated to the
6 Watermaster Board. In short, Mr. Fudacz and his law firm have done everything conceivable to
7 derail the Watermaster in favor of the Advisory Committee. He has assumed advocacy not on the
8 part of the court, or the Watermaster but rather the Advisory Committee. (See, Audit, Exhibit "C",
9 page 44).

10 The simple truth is that instead of fulfilling his obligations which he himself has recognized
11 and advise all parties of the separation of powers and checks and balances in the Judgment, counsel
12 has elected to assist the Advisory Committee in eliminating the District as the Watermaster,
13 centralizing all authority in the Advisory Committee thereby insuring his best interests.

14 Once again, the test set forth in Slatt v. Superior Court (1994) 9 Cal. 4th 275 [885 P.2d 950;
15 36 Cal.Rptr.2d 537] is satisfied here. The evidence now before the court is even more compelling to
16 demonstrate the inherent conflict of interest in representing both the Advisory Committee and
17 Watermaster concurrently. It is submitted to the court that under the requirements of Slatt,
18 disqualification of counsel is mandatory and not subject to the court's discretion.

19 V.

20 CONCLUSION

21 The inescapable conclusion with which we are faced is that the checks and balances and
22 separation of powers afforded by the Judgment have disappeared. For whatever reason, the Advisory
23 Committee with the collaboration of the Director of Watermaster Services has assumed all control
24 and authority over Watermaster affairs including discretionary and administrative matters. The
25 Advisory Committee refuses to recognize any authority of the Watermaster whatsoever and brazenly
26 defies any directives issued by the Watermaster.

27 The Watermaster affairs are in a state of chaos. The budget has escalated by over 700% in
28 the last six years. Employees have been hired under the guise of independent contractors so as to

1 circumvent established hiring and budgetary policies. Money has been stolen from Watermaster bank
2 accounts and car allowances are being drawn by the Director of Watermaster Services without being
3 properly reported to her employer. Third party vendors are complaining of Watermaster's
4 questionable employment practices and the likelihood of civil litigation in that regard exists.

5 But perhaps most importantly, all semblance of fiduciary responsibility to the residents of the
6 basin has disappeared. When the Watermaster objects to this state of affairs, the Advisory
7 Committee's reaction is to replace the Watermaster. What is most frightening, is that they seek to
8 replace the Watermaster with members of the Advisory Committee. This would be the final step in
9 eliminating all accountability whatsoever relative to Watermaster affairs.

10 We believe the motive for the Advisory Committee's action is monetary. There is no question
11 but that the southern end of the basin suffers from a high concentration of nitrates in its groundwater
12 and is in dyer need of being cleaned up. The northern most producers in the basin however have the
13 benefit of clean water and are not immediately threatened by the same problems suffered to the south.
14 The 80% authority of the Advisory Committee is centered squarely with the northern most producers.
15 Cleanup of the southern end of the basin would require a substantial expenditure which the northern
16 producers, and controlling arm of the Advisory Committee have no intention of financing. As long as
17 they control the Advisory Committee and the Watermaster Board, these northern most producers will
18 continue to benefit from pumping clean water on the north end of the basin while at the same time
19 stalling any cleanup of the remainder of the basin despite the fact that the Judgment requires them to
20 do so.

21 For the foregoing reasons, Chino Basin Municipal Water District, acting as Watermaster,
22 respectfully requests the court to find that the audit conducted of Watermaster affairs is in fact a

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Watermaster expense and should be paid for with Watermaster funds.

Respectfully Submitted,

Dated: February 22, 1997.

CIHIGOYENETCHE, GROSSBERG & CLOUSE


By: 
JEAN CIHIGOYENETCHE
Attorneys for Plaintiff,
CHINO BASIN MUNICIPAL WATER DISTRICT

EXHIBIT A

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DECLARATION OF BILL HILL

I, Bill Hill, hereby declare as follows:

1. I am the former Chairman of the Board of Chino Basin Municipal Water District and was a member of the Board of Directors of that District from June 1990 until December of 1996 when my term of office lapsed. I concurrently held the position of Board of Director of the Chino Basin Watermaster from June 1990 through December of 1997.

2. I submit this declaration in support of the opposition to the Motion for Court Order that Audit Commissioned by Chino Basin Municipal Water District Board is not a Watermaster Expense. I have first-hand knowledge of the matters set forth herein and, if called as a witness I would be competent to testify thereto.

3. Through most of my tenure as a member of the Board of Directors of the Watermaster, the relationship between the Watermaster and the Advisory Committee has been relatively trouble free. During 1995 however, the relationship between the two entities became troublesome.

4. During 1995, the Advisory Committee submitted its annual budget for the Watermaster. I reviewed this budget and considered it to be too high and had questions as to why the Watermaster budget was being increased.

5. I attended an Advisory Committee meeting wherein I informed them that I felt the budget called for the expenditure of too much money and that as a Watermaster Board member I would not be voting to approve the budget. I was told by a member of the Advisory Committee at that time that the Committee had approved the budget by a vote of more than 80% and therefore, approval of the budget by the Watermaster was mandated. Also during that meeting, Mr. Mike Teal, a representative on the Advisory Committee from the City of Ontario, told me "what do you care, it's not your money!" I communicated to the Advisory Committee at that time that it appeared that the Watermaster Board of Directors had in fact no authority whatsoever if this was the way in which the Advisory Committee was allowed to operate under the Judgment.

6. I was very concerned about my liability in approving a budget, through a mandate of the Advisory Committee, when I did not agree with the terms of that budget. I then requested Larry Rudder,

1 Chief Financial Officer for Chino Basin Municipal Water District and also responsible for the financia
2 affairs of the Watermaster at that time, to do an analysis of the Watermaster budget and expenditure
3 over the preceding five years. Mr. Rudder complied with my request and the findings indicated that the
4 Watermaster budget had increased in an amount exceeding 700% over the preceding six-year period.

5 7. By early 1996, a few months after my initial inquiries and expressed concerns over the
6 Watermaster budget, the Advisory Committee had initiated efforts to remove the Board of Directors of
7 Chino Basin Municipal Water District from their position as Watermaster.

8 I declare under penalty of perjury the foregoing to be true and correct to the best of my
9 knowledge. Executed on this 21st day of February, 1997 at Upland, California.

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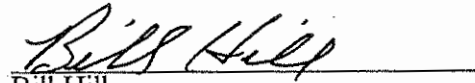

Bill Hill

EXHIBIT B

DECLARATION OF LARRY RUDDER

I, Larry Rudder, hereby declare as follows:

1. I am the Chief Financial Officer for the Chino Basin Municipal Water District. I have first hand knowledge of the matters set forth herein and, if called as a witness I would be competent to testify thereto.

2. I submit this declaration in support of Chino Basin Municipal Water District acting as Watermaster opposition to Watermaster's Advisory Committee motion to have audit commissioned by Chino Basin Municipal Water District declared an expense of Chino Basin Municipal Water District.

3. From September of 1992 through March 20 of 1996, I held the position of Financial Services Officer with respect to the Watermaster. From March 20, 1996 through June of 1996 my title was Chief Financial Officer however, my duties and responsibilities as they pertained to the Watermaster did not change concurrently with the title of my position. My duties with respect to the Watermaster throughout that time period included overseeing all of the accounting and investment activities of the Watermaster. This included, but was not limited to, paying all invoices of the Watermaster, overseeing the investment of Watermaster funds and preparing the payroll for Chino Basin Municipal Water District employees who were assigned the task of working in the area of Watermaster Services. As a result of my position, I am familiar with the accounting and bookkeeping of the Watermaster during my tenure in that position from 1992 through 1996. The preparation of the annual budget and annual computation of assessments for Watermaster was generally done by the Chief of Watermaster Services.

4. During my tenure as Chief Financial Officer of Watermaster, Watermaster was expected to follow the policies and procedures of Chino Basin Municipal Water District in that Watermaster had no separate policies and procedures of its own. Additionally, Watermaster's personnel were actually employees of Chino Basin Municipal Water District who were performing Watermaster services under agreement between the Watermaster and Chino Basin Municipal Water District.

5. As part of my duties, I attended Advisory Committee meetings from time to time. Soon after I assumed the responsibilities of Financial Services Officer of the Watermaster, I attended a meeting of the Advisory Committee wherein that Committee authorized Mr. Ed James, then Chief of Watermaster

1 Services, to spend thousands of dollars on the purchase of computer equipment on behalf of the
2 Watermaster. During that meeting I informed the Advisory Committee that such an expenditure was not
3 an appropriate operations and maintenance expenditure but rather a capital expenditure which would
4 require authorization not by the Advisory Committee but by the Watermaster. I was told at that time
5 by the Advisory Committee that indeed they had secured an 80% vote of the Advisory Committee and
6 therefore, they would proceed as they saw fit. The Advisory Committee also told me, in no uncertain
7 terms, that no further comment from me on the issue was wanted.

8 6. During that same general time period, I noted other violations of policies by the Advisory
9 Committee especially with regard to expenditures in training, travel and seminars. Legal counsel for the
10 Watermaster advised me that if the Advisory Committee acted by 80% vote, they could appropriate funds
11 for such expenditures. Although I did not agree, the expenditures did not amount to a very large sum
12 of money and no one seemed to express any opposition to the expenditures therefore, based upon legal
13 advise I assumed this conduct was acceptable.

14 7. Sometime during the fall of 1995, I was approached by Bill Hill, then Chairman of the
15 Board of Directors of Chino Basin Municipal Water District. He asked that I work up a comparison of
16 the expenditures of the Watermaster over the prior five years. He expressed to me concern that the
17 Advisory Committee lacked fiscal restraint and, basically, seemed to be out of control. I performed the
18 report at the request of Mr. Hill and compared Watermaster budgeted expenses (excluding water
19 purchases) to previous actual expenditures over a six year basis. My findings in that report indicated an
20 increase of 714% in administrative and operating expenditures during that time period. I communicated
21 this information to Mr. Hill as he had requested.

22 8. In or about January, 1996, I attended an Advisory Committee meeting. At that meeting
23 Mr. Mike Teal a representative from Ontario denounced Mr. Bill Hill and stated that Mr. Hill was
24 meddling in Advisory Committee affairs and that he wanted the Advisory Committee and Watermaster
25 to be free of the control of Chino Basin Municipal Water District and Mr. Hill. At that time he suggested
26 that the Advisory Committee appoint themselves as Watermaster.

27 9. Soon thereafter, I began to notice overt efforts by the Advisory Committee and the Chief
28 of Watermaster Services who was a Chino Basin Municipal Water District employee, yet was closely

1 aligned with the Advisory Committee, to separate the Watermaster from Chino Basin Municipal Water
2 District. In exercising these efforts, I noted serious violations of policies and procedures with respect
3 to the authority of the Advisory Committee as well as Ms. Traci Stewart the Chief of Watermaster
4 Services. One clear example is the fact that Ms. Stewart, on behalf of the Advisory Committee, signed
5 a multi-year lease for office space which would ultimately become the Watermaster offices. It is my
6 understanding of the Judgment that the Advisory Committee has no authority to enter into contracts on
7 behalf of the Watermaster including the lease of real property. Moreover, the lease agreement itself is
8 signed by Traci Stewart on behalf of the Watermaster with no prior approval of the Watermaster. This
9 was all done under authority of an 80% vote by the Advisory Committee. Finally, Ms. Stewart operated
10 under the policy which granted her authority to sign contracts of a value of \$5,000.00 or less. The value
11 of the lease clearly exceeded the \$5,000.00 limitation and therefore Ms. Stewart clearly exceeded the
12 scope of her authority in committing the Watermaster to this contract. A copy of the lease agreement
13 is attached hereto as Exhibit "1" and incorporated herein by this reference.

14 10. It is my opinion that there are numerous examples of acts on behalf of the Advisory
15 Committee and the Director of Watermaster Services which would legitimately prompt an audit of the
16 books of Watermaster. Initially, there is a complete lack of fiduciary responsibility with regard to the
17 handling of Watermaster funds and investments. Although under the Judgment the Watermaster is vested
18 with the responsibility to manage the books and investments, the Advisory Committee maintains that if
19 they obtain an 80% vote of their members, the Watermaster is obligated to pursue whatever expense or
20 investment the Advisory Committee recommends at that time. This is despite the fact that there are no
21 Advisory Committee approved policies and procedures which would provide accountability or limitations
22 on such practices. I have been told by legal counsel that an 80% or greater vote by the Advisory
23 Committee is a mandate and I have never been advised that such a mandate can be appealed to the court
24 under the Judgment.

25 11. The audit is further substantiated by the dramatic increase in the Watermaster budget over
26 the years as described above. In addition, the most recent 1996 to 1997 budget shows another increase
27 of over \$290,000.00 or 32.8% over 1995 - 1996 actual expenditures.

28 12. Also supporting a complete audit is the recent theft of funds from the Watermaster

1 checking account. Apparently, someone had changed the address for delivery of Watermaster bank
2 statements to a location other than the Watermaster offices. As a result, statements stopped arriving at
3 the Watermaster for some period of time however, there were no policies or procedures in effect which
4 would alert the Watermaster employees in a timely manner that a potential problem existed. In the
5 meantime, approximately \$26,000.00 of Watermaster money was stolen. An additional \$142,000.00 had
6 also been transferred from a new Watermaster account to the old Watermaster account suspiciously
7 coincidental to that time of year when Watermaster typically receives substantial assessment revenues.
8 An audit would allow the Director of Watermaster Services and the Watermaster to better draft and
9 implement policies and procedures which would provide for follow-up should bank statements not arrive
10 in timely fashion.

11 13. An audit is also supported by the fact that several individuals identified as independent
12 contractors by the Director of Watermaster Services actually operate as employees and, for purposes of
13 the Internal Revenue Service and Franchise Tax Board would be defined as employees. The present
14 situation does not provide for the appropriate financial reporting to the Internal Revenue Service or the
15 Franchise Tax Board and, as a result, exposes the Watermaster to potential liability. I believe that these
16 individuals are hired under the guise of independent contractors so as to circumvent the need for an
17 amendment to the Watermaster budget which obviously would require Watermaster approval. I have
18 also reviewed correspondence from Stetson Engineering regarding concerns relative to the status of
19 Fernando Lopez as a Stetson Engineering employee. A copy of said correspondence is attached hereto
20 as Exhibit "2" and incorporated herein by this reference.

21 14. I am also aware that Traci Stewart, Chief of Watermaster Services has, after July 1, 1996
22 when Watermaster moved to their new office building, drawn a monthly car allowance which she had
23 previously not been entitled to. Apparently, the expenditure was a line item entry in the annual budget.
24 Moreover, Ms. Stewart has not reported the car allowance as part of her normal payroll and therefore,
25 no deductions for income taxes have been made on that money. The policies and procedures of Chino
26 Basin Municipal Water District as well as accepted accounting practice would require that taxes be
27 deducted from these payments on a bi-weekly basis as the income is earned.

28 15. Based upon the preceding irregularities and other known or suspected acts it is my belief

1 that an operational audit was imperative to be conducted as soon as possible. The audit would, among
2 other things, identify whether appropriate policies and procedures were in place and properly
3 implemented. The audit would determine if the Judgment, its rules and regulations and any other known
4 governmental laws, rules or regulations were being adhered to. Additionally, due to the apparent lack
5 of internal controls, the audit would identify such weaknesses and make recommendations for
6 improvements.

7 16. Since July of 1996, I have not been actively working on Watermaster expenses or
8 investments. At the present time, all expenditures and investments are handled at the Watermaster
9 Services staff level and an independent contractor. These expenditures are presented to the Watermaster
10 Board of Directors on a quarterly basis well after the money has been spent.

11 17. As a result of the improprieties that I have witnessed through the years, in January of 1997
12 I resigned as Treasurer of the appropriative pool which was the last remaining obligation I had with
13 respect to the Watermaster. I believe that based upon the circumstances set forth above, an audit of the
14 Watermaster finances and bookkeeping is not only warranted, but necessary.

15 I declare under penalty of perjury the foregoing to be true and correct to the best of my
16 knowledge. Executed on this 21st day of February, 1997 at Fontana, California.

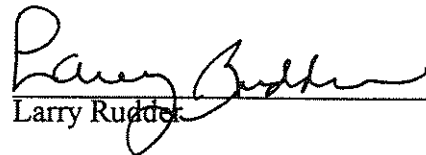
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20 Larry Rudder

EXHIBIT B - 1

STANDARD OFFICE LEASE—GROSS

AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION



1. Basic Lease Provisions ("Basic Lease Provisions")

1.1 Parties: This Lease, dated, for reference purposes only, March 28, 1996, is made by and between Rancho Tech, LLC (herein called "Lessor") and Chino Basin Watermaster doing business under the name of Chino Basin Watermaster (herein called "Lessee").

1.2 Premises: Suite Number(s) #101 & #102 floors, consisting of approximately 3,000 feet, more or less, as defined in paragraph 2 and as shown on Exhibit "A" hereto (the "Premises").

1.3 Building: Commonly described as being located at 8632 Archibald Ave, hereinafter maybe referred to as Office Building Project in the city of Rancho Cucamonga County of San Bernardino State of California, as more particularly described in Exhibit hereto, and as defined in paragraph 2.

1.4 Use: public agency and general office, subject to paragraph 1.5.

1.5 Term: five (5) years, commencing April 3, 1996 ("Commencement Date") and ending March 31, 2001, as defined in paragraph 3.

1.6 Base Rent: \$3,120.00 per month, payable on the 1st day of each month, per paragraph 4.1 and adjusted as specified in paragraph 5.1 of this lease.

1.7 Base Rent Increase: On every month of April during the term, the monthly Base Rent payable under paragraph 1.6 above shall be adjusted as provided in paragraph 4.3 below of the lease.

1.8 Rent Paid Upon Execution: _____ for _____

1.9 Security Deposit: \$3,120.00

1.10 Lessee's Share of Operating Expense Increase: 18.6% as defined in paragraph 4.2.

2. Premises, Parking and Common Areas

2.1 Premises: The Premises are a portion of a building, herein sometimes referred to as the "Building" identified in paragraph 1.3 of the Short Lease Provisions. "Building" shall include adjacent parking structures, owned in connection therewith. The Premises, the Building, the Common Areas, the land upon which the same are located, along with all other buildings and improvements thereon or thereunder, are herein collectively referred to as the "Office Building Project." Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all of the conditions set forth herein, the real property referred to in the Basic Lease Provisions, paragraph 1.2, as the "Premises" including rights to the Common Areas hereinafter specified.

2.2 Vehicle Parking: So long as Lessee is not in default, and subject to the rules and regulations attached hereto, and as established by Lessee from time to time, Lessee shall be entitled to rent and use 8 parking spaces in the Office Building Project at the monthly rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

2.2.1 If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.2.2 The monthly parking rate per parking space will be \$ 0 per month at the commencement of the term of this Lease and is subject to change upon five (5) days prior written notice to Lessee. Monthly parking fees shall be payable one month in advance prior to first day of each calendar month.

option, by notice in writing to Lessor within ten (10) days thereafter, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder, provided, however, that, as to Lessee's obligations, Lessee first reimburses Lessor for all costs incurred for Non-Standard Improvements and, as to Lessor's obligations, Lessor shall return any money previously deposited by Lessee (less any offsets due Lessor for Non-Standard Improvements); and provided further, that if such written notice by Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease hereunder shall terminate and be of no further force or effect.

3.2.1 Possession Tendered—Defined. Possession of the Premises shall be deemed tendered to Lessee ("Tender of Possession") when (1) the improvements to be provided by Lessor under this Lease are substantially completed, (2) the Building utilities are ready for use in the Premises, (3) Lessee has reasonable access to the Premises, and (4) ten (10) days shall have expired following advance written notice to Lessee of the occurrence of the matters described in (1), (2) and (3), above of this paragraph 3.2.1.

3.2.2 Delays Caused by Lessee. There shall be no abatement of rent, and the sixty (60) day period following the Commencement Date before which Lessee's right to cancel this Lease accrues under paragraph 3.2, shall be deemed extended to the extent of any delays caused by acts or omissions of Lessee, Lessee's agents, employees and contractors.

3.3 Early Possession. If Lessee occupies the Premises prior to said Commencement Date, such occupancy shall be subject to all provisions of this Lease, such occupancy shall not change the termination date, and Lessee shall pay rent for such occupancy.

3.4 Uncertain Commencement. In the event commencement of the Lease term is defined as the completion of the improvements, Lessee and Lessor shall execute an amendment to this Lease establishing the date of Tender of Possession (as defined in paragraph 3.2.1) or the actual taking of possession by Lessee, whichever first occurs, as the Commencement Date.

4. Rent.

4.1 Base Rent. Subject to adjustment as hereinafter provided in paragraph 4.3, and except as may be otherwise expressly provided in this Lease, Lessee shall pay to Lessor the Base Rent for the Premises set forth in paragraph 1.6 of the Basic Lease Provisions, without offset or deduction. Lessee shall pay Lessor upon execution hereof the advance Base Rent described in paragraph 1.8 of the Basic Lease Provisions. Rent for any period during the term hereof which is for less than one month shall be prorated based upon the actual number of days of the calendar month involved. Rent shall be payable in lawful money of the United States to Lessor at the address stated herein or to such other persons or at such other places as Lessor may designate in writing.

4.2 Operating Expense Increase. Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share, as hereinafter defined, of the amount by which all Operating Expenses, as hereinafter defined, for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the "Operating Expense Increase," in accordance with the following provisions:

(a) "Lessee's Share" is defined, for purposes of this Lease, as the percentage set forth in paragraph 1.10 of the Basic Lease Provisions, which percentage has been determined by dividing the approximate square footage of the Premises by the total approximate square footage of the rentable space contained in the Office Building Project. It is understood and agreed that the square footage figures set forth in the Basic Lease Provisions are approximations which Lessor and Lessee agree are reasonable and shall not be subject to revision except in connection with an actual change in the size of the Premises or a change in the space available for lease in the Office Building Project.

(b) "Base Year" is defined as the calendar year in which the Lease term commences.

(c) "Comparison Year" is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first twelve (12) months of the Lease Term (other than such as are mandated by a governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense Increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such increase.

(d) "Operating Expenses" is defined, for purposes of this Lease, to include all costs, if any, incurred by Lessor in the exercise of its reasonable discretion, for:

(i) The operation, repair, maintenance, and replacement, in neat, clean, safe, good order and condition, of the Office Building Project, including but not limited to, the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, telecommunication and other equipment used in common by, or for the benefit of, lessees or occupants of the Office Building Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(ii) Trash disposal, janitorial and security services;

(iii) Any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of the premiums for the liability and property insurance policies to be maintained by Lessor under paragraph 8 hereof;

(v) The amount of the real property taxes to be paid by Lessor under paragraph 10.1 hereof;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services to the Office Building Project;

(vii) Labor, salaries and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Office Building Project and accounting and a management fee attributable to the operation of the Office Building Project;

(viii) Replacing and/or adding improvements mandated by any governmental agency and any repairs or removals necessitated thereat amortized over its useful life according to Federal income tax regulations or guidelines for depreciation thereof (including interest on the balance as is then reasonable in the judgment of Lessor's accountant).

EXHIBIT B-2



• 3104 East Carvey Avenue • West Covina, California 91791 • (818) 967-6202 • FAX: (818) 331-7065

• 2171 E. Francisco Blvd., Suite K • San Rafael, California 94901 • (415) 457-0701 • FAX: (415) 457-1638

• 2651 W. Guadalupe Rd., Suite A209 • Mesa, Arizona 85202 • (602) 839-5910 • FAX: (602) 839-8560

RECEIVED
BY:
West Covina

Reply to:

1659

December 16, 1996

Ms. Traci Stewart
Chino Basin Watermaster Services
8632 Archibald Avenue
Suite 109
Rancho Cucamonga, CA 91730

RE: Watermaster Engineering Services

Dear Ms. Stewart:

We, at Stetson Engineers Inc. have been following the recent efforts and difficulties the Chino Basin Watermaster has been experiencing with reorganization plans. Being aware of these difficulties, we have set aside some issues that we feel should be addressed. The primary issues are Watermaster Engineering Services and Stetson's employment of your technical assistant (staff member).

When the Chino Basin Watermaster solicited proposals for Watermaster Engineering Services in 1994, we felt Stetson was uniquely qualified to furnish support for the Watermaster Service. Significant time and effort were assigned to preparing a comprehensive response to your request for proposal. Following initial screening and interviews, Stetson was selected to provide Watermaster Engineering Services by the selection panel, which you participated.

It was generally understood that being selected as Watermaster's Engineer meant that Stetson would serve Watermaster as an extension of Watermaster's staff (please see your attached letter dated July 19, 1994). For a short period of time, Stetson was used in this capacity. However, by the fall of 1995, Stetson's involvement in Watermaster engineering activities had dropped to nothing. Since late 1995, Stetson has received no work assignments or communication on Watermaster activities, other than routine mailing.



STETSON ENGINEERS INC.

Ms. Traci Stewart
December 16, 1996
Page 2

In August of 1994 a very productive meeting was held at the Watermaster office to identify numerous issues and work assignments. Mr. Fudacz and I both attended the meeting with you and your staff. Some time later you expressed some dissatisfaction with Stetson's response to some assignments and notified me that due to costs, Stetson should no longer attend regular meetings unless requested to do so. I assured you that Stetson is fully committed to the Watermaster and felt additional communication from Watermaster on assignments and expectations would be helpful. We agreed to move forward with Stetson providing Watermaster Engineering Services.

Since late 1995, Stetson has not been requested to participate in any of the engineering studies or assignments for Watermaster. Another engineering firm, that was considered and not selected for Watermaster Engineering Services, has been retained and apparently performs all routine Watermaster engineering work.

Stetson takes pride in its professional approach to engineering services and is in business to make our client's job easier and more productive. We try to be as flexible as possible to meet our client's needs. We also recognize the client's discretionary authority to assign work in its own interest.

Following execution of our Agreement, you had suggested we consider sub-contracting services to the same consultant discussed above. Following our meeting, it was clear to us the consultant was not interested in a sub-contracting role. In addition, budget constraints on engineering services allowed essentially no room for sub-contractor costs. While it appears to us Stetson has been unfairly and unilaterally excluded from performing under the Agreement, we have remained patient, generally assuming the reorganization effort would restabilize our engineering work.

It is unclear why Stetson was selected for Engineering Services if your confidence and preference was aligned with another consultant that was also under consideration. While we feel Stetson has not been treated fairly or given reasonable opportunity to fulfill our contract, we remain loyal and committed to the Watermaster. I have personally attended numerous meetings to stay abreast of Watermaster activities on my own time. Yet no response or communication has been received regarding engineering services. Clarification of Stetson's anticipated role with the Watermaster for the future would be appreciated. Stetson remains available to participate in joint efforts as it is deemed appropriate.

The second issue is more pressing for Stetson. In early 1995, you requested that a technical assistant performing well location work for Watermaster (Mr. Fernando Lopez) be placed on Stetson's payroll for various reasons. In an effort to serve



STETSON ENGINEERS INC

Ms. Traci Stewart
December 16, 1996
Page 3

Watermaster, and at no benefit to Stetson, this staff member for a limited time and invoice Watermaster for cost only. For professional reasons, I was not comfortable invoicing Mr. Lopez at our expense. This arrangement was a favor to you and Watermaster, and was expected to be completed by mid-1995. This arrangement has now been in place for over a year and we have received no communication from Watermaster regarding the status of Mr. Lopez.

I have recently been notified by the state office that if the current arrangement continues beyond December 31, 1996, Mr. Lopez will begin vesting ownership in Stetson's Employee Stock Ownership Plan and become a shareholder in the same capacity as our regular engineers. As you can imagine, this is not acceptable.

I would appreciate being notified in an orderly fashion to terminate Mr. Lopez's employment with Stetson Engineers Inc. We must complete termination by December 31, 1996.

As you can see we are frustrated and disappointed with the past professional relationship and the level of communication. We have full confidence that given a reasonable opportunity, Stetson will demonstrate its business in helping to solve your problems. Stetson Engineers Inc. remains committed to you.

Sincerely,



Stephen B. Stetson
Vice President

cc: Mr. Joe Grindstaff, Chairman
Chino Basin Watermaster Advisory Committee, attachments

01J08911652STEWART.LR1

EXHIBIT C

CHINO BASIN WATERMASTER
RULES AND REGULATIONS

ARTICLE 1

GENERAL PROVISIONS

1.01 Title/Code. This document shall be known and may be referred to as the "Chino Basin Watermaster Rules and Regulations" adopted pursuant to Judgment. To provide convenience in operating under the Judgment certain procedural matters contained therein have been set forth in these rules and regulations, however, should a conflict arise between the Judgment and these rules and regulations the language of the Judgment shall in all cases prevail. Designations hereinafter to "See Judgment" shall refer to verbatim quotations from the Judgment; whereas "Based on Judgment" shall refer to a paraphrase of the Judgment language.

1.02 Powers and Duties - General. 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 said Judgment or as may be ordered or authorized by the Court thereafter, in the exercise of the Court's continuing jurisdiction. [See Judgment, page 12, Section 17.]

1.03 Powers and Duties - Limited. No policy decision shall be made by Watermaster until the question involved has been raised for discussion and a vote thereon taken by the Watermaster Advisory Committee and the recommendations

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thereof received by Watermaster.

When any recommendation or advice of the Watermaster Advisory Committee is received by Watermaster, action consistent therewith may be taken by Watermaster; provided, that any recommendation approved by 80% or more of the Watermaster Advisory Committee shall constitute a mandate for action by Watermaster consistent therewith. If Watermaster is unwilling or unable to act pursuant to recommendation or advice from the Watermaster Advisory Committee (other than a mandated action), Watermaster shall hold a public hearing, which shall be followed by written findings and decision. Thereafter, Watermaster may act in accordance with said decision, whether consistent with or contrary to said Watermaster Advisory Committee recommendation. Such action shall be subject to review by the Court, as in the case of all other Watermaster determinations.

In the event Watermaster proposes to take any discretionary action, other than approval or disapproval of a pool committee action or recommendation properly transmitted, or execute any agreement not theretofore within the scope of a Watermaster Advisory Committee recommendation, notice of such intended action shall be served on the Watermaster Advisory Committee and its members at least thirty (30) days before the Watermaster meeting at which such action is finally authorized. [Based on Judgment, pages 21-22, Section 38.]

1.04 Definitions. Unless otherwise expressly indicated

or compelled by their context, words, phrases, and references appearing herein shall have the same meanings as set forth in the Judgment, including the additional definitions as follows:

(a) Committee(s) -- Any of the Pool Committees or the Watermaster Advisory Committee as the context may compel.

(b) Judgment -- The judgment entered in Chino Basin Municipal Water District v. City of Chino, et al., San Bernardino Superior Court No. 164327.

(c) Watermaster -- The Chino Basin Watermaster under the terms of the Judgment.

ARTICLE 2

PROCEDURES

* 2.01 Principal Office. The principal office of Watermaster shall be the Chino Basin Municipal Water District business office, located at 8555 Archibald Avenue, Cucamonga, California 91730; telephone number (714) 987-1712, or at such other location or locations as may be designated from time to time by order of the Court or by amendment to these rules and regulations.

2.02 Records. The records of Watermaster shall be open to inspection and maintained at the principal office. [Based on Judgment, page 20, Section 37(d).] Copies of such records may be obtained upon payment of the duplication costs thereof.

2.03 Regular Meetings. Regular meetings shall be held at the principal office at 9:00 a.m. on each fifth Wednesday, or at such other time or place as may be designated from time to time by the Watermaster, contained in the necessary notice thereof. If the time designated for regular meetings shall fall on a legal holiday, the regular meeting shall be held instead on the next succeeding regular business day at the same time and place, or such other day, time and place as may be designated. [Based on Judgment, page 20, Section 37(b).]

2.04 Special Meetings. Special meetings may be called at any time by a majority of the board acting as Watermaster by delivering notice thereof at least twenty-four (24) hours before the time of each such meeting in the case of personal delivery, and ninety-six (96) hours in the case of mail. [Based on Judgment, page 20, Section 37(c).]

2.05 Adjournment. Any meeting may be adjourned to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously posted forthwith on or near the door of the place where the meeting was held. [Based on Judgment, page 20, Section 37(e).]

2.06 Public Meetings/Hearings. All meetings, whether regular or special, shall be open to the public. Whenever a public hearing shall be required herein, written notice of such public hearing containing the time, date and place of hearing, together with the matters to be heard thereat,

shall be given to all Active Parties and each such person who has requested, in writing, notice of such meeting, at least ten (10) days prior to said public hearing.

At such hearing, evidence shall be taken with regard to only the matters noticed, unless a sufficient urgency shall exist to the contrary, and full findings and decisions shall be issued and made available for public inspection.

2.07 Notice. Notices shall be given in writing to all Active Parties and each such person who has requested notice in writing, and shall specify the time and place of the meeting and the business to be transacted thereat. [Based on Judgment, page 20, Section 37(c).]

Delivery of notice shall be deemed made on the date personally given or within ninety-six (96) hours of deposit thereof in the United States mail, first class, postage prepaid, addressed to the designee and at the address in the latest designation filed by such person.

2.08 Quorum. A majority of the board acting as Watermaster shall constitute a quorum for the transaction of the affairs of business. [Based on Judgment, page 18, Section 35.]

2.09 Voting Procedures. Only action by affirmative vote of a majority of the board acting as Watermaster shall be effective.

All actions may be adopted by voice vote, but upon demand of any member of a board acting as Watermaster, the roll shall be called and the ayes and noes recorded in the minutes of the proceedings. Every member of a board acting as Watermaster, in attendance, unless disqualified by reason

EXHIBIT D

**EXHIBIT D -- AUDIT REPORT -- IS IN THE PROCESS OF BEING
FINALIZED AT THE TIME OF THE FILING OF THIS OPPOSITION --
A COPY OF SAID FINAL AUDIT REPORT WILL BE FILED & SERVED
UNDER SEPARATE COVER PRIOR TO THE HEARING OF THE MOTION.**

EXHIBIT E

1 result in the elimination of all checks and balances and separation of powers afforded under the Judgment
2 I am informed and believe that the Advisory Committee then began to examine other possible ways to
3 formulate a new Watermaster Board of Directors.

4 6. In late May and early June of 1996, the Advisory Committee petitioned the court to
5 replace the Watermaster Board of Directors. At that time, I was confused as to the issue of legal
6 representation of the Watermaster. I understood that the Watermaster general counsel was a gentleman
7 named Fred Fudacz however, up until 1996 and indeed up until January of 1997 I had never met him.
8 When the various motions to replace the Watermaster were filed in 1996 however, I became aware that
9 Mr. Fudacz and his law firm were responsible for preparing those motions. I knew that the Watermaster
10 Board of Directors had not instructed him to file such paperwork nor were we ever consulted by the
11 attorney about these proposed motions prior to them being filed. It became apparent to me at that point
12 in time that in fact Mr. Fudacz and his law firm were representing the Advisory Committee and certainly
13 not the Watermaster Board of Directors who had given him no direction whatsoever to proceed in such
14 a manner. I could not understand how those motions could be filed by Mr. Fudacz as counsel for the
15 Watermaster when those matters clearly expressed the position of the Advisory Committee which was
16 entirely opposite to and directly in conflict with the position of the Watermaster Board.

17 7. The District's Board of Directors then met to discuss the motions that had been filed on
18 behalf of the Watermaster by Mr. Fudacz. The District's Board was unanimous on the issue that to have
19 any advisory agency members on the proposed Watermaster Board would create an inherent conflict
20 of interest. However, the Board was confused as to how to proceed since Mr. Fudacz had filed the
21 motions on behalf of Watermaster, yet had taken that direction from the Advisory Committee. It was
22 my position that Mr. Fudacz should represent the Watermaster Board of Directors since he was general
23 counsel for the Watermaster and not the Advisory Agency. At the same time, it was obvious that we
24 could not rely upon the counsel of Mr. Fudacz since he had already taken a position on behalf of the
25 Advisory Committee which was directly contrary to the position of the Watermaster Board. At that time
26 it was the unanimous decision of the District's Board, who also comprised the Watermaster Board in
27 its entirety, to have the District's general counsel file opposing pleadings with the court in response to
28 the Advisory Agency's motion.

1 8. It is my understanding that in light of these motions, the court ordered the parties to meet
2 and confer in an attempt to resolve the issues concerning the replacement of the Watermaster.
3 Nevertheless, during the ensuing months, the positions of the Advisory Committee and the Watermaster
4 have become even more strained. I have received information from Larry Rudder, former Chief Financial
5 Officer for the Watermaster that in fact the Advisory Committee and the Director of Watermaster
6 Services were following no approved procedures or policies with regards to conducting the financial
7 affairs of the Watermaster. Concerns over the ever increasing budget of the Watermaster continued.
8 I felt that the Advisory Committee was working completely outside of the parameters of the Judgment
9 itself and had taken over the administrative functions of the Watermaster and had essentially nullified the
10 office of Watermaster.

11 9. I was repeatedly told over the years that if the Advisory Committee voted by an 80% or
12 greater majority, the Watermaster Board of Directors were mandated to follow that vote. I was told that
13 this rule applied regardless of what issue was before the Watermaster Board and I have never received
14 any legal advice from Watermaster counsel to the contrary. In fact, the only advice I have ever received
15 from Mr. Fudacz and his firm, through correspondence, was that the Watermaster Board must comply
16 with the mandated vote of the Advisory Committee.

17 10. In December of 1996, it was brought to my attention that money had been stolen from
18 the Watermaster accounts. At that point in time, I became even more concerned about my fiduciary
19 responsibilities as Watermaster Board of Director. I became concerned about my own personal liability
20 with respect to the handling of Watermaster funds and the fact that the Director of Watermaster Services
21 and her staff were no longer taking any directives from the Watermaster or the District despite the fact
22 that they continue to be employees of the District. Therefore, I felt it was my obligation as a member of
23 the Watermaster Board of Directors to call a meeting seeking an independent third party audit of the
24 affairs of the Watermaster.

25 11. On January 2, 1997, notice was given of a special meeting of the Watermaster to be held
26 on January 9, 1997. At that meeting, a public hearing was held to discuss the potential audit of the
27 Watermaster policies, procedures and books. Several members of the public addressed the Watermaster
28 Board at that time including representatives from the Advisory Committee and other Pool Committees

1 Minutes of the meeting have been prepared by Watermaster Services staff and, although these minutes
2 have not yet been formally approved by the Watermaster Board, a copy of them are attached as Exhibi
3 "1" and incorporated herein by this reference.

4 12. During the course of that meeting, it became apparent from statements made by some o
5 the speakers that action by the Watermaster could result in civil litigation and potentially a grand jury
6 investigation of Watermaster. Unfortunately, Watermaster counsel Fred Fudacz was not present at tha
7 meeting and therefore in light of the threatened litigation made by the speakers at the meeting I decide
8 to adjourn the meeting until we could consult with our legal counsel regarding our potential exposure
9 to litigation.

10 13. On January 9, 1997, notice was given that the adjourned Watermaster Board meeting
11 would be reconvened on January 14, 1997. On January 13, 1997, I personally made a phone call to the
12 offices of Fred Fudacz and talked directly with his secretary. She advised me that Mr. Fudacz was not
13 available to come to the telephone at that time. I advised her to inform Mr. Fudacz that I specifically
14 requested his attendance at the Watermaster meeting of January 14, 1997. I also advised her that I did
15 not want a subordinate to appear on behalf of Mr. Fudacz.

16 14. On January 14, 1997, when the previously adjourned Watermaster meeting reconvened,
17 Mr. Ossiff appeared as general counsel for the Watermaster as opposed to Mr. Fudacz. My first order
18 of business at this meeting was to open up the public hearing for further comment on the issues of the
19 audit and whether it should go forward. Although there were many people in attendance at the meeting,
20 no one came forward to address the Board at that time. Accordingly, the public hearing section of the
21 meeting was closed. We then adjourned to closed session to discuss the threatened litigation which had
22 occurred at the previous meeting with Mr. Ossiff, Watermaster counsel. After having received legal
23 counsel in closed session, the open session of the meeting was once again convened at which point a
24 motion was passed to conduct an independent third party audit of the Watermaster affairs. A copy of
25 the minutes of said meeting, although not formally approved by the Watermaster Board, are attached
26 hereto as Exhibit "2" and incorporated herein by this reference.

27 15. On January 23, 1997, another meeting of the Watermaster Board of Directors was held.
28 The purpose of this meeting was to select a firm qualified to conduct the audit of the Watermaster.

1 Public comment was once again taken at this meeting concerning whether or not the audit should be
2 conducted at all. All individuals were once again given an opportunity to be heard at this meeting. This
3 includes member representatives of the Advisory Committee and various Pool Committees. Mr. Fudacz
4 was also present at this meeting and he was directly questioned by myself and Board member, Terry
5 Catlin regarding his apparent conflict of interest in representing the Advisory Committee and the
6 Watermaster Board at the same time on the same issue. He stated at that time that it was his
7 responsibility to ensure that all parties abided by the terms of the Judgment. However, he has never
8 explained the terms of the Judgment to me or to my knowledge any of the members of the Watermaster
9 Board. Once again, Mr. Fudacz filed a petition with the court to replace the Watermaster with a new
10 nine member Watermaster wherein he claimed to be working on behalf of the Watermaster. He also filed
11 a motion to have the cost of the audit paid by the District. However, the Watermaster has never directed
12 him to file such motions and, in fact, I believe he is working at the direction of the Advisory Committee
13 again. A copy of the January 23, 1997 meeting minutes, which have not been formally approved by the
14 Watermaster Board of Directors, are attached hereto as Exhibit "3" and incorporated herein by this
15 reference.

16 16. I have also reviewed two retainer agreements pertaining to legal services provided by Mr.
17 Fudacz and his law firm. One retainer agreement indicates that Mr. Fudacz will act as special counsel
18 to the Advisory Committee. The second retainer agreement states that Mr. Fudacz and his law firm will
19 act as general counsel to the Watermaster. A copy of said retainer agreements are attached hereto
20 collectively as Exhibit "4" and incorporated herein by this reference.

21 17. For all the foregoing reasons I believe that an audit of Watermaster affairs was indeed
22 necessary so as to ensure that all parties to the Judgment are in fact working within the framework of the
23 Judgment. It is also necessary to determine whether Watermaster funds are being properly accounted
24 for. All decisions regarding the audit were done by the Watermaster Board of Directors and not Chino
25 Basin Municipal Water District Board of Directors. I also believe that Mr. Fudacz has a conflict of
26 interest in representing the Advisory Committee and filing pleadings as counsel for Watermaster in direct
27 opposition to the position taken by the Watermaster Board on these issues.

28 18. In February of 1997, the Board of Directors of the District by a vote of 4-0, with one

1 member absent, voted to instruct its general counsel, Jean Cihigoyenette, to send correspondence t
2 Mr. Fudacz once again outlining the position of the Watermaster Board regarding his representation o
3 the Advisory Committee on these issues and instructing him to take affirmative action on behalf of th
4 Watermaster to take the pending motions off calendar. A copy of said correspondence is attached heret
5 as Exhibit "5" and incorporated herein by this reference.

6 I declare under penalty of perjury the foregoing to be true and correct to the best of m
7 knowledge. Executed on this 23rd day of February, 1997 at Ontario, California.

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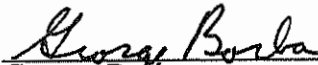

George Borba

EXHIBIT E-1

VERBATIM
MINUTES
OF THE
SPECIAL MEETING OF THE
CHINO BASIN WATERMASTER
BOARD OF DIRECTORS
January 9, 1997

DRAFT

The meeting of the Chino Basin Watermaster was held at the offices of Chino Basin Municipal Water District, 9400 Cherry Avenue, Building A, Fontana, January 9, 1997 at 10:00 A.M.

Watermaster Members Present

George Borba
John L. Anderson
Terry Catlin
Anne W. Dunihue
Wyatt Troxel

Vice-Chairman
Secretary/Treasurer
Member
Member
Member

Watermaster Staff Present

Traci Stewart
Michelle Lauffer
Alice Lichti

Chief of Watermaster Services
Water Resources Specialist
Controller

Others Present

Steve Arbelbide
Paula Barron
Patti Bonawitz
Gerald J. Black
Bob DeBerard
Robert Dougherty
Doug Drury
Charles Fedak
Joe Grindstaff
Jimmy Gutierrez
Jack Hagerman
Edwin James
Mark Kinsey
Gene Koopman
Bob Page
Robb Quincey
Larry Rudder
Mike Teal
Dennis Yates

California Steel Industries, Inc.
Chino Basin Municipal Water District
Chino Basin Municipal Water District
Fontana Union Water Company
Grapes
Attorney, City of Ontario
Chino Basin Municipal Water District
CPA
Monte Vista Water District
Attorney, City of Chino
California Institute for Men
Jurupa Community Services District
Chino Basin Municipal Water District
Milk Producers Counsel
Daily Bulletin
Chino Basin Municipal Water District
Chino Basin Municipal Water District
City of Ontario
Councilman, City of Chino

VICE-CHAIRMAN BORBA called the meeting to order at 9:57 A.M.

Following the Flag Salute,

A. PUBLIC COMMENT

VICE-CHAIRMAN BORBA:

First item is public comment. Anyone in the audience may come forward and state issues that are not on the agenda. Of course, as you all know, no official action can be taken although we can discuss them. We're at a handicap this morning as the Watermaster because our legal counsel was unable to be here, so I'll do the best I can and I see some attorneys out there, maybe, on an unbiased basis, you can help me out.

ED JAMES

My name is Ed James. I am Chairman of the Appropriative Pool and General Manager for Jurupa Community Services District. I appreciate George giving me the opportunity to speak because I have to leave at 10:30. I have a meeting with my own Board I have to get back to. I guess there's some things that happened last night that I want to bring to your attention. I don't think I can remember all of it, quite a bit occurred. But, I'm here at this point, I guess, first of all, I wanted to bring an olive branch. I couldn't find an olive branch and I didn't want to rip any live trees, so I'm bringing the olive leaf here. Basically, what I'm trying to do here is, you are the Chino Basin Watermaster Board, court appointed,

ED JAMES:

If I could. I was going to bring it up under action Item No. 1. The action is that we've, the Committee, at this point, because there's so much going on and there's so much information out there that people don't really know, we were asked and was basically heard on that this Board not take any official action. That you can go ahead and discuss the issues, you have all the right to do that, but we knew last night, we spend from 4 to 8:00 p.m. trying to work out all the issues going on. There's a lot of stuff out there, a lot of miscommunication, that's why this Executive Committee has been. And so there was a motion asking that this Board not take any official action but that does not mean that you cannot discuss it. You have a right to discuss, if you have any questions and all that. We're just asking at this point that you do not take any action but you have the right to ask information and pursue it and we will begin working with you and presenting questions and I would ask you to ask questions today, so then if we do have more questions, then we can meet and answer those in the future for you

ROBERT DOUGHERTY, ATTY, CITY OF ONTARIO:

If I might speak on that, I'm Robert Dougherty representing the City of Ontario. I just want to try and make it clear what the two motions were that were passed. There was a motion that was passed by less than 80% but more than 50% of the Advisory Committee last night and that was to request the Board not to take any personnel action in regard to Watermaster staff until such time as requested by the Advisory Committee. That, of course, did not receive an 80% vote, it did receive a more than 50% vote. Our understanding of the rules as set down in the Judgement is if the Board wishes to take up the issue of personnel action, it now would be incumbent upon the Board to hold a public hearing and to give an appropriate notice which I seem to recall as 30 days. The second motion which did pass by more than 80% of the vote of the Advisory Committee was with respect to this meeting here today and it was two-fold. One was a request that you not take any personnel action today, the second was that you not adjourn to closed session for the purpose of discussing any personnel action. Mr. James is correct, this does not preclude you from discussing the issues but it should be done in open session and it is my understanding that the person who is the subject of discussion would not object to that, because she did not object last night.

WYATT TROXEL

Mr. Chairman, my question was, how would we have a discussion and not have a closed session?

VICE-CHAIRMAN BORBA:

It's agendized as closed session so we would have to go to open session...I don't know the procedure here. Well, we'll take that, if we decide to do that. I'd like to ask some questions of Traci. Now, we haven't had an update on this activity we had, the problems you had over there with this embezzlement or fraud or whatever you had. Would you step forward and bring us up to date on what the activity is.

TRACI STEWART:

Yes sir. I'm sorry. What I reported to the Advisory Committee yesterday is that I received a communication from the FBI indicating that it was their policy not to participate in any discussions when there's an on-going investigation and they informed us that they are waiting for some information from B of A's investigation relative to our case. There was a representative from the Sheriff's Department there last night. Essentially, his statement was the same and then I did apprise the Committee that the bank had put the money back into the account as of yesterday and that they're in the process of computing the interest that we would have earned had the money stayed in our account.

VICE-CHAIRMAN BORBA:

Okay. Can we continue on that. My problem, or questions are if you will, is that I don't know your procedures. You have an auditor, you have other people that work for you in the department, as to how this occurred. Was this just an outright fraud from someone? Reading the article in the paper, an outsider would think somebody knew something. That's a perception, I think, that you could draw from that...so it may be an area that is confidential or can't be disclosed, but

TRACI STEWART:

Our first reaction, and I did disclose this at the meeting that we had on the 4th, but our first reaction was that possibly it was somebody that had inside information. But, when we discovered that there were other entities that were also having the same problem and that their mail was being routed to the

ROBERT DOUGHERTY, ATTY. CITY OF ONTARIO:

Well, I understand that in order for the employees handled as a unit not under your auspices, but PERS, that basically, you just need to sign off at this time and the documents are ready for that purpose.

VICE-CHAIRMAN BORBA:

Another problem I have is, the fact that the 80/20 rule is appropriate, and it's fine with me, okay, as long as I don't have a responsibility, but then nevertheless here, we have a Watermaster meeting which we're all participating in, then if there's an 80/20 rule we have no say so, no authority, zero.

ROBERT DOUGHERTY, ATTY. CITY OF ONTARIO:

Under the Judgement, if it's a Watermaster issue, which this is, then the 80/20 rule is a mandate if there's more than 80%. As far, you've posed other issues that we'd really have to examine when and if they ever happened, that is the issue of liability for an accident. I haven't had time to analyze what would happen. In the context that we're speaking of today, then it's our opinion the 80/20 rule applies.

JIMMY GUTIEREZ, ATTY. CITY OF CHINO

I have the opposite view, but, once Ms. Stewart finishes, I'd like to address both the audit and that question.

VICE-CHAIRMAN BORBA:

Let me ask one more question, then I'll be quiet. (Pause) I lost my train of thought.

TRACI STEWART:

Can I say, Mr. Borba, that we maintain insurance just as you maintained insurance for that purpose in the name of Watermaster and that any entity or group of people who would be serving in the capacity of Watermaster would be covered by that insurance and in the context that there might be some lawsuit that was successful, my understanding would be that that would then be incumbent upon the producers of the Basin who are paying for the costs associated with Watermaster to assess themselves and pay that. It would not become a liability to whoever the entity is that is Watermaster, individually as a separate entity. We carry liability insurance and the bonds and everything that we understand we're supposed to be carrying.

TERRY CATLIN:

Is the Watermaster Board a party to that?

TRACI STEWART:

They're named, yes, by person currently and we would be naming, there's a position and then there's also, one is like a blanket position and the other one is an indemnity and then there's also insurance that

TERRY CATLIN:

That says we are liable?

TRACI STEWART:

That we're covered. You know, like for example, Alice is named, I am named, because we're people that are conducting the day-to-day business of Watermaster activities.

VICE-CHAIRMAN BORBA:

Okay, that question I had, then I'll be quiet. I got my train of thought back now. On the audit, there was a request for an audit and now we have an 80/20 rule here that says we're not to get involved in it as I understand it. What's going to happen as far as your procedures and whatever you're doing over there as far as making sure that everything is pure and

TRACI STEWART:

That's what Ed eluded to. The Committee appointed a committee of financial officers from the various producers that want to participate and asked that those people convene and then work with Alice primarily and look at our financial procedures and policies and if they find they want to recommend

WYATT TROXEL:

Okay, I wasn't sure what subject you were talking about.

JIMMY GUTIERREZ:

Paragraph 17 says: "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..." Paragraph 20 say "Watermaster may employ or retain such administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as may be deemed appropriate in the carrying out of its powers and shall require appropriate bonds from all officers and employees handling Watermaster funds." Also, Paragraph 25, "Watermaster may enter into contracts for the performance of any powers herein granted;..." Those are your powers. Now; I want to go to this 80/20 rule because, in my opinion, it has been totally miss-interrupted, misapplied to the point that it makes no sense and I totally disagree with Mr. Dougherty. That's what you'd expect when you have two lawyers in the same room. But, what's important is the definition of discretionary determinations because what it says under Paragraph 38(b) of the Advisory Committee, which is the paragraph that gives power to the Advisory Committee, it says "The Advisory Committee shall have the duty to study, and the power to recommend, review and act upon all discretionary determinations..." it goes on to say "When any recommendation or advice of the Advisory Committee is received by Watermaster, action consistent therewith may be taken by Watermaster; provided, that any recommendation approved by 80 votes or more in the Advisory Committee shall constitute a mandate for action by Watermaster consistent therewith." but it goes on to say "If Watermaster is unwilling or unable to act pursuant to recommendation or advice from the Advisory Committee..." I won't read the rest of it but clearly, it says if you're unable or unwilling, therefore, you have the power not to follow the 80% mandate. But what it says is that, if you do not agree, you can have a hearing but the hearing, at the hearing make findings and then you can act in the manner you want and if the Advisory Committee doesn't like it, the Advisory Committee takes you to Court. But there is nothing in this Judgment, and I defy anyone, including Mr. Dougherty, to point to language in the Judgment that says that you must act in accordance with that 80% vote. It is not the case and also, a more important distinction which I now come to is the distinction between your powers as administrators as employees is different from discretionary action. I believe that the Judgment gives Watermaster enumerated powers to do the things such as I read, and only Watermaster has those. Under the powers of the Advisory Committee, there is no statement that the Advisory Committee can hire anybody, can hire a lawyer, can hire an accountant, can hire anybody else, nor does the Advisory Committee have the power to enter into any contract such as the lease they have on a facility now. Nor, is there anything in the Advisory Committee that says that the Watermaster is prevented from doing its duties under the Judgment. It talks about discretionary and there is no place in the Judgment where discretionary is defined except where it comes in the Judgment a discussion about a plan for water basin management of the water in the District. That's the only other place a discretionary term is used. Now, I don't expect you to take my word for it, because I'm not your lawyer. However, I want you to be aware that at least the City of Chino believes this to be the case and has taken the action. As a matter of fact, the City of Chino was the sole dissenter in the vote taken a year ago to displace Chino Basin Watermaster and we filed an opposition and the Judge believed enough in what we were saying that he did not grant the motion to replace Chino Basin Board with this Advisory Committee to be the Watermaster because there's a structural component within the Judgment that says the Watermaster is you, you report to the Court, not to the Advisory Committee. The Advisory Committee has their rights, their powers, and if they don't like anything that you do, the Advisory Committee can challenge you and we believe that it is an inherent dysfunction if we combine the structure that is contemplated in the Judgment where on the one hand, the Watermaster, which is yourselves administer the groundwater in this Basin with the rights of the producers to disagree. Getting back to the point, we believe that the audit should take place, we believe that you should commission the audit, we need to have confidence and we need to have the Daily Bulletin and the San Bernardino Sun and all the other papers change their perception about what is going on within Watermaster. Something smells and everybody knows that where there's a smell, there's a corps someplace. I'm not pointing the finger at anybody, but there, I think, is a reason why the Chief of Watermaster Services wants to limit the scope of the audit. And, my question is, what is she hiding? Maybe she's not hiding anything. Let the audit go forth.

ROBERT DOUGHERTY, ATTY. CITY OF ONTARIO:

My I have a chance to address Mr. Gutierrez' remarks?

being done in their interest. There are several personnel issues and I was going to stay around, but I have to leave right now. There are concerns I have and that's what this committee wants to do. We want to (garbled). I agree with Jimmy, they are, right now because there's no one else, they are Chino Basin Municipal Water District employees and there are rules and procedures, they are here and (garbled). Once they become over and they change and we're going through this transition, there's going to have to be a contract. That has not been developed yet. We're in limbo folks and it's very tough. But there are concerns that have happened on the personnel issues that need to be resolved and that's what I hope the Executive Committee can come in and meet with you, because I found that there's some merit increases that have not been given. Turns out that we haven't presented the information to Chino Basin to get those. That has to be resolved, there are people out there who deserve just compensation, they haven't gotten that. There are other issues too I found out. But, because of this lack of communication, people are being hurt by it and that's where we're hopefully ought to be resolved and move forward. Again, what the Advisory Committee said is, don't take any action here, we want to work with you, you work with us, let's resolve this. There is the personnel or the perception out there, we've got to get that resolved, and let's move forward. Thank you and I'm sorry I have to leave but I appreciate your time.

VICE-CHAIRMAN BORBA:

Thank you Mr. James. Mr. Dougherty.

ROBERT DOUGHERTY, ATTY. CITY OF ONTARIO:

Thank you Mr. Chairman. I think what I'd like to do is start with reading, word for word, the section of the Judgment that Mr. Gutierrez paraphrased for you. And, it is paragraph 38(b)(1) entitled Committee Initiative. It says, "When any recommendation or advice of the Advisory Committee is received by Watermaster, action consistent therewith may be taken by Watermaster, provided, that any recommendation approved by 80 votes or more in the Advisory Committee shall constitute a mandate for action by Watermaster consistent therewith. If Watermaster is unwilling or unable to act", next page, "pursuant to recommendation or advice from the Advisory Committee (other than such mandatory recommendations), Watermaster shall hold a public hearing, which shall be followed by written findings and decisions. Thereafter, Watermaster may act in accordance with said decision, whether consistent with or contrary to said Advisory Committee recommendation. Such action shall be subject to review by the Court, as in the case of all other Watermaster determinations." That's where the subsection ends. Another issue was brought up and that was the question of whether an action is discretionarily or mandatory. Well, discretionary or mandatory does not equate with administrative. A lot of what you do, a lot of what every organization does is administrative, however, it can be an administrative action which is either mandatory or discretionary, depending upon what it is that the Board or the body taking action does. It is mandatory when you have no discretion to follow. For example, if you are precluded from doing something, then it's mandatory that you don't. If it is required that you pay your taxes on time for the body, if the body has taxes, that's mandatory. On the other hand, you have perhaps a mandatory duty to look at personnel issues of those employees that are yours, and we won't get into that issue now of whose employee Chief of Watermaster Services is. But, once you have that mandatory duty to look into it, it's discretionary how you handle it. You can either discretionary take action or not take action. What the Advisory Committee has asked, by more than 80% today, has been that you do not go into closed session and you do not take any action today. I think that is a direction that is given with respect to a discretionary matter. Now, having said that, I think I'm going to be at this point in time, totally politically incorrect. I've sat through these meetings now since last February at the Advisory Committee and I have absolutely been appalled at the various, what I perceive as hidden agendas that have been going on in that body. Without getting into what they are, I will say, I wonder why they are, who has them, sometimes I wonder what they are, although sometimes I can guess and, for some reason, the agenda at this point, by at least the City of Chino and the Monte Vista Water Company has been to get the Chief of Watermaster Services. Now, I ask why. Well, I think there are a number of possible explanations, but I won't get into that because I would only be speculating and I can't put myself inside somebody else's head and do that. However, it is rather apparent that that is the objective. A vote was taken last night, there was an attempt to reconcile everything. Another issue that was up for consideration was whether Mr. Grindstaff should remain as the Chairman of the Advisory Committee in view of the letter that had been written by his Board at Monte Vista to the Advisory Committee and also a follow-up letter that came to light. At the end of the meeting, it was determined that no action would be taken in the spirit of the olive branch, to replace Mr. Grindstaff. It was also the overwhelming recommendation to back off and let's continue

received a call asking that we immediately bring over our check for our administrative fees, \$147,000. That check was delivered that afternoon. Monday night, and I was even out of town at the time this all occurred, Monday night, I got a message and called Traci ...(end of side A)...not just an account number that fell in the trash someplace, or that somebody had and had tried to transfer \$142,000 out of that new account into the old account. Now, in fact, I believe that that probably all was coincidence, but certainly, it gave rise to great concern in our agency and our controller has been a banker and has worked as an internal auditor and on Wednesday morning, the first time I could talk to him about this, he said to me, Joe, this is terrible, we need to have an audit. And, I had suggested that the day before. He actually called around, I think he called virtually every CFO, he told me that he called, I think it was ten or twelve chief financial officers of agencies in our area. And, this morning I verified, he said he called the City of Ontario, he called the City of Upland, he called the City of Chino, the City of Chino Hills, Cucamonga County Water District, he called virtually all of those places, and unanimously, they said there should be an audit, the chief financial officers of those organizations. He, on the, the only disagreements, one of the CFOs said you should wait until the police have finished investigating staff and another CFO said, you know, it shouldn't be the auditor that's regularly used because there may be a conflict there. But other than that, it was unanimous there should be an audit. At our Board meeting on Wednesday night, after Cal had called around, Cal made a report about that. Our Board wrote a letter, or directed that a letter be written and actually, personally reviewed, and started to send a letter saying that we need to have an audit. That was not, never has been, the motive of our district to do anything personnel wise, to attack any individual. Our district is a representative of their customers and our Board of Directors takes their fiduciary responsibilities very seriously and I resent and categorically deny any implication that our position on this has anything to do with anything except for the fact that we believe we should look at the internal controls. Any questions?

WYATT TROXEL:

I have a general question. If we were to consider to recommend an audit, and say it cost \$30,000, or whatever it is, who pays for it? Who is actually paying for it?

ALICE LIGHT:

The producers would end up paying for it.

WYATT TROXEL:

Not the general public? It's not Chino Basin Municipal Water District?

ALICE LIGHT:

In some instances, it will be passed through, probably not a significant increase or anything like that on the water bills, but the agencies would pay for it and the majority would be paid for by the cities.

WYATT TROXEL:

Okay. So the producers are represented on the Advisory Committee?

ALICE LIGHT:

Yes, the Advisory Committee is made up of predominately cities, and the agricultural pool, and the industrial area (the non-agricultural pool) are also represented with, I think, 20% votes.

JOE GRINDSTAFF:

I'd like to add that, if, in fact, this Board decides to do that, it will probably invite legal action and it may end up being through that legal action that you would pay. I think you should be aware. In my opinion, and I voted against that motion, but in my opinion, that is a consequence that might occur. And, I shouldn't probably give legal advice, but I'm telling you that I think, in fact, that the Advisory Committee was very sincere and committed to the fact that they wanted to do it a different way and that some of those people feel so strongly that they would elect, at that point, to go to Court, and I just think that should be on the table.

WYATT TROXEL:

Okay. If I could try to understand. I think, out of all the mush that occurred today, mush because we got a lot of conflicting statements, what I think I've heard is that, members of the Advisory Committee would be supportive of an audit, but be cautious in how it's initiated and for us not to suggest one at this time. Is that what I heard?

ANNE DUNIHUE:

That's coming through too?

ALICE LICHTI:

Yes, that's coming through too.

VICE-CHAIRMAN BORBA:

Mr. Grindstaff, thank you very much. Oh, excuse me Mr. Grindstaff, we've got a question for you.

TERRY CATLIN:

Based on the Advisory Committee's recommendation to have this audit. Those CFO's are from the Advisory Committee or from the, where are they from?

JOE GRINDSTAFF:

The CFO's were, to be invited were the CFO's from the Advisory Committee members and Chino Basin Municipal Water District and, I don't know, was there anybody else? I know that Ed was trying to open it up.

TRACI STEWART

Whoever would like to participate.

ROBERT DOUGHERTY, ATTY. CITY OF ONTARIO:

It was basically accounting personnel.

JOE GRINDSTAFF:

Yeah, someone who had internal audit experience.

ROBERT DOUGHERTY, ATTY. CITY OF ONTARIO:

Right. And the number wasn't limited. It was basically thrown out for volunteers, but there was an indication, I felt, that there would be quite a few volunteers.

TRACI STEWART

I know Mr. Koopman in the Ag Pool was concerned because they didn't really have a specific CPA, but they would like to see a CPA at least on it. So, we have a sense that we should have some good representation. There's an interest in having good representation.

TERRY CATLIN:

Would this audit be limited, or full?

JOE GRINDSTAFF:

The discussion was not even that it would be an audit, but these guys, these people, would get together, look at what we're doing, and make recommendations and that they would use their expertise and if, in fact, they felt that there was a full audit needed, then they would recommend that, or if they felt we needed just to revise policies, it think, am I correct, that the CFO's would make that decision?

TERRY CATLIN:

Depending on the makeup of that body. Is there potential for a bias or conflict of interest?

JOE GRINDSTAFF:

There's probably always potential. I believe that the CFO's for the agencies in this area are honorable people. I believe that and I believe that for every agency. I have no reason to think otherwise, whether it's a city or a district or whoever and, if the politics are kept out, I believe, generally, CFO's are more inclined to keep politics out, I think that they would come together, probably without any of the rest of us being there, and make decisions. But, obviously, it is possible that there could be a conflict and obviously, it is possible that the CFO's wouldn't agree. May be that Larry Rudder would be assigned, he'd go there and he'd say I think we need to do this and, Cal Good, our controller, would go there and say I think we need to do that, and they'd disagree and there could be, I don't know.

JOE GRINDSTAFF:

Of the financial policies and procedures. That was not something that was a task given to the CFO's. They're going to look at it and say, this is what we think should be done. There was no assignment to give an opinion because an opinion would require an independent auditor be hired and that he or she do testing and do what I call a full audit which means, they actually test and say, there was a \$9,000 loss I think Mr. Fedak explained yesterday and we want to conduct our testing procedure to determine if another \$9,000 loss could occur and to make sure policies, procedures and practices are in place that would prevent that kind of thing from occurring again. And, as I understand it, that's what a full audit would do. Maybe I should defer it to the CPA here. (CPA said yes) Yes. But that was not the task. It could be that the CFO's however, would come back and say that should be the task, we aren't the ones to do it; or, that should be the task and we have one of our CFO's who is capable and competent to do that. He is volunteering to spend his city's or his district's or his agency's time to conduct that audit for us. I think it's more likely, if they decide it is necessary, that they would recommend that someone be hired. But, it is possible the other way, I think.

TERRY CATLIN:

I would think that in the interest of calming public fears one would want an official opinion rendered.

JOE GRINDSTAFF:

That is certainly Monte Vista's opinion, but I should have somebody else stand here and express the Advisory Committee's opinion sometimes.

DENNIS YATES:

My name is Dennis Yates, I'm a councilman from the City of Chino. I guess I might be the original culprit with the Watermaster issue. It seems like an eternity ago when I got wind that these very people that are addressing you about the audit are the very people that tried to vote you folks out of the Watermaster Board. So, I want you to keep that in your mind. Being a fellow elected official, I'm a little aghast sitting here that these employees sitting behind me are again trying to dictate policy and that is your job as elected officials, it's my job as an elected official and I shouldn't have to remind you of that. The proposal of the members doing a self audit to me is like putting the fox in the hen house. It's almost to the point, to me, where it's hilarious. It would be what I consider a "drive-by audit". I don't think it would be effective and it will be steered by these employees of the Advisory Board. I have already had conference with counsel on the issue of requesting a Grand Jury Audit of the Watermaster. They've already voted 5/0 to instruct our City attorney, Mr. Gutierrez, to do so. If this Board, elected body, does not chose today to do an audit, to develop your own RFP, you will leave the City of Chino no other avenue but to request a Grand Jury Audit and that's a promise from the City of Chino. On the second item of the agenda, we did, Tuesday night, unanimously, 5/0 vote, a vote of "no confidence" for the administration of the Watermaster for several reasons. One, the budgeting, enlarging the budget of Watermaster, the unauthorized leasing of a new office building, some suspicious hiring of an engineer and what it all boils down to Board, is, if I have a problem with your administrator, I don't feel I have to go to, or any other elected official, go to the Advisory Committee employees to lodge a complaint against an employee of the Watermaster. I should be able to come to you folks who are their employer and do that. But the Advisory Board is working it now to where, everything has to go through them. You have to go through them, I have to go through them. But, they're not elected officials, we are. We're the ones that are going to have to pay the preacher down the road. So, I beg of you to go ahead and authorize the audit, develop the RFP and get this audit going to get the trust back to the Watermaster Board. And, also, I would request that you do go into closed session and you consider a "vote of no confidence" of the administrator of the Watermaster. There any questions?

LARRY RUDDER:

Yes. In light of that conversation, I'd like to express a concern I've had in the past as Finance Officer in the Watermaster for a few years, there were several occasions, not many, but several occasions where I advised the Advisory Committee that the action they were contemplating was not sound financial practice, or it violated District policy. The two or three times that this happened, they, in a very cavalier manner I might add, dismissed it. They had 80% of the votes so, go sit down. And, I don't know if something similar to that is going to happen with this audit, internal audit. Are they going to pick and choose what they like at their discretion? Or even if they come up with a list of procedures

District employees as far as merit increases are concerned. I personally, will welcome an audit. I feel that the audit will best be done by people in positions similar to Mr. Rudder because they know, through long experience, what should be in place as far as policies and procedures relating to finances are concerned. I don't believe that any of them have ever come up against a fraud case such as we have just experienced. That doesn't say that they can't tomorrow. And, in speaking with Mr. Rudder following the fraud case, he has told me that he has looked at his own procedures and tightened down a few screws. I wouldn't be a bit surprised if some of the other financial officers haven't done likewise. They have a wealth of knowledge there that we can draw on at very minimal cost and if they will respond as quickly as Traci can get the letters out to them as far as who is willing to work on this committee, we can come up with either yes, your procedures are good, they should be modified (and if they need to be modified, I have no hesitation in doing that), and I think you'll find that financial officers, as a whole, as a body, are people with integrity and we don't let ourselves be swayed by politics. So, it would be my recommendation that we at least give the financial officers an opportunity to look into the picture, make their recommendations and there's going to be an Advisory Committee meeting on the 22nd is that right? Okay, pools on the 22nd and Advisory on the 13th of February. That's a little more than a month away. If they can have a report ready for that meeting, there will be a lot of time saved. If we go out for proposals, for a formal audit, the Watermaster's next meeting is in March. Unless there's a special Watermaster meeting called, the proposals could not be awarded prior to then, the Advisory Committee would not look at them until February 13 and you would lose up to two months before getting a move on this situation.

TERRY CATLIN:

Question. You're saying if you went out for bid they would not be looked at by the Advisory Committee until February 13, is that right?

ALICE LICHTI:

That would be their next regular meeting at which time they would review something, unless a special meeting was called for that purpose.

TERRY CATLIN:

But, then, there's still the question of whether or not this Board has administrative powers to contract with an auditor independently of the Advisory Committee. In my mind

ALICE LICHTI:

If you decided you wanted to hire an auditor and if your directions were given today to go out for proposals, if that was your decision and that was your action and we went out for proposals, they would go to the Advisory Committee on February 13 and would come back to this body in March, unless a lot of special meetings were set up in order to do the review. And, you would lose up to two months time before the person was even hired.

TERRY CATLIN:

But isn't there this question, though, I mean, if, it's like we need to get approval from the Advisory Committee to do that.

ALICE LICHTI:

No.

TERRY CATLIN:

Then why do they need to look at it?

ALICE LICHTI:

Every contract goes through the Advisory Committee. They're all reviewed by the Advisory Committee.

TERRY CATLIN:

But it says here, in the Adjudication, Paragraph 20, that Watermaster may employ or retain administrative engineering, etc. accounting consultants. But, you're saying there is a need still to get approval by the Advisory Committee.

ROBERT DOUGHERTY, ATTY. CITY OF ONTARIO:

We can speak at the _____ and I really wish that somebody that is in favor of an audit would, at this point, would tell us what exactly they want to have looked at and what they want to have as a audit and why they're doing it in the first place. Again, if we focus on what happened that precipitated this whole rhu-ha-ha, it was the fact that the Watermaster account got tapped by some crooks somewhere for money which has now been paid back by the bank because, it's the bank's loss. If the focus is on that, then, the audit should be directed toward that. If the focus is otherwise, it should be defined. I think what the CFO's are going to look at is the specific problem, because that's what they should look at originally, and in connection with that, they're going to look at the entire accounting procedures to see what improvements can be made. This is not a adverse reflection on anybody. We're not saying your procedures are _____, they should be revised and you're dumb for not doing it before, because everyone can stand to improve. But, I just can't understand, why, with the Advisory Committee acting the way it did, the producers in the Basin, the majority of them making the recommendation that they did, that here we have basically, one public agency, actually two public agencies fighting tooth and nail to have something otherwise done. I mean, from the standpoint of who pays money into the water fund in this Chino Basin; I think you know as well as I do that Chino and Monte Vista are not the major financial players and the major financial players, in addition to the vast majority of the minor financial players have already indicated what they would like to see you do. Now, I agree you have the power to order an audit, you have the power to bypass the RFP procedure, then the question I have is why would you do that?

VICE-CHAIRMAN BORBA:

(Angrily) Mr. Dougherty, you, it bothers me at this point in time that you keep insinuating that there's a hidden agenda. Would you folks like to respond to that? I'd like to that on the table.

ROBERT DOUGHERTY, ATTY. CITY OF ONTARIO:

I don't know why the two agencies are not willing to accept the Advisory Committee recommendations.

VICE-CHAIRMAN BORBA:

I'm more concerned with the hidden agenda type of thing.

VOICE FROM THE AUDIENCE

I'd like to know what the hidden agenda is too.

JOE GRINDSTAFF:

What Monte Vista Water District clearly and concisely wants out of an audit is a signed opinion that the policies and procedures that we have been following and or will be following will prevent a future loss or a future incident of this kind. I think that's the kind of signature that we want from assigned professional, a CPA, that says we have independently examined the policies and procedures and practices of this and we believe, and we're putting our CPA license and our name down that the policies, procedures and practices will prevent that. It's not, for me, that's what I want, I don't know the list of things, I want a signature from a CPA that says that and if we can get that some other way, then I am happy. That's what I want. I think that's the thing that will assure our Board that, in fact, the financial policies, procedures and practices are, in fact, acceptable.

VICE-CHAIRMAN BORBA:

Thank you sir. Mr. Yates.

DENNIS YATES:

Mr. Chairman. I will admit to this Board that the City of Chino does have a hidden agenda. When I first, as I addressed to this Board earlier, first got wind that the Advisory Board was trying to replace the elected officials, that's what got my attention and that has become my personal covered agenda. The fight was initially started to keep elected officials as the Watermaster. The City of Chino has come up with five to six different alternatives to the Watermaster, all of them basically that elected officials would be the Watermaster. That is our hidden agenda and through that process, when we instructed our City attorney to look into expenditures of the Watermaster, the 800% inflation of the budget, all of these things start surfacing. Her leasing the building, the engineer hiring practice. All of this has bubbled to the surface and then most recently, the misappropriation of the funds. So, we're trying to protect

financial officer look at it. And, I don't know who would be more interested in knowing if they're being ripped off and what could be done to prevent it, than the person that has actually experienced the theft. I'd rather use the word theft than misappropriation because misappropriation implies some internal connection as opposed to theft which can be done by anybody. So to me, it would be similar to his individual who had the business set up (changed tapes) I don't see where the bias would be.

JIMMY GUTIERREZ:

Crisis is not a problem. Crisis is an opportunity if you act on it. I'm going to focus on the City of Chino. We've had a couple of crisis in the past, one involving Chino Basin. Chino Basin funded the City of Chino some years ago, a substantial amount of money because of a wastewater discharge. We had a miserable program. We weren't taking care of it. But, we responded to that crisis and we cleaned up our act and we do a very good job. Recently, I'm sure you're all aware that we had a financial loss and we responded to that. We've done a lot of things. We've hired a financial advisor, we have entered into a contract with that person, we have got a new auditor, we've entered into a very tight contract with that person, we are now in the process of entering into a very tight contract with a bank for banking services. Now, I agree with everything that Mr. Fedak has said and Mr. Grindstaff has said about the audit for internal controls but I would also suggest that you consider looking at the legal relationship between Watermaster and the bank. I believe there's not an agreement in-place and what's important there, is to assure that the appropriate procedures between Watermaster and the bank are in-place. I don't know if this firm is qualified to do that or not, but also to assure that the bank doesn't cheat you by limiting its liability if you have losses. That's something that I'm personally involved in now, and that's another concern. Apart from that, in the future, I don't know what Chino Basin Municipal Water District has done, under its statutory responsibilities with respect to its investments. Under the Judgment, the Judgment clearly says the Watermaster is responsible to deal with the investment of water funds the same as under the Government Code applicable to a public entity and I don't know if you have a policy for that. That was vaguely discussed at the Advisory Committee. I raised questions, I didn't get an answer, and that's another area I think you need to look at. But for now, I think the audit should be what you've heard and probably think you also need to look at banking services.

VICE-CHAIRMAN BORBA:

Thank you sir.

CHUCK FEDAK:

Can I just address one more thing to Mr. Dougherty. When we do an audit, when any CPA does an audit, it is based on, we hope would be statistical samples and we base those samples based on our reliance on the existing internal controls as we see it. Typically, we base our conclusions on samples and we infer to the population statistically, the results of those samples. The key word here is the reliability and internal control going into this thing. One of the reasons that the cost of this type of audit is so high is, this has nothing to do with Traci, or staff or anybody, going into this, our reliability factor would be very low. So instead of looking at all disbursements of, instead of looking at selected disbursements of say 50, now we're going down, we're looking at many more items now because we're required to do so because of what our interpretation of the Law reliance of the internal control is. So, basically, we're basing it on samples but in this type of an audit, it's almost, not quite the whole population, but it's a big sample, much bigger than normal would be done.

TERRY CATLIN:

The purpose of the statistics and the high sample rate, isn't that to field incompetence in your opinion..

CHUCK FEDAK:

It supports our opinion that the financial statements are free of a material distortion or material error and in this case, the sample must large, much larger than it normally would in a normal audit. And, I can tell you, a lot of it would not be statistical, a lot of it would be judgmental. There's certain types of disbursements and this type of an incidences that you'd need to look at and there would be no statistical sample, we would 100% tasked in certain areas. Pretty much, any correspondence from B of A, in terms of transfers, I mean, we would look at all of that. And it has to be done. There is no statistical sample.

I think you are correct, there is a potential for litigation and I would leave it to your attorney to advise you on the closed session.

VICE-CHAIRMAN BORBA:

So as of right now, I'm on solid ground from that standpoint? Any comments or discussion? If not, I'm going to adjourn the meeting.

Meeting adjourned at 11:37 a.m.

The forgoing verbatim minutes were prepared by Watermaster Services and represent a full, true and as correct as feasibly possible, transcript of the Special Meeting of the Chino Basin Watermaster held January 9, 1997.

Secretary

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EXHIBIT E-2

VERBATIM
MINUTES
OF THE
SPECIAL MEETING OF THE
CHINO BASIN WATERMASTER
BOARD OF DIRECTORS
January 14, 1997

DRAFT

The meeting of the Chino Basin Watermaster was held at the offices of Chino Basin Municipal Water District, 9400 Cherry Avenue, Building A, Fontana, January 14, 1997 at 9:00 A.M.

Watermaster Members Present

| | |
|------------------|---------------------|
| George Borba | Vice-Chairman |
| John L. Anderson | Secretary/Treasurer |
| Terry Catlin | Member |
| Anne W. Dunihue | Member |
| Wyatt Troxel | Member |

Watermaster Staff Present

| | |
|------------------|-------------------------------|
| Traci Stewart | Chief of Watermaster Services |
| Michelle Lauffer | Water Resources Specialist |
| Alice Lichti | Controller |
| John Ossiff | Legal Counsel |
| Mary Staula | Administrative Assistant |

Others Present

| | |
|---------------------|---------------------------------------|
| Richard L. Adams II | Attorney, City of Pomona |
| Steve Arbelbide | California Steel Industries, Inc. |
| Paula Barron | Chino Basin Municipal Water District |
| Ron Craig | City of Chino Hills |
| Bob DeBerard | Grapes |
| Gerald J. Black | Fontana Union Water Company |
| Robert DeLoach | City of Pomona |
| Robert Dougherty | Attorney, City of Ontario |
| Joe Grindstaff | Monte Vista Water District |
| Jimmy Gutierrez | Attorney, City of Chino |
| Jack Hagerman | California Institute for Men |
| Edwin James | Jurupa Community Services District |
| Gene Koopman | Milk Producers Counsel |
| Michael J. McGraw | Fontana Water Company |
| Thomas H. McPeters | Attorney, Fontana Union Water Company |
| Lloyd W. Michael | Cucamonga County Water District |
| Bob Page | Daily Bulletin |
| Tim Ryan | Attorney, City of Fontana |
| Mike Teal | City of Ontario |

VICE-CHAIRMAN BORBA called the meeting to order at 9:02 A.M.

Following the Flag Salute,

VICE-CHAIRMAN BORBA:

Originally, I had postponed, or not postponed, but adjourned this meeting to a closed session, but being that on the agenda we do have a public comment period, I wouldn't mind opening it up to public comment for those folks who were not here Thursday to express themselves. I don't want to continue a dialog and be repetitious. Is there anyone here that would like to make a comment to this Board that was not here Thursday? If there is, you're welcome to come forward. If not, then we're going to go into closed session under the Government Code 54956-9 for advice and council with legal counsel. In order to cause less commotion, I think it would be probably better if we go outside and all you folks stay in your chairs, it would be a lot less disruptive if we do that.

ATTY. JOHN OSSIFF:

Mr. Chairman, if I may make a comment on that?

VICE-CHAIRMAN BORBA:

Okay.

ATTY. JOHN OSSIFF:

As I indicated in the letter that I had sent to you, the Watermaster Rules do require that Watermaster business be conducted in public session. Also, the reference you made to the Brown Act is not applicable to the meetings of Watermaster as an extension of the Court.

VICE-CHAIRMAN BORBA:

You weren't here last Thursday, I wish you had been. There was an implied threat of legal action if there was some action taken by this Board, that absolutely authorizes us to go into closed session as it relates to legal matters. And, with that, we'll

ATTY. JOHN OSSIFF:

Well, that's my advice and

VICE-CHAIRMAN BORBA:

Well, my advice is that we can do that under the Brown Act and there was an implied threat of legal action. With that, we'd like to ask you some legal questions in closed session. Then, we'll have a vote and if there is any action to be taken, it will be done publicly right here. It only pertains to legal action.

The Board members and Atty. John Ossiff left the room.

The meeting reconvened at 9:40 A.M.

VICE-CHAIRMAN BORBA:

At this point in time, is there any actions to be taken in this matter? (Silence) Is there a motion, is there none? Either we do or we don't.

TERRY CATLIN:

I'd like to make a motion to perform an independent audit.

VICE-CHAIRMAN BORBA:

Is there a second to that motion?

JOHN ANDERSON:

I'll second it.

VICE-CHAIRMAN BORBA:

Made and seconded. Any discussion on that motion?

MEMBER OF THE AUDIENCE:

Could you repeat the motion?

TERRY CATLIN:

I'd like to make a motion to perform an independent audit of financial activities, practices and procedures of Watermaster Services.

VICE-CHAIRMAN BORBA:

If there is no discussion, will Madam Secretary, will you take the roll please.

ATTY. JOHN OSSIFF:

If I may make a comment, Mr. Chairman, that as I stated in my letter sent to you before the meeting, I believe that it is outside the procedural scope of the Judgement to take final action at this meeting as it has been called. I don't think the proposed motion is within the scope of the Watermaster's authority under the Judgement for this meeting.

VICE-CHAIRMAN BORBA:

Pertaining to what particular part of it? I mean, what are you referring to specifically?

ATTY. JOHN OSSIFF:

I believe that for such action that would constitute discretionary action of Watermaster, at minimum, would require 30 days notice prior to the meeting at which formal action was taken.

VICE-CHAIRMAN BORBA:

Could the fact that the Advisory Committee has already acted on it has no input as to what you're stating. I mean, you still think the 30 day rule is still required, even though they've taken an action? It's nothing new that we're advocating it.

ATTY. JOHN OSSIFF:

I think the 30-days would still be required.

WYATT TROXEL:

Question. The motion has been quoted and seconded to call for an audit and you're saying that if we were to take an action, be it a discretionary action, the more appropriate motion would be to call for a hearing and set a date 30 days out?

ATTY. JOHN OSSIFF:

I think it would fall within the scope of Section 38(b)(2) of the Judgement that talks about discretionary action... "notice of such intended action shall be served on the Advisory Committee and its members at least thirty (30) days before the Watermaster meeting, at which such action is finally authorized." I think there would have to be compliance with that section of the Judgement.

WYATT TROXEL:

Assuming that we understand and agree to that, then the motion that's been made, would it be inappropriate to vote on it either way? In other words, there's potential for yes votes and no votes, is it outside the bounds of Watermaster?

ATTY. JOHN OSSIFF:

I don't think the Watermaster can take final action on that. A vote would not constitute a vote to take (stop)... within the scope of the Judgement, would not constitute a vote to take that action. I think, at best, it, under the Judgement, would be ineffective or advisory.

TERRY CATLIN:

Isn't that open to a matter of interpretation of the Judgement?

ATTY. JOHN OSSIFF:

I suppose the answer is that everybody can have their own understanding, but that's our understanding of the requirements of the Judgement and the provisions of that section.

TERRY CATLIN:

How do you accommodate Paragraph 20 where it says we may hire consultants?

ATTY. JOHN OSSIFF:

In general, hiring consultants? I think hiring consultants (stop)...well, Paragraph 20 is one of several different pages of Section V. of the Judgement under "Powers and Duties" of the Watermaster, acquiring facilities, imposing assessments, etc., entering into contracts. All of those are powers of the Watermaster, some may be ministerial but I think the majority of them are discretionary and by discretionary, I mean in the sense that Watermaster can, for example, with contracts or facilities or for services, enter or not enter into a contract. I think it's discretionary in that regard. As a discretionary matter, it would have to go through the Pool Committees and the Advisory Committee process, or if Watermaster wanted to take independent discretionary action, comply with the provisions of Section

38(b)(2). In other words, it's a Watermaster power, but probably falls within the scope of a discretionary action that the Watermaster could take.

TERRY CATLIN:

You're saying the word "probably", yet it's open to interpretation. Again, Paragraph 20 simply says "Watermaster may employ or retain such administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as may be deemed appropriate in the carrying out of its powers..."

ATTY. JOHN OSSIFF:

When I said "probably", I was speaking in terms of there's a whole list of powers. If you specifically want to talk about contracts, unless you have something specific in mind that I could address, I think, if I understand what you're talking about, hiring a consultant of some sort I think does fall within a discretionary power.

WYATT TROXEL:

That would then require a 30-day notice if we take action, say from the Advisory Committee, exercising this discretionary power?

ATTY. JOHN OSSIFF:

I think that's what Section 38(b)(2) says.

VICE-CHAIRMAN BORBA:

And you're specifically saying this is not an administrative action. Is that also your interruption?

ATTY. JOHN OSSIFF:

If by administrative you mean ministerial, something that Watermaster is required to do under the Judgement, the answer is yes. This would not be an administrative or ministerial action, it would be discretionary.

VICE-CHAIRMAN BORBA:

So you (inaudible), in effect, from an administrative standpoint, you cannot overview the Advisory Committee without a 30-day notice. Is that what you're saying?

ATTY. JOHN OSSIFF:

I think you've used of the word "administrative review" in a little different use there. Watermaster has authority, it can take discretionary action pursuant to the procedures of 38(b)(2), it can act in accordance with Advisory Committee actions, or it can decide not to, again, in accordance with the procedures of the Judgement. So, certainly, Watermaster has administrative powers in that sense, and responsibilities. But, I was speaking in terms of discretionary versus ministerial action.

WYATT TROXEL:

Just one clarification, if the Advisory Committee were to have a vote to go ahead with an audit, then that could shorten up the time frame in initiating the audit? But, if we're going to counter their recommendation, that sets a 30-day minimum requirement.

ATTY. JOHN OSSIFF:

Yes.

WYATT TROXEL:

I would like to offer a substitute motion that we call for a hearing to be set 30-days from this date, or some reasonable date, to initiate an independent audit.

VICE-CHAIRMAN BORBA:

Is there a second to that motion?

ANNE DUNIHUE:

I'll second that motion.

VICE-CHAIRMAN BORBA:

I believe the protocol is such that we call for questions on this amendment, right? Rather, discussion on this amendment. Give me the legal protocol here.

ANNE DUNIHUE:

Substitute motion.

VICE-CHAIRMAN BORBA:

Do we discuss the substitute motion?

ATTY. JOHN OSSIFF:

I believe so.

VICE-CHAIRMAN BORBA:

Any discussion on this motion?

TERRY CATLIN:

Can you repeat the motion?

WYATT TROXEL:

The motion would be to call for a hearing at least 30-days out, to call for an audit and to obtain an outside firm to perform the audit.

TERRY CATLIN:

And what is the purpose of the 30-day notice as it pertains to the Judgement?

ATTY. JOHN OSSIFF:

The Judgement doesn't specify, in that particular section, a purpose. The overall purpose and intent of the Judgement is to maximum input of the parties and to ensure that every party has as much opportunity as possible for input in the decision-making process. And, this is certainly something that has been emphasized by the Court as well recently.

WYATT TROXEL:

It would seem that part of the action has been put in-place. The Advisory Committee has appointed a panel of financial representatives from the various parties to initiate a (inaudible). It seems that one of the things this might do is...they said they were going to be responding very quickly. This kindof almost assures they have to do something, so it would seem that there might be some input from that group that could help with an audit.

VICE-CHAIRMAN BORBA:

If I may, that comment doesn't clear the air of a third party, unbiased opinion and the public perception. I think most people agree with myself now that we need a clean-cut third party review of this in order to be 100%...

WYATT TROXEL:

I agree with that. That's not what the motion calls for. The motion calls for an external audit, just that the 30-days will provide opportunity for input. It doesn't mean that we have to decide...

VICE-CHAIRMAN BORBA:

You confused that motion by stating the fact that they doing that committee to set up an internal audit.

WYATT TROXEL:

My motion doesn't stop there.

TERRY CATLIN:

In regards to the 30-day notice. Didn't the Advisory Committee have opportunity to discuss this when they brought it up on their own in their meeting last Wednesday? Did they not vote on this, on the possibility of performing an external audit?

ATTY. JOHN OSSIFF:

I have the disadvantage of not being at that particular Advisory Committee meeting, so I don't know exactly what was discussed. In terms of the 30-day provision, that is really intended to provide parties an opportunity to comment on and give input on proposed Watermaster actions. That has not gone through the Committee process. I don't think there was proposed Watermaster action at the time, so that particular issue couldn't have been discussed at any of the Pool Committees or Advisory Committee meetings.

VICE-CHAIRMAN BORBA:

Any more discussion on that amendment? Madam Secretary, would you take the roll please.

RECORDING SECRETARY:

Subject to the amended motion, right?

SEVERAL BOARD MEMBERS:

It wasn't an amendment, it was a substitute motion.

JOHN ANDERSON:

That cancels the first motion then?

WYATT TROXEL:

If it passes.

RECORDING SECRETARY:

On the substitute motion, do you want individual...

VICE-CHAIRMAN BORBA:

Yes, call the roll.

| | |
|---------------|-----|
| ANNE DUNIHUE | YES |
| WYATT TROXEL | YES |
| GEORGE BORBA | NO |
| JOHN ANDERSON | NO |
| TERRY CATLIN | NO |

VICE-CHAIRMAN BORBA:

Motion failed for lack of majority. We will now vote and take the roll on the original.

| | |
|---------------|-----|
| ANNE DUNIHUE | NO |
| WYATT TROXEL | NO |
| GEORGE BORBA | YES |
| JOHN ANDERSON | YES |
| TERRY CATLIN | YES |

VICE-CHAIRMAN BORBA:

Motion's carried by majority vote.

LLOYD MICHAEL:

Whose paying for this?

VICE-CHAIRMAN BORBA:

Pardon?

LLOYD MICHAEL:

Who's paying for it?

VICE-CHAIRMAN BORBA:

I assume the Watermaster pays for it.

LLOYD MICHAEL:

That'll be an interesting discussion.

VICE-CHAIRMAN BORBA:

Okay. With that, I'll adjourn the meeting with one comment. In the future, I do believe very honestly, that the Watermaster needs to have a notice of a hearing that will be 30 or plus days to review our relationship with our legal counsel. It appears we have legal counsel for both entities and that doesn't set right for some reason with me. Anyway, but nevertheless, at this point in time, with that we'll adjourn the meeting.

Meeting adjourned at 9:55 a.m.

The forgoing verbatim minutes were prepared by Watermaster Services and represent a full, true and as correct as feasibly possible, transcript of the Special Meeting of the Chino Basin Watermaster held January 14, 1997.

Secretary

EXHIBIT E-3

DRAFT

**VERBATIM
MINUTES
OF THE
SPECIAL MEETING OF THE
CHINO BASIN WATERMASTER
BOARD OF DIRECTORS
January 23, 1997**

The meeting of the Chino Basin Watermaster was held at the offices of Chino Basin Municipal Water District, 9400 Cherry Avenue, Building A, Fontana, January 23, 1997 at 1:30 P.M.

Watermaster Members

Present

George Borba
John L. Anderson
Terry Catlin

Vice-Chairman
Secretary/Treasurer
Member

Absent

Anne W. Dunihue
Wyatt Troxel

Member
Member

Watermaster Staff Present

Traci Stewart
Fred Fudacz
MICHELLE: Lauffer

Chief of Watermaster Services
Legal Counsel
Water Resources Specialist

Others Present

Pat Andrews
Steve Arbelbide
Paula Barron
Bob DeBerard
Patti Bonawitz
Linda Devlin
Robert Dougherty
Joe Grindstaff
Jimmy Gutierrez
Jack Haggerman
Mark Kinsey
Gene Koopman
Marilyn Levin
Larry Rudder
Bob Page
Mike Teal
Bob Valenti

Chino Basin Municipal Water District
California Steel Industries, Inc.
Chino Basin Municipal Water District
Grapes
Chino Basin Municipal Water District
Soren McAdam Bartells, CPA's
Attorney, City of Ontario
Monte Vista Water District
Attorney, City of Chino
California Institute for Men
Chino Basin Municipal Water District
Milk Producers Counsel
State Attorney General's Office
Chino Basin Municipal Water District
Daily Bulletin
City of Ontario
Chino Basin Municipal Water District

Chairman Anderson called the meeting to order at 1:34 P.M.

Following the Flag Salute, Chairman Anderson read:

If any members of the public would like to address the Board on any item that is within the jurisdiction of the Board, however, no action may be taken on any item not appearing on the agenda unless the action is otherwise authorized by Subdivision (b) of Section 54954.2 of the Government Code..

FUDACZ: Well, I'm not exactly the public. My name is Fred Fudacz. I'm Watermaster Counsel. I was directed, as you may be aware by now, to send a letter to the Board relative to certain positions of the Advisory Committee in regards to the proposed audit. I

just wondered if you had a chance to get that and if you had any questions, I'm here and available to answer any that you may have.

CHAIRMAN ANDERSON: George or Terry, you wanted to ask questions of Mr. Fudacz? (No questions).

FUDACZ: If things arise during the course of the proceedings, I'm certainly available for that.

CHAIRMAN ANDERSON: (garbled)

STEVE ARBELBIDE: Mr. President, members of the Board, I'm Steve Arbelbide and I'm a member of the executive committee of the Advisory Pools, or the Advisory Committee and the Watermaster Pools. This morning we met with a few of the members of the Board to discuss some of our concerns regarding the audit, the procedures that had taken place with some of the actions by the Board. Hopefully, it was to, more or less, to communicate our positions, and also to get some information back from the Board as to why you took your positions, and so forth, or those actions. But, what we wanted to do with the executive committee was to establish a communications bridge between the Watermaster Board and the various Pools of the Watermaster. And this morning, we kind of exchanged some of the ideas there on why our Ad Hoc Financial Committee was formed and what they had found. We had presented some of their preliminary findings that they had recommended to you. We were hoping that with the process that we were doing that this would expedite the audit process and avoid having to go to hiring an outside consultant to do an audit until its really deemed necessary. We also discussed some of the roles that the, that the Board plays, and that the Advisory Committee plays and those areas that could be clarified and looked at so that there isn't this misconception of duties or roles or different opinions so we can all work in the same direction. So, hopefully, you know, with that type meeting that we had, that we can continue that and meet with various members of the Board in the future to resolve these types of issues before we get to that point of having to go to litigation or just to get an understanding of our positions on these matters.

CHAIRMAN ANDERSON: Questions of Steve?

ARBELBIDE: All right, thank you.

GENE KOOPMAN: Good afternoon, my name is Gene Koopman, I'm here from the Agricultural Pool. I also was part of the meeting that was held this morning. I don't think there's a lot of difference between the position of the Advisory Committee and Watermaster. I believe its more, you know, its definitely a timing element. When going back to the Advisory Committee with the information we had, and being told that this, this audit was going to cost us in the neighborhood of \$30,000 to \$35,000 dollars. We got the money back, so that made some of us feel a little more comfortable with if it had been something internal, that the bank wouldn't have been so quick to give us the money back. The feeling was, we did need to do an audit, but just to, before we knew what was going on, to spend the \$30,000, \$35,000 dollars, that it would be better that if we tried to do something internally. So, this Ad Hoc Committee was created, with financial representatives from the different agencies, and these are the agencies that, you know, put considerable amount of money in to the Watermaster. They're definitely interested, and I believe they're meeting as we speak. They're supposed to come up with the results and findings by February 13th. Depending on the outcome of those findings, will be the determining factor on whether the Advisory Committee decides to go ahead with a further audit or no audit or what have you. I think the basic difference between where the Advisory Committee has been and the Watermaster is strictly on timing. And on whether this 30 days has to, you know, or you agree or on whether you have to wait the 30 days or

not. I think its unfortunate that its come down to that. I think from a timing standpoint, the way we're going about it now, will, actually speed up the process. I do think that Watermaster can start the 30 day and should start the 30 day clock, and, but-I also think that they should put this thing out for RFP's. My first feeling when I heard, I heard the \$30,000 to \$35,000 dollars, and I've been involved in different groups that have, we've done audits for the state and for other private institutions, that this seemed like an awful lot of money considering the size of the organization. I don't know whether that's a valid number or not, but we do know its a lot of money. And, everybody involved, in fact, the Ag Pool, the Ag Pool on its own could ask for an audit, and the way, its kind of a funny situation, but we literally, the Ag Pool, could have asked for an audit, and the expense would have been picked up by the Appropriators. But we felt comfortable enough at that time to go with this process. Even further than that, as far as in discussions this morning, there seems to be differences of opinion on the interpretation of the Adjudication, even within the Advisory Board. And even, I can say, within the Agricultural Pool, that there are differences in interpretation on what actually the responsibilities of Watermaster and that of the Advisory Committee. I think that we, we need for both organizations, to at some point, go to the judge and get his determinations on what are the rights and responsibilities of Watermaster and also of the Advisory Committee. In discussions, in fact, I said this morning I believe that the Watermaster, because Chino Basin has been Watermaster for a considerable number of years, that there's no organization that has a better idea of what they see the problems, you know, of being Watermaster. I, I think that even internally, that the discussions that are going on at the Advisory Committee and Watermaster on what is going to be the new Watermaster, differences of opinion in what the Adjudication says are finding their way into those discussions and that definitely needs to be straightened away. We have, I think part of the problem comes from poor communication, lack of communication. This executive committee has been formed, it is hopefully going to straighten that out that we will have better communication between those two organizations. If you have any questions, I'll be glad to answer any.

GEORGE BORBA: I had a question, Mr. Chairman. Mr. Koopman, I take it the Ag Pool agrees, it does not have a problem with the audit, its just the timing issue, that's the problem.

KOOPMAN: Yes

BORBA: Is that right? So, what's the difference between 10 days and 30 days? What's the difference if you have no problem with the audit itself? 30 day rule, you know, that's what's in there, but I don't agree with personally, but I think its an administrative procedure.

KOOPMAN: Well, there again...

BORBA: It seems like if you're going to do an audit, timing is of the essence and it should be done immediately. That 30 days is just a drag out as far as I'm concerned.

KOOPMAN: Well, I, I think, I think that the bottom line on that is the difference in interpretation of the Adjudication. And I'm comfortable with, with the 30 days, because of this Ad Hoc Committee that we put in place. Absent that

BORBA: But, you're not opposed to us doing the audit? Its just the 30 days. Is that right? Or not right?

KOOPMAN: I would like, I, personally, I feel at this point, I don't have enough information, and I hope to get that information from this Ad Hoc Committee. Absent the Ad Hoc Committee, I would say "Yes, let's go ahead and do the audit as quick as we possibly can.

BORBA: I misunderstood you. I thought you said you didn't have any problems with the audit.

KOOPMAN: If one is needed, and, let's say that the Ad Hoc Committee comes out and says we need an audit and we find out the cost is going to be \$40,000 dollars, I would say let's go ahead we have to do it. Because I think there's no question, as does the Advisory Committee and the Watermaster here, it comes down to perception. We have to not only be lily white, but we have to have the perception of being that way. And we cannot afford any other kind of perception.

BORBA: You said, are you saying an in-house audit will give a better perception than a third party, outside auditor, is that what you're saying? .

KOOPMAN: No

BORBA: OK

KOOPMAN: But what I'm saying is that we'll have a better idea. One of the people on here from City of Upland is also a CPA and it was something that I had asked for. And when he puts his name on the line, his license is at risk.

BORBA: I understand that. But if it was me, I have an opposite perception. To me, if it was an inside audit is a different perception, than a third party un.. third party audit...to me there's a different perception between those two audits.

KOOPMAN: Yes

BORBA: (garbled comments)

KOOPMAN: Any other questions? Thank you.

DOUGHERTY: Well, I wasn't going to speak, but I think I will at this point. Robert Dougherty - representing the City of Upland. Well I think this..

CHAIRMAN ANDERSON: Upland?

DOUGHERTY: That's where I live. Oh Bob, shall I start over, bad day. City of Ontario. Again, we keep using this word audit, and I still don't know what we're going to be looking for. And, if the word audit is proposed because of what happened recently involving the WM account and what I understand is approximately \$24,000 of forged checks, were run through that account. I also understand that insofar as we know the checks were printed up or were caused to be printed by some third party who somehow got hold of the WM account number and they were in fact forgeries and in fact the bank paid those forgeries and now made good on the money. So the thing we have here is a committee of the Advisory Committee, an Ad Hoc Committee of the people who would have been ripped off had the bank not reimbursed the money. I don't consider that an "inside" look at one's operations. We had the WM staff on the one hand, it was a WM account, and we have essentially, I would say, the depositors, taking a look at the procedure. And I think its all very well and good for Mr. Koopman to say that the Ag Pool wouldn't oppose an audit, but I think he did acknowledge that it would be the Appropriators that would pay for it. If there's really a suspicion of anything inappropriate that a audit would uncover, then I think we ought to know exactly what it is that people would hope to uncover as a result of it. I just cannot see it in this fact situation and getting down to the procedure, I think we have to look at the Judgment for a delineation of power between the Advisory Committee and the Watermaster Board, whoever that board might be serving from time to time. The Judgment spells it out, and it essentially provides two situations for the Watermaster

when faced with a vote of the Advisory Committee. One is if its a majority vote of the Advisory Committee, the WM can take action consistent with it, you don't have to have 30 days. But if action is contemplated which is not consistent with the Advisory Committee recommendation, then the 30 day notice, the public hearing and the finding provisions all apply. And, you're right, if you go through that procedure, and you do determine that, for reasons which you give, the Advisory Committee should not be followed, then you could make a determination adverse or opposite to what they did or at least at various to what they did. And then anyone can go to court. and of course, anyone can go to court basically anytime. On the other hand, when it gets to 80% or more, the Judgment says it right in black & white, its a mandated action. It is not subject to further review by the Watermaster. If the Watermaster elects not to follow the mandated action, then a Court could compel it because it is a mandate. But in this situation, I don't know why we have this public perception problem, except that it may be of our own making, by shall we say, not precisely defining what we are attempting to do and why we are going about it the way we are going about it. I would respectfully request the Board to simply table this matter, allow the Ad Hoc Committee to complete its study, and once you have the study, at that point if there is some feeling that an audit by a CPA independent of the people who put the money into the pot can come up with something, then that can be considered. Thank you.

CHAIRMAN ANDERSON: Any other public comments.

MARILYN LEVIN: I also was not going to even come or speak. Marilyn Levin, I'm with the Attorney General's office and the State of California is a member of the Ag Pool. So we work very closely with Gene Koopman. Just wanted to comment on a couple of things. I believe that I am here also to respectfully request that you table this matter until the work of the Ad Hoc Committee is finished and you would have an opportunity to see what they have come up with. And, I'll explain really briefly because you talked about perception of the audit. First of all, the Advisory Committee as well as the Agricultural Pool including Mr. Koopman the farmers and the State of California, I believe all voted to establish this Ad Hoc Committee. It is not an in-house audit. It is comprised of at least seven individuals who are accountants, and one is a CPA. Who I believe was the Watermaster CPA for very many years as I understand it, a very respected individual. Because of that, as well as our requesting that the Chino Basin Municipal Water District send an accountant also to this Ad Hoc Committee, it seemed immanently reasonable not at this point to spend at least \$30,000 to \$35,000 on an audit, or to even go through the procedure to figure out what kind of audit we needed. If it were a more full blown audit, perhaps it would be more money. So it seemed both for the Chino Basin Municipal Water District as Watermaster as well as for the Advisory Committee, this was a very prudent way to approach it and many of people who had first wanted an audit, after hearing all of the information, really had to step back and think about, you know, what is the prudent way to approach this. And, perhaps at the last meeting, we weren't able to communicate that to you as well. I asked yesterday at the meeting, well, what is the agenda of this Ad Hoc Committee? I thought that that would be helpful, and if you would have an opportunity to look down the agenda, they are including looking at the internal procedures of the Chief of Watermaster. Its not an internal audit, the Chief of Watermaster Services is not looking at the Chief of Watermaster Services, its the Appropriators, the Ag Pool is, is happy with the person who is, the CPA, and we would like Chino Basin Municipal Water District to join in as well. It would be a savings of taxpayers dollars if, if you could do that. The second thing is, that we have directed the Ad Hoc Committee to look at whether or not, if they are not satisfied, a full blown audit is necessary and to bring that recommendation back to the Advisory Committee. And, at that time, if it is, we'll have to look at how much it would cost and who should be able to do it. So I was happy to see the agenda that, and, and the scope of responsibilities of this group. And this group has now met twice, they're meeting today, they met one other time. These people are, are, I don't actually know if they're all employed in-house with the cities, they're probably just

accountants who, you know, have a business and work as consultants, so their reputation is also on the line. And they're donating their time in the sense that the cities are picking up the costs. I don't think the perception will be that its a white-wash, and, a um, well that its a white-wash, that its an in-house audit. I really think that if people understand in the public what we're doing, we're real careful to get a varied group of people. In fact, the Ag Pool was concerned that we didn't have a representative, accountant, and someone asked if the State of California could send over their accountant, and I didn't know who that was, and I didn't think that we could. But, everyone wanted to make sure that they were protected on this committee. I'm not going to get into any of the other issues about the notice, the roles. Hopefully, we won't ever have to get into that. But now, today, I just request that, that I believe it would be an important decision to table this until we get the report of this Ad Hoc Committee, and to send over the Chino Basin Municipal Water District accountant so that you could feel comfortable that you understand what the work of the Committee is and what they're doing.

BORBA: Mr. Chairman, clarification. The folks that do this audit, you say they are not employed, that's not my understanding.(overlapping with Marilyn's response).

LEVIN: I, I don't know if, they are employed by each of the cities, yes.

BORBA: I understand they are employees, I don't know, from my understanding, they were employed by the members of the pools, now you're saying they're not. I don't know.

LEVIN: No, no they are employed, I just don't know if they are

BORBA: I don't mean contract employees, I mean full time employees.

LEVIN: OK, I don't know.

BORBA: Could you get that clarified?

FUDACZ: There's at least one representative, the Upland representative, that I know for a fact is a member of an accounting firm that is a consultant to the City of Upland serving on this Committee. As far as the others, I don't know, he's Mr. Reardon, CPA.

BORBA: Somebody should know?

Traci Stewart: They're all employees (garbled background comments from Board members)

BORBA: That's a difference

LEVIN: OK, that's an important question, and I assumed

FUDACZ: never mind

LEVIN: .. and actually, you know, I don't know if its such a perception issue.

BORBA: But you mentioned that

LEVIN: Absolutely, absolutely, God, luckily, I didn't have to swear under oath (laughter).

BORBA: No problem, no problem.

TERRY CATLIN: So are we saying

LEVIN: But I'm sorry about that.

BORBA: That's OK, I, I didn't know.

CHAIRMAN ANDERSON: According to our list here, most of them the way I understand it, are city employees.

LEVIN: Yeah, it sounds, accounting manager, right down the line

DOUGHERTY: I would just like to add that Mr. Reardon, who Mr. Fudacz mentioned, is an independent accountant, he is also the elected Treasurer of the City of Upland, so

LEVIN: And he was the main, I'm sorry, he was the main reason, his name on the list, was the main reason why the Ag Pool, portions of the Ag Pool were happy with the fact that he was a CPA, and he was an independent CPA. So we, we would urge you, and also that the Ag Pool voted for this Ad Hoc Committee and voted to send the letter to the Watermaster asking you basically at this point to work with us, and I'm here to ask you to table the matter.

CHAIRMAN ANDERSON: Any other questions, Terry?

CATLIN: Excuse me, Mr. Chairman.

BORBA: You had another question.

LEVIN: I don't know anything more than what I just said, no I just..

CATLIN: Uh, the other people assigned to this committee, other than the Upland official, are they affiliated with Watermaster in some way?

LEVIN: All I know, and obviously I started off on the wrong foot by saying that they could be consultants. I don't know. As I understand it, they are working for these cities, and these cities are associated with the whole Watermaster process, is that what you mean?

CATLIN: Yeah.

LEVIN: Yes, of course, they're not like, its not San Francisco, who's not related to the Watermaster, right,,they're cities within the Watermaster area.

CATLIN: You're saying that the cities would be picking up the cost. Wouldn't the bottom line still be that the public is still paying for it?

LEVIN: Well I assume that is correct, they would be paying for it, but any audit probably would also be looked at by the various cities. I think its not the right question, it comes down to the fact that the Appropriators in the basin, and the Ag Pool in the basin, and the Non-Ag Pool in the basin, and you as the Watermaster, we are concerned. If we are concerned, we are looking into the procedures. So, there's no reason why there would be not a thorough job done. If the Chief of Watermaster were looking into their own procedures, yes. And also I might add that at the meeting that this was voted on, one of the investigators who couldn't say much about this case, just chose to stand up and explain to us all that whatever happened, this kind of thing happens all the time. He doubted that it had anything to do with our internal procedures. You know, by listening to an investigator, stand up, probably on his own time explaining that to us, it is doubtful that there's going to be a public perception that we're just looking at our own procedures and doing some kind of white-wash. I really think that if you look down the list of the people, we would be the most, all the Ag Pool, and the Appropriators, and the Non-Ag would be the people who would be interested in doing an adequate job. And it seems to me that

you could afford yourself the protection, if you thought something separate needed to be done, would be to join the group, go to the couple of meetings, and be part of the report. And, as I said, part of the agenda is that if it is necessary to do an outside audit, as you've asked for, then at that time we can reach all these other thorny issues that we would all like to avoid right now.

GUTIERREZ: Jimmy Gutierrez, for the City of Chino. There's two reasons to do the audit. The first one is to make sure that adequate controls exist regarding the funds that are used to pay for Watermaster Services. The second reason is even a greater reason, and that is to assure that the WM acts as a WM, because effectively speaking, the Advisory Committee has been acting as WM, and doesn't want the WM under the Judgment, which is your Board, to do its job. You were appointed to be the WM for a number of reasons. One was to fairly administer the Judgment, serve as an arbiter of the interests of the parties, and to protect the public with respect to water quantity, quality and cost. And the reason everyone here does not want you to do it is because they want to continue to operate. They don't want the WM to be the WM. They have effectively rewritten the Judgment, and they don't even want the Court to supervise the functions of the WM under the Judgment.

DOUGHERTY: Can I just, one very short thing? I think the, it gets right down to this. Mr. Borba, for example, if somebody that you suspected stole your money, I think you would probably have more interest in finding out who it was, and how it was done than anyone else out there because its your money. And by the same token, to the extent that this happening could have resulted in a loss, to Ontario, Chino, and everyone else and every city and every agency, that contributes to the WM fund, we all have, I think, the most sincere interest in finding out what happened, why it happened and to prevent it from happening again. So, for that reason, it is not an in-house audit, anymore than your looking into your money being stolen would be an in-house audit of whoever might have stolen it. And when it comes to the people that are looking at it initially, that the Advisory Committee wants to have review this before any significant amount of money is spent on some outside individual who would have less interest financially than their entities, we think it should not be done. And I'm a little bit concerned that Mr. Gutierrez should cast doubt on perhaps the people who have been selected as the Ad Hoc Committee to do this job, one of which includes, is a representative of the City of Chino. Again, we would just repeat our request that the matter be tabled.

BORBA: Mr. Dougherty, let me make one comment since you directed those comments to me and I was elected by the people to protect and guard the people's money, and I look at it like its my money.

DOUGHERTY: I was just

BORBA: Although it didn't come out of my personal pocket, I want you to know that I look at it from that standpoint, very seriously the responsibility that I have here.

DOUGHERTY: And I think what I was doing was an analogy was that, just as you look at it seriously, the producers look at it seriously.

BORBA: Who is the ultimate guardian of these moneys? Is it the WM, or is it the Advisory Board?

DOUGHERTY: The ultimate guardian of these moneys is the Court.

BORBA: Well, granted, but through us. Through the WM I would think. Its not through you folks as WM.

RUDDER: That is a very good question, if I may at this time. That brings up an interesting question on who's the guardian. That's a question I've had for a number of years when I was Treasurer of Watermaster. And I was told on several occasions by the Advisory Committee I had no authority, since they had 80% vote. So, who is the fiduciary of Watermaster funds on an 80% vote? And, that's a very good question, I don't know if I can get an answer from Watermaster Counsel today, who that person is, I don't know who it is.

FUDACZ: The notion of what a WM is I don't think its very well understood in the public. Its a very arcane sort of device. We're not talking about a public agency set up by a legislature. We're talking about an entity akin to a Court appointed receiver, is the best way of putting it. And that situation is somewhat complicated in our Judgment because we have a bifurcation of responsibility. And that is an outgrowth of the negotiations that brought about our Judgment. But the ultimate fiduciary is the Court, and our responsibility is to the Court and to enforce and uphold the Judgment. My role as WM Counsel is to tell everyone what the Judgment is because that's what people have to adhere to. There is liability, exposure if we don't adhere to the Judgment. And if there's any question about it, if you don't agree with my opinion, or Mr. Gutierrez's opinion, you can always go to Court. But, the responsibility is set forth in the Judgment and, the way it sets forth the responsibility is that the Advisory Committee, when it acts on an 80% vote, and its a discretionary matter, essentially assumes that responsibility. That action is promulgated by, and has to be promulgated by WM, whether WM agrees with it or not. Otherwise, certain provisions of the Judgment wouldn't make any sense. There's a specific provision for WM to go to Court in the case it objects to one of its own actions. That doesn't make any sense in the context where there isn't that mandate. But ultimately, it is the Court operating under this Judgment that has responsibilities and we are functionaries of the Court. And we have to adhere to the limitations and the procedures set forth in that Judgment, otherwise we are acting outside its scope, and we don't have any authority to act. So, I know that's complicated, its difficult to understand from the perspective of an elected official for Chino Basin Municipal Water District, where your authority stems from a legislative mandate. I mean, its understandable your reaction, I mean there is perhaps a public perception out there as a result of the news paper articles that something is amiss. But, its the Court's responsibility, we can all go to Court, every party to the Judgment can go to Court, and assure itself that everything is right. And ask any questions. Any party can audit the books and records of WM at any time. Chino Basin as a District, if it has concerns about what is going on, can force those books to be opened up, analyze the procedures, do anything it likes to satisfy itself. That's a right to any party. Any party can go to Court at any time and challenge anything that's going on. That may seem awkward, its not the way business is done in a District that's set up by a legislative mandate. But unfortunately, for better or worse, that's the creature that we created for ourselves and that's the way we've got to conduct our business, in accordance with those procedures. So, the responsibility ultimately lies with the Court, we are functionaries of the Court, and there's a process set up in the Judgment as to whose responsibility is what under what circumstances. Where there's an 80% mandate, that responsibility essentially falls on the Advisory Committee, because the WM has no say in what's done. And, if you have any questions about it, I'd be happy to answer them. I know its a difficult thing to understand, particularly as elected officials. And, its a peculiar creature of the law that creates these Watermasters, but unfortunately, the State of California has no legislative scheme to mandate management and control of groundwater resources and what's arisen in its place are these judgments with these Watermasters set up to essentially manage basins through adjudications. And that's just the way the creature was set up and has evolved over time.

CATLIN: Mr. Chairman. So, just so I have it straight, the Court is the ultimate overseer of the Adjudication?

FUDACZ: Right.

CATLIN: We're two parties who have differing opinions on how to best serve the Court then, am I right?

FUDACZ: Yes, well, I mean if there are, if there are then, but Watermaster and Advisory Committee are not parties. They're not contestants. They don't have their own set of interests. I mean, when you sit as WM, you don't have an interest other than serving the Court and abiding by the Judgment and implementing the Judgment. Its the same for WM, for Advisory Committee, when it sits as Advisory Committee, it is a functionary of the Court. Now, all those activities looked at and examined by the parties to the Judgment that are providing the money that essentially is the subject matter of the Judgment. And they can go into Court at any time to challenge anything that's done. So, essentially, there is the ultimate control where every single party to the Judgment can go to the ultimate holder of responsibility, the Court, and make sure that everything is going according to Hoyle.

GRINDSTAFF: Just one aside, it seems to me that the Judgment does provide for Counsel for the Advisory Committee, if needed, and for each of the Pools, so it is possible that the pools can sue each other or could go to Court and ask, and have differing points of view.

FUDACZ: Oh, there's no question about it.

GRINDSTAFF: OK, I thought that was, you said that we might not have differing points of view because we're the Advisory Committee

FUDACZ: But we're not party contestants. The differing points of view is what the Judgment says and our responsibility when we sit as the Advisory Committee is not to pursue any individual interest that a party may have, but to implement the Judgment as its written. Similarly, that's the role of Watermaster. The parties don't have that restriction. They're free to contest their interests as they see them without such restrictions. So, I'm very sensitive to this, because as a District you challenged, at one point, you challenged my role in this, that I had a conflict of interest. How could I represent the Advisory Committee and Watermaster at the same time. I'd submit to you those parties, those two entities are doing the same job. It's like

BORBA: Right now, we're in an adversarial position right now, and you're representing both parties. I think that's different.

FUDACZ: Well, if you're in an adversarial position, you shouldn't be.

BORBA: You do have a conflict as far as I'm concerned. Very honestly.

FUDACZ: We, we took this to the Court, and you know, the Court looked at that already and its a rough analogy, and its very rough, to a corporation. Where you have a board of directors and an executive.

BORBA: I don't think the issue is as clear cut as this one is though. As far as conflict on your behalf.

FUDACZ: I don't understand.

BORBA: Well, we're in adversarial positions, its quite evident you're representing both sides, and I don't know how you can do that.

FUDACZ: I am not, I am representing the Judgment and the Court.

BORBA: Well, you've advised the Advisory Committee, and I'm sure you've advised us.

FUDACZ: Yeah, I tell them the same thing. Sometimes I tell them things they don't like to hear and

BORBA: You can tell them anything you want, and maybe you don't like what I'm telling you either, but you have a conflict because you're advising two adversarial people, positions or parties, whatever you want to call them.

CATLIN: How do you avoid the bias? I mean, the big dispute here is whether or not we have administrative power to carry on an audit on our own will, without, you know, Advisory Committee approval. That's a big part of the dispute, so how do you eliminate the bias from?

FUDACZ: Well, I've got to read the Judgment with a responsibility to the Court. Ultimately, I'm responsible to the Court.

CATLIN: But then, we have, we have other people, lawyers saying, having a differing opinion.

FUDACZ: Their client is the City of Chino, the State of California, whomever they represent. My client is, in essence, the Judgment and the Court and, you know, its a difficult job. Particularly under these circumstances, but what is the alternative? The alternative is everyone have an armed camp, with a lawyer, with no one trying to be that arbiter and so that every time you do anything, you're in Court. And, I would submit that would be a very expensive, non-productive approach to managing this basin.

GUTIERREZ: May I respond to that. What started this comment was Mr. Rudder's statement about who's the fiduciary. Uh, my opinion is that this Board is a fiduciary, if there's a loss of moneys, you are each individually responsible unless you've delegated your authority to Mr. Rudder, in which case, he's individually responsible. There is a paragraph in the Judgment under the enumerated powers for the WM that says all funds must be held as required by public entities under the Government Code. Two years ago, the legislature amended the investment provisions, which make the elected officials of public entities fiduciaries for the loss of any funds unless that responsibility is explicitly delegated to the Treasurer. Now, Mr. Fudacz has found it convenient over the last few years to systematically interpret the Judgment in such a manner as to repose all authority of the WM in the Advisory Committee, when none exists. The only time the Advisory Committee has any authority is when it deals with a discretionary item. I do not believe that the enumerated powers granted to the WM constitute discretionary items, because under the authority given to the Advisory Committee, no specific powers are enumerated other than the power to make recommendations on discretionary matters. The Judgment does not define the term discretionary. The only other place in the Judgment where the term discretionary is found is in connection with the adoption of a water management plan. And, I think that's the area where the Advisory Committee has authority, not on these enumerated powers. You have enumerated powers under the Judgment to conduct an audit, you should conduct an audit for a number of reasons, one is to make sure that there are procedures in place now, especially since the employees of the Chino Basin Watermaster have now effectively broken away and are doing what they're doing on their own and we don't know if they are using the same procedures. That is clearly one reason. The other reason is to assure yourselves you don't have any personal liability for what these employees are doing.

MICHELLE: LAUFFER: May I ask a question for clarification please? I usually refer to them in the minutes. What portion of the Judgment did you just site?

GUTIERREZ: I said a portion of the Judgment. I didn't site the paragraph because I don't have it in front of me, but its in there.

MICHELLE:: You spoke from it, and so I can't find it and I'm just asking

GUTIERREZ: There's a paragraph in there.

MICHELLE:: But you can't

GUTIERREZ: Not without looking at it....

MICHELLE:: OK, OK, I just wanted it for the minutes.

GUTIERREZ: There it is, Paragraph 23, Investment of Funds. Watermaster may hold and invest any and all Watermaster funds in investments authorized from time to time for public agencies of the State of California. And that brings in the Government Code.

MICHELLE:: Thank you.

DOUGHERTY: I don't think the issue is investing the funds in stocks and I think that is what the provisions of the Government Code relate to, is the propriety of investments. Certainly, I don't think it would make you liable in a situation, like this, as Mr. Gutierrez seems to imply, if you don't go outside of the Judgment, as my opinion is and obviously Mr. Fudacz', and order an audit at this time.

FUDACZ: I'd like to clear up this issue of liability. You should understand that I don't just represent the Chino Basin Watermaster, I represent a number of Watermasters and you're not the only client of this sort that I have. I think I may be as familiar with this creator as anyone in the State of California. There's a doctrine of quasi judicial immunity that would protect member sof Watermaster Board for their actions, so long as they follow the terms of the Judgment and everything is in line with the dictates of the Court. So the notion of exposing yourself to personal liability isn't an issue as long as you're within the (??) of that doctrine and you follow the Judgment and you adhere to the instructions of the Court.

CHAIRMAN ANDERSON: How many years have you been attorney to the Watermaster Advisory Committee? Three or four years?

FUDACZ: I was hired as a special consultant to the Advisory Committee and then hired as Watermaster counsel a couple of years ago.

CHAIRMAN ANDERSON: I guess the next question is, how come today is the first time we met you?

FUDACZ: That's a good question. No one has ever asked me to come and I think that is something you ought to look at. The history (interrupted)

CHAIRMAN ANDERSON: No one has ever asked you to attend a meeting when Watermaster activity going on?

FUDACZ: I've never been asked to come except one meeting I was late to.

BORBA: Mr. Fudacz, I called your secretary last Wednesday for you to be here last Thursday

FUDACZ: And Mr. Ossiff was

BORBA: I asked for you specifically sir. (garbled) So you have been requested, I requested you come.

FUDACZ: Our firm is Watermaster counsel, I'm not Watermaster counsel. I apologize, I would have liked to have been here. I didn't mean to imply that that didn't happen, obviously it did, but the history of Watermaster has been that mostly you've been presented with 80% mandates which you, under the Judgment, are bound to ratify. And, that's typically what's happened. I think we did a survey of all the meetings and, on an average, they last a few minutes basically for that reason. I was told to take my directions from the Advisory Committee and the Chief of Watermaster Services and I guess the notion was that it wasn't a good expenditure of funds to have me come here just to watch this ratification of action. There hasn't been many, if any situations, where there has, in the past, been this sort of dispute. So I think, you know, my suggestion is that it's important for me to be at these meetings now, for that reason and provide whatever guidance I can. I would urge that on everyone. I'm certainly not in the business of forgoing attendance at meetings because that's how I make a living.

CHAIRMAN ANDERSON: For meetings that you stay fifteen minutes half-hour?

FUDACZ: Yeah, it takes me an hour to drive out and an hour to back, so by the time, for very little amount of time, you're running up quite a bill, unfortunately. I think that was part of the thought process. I am happy to be here. I'd be delighted frankly, and my partners would be delighted to have me here too.

CHAIRMAN ANDERSON: The reason I asked the question was, we might not have been here today if you'd been at the Watermaster meetings and kind of helped fill in some of the details so we weren't going this way. This all hasn't stemmed just from what happened with the bank deal

FUDACZ: I know there's been a dispute all along and a misunderstanding of roles and it's understandable because, this Judgment is particularly difficult to understand because of the different pools, the Advisory Committee, and the Watermaster. And that's, there's some books about it I can provide you if you're interested. Professor Blomquist of the University of Indiana did a study of all the basins in Southern California and talks about the Watermasters and talks about the background of the Judgment. I think it would be very useful reading for you to understand how this came about and why we have this very bizarre governance system within our basin and just what the respective roles were meant to be. But I think you can garner some guidance by what's happened in the past. The suggestion has been that past Watermaster Boards just were shirking their duty and didn't do what they were supposed to. I don't think that's the case. I think that reflects what the intention of the parties, and the Court, and the Judgment was from the outset of the Judgment from '78 on. We have that whole experience to look to in interpreting what the proper roles of the respective entities are. That's a long, circuitous way of telling you why I haven't been here before, and it's not that I don't want to and there's a rational for it, it wasn't my decision and I'm happy to be here.

CHAIRMAN ANDERSON: Somewhere along the line, someone had to see this coming, and it would have helped us if we'd had some explanation or some counsel to give us some information that no one could give us and now we're down to the point where it looks like the Judge is going to have to make the Judge's comments, statement, to get it straightened out again.

FUDACZ: Well, that may be, that would be unfortunate. I hope that people with good will and good faith could come together and work things out. That's the history of these

adjudications, people work through their problems and develop consensus. My understanding is that was the characteristic of activity in this basin in the past and it certainly is in other basins. Obviously, from time to time, there are disputes and that's why the Court has continuing jurisdiction. That's a concept that I don't know if everyone understands. Most Judgments, you have a final Judgment and the Trial Court is relieved of any supervision or any responsibility for the Judgment. Here, in our Judgment, we have a specific provision that provides for the Court to exercise continuing supervision over everything that we do. So we have Judge now, Judge Gunn, who I was before this very morning and had a question about the bank accounts and that I explained to him and he didn't seem alarmed by it because he understood that the money had been returned. I think he read that in the paper, but he did ask me about it. So that's quite a bit different than your vanilla type litigation, in a very special context, and we're part of the judicial branch of the Government as opposed to the legislative branch of the Government. So that gives a whole different cast and meaning to your duties and responsibilities here. Your duties and responsibilities are to the Judgment that was enacted by the Court.

CHAIRMAN ANDERSON: Okay, I want to get to the liability part. Maybe I didn't quite understand, you know, we're liable but not responsible? Try to clear me up on that one.

FUDACZ: A Court has immunity from liability. It's a special circumstance whether you can sue a Court for doing something that's within it's power to do. Even in this sue happy society of ours, it's rare that you find Superior Courts being sued. You can't sue a Judge for a bad decision. You know, if you lose in Court, you can't turn around and sue your Judge. There's a doctrine that grows out of that called quasi judicial immunity that provides some protection to functionaries of the Court. Like you have a receiver appointed by the Court to assist the Court in doing certain things with property and all that. You have a master to deal with, like busing cases are an example, where a special master was appointed to look after the implementation of the plan. If the receiver of the master acts within the scope of the authority granted to it by the Court, the Court's immunity extends to the individual or the individuals acting as receiver or master or whatever. And that's the protection that you have as individuals sitting on a Watermaster Board. The importance is to not act outside the Judgment so you assure yourself that you have that protection. We always carry insurance in all the Watermasters we have. We have insurance with Watermaster now to insure that be there any question or someone questions whether you're acting either within or without your authority, you're insured for that, and I certainly advise all my Watermasters to have that. But, I think it's fairly well accepted that there is this notion of quasi judicial immunity that is applicable here. But, again, it behooves us to be careful in what we do and be careful to follow the Judgment.

CATLIN: Mr. Fudacz is it your belief that the Watermaster Board serves as a rubber stamp contingency?

FUDACZ: No, as I think as Mr. Dougherty pointed out, if, there's a number of situations. If there's an 80% mandate, you have to do that. Watermaster can disagree, you like in this situation, my estimation is you have a mandate to defer to the Advisory Committee in what it's proposing to do. Now you could disagree with that and go to Court and challenge that and the Judgment provides for that. If there's less than an 80% mandate from the Advisory Committee, say there's a 50% to 80% recommendation that comes to you, then you're in an area where you exercise some discretion. You can either follow that recommendation or decide not to follow it, but if you decide not to follow it, you have to have a public hearing and provide 30 days notice and issue a decision with specific findings. I believe the theory behind that is that gives all the parties to the Judgment who may disagree with what you do, a chance to look at what you're doing and take it to Court because every party has the right to protect itself by going to Court and seeking an interpretation and even an amendment to the Judgment. The Judgment can be amended except that there's certain areas that are spelled out relating to specific designation of

water rights in which the Court doesn't have continuing jurisdiction. But in all other areas, we can, as we are apt to say in some of the meetings, open up the Judgment. Where there has been no recommendation, let's say you're presented with a problem where the Advisory Committee hasn't acted at all, you can initiate action, but again, you've got to give 30 days notice to everyone so they know what you're doing and they'll have the opportunity to give you input and then challenge what you do if they disagree. But, those are the basic parameters under which you operate.

CATLIN: That's open to interpretation. How do you view Paragraph 20 and Paragraph 48...in Paragraph 20 where it says we can hire consultants, including auditors; Paragraph 48 with respect to filing the annual report a certified audit could be performed.

FUDACZ: There's no question you have the power to do it. If the Advisory Committee didn't have any recommendation, they'd just ignored the thing, sat on their fannies, you could go and do that. If they told you by 50% vote they don't want an audit, you could have a public hearing and have that audit ordered up and support your decision with written findings.

CATLIN: Again, that's one of the key points, where it's open to interpretation. That's your view but I've also heard other views.

FUDACZ: The only thing I would say is that is the history of the Judgment and supported by the literature on this basin which there is, there's transcripts of the hearing relating to the Judgment, the discussions which I've had an opportunity to review as counsel, so I'm not looking from just the bare words of the Judgment. I recognize that this Judgment is not crystal clear and anyone that's heard me provide advice, it's often times that the Judgment is ambiguous, I don't know what the answer is. I don't think this is one of those situations.

CHAIRMAN ANDERSON: Any other public comments?

CATLIN: Mr. Chairman. In regards to the internal audit versus an outside audit. I strongly believe there needs to be an objective audit, it needs to be an independent audit by a third party. Even though there's nothing official there, maybe a third party, still there's other members who might have some bias. Now that's not a personal attack on those officials. Just let me give you a little bit on my background. I'm trained as a scientist. Scientists, good scientists anyway, go out of their way to eliminate bias in their specs. The whole concept of a placebo double blind studies is to eliminate bias from their study. I understand lawyers prevent witnesses from going into the Court before their testimony so that bias isn't introduced into their testimony. So there this whole, that's where I'm coming from when I'm concerned about bias. I think it needs to be objective. Again, it's not a personal attack on any CFO or any official that might be a part of that Executive Committee. And to have an audit, there would be independence in my mind of any fraudulent activity, defraud, or perceived fraudulent activity for loss of funds. As we heard last time in a meeting, Mr. Fedak pointed out that a lot of times an audit is initiated just because the company wants to have a better understanding of their financial institutions. Now, I look at the Watermaster literature and the Board members are listed at the bottom. Seems to me that that's an endorsement of those communications and it seems to be, it would be prudent for me, it would be my responsibility to make sure that affairs of the financial accounting is practiced properly. Now, even though, you know, there's talk about Board members here being appointed by the Court. But still, when the Court made up the adjudication, it seems to me the Court knew we were elected officials when they made up that assignment or appointment. But still, as elected officials (change tapes).....in regards to financial practices. As far as the money that might be involved, well there's still a big question that, if the Executive Committee (tape messed up)

BORBA: (Garbled) I understand Larry's done some work on the, call

RUDDER: At the request of the Watermaster Board I did solicit bids for auditing services. We contacted five firms:
(Larry quickly named the five firms but I was unable to understand or interpret the names of those firms).

I believe Soren, McAdam & Bartells. And the low, what we believe is the best firm to serve this purpose is Soren McAdam & Bartles. Their fee is from \$7,000, to \$14,000, not-to-exceed \$14,000 and that is for an internal audit, an operation audit, excuse me. Let me pass out some copies here. I have, present here today is Linda Devlin of the firm, she's a share holder of Soren McAdam & Bartles. They're locate in Redlands and have offices in Riverside. They are an independent firm, the largest independent firm in the Inland Valley. They have approximately 75 members on staff. They have no affiliation with any entity here in our member agencies or any of the water districts in this area. However, they do have experience in serving other water agencies and other Watermaster audits. They will be available if you so desire to go forth with an audit starting Tuesday and will be complete and have a report back to the Board within 30 days. The letter you have before you itemizes the various areas they'll look into, including the, following the established policies, standards and the contract or judicial order (garbled) by opportunities for improvement in the procedures and work flow (garbled) recommendations for improvement and future action in terms of compliance, assess the Watermaster's internal control system, cash receipts, disbursements, payroll system and basically, the entire accounting system. Develop recommendations for improvements to the internal control system. If there's any questions I can answer, I'd be glad to or Linda Devlin would be, also I'm sure, glad to answer any questions you might have.

CATLIN: Mr. Chairman, just for clarification, you looked at several firms.

RUDDER: We looked at five firms yes.

CATLIN: Five firms. And this copy here is what you would recommend out of examining these five firms.

RUDDER: This is my recommendation. They are one of the two low bidders. At \$7,000 they would be the low bidder and they are the most comprehensive, proposing to do a minimum of sixty specimens and a minimum of twenty-five cash receipts initially. So I think in terms of the scope of work, they're definitely the low bidder. Some of the firms were up in the neighborhood of \$15 or \$25,000.

MICHELLE: May I ask a question? On the second page, the sixth item down says "we will evaluate the adequacy of the internal control system for soundness and compliance with the District's policies and procedures", we have adopted some of our own policies and procedures so would those be in replacement, where we have them, would they replace District policies and procedures because the Watermaster has adopted them.

RUDDER: That's a very interesting question. For many years, the Watermaster had no policies and procedures so they just automatically, we thought, fell under the Chino Basin policies and procedures. But some years ago, that's where some conflict started to arise. They had no policies and procedures, yet they didn't want to follow Chino Basin's policies and procedures. So the policies and procedures were more or less on an ad hoc basis. It's whatever the Advisory Committee wanted at the time. So, to answer your question, I guess we would look at Watermaster's policies and procedures, check them for accuracy and also for the ones you don't have policies and procedures on, we'd look at ours, Chino Basin's.

BORBA: Clarify, would you repeat that please, Larry, I missed something. (Garbled) the district versus theirs or they're going to review all policies.

RUDDER: They're going to review all policies and procedures.

BORBA: So we can take that District out and put "all policies"

RUDDER: Yes.

CHAIRMAN ANDERSON: Have any more questions

CATLIN: No more questions, but just on that one point. Would it be more objective to avoid the use of District there? What would be the, it seems like we'd be using the District as a standard so to speak. Is there a better standard to use?

RUDDER: I don't believe there's a better standard to use than the District. If there's a conflict in the policies and procedures, then the auditors would have to verify or report on the adequacy of the policies and procedures of Watermaster.

CATLIN: Can we break District (inaudible) out?

BORBA: Does that mean if there's different standards, it's okay? I don't know.

LINDA: That's possible. The reason why this was put in the way it was is we understood the Watermaster was supposed to be following the District's policies and procedures. That's what the direction was, so that's the standard we're holding Watermaster to.

BORBA: But its come out now there are some additional

LINDA: As long as they're not in, they're adverse, they're not adverse to the District's policies and procedures, we will still evaluate those. If they're contrary, that gets reported back, if they're good policies and procedures, that gets reported back also.

CATLIN: If you were to go into any public institution, what would you consider standard practices? I mean, what standards would you use. I don't know, do you understand my question? The concern I have is, what if there's something wrong with the District's procedures, lets say.

LINDA: We would report back on that also, because they could be inadequate also.

CATLIN: So you always compare the practices and procedures of one like public agency to maybe another one.

LINDA: No.

CATLIN: How do you determine what you're going to use as your standard for comparison.

LINDA: Standard is what we are taught in school and that is that we should have segregation of duties so that one person cannot both record and perform a transaction and then record it and basically handle all phases of an activity. For instance, writing a check, signing the check, sending it to the vendor, getting the bank statement back, doing the bank reconciliation and basically recording it on the books. One person doing all of that can basically do a lot of things with nobody checking. So what our objective is, for a good, sound internal control system, is to have those different individual activities done by different people or split up as much as possible so that that type of activity can not occur without being caught relatively soon after it actually occurs.

CATLIN: That's how it should be practiced at every public institution. Is there a government policy that you work against? You're saying that's how you were taught in school.

LINDA: No, that's what we practice. That is internal control, okay? We come in to make sure that your system is as good as it possibly can be. In a governmental entity if we're doing an A128 audit, which is required when we do, when you have federal funds for instance, we have specific areas that we have to test. We'll test the major system within your entity, your accounting system, and your environment, your accounting environment, etc. okay? Within the yellow book that sets forth government (tape tweaked) standards, there's specific information about internal control and compliance that we have to follow. Governmental is very straight forward, if

CATLIN: So you're really using the yellow book as your standard really. Everything has to be in accordance with the procedures in that book?

LINDA: If it's an A128 audit.

CATLIN: That's what this is.

LINDA: No, this is an operational audit because it's not, because there's no federal funds involved.

CHAIRMAN ANDERSON: Any questions? Thank you Larry.

BORBA: Mr. Chairman, I make a motion that we hire the firm of Soren McAdam & Bartles to do this audit for us starting as soon as possible.

CATLIN: Second.

CHAIRMAN ANDERSON: Any further discussion?

BORBA: I have a comment Mr. Chairman, that I am just very amazed, I'm amazed, I'm disappointed at the resistance the Advisory Committee has to this audit, putting out numbers of \$30 to \$35,000 without knowing what they're talking about. The perception out there is one that I think should be clean and clear without any internal restrictions at all, and I just, I just don't understand the reluctance, the difference between ten days and thirty days, what's the difference? The audit should be done immediately in my opinion. Therefore, I call for the question on the motion.

CHAIRMAN ANDERSON: All in favor? (Ayes were heard.)

CHAIRMAN ANDERSON: Opposed? I guess with that, we're adjourned.

Meeting adjourned.

The forgoing verbatim minutes were prepared by Watermaster Services and represent a full, true and as correct as feasibly possible, transcript of the Special Meeting of the Chino Basin Watermaster held January 23, 1997.

Secretary

EXHIBIT E - 4

**AGREEMENT NUMBER WMLA94001 FOR GENERAL COUNSEL
SERVICES BETWEEN THE CHINO BASIN WATERMASTER
AND NOSSAMAN, GUTHNER, KNOX & ELLIOTT**

The Chino Basin Watermaster ("Watermaster"), an entity created by the Superior Court of the State of California pursuant to the Judgment entered in San Bernardino County Superior Court Case No. WCV51010 (formerly Case No. SCV 164327), and Nossaman, Guthner, Knox & Elliott ("Nossaman"), hereby agree that Nossaman will provide General Counsel services to the Watermaster on the terms and conditions stated herein.

1. Term of Agreement

This Agreement will become effective as of July 1, 1994, through June 30, 1995, inclusive, unless terminated in accordance with paragraph ten (10).

2. Scope of Services

Nossaman will provide Watermaster with such legal services as Watermaster requests in connection with its administration and enforcement of the Judgment, as amended, in San Bernardino Superior Court Civil Action No. WCV51010. These services include, but are not limited to the following:

- a. Meet or consult with Watermaster and its staff as Watermaster requires.
- b. Attend such meetings as Watermaster requires.
- c. Provide review, analysis, advice, recommendations, opinions, and consultations on issues and matters of concern and interest to Watermaster.
- d. Provide representation of Watermaster in litigation or other proceedings affecting matters of interest and concern to Watermaster.
- e. Monitor on-going litigation or other proceedings affecting matters of interest and concern to Watermaster.

3. Key Personnel

Frederic A. Fudacz will be the partner-in-charge from Nossaman, with day-to-day responsibility for servicing the legal needs of Watermaster. The partner-in-charge will be changed only upon prior consent of the Watermaster. Nossaman will assemble an interdisciplinary team to be available to Watermaster as desired to provide specialized advice or service. Without cost to Watermaster, the members of this team will monitor and apprise Watermaster of legislative developments affecting Watermaster.

4. Fees and Costs

a. Regular Services

Nossaman will charge Watermaster on an hourly rate basis according to Schedule "A" attached hereto or as might be amended, which represents a 10% discount from Nossaman's regular hourly rates. Nossaman may add new attorneys or paralegals to Schedule "A" upon consent of Watermaster to the addition of such person and their hourly rates. The hourly rates which Nossaman charges Watermaster will be changed only upon prior consent of Watermaster.

b. Attendance at Regular and Special Meetings

For attendance at meetings of Watermaster, Nossaman will charge Watermaster on an hourly rate basis, according to Schedule "B" attached hereto, which represents a 20% discount from Nossaman's regular hourly rates. Nossaman may add new attorneys or paralegals to Schedule "B" upon consent of Watermaster to the addition of such persons and to their hourly rates.

c. Expenses

Ordinary Expenses

In addition to fees for services, Watermaster agrees to reimburse Nossaman for its actual reasonable out-of-pocket expenses incurred in connection with provision of the services identified herein. Reimbursable ordinary expenses shall include, but not be limited to, postage, overnight delivery costs, messenger costs, long distance telephone charges, computer research, and document reproduction. No overhead or administrative charge will be applied to out-of-pocket expenses.

Extraordinary Expenses

Reimbursable extraordinary expenses shall include charges for which Nossaman has obtained Watermaster's prior approval. Such expenses shall include, but not to be limited to, Nossaman's expert witnesses and unusual travel expenses. No overhead or administrative charge will be applied to extraordinary expenses.

5. Billings and Payment

a. Billing Statements

Nossaman shall submit its billing statements monthly in arrears. Each billing statement shall include the name of each attorney or paralegal providing services, time billed by each attorney or paralegal on a daily basis, indicating time for each service provided, a description of the service provided, the hourly rate for each attorney or paralegal in accordance with Schedule "A" or "B", as the same may be amended from time to time, total monthly fees billed, a description of all ordinary and extraordinary expenses and a total of monthly expenses billed.

b. Payments

Watermaster shall pay Nossaman monthly, within 30 calendar days of receipt by Watermaster of the monthly billing statement.

6. Insurance

During the term of this Agreement, Nossaman shall maintain at Nossaman's sole expense, the following insurance.

a. Minimum Scope of Insurance

1. General Liability

\$500,000.00 combined single limit per occurrence for bodily injury, personal injury and property damages. Coverage shall be at least as broad as Insurance Services Office form number GL 00 02 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 04 04 03 81 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage, "occurrence" from CG 00 01 11 85.

2. Automobile Liability

\$500,000.00 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 01 87, covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25 (Ed. 01 86).

3. Workers' Compensation and Employers Liability

Workers' compensation limits as required by the Labor Code of the State of California and employers liability limits of \$500,000.00 per occurrence.

4. Professional Liability insurance in the amount of \$1,000,000.00 per occurrence.

b. Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by Watermaster.

c. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage

a. Watermaster, its officers, officials, employees and volunteers are to be covered as insureds, endorsements GL 20 11 07 68, CG2010 1185 and/or CA 20 01 (Ed. 01 78), as respects: liability arising out of activities performed by or on behalf of Nossaman, products and completed operations of Nossaman, premises owned, occupied or used by Nossaman, or automobiles owned, leased, hired or borrowed by Nossaman. The coverage shall contain no special limitations on the scope of protection afforded to Watermaster, its officers, officials, employees or volunteers.

b. Nossaman's insurance coverage shall be primary insurance as respects Watermaster, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Watermaster, its officers, officials, employees, or volunteers shall be excess of Nossaman's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Watermaster, its officers, officials, employees or volunteers.

d. Nossaman's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Nossaman may satisfy the limit requirements in a single policy or multiple policies. Any such additional policies written as excess insurance shall not provide any less coverage than that provided by the first or primary policy.

2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against Watermaster, its officers, officials, employees and volunteers for losses arising from work performed by Nossaman for Watermaster.

3. All Coverages

Each insurance policy required by this contract shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Watermaster.

d. Acceptability of Insurers

With the exception of Professional Liability Insurance, all insurance is to be placed with insurers with a Best's rating of no less than A:VII, and who are admitted insurers in the State of California. Professional Liability Insurance may be placed with a syndicate(s) at Lloyds of London.

e. Verification of Coverage

Nossaman shall furnish Watermaster with certificates of insurance and with original endorsements effecting coverage required by Watermaster for themselves. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be approved by Watermaster before work commences. Watermaster reserves the right to

require complete, certified copies of all required insurance policies, at any time.

f. Submittal of Certificates

Nossaman shall submit all required certificates and endorsements to the following:

Mr. Patrick King, Risk Manager
Chino Basin Municipal Water District
P.O. Box 697
Rancho Cucamonga, California 91729-0697

7. Legal Relations and Responsibilities

a. Professional Responsibility

Nossaman shall be responsible, to the level of competency presently maintained by other practicing professionals performing the same or similar type of work.

b. Status of Nossaman

Nossaman is retained as an independent contractor only, for the sole purpose of rendering the services described herein, and is not an employee of Watermaster.

c. Observing Laws and Ordinances

Nossaman shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect the conduct of any services or tasks performed under this Agreement, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Nossaman shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees, and shall protect Watermaster, its officers, employees and agents against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by Nossaman or its employees.

d. Subcontract Services

Any subcontracts for the performance of any services under this Agreement shall be subject to the prior written approval of Watermaster.

e. Liens

Nossaman shall pay all sums of money that become due from any labor, services, materials, or equipment furnished to Nossaman on account of said services to be rendered or said materials to be furnished under this Agreement and that may be secured by any lien against Watermaster. Nossaman shall fully discharge each such lien at the time performance of the obligation secured matures and becomes due.

f. Conflict of Interest

No official of Watermaster who is authorized in such capacity and on behalf of Watermaster to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving this Agreement, or any subcontract relating to services or tasks to be performed pursuant to this Agreement, shall become directly or indirectly personally interested-in this Agreement.

g. Equal Opportunity

During the performance of this Agreement, Nossaman shall not unlawfully discriminate against any employee or employment applicant because of race, color, religion, sex, age, marital status, ancestry, physical or mental disability, sexual orientation, veteran status, or national origin.

h. Attorneys Fees

In the event an action is commenced by a party to this Agreement against the other to enforce its rights or obligations arising from this Agreement, the prevailing party in such action, in addition to any other relief and recovery ordered by the court or arbitration, shall be entitled to recover all statutory costs, plus reasonable attorneys' fees, as established by the court.

8. Ownership of Materials and Documents/Confidentiality

Any and all partial or complete reports, notes, computations, lists, and/or other materials, documents, information, or data prepared by Nossaman pertaining to this Agreement, are confidential and shall be available to Watermaster from the moment of their preparation, and Nossaman shall deliver same to Watermaster whenever requested to do so by Watermaster. Nossaman agrees that same shall not be made available to

any individual or organization, private or public, without the prior written consent of Watermaster, or as may be ordered or requested by the court.

9. Notices

Any notices permitted or required under this Agreement shall be delivered, mailed or faxed to the party in question at the following addresses or fax numbers:

If to Watermaster:

Chino Basin Watermaster
Attention: Ms. Traci Stewart
Acting Chief of Watermaster Svcs.
9400 Cherry Avenue, Building A
Fontana, CA 92335
Fax Number: (909) 357-3870

If to Nossaman:

Nossaman, Guthner, Knox & Elliott
Attention: Frederic A. Fudacz
445 South Figueroa Street
31st Floor
Los Angeles, California 90071-1602
Fax Number: (213) 612-7801

Notices may be sent by hand-delivery, fax, first class mail, or overnight delivery. Notices shall be deemed received upon the business day delivered or faxed, if hand-delivered or sent by fax, on the next business day if sent by overnight delivery, or on the third business day after mailing, if mailed. Any party may change its address or fax number by giving notice to the other party in accordance with this paragraph.

10. Termination

This Agreement may be terminated by Watermaster at any time Watermaster deems to be in its best interest. Watermaster shall terminate services by delivery to Nossaman a 30 calendar day written termination notice. Nossaman may terminate this Agreement upon good cause and a 30 calendar day written termination notice. Any termination by Nossaman shall be consistent with its obligations for protection of client interest as required by applicable law and rules governing the provision of legal services.

11. Integration

This Agreement shall constitute the complete and exclusive statement of understanding between Watermaster and Nossaman, which supersedes all previous written or oral agreements, and all prior communications between the parties.

12. Applicable Law

This Agreement shall be construed and interpreted under the laws of the State of California.

Dated: _____

Chino Basin Watermaster

By: Bill Hill

Attest:

By: John L. Anderson

Dated: Aug. 9, 1994

Nossaman, Guthner, Knox & Elliott

By: Fredenc A. Fudacz
Fredenc A. Fudacz, Partner

SCHEDULE A**SCHEDULE A****BILLING RATES FOR
CHINO BASIN WATERMASTER**

| <u>Attorney Name</u> | <u>Hourly Rate</u> |
|-----------------------|--------------------|
| Frederic A. Fudacz | \$ 239.00 |
| John Ossiff | 180.00 |
| Brenda Jahns | 162.00 |
| Geoffrey S. Yarema | 225.00 |
| William T. Bagley | 270.00 |
| James E. Erickson | 261.00 |
| James C. Powers | 239.00 |
| Robert D. Thornton | 225.00 |
| Howard D. Coleman | 239.00 |
| Alvin S. Kaufer | 239.00 |
| Janet S. Murillo | 216.00 |
| Henry S. Weinstock | 198.00 |
| Daniel M. Grigsby | 198.00 |
| Thomas D. Long | 180.00 |
| Sherri M. Kirk | 180.00 |
| Winfield D. Wilson | 171.00 |
| Adrienne W. Goldstone | 171.00 |
| Richard P. Bozof | 171.00 |

SCHEDULE A

| <u>Attorney Name</u> | <u>Hourly Rate</u> |
|----------------------|--------------------|
| Joe Guzman | 162.00 |
| Mary Lou Byrne | 149.00 |
| O. Andrew Wheaton | 135.00 |
| Mark S. Lieblein | 135.00 |
| Abraham Meltzer | 135.00 |
| Karen M. Chang | 126.00 |

| <u>Paralegal Name</u> | <u>Hourly Rate</u> |
|-----------------------|--------------------|
| Sylvia S. Hoffman | \$ 77.00 |
| Michele M. White | 77.00 |
| Kathleen R. Noe | 77.00 |

SCHEDULE B

SCHEDULE B

BILLING RATES FOR
CHINO BASIN WATERMASTER

| <u>Attorney Name</u> | <u>Hourly Rate</u> |
|-----------------------|--------------------|
| Frederic A. Fudacz | \$ 212.00 |
| John Ossiff | 160.00 |
| Brenda Jahns | 144.00 |
| Geoffrey S. Yarema | 200.00 |
| William T. Bagley | 240.00 |
| James E. Erickson | 232.00 |
| James C. Powers | 212.00 |
| Robert D. Thornton | 200.00 |
| Howard D. Coleman | 212.00 |
| Alvin S. Kaufer | 212.00 |
| Janet S. Murillo | 195.00 |
| Henry S. Weinstock | 179.00 |
| Daniel M. Grigsby | 179.00 |
| Thomas D. Long | 160.00 |
| Sherri M. Kirk | 182.00 |
| Winfield D. Wilson | 154.00 |
| Adrienne W. Goldstone | 154.00 |
| Richard P. Bozof | 152.00 |

SCHEDULE B

| <u>Attorney Name</u> | <u>Hourly Rate</u> |
|----------------------|--------------------|
| Joe Guzman | 144.00 |
| Mary Lou Byrne | 135.00 |
| O. Andrew Wheaton | 122.00 |
| Mark S. Lieblein | 122.00 |
| Abraham Meltzer | 122.00 |
| Karen M. Chang | 114.00 |

| <u>Paralegal Name</u> | <u>Hourly Rate</u> |
|-----------------------|--------------------|
| Sylvia S. Hoffman | \$ 70.00 |
| Michele M. White | 70.00 |
| Kathleen R. Noe | 70.00 |

**AGREEMENT NUMBER EJ93002 FOR SPECIAL COUNSEL SERVICES
BETWEEN THE CHINO BASIN WATERMASTER ADVISORY COMMITTEE
AND NOSSAMAN, GUTHNER, KNOX & ELLIOTT**

The Chino Basin Watermaster Advisory Committee ("Advisory Committee"), a committee organized under the Chino Basin Watermaster entity created by the Superior Court of the State of California pursuant to the Judgment entered in San Bernardino County Superior Court Case No. WCV51010 (formerly Case No. SCV 164327), and Nossaman, Guthner, Knox & Elliott ("Nossaman"), hereby agree that Nossaman will provide Special Counsel services to the Advisory Committee on the terms and conditions stated herein.

1. **Term of Agreement**

This Agreement will become effective as of December 1, 1993, through June 30, 1994, inclusive, unless terminated in accordance with paragraph ten (10).

2. **Scope of Services**

Nossaman will provide Advisory Committee with such legal services as the Advisory Committee requests in connection with the Watermaster's administration and enforcement of the Judgment, as amended, in San Bernardino Superior Court Civil Action No. WCV51010. These services include, but are not limited to the following:

- a. Meet or consult with the Advisory Committee and its staff as the Advisory Committee requires.
- b. Attend such meetings as the Advisory Committee requires.
- c. Provide review, analysis, advice, recommendations, opinions, and consultations on issues and matters of concern and interest to the Advisory Committee.
- d. Provide representation of the Advisory Committee in litigation or other proceedings affecting matters of interest and concern to the Advisory Committee. With respect to the above referenced action No. WCV51010, Nossaman will coordinate and work with the Watermaster's General Counsel, Guido R. Smith, as necessary and as directed by the Advisory Committee to establish a rapport with the Court in the processing of special procedural matters.
- e. Monitor on-going litigation or other proceedings affecting matters of interest and concern to the Advisory Committee.

Agreement for General Counsel Services...(continued)

3. Key Personnel

Frederic A. Fudacz will be the partner-in-charge from Nossaman, with day-to-day responsibility for servicing the legal needs of the Advisory Committee. The partner-in-charge will be changed only upon prior consent of the Advisory Committee. Nossaman will assemble an interdisciplinary team to be available to the Advisory Committee as desired to provide specialized advice or service. Without cost to the Advisory Committee, Nossaman will keep the members of this interdisciplinary team apprised of ongoing developments affecting the Advisory Committee. Without cost to the Advisory Committee, the members of this team will monitor and apprise the Advisory Committee of legislative developments affecting the Advisory Committee.

4. Fees and Costs

a. Regular Services

Nossaman will charge the Advisory Committee on an hourly rate basis according to Schedule "A" attached hereto, which represents a 10% discount from Nossaman's regular hourly rates. Nossaman may add new attorneys or paralegals to Schedule "A" upon consent of the Advisory Committee to the addition of such persons and to their hourly rates. The hourly rates which Nossaman charges the Advisory Committee will be changed only upon prior consent of the Advisory Committee.

b. Attendance at Advisory Committee Meetings

For attendance at meetings of the Advisory Committee, Nossaman will charge the Advisory Committee on an hourly rate basis, according to Schedule "B" attached hereto, which represents a 20% discount from Nossaman's regular hourly rates. Nossaman may add new attorneys or paralegals to Schedule "B" upon consent of the Advisory Committee to the addition of such persons and to their hourly rates. The hourly rates which Nossaman charges the Advisory Committee will be changed only upon prior consent of the Advisory Committee.

c. Expenses

Ordinary Expenses

In addition to fees for services, the Advisory Committee agrees to reimburse Nossaman for its actual reasonable out-of-pocket expenses incurred in connection with provision of the services identified herein. Reimbursable ordinary expenses shall

Agreement for General Counsel Services...(continued)

include, but not be limited to, postage, overnight delivery costs, messenger costs, long distance telephone charges, computer research, and document reproduction. No overhead or administrative charge will be applied to out-of-pocket expenses.

Extraordinary Expenses

Reimbursable extraordinary expenses shall include charges for which Nossaman has obtained the Advisory Committee's prior approval. Such expenses shall include, but not be limited to, Nossaman's expert witnesses and unusual travel expenses. No overhead or administrative charge will be applied to extraordinary expenses.

5. Billings and Payment

a. Billing Statements

Nossaman shall submit its billing statements monthly in arrears. Each billing statement shall include the name of each attorney or paralegal providing services, time billed by each attorney or paralegal on a daily basis, a description of the services provided, the hourly rate for each attorney or paralegal in accordance with Schedule "A" or "B", as the same may be amended from time to time, total monthly fees billed, a description of all ordinary and extraordinary expenses and a total of monthly expenses billed.

b. Payments

The Advisory Committee shall pay Nossaman monthly, within 30 days of receipt by the Advisory Committee of the monthly billing statement.

6. Insurance

During the term of this Agreement, Nossaman shall maintain at Nossaman's sole expense, the following insurance.

a. Minimum Scope of Insurance

1. General Liability

\$500,000.00 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number GL 00 02 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 04 04 03 81 covering Broad Form

Agreement for General Counsel Services...(continued)

Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage, "occurrence" form CG 00 01 11 85.

2. Automobile Liability

\$500,000.00 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 01 87, covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25 (Ed. 01 86).

3. Workers' Compensation and Employers Liability

Workers' compensation limits as required by the Labor Code of the State of California and employers Liability limits of \$500,000.00 per occurrence.

4. Professional Liability insurance in the amount of \$1,000,000.00 per occurrence.

b. Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by Advisory Committee.

c. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage

a. Advisory Committee, its officers, officials, employees and volunteers are to be covered as insureds, endorsements GL 20 11 07 66, CG2010 1185 and/or CA 20 01 (Ed. 01 78), as respects: liability arising out of activities performed by or on behalf of Nossaman, products and completed operations of Nossaman, premises owned, occupied or used by Nossaman, or automobiles owned, leased, hired or borrowed by Nossaman. The coverage shall contain no special limitations on the scope of protection afforded to Advisory Committee, its officers, officials, employees or volunteers.

b. Nossaman's insurance coverage shall be primary insurance as respects Advisory Committee, its officer, officials, employees and volunteers. Any insurance or self-insurance maintained by Advisory Committee, its

Agreement for General Counsel Services...(continued)

officers, officials, employees, or volunteers shall be excess of Nossaman's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Advisory Committee, its officers, officials, employees or volunteers.

d. Nossaman's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Nossaman may satisfy the limit requirements in a single policy or multiple policies. Any such additional policies written as excess insurance shall not provide any less coverage than that provided by the first or primary policy.

2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against Advisory Committee, its officers, officials, employees and volunteers for losses arising from work performed by Nossaman for Advisory Committee.

3. All Coverages

Each insurance policy required by this contract shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Advisory Committee.

d. Acceptability of Insurers

With the exception of Professional Liability Insurance, all insurance is to be placed with insurers with a Best's rating of no less than A:VII, and who are admitted insureds in the State of California. Professional Liability Insurance may be placed with a syndicate(s) at Lloyds of London.

e. Verification of Coverage

Nossaman shall furnish Advisory Committee with certificates of insurance and with original endorsements effecting coverage required by Advisory Committee for themselves. The certificates and endorsements for each insurance policy are to be

Agreement for General Counsel Services...(continued)

d. Subcontract Services

Any subcontracts for the performance of any services under this Agreement shall be subject to the prior written approval of the Advisory Committee.

e. Liens

Nossaman shall pay all sums of money that become due from any labor, services, materials, or equipment furnished to Nossaman on account of said services to be rendered or said materials to be furnished under this Agreement and that may be secured by any lien against Advisory Committee. Nossaman shall fully discharge each such lien at the time performance of the obligation secured matures and becomes due.

f. Conflict of Interest

No official of Advisory Committee who is authorized in such capacity and on behalf of Advisory Committee to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving this Agreement, or any subcontract relating to services or tasks to be performed pursuant to this Agreement, shall become directly or indirectly personally interested in this Agreement.

g. Equal Opportunity

During the performance of this Agreement, Nossaman shall not unlawfully discriminate against any employee or employment applicant because of race, color, religion, sex, age, marital status, ancestry, physical or mental disability, sexual orientation, veteran status or national origin.

h. Attorneys Fees

In the event an action is commenced by a party to this Agreement against the other to enforce its rights or obligations arising from this Agreement, the prevailing party in such action, in addition to any other relief and recovery ordered by the court or arbitration, shall be entitled to recover all statutory costs, plus reasonable attorneys' fees.

8. Ownership of Materials and Documents/Confidentiality

Any and all partial or complete reports, notes, computations, lists, and/or other materials, documents, information, or data prepared by Nossaman pertaining to this

Agreement for General Counsel Services...(continued)

Agreement, are confidential and shall be available to Advisory Committee from the moment of their preparation, and Nossaman shall deliver same to Advisory Committee whenever requested to do so by the Advisory Committee. Nossaman agrees that same shall not be made available to any individual or organization, private or public, without the prior written consent of Advisory Committee or as may be ordered or requested by the court.

9. Notices

Any notices permitted or required under this Agreement shall be delivered, mailed or faxed to the party in question at the following addresses or fax numbers:

If to the Advisory Committee:

Chino Basin Watermaster Advisory Committee
Attn: Edwin D. James, Chief, Watermaster Services
Post Office Box 697
Rancho Cucamonga, California 91729-0697
FAX Number: (909) 980-9494

If to Nossaman:

Nossaman, Guthner, Knox & Elliott
Attn: Frederic A. Fudacz
445 South Figueroa Street
31st Floor
Los Angeles, California 90071
FAX Number: (213) 612-7801

Notices may be sent by hand-delivery, fax, first class mail, or overnight delivery. Notices shall be deemed received upon the business day delivered or faxed if hand-delivered or sent by fax, on the next business day if sent by overnight delivery, or on the third business day after mailing, if mailed. Any party may change its address or fax number by giving notice to the other party in accordance with this paragraph.

10. Termination

This Agreement may be terminated by the Advisory Committee at any time the Advisory Committee deems to be in its best interest. The Advisory Committee shall terminate services by delivery to Nossaman a 30-day written termination notice.

Agreement for General Counsel Services...(continued)

Nossaman may terminate this Agreement upon good cause. Any termination by Nossaman shall be consistent with its obligations for protection of client interest as required by applicable law and rules governing the provision of legal services.

11. Integration

This Agreement shall constitute the complete and exclusive statement of understanding between the Advisory Committee and Nossaman, which supersedes all previous written or oral agreements, and all prior communications between the parties.

12. Applicable Law

This Agreement shall be construed and interpreted under the laws of the State of California.

Dated: 11-29-93

Chino Basin Watermaster Advisory Committee

By: Thomas E. Shollenberger
Thomas E. Shollenberger, Chairman

Attest:

By: Edwin D. James
Edwin D. James, Secretary

Dated: 12-1-93

Nossaman, Guthner, Knox & Elliott

By: Frederic A. Fudacz
Frederic A. Fudacz, Partner

SCHEDULE "A"

BILLING RATES FOR
CHINO BASIN WATERMASTER ADVISORY COMMITTEE

| <u>Attorney Name</u> | <u>Hourly Rate</u> |
|----------------------|--------------------|
| Frederic A. Fudacz | \$ 239.00 |
| Brenda Jahns | 162.00 |
| Geoffrey S. Yarema | 239.00 |
| William T. Bagley | 300.00 |
| James E. Erickson | 239.00 |
| Robert D. Thornton | 239.00 |
| John Ossiff | 180.00 |
| Thomas D. Long | 198.00 |
| Jose E. Guzman | 162.00 |
| Richard P. Bozof | 171.00 |
| Mary Lou Byrne | 144.00 |
| Mark S. Lieblein | 126.00 |
| O. Andrew Wheaton | 126.00 |
| Karen J. Chang | 126.00 |
| Alvin S. Kaufer | 239.00 |
| Daniel M. Grigsby | 198.00 |
| Howard D. Coleman | 239.00 |
| James C. Powers | 239.00 |
| Janet S. Murillo | 216.00 |

FEB-24-97 MON 08:50

CHINO BASIN MWD

FAX NO. 909 357 3870

P. 09

Sherri M. Kirk 180.00

Winfield D. Wilson 171.00

Paralegal

Sylvia S. Hoffman \$ 76.00

Kathleen R. Noe 76.00

Michele M. White 76.00

H. Satomi Zimmerman 63.00

SCHEDULE "B"

BILLING RATES FOR
CHINO BASIN WATERMASTER ADVISORY COMMITTEE

| <u>Attorney Name</u> | <u>Hourly Rate</u> |
|----------------------|--------------------|
| Frederic A. Fudacz | \$ 212.00 |
| Brenda Jahns | 144.00 |
| Geoffrey S. Yarema | 212.00 |
| William T. Bagley | 300.00 |
| James E. Erickson | 212.00 |
| Robert D. Thornton | 212.00 |
| John Ossiff | 160.00 |
| Thomas D. Long | 176.00 |
| Jose E. Guzman | 144.00 |
| Richard P. Bozof | 152.00 |
| Mary Lou Byrne | 128.00 |
| Mark S. Lieblein | 112.00 |
| O. Andrew Wheaton | 112.00 |
| Karen J. Chang | 112.00 |
| Alvin S. Kaufer | 212.00 |
| Daniel M. Grigsby | 176.00 |
| Howard D. Coleman | 212.00 |
| James C. Powers | 212.00 |
| Janet S. Murillo | 192.00 |

FEB-24-97 MON 08:51

CHINO BASIN MWD

FAX NO. 909 257 3870

P. 11

Sherri M. Kirk 160.00

Paralegal

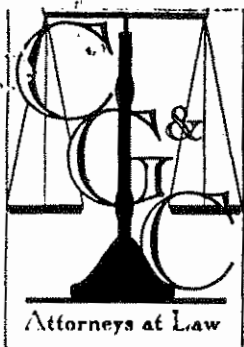
Sylvia S. Hoffman \$ 68.00

Kathleen R. Noe 68.00

Michele M. White 68.00

H. Satomi Zimmerman 56.00

EXHIBIT E-5



February 6, 1997

**Cihigoyenette,
Grossberg
& Clouse**

A Partnership of Professional Corporations

Palmbrook Corporate Center
3602 Inland Empire Blvd.
Suite C315
Ontario, California 91764
Telephone ~ (909) 483-1850
Facsimile ~ (909) 483-1840

Jean Cihigoyenette*
Scott J. Grossberg*
Richard R. Clouse*
*A Professional Corporation

Bonnie Bailey-Jones
Susan M. Sharpless
Teresa M. Brantley

Office Administrator
Guadalupe G. Ramirez

Virtual Law Office™
Bulletin Board Service
(909) 483-6430

World Wide Web Site
<http://ourworld.compuserve.com/homepages/S.Grossberg>

Internet E-Mail
73373.1463@compuserve.com
102175.379@compuserve.com

Frederic A. Fudacz
Nossaman, Guthner, Knox & Elliott
445 South Figueroa Street, Thirty-First Floor
Los Angeles, California 90071

Re: Chino Basin Municipal Water District v. City of Chino

Dear Mr. Fudacz:

This firm has been directed to send this correspondence to you by the Board of Directors of Chino Basin Municipal Water District, our client. As you are well aware, the same Board acts as the Watermaster under the adjudication which we have discussed many times over the past year. This letter is prompted by your action in filing a notice of motion and motion for appointment of a nine member board as Watermaster as well as your motion for order of court that the audit of Watermaster services presently being conducted be charged to Chino Basin Municipal Water District as opposed to the Watermaster. You have filed both motions as attorney for Watermaster. We believe that your actions throughout the past year, if not longer, have placed you in a direct conflict of interest as Watermaster counsel and, most certainly have compromised your clients' best interests.

We begin with your retainer agreement identified as Agreement No. WMLA94001 For General Counsel Services Between the Chino Basin Watermaster and Nossaman, Guthner, Knox & Elliott. Although by its terms that agreement lapsed in June of 1995, the Director of Watermaster Services has represented to us that that is the most current retainer agreement between your firm and the Watermaster. Therefore, we assume that you continue to render services under the terms and conditions of that retainer agreement. That agreement clearly sets forth the fact that your firm represents the Watermaster and no other entity. This is not surprising since, under the adjudication, the Watermaster has the exclusive authority to retain general counsel. The adjudication grants the Advisory Committee the right to special counsel only in specific and limited circumstances.

Despite your contractual obligations to the Watermaster, you have elected to represent the interest of the Advisory Committee which interests are in direct conflict with those of the Watermaster. You have historically argued that you

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have no conflict of interest in representing the Advisory Committee and the Watermaster concurrently, however the Watermaster does not agree. We trust that you recognize that the adjudication creates separate and distinct bodies including those of Watermaster and the Advisory Committee. Each has a specific role set forth in the adjudication. Moreover, the potentiality for adverse interests in those two bodies is reflected in the adjudication where the Advisory Committee has the right to petition the court for relief from Watermaster decisions and vice versa. It is rather obvious that the drafters of the adjudication recognized the distinctive roles of the Watermaster and the Advisory Committee and the anticipated differences in opinions that they would share regarding many of the compelling issues which Chino Basin would have to address throughout the years.

Indeed, the events of recent months have indicated just how polarized the Watermaster and Advisory Committee can become over issues within the Basin. Their interests are not always aligned nor were they expected to be under the terms of the adjudication. You however have blurred the separation of powers afforded under the adjudication, and have so confused your role of legal counsel, perhaps even in your own mind, that it is clear to the Watermaster that you have placed yourself in a direct conflict of interest. We first brought the conflict of interest to your attention in May of 1996, yet you have failed to follow the directives of the Watermaster, the only entity with which you appear to have a retainer agreement at this time. We would direct you to our May 10, 1996 correspondence wherein we outlined our concerns of conflict of interest at that time.

More recently, you have reiterated your position that you are counsel for Watermaster. Despite this, you continue to take direction from and render legal counsel to the Advisory Committee without having been authorized to do so by the Watermaster. You have two motions presently filed with the court wherein you identify yourself as attorney for Chino Basin Watermaster. One motion is to remove Chino Basin Municipal Water District from its present Watermaster position and the other seeks to charge Chino Basin Municipal Water District with the cost of an audit voted upon by the Chino Basin Watermaster and directly related to Watermaster business. First of all, the Watermaster Board did not authorize the filing of either of those motions and, in fact, the positions which you advocate in each of those motions are directly in conflict with the best interests and the will of the Watermaster Board. Moreover, the Watermaster Board did not even know that the most recent motion to appoint a nine member panel would be filed until February 5, 1997, when they first received copies of the motion. They were not consulted on the issue nor were they advised that the motion was pending.

It is the shared belief of our client and ourselves that the polarization of the Watermaster and the Advisory Committee together with all of the ill will surrounding those circumstances can, for the most part, be placed directly upon your shoulders. Historically, you have failed to provide legal

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Page 3

advice to the Watermaster with regard to their authority and rights under the adjudication. Instead, you have aligned yourself with the Advisory Committee allowing them to act in excess of any authority granted them under the adjudication without advising them that in fact they were exceeding their authority. It was your duty, and continues to be your duty to ensure that the separation of powers and associated checks and balances as set forth in the adjudication between the Watermaster and the Advisory Committee are strictly adhered to. Instead, with the careless disregard for the rights and interests of your client the Watermaster, you have effectively obliterated any such checks and balances which the adjudication put in place to the extent that the Advisory Committee has usurped so much unauthorized control over the Watermaster that they now do not wish to give it up.

To compound matters, you have represented in writing and in proceedings before the court and the Watermaster Board of Directors that you are counsel for the Watermaster Board of Directors; that you are counsel for the Advisory Agency; that you are counsel for the Watermaster in general since there is no distinguishment between the Advisory Committee and the Watermaster Board of Directors and, most recently that you are attorney for the court assigned to oversee the Watermaster in general. These representations cause even greater concern to the Watermaster Board of Directors since, clearly, their position is not aligned with the Advisory Committee in this instance and indeed, is directly opposite.

Perhaps most compelling is the fact that the Watermaster Board of Directors cannot consult with you on these issues in that you refuse to recognize their authority as a Watermaster Board of Directors and have actively worked against their best interests in the past. This too has been brought to the attention of the court which indicated that their interest could be represented by this law firm concerning these issues. Although we strongly disagree with that contention, the Watermaster Board has been left with no other choice but to rely upon Chino Basin counsel for guidance.

Accordingly, you are directed, by the Board of Directors of the Chino Basin Watermaster, to do all of the following:

1. To remove from the court's calendar the Notice of Motion and Motion For Order of Court That Audit Commissioned By the Chino Basin Municipal Water District Board is not a Watermaster expense. The motion should be taken from the court's calendar forthwith.
2. To remove from the court calendar the Notice of Motion and Motion For Appointment of a Nine Member Board as Watermaster. This should be removed from the court's calendar forthwith.

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3. To cease and desist any further representation of the Advisory Committee or any other committee created by the adjudication save and except the Watermaster Board of Directors. This includes rendering any legal advice regarding the replacement of the Watermaster Board of Directors which position is in direct conflict with the interests and position of the Watermaster Board of Directors.
4. To send to the Chino Basin Board of Directors as well as these offices, written confirmation that neither you nor your firm have entered into any retainer agreements or agreements to provide legal services subsequent to Agreement No. WMLA94001 for general counsel services between the Chino Basin Watermaster and Nossaman, Guthner, Knox & Elliott.
5. Submit written confirmation to the Chino Basin Watermaster Board of Directors and this firm no later than 4 p.m. February 10, 1997 confirming that the above referenced law and motion matters have been taken off calendar.

As you are well aware, the issue of your legal representation and retainer agreement are presently the topic of a Watermaster meeting to be held on February 26, 1997 at 10:00 a.m. The Board anticipates your presence at that meeting.

Respectfully submitted,

CIHIGOYENETCHE, GROSSBERG & CLOUSE



JEAN CIHIGOYENETCHE

JC:kp