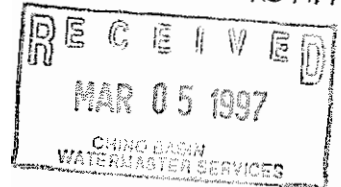


3/11/97
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

11 CHINO BASIN MUNICIPAL WATER)
12 DISTRICT,)
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Plaintiff(s),

vs.

CITY OF CHINO, et al.,

Defendant(s).

CASE NO. RCV 51010

OPPOSITION TO MOTION FOR
APPOINTMENT OF NINE MEMBER BOARD
AS WATERMASTER; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF

DATE: March 11, 1997
TIME: 8:30 a.m.
DEPT: H

Specially assigned to the Honorable Judge J.
Michael Gunn

COMES NOW, Chino Basin Municipal Water District submits the following opposition to the
Motion to Appoint Nine Member Board as Watermaster.

I.

**THE PROPOSED NINE MEMBER WATERMASTER
IS NOTHING MORE THAN THE APPOINTMENT
OF THE ADVISORY COMMITTEE TO ACT AS WATERMASTER**

The moving parties veiled attempt at equity and impartiality in appointing the proposed nine
member Watermaster is nothing short of laughable. The proposal eliminates all checks and balances
afforded under the Judgment and therefore should be summarily rejected.

1 First of all, six of the nine members of the proposed Watermaster would represent appointees
2 of the various Pool Committees who also comprise the Advisory Committee. The suggested
3 safeguard that no sitting member of the Advisory Committee can serve on the Watermaster is in fact
4 no safeguard at all. That a different person is appointed to serve as Watermaster does not detract
5 from the fact that that person answers to the member agency of the Advisory Committee that
6 appointed him. Realistically, it cannot be expected that the appointee on the Watermaster Board
7 would vote against an issue supported by that person's colleague on the Advisory Committee.
8 Indeed, the proposal ensures continuity of decision-making by the Advisory Committee by clearly
9 stating that the Watermaster appointee can be replaced by the underlying Advisory Committee
10 representatives at any time.

11 In reality, if the Watermaster appointee should take a position contrary to that of his
12 underlying Advisory Committee representative, he will be replaced in the same manner as Chino
13 Basin Municipal Water District is being replaced now. We need go no further than the case presently
14 at bench to find a perfect example of what will occur.

15 In a further effort to display the appearance of equity, three "token" seats are offered to
16 various water districts one of which being Chino Basin Municipal Water District. Clearly the
17 proposed Watermaster Board is weighted in favor of the Advisory Committee and, the three
18 remaining votes are virtually meaningless. These three positions are offered as nothing more than
19 window dressing so as to ensure passage of this proposal by the court.

20 **II.**

21 **UNDER THE PROPOSED WATERMASTER PLAN,**
22 **ALL CHECKS AND BALANCES PROVIDED BY THE**
23 **JUDGMENT WOULD BE ELIMINATED**

24 The preceding argument in this opposition is equally applicable when discussing the critical
25 element of checks and balances provided for in the Judgment. The Judgment creates three distinct
26 bodies to oversee the management of the Chino Basin. To allow the proposal presently before the
27 court to pass, management of the Basin would be vested in one body, the Advisory Committee which,
28 in turn, is comprised of the producers against whom an injunction was originally issued by the

1 Judgment. To empower the Advisory Committee in such a fashion would be akin to appointing a
2 supreme court comprised of legislators to ensure the constitutionality of the legislation which they
3 themselves created. As a practical matter, this affords absolutely no checks and balances whatsoever.
4 Although the proposal presently before the court may be workable for the Advisory Committee and
5 hence the basin producers, the practical effect would be to come full circle and place the regulatory
6 authority over the Chino Basin directly in the hands of the producers from whom that authority was
7 taken by the Judgment.

8 III.

9 THE PROPOSED WATERMASTER WOULD NOT 10 IMPROVE THE FUNCTION OF CHINO BASIN BUT, 11 RATHER, CONTINUE ITS DISFUNCTION

12 It cannot be disputed that, for years, the Advisory Committee has controlled all aspects of the
13 implementation of the Judgment and, hence, Chino Basin itself. Their efforts in that regard have
14 failed and failed miserably. Unfortunately, the Advisory Committee has been assisted in their efforts
15 by the Watermaster which has been continuously advised that the Advisory Committee is the
16 controlling body and that an eighty percent (80%) vote of the Advisory Committee is a mandate upon
17 them.

18 For the first time, the Watermaster has evaluated its role and responsibility under the
19 Judgment and has acted accordingly in asserting some degree of authority. This action by the
20 Watermaster is long overdue in light of the state of affairs presently existing.

21 The quality of the groundwater in the Chino Basin is deplorable. Although the Advisory
22 Committee and the Watermaster had the responsibility to ensure the quality of the Chino Basin
23 groundwater, in reality, the quality of the water in Chino Basin has deteriorated exponentially with
24 the Advisory Committee at the helm. They have done little if anything to prevent this ongoing
25 problem and, to add insult to injury, the moving papers attribute credit for the implementation of a
26 desalinization program which they fought tooth and nail to prevent. Indeed, one of the early
27 allegations against Mr. Bill Hill submitted in moving papers to replace the Watermaster in 1996, was
28 that his efforts to secure the desalinization program led to a conflict of interest necessitating

1 replacement of the Watermaster.

2 All this must be coupled with the administrative affairs of the Watermaster which reveal that
3 the Director of Watermaster Services and her staff, who are absolutely aligned with the Advisory
4 Committee, are virtually running out of control. The only policies and procedures presently being
5 followed by Watermaster Services are those policies and procedures which suit their whim at any
6 particular moment. The best evidence of responding parties position is the audit which was recently
7 completed.

8 The proposed Watermaster Board would do nothing more than maintain status quo. This is
9 entirely unacceptable and could lead to irretrievable damage to the Basin.

10 **IV.**

11 **FOR COMPELLING REASONS, THE COURT SHOULD**
12 **REJECT THE PROPOSED WATERMASTER BOARD**

13 Although the Judgment does provide that the Advisory Committee, by majority vote, can
14 replace the Watermaster, it also affords the court discretion to reject such a proposal if compelling
15 reasons exist. The deteriorating and unabated condition of the Chino Basin groundwater is
16 compelling reason enough. This deplorable state has occurred under the control of the Advisory
17 Committee who now seeks to obtain absolute authority over the basin. The total lack of fiduciary
18 responsibility for public funds is equally compelling. Add to this the complete disregard by the
19 Advisory Committee for the separation of powers provided under the Judgment and there are ample
20 compelling reasons why the court should reject the proposal presently before it.

21 **V.**

22 **CONCLUSION**

23 Based upon the foregoing arguments, Chino Basin Municipal Water District respectfully
24 requests the court to reject the proposed nine member Watermaster Board. To approve this proposal
25 would eliminate all checks and balances afforded under the Judgment. History has indicated that the
26 Advisory Committee will bow to no one. This necessitated the Judgment in the first place.

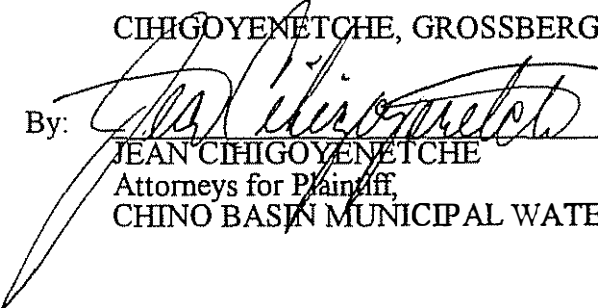
27 This responding party would suggest a truly independent Watermaster be appointed. This
28 would consist of a body, the representatives of which would have no rights to production in the basin.

1 Such a Watermaster can take the form an individual engineer or, perhaps even more appropriate, a
2 retired Judge. Such an individual could easily function as Watermaster in that the Judgment affords
3 the Watermaster the ability to retain all technical services required to perform its function. Moving
4 parties place great weight in a previous order issued by Judge Don Turner which order was based
5 upon the issues and the evidence before him at that time. And perhaps the reasoning behind his order
6 would have no application to the issues presently before the court. Nevertheless, perhaps Judge
7 Turner would be the appropriate party to serve as Watermaster.

8
9 Respectfully submitted,

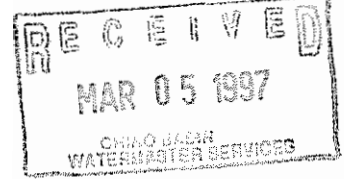
10 Dated: March 4, 1997

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12 By: 
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14 Attorneys for Plaintiff,
15 CHINO BASIN MUNICIPAL WATER DISTRICT

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9 FOR THE COUNTY OF SAN BERNARDINO

11	CHINO BASIN MUNICIPAL WATER DISTRICT,)	CASE NO. RCV 51010
12)	PROOF OF SERVICE BY MAIL
13)	
14	vs.)	
15	CITY OF CHINO, et al.,)	
16)	
17)	
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18 I am employed in the County of San Bernardino, State of California and am over the age of 18
19 years. I am not a party to the within action. My business address is 3602 Inland Empire Boulevard,
20 Suite C315, Ontario, California.

21 On or before March 4, 1997, I served the documents described as:

- 22 1. Notice of Continuance of Motion for Order of Court that Audit Commissioned by the
- 23 Chino Basin Municipal Water District Board is Not a Watermaster Expense and; Notice of
- 24 Continuance of Motion for Appointment of Nine Member Board as Watermaster; and
- 25 2. Opposition to Motion for Appointment of Nine Member Board as Watermaster;
- 26 Memorandum of Points and Authorities in Support Thereof
- 27 on the interested parties to this action in the manner described below and addressed as indicated on
- 28 the attached list.

1 I caused the documents to be enclosed in a sealed envelope with postage thereon fully paid,
2 and to be deposited in the United States mail in Ontario, California. The documents were to be
3 deposited with the United States Postal Service on the same day.

4 I declare that I am employed in the office of a member of the bar of this court at whose
5 direction the service was made. I declare under penalty of perjury that the foregoing is true and
6 correct, and that this declaration was executed on March 4, 1997, at Ontario, California.

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9 KIM PEREZ

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