

1 **CIHIGOYENETCHE, GROSSBERG & CLOUSE**

Fee Exempt - Public Entity, Gov Code § 6103

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

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11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )  
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CASE NO. RCV 51010  
EX PARTE APPLICATION FOR AN ORDER  
SHORTENING TIME ON A MOTION TO  
DISQUALIFY COUNSEL  
Date: March 6, 1997  
Time: 8:30 a.m.  
Dept: H

vs.  
CITY OF CHINO, et al.,  
Defendant(s).

The undersigned declares as follows:

1. I am an attorney duly licensed to practice before the courts of the State of California and am a principal of the law firm of Cihigoyenette, Grossberg & Clouse, general counsel for Chino Basin Municipal Water District, ("CBMWD") who is party to the judgment filed in this action in 1978, over which this court has continuing jurisdiction.
2. Attached hereto as Exhibit "1" is a copy of a proposed motion, seeking disqualification of the law firm of Nossaman, Guthner, Knox & Elliott and its attorneys Frederic A. Fudacz and John Ossiff ("Respondents") from further representing any party appearing before the court with regard to Watermaster.
3. The delay in hearing this matter after the normal time required for service of the above described papers would cause irreparable harm to CBMWD for the following reasons:

1           a.       The Respondents have an inherent conflict of interest in representing the  
2 Watermaster and the Advisory Committee simultaneously and successively in a matter in which they  
3 have adverse positions. Respondents are acting without the authority or direction of the Watermaster  
4 by which they were retained.

5           b.       On February 27, 1997, the Respondents were terminated as legal counsel for  
6 the Watermaster. On March 3, 1997, Respondents appeared in Department H of the Superior Court  
7 of the County of San Bernardino as counsel for the Advisory Committee and at the direction of the  
8 Director of Watermaster Services. The purpose for their appearance was to argue an adverse  
9 position to their former employer the Watermaster despite the fact that they had previously filed  
10 pleadings concerning the same issue in the same case on behalf of the Watermaster. Motions to  
11 appoint a nine member Watermaster, replacing the existing CBMWD Watermaster Board and a  
12 motion to have a recent audit considered a non-Watermaster expense are presently pending before the  
13 court. Both of these motions were brought by the Respondents on behalf of the Watermaster  
14 although not at the direction of the Watermaster. These motions are set to be heard on March 11,  
15 1997 and, it appears that Respondents will be arguing on behalf of the Advisory Committee, the  
16 opponent of the Watermaster which they previously represented.

17           c.       To refuse to grant this motion for order shortening time and, in effect  
18 preventing the motion for disqualification of counsel would cause irreparable harm to CBMWD in  
19 that the Respondents, who previously represented CBMWD as the Watermaster Board of Directors  
20 would be allowed to take an adversarial position against their former client and in fact engage in  
21 simultaneous and successive representation on the issues presently before the court. Such  
22 simultaneous and successive representation requires automatic disqualification.

23           d.       Irreparable harm would further occur in that once the motion is argued by  
24 counsel, no adequate remedy at law would be available to the moving party herein.

25           4.       On March 5, 1997, my offices notified the Advisory Committee, through its Chairman,  
26 Joseph Grindstaff; Traci Stewart, Chief of Watermaster Services; and Attorneys Fudacz and Ossiff,  
27 former counsel for the Watermaster, of the hearing on this ex parte application for an order  
28 shortening time for service and hearing on the motions by telephone and fax as described on the

1 attached proof of service.

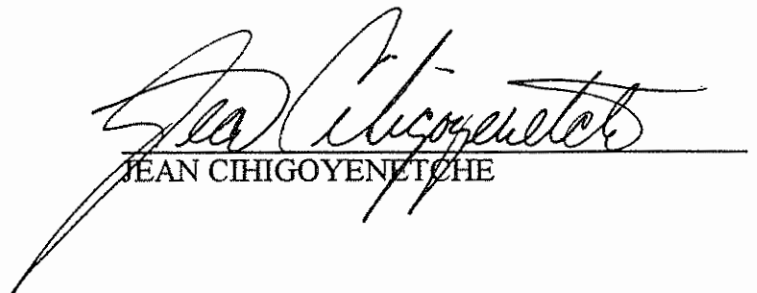
2 5. The adjudication issued by the court in this matter in January 1978 requires that notice  
3 be served upon all active parties as defined in the adjudication. At present, there are over 120 active  
4 parties who are entitled to service of the motions which are being brought by the District and which  
5 are the subject of this declaration.

6 6. I hereby request the court to waive the notice requirements for the hearing on the ex  
7 parte application for an order shortening time. The request is based upon the fact that there are  
8 numerous active parties to the adjudication, notice to whom would be unduly burdensome.

9 7. Granting the ex parte order shortening time and waiving the notice requirements on  
10 the ex parte hearing would not result in inconvenience or significant burden to the opposing party in  
11 that the District is prepared to serve copies of the motion on all active parties as soon as the court  
12 issues a hearing date. Moreover, the court presently has two motions pertaining to Watermaster  
13 issues scheduled to be heard on March 11, 1997 at which time this motion for disqualification of  
14 counsel may be heard.

15 8. I am informed and believe and on that basis allege that pursuant to San Bernardino  
16 Superior Court Rule 950, the court retains discretion to issue the ex parte order shortening time and  
17 to waive the normal ex parte notice requirements.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing  
19 is true and correct to the best of my knowledge, and that this application was executed on March  
20 5, 1997, at Ontario, California.

21  
22   
23 JEAN CHIGOYENETCHE  
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**EXHIBIT 1**

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

Fee Exempt - Public Entlty, Gov Code § 6103

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8 Attorneys for Plaintiff,  
9 CHINO BASIN MUNICIPAL WATER DISTRICT

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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,  
vs.  
CITY OF CHINO, et al.  
Defendants.

CASE NO. RCV 51010

NOTICE OF MOTION AND MOTION FOR  
DISQUALIFICATION OF COUNSEL;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF;  
DECLARATIONS OF JOHN ANDERSON,  
GEORGE BORBA, TERRY CATLIN, JEAN  
CIHIGOYENETCHE AND KIM PEREZ IN  
SUPPORT THEREOF

DATE:  
TIME: 8:30 a.m.  
DEPT: H

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD, AND TO NOSSAMAN,  
GUTHNER, KNOX & ELLIOTT, LLP, JOHN OSSIFF AND FREDERIC A. FUDACZ, AND  
CHINO BASIN ADVISORY COMMITTEE, AND THEIR COUNSEL OF RECORD:

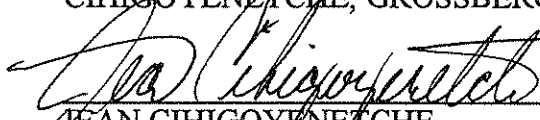
NOTICE IS HEREBY GIVEN that on \_\_\_\_\_, 1997, at 8:30 a.m., in  
Department H of the above-entitled court, located at 8303 North Haven Avenue, Rancho  
Cucamonga, California, moving party, CHINO BASIN MUNICIPAL WATER DISTRICT, will  
move the court for an order disqualifying the law firm of Nossaman, Guthner, Knox & Elliott, LLP,  
and attorneys John Ossiff and Frederic A. Fudacz, as attorneys representing CHINO BASIN  
WATERMASTER and CHINO BASIN WATERMASTER ADVISORY COMMITTEE.

1 This motion will be based upon the grounds that said attorneys have concurrently and  
2 successively represented the CHINO BASIN WATERMASTER and CHINO BASIN  
3 WATERMASTER ADVISORY COMMITTEE, which entities have adverse interests. Additionally,  
4 said attorneys have breached their fiduciary duty to the CHINO BASIN WATERMASTER.

5 The motion is based upon this notice of motion, the memorandum of points and authorities  
6 and the declarations of John Anderson, George Borba, Terry Catlin, Jean Cihigoyenetché and Kim  
7 Perez filed concurrently herewith, and all pleadings and documents on file herein.

8  
9 DATED: March 5, 1997

10 CIHIGOYENETCHE, GROSSBERG & CLOUSE

11   
12 \_\_\_\_\_  
13 JEAN CIHIGOYENETCHE  
14 Attorneys for  
15 CHINO BASIN MUNICIPAL WATER DISTRICT

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**MEMORANDUM OF POINTS AND AUTHORITIES**

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**1.**

**STATEMENT OF FACTS**

On or about December 1, 1993 the law firm of Nossaman, Guthner, Knox & Elliott was retained as special counsel for the Advisory Committee a body created under the Watermaster Judgment presently before the court. A copy of said retainer agreement is attached hereto as Exhibit "A" and incorporated herein by this reference. Thereafter, in or about August of 1994 the same law firm entered into a retainer agreement with the Chino Basin Watermaster whereby they agreed to provide legal services as general counsel to the Watermaster. A copy of said retainer agreement is attached hereto as Exhibit "B" and incorporated herein by this reference. By the terms of Exhibit "B", the retainer lapsed in June of 1995. No subsequent retainer agreement exists between the Watermaster and the subject law firm although they have continued to act as counsel to the Watermaster.

Throughout the retention, Nossaman, Guthner, Knox & Elliott have acted primarily through their attorneys Frederic A. Fudacz and John Ossiff (referred to collectively as "Respondents"). Historically, Respondents have rendered legal advice to the Advisory Committee but has failed to render legal advice to the Watermaster their true employer. Although they were originally retained as special counsel for the Advisory Committee, and had a written contract as evidence of that, they have since entered into a written contract with the Watermaster thereby acknowledging that these are two separate bodies. Despite Respondent's retention by the Watermaster, they have continued to render legal advice to the Advisory Committee. In fact, the members of the Watermaster Board of Directors did not personally meet Mr. Fudacz or Mr. Ossiff until January of 1997 when their conflict of interest became the subject of open discussion by the Watermaster.

Despite this, Respondents have continued to file motions with the court designating themselves as counsel for Watermaster. In 1996 and again in January of 1997, Respondents, purportedly on behalf of the Watermaster, filed motions with this court to replace the Watermaster

1 (their employer) with an alternative Watermaster Board. The presently constituted Watermaster felt  
2 that this was a direct conflict of interest in that they had never advised Respondents to take such  
3 action.

4 As recently as February 6, 1997, Jean Cihigoyenette, general counsel for Chino Basin  
5 Municipal Water District, which sits as the Watermaster Board as well, sent correspondence to  
6 Respondents once again delineating their conflict of interest in the eyes of the Watermaster Board and  
7 demanding that they take certain action as their general counsel. A copy of said correspondence is  
8 attached to the Declaration of Jean Cihigoyenette filed herewith, attached as Exhibit "C" and  
9 incorporated herein by this reference.

10 The conflict of interest arises from Respondents continuing to represent the Advisory  
11 Committee arguing positions that are directly adverse to those positions maintained by the  
12 Watermaster, their former client. The Watermaster has clearly stated that to appoint a new  
13 Watermaster which includes any representatives from the Advisory Committee would result in a  
14 conflict of interest and, therefore, not in the best interest of the Watermaster. Despite this,  
15 Respondents have elected to take their direction from the Advisory Committee who supports  
16 appointing a new Watermaster which includes representatives from the Advisory Committee. To add  
17 insult to injury, Respondent file the Advisory Committee motions designating themselves as counsel  
18 for Watermaster. They have never received direction from the Watermaster to file those motions.

19 Finally, on February 27, 1997, at a duly noticed meeting of the Watermaster Board of  
20 Directors, the legal services contract between Respondents and the Watermaster was considered.  
21 Upon hearing comments from those present at the public hearing, a motion was made and passed to  
22 terminate the employment of Respondents. Despite having been terminated on February 27,  
23 Respondents appeared in court on March 3, 1997 declaring themselves counsel for the Advisory  
24 Committee and being present at the request of the Director of Watermaster Services (who is a Chino  
25 Basin Municipal Water District employee). Respondents were present so as to argue the merits of a  
26 motion which they had filed on behalf of the Watermaster, their prior employer. It is important to  
27 note that the motion which Respondents were present to argue was drafted and filed during the time  
28 that they were simultaneously acting as attorney for both the Advisory Committee and the



1 Watermaster. Their appearance on March 3, 1997, was to argue the merits of those motions on  
2 behalf of the Advisory Committee's point of view which is directly opposite to the position held by  
3 the Watermaster. Indeed, the Watermaster's position is that to promote the Advisory Committee's  
4 point of view would not be in the best interests of Chino Basin as a whole. Despite this, Respondents  
5 continue to pursue the position of the Advisory Committee in direct conflict and against the express  
6 desires of the Watermaster.

7 2.

8 **DISQUALIFICATION OF RESPONDENTS IS MANDATORY**  
9 **AND NOT SUBJECT TO THE DISCRETION OF THE COURT**

10 Respondents have assumed the position of simultaneous representation of both the  
11 Watermaster and the Advisory Committee, despite the fact that the interests of those bodies are  
12 clearly adverse to each other. The Advisory Committee seeks to oust the existing Watermaster, and  
13 the Watermaster opposes that action. However, Respondents have filed a petition to oust the  
14 Watermaster while at the same time, submitting those documents as counsel for the Watermaster.  
15 Additionally, counsel appeared in court on March 3, 1997 after having been terminated as  
16 Watermaster counsel on February 27, 1997. Such simultaneous representation requires automatic  
17 disqualification of Respondents under California law. This motion is timely pursuant to White v.  
18 Superior Court (2d Dist. 1979) 98 Cal. App. 3d 51, 159 Cal.Rptr. 278.

19 The issue of simultaneous representation was articulately addressed by the Supreme Court of  
20 California, *in bank*, in the case of *Flatt v. Superior Court*, (1994) 9 Cal.4th 275, 885 P.2d 950, 36  
21 Cal.Rptr.2d 537. There, the court discussed the issues of successive representation and simultaneous  
22 representation, noting that in the former situation a substantial relationship test is to be employed by  
23 the court where in the later situation a more stringent test is to be applied. The court stated as  
24 follows:

25 "In evaluating conflict claims in dual representation cases, the courts  
26 have accordingly imposed a test that is more stringent than that  
27 demonstrating a substantial relationship between the subject matter of  
28 successive representation. Even though the simultaneous

1 representations have nothing in common, and there is no risk that  
2 confidences to which counsel is a party in the one case have any  
3 relation to the other matter, disqualification may nevertheless be  
4 required. Indeed, in all but a few incidences, the rule of disqualification  
5 in simultaneous representation cases is a per se or 'automatic' one.”

6 [Citations]

7 Ibid (Emphasis in original).

8 The policy considerations supporting the above cited rule are based upon considerations of  
9 loyalty and fidelity to the client. It is not necessary to show that confidential information obtained by  
10 one client was used against the other client, but, rather, the mere simultaneous representation of two  
11 clients who have adverse interests in the same case or in unrelated cases requires automatic  
12 disqualification. The use of confidential information is presumed. (See *Truck Insurance Exchange v.*  
13 *Firemans Fund Insurance Co.*, (1992) 6 Cal.App.4th 1050, 8 Cal.Rptr.2d 228).

14 It is undeniable that the Respondents have represented both the Advisory Committee and the  
15 Watermaster as counsel on Watermaster issues. Respondents have also assumed the position of one  
16 of its clients, the Advisory Committee directly in contradiction to the interests of its other client, the  
17 Watermaster. A finding of simultaneous representation mandates disqualification as a matter of law  
18 and, under *Flatt supra*, the court has no discretion to deny the motion.

19 To compound matters further, Respondents filed the motion to replace the Watermaster, as  
20 counsel for Watermaster, without ever receiving authorization or instructions from the Watermaster  
21 to do so. It is impossible to reconcile the conduct of Respondents in this matter. On the one hand,  
22 they purport to represent the Watermaster, and on the other hand, they take direction from the  
23 Advisory Committee to oust the Watermaster.

24 Even under the less stringent “substantial relationship” test, Respondents must be disqualified.  
25 Under that test, if the facts relative to the representation of the latter client are substantially related to  
26 the facts surrounding representation of the former client, then disqualification is likewise mandatory.  
27 Moreover, it need not be shown that confidential information acquired in one fiduciary relationship be  
28 used against the client in a second fiduciary relationship. That adverse relationship is presumed. (See

1 *Ahmanson & Co. v. Salomon Bros., Inc.*, (1991) 229 Cal.App.3d 1445, 280 Cal.Rptr 614).

2 In short, Respondents have committed the most serious type of conflict of interest that an  
3 attorney can commit against a client. Respondents are using information obtained during the attorney  
4 client relationship to adversely affect the rights and reputation of its own client. Despite the direct  
5 and untenable conflict of interest, Respondents have refused to relent in their position,  
6 notwithstanding the correspondence sent to them by their clients delineating the conflict of interest  
7 and requesting that they voluntarily recuse themselves.

8 3.

9 **RESPONDENT MUST ALSO BE DISQUALIFIED**

10 **UNDER THE THEORY OF SUCCESSIVE REPRESENTATION**

11 As stated above, Respondents were terminated as counsel for the Watermaster effective  
12 February 27, 1997. (See Declarations of John Anderson, George Borba and Terry Catlin attached  
13 hereto collectively as Exhibit "D" and incorporated herein by this reference). Therefore, from a  
14 technical standpoint it could be argued that Respondents' appearance in court on March 3, 1997 did  
15 not constitute a simultaneous representation but rather a successive representation of the Advisory  
16 Committee after their termination by the Watermaster. Ignoring for a moment that the motions  
17 pending before the court were filed prior to Respondents termination as legal counsel for the  
18 Watermaster, Respondents must nevertheless be disqualified for their successive representation of the  
19 Advisory Committee.

20 As stated in the case of *Ahmanson & Co. v. Salomon Bros., Inc.* (1991) 229 Cal.App.3d  
21 1445, 280 Cal. Rptr. 614:

22 "It is beyond dispute a court may disqualify an attorney from  
23 representing a client with interests adverse to those of a former client. .  
24 . . where such a conflict of interest exists, and the former client has not  
25 consented to the current representation, disqualification follows as a  
26 matter of course. The court does not engage in a 'balancing of  
27 equities' between the former and current clients. The rights and  
28 interests of the former client will prevail. (Citations)"

1 The sole burden of proof that the moving party must establish in a successive representation  
2 argument is that the representation of the former client and present client concerned the same subject  
3 matter. The use of confidential material obtained in the attorney-client relationship need not be  
4 shown. The sharing of confidential information by the attorneys presumed. Ibid.

5 The fact that the respondent appears in court on behalf of the Advisory Committee to argue  
6 the merits of the motions that he filed on behalf of the Watermaster clearly establish that the subject  
7 matter of his representation in this instance is the same as between the Watermaster and the Advisory  
8 Committee. The only difference is that they share polar opinions regarding that subject matter.  
9 Clearly, disqualification is mandated in this matter.

10 4.

11 **RESPONDENTS ANALOGY OF HIS ROLE AS**  
12 **WATERMASTER ATTORNEY TO THAT OF**  
13 **CORPORATE COUNSEL IS MISPLACED**

14 In the past, Respondents have argued that their position is akin to corporate counsel wherein  
15 they represent the corporation as a whole and not specifically the Board of Directors or the  
16 shareholders. Accordingly, they are compelled to provide legal representation that they feel promotes  
17 the best interests of the entire organization as opposed to the separate bodies comprising that  
18 organization.

19 In support of their position, Respondents rely on RPC 3-600. They cite to (b) of that rule to  
20 support their contention that their duties flow to the organization as a whole. However, what  
21 responding parties have failed to cite to the court are the more pertinent provisions of Rule 3-600  
22 specifically Section (c), (d) and (e). In general, those provisions state that an attorney should  
23 recognize where dual representation has placed him in a position between two adversaries. Under  
24 such circumstances, the Rules of Professional Conduct requires the attorney to withdraw as counsel  
25 to either of the adversaries on those issues in controversy. Such was the course of conduct that the  
26 Respondents should have followed in this matter. Instead, they chose sides and elected to champion  
27 the cause of the Advisory Committee in disregard for the best interest of the Watermaster, their then  
28 employer. As soon as the Advisory Committee, with the assistance of Respondents counsel, decided

1 to replace the existing Watermaster Board, Respondents found themselves inextricably involved in a  
2 conflict of interest.

3 The discussion notes under RPC-600 almost appear to have been drafted with Respondents  
4 very situation in mind.

5 "Rule 3-600 is not intended to create or validate artificial distinctions  
6 between entities and their officers, employees, or members, nor is it the  
7 purpose of the rule to deny the existence or importance of such formal  
8 distinctions. In dealing with a close corporation or small association,  
9 members commonly perform professional engagements for both the  
10 organization and its major constituents. When a change in control  
11 occurs or is threatened, members are faced with complex decisions  
12 involving personal and institutional relationships and loyalties and have  
13 frequently had difficulty in perceiving their correct duty. (Citations) In  
14 resolving such multiple relationships, members must rely on case law."

15  
16 The case law which must be considered in the present case is that case law which is cited in  
17 this brief. Accordingly, disqualification of counsel is mandated.

18 5.

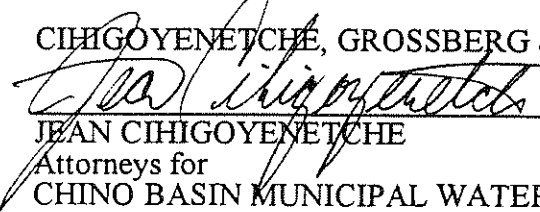
19 **CONCLUSION**

20 Based upon the foregoing arguments and authorities, the moving party respectfully requests  
21 the court issue an order disqualifying the Respondents from acting as counsel for the Watermaster,  
22 the Advisory Committee or pertaining to any issue relative to the Watermaster Judgment.

23  
24 DATED: March 5, 1997

Respectfully submitted,

25 CIHIGOYENETCHE, GROSSBERG & CLOUSE

26   
27 JEAN CIHIGOYENETCHE

28 Attorneys for  
CHINO BASIN MUNICIPAL WATER DISTRICT

**EXHIBIT A**

**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

Sherrl 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

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 B**

**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 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 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 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 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 92336  
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: July 7, 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	182.00
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. Fudocz	\$ 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



**EXHIBIT C**

1 **CIHIGOYENETCHE, GROSSBERG & CLOUSE**

2 **Jean Cihigoyenetche (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,** )  
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28 )  
Plaintiff(s),  
vs.  
CITY OF CHINO, et al.,  
Defendant(s).

CASE NO. RCV 51010  
DECLARATION OF JEAN  
CIHIGOYENETCHE

I, JEAN CIHIGOYENETCHE, declare as follows: .

1. I am an adult over the age of 18 and have first hand knowledge of the matters set forth herein. I am a principal with the law firm of Cihigoyenetche, Grossberg & Clouse, attorneys for Chino Basin Municipal Water District ("CBMWD"). I submit this declaration in support of my motion to disqualify the law firm of Nossaman, Guthner, Knox & Elliott and their attorneys Frederic A. Fudacz and John Ossiff as counsel for the Watermaster and the Advisory Committee.

2. In February of 1997, I was directed, by a unanimous vote of the Board of Directors of the CBMWD, with one member absent, to direct correspondence to legal counsel for the Watermaster setting forth the Board's perceived conflict of interest which those attorneys have in representing the Watermaster and the Advisory Committee simultaneously on matters in which those boards have adverse positions. Specifically, the Advisory Committee had directed counsel to file a

1 motion to replace the Watermaster. The presently constituted Watermaster Board of Directors,  
2 comprised entirely of the Board of Directors of CBMWD opposed such a motion.

3 3. Counsel also filed a motion to have an audit which was commissioned by the  
4 Watermaster Board of Directors deemed to be an expense of CBMWD. The Board of Directors of  
5 CBMWD and, hence, the Watermaster Board of Directors also opposed that motion.

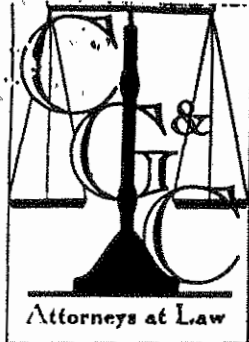
6 4. On February 6, 1997, I sent correspondence to counsel as I had been directed,  
7 advising him of his conflict of interest and demanding that the motions which he had previously filed  
8 be taken off calendar. Counsel refused to follow the directives from his client and the motions remain  
9 pending. A copy of said correspondence is attached hereto as Exhibit "1" and incorporated herein by  
10 this reference.

11 5. On February 27, 1997, counsel was terminated as the attorney for the Watermaster. I  
12 believed that as a result of his termination, he would not appear at the hearing on the motions  
13 referenced above the first of which was set for March 3, 1997 and the second for March 11, 1997.  
14 On February 27, 1997, after Respondent's termination, and at the direction of the Chairman of the  
15 Watermaster Board, I asked Respondents to sign a Substitution of Attorney in the within case.  
16 Respondents refused and continue to refuse to sign a Substitution of Attorney despite repeated  
17 attempts by my office and myself. On March 3, 1997, counsel in fact appeared in court this time on  
18 behalf of the Advisory Committee and at the direction of the Director of Watermaster Services.  
19 Counsel was present to argue the motion before the court on behalf of the Advisory Committee and  
20 against the Watermaster their former employer.

21 6. All indications are that counsel will once again appear before the court on March 11,  
22 1997 to further argue on behalf of the Advisory Committee and against the Watermaster, their former  
23 client. Counsel has clearly taken an adverse position to that of his former client, the Watermaster.

24 I declare under penalty of perjury the foregoing to be true and correct to the best of my  
25 knowledge. Executed on this 5th day of March, 1997 at Ontario, California.

26  
27  
28  
  
JEAN CIHIGOYENETCHE



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

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World Wide Web Site

[http://ourworld.compuserve.com/homepages/S\\_Grossberg](http://ourworld.compuserve.com/homepages/S_Grossberg)

Internet E-Mail  
73373.1463@compuserve.com  
102175.37@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

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

**EXHIBIT D**



DECLARATION OF JOHN ANDERSON

I, John Anderson, hereby declare as follows:

1. I am a member of the Board of Directors of Chino Basin Watermaster. I have first hand knowledge of the matters set forth herein and, if called as a witness would be competent to testify thereto.

2. On February 27, 1997, Chino Basin Watermaster Board of Directors held a duly noticed meeting. The purpose of the meeting was to discuss the legal services contract between the Watermaster and the law firm of Nossaman, Guthner, Knox & Elliott and specifically Fred Fudacz and John Ossiff, members of that firm, who had been acting as Watermaster counsel prior to that time.

3. I was concerned about the legal representation of Mr. Fred Fudacz and his law firm with respect to Watermaster matters. Within the last twelve months there have been a series of motions filed with the court presumably at the direction of the Advisory Committee seeking to replace the Watermaster Board of Directors. I was concerned about the motions brought in 1996 as well as the motions presently pending in this court to replace the Watermaster in that if those motions are granted, Advisory Committee members would also share a seat on the Watermaster Board of Directors. I believe this would create an inherent conflict of interest with regard to the Watermaster and have held that belief since the initial motions to replace the Watermaster were filed in 1996. I oppose those motions.

4. I was also deeply troubled that Mr. Fudacz and his law firm would file those motions on behalf of the Watermaster when in fact the Watermaster had never directed him to do so. In fact, although I have served on the Watermaster Board of Directors for more than fifteen years, I had never met Mr. Fudacz or any representatives from his law firm until January of 1997. Although Mr. Fudacz held himself out as filing the motions to replace the Watermaster on behalf of the Watermaster, neither I nor to my knowledge has any other member of the Watermaster Board ever given direction to Mr. Fudacz to do so. Indeed, until January of 1997 when Mr. Fudacz finally attended a Watermaster meeting, he had never rendered legal advice to me as a board member. I as a Watermaster board member was never notified that the motions to replace Watermaster were being brought until I received service of the motions after they had been filed. Additionally, Mr. Fudacz has never contacted me to discuss the

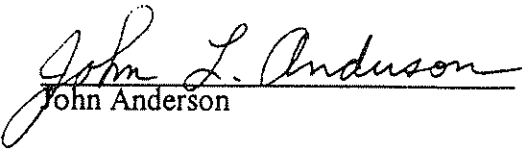
1 possibility of resolving issues between the Advisory Committee and the Watermaster Board of Directors  
2 and he has never discussed with me directly the reasons why the Advisory Committee wishes to replace  
3 the Watermaster.

4 5. I believe that Mr. Fudacz and his law firm have rendered the Watermaster Board of  
5 Directors no legal representation over the years. I also believe that Mr. Fudacz has a conflict of interest  
6 in representing the Advisory Committee and seeking to replace the Watermaster Board who he actually  
7 represented.

8 6. At the Watermaster Board hearing of February 27, 1997, upon discussion of the issue of  
9 the legal service contract including comments from Mr. Fudacz and other attorneys and individuals who  
10 were present to speak on the issue, a motion was made to sever the legal services contract between the  
11 Watermaster and Mr. Fudacz and his law firm. I voted in favor of severing that relationship and, as I  
12 understood it, Mr. Fudacz and his law firm are no longer retained by the Watermaster to provide legal  
13 services in any capacity whatsoever.

14 7. On Saturday, March 1, 1997 a newspaper article was published in the Daily Bulletin, a  
15 local newspaper. That article suggested that the action of the Board of Directors at its February 27  
16 meeting was somehow unclear and that Mr. Fudacz intended to appear in court as legal counsel for the  
17 Watermaster on March 3, 1997. I do not believe that there was any uncertainty related to the vote taken  
18 by the Watermaster at that meeting. I voted to terminate the services of Mr. Fudacz and his law firm and  
19 by that vote I do not expect him to provide legal services on behalf of Watermaster and/or relative to any  
20 Watermaster issues. In fact, after the meeting I asked Jean Cihigoyenette to secure Mr. Fudacz'  
21 signature on a Substitution of Attorney form for the case of Chino Basin Municipal Water District vs.  
22 City of Chino, Case No. RCV 51010. I am informed that he has refused to sign it.

23 I declare under penalty of perjury the foregoing to be true and correct to the best of my  
24 knowledge. Executed on this 2nd day of March, 1997 at Chino, California.

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28 John Anderson

DECLARATION OF GEORGE BORBA

I, George Borba, hereby declare as follows:

1. I am a member of the Board of Directors of Chino Basin Watermaster and have held a position on that Board of Directors since 1978, the inception of the Watermaster. I have first hand knowledge of the matters set forth herein and, if called as a witness would be competent to testify thereto.

2. On February 27, 1997 a duly noticed meeting of the Watermaster Board of Directors was held. The meeting was called at my request for the specific purpose of reviewing the legal services contract between the Watermaster and the law firm of Nossaman, Guthner, Knox & Elliott. I requested the meeting to be held because I was deeply concerned that the law firm of Nossaman, Guthner, Knox & Elliott through its lawyers Fred Fudacz and John Ossiff had a conflict of interest in representing the Watermaster on one hand and the adverse interests of the Advisory Committee on the other. I also felt that Watermaster had not been adequately represented by that firm and its attorneys. I had made my feelings known to Mr. Fudacz prior to the February 27, 1997 meeting however, I wished to further discuss the issue of his legal representation at a duly noticed Watermaster meeting.

3. I am aware that Mr. Fudacz and his law firm filed a motion in 1996 to replace the Watermaster Board of Directors with an alterative board which contained members of the Advisory Committee. I believe that to appoint an Advisory Committee representative to the Watermaster Board of Directors would create an inherent conflict of interest under the Watermaster Judgment. I also understand that a similar motion is pending before this court at the present time. Neither the motions that were filed in 1996 or the motion presently pending before this court to replace the Watermaster was discussed with me by Mr. Fudacz or any representative from his firm prior to it being filed. In fact, I had no notice of either motion prior to the time that they were filed. Mr. Fudacz has never consulted with me regarding the purpose of those motions nor has he ever consulted with me regarding why the Advisory Committee wishes to replace the Watermaster Board. I oppose those motions.

4. On February 27, 1997 at the Watermaster board meeting, after discussion was held regarding the legal services contract in question, I made a motion that the Watermaster sever its legal

1 relationship with the law firm Nossaman, Guthner, Knox & Elliott which would include Mr. Fudacz and  
2 Mr. Ossiff. The motion was approved by a majority of the board at that time.

3 5. I had previously reviewed two retainer agreements pertaining to Mr. Fudacz and his law  
4 firm including one wherein he was retained to act as special counsel for the Advisory Committee and  
5 a more recent agreement, which lapsed in 1995, wherein he was retained as general counsel for the  
6 Watermaster. During the course of the February 27 meeting, Mr. Fudacz stated there were no more  
7 recent retainer agreements between his firm and the Watermaster. Mr. Fudacz also stated during the  
8 course of the meeting that the Watermaster Board had the authority to fire his law firm if they so desired.  
9 It was apparent to me from the comments of Mr. Fudacz that he knew exactly why the meeting had been  
10 called.

11 My motion, and my vote in support of that motion were intended to terminate all attorney-client  
12 relationships between the Watermaster and Mr. Fudacz, Mr. Ossiff and their law firm Nossaman,  
13 Guthner, Knox & Elliott. I do not believe that there was any uncertainty in the Board's action at all.

14 6. On March 1, 1997, I read an article in the Daily Bulletin, a local newspaper. As I  
15 understood it, the article set forth a position attributed to Mr. Fudacz that he was unclear as to the action  
16 taken by the Watermaster Board at the February 27 meeting and that he intended to appear in court on  
17 March 3, 1997 to argue motions on behalf of the Advisory Committee which he had previously filed.


18 7. When I read the newspaper article referred to above, and if Mr. Fudacz indeed  
19 communicated such information to the newspaper reporter, I believe that it constitutes yet another  
20 example of how Mr. Fudacz and his law firm have worked on behalf of the Advisory Committee to  
21 undermine all actions taken by the Watermaster Board of Directors. In my mind, there is no doubt  
22 whatsoever that he is acting in a direct conflict of interest with respect to his representation of the  
23 Watermaster. The action which the Watermaster Board of Directors took on February 27, 1997 was  
24 intended to, and did sever all relationship with Mr. Fudacz and his law firm and precludes him from

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1 representing the Watermaster, in any capacity, even the Advisory Committee, in matters concerning  
2 Watermaster affairs.

3 I declare under penalty of perjury the foregoing to be true and correct to the best of my  
4 knowledge. Executed on this 2nd day of March, 1997 at Ontario, California.

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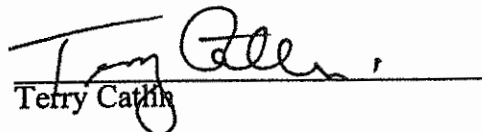
  
George Borba



1 Watermaster which was brought by Mr. Fudacz. I was never consulted by Mr. Fudacz or any other  
2 member of his firm prior to that motion being filed and, to date, have not been explained a reason why  
3 the motions were brought as they were. I believe that Mr. Fudacz has rendered virtually no legal counsel  
4 to the Watermaster Board since I have served on that body.

5 3. At the February 27, 1997 meeting of the Watermaster Board of Directors, I voted in  
6 support of the motion brought by Director Borba to sever all legal ties with Mr. Fudacz, Mr. Ossiff and  
7 the law firm of Nossaman, Guthner, Knox & Elliott. It was my understanding that if that motion passed  
8 by a majority vote of the Watermaster Board Members, which it did, Mr. Fudacz, Mr. Ossiff and their  
9 law firm would be terminated as attorneys for the Watermaster. I noted nothing whatsoever that was  
10 unclear with respect to the motion or the action that was taken by the Watermaster Board of Directors.  
11 It is my understanding that, based upon the vote taken on February 27, 1997 Mr. Fudacz, Mr. Ossiff and  
12 their law firm have no further standing to represent the Watermaster or any other Agency under the  
13 Watermaster, including the Advisory Committee with regard to legal matters pertaining to the  
14 Watermaster.

15 I declare under penalty of perjury the foregoing to be true and correct to the best of my  
16 knowledge. Executed on this 2nd day of March, 1997 at Ontario, California.

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20 Terry Catlin