

3/6/97 COURT
NGK&E
RE APPT

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

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

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

10
11 **CHINO BASIN MUNICIPAL WATER**)
12 **DISTRICT,**)
13)
14)
15)
16)

Plaintiff(s),

vs.

17 **CITY OF CHINO, et al.,**)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Defendant(s).

CASE NO. RCV 51010

POINTS AND AUTHORITIES IN SUPPORT
OF THE APPLICATION FOR AN ORDER
SHORTENING TIME ON A MOTION TO
DISQUALIFY COUNSEL

Date: March 6, 1997
Time: 8:30 a.m.
Dept: H

I.

INTRODUCTORY STATEMENT

On or about February 24, 1997 CBMWD filed an opposition to motion for order of the court that the audit commissioned by the Chino Basin Municipal Water District Board is not a Watermaster expense. As part of that opposition, CBMWD declared that there was a conflict of interest in the representation of the law firm of Nossaman, Guthner, Knox & Elliott and specifically attorneys Frederic A. Fudacz and John Ossiff ("Respondents"). The basis for the claimed conflict of interest was that Respondents had represented, simultaneously, the Watermaster and the Advisory Committee each of whom had adverse positions over the issues being considered. The opposition argued that this was an inherent conflict of interest and warranted automatic disqualification of the attorneys.

Since the filing of the oppositions papers, and on February 27, 1997, Chino Basin Watermaster, at a duly noticed meeting, considered the legal services contract between the

1 those motions would result in irreparable harm to the moving party herein. The Respondents are
2 acting in a direct conflict of interest by simultaneously and successively representing adversarial
3 parties over the same issues. However, to allow Respondents to argue the motions presently pending
4 before the court would render disqualification of those attorneys at a later date meaningless.
5 Therefore, it is imperative that the disqualification of counsel occur before argument of the pending
6 motions.

7 Finally, in light of the hearing held on March 3, 1997 it would appear that all counsel
8 representing various parties under the Watermaster Judgment were present to hear arguments
9 regarding disqualification of counsel. Moreover, Respondents had briefed the issue in their reply
10 papers when responding to the opposition papers referred to above. Therefore, the motion to
11 disqualify counsel will come as no surprise to any party to this action and, judging by the comments
12 made at the recent hearing they are fully prepared to argue the issue.

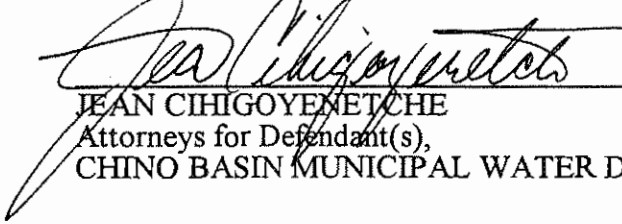
13 Therefore, this moving party requests that them Motion to Disqualify Counsel be scheduled
14 for March 11, 1997 to be heard before all other motions concerning Watermaster issues presently
15 pending before this court, or, alternatively, continue the Watermaster motions until such time as the
16 motion to disqualify counsel can be heard.

17
18
19
20
21
22
23
24
25
26
27
28

DATED: March 5, 1997

Respectfully submitted,

CIHIGOYENETCHE, GROSSBERG & CLOUSE


JEAN CIHIGOYENETCHE
Attorneys for Defendant(s),
CHINO BASIN MUNICIPAL WATER DISTRICT

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

6 Attorneys for Plaintiff,
7 CHINO BASIN MUNICIPAL WATER DISTRICT

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

11 CHINO BASIN MUNICIPAL WATER)	CASE NO. RCV 51010
12 DISTRICT,)	
)	DECLARATION OF KIM PEREZ
13 Plaintiff(s),)	REGARDING NOTICE OF HEARING ON EX
14 vs.)	PARTE APPLICATION AND SERVICE BY
)	FAX OF MOVING PAPERS
15 CITY OF CHINO, et al.,)	
)	
16 Defendant(s).)	

17 I, KIM PEREZ, declare:
18 I am employed in the offices of Cihigoyenette, Grossberg & Clouse and am over the age 18
19 years. If called as a witness, I could competently testify the following facts:

20 1. On March 5, 1997, I contacted the individuals identified below at the telephone
21 numbers described and informed them that an ex parte hearing had been scheduled for March 6, 1997,
22 at 8:30 a.m., in Department H of the above-entitled court to obtain an order shortening time for
23 service and hearing on motion. Further, following notification by telephone, I also provided copies of
24 the moving papers (Ex Parte Application, Points and Authorities in Support of the Application, and
25 the proposed motion) by fax as identified below.

26 2. At approximately 8:45 a.m. on March 5, 1997, I telephoned Joseph Grindstaff's office
27 at (909) 624-0035. Mr. Grindstaff was not available so I spoke with his secretary, Jeanie Daley and
28

1 informed her of the date, time and purpose of the ex parte hearing. Ms. Daley indicated that she did
2 not know if Mr. Grindstaff would attend the hearing. Fax: (909) 624-4725.

3 3. At approximately 8:36 a.m. on March 5, 1997, I telephoned John Ossiff and Frederic
4 A. Fudacz of Nossaman, Guthner, Knox & Elliott at (213) 612-7800. Mr. Ossiff and Mr. Fudacz
5 were not available so I left a voice mail message for each of them and informed them of the date, time
6 and purpose of the ex parte hearing. Fax: (213) 612-7801.

7 4. At approximately 8:27 a.m. on March 5, 1997, I telephoned Traci Stewart, Chief of
8 Watermaster Services at (909) 484-3888. Ms. Stewart was not available so I spoke with her
9 secretary, Dora Chavarin and informed her of the date, time and purpose of the ex parte hearing. Ms.
10 Chavarin indicated that she did not know if Ms. Stewart would attend the hearing. Fax: (909) 484-
11 3890.

12 5. At approximately 8:32 a.m. on March 5, 1997, I telephoned Gene Tanaka at the law
13 firm of Best, Best & Krieger at (909) 686-1450. Mr. Tanaka was not available so I left a voice mail
14 message with his secretary, Kay Bliss and informed her of the date, time and purpose of the ex parte
15 hearing. Fax: (909) 686-3083.

16 6. At approximately 8:40 a.m. on March 5, 1997, I telephoned Robert Dougherty of
17 Covington & Crowe at (909) 983-9393. Mr. Dougherty was not available so I spoke with his
18 secretary, Pat Fletcher and informed her of the date, time and purpose of the ex parte hearing. Ms.
19 Fletcher indicated that she did not know if Mr. Dougherty would attend the hearing. Fax: (909) 391-
20 6762.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct, and that this declaration was executed on March 5, 1997, at Ontario, California.

23
24 
25 KIM PEREZ
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR & MUNICIPAL COURTS OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT H (RC) HON. J. MICHAEL GUNN, JUDGE

CHINO BASIN MUNICIPAL)
WATER DISTRICT,)
Plaintiff,)
vs.) Case No. RCV-51010
CITY OF CHINO, et al.,)
Defendants.)

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

Thursday, March 6, 1997

APPEARANCES:

Cihigoyenetcche, Grossberg & Clouse
By: **JEAN CIHIGOYENETCHE**
Attorney at Law
Palmbrook Corporate Center
3602 Inland Empire Boulevard, Suite C315
Ontario, CA 91764

Nossaman, Guthner, Knox & Elliot
By: **JOHN OSSIFF**
Attorney at Law
445 South Figueroa Street
Los Angeles, CA 90071-1602

Reported by: HEATHER R. PARIS, C.S.R.
Official Reporter, C-10294

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ALSO PRESENT:

Best, Best & Krieger
By: **GENE TANAKA**
Attorney at Law
400 Mission Square, 3750 University Avenue
P.O. Box 1028
Riverside, CA 92502

Covington & Crowe
By: **ROBERT E. DOUGHERTY**
Attorney at Law
1131 West Sixth Street
Post Office Box 1515
Ontario, CA 91762

Alvarez-Glasman & Colvin
By: **RICHARD ADAMS, III**
Attorney at Law
200 East Beverly Boulevard, 2nd Floor
Montebello, CA 91733

McPeters, McAlearney, Shimoff & Hatt
By: **THOMAS H. MCPETERS**
Attorney at Law
615 Brookside Avenue, Suite B
P.O. Box 2084
Redlands, CA 92373

DAVID BOYER
Attorney at Law

1 RANCHO CUCAMONGA, CALIFORNIA; THURSDAY, MARCH 6, 1997;

2 A.M. SESSION

3 DEPARTMENT H (RC)

HON. J. MICHAEL GUNN, JUDGE

4 APPEARANCES:

5 (Appearances as noted on the appearance page.)

6 (Heather R. Paris, C.S.R., Official Reporter, C-10294)

7 THE COURT: Chino Basin Municipal Water District
8 versus the City of Chino, case number RCV-51010.

9 MR. CIHIGOYENETCHE: Good morning. Jean
10 Cihigoyenetche on behalf of Chino Basin Municipal Water
11 District.

12 MR. OSSIFF: John Ossiff on behalf of Chino
13 Basin Watermaster.

14 MR. TANAKA: Gene Tanaka on behalf of the
15 Cucamonga County Water District.

16 MR. DOUGHERTY: Robert Dougherty on behalf of
17 the City of Ontario.

18 MR. ADAMS: Richard Adams on behalf of the City
19 of Pomona.

20 MR. MCPETERS: Tom McPeters on behalf of Fontana
21 Union Water Company, Monte Vista Irrigation Company, San
22 Antonio Water Company, and West End Consolidated Water
23 Company.

24 MR. BOYER: David Boyer on behalf of Monte Vista
25 Water District.

26 THE COURT: Mr. Kidman couldn't make it? I

1 called him kidder. I remember calling him that.

2 Anyway, this is a Motion to Shorten Time. The
3 preliminary is to grant the Motion to Shorten Time.

4 Anybody want to speak to that?

5 MR. OSSIFF: If I may. There are, I think,
6 several reasons why the Request to Shorten Time should be
7 denied. First of all, the Motion to which it refers, all
8 of the factual issues, and, frankly, all of the issues,
9 have been before the Court; and the Court ruled on those
10 last June.

11 The only new matter that has come up has been on
12 February 22nd Chino Basin Municipal Water District took
13 action and voted to sever the contract of the Nossaman
14 firm. That action was unauthorized under the Judgment and
15 certainly shouldn't be grounds for shortening time, let
16 alone grounds for the motion itself. There probably isn't
17 enough time from today until the 11th to Notice all of the
18 parties properly and allow them sufficient time to
19 respond.

20 And finally, the reason that the reason given to
21 shorten time is related to the hearing scheduled for March
22 11th is whatever this Court does with respect to the
23 Motion to Disqualify has nothing to do with the Motion on
24 March 11th. At this point there are two motions, one
25 regarding the audit and one regarding appointment of a new
26 Watermaster, those motions have been joined in by many of

1 the parties, and the Court needs to hear and rule on those
2 regardless of what happens with the Motion to Disqualify.
3 There really are no grounds to shorten time.

4 THE COURT: Well, I know what I intended to do,
5 but it is not noticed for today. You're not going to be
6 prejudiced by the case being put over until Tuesday,
7 because there will be time for adequate Notice in this
8 case on the Motion.

9 MR. TANAKA: Your Honor, if I may be heard very
10 briefly. I am sorry -- Gene Tanaka. I am concerned about
11 Notice pursuant to the Judgment, which is the world we now
12 live in in this case.

13 Your Honor, the Watermaster, in the form of
14 Chino Basin Municipal Water District, has been instructed
15 to not take action with respect to this contract by the
16 Advisory Committee. That becomes a mandated action under
17 38(c) of the Judgment; a mandated action is subject to
18 review by the Court; but the Watermaster has to come into
19 court and file an Application, which they have done. The
20 problem they have is the procedures they have to follow
21 are under 38 -- excuse me, 3031(c), which requires a
22 Noticed Motion. That's my problem with this ex parte
23 proceeding, your Honor.

24 THE COURT: What are you saying? Nobody is
25 going to get prejudiced. I know what I am going to do on
26 Tuesday. I am already writing up work on it, so it is

1 not --

2 MR. DOUGHERTY: Well, your Honor, I hope you are
3 not already writing it up on the issue of the Motion to
4 Change Watermaster.

5 THE COURT: No, I am not. Everybody will have a
6 chance to be heard on all issues at some point in time,
7 okay? But this is -- I will have an Intended for you on
8 Tuesday morning when you walk in -- a written Intended.
9 And no decisions will be made on Tuesday. It will be
10 something for you guys to take back and get more billable
11 hours on.

12 MR. CIHIGOYENETCHE: Just what the doctor
13 ordered, huh?

14 THE COURT: In essence then there will be
15 adequate time.

16 As we speak, my mind is working on it, so -- but
17 no decision is going to be made on Tuesday. I am going to
18 give you guys a written and give you adequate time. This
19 is an important concern to the whole valley. And I feel
20 that it is unfair to the citizens of this valley to just
21 all of the sudden start springing motions on the Court and
22 having me make decisions like that.

23 I want to throw out a trial balloon and let you
24 guys fight against it; and that's what I intend to do.
25 That's why nobody is going to get hurt by shortening the
26 time to Tuesday, because nothing is going to happen on

1 Tuesday, except I will give you an Intended and send you
2 back to your law offices and have you come back in a brief
3 time, okay?

4 MR. OSSIFF: With respect to the Motion to
5 Disqualify, may we have until Monday to file Responsive
6 Pleadings?

7 THE COURT: Certainly. Because nothing is going
8 to happen on Tuesday anyway on that. That is going to be
9 in my Intended. Everything is going to be covered. And
10 then everybody is going to be sent back to their offices.
11 I am going to give you adequate --

12 There are too many attorneys and too little time
13 in the morning to have everybody set up and give their
14 verbal arguments extemporaneously, and then at 11:00 me
15 make a decision. I would rather have you guys have
16 adequate Notice of what I intend to do, and you can have a
17 more cerebral approach instead of a knee-jerk reaction.

18 MR. CIHIGOYENETCHE: Very good.

19 THE COURT: How about Notice?

20 Mr. Cihigoyenetcche?

21 MR. CIHIGOYENETCHE: I will give Notice.

22 THE COURT: And every time I look at you,
23 Mr. McPeters, I remember you, people will fight about
24 water. That's a quote I will remember.

25 MR. MCPETERS: And they always show up.

26 (Proceedings were concluded.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR & MUNICIPAL COURTS OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

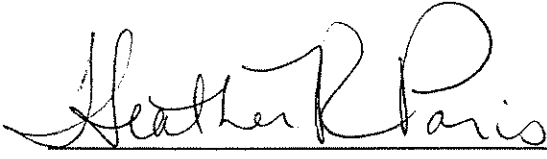
DEPARTMENT H (RC) HON. J. MICHAEL GUNN, JUDGE

CHINO BASIN MUNICIPAL)
WATER DISTRICT,)
Plaintiff,)
vs.) Case No. RCV-51010
CITY OF CHINO, et al.,)
Defendants.)
_____)

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss

I, Heather R. Paris, Official Reporter of the Superior
& Municipal Courts of the State of California, for the
County of San Bernardino, do hereby certify that the
foregoing pages numbered 1 through 5, comprise a full,
true, and correct, computer-aided transcription of the
proceedings held in the above-entitled matter on
Thursday, March 6, 1997.

Dated this 5th day of May, 1997.

 C.S.R.

Official Reporter, C-10294