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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
WEST DISTRICT

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.
CITY OF CHINO, et al.,

Defendants.

CASE NO. RCV 51010
Specially Assigned to the Honorable
Judge J. Michael Gunn

CITY OF ONTARIO'S RESPONSE TO
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF THE
MOTION FOR THE APPOINTMENT OF A
NINE MEMBER WATERMASTER BOARD;
DECLARATION OF LLOYD MICHAEL;
DECLARATION OF MICHAEL L. TEAL

Date: March 11, 1997
Time: 9:30 a.m.
Dept: RC-H

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1 The City of Ontario respectfully submits this response memorandum of points and
2 authorities:

3 **INTRODUCTION**

4 As of 10:00 a.m. on March 6, 1997,¹ opposition to the appointment of the proposed Nine
5 Member Watermaster Board has been received by this office from the Board of Directors of Chino
6 Basin Municipal Water District ("CBMWD"), Monte Vista Water District ("MVWD"), the City of
7 Chino Hills ("Chino Hills"), the Overlying (Agricultural) Pool Committee ("Ag Pool"), and the City
8 of Chino ("Chino"). These entities shall sometimes be referred to herein collectively as the
9 "Opposition." Although the City of Ontario ("Ontario") disagrees with Chino Hills, Chino, and the
10 Ag Pool in regard to both their factual claims and legal analyses, at least the attorneys for those
11 entities did not, for the most part, drag this dispute down into the gutter. The same cannot be said
12 for the attorneys for CBMWD and MVWD. The attorneys for those entities apparently believe that
13 when their parties are short on the facts, and the law, then, in addition to distorting the facts and
14 misstating the law, it is acceptable practice to impugn the integrity and question the motives of those
15 duly appointed representatives of agriculture, private industry overlyers, and the public and private
16 entity water appropriators who serve on the Advisory Committee. By doing so, they also insult the
17 elected public officials who sit on city councils and water district boards and who appoint Advisory
18 Committee members to represent their respective public entities.

19 The temptation to respond in kind to CBMWD and MVWD is almost overwhelming.
20 However, in view of the importance of the matter now before the court, such self-indulgence, while
21 it might be gratifying to counsel, would only be counter-productive.

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¹ The envelope containing Chino's opposition was sent regular mail and was postmarked March 5, 1997.

ARGUMENT

I. THE JUDGMENT AND THE POST JUDGMENT ORDERS
ESTABLISH THE ADVISORY COMMITTEE AS THE POLICY
MAKING BODY

The Judgment and the Post Judgment rulings of this court establish that the Advisory Committee is the policy making body under the Judgment. The final authority to carry out the terms of the Judgment is vested in the court.

The Advisory Committee which came into existence by virtue of the Judgment is solely a creature of the Judgment. Its membership, its powers, and its responsibilities are all contained within the four corners of the Judgment.

Several paragraphs of the Judgment define the powers and responsibilities of the Advisory Committee, the Watermaster and the court and spell out in detail the procedure to be followed by each in the exercise of those powers and responsibilities. The oversight power of the court is supreme, except as limited by the terms of the Judgment itself.

Paragraph 15² provides,

“Full jurisdiction, power and authority are retained and reserved to the court as to all matters contained in this Judgment, except: [exceptions are stated].”

The office of Watermaster is established by paragraph 16. CBMWD was appointed as the first Watermaster for an initial period of five (5) years. CBMWD has served as Watermaster, either de jure or de facto, ever since. The powers and duties of the Watermaster are contained in paragraphs 17 through 30. Paragraph 31 then provides,

“All actions, decisions or rules of Watermaster shall be subject to review by the court on its motion or on timely motion by any party, the Watermaster (in the case of a mandated action), the Advisory Committee, or any Pool Committee, as follows: [the procedure

² Unless otherwise noted, all paragraph references are to the Judgment in this case.

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follows”³

Under paragraph 31, the Advisory Committee has express standing to request court review of any Watermaster action, decision or rule.

Paragraph 31(d) provides that the court shall review de novo the issue in question and, in conducting that review “*Watermaster’s findings or decision, if any, may be received in evidence at said hearing, but shall not constitute presumptive or prima facie proof of any fact in issue.*”

The powers and functions of the Advisory Committee are set forth in paragraph 38(b). Paragraph 38(b)(1) provides that when a recommendation of the Advisory Committee is approved by eighty (80) votes or more, it shall constitute a mandate for action by Watermaster consistent therewith. The Watermaster has no discretion to disregard a recommendation which constitutes a mandate, and it cannot take action which is contrary to the recommendation. The Watermaster does, however, have the right under paragraph 31(b) to seek court review of a mandated action and, under paragraph 38(c), the Watermaster is entitled to employ counsel. The cost of such counsel is a “Watermaster expense” and not an expense of CBMWD as a public entity.

MVWD has submitted a declaration from the Honorable Ruben S. Ayala, California State Senator representing the 32nd Senatorial District. Senator Ayala refers to Senate Bill No. 222 (“SB222”) which, upon adoption by the Legislature and approval by the Governor, took effect on June 28, 1975 as Chapter 165 Statutes of 1975. A copy of SB222 is attached as Appendix 2 of the First Annual Report of Chino Basin Municipal Water District “Chino Basin Water Production Assessment Operations for 1974-75 (November 1976).” SB222 authorized Chino Basin Municipal Water District, the Western Municipal Water District, and the Pomona Valley Municipal Water District (now known as Three Valleys Municipal Water District) to impose a production assessment of not more than two dollars (\$2.00) per acre foot which was to be used for purposes relating to the development of a management plan for the water resources of the Chino Basin. The authority of the municipal water districts to levy assessments under SB222 did not extend beyond the fiscal year 1996-97 production (Water Code § 72146). The “Advisory Committee” to which Senator Ayala

³ Paragraph 31 covers all actions, decisions, etc., not just those which might be deemed “discretionary.”

1 refers, and which is mentioned in Water Code §§ 72144, 72144.1, and 72144.2 is not the same
2 advisory committee that was created by the Judgment that was filed on January 30, 1978. The job
3 of the SB222 Advisory Committee was complete once the Judgment was entered. During the time
4 the SB222 Advisory Committee was a functioning body, CBMWD acknowledged that “*The*
5 *Advisory Committee continued throughout the remainder of 1975-76 to meet monthly and to act as*
6 *the central policy committee.*” (First Amended Report, ante)

7 Senator Ayala states, “*It was my intent to keep the producers out of the administration of the*
8 *legislation but to give them a voice since their interests were affected.*” Regardless of what the
9 Senator may have privately intended, his intent is irrelevant to an interpretation of the Judgment.

10 “*An intent that finds no expression in the words of the statute cannot*
11 *be found to exist. The courts may not speculate that the legislature*
12 *meant something other than what it said. Nor may they rewrite a*
13 *statute to make it express an intention not expressed therein.*”

14 [citations omitted] Hennigan v. United Pacific Ins. Co., 53
15 Cal.App.3d 1, 7 (1995).

16 “*We are not, of course, to speculate that the Legislature meant*
17 *something other than what it said.*” People v. Zankich 20 Cal.App.3d
18 971, 978 (1971).

19 The Declaration of Lloyd Michael, a copy of which is attached hereto as Exhibit “A,” shows
20 that Senator Ayala’s intent in this regard was not communicated to those who served on the SB222
21 Advisory Committee. Mr. Michael’s declaration and the Declaration of Michael L. Teal, a copy of
22 which is attached hereto as Exhibit “B,” show that the intent of the parties to the Judgment was that,
23 subject to court control, the power to govern the Chino Groundwater Basin would remain with the
24 producers who rely on the Basin as a source of water supply.

25 In any event, Ontario submits that the issue of who [or what] is the policy making body for
26 the “Chino Basin” has already been decided by this court, and that decision is not now subject to
27 change.

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1 On July 31, 1989, a “Statement of Decision and Order Re Motion for Review of Watermaster
2 Actions and Decisions Filed by Cities of Chino and Norco and San Bernardino County Water Works
3 District No. 8” (hereinafter, the “Order”) in this case, signed by the Honorable Don A. Turner, Judge
4 of the Superior Court, was filed in the Central District of this court. A copy of that Order is attached
5 to the “Notice of Motion and Motion for Appointment of Nine Member Board as Watermaster ...”
6 filed herein by the Law Firm of Nossaman, Guthner, Knox & Elliott, LLP. The court is respectfully
7 requested to take judicial notice of that Order. Evidence Code § 451(a). The Order was made as
8 a result of the Motion for a Review of Watermaster Actions and Decisions which was filed by the
9 Cities of Chino and Norco and San Bernardino County Water Works District No. 8.⁴ At page 3,
10 lines 6 through 9, Judge Turner stated,

11 *“The Advisory Committee is the policy making group for the Basin.
12 Any action approved by eighty percent or more of the Advisory
13 Committee constitutes a mandate for action by the Watermaster
14 consistent therewith.”*

15 The Order was the resolution following a review by the court, pursuant to paragraph 31, of certain
16 Watermaster decisions and actions. Paragraph 31(e) provides,

17 *“The decision of the court in such proceedings shall be an appealable
18 supplemental order in this case. When the same is final, it shall be
19 binding upon the Watermaster and all parties.”*

20 The Order is an order made after the Judgment. The Judgment could have been appealed under the
21 authority of Code of Civil Procedure § 904.1(a)(1) and, thus, the Order itself could have been //
22 appealed pursuant to Code of Civil Procedure § 904.1(a)(2). There was no appeal from the Order.

23 The Order contains a substantive interpretation of the Judgment and concludes that the
24 Advisory Committee is the policy making body for the Basin. Under the terms of the Judgment
25 itself and Code of Civil Procedure sections relating to appealable orders, the Order is a final order
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28 ⁴ The area formerly served by San Bernardino County Water Works District No. 8 is now served by the
Cities of Chino, Chino Hills and by MVWD.

1 and its determination as to the authority of the Advisory Committee is res judicata. Reeves v.
2 Hutson, 144 Cal.App.2d 445 (1956).

3 Assuming, for the sake of argument only, that the issue of the Advisory Committee's powers
4 and duties can be reopened, then, until such time as the issue is properly raised and ruled on again,
5 the Order remains controlling. "*Manifestly, if an order has been made in the course of an action it*
6 *is binding on the litigants and the court alike so long as it has not been set aside.*" City of Los
7 Angeles v. Oliver, 102 Cal.App. 299, 325 (1929). "*One of the disputable presumptions of law is that*
8 *a judicial record when not conclusive does still correctly determine or set forth the rights of the*
9 *parties.*" Argabrite v. Argabrite, 56 Cal.App. 650, 652 (1922).

10 **II. THERE ARE NO COMPELLING REASONS WHY THE**
11 **WATERMASTER SHOULD NOT BE CHANGED AND THE NINE**
12 **MEMBER BOARD, AS RECOMMENDED BY THE ADVISORY**
13 **COMMITTEE, CONFIRMED AS THE NEW WATERMASTER**

14 Paragraph 16 provides that the court can change the Watermaster at any time and that,

15 "*Unless there are compelling reasons to the contrary, the court shall*
16 *act in conformance with a motion requesting the Watermaster be*
17 *changed if such motion is supported by a majority of the voting*
18 *power of the Advisory Committee.*"

19 The proposed Nine Member Watermaster Board, if confirmed by the court, will consist of
20 one (1) member from CBMWD, one (1) member from Western Municipal Water District
21 ("Western"), one (1) member from Three Valleys Municipal Water District ("Three Valleys"), three
22 (3) members from the Appropriative Pool, two (2) members from the Overlying (Agricultural) Pool,
23 and one (1) member from the Overlying (nonagricultural) Pool. The opposition filed by the Ag Pool
24 suggests that it is uncomfortable with Western and Three Valleys because of a fear that those two
25 municipal water districts will align themselves with the appropriators who are within the areas of
26 their jurisdiction. If the same line of reasoning is followed, the Ag Pool's acceptance of CBMWD
27 suggests that the Ag Pool believes that CBMWD will align itself with the Overlying (Agricultural)
28 Pool and not with the appropriators within the area of its jurisdiction. With respect to Western and

1 Three Valleys, at least, the Ag Pool's fears are based on pure speculation. No admissible evidence
2 has been offered by any of the opponents which would tend to establish that Western and Three
3 Valleys, while serving as members of a Watermaster Board, would act other than fairly, impartially,
4 and in the best interests of all the producers in the Chino Basin. Contrary to what Chino states,
5 paragraph 16 does require that the Nine Member Watermaster Board, as recommended by a majority
6 of the Advisory Committee, be appointed unless compelling reasons to the contrary exist. The
7 burden of proving that there are compelling reasons not to appoint the Nine Member Board belongs
8 to the Opposition. Inchoate fears, based upon nothing but speculation, are insufficient. The
9 opposition papers contain a great deal of unsworn rhetoric by the attorneys for the Opposition as to
10 the reasons they believe the Nine Member Board should not be appointed by this court. This
11 rhetoric must be disregarded. "*Testimony' refers to statements made under oath* [citation omitted].
12 *Thus, attorneys' statements do not constitute evidence.*" County of Alameda v. Moore, 33
13 Cal.App.4th 1422, 1426 (1995). Opponents have failed to meet their burden of proof.

14 On the other hand, the past actions of CBMWD certainly call into question its suitability to
15 continue as Watermaster. The animosity recently displayed by CBMWD toward the Advisory
16 Committee, and those who support the Advisory Committee in its effort to replace CBMWD as
17 Watermaster, is nothing short of extreme. Just a few examples are:

18 **A. The "Audit"**⁵

19 In or about November 1996, the Watermaster staff discovered that approximately
20 \$26,000 was missing from a Watermaster account with the Bank of America. Thereafter, CBMWD
21 expressed its intent to have an "audit" performed. The reason given to support the perceived
22 necessity for such an audit was the incident referred to above which is described in detail in
23 documents filed herein by other parties.

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27 ⁵ The facts supporting this argument are generally contained within the Declarations and Exhibits which
28 have been submitted by other parties in support of, and in opposition to, the motion re audit expense which motion
is now set for hearing concurrently with the motion for the appointment of a new Watermaster. For the sake of
brevity and in the interest of getting this reply filed in time for the court to read it, citation to individual documents
previously filed by other parties will be omitted.

1 At an Advisory Committee meeting held in January of 1997, a representative of the San
2 Bernardino County Sheriff's Department was present and explained how the bank account incident
3 may have occurred. The deputy sheriff stated that there was no evidence that this incident was an
4 "inside job." He stated that incidents like this are, unfortunately, commonplace and that millions
5 of dollars are stolen in this same manner every year. He also stated that his Department, and the
6 Federal Bureau of Investigation, were conducting an investigation.

7 Before the time that CBMWD ordered the audit, the bank had made good the loss by
8 crediting the Watermaster account with the sum that was stolen, the interest that would have been
9 earned thereon had the funds not been stolen, and even the debit against the Watermaster account
10 for the printing cost of the forged checks.

11 Realizing that an outside audit would be very expensive, the Advisory Committee established
12 an Ad Hoc Committee consisting of the financial officers of seven of its members. Included on the
13 Ad Hoc Committee was Walter Reardon who is a certified public accountant and the elected
14 treasurer of the City of Upland. CBMWD was invited to have its financial officer serve on the Ad
15 Hoc Committee, but it declined that invitation. The Advisory Committee also voted, by more than
16 80% of its voting power, to request that CBMWD not contract for an outside audit unless one was
17 later requested by the Advisory Committee. Under paragraph 38(b)(1) of the Judgment, this vote
18 constituted a mandate for action by the Watermaster consistent therewith. Following the
19 Advisory Committee's vote on the audit issue, CBMWD had a choice of two courses of action under
20 the Judgment. It could either act in accordance with the Advisory Committee vote and not contract
21 for an audit or, under paragraph 31(b) of the Judgment, it could have, by noticed motion, requested
22 that the court determine the issue of whether an audit should be conducted. CBMWD did neither.
23 Instead, it concluded that ordering an audit would be "administrative" and not "discretionary" and
24 contracted for the audit forthwith.⁶

25 The audit report that was done is over forty-five (45) pages in length. Although the
26 CBMWD's vocalized reason for having the audit performed was the bank incident that occurred in
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28 ⁶ CBMWD purports to equate "administrative" action to "ministerial" action as distinguished from
"discretionary" action. Thus CBMWD seeks to justify its failure to seek court review of a mandated action.

1 late 1996, the audit report contains only a brief reference to that incident, on page 17, which made
2 reference to the ongoing FBI investigation and stated,

3 *“Because this engagement was not intended to be a fraud*
4 *investigation, we did not pursue the matter.”*

5 **B. The Attempt to Disqualify the Law Firm of Nossaman, Guthner, Knox & Elliott**

6 The only logical reason for CBMWD, and the other Opponents, attempting to
7 disqualify the Nossaman firm at this time is to buttress their claim that the Advisory Committee’s
8 motion to appoint a new Nine Member Watermaster Board is improper, should not have been filed,
9 and should not now be heard. Even if this argument had merit, it would only delay the inevitable
10 for a short period of time. Under paragraph 16,

11 *“Watermaster may be changed at any time by subsequent order of the*
12 *court, on its own motion, or on the motion of any party after notice*
13 *and hearing.”*

14 Ontario, and several other of the parties to the Judgment, have joined in the motion for the
15 appointment of the Nine Member Watermaster Board. Accordingly, the question of whether the
16 motion was appropriately filed in the first instance is now moot.

17 On March 6, 1997, CBMWD obtained an order shortening time so that its motion to
18 disqualify the Nossaman firm can be heard on March 11, 1997. Any disqualification of the
19 Nossaman firm, at this time, will have no effect on the court’s ability to hear and determine the
20 pending motion regarding the appointment of a new Watermaster. It is submitted that CBMWD is
21 pursuing the disqualification motion only for the purpose of revenge.

22 It has been suggested that the Watermaster is, in effect, a “fiduciary.” In the context of the
23 Judgment, the producers of water from the Basin may also be likened to “beneficiaries.” If there
24 exist hostility between a fiduciary and a beneficiary to the extent that the relationship is jeopardized,
25 then the fiduciary should be removed. Brown v. Memorial National Home Foundation, 162
26 Cal.App.2d 513 (1958)

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1 In any event, the Judgment, and the Order,⁷ requires that CBMWD be removed as
2 Watermaster forthwith.

3 **III. IN THE ABSENCE OF A FINDING OF COMPELLING**
4 **REASONS TO THE CONTRARY, WHICH FINDING MUST**
5 **BE SUPPORTED BY A PREPONDERANCE OF ADMISSIBLE**
6 **EVIDENCE, THE COURT IS REQUIRED TO APPOINT THE**
7 **NINE MEMBER WATERMASTER BOARD AS**
8 **RECOMMENDED BY THE ADVISORY COMMITTEE**

9 The Opponents apparently recognize the futility of any attempt at retaining CBMWD as
10 Watermaster. With the exception of Chino, all of the other Opponents, including CBMWD itself,
11 have not requested that CBMWD be retained. They have, however, suggested to the court several
12 “alternatives” which, if ordered by the court, will only perpetuate CBMWD’s control of the office
13 of Watermaster. Some of the Opponents have suggested that the court now appoint a five member
14 board consisting of three members from CBMWD, one member from Three Valleys, and one
15 member from Western. Although Ontario was prepared to support this concept at one time, it no
16 longer can support this concept now that CBMWD has shown its true colors. If such a five member
17 board is appointed, with three members from CBMWD, CBMWD by its majority membership will
18 retain control of the office of Watermaster. Such a five member board was last considered by the
19 Advisory Committee at its January 30, 1997 meeting. The motion failed on a 67.99% No vote. No
20 recommendation for the appointment of an individual as Watermaster has been made.

21 Some of the Opponents suggest the appointment of a retired judge to act as a “mediator” or
22 an “arbitrator.” It appears that these Opponents would like to have the retired judge “mediate” or
23 “arbitrate” the issue of who the new Watermaster should be. The Advisory Committee has been
24 wrestling with this issue for over one year. Exactly what a mediator or arbitrator could do in such
25 a role is unclear. Nothing in the Judgment would allow a mediator or an arbitrator to order the
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27 ⁷ The Order provides, “Any party may request, by motion, that the Watermaster be changed, and should
28 be changed if the request is supported by a majority of the voting power of the Advisory Committee.” Order, page
2, lines 4 through 7

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1 Advisory Committee to make a particular recommendation regarding a new Watermaster.⁸ All that
2 appointing a mediator or arbitrator would accomplish is the perpetuation of CBMWD's control, as
3 the "interim" Watermaster, while the proceeding to select a replacement goes on and on and on.

4 CONCLUSION

5 It is respectfully submitted that the motion for the appointment of the Nine Member
6 Watermaster Board, to replace CBMWD as Watermaster, is properly before this court. The court
7 should overrule all objections and should forthwith appoint the Nine Member Board, as
8 recommended by the Advisory Committee, as the new Watermaster.

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10 Dated: March 7, 1997

Respectfully submitted,

11 COVINGTON & CROWE, LLP

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13 By:



14 Robert E. Dougherty
15 Attorneys for Defendant City of Ontario

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28 ⁸ By analogy to a writ of mandate, the Advisory Committee cannot be compelled to exercise its discretion
in a particular way. Larson v. City of Redondo Beach 27 Cal.App.3d 332, 336 (1972)

EXHIBIT "A"

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DECLARATION OF LLOYD W. MICHAEL

I, Lloyd W. Michael, hereby declare as follows:

1. I represented Cucamonga County Water District (CCWD) through the entire negotiations and regarding the case of Chino Basin Municipal Water District v. City of Chino, et al., San Bernardino County Superior Court Case No. 164327 (now RCV 51010). At that time, I was serving as General Manager of CCWD, and I am again serving as General Manager of CCWD currently.

2. I was personally involved in the negotiations among the parties to the above referenced case that resulted in the stipulated Judgment now known as the Chino Basin Judgment.

3. Senator Ruben S. Ayala was asked by representatives of the Chino Basin Municipal Water District to sponsor legislation to facilitate the collection of money necessary to pay attorneys and engineering consultants the Advisory Committee retained to assist with development of the Chino Basin Plan. He was asked to sponsor this legislation with the full consent and approval of (i.e. on behalf of) the Advisory Committee. I do not recall his stated intent was to "keep the producers out of the administration of the legislation but to give them a voice since their interests were affected" (Monte Vista Water District Opposition to Motion, Declaration of Senator Ruben S. Ayala, 3:16-18). In fact, the producers insisted the legislation require CBMWD to formally establish the Advisory Committee, and CBMWD reported on its role in its "First Annual Report of Chino Basin Municipal Water District – Chino Basin Water Production Assessment Operations for 1974-75" when it said on page 2 "The Advisory Committee continued throughout the remainder of the 1975-76 to meet monthly and to act as the central policy committee."

4. Senator Ayala was not personally involved in the negotiations, and he did not object to the Stipulated Agreement which became the binding contract among the producers called the Chino Basin Judgment. Additionally, his legislation did not establish the role or power of the Advisory Committee, the Judgment did.

5. The intention of the parties to the Judgment was that the power to govern the Chino Basin would rest with the producers that relied on it as a source of water supply. This was accomplished by Section 38 of the Judgment where all things that were not previously discussed by the pools or Advisory Committee are

1 discretionary, and where the Advisory Committee can mandate actions of Watermaster without recourse
2 except for the Court.

3 5. Section 16 of the Judgment was negotiated as the final control on Watermaster because there
4 were a number of producers who believed there was an inherent conflict of interest in having Chino Basin
5 Municipal Water District, who was (and is) the basin's primary supplier of supplemental water, also serve as
6 the Watermaster.

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9 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
10 correct.

11 Executed this 7th day of March, 1997 at Rancho Cucamonga, California.

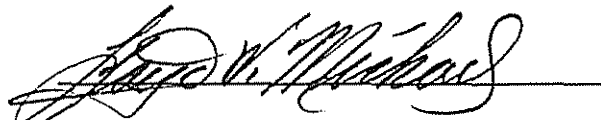
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14 
15 Lloyd W. Michael

EXHIBIT "B"

1 **DECLARATION OF MICHAEL L. TEAL**

2 I, Michael L. Teal, declare as follows:

3 1. I am the Public Works Director for the City of Ontario. I know the following of my
4 own personal knowledge, and if called upon, could and would testify competently thereto in a court
5 of law.

6 2. I was first employed by the City of Ontario in 1971 as an Administrative Assistant.
7 I was promoted to Senior Administrative Assistant in 1976. In 1981, I became Director of Public
8 Services (now, Public Works). During the years 1976 through 1977, I assisted Dennis Wilkins in
9 representing the City of Ontario during the negotiations which led to the Stipulated Judgment in the
10 case of Chino Basin Municipal Water District v. City of Chino, et al.

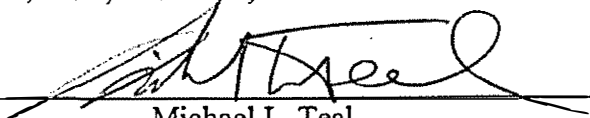
11 3. When the Judgment was entered in 1978, the City of Ontario accepted 11,374 acre
12 feet of water rights (its share of initial operating sale yield under Exhibit "E" of the Judgment). At
13 that time, the City of Ontario was of the opinion that, if the case went to trial, it could prove that it
14 had acquired by prescription or otherwise, water rights exceeding the amount which it accepted.
15 Ontario entered into the Stipulation for Judgment knowing that the rapid development that was
16 occurring in the region would necessitate an increase in water demands. Ontario agreed to the terms
17 of the Judgment on two fundamental conditions. First, that the producers essentially manage the
18 water basin through the Advisory Committee, and second, that the producers in the Appropriative
19 Pool acquire additional water rights as the agricultural area urbanized and agricultural production
20 diminished.

21 4. Since 1978, the City of Ontario has spend over forty million dollars (\$40,000,000)
22 in water purchases and replenishment assessments due to the water rights it relinquished as a
23 condition of the Stipulated Judgment. In effect, Ontario has paid for the water it will receive as
24 agricultural production decreases and the agricultural producers leave the Basin. It has a major
25 investment in how the Basin will be managed. Ontario did not then contemplate, and does not now
26 accept, that a third party who has no water rights in the Basin will be able to dictate to citizens of
27 Ontario and other producers how their resource will be managed. This is especially true now that
28 the third party (CBMWD) appears to have a self-interest in how the Basin will be managed.

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1 7. In my opinion, the proposed nine member board can fairly and neutrally administer
2 the Judgment, under the policy direction of the Advisory Committee and subject to the final
3 approval of the court. I urge the court to appoint the nine member board which has been
4 recommended for approval.

5 I declare under penalty of perjury under the laws of the State of California that the foregoing
6 is true and correct. Executed this 6th day of March, 1997, at Ontario, California.

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8 _____
9 Michael L. Teal

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RESOLUTION NO. 96-3

RESOLUTION OF THE CHINO BASIN WATERMASTER
TO FINANCIALLY SUPPORT THE DEVELOPMENT OF
ADDITIONAL DESALTING IN CHINO BASIN TO
PROTECT THE SAFE YIELD OF THE BASIN

WHEREAS, the Chino Basin Watermaster (Watermaster) was appointed on January 27, 1978, under the Judgment in Case No. RCV 51010 (formerly Case No. SCV 164327) entitled Chino Basin Municipal Water District v. City of Chino Et al. (The "Judgment"), with powers to levy and collect replenishment assessments necessary to replace water produced from the Chino Basin in excess of Safe Yield allocations and to cover the cost of administration of the Judgment; and

WHEREAS, Watermaster has approved an agreement with the California Regional Water Quality Control Board, Santa Ana Region (RWQCB) to provide 12,000 acre feet of replenishment water for the Santa Ana Watershed Project Authority's Project Agreement 14 (Desalter) for the purpose of removing high-salinity/nitrate groundwater to stabilize and eventually improve water quality in the Chino Basin; and

WHEREAS, although the Desalter will begin to clean-up the southern portion of Chino Basin, additional desalting or other technologies may be required in order for agencies to be able to develop water in the lower portion of Chino Basin for domestic use and to protect the existing Safe Yield of the basin; and

WHEREAS, desalting is expensive and may not be economically viable if an agency must purchase replenishment water to offset production produced through a desalter;

NOW, THEREFORE the Watermaster does hereby determine as follows:

1. That when the demand for desalted water in the southern portion of the Chino Basin exceeds the 12,000 acre feet produced by the Desalter, Watermaster will provide additional replenishment water to offset the replenishment obligation for future desalting

projects that make economic sense and protect the Safe Yield of the basin. The replenishment sources used to offset the replenishment obligation will come from the interception of rising groundwater to the Santa Ana River, other water sources, including reclaimed, developed by Watermaster, and may include the purchase of replenishment water.

2. Watermaster will continue to provide replenishment water to future desalters to the extent that the incremental cost of desalting groundwater is greater than the cost of producing overdraft water that requires no wellhead treatment.

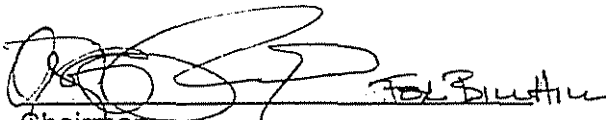
3. If Watermaster is required to purchase water to meet the replenishment obligation of the future desalters, a special assessment may be levied.

4. Watermaster hereby expresses support to the RWQCB in its attempt to regulate pollution that makes its way into the Chino Basin, and encourages them to continue that effort.


5. That the Secretary is hereby authorized and directed to transmit certified copies of Resolution No. 96-3, to the appropriate agencies.

*** APPROVED BY ADVISORY COMMITTEE BY A UNANIMOUS VOTE ON JUNE 26, 1996.

ADOPTED this 10th day of July, 1996.


Chairman
Chino Basin Watermaster

ATTEST:


Secretary
Chino Basin Watermaster

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN BERNARDINO)

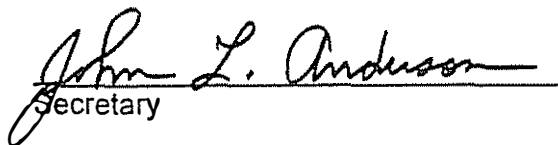
I, John L. Anderson, Secretary of the Chino Basin Watermaster, DO HEREBY CERTIFY that the foregoing Resolution being No. 96-3 was adopted at a regular meeting of the Chino Basin Watermaster Board by the following vote:

AYES: John L. Anderson, Wyatt Troxel, Anne W. Dunihue

NOES: None

ABSENT: Bill Hill, George Borba

ABSTAIN: None


Secretary

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

3 I am employed in the County of San Bernardino, State of California. I am over the age of
4 18 and not a party to the within action; my business address is Covington & Crowe, LLP, 1131 West
5 Sixth Street, Post Office Box 1515, Ontario, California 91762.

6 On March 7, 1997, I served the foregoing document described as CITY OF ONTARIO'S
7 RESPONSE TO MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE
8 MOTION FOR THE APPOINTMENT OF A NINE MEMBER WATERMASTER BOARD;
9 DECLARATION OF LLOYD MICHAEL; DECLARATION OF MICHAEL L. TEAL on the
10 interested parties in this action

11 by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the
12 attached mailing list:

13 by placing the original a true copy thereof enclosed in sealed envelopes addressed
14 as follows:

15 **BY MAIL**

16 I deposited such envelope in the mail at Ontario, California. The envelope was mailed
17 with postage thereon fully prepaid.

18 As follows: I am "readily familiar" with the firm's practice of collection and processing
19 correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on
20 that same day with postage thereon fully prepaid at Ontario, California, in the ordinary course of
21 business. I am aware that on motion of the party served, service is presumed invalid if postal
22 cancellation date or postage meter date is more than one day after date of deposit for mailing in
23 affidavit.

24 Executed on March 7, 1997, at Ontario, California.

25 **** (BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the
26 addressee.

27 Executed on _____, at Ontario, California.

28 *(State)* I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at
whose direction the service was made.


Patricia A. Fletcher

* (BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

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