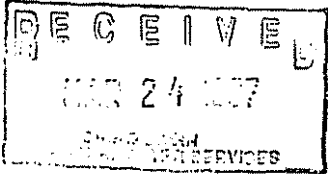


MAR 19 1997

Wanda DeVinney



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

CHINO BASIN MUNICIPAL WATER )  
DISTRICT, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF CHINO, et al., )  
 )  
 Defendants. )

CASE NO. RCV 51010

~~PROPOSED~~ ORDER TO SHOW CAUSE  
RE: APPOINTMENT OF SPECIAL  
REFEREE FROM OUTSIDE OF COUNTY  
AND ADOPTION BY COURT OF ITS  
TENTATIVE RULING

Having considered the Motion for the Appointment of Nine Member Board as Watermaster, the Motion for Order of Court that Audit Commissioned by the Chino Basin Municipal Water District Is Not a Watermaster Expense, and the Motion for Disqualification of Counsel, the Court has issued its Tentative Ruling, which is attached to this Order as Exhibit "1".

The Court further finds that it is necessary to appoint a special referee to provide recommendations to resolve the issues raised by the Motion for the Appointment of Nine Member Board.

1 The Court finds that there are compelling reasons to deviate from the procedure set forth  
2 in Code of Civil Procedure section 640 regarding the appointment of a referee, and intends to  
3 appoint as special master Anne Schneider, a person who resides outside of San Bernardino  
4 County. Among these compelling reasons is:

- 5 1. The high level of expertise possessed by Ms. Schneider on the subject of Water  
6 litigation;  
7
- 8 2. The fact that by residing outside of this county, Ms. Schneider will have a greater  
9 ability to remain objective and impartial; and
- 10 3. Ms. Schneider's familiarity with the 1978 Judgment, having previously acted as  
11 special referee to this Court regarding issues related to the Judgment.

12 Pursuant to the above findings,

13  
14 IT IS ORDERED that on April 29, 1997, at 1:30 p.m., any party to the Judgment will  
15 be permitted to show cause why this Court should not enter its Tentative Ruling as its ruling on  
16 the motions before it, and/or show cause why this Court should not appoint a special referee  
17 from outside. *San Bernardino County. JMS/WJS*

18  
19 IT IS FURTHER ORDERED that any party submitting papers related to this Order to  
20 Show Cause must file them with the Court and serve them no later than April 15, 1997, with  
21 any written argument limited to ten (10) pages.

22  
23 IT IS FURTHER ORDERED that the motion by Richards, Watson & Gershon for an  
24 order deleting that law firm from the service list will be considered by the Court at that time,  
25 with no appearance necessary from moving party.

26  
27 IT IS FURTHER ORDERED that Chino Basin Municipal Water District will remain as  
28 interim watermaster.


///

1 IT IS FURTHER ORDERED that all personnel matters concerning Watermaster staff shall be  
2 held in abeyance by both Chino Basin Municipal Water District and by the Advisory Committee  
3 until after the Court issues its ruling following receipt of recommendations by the special  
4 referee.

5  
6 DATED: MAR 1 9 1997

7 J. Michael Gunn  
8 HONORABLE J. MICHAEL GUNN

9  
10 Respectfully submitted by:  
11 MCCORMICK, KIDMAN & BEHRENS

12 By:   
13 David D. Boyer  
14 Attorneys for Defendant  
15 Monte Vista Water District

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SUPERIOR AND MUNICIPAL COURT  
STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER ) NO. RCV RCV 51010  
DISTRICT, )  
Plaintiff )  
v. )  
CITY OF CHINO, et al )  
Defendant )

Hearing Date: March 11, 1997 Dept: RC-H

- Motions: (1) Motion to Disqualify Counsel for Watermaster  
(2) Motion for Order that Audit Commissioned by Watermaster is not a  
Watermaster Expense  
(3) Motion to Appoint Nine-Member Watermaster Board

TENTATIVE RULING

This is an adjudication of all rights in and to the ground waters of Chino Basin and its storage capacity. For at least five years prior to the filing of the amended complaint in July, 1976, the annual production from the Chino Basin had exceeded the safe yield, resulting in a

1 continuous state of overdraft of the basin. Concern for the future of the basin prompted the  
2 filing of the original complaint in 1975. After three years of negotiation, judgment was entered  
3 on January 27, 1978.<sup>1</sup>

4 In 1978 Chino Basin Municipal Water District ("District") was appointed as  
5 "Watermaster" to administer and enforce the provisions of the judgment and any subsequent  
6 order of the Court (Judgment ¶ 16.) The District has performed its Watermaster duties for the  
7 past 19 years. A motion is presently before the Court, purportedly filed on behalf of the  
8 "Watermaster," to relieve the District of its Watermaster duties and substitute in place of the  
9 District a nine-member board composed of representatives of various producers of the basin.

10 The motion to relieve the District of its Watermaster duties is described by one  
11 group of producers as a power struggle between the producers in the north end of the basin and  
12 the producers in the south end of the basin. The motion has prompted Senator Ruben S. Ayala  
13 to file a declaration with this court stating his vigorous opposition to a motion which would  
14 "replace an independent Watermaster with individual producers whose self-interest would bias  
15 them against the protection of the groundwater supplies for the Chino Basin for the public,  
16 health, safety and welfare." This declaration has been objected to as impermissible opinion  
17 evidence. The Court feels that there exists sufficient foundation for qualifying Senator Ayala  
18 as an expert, and the foundation will probably be required by the special referee as will be  
19 discussed further in this opinion. For now, the issue is moot.

20 The motion to relieve the District of its Watermaster duties was apparently  
21 precipitated, at least in part, by a recent action taken by the District's board of directors in  
22 contravention of a purported "mandate" by the Advisory Committee, which is composed of  
23 various producers of the basin. The action taken by the District's board of directors was to call  
24 for a special audit of certain Watermaster administrative matters. The estimated cost of the  
25 special audit is \$35,000.00. A motion has been filed, again purportedly on behalf of the

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26  
27 <sup>1</sup> A bound copy of the judgment is in the current file, and the Court will take judicial notice  
28 of the judgment on the Court's own motion.

1 "Watermaster," for an order declaring that the cost of the audit is not a "Watermaster" expense.  
2 The "Nossaman Firm" purportedly representing the Watermaster is bringing this motion  
3 pursuant to the direction of the Chino Basin Watermaster Advisory Committee (Advisory  
4 Committee), acting pursuant to a 91.43% of the vote.

5 The motion requests an order from the Court that the costs of the audit be borne  
6 by the Board of the Chino Basin Municipal Water District (District).

7 Watermaster contends that the District commissioned an audit in violation of the  
8 requirements of the Judgment and Rules and Regulations of Watermaster.

9 Opposition to the Motion has been filed by Chino Basin Municipal Water District,  
10 among others. The arguments made by City of Chino Hills and The Chino Municipal Water  
11 District are almost identical. Besides the arguments made by the District, Chino Hills contends  
12 that it has not been proven that the forged checks were not drawn by employees and/or  
13 independent contractors of the Watermaster. This argument is not relevant to the issue here.  
14 There is no evidence that the individuals were in any way involved in the forged checks.

#### 15 **Background**

16 In December of last year, it was discovered that fraudulent checks had been drawn  
17 upon Watermaster's account. Upon discovering this information, the Watermaster immediately  
18 informed the bank and the law enforcement authorities. The sums were restored by the bank and  
19 a new checking account has been established.

20 The information was brought to the attention of the Advisory Committee, which  
21 considered the situation at an Advisory Committee meeting on January 8, 1997. The Advisory  
22 Committee was informed by a representative of the San Bernardino County Sheriff's Department  
23 that fraudulent activity of this type was not uncommon. The Advisory Committee was also  
24 informed that this activity could occur even if proper procedures were in place.

25 At the January 8, 1997 meeting, the Advisory Committee took the following  
26 actions:

27 1. It established, by a 91.43% majority vote, an Ad Hoc Finance Committee to examine  
28 the financial procedures of Watermaster. The Advisory Committee further stated that if the

1 Committee determines an independent audit is necessary, the Advisory Committee would  
2 consider that recommendation.

3 2. It directed a recently formed Executive Committee (which consists of the chairman  
4 of each of the three Pools) to attend the special Watermaster meeting that had been called for  
5 the next day, January 9, to recommend that the Watermaster Board not take any action on its  
6 agendized [sic] items, including the authorization of an independent audit. This motion was  
7 approved by a 91.43% majority.

8 3. The Advisory Committee defeated a motion that was made to recommend to the  
9 Watermaster that the Board of Directors of the District conduct an examination and review of  
10 the internal procedures utilized by Watermaster Services. This motion failed by a 91.43% vote.

11 At the special Watermaster meeting on January 9, the Watermaster was informed  
12 that the Advisory Committee had recommended by more than an 80% vote that Watermaster  
13 take no action seeking an independent audit of Watermaster Services. On January 10, the  
14 Watermaster through its counsel sent a letter to the Vice Chairman of the District, reminding the  
15 District of the requirement of the judgment.

16 At the January 14 meeting, the District met in closed session. It then, in open  
17 session, voted to conduct an audit immediately. This audit will be referred to as a "special  
18 audit."

19 On January 17, the District gave notice of a January 23, 1997 special Watermaster  
20 meeting to select an auditor and award a contract.

21 On January 22, the Advisory Committee met and, by a 91.43% vote, voted to  
22 direct Watermaster counsel to advise the District of the position of the Advisory Committee and  
23 to file this motion if the District took action to retain an auditor.

24 On January 22, Watermaster Counsel sent a letter to District advising it of the  
25 actions of the Advisory Committee.

26 At a January 23 special Watermaster meeting, the District was again advised by  
27 Watermaster Counsel that because of the Advisory Committee's decision, the District did not  
28 have authority to take the actions that were being considered.

1           At the January 23 meeting the District announced that it had received proposals  
2 from several accounting firms. The Chief Financial Officer of the District recommended that the  
3 firm of Soren, McAdam, Bartells be hired to conduct a special audit.

4           The contact of various accounting firms was done without any input from the  
5 Advisory Committee, the Pool Committees or any parties other than Chino Basin Municipal  
6 Water District. The District approved the hiring of Soren, McAdam, Bartells.

7           The District contends that this motion arises from "a decision by the Watermaster  
8 to conduct an audit of the Watermaster affairs." The District contends that the special audit was  
9 prompted by a well-founded concern that the Advisory Committee had usurped the  
10 administrative authority of the Watermaster. The District contends that the Advisory Committee  
11 was conducting Watermaster business in total disregard of generally accepted accounting  
12 standards.

13           The District further contends that the Board of Directors of the District, as the  
14 Watermaster, correctly voted to have a special audit conducted and further voted to hire Soren,  
15 McAdam & Bartells to perform that special audit. The District argues that this action was one  
16 that could be taken by the Watermaster without consultation with the Advisory Committee.

17           Watermaster contends that the Advisory Committee, by over an 80% vote, voted  
18 to take no action directing a special audit at the then present time. Therefore, Watermaster  
19 contends, this was a mandate from the Advisory Committee and the Watermaster could not act  
20 in contradiction to that vote.

21           Watermaster further contends that even if the decision to conduct a special audit  
22 had not been subject to the Advisory Committee's mandate, it still would have been improper.  
23 Watermaster bases this on paragraph 38(b)(2) of the Judgment, which requires that the  
24 Watermaster give 30 days notice of the meeting at which it intends to take action.

25           The special audit has been completed. The results are submitted as Exhibit "D"  
26 to the opposition

27           The Watermaster contends that the procedures followed to commission the special  
28 audit violated the requirements of the Judgment. The Watermaster contends that the Judgment



1 imposes clear conditions on the exercise of any powers of the Watermaster that has not been  
2 approved in advance by the Advisory Committee.

3 Paragraph 38(b)<sup>2</sup> provides that:

4 (b) Advisory Committee. The Advisory Committee shall have the duty to study,  
5 and the power to recommend, review and act upon all discretionary  
determinations made or to be made hereunder by Watermaster.

6 (2) Committee Review. In the event Watermaster purposes to take any  
7 discretionary action, other than approval or disapproval of a Pool Committee  
8 action or recommendation properly transmitted, or execute any agreement not  
9 theretofore within the scope of an Advisory Committee recommendation, notice  
of such intended action shall be served on the Advisory Committee and its  
members at least thirty (30) days before the Watermaster meeting at which such  
action is finally authorized.

10 Watermaster contends that:

- 11 1. The commission of a special audit was a discretionary act.
- 12 2. The agreement with the accounting firm to conduct the special audit was the execution  
13 of an agreement not approved by the Advisory Committee.
- 14 3. Since the Advisory Committee voted by a greater than 80% vote to delay taking action  
15 on a special audit, the District was mandated to act consistently with that vote.

16 The District does not dispute that if the act was discretionary, 30 days notice of  
17 the meeting or public hearing was required. They contend, however, that the hiring of an  
18 accounting firm to perform a special audit is not a discretionary action, but one that is  
19 exclusively within the District's powers as Watermaster.

20 If the special audit was a discretionary act that had to be recommended or  
21 approved by the Advisory Committee, the District acted without authority and violated the  
22 procedures contained in the Judgment. Therefore, the costs of the special audit would not be  
23 a Watermaster expense.

24 If the special audit was not a discretionary act then the special audit was within  
25 the District's authority. In this instance the cost of the special audit would be a Watermaster  
26 expense.

27 Therefore, the actual question raised is: Was the commission of a special audit

28 \_\_\_\_\_  
<sup>2</sup>All paragraph references are contained in the 1978 Judgment.

1 a discretionary act?

2 Watermaster contends that a decision to take a particular action is discretionary  
3 if the agency has a choice to either take or not take the action or how the action is to be  
4 undertaken. This definition is extracted from Webster's Dictionary and the California  
5 Environmental Quality Act.

6 CEQA provides that:

7 A discretionary project is one that requires the exercise of Judgment or  
8 deliberation when the public agency or body decides to approve or  
9 disapprove a particular activity, as distinguished from situations where the  
10 public agency or body merely has to determine whether there has been  
11 conformity with applicable statutes, ordinances or regulations. Remy,  
12 Thomas, Moose & Yeates, Guide to the California Environmental Quality  
13 Act (CEQA) (1994) p.38.

14 A discretionary act is discussed in Part VI of the Judgment relating with the  
15 Physical Solution. Paragraph 41 provides that:

16 41. Watermaster, with the advice of the Advisory and Pool Committees,  
17 is granted Discretionary powers in order to develop an optimum basin  
18 management program for Chino Basin including both water quantity and  
19 quality considerations. Withdrawals and supplemental water  
20 replenishment of basin water, and the full utilization of the water resources  
21 of Chino Basin, must be subject to procedures established by and  
22 administered through Watermaster with the advice and assistance of the  
23 Advisory and Pool Committees composed of the effective producers. Both  
24 the quantity and quality of said water resources may thereby be preserved  
25 and the beneficial utilization of the basin maximized.

26 The District contends that this paragraph defines discretionary acts and limits them  
27 to those listed. I disagree with this proposition. The theme of the Judgment is that the Advisory  
28 Committee is the policy making body. If the matters that required the Advisory Committee's  
input were limited to those listed, the Watermaster would be the policy making body.

Therefore, I do not find this paragraph to be determinative on the issue.

Employment of professionals by the Watermaster is discussed in  
paragraph 20.

The District contends that hiring an accountant is an administrative function that  
is specifically allowed by the Judgment.

Paragraph 20 states that:

1       20. Employment of Experts and Agents. Watermaster may employ or  
2 retain such administrative, engineering, geologic, accounting, legal or other  
3 specialized personnel and consultants as may be deemed appropriate in the  
4 carrying out of its powers and shall require appropriate bonds from all  
5 officers and employees handling Watermaster funds. Watermaster shall  
6 maintain records for purposes of allocation of costs of such services as  
7 well as of all other expenses of Watermaster administration as between the  
8 several pools established by the Physical Solution.

9               This paragraph states that the Watermaster may retain certain professionals to  
10 carry out its powers. This section does not expand the Watermaster's powers, or categorize  
11 certain powers as discretionary. This section merely allows for the retention of certain  
12 professionals to assist the Watermaster in completing either discretionary or nondiscretionary  
13 tasks.

14               Paragraph 48 states that the Watermaster's report, which is filed at the end of the  
15 year, must contain a certified audit of all assessments and expenditures.

16               The special audit in question here is not the "normal course of business" yearly  
17 audit that is required by paragraph 48. The special audit in question is a special audit. It is not  
18 required by any provision in the Judgment. The scope, timing, and the firm to complete the  
19 special audit were all separate decisions. This makes the special audit distinct from the yearly  
20 audit. Therefore, this section does not delineate whether the special audit was a discretionary  
21 act or not.

22               After reviewing the Judgment, I think that commissioning a special audit (costing  
23 \$30,000 - \$35,000) and hiring a firm to complete the special audit is outside the normal course  
24 of business.

25               Further, I think the language contained in paragraph 20 refers to retention of  
26 experts in the ordinary course of business, not a commission to do an independent study outside  
27 the normal course of business.

28               The Court intends to find that the commission of the special audit was a  
discretionary act. Therefore, the cost of the special audit is not a Watermaster expense.

              The District contends, among other things, that the commission of the special audit  
was an administrative function and therefore, not a discretionary act. Paragraph 54 divides  
administrative expenses into two categories, either general Watermaster administrative expenses,

1 or special project expenses.

2 (a) General Watermaster Administrative Expense shall include office  
3 rental, general personnel expense, supplies and office equipment, and  
4 related incidental expense and general overhead.

5 (b) Special Project Expense shall consist of special engineering, economic  
6 or other studies, litigation expense, meter testing or other major operating  
7 expenses. Each such project shall be assigned to a Task Order number and  
8 shall be separately budgeted and accounted for.

9 Paragraph 54 further provides that:

10 Special Project Expense shall be allocated to a specific pool, or any portion thereof,  
11 only upon the basis of prior express assent and finding of benefit by the Pool Committee,  
12 or pursuant to written order of the Court.

13 If the Court were to accept District's contention that the special audit was an  
14 administrative act, then the Court must decide into which category it falls.

15 I think that if the special audit falls within either of these two categories, it would  
16 fall within the special project category. A full, nonroutine audit is not general overhead. I think  
17 that it would be an economic study.

18 If an economic study could be performed without special provisions for paying the  
19 costs, then the phrase "economic or other studies" in paragraph 54(b) would be surplusage.

20 Since prior approval of a special project expense is required, this contention does  
21 not assist the District.

22 The District argues that the special audit was justified. It cites certain  
23 circumstances regarding the expenditures of the Watermaster, the 700% rise in the Watermaster  
24 budget, the results of the special audit, and the contention that the Nossaman firm has a conflict  
25 of interest, to justify the special audit. Objecting to the expenditures is an interesting argument.  
26 The Watermaster has approved, in fact, paid the expenditures to which it is now objecting. This  
27 puts the District in an interesting position. The Watermaster has also approved the 700%  
28 increase in the Watermaster budget.

The District recites the circumstances and the results of the special audit to justify  
the special audit. This argument ignores the procedures through which the special audit was  
commissioned. This argument also attempts to justify the action taken by the results found.  
This argument ignores the provisions of the Judgment and attempts to say if we are right we do

1 not have to follow any procedures. I do not find this argument persuasive. The result does not  
2 justify the method.

3           The District had notice that the Advisory Committee considered the commission  
4 of the special audit a discretionary act. Since the District was aware of the problem, the District  
5 could have brought this matter before the Court before commissioning the special audit. Instead  
6 the District took a risk that the Court would agree that it was not a discretionary act.

7           The Court intends to grant the motion. This is a harsh result. The District will be  
8 required to pay for a special audit that has already been completed. The District, however,  
9 ignored all warnings that this was inappropriate and decided to continue without a court order,  
10 in spite of these warnings. Since the District decided to take the risk, it must accept the  
11 consequences of losing. However, I could be persuaded to postpone my decision until after  
12 hearing the recommendation of the special referee discussed herein, since the Court does feel  
13 that the audit was not without its benefits, taking into consideration a number of things,  
14 including whether someone was "sleeping at the switch."

15           All three motions are inextricably related. They are also dependent upon the  
16 Court's interpretation of the provisions of the 1978 judgment and ultimately its delineation of  
17 the functions and authority of the Watermaster and the Advisory Committee.

18           Although there has been no evidentiary hearing where live testimony was taken,  
19 it appears to the Court from the papers submitted in this matter that over the course of the past  
20 few years the Advisory Committee has assumed the task of directing the performance of the  
21 District's Chief Executive Officer, Traci Stewart, with respect to Watermaster functions. Until  
22 several months ago, the District's board of directors acquiesced to the Advisory Committee's  
23 assumption of Watermaster administrative duties. However, the District's recent actions in  
24 calling for a special audit and terminating the services of Nossaman, Guthner, Knox & Elliott  
25 as Watermaster general counsel demonstrate its present intention to prevent the Advisory  
26 Committee from interfering in administrative matters.

27           It is the opinion of this Court that the resolution of the motion to appoint a nine-  
28 member Watermaster board presently before it will necessitate a thorough review of the checks

1 and balances contained in the 1978 judgment, an interpretation of the phrase "discretionary  
2 determinations" used in paragraph 38, subdivision (b) of the judgment, and a delineation of the  
3 functions of the Watermaster and Advisory Committee. The importance of the issues before the  
4 Court is illustrated by the statements contained in the declaration submitted by P. Joseph  
5 Grindstaff, the General Manager for the Monte Vista Water District and the present Chairman  
6 of the Advisory Committee. Mr. Grindstaff states that the water quality and safe yield in the  
7 basin has deteriorated as a result of the failure of the Advisory Committee to address certain  
8 issues: pumping patterns, storage limits and losses, speculation in water and development of an  
9 optimum basin management plan. Mr. Grindstaff believes that most of the water pumped from  
10 the basin no longer meets health department standards for safe drinking water without blending  
11 or treatment.

12           The Court finds that there is an urgent need to address the issue presented by the  
13 motion, but the Court further finds that it is necessary to obtain a recommendation from a  
14 recognized water law expert on the issues before it. Accordingly, the Court proposes to appoint  
15 a special referee pursuant to Code of Civil Procedure section 639 subdivision (d); however,  
16 notice is hereby given that the Court intends to make a finding that there are compelling reasons  
17 to deviate from the procedure set forth in Code of Civil Procedure section 640, to the extent that  
18 the Court intends to appoint Anne Schneider, a person who resides outside of San Bernardino  
19 County, unless cause is shown at the next hearing why this Court should not appoint a special  
20 referee from outside the county. Among the reasons that the Court finds compelling are the  
21 high level of expertise Ms. Schneider possesses in the subject of Water litigation, and by virtue  
22 of the fact that she resides outside the county, the chances of impartiality on her part and in her  
23 recommendation are diminished; moreover, Ms. Schneider has previously acted as special  
24 referee to this court (another judge) regarding issues related to the 1978 judgment. The referral  
25 to Ms. Schneider would be for advisory purposes only, and this court would retain jurisdiction  
26 to adopt in whole or part the recommendations of the special referee, taking into consideration  
27 appropriate objections. It would be the intent of the Court that Ms. Schneider's fee be an  
28 expense of Watermaster in order to spread the costs over all of the users instead of just to the

1 parties filing papers in this proceeding.

2 DISQUALIFICATION

3 The filing of the above two motions prompted the filing of yet a third motion,  
4 again purportedly filed on behalf of the "Watermaster," to disqualify the law firm of Nossaman,  
5 Guthner, Knox & Elliott, L.L.P., and attorneys John Ossiff and Frederic A. Fudacz as attorneys  
6 representing *either* the Watermaster or the Advisory Committee

7 "A former client may seek to disqualify a former attorney from representing an adverse party  
8 by showing the former attorney actually possesses confidential information adverse to the former  
9 client. However, it is well settled actual possession of confidential information need not be  
10 proved in order to disqualify the former attorney. It is enough to show a 'substantial  
11 relationship' between the former and current representation . [Citation.] If the former client can  
12 establish the existence of a substantial relationship between representations, the courts will  
13 conclusively presume the attorney possesses confidential information adverse to the former  
14 client. [fn.] [Citations.]" *H.F. Ahmanson & Co. v. Salomon Brothers, Inc.* (1991) 229 Cal. App.  
15 3d 1445, 1452.)

16 The Court finds that the law firm of Nossaman, Guthner, Knox & Elliott and  
17 attorneys Frederic A. Fudacz and John Ossiff have in the past acted as general counsel to the  
18 Chino Basin Water District Board of Directors in its role as Watermaster. The Court further  
19 finds that Nossaman, Guthner, Knox & Elliott has been discharged by the District Board of  
20 Directors and no longer represents the Watermaster. The Court finds that the retainer agreement  
21 was signed by CBMWD board of directors in their official capacity. The Nossaman firm used  
22 substantially the same contract with Watermaster as they utilized with the advisory Committee.  
23 Although the Court does not possess a copy of the "Facilities Agreement," a delegation of  
24 duties back to the advisory committee does not necessarily assign the right and the power to  
25 terminate the contract. The Nossaman Firm looked to Watermaster for fees, and as that duty  
26 was not delegated, neither was the power to terminate the attorney client agreement. Since the  
27 Nossaman firm is now terminated, the issue of conflict disqualification is moot; again, this is  
28 the intended decision. I would like to see the facilities agreement before a final ruling, but study

1 the charts attached hereto for insight into my reasoning, and you are welcome to provide your  
2 version if you disagree with that depicted in the charts supplied for analysis.

3 Facilities Agreement

4 The Court has not been provided with a copy of the present Facilities and Services  
5 Agreement between the District in its role as Watermaster and the Advisory Committee. The  
6 Chief of Watermaster Services, Traci Stewart is requested to provide a copy to the Court  
7 forthwith. This will become an order to Watermaster if the request is not honored; of course,  
8 I have no reason to doubt that the request will not be honored. The Court is concerned that the  
9 employees of Watermaster not be held hostage to this litigation, and the Advisory Committee  
10 and the Watermaster (CBMWD) are ordered to meet and confer regarding the so-called "Pers  
11 problems."

12 An OSC date will be set approximately three weeks from today to show cause why  
13 the intended decision stated herein should not be an order of the Court. In addition the deletion  
14 from service requested by unnoticed motion will be heard that day without necessity of  
15 appearance by the moving party. See Wanda for a copy of the request.

16 As one can readily ascertain by reading this intended decision, due to volume of  
17 papers filed, and in spite thereof, and the magnitude of the effect of the Court's decision on the  
18 people affected by the Court's ruling, this Court needs the additional information requested, as  
19 well as some additional time. As some of you know, some filings came as late as this afternoon,  
20 and you will be here in just eight hours from the time it is now. As soon as you have read this  
21 intended, confer with those present on a date to come back to court.

22 Dated: March 10, 1997,

23  
24  
25   
26 HON. J. MICHAEL GUNN  
27 Judge  
28



MAR 25 1997

Wanda DeVinney

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO - WEST DISTRICT

CHINO BASIN MUNICIPAL WATER

DISTRICT,

Plaintiff,

v.

CITY OF CHINO,

Defendant.

) Case No. RCV 51010  
)  
) PROOF OF SERVICE OF  
) 1. ORDER March 11, 1997 Tentative  
) Ruling, Request for Documents  
) 2. ORDER TO SHOW CAUSE RE:  
) APPOINTMENT OF SPECIAL  
) REFEREE FROM OUTSIDE OF  
) COUNTY AND ADOPTION BY  
) COURT OF ITS TENTATIVE RULING

) Hearing:  
) DATE: April 29, 1997  
) TIME: 1:30 p.m.  
) DEPT: H

) Specially assigned to the Honorable  
) Judge J. Michael Gunn

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1 I, Mary L. Staula, declare:

2  
3 1. I am over the age of 18 and not a party to this action. My business address is  
4 Chino Basin Watermaster, 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California  
5 91730.

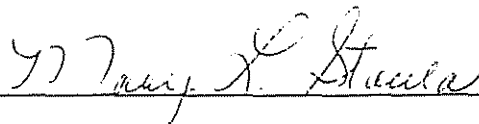
6  
7 2. On today's date, I served the documents identified below by placing a true and  
8 correct copy of same in sealed envelopes address to each of addresses listed on the attached  
9 mailing list "A".

- 10 • Order March 11, 1997 Tentative Ruling, Request for Documents.  
11 • Order to Show Cause Re: Appointment of Special Referee from Outside of  
12 County and Adoption by Court of its Tentative Ruling.

13  
14 3. I then placed said envelopes for collection, processing and mailing by Chino  
15 Basin Watermaster personnel with the United States Postal Service on today's date, following  
16 Chino Basin Watermaster's ordinary business practices. Pursuant to these practices, with  
17 which I am familiar, addressed envelopes are deposited in the ordinary course of business  
18 with the United States Postal Service on the same date they are collected and processed, with  
19 postage thereon fully prepaid.

20  
21 I declare under penalty of perjury under the laws of the State of California  
22 that the foregoing is true and correct.

23  
24 Executed on March 25, 1997, at Rancho Cucamonga, California.

25  
26 

27 Mary L. Staula  
28

AAAAA AAAAA  
MAILING LIST A INTERESTED PARTIES  
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UPDATED 3/14/97/WMSVS/MDL

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