

CHINO BASIN
AUDIT
TS



1 **CHIGOYENETCHE, 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**

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11 **CHINO BASIN MUNICIPAL WATER**)
12 **DISTRICT,**)
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16)

Plaintiff(s),

vs.

CITY OF CHINO, et al.,

Defendant(s).)

CASE NO. RCV 51010

MEMORANDUM OF POINTS AND
AUTHORITIES IN REPLY TO THE
COURT'S TENTATIVE RULING

17 COMES NOW Chino Basin Municipal Water District ("District") which, in reply to the
18 Court's Tentative Ruling of March 10, 1997 submits the following Memorandum of Points and
19 Authorities.
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I

21 **THE OPERATIONAL AUDIT SHOULD BE**
22 **DEEMED A WATERMASTER EXPENSE**

23 A. The "Forgery" Relating to Watermaster Funds Was Not The Sole Factor Prompting
24 The Audit.

25 The Court's Tentative Ruling at page 3, line 21, expresses the position that the audit presently
26 before the court for consideration was prompted by the theft of Watermaster funds. This position has
27 been expressed in many of the pleadings presented to the court by the various parties. However, that
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1 22); invest funds (Judgment paragraph 23); borrow money (Judgment paragraph 24) and enter into
2 contracts (Judgment paragraph 25). The authority to perform the above cited acts are exclusively
3 within the province of the Watermaster and no similar authority is extended to the Advisory
4 Committee under the Judgment. Moreover, paragraph 17 of the Judgment states "subject to the
5 continuing supervision and control of the court, Watermaster shall have and may exercise the express
6 powers, and shall perform the duties, as provided in this Judgment . . ." (Emphasis added).

7 The intended decision reads into the above cited provisions of the Judgment that the Advisory
8 Committee has cooperative authority in the above listed categories. Nowhere in the Judgment does it
9 state that the Advisory Committee shares authority over the enumerated powers of the Watermaster.
10 There are numerous paragraphs in the Judgment which do provide for cooperative powers and,
11 therefore it must be assumed that if the above enumerated powers were to be shared, the Judgment
12 would have so stated. In reality, the Judgment expressly excluded cooperative powers in those areas
13 because the Advisory Committee was not intended to have any authority in those areas. The intended
14 ruling circumvents the Judgment by requiring the Watermaster to secure Advisory Committee
15 approval for every expenditure of funds.

16 The net result is to bring the Judgment full circle by vesting all appropriative authority and
17 hence all authority whatsoever squarely with the Advisory Committee and the producers. This is not
18 only against the express provisions of the Judgment but against the intent and spirit of the Judgment
19 as well.

20 Simply stated, the Watermaster Board felt that the Watermaster staff was mismanaging the
21 Watermaster affairs. The purpose of the audit was to identify the problems inflicting the Watermaster
22 and to take steps to resolve them. Not only is this within the normal course of business in managing
23 the Watermaster, it is also the expected course of conduct which a public official should take. It
24 seems as though the Watermaster will now be punished for taking proactive steps to remedy a clearly
25 egregious situation.

26 The Watermaster was not unreasonable in calling for the audit and in fact specifically limited
27 the cost of the audit to a sum not to exceed \$14,000.00. This obviously is a sum less than half of the
28 amount which the Advisory Committee has represented to this court would be the cost of the audit to

1 wit \$30,000.00 to \$35,000.00. The estimate offered by the Advisory Committee was unsubstantiated
2 in fact. It is no surprise that the Advisory Committee, with the full support of the Watermaster
3 Services, would object to the audit in that their policies and procedures, or lack thereof, were the
4 subject of the audit. Certainly they would not support scrutiny of their own conduct which they knew
5 was inappropriate.

6 C. The Operational Audit Was Not a Discretionary Act.

7 The intended ruling of the court includes a finding that the decision of the Watermaster Board
8 to conduct the audit was a discretionary act and therefore, subject to the notice provisions and court
9 review provisions of the Judgment. As argued above, the purpose of the audit was to determine
10 whether proper policies and procedures were in place to ensure that public funds were being properly
11 managed. Although the theft of Watermaster funds was not the focus of the audit, it was an
12 important factor in supporting the contention that there were no adequate policies or procedures
13 being followed by Watermaster Services staff and that it was incumbent to get to the root of the
14 problem before additional public funds were improperly dissipated.

15 It cannot be had both ways, the word "discretionary" not only infers the right to take action
16 but also the right not to take action. In the context of the intended ruling, if the Watermaster, as
17 fiduciary of the Watermaster funds, suspected mismanagement of the Watermaster affairs, they have
18 the discretion to take no action at all.

19 It is submitted that where the Watermaster suspects the improper management of
20 Watermaster affairs, which includes the inappropriate expenditure of Watermaster funds and the lack
21 of any consistency in policy and procedures whatsoever, the Watermaster fiduciary is compelled to
22 take action to remedy the problem and would be clearly remiss in its duties should it exercise
23 "discretion" to allow such improprieties to continue. The Watermaster was compelled to fulfill its
24 fiduciary obligation to the public. The Watermaster had no discretion whatsoever in handling this
25 matter and, in fact, was mandated to implement efforts to rectify the problem. Since the decision to
26 conduct the audit was not discretionary, the decision to conduct the audit was wholly appropriate
27 and, therefore, a legitimate Watermaster expense.

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1 D. The Watermaster Should Not be Held Responsible for the Increased Watermaster
2 Budget.

3 At page 9, lines 18 through 25 of the intended ruling, reference is made to the District's
4 argument that the Watermaster budget has increased 700% over recent years. While not specifically
5 stated, the language of the intended ruling would seem to infer that the Watermaster should not
6 complain of the increased budgets since they approved them. However, this argument completely
7 disregards the circumstances under which those budgets were approved.

8 Initially, those budgetary increases were passed by more than an 80% vote of the Advisory
9 Committee. Hence, the Watermaster was mandated by virtue of the Judgment to follow that vote.
10 The uncontested declaration of Bill Hill demonstrates that Watermaster's objection to the increased
11 budgets is the precise reason these motions are before the court now. The District functioned as
12 Watermaster for 18 years with little opposition until they questioned the increasing budget. It was in
13 the face of those objections that the Advisory Committee opted to oust the Watermaster and place
14 themselves in power.

15 Additionally, as the declaration of Larry Rudder clearly states, he too objected to the ever
16 increasing budget problems. He was clearly rebuffed by the Advisory Committee and there has not
17 been one declaration submitted in opposition to the assertions made by Mr. Rudder.

18 At the same time, the Watermaster was completely without legal counsel. Mr. Fudacz had
19 elected to represent the Advisory Committee and did not even attend Watermaster meetings.
20 Counsel allowed the staff at Watermaster services, and the Advisory Committee, to overstep their
21 authority in every fashion and never rendered counsel to the Watermaster to advise them of their
22 authority and their rights under the Judgment. One must ask where are the checks and balances?
23 History has clearly demonstrated that if the Watermaster does its task under the Judgment against the
24 self-serving orders of the Advisory Committee, it will be ousted.

25 E. Watermaster has Derived a Benefit from the Audit.

26 In the intended ruling the court states that it is inclined to delay the allocation of the cost for
27 the audit until the special referee has had occasion to review the matter. If the court's final ruling
28 holds that the audit is not a Watermaster expense, the District would request that the court allow the

1 special referee to examine the issue and make a recommendation as to the appropriate allocation of
2 expense for the audit.

3 II

4 THE ADVISORY COMMITTEE'S VOTE AGAINST
5 THE AUDIT WAS A SHAM.

6 The intended ruling states that prior to Watermaster's decision to conduct the audit, the
7 Advisory Committee had voted, by more than 80%, against the audit. The intended ruling suggests
8 that the Watermaster was bound by that decision and, if they disagreed, should have appealed to the
9 court on the issue. What is not referred to in the intended ruling however, is the fact that the
10 Advisory Committee met on January 8, 1997, the day before the meeting of the Watermaster to
11 consider the issue. Prior to that, the Advisory Committee was following its normal laissez-faire
12 management style. In fact, the vote of Advisory Committee was taken well after the notice of
13 meeting of Watermaster had been mailed to the appropriate parties and was intended as nothing more
14 than a procedural hurdle thrown before the Watermaster who had finally decided that action was
15 needed.

16 Such procedural maneuvering is not unusual to the Advisory Committee. They have decided
17 to shed the yoke of Watermaster supervision and consolidate all authority over the Chino Basin
18 within themselves. To believe that an internal audit of the Advisory Committee would have been
19 forthcoming is akin to empowering Richard Nixon with the decision of whether or not to investigate
20 the Watergate matter. The Advisory Committee's vote was nothing short of a sham and yet another
21 example that they will thwart any attempt by the Watermaster to exercise its authority under the
22 Judgment.

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Handwritten notes:
10-11: No Notice
11-12: 1/8/97
13-14: 1/7/97
15-16: 1/8/97
17-18: 1/8/97
19-20: 1/8/97
21-22: 1/8/97
23-24: 1/8/97
25-26: 1/8/97
27-28: 1/8/97

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III

THE LAW FIRM OF NOSSAMAN, GUTHNER,
KNOX & ELLIOTT AND ITS ATTORNEYS SHOULD
BE DISQUALIFIED FROM FURTHER ARGUMENT
BEFORE THE COURT.

The intended ruling also address the issue of disqualification of counsel which has been thoroughly argued in prior pleadings. Should the law firm of Nossaman, Guthner, Knox & Elliott attempt to represent any party on Watermaster issues, the District urges the court to immediately disqualify them based upon a conflict of interest. The case authorities of Flatt v. Superior Court (1994) 9 Cal. 4th 275 [885 P.2d 950; 36 Cal.Rptr. 2d 537] and H.F. Ahmanson & Company v. Salomon Brothers, Inc. (1991) 229 Cal.App. 3d 1445 would mandate such disqualification.

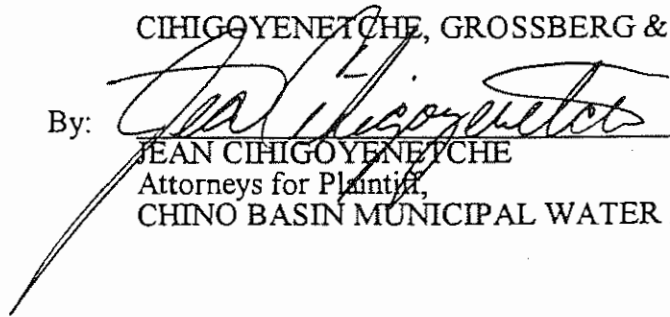
IV

CONCLUSION

It is respectfully requested that the court find that the audit in question was a legitimate Watermaster expense. The Watermaster had no discretion in this regard and the action was administrative in that it sought to identify serious problems with the management of Watermaster affairs.

Dated: April 17, 1997

CHIGOYENETCHE, GROSSBERG & CLOUSE

By: 
JEAN CHIGOYENETCHE
Attorneys for Plaintiff,
CHINO BASIN MUNICIPAL WATER DISTRICT