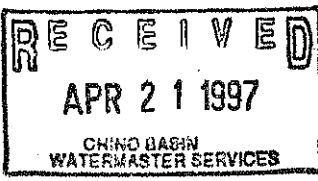


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9 FOR THE COUNTY OF SAN BERNARDINO

10
11 CHINO BASIN MUNICIPAL WATER
DISTRICT,
12
13 Plaintiff,
14 v.
15 CITY OF CHINO, et al.,
16 Defendants.

Case No. RCV 51010

AGRICULTURAL POOL
COMMITTEE'S RESPONSE
SUPPORTING THE TENTATIVE
RULING AND APPOINTMENT OF
SPECIAL MASTER

Date: April 29, 1997
Time: 1:30 a.m.
Dept: H

17
18 I

19 INTRODUCTION

20 The Agricultural Pool Committee of the Chino Basin (herein
21 "Ag Pool") supports the Tentative Ruling which provides for
22 appointment of Special Master Anne Schneider, and herewith
23 submits its Points and Authorities in support of such decision in
24 anticipation of an opposition to the Tentative ruling by certain
25 Appropriative Pool Cities.

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1 II

2 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SPECIAL MASTER

3 A. The Judgment provides that the Watermaster and Advisory
4 Committee are separate and independent entities.

5 The Ag Pool of the Chino Basin Judgment opposed the nine
6 member board proposed by Watermaster staff and the Advisory
7 Committee. This opposition is based on the firm belief of the Ag
8 Pool that the proposed nine-member board will be controlled and
9 dominated by the same water interests that control the Advisory
10 Committee at this time and the long term water quality interests
11 of the Chino Basin will be adversely impacted. The Judgment
12 was entered in 1978 and provided for an Advisory Committee made
13 up of the water users within the basin in proportion to their
14 actual use of water. The Judgment also created a separate role
15 of Watermaster to "administer and enforce the provisions of this
16 Judgment". The Advisory Committee's role was to advise the
17 Watermaster except in the case of an 80% (or greater) vote of the
18 Advisory Committee which constituted a mandate to the
19 Watermaster. The Judgment, therefore created two separate bodies
20 with "checks and balances". Chino Basin MWD was the Watermaster
21 and has acted in that capacity until the present. In its
22 reply to the opposition, Mr. Fudacz, purporting to represent the
23 Watermaster identified these assertions as attempting to
24 "radically" alter the Judgment. (Reply p3 line 24).

25 The thrust of the current proposal is to give the Advisory
26 Committee control over the actions of the Watermaster rather than
27 control over the composition of the Watermaster. Moving party
28 suggests the Advisory Committee's control over the composition of

1 the Watermaster and historical control over decision making
2 negates any separateness of the entities and there is no
3 provision in the Judgment for "checks and balances". This
4 interpretation of the Judgment is significantly flawed. The
5 Judgment created two separate administrative bodies to carry out
6 the terms of the Judgment. If it was intended that the
7 Watermaster was simply the Advisory Committee's "staff", the
8 Judgment could have been set up that way. Instead, the Judgment
9 at paragraph 18 authorizes the Watermaster to adopt rules and
10 regulations to conduct its affairs. Paragraph 26 authorizes the
11 Watermaster to act jointly with state and federal agencies for
12 the purposes of carrying out the physical solution. Paragraph 27
13 authorizes Watermaster to undertake hydrologic studies.
14 Paragraph 28 authorizes Watermaster to enter into water storage
15 agreements. Paragraph 30 requires Watermaster to prepare an
16 annual budget. The Advisory Committee is given the
17 responsibility of making recommendations before the Watermaster
18 acts. Paragraph 38(b)(1) provides that Watermaster may act
19 "consistent with or contrary to said Advisory Committee's
20 recommendation." If the Advisory Committee members are
21 Watermaster members, the Advisory Committee will control the
22 decisions that it was intended to have only advisory input.

23 Most importantly, paragraph 41 of the Judgment provides that
24 Watermaster, not the Advisory Committee, is granted ultimate
25 authority to manage the Basin.

26 In conclusion, the terms of the judgment itself requires a
27 Watermaster which is separate from the Advisory Committee. This
28 may be somewhat obvious, but not to certain Advisory Committee

1 members. The proponents of the nine member board suggest they
2 may be the same. The same proponents had previously brought a
3 motion (filed February 7, 1996) to have the Advisory Committee
4 appointed as Watermaster. This was ultimately taken off calendar
5 in favor of the current proposal to have a separate Watermaster
6 made up of the same participants. It is respectfully submitted
7 that this effort to eliminate the separateness of Watermaster and
8 Advisory Committee is contrary to the terms of the Judgment.

9 B. The intent of the Judgment and Equity require an independent
10 and neutral Watermaster.

11 As has been belabored in the initial opposition to the 9
12 member board, considerable conflict has arisen over water quality
13 issues. Unfortunately, the Advisory Committee is controlled by
14 the northern Appropriative Pool members and the water quality
15 problems are suffered by the southern agricultural interests and
16 a minority of the Appropriative Pool primarily in the southern
17 portion of the basin.

18 The support for this conclusion was provided by the moving
19 party in the declaration of Mark Wildermuth, who stated at
20 paragraph 7:

21 "All our studies including review of water quality data
22 from wells and CIGSM projections of future conditions suggest
23 that groundwater quality will deteriorate in the southern half of
24 the basin."

25 As was more particularly described in earlier opposition,
26 one of the catalysts for the Advisory Committee's opposition to
27 the current Watermaster was the support given by Chino Basin MWD
28 to a proposal by the Ag Pool to contribute 12,000 acre feet of

1 water to a Desalter Project to begin water treatment to remove
2 nitrates in the water.

3 Moreover, in July, 1989, Judge Don A. Turner heard a motion
4 for review of Watermaster's actions. Judge Turner reviewed the
5 Judgment and made several critical findings. First, he
6 recognized that "long before the Judgment was entered, it was
7 recognized that water quality problems were present in the basin;
8 however, no one could agree on exactly which problems to tackle
9 and what to do about them." (July 31, 1989 order p.9) Judge
10 Turner also recognized the proposition that the "problems of the
11 lower end of the basin should be the problem of the entire
12 basin." Judge Turner noted in concluding that "The Court is
13 convinced that there are some legitimate concerns in the way of
14 long-range planning for improved quality of the water of the
15 basin and for an equitable method of spreading the costs of
16 improving the quality." (p.15)

17 With water quality facing the Chino Basin as its greatest
18 hurdle, in the future it is crucial that this court not approve a
19 Watermaster controlled by the Advisory Committee which is
20 dominated by Northern water interests who have "quantity of
21 water" produced as a primary goal.

22 A water rights adjudication by definition is an equitable
23 proceeding. In a water rights adjudication, where competing
24 demands exceed the available supply, courts have developed
25 "physical solutions" to address the numerous problems associated
26 with over production of the limited water resources. A physical
27 solution involves the application of general equitable principles
28 to achieve reasonable allocation of water to competing interests

1 so that an equitable accommodation of demands upon a water source
2 can be achieved. (Imperial Irrigation District v. State Water
3 Resources Control Board (1990) 225 Cal. App. 3d 558, 562.) Each
4 physical solution is different and must be crafted to fit the
5 unique circumstances existing in any given basin.

6 The history of this litigation demonstrates to the court
7 that the Chino Basin involves a large basin with several hundreds
8 of water users. Many diverse interests exist. The Judgment
9 created a physical solution which divided the water users into
10 three major groups or "pools". These pools consist of 1)
11 Agricultural Pool which includes the State of California; 2)
12 Appropriative Pool which primarily serves Municipal users; and 3)
13 Overlying Non-Agricultural Pool which serves industrial users.
14 These pools form the Advisory Committee, which advises the
15 Watermaster in performing its function under the physical
16 solution judgment. The amount of water use determines the
17 percentage of voting strength. The Appropriative Pool holds a
18 75% majority vote of the Advisory Committee.

19 As is apparent from this dispute, the parties to this action
20 have competing interests in the groundwater of the Chino Basin.
21 The Judgment recognized this and created two entities to
22 administer the Judgment. The most critical aspect to this "check
23 and balance" approach is the establishment of a neutral and

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1 unbiased Watermaster to administer and enforce the physical
2 solution established under the Judgment in accordance with
3 Article 10, section 2 of the California Constitution.¹

4 As has been described above, the appointment of a
5 Watermaster controlled by the Advisory Committee, or Northern
6 water interests, threatens the integrity of the Judgment and will
7 deprive the parties of due process guarantees as Advisory
8 Committee members cannot carry out Watermaster's functions in an
9 unbiased and neutral fashion. (Cohan v. City of Thousand Oaks
10 (1994) 30 Cal. App. 4th 547, 559 ["A biased decisionmaker is
11 constitutionally unacceptable . . . The right to a fair procedure
12 includes the right to impartial adjudicators."])

13 C. The appointment of Anne Schneider as special master is
14 appropriate.

15 Ms. Schneider as a recognized expert in this area, is
16 capable of investigating and understanding the diverse interests
17 presented in this case. She will be helpful to the Court to
18 analyze the current proposal or recommend alternative proposals
19 for Watermaster. In the event a nine member board remains her
20 recommendation, she can suggest rules or procedures to avoid
21 domination of the Watermaster Board by the Appropriative Pool
22 members who control the Advisory Committee.

23 ///

24 _____
25 ¹ Article 10, Section 2 of the California Constitution
26 provides in part that "the general welfare requires that the water
27 resources of the State be put to beneficial use to the fullest
28 extent of which they are capable and that the waste or unreasonable
use or unreasonable method of use of water be prevented, and that
the conservation of such waters is to be exercised with a view to
the reasonable and beneficial use thereof in the interest of the
people and for public welfare. . . ."

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III

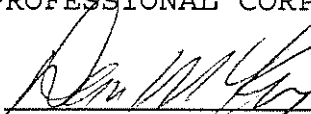
CONCLUSION

In sum, the proposed nine member board is not in conformance with the terms of the Judgment or the intent of the Judgment to create a physical solution and equitable use of water within the basin. Reference to a Special Master is appropriate to investigate and report back to the Court whether the proposed Watermaster can be structured to meet the objectives of the Judgment or whether another alternative is required.

DATED: April 15, 1997

Respectfully submitted,

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By: 

Dan G. McKinney
Attorneys for AG Pool of the
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1 STATE OF CALIFORNIA) CERTIFICATION OF SERVICE BY MAIL
2 COUNTY OF RIVERSIDE)
3

4 I am employed in the County of Riverside, State of
5 California. I am over the age of 18 and not a party to the
6 within action; my business address is 3880 Lemon Street, Fifth
7 Floor, Riverside, California.

8 On April 18, 1997, I served the foregoing document
9 described as AGRICULTURAL POOL COMMITTEE'S RESPONSE SUPPORTING
10 THE TENTATIVE RULING AND APPOINTMENT OF SPECIAL MASTER on
11 interested parties in this action by placing a true copy thereof
12 enclosed in a sealed envelope addressed as follows:

13 SEE ATTACHED SERVICE LIST

14 I am "readily familiar" with the firm's practice of collec-
15 tion and processing correspondence for mailing. Under that
16 practice it would be deposited with the U.S. postal service on
17 that same day with postage thereon fully prepaid at Riverside,
18 California, in the ordinary course of business. I am aware that
19 on motion of the party served, service is presumed invalid if
20 postage cancellation date or postage meter date is more than one
21 day after date of deposit for mailing in affidavit.

22 XXXX (STATE) I declare under penalty of perjury under the laws of
23 the State of California that the above is true and correct.

24 _____ (FEDERAL) I declare that I am employed in the office of a
25 member of the bar of this court at whose direction the
26 service was made.

27 Executed this 18 th day of April, 1997, at Riverside,
28 California.

29 Tamara M. Sosa
30 (type or print name)


(signature)

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