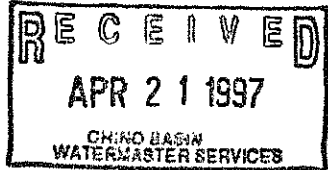


CHINO
4/29/97
REARST
TB



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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO, WEST JUDICIAL DISTRICT

11 CHINO BASIN MUNICIPAL WATER DISTRICT,	}	Case Number: RCV 51010
12 Plaintiffs,		CITY OF CHINO'S RESPONSE TO
13 vs.		JUDGE GUNN'S ORDER TO SHOW
14 CITY OF CHINO, et. al.,		CAUSE RE APPOINTMENT OF SPECIAL
15 Defendants.		REFEREE FROM OUTSIDE COUNTY
		AND ADOPTION BY COURT OF ITS
		TENTATIVE RULING
		Date: April 29, 1997
		Time: 1:30 p.m.
		Dept: H

18 NOW COMES THE CITY OF CHINO which hereby offers its Response to
19 JUDGE GUNN'S ORDER TO SHOW CAUSE as follows:

20 INTRODUCTION

21 The City of Chino supports and welcomes the Court's intended decision to appoint
22 Anne J. Schneider as special master despite the fact that she resides outside the County of
23 San Bernardino. However, the City of Chino suggests that the Court's order of appointment
24 specify those issues on which Ann Schneider should make recommendations to the Court.

25 Likewise, the City of Chino supports the Court's intended decision to allow the Chino
26 Basin Municipal Water District to remain as Watermaster on an interim basis.

27 However, the City of Chino believes that the Court will have made irreparable and
28 irrevocable mistakes affecting the future management of the Chino Groundwater Basin if it

1 allows its tentative decision to stand on its interpretation of the “discretionary powers” of the
2 Advisory Committee. The City of Chino invites the Court to reserve ruling on the meaning
3 of the “discretionary powers” of the Advisory Committee until it receives the report of the
4 special master and the input of the various parties.

5 I.

6 **THE CITY OF CHINO SUPPORTS THE COURT’S INTENDED DECISION**
7 **TO APPOINT ANNE J. SCHNEIDER AS SPECIAL MASTER**

8 The City of Chino supports and welcomes the Court’s intended decision to appoint
9 Anne J. Schneider as special master despite the fact that she resides outside the County of
10 San Bernardino. However, the City of Chino suggests that the Court’s order of appointment
11 specify those issues on which Ann Schneider should make recommendations to the Court.

12 In the opinion of the City of Chino, good cause exists to depart from the requirement
13 of Code of Civil Procedure Section 640 that a special master reside within the County. It is
14 clear that the major disputes between the parties to the judgment makes “impartiality” a
15 virtue. Furthermore, no one can dispute the expertise of Anne J. Schneider on water
16 issues; and that expertise will become crucial in responding to the Court’s charge to Anne J.
17 Schneider. Therefore, the combination of her expertise and impartiality should constitute
18 good cause to appoint Anne J. Schneider as special master.

19 Finally, the City of Chino requests the Court to include the following charges in the
20 order of appointment:

- 21 1. That each party be permitted to communicate its position and factual
22 information on the issues upon which the Special Master is charged;
- 23 2. That the practices and circumstances within watermaster staff relating to the
24 theft of funds be investigated so as to assure that such a loss does not occur;
- 25 3. That the Special Master report on the water quality of the Basin and the
26 existence and/or_adequacy of the water management plan to improve the
27 water quality in the basin including the method of financing the plan;
- 28 4. That the Special Master report on the structure of the powers of the

1 Watermaster and the parties under the judgment including the adequacy of
2 the checks and balances to assure the purpose of the judgment;

3 5. That the Special Master report on the advantages and disadvantages of a
4 public entity versus a private person or entity to serve as Watermaster.

5 II.

6 THE COURT SHOULD RESERVE ITS DETERMINATION ON THE MEANING OF THE
7 DISCRETIONARY POWERS OF THE ADVISORY COMMITTEE

8 At page 8, line 24 of its tentative ruling, the Court states:

9 "The Court intends to find that the commission of the special audit was a
10 discretionary act."

11 This intended decision is a MISTAKE!

12 The City of Chino does not object to the Court's intended decision that "the special
13 audit is not a Watermaster expense."

14 However, the City of Chino believes that the Court's intended finding that "the special
15 audit was a discretionary act" translates to the implication that any expenditure of funds by
16 the Watermaster is a discretionary act subject to the veto of the Advisory Committee.
17 Furthermore, such a finding is unnecessary to a determination that the special audit is not a
18 Watermaster expense, especially since the Court has observed that the special audit was
19 not in the "normal course of business."

20 Here is the dilemma for the Court in the future: Any Watermaster appointed by this
21 Court will not be able to implement the judgment if it cannot expend funds for that purpose,
22 because it must fear the "veto power" of the Advisory Committee under Paragraph 38(b) of
23 the judgment.

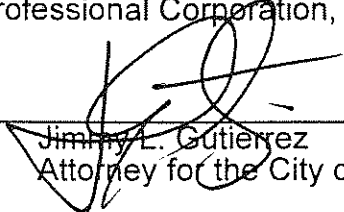
24 By determining that "the special audit was a discretionary act," the Court will create
25 an obstacle for itself and its Watermaster in future dealing with the parties to this judgment.
26 The big issues of water quality and water storage, yet to be determined, have enormous
27 financial consequences to the parties. As these issues are addressed, the Advisory
28 Committee may chose to oppose what is best for the management of the Chino Water

1 Basin as a whole, because their individual financial interests are affected. At that time, the
2 Court may hear that it is bound by this ruling. Furthermore, such a determination is not
3 necessary to hold that the special audit is not a Watermaster expense.

4 Respectfully submitted by:

5 Dated: April 18, 1997

Jimmy L. Gutierrez,
A Professional Corporation,

7 By: 
Jimmy L. Gutierrez
Attorney for the City of Chino

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO, WEST JUDICIAL DISTRICT**
10

11 **CHINO BASIN MUNICIPAL WATER**
DISTRICT,
12
13 **Plaintiff,**
14 **vs.**
15 **CITY OF CHINO,**
16 **Defendant.**
17

CASE NO. RCV 51010
PROOF OF SERVICE BY MAIL OF CITY
OF CHINO'S RESPONSE TO JUDGE
GUNN'S ORDER TO SHOW CAUSE RE
APPOINTMENT OF SPECIAL REFEREE
FROM OUTSIDE COUNTY AND
ADOPTION BY COURT OF ITS
TENATIVE RULING
Date: April 29, 1997
Time: 1:30 p.m.
Dept: H

18
19 I am employed in the County of San Bernardino, State of California and am over the age of
20 18. I am not a party to the action within. My business address is 12616 Central Avenue, Chino,
21 California, 91710.

22 On April 18, 1997, I served the foregoing document(s) described as **CITY OF**
23 **CHINO'S RESPONSE TO JUDGE GUNN'S ORDER TO SHOW CAUSE RE**
24 **APPOINTMENT OF SPECIAL REFEREE FROM OUTSIDE COUNTY AND ADOPTION**
25 **BY COURT OF ITS TENATIVE RULING**
26
27 on the interested parties in this action
28

1 [X] by placing the [] original and/or [X] a true copy thereof enclosed in a sealed
2 envelope(s), addressed as follows:

3 **SEE ATTACHED SERVICE LIST**

4 [X] [By regular mail]

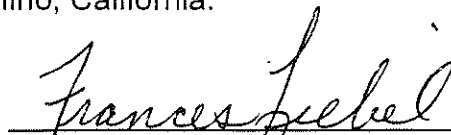
5 [X] I caused such envelope to be deposited in the mail at Chino, California. The
6 envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the
7 firm's practice of collection and processing correspondence for mailing. It is deposited
8 with the U.S. Postal Service on that same day in the ordinary course of business. I am
9 aware that on motion of the party served, service is presumed invalid if postal cancellation
10 date or postage meter date is more than one (1) day after deposit of mailing affidavit.
11

12 [] [By Personal Service] I personally handed the sealed enveloped addressed as
13 above to a representative of that party on _____, at Chino,
14 California.
15

16 [] [By Fax] I transmitted a true copy of said document by facsimile machine,
17 pursuant to Rule 2005. The facsimile machine I used complied with Rule 2003(3) and no
18 error was reported by the machine. Pursuant to Rule 2005(k), I caused the machine to
19 print a transmission record of the transmission, a copy of which is attached to this
20 declaration. Said fax transmission was completed on the above date.
21

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

24 Executed on April 18, 1997, at Chino, California.

25
26 
27 Frances Liebel
28 Frances Liebel

ATTACHMENT

CASE NAME : CHINO BASIN MUNICIPAL WATER DISTRICT v. CITY OF CHINO

CASE NUMBER0: RCV 51010

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