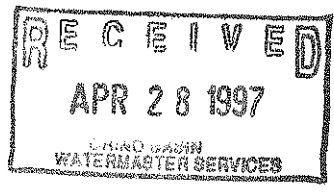


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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

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

CASE NO. RCV 51010

REPLY TO OPPOSITION TO MOTION
TO STRIKE A MOTION

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

SPECIALLY ASSIGNED TO THE
HONORABLE JUDGE J. MICHAEL
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I.

INTRODUCTION

In their opposition, the Advisory Committee and the City of Ontario have finally revealed the hidden agenda behind the appointment of Retired Judge Turner as interim Watermaster. That is, to create a new entity called Watermaster Services Staff to operate independently of the Watermaster. (Opposition, p.5, lines 16-20). This is an entity not identified by the Judgment, and never contemplated by any of the parties in the creation of the Judgment. To create such a new and independent entity would be to completely modify the Judgment. Absent proper notice and proper review by the court, such a request is completely improper.

Contrary to their protests and histrionics, the Advisory Committee and the City of Ontario are using both the Motion to Appoint a Nine Member Board as Watermaster and the Motion to Appoint Retired Judge Turner as Interim Watermaster as a mechanism for the usurpation of power from the Watermaster. They contemplate nothing less than a complete rewriting of the Judgment.

Monte Vista Water District is extremely appreciative of Judge Turner's willingness to serve as interim Watermaster. Monte Vista Water District, however, suspects that Judge Turner has bought the proverbial "pig in a poke." That is, he has no idea as to what is in store for him from these parties. He likely does not understand that he will now serve as an employer and bear all liability of an employer. He likely does not understand that he will be considered a fiduciary of all producers in the Basin and will also bear all liability in that respect.

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II.

THE MOTION TO APPOINT RETIRED JUDGE TURNER AS
INTERIM WATERMASTER IS IMPROPER

It is uncontroverted that:

1. That the court's order of March 19, 1997, limited the issues to be considered by the court at this time to the appointment of Ann Schneider as Referee;
2. That the City of Ontario and the Department of Corrections at the hearing on March 11, 1997, requested that the court appoint Retired Judge Turner as interim Watermaster;
3. That the court allowed those parties to argue in favor of the appointment of Retired Judge Turner for over twenty minutes;
4. That during those arguments, issues concerning PERS, tension between Watermaster service's staff and the Watermaster, fears by the Watermaster services staff of retaliation by the current Watermaster, and personnel actions to be taken regarding Watermaster services staff were all discussed;
5. That the court denied the request to appoint Retired Judge Turner as interim Watermaster

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and included in its order of March 19, 1997, a directive that Chino Basin Municipal Water District (CBMWD) will serve as interim Watermaster; and

6. Neither the Advisory Committee nor the City of Ontario have raised any new or different facts, circumstances or law than that raised at the March 11, 1997, hearing.

There is no question that the current motion by the Advisory Committee and the City of Ontario is a renewed request for the appointment of Retired Judge Turner as interim Watermaster. As such, it can be considered as nothing other than a motion for reconsideration. (see Gilbert v. AC Transit (1995) 32 Cal.App.4th 149, 1499.) Absent new or different facts, circumstances or law than that which existed on March 11, 1997, the court has no alternative but to strike and/or deny their motion. (Code of Civ.Proc. §1008.)

III.

THE COURT HAS THE INHERENT AUTHORITY TO STRIKE ANY DOCUMENT, TESTIMONY OR EVIDENCE THAT IS IMPROPER

The Advisory Committee and the City of Ontario apparently believe that the court only has authority to strike a motion pursuant to Code of Civil Procedure Sections 435 and 436. While Monte Vista Water District disagrees with their assertion that these sections only apply to complaints, answers and cross-complaints, there are numerous other authorities upon which the court can grant Monte Vista Water District's Motion to Strike.

Every court in the State of California has the inherent power to strike matters which are improperly brought before it. (See Witkin, California Procedure (4th ed.1997) Courts

1 §§177-179, p.235-240.) Furthermore, most statutes allowing the court to sanction a party
2 for improperly bringing a matter before it include as a sanction the striking of the subject
3 document. (See Code Civ.Proc. §§128.5, 128.7, 177.5, 575.2 and Cal.Rules of Court, Rules
4 227 and 526.)
5

6 Monte Vista Water District brought its motion to strike the motion brought by the
7 Advisory Committee and the City of Ontario because it was procedurally improper. It
8 violated the court's order to show cause issued on March 19, 1997, and it is an improper
9 motion for reconsideration, as it fails to state new facts or circumstances than existed the
10 last time these parties requested the appointment of Retired Judge Turner as interim
11 Watermaster. There is no question that the court has the authority to strike such an
12 improper motion.
13

14 **IV.**

15 **THE ADVISORY COMMITTEE VIOLATED THE JUDGMENT AND ITS OWN**
16 **RULES IN BRINGING THIS MOTION**

17 The Advisory Committee and the City of Ontario argue that the court must grant
18 their motion for the appointment of Retired Judge Turner as interim Watermaster, as the
19 Judgment requires the granting of such a motion when it is supported by a majority of the
20 "voting power of the Advisory Committee." They, however, neglect to advise the court that
21 they fail to give notice of the meeting to approve the motion to those Advisory Committee
22 members who would oppose their motion. (See Joinder by Agricultural Pool). It is,
23 therefore, not surprising that a majority of the producers who were given notice of the
24 meeting would support this motion.
25
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1 The simple fact is that the Advisory Committee failed to follow its own rules and the
2 Judgment in taking a vote with regard to bringing this motion. Therefore, pursuant to the
3 Judgment, the Advisory Committee does not have standing to bring this motion.

4
5 v.

6 **COMPELLING REASONS EXIST TO DENY THE MOTION TO APPOINT**
7 **JUDGE TURNER AS INTERIM WATERMASTER**

8 The Advisory Committee and the City of Ontario concede that even with a majority
9 of the Advisory Committee voting in favor of a motion to change Watermaster, the court
10 can deny that motion if compelling reasons exist. (Judgment, ¶16). There is no question
11 that such reasons exist.
12

13 As noted in the introduction to this Reply, the motion to appoint Retired Judge
14 Turner as Interim Watermaster is a thinly veiled attempt by the Advisory Committee to
15 completely rewrite the Judgment. Upon the appointment of Retired Judge Turner as
16 interim Watermaster, the newly created watermaster services staff expect to become
17 independent from CBMWD, despite the fact that those individuals are employees of
18 CBMWD, and are performing their current functions as employees of CBMWD. The
19 Judgment does not describe nor contemplate the creation of an independent watermaster
20 services staff. The creation of such an independent entity would be a modification of the
21 judgment, and impermissible under these circumstances. (Witkin, California Procedure (4th
22 ed 1997) Judgment, §§81-82, pp.610-612, citing Orban Lumber Co. v. Fear (1966) 240
23 Cal.App. 2d 853,856.).
24
25

26 The court is about to appoint a referee to investigate the respective roles of the
27 Watermaster and the Advisory Committee, and to investigate the current management of
28 the Chino Basin. As previously described, given Retired Judge Turner's previous

1 involvement in this matter, his appointment as interim Watermaster will only serve to
2 intimidate any referee and will confuse the issues currently before the court.

3 Furthermore, it is imperative that the court maintain the status quo until an
4 investigation by the referee is completed and a report is provided by the court.

5
6 Otherwise, the objectivity of the referee may be undermined. The appointment of a new
7 interim Watermaster will clearly disrupt the status quo.

8 Finally, the greatest protection of every party involved in this matter, including
9 watermaster services staff, is the court's order holding in abeyance personal decisions
10 concerning watermaster services staff by both CBMWD and the Advisory Committee.
11 Apparently, the Advisory Committee is unwilling to live with this provision.

12 VI.

13 CONCLUSION

14
15 There is no question that the motion by the Advisory Committee and the City of
16 Ontario is improper at this time. The court has the authority to grant a motion to strike
17 the improperly brought motion.

18 To grant this motion at this time would be a disaster for all who depend upon the
19 Chino Basin. It will undermine any independent and neutral analysis of the respective roles
20 of the Watermaster and the Advisory Committee and regarding the management of the
21 Chino Basin. It will also likely confuse the issues before the court.

22
23 While all parties in this matter are appreciative of Retired Judge Turner's willingness
24 to serve as interim Watermaster, Monte Vista Water District bears that no one has
25 explained to him the potential liability to which he will be exposed should he be appointed
26 to this position. On the other hand, if someone has explained to Retired Judge Turner in
27 detail his duties and responsibilities as interim Watermaster, then the statements by the
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Advisory Committee and the City of Ontario in their Opposition regarding the amount of ex parte communications in which they have engaged with Retired Judge Turner are false.

DATE: April 25, 1997

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is: 695 Town Center Drive, Suite 1400, Costa Mesa, California 92626-1924.

On April 25, 1997, I served the foregoing document described as MONTE VISTA WATER DISTRICT'S REPLY TO OPPOSITION TO MOTION TO STRIKE A MOTION on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

BY MAIL:

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

Executed on April 25, 1997, at Costa Mesa, California.

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


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