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FILED - West District
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APR 29 1997

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19 FOR THE COUNTY OF SAN BERNARDINO

20 CHINO BASIN MUNICIPAL WATER
21 DISTRICT,

22 Plaintiff,

23 vs.

24 CITY OF CHINO,

25 Defendant.

)
) Case No. RCV 51010
) Specially Assigned to the
) Honorable Judge J.
) Michael Gunn
)
) OPPOSITION OF CHINO BASIN
) ADVISORY COMMITTEE AND THE
) CITY OF ONTARIO TO MOTION OF
) CHINO BASIN MUNICIPAL WATER
) DISTRICT FOR REVIEW OF
) ADVISORY COMMITTEE MANDATED
) ACTION
)
) Date: May 5, 1997
) Time: 8:30 a.m.
) Dept: H

26 I. INTRODUCTION.

27 This motion by the Interim Watermaster, Chino Basin
28 Municipal Water District ("CBMWD") asks the Court to micro-manage
the affairs of the Watermaster because CBMWD continues to resist

1 segregation of Watermaster staff from the CBMWD in the hopes of
2 indefinitely continuing its renegade rule contrary to Advisory
3 Committee mandates. Despite all of the CBMWD rhetoric about
4 Advisory Committee "usurpation" of power, the subject motion
5 inherently recognizes the policy-making discretion afforded to the
6 Advisory Committee in the Judgment. Simply stated, the Advisory
7 Committee mandates discretionary actions, subject only to Court
8 review. The pending motion asks the Court to ignore simple
9 Advisory Committee operational mandates and to step in and in
10 effect micro-manage the case in a way which causes CBMWD to remain
11 indefinitely as Watermaster rather than affording the Court the
12 flexibility to smoothly transition to a new Court appointed
13 Watermaster should the Court choose to do so.

14 **II. THE ADVISORY COMMITTEE HAS POWER TO MANDATE THE**
15 **WATERMASTER TO EXERCISE ITS DISCRETION IN A PARTICULAR MANNER.**

16 The Advisory Committee is empowered to control
17 Watermaster discretion in all respects under the Judgment in this
18 case. Paragraph 38(b) of the Judgment provides:

19 "The Advisory Committee shall have the duty to study,
20 and the power to recommend, review and act upon all
21 determinations made or to be made hereunder by Watermaster."
22 [Emphasis added.] Paragraph 38(b)(1) mandates the Watermaster to
23 implement any such recommendation approved by an 80% or greater
24 vote of the Advisory Committee.

25 The Judgment does not limit the type or number of the
26 mandatory recommendations which the Advisory Committee may make.
27 Therefore, claims in the moving papers that the challenged
28 mandates "did not come within the purview of Advisory Committee

1 review and action" are baseless. [See CBMWD Points and
2 Authorities 2:35, 3:16-17, 5:1-3, 5:20-23, 6:10-11, 7:25-28.] No
3 discretionary power of the Watermaster is exempt from the
4 paragraph 38(b) mandate power of the Advisory Committee, not even
5 administrative decisions.

6 Further, the Amended Services and Facilities Contract,
7 paragraph six, states:

8 "Any district staff working on or providing assistance
9 to the Watermaster program shall receive their direction from
10 and report to the Advisory Committee."

11 Clearly, the CBMWD employees working under contract as Watermaster
12 staff have always been governed at an administrative and policy
13 making level by the Advisory Committee as specified in the
14 Judgment and Facilities Contract.

15 **III. THIS COURT SHOULD SUSTAIN THE ADVISORY COMMITTEE**
16 **MANDATES.**

17 Paragraph 31(d) of the Judgment provides that in the
18 event of a motion seeking review of an Advisory Committee mandate,
19 the Court shall review *de novo* such recommendation. By analogy to
20 *de novo* review of administrative agency discretionary
21 determination, courts only overturn such determinations where the
22 agency has abused its discretion. See *Steele v. Los Angeles*
23 *County Civil Serv. Comm'n* (1958) 166 Cal. App. 2d 129, 137, 333
24 P.2d 171, 175. Obviously, there was no abuse of discretion by the
25 Advisory Committee with respect to its challenged mandates.
26 CBMWD's challenges simply seek to freeze in place its purported
27 control over Watermaster staff.

28 / / / /

1 Specifically, CBMWD claims that resolution 97-5
2 declaring Watermaster's intent to enter into a contract with
3 CalPers is an "interference" with the contractual relationship
4 with the District and its employees. Of course, pursuant to prior
5 Court order, the notion of Watermaster staff receiving PERS
6 benefits independent of CBMWD has been in process for months.
7 Resolution 97-5 would complete the process. CBMWD simply wishes
8 to forever delay that completion so that it may maintain its grip
9 on the Watermaster staff and make it more difficult for the Court
10 to replace CBMWD.

11 Pursuant to paragraph 30 of the Judgment, the Advisory
12 Committee has oversight over the Watermaster annual administrative
13 budget process. Rather than purchase a vehicle, the Advisory
14 Committee acted in a cost efficient manner to provide a car
15 allowance to the Director of Watermaster Services to reimburse her
16 for services provided to the Watermaster. The car allowance is
17 reimbursed by Watermaster funds pursuant to the Judgment. No
18 abuse of discretion is manifest as to CBMWD. Again, CBMWD seems
19 to want to show the water producers "who is boss" on a mundane
20 issue which never should be presented to the Court for resolution.

21 CBMWD's arguments that the Advisory Committee has no
22 discretion over the annual report audit are similarly
23 contraindicated by paragraph 30 of the Judgment. That paragraph
24 provides that the Advisory Committee has budget oversight,
25 including the authority to require any "comparative information or
26 explanation" as recommended by the Advisory Committee. Implicit
27 in the Advisory Committee authority over parameters of the budget
28 audit is the Advisory Committee's principal responsibility to

1 oversee Watermaster accountability under the budget. The audit is
2 for the principal benefit of the Advisory Committee; therefore,
3 any Advisory Committee mandated action as to the selection of the
4 auditor and its parameters is well within Advisory Committee
5 discretion. The Advisory Committee's oversight over the budget
6 applies with equal force to the investment strategies of
7 Watermaster.

8 Finally, CBMWD also wishes to prevent Watermaster staff
9 from subscribing to a deferred compensation plan other than that
10 provided by CBMWD. This simply is another attempt to render
11 Watermaster staff dependent on CBMWD so that it is more difficult
12 for the Court to make a change.

13 **IV. CONCLUSION.**

14 This Court should not spend its time and resources
15 micro-managing the Watermaster administrative functions. The
16 Advisory Committee mandates should not be disturbed unless they
17 constitute a clear abuse of discretion. CBMWD has no right
18 afforded in the Judgment to perpetuate its "control" over
19 Watermaster staff. The actions of the Advisory Committee
20 segregating Watermaster staff benefits and accounting from those
21 of CBMWD are proper, are pursuant to prior Court order, are meant
22 to protect Watermaster staff and will enable the Court to protect

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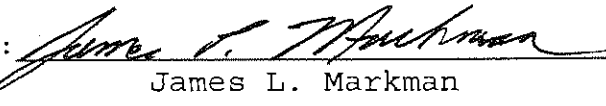
1 employees and transition the position of Watermaster to an
2 unbiased body, person or entity.

3 Dated: April 29, 1997

Respectfully submitted,

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10 FOR THE COUNTY OF SAN BERNARDINO - WEST DISTRICT

12 CHINO BASIN MUNICIPAL WATER DISTRICT,)
13 Plaintiff,)
14 v.)
15 CITY OF CHINO,)
16 Defendant.)

Case No. RCV 51010

PROOF OF SERVICE OF

OPPOSITION OF CHINO BASIN ADVISORY
COMMITTEE AND THE CITY OF ONTARIO TO
MOTION OF CHINO BASIN MUNICIPAL WATER
DISTRICT FOR REVIEW OF ADVISORY COMMITTEE
MANDATED ACTION

Hearing:

DATE: May 5, 1997

TIME: 8:30 a.m.

DEPT: H

Specially assigned to the Honorable
Judge J. Michael Gunn

1 I, Mary L. Staula, declare:

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

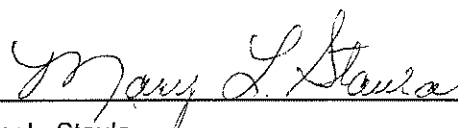
4 2. On today's date, I served the documents identified below by placing a true and correct copy of
5 same in sealed envelopes address to each of addresses listed on the attached mailing list "A".

6 OPPOSITION OF CHINO BASIN ADVISORY COMMITTEE AND THE CITY OF ONTARIO TO
7 MOTION OF CHINO BASIN MUNICIPAL WATER DISTRICT FOR REVIEW OF ADVISORY
8 COMMITTEE MANDATED ACTION.

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

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

16
17 Executed on April 29, 1997, at Rancho Cucamonga, California.

18
19
20 
21 _____
Mary L. Staula

AAAAA AAAAA
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UPDATED 4/28/97

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