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DWR  
RE APPT

FEE EXEMPT

COURT DOC.

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TO MARKMAN  
6/18/97

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FILED - West District  
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JUN 17 1997

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

14		)	
15	CHINO BASIN MUNICIPAL WATER	)	Case No. RCV 51010
16	DISTRICT,	)	[Specially Assigned to the
17	Plaintiff,	)	Honorable J. Michael Gunn]
18	vs.	)	REPORT TO THE COURT ON THE
19	CITY OF CHINO,	)	PROCESS OF CONTRACTING FOR
20	Defendant.	)	THE SERVICES OF THE
21		)	CALIFORNIA DEPARTMENT OF
22		)	WATER RESOURCES AS INTERIM
23		)	WATERMASTER

22 On page 9 of its initial Ruling and Order of Special  
23 Reference dated April 29, 1997, the Court stated as follows:

24 "...The Court hereby appoints the California Department  
25 of Water Resources as Interim Watermaster subject to the  
26 Department's acceptance and agreement on mutual acceptable  
27 terms. The Advisory Committee and Chino Basin Municipal  
28

1 Water District are directed to jointly negotiate terms and  
2 conditions and present them to the Court for approval no  
3 later than June 18, 1997...."

4 The purpose of this document is to report to the Court  
5 that the Advisory Committee and Chino Basin Municipal Water  
6 District, through legal counsel, have contacted the California  
7 Department of Water Resources ("DWR" hereinafter) and are in the  
8 process of attempting to present to the Court the terms and  
9 conditions pursuant to which DWR will accept the Court's  
10 appointment as Interim Watermaster. The specific process  
11 completed to date is described in the following declaration of  
12 James L. Markman and the memorandum attached hereto marked Exhibit  
13 "1".

14 As indicated in the following declaration and exhibit,  
15 it is clear that the Advisory Committee and Chino Basin Municipal  
16 Water District will not be able to present to the Court a contract  
17 with DWR or any other expression of the terms and conditions of  
18 DWR's appointment on or before June 18, 1997. However, it is

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1 anticipated that such a contract will be available for  
2 presentation to the Court before the end of July, 1997.

3 Dated: June 13, 1997

Respectfully Submitted

4 Markman, Arczynski, Hanson,  
5 Curley & Slough  
6 Attorneys for Chino Basin  
Watermaster Advisory Committee

7 Cihigoyenette, Grossman & Clouse  
8 Attorneys for Chino Basin  
9 Municipal Water District

10  
11 BY: James L. Markman  
12 James L. Markman

DECLARATION OF JAMES L. MARKMAN

James L. Markman states and declares as follows:

I am an attorney duly licensed to practice law in all of the Courts of the State of California and am Special Counsel to the Chino Basin Watermaster Advisory Committee in regard to all matters concerning the person or entity who acts as Watermaster pursuant to the judgment entered in the above-entitled case. In that capacity, and in accordance with the Court's Ruling and Order of Special Reference dated April 29, 1997, I have been acting in conjunction with Mr. Jean Cihigoyenette, attorney for Chino Basin Municipal Water District in discussing and negotiating with representatives of the California Department of Water Resources ("DWR" hereinafter) in regard to the proposed appointment of DWR's Interim Watermaster for Chino Basin. The efforts made by the undersigned and Mr. Cihigoyenette have included a number of discussions by telephone with representatives of DWR and a meeting which occurred in the offices of DWR in Sacramento on May 29, 1997. That meeting was attended by Mr. Chuck White, Southern District Director for DWR and DWR's attorneys, including Mr. Dave Anderson, Mr. Steve Cohen, Mr. John Kramer, Mr. Jim O'Brien and Mr. David Sandino. During the meeting, it became apparent that DWR was potentially willing to perform the role as Interim Watermaster, that the parties preferred that the present Watermaster Services Staff would remain functioning in their present capacities, that the Watermaster Services Staff would report to DWR acting as Watermaster with respect to lines of authority, and that DWR was aware of its responsibilities under the Chino Basin judgment to review substantive decisions of the

1 Chino Basin Watermaster Advisory Committee and take such decisions  
2 to the Court in the event that DWR disagreed with those decisions.  
3 Attached to this declaration and marked Exhibit "1" is a  
4 memorandum prepared by the undersigned and delivered to the  
5 members of the Chino Basin Advisory Committee and DWR reflecting  
6 the substance of the Sacramento meeting at which DWR's appointment  
7 as Interim Watermaster was discussed. The attached memorandum  
8 accurately reflects the substance of the discussions in  
9 Sacramento.

10           Subsequent to the Sacramento meeting reflected in  
11 Exhibit "1", Mr. Chuck White of DWR has had a number of meetings  
12 with the Watermaster Services staff in order to familiarize  
13 himself with the Watermaster's staff functions. In addition, Mr.  
14 White has attended meetings of the Advisory Committee.

15           On June 12, 1997, I received a telephone call from Mr.  
16 David Sandino, attorney for DWR. Mr. Sandino stated to me that  
17 DWR was in the process of formulating a memorandum of principles  
18 by which DWR would serve as Interim Watermaster pursuant to the  
19 Court's appointment. He indicated to me that that memorandum  
20 would be completed and would be circulated at the end of the week  
21 commencing June 15, 1997. He indicated that issues still being  
22 discussed internally at DWR related to the prospective appointment  
23 included the status of the Watermaster Services staff personnel  
24 (e.g., state employees or contract employees) and fiscal  
25 management issues. Mr. Sandino stated to me that he remained  
26 optimistic that a contract would be worked out and that DWR would  
27 accept the Court's appointment. Mr. Sandino also stated that,  
28 assuming the memorandum circulated could be agreed to in principle

1 by representatives of DWR, the Advisory Committee and Chino Basin  
2 Municipal Water District, a contract could then be generated for  
3 review within two to three weeks. Accordingly, I have concluded  
4 that a contract may be prepared and presented to the Advisory  
5 Committee and Chino Basin Municipal Water District for approval  
6 sometime prior to the end of July, 1997 at which point it could  
7 then be delivered to the Court for the Court's review and  
8 approval.

9 I declare under penalty of perjury under the laws of the  
10 State of California that the foregoing is true and correct and  
11 that this declaration was executed on June 13,  
12 1997, at Brea, California.

13  
14 By: James L. Markman  
15 James L. Markman  
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## MEMORANDUM

To: Chino Basin Advisory Committee

From: James L. Markman, Special Counsel *JLM*

Date: May 29, 1997

Re: Progress on utilization of the State of California Department  
of Water Resources as Interim Watermaster

Yesterday, May 28, 1997, a meeting was conducted on the above-referenced subject in Sacramento. The meeting was attended by James L. Markman, Special Counsel for the Advisory Committee, Jean Cihigoyenette, Counsel for Chino Basin Municipal Water District, Chuck White, Southern District Director for DWR and several attorneys for DWR including Dave Anderson, Steve Cohen, John Kramer, Jim O'Brien, and David Sandino. Of course, the subject matter of the meeting was the proposal from Judge Gunn that DWR serve as Interim Watermaster. As you will recall, the court's order instructed representatives of the Advisory Committee and Chino Basin Municipal Water District to negotiate a contract with DWR to perform that role. The contract is due back to the Court in mid-June.

It is my feeling that the meeting was very productive and following are some of the points discussed and the results of that discussion.

1. DWR apparently is willing to perform the role as Interim Watermaster. This is not a final decision, but the DWR representatives were extremely encouraging in that regard.

2. Present Watermaster staff would remain performing staff functions in present capacities. In other words, all the parties at the meeting agreed that the idea was not to sweep out the staff and have DWR completely perform all Watermaster staff functions on an interim basis. The problem discussed in this regard was the status of the staff during the interim period. Three options were discussed without reaching a conclusion as to any option. Those options were the staff becoming temporary state employees, the staff remaining Chino Basin employees under contract with the State and the staff simply become contract employees with the State without retaining any affiliation with Chino Basin Municipal Water District. The last option seemed to be the one preferred by the parties although this is not final by any means.

3. The line of authority involving the Watermaster services staff and DWR acting as Watermaster was discussed. It is clear that DWR would take its responsibilities as Watermaster quite seriously and would expect to supervise and have the Watermaster services staff answer to the DWR representative who is acting as Watermaster. In other words, because in all likelihood the relationship between Chino Basin Municipal Water District and Watermaster Services staff will be finally severed, no facilities and services agreement would remain in effect. In short, DWR expects to act as Watermaster with the Watermaster staff reporting to it rather than having the Watermaster staff directed by and reporting to the Advisory Committee.

4. DWR was made aware of the fact that the Watermaster has a role to play under the structure of the judgment in reviewing substantive decisions which are made by the Advisory Committee. The Watermaster's obligation to review and perhaps file a motion with the Court contesting any Advisory Committee decision was made clear and is understood by DWR. However, it also was clear that DWR does not look forward to involving itself in major substantive decisions as to which it would find itself butting heads with the Advisory Committee and in essence taking the place of Chino Basin Municipal Water District in an ongoing court battle with the Advisory Committee. It was felt that it would be wise to limit substantive decisions regarding operation of the Basin during the interim period while DWR acts as Interim Watermaster. For example, ultimate decisions on storage rights or loss of storage rights in any other substantive adjustments to the present operations should probably be put off during the "cooling off" period. This seems particularly appropriate since the parties' energies will be devoted to the Ann Schneider process in determining the issue of the permanent Watermaster.

5. There was discussion as to who would be the Watermaster attorney while DWR serves as Watermaster. DWR proposed a Deputy Attorney General who services DWR be the Watermaster attorney even though there could be a perceived conflict since the Attorney General's Office represents the Department of Fish and Game.



Memorandum to: Chino Basin Advisory Committee  
May 29, 1997  
Page Three

I personally see no problem with another Deputy Attorney General representing another department in the matter. There probably will be language in the Watermaster contract by which the parties to the contract waive any such conflict.

6. Issues were discussed as to who should be the party contracting with DWR to perform interim Watermaster services. It is my view that at least theoretically the contract should be the Superior Court of San Bernardino County since the Watermaster is essentially an agent of the Court. However, DWR indicated that it might be wise to have the Advisory Committee and Chino Basin Municipal Water District "sign-off" on the interim Watermaster contract and I agree. Accordingly, at this time, it appears that there will be a contract for Watermaster services with DWR, the Advisory Committee and Chino Basin Municipal Water District as contracting parties. It was also proposed that the Court approve the contract so that any entity which could claim to be a proper contracting party would concur with the provisions of the contract.

7. The next step in the process will be for DWR to have internal discussions on several of the issues discussed in this memorandum. DWR will prepare the first draft of the agreement, assuming that there is not some blockade to completing the process.

Please note that there were no discussions of what DWR would demand as payment. This is due to the fact that the discussions had first to define the function of DWR's employees acting as Watermaster in connection with the Watermaster services staff staying in place. Accordingly, at present, we do not know how many DWR personnel will be involved or the amount of time to be dedicated. These are the matters they will discuss internally in preparing a draft.

8. In reference to the date the Court set for returning a contract, it appears there may not be enough time to do so. Accordingly, Jean Cihigoyenette and I agreed that we would file a joint status report with the Court as soon as it appears certain that there will be no contract to present to the Court for its approval in mid-June. That report would simply update the Court on the progress being made and, hopefully, would satisfy the direction of the Court. Obviously, a Court order with a date which depends upon a third party willing to agree to a contract is not the type of order as to which a strict timeline should be enforced.

I look forward to discussing this memorandum and the above-referenced meeting in the Advisory Committee meeting this date.

JLM:ljl  
L:\ALPHA\CHINOBSN\MCOMITTE

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FILED - West District  
San Bernardino County Clerk

JUN 17 1997  
Wanda DeVinney

Attorneys for Chino Basin Watermaster Advisory Committee

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO  
WEST DISTRICT

7 CHINO BASIN MUNICIPAL WATER  
8 DISTRICT

) Case No. RCV 51010

9 Plaintiff,

) PROOF OF SERVICE OF

10 v.

) REPORT TO THE COURT ON THE

) PROCESS OF CONTRACTING FOR

11 CITY OF CHINO et al.,

) THE SERVICES OF THE CALIFORNIA

) DEPARTMENT OF WATER RESOURCES

) AS INTERIM WATERMASTER

12 Defendants.

)

)

) Hearing:

) DATE:

) TIME:

) DEPT.: H

)

) Specially assigned to the Honorable

) Judge J. Michael Gunn

18  
19 I, Mary L. Staula, declare:

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

22 2. On today's date, I served the documents identified below by placing a true and correct  
23 copy of same in sealed envelopes addressed to each of the addresses listed on the attached mailing  
24 List "A".

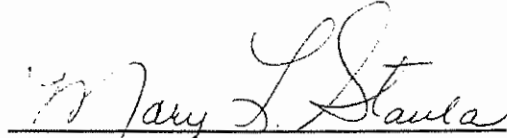
- 25 • Report to the Court on the Process of Contracting for the Services of the California  
26 Department of Water Resources as Interim Watermaster.

27 ///

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

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

8  
9 Executed on June 17, 1997, at Rancho Cucamonga, California.  
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14 Mary L. Staula  
15 Mary L. Staula  
16 Chino Basin Watermaster  
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RWQCB - SANTA ANA REGION  
3737 MAIN ST STE 500  
RIVERSIDE CA 92501-3339

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MONTGOMERY WATSON  
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PASADENA CA 91109-7009

ARNOLD RODRIGUEZ  
SANTA ANA RIVER WATER CO  
10530 54TH ST  
MIRA LOMA CA 91752-2331

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CHINO CA 91708-0667

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IRVINE CA 92619-7057

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RUTAN & TUCKER  
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COSTA MESA CA 92626

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SAN GABRIEL VALLEY WATER CO  
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EL MONTE CA 91734

PATRICK SAMPSON  
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NICHOLS STEAD BOILEAU & KOSTOFF  
223 WEST FOOTHILL BLVD #200  
CLAREMONT CA 91711-2708

BILL STAFFORD  
MARYGOLD MUTUAL WATER CO  
9715 ALDER ST  
BLOOMINGTON CA 92316-1637

DAVID STARNES  
MOBILE COMMUNITY MGMT CO  
1801 E EDINGER AVE STE 230  
SANTA ANA CA 92705

MIKE STENBERG  
PRAXAIR  
5735 AIRPORT DR  
ONTARIO CA 91761

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DIVISION OF WATER RIGHTS  
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SACRAMENTO CA 95809-2000

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BEST BEST & KRIEGER LLP  
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MIRA LOMA CA 91752-1126

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10841 PARAMOUNT BLVD  
DOWNEY CA 90241

WYATT TROXEL  
CHINO BASIN MWD/CBWM  
5791 JADEITE AVE  
ALTA LOMA CA 91737-2264

ARLAN VAN LEEUWEN  
FAIRVIEW FARMS  
6829 PINE AVE  
CHINO CA 91709

GEOFFREY VANDEN HUEVEL  
CHINO BASIN WATER CONS DIST  
4619 EUCALYPTUS AVENUE  
CHINO CA 91710-9215

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