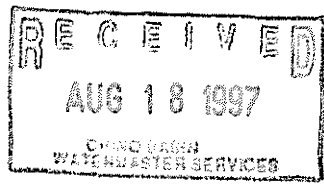


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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER )  
DISTRICT, ) Case No. 164327  
 )  
Plaintiff, ) [BEFORE COURT APPOINTED  
 ) REFEREE ANNE J. SCHNEIDER]  
 )  
vs. ) POINTS AND AUTHORITIES OF  
 ) CHINO BASIN WATERMASTER  
CITY OF CHINO, et al., ) ADVISORY COMMITTEE IN SUPPORT  
 ) OF MOTION TO APPOINT A NINE-  
Defendant. ) MEMBER WATERMASTER BOARD AND  
 ) AN ORDER THAT AN AUDIT  
 ) COMMISSIONED BY CHINO BASIN  
 ) MUNICIPAL WATER DISTRICT IS  
 ) NOT A WATERMASTER EXPENSE  
 )  
 ) Date: October 21, 1997  
 ) Time: 10:00 a.m.

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I. INTRODUCTION.

The Chino Basin Watermaster is an appointed agent of the Court exercising the express enumerated powers and duties contained in the Judgment or otherwise ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction (Judgment, paragraph 17). The Court originally appointed Chino Basin Municipal Water District as the Watermaster for a five year

1 term (Judgment, paragraph 16). The Court may order successive  
2 five year terms for that Watermaster or may appoint a successor  
3 Watermaster (Judgment, paragraph 16).

4 The Judgment mandates the Court to act in conformance  
5 with a motion by any party (or, by implication, by the Advisory  
6 Committee which represents the wishes of numerous parties) to  
7 replace the Watermaster if that motion is supported by a majority  
8 of the voting power of the Advisory Committee. The Court only may  
9 deviate from that mandate if there are presented to the Court  
10 "compelling reasons to the contrary." (Judgment, paragraph 16.)

11 There is currently pending before the Court a motion by  
12 the Advisory Committee, representing a significant majority of its  
13 voting power and, therefore, numerous parties, to replace the  
14 existing Watermaster with a nine-member board. In its quest to  
15 define the phrase "compelling reasons to the contrary", the Court  
16 has directed its Referee to consider checks and balances contained  
17 in the Judgment and to consider the effect of the phrase  
18 "discretionary determinations" contained in subparagraph 38(b) in  
19 conjunction with the pending motion.

20 These points and authorities respond to the questions  
21 posed by the Referee in the Referee's July 18, 1997 letter within  
22 the context of the motions pending before the Court.

23 **II. "COMPELLING REASONS" AS UTILIZED IN THE JUDGMENT SHOULD**  
24 **BE CONSIDERED TO BE REASONS WHICH FORCE OR COMPEL THE COURT TO**  
25 **DISAGREE WITH THE ADVISORY COMMITTEE'S CHOICE OF WATERMASTER.**

26 The Advisory Committee submits that the Court should be  
27 guided by the rules of interpretation of judgments in construing  
28 the meaning of the phrase "compelling reasons." The same rules of

1 interpretation apply in ascertaining the meaning of a judgment as  
2 in ascertaining the meaning of any other writing. *Strohm v.*  
3 *Strohm* (1960) 182 Cal. App. 2d 53, 63. However, in interpreting  
4 the Judgment, the understanding/intent of the Court entering the  
5 Judgment, and not that of the parties, is the determinative  
6 factor. See *Russell v. Superior Court* (1967) 252 Cal. App. 2d 1,  
7 8.

8           The language of the Judgment, if clear and explicit, is  
9 to govern its interpretation. See *Civil Code* Section 1638. The  
10 words "compelling reasons" are to be understood in their ordinary  
11 and popular sense, rather than according to their strict legal  
12 meaning; unless used by the parties in a technical sense or unless  
13 a special meaning is given to them by usage. See *Civil Code*  
14 Section 1644; *County of Orange v. Santa Margarita Water District*  
15 (1996) 44 Cal. App. 4th 189, 192.

16           Taking into account the above-referenced rules and the  
17 absence of legal authority defining a "compelling reasons" test,  
18 the Court's inquiry in interpreting "compelling reasons" must be  
19 to determine its common meaning. The common dictionary definition  
20 of "compelling" is "forceful". Merriam Webster, Webster's Third  
21 New International Dictionary, 1986, Third Ed. The word "forceful"  
22 suggests a significant or very strong reason. It is thus clear  
23 that the Court intended that reasons over and above the simple  
24 weight of logic and equity must exist for the Court to deny the  
25 pending motion. Reasons which essentially "force" or "compel" the  
26 Court to deny the motion must be found to support such a denial.

27 / / / /  
28 / / / /

1           III. THE STRUCTURE OF THE JUDGMENT CONSTITUTES A COMPELLING  
2 REASON TO HAVE A WATERMASTER SEPARATE FROM THE ADVISORY COMMITTEE  
3 ALTHOUGH MERGING THE TWO FUNCTIONS BY AMENDING THE JUDGMENT WOULD  
4 GENERATE EQUITY.

5           Due to the structure now contained in the Judgment,  
6 which includes a policy making Advisory Committee some of whose  
7 actions are reviewable by the Watermaster before a Court  
8 determination is required, the functions of the two cannot be  
9 merged unless the Judgment itself is amended. Accordingly, the  
10 parties and the Court are "forced" or "compelled" to adhere to  
11 that existing structure in considering the instant motion.

12           Paragraph 38(b) of the Judgment sets forth the method by  
13 which the Watermaster, in dealing with a discretionary  
14 determination, may contest an Advisory Committee recommendation  
15 supported by less than an eighty percent Advisory Committee vote.  
16 In order to disagree, Watermaster must conduct a noticed hearing  
17 and then support its disagreement with written findings supporting  
18 its decision to disagree. Even then, the Watermaster's action is  
19 subject to Court review on motion by the Advisory Committee or any  
20 party or parties. Clearly, the Judgment intentionally makes it  
21 difficult for Watermaster to disagree with any Advisory Committee  
22 recommendation and requires Watermaster to specifically justify  
23 its disagreement.

24           Of course, if Watermaster chooses to disagree with an  
25 Advisory Committee recommendation supported by 80 or more votes,  
26 Watermaster must directly move the Court to do so. There is no  
27 right of any party to the Judgment alone to bring a Court motion  
28 opposing an Advisory Committee mandate or recommendation.



1 Watermaster possesses no "veto" which can shortstop the  
2 Advisory Committee's recommendations. The functions served by  
3 Watermaster in reviewing Advisory Committee recommendations are  
4 the following:

5 1. Taking a Watermaster action disagreeing with the  
6 Advisory Committee after conducting a hearing and making findings,  
7 which action may then be contested by a motion before the Court  
8 filed by the Advisory Committee, a Pool committee or any party; or

9 2. Filing a motion with the Court contesting an  
10 Advisory Committee recommendation supported by 80 or more votes.

11 In summary, at present, Watermaster simply is an  
12 intermediate checkpoint which serves to ultimately bring an issue  
13 before the Court. This is true because some Advisory Committee  
14 recommendations are not directly reviewable by motion under the  
15 Judgment while all Watermaster decisions are so reviewable.

16 Were the Judgment to be amended to merge the Advisory  
17 Committee and Watermaster functions so that the Advisory Committee  
18 became the Watermaster, all Advisory Committee (or Watermaster)  
19 decisions would be subject to review by motion of any party or  
20 parties to the Court. The only practicable difference created by  
21 such a restructuring would be the requirement that those in a  
22 minority position would have to bear the legal fees and costs in  
23 doing so rather than passing those costs on to all producers as a  
24 Watermaster expense (see Judgment, subparagraph 38(c)). That  
25 result would generate equity because it would preclude the present  
26 situation from continuing to occur where the majority of those  
27 voting for a contested Advisory Committee recommendation pay for  
28 the legal fees generated by the Advisory Committee through the

1 process and then also may for Watermaster legal fees generated by  
2 a minority of parties who wish to contest the Advisory Committee's  
3 position. In short, there may be a great deal of equity in the  
4 notion suggested by the Referee that the Advisory Committee and  
5 Watermaster functions be merged. However, again, the Judgment  
6 would need to be amended to effect that merger.

7 **IV. NO COMPELLING REASON TO DENY THE MOTION TO APPOINT THE**  
8 **SUGGESTED NINE-MEMBER WATERMASTER BOARD HAS EMERGED FROM THE MASS**  
9 **OF PAPERS FILED IN OPPOSITION TO THE MOTION.**

10 Papers filed heretofore contain unfounded claims that  
11 the proposed nine-member Watermaster Board would merely parrot  
12 Advisory Committee recommendations based upon the assertion that  
13 that board will be controlled by a majority of appropriator  
14 producers who vote on the Advisory Committee. Those claims are  
15 simply unsupported by logic. The proposed nine-member Watermaster  
16 Board is comprised of three non-appropriator overlying party  
17 representatives, three appropriator party representatives and  
18 three representatives from public water districts who have no  
19 voting power on the Advisory Committee. Notwithstanding all of  
20 the paperwork filed on this motion, no logic has been offered  
21 supporting the claim that the proposed Watermaster Board will  
22 mimic any position taken by the Advisory Committee. In fact, the  
23 appropriators, the purported "controlling majority" constitute  
24 only one-third of the voting power of the proposed Watermaster  
25 Board, the same amount as the purported agricultural and non-  
26 agricultural "minority." Thus, the majority of production cannot  
27 determine the outcome of Watermaster decisions as it does Advisory  
28 Committee positions. The only thing certain about the proposed

1 Watermaster Board is that its constituent interests are diverse,  
2 unlike those of a single entity, public or private.

3 In summary, to this point, the only asserted  
4 "compelling" reason for denial offered by the opponents is this  
5 non-existent mutuality of control of the Advisory Committee and  
6 the proposed Watermaster Board. Accordingly, no reason which  
7 forces or compels the Court to deny the motion has been stated or  
8 exists.

9 V. LEGAL AUTHORITY EXISTS TO AID THE COURT IN  
10 DISTINGUISHING DISCRETIONARY AND ADMINISTRATIVE WATERMASTER  
11 FUNCTIONS AND THE DECISION TO ORDER A SPECIAL AUDIT MUST BE  
12 CONSIDERED AN INVALID DISCRETIONARY ACT.

13 The Advisory Committee submits that the legal  
14 distinction between discretionary and ministerial acts of public  
15 officials discussed in the context of mandamus should be  
16 considered analogous to the distinction between discretionary and  
17 administrative acts referred to in the Judgment. A discretionary  
18 act is one taken as a result of the exercise of discretion or  
19 judgment while a ministerial act is one taken without regard to  
20 the exercise of judgment or opinion which is required under a  
21 given set of facts. *Williams v. Stockton* (1925) 195 Cal. 745,  
22 748; *Rodriguez v. Solis* (1991) 1 Cal. App. 4th 495.

23 Here, the only reason to create a set of  
24 "nondiscretionary", "ministerial" or "administrative" Watermaster  
25 acts is to define those which do not require the Pools or the  
26 Advisory Committee to provide policy input as a prerequisite  
27 (Judgment, paragraph 38). Such acts must be considered simple  
28 discharges of duty which are required under the terms of the

1 Judgment. Examples of such administrative acts defined in the  
2 Judgment are found in paragraphs 21 (requiring measuring devices),  
3 22 (levying and collecting assessments provided for in the pooling  
4 plans and physical solution), 28 (entering into standard form  
5 storage agreements) and 29 (maintaining water accounts).

6 Clearly, ordering a special audit was not a simple act  
7 required to be performed by Chino Basin Municipal Water District  
8 acting as Watermaster. In fact, it was the type of discretionary  
9 act broadly contemplated, but not required in paragraph 20 of the  
10 Judgment. Chino Basin Municipal Water District made a  
11 discretionary decision to order the audit without seeking advice  
12 from the Pools or the Advisory Committee. In fact, it did so  
13 contrary to an Advisory Committee mandate not to so act. As the  
14 Court has held tentatively, Chino Basin Municipal Water District  
15 now must bear the cost it incurred in ordering the subject audit.

16 **VI. THE REQUIREMENT THAT WATERMASTER SEEK POOL AND ADVISORY**  
17 **COMMITTEE ADVICE CONSTITUTES A CHECK ON WATERMASTER'S**  
18 **DISCRETIONARY ACTS.**

19 As discussed above, paragraph 38 of the Judgment  
20 precludes Watermaster from exercising its discretion without first  
21 seeking input and advice from the Pools and the Advisory  
22 Committee. Further, Watermaster is bound by Advisory Committee  
23 input supported by 80 or more votes unless the Court finds that it  
24 is forced or compelled to disagree with the Advisory Committee.

25 As to other Advisory Committee guidance, Watermaster  
26 must conduct a hearing and make findings in order to override the  
27 same. Thus, policy input is required before and as a check on  
28 Watermaster's discretionary alternatives.

1 VII. THE COURT IS THE ULTIMATE CHECK ON ALL WATERMASTER  
2 DECISIONS BE THEY DISCRETIONARY, ADMINISTRATIVE OR MANDATORY.

3 The exercise of all Watermaster functions are subject to  
4 Court supervision (Judgment, paragraph 17). All actions,  
5 decisions or rules of Watermaster are subject to Court review on  
6 its own motion or by motion by any pool committee, the Advisory  
7 Committee or party or parties (Judgment, paragraph 31). Thus, no  
8 matter how one characterizes a Watermaster action or decision, it  
9 is held in check by potential Court review.

10 VIII. CONCLUSION.

11 The Advisory Committee submits that the process of  
12 responding to questions put forth by the Referee reinforces the  
13 following conclusions:

14 A. No reason has been offered or exists which forces  
15 or compels the Court to deny the pending motion to appoint a nine-  
16 member Watermaster Board; and

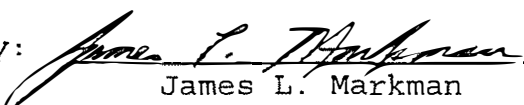
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B. Chino Basin Municipal Water District's decision to order the special audit was an exercise of discretion made contrary to the provisions of the Judgment without Pool or Advisory Committee input; therefore, as tentatively held by the Court, Chino Basin Municipal Water District must bear the audit expenses.

Dated: August 15, 1997

Respectfully submitted,  
  
RICHARDS, WATSON & GERSHON  
A Professional Corporation  
JAMES L. MARKMAN  
BOYD L. HILL  
Attorneys for Chino Basin  
Watermaster Advisory Committee

By:   
James L. Markman

1 **PROOF OF SERVICE BY MAIL**

2  
3 STATE OF CALIFORNIA, COUNTY OF ORANGE

4 I am employed in the County of Orange, State of California. I am over the age of 18 years  
5 and am not a party to the within action; my business address is Number One Civic Center Circle,  
6 P.O.Box 1059, Brea, California 92822-1059.

7 On August 15, 1997, I served the foregoing document described as:

8 **POINTS AND AUTHORITIES OF CHINO BASIN**  
9 **WATERMASTER ADVISORY COMMITTEE IN SUPPORT**  
10 **OF MOTION TO APPOINT A NINE-MEMBER WATERMASTER**  
11 **BOARD AND AN ORDER THAT AN AUDIT COMMISSIONED**  
12 **BY CHINO BASIN MUNICIPAL WATER DISTRICT**  
13 **IS NOT A WATERMASTER EXPENSE**

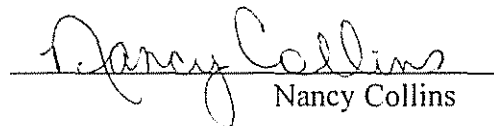
14 on the interested parties in this action by placing a full, true and correct copy thereof in a sealed  
15 envelope addressed as follows:

16 See attached service list.

17 The envelope was sealed and placed for collection and mailing to be deposited in the mail on  
18 the same day in the ordinary course of business at Brea, California. The envelope was mailed with  
19 postage thereon fully prepaid.

20 I am readily familiar with this firm's practice of collecting and processing correspondence for  
21 mailing. It is deposited with the United States Postal Service on the same day in the ordinary course  
22 of business.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing  
24 is true and correct and that this Proof of Service was executed this 15th day of August, 1997, at Brea,  
25 California.

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Nancy Collins

Service List

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9	Redlands, California 92373	West End Municipal Water District
10	Dan McKinney	Special Counsel for the Ag Pool
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16	11142 Garvey Avenue	
17	El Monte, California 91734	
18	John Schatz	Jurupa Community Service District
19	c/o Santa Margarita Water District	
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21	Mission Viejo, California 92690-2279	
22	Gene Tanaka	Cucamonga County Water District,
23	Best, Best & Krieger	Kaiser Ventures, Inc., and
24	P.O. Box 1028	Western Municipal Water District
25	Riverside, California 92502	
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