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CHINO BASIN
WATERMASTER SERVICES

MARKMAN
10/21/97
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SCHNEIDER
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6 Attorneys for CHINO BASIN ADVISORY COMMITTEE

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO

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11 CHINO BASIN MUNICIPAL WATER) Case No. 164327
DISTRICT,)
12) [BEFORE COURT APPOINTED
Plaintiff,) REFEREE ANNE J. SCHNEIDER]
13)
vs.) REPLY POINTS AND AUTHORITIES
14) OF CHINO BASIN WATERMASTER
CITY OF CHINO, et al.,) ADVISORY COMMITTEE IN SUPPORT
15) OF MOTION TO APPOINT A NINE-
Defendant.) MEMBER WATERMASTER BOARD AND
16) AN ORDER THAT AN AUDIT
17) COMMISSIONED BY CHINO BASIN
18) MUNICIPAL WATER DISTRICT IS
19) NOT A WATERMASTER EXPENSE
20)
Date: October 21, 1997
Time: 10:00 a.m.

21 By way of a very short reply to points and authorities
22 filed in opposition to the above-referenced motions, the
23 Watermaster Advisory Committee offers the following thoughts.

24 I. NO LOGICAL EXPLANATION HAS BEEN ADVANCED BY OPPONENTS TO
25 THE MOTION TO APPOINT A NINE-MEMBER WATERMASTER BOARD AS TO WHY
26 THAT BOARD WOULD MIMIC THE INPUT OF THE ADVISORY COMMITTEE.

27 With all the opposition filed to date, counsel for the
28 Advisory Committee still has not been able to identify any

1 explanation as to why the opponents to the pending motion continue
2 to assert that the nine-member Watermaster Board would constitute
3 a replication of the Advisory Committee by way of voting control.
4 As is well understood, the Advisory Committee constitutes a vote
5 of production and expresses the point of view of the majority of
6 the producers. It also is clearly the policy making body
7 established under the judgment, notwithstanding protestations by
8 the opponents to the contrary.

9 The proposed nine-member Watermaster Board would consist
10 of six producer representatives and three representatives from
11 public entities who do not have production rights. Accordingly,
12 the alleged "controlling" block of votes on the Advisory
13 Committee, consisting of the three appropriative pool members on
14 the nine-member Watermaster Board, could not control the decisions
15 of the Watermaster but, rather, would constitute a one-third
16 minority. That one-third minority is in stark contrast to the
17 voting control enjoyed by the appropriative pool members with
18 respect to Advisory Committee positions.

19 Again, with all of the expressions that the Watermaster
20 allegedly should be "an ombudsmen" or "protect the people," the
21 fact is that the Watermaster is constituted in the judgment as an
22 administrative body which essentially adheres to the policy
23 direction of the Advisory Committee unless the Watermaster Board
24 wishes to take the matter before the Court, acting as an agent of
25 the Court. The proposed nine-member Watermaster Board certainly
26 would be subject to different voting control than is the Advisory
27 Committee and surely could perform the functions mapped out for it
28 under the judgment. Again, where is the logic behind the

1 repetitive unsupported assertions that the persons who have
2 "controlling" votes on the Advisory Committee would have the same
3 control over Watermaster decisions? There simply is no basis for
4 those assertions.

5 II. THE ADVISORY COMMITTEE IS AFFORDED INPUT UNDER THE
6 JUDGMENT EACH AND EVERY TIME THE WATERMASTER PURPORTS TO EXERCISE
7 ITS DISCRETION.

8 The opponents to the motion also attempt to focus on
9 individual provisions of the Judgment and claim there is a
10 delineation of Watermaster acts which are discretionary and
11 nondiscretionary. The problem is that no language in the judgment
12 supports those assertions. There is a long list of powers and
13 functions of the Watermaster, some of which clearly are
14 ministerial or administrative in nature as pointed out in the
15 Advisory Committee's original points and authorities. Others
16 clearly are discretionary. The Referee is requested to pay
17 particular attention to subparagraph 38(B) of the Judgment which
18 makes it very clear that the Advisory Committee is to be afforded
19 the opportunity to give input (recommendations, reviews and acts)
20 "upon all discretionary determinations made or to be made
21 hereunder by Watermaster." The Court, in its April 29 decision,
22 made it clear that it felt the Watermaster was in error in
23 deciding to go forward with a special audit without taking the
24 input of the Advisory Committee. Nothing could be clearer in view
25 of the language set forth in subparagraph 38(B). As pointed out
26 in the original points and authorities filed by the Advisory
27 Committee, it is not difficult to determine what is a
28 "discretionary" act and what is an "administrative" or

1 "ministerial" act. When the Watermaster is required to exercise
2 judgment and make a decision rather than simply performing a
3 function prescribed in the judgment, the Watermaster is engaged in
4 a "discretionary" act and must seek the input of the Advisory
5 Committee prior doing so. Such a decision clearly includes the
6 decision to conduct a special audit. It also would include
7 decisions to employ engineers or lawyers to perform particular
8 functions.

9 Chino Basin Municipal Water District simply attempted to
10 circumlocute Advisory Committee input on the pending issue
11 involving the special audit. In summary, it is necessary to
12 define "discretionary" acts for purposes of applying the subject
13 judgment as recognized by the Referee in seeking a distinction
14 between "discretionary" and "administrative" acts. If the
15 Watermaster acts in a discretionary manner without Advisory
16 Committee input, that action is invalid and the expenses resulting
17 therefrom that act cannot be passed on to the producers.

18 **III. CONCLUSION.**

19 The Advisory Committee respectfully submits that the
20 pending motion to appoint the nine-member Watermaster Board should
21 be recommended to be approved by the Court as soon as possible and

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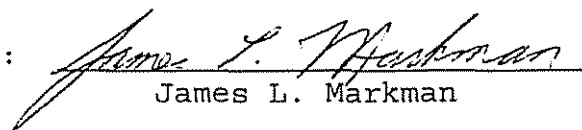
1 that the Referee should recommend that the Court confirm its
2 tentative conclusion that the costs of the special audit should be
3 borne by Chino Basin Municipal Water District rather than the
4 producers.

5 Dated: September 5, 1997

Respectfully submitted,

6 RICHARDS, WATSON & GERSHON
7 A Professional Corporation
8 JAMES L. MARKMAN
9 BOYD L. HILL
10 Attorneys for Chino Basin
11 Watermaster Advisory Committee

12 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 September 5, 1997, I served the foregoing document described as:

8 **REPLAY 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**

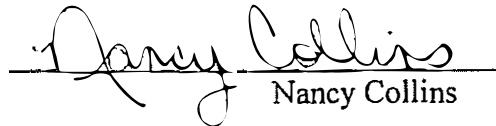
14 on the interested parties in this action by placing a full, true and correct copy thereof in a sealed
15 envelope addressed as follows:

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 5th day of September, 1997, at
25 Brea, California.

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Nancy Collins

Service List

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