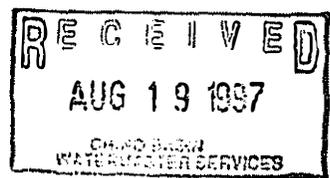


ONTARIO
10/21/97
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(SPACE BELOW FOR FILING STAMP ONLY)

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7
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
9 WEST DISTRICT

11 CHINO BASIN MUNICIPAL WATER DISTRICT,
12
13 Plaintiff,
14 v.
15 CITY OF CHINO, et al.,
16 Defendants.

CASE NO. RCV 51010
Specially Assigned to the Honorable
Judge J. Michael Gunn [Before Court
Appointed Referee Anne J. Schneider]

**CITY OF ONTARIO'S POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO APPOINT A NINE
MEMBER WATERMASTER BOARD
WATERMASTER AND FOR 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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19
20 On December 20, 1977, during the course of the "trial" in this case before the Honorable
21 Howard B. Wiener, Judge, Donald D. Stark (now deceased) stated,

22 This [adjudication] is designed mainly for the pool committees in
23 each pool to pretty much run their own affairs. It should run
24 smoothly. If it doesn't run smoothly, my suspicion is the first
contested matter will be a motion to remove the water master and --
but it could be some other issue.

25 (Hearing Transcript p. 83 lines 7-11.)

26 Mr. Stark, who represented the plaintiff, Chino Basin Municipal Water District, at the time,
27 also informed the court,

28 //

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1 On page 11[sic] is where are are talking on the appointment of
2 watermaster and that language was tightened to make it clear that the
3 Court in the absence of compelling reasons to the contrary would
4 follow a majority vote of the advisory committee to change in
5 watermaster. That matter was brought to the attention of the plaintiff
6 district and their board although failing to see the necessity for it have
7 agreed to do it. That's perfectly satisfactory with them.¹

8 (Hearing Transcript p. 87 lines 16-24.)

9 Eighteen years elapsed between the time of Don Stark's comments to the court and the time
10 when the Advisory Committee first sought to have Chino Basin Municipal Water District
11 (hereinafter, the "District") relieved of its responsibilities as Watermaster. It has been apparent from
12 the git-go of that exercise that it was no longer "perfectly satisfactory" with the District board that
13 its services as Watermaster should come to an end.

14 It has now been more than eighteen months since the Advisory Committee first voted to oust
15 the District as Watermaster. Yet, the District continues to serve in that capacity. Although it now
16 carries the adjective "Interim" before its title as Watermaster, the District may still fully exercise all
17 of the powers and perform all of the duties of Watermaster as they are set forth in the Judgment.
18 How the District has managed to stay in power, against the will of a majority of the Advisory
19 Committee, is quite obvious. The District board, with the help of a vociferous minority of water
20 producers who are politically aligned with the District have, so far, forestalled its removal by
21 opposing every proposal which has been made for a new Watermaster. This tactic has worked. The
22 District continues to serve as Watermaster.

23 **ADOPTION BY REFERENCE OF POINTS AND AUTHORITIES OF**

24 **CHINO BASIN WATERMASTER ADVISORY COMMITTEE**

25 The Chino Basin Watermaster Advisory Committee, in response to the Referee's request,
26 submitted Points and Authorities in Support of Motion to Appoint a Nine-Member Board and for
27 an Order that an Audit Commissioned by Watermaster is Not a Watermaster Expense. Ontario
28 adopts those points and authorities by reference.

//

¹ The subject provision appears at page 12 of the printed Judgment.

1 **APPOINTMENT AND REMOVAL OF WATERMASTER**
2 **PURSUANT TO THE JUDGMENT**

3 Paragraph 16 of the Judgment provides for Watermaster appointment, and, by implication,
4 for Watermaster removal. Although paragraph 16 provides for a Watermaster term of five years,
5 the crux of the section is that it permits the court, either on its own motion or on the motion of any
6 party after notice and hearing, to change the Watermaster at any time. The only limitation on the
7 court's power to act in this regard is that it must act in conformance with a motion that is supported
8 by a majority of the voting power of the Advisory Committee "unless there are compelling reasons
9 to the contrary."

10 The compelling reasons to the contrary limitation on the court's power must be considered
11 in two separate contexts. The first pertains to the removal of the serving Watermaster and the
12 second is the appointment of a successor Watermaster.

13 **What Are "Compelling Reasons" for Not Removing a Serving Watermaster?**

14 A serving Watermaster should be removed anytime that the Watermaster has lost the
15 confidence of a majority of the voting power of the Advisory Committee. The Judgment under
16 which the Chino Basin is managed was the product of lengthy negotiations among numerous parties.
17 As the remarks of the late Don Stark to the court show, the procedure for changing the Watermaster
18 was given serious consideration by the parties. Paragraph 16 of the Judgment stands alone. It gives
19 the court full power and authority to remove a serving Watermaster at any time on the court's own
20 motion or upon the motion of any party after notice and hearing. Paragraph 16 requires the court
21 to remove a serving Watermaster if a motion for removal is supported by a majority of the voting
22 power of the Advisory Committee. Ontario submits that there can be no "compelling reason" why
23 a serving Watermaster should not be removed upon a motion supported by a majority of the voting
24 power of the Advisory Committee. Under such circumstances, the removal process for a serving
25 Watermaster, as opposed to the appointment of a successor Watermaster, should be considered the
26 equivalent of a recall election. Nothing in paragraph 16, or elsewhere in the Judgment, authorizes
27 a serving Watermaster to contest its own removal.

28 //

1 What Are “Compelling Reasons” Not to Appoint a Successor Watermaster Who
2 Is Supported by a Majority of the Voting Power of the Advisory Committee?

3 It is possible, at least in theory, that the Advisory Committee would recommend a
4 Watermaster who is not legally or practically qualified or capable of serving as such. Were the
5 Advisory Committee to nominate Charles Manson, it is conceivable that the court could find that
6 there are “compelling reasons” not to appoint him. Short of such a Wally World situation, it is hard
7 to envision any circumstances under which the court would be justified in finding, in advance of an
8 appointment, that there are compelling reasons why a person or entity otherwise legally qualified
9 and physically capable of acting as Watermaster should not at least be given the opportunity to
10 serve. Certainly, an inchoate fear that a given person or entity might take actions or make decisions
11 which might not be in the best interests of some of the water producers in the Chino Basin is not a
12 “compelling reason.” If assumed but undemonstrated bias is deemed a “compelling reason,” then
13 finding a qualified person or entity to serve as successor Watermaster might not be possible.

14 When the subject of changing the Watermaster first came up, the initial proposal was to have
15 the Advisory Committee serve as Watermaster. That proposal has not been on the table for a long
16 time now. What is before the court is a motion to have a Nine Member Board serve as Watermaster.
17 As pointed out in the Advisory Committee’s points and authorities, this proposed Nine Member
18 Board is not the functional equivalent of the Advisory Committee. Appointing the Nine Member
19 Board as Watermaster does not require amending the Judgment, as appointing the Advisory
20 Committee Watermaster would. If subsequent events prove that the Nine Member Board was a poor
21 choice, then paragraph 16 of the Judgment gives the court authority to remove it at any time. While
22 the Nine Member Board is serving as Watermaster, its actions, decisions or rules, like that of any
23 other serving Watermaster, are subject under paragraph 31 of the Judgment to review of the court
24 on the motion of any party, the Advisory Committee, any Pool Committee or on the court’s own
25 motion. Simply put, the court should appoint the Nine Member Board as recommended by a
26 majority of the voting power of the Advisory Committee and allow it the opportunity to function in
27 that capacity.

28 //

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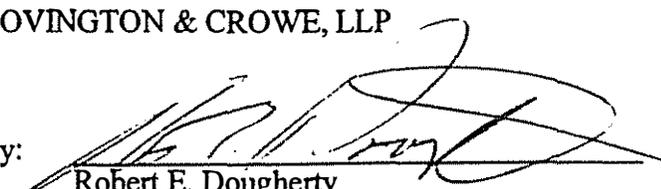
1 THE COURT IS THE ULTIMATE "CHECK AND BALANCE" IN REGARD
2 TO ALL MATTERS DETERMINED PURSUANT TO THE JUDGMENT

3 "Checks and balances," like any other nice sounding phrase, can only have meaning in
4 reference to the context in which it is used. When applied to the context of the United States
5 Government, the phrase takes on the significance of which we are all familiar. It is a concept,
6 embodied in the United States Constitution, by which each of the three co-equal branches of
7 government can keep the other two from running amuck. In the context of the Judgment in this case,
8 a formal system of checks and balances is not provided for nor is one needed. The ultimate "check
9 and balance," so to speak, is a superior court judge who has the power under paragraph 31 of the
10 Judgment, to conduct *de novo* reviews and make decisions on all matters which arise under the
11 Judgment. The court's power extends to all actions, decisions or rules of Watermaster. Paragraph
12 31 does not distinguish between actions on the basis of their classification as "discretionary,"
13 "administrative," or "mandatory." Under paragraph 31 of the Judgment, the superior court review
14 procedure can be initiated by any party, any Pool Committee, the Advisory Committee, the court
15 on its own motion, or by the Watermaster itself in the event it disagrees with a mandated action.
16 Unlike the Constitution of the United States, the Judgment assigns to the superior court the role of
17 benevolent dictator. Should the superior court run amuck, paragraph 31(e) of the Judgment
18 authorizes an appeal to the *troika* known as the court of appeal.

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21
22 Dated: August 8, 1997.

Respectfully submitted,

COVINGTON & CROWE, LLP

23
24
25 By: 

Robert E. Dougherty
Attorneys for Defendant City of Ontario

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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

3 I am employed in the County of San Bernardino, State of California. I am over the age
4 of 18 and not a party to the within action; my business address is Covington & Crowe, LLP,
1131 West Sixth Street, Post Office Box 1515, Ontario, California 91762.

5 On August 18, 1997, I served the foregoing document described as CITY OF
6 ONTARIO'S POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO APPOINT A
7 NINE MEMBER WATERMASTER BOARD WATERMASTER AND FOR AN ORDER
THAT AN AUDIT COMMISSIONED BY CHINO BASIN MUNICIPAL WATER DISTRICT
IS NOT A WATERMASTER EXPENSE on the interested parties in this action

8 by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the
attached mailing list:

9 by placing the original a true copy thereof enclosed in sealed envelopes addressed
10 as follows:

11
12 BY MAIL

13 I deposited such envelope in the mail at Ontario, California. The envelope was
mailed with postage thereon fully prepaid.

14 As follows: I am "readily familiar" with the firm's practice of collection and
15 processing correspondence for mailing. Under that practice it would be deposited with U.S.
Postal Service on that same day with postage thereon fully prepaid at Ontario, California, in the
16 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
17 for mailing in affidavit.

18 Executed on August 18, 1997, at Ontario, California.

19 ** (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the
addressee.

20 Executed on _____, at Ontario, California.

21 (State) I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 (Federal) I declare that I am employed in the office of a member of the bar of this court at
whose direction the service was made.

24
25 
26 Patricia A. Fletcher

27 * (BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX OR BAG)

28 ** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

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