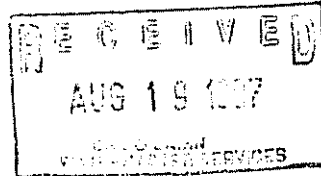


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3 Attorney for Jurupa
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6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO
10 WEST VALLEY DISTRICT

11
12 CHINO BASIN MUNICIPAL WATER) Case No. RCV 51010
13 DISTRICT,) (Specially Assigned to the
Plaintiff,) Honorable J. Michael Gunn)
14)
v.) JURUPA COMMUNITY SERVICES DISTRICT'S
15) RESPONSE TO SPECIAL REFEREE ANNE
CITY OF CHINO, et al.,) SCHNEIDER'S JULY 18, 1997 REQUEST
16) FOR BRIEFS WITH RESPECT TO
Defendants.) SPECIFIED ISSUES
17)

18 Jurupa Community Services District (JCSD) responds to Special
19 Referee Anne Schneider's request for briefs with respect to the
20 issues specified in her July 18, 1997 letter as follows:

21 1. WHAT WOULD CONSTITUTE A "COMPELLING REASON" FOR THE COURT NOT
22 TO ACT IN CONFORMANCE WITH A MOTION, SUPPORTED BY A MAJORITY OF THE
23 VOTING POWER OF THE ADVISORY COMMITTEE, REQUESTING THE WATERMASTER BE
24 CHANGED?

25 A "compelling reason" for the Court not to act in conformance
26 with the majority vote of the Advisory Committee to change the
27 Watermaster is that the change as proposed, which would include in
28 essence a controlling membership of the Advisory Committee on

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1 Watermaster, would impair or extinguish fundamental checks and
2 balances purposefully included within the Judgment framework that are
3 directed to establishing and maintaining Watermaster and the Advisory
4 Committee as separate entities.

5 The motion approved by a majority of the Advisory Committee in
6 this case is not to change the Watermaster, but to effect a
7 recomposition of the Watermaster that would result in producers
8 having a controlling interest and thus blur the distinction between
9 Watermaster and the Advisory Committee. Thus, the motion is
10 mischaracterized in masquerading as a change when it is in effect a
11 recomposition that would essentially abolish Watermaster as a
12 separate entity.

13 A review of the effect and purpose of the motion to change
14 clearly provides a "compelling reason" for the Court not to act in
15 conformance with the Advisory Committee's motion since the motion
16 does not merely change Watermaster but redefines its role by virtue
17 of the composition of its membership.

18 The reasons supporting the importance of maintaining Watermaster
19 as a separate entity are addressed in the following section.

20 2. IS THERE A "COMPELLING REASON" WHY THE WATERMASTER AND
21 ADVISORY COMMITTEE SHOULD BE SEPARATE? IF YES, WHAT DEGREE OR FORM OF
22 SEPARATION WOULD THERE HAVE TO BE BETWEEN THE ADVISORY COMMITTEE AND
23 THE WATERMASTER?

24 Yes, there is at least one "compelling reason" for a separate
25 Watermaster and Advisory Committee which is identified below.

26 A. Paragraph 41 of the Judgment provides Watermaster with
27 discretionary powers to develop an optimum basin management program
28

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1 consistent with Article X, Section 2 of the California Constitution.

2 Paragraph 41 of the Judgment provides in part: "Watermaster,
3 with the advice of the Advisory and Pool Committees, is granted
4 *discretionary* powers in order to develop an optimum basin management
5 program for Chino Basin, including both water quantity and quality
6 considerations." (Judgment, Paragraph 41; emphasis added).

7 Paragraph 41 of the Judgment is perhaps the most "compelling
8 reason" why the Watermaster and Advisory Committee should be separate
9 since Watermaster has express discretionary powers to develop in
10 essence the Constitution for the Basin with only the "advice"
11 (Judgment, Paragraph 41 quoted above) of the Advisory Committee and
12 not consent or approval as is required in other sections of the
13 Judgment pertaining to other Watermaster functions.

14 Clearly, the purpose of vesting Watermaster with the
15 discretionary power to develop such a fundamentally important
16 program, with only the advice of the Advisory Committee, was to
17 promote objectivity and avoid the inherent self-interest and bias of
18 Advisory Committee members that might otherwise result in a program
19 which is less than optimum with respect to the directives included in
20 Paragraph 41. Considering this clear objective, there is a
21 "compelling reason" why the Watermaster and Advisory Committee should
22 be separate since the Judgment could have provided for this important
23 function to be a shared responsibility of the two entities. If the
24 Court grants the Advisory Committee's motion regarding the proposed
25 composition of the nine-member Watermaster Board, this will be the
26 result.

27 The importance of a separate Watermaster entity is further
28

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1 underscored in the remaining provisions of Paragraph 41 which provide
2 in part: "...[T]he full utilization of the water resources of Chino
3 Basin, must be subject to procedures *established by and administered*
4 *through Watermaster* with the advice and assistance of the Advisory
5 and Pool Committees composed of the affected producers. Both the
6 quantity and quality of said water resources may thereby be preserved
7 and the beneficial utilization of the Basin maximized." (Judgment,
8 Paragraph 41; emphasis added).

9 Since the Watermaster has the authority to "establish and
10 administer" procedures to effect the full utilization of the Basin's
11 water resources, there is no question regarding the meaning of
12 "discretionary powers" as used in the preceding sentence of Paragraph
13 41. It is also instructive that Paragraph 41 is entitled "Watermaster
14 Control", which should further leave no doubt regarding Watermaster's
15 authority regarding the provisions of Paragraph 41.

16 The merger of Watermaster and the Advisory Committee, which
17 would essentially occur if the latter's motion is approved, would
18 directly vest the Advisory Committee with the important function set
19 forth in Paragraph 41 and open the door for mischief regarding the
20 full utilization of the Basin's water resources where interested
21 producers are making the decisions.

22 Finally, the imperative of Article X, Section 2 of the
23 California Constitution, which is paraphrased in the last sentence of
24 Paragraph 41, serves as a "compelling reason" for the separation of
25 Watermaster and the Advisory Committee since the separation increases
26 the likelihood that the water resources of the Basin will be fully
27 utilized with respect to both quantity and quality for purposes of
28

1 maximum beneficial use.

2 The Court has been fully informed through the myriad documents
3 filed in connection with this dispute regarding the substantial water
4 quality issues concerning the Basin which are particularly
5 exacerbated and notorious within the southern portion of the Basin
6 where JCSD is located.

7 A Watermaster Board controlled by northern Basin interests
8 endowed with substantial appropriative rights and unimpaired water
9 quality compared to southern Basin entities will clearly have a
10 difficult task, due to inherent self-interest and bias, in
11 implementing the mandate of Article X, Section 2 of the California
12 Constitution as demonstrated by the circumstances precipitating the
13 ouster of Chino Basin Municipal Water District which was based in
14 part on the latter's actions that were perceived as contrary to the
15 interests of members of the Advisory Committee.

16 With respect to addressing why Watermaster and the Advisory
17 Committee should be separate when Paragraph 38(b) provides the
18 Advisory Committee with "the duty to study, and the power to
19 recommend, review and act upon all discretionary determinations made
20 or to be made hereunder by Watermaster", despite advice from the
21 Advisory Committee, Watermaster is not mandated to act consistent
22 with such advice except by a 80% vote of the Committee. The mere
23 specter of a supermajority vote, which if exercised, overrides the
24 discretionary powers of Watermaster does not obviate the purpose of
25 separate entities. Rather, the 80% mandate provision merely provides
26 a check and balance that defines the extent of discretion which may
27 be exercised by Watermaster, and balance of power between Watermaster
28

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1 and the Advisory Committee if such discretion is determined by the
2 Advisory Committee to be inconsistent with the interests of its
3 members and/or the Judgment's provisions.

4 B. The degree or form of separation between the Advisory
5 Committee and Watermaster should be sufficient to ensure Watermaster
6 may freely exercise its discretionary powers.

7 With respect to Watermaster's exercise of discretionary powers
8 expressly provided for in Paragraph 41 of the Judgment, the degree or
9 form of separation should result in Watermaster's complete
10 independence to establish and implement its Constitutional imperative
11 as discussed in the preceding section of this brief.

12 As indicated in the attached declaration, one of the primary
13 purposes of establishing Watermaster independent from, and not
14 composed of or strongly influenced by, the Advisory Committee, was to
15 enable the development of a basin management program directed to the
16 interests of the Basin as a whole and not merely responsive to
17 economic objectives or, with respect to water quality, fortuitously
18 located producers. To date, as evidenced by the lack of a
19 comprehensive basin management plan addressing water quality issues,
20 this has not occurred.

21 It appears the Court has the choice of either establishing a
22 Watermaster structure that promotes the objectives of Paragraph 41,
23 which is essentially a restatement in the context of the Judgment of
24 Article X, Section 2 of the California Constitution, and recognize
25 the separation of powers as between the Advisory Committee and
26 Watermaster is essential to effect the purposes of Paragraph 41, or
27 merging the two entities, which may reduce tension between the two
28

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1 entities but in the long-term probably creates a structure which
2 current circumstances indicate will result in the failure to maximize
3 the beneficial use of the Basin's waters to the detriment of the
4 Basin as a whole.

5 With respect to Paragraph 38(b) of the Judgment and its
6 relationship to Paragraph 41, the Court may wish to consider
7 modification in accordance with its continuing jurisdiction for
8 purposes of providing Watermaster with unfettered discretion in
9 developing an optimum basin management program to implement the
10 mandate of Article X, Section 2 of the California Constitution.

11 3.a. WITH RESPECT TO DUTIES EXPLICITLY IDENTIFIED AS
12 "DISCRETIONARY" THAT ARE SET FORTH IN THE JUDGMENT, WHAT CHECKS AND
13 BALANCES ARE PROVIDED IN THE JUDGMENT TO ASSURE THAT EACH OF THOSE
14 DUTIES IS CARRIED OUT IN A MANNER CONSISTENT WITH THE PROVISIONS OF
15 THE JUDGMENT?

16 Although Paragraph 41 of the Judgment explicitly provides
17 Watermaster with "discretionary powers", those powers, pursuant to
18 Paragraph 38(b), are subject to review and action by the Advisory
19 Committee. Consequently, if the Judgment provides the Advisory
20 Committee in every instance with the authority to override
21 discretionary powers of Watermaster, then Paragraph 38(b) provides
22 checks and balances to assure that the Advisory Committee is the
23 ultimate authority, subject to the Court, with respect to carrying
24 out duties consistent with the provisions of the Judgment.

25 In the event actions or inactions by the Advisory Committee are
26 determined not to be consistent with the provisions of the Judgment,
27 then the Court must ultimately make that determination and serve as
28

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1 the source of checks and balances.

2 3.b. WITH RESPECT TO THE DUTIES EXPLICITLY IDENTIFIED AS
3 "ADMINISTRATIVE" THAT ARE SET FORTH IN THE JUDGMENT, WHAT CHECKS AND
4 BALANCES ARE PROVIDED IN THE JUDGMENT TO ASSURE THAT EACH OF THOSE
5 DUTIES IS CARRIED OUT IN A MANNER CONSISTENT WITH THE PROVISIONS OF
6 THE JUDGMENT?

7 "Administrative" duties explicitly set forth in the Judgment
8 concerning Watermaster are accompanied by the language "subject to
9 prior recommendation or approval of the Advisory Committee" or
10 similar (e.g.; Judgment, Paragraph 26). Accordingly, the Advisory
11 Committee, subject to the Court, serves to provide checks and
12 balances regarding administrative duties.

13 In the event the Advisory Committee is determined not to have
14 acted in accordance with the provisions of the Judgment, then the
15 Court serves as the source of checks and balances.

16 3.c. WITH RESPECT TO DUTIES EXPLICITLY IDENTIFIED AS "MANDATORY"
17 THAT ARE SET FORTH IN THE JUDGMENT, WHAT CHECKS AND BALANCES ARE
18 PROVIDED IN THE JUDGMENT TO ASSURE THAT EACH OF THOSE DUTIES IS
19 CARRIED OUT IN A MANNER CONSISTENT WITH THE PROVISIONS OF THE
20 JUDGMENT?

21 The Court serves as the check and balance concerning the failure
22 to act, or improper action, in connection with "mandatory" duties set
23 forth in the Judgment to the extent the parties do not exercise
24 enforcement.

25 3.d. FOR PURPOSES OF INTERPRETING THE LIMITED PROVISIONS OF THE
26 JUDGMENT THAT DEFINE MANDATORY, DISCRETIONARY, AND/OR ADMINISTRATIVE
27 ACTIONS, WHAT FURTHER LEGAL AUTHORITY DEFINES WHAT ACTIONS WOULD
28

1 PROPERLY BE CHARACTERIZED AS DISCRETIONARY THAT MAY NOT BE EXPLICITLY
2 IDENTIFIED AS SUCH IN THE JUDGMENT?

3 The ultimate legal authority concerning Watermaster's exercise
4 of discretion with respect to carrying out its duties under Paragraph
5 41 is Article X, Section 2 of the California Constitution and the
6 Judgment's explicit reference to this Constitutional touchstone in
7 relationship to developing an optimum basin management plan.

8 The consequence of invoking this Constitutional imperative is to
9 provide Watermaster with unfettered discretion regarding its
10 Paragraph 41 duties rather than being subject to override by the
11 Advisory Committee pursuant to the latter's apparent authority to do
12 so under Paragraph 38(b).

13 The paramount legal authority of Article X, Section 2 of the
14 California Constitution, which is explicitly incorporated into the
15 Judgment, should be interpreted to obviate the apparent authority of
16 the Advisory Committee under Paragraph 38(b) of the Judgment which
17 only serves to frustrate this directive and the discretionary power
18 provided to Watermaster under Paragraph 41. This Constitutional
19 "compelling reason", if ignored or not enforced by the Court, with
20 respect to assuring the development and implementation of a program
21 directed to the interests of the Basin as a whole has resulted, and
22 will continue to result, in the failure to comprehensively address
23 water quality issues in the Basin.

24 Article X, Section 2 of the California Constitution also defines
25 other actions which could be characterized as "discretionary" but not
26 explicitly defined as such in the Judgment to the extent such
27 discretion is required to effect the purpose of maximizing beneficial
28

1 use of the Basin's waters.

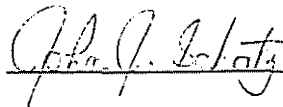
2 The compelling question here is whether sufficient discretionary
3 latitude can be incorporated into the structure and balance of powers
4 between Watermaster and the Advisory Committee for purposes of
5 promoting a cooperative relationship between the two entities that
6 share common goals and objectives with respect to comprehensively
7 addressing water quantity and quality issues and thus maximize
8 beneficial use, or if the Court must continually serve as the third
9 leg in this stool to enforce Article X, Section 2 of the California
10 Constitution.

11 Under any rubric which may be devised to effectuate the purposes
12 of the Judgment and Article X, Section 2, unfortunately given the
13 differing interests of the parties with respect to the competing
14 factors of economics and water quality, the Court will likely be
15 frequently called upon to balance the long-term interests of the
16 parties.

17 ///

18 DATED: August 18, 1997

John J. Schatz, Attorney At Law

19
20 By: 

21 John J. Schatz

22 Attorney for Defendant
23 Jurupa Community
24 Services District
25
26
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28

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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am
4 over the age of 18 and not a party to the within action; my business
5 address is: P.O. Box 7775, Laguna Niguel, California 92607-7775.

6 On August 18, 1997, I served the foregoing document described as
7 JURUPA COMMUNITY SERVICES DISTRICT'S RESPONSE TO SPECIAL REFEREE ANNE
8 SCHNEIDER'S JULY 18, 1997 REQUEST FOR BRIEFS WITH RESPECT TO
9 SPECIFIED ISSUES on the interested parties in this action by placing
10 a true copy thereof enclosed in sealed envelopes addressed as
11 follows:

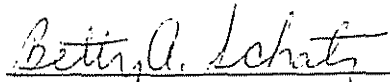
12 SEE ATTACHED SERVICE LIST

13 [X] BY MAIL:

14 [X] As follows: I am "readily familiar" with the firm's practice of
15 collection and processing of correspondence for mailing. Under
16 that practice it would be deposited with U.S. Postal Service on
17 that same day with postage thereon fully prepaid at Mission
18 Viejo, California in the ordinary course of business. I am aware
19 that on motion of the party served, service is presumed invalid
20 if postal cancellation date or postage meter date is more than
21 one day after date of deposit for mailing in affidavit.

22 Executed on August 18, 1997, at Mission Viejo, California.

23 [X] (STATE) I declare under penalty of perjury under the laws of the
24 State of California that the above is true and correct.

25
26 

27 BETTY A. SCHATZ
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DECLARATION OF LANGDON W. OWEN

1 I Langdon ("Don") Owen, declare as follows:

2 I am a registered civil engineer in the State of California with more than 40 years
3 experience involving water resources. I am the principal in the consulting engineering firm of Don
4 Owen & Associates and a recognized expert throughout the State of California concerning water
5 issues. I was directly involved in the discussions and proceedings prior to the effective date of the
6 Judgment in Chino Basin Municipal Water District v. City of Chino et al. (RCV 51010),
7 including but not limited to matters related to structuring the Judgment and establishing the
8 framework to provide for a separate Watermaster and Advisory Committee.

9 One of the primary purposes of establishing Watermaster separate from, but accountable
10 to, the Advisory Committee, through the various checks and balances included in the Judgment,
11 was to promote the development of an optimum basin management program consistent with
12 Article X, Section 2 of the California Constitution.

13 Water quality even at that time was a paramount concern and the parties were faced with
14 the difficult task of recognizing and balancing the interests of producers in the northern area of the
15 Basin who held the majority of production rights, and were not immediately affected by water
16 quality, with establishing a structure within the Judgment that would effectively and
17 comprehensively maximize the beneficial use of all Basin waters, including those which were, and
18 would soon likely become impaired due to the large concentration of salts and nitrogen within and
19 overlying Basin waters.

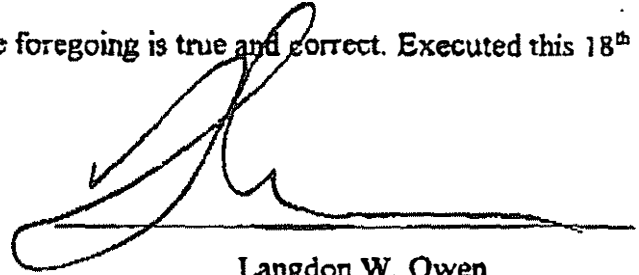
20 The objective was to provide Watermaster with sufficient independent discretion, to the
21 extent consensus could be maintained among the interested parties, to develop a Basin
22 management program directed to addressing the interests of the Basin as a whole and not allow
23 economic or other relatively short-term considerations to dominate the operation of the Basin at
24 the expense of long-term programs developed for the purpose of maximizing and perpetuating use
25 of the Basin's waters for all users.

26 There is no question that the structure as between Watermaster and the Advisory
27 Committee was based on compromises necessary in order to develop consensus leading to the
28 Judgment. Nonetheless, in spite of the Advisory Committee's strong role with respect to the

DECLARATION OF LANGDON W. OWEN

1 Judgment, the functions of the Watermaster were purposefully separated from the Advisory
2 Committee in order to promote the exercise of discretionary powers by Watermaster rather than
3 merely turning the operation of the Basin over to the control of interested producers.

4
5 I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th
6 day of August, 1997 at Irvine, California.

7
8
9 
Langdon W. Owen

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Western Municipal Water District
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3 Attorney for Jurupa
4 Community Services
District

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO
10 WEST VALLEY DISTRICT

11
12 CHINO BASIN MUNICIPAL WATER) Case No. RCV 51010
DISTRICT,) (Specially Assigned to the
13) Honorable J. Michael Gunn)
Plaintiff,)
14) NOTICE OF APPOINTMENT OF JOHN J.
v.) SCHATZ AS SPECIAL COUNSEL TO
15) JURUPA COMMUNITY SERVICES DISTRICT
CITY OF CHINO, et al.,)
16) By fax
Defendants.)
17

18
19 Notice is hereby given of the appointment of John J. Schatz by
20 the Jurupa Community Services District to serve as special counsel
21 for purposes of the above captioned action including but not limited
22 to responding to Referee Anne Schneider's request for briefs from the
23 parties with respect to the Motion to Appoint a Nine-Member
24 Watermaster Board and Motion for Order that Audit Commissioned by
25 Watermaster is Not a Watermaster Expense.

26 ///
27 ///
28 ///

1 DATE: August 13, 1997

John J. Schatz, Attorney at Law

2

3

By: John J. Schatz
John J. Schatz

4

5

Attorney for Defendant
Jurupa Community
Services District

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STATE BAR NUMBER 141029

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am
4 over the age of 18 and not a party to the within action; my business
5 address is: P.O. Box 7775, Laguna Niguel, California 92607-7775.

6 On August 13, 1997, I served the foregoing document described as
7 NOTICE OF APPOINTMENT OF JOHN J. SCHATZ AS SPECIAL COUNSEL TO JURUPA
8 COMMUNITY SERVICES DISTRICT on the interested parties in this action
9 by placing a true copy thereof enclosed in sealed envelopes addressed
10 as follows:

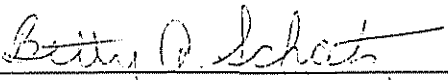
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13 [X] As follows: I am "readily familiar" with the firm's practice of
14 collection and processing of correspondence for mailing. Under
15 that practice it would be deposited with U.S. Postal Service on
16 that same day with postage thereon fully prepaid at Mission
17 Viejo, California in the ordinary course of business. I am aware
18 that on motion of the party served, service is presumed invalid
19 if postal cancellation date or postage meter date is more than
20 one day after date of deposit for mailing in affidavit.

21 Executed on August 13, 1997, at Mission Viejo, California.

22 [X] (STATE) I declare under penalty of perjury under the laws of the
23 State of California that the above is true and correct.

24
25 
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