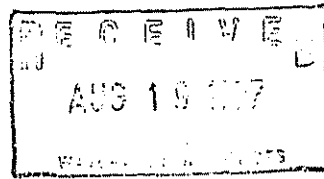


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10 Additional Parties and Counsel  
11 Listed on the Next Page

12 CONSOLIDATED SUPERIOR/MUNICIPAL COURTS  
13 COUNTY OF SAN BERNARDINO  
14 WEST DISTRICT

15  
16 CHINO BASIN MUNICIPAL WATER ) Case No. RCV 51010  
DISTRICT, )  
17 Plaintiff, ) [Specially Assigned to the  
18 v. ) Honorable J. Michael Gunn]  
19 CITY OF CHINO, et al., ) MEMORANDUM OF POINTS AND  
20 Defendants. ) AUTHORITIES IN SUPPORT OF MOTION  
21 ) FOR APPOINTMENT OF NINE MEMBER  
22 ) WATERMASTER BOARD OF CCWD, WMWD,  
23 ) KAISER, FONTANA UNION WATER  
24 ) COMPANY, MONTE VISTA IRRIGATION  
25 ) WATER COMPANY, SAN ANTONIO WATER  
26 ) COMPANY AND WEST END  
27 ) CONSOLIDATED WATER COMPANY

Date: October 21, 1997  
Time: 10:00 a.m.  
Dept: RC-H  
Action Filed:  
Trial Date: Stipulated Judgment

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MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION

Over a year ago, the Chino Basin Advisory Committee ("Advisory Committee") decided that a new Watermaster should be appointed, and took all actions necessary to implement this plan of action. Despite the claims of a very small minority, there are simply no compelling reasons for the Court to reject the proposed Watermaster Board. In fact, the new Board will provide greater representation of all of the parties to this action.

Indeed, it appears that the real purpose of the opposition to the appointment of the nine-member Watermaster Board is to substantially rewrite the Judgment. This is simply not the issue that is being addressed now, and the Court does not have the authority to unilaterally change the Judgment or to ignore the express requirements of the Judgment. Therefore, the nine member Watermaster Board proposed by the Advisory Committee should be approved by the Court.

2. PROCEDURAL HISTORY

In April 1996, the Advisory Committee elected to replace the existing Watermaster and subsequently took the necessary actions required by the Judgment to implement that decision. At the time the Judgment was entered, the Chino Basin Municipal Water District

1 ("CBMWD") was appointed as the initial Watermaster. (Judgment, ¶  
2 16.) Due to dissatisfaction with CBMWD in that position, the  
3 Advisory Committee considered appointing a new Watermaster.  
4

5 The Judgment specifies that the Watermaster can be changed at  
6 any time upon the motion of any party or upon motion of the Court.  
7 Additionally, if the motion to appoint a new entity as Watermaster  
8 is approved by a majority of the voting power of the Advisory  
9 Committee, the Court "shall" act in conformance with this motion  
10 unless there are "compelling reasons" to the contrary. (Judgment,  
11 ¶ 16.)  
12

13 On April 24, 1996, exercising the authority granted to it  
14 under the Judgment, the Advisory Committee approved by a vote of  
15 96.56% to 3.44% a motion to nominate a new Watermaster composed of  
16 a nine-member panel of representatives, for a term ending June 30,  
17 1998. The only party that voted against the proposal was the City  
18 of Chino, which controlled all of the 3.44% of the opposition  
19 votes. The nine-member panel included a wide range of interests  
20 including one member each to be nominated by the Overlying  
21 (Agricultural) Pool, the Overlying (Non-Agricultural) Pool, CBMWD,  
22 Three Valleys Municipal Water District ("Three Valleys"), Western  
23 Municipal Water District ("WMWD"), and three at-large  
24 representatives to be selected by the Advisory Committee.  
25 ([First] Notice of Motion and Motion For Appointment of Nine  
26 Member Board as Watermaster ("1st Motion for Nine Member Board"),  
27 pp. 7, 11.)  
28

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1 The Motion for Nine Member Board was submitted to the Court  
2 for approval of this new Watermaster and extensive briefing and  
3 oral argument ensued. The Court continued the hearing and ordered  
4 the parties to meet and confer to attempt to resolve the issue.  
5 (Order on Motion Pertaining to Watermaster, dated July 26, 1996,  
6 p. 3.)

7  
8 On January 30, 1997, the Advisory Committee by a 67.99%  
9 majority voted to name a revised nine-member Watermaster Board.  
10 The new Watermaster Board consisted of the following:

- 11 • Two members from the Overlying (Agricultural) Pool  
12 appointed by the Overlying (Agricultural) Pool;
- 13 • One member from the Overlying (Non-Agricultural)  
14 Pool appointed by the Overlying (Non-Agricultural)  
15 Pool;
- 16 • Three members from the Appropriative Pool appointed  
17 by the Appropriative Pool;
- 18 • One member from the Board of Three Valleys;
- 19 • One member from the Board of WMWD; and
- 20 • One member from the Board of CBMUD.

1 ([Second] Notice of Motion and Motion for Appointment of Nine  
2 Member Board as Watermaster, etc. ["2nd Motion for Nine Member  
3 Board"], pp. 2-3.)  
4

5 The Board was specifically selected to ensure that all  
6 perspectives in the Basin would be adequately represented,  
7 consisting of three non-appropriator overlying representatives,  
8 three appropriator representatives and three water district  
9 representatives without any voting rights on the Advisory  
10 Committee. Moreover, any member of the Appropriative Pool that  
11 owns or has a controlling interest in another member of the  
12 Appropriative Pool would not be allowed to serve concurrently with  
13 said other member of the Appropriative Pool on the Watermaster  
14 Board. In addition, individuals would be allowed to serve on the  
15 Watermaster Board and the Advisory or Pool Committee except for  
16 the Overlying (Non-Agricultural Pool.) Finally, voting will be on  
17 a one person, one vote basis. (2nd Motion for Nine Member Board,  
18 pp. 3-4.)  
19

20 Opposition to this proposed Watermaster Board was submitted  
21 to the Court by the Cities of Chino and Chino Hills, CBMWD, Monte  
22 Vista Water District and the Agricultural Pool. The Court  
23 appointed a Special Referee, Anne Schneider, to review the  
24 evidence submitted on issues relating to a new Watermaster, and  
25 the California Department of Water Resources was appointed as  
26 Interim Watermaster. (Ruling and Order of Special Reference,  
27 dated April 29, 1997, pp. 9-10.) On July 18, 1997, the Special  
28

1 Referee requested additional briefing on these Watermaster issues.

2  
3 3. THE NINE-MEMBER WATERMASTER BOARD SHOULD BE  
4 APPROVED PURSUANT TO THE JUDGMENT

5  
6 A. A Majority of the Advisory Committee voted to  
7 Appoint the Nine-Member Watermaster Board  
8

9 As discussed above, in accordance with the Judgment, a  
10 majority of the Advisory Committee voted on two separate occasions  
11 to appoint a new Watermaster Board. The relevant paragraph in the  
12 Judgment that provides for the appointment of a Watermaster  
13 states:

14  
15 Watermaster may be changed at any time by  
16 subsequent order of the Court, on its own  
17 motion, or on the motion of any party after  
18 notice and hearing. Unless there are  
19 compelling reasons to the contrary, the Court  
20 shall act in conformance with a motion  
21 requesting the Watermaster be changed if such  
22 motion is supported by a majority of the  
23 voting power of the Advisory Committee.

24 (Judgment, ¶ 16 [emphasis added].)

25  
26 Since the Advisory Committee complied with this procedure,  
27 approving by a 67.99% majority a new nine-member Watermaster  
28



1 Board, the only way this Court could reject the recommendation of  
2 the Advisory Committee is if the Court is presented with  
3 "compelling reasons to the contrary."  
4

5 B. There Are No "Compelling Reasons" Preventing the  
6 Court From Approving the Nine-Member Watermaster  
7 Board  
8

9 No evidence has ever been presented to the Court during this  
10 phase of the litigation that rises to the level of "compelling  
11 reasons to the contrary" prohibiting it from acting in conformance  
12 with the Advisory Committee's motion, despite numerous  
13 opportunities provided to opponents to brief and orally argue this  
14 issue. These opponents will nonetheless reargue that a  
15 "compelling" reason for the Court not to act in conformance with  
16 the motion is that the Basin has been poorly managed in the past,  
17 leading to a decline in groundwater quality and quantity, which is  
18 somehow the fault of the Advisory Committee. Since these opponents  
19 claim that the new Watermaster Board would be virtually identical  
20 to the Advisory Committee, the alleged mismanagement would  
21 continue.  
22

23 This allegation is specious for several reasons. First,  
24 there is no evidence that Basin water quality or quantity has  
25 suffered because of the administration of either the Watermaster  
26 or the Advisory Committee. The causes of the water quality  
27 problems in the Basin are long standing and independent of any  
28

1 actions by the Advisory Committee or the Watermaster. (See  
2 Declaration of Mark J. Wildermuth in Support of Memorandum of  
3 Points and Authorities dated August 18, 1997, ("Wildermuth Dec."),  
4 ¶¶ 6, 7, 8, 11-12.) In fact, the parties to the Judgment actually  
5 have little or no control over water quality degradation, as this  
6 responsibility has been delegated to the Regional Water Quality  
7 Control Board, Santa Ana Region. (Wildermuth Dec., ¶ 6.)  
8 Moreover, the causes of water quality degradation in the Basin are  
9 wide ranging, including the results of irrigated agriculture and  
10 dairy waste management practices. (Wildermuth Dec., ¶¶ 7-8, 11.)  
11

12 These conclusions are supported by a study recently prepared  
13 by the California Regional Water Quality Control Board, Santa Ana  
14 Region, which indicates that the primary adverse impact to  
15 groundwater quality in the Basin is due to the large concentration  
16 of dairies in the southern portion of the Basin, not  
17 mismanagement. (Declaration of Traci Stewart in Support of  
18 Memorandum of Points and Authorizes, dated August 15, 1997,  
19 ("Stewart Dec."), Exhibit "A.") According to the Regional Board,  
20 groundwater quality becomes progressively worse as it moves south  
21 in the basin. (Stewart Dec., Exhibit "A," p. 6.)  
22

23 While there are a number of contributors to  
24 this problem, including irrigated agriculture  
25 and municipal wastewater discharge, it is  
26 clear that dairy operations in the Chino Basin  
27 are of overwhelming importance. The Chino  
28

1 basin contains the highest concentration of  
2 dairies found anywhere in the world . . . the  
3 severity of the water quality problem now  
4 confronting the Region in the Chino Basin  
5 demands reconsideration of the Board's dairy  
6 regulatory strategy, both in its design and  
7 implementation. (Stewart Dec., Exhibit "A," p.  
8 i.)  
9

10 Thus, it is disingenuous in the extreme for opponents of the  
11 nine-member Watermaster Board to claim that the Advisory Committee  
12 is responsible for poor water quality in the Basin.  
13

14 Moreover, contrary to opponents' claims, the proposed make up  
15 and voting power of the nine-member Board shows that it would in  
16 fact provide a level of decision-making independent from the  
17 Advisory Committee. The Board was specifically selected to ensure  
18 that all positions in the Basin would be adequately represented:  
19 three non-appropriator overlying representatives; three  
20 appropriator representatives; and three water district  
21 representatives without any voting rights on the Advisory  
22 Committee. In contrast, the Advisory Committee is made up of  
23 representatives of producers only. Furthermore, no individual  
24 will be on both the Nine Member Board and the Advisory Committee.  
25 Moreover, voting on the nine-member Board will be one person, one  
26 vote. Voting on the Advisory Committee is allocated according to  
27 production and payment of assessments.  
28

1           Thus, the nine-member Watermaster Board will not be composed  
2 of the same interests and members as the Advisory Committee. The  
3 nine-member Board will be more representative and provide greater  
4 protection to minority rights than has existed in the Basin  
5 previously. Additionally, in the event a party is unhappy with  
6 any decision made by the Watermaster, they always have the ability  
7 under the Judgment to seek Court review.

8  
9           Opponents are also expected to allege that another  
10 compelling reason for the Court to reject the nine-member  
11 Watermaster Board is that it will ignore water quality issues in  
12 the southern portion of the Basin because there may have be a  
13 majority of votes located in the northern end. This claim is also  
14 without factual or legal support. As explained above, the water  
15 quality problems were not caused by the Advisory Committee and the  
16 new nine member board will ensure broader representation.  
17 Furthermore, Judgment requires the Watermaster to take steps to  
18 clean up the entire Basin regardless of its individual interests.  
19 The Watermaster must "develop an optimum basin management program  
20 for Chino Basin, including both water quality and quantity  
21 considerations." (Judgment, ¶ 41) There is no evidence presented  
22 to the Court that the nine-member Board would ignore the  
23 Judgment.<sup>1/</sup>

24  
25 <sup>1/</sup> This allegation also ignores the fact that the Advisory  
26 Committee, which does have a majority vote from the  
27 parties in the northern part of the Basin, voted to  
28 commit 12,000 acre-feet a year with a present market  
value of almost 3 million dollars to a desalter program  
(continued...)

1 Finally, as addressed in more detail below, it is not the  
2 Watermaster's duty to develop policy or to control the basin. The  
3 Judgment gives the Advisory Committee and the producers in the  
4 Basin control over the Watermaster, not visa versa. The function  
5 of the Watermaster under the Judgment is not to provide oversight  
6 or set policy for the pool or committee members. Instead, many of  
7 the Watermaster's actions must be approved by the Advisory  
8 Committee. In fact, in 1989, this Court found that "under the  
9 Judgment, [the Advisory Committee] is the controlling body of the  
10 ground water basin." (Order [attached as Exhibit "A"], p. 7.)  
11 Judge Turner also noted that the Advisory Committee is "the policy  
12 making group for the Basin." (Order, p. 3.)

13  
14 Simply put, no compelling reasons exist for the Court to  
15 reject the nine-member Watermaster Board approved by the majority  
16 of the Advisory Committee.

17  
18 4. THE JUDGMENT REQUIRES THAT THE WATERMASTER AND  
19 ADVISORY COMMITTEE REMAIN SEPARATE ENTITIES

20  
21 The language of the Judgment shows that it was the intent of  
22 the parties and the Court that the Watermaster and the Advisory  
23 Committee remain separate entities with separate responsibilities.  
24 Each entity has been assigned distinct tasks to manage the Basin

25  
26 \_\_\_\_\_  
27 1/ (...continued)  
28 specifically intended for cleanup of the southern  
portion of the Basin.

1 in an effective manner. For example, Watermaster duties include  
2 acquisition of necessary facilities and equipment (Judgment,  
3 ¶ 19), employment of experts and agents, the levy and collection  
4 of assessments, and investment of Watermaster funds. (Judgment,  
5 ¶¶ 19-20, 22-23.) Advisory Committee duties include recommending,  
6 reviewing and acting upon all discretionary actions of the  
7 Watermaster, recommending rules and regulations for conduct of  
8 Watermaster affairs, and review and submittal of administrative  
9 budgets. (Judgment, ¶¶ 18, 30, 38(b).)

10  
11 Moreover, as previously discussed, since the nine-member  
12 Board is selected differently and has a different allocation of  
13 voting power than the Advisory Committee, it will have a very  
14 different method of decision making and will be independent from  
15 the Advisory Committee. Prior to merging these two separate roles,  
16 the Judgment would have to be amended to specifically reallocate  
17 the duties of each.

18  
19 5. THE JUDGMENT DOES NOT REQUIRE THE WATERMASTER TO  
20 PROVIDE "CHECKS AND BALANCES"

21  
22 Several opponents of the proposed nine-member Board have  
23 raised issues to the Court regarding an alleged lack of "checks  
24 and balances" if the Watermaster Board is approved, alleging that  
25 Basin producer representatives on the Board would eliminate the  
26 neutrality of the Watermaster. This claim is in fact a red  
27 herring, ignoring the plain language and purpose of the Judgment,  
28

1 which does not charge the Watermaster with the task of preventing  
2 abuse by the various parties.

3  
4 The Judgment provides that the Advisory Committee has control  
5 over the Watermaster, not the other way around. As noted above,  
6 this Court has already determined that "under the Judgment, [the  
7 Advisory Committee] is the controlling body of the ground water  
8 basin." The Judgment strongly supports this interpretation. For  
9 example, the Advisory Committee must review and approve all major  
10 Watermaster discretionary actions:

11  
12 The Advisory Committee shall have the duty to  
13 study, and the power to recommend, review and  
14 act upon all discretionary determinations made  
15 or to be made hereunder by Watermaster.

16 (Judgment, ¶ 38(b).)

17  
18 Specifically, the Advisory Committee can mandate that the  
19 Watermaster take certain actions if supported by 80% of the  
20 eligible voters. In that event, the Watermaster must obey.

21 (Judgment, ¶ 38(b) [1].) The Advisory Committee can also recommend  
22 or advise the Watermaster. In that event, the Watermaster must  
23 obey unless it holds a public hearing and issues written findings  
24 and a decision. (Ibid.)

25  
26 The Advisory Committee also reviews the annual administrative  
27 budget and recommendation prepared by the Watermaster. (Judgment,  
28

1 ¶ 30.) The actions of the Watermaster are further limited in that  
2 it may adopt applicable rules and a standard form of agreement for  
3 storage of supplemental water only with the approval of the  
4 Advisory Committee. (Judgment, ¶ 28.)  
5

6 Instead, it is the Court that has the ultimate authority and  
7 is the ultimate source of any "checks and balances" in the  
8 Judgment. The Judgment specifies that any party may seek review  
9 of any Watermaster decision, giving all parties an equal  
10 opportunity to protest an action. (Judgment, ¶ 31.) Since every  
11 entity with an interest in Basin is named as a party to this  
12 action, they have an equal opportunity to seek judicial review of  
13 that decision. The composition of the Watermaster does not affect  
14 this right in any way.  
15

16 The categorization that has previously been made by opponents  
17 between "discretionary," "administrative," and "mandatory" actions  
18 of the Watermaster is simply a distinction without a difference.  
19 The Advisory Committee controls the Watermaster's actions and  
20 those that it does not have to specifically approve can always be  
21 challenged before the Court. Therefore, the neutrality of the  
22 Watermaster is simply not an issue.  
23  
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6. CONCLUSION

For the reasons stated herein, the Court is requested to enter an order appointing the Nine Member Watermaster Board as approved by the Advisory Committee.

Dated: August 18, 1997.

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Dated: August 18, 1997.

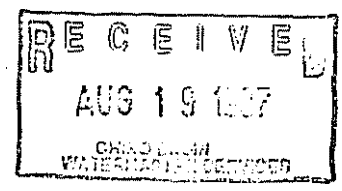
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9 Additional Parties and Counsel  
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11 CONSOLIDATED SUPERIOR/MUNICIPAL COURTS  
12 COUNTY OF SAN BERNARDINO  
13 WEST DISTRICT

15 CHINO BASIN MUNICIPAL WATER ) Case No. RCV 51010  
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17 Plaintiff, ) [Specially Assigned to the  
18 v. ) Honorable J. Michael Gunn]  
19 CITY OF CHINO, et al., ) PROOF OF SERVICE BY FAX AND  
20 Defendants. ) FEDERAL EXPRESS OF MEMORANDUM OF  
21 ) POINTS AND AUTHORITIES IN  
22 ) SUPPORT OF MOTION FOR  
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28 ) COMPANY AND WEST END  
CONSOLIDATED WATER COMPANY;  
DECLARATION MARK JOSEPH  
WILDERMUTH; AND DECLARATION OF  
TRACI STEWART

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- 5 1. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR  
6 APPOINTMENT OF NINE MEMBER WATERMASTER BOARD OF CCWD, MWD,  
7 KAISER, FONTANA UNION WATER COMPANY, MONTE VISTA IRRIGATION  
WATER COMPANY, SAN ANTONIO WATER COMPANY AND WEST END  
CONSOLIDATED WATER COMPANY;
- 8 2. DECLARATION OF MARK JOSEPH WILDERMUTH IN SUPPORT OF MOTION FOR  
9 APPOINTMENT OF NINE MEMBER WATERMASTER BOARD OF CCWD, MWD,  
10 KAISER, FONTANA UNION WATER COMPANY, MONTE VISTA IRRIGATION  
WATER COMPANY, SAN ANTONIO WATER COMPANY AND WEST END  
CONSOLIDATED WATER COMPANY; AND
- 11 3. DECLARATION OF TRACI STEWART IN SUPPORT OF MOTION FOR  
12 APPOINTMENT OF NINE MEMBER WATERMASTER BOARD OF CCWD, MWD,  
13 KAISER, FONTANA UNION WATER COMPANY, MONTE VISTA IRRIGATION  
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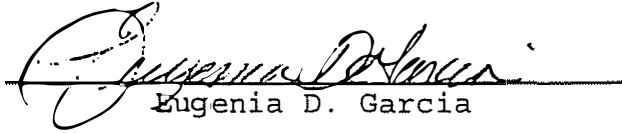
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10 State of California that the above is true and correct.

11 Executed on August 18, 1997, at Riverside, California.

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14 Eugenia D. Garcia

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