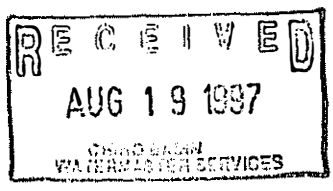


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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN BERNARDINO**

11	CHINO BASIN MUNICIPAL WATER DISTRICT,	)	CASE NO. RCV 51010
12		)	
13	Plaintiff(s),	)	MEMORANDUM OF POINTS AND
14	vs.	)	AUTHORITIES RE: MOTION TO APPOINT
15	CITY OF CHINO, et al.,	)	NINE MEMBER WATERMASTER BOARD
16		)	[Anne J. Schneider, Esq.]
	Defendant(s).	)	

17 Comes now Chino Basin Municipal Water District, acting as Watermaster which submits the  
18 following points and authorities pursuant to the Order of Referee Anne J. Schneider, Esq.

19 **I.**

20 **COMPELLING REASONS EXIST**

21 **TO DENY THE APPOINTMENT OF A NINE MEMBER WATERMASTER BOARD**

22 The initial issue raised in this matter is what compelling reasons exist which would support the  
23 court in denying the Advisory Committee's motion to appoint a nine member Watermaster Board.  
24 The problem from this responding party's position is not so much the appointment of the nine  
25 member board but the proposed composition of that board. Specifically, the proposed nine member  
26 board would be comprised almost entirely of representatives from the Advisory Committee.

27 Perhaps the most compelling reason to deny the motion is the present condition of the  
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1 groundwater of the Chino Basin as evidenced by the declaration of Mr. Joseph Grindstaff and other  
2 declarations submitted by the various parties in interest in this matter.

3 In essence, the Chino Basin has been managed by the majority of the Advisory Committee for  
4 at least the last ten years with strong arguments supporting the contention that they have managed the  
5 basin since its inception. For whatever reason, the Chino Basin Watermaster has, over the years,  
6 acquiesced to the 80% rule provided in the judgment. Under Watermaster's belief that all decisions  
7 of the Advisory Committee which garnered 80% or more support at that level were in fact mandates  
8 upon the Watermaster, the Advisory Committee has been the de facto Watermaster over the years.  
9 The present condition of the Chino Basin is deplorable with the future looking grim should the status  
10 quo continue.

11 The majority of the Advisory Committee has demonstrated, and continues to demonstrate to  
12 this date, their inability to shed their self-serving partisan interest and do what is best for the basin as  
13 a whole. It was not until the Watermaster realized that it was not simply a rubber-stamp for the  
14 Advisory Committee and that it could take a proactive role in the management of the basin that the  
15 Advisory Committee deemed the Watermaster to be obstreperous and in need of replacement.

16 The court, in 1978, pronounced its purpose and objective in Section VI Paragraph 39 of the  
17 judgment. Those purposes and objectives have not been met under the management and control of  
18 the Advisory Committee nor will they be met in the future should the Advisory Committee remain in  
19 control of the basin.

## 20 II.

### 21 THE OFFICE OF WATERMASTER SHOULD BE SEPARATE 22 AND DISTINCT FROM THE ADVISORY COMMITTEE

23 In addition to the arguments set forth above, there are additional compelling reasons why the  
24 Watermaster and the Advisory Committee should remain separate and distinct. The first compelling  
25 reason is that the judgment in question created them as separate bodies. As clearly stated in the  
26 judgment, the Watermaster was created because the safe yield of the basin had been exceeded for  
27 several years by production which was "...open, notorious, continuous, adverse, hostile and under  
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1 claim of right by producers” (Judgment, Section II Paragraph 7.) The producers who were to be  
2 monitored under the judgment ultimately became the pooling committees, members of which in turn  
3 comprise the Advisory Committee. If the court and the parties to the judgment had intended a unified  
4 Watermaster and Advisory Committee, there would be no need for the judgment. Therefore, a  
5 compelling reason to maintain separation between those two bodies is the furtherance of complying  
6 with the judgment itself. To allow the Advisory Committee to unify itself by assuming the role of  
7 Watermaster would not only circumvent the provisions of the judgment, but also serve to eliminate  
8 the oversight of producers by an independent body.

9 The majority of producers in the form of the Advisory Committee have argued that they have  
10 vested rights in the Chino Basin and therefore should be entitled to control their own destiny. In a  
11 technical sense, this may be true, and in fact, they have been given rights under the judgment.  
12 However, in practical terms, the proper management and control of the basin’s resources are of  
13 general public concern and the proper management and preservation of this resource is far more  
14 compelling than extending greater management and control of those resources to the Advisory  
15 Committee and its producers over and above what is afforded under the judgment.

16 The degree of separation between the two bodies should be that which is provided in the  
17 judgment. The role of the Advisory Committee is defined by its title, an Advisory Committee. Their  
18 authority does not, and should not, involve decisions over administration and management, an  
19 authority which the Advisory Committee has usurped over the years. The Advisory Committee’s  
20 adamant refusal to recognize the separation of authority and responsibility under the judgment have  
21 brought us to this inevitable position where the parties have been battling in court for at least the last  
22 year and a half while the important issues facing management of the basin go unaddressed.

23 Arguments have been offered that there is no language in the judgment itself which prevents  
24 the Advisory Committee, or members thereof, from holding the position of Watermaster. Likewise,  
25 however, there is no enabling language within the judgment that would entitle them to that office.  
26 The Advisory Committee has argued that the Watermaster is a public entity for purposes of securing  
27 pension benefits for the employees of Watermaster Services. It is submitted that if the Watermaster is  
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1 a public entity for that purpose, it is a public entity for all purposes. A public entity is vested with  
2 those authorities expressly stated in statute as interpreted through case law. If a public entity seeks to  
3 perform an act which is not expressly authorized under its respective enabling statutes, the authority  
4 for such an act does not lie.

5 Here, the authorizing document is the judgment. The judgment extends no authority to the  
6 Advisory Committee to hold the office of Watermaster, and therefore, it cannot do so.

7 **III.**

8 **THE CHECKS AND BALANCES FOR DISCRETIONARY ACTS**  
9 **ARE SET FORTH IN THE JUDGMENT**

10 Paragraph 41 of the judgment vests in the Watermaster, the control and discretionary powers  
11 to develop an optimum basin management program for Chino Basin including water quality and  
12 quantity. That same provision vests in the Advisory Committee the authority to advise the  
13 Watermaster on such decisions. Moreover, Paragraph 38(b) of the judgment grants the Advisory  
14 Committee the duty and the power to study, recommend, review and act upon discretionary  
15 determinations made by the Watermaster.

16 These provisions allow for checks and balance in decision making by incorporating the  
17 participation of both producers and the Watermaster. Unfortunately, the majority of the Advisory  
18 Committee have elected to manage the basin under authoritarian rule relying on the 80% rule to  
19 further its own interest at the expense of the basin. In doing so, they have completely eliminated the  
20 Watermaster from the decision making process and, as evidenced by the very case presently before  
21 the court, have sent a message to the Watermaster that they either comply with the directives of the  
22 majority of the Advisory Committee or they will be dispatched.

23 The courts have regularly dealt with defining discretionary decision making, especially in the  
24 context of governmental tort liability. However, the courts are quick to note that the distinction  
25 between a discretionary and ministerial act depends upon the particular circumstances of the case at  
26 hand, and therefore, must be judged on a case by case basis. (Saltares v. Kristovich (1970) 6 Cal.  
27 App. 3d 504, 85 Cal. Rptr. 866.) Nevertheless, "...the U.S. Supreme Court has adopted the 'planning  
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1 level vs. operational level' test for determining whether the function is, or is not, discretionary."  
2 (Widdows v. Koch (1968) 263 Cal. App. 2d 228, 69 Cal. Rptr. 464.)

3 As hereinafter noted, there are numerous duties which the judgment assigns to the  
4 Watermaster exclusively. Paragraph 41 of the judgment is the only reference in the judgment which  
5 would define discretionary acts. There, discretion is extended to those decisions which concern the  
6 development of an optimum basin management program including water quality and quantity. This  
7 would seem to fall directly in line with the definition utilized in the Widdows case cited above.

8 The test, therefore, to determine who should participate in the decision making process on any  
9 given issue would be to first determine whether or not the issue falls within any of the exclusive  
10 authorities granted to the Watermaster as more thoroughly set out in Section IV below. If the issue  
11 does not fall within one of those categories, it should then be determined whether the issue concerns  
12 the development of an optimum basin management program for Chino Basin including water quality  
13 and quantity. If it does, the Advisory Committee should participate in the decision making pursuant  
14 to the judgment. If the issue falls outside of that category, however, the decision making should rest  
15 with the Watermaster subject to review provided for in the judgment.

16 Another check and balance of the judgment is provided at Paragraph 38(b)[1]. That provision  
17 is extremely important in that it affords the public a right to be heard on important issues over which  
18 the Watermaster and Advisory Committee disagree. Even an 80% vote of the Advisory Committee is  
19 subject to public scrutiny and input should the Watermaster deem that appropriate. If the Advisory  
20 Committee is allowed to assume the role of Watermaster as well, the ability of the public, which is  
21 directly affected by the decisions of the Watermaster, to voice their concerns and participate in this  
22 important decision making process will be eliminated. It is naive to believe that the Advisory  
23 Committee acting as Watermaster will dispute and bring to the public forum a decision which they  
24 themselves made at the Advisory Committee level. Hence, in order to enforce the checks and  
25 balances which are duly set forth in the judgment itself, the role and authority of the Watermaster and  
26 the Advisory Committee must be specifically delineated and all of the parties to the judgment must  
27 respect not only the provisions of the judgment but the authority vested in the respective bodies.  
28

1 Finally, the ultimate check and balance is the jurisdiction and authority of the court itself. This  
2 is likewise provided for at Paragraph 31 of the judgment.

3 IV.

4 **THE JUDGMENT PROVIDES CHECKS AND BALANCES**  
5 **FOR ADMINISTRATIVE DECISION MAKING**

6 Under the judgment, the Watermaster is responsible to administer the judgment. In  
7 furtherance of that, the Watermaster is extended authority which is not extended to the Advisory  
8 Committee. This includes the authority to purchase, lease, acquire and hold all necessary facilities  
9 and equipment (Judgment, Paragraph 19); employ or retain such administrative, engineering,  
10 geologic, accounting, legal or other specialized personnel and consultants (Judgment, Paragraph 20);  
11 cause the parties to install and maintain measuring devices (Judgment, Paragraph 21); levy and collect  
12 all assessments provided for in the pooling plans and physical solution (Judgment, Paragraph 22);  
13 hold and invest any and all Watermaster funds and investments authorized from time to time for  
14 public agencies of the State of California (Judgment, Paragraph 23); borrow from time to time  
15 amounts not exceeding the annual anticipated receipts of Watermaster during the year (Judgment,  
16 Paragraph 24); enter into contracts for the performance of any powers granted under the Judgment  
17 with certain exceptions (Judgment, Paragraph 25); calculate additions, extractions and losses and  
18 maintain an annual account of all stored water in Chino Basin, and any losses of water supplies or  
19 safe yield of Chino Basin resulting from stored water (Judgment, Paragraph 29); adopt an annual  
20 budget subject to review by the Advisory Committee (Judgment, Paragraph 30).

21 The checks and balances afforded under the judgment include the court's ultimate supervision  
22 over the Watermaster (Judgment, Paragraph 17); the right of any party to remove the Watermaster  
23 (Judgment, Paragraph 16); and the fact that some administrative matters are to be conducted with the  
24 advice of the Advisory Committee including, but not limited to, Advisory Committee  
25 recommendation for Watermaster rules and regulations (Judgment, Paragraph 18) and Advisory  
26 Committee review of the annual budget (Judgment, Paragraph 30). The Advisory Committee,  
27 however, refuses to acknowledge these enumerated powers of the Watermaster and have extended  
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1 their authority from advising on discretionary matters to controlling all of the affairs of the  
2 Watermaster leaving the parties not knowing who has authority to do what under the judgment.

3 **CONCLUSION**

4 To allow the appointment of the nine member Watermaster Board comprised of Advisory  
5 Committee members would eliminate most, if not all, of the checks and balances provided by the  
6 judgment. Perhaps the most important of these is the ability for the Watermaster to call a public  
7 hearing under Paragraph 38(b)[1]. In essence, the Advisory Committee would have eliminated all  
8 scrutiny of their decision making, and we would have come full circle by placing the producers back  
9 in charge of the Chino Basin.

10 Despite the critical condition of the Chino Basin, the proponents of the nine member  
11 Watermaster Board offer nothing new. They offer the same staffing, the same decision makers and  
12 the same partisan control over the basin. They would effectively exclude all public scrutiny and  
13 involvement in the decision making process concerning the resources of the basin which affects the  
14 public in general.

15 In short, the position of Watermaster should be filled with an independent person or body  
16 having no ties or obligations to the producers.

17 Respectfully submitted.

18 Dated: August 18, 1997

CIHIGOYENETCHE, GROSSBERG & CLOUSE

19  
20  
21 By:

  
JEAN CIHIGOYENETCHE

Attorneys for Plaintiff,

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

10  
11 **CHINO BASIN MUNICIPAL WATER** )  
12 **DISTRICT,** ) **CASE NO. RCV 51010**  
13 **Plaintiff(s),** ) **PROOF OF SERVICE BY MAIL**  
14 **vs.** )  
15 **CITY OF CHINO, et al.,** )  
16 **Defendant(s).** )

17 I am employed in the County of San Bernardino, State of California and am over the age of 18  
18 years. I am not a party to the within action. My business address is 3602 Inland Empire Boulevard,  
19 Suite C315, Ontario, California.

20 On or before August 18, 1997, I served the documents described as: MEMORANDUM  
21 OF POINTS AND AUTHORITIES RE: MOTION TO APPOINT NINE MEMBER  
22 WATERMASTER BOARD on the interested parties to this action in the manner described below and  
23 addressed as indicated on the attached list.

24 I caused the documents to be enclosed in a sealed envelope with postage thereon fully paid,  
25 and to be deposited in the United States mail in Ontario, California. The documents were to be  
26 deposited with the United States Postal Service on the same day.

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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. I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on August 18, 1997, at Ontario, California.

  
\_\_\_\_\_  
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