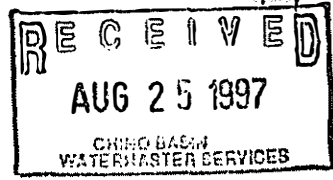


TVMWD
RE APPT
10/21/97

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Attorneys for THREE VALLEYS MUNICIPAL WATER DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,)	CASE NO. RCV 51010
)	
Plaintiff,)	OPENING BRIEF OF THREE VALLEYS MUNICIPAL WATER DISTRICT IN SUPPORT OF NINE-MEMBER WATERMASTER BOARD
)	
vs.)	
)	
CITY OF CHINO, et al.,)	
)	
Defendants.)	Date: October 21, 1997
)	Time: 10:00
)	Referee: Anne J. Schneider

Pursuant to the instructions of Anne J. Schneider, Referee in the above-captioned proceeding by virtue of a Ruling and Order of Special Reference entered by the Court on April 29, 1997, THREE VALLEYS MUNICIPAL WATER DISTRICT ("TVMWD") submits the following Opening Brief in response to the matters contained in said Order and in the Referee's correspondence of July 18, 1997, in support of the appointment of a nine-member board to serve as the Chino Basin Watermaster ("Watermaster"):

I.
INTRODUCTION

In 1978, the Court entered a Judgment which adjudicated the groundwater rights to the Chino Basin ("the Basin") and established

1 the provisions under which the Basin would be managed ("the
2 Judgment"). TVMWD is a party to the Judgment, although it is not
3 a producer within the Basin.

4 The Judgment organized the Basin's groundwater producers into
5 the Overlying (Agricultural) Pool, the Overlying (Non-Agricultural)
6 Pool, and the Appropriative Pool (collectively "the Pools"), and
7 created the office of Watermaster to carry out the administrative
8 functions of managing the Basin and to organize a committee for
9 each of the Pools. (Judgment, Section 16.) These committees, in
10 turn, were directed to form the Chino Basin Advisory Committee
11 ("Advisory Committee") which would then exercise some degree of
12 control over the activities of the Watermaster. (Judgment,
13 Sections 18, 25-28, 30, 32.) In this regard, The decisions of the
14 Advisory Committee become mandates to the Watermaster, which
15 Watermaster is obligated to perform when such decisions are made
16 pursuant to a vote of 80 percent of the Advisory Committee members.
17 [Judgment, Section 38(b)(1).]

18 The ultimate control which may be exercised by the Advisory
19 Committee over the Watermaster is the ability to replace the entity
20 which serves as Watermaster. Section 16 of the Judgment states
21 that "Watermaster may be changed at any time" and that:

22 "unless there are compelling reasons to the contrary, the
23 Court shall act in conformance with a motion requesting
24 that Watermaster be changed if such a motion is supported
by a majority of the voting power of the Advisory
Committee."

25 The Judgment provides that the term of appointment to the
26 position of Watermaster is five years. The Board of Directors of
27 the Chino Basin Municipal Water District ("CBMWD") was selected as
28 the initial Watermaster for the Basin and has served in that

1 capacity ever since.

2 II.

3 PROCEDURAL BACKGROUND

4 In or about February of 1997, a motion was filed by counsel
5 for Watermaster to appoint a nine-member board to serve as
6 Watermaster. That motion was supported by a 67.99% majority vote
7 of the Advisory Committee. As proposed by the Advisory Committee,
8 the nine-member board would be composed of the following:

- 9 * Two representatives from the Overlying (Agricultural)
10 Pool;
11 * One representative from the Overlying (Non-Agricultural)
12 Pool;
13 * Three representatives from the Appropriative Pool;
14 * One representative nominated by CBMWD;
15 * One representative nominated by TVMWD; and
16 * One representative nominated by Western Municipal Water
17 District ("WMWD").

18 Votes on the proposed Watermaster board will be tallied on a
19 one person - one vote basis. Neither CBMWD, TVMWD, or WMWD have
20 any voting power on the Advisory Committee.

21 The TVMWD Board of Directors adopted a resolution by a 6-0
22 vote supporting the appointment of the nine-member board to serve
23 as Watermaster and selected Director Krueger as its representative.
24 TVMWD also filed a Joinder to the motion seeking appointment of the
25 nine-member Watermaster board.

26 On April 29, 1997, the Court considered the motion and ordered
27 that the matter be referred to Anne J. Schneider for a
28 "recommendation as to how to proceed with resolving the motion."

1 Specifically, the Court requested the Referee to:

2 "consider the checks and balances contained in the 1978
3 Judgment and to consider the advantages and disadvantages
4 of a public entity watermaster versus a private entity
5 watermaster."

6 For the reasons that follow, TVMWD requests that the Referee
7 issue a recommendation to the Court supporting the appointment of
8 the proposed nine-member Watermaster board.

9 III.

10 ARGUMENT

11 A. No Compelling Reason Exists To Overrule The
12 Majority Vote Of The Advisory Committee To
13 Appoint The Nine-Member Watermaster Board.

14 Section 16 of the Judgment expressly provides as follows:

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

22 The nine-member Watermaster board described herein has been
23 approved by a majority of the Advisory Committee. Therefore, the
24 Court is required under the Judgment to "act in conformance with a
25 motion requesting that Watermaster be changed" unless there are
26 "compelling reasons to the contrary."

27 The underlying gist of the opposition papers previously filed
28 herein is basically grounded upon the unsupported proposition that
the proposed nine-member Watermaster board would be dominated by
the Appropriative Pool. However, in contrast to Advisory Committee
actions, producers who pump the most from the Basin would not
inherently control the outcome of Watermaster decisions because the
Appropriative Pool holds only one-third of the voting power on the

1 proposed Watermaster Board - the same percentage as the overlying
2 producers and the municipal water districts who in fact have no
3 voting power whatsoever on the Advisory Committee.

4 Thus, the proposed nine-member Watermaster board has been
5 designed to be an autonomous entity with a level of decision-making
6 that is independent of the Advisory Committee within the parameters
7 contained in the Judgment. Accordingly, no "compelling reasons"
8 exist to deny the motion seeking appointment of the nine-member
9 board as Watermaster.

10 B. Protection Of Minority Interests And The
11 Integrity Of The Judgment Necessitates A
12 Separation Of The Watermaster And The
13 Advisory Committee.

14 As mentioned above, the Advisory Committee is composed
15 entirely of producers within the Basin. Voting power on the
16 Advisory Committee is allocated according to production and payment
17 of assessments.

18 On the other hand, the proposed nine-member Watermaster Board
19 will include representatives of the three municipal water districts
20 which are located within the Basin. Voting on the nine-member
21 board will be one person - one vote.

22 As such, maintaining a separate Watermaster is necessary to
23 provide a forum to protect the rights of each and every party to
24 the Judgment, regardless of the amount of water that that party
25 produces of the amount of assessments that that party pays.

26 In this regard, in the past with CBMWD serving as Watermaster,
27 parties located outside the jurisdictional boundaries of CBMWD had
28 no opportunity to participate in the selection of the CBMWD Board
of Directors. On the other hand, if the proposed nine-member board

1 is approved, every party to the Judgment will have input on the
2 composition of Watermaster. Thus, the nine-member board would be
3 more representative of the interests of the affected parties and
4 would provide greater protection to minority rights than both the
5 Advisory Committee and CBMWD serving as Watermaster.

6 In addition, merging the Watermaster and the Advisory
7 Committee would require a major overhaul of the Judgment which has
8 been the basis for managing the water resources in the Basin for
9 almost twenty years. As the Referee herself noted in 1977:

10 "The concept of using a watermaster as a managing
11 agency, pursuant to a stipulated adjudication, has been
12 considered in several situations. The judgment in Upper
13 San Gabriel Valley Municipal Water District v. City of
14 Alhambra (San Gabriel) and the stipulation for judgment
15 in Chino Basin Water District v. City of Chino (Chino
16 Basin) illustrate a type of solution that is now being
17 developed.

18 "The watermaster established by the stipulated
19 judgment in the San Gabriel case is composed of nine
20 members appointed by the court, of whom six are nominated
21 by groundwater pumpers and three by the two main water
22 districts in the basin.

23 "The Chino Basin watermaster's powers are similar
24 to the San Gabriel watermaster's, including the power to
25 control the use of basin storage space." Schneider,
26 Groundwater Rights in California, Governor's Commission
27 to Review California Water Rights Law (1977) pp. 53-57.
28 (Emphasis supplied, footnotes omitted.)

Therefore, preserving a separate Watermaster is essential for
the protection of minority interests in the Basin as well as the
administrative structure of the Judgment which has governed the
management of the Basin for nearly two decades.

C. The Judgment Provides Adequate Checks And
Balances With Respect To Watermaster
Decisions

Under Section 38(a) of the Judgment, each of the Pools has the
power to develop policy recommendations for the administration of

1 its particular pool. All actions and recommendation of the Pools
2 which require Watermaster implementation must first be noticed to
3 the other two Pools. If no objection is received in writing within
4 thirty days, such action or recommendation shall be transmitted
5 directly to the Watermaster for action.

6 Under Section 38(b) of the Judgment, the Advisory Committee
7 has the power to recommend, review, and act upon all discretionary
8 determinations made by the Watermaster. When any such
9 recommendation or advice is approved by 80 votes or more of the
10 Advisory Committee, the Watermaster is mandated to take such action
11 [subject to court review thereof under Sections 31 and 38(c) of the
12 Judgment]. Otherwise, the Watermaster may act contrary to an
13 Advisory Committee recommendation only after holding a public
14 hearing, adopting written findings, and issuing a decision
15 consistent therewith. [Judgment, Section 38(b)(1).]

16 Pursuant to Sections 19-24 and 29 of the Judgment, the
17 Watermaster is authorized to perform various administrative
18 functions. However, in the event the Watermaster proposes to take
19 any discretionary action, other than approval or disapproval of an
20 action of the Pools or recommendation properly transmitted, or
21 execute any agreement not theretofore within the scope of an
22 Advisory Committee recommendation, Section 38(b)(2) provides that
23 notice of such intended action shall be served on the Advisory
24 Committee and its members at least thirty days before the
25 Watermaster meeting at which such action is finally authorized.

26 Thus, several internal checks and balances concerning
27 Watermaster decisions are specifically set forth in the Judgment.
28 In any event, regardless of whether such decisions are

1 characterized as discretionary, administrative, or mandatory,
2 Section 31 of the Judgment expressly provides as follows:

3 "All actions, decisions or rules of Watermaster shall be
4 subject to review by the Court on its own motion or on
5 timely motion by any party, the Watermaster (in the case
6 of a mandated action), the Advisory Committee, or any
7 Pool" (Emphasis added.)

8 In addition, Section 38(b)(1) of the Judgment also provides
9 that any decision by the Watermaster consistent with or contrary to
10 an Advisory Committee recommendation "shall be subject to review by
11 the Court, as in the case of all other Watermaster determinations."
12 (Emphasis added.)

13 Further, the Referee herself has noted the checks and balances
14 placed upon the Watermaster under the Judgment when she commented
15 in 1977 that:

16 "the Chino Basin watermaster is not only subject to
17 review by the court, but is also subject to review by an
18 'Advisory Committee' and 'Pool Committees.'" Schneider,
19 Groundwater Rights in California, Governor's Commission
20 to Review California Water Rights Law (1977) p. 57.
21 (Emphasis supplied, footnote omitted.)

22 Thus, any party to the Judgment - even if they do not produce
23 water from the Basin - may seek Court review of any Watermaster
24 decision, whether that decision is consistent with, contrary to, or
25 independent of any recommendation of the Advisory Committee.
26 Therefore, it is simply not possible for any one party, or any
27 group of parties, to make a decision regarding the management of
28 the Basin without the opportunity of each and every other party
affected thereby to seek Court review of that decision. The
appointment of the nine-member board as Watermaster will not change
this aspect of the Judgment in any manner whatsoever.

///

1 D. The Composition Of The Watermaster Should
2 Include Public Agencies Rather Than A
3 Private Entity.

4 For all of the following reasons, it is respectfully submitted
5 that the Watermaster should be composed of public agencies rather
6 than a private individual or entity:

- 7 1. The inclusion of local governmental entities such as
8 TVMWD on the Watermaster board ensures that the elected
9 officials are directly accountable to the public for
10 managing the common groundwater supply in the Basin.
- 11 2. The inclusion of local governmental entities such as
12 TVMWD ensures that the activities of Watermaster
13 representatives are subject to such statutory
14 protections as the Ralph M. Brown Act (Government Code
15 Section 54950 et seq.), the Political Reform Act
16 (Government Code Section 87100 et seq.), the Public
17 Records Act (Government Code Section 6250 et seq.), and
18 Government Code Section 1090.
- 19 3. The inclusion of local governmental entities such as
20 TVMWD ensures that experienced staff and adequate
21 resources will be available to manage and control the
22 Basin.
- 23 4. The inclusion of parties to the Judgment on the
24 Watermaster board ensures that a variety of points of
25 view are considered and that the parties to the Judgment
26 are able to participate in the implementation thereof.
- 27 5. The specific knowledge of the Basin by a private
28 individual or firm may be limited, thus resulting in a
duplication of past efforts by reason of a private

1 Watermaster's unnecessary review of technical
2 information and previous decisions to obtain a working
3 understanding of the Basin.

4 6. The cost to the community to retain a private individual
5 or firm could be more expensive since a private
6 Watermaster would be working to make a profit (whereas
7 directors' fees are limited by statute), and the
8 viability of its decisions would not be limited by
9 financing concerns on the manner in which funds would be
10 raised to maintain operations.

11 7. The parties to the Judgment who do not have any water
12 rights in the Basin would be completely divested of any
13 representation on Watermaster and any input into the
14 management of the Basin if a private individual or firm
15 was appointed as the Watermaster.

16 8. A private Watermaster would not be held directly
17 accountable to the public.

18 9. A private Watermaster would not be subject to conflict
19 of interest disclosures, public inspection of records,
20 or an open decision-making process (except in hearings
21 before the Court).

22 IV.

23 CONCLUSION

24 Therefore, based upon all of the above, TVMWD respectfully
25 requests that the Referee recommend to the Court that the pending
26 motion for appointment of a nine-member board to serve as the

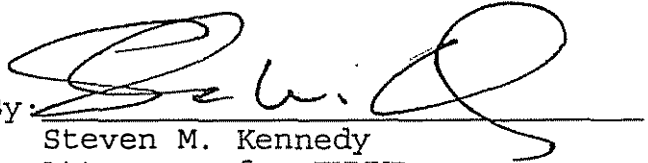
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1 Watermaster be granted.

2 Dated: August 18, 1997

BRUNICK, ALVAREZ & BATTERSBY

3
4 By: 
5 Steven M. Kennedy
6 Attorneys for TVMWD

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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 1839 Commercenter West, San Bernardino, California.

On August 18, 1997, I served the foregoing document described as Opening Brief of Three Valleys Municipal Water District in Support of Nine-Member Watermaster Board on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

See Attached Service List

X As follows: I am "readily familiar" with the firm's practice of collection and 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 San Bernardino, California, in the 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 for mailing in affidavit.

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

Executed on August 18, 1997, at San Bernardino, California.

Donna Schreiber

Donna Schreiber
(Signature)

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