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11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
12 COUNTY OF SAN BERNARDINO

13	CHINO BASIN MUNICIPAL WATER )	CASE NO. RCV 51010
14	DISTRICT, )	[Specially Assigned to the
	)	Honorable J. Michael Gunn]
15	Plaintiff, )	
	)	<b>REFEREE'S REQUESTED BRIEF</b>
16	vs. )	<b>REGARDING IDENTIFIED ISSUES</b>
	)	
17	CITY OF CHINO )	<b>HEARING DATE: October 21, 1997</b>
18	)	<b>HEARING TIME: 10:00 a.m.</b>
19	Defendant. )	<b>DEPT: To be determined</b>
	)	
		<b>REFEREE: Anne J. Schneider</b>

20  
21 **INTRODUCTION**

22 The adjudication which resulted in the Judgment was necessary due to Chino Basin Water  
23 producers' failure or refusal to effectively manager the Basin. The Judgment imposes a physical  
24 solution upon all of the producers in the Basin to force them to comply with the mandate of  
25 Article X, Section 2.

26 A part of the enforcement mechanism of the Judgment is the creation of a neutral  
27 independent and objective Watermaster, who administers and manages the Basin. Chino Basin  
28

1 Municipal Water District ("CBMWD") was selected as the first Watermaster, and was purposely  
2 kept out of the negotiations of the Judgment in order to maintain its independence, objectivity and  
3 neutrality. (Declaration of Langdon Wood Owen.)

4 Over time the producer controlled Advisory Committee has been able to usurp authority  
5 from the Watermaster by falsely claiming that the Judgment gives the Advisory Committee  
6 mandate authority over any action of the Watermaster with an 80 percent vote from its  
7 membership. The result of the Advisory Committee acting as de facto Watermaster has been to  
8 focus away from basin management, the purpose and objective of the Judgment, instead to focus  
9 upon being the fiscal desires of certain controlling producers. Water quality and quantity has  
10 deteriorated to a point where the water no longer meets safe drinking standards, soil subsidence  
11 has occurred, and growing areas within the Basin have an insufficient supply of water.

12 Approximately two years ago, the Watermaster woke up and realized its fiduciary  
13 obligation was not only to the producers in the Basin, but to the public, and began to question  
14 Advisory Committee actions. Unfortunately, it was too late. The Advisory Committee had  
15 already commandeered the Watermaster's services staff, directing it to report to the Advisory  
16 Committee on all matters, and retained a law firm to represent the Watermaster under the  
17 Advisory Committee's sole direction.<sup>1</sup> In the mean time, the Advisory Committee had brought a  
18 motion to remove CBMWD as Watermaster and appoint the Advisory Committee as the  
19 Watermaster.

20 The Advisory Committee's current motion to appoint a nine member board of producers  
21 as Watermaster is thinly veiled renewal of its previous motion to appoint itself as Watermaster.  
22 It is the final step in the Advisory Committee's usurpation of power and is a practical evisceration  
23 of the physical solution.

24 The purposed nine member board will result in the same producers controlling the  
25

26 <sup>1</sup>

27 In fact, when the Watermaster fired its purported counsel, it was advised by the same  
28 counsel that counsel could not be fired without Advisory Committee authority. Thereafter, it  
took a court order to stop this counsel from appearing in court and alleging it represented the  
Watermaster.

1 Watermaster panel as control the Advisory Committee. More importantly, appointing any  
2 producer with a pecuniary interest in the Basin as Watermaster, is contrary to intent of the  
3 Judgment and its drafters, and will further undermine the purpose and objective of the physical  
4 solution.

5 **ISSUE 1: WHAT WOULD CONSTITUTE A "COMPELLING**  
6 **REASON" FOR THE COURT NOT TO ACT IN**  
7 **CONFORMANCE WITH A MOTION, SUPPORTED BY A**  
8 **MAJORITY OF THE VOTING POWER OF THE ADVISORY**  
9 **COMMITTEE, REQUESTING THE WATERMASTER BE**  
10 **CHANGED?**

11 **A. The Current Motion by the Advisory Committee Seeks to Modify the Judgment**  
12 **Rather Than to Simply Change the Identity of the Watermaster.**

13 The purpose and objective of the physical solution is set forth in Paragraph 39 of  
14 the Judgment. That is to comply with the mandate of Article X, Section 2 of the California  
15 Constitution, which provides in part:

16 It is hereby declared that because of conditions prevailing in this State, the general  
17 welfare requires that the water resources of the State be put to beneficial use to the  
18 fullest extent of which they are capable, and the waste or unreasonable use or  
19 unreasonable method of use of water be prevented, and that the conservation of  
20 such waters is to be exercised with a view to the reasonable and beneficial use  
21 thereof in the interest of the people and for the public welfare.

22 Paragraph 39 of the Judgment further explains that the purpose of all other  
23 provisions of the Judgment:

24 Is to establish a legal and practical means for making the maximum reasonable  
25 beneficial use of the waters of Chino Basin by providing the optimum economic,  
26 long-term, conjunctive utilization of surface waters, groundwater, and supplemental  
27 water, to meeting the requirements of water users having rights in or dependent  
28 upon Chino Basin.

(Judgment, ¶ 39, p. 23.)

This includes the establishment of a neutral, objective and independent  
Watermaster, which administers and manages the Basin consistent with the physical solution, and  
receives advice on the development of an optimum basin management program from a producer

1 representative Advisory Committee. (Judgment, ¶¶ 16-31, 38, 40-41). The Judgment also  
 2 provides for the creation by the Watermaster of pool committees consistent with the several pools  
 3 created under the physical solution (i.e., Overlying (agricultural) Pool, Overlying (non-  
 4 agricultural) Pool, and Appropriative Pool). (Judgment ¶¶ 32, 43.) The Judgment contemplates  
 5 that through effective basin management by the Watermaster and the importation of supplemental  
 6 water, all water users dependent upon the Basin will be allowed to pump sufficient waters from  
 7 the Basin to meet their requirements. (Judgment, ¶ 42, p. 24.)

8           Within the Judgment is an elaborate system of varying checks and balances between  
 9 the Watermaster and the Advisory Committee for certain administrative functions of the  
 10 Watermaster, as well as another system of checks and balances between the Watermaster and  
 11 Advisory Committee for discretionary acts by the Watermaster (defined by the Judgment as  
 12 development of an optimum basin management program). (Judgment ¶¶ 17-30, 38, 41.) The  
 13 Watermaster, however, is the final arbiter of any dispute between producer pools. (Judgment ¶  
 14 38, p. 21.) Additionally, the Watermaster has absolute authority, without producer involvement,  
 15 to control groundwater storage, to acquire necessary facilities and equipment, to employ experts  
 16 and agents, to levy and collect assessments, to invest funds, and to obtain supplemental water for  
 17 the Basin. (Judgment, ¶¶ 11, 19, 20, 22, 49.)

18           If the groundwater producers are allowed to serve on both the Advisory Committee  
 19 and as a member of the board constituting the Watermaster, such conduct would threaten the very  
 20 integrity of the Judgment. (See *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 559  
 21 ["A biased decision maker is constitutionally unacceptable . . . . The right to a fair procedure  
 22 includes the right to impartial adjudicators."].) A panel of Basin producer representatives acting  
 23 as the Watermaster controlled by the same majority controlling the Advisory Committee would  
 24 eliminate both the neutrality of the position of Watermaster and would effectively eliminate the  
 25 checks and balances between the Watermaster and the Advisory Committee. These two central  
 26 tenants to the Judgment are crucial to safeguarding the sole purpose and objective of the  
 27 Judgment, i.e., to enforce the mandate of Article X, Section 2 of the California Constitution.  
 28 (Judgment, ¶ 39, p. 23; see also Declaration of Senator Rubin Ayala.) Such a proposed



1 modification of the Judgment is nothing less than a substantive modification of the Judgment and  
 2 is, consequently, impermissible, absent a provision in the Judgment to the contrary. (Witken,  
 3 California Procedure (3d ed. 1985) *Judgment* § 81, pp. 516-517, citing *Orbin Lumber Co. v.*  
 4 *Fearrien* (1966) 240 Cal.App.2d 853, 856.)

5 The Judgment clearly describes the Watermaster and the Advisory Committee as  
 6 separate bodies, independent of each other. Nowhere in the Judgment is there any indication that  
 7 the court would sanction the controlling members of the Advisory Committee serving as a panel  
 8 of Watermasters. Under the maxim of *expressio unius est exclusio alterius* ("the expression of  
 9 one thing is the exclusion of another"), omission of any discussion in the Judgment of an overlap  
 10 between Advisory Committee members and Watermaster indicates that the Judgment did not  
 11 intend any such overlap. (See *Southern Pacific Pipelines, Inc. v. State Board of Equalization*  
 12 (1993) 14 Cal.App.4th 42 [Maxim applied to the interpretation of a judgment].)

13 Furthermore, as explained in the Declaration of Langdon Wood Owen, it was  
 14 always the intention of the parties to this stipulated Judgment that the Watermaster be neutral,  
 15 objective, and separate from the producers. That is why CBMWD was not allowed to participate  
 16 in the negotiations for the Judgment. (Declaration of Langdon Wood Owen, ¶ 4.) To allow the  
 17 appointment of a producer controlled Watermaster is a modification not only of the stated terms  
 18 of the Judgment, but of the clear intentions of its drafters.

19 Allowing any producers or group of producers in the Basin to act as the  
 20 Watermaster risks appointment of a Watermaster that will put its own economic self-interest ahead  
 21 of the stated purpose and objective of the physical solution. This statement is not pure  
 22 speculation. The adjudication was necessary because the producers in the Basin cared less about  
 23 Basin Management and more about pecuniary gain. As conceded by all parties in their recent  
 24 briefs before the court, the Advisory Committee in recent years has control all aspects of the  
 25 management and administration of the Basin. The result has been to veer from the purpose and  
 26 objective of the Judgment by ignoring Basin management issues, such as conjunctive use of  
 27 supplemental water and nitrate levels, and to focus on the fiscal desires of the most powerful of  
 28 the appropriators (i.e., City of Ontario and City of Rancho Cucamonga). (See Declaration of

1 Langdon Wood Owns and Declaration of P. Joseph Grindstaff.<sup>2)</sup>

2 B. Other "Compelling Reasons" for the Court Not to Act In Conformance With  
3 A Motion by the Advisory Committee to Change the Identity of the Watermaster.

4 The most compelling possible reason for a court to reject a motion by 80 percent  
5 of the Advisory Committee to replace the Watermaster is if such replacement would undermine  
6 the purpose and objective of the Judgment.<sup>3</sup> Clearly, that purpose and object is to carry out with  
7 the mandate of Article X, Section 2 by providing the optimum economic, long-term, conjunctive  
8 utilization of surface waters, groundwater and supplemental water to meet the requirements of  
9 water users having rights in or dependent upon the Basin, i.e., Basin management.

10 The Judgment is very clear that this purpose and objective overrides all other  
11 considerations. (Judgment, ¶¶ 15, 17, 39-41.) In fact, the Judgment provides for the modification  
12 by the court of any of its terms in order to achieve its stated purpose and objective. (Judgment,  
13 ¶¶ 15 and 40.) If the court grants the motion of the Advisory Committee, it will place in the role  
14 of Watermaster entities that have economic interests contrary to the stated purpose and objective  
15 of the Judgment. They will act accordingly.

16 Again, this is not conjecture. One need only review the recent history of the Basin.  
17 In recent years, the Advisory Committee has acted as the de facto Watermaster. As described  
18 in detail in the Declaration of P. Joseph Grindstaff, there has been a continuing degradation of  
19 water quality and safe yield in the Basin due to the failure of the members of the pools and  
20 Advisory Committee to following the Judgment. These parties have knowingly avoided dealing  
21 with such issues as pumping patterns, safe yield, storage limits and losses, speculation in water,  
22

23 \_\_\_\_\_  
24 <sup>2</sup>  
25 The Declaration of P. Joseph Grandstaff is attached to Monte Vista District's Partial  
26 Opposition to the Motion for Appointment of Nine Member Broad as Watermaster, which has  
27 already been provided to the referee.

28 <sup>3</sup>  
It should be noted that Paragraph 16 of the Judgment only pertains to motions "requesting  
the Watermaster be changed" and does not indicate whether any motion, no matter the level of  
support from the producers, can compel a court to select a specific person or entity requested as  
the new Watermaster.

1 and development of a Optimum Basin Management Plan. (Grindstaff Dec., p 5, ¶¶ 9-27.)  
2 Additionally, the parties have used an estimated 50,000 acre-feet (current replacement cost are  
3 approximately \$12 million) in extra water from the Basin in direct violation of the Judgment in  
4 order to lower expenses. (Grindstaff Dec., ¶¶ 5, 6 and Exhibit A.)

5 When the current Watermaster indicated that it wanted to review these issues and  
6 began prodding the Advisory Committee to take action on issues of water management and  
7 administration, attempts by the controlling members of the Advisory Committee to remove the  
8 Watermaster began. (Grindstaff Dec., ¶ 6.) Absent the appointment of a Watermaster who is  
9 completely neutral and objective, the water quality and quantity of the Basin will continue to  
10 deteriorate.

11 The second most compelling reason to reject the Advisory Committee's motion is  
12 that appointment of a producer panel Watermaster it would violate the very structure of the  
13 Judgment. Since the drafting of the Judgment, it has been the intention of all parties that the  
14 Watermaster be independent, neutral and objective. (See Declaration of Langdon Wood Owen.)  
15 A Basin producer, by definition, cannot be independent, neutral and objective. The producer's  
16 pecuniary interests revolve around the groundwater of the Basin and the decisions made by the  
17 Watermaster in that regard.

18 As is clearly indicated in Paragraph 17 of the Judgment, (which begins the  
19 discussion of the Watermaster's powers and duties), the Watermaster acts a direct arm of the  
20 court. (See also ¶ 31.) Every other representative of the court, including arbitrators, mediators,  
21 special masters, and receivers are required to be independent, neutral and objective with regard  
22 to any of the parties involved in the litigation. (See Code Civ. Proc. §§170.1, 556, 641; Cal.  
23 Rules of Court, rule 1606.) There is no authority providing an exception for Watermasters

24 Furthermore, appointing Basin producers as the Watermaster effectively eliminates  
25 the checks and balances between the Watermaster and the Advisory and Pool Committees. Such  
26 checks and balances presume a separation between the Watermaster and the Advisory and Pool  
27 Committees. In other words, if the Watermaster and these Committees are essentially the same,  
28 there are no checks and balances between the entities. Appointing producers as Watermaster

1 checks and balances presume a separation between the Watermaster and the Advisory and Pool  
2 Committees. In other words, if the Watermaster and these Committees are essentially the same,  
3 there are no checks and balances between the entities. Appointing producers as Watermaster  
4 eliminates the separation of the Advisory Committee or the Pooling Committees from the  
5 Watermaster.<sup>5</sup>

6 Additionally, the Judgment does not contemplate a Watermaster consisting of more  
7 than one public or private entity. CBMWD was selected as the initial Watermaster. Absent  
8 contrary instruction in the Judgment, a similar pattern should be followed. One can only  
9 contemplate the morass of bureaucracy that would be involved if numerous entities, consisting of  
10 numerous boards of directors, had to coordinate their voting and meetings to effectively act as  
11 Watermaster.

12  
13 **ISSUE 2: IS THERE A "COMPELLING REASON" WHY THE**  
14 **WATERMASTER AND ADVISORY COMMITTEE SHOULD**  
15 **BE SEPARATE? IF YES, WHAT DEGREE OR FORM OF**  
16 **SEPARATION WOULD THERE HAVE TO BE BETWEEN**  
17 **THE ADVISORY COMMITTEE AND THE**  
18 **WATERMASTER?**

19 Yes. It should first be noted that there is no requirement that any party to the Judgment  
20 present a "compelling reason" for the separation of the Watermaster and the Advisory Committee.  
21 The only time such a standard is required in the Judgment is in opposing a motion by the majority  
22 of the Advisory Committee to remove the entity acting as Watermaster. Nevertheless, compelling  
23 reasons do exist for continuing to insure that the Watermaster and Advisory Committee are  
24 separate.

25 The most obvious reason is that the Judgment requires that the Watermaster and Advisory  
26 Committee be completely separate. The Advisory Committee consists entirely of representatives

27 <sup>5</sup>

28 The elimination of the separation between the Watermaster and the Advisory Committee  
proposed by the Advisory Committee in their motion creates another problem. Who can compel  
the removal of the Advisory Committee after it is also made the Watermaster?

1 from producers who have a direct pecuniary interest in the groundwater of the Basin. In contrast  
2 the Watermaster acts as an arm of the court. (Judgment, ¶¶ 17 and 31.) No representative of  
3 a court is allowed to have a pecuniary interest in the matter before it. (See Code Civ. Proc. §§  
4 170.1, 566, 641; Cal. Rules of Court, rule 1606.) No exception is made for Watermasters.

5 Even if the Judgment was not clear concerning the requirement that the Watermaster is to  
6 be independent, neutral and objective, that was the intention of the drafters and original  
7 signatories to the stipulated Judgment. As explained in the Declaration of Langdon Wood Owen,  
8 CBMWD was precluded from participating in the negotiation and drafting of the Judgment  
9 because the parties intended CBMWD to act as the Watermaster. They wanted to ensure that  
10 CBMWD remained neutral and objective. There is no evidence the Judgment contemplates a  
11 different standard for the second Watermaster.

12 If the Advisory Committee and the Watermaster are not separate, there is no reason for the  
13 Judgment to contain any checks and balances, including the provision allowing for an 80 percent  
14 mandate from the Advisory Committee on "discretionary" decisions. (Judgment, ¶ 38(b)(1), p.  
15 21.) By developing a system of checks and balances between the Watermaster and the Advisory  
16 Committee, the Judgment presumes that the two entities are separated. Otherwise, the checks and  
17 balances are unnecessary.

18 The amount of separation required between the Advisory Committee and the Watermaster  
19 is complete separation. The Advisory Committee consists of producers, who each have pecuniary  
20 interests in the Basin. Recent history demonstrates the danger of allowing one or more entities  
21 with pecuniary interest in the Basin to act as the Watermaster.

22 As conceded by all parties, for the past several years the Advisory Committee has acted  
23 as a de factor Watermaster. The result has been a failure to develop and implement a plan for  
24 conjunctive use of supplemental water, a lack of sufficient water supply, and a deterioration of  
25 water quality to a point where most of the water pumped out of the Basin no longer meets health  
26 department standards for safe drinking water without blending or treatment. (Declaration of P.  
27 Joseph Grindstaff and Declaration of Langdon Wood Owen.) In short, the de facto Watermaster  
28 regime has failed to provide adequate Basin management.

1 ISSUE 3(a): WITH RESPECT TO DUTIES EXPLICITLY  
2 IDENTIFIED AS "DISCRETIONARY" THAT ARE SET  
3 FORTH IN THE JUDGMENT, WHAT CHECKS AND  
4 BALANCES ARE PROVIDED IN THE JUDGMENT TO  
5 ASSURE THAT EACH OF THOSE DUTIES ARE  
6 CARRIED OUT IN A MANNER CONSISTENT WITH  
7 THE PROVISIONS OF THE JUDGMENT?

8 The only responsibility or duty of the Watermaster designated by the Judgment as  
9 "discretionary" is the Watermaster's power to develop an optimum basin management program.  
10 (Judgment, ¶ 41, p. 23.) No other responsibility, duty, or power is characterized by the  
11 Judgment as discretionary.

12 Paragraph 41 of the Judgment provides that such basin manager programs are to be  
13 developed and implemented with the advice of the Advisory Committee. Paragraph 38(b)(1)  
14 provides that when the Watermaster receives "advice of the Advisory Committee," action  
15 consistent *may* be taken by the Watermaster, unless that advice is approved by 80 percent of the  
16 votes or more in the Advisory Committee. Should the advice be supported by an 80 percent or  
17 more majority, that advice constitutes a mandate for action by the Watermaster consistent with  
18 it.

19 Thus, discretionary acts by the Watermaster are left within the Watermaster control absent  
20 contrary direction from the Advisory Committee supported by an 80 percent majority. Such  
21 advice supported by an 80 percent majority constitutes a mandate. Should the Watermaster  
22 believe that this mandate is not in the best interest of the Basin or contrary to the overall purpose  
23 and goal of the Judgment, the Watermaster can seek judicial review. (Judgment, ¶ 38(c), p. 22.)

24 The Judgment also provides for the Watermaster to give notice to the Advisory Committee  
25 should the Watermaster propose to vary in a discretionary act from unmandated advice formally  
26 provided by the Advisory Committee. Thereafter, the Watermaster is to hold a public hearing,  
27 followed by written findings and decisions. Notice of the Watermaster's intention to act contrary  
28 to unmandated advice received by the Advisory Committee, must be provided to the Advisory  
Committee and its members at least thirty days before the Watermaster meeting at which such

1 action is to be authorized. (Judgment, ¶¶ 38(b)(1) and (2), pp. 21-22.)

2 Such an elaborate system of checks and balances allows the Watermaster to take the lead  
3 developing and implementing a plan for basin management, but also forces the Watermaster to  
4 consider advice it receives from the Advisory Committee which represents the producers directly  
5 affected by the Watermaster's decision. Should the Watermaster chose to act upon a discretionary  
6 matter in a manner contrary to the advice received by the Advisory Committee and there is no  
7 80 percent mandate from the Advisory Committee, either the Advisory Committee or individual  
8 producers can seek court review of the Watermaster's proposed discretionary act. (Judgment ,  
9 ¶ 38(c) p. 22.)

10 The failure of the producers over many years as de facto Watermaster to provide for even  
11 minimal Basin management demonstrates the dangers of allowing the producers to act as  
12 Watermaster.

13  
14 **ISSUE 3(b): WITH RESPECT TO DUTIES EXPLICITLY**  
15 **IDENTIFIED AS "ADMINISTRATIVE" THAT ARE**  
16 **SET FORTH IN THE JUDGMENT, WHAT CHECKS**  
17 **AND BALANCES ARE PROVIDED IN THE**  
18 **JUDGMENT TO ASSURE THAT EACH OF THOSE**  
19 **DUTIES IS CARRIED OUT IN A MANNER**  
20 **CONSISTENT WITH THE PROVISIONS OF THE**  
21 **JUDGMENT?**

22 Paragraph 16 of the Judgment provides for the Watermaster "to administer and enforce  
23 the provision of the Judgment." Various paragraphs throughout the Judgment speak of the duties  
24 of the Watermaster that are clearly administrative in nature. (See ¶¶ 11-12, 17-30, 36, 45, 48,  
25 and 56.)

26 Paragraph 54 of the Judgment describes those expenses incurred by the Watermaster that  
27 are considered "administrative expenses." These include office rental, general personnel expense,  
28 supplies and office equipment, related incidental expense and general overhead, engineering,  
economic or other studies, litigation expense, meter testing, or other major operating expenses.

1 Those expenses identified as "administrative expenses" stem from those duties and responsibilities  
2 of the Watermaster identified in Paragraph 17 through 30 of the Judgment, which have been  
3 previously characterized by the parties as "administrative."

4 For each of the duties and powers of the Watermaster listed in paragraphs 17 through 30,  
5 the Judgment specifically identifies which of those duties and powers involve Advisory Committee  
6 participation and which do not. The Judgment identifies as administrative duties and powers of  
7 the Watermaster involving some level of Advisory Committee involvement as: entering into  
8 contracts (¶ 25), cooperation with other agencies (¶ 26), studies (¶ 27), groundwater storage  
9 agreements (¶ 28), and annual administrative budget (¶ 30).

10 The Advisory Committee involvement with contracts between the Watermaster and third  
11 parties is limited to contracts between CBMWD and the Watermaster. This involvement by the  
12 Advisory Committee is only necessary as long as CBMWD remains as the Watermaster, as the  
13 provision is intended to keep CBMWD neutral and objective in decisions it makes as the  
14 Watermaster. (Judgment, ¶ 25, p. 14.)

15 The Advisory Committee's involvement with the Watermasters' annual administrative  
16 budget is limited to recommendations following review of the proposed budget. The Watermaster,  
17 however, is required to include in its final budget, additional comparative information or  
18 explanation as recommended by the Advisory Committee. (Judgment, ¶ 30, pp. 15-16.)

19 To engage in studies of hydrologic conditions, the Watermaster must obtain "concurrence"  
20 of either the Advisory Committee or the affected Pool Committee. (Judgment, ¶ 26, p. 14.) In  
21 contrast, prior to acting in cooperation with other state or federal agency, the Watermaster must  
22 get approval or a prior recommendation from the Advisory Committee (Judgment, ¶ 14, p. 26.)  
23 Such approval or prior recommendations from the Advisory Committee is also necessary for the  
24 Watermaster to adapt various rules and regulations. (Judgment ¶ 18, pp. 12-13.)

25 The administrative power and duty of the Watermaster most scrutinize is that involving  
26 groundwater storage agreements. The Advisory Committee must approve, prior to adoption by  
27 the Watermaster, uniformly applicable rules and a standard form of agreement for storage of  
28 supplemental water. Additionally, any storage agreement entered into by the Watermaster must



1 first be approved by written order of the court. (Judgment, ¶ 28, p. 15.)

2 All other administrative powers and duties of the Watermaster under the Judgment do not  
3 involve the Advisory Committee. (Judgment, ¶¶ 19-24 and 29.) These administrative powers  
4 and duties include acquisition of facilities (¶ 19), employment of experts and agents (¶ 20),  
5 installation and maintenance of measuring devices (¶ 21), levying and collecting assessments (¶  
6 22), investing Watermaster funds (¶ 23)d, borrowing money (¶ 24), and accounting for stored  
7 water (¶ 29).

8 A further check upon the Watermaster in the performance of any of its administrative  
9 duties is found in Paragraph 31 of the Judgment, which allows for judicial review of any action  
10 of the Watermaster by motion of any party. The final check upon the Watermaster in the  
11 performance of its administrative power and duties is the ability of any party to bring a motion  
12 before the court to remove the Watermaster. As discussed above, if such a motion is supported  
13 by 80 percent of the Advisory Committee, absent compelling reasons to the contrary, the court  
14 is mandated to remove the Watermaster.

15  
16 **ISSUE 3(c): WITH RESPECT TO DUTIES EXPLICITLY**  
17 **IDENTIFIED AS “MANDATORY” THAT ARE SET**  
18 **FORTH IN THE JUDGMENT, WHAT CHECKS AND**  
19 **BALANCES ARE PROVIDED IN THE JUDGMENT TO**  
20 **ASSURE THAT EACH OF THOSE DUTIES IS**  
21 **CARRIED OUT IN A MANNER CONSISTENT WITH**  
22 **THE PROVISIONS OF THE JUDGMENT?**

23 There are no duties explicitly identified in the Judgment as “mandatory.” Common sense,  
24 however, would indicate that any duty described by the Judgment using the verb “shall” is  
25 mandatory under the Judgment. With regard to the administrative powers and duties of the  
26 Watermaster found in Paragraphs 17 through 30 of the Judgment, those duties described as rules  
27 and regulations (¶ 18), measuring devices (¶ 21), groundwater storage agreements (¶ 28),  
28 accounting for stored water (¶ 29), and annual administrative budget (¶ 30), contain the verb  
“shall,” and, thus, given the “plain meaning” of the paragraphs, should be construed as

1 mandatory duties of the Watermaster.

2 As discussed above, there is no set checks and balances with regard to those duties. Some  
3 involve Advisory Committee participation, and that participation constitutes the first level of  
4 checks upon the Watermaster. Others do not involve Advisory Committee participation. For all  
5 Watermaster administrative duties, however, an additional level of check upon the Watermaster  
6 is the ability of any party to seek court review of any Watermaster act or omission. (Judgment,  
7 ¶ 38(c), p. 22) and the ability for any party or the Advisory Committee to bring a motion to  
8 remove the Watermaster. (Judgment, ¶ 16, p. 12.)

9  
10 **ISSUE 3(d): FOR PURPOSES OF INTERPRETING THE LIMITED**  
11 **PROVISIONS IN THE JUDGMENT THAT DEFINE**  
12 **MANDATORY, DISCRETIONARY, AND/OR**  
13 **ADMINISTRATIVE ACTIONS, WHAT FURTHER**  
14 **LEGAL AUTHORITY DEFINES WHAT ACTIONS**  
15 **WOULD PROPERLY BE CHARACTERIZED AS**  
16 **DISCRETIONARY THAT MAY NOT BE**  
17 **EXPLICITEDLY IDENTIFIED AS SUCH IN THE**  
18 **JUDGMENT?**

19 Article X, Section 2 of the California Constitution mandates that water be put to beneficial  
20 use to the fullest extent it is capable, and precludes the waste or unreasonable use or unreasonable  
21 method of use of water. The purpose of this provision has always been to allow water resources  
22 to serve the greatest number of beneficial users. (*California Water Service Co. V. Edwards*  
23 *Sidebotham & Son, Inc.* (1964) 224 Cal.App.2d 715, 731-732.)

24 Courts are vested with the power to enforce this constitutional mandate. Furthermore,  
25 courts have a duty to impose a corrective physical solution upon a finding of unreasonable use or  
26 unreasonable method of use of water. (*Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383.)  
27 This is consistence with the language of the Judgment which attempts to apply the constitutional  
28 mandate for reasonable use of water to the Basin and allows for modification of the Judgment in  
order to correct waste or an unreasonable use of method of use of water. (Judgment, ¶¶ 15, 39-

1 40.)

2 The evidence is clear that there has been no effective management of groundwater in the  
3 Chino Basin. There has been no effort to maximize the groundwater resource through conjunctive  
4 use of supplemental water, nor an effort to solve the degradation of water quality. As this  
5 lowering of water quality and quantity occurred during the Advisory Committee's reign as de  
6 facto Watermaster, there is every reason to believe it will continue if members of the Advisory  
7 Committee reign as de jure Watermaster.

8 It is conceded by all parties to this action that Paragraph 41 of the Judgment describes the  
9 Watermaster's power to develop a optimum management program for the Chino Basin as  
10 "discretionary." No other duty or power is specifically identified as "discretionary." Under the  
11 maxim of *expressio unius est exclusio alterius* ("the expression of one thing is the exclusion of  
12 another"), omission of the term "discretionary" to describe any other power or duty of the  
13 Watermaster indicates that the Judgment did not intend to characterize those other powers and  
14 duties as "discretionary." (See *Southern Pacific Pipelines, Inc. v. State Board of Equalization*  
15 (1993) 14 Cal.App.4th 42 [Maxim applied to the interpretation of a Judgment].)

16 In contrast, the Judgment refers to the costs flowing from the Watermaster's powers and  
17 duties described in Paragraphs 17 through 30 as "administrative costs." (Judgment, ¶ 54, p. 29.)  
18 Under the maxim *expressio unis est exclusio alterius*, the description of the expenses of certain  
19 Watermaster activities as "administrative costs" indicates that the Judgment considers those  
20 activities as administrative in nature.

21 Under the plain meaning doctrine, courts cannot create exceptions, contravene plain  
22 meaning, insert what is omitted, omit what was inserted, or rewrite the provision. (*San Francisco*  
23 *Unified School District v. San Francisco Classroom Teachers Assn.* (1990) 222 Cal.App.3d 146,  
24 149; see also *Hi-Desert County Water District v. Blue Skies Country Club, Inc.* (1994) 23  
25 Cal.App.4th 1723, 1723-1734 [Judgment entered into after extensive negotiations and approval  
26 by the court is tantamount to a contract, and is, thus, subject to the rules of constructions and  
27 interpretation to a contract].) Were the court to attempt to define other powers and duties of the  
28 Watermaster as "discretionary," without those other powers and duties being explicitly

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doctrine by inserting terms not contained in the Judgment.

In contrast, if the court were to interpret the Watermaster powers and duties found in Paragraphs 17 through 30 as anything other than administrative, the court would have to ignore the description of the resulting costs from those duties found in Paragraph 54. Under the plain meaning doctrine, the court is precluded from ignoring a part in its interpretation of the whole.

As the only action by the Watermaster which the Judgment defines as "discretionary" is the development of a basin management plan, that power and duty of the Watermaster is the only power and duty subject to control by an 80 percent vote mandate from the Advisory Committee. Any other interpretation would be violative of both the maxim of *expressio unius est exclusio alterius* and the plain meaning doctrine.

CONCLUSION

There is no question that the Judgment contemplates a neutral, independent, and objective Watermaster, and that it precludes any producer in the Basin for serving as Watermaster. The Judgment is explicit in this regard, and as the Declaration of Langdon Wood Owen establishes, it was always the intention of the parties stipulating to the Judgment that any Watermaster be independent, neutral and objective. Additionally, allowing the Advisory Committee to sit as Watermaster would make meaningless the various checks and balances between the Watermaster and the Advisory Committee which are contained in the Judgment.

The need for an independent, neutral and objective Watermaster is made apparent by the current condition of the Basin. For the past few years, the Basin has been under de facto control of the producers, who ignore the purpose and objective of the Judgment for their "own" self-interests. This has resulted in a failure to manage the of Basin. Granting the current motion by the Advisory Committee will continue this trend.

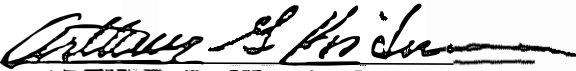
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1 Article X, Section 2 of the California Constitution requires the court to do more than  
2 simply deny the current motion by the Advisory Committee. It requires the court to appoint a  
3 Watermaster who is not only independent, neutral and objective, but who will fulfill the purpose  
4 and objective of the physical solution. It further mandates that the court preclude the Advisory  
5 Committee from interfering with the Watermaster's attempts to provide for the maximum  
6 reasonable beneficial use of the waters of the Basin.

7 DATED: August 18, 1997

Respectfully submitted,

8 McCORMICK, KIDMAN & BEHRENS  
9 ARTHUR G. KIDMAN  
10 DAVID D. BOYER

11  
12 By:   
13 ARTHUR D. KIDMAN  
14 Attorneys for Monte Vista Water District

15 cmccm:litest.pld

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STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is: 695 Town Center Drive, Suite 1400, Costa Mesa, California 92626-3038.

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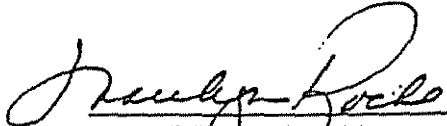
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Ellison S. Schneider  
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Sacramento CA 95814

Executed on August 18, 1997, at Costa Mesa, California.

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

(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.

  
MARILYN ROCHE

Chino Basin v. City of Chino, et al.  
S.B.C.S.C. Case No. RCV 51010

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(714)755-3100, fax (714) 755-3110

Attorneys for Monte Vista Water District

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER )  
DISTRICT, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CITY OF CHINO )  
 )  
Defendant. )  
\_\_\_\_\_ )

CASE NO. RCV 51010  
[Specially Assigned to the  
Honorable J. Michael Gunn]  
  
DECLARATION OF D. BURNELL  
CAVENDER  
  
HEARING DATE: October 21, 1997  
HEARING TIME: 10:00 a.m.  
DEPT: To be determined  
  
REFEREE: Anne J. Schneider

DECLARATION OF D. BURNELL CAVENDER

I, D. Burnell Cavender, hereby declare as follows:

1. I am currently the general manager of San Bernardino Valley Water Conservation District.
2. I am familiar with the below stated facts and could and would competently testify thereto if required.
3. Between October 1990 and May 1996, I served as a Deputy Manager of the Santa Ana Watershed Project Authority.



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MCCORMICK, KIDM & BEHRENS, LLP  
LAWERS

4. During that time period, my office did watershed planning for the Santa Ana River Watershed, which included the Chino Groundwater Basin. We conducted a basin groundwater study to determine a better way for the Chino Groundwater Basin to be managed. It my understanding that the project was in response to a court order.

5. By 1995, my office had developed a basin management plan and we advocated moving forward to the implementation phase. Those sponsoring the plan, however, refused to fund implementation and move forward on the plan based upon, as I understand, pressure from the Appropriators' Pool in the Basin.

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct. Executed this 18th day of August, 1997.

  
D. BURNELL CAVENDER

MCCORMICK, KIDMAN & BEIRNS, LLP  
LAWYERS

PROOF OF SERVICE  
CCP 1013a(3)  
FRCP 5(b)

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On August 18, 1997, I served the foregoing document described as DECLARATION OF D. BURNELL CAVENDER on interested parties in this action

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Ellison S. Schneider  
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Sacramento CA 95814

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

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MARILYN ROCHE

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10 Attorneys for Monte Vista Water District

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
12 COUNTY OF SAN BERNARDINO

13 CHINO BASIN MUNICIPAL WATER )  
14 DISTRICT, )

15 Plaintiff, )

16 vs. )

17 CITY OF CHINO )

18 Defendant. )

CASE NO. RCV 51010  
[Specially Assigned to the  
Honorable J. Michael Gumm]

DECLARATION OF LANGDON WOOD  
OWEN IN SUPPORT OF MONTE  
VISTA WATER DISTRICT'S BRIEF

DATE: October 21, 1997  
TIME: 10:00 a.m.  
DEPT: To be determined

REFeree: Anne J. Schneider

21  
22 DECLARATION OF LANGDON WOOD OWEN

23 I, Langdon Wood Owen, hereby declare as follows:

24 1. I am a licensed engineer with substantial background in hydrology. I was employed  
25 by the Division of Water Resources for over ten years. Thereafter, I was employed as general  
26 manager for the Orange County Water District for approximately ten years. I am currently the  
27 owner of Don Owen and Associates, an engineering consulting firm. I have been a director of  
28

1 the Orange County Water District since 1979. I am a past commissioner of the Santa Ana Project  
2 Authority and the West Riverside Regional Waste Reclamation JPA. I am on the National Water  
3 Research Institute Board of Directors and the Dominguez Water Corporation Board of Directors.  
4 I also sit on the board of directors for the Metropolitan Water District.

5 2. I have personal knowledge of the below stated facts and could and would  
6 competently testified thereto if required.

7 3. During 1976 and 1977, I assisted Donald D. Stark in the drafting and negotiating  
8 of the Chino Basin Judgment. This involved negotiating a settlement of the adjudication and  
9 creating a judgment to which all parties would stipulate. This also involved a number of meetings  
10 involving most major producers in the Basin, as well as smaller meetings including various  
11 categories of major producers.

12 4. Chino Basin Municipal Water District only minimally participated in the  
13 negotiations for the stipulated Judgment. The reason for this limited participation was the  
14 determination at an early stage in the negotiations that Chino Basin Municipal Water District  
15 would serve as the initial Watermaster. It was believed by those involved in the negotiations that  
16 it would be inappropriate to allow Chino Basin Municipal Water District to engage in the  
17 negotiations if it were later to serve as Watermaster. The intention was to keep Chino Basin  
18 Municipal Water District neutral and objective in these matters.

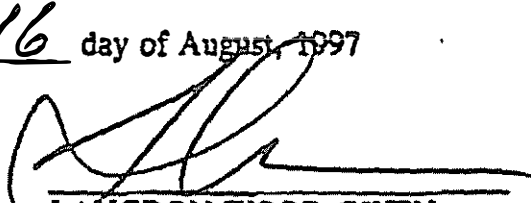
19 5. At the time of the negotiations of the Judgment, I was, and I remain, familiar with  
20 the water quantity and quality issues of the Basin, as well as the various claims by the producers  
21 as to the water of the Basin. Based upon my knowledge, it is my opinion that the Basin is not  
22 managed in a manner to optimize the Basin resource or to equitably address water quality  
23 problems.

24 6. Specifically, the Judgment was negotiated with the understanding that optimum use  
25 of the Basin would involved conjunctive use with State Water Project and Metropolitan Water  
26 District water. However, those controlling the management of the Basin have failed to implement  
27 and have prevented meaningful conjunctive use.

28 7. Those who control the Chino Basin adjudication place their special interests ahead

1 of basin management when making decisions under the adjudication.

2 I declare under penalty of perjury under the laws of the State of California that the  
3 foregoing is true and correct. Executed this 16 day of August, 1997

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6 LANGDON WOOD OWEN

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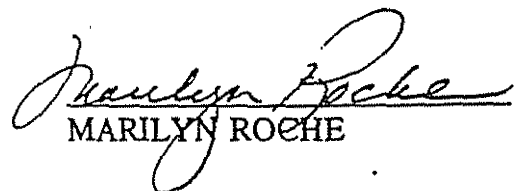
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