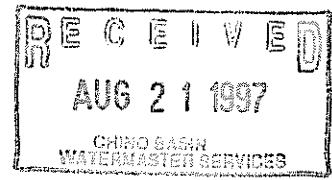


CHINO
REAPPT
10/21/97
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO, WEST JUDICIAL DISTRICT
10

11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

12 Plaintiffs,

13 vs.

14 CITY OF CHINO, et. al.,

15 Defendants.
16
17

) Case Number: RCV 51010
) [Specially Assigned to the
) Honorable Judge J. Michael Gunn]

) CITY OF CHINO'S RESPONSE TO
) REFEREE'S REQUEST FOR
) SUPPLEMENTAL BRIEFING

) Date: October 21, 1997
) Time: 10:00 a.m.
) Dept: To Be Assigned

18 NOW COMES THE CITY OF CHINO which hereby offers this supplemental brief as
19 requested by Special Referee Ann J. Schneider:

20 I.

21 THE PROTECTION OF THE PUBLIC IS THE COMPELLING REASON
22 TO DENY THE APPOINTMENT OF THE NINE MEMBER BOARD

23 There is one simple and obvious reason that compels the Court to deny the motion
24 of the Advisory Committee to appoint a nine member to act as Watermaster.

25 The proposal, by its very nature, would eliminate the system of "checks and
26 balances" implicit in the judgment to the detriment of the public's interest in the ground
27 water and its quality and cost.

28 It is apparent that the framers of the stipulated judgment that resulted in the

1 adjudication of the Chino Basin resolved certain conflicts between the self interests of the
2 water producers as a group against the legitimate interests of the public to the availability of
3 ground water of the highest quality at the lowest cost, the conflicts among the producers
4 themselves over a variety of issues whether real or imagined and, most importantly, the
5 need for a credible and reliable system to mediate these conflicts.

6 For better or worse, the current judgment struck a balance whereby the protection of
7 the public and the administration of the judgment was delegated to a Watermaster and the
8 interests of the producers was protected by awarding them the right to challenge any action
9 of the Watermaster and to make certain recommendations to the Watermaster. For the
10 most part that system has operated without much controversy until recently. While disputes
11 have arisen between the Advisory Committee and the current Watermaster, the Chino
12 Basin Municipal Water District (hereafter called "CBMWD"), those disputes do not warrant
13 the elimination of the current system of checks and balances which creates a demarcation
14 between the interests of the public on the one hand and the interests of the water producers
15 on the other hand.

16 The proposal to appoint a nine member board, consisting of the water producers with
17 adjudicated water rights, is not the answer to the current controversy. It is a smoke screen.
18 In an effort to justify the removal of CBMWD as Watermaster, the Advisory Committee has
19 not only requested the replacement of CBMWD. In addition, the Advisory Committee has
20 requested the un-thinkable. It has requested, in essence, that it be appointed as the
21 Watermaster.

22 This is wrong!

23 It is plainly wrong; and the Special Referee would be wrong to recommend to Judge
24 Gunn that such a proposal be approved. In fact, the Special Referee should take this
25 opportunity and stuff the proposal into the trash where it belongs.

26 At stake in this controversy is truth and fairness. It is the public that cannot protect
27 itself, because it is not a party to the judgment. The producers are parties with clearly
28 defined rights under the judgment. The public, on the other hand, can only hope that its

1 interests will be protected by the Watermaster. That protection would be obliterated if the
2 producers were appointed Watermaster. In effect, the producers would have all of the
3 marbles (or all of the water).

4 If the proposal were granted, truth would be the first victim. With the producers in
5 control of the Advisory Committee and the Watermaster, what opportunity would exist for
6 dissent? What opportunity would the public have to protect itself since the public is not a
7 party to the judgment. Without a Watermaster independent of the producers, the public has
8 no chance.

9 This would be wrong, plain wrong! Because it would be wrong is the very reason
10 why there is a "compelling reason" to deny the request to appoint the nine member board,
11 or any board, comprised of the producers.

12 It is that simple.

13 II.

14 THE PROTECTION OF THE PUBLIC IS THE COMPELLING REASON 15 TO KEEP THE WATERMASTER SEPARATE FROM THE ADVISORY COMMITTEE

16 The special referee and the court are reminded that the Advisory Committee has
17 already succeeded in its quest to remove CBMWD as Watermaster. The real remaining
18 issue is what independent person or entity should be appointed as Watermaster?

19 Neither the Special Referee nor the Court should make the mistake of combining the
20 Advisory Committee and the Watermaster. The Advisory Committee protects the interests
21 of the water producers. The Watermaster administers the judgment, protects the public and
22 answers to the Court (not the Advisory Committee).

23 For this reason, the system of checks and balances implicit in the judgment should
24 continue. Granting the proposal for a Watermaster composed of water producers would
25 eliminate the separation contemplated by the judgment. Let's keep it as is. Let's not fix
26 what is not broken.

27 Next, the Watermaster can be an individual with proven experience. Surely, that is
28 not an impossible task.

1 III.

2 POWERS OF THE WATERMASTER AND THE ADVISORY COMMITTEE
3 SHOULD BE DECIDED ON A CASE BY CASE BASIS

4 The meaning of the terms "discretionary," "administrative" and "mandatory" should be
5 left for an actual controversy on a case by case basis. Further, the definition of those terms
6 are unnecessary to decide whether the patent power play of the Advisory Committee will
7 prevail. If it does, these questions become irrelevant. If it does not, these questions can
8 await an appropriate controversy based upon real circumstances.

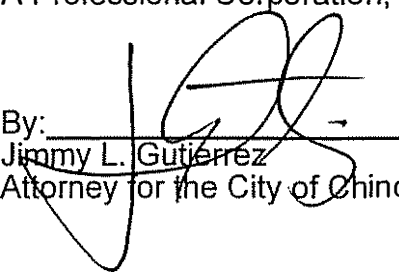
9 CONCLUSION

10 Please deny the Advisory Committee's attempt to become the Watermaster; but
11 please suggest a new Watermaster.

12 Respectfully submitted by:

13 Dated: August 19, 1997

14 Jimmy L. Gutierrez,
A Professional Corporation,

15
16 By: 
17 Jimmy L. Gutierrez
18 Attorney for the City of Chino
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF SAN BERNARDINO) Case Number RCV 51010

4 I am employed in the County of San Bernardino, State of California. I am over
5 the age of 18 and not a party to the within action. My business address is Jimmy L.
Gutierrez, A Professional Corporation 12616 Central Avenue, Chino, CA 91710.

6 On August 20, 1997, I served the foregoing document(s) described as **CITY OF**
7 **CHINO'S RESPONSE TO REFEREE'S REQUEST FOR SUPPLEMENT BRIEFING**

8 by placing [X] the original [X] a true copy thereof enclosed in a sealed envelope(s)
addressed as follows:

9 **SEE ATTACHED SERVICE LIST**

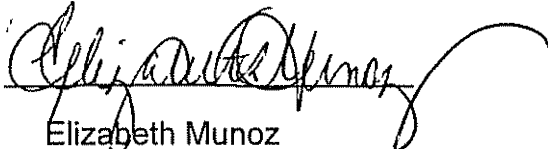
10 [x] BY MAIL as follows:

11 [x] I deposited such envelope in the mail at Chino, California which was
12 mailed with postage thereon fully prepaid.

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

18 I declare under the penalty of perjury under the laws of the State of California
19 that the foregoing is true and correct.

20 Executed on August 20, 1997 at Chino, California.

21 By: 
22 Elizabeth Munoz
23
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ATTACHMENT

CASE NAME : CHINO BASIN MUNICIPAL WATER DISTRICT v. CITY OF CHINO

CASE NUMBER: RCV 51010

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