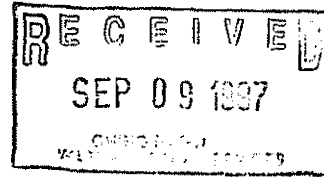


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PREPPT  
10/21/97  
SCHNEIDER  
TS  
ML

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5 District

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

12 CHINO BASIN MUNICIPAL WATER ) Case No. RCV 51010  
13 DISTRICT, ) (Specially Assigned to the  
14 ) Honorable J. Michael Gunn)  
15 Plaintiff, )  
16 v. ) JURUPA COMMUNITY SERVICES DISTRICT'S  
17 ) REPLY BRIEF ON POINTS AND  
18 CITY OF CHINO, et al., ) AUTHORITIES CONCERNING MOTION  
19 ) FOR APPOINTMENT OF NINE MEMBER  
20 ) WATERMASTER BOARD  
21 )  
22 Defendants. )  
23 ) Date: October 21, 1997  
24 ) Time: 10:00 a.m.

19 Jurupa Community Services District (JCSD) submits the following  
20 points and authorities in reply to the August 18, 1997 briefs filed  
21 by various interested parties concerning the motion for appointment  
22 of a nine member Watermaster board.

23 1. THERE IS NO DISAGREEMENT BY THE PARTIES SUPPORTING AND  
24 OPPOSING A NINE MEMBER WATERMASTER BOARD THAT THE JUDGMENT REQUIRES  
25 SEPARATION OF THE ADVISORY COMMITTEE AND WATERMASTER.

26 The August 18, 1997 briefs filed on behalf of parties supporting  
27 a nine member Watermaster board support separation of the Advisory  
28 Committee and Watermaster (CCWD, et al. brief, p. 10; Chino Basin

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1 Advisory Committee brief, p. 4; Three Valleys Municipal Water  
2 District brief, p. 5; and, City of Ontario brief by implication, p.  
3 4). If the parties supporting and opposing the nine member  
4 Watermaster board are in agreement with respect to the Judgment's  
5 requirement for this separation, the determination of whether the  
6 nine member board is consistent with this requirement turns on if the  
7 composition of the board as proposed maintains this separation.  
8 Clearly, the proposed composition of the nine member board does not  
9 accomplish this.

10 The referenced parties supporting the nine member Watermaster  
11 board attempt to distinguish the proposed board from the Advisory  
12 Committee by focusing on the diversity of representation by members  
13 of the various pools (CCWD, et al. brief, p. 11; Chino Basin Advisory  
14 Committee brief, p. 10-11; and, Three Valleys Municipal Water  
15 District brief, p. 6); and suggesting that despite "inchoate fears"  
16 the nine member board be given a chance (City of Ontario brief, p.  
17 4). The fundamental flaw, however, with respect to the nine member  
18 proposal is that six of the nine members (67%) would be interested  
19 producers who collectively would control the Watermaster board and  
20 thus obviate the separation, which all agree is required by the  
21 Judgment, between the Advisory Committee and Watermaster.

22 Attempts to justify the nine member Watermaster board by  
23 reference to a similar composition in the San Gabriel case fail to  
24 indicate if the San Gabriel case involves parties with dissimilar  
25 interests with respect to water quality and production rights as in  
26 the Chino Basin and/or if a comprehensive and agreed to basin  
27 management program exists in the former which is clearly presently  
28 lacking in the latter. (Three Valleys Municipal Water District brief,

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1 p. 6).

2 2. THERE IS NO DISAGREEMENT BY THE PARTIES SUPPORTING AND  
3 OPPOSING A NINE MEMBER WATERMASTER BOARD THAT MERGER OF THE ADVISORY  
4 COMMITTEE AND WATERMASTER WOULD REQUIRE AN AMENDMENT OF THE JUDGMENT.

5 Parties supporting the nine member board note that the Judgment  
6 would have to be amended in order to merge the Advisory Committee and  
7 Watermaster (CCWD, et al. brief, p. 11; Chino Basin Advisory  
8 Committee brief, p. 4; Three Valleys Municipal Water District brief,  
9 p. 6; and, City of Ontario brief, p. 4). Consequently, if the  
10 composition of the Watermaster board functionally merges the Advisory  
11 Committee and Watermaster, this would be tantamount to an amendment  
12 of the Judgment.

13 The Court clearly had an opportunity to populate Watermaster  
14 with interested producers but purposefully avoided doing so in order  
15 to retain Watermaster as a neutral and objective entity (Owen  
16 Declaration supporting Monte Vista Water District brief, p. 2). The  
17 Court's approval of the motion to appoint a nine member Watermaster  
18 with interested producers comprising 67% of the board is not only  
19 inconsistent with the original intent of the parties (which intent is  
20 noted by the CCWD, et al. brief, p. 10), but would constitute an  
21 amendment of the Judgment.

22 3. ACTIONS AND INACTIONS BY THE ADVISORY COMMITTEE WITH RESPECT  
23 TO THE MANAGEMENT OF THE BASIN HAVE CLEARLY CONTRIBUTED TO WATER  
24 QUALITY DEGRADATION.

25 Parties supporting the nine member Watermaster board artfully  
26 attempt to distinguish between the reasons for water quality  
27 degradation in the Basin and management of the degradation (see CCWD,  
28 et al. brief, p. 6-9). The valid premise is that actions or inactions

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1 contributing to water quality degradation by the Advisory Committee,  
2 which would control the nine member Watermaster board, constitute a  
3 compelling reason not to approve the motion for the nine member  
4 board.

5         There is no disagreement that irrigated agriculture and dairy  
6 waste management practices have set the stage with respect to water  
7 quality degradation independent of the Advisory Committee and  
8 Watermaster, however, the management of this degradation in  
9 connection with the development of an optimum basin management  
10 program (Judgment, Paragraph 41) pursuant to Section 2 of Article X  
11 of the California Constitution (Judgment, Paragraph 39) is clearly  
12 required by the Judgment.

13         It is also clear that the Regional Water Quality Control Board,  
14 Santa Ana Region, has not assumed responsibility for management of  
15 the Basin's water resources with respect to water quality (CCWD, et  
16 al. brief, p. 7, citing Wildermuth Declaration). Rather, the Regional  
17 Board states "[t]he severity of the water quality problem now  
18 confronting the Region in the Chino Basin demands reconsideration of  
19 the [Regional] Board's dairy regulation strategy ..." (Dairies And  
20 Their Relationship To Water Quality Problems In The Chino Basin;  
21 Stewart Declaration supporting CCWD, et al. brief, Preface, p.i) and  
22 that the Santa Ana Watershed Project Authority is implementing "the  
23 construction and operation of desalters [which] will be absolutely  
24 essential" to address water quality problems in the Basin (id., p. I-  
25 35). With respect to the latter, it is important to note that the  
26 Santa Ana Watershed Project Authority, and not the Advisory  
27 Committee, is undertaking the construction of desalters in the Basin  
28 to begin addressing water quality degradation (see CCWD, et al.

1 brief, p. 9).

2 If the Regional Board was accountable for the plenary management  
3 of water quality degradation, it would have assumed responsibility  
4 for Basin management rather than merely referencing its more narrow  
5 duty with respect to dairy waste regulation strategy and noting the  
6 construction of desalters by another entity such as the Santa Ana  
7 Watershed Project Authority. If the Court wishes to test the position  
8 of the parties to the Judgment with respect to whether the parties or  
9 Regional Board is responsible for the management of water quality  
10 degradation, it could make a finding in favor of the latter, however,  
11 this would undoubtedly precipitate a flurry of motions, briefs and  
12 litigation contesting such a finding by those supporting the nine  
13 member Watermaster board.

14 Although it may be true that there is not any "data which  
15 concludes most of the water now pumped out of the ground fails to  
16 meet Health Department standards for safe drinking water without  
17 blending or treatment" (emphasis added; Wildermuth Declaration, p. 4,  
18 supporting CCWD, et al. brief), this is certainly true in the  
19 southern portion of the Basin where the Jurupa Community Services  
20 District is located.

21 **4. PARTIES SUPPORTING THE NINE MEMBER WATERMASTER BOARD SUGGEST**  
22 **THAT SINCE THE COURT IS THE ULTIMATE CHECK AND BALANCE WITH RESPECT**  
23 **TO THE JUDGMENT THIS OBVIATES THE ROLE OF WATERMASTER FOR THIS**  
24 **PURPOSE.**

25 The parties supporting the nine member Watermaster board note  
26 that the Court is the ultimate check and balance with respect to the  
27 Judgment (CCWD, et al. brief, p. 13; Chino Basin Advisory Committee  
28 brief, p. 5; Three Valleys Municipal Water District brief, p. 8; and,

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1 City of Ontario brief, p. 5). While there does not appear to be  
2 disagreement on this point between the parties supporting and  
3 opposing the nine member Watermaster board, those in support suggest  
4 this obviates or diminishes Watermaster's role in this respect. These  
5 points are apparently made for the purpose of arguing that a  
6 functional merger of the Advisory Committee and Watermaster, and thus  
7 extinguishing checks and balances between the two entities, is not  
8 important since parties can always ultimately seek redress from the  
9 Court.

10 This line of reasoning further suggests that there is no point  
11 in distinguishing discretionary, administrative and mandatory actions  
12 by Watermaster since the Advisory Committee controls Watermaster's  
13 actions (CCWD, et al. brief, p. 13). In contrast, some suggest that  
14 Watermaster at least provides an "intermediate checkpoint which  
15 serves to ultimately bring an issue before the Court" (Chino Basin  
16 Advisory Committee brief, p. 5).

17 Certainly the parties to the Judgment could have avoided the  
18 substantial amount of time devoted during the negotiations leading to  
19 the Judgment establishing checks and balances between the Advisory  
20 Committee and Watermaster by clearly providing for redress by the  
21 Court and avoiding reference to discretionary, administrative and  
22 mandatory actions involving the two entities. Suggesting that the  
23 neutrality of the Watermaster is not an issue (CCWD, et al. brief, p.  
24 13) is also counter to the intention of the parties during the  
25 Judgment's negotiation process (Owen Declaration, p. 2, supporting  
26 Monte Vista Water District brief).

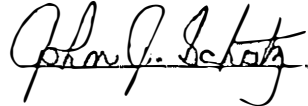
27 The ultimate question for the Court is whether it wishes to  
28 serve in the role as the threshold and primary means of addressing

1 disagreements among the parties, or enforcing the Judgment's  
2 separation of power and purpose between the Advisory Committee and  
3 Watermaster with the Court reserving its exercise of ultimate  
4 authority only in the event of continued disagreement.

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DATED: September 8, 1997

John J. Schatz, Attorney At Law

By:   
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am  
4 over the age of 18 and not a party to the within action; my business  
5 address is: P.O. Box 7775, Laguna Niguel, California 92607-7775.

6 On September 8, 1997, I served the foregoing document described  
7 as JURUPA COMMUNITY SERVICES DISTRICT'S REPLY BRIEF ON POINTS AND  
8 AUTHORITIES CONCERNING MOTION FOR APPOINTMENT OF NINE MEMBER  
9 WATERMASTER BOARD on the interested parties in this action by placing  
10 a true copy thereof enclosed in sealed envelopes addressed as  
11 follows:

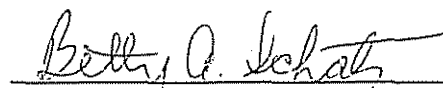
12 SEE ATTACHED SERVICE LIST

13 [X] BY MAIL:

14 [X] As follows: I am "readily familiar" with the firm's practice of  
15 collection and processing of correspondence for mailing. Under  
16 that practice it would be deposited with U.S. Postal Service on  
17 that same day with postage thereon fully prepaid at Mission  
18 Viejo, California in the ordinary course of business. I am aware  
19 that on motion of the party served, service is presumed invalid  
20 if postal cancellation date or postage meter date is more than  
21 one day after date of deposit for mailing in affidavit.

22 Executed on September 8, 1997, at Mission Viejo, California.

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

25  
26 

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