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10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 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 Gunn}

REPLY BRIEF OF MONTE VISTA
WATER DISTRICT

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

REFEREE: Anne J. Schneider

21 I
22 INTRODUCTION

23 Surprisingly, the parties appear to agree upon the following facts:

- 24 1) The Judgment intended the Watermaster and Advisory Committee to be separate
25 entities;
26 2) Under the Judgment the Watermaster and Advisory Committee have different
27 powers, functions and duties;
28 3) In recent years the Advisory Committee has controlled groundwater management

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1 of the Basin; and

2 4) There are currently groundwater quantity and quality problems in the Basin.

3 Perhaps most enlightening is the declaration and exhibit submitted by Traci Stewart, an
4 employee of the current Watermaster, and head of the Watermaster's services staff.¹ Rather than
5 maintaining an impartial and neutral position, the declaration is filed in support of the motion to
6 appoint a nine member Watermaster panel, and attempts to downplay water quantity and quality
7 issues in the Basin. The fact that an employee of the Watermaster, acting in an official capacity
8 as an arm of the court, has submitted a declaration in support of the Advisory Committee's
9 attempt to get their controlling members appointed as Watermaster is just another example of the
10 usurpation of power that has occurred in the Basin.

11
12 **II**

13 **THE WATERMASTER MUST BE COMPLETELY INDEPENDENT**
14 **AND SEPARATE FROM THE PRODUCERS IN THE BASIN**

15 Contrary to the assertions by the moving parties, the Watermaster was never intended to
16 act as a representative of the producers in the Basin. The Watermaster's sole purpose is to
17 administer and enforce the provisions of the Judgment. (Judgment, ¶ 16.) The Judgment defines
18 the sole purpose and objective of its provisions as:

19 [E]stablish[ing] a legal and practical means for making the maximum reasonable
20 beneficial use of the waters of Chino Basin by providing the optimum economic,
21 long-term, conjunctive utilization of surface waters, ground waters and
22 supplemental water, to meet the requirements of *water users* having rights in or
dependent upon Chino Basin. [Emphasis added.] (Judgment, ¶ 39.)

23 Thus, in making decisions regarding the Basin, the Watermaster cannot consider the individual
24 needs of any producer or group of producers, but must consider the needs of the Basin as a public
25 resource.

26
27 ¹ As noted in Monte Vista's Opening Brief, in recent years the Advisory Committee has
28 required Watermaster's services staff members to report to the Advisory Committee rather than
to the Watermaster.

1 It defies all credulity for the moving parties to argue that a panel of Basin producers acting
2 as Watermaster could put aside their own self-interest and manage the Basin for the public benefit.
3 One need only remember that this adjudication was necessary due to the fact that twenty years ago
4 the producers were unable to properly manage the Basin on their own. More recently, the
5 producer controlled Advisory Committee has managed the Basin into a further state of disrepair,
6 focusing upon the pecuniary interests of a few powerful producers rather than the true needs of
7 the Basin. Now, as indicated in the chief of the Watermaster services' declaration, the future
8 policy of a producer controlled Watermaster will be to attribute water quality problems in the
9 Basin to the dairy industry and leave these problems for the dairy industry and the Regional Water
10 Quality Control Board to resolve. (Declaration of Traci Stewart; see also Declaration of Mark
11 Wildermuth, ¶ 6 and Memorandum of Points and Authorities by Cucamonga County Water
12 District, et al., p. 7.)

13 As noted in the City of Chino Hills' Response, there are literally millions of people
14 dependant upon adequate water quantity and quality in the Basin. These water users are entitled
15 to the appointment of a Watermaster who will focus its efforts on the interests of the entire Basin,
16 rather than on the pecuniary interests of a few powerful appropriators.

18 III

19 WATER QUALITY ISSUES ARE NOT THE SOLE PROVINCE OF 20 THE REGIONAL WATER QUALITY CONTROL BOARD

21 The moving parties assert that the Watermaster has no role in water quality issues in the
22 Basin, and that such problems are under the jurisdiction of the Regional Water Quality Control
23 Board ("Regional Board"). (See Memorandum of Points and Authorities of Cucamonga County
24 Water District, et al., p. 7, Declaration of Mark Joseph Wildermuth, ¶ 6, and Declaration of
25 Traci Stewart) This assertion is incorrect.

26 The power and authority of Regional Water Quality Control Boards is conferred by the
27 Porter-Cologne Water Quality Control Act. (Water Code § 13000 *et seq.*) That Act, however,
28 grants a Regional Board only the ability to regulate waste discharge. (Water Code §§ 13050(i),

1 13140, and 13320-13389.) As noted by the court in the Racanelli Decision: "Apart from
2 regulating waste discharge, the Board's express authority to implement water quality standards
3 seems limited to recommending actions by other entities." (*United States v. State Water Resources*
4 *Control Board* (1986) 182 Cal.App.3d 82, 124.)

5 The Regional Board lacks statutory authority to require water quality remediation or to
6 manage water quality issues in a ground water basin. Except as water quality issues relate to the
7 discharge of waste, the Regional Board is not the *sole* authority, and, in fact, the Regional Board
8 *lacks* any authority beyond recommendation. Furthermore, nothing in the Porter-Cologne Act
9 indicates that it pre-empts a court appointed Watermaster in an adjudicated groundwater basin
10 from resolving water quality problems arising from the discharge of "waste."

11 The Judgment itself specifically recognizes that the physical solution was designed to remedy
12 both water quantity and quality problems in the Basin, and that, as part of its duties, Watermaster
13 is to develop a basin management plan for the Basin, "including both water quantity and quality
14 considerations." (Judgment, ¶ 41.) Additionally, as Judge Turner noted in his order of July 31,
15 1989:

16 The fundamental idea behind the Judgment was to guarantee, especially in times of
17 drought, that there would be sufficient water for all legitimate users of the basin and
18 that the water would be of good quality. (July 31, 1989 Order, p. 4.)²

19 IV

20 THE PRIMARY CONSIDERATION BY THE COURT IN 21 RESOLVING ALL ISSUES BEFORE IT SHOULD 22 BE TO ACHIEVE THE STATED PURPOSE AND 23 OBJECTIVE OF THE JUDGMENT

24 The stated purpose and objective of the physical solution is to comply with the mandate of
25 Article X, Section 2 of the California Constitution and put the waters of the Chino Basin to their
26

27 ² A copy of Judge Turner's Order of July 31, 1989, was attached to the Advisory
28 Committee's Motion for Appointment of Nine Member Board as Watermaster.

1 maximum reasonable beneficial use by providing:

2 [T]he optimum economic, long-term, conjunctive utilization of surface waters,
3 ground waters and supplemental water, to meet the requirements of water users
4 having rights in or dependent upon Chino Basin. (Judgment, ¶ 39.)

4 The Judgment further provides that the purpose of all other provisions within it are to establish a
5 legal and practical means to accomplish this stated purpose and objective. (Judgment, ¶ 39.)

6 Contrary to the claims of the City of Ontario, the litmus test for selecting a new
7 Watermaster should not be whether its character rises above that of Charles Manson. Rather, given
8 the above, the overriding consideration in selecting a new Watermaster should be whether the
9 proposed new Watermaster will carry out the purpose and objective of the physical solution in a
10 fair, impartial and neutral manner, favoring no party or group of parties over others. If there is
11 any doubt in this regard, the individual or entity selected is not qualified under the Judgment to
12 serve as Watermaster. In other words, *any doubt* that a proposed Watermaster can achieve the
13 stated purpose and objective of the Judgment is **COMPELLING REASON** to reject the proposed
14 Watermaster.

15 There is no question that the panel of producers proposed by the Advisory Committee to act
16 as the Watermaster fails to meet this standard. A majority of the proposed panel has a pecuniary
17 interest in the Basin, as they are producers. It defies human nature to expect that these producers
18 will always subordinate to the public interest when making decisions as Watermaster. This was
19 understood by the drafters of the Judgment when they created the separate position of Watermaster
20 and precluded Chino Basin Municipal Water District, the proposed Watermaster at that time, from
21 participating in negotiations for the Judgment.

22
23 V

24 CONCLUSION

25 There is no question that the Judgment requires the appointment of an impartial, neutral,
26 and objective Watermaster. This was the intention of the drafters of the Judgment, and is consistent
27 with the stated purpose and objective of the physical solution. Producers in the Basin, by virtue
28

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1 of their proprietary interest in the waters of the Basin, are disqualified from functioning as
2 Watermaster or on a panel that acts as Watermaster.

3 This issue is too important to the needs of the Basin communities to allow a few powerful
4 appropriators to control it. The drafters recognized the serious water quantity and quality problems
5 in the Basin, and the disastrous results if basin management was not brought in line with the
6 mandate of Article X, Section 2 of the California Constitution. As recently as 1989, this court in
7 an order by Judge Turner noted its concern over the "long-range planning for improved quality of
8 water of the basin and for an equitable method of spreading the costs of improving the quality."
9 (July 31, 1989 Order, p. 15.) Absent the appointment of an independent, neutral and objective
10 Watermaster with its sole focus being the stated purpose and objective of the physical solution,
11 there will never be a resolution of the water quantity and quality problems in the Basin.

12 Given the above, Monte Vista Water District respectfully requests that the referee help bring
13 the Chino Basin into compliance with Article X, Section 2, as well as with the stated purpose and
14 objective of the Judgment, by recommending that the court deny the motion to appoint a nine
15 member board as Watermaster, and by recommending to the court that the new Watermaster be an
16 independent, neutral and objective entity, and that it have the ability to effectively administer and
17 manage the Basin consistent with the purpose and objective of the physical solution as set forth in
18 the Judgment.

19 DATED: September 8, 1997

Respectfully submitted,

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