

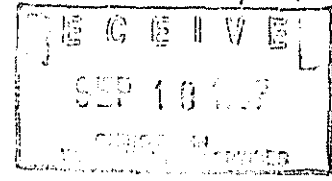
TVMWD

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER)	CASE NO. RCV 51010
DISTRICT,)	
Plaintiff,)	REPLY BRIEF OF THREE
vs.)	VALLEYS MUNICIPAL WATER
CITY OF CHINO, et al.,)	DISTRICT IN SUPPORT OF
Defendants.)	NINE-MEMBER WATERMASTER
	BOARD
	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 Reply Brief in response to the arguments presented by various parties hereto in opposition to the appointment of a nine-member board to serve as the Chino Basin Watermaster ("Watermaster"):

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ARGUMENT

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

In 1978, the Court entered a Judgment which adjudicated the groundwater rights to the Chino Basin ("the Basin") and established the provisions under which the Basin would be managed ("the Judgment"). TVMWD is a party to the Judgment, although it is not a producer within the Basin.

The Judgment organized the Basin's groundwater producers into the Overlying (Agricultural) Pool, the Overlying (Non-Agricultural) Pool, and the Appropriative Pool (collectively "the Pools"), and created the office of Watermaster to carry out the administrative functions of managing the Basin and to organize a committee for each of the Pools. (Judgment, Section 16.) These committees, in turn, were directed to form the Chino Basin Advisory Committee ("Advisory Committee") which would then exercise some degree of control over the activities of the Watermaster. (Judgment, Sections 18, 25-28, 30, 32.)

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

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

In or about February of 1997, a motion was filed by counsel for Watermaster to appoint a nine-member board to serve as

1 Watermaster. That motion was supported by a 67.99% majority vote
2 of the Advisory Committee. Therefore, the Court is required under
3 the Judgment to "act in conformance with a motion requesting that
4 Watermaster be changed" unless there are "compelling reasons to the
5 contrary."

6 The underlying basis of the opposition papers filed herein is
7 essentially grounded upon the unsupported perception that the
8 proposed nine-member Watermaster board would be dominated by the
9 Appropriative Pool.

10 However, as proposed by the Advisory Committee, the nine-
11 member board would be composed of the following:

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

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

23 Thus, while the Advisory Committee is composed entirely of
24 producers within the Basin and voting power is allocated according
25 to production and payment of assessments, the proposed nine-member
26 Watermaster Board will include representatives of the three
27 municipal water districts which are located within the Basin and
28 voting on the nine-member board will be one person - one vote.

1 Therefore, in contrast to Advisory Committee actions,
2 producers who pump the most from the Basin would not inherently
3 control the outcome of Watermaster decisions because the
4 Appropriative Pool holds only one-third of the voting power on the
5 proposed Watermaster Board - the same percentage as the overlying
6 producers and the municipal water districts who in fact have no
7 voting power whatsoever on the Advisory Committee.

8 Further, in the past with CBMWD serving as Watermaster,
9 parties located outside the jurisdictional boundaries of CBMWD had
10 no opportunity to participate in the selection of the CBMWD Board
11 of Directors. On the other hand, if the proposed nine-member board
12 is approved, every party to the Judgment will have input on the
13 composition of Watermaster. Thus, the nine-member board would be
14 more representative of the interests of the affected parties and
15 would provide greater protection to minority rights than both the
16 Advisory Committee and CBMWD serving as Watermaster.

17 Thus, the proposed nine-member Watermaster board would be
18 autonomous entity designed to protect the rights of each and every
19 party to the Judgment, regardless of the amount of water that that
20 party produces or the amount of assessments that that party pays,
21 with a level of decision-making that is independent of the Advisory
22 Committee within the parameters contained in the Judgment.

23 Accordingly, no "compelling reasons" exist to deny the motion
24 seeking appointment of the nine-member board as Watermaster.

25 B. The Judgment Provides Adequate Checks And
26 Balances With Respect To Watermaster
Decisions

27 Contrary to the arguments presented by those parties opposing
28 the appointment of the nine-member Watermaster board, the Judgment

1 already provides sufficient checks and balances over Watermaster
2 decisions regardless of whether they are categorized as
3 discretionary, administrative, or mandatory.

4 In this regard, under Section 38(a) of the Judgment, each of
5 the Pools has the power to develop policy recommendations for the
6 administration of its particular pool. All actions and
7 recommendation of the Pools which require Watermaster
8 implementation must first be noticed to the other two Pools. If no
9 objection is received in writing within thirty days, such action or
10 recommendation shall be transmitted directly to the Watermaster for
11 action.

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

22 Pursuant to Sections 19-24 and 29 of the Judgment, the
23 Watermaster is authorized to perform various administrative
24 functions. However, in the event the Watermaster proposes to take
25 any discretionary action, other than approval or disapproval of an
26 action of the Pools or recommendation properly transmitted, or
27 execute any agreement not theretofore within the scope of an
28 Advisory Committee recommendation, Section 38(b)(2) provides that

1 notice of such intended action shall be served on the Advisory
2 Committee and its members at least thirty days before the
3 Watermaster meeting at which such action is finally authorized.

4 Thus, several internal checks and balances concerning
5 Watermaster decisions are specifically set forth in the Judgment.
6 In any event, regardless of whether such decisions are
7 characterized as discretionary, administrative, or mandatory,
8 Section 31 of the Judgment expressly provides as follows:

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

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

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

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

4 While some of the parties herein have maintained in their
5 briefs that the Watermaster should be neutral and independent, no
6 argument has been presented that alleges that the Watermaster
7 should be a private individual or entity as opposed to a public
8 agency.

9 Thus, for all of the reasons asserted in TVMWD's Opening Brief
10 on file herein, it is once again respectfully submitted that the
11 Watermaster should be composed of public agencies rather than a
12 private individual or entity.

13 II.

14 CONCLUSION

15 Therefore, based upon all of the above, TVMWD respectfully
16 requests that the Referee recommend to the Court that the pending
17 motion for appointment of a nine-member board to serve as the
18 Watermaster be granted.

19 Dated: September 8, 1997

BRUNICK, ALVAREZ & BATTERSBY

20 By: 

21 Steven M. Kennedy
22 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 September 8, 1997, I served the foregoing document described as Reply 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 in sealed envelopes with postage thereon fully prepaid for deposit in the United States mail in San Bernardino, California, addressed as follows:

SEE ATTACHED SERVICE LIST

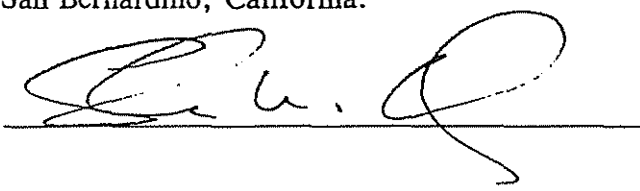
and by transmitting via facsimile the document listed above to Anne J. Schneider at fax number (916) 447-3512.

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.

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

Executed on September 8, 1997, at San Bernardino, California.

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