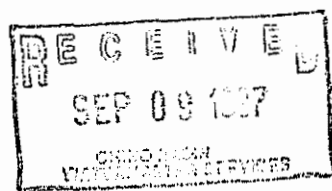


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10 Additional Parties and Counsel
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12 CONSOLIDATED SUPERIOR/MUNICIPAL COURTS
13 COUNTY OF SAN BERNARDINO
14 WEST DISTRICT

15
16 CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
17 Plaintiff,)
18 v.)
19 CITY OF CHINO, et al.,)
20 Defendants.)
21

Case No. RCV 51010
[Specially Assigned to the
Honorable J. Michael Gunn]
REPLY MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR APPOINTMENT OF NINE MEMBER
WATERMASTER BOARD OF CCWD, WMWD,
KAISER, FONTANA UNION WATER
COMPANY, MONTE VISTA IRRIGATION
WATER COMPANY, SAN ANTONIO WATER
COMPANY AND WEST END
CONSOLIDATED WATER COMPANY

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

Action Filed: January 2, 1975
Trial Date: Stipulated Judgment

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1 REPLY MEMORANDUM OF POINTS AND AUTHORITIES

2
3 1. THERE HAVE BEEN NO "COMPELLING REASONS" SUBMITTED
4 PREVENTING THIS COURT FROM APPROVING THE PROPOSED
5 NINE-MEMBER WATERMASTER BOARD

6
7 A. The Proposed Watermaster Board Will Be More Not
8 Less Representative.

9
10 Opponents of the proposed nine-member Watermaster Board
11 repeatedly claim that the major "compelling reason" supporting
12 rejection of this Board is that the Advisory Committee is
13 attempting to appoint itself as Watermaster. Contrary to this
14 unsupported claim, the make-up of the proposed nine-member
15 Watermaster Board clearly shows that it would in fact provide
16 decision making independent from the Advisory Committee.

17
18 The nine-member Watermaster Board was chosen to ensure that
19 all perspectives concerned with Basin management and operation
20 would be adequately represented: three non-appropriator overlying
21 representatives, three appropriator representatives, and three
22 water district representatives who do not have any votes on the
23 Advisory Committee. The Appropriative Pool holds only a third of
24 the votes on the Watermaster Board. In contrast, the Advisory
25 Committee is made up of representatives of producers only.
26 Moreover, any member of the Appropriative Pool that owns or has a
27 controlling interest in another member of the Appropriative Pool
28

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1 would not be allowed to serve concurrently with this other member
2 of the Pool on the Watermaster Board. ([Second] Notice of Motion
3 and Motion for Appointment of Nine Member Board as Watermaster,
4 etc., ["2nd Motion for Nine Member Board"], pp. 3-4.)
5

6 Furthermore, no individual would be able to serve on both the
7 nine-member Watermaster Board and the Advisory Committee, and
8 voting on the nine-member Board would be pursuant to a one person,
9 one vote rule. In contrast, voting on the Advisory Committee is
10 conducted pursuant to production and assessment payments. (2nd
11 Motion for Nine Member Board, pp. 3-4.)
12

13 Therefore, the nine-member Board would be more, not less,
14 representative and protective of all rights in the Basin than
15 currently exists in the present situation. Consequently, the
16 Watermaster will be very different from the Advisory Committee, no
17 de facto merger has occurred, and the producers would not be in
18 control of both entities. The opponents of the proposed
19 Watermaster have simply failed to present any evidence showing
20 that the composition of this Board will adversely impact the other
21 parties to the Judgment.
22

23 B. The Advisory Committee Has Not Negatively Impacted
24 The Chino Basin.
25

26 These same opponents' continued assertions that the Advisory
27 Committee has somehow negatively impacted the Basin is simply
28

1 absurd, not to mention irrelevant. As extensively addressed in
2 defendant Cucamonga County Water District's et al opening
3 Memorandum of Points and Authorities, there is simply no evidence
4 that Basin water quality or quantity has decreased because of
5 faulty administration by either the Watermaster or the Advisory
6 Committee. (Memorandum of Points and Authorities in Support of
7 Motion for Appointment of Nine Member Watermaster Board of CCWD,
8 etc., dated August 18, 1997 ("Opening Brief"), pp. 6-8.) As
9 previously stated, the causes of degradation of groundwater
10 quality in the Basin are extremely complex and wide ranging,
11 resulting in part from the high concentration of dairies in the
12 Basin and agricultural practices, not mismanagement by the
13 Watermaster or the Advisory Committee. (Opening Brief, pp. 6-8.)
14 In fact, the parties to the Judgment can do little if anything to
15 either allow or prevent degradation of water quality, which
16 actually comes under the purview of the Regional Water Quality
17 Control Board. (Declaration of Mark Joseph Wildermuth, dated
18 August 18, 1997, ¶ 6.)

19
20 Defendant Monte Vista Water District has submitted a
21 Declaration by Langdon Wood Owen apparently filed to "prove" that
22 the Advisory Committee and/or Watermaster have mismanaged the
23 Basin. To the contrary, the Declaration instead sets forth vague
24 and unsupported claims such as: "Based upon my knowledge, it is my
25 opinion that the Basin is not managed in a manner to optimize the
26 Basin resource or to equitably address water quality problems."

27 (Declaration of Langdon Wood Owen in Support of Monte Vista Water
28

1 District's Brief, dated August 16, 1997 ("Owen Declaration"), ¶
2 5.) Mr. Owen also states: "those controlling the management of
3 the Basin have failed to implement and have prevented meaningful
4 conjunctive use." (Owen Declaration, ¶6.) Mr. Wood concludes his
5 Declaration by stating that: "Those who control the Chino Basin
6 adjudication place their special interests ahead of basin
7 management when making decisions under the adjudication." (Owen
8 Declaration, ¶ 7.)
9

10 However, Mr. Wood never bothers to provide a single example
11 to support these accusations. He never says what occurred, when
12 it occurred or why it is relevant to his claims. He does not even
13 say that the producers or Advisory Committee did anything wrong.
14 Such vague, unsubstantiated statements certainly do not rise to
15 the level of a "compelling reason" that would prohibit the
16 appointment of the proposed Board.
17

18 2. THE JUDGMENT DOES NOT SET FORTH "CHECKS AND BALANCES"
19 BETWEEN THE ADVISORY COMMITTEE AND THE WATERMASTER IN
20 IMPLEMENTATION OF THE JUDGMENT.
21

22 Opponents of the proposed Nine Member Board again try to
23 obfuscate the real issues pertinent to this matter as shown by
24 their continued reliance upon the "checks and balances" scenario
25 that they claim is contained within the Judgment; a scenario they
26 allege will be destroyed with the appointment of the proposed
27 Watermaster Board. These minority opponents are simply trying to
28

1 divert the Court's attention by briefing an issue that is simply
2 not relevant.

3
4 The Judgment does not impose upon the Watermaster the duty of
5 policing the various interested entities. Instead, it is the
6 Advisory Committee that has control over the Watermaster. As
7 already found by this Court, "under the Judgment, [the Advisory
8 Committee] is the controlling body of the ground water basin."
9 (Opening Brief, p. 12, Exhibit "A" [Order].) The Judgment was
10 obviously drafted to ensure that without the Advisory Committee's
11 approval, the Watermaster's actions would intentionally be very
12 limited. Thus, there are no "checks and Balances" between the
13 Watermaster and the Advisory Committee, but the Watermaster is
14 instead assigned certain tasks, the majority of which require
15 Advisory Committee approval.

16
17 Instead, it is the Court that has the power to ensure that
18 the Judgment is properly implemented, not the Watermaster.
19 Paragraph 31 of the Judgment gives any party, any Pool Committee,
20 the Watermaster and the Advisory Committee the opportunity to seek
21 review of any Watermaster action, thereby providing all parties an
22 equal opportunity to protest any action. Additionally, Paragraph
23 31 provides that the Court can review any action or do so on its
24 own motion. The Judgment also gives the Court the power to
25 conduct a de novo review of the action. (Judgment, ¶ 31, subd.
26 (d).) Finally, the Judgment provides that any decision of the
27 Court can be appealed, providing one more opportunity for
28

1 unbiased, independent review. (Judgment, ¶ 31, subd. (e).)
2 Because every entity with an interest in the Basin has been named
3 as a party to this action, they each have an equal opportunity to
4 seek judicial review of that decision.

5
6 Opponent Monte Vista Water District's claim that the
7 Watermaster acts as a "direct arm of the court" is simply wrong.
8 (Monte Vista Water District's Referee's Requested Brief, etc.,
9 dated August 18, 1997, p. 7.) Paragraphs 17 and 31 of the
10 Judgment cited by Monte Vista actually state that the Court has
11 continuing supervision and control of the Watermaster, and that
12 any Watermaster decision is subject to review by this Court.
13 Moreover, the Watermaster composition allows it just the type of
14 independence and neutrality sought by Monte Vista.

15
16 The Judgment does not make the distinction between
17 administrative, discretionary and mandatory actions -- instead, it
18 states that: "All actions, decisions or rules of Watermaster shall
19 be subject to review by the Court. . . ." (Judgment, ¶ 31.) Thus,
20 the Judgment simply does not allow a party or parties to take
21 control of the Basin without an opportunity for every other
22 potentially impacted party to seek Court review of that action.
23 Appointment of the proposed Nine-member Watermaster Board does not
24 in any way vitiate this opportunity for independent review.^{1/}

25
26 ^{1/} Monte Vista continually claims that under the "maxim of
27 expressio unius est exclusio alterius" any time the
28 Judgment fails to specifically set forth rules on any

(continued...)

1 3. CONCLUSION

2
3 For the reasons stated herein, the Court is requested to
4 enter an order appointing the Nine Member Watermaster Board as
5 approved by the Advisory Committee.
6

7 Dated: September 8, 1997.

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11 Gene Tanaka
12 Michelle Ouellette
13 Attorneys for Defendants
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15 District, Western Municipal
16 Water District and Kaiser
17 Ventures, Inc.

18 Dated: September 8, 1997.

19 McPETERS McALEARNEY SHIMOFF & HATT
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27 Company and West End
28 Consolidated Water Company

29 1/ (...continued)

30 given issue it means that the Judgment intentionally
31 excluded such action. However, as anyone who has ever
32 drafted complex documents knows, not every contingency
33 can possibly be foreseen or considered during document
34 preparation.

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REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR APPOINTMENT OF NINE MEMBER WATERMASTER BOARD OF CCWD, MWD, KAISER, FONTANA UNION WATER COMPANY, MONTE VISTA IRRIGATION WATER COMPANY, SAN ANTONIO WATER COMPANY AND WEST END CONSOLIDATED WATER COMPANY

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Riverside, California addressed as set forth below.

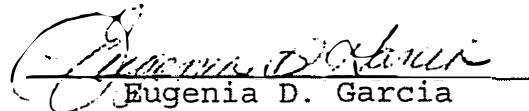
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Eugenia D. Garcia

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by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Riverside, California addressed as set forth below.

by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.

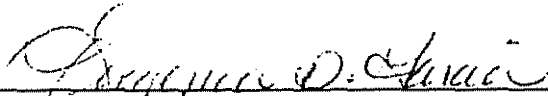
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SERVICE LIST

Chino Basin Municipal Water District, et al.

v.

City of Chino, et al.

San Bernardino County Superior Court
Case No. RCV 51010

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