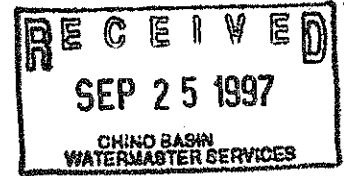


CIHIGOYENETCHE
REAPPT
10/16/97



TS
MS
ML

1 **CIHIGOYENETCHE, GROSSBERG & CLOUSE**
2 **Jean Cihigoyenette (Bar No. 105227)**
3 3602 Inland Empire Boulevard, Suite C-315
4 Ontario, CA 91764
5 (909) 483-1850

6 Attorneys for Plaintiff,
7 **CHINO BASIN MUNICIPAL WATER DISTRICT**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN BERNARDINO** "EXEMPT FROM FILING FEE
10 PURSUANT TO GOVERNMENT
11 **CODE SECTION 6103"**

11 **CHINO BASIN MUNICIPAL WATER**)
12 **DISTRICT,**)
13)
14 **vs.**)
15 **CITY OF CHINO, et al.,**)
16 **Defendant(s).**)

CASE NO. RCV 51010
**NOTICE OF MOTION AND MOTION FOR
CLARIFICATION OF PRIOR RULING;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF JEAN
CIHIGOYENETCHE, ESQ.**
DATE: October 16, 1997
TIME: 8:30 a.m.
DEPT: H

17 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

18 **PLEASE TAKE NOTICE** that on October 16, 1997 or as soon thereafter as the matter may
19 be heard in Department H of the above-entitled court. The moving party, Chino Basin Municipal
20 Water District will seek an order of the court regarding what action may be taken, if any, with regard
21 to personnel matters concerning the employees of Chino Basin Municipal Water District who are
22 assigned to the Watermaster Services staff. This motion will be based upon this notice, the
23 memorandum of points and authorities submitted herewith and the declaration of Jean
24 Cihigoyenette, Esq.

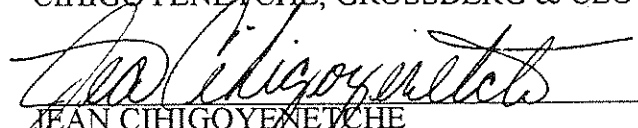
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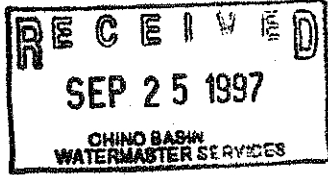
Dated: September 24, 1997

Respectfully submitted,

CIHIGOYENETCHE, GROSSBERG & CLOUSE

By: 
JEAN CIHIGOYENETCHE
Attorneys for Plaintiff
CHINO BASIN MUNICIPAL WATER DISTRICT

CIHIGOYENETCHE
REAPPT
10/16/97
TS
MS
ML



1 **CIHIGOYENETCHE, GROSSBERG & CLOUSE**
2 **Jean Cihigoyenette (Bar No. 105227)**
3 3602 Inland Empire Boulevard, Suite C-315
4 Ontario, CA 91764
5 (909) 483-1850

6 Attorneys for Plaintiff,
7 CHINO BASIN MUNICIPAL WATER DISTRICT

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

10 - "EXEMPT FROM FILING
11 PURSUANT TO GOVERN.
12 CODE SECTION 6100

11 CHINO BASIN MUNICIPAL WATER)
12 DISTRICT,)
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15)
16)
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Plaintiff(s),

vs.

CITY OF CHINO, et al.,

Defendant(s).

CASE NO. RCV 51010 CODE SECTION 6100

MEMORANDUM OF POINTS AND
AUTHORITIES RE MOTION FOR
CLARIFICATION OF PRIOR RULING

DATE: October 16, 1997
TIME: 8:30 a.m.
DEPT: H

COMES NOW Chino Basin Municipal Water District which moves the court for an order clarifying prior rulings of the court regarding decisions which may affect the employment status of employees assigned to Watermaster Services staff.

I.

INTRODUCTION

As the court is well aware, Chino Basin Municipal Water District ("Chino Basin") has served as Chino Basin Watermaster under an adjudication since 1978. As part of that adjudication, Chino Basin has assigned a certain number of its employees to provide services relative to its Watermaster function. In 1992, a facilities agreement was executed between Chino Basin and The Chino Basin Watermaster whereby it was agreed, in part, that the Chino Basin employees assigned to Watermaster Services staff would take direction from the Advisory Committee as to those employees' day to day

1 tasks. A copy of said facilities agreement is attached hereto as Exhibit A and incorporated herein by
2 this reference.

3 Presently, there are a total of five Chino Basin employees assigned to Watermaster Services
4 staff. These employees are carried on the books of Chino Basin and are paid by Chino Basin. All
5 benefits are derived from their employment with Chino Basin. However, and especially over the last
6 two years, these employees have been taking their directives from the Advisory Committee and have
7 even been physically relocated from Chino Basin's offices to offices at a different location. For the
8 most part, communication between Watermaster staff and Chino Basin with regard to staff's work
9 detail has been non-existent.

10 During the last year and a half, the court has entertained several motions regarding the
11 Watermaster. One of the concerns expressed by the court throughout those proceedings was the
12 status of Chino Basin's employees assigned to Watermaster Services. Accordingly, the court has
13 issued at least two rulings which, in part, would preclude the taking of any action which would affect
14 the employment status of Watermaster staff. Copies of said orders are attached hereto as Exhibits B
15 and C and incorporated herein by this reference.

16 Since the orders referred to above were issued by the court, Chino Basin has performed no
17 employee evaluation relative to the Watermaster staff. Recently, the Advisory Committee has
18 performed an evaluation of Traci Stewart, the Director of Watermaster Services and have brought the
19 results of their review to Chino Basin requesting that they approve a merit increase in the salary of
20 Ms. Stewart. The matter was reviewed in committee session which included representatives from
21 Chino Basin and the Advisory Committee. In addition, the matter was discussed in a joint session
22 between representatives of the Advisory Committee and Chino Basin Board of Directors.

23 Chino Basin has not taken action on the request in light of the prior court rulings which
24 preclude any action which would affect the employment status of Ms. Stewart or any other members
25 of the Watermaster staff. Chino Basin now seeks clarification of the prior court orders as they pertain
26 to Watermaster Services staff.

27 //

28 //

1 II.

2 THE FACILITIES AGREEMENT DOES NOT ADDRESS
3 THE ISSUE OF PERSONNEL REVIEW

4 Initially, Chino Basin submits that there is question as to whether the facilities agreement is
5 even in force and effect at this point in time. In correspondence dated April 29, 1996, attached hereto
6 as Exhibit D, the Advisory Committee sent written notice to Chino Basin of cancellation of the
7 facilities agreement. In consideration therefore, Chino Basin took certain actions including the
8 transfer of title to certain motor vehicles to the Watermaster. It was not until there was a dispute as
9 to who the ongoing Watermaster would be and what effect that decision would have upon the
10 pension benefits of the Watermaster staff that the Advisory Committee proclaimed that the
11 cancellation of the facilities agreement was of no force and effect.

12 Nevertheless, the court has continued to presume in the course of various rulings that the
13 facilities agreement is in effect although no specific legal ruling has been made in that regard. For
14 purposes of this motion however it does not appear that the language of the facilities agreement,
15 assuming it is in effect, would be controlling. The facilities agreement gives no direction as to who is
16 responsible for performing personnel reviews of Watermaster staff. Likewise, that agreement extends
17 no authority to the Advisory Committee to mandate to Chino Basin any type of personnel action with
18 regard to Watermaster staff.

19 III.

20 CHINO BASIN DOES NOT OBJECT TO A PERSONNEL
21 REVIEW OF WATERMASTER STAFF

22 By way of this motion, Chino Basin seeks the assistance of the court which has the ultimate
23 decision making authority under the adjudication. Although Chino Basin does not acknowledge that
24 the court has jurisdiction over personnel issues between Chino Basin and its employees, the court has
25 issued two prior rulings which, in the mind of Chino Basin, would preclude any action whatsoever
26 relative to the review of Ms. Stewart sought by the Advisory Committee at this time. Chino Basin is
27 willing to move forward with such a review as long as that action would not constitute a violation of
28 the court's prior orders.

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DECLARATION OF JEAN CIHIGOYENETCHE

I, Jean Cihigoyenette, hereby declare as follows:

1. I am an attorney licensed to practice law in all of the courts of the State of California and I represent Chino Basin Municipal Water District in this matter. I have first hand knowledge of the matters set forth herein and, if called as a witness, would be competent to testify thereto.

2. On September 3, 1997, during the closed session portion of Chino Basin Municipal Water District's regularly scheduled meeting, representatives from the Chino Basin Watermaster Advisory Committee addressed Chino Basin's Board of Directors with regard to a personnel review pertaining to Ms. Traci Stewart, Director of Watermaster Services.

3. I am informed and believe and on that basis allege that prior to September 3, 1997, meetings were held between representatives of the Watermaster Advisory Committee and representatives of Chino Basin's personnel committee regarding the personnel review of Ms. Stewart.

4. As a result of these meetings, the Advisory Committee has requested that Chino Basin take action with regard to the personnel review of Ms. Stewart and consider a potential merit increase in her salary. Representatives of the Board of Directors of Chino Basin have expressed concern that there are at least two prior court orders which restrict any action taken by them which would affect the employment status of the personnel of Watermaster staff.

5. Based upon those concerns, Chino Basin Municipal Water District has directed me to file the present motion with the court seeking an order clarifying the authority of Chino Basin to proceed with a personnel review of the employees of Watermaster staff.

I declare under penalty of perjury the foregoing to be true and correct to the best of my knowledge. Executed on this 23rd day of September, 1997 at Ontario, California.

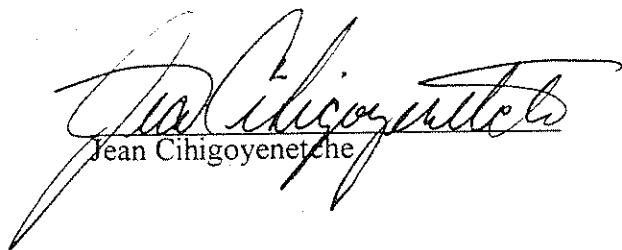

Jean Cihigoyenette

EXHIBIT A

AMENDED SERVICES AND FACILITIES CONTRACT

THIS CONTRACT made and entered into this 5th day of August 1992, by and between the Chino Basin Municipal Water District, hereafter referred to as "District," and Chino Basin Municipal Water District acting in its capacity as Watermaster pursuant to appointment of the Court in Judgment entered, Chino Basin Municipal Water District vs. City of Chino, et al., San Bernardino Superior Court Case No. WCV51010 (formerly Case No. SCV164327), hereafter referred to as "Watermaster";

W I T N E S S E T H:

WHEREAS, District is willing and able, through its staff and facilities, to provide certain services necessary in the performance of Watermaster's duties; and

WHEREAS, it is deemed to be in the best interest of Watermaster to contract with the District rather than to procure independent personnel and facilities for said services;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein made and contained, the parties hereto agree as follows:

1. SCOPE OF AGREEMENT. District agrees to provide services and facilities as designated in paragraph 5. hereof and as may be reasonably requested from time to time and consistent with District's primary obligation to serve the needs of District, and its Watermaster function, to be performed for and on behalf of Watermaster, pursuant to the conditions imposed hereby unless terminated as set forth herein.

2. REIMBURSEMENT FOR SERVICES.

a. It is agreed by the parties that District shall be reimbursed by Watermaster for the cost of all services performed and facilities utilized pursuant to this Contract. Such costs shall be determined through the application of generally accepted accounting principles and in compliance with the following guidelines:

1) All direct labor costs and related labor costs of personnel involved.

2) The cost of materials and/or supplies utilized.

3) The cost of computer time, postage and special photocopy runs.

4) A percentage charge to cover general and administration overhead shall be added to items 1) - 3) above. The general and administration overhead shall be computed as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

b. District shall be reimbursed the actual cost of insurance, materials and/or supplies purchased exclusively for Watermaster use.

c. District shall submit to Watermaster a monthly statement for services rendered by District to Watermaster no later than the fifteenth (15) of each next succeeding month. Payment thereof to be made by Watermaster to District within thirty (30) days of receipt of such statement.

3. CONTRACTED SERVICES. Consulting services shall be contracted for independently by Watermaster, including but not limited to legal, engineering and audit.

4. SUPPLEMENTAL WATER. Supplemental water for replenishment purposes as may be required by the Judgment, shall be sold by District to Watermaster at District's actual cost.

5. SERVICES AND FACILITIES TO BE PERFORMED BY THE DISTRICT. The services and/or facilities as set forth hereafter constitute a general outline of the duties that may or may not be requested by Watermaster, for District to perform from time to time. District is hereby requested by Watermaster to do and faithfully perform the following services and make facilities available as may be reasonable from time to time, for and on behalf of Watermaster throughout the term of this Contract:

a. Make available for the holding of Watermaster meetings and/or public hearings from time to time, the facilities of District. Prepare, copy and mail written

findings and decisions of Watermaster public hearings, minutes, and other documents as may be necessary from time to time. Maintain and make available for inspection all records, including minutes of any meeting of Watermaster, the Watermaster Advisory Committee, and/or any Pool Committee.

b. Make available to Watermaster said facilities, telephone equipment, supplies, other equipment, utilities and personnel, as may be necessary and requested by the Watermaster to perform the day to day operations of the Watermaster.

c. Prepare, upon request of Watermaster, appropriate agendas for all meetings of Watermaster. Prepare and distribute the annual Watermaster report. Process all the Watermaster correspondence.

d. Coordinate, maintain, and administer the meter service, carry-over rights, ground water storage and withdrawal procedures, supplemental water purchases and assignment, transfer and lease of decreed rights.

e. Receive and analyze producer reports and compile, organize and distribute production data summaries as needed. Compile necessary historical data for safe yield purposes.

f. Conduct in lieu and other negotiated procedures and coordinate such programs upon implementation.

g. Provide such incidental general engineering support as may be required.

✓h. Keep and maintain adequate accounts of all financial transactions of Watermaster, make deposits and disburse such funds as may be received by the Watermaster, and invest funds of the Watermaster as authorized.

i. Keep and maintain the appropriate fidelity and other bonds required by the Judgment and/or appropriate insurance as necessary. Keep and maintain records allocating costs and expenses of Watermaster as between the several pools. Issue assessments as levied by Watermaster, including notice thereof and perform collection procedures if required.

j. Cause to be performed an independent annual audit of Watermaster funds.

k. Prepare and distribute the annual Administrative Budget and incidental reports.

* 6. DISTRICT EMPLOYEES WORKING FOR WATERMASTER. Any District staff working on or providing assistance to the Watermaster program shall receive their direction from and report to the Advisory Committee.

✓ 7. SPECIAL PROJECTS. It is anticipated by the parties hereto that special projects, in addition to the day to day administrative duties set forth in paragraph 5. hereof, may be required from time to time. All such special projects will be initiated only by separate work orders approved by the Watermaster Advisory Committee and Watermaster.

8. LIABILITY. District shall list Watermaster as an additional named insured on its policies of liability insurance, or secure, if necessary, separate policies of liability insurance.

9. ENTIRE CONTRACT AND MODIFICATION. This Contract expresses the whole agreement between the parties, there being no representations, warranties or other agreements not herein expressly set forth or provided for. No change, or modification of, or condition to this Contract shall be valid unless the same shall be in writing and signed by both parties hereto.

10. BINDING CONTRACT. This Contract shall be binding upon and inure to the benefit of District, its successors and assigns, and shall be binding upon and inure to the benefit of Watermaster.

11. PARAGRAPH HEADINGS/COUNTERPARTS. All paragraph headings herein are inserted for the convenience of the parties only. This Contract may be executed in several counterparts, each of which shall be deemed to be an original and which together will constitute one and the same instrument.

12. TERMINATION. This Contract may be terminated by either party, with or without cause, by giving six (6) months written notice to the other party. This Contract shall be automatically terminated whenever District shall cease to be Watermaster.

13. WAIVER. The waiver of, or failure to enforce any provision of this Contract, shall not operate as a waiver of such provisions, or any future breach of any such provisions.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives on the date first above appearing.

"WATERMASTER"

By [Signature]
President

"DISTRICT"

By [Signature]
President of the Board of
Directors of CHINO BASIN
MUNICIPAL WATER DISTRICT

ATTEST:

By [Signature]
Secretary

ATTEST:

By [Signature]
Secretary of the Board of
Directors of CHINO BASIN
MUNICIPAL WATER DISTRICT

APPROVED BY WATERMASTER ADVISORY COMMITTEE

By [Signature]
Chairman

contract

ADOPTED BUDGET 1991/92
General Fund

NOTES TO GENERAL & ADMINISTRATIVE ABATEMENTS

The General and Administrative (G&A) Expense is a charge made to each and every non-General Fund or General Fund Special Project to cover the cost of administration of the District as a whole. These costs cannot be directly charged against a plant or a project and include such costs of operations as follows:

- Administration of the District
- Purchasing and paying the bills of the District
- Issuing statements and receiving payment therefore
- Routine Customer Services
- Collection and distribution of receipts among the taxing funds
- Engineering services of general benefit to the District
- General office maintenance, utilities and insurance
- Preparation of payroll for all employees
- Accounting work pertinent to all funds but not distinct to any (budget control, trial balance work, etc.)
- Any coverage or shortage incurred in arriving at a proper percentage for direct charges for payroll burden
- And anything left over in the General Fund at the close of audit.

The General and Administrative Expense percentage is derived from the prior year's audit, in this instance the audit for the year ended June 30, 1991.

	Total Expenses	Less Depreciation	Net Expenses
Internal General Fund (Unabated)	\$ 3,909,720	\$455,180	\$3,454,540
Water Fund	697,454		
Regional Waster Water Funds	17,037,816		
Tertiary Funds	4,220,680		
Co-Composting Fund	269,016		
Non-Reclaimable Waste System	2,816,785		
AD #1 Fund	<u>1,820</u>		
Total Expenses	\$35,223,291		
Less G&A Applied	<u>2,028,331</u>		
Total Expenses per Audit	<u>\$33,194,960</u>		

$$\frac{\$3,454,540}{\$33,194,960} = 10.41\% \text{ Actual Percentage used for 1991/92}$$

EXHIBIT B

RECEIVED
MAR 19 1997
CLERK'S OFFICE

FILED - West District
San Bernardino County Clerk

MAR 19 1997
Wanda DeVinney

RECEIVED
MAR 24 1997
CLERK'S OFFICE

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

CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF CHINO, et al.,)
)
 Defendants.)

CASE NO. RCV 51010

~~PROPOSED~~ ORDER TO SHOW CAUSE
RE: APPOINTMENT OF SPECIAL
REFEREE FROM OUTSIDE OF COUNTY
AND ADOPTION BY COURT OF ITS
TENTATIVE RULING

Having considered the Motion for the Appointment of Nine Member Board as Watermaster, the Motion for Order of Court that Audit Commissioned by the Chino Basin Municipal Water District Is Not a Watermaster Expense, and the Motion for Disqualification of Counsel, the Court has issued its Tentative Ruling, which is attached to this Order as Exhibit "1".


The Court further finds that it is necessary to appoint a special referee to provide recommendations to resolve the issues raised by the Motion for the Appointment of Nine Member Board.

1 IT IS FURTHER ORDERED that all personnel matters concerning Watermaster staff shall be
2 held in abeyance by both Chino Basin Municipal Water District and by the Advisory Committee
3 until after the Court issues its ruling following receipt of recommendations by the special
4 referee.

5
6 DATED: MAR 1 9 1997

7 J. Michael Gunn
8 HONORABLE J. MICHAEL GUNN

9 Respectfully submitted by:
10
11 MCCORMICK, KIDMAN & BEHRENS

12 By: 
13 David D. Boyer
14 Attorneys for Defendant
15 Monte Vista Water District

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SUPERIOR AND MUNICIPAL COURT
STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER) NO. RCV RCV 51010
DISTRICT,)
Plaintiff)
v.)
CITY OF CHINO, et al)
Defendant)

Hearing Date: March 11, 1997 Dept: RC-H

- Motions: (1) Motion to Disqualify Counsel for Watermaster
(2) Motion for Order that Audit Commissioned by Watermaster is not a
Watermaster Expense
(3) Motion to Appoint Nine-Member Watermaster Board

TENTATIVE RULING

This is an adjudication of all rights in and to the ground waters of Chino Basin and its storage capacity. For at least five years prior to the filing of the amended complaint in July, 1976, the annual production from the Chino Basin had exceeded the safe yield, resulting in a

1 "Watermaster," for an order declaring that the cost of the audit is not a "Watermaster" expense.
2 The "Nossaman Firm" purportedly representing the Watermaster is bringing this motion
3 pursuant to the direction of the Chino Basin Watermaster Advisory Committee (Advisory
4 Committee), acting pursuant to a 91.43% of the vote.

5 The motion requests an order from the Court that the costs of the audit be borne
6 by the Board of the Chino Basin Municipal Water District (District).

7 Watermaster contends that the District commissioned an audit in violation of the
8 requirements of the Judgment and Rules and Regulations of Watermaster.

9 Opposition to the Motion has been filed by Chino Basin Municipal Water District,
10 among others. The arguments made by City of Chino Hills and The Chino Municipal Water
11 District are almost identical. Besides the arguments made by the District, Chino Hills contends
12 that it has not been proven that the forged checks were not drawn by employees and/or
13 independent contractors of the Watermaster. This argument is not relevant to the issue here.
14 There is no evidence that the individuals were in any way involved in the forged checks.

15 Background

16 In December of last year, it was discovered that fraudulent checks had been drawn
17 upon Watermaster's account. Upon discovering this information, the Watermaster immediately
18 informed the bank and the law enforcement authorities. The sums were restored by the bank and
19 a new checking account has been established.

20 The information was brought to the attention of the Advisory Committee, which
21 considered the situation at an Advisory Committee meeting on January 8, 1997. The Advisory
22 Committee was informed by a representative of the San Bernardino County Sheriff's Department
23 that fraudulent activity of this type was not uncommon. The Advisory Committee was also
24 informed that this activity could occur even if proper procedures were in place.

25 At the January 8, 1997 meeting, the Advisory Committee took the following
26 actions:

27 1. It established, by a 91.43% majority vote, an Ad Hoc Finance Committee to examine
28 the financial procedures of Watermaster. The Advisory Committee further stated that if the

1 At the January 23 meeting the District announced that it had received proposals
2 from several accounting firms. The Chief Financial Officer of the District recommended that the
3 firm of Soren, McAdam, Bartells be hired to conduct a special audit.

4 The contact of various accounting firms was done without any input from the
5 Advisory Committee, the Pool Committees or any parties other than Chino Basin Municipal
6 Water District. The District approved the hiring of Soren, McAdam, Bartells.

7 The District contends that this motion arises from "a decision by the Watermaster
8 to conduct an audit of the Watermaster affairs." The District contends that the special audit was
9 prompted by a well-founded concern that the Advisory Committee had usurped the
10 administrative authority of the Watermaster. The District contends that the Advisory Committee
11 was conducting Watermaster business in total disregard of generally accepted accounting
12 standards.

13 The District further contends that the Board of Directors of the District, as the
14 Watermaster, correctly voted to have a special audit conducted and further voted to hire Soren,
15 McAdam & Bartells to perform that special audit. The District argues that this action was one
16 that could be taken by the Watermaster without consultation with the Advisory Committee.

17 Watermaster contends that the Advisory Committee, by over an 80% vote, voted
18 to take no action directing a special audit at the then present time. Therefore, Watermaster
19 contends, this was a mandate from the Advisory Committee and the Watermaster could not act
20 in contradiction to that vote.

21 Watermaster further contends that even if the decision to conduct a special audit
22 had not been subject to the Advisory Committee's mandate, it still would have been improper.
23 Watermaster bases this on paragraph 38(b)(2) of the Judgment, which requires that the
24 Watermaster give 30 days notice of the meeting at which it intends to take action.

25 The special audit has been completed. The results are submitted as Exhibit "D"
26 to the opposition

27 The Watermaster contends that the procedures followed to commission the special
28 audit violated the requirements of the Judgment. The Watermaster contends that the Judgment

1 a discretionary act?

2 Watermaster contends that a decision to take a particular action is discretionary
3 if the agency has a choice to either take or not take the action or how the action is to be
4 undertaken. This definition is extracted from Webster's Dictionary and the California
5 Environmental Quality Act.

6 CEQA provides that:

7 A discretionary project is one that requires the exercise of Judgment or
8 deliberation when the public agency or body decides to approve or
9 disapprove a particular activity, as distinguished from situations where the
10 public agency or body merely has to determine whether there has been
11 conformity with applicable statutes, ordinances or regulations. Remy,
12 Thomas, Moose & Yeates, Guide to the California Environmental Quality
13 Act (CEQA) (1994) p.38.

14 A discretionary act is discussed in Part VI of the Judgment relating with the
15 Physical Solution. Paragraph 41 provides that:

16 41. Watermaster, with the advice of the Advisory and Pool Committees,
17 is granted Discretionary powers in order to develop an optimum basin
18 management program for Chino Basin including both water quantity and
19 quality considerations. Withdrawals and supplemental water
20 replenishment of basin water, and the full utilization of the water resources
21 of Chino Basin, must be subject to procedures established by and
22 administered through Watermaster with the advice and assistance of the
23 Advisory and Pool Committees composed of the effective producers. Both
24 the quantity and quality of said water resources may thereby be preserved
25 and the beneficial utilization of the basin maximized.

26 The District contends that this paragraph defines discretionary acts and limits them
27 to those listed. I disagree with this proposition. The theme of the Judgment is that the Advisory
28 Committee is the policy making body. If the matters that required the Advisory Committee's
input were limited to those listed, the Watermaster would be the policy making body.

Therefore, I do not find this paragraph to be determinative on the issue.

Employment of professionals by the Watermaster is discussed in
paragraph 20.

The District contends that hiring an accountant is an administrative function that
is specifically allowed by the Judgment.

Paragraph 20 states that:

1 or special project expenses.

2 (a) General Watermaster Administrative Expense shall include office
3 rental, general personnel expense, supplies and office equipment, and
4 related incidental expense and general overhead.

5 (b) Special Project Expense shall consist of special engineering, economic
6 or other studies, litigation expense, meter testing or other major operating
7 expenses. Each such project shall be assigned to a Task Order number and
8 shall be separately budgeted and accounted for.

9 Paragraph 54 further provides that:

10 Special Project Expense shall be allocated to a specific pool, or any portion thereof,
11 only upon the basis of prior express assent and finding of benefit by the Pool Committee,
12 or pursuant to written order of the Court.

13 If the Court were to accept District's contention that the special audit was an
14 administrative act, then the Court must decide into which category it falls.

15 I think that if the special audit falls within either of these two categories, it would
16 fall within the special project category. A full, nonroutine audit is not general overhead. I think
17 that it would be an economic study.

18 If an economic study could be performed without special provisions for paying the
19 costs, then the phrase "economic or other studies" in paragraph 54(b) would be surplusage.

20 Since prior approval of a special project expense is required, this contention does
21 not assist the District.

22 The District argues that the special audit was justified. It cites certain
23 circumstances regarding the expenditures of the Watermaster, the 700% rise in the Watermaster
24 budget, the results of the special audit, and the contention that the Nossaman firm has a conflict
25 of interest, to justify the special audit. Objecting to the expenditures is an interesting argument.
26 The Watermaster has approved, in fact, paid the expenditures to which it is now objecting. This
27 puts the District in an interesting position. The Watermaster has also approved the 700%
28 increase in the Watermaster budget.

The District recites the circumstances and the results of the special audit to justify
the special audit. This argument ignores the procedures through which the special audit was
commissioned. This argument also attempts to justify the action taken by the results found.
This argument ignores the provisions of the Judgment and attempts to say if we are right we do

1 and balances contained in the 1978 judgment, an interpretation of the phrase "discretionary
2 determinations" used in paragraph 38, subdivision (b) of the judgment, and a delineation of the
3 functions of the Watermaster and Advisory Committee. The importance of the issues before the
4 Court is illustrated by the statements contained in the declaration submitted by P. Joseph
5 Grindstaff, the General Manager for the Monte Vista Water District and the present Chairman
6 of the Advisory Committee. Mr. Grindstaff states that the water quality and safe yield in the
7 basin has deteriorated as a result of the failure of the Advisory Committee to address certain
8 issues: pumping patterns, storage limits and losses, speculation in water and development of an
9 optimum basin management plan. Mr. Grindstaff believes that most of the water pumped from
10 the basin no longer meets health department standards for safe drinking water without blending
11 or treatment.

12 The Court finds that there is an urgent need to address the issue presented by the
13 motion, but the Court further finds that it is necessary to obtain a recommendation from a
14 recognized water law expert on the issues before it. Accordingly, the Court proposes to appoint
15 a special referee pursuant to Code of Civil Procedure section 639 subdivision (d); however,
16 notice is hereby given that the Court intends to make a finding that there are compelling reasons
17 to deviate from the procedure set forth in Code of Civil Procedure section 640, to the extent that
18 the Court intends to appoint Anne Schneider, a person who resides outside of San Bernardino
19 County, unless cause is shown at the next hearing why this Court should not appoint a special
20 referee from outside the county. Among the reasons that the Court finds compelling are the
21 high level of expertise Ms. Schneider possesses in the subject of Water litigation, and by virtue
22 of the fact that she resides outside the county, the chances of impartiality on her part and in her
23 recommendation are diminished; moreover, Ms. Schneider has previously acted as special
24 referee to this court (another judge) regarding issues related to the 1978 judgment. The referral
25 to Ms. Schneider would be for advisory purposes only, and this court would retain jurisdiction
26 to adopt in whole or part the recommendations of the special referee, taking into consideration
27 appropriate objections. It would be the intent of the Court that Ms. Schneider's fee be an
28 expense of Watermaster in order to spread the costs over all of the users instead of just to the

1 the charts attached hereto for insight into my reasoning, and you are welcome to provide your
2 version if you disagree with that depicted in the charts supplied for analysis.

3 Facilities Agreement

4 The Court has not been provided with a copy of the present Facilities and Services
5 Agreement between the District in its role as Watermaster and the Advisory Committee. The
6 Chief of Watermaster Services, Traci Stewart is requested to provide a copy to the Court
7 forthwith. This will become an order to Watermaster if the request is not honored; of course,
8 I have no reason to doubt that the request will not be honored. The Court is concerned that the
9 employees of Watermaster not be held hostage to this litigation, and the Advisory Committee
10 and the Watermaster (CBMWD) are ordered to meet and confer regarding the so-called "Pers
11 problems."

12 An OSC date will be set approximately three weeks from today to show cause why
13 the intended decision stated herein should not be an order of the Court. In addition the deletion
14 from service requested by unnoticed motion will be heard that day without necessity of
15 appearance by the moving party. See Wanda for a copy of the request.

16 As one can readily ascertain by reading this intended decision, due to volume of
17 papers filed, and in spite thereof, and the magnitude of the effect of the Court's decision on the
18 people affected by the Court's ruling, this Court needs the additional information requested, as
19 well as some additional time. As some of you know, some filings came as late as this afternoon,
20 and you will be here in just eight hours from the time it is now. As soon as you have read this
21 intended, confer with those present on a date to come back to court.

22 Dated: March 10, 1997,

23
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HON. J. MICHAEL GUNN
Judge

EXHIBIT C

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5 (909) 483-1850

6 Attorneys for Plaintiff,
7 CHINO BASIN MUNICIPAL WATER DISTRICT

FILED-West District
San Bernardino County

MAY 07 1997

By MARY A. MASTERSON
Deputy

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

CONFORM
COPY

10
11 CHINO BASIN MUNICIPAL WATER)
12 DISTRICT,)

13 Plaintiff(s),)

14 vs.)

15 CITY OF CHINO, et al.,)

16 Defendant(s).)

CASE NO. RCV 51010

NOTICE OF RULING

17 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

18 PLEASE TAKE NOTICE that Chino Basin Municipal Water District's Motion for Court
19 Review of Advisory Committee Mandated Action came regularly for hearing on May 5, 1997 in
20 Department H of the above-entitled court, the Honorable Judge J. Michael Gunn, presiding. Robert
21 Dougherty, Esq. appeared on behalf of City of Ontario. Boyd L. Hill, Esq. appeared on behalf of
22 Chino Basin Watermaster Advisory Committee and Jean Cihigoyenette, Esq. appeared on behalf of
23 Chino Basin Municipal Water District.

24 Upon considering the moving and opposing papers, and hearing argument the court ruled as
25 follows:

26 1. No action is to be taken under the resolution of intention declaring the Watermaster's
27 intent to enter into a contract with Cal Pers. The ruling is made without prejudice to renew the Cal
28

1 Pers application depending upon action taken by the California Department of Water Resources.

2 2. No action is to be taken as to the \$500.00 a month vehicle allowance for the Chief of
3 Watermaster Services. All salary shall remain the same pending action by the California Department
4 of Water Resources with respect to Watermaster Services employees.

5 3. No action is to be taken regarding the ad hoc finance committee's recommendation
6 that staff immediately begin the process of selecting an auditor to perform Watermaster's fiscal year
7 1996-1997 financial audit, within expanded scope of work to include the events regarding the forgery
8 that occurred in December 1996; and that staff implement the procedural recommendations submitted
9 by the committee were available and feasible. If the California Department of Water Resources fails
10 to assume the responsibilities of Watermaster by July 1, 1997 the expanded audit will be approved by
11 the court. If the California Department of Water Resources does accept the responsibilities of
12 Watermaster prior to July 1, 1997 they will be responsible for determining the scope of the audit.

13 4. No action is to be taken on Resolution No. 97-1 establishing a Watermaster
14 investment policy, as approved by the Advisory Committee on October 16, 1997.

15 5. No action is to be taken on Resolutions Nos. 97-2, 97-3 and 97-4 authorizing the
16 adoption and implementation of three separate section 457 deferred compensation plans.

17
18 Respectfully submitted,

19 Dated: May 5, 1997

CIHIGOYENETCHE, GROSSBERG & CLOUSE

20
21 By: 

JEAN CIHIGOYENETCHE

Attorneys for Plaintiff,

CHINO BASIN MUNICIPAL WATER DISTRICT

EXHIBIT D



CHINO BASIN WATERMASTER

8632 Archibald Ave., Suite 108, Rancho Cucamonga, CA 91730
TEL: (909) 484-3488 • FAX: (909) 484-3890

TRACI STEWART
Chief of Watermaster Services

April 29, 1996

Dr. Robb D. Quincey
Chief Executive Officer/General Manager
Chino Basin Municipal Water District
P.O. Box 697
Rancho Cucamonga, CA 91729

Re: Facilities and Services Agreement

Dear Dr. Quincey, ^{Robb}

On April 24, 1996, the Advisory Committee took unanimous action to terminate the existing Facilities and Services Agreement with Chino Basin Municipal Water District and to accept your letter dated March 13, 1996, as an interim facilities and services agreement during the transition period. Additionally, the committee wished me to express thanks to you and your staff for your willingness to cooperate and to assist in an efficient and orderly transition.

One item that was not specifically identified in our initial letter or subsequent discussion is the transfer of title for the Watermaster Truck. I spoke to Larry Rudder regarding this, and he indicated we would probably need to pay the remaining lease payments in full before title can transfer. This can probably be done right after the first of the new fiscal year, and the transfer can be made immediately thereafter. I will retain automobile insurance for the truck effective July 1, 1996.

Thanks again to you and your staff for all the help during this transition period. If there's any way we can be of assistance to you, please do not hesitate to call.

Sincerely,

Traci Stewart
Chief of Watermaster Services

1 **CIHIGOYENETCHE, GROSSBERG & CLOUSE**

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

10
11 CHINO BASIN MUNICIPAL WATER)
12 DISTRICT,)
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CASE NO. RCV 51010
PROOF OF SERVICE BY MAIL

vs.

CITY OF CHINO, et al.,
Defendant(s).

I am employed in the County of San Bernardino, State of California and am over the age of 18 years. I am not a party to the within action. My business address is 3602 Inland Empire Boulevard, Suite C315, Ontario, California.

On or before May 6, 1997, I served the documents described as: NOTICE OF RULING on the interested parties to this action in the manner described below and addressed as indicated on the attached list.

I caused the documents to be enclosed in a sealed envelope with postage thereon fully paid, and to be deposited in the United States mail in Ontario, California. The documents were to be deposited with the United States Postal Service on the same day.

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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 6, 1997, at Ontario, California.


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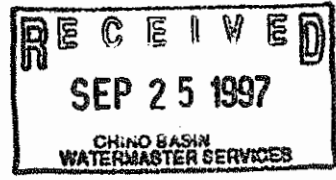
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CIHIGOYENETCHE
RE APPT
10/16/97
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MS
ML



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

10
11 CHINO BASIN MUNICIPAL WATER) CASE NO. RCV 51010
12 DISTRICT,)
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CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
Plaintiff(s),)
vs.)
CITY OF CHINO, et al.,)
Defendant(s).)

CASE NO. RCV 51010
PROOF OF SERVICE BY MAIL

I am employed in the County of San Bernardino, State of California and am over the age of 18 years. I am not a party to the within action. My business address is 3602 Inland Empire Boulevard, Suite C315, Ontario, California.

On or before September 24, 1997, I served the documents described as: **NOTICE AND MOTION AND MOTION FOR CLARIFICATION OF PRIOR RULING; MEMORANDUM OF POINTS AND AUTHRORITIES; DECLARATION OF JEAN CIHIGOYENETCHE, ESQ.** on the interested parties to this action in the manner described below and addressed as indicated on the attached list.

I caused the documents to be enclosed in a sealed envelope with postage thereon fully paid, and to be deposited in the United States mail in Ontario, California. The documents were to be deposited with the United States Postal Service on the same day.

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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on September 24, 1997, at Ontario, California.



KIM PEREZ

Chino Basin Municipal Water District v. City of Chino, et al.
Case No: RCV 51010

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