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FILED - West District  
San Bernardino County Clerk

OCT 21 1999

By *Lina L. Gulmarte*  
Deputy

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

11 CHINO BASIN MUNICIPAL WATER  
DISTRICT,

12 Plaintiff,

13 vs.

14 CITY OF CHINO, et al.,

15 Defendants.  
16

) CASE NO.: RCV 51010

) MEMORANDUM OF POINTS AND AUTHORITIES  
) CONCERNING SANTA ANA RIVER

) Hearing Date: October 28, 1999  
) Time: 1:30 PM Dept. R-8

) Specially assigned to the Honorable Judge J.  
) Michael Gunn

17  
18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

19 PRELIMINARY

20 This memorandum recommends a role for this court and the Watermaster with  
21 respect to the petition by Orange County Water District ("Orange County") to revise the  
22 declaration of fully appropriated stream submitted to the State Water Resources Control  
23 Board ("State Board") regarding the Santa Ana River.

24 BACKGROUND

25 On September 30, the court set a hearing for October 28, 1999, to discuss the  
26 possible role of the Chino Basin Watermaster and this Court with respect to a petition filed  
27 by Orange County to revise the declaration of fully appropriated streams regarding the  
28 Santa Ana River. This memorandum is filed based on the court's order for hearing, and on

1 the Chino Basin Watermaster Board and Advisory Committee recommendations to the  
2 court from their October 14, 1999 meetings regarding the petition.

3 In summary, the State Board plans to hold a hearing on December 7, 1999, to  
4 consider lifting its existing declaration of fully appropriated stream for the Santa Ana River.  
5 Orange County estimates as much as 500,000 acre-feet ("AF") is available for  
6 appropriation. The allegedly surplus water consists of storm water and recycled water.  
7 Chino Basin is connected to Orange County physically and legally. The Chino Basin  
8 watershed is tributary to the Santa Ana River. Western and Inland Empire Utilities Agency  
9 (IEUA) have a joint obligation under the judgment in Orange County Water District v. City of  
10 Chino (OCSC No. 117628) ("Orange County case") to deliver 42,000 AF/Y of base flow in  
11 the Santa Ana River at Prado Dam for use by Orange County.<sup>1</sup>

12 In December, the State Board will also consider a separate petition (Western  
13 petition) by Western Municipal Water District ("Western") and San Bernardino Valley  
14 Municipal Water District (San Bernardino) to remove the existing declaration of fully  
15 appropriated stream for the Santa Ana River. San Bernardino must provide 15,250 AF/Y  
16 of base flow to the River at Riverside Narrows pursuant to the Orange County case. The  
17 Western petition and application do not seem to affect the Chino Basin.

18 The Optimum Basin Management Program ("OBMP") anticipates more intensive use  
19 of water in the Chino Basin watershed, including water tributary to the Santa Ana River.  
20 The OBMP could be adversely impacted if the SWRCB grants the petition to remove the  
21 declaration.

## 22 THE ISSUES

23 The Orange County petition presents a factual issue: whether there is surplus water  
24 in the Santa Ana River which is available for new appropriation. The Orange County  
25 petition may include water needed to implement the OBMP that is subject to the continuing  
26 jurisdiction of the court and previously adjudicated in the Orange County case. Orange  
27

28 <sup>1</sup> The Orange County case requires a minimum flow of 34,000 AF/Y of base flow from the upper area to the lower area, which is met by the Inland Empire Utilities Agency and Western Municipal Water District at Prado Dam.

1 County representatives have indicated their petition and application are not intended to  
2 affect the use of water in the Chino Basin or the rights and obligations adjudicated under  
3 the Orange County case, but the documents in support of the petition and application are  
4 not clear. The question is whether these petitions and applications could interfere with the  
5 Watermaster's basin management programs.

6 Assuming the petitions will result in appropriation of water in derogation of the  
7 OBMP, they also present a legal issue: whether the State Board has jurisdiction to grant  
8 the petitions in derogation of this Court's continuing jurisdiction.

### 9 ANALYSIS

#### 10 Factual Issues

11 Resolving the meaning of the Orange County petition is difficult because of the  
12 volume of materials submitted to the State Board. A case can be made Orange County  
13 does not intend to interfere with Chino Basin management but the opposite case can also  
14 be made. The meaning of the Orange County petition cannot be resolved at this time. The  
15 testimony of Orange County and the testimony of Inland Empire Utilities Agency ("IEUA")  
16 and Western as responsible parties under the Orange County case will be important.  
17 Fortunately, Orange County, Inland Empire and Western are parties to this judgment and  
18 can be summoned to give testimony.

#### 19 Legal Issues

20 The Judgment reserves "continuing jurisdiction" to this court over "all matters  
21 contained in the judgment".<sup>2</sup> The court reserved the power to make further orders  
22 "necessary or appropriate for interpretation, enforcement or carrying out" the Judgment.<sup>3</sup>  
23 On this basis, the court ordered the preparation of the OBMP. The court will order the  
24 implementation of the OBMP under this provision. The court could invoke this provision to  
25 order the increased diversion of storm water or the increased use of recycled water. Such  
26 increased diversion, while wholly contemplated in the Orange County case, may be  
27 contrary to the petition submitted to the State Board by Orange County.

28 \_\_\_\_\_  
<sup>2</sup> Paragraph 15.

1 The court (and by extension the Watermaster) may not necessarily be authorized to  
2 appear before the State Board. However, the State of California is a party to the instant  
3 action. This court may order the State to appear and show whether the State Board should  
4 be permitted to act in a manner inconsistent with the Judgment.

5 **RECOMMENDATION**

6 Based on the foregoing, the Watermaster recommends the court:

- 7 1. Order Orange County Water District, Inland Empire Utilities Agency and Western  
8 Municipal Water District to appear on November 18, 1999, at 1:30 p.m. to clarify  
9 their respective positions with respect to the petitions to revise the declaration of  
10 fully appropriated streams regarding the Santa Ana River; and  
11 2. Order the State of California to show cause on November 18, 1999, at 1:30 p.m.,  
12 or as soon thereafter as the matter may be heard, why a preliminary injunction  
13 should not issue to prevent the State Water Resources Control Board from  
14 holding a hearing to consider revising the declaration of fully appropriated  
15 streams for the Santa Ana River which could adversely affect the management of  
16 the Chino Basin.

17  
18 Dated: Oct 21, 1999

Respectfully submitted,

19   
20 Wayne K. Lemieux

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27  
28 <sup>3</sup> Ibid.

CHINO BASIN MUNICIPAL WATER DISTRICT V. CITY OF CHINO et al.  
CASE NO. RCV 51010

PROOF OF SERVICE

I, Genia van Schaik:

1. I am over the age of 18 and not a party to this action. My business address is Chino Basin Watermaster, 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California 91730.


2. On today's date, I served the documents identified below by placing a true and correct copy of same in sealed envelopes addressed to the addresses shown on the attached mailing lists.

**MEMORANDUM OF POINTS AND AUTHORITIES CONCERNING SANTA ANA RIVER**

I then placed said envelopes for collection, processing and mailing by Chino Basin Watermaster personnel with the United States Postal Service on today's date, following Chino Basin Watermaster's ordinary business practices. Pursuant to these practices, with which I am familiar, such sealed, addressed envelopes are deposited in the ordinary course of business with the United States Postal Service on the same date they are collected and processed, with postage thereon fully prepaid.

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

Executed on October 21, 1999, at Rancho Cucamonga, California.

  
Genia van Schaik



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