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Wanda DeVinney

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

CHINO BASIN MUNICIPAL
WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants.

CASE NO. RCV 51010

RULING

Introduction

This is an adjudication of groundwater rights in the Chino Basin. For at least five years before the filing of the amended complaint in July 1976, the annual production from the Chino Basin had exceeded the safe yield, resulting in a continuous state of overdraft of the basin. Concern for the future of the basin prompted the filing of the original complaint in 1975. After three years of negotiations, judgment was entered on January 27, 1978. Chino Basin Municipal Water District was appointed "Watermaster" to administer and enforce the provisions of the judgment and any subsequent order of the Court (Judgment ¶ 16.)

Chino Basin Municipal Water District has served as Watermaster for the past twenty years. A motion is presently before the court to relieve the District of its Watermaster duties and substitute in its place a nine-member board. The motion was



-1-
EXHIBIT "A"

EXHIBIT B - 001

1 precipitated, at least in part, by the District's action calling for a special audit of certain
2 Watermaster administrative matters. The action was taken in contravention of an
3 asserted "mandate" by the Advisory Committee, which prompted the motion for an order
4 declaring that the cost of the audit (\$35,000) is not a "Watermaster" expense.

5 On April 29, 1997, the court issued an Order of Special Reference to receive a
6 report and recommendation on these two motions from Anne J. Schneider, a recognized
7 water law expert. The court requested Special Referee Schneider to consider and give
8 an opinion on the meaning of Paragraph 38(b) of the Judgment and its relationship to
9 Paragraph 41 of the Judgment. The court also requested Special Referee Schneider to
10 consider the checks and balances contained in the 1978 Judgment and the advantages
11 or disadvantages of a public entity watermaster versus a private entity watermaster. On
12 December 12, 1997, Special Referee Schneider issued her Report and
13 Recommendation. The court has considered the Report and Recommendation and
14 hereby issues its ruling accepting the Report and adopting the Recommendation of Anne
15 Schneider. The court hereby incorporates herein by reference the entirety of Special
16 Referee Schneider's Report and Recommendation.

17 Motion to Appoint Nine-Member Board as Watermaster

18 Unless there are compelling reasons to the contrary, upon noticed motion the
19 court must grant a request to change the Watermaster if the motion is supported by a
20 majority of the voting power of the Advisory Committee. (Judgment, ¶16.) In other
21 words, to deny such a motion, the court must find reasons that "force" or "compel" denial
22 of the motion.

23 A review of the Judgment reveals that the Watermaster's function is to administer
24 and enforce the provisions therein and subsequent instructions or orders of the court.
25 (*Ibid.*) The Watermaster operates on the one hand as an administrator and on the other
26 hand as an extension of the court. When functioning as an extension of the court the
27 Watermaster acts as a steward of the groundwater resources in the Chino Basin. The
28 Watermaster must protect the interests of the public as well as the interests of the

1 producers. Consequently, the Watermaster may find it necessary to take positions
2 adverse to the Advisory Committee.

3 With respect to replacing the existing Watermaster, automatic rejection of the
4 proposed change can only be based on one of two assumptions: (1) the status quo is
5 perfect; or (2) the choice we face is between reform and no action at all; if the proposed
6 reform is imperfect, we presumably should take no action at all, while we wait for a
7 perfect proposal. But the real choice is between the nine-member board and the status
8 quo. The court finds that the status quo Watermaster is imperfect and does not in and of
9 itself warrant finding of a compelling reason. Absent a compelling reason, the court must
10 appoint the nine-member board as Watermaster.

11 However, if the appointment of a nine-member board would permit the Advisory
12 Committee to control the Watermaster; and/or deprive the Watermaster of its ability to
13 administer the Judgment independently and objectively, surely it would be a compelling
14 reason to deny the motion. Therefore, it is significant that the proposed nine-member
15 board would include the following:

- 16 1. Three members selected by the Overlying Pools;
- 17 2. Three members selected by the Appropriative Pool; and
- 18 3. The remaining three members would be nonpumper water districts: (a) Chino
19 Basin Municipal Water District, (b) Western Municipal Water District, and (c)
20 Three Valleys Municipal Water District.

21 Thus, the majority of the board members would represent the interests of producers, but
22 the court finds the proposed nine-member board to be the best of the alternatives
23 considered by the court, and the court, in considering compelling reasons, did consider
24 all forms of Watermaster listed on Exhibit "A" attached hereto and herein incorporated by
25 reference.

26 Although there is no evidence that the pecuniary interests of the board members will
27 control their voting, to ensure that the board is carrying out the function of the
28 Watermaster, Special Referee Schneider recommends that the appointment of the nine-

1 member board be of a limited duration to determine whether or not it will function
2 independently from the Advisory Committee. The court agrees with the recommendation
3 and chooses to appoint the nine-member board as Interim Watermaster, with the
4 limitations listed in the order below.

5 At the end of the interim appointment, if it appears to the court that the proposed
6 nine-member board is unable to function as an independent extension of the court, the
7 court ~~will~~^{may} appoint the Department of Water Resources as Watermaster for a five-year
8 appointment, as provided in the Judgment. The parties are hereby informed that one of
9 the measures that will be used by the court in determining whether or not the Nine-
10 member Board is able to function independently is the progress made on the adoption of
11 an optimum basin management program, which is discussed *infra*.

12 **Order Appointing Nine-Member Board as Interim Watermaster**

13 The court hereby sets aside its previous order appointing the Department of Water
14 Resources as Interim Watermaster and instead appoints the Nine-member Board as
15 Interim Watermaster for a twenty-six-month period commencing March 1, 1998, and
16 ending June 30, 2000. Thus, commencing March 1, 1998, the position of Chino Basin
17 Watermaster shall be filled by a nine-member board selected and organized as
18 follows:

19 The Nine-member Watermaster Board shall consist of (1) two members from the
20 Overlying (Agricultural) Pool appointed by the Overlying (Agricultural) Pool; (2) one
21 member from the Overlying (Non- Agricultural) Pool appointed by the Overlying (Non-
22 Agricultural) Pool; (3) three members from the Appropriative Pool appointed by the
23 Appropriative Pool; (4) one member appointed by the Board of Three Valleys
24 Municipal Water District; (5) one member appointed by the Board of Western
25 Municipal Water District; and (6) one member appointed by the Board of Chino Basin
26 Municipal Water District. The members of the Watermaster Board will vote on a one-
27 person, one-vote basis.

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1 If one of the three municipal water districts elects not to serve on the Nine-
2 member Watermaster Board, a representative from the State of California will be
3 seated in its place. Any member of the Appropriative Pool which owns or has a
4 controlling interest in another member of the Appropriative Pool will not be allowed to
5 serve concurrently with said other member of the Appropriative Pool on the
6 Watermaster Board.

7 No individual will be allowed to serve concurrently on the Watermaster Board
8 while serving as a member of the Advisory Committee and/or the respective Pool
9 Committee, with the exception of representatives from the Overlying (Non-Agricultural)
10 Pool. This shall not prevent the same member agency or entity with a representative
11 on the Chino Basin Advisory Committee from appointing a different representative to
12 the Watermaster Board. Additionally, participating agencies with governing bodies are
13 strongly encouraged to have elected officials serve as their representative on the
14 Watermaster Board.

15 Except as to members of the first Watermaster Board, Watermaster Board
16 members shall serve staggered three-year terms. The appointments by the Municipal
17 Water District boards, the Appropriative Pool and the Overlying (Non-Agricultural) Pool
18 shall be made on a rotating basis with all members afforded an equal opportunity to
19 serve. Appointments by the Overlying (Agricultural) Pool shall be rotated among
20 categories of agricultural producers with each category of producers having an equal
21 opportunity to serve. The State of California shall be included as one of the categories
22 of producers rotating from the Overlying (Agricultural) Pool, unless the State of
23 California is currently serving in a vacant municipal water district position.

24 Except as otherwise provided in this paragraph, the first Nine-member
25 Watermaster Board shall serve until June 30, 2000. Assuming the Nine-member
26 Board in the future is appointed Watermaster for a full five-year term, then the
27 following actions shall be performed: At least 60 days prior to June 30, 2000, the
28 Appropriative Pool shall extend the term of one of its then current Watermaster Board

1 representatives to June 30, 2001, and shall extend the term of another of its then
2 current Watermaster Board representatives to June 30, 2002. At least 60 days prior to
3 June 30, 2000, the Overlying (Agricultural) Pool and the Overlying (Non-Agricultural)
4 Pool shall jointly extend the term of one of the three then-current Watermaster Board
5 representatives of the two pools to June 30, 2001, and shall extend the term of
6 another of the three then-current Watermaster Board representatives of the two pools
7 to June 30, 2002. At least 60 days prior to June 30, 2000, the three Municipal Water
8 Districts shall jointly extend the term of one of the three then-current Watermaster
9 Board representatives of those three districts to June 30, 2001, and shall extend the
10 term of another of the three then-current Watermaster Board representatives of those
11 three districts to June 30, 2002.

12 The court hereby orders the Chief of Watermaster Services to file the names
13 of the representatives, including any alternates thereto, with the court and to serve a
14 copy of the names of the representatives and any such alternates on the active parties
15 by not later than March 15, 1998. The Chief of Watermaster Services is encouraged
16 to provide the same information to the public through print and electronic media.
17 (See discussion *infra* concerning Watermaster's use of the Internet.)

18 Should any member of the Watermaster Board resign therefrom, become
19 ineligible to serve thereon, or lack the mental or physical capacity to serve thereon, as
20 determined by the court, the appointing authority shall appoint a replacement member
21 of the Watermaster Board to serve through the unexpired period of the term of the
22 replaced member.

23 The current Watermaster, Chino Basin Municipal Water District, is hereby
24 ordered to take all steps necessary and proper to ensure a smooth and orderly
25 transition to the new Watermaster Board including, but not limited to, any required
26 actions, resolutions and/or agreements which will transition all of the present
27 Watermaster staff members from their status as Chino Basin Municipal Water District
28 employees to their status as employees of the Watermaster while maintaining all of

1 their employment credits and benefit programs. Not later than March 15, 1998, the
2 Chief of Watermaster Services shall file with the court a list of the names of all
3 Watermaster employees and their respective positions.

4 The Watermaster shall notice a hearing to occur on or before October 28, 1999,
5 to consider all parties' input as to the continuance of the nine-member board as
6 Watermaster after June 30, 2000. To ensure that the California Department of Water
7 Resources is in a position to assume the duties of Watermaster at the end of the interim
8 appointment, the court directs the parties to resume negotiations with the Department
9 related to its takeover of Watermaster operations, should the nine-member board fail to
10 operate independently and effectively. The Interim Watermaster shall notice a hearing no
11 later than September 30, 1999, to report on the status of negotiations. The court further
12 orders that, without prior court approval, the Interim Watermaster shall not enter into any
13 agreement that the Department of Water Resources will be obligated to assume, which
14 means no contracts signed from this day forward wherein payment and/or performance
15 of any kind whatsoever will be after June 30, 2000. The current Watermaster employees
16 are hereby advised that if the court appoints the California Department of Water
17 Resources as Watermaster at the end of the interim appointment, their positions will
18 terminate on June 30, 2000, without further order of the court. Further, the Department of
19 Water Resources will not be required to hire current Watermaster employees upon its
20 appointment; rather, current Watermaster employees may be rehired at the discretion of
21 the Department and on such terms as the California Department of Water Resources
22 deems appropriate. Finally, the California Department of Water Resources should be
23 added to the parties' mailing list to ensure that the Department receives notice of all
24 proceedings.

25 It should be apparent that timely filing of all reports with the court and
26 development of an optimum basin management program are of significant interest to the
27 court in the continuation of the nine-member board as Watermaster. The court is very
28 aware that the parties hereto desire local control of the Watermaster function, and the

1 court has no desire to transfer control from the nine-member board provided that
2 Watermaster professionally performs its responsibilities under the judgment.¹

3 Motion to Determine Audit Expense was not a Watermaster Expense

4 Special Referee Schneider found that the special audit was ordered in response
5 to (1) substantial increases in Watermaster's annual budget expenditures, (2) allegations
6 of fraud or theft (even though the audit itself did not address theft), and (3) recognition
7 that the District had lost control of the Watermaster services staff. In addition, one of the
8 purposes of the audit was to advise the District board members of the activities occurring
9 at the Watermaster staff level. Special Referee Schneider further found that the special
10 audit does not fit within the definition in the Judgment of a discretionary act, nor does it
11 fall into the category of things subject to Advisory Committee recommendation or
12 approval. The court hereby adopts the findings of Special Referee Schneider along with
13 the recommendation that the court determine that the special audit was made in the
14 general course of Watermaster business; therefore, it is a proper Watermaster expense.

15 Court Monitoring of Optimum Basin Management Program

16 The judgment grants to the Watermaster discretionary powers to develop an
17 optimum basin management program for Chino Basin, which is to include both water
18 quantity and water quality considerations. Special Referee Schneider discovered that the
19 current Watermaster has not completed an optimum basin management program,
20 despite Judge Turner's recommendation in 1989 that the plan be completed within two

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24 ¹ However, one is reminded of the passage in "The tragedy of the commons Revisited" by Beryl Crowe (1989) with
25 reference to administrators of the commons: "... one writer postulated a common life cycle for all attempts to
26 develop regulatory bodies. The life cycle is launched by an outcry so widespread and demanding that it generates
27 enough political force to bring about establishment of a regulatory agency to insure the equitable, just, and rational
28 distribution of the advantages among all holders of interest in the commons. This phase is followed by the symbolic
reassurance of the offended as the agency goes into operation, developing a period of political quiescence among
the great majority of those who hold a general but unorganized interest in the commons. Once this political
quiescence has developed, the highly organized and specifically interested groups who wish to make incursions
into the commons bring sufficient pressure to bear through other political processes to convert the agency to the
protection and furthering of their interests. In the last phase even staffing of the regulating agency is accomplished
by drawing the agency administrators from the ranks of the regulated." Reprinted in "Managing the Commons" by
Garrett Hardin and John Baden. W.H. Freeman, 1977.

1 years and despite the fact that the water quality in the basin has deteriorated in recent
2 years.

3 The Chino Basin Water Resources Management Task Force issued its report in
4 1995, which has been identified as the initial step in the development of a management
5 plan for the basin. (Chino Basin Water Resources Management Task Force, Chino Basin
6 Water Resources Management Study Final Summary Report (September, 1995),
7 hereinafter "the task force report".) Special Referee Schneider recommends that as part
8 of the court's continuing jurisdiction and obligation to oversee, control, and direct the
9 Watermaster, the court appoint an independent person to take a look at the work that's
10 been done on the program to date, to determine what remains to be accomplished, and
11 to make a complete report to the court.

12 Anne J. Schneider hereby is appointed as the court's Special Referee to report
13 and make recommendations to the court concerning the contents, implementation,
14 effectiveness, and shortcomings of the optimum basin management plan. Further, Joe
15 Scalmanini hereby is appointed to provide Anne J. Schneider with technical assistance
16 as required by Ms. Schneider to provide said report and recommendations.

17 **Order Concerning Development of Optimum Basin Management Program**

18 The court hereby makes the following orders related to the development of an
19 optimum basin management program, which encompasses the implementation plan
20 elements identified in the task force report and at the recent hearing conducted by
21 Special Referee Schneider.

22 On or before June 1, 1998, each party to this action desiring to do so shall
23 submit recommendations to the Watermaster as to the scope and level of detail of the
24 optimum basin program. On or before June 30, 1998, the Watermaster, having first
25 provided a copy of the scope and level of detail plan to the Advisory Committee for its
26 review and/or action, shall file with the court its written recommendation as to the
27 scope and level of detail of the program, together with a duly noticed motion seeking
28 court approval of said recommendation. Special Referee Schneider shall review the

1 Watermaster's recommendations for technical and legal sufficiency, using Joe
2 Scalmanini as a consultant on technical issues, if necessary, and make a progress
3 report to the court by July 30, 1998. Special Referee Schneider and Mr. Scalmanini
4 are cautioned not to duplicate the work completed by the task force in making their
5 report to the court; but instead, supplement and modify the previous work where
6 appropriate. Hopefully, the aforementioned procedure will enhance and elucidate
7 work already performed, and, at the same time, save money.

8 The court further orders the Watermaster to develop an optimum basin
9 management program, which encompasses the elements of the implementation
10 program recommended by the task force and the implementation elements discussed
11 at the recent hearing conducted by Special Referee Schneider. The Watermaster, in
12 consultation with Special Referee Schneider, is to make quarterly progress reports to
13 the court. The Special Referee is authorized to conduct hearings, if necessary, to
14 ensure the development of all essential elements of the program. The Watermaster is
15 to submit the optimum basin management program first to the Advisory Committee for
16 review and/or action, then to the court no later than September 30, 1999, or show
17 cause why it cannot do so. Thereafter, the court will hold a hearing on October 28,
18 1999, at 1:30 p.m. to consider whether to approve and order full implementation of the
19 program or consider why the program has not been completed.

20 Finally, in order to facilitate greater communication with the public, in addition to
21 notices required in newspapers of general circulation, Watermaster shall have installed
22 and maintained a so-called "web site" or such new Internet technologies as may be
23 equal to or better than the World Wide Web, similar to those established by the Main
24 San Gabriel Basin Watermaster and the Mojave Basin Area Watermaster, and keep it
25 up-to-date with notice of meetings, agenda items, minutes of meetings, and such other
26 items and such other information as Watermaster deems appropriate to inform the

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1 public of Watermaster's functions.² The public has a right to know if, as previously
2 alleged, some board members are routinely absent from meetings, and a web page
3 with minutes of the meetings, among other things, seems an appropriate means of
4 communication with the public in order to keep them informed on Watermaster issues.

5 Guidelines for Watermaster and Advisory Committee

6 To provide guidance to the parties, Special Referee Schneider determined it is
7 necessary for the court to provide an outline of the roles of the Watermaster and
8 Advisory Committee. As noted in the Special Referee's Report and Recommendation,
9 routine administrative functions of the Watermaster are performed independently, without
10 review by the Advisory Committee. The Watermaster may acquire facilities and
11 equipment (subject to certain limitations delineated in the Judgment³), may employ
12 administrative, engineering, legal or other specialized personnel and consultants as it
13 deems appropriate, may borrow money, and may enter into contracts for the
14 performance of any powers granted in the Judgment. On the other hand, many
15 Watermaster actions are subject to the approval of the Advisory Committee. For
16 example, the Watermaster's annual budget is subject to Advisory Committee approval,
17 the Watermaster's rules and regulations may only be adopted upon recommendation by
18 the Advisory Committee, and the Watermaster may act jointly or in cooperation with State
19 or Federal agencies to carry out the physical solution only upon recommendation or
20 approval of the Advisory Committee. For further guidance as to the respective roles of
21 the Watermaster and the Advisory Committee, the parties are directed to Part III of
22 Special Referee Schneider's Report and Recommendation entitled "Watermaster Roles
23 and Review of Watermaster Actions", found on pages 10 through 22, which is hereby

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26 ² Initial installation of a web site cost one local attorney less than five hundred dollars, and maintenance or training
27 of employees for updates costs approximately thirty-five dollars per hour. It would have been inappropriate for the
28 court to have contacted any water agencies regarding their costs; hence, the above-listed costs are only
informational, not limitations, but, clearly a multi-year contract is not warranted under the circumstances of the
interim appointment discussed herein.

³ Your attention is called to the special audit's findings regarding facilities and computer service contracts, among
other things.

1 adopted and approved by the court and incorporated herein by this reference.

2 Conclusion

3 The court does not presage a future intention to replace the nine-member board
4 with any other form of watermaster. On the contrary, if this court were not confident in
5 the ability of the Nine-member Board Watermaster to effectuate the intent of the
6 judgment, other conditions would have been imposed or another form of watermaster
7 would have been appointed. At the present time, this court is of the opinion that the
8 conditions of the appointment will insure the success and future five-year appointment
9 of the Nine-Member Board as Watermaster. However, this court is of the opinion that
10 some follow-up dates are necessary to vitiate the possibility of repeating the history of
11 missed filing dates⁴ and asserted inadequate management by Watermaster. None of
12 us wants the past to be prologue.

13 There was a request for benefit and salary increases. The court is of the opinion
14 that the Nine-member Board Watermaster should examine these requests in its initial
15 thorough review of the entire Watermaster budget. The court is not opposed to wage
16 and benefit increases if the Nine-member Watermaster Board deems an increase in
17 either or both of these categories appropriate, assuming Watermaster first sends its
18 proposed budget to the Advisory Committee and Advisory Committee has no
19 objection. Additionally, there was expressed some concern that the employees were
20 worried about their future employment. As you may recall, at the outset of this court's
21 handling of this case, all parties were warned not to fire employees out of spite or for
22 tactical reasons, because the employees were real people with real families to feed,
23 although the employees could be terminated for legitimate reasons. Additionally,
24 without voicing it, the court was of the opinion that most, if not all, employees could be
25 utilized by whatever form the Watermaster became. Some may have misconstrued
26 this as permanent judicial protection of employees beyond what law and decency
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⁴ There was a nunc pro tunc order necessary to confirm the activities of Watermaster after its previous appointment expired, and yearly reports have been tardy.

1 require. This was not, nor is it the court's intention.⁵ The court does expect
2 Watermaster to have a social conscience, but most people have no more protection
3 than law and decency require, and Watermaster employees should be no different.
4 Watermaster employees should realize that their best efforts are necessary to ensure
5 the quality and quantity of water in the Chino Basin. If an employee cannot perform
6 his or her duties, then the people dependent on the quality and quantity of water suffer;
7 moreover, the continued existence of the Nine-member Board Watermaster is
8 jeopardized. It should be remembered that June 30, 2000, no-Board, no-job-
9 expectation. This is meant to be neither a flip statement nor a threat. It is meant to be
10 fair warning; the same concern, albeit a different vein, that the court had when it
11 conditioned the appointment of the California Department of Water Resources on
12 negotiation by the Advisory Board and the CBMWD. At the previous hearing when
13 asked why the negotiating parties were appointed, the attorneys were informed that
14 there were employees to consider, and there still are employees to consider, but the
15 employees interests have to be balanced against the greater good for all the people
16 affected by the judgment. So far, the employee's interests have prevailed, but at the
17 end of June 2000, the outcome could be different.

18 It should be mentioned that this court has been impressed with the
19 professionalism displayed recently by the attorneys involved in this litigation. When
20 this case initially came to my court, the level of vitriol was far more than was evident in
21 a reading of the transcript of the hearing held with the Special Referee. Furthermore,
22 although the attorneys have been very professional throughout these proceedings, it
23 seems as though the level of vitriol at recent hearings in court has subsided to an
24 imperceptible level, and the accelerated progress toward resolution of this case is
25 impressive. Thank you. Also, I want to thank all of the people, Gene Koopman,
26 among others, whose large presence, concern, and commitment did not go unnoticed
27 or unappreciated at the hearings in this matter.

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⁵ Although the attorneys correctly interpreted my comments to mean err, if at all, on the side of restraint during the period of litigation

1 The Special Referee alluded to "the tragedy of the commons." Assuming she
2 meant to allude to Garrett Hardin's 1968 essay, "The Tragedy of the Commons,"⁶ it is
3 hoped that the appointment of the new Nine-member Board as Watermaster will result
4 in the triumph of the commons. The people of this area deserve it. Good Luck.

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DATED: FEB 19 1998

J. Michael Gunn
J. MICHAEL GUNN, Judge

28 ⁶ The article appeared in Science 162:1243-1248, December 13, 1968. The "commons" refers to the common resources that are owned or controlled by everyone or everyone in a subset having control of the common resource. The tragedy occurs when everyone has the freedom to exploit the commons, resulting in the destruction of the commons. The intent of the exploiter is irrelevant. A political solution, although problematical, is the only way to potentially save the commons, all must agree to conserve the commons.