

MEMORANDUM

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TO: Mayor and City Council
FROM: John M. Rager, City Attorney
DATE: June 4, 1984
RE: Chino Basin Sewage Contract Amendment.

The City of Fontana has long maintained that they wish to leave the ultimate power concerning the decisions on sewage service to remain with Chino Basin. This has caused some problems with the remaining cities who are attempting to put some final control in the hands of a majority of the contracting agencies.

In the proposed agreement, there are two provisions wherein it appears that the majority of the contracting agencies may have the power to over rule the board.

I met with the attorney for the board and he feels that the board still has ultimate control.

The area of concern is the capital capacity reimbursement amount. This is commonly referred to as the sewer connection fee.

The agreement provides that the contracting agencies may determine that it is necessary to increase or decrease the connection fee. On their doing that the Chino Basin Board of Directors is bound to follow the determination of the contracting agencies.

Chino Basin is of the opinion that since the contract requires the contracting agencies to base their determination upon the ten year forecast, that the ten year forecast prepared by Chino Basin would necessarily control the recommendation of the contracting agencies.

This may sound as if the contracting agencies are bound by Chino Basin but that is in theory only. In practice, there can be a number of interpretations based upon the amounts of money necessary to meet the ten year forecast.

The second area of dispute involves construction contracts. The contracting agencies have the power to disapprove a capital expenditure in excess of \$1,000,000.00. Chino Basin maintains that they have ultimate control on the basis that the approval or disapproval of any such contract will be based only on the availability of the capital improvement fund and the capital reimbursement accounts.

The procedure for a contracting agency, who is affected by one of the above decisions of the other contracting agencies, wherein a formal hearing would be held by the Chino Basin Board, and evidence taken, and Chino Basin makes the final determination on the issue.

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As Chino Basin has the final determination on these issues, it might appear that the interest of the City might well be protected but the giving of the power to the contracting agencies would then require the City to request a hearing, prepare evidence, and become the actual adversary of other contracting agencies. This would involve additional time and expense for the City, that under the present contract is not necessary.

Respectfully submitted,

John H. Rager, City Attorney
for the City of Fontana

JMR:lt