

Font (v)
Font



CHINO BASIN
MUNICIPAL
WATER
DISTRICT

TELEPHONE (714) 987-1712

THEO T. NOWAK
GENERAL MANAGER

April 10, 1986

Mr. Bob Schoenborn
City of Fontana
P. O. Box 518
Fontana, CA 92335

Dear Mr. Schoenborn:

Subject: Regional Sewerage Service Contract -
Memorandum of Understanding

Pursuant to your correspondence of March 11, 1986, Chino Basin Municipal Water District's Board of Directors has considered and approved the subject Memorandum of Understanding. Attached for your use are two copies of the fully executed document.

Now that these matters are behind us we look forward to cooperatively moving forward with implementation of the amended contract.

Sincerely,

Theo T. Nowak

Theo T. Nowak, General Manager
CHINO BASIN MUNICIPAL WATER DISTRICT

Attachment

cc: Dwight French
Anne Dunihue

bcc: Gary Hackney

/bd

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301-3.0



City of Fontana CALIFORNIA

March 11, 1986

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MAR 11 1986

**CHINO BASIN MUNICIPAL
WATER DISTRICT**

File: Chino Basin Municipal Water
District -Agreement Amending
and Supplementing Chino Basin
Regional Sewage Service Contract

Chino Basin Municipal Water District
8555 Archibald Avenue
P.O. Box 697
Rancho Cucamonga, CA 91730

Attention: Dwight French
President, Board of Directors

The City of Fontana is hereby transmitting the "Agreement Amending and Supplementing Chino Basin Regional Sewage Service Contract" and two copies of the "Memorandum of Understanding Between CBMWD and the City of Fontana Agreeing to the Interpretation of Certain Sections of the Amended Regional Sewerage Contract Dated April 12, 1984". These documents have been executed by the Mayor of the City of Fontana.

Please provide the City with one of the two copies of the MOU when they have been fully executed. Thank you.

Robert Schoenborn, P.E.
Public Works Director

RS:wp
Enclosures

MEMORANDUM OF UNDERSTANDING
BETWEEN
CBMWD AND THE CITY OF FONTANA
AGREEING TO THE INTERPRETATION
OF CERTAIN SECTIONS OF THE
AMENDED REGIONAL SEWERAGE CONTRACT
DATED APRIL 12, 1984

I

WHEREAS, Chino Basin Municipal Water District, City of Chino, County Service Area Number 70, Cucamonga County Water District, City of Montclair, City of Ontario and City of Upland have executed an agreement amending the 1972 Chino Basin Contract, such amended contract bearing the date of April 12, 1984.

Said 1972 contract was signed by the City of Fontana and the City of Fontana is a current contracting agency with Chino Basin Municipal Water District.

II

WHEREAS, it is the intent of the City of Fontana to execute said amended Regional Sewerage Contract bearing the date of April 12, 1984, upon the execution of this Memorandum of Understanding between CBMWD and the City of Fontana.

III

It is understood and agreed between the parties that the opinion on the amended Regional Sewerage Contract dated April 11, 1985 prepared by Eugene Nazarek, Counsel for CBMWD, attached hereto at Exhibit "A", is a correct interpretation of the April 12, 1984 contract, wherein the ultimate decision concerning capital capacity reimbursement and major capital projects lies with the Board of CBMWD.

IV

It is understood and agreed between the parties that under the terms of the revised contract, all contracting agencies will be charged their fair share of the operations and maintenance cost of the Regional Program. CBMWD agrees that it has the right and will perform such

checks and audits as necessary to assure compliance with the terms of the contract. CBMWD shall review and monitor the rate structures of all contracting agencies so that the service charge rate system shall not distort the equivalent dwelling unit calculation for any contracting agency.

V

It is understood and agreed between the parties that the resolution of concern with respect to the coincidence of Fontana and CBMWD boundaries are outside the scope of discussion regarding the revised contract and should be resolved through separate discussions. It is agreed between CBMWD and the City of Fontana, that both parties will use good faith in resolving the issue of compliance with the conditions of the contract with respect to providing service to areas within Fontana but outside of the District on an equitable basis.

Date Of Execution:

April 2, 1986

CHINO BASIN MUNICIPAL WATER DISTRICT

By: [Signature]
President of the Board of Directors

ATTEST:

John L. Anderson
Secretary of the Board of Directors

Date Of Execution

April 2, 1986

CITY OF FONTANA

By: [Signature]
Mayor

ATTEST:

Patricia Murray
City Clerk

LAW OFFICES OF
NAZAREK, HARPER, HOPKINS & MCFARLIN
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

EUGENE A. NAZAREK*
JOHN R. HARPER*
IVAN L. HOPKINS
GEORGE W. MCFARLIN
*A PROFESSIONAL CORPORATION

2171 CAMPUS DRIVE, SUITE 330
IRVINE, CALIFORNIA 92715
(714) 752-8494

348 W. HOSPITALITY LANE
SUITE 102
SAN BERNARDINO, CALIFORNIA 92408
(714) 824-8360

BRET M. REED, JR.
OF COUNSEL

April 11, 1985

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CHINO BASIN MUNICIPAL
WATER DISTRICT

Chino Basin Municipal Water District
Post Office Box 697
Rancho Cucamonga, California 91730

Attn: Theo Nowak, General Manager

Re: Opinion on Amended Regional Contract
City of Fontana

Dear Mr. Nowak:

In accordance with your request, I have reviewed the amended Regional Sewerage Contract (the "Amended Contract"), dated April 12, 1984, in order to render an opinion on the issues specified as follows:

1. Does CBMWD have control of the amount of the Capital Capacity Reimbursement Payment to be paid by the contracting agencies for connection to a community sewer system?
2. Does CBMWD have control over "major projects" for improvement and/or expansion of the Regional Sewerage System?
3. Can CBMWD issue general obligation bonds secured by ad valorem taxes to finance the construction of improvements and/or expansion of the Regional Sewer System?
4. Under the Mello-Roos Community Facilities Act of 1982, can a special tax be levied on lands outside of the boundaries of CBMWD which are connected to the community sewer system of the City of Fontana to reimburse CBMWD for the capital costs under the Amended Contract?

Chino Basin Municipal Water District
April 11, 1985
Page Two

OPINION

With respect to the foregoing issues, the opinion of this office may be summarized as follows:

1. CBMWD has authority to make the final determination to approve or disapprove any increase or decrease in the Capital Capacity Reimbursement Payment for new connections to a community sewer system and to any modification in the computation of equivalent dwelling units.
 - (a) The control of CBMWD is based upon its authority to make specific findings on the recommendations made by the Regional Policy Committee with respect to the 10-year forecast and/or mid-year report. If CBMWD or any other contracting agency objects to the recommendations of the Regional Policy Committee, then CBMWD must proceed to a noticed public hearing and, at the conclusion of the public hearing, CBMWD has authority to make a final and binding determination on the issues.
 - (b) The source of revenue for the payment of the Capital Capacity Reimbursement Payments (currently at \$950 per EDU) is solely within the discretion of each contracting agency, that is, each contracting agency may generate the Capital Capacity Reimbursement Payment from connection charges to the community sewer system or sewer user fees or any other lawfully available funds.
 - (c) Until demand is made by CBMWD, each contracting agency establishes a Capital Capacity Reimbursement Account to which Capital Capacity Reimbursement Payments are deposited or credited. The interest earned on the Account may be used by the contracting agency for any lawful purpose.
2. CBMWD has final authority over the implementation and processing of major projects.

Chino Basin Municipal Water District
April 11, 1985
Page Three

- (a) The authority of CBMWD is based upon its authority to approve or disapprove the recommendations of the Regional Policy Committee with respect to the 10-year forecast and mid-year report. The disapproval of CBMWD or the objections of any contracting agency to the recommendations of the Regional Policy Committee will require CBMWD to conduct a noticed public hearing and, at the conclusion of the public hearing, the authority of CBMWD to make a final determination on these issues.
 - (b) In addition to the foregoing, CBMWD has the authority to make demand upon each contracting agency for its pro-rata share of the Supplemental Capital Outlay Funds to defray the cost of construction of any major project. CBMWD has on-going control over the progress of a construction contract through the availability of Supplemental Capital Outlay Funds from each contracting agency.
 - (c) To the extent that the Regional Policy Committee can disapprove a major project, such disapproval may only be based upon lack of available funds to undertake and complete the project. Furthermore, the possible disapproval by the Regional Policy Committee can be off-set by the prior authority of CBMWD to approve or disapprove the 10-year forecast and mid-year reports and to make a final determination thereon after noticed public hearing.
3. CBMWD does not have the authority to issue general obligation bonds secured by ad valorem taxes to finance the construction of improvements and/or expansion of the Regional Sewer System.
- (a) Pursuant to Article XIII A of the California Constitution (Jarvis Initiative), no ad valorem taxes can be levied and collected above the 1% limitation, except to pay for indebtedness

Chino Basin Municipal Water District
April 11, 1985
Page Four

approved by the voters prior to the passage of Article XIII A. Consequently, new general obligation bond issues have effectively been prohibited in California regardless of voter approval.

(b) At the time of formation of Improvement District "C", CBMWD had the ability to either increase the ad valorem taxes within the Improvement District or to submit to the voters of the Improvement District a proposition to authorize the issuance of general obligation bonds. With the passage of Article XIII A, CBMWD lost the authority to either increase ad valorem taxes or to issue general obligation bonds.

4. The City of Fontana has authority under the Mello-Roos Community Facilities Act of 1982 to form a Community Facilities District on lands within the City but outside of the boundaries of CBMWD and, subject to the approval of two-thirds (2/3) of the electorate therein, to levy a special tax (other than an ad valorem tax) to reimburse CBMWD for the capital costs under the Amended Contract. Pursuant to the original and Amended Contract, each contracting agency providing the services and facilities of the Regional Sewerage System to territory outside CBMWD is obligated to pay to CBMWD special Capital Outlay Charges for such territory. Upon receipt, these charges are deposited or credited to the Regional Wastewater Capital Improvement Fund and utilized for the purpose of financing the acquisition, improvement and expansion of the Regional Sewerage System.

(b) The City of Fontana has annexed territory outside of the boundaries of CBMWD and has provided sewer service to certain portions of this territory without the payment of any Capital Outlay Charges. Under the Mello-Roos Community Facilities Act of 1982, such Capital Outlay Charges could be paid by the levy and collection of a special tax upon that portion of the territories receiving sewer service.

Chino Basin Municipal Water District
April 11, 1985
Page Five

(c) It would be appropriate for the City of Fontana to consider undertaking these proceedings for the reasons specified as follows:

- (i) The subject lands are within the City of Fontana but outside the boundaries of CBMWD.
- (ii) The obligation to pay capital outlay charges is an obligation of the City of Fontana under both the original and Amended Contract.

I hope that the foregoing opinion will assist both CBMWD and the City of Fontana in the interpretation of the Amended Regional Sewerage Contract.

Very truly yours,

Eugene A. Nazarek
Eugene A. Nazarek

EAN:mdh

cc: Bob Schoenborn, City of Fontana

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proposed Memorandum of Understanding between the City and the District regarding the April 12, 1984 Regional Sewage Service Contract and approved the signing of the Amended Regional Sewage Service Contract. After discussion, Staff was directed to distribute copies of the proposed MOU between the District and the City of Fontana to the Regional Technical Committee for their review and comment prior to Board action on the MOU.

5/11/84

District Legal Counsel returned to the meeting and reported on his discussion with Jack Orr, Inland Container, regarding possible court dates and proceedings. Discussion followed.

There being no further business to come before the Board, President French adjourned the meeting.

John L. Anderson
Secretary

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101.3.0

MOVED, that the Board authorize Staff to negotiate with CH2M Hill for a contract for design engineering services for Regional Plant No. 2-B and direct Staff to investigate the use of a construction management firm.

M86-3-4
RP#2-B

Motion carried by unanimous vote.

A letter dated March 5, 1986 from the General Manager was reviewed regarding the status of the District's choice to terminate social security coverage and the Supreme Court ruling challenging the 1983 law prohibiting termination of any social security coverage agreement that was in effect prior to April 20, 1983. The Supreme Court's decision is expected by mid year. If the Supreme Court upholds the U. S. District Court ruling, it is not known whether those agencies that have declared an intent to terminate will be automatically out of the social security system or if time will be permitted for the reevaluation process. After discussion, the following motion was made by Director Anderson, seconded by Director Dunihue:

MOVED, that the Board authorize Staff to conduct a secret ballot of the District employees to determine whether or not they are in favor of continuing Social Security coverage if the U. S. District Court decision is upheld by the Supreme Court.

M86-3-5
TERMINATION
OF SOCIAL
SECURITY
COVERAGE

Motion carried by unanimous vote.

Assistant Manager Homan reported on the status of the District's appeal to the State Water Resources Control Board regarding the in-lieu water program indicating that this matter will be discussed in a SWRCB workshop on March 6 and will be formally considered by the SWRCB at its March meeting.

IN LIEU
WATER
PROGRAM

Manager Nowak reviewed the correspondence dated February 13, 1986 from the National Water Resources Association soliciting this district's membership and participation in the NWRA Municipal Caucus. After discussion, the letter was received and filed.

NWRA MUNICI-
PAL CAUCUS

Director Dunihue reported that the Fontana City Council had accepted the City Attorney's report and

REGIONAL
CONTRACT

Law offices of
RAGER & WINSTEAD
A LAW CORPORATION

JOHN M. RAGER
WILLIAM R. WINSTEAD

P. O. DRAWER U
8413 SIERRA AVENUE
FONTANA, CALIFORNIA 92335-0092
(714) 822-4445

DATE: February 21, 1986
TO: Mayor and City Council
FROM: John M. Rager, City Attorney
SUBJECT: Chino Basin Contract of April 12, 1984



As the Mayor and City Council are aware, the 1984 agreement amending and supplementing the Chino Basin Regional Sewage Service Contract, has been approved by all contracting agencies, except the City of Fontana.

Meetings have taken place between the representatives of Chino Basin and the representatives and staff with the City of Fontana, wherein the concerns of the City of Fontana have been discussed and solutions sought.

Having secured the results of these discussions from Robert Schoenborn, and Ann Dunihue, and included them in the Memorandum of Understanding.

The problem of the majority of the contracting agencies controlling the Chino Basin Board is adequately addressed and the position of the City of Fontana protected by the opinion letter to Eugene Nazarek, which is attached to the Memorandum of Understanding.

This opinion, which has previously been approved by the contracting agencies, provides that the ultimate decision in regards to the hook-up charge and major construction projects exceeding one million dollars, will remain in the hands of the Chino Basin Board.

The second major issue addressed by this memorandum is Chino Basin's duty and obligation to equitably require the contracting agencies to charge the users of their sewer system an amount, so that the cost of the treatment by Chino Basin will be evenly distributed. Thus, if a contracting agency wishes to give a charity, school or other institution a lessor rate or free sewer service, the difference would not be picked up by the remaining contracting agencies.

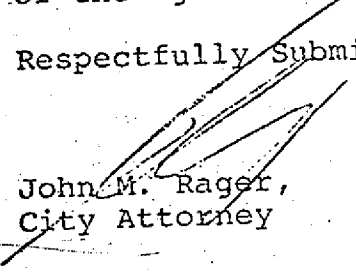
The last issue treated by the memorandum is the desire of the City of Fontana to have Chino Basin Municipal Water District annex and provide service to those areas within the corporate limits, but not presently within the district.

This memorandum does not resolve that issue, but requires both parties to make all good faith efforts to incorporate those areas within the district and pending the incorporation to provide service to them on an equitable basis.

Thus, all of the issue's raised by the parties have been addressed, although the final issue of the annexation of the outside territory has not been resolved, the contract does require that good faith attempts be made to resolve it.

In reviewing this memorandum, the April 12, 1984 agreement and the letter of Eugene Nazarek, I feel that the interest of the City of Fontana would be protected and recommend the signing of the agreement.

Respectfully Submitted;


John M. Rager,
City Attorney