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 6 MONTE VISTA WATER DISTRICT

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 9 SUPERIOR COURT OF CALIFORNIA
 10 COUNTY OF SAN BERNARDINO

12	CHINO BASIN MUNICIPAL WATER)	CASE NO. RCV 51010
13	DISTRICT,	)	Specially Assigned to The
14		)	Honorable J. Michael Gunn
15	Plaintiff,	)	Department R-8
16	v.	)	RESPONSE OF DEFENDANT,
17	CITY OF CHINO, et al.,	)	MONTE VISTA WATER DISTRICT,
18	Defendants.	)	TO WATERMASTER MOTION
19		)	CONCERNING OPTIMUM BASIN
20		)	MANAGEMENT PLAN, STATUS OF
21		)	NEGOTIATIONS.
		)	Hearing Date: September 30, 1999
		)	Time: 1:30 p.m.
		)	Department: R-8

22
23 I. INTRODUCTION

24 This Court's ruling of February 19, 1998 in the above entitled matter requires the Chino
 25 Basin Watermaster to "notice a hearing on or before October 28, 1999 to consider all
 26 parties' input as the continuance of the nine-member board as Watermaster after June 30,
 27 2000." The same order requires a noticed hearing before September 30, 1999 to report on
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the status of negotiations with the Department of Water Resources "related to its takeover of Watermaster operations, should the nine-member board fail to operate independently and effectively." In the same ruling, this Court also ordered the Watermaster to submit an optimum basin management program to the Court no later than September 30, 1999. The Court expressly stated an intended linkage between the continuation of the nine person Watermaster panel and the timely submission of an optimum basin management program:

"It should be apparent that timely filing of all reports with the court and development of an optimum basin management program are of significant interest to the court in the continuation of the nine-member board as Watermaster."

The Watermaster motion before the Court is in response to these deadlines.

The Board of Directors of the Monte Vista Water District met specially on September 8 to consider the several items currently pending before the Court under Watermaster's motion. Monte Vista Water District believes that the parties to the Judgment have exerted substantial good faith diligence to bring the Optimum Basin Management Plan ("OBMP"), Phase I (Sections 1-4) to the current submission. Monte Vista believes that the court should grant additional time for the Watermaster and the parties to complete the OBMP and that such additional time is necessary and will be put to good use. While Monte Vista Water District notes some issues with the Phase I OBMP, it is necessary to bring this phase to closure, even in its imperfect state, in order that the parties may focus on the important issues of ways and means to implement the OBMP. The Phase I OBMP should not be approved, but should instead be "received" as a progress report. The parties, the Watermaster and the Court cannot reasonably approve or agree to a OBMP when the feasibility of ways and means of implementation remain unknown. If the ways and means of implementation are infeasible, then it may be necessary to adjust the goals and scope of the OBMP.

1 Monte Vista believes that the nine-member Watermaster has performed reasonably
2 well over the last eighteen months, but a decision on whether to grant the panel a five year
3 appointment should await completion of the OBMP.

4 **II. PHASE I, OPTIMUM BASIN MANAGEMENT PLAN SHOULD BE**
5 **RECEIVED AS A REPORT, BUT NOT APPROVED AS A FINAL PLAN**

6 The written and verbal comments submitted to the Watermaster by the parties at the
7 Watermaster's September 15 hearing on the OBMP, Phase I by and large seem to concur in
8 the OBMP goals set forth in Section 3. The comments, however, express various
9 disagreements, doubts and concerns with the state of the Basin described in Section 2 and
10 the plan elements set forth in Section 4. As set forth below, Monte Vista has some
11 reservations about the Phase I OBMP. Monte Vista, however, urges the Court to receive
12 the OBMP, Phase I, Sections 1-4 as a progress report and allow the parties to set aside that
13 part of this work. The parties can then focus attention on what seems likely to be the even
14 more difficult and contentious process of trying to achieve consensus on ways and means
15 to implement the OBMP.
16

17 Many of the party's comments show an understanding that the implementation,
18 especially the apportionment of implementation cost, must be fair and equitable. Monte
19 Vista believes that consensus should be pursued because, as pointed out by legal counsel to
20 Cucamonga Water District, there are some inherent limitations on the jurisdiction of the
21 Court to force affirmative actions by parties. The OBMP needs to establish incentives for
22 voluntary affirmative actions by the parties to implement the OBMP, especially in regard
23 to improving basin water quality.

24 Neither the parties nor the Court can reasonably endorse the OBMP, Phase I until
25 the ways and means for plan implementation under Phase II (Section 5) have been
26 developed. To do so would be akin to adopting a household budget, based only upon the
27 wants and desires wish list of the family, without taking into account the available
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financial resources or the fair allocation of benefits, cost and effort among the family members. It may be necessary to set priorities or to otherwise adjust some of the goals and objectives of the OBMP in order to match available resources and to fairly apportion cost among those who would utilize the natural resources of the Chino Basin groundwater aquifers.

Though imperfect (see noted deficiencies below), the OBMP Phase I report needs to be received and set aside for now so that the pressing work of identifying ways and means for implementation can proceed. The many comments of the parties submitted to the Watermaster show that perfection has not been achieved in the Phase I, OBMP. Yet at some point the law of diminishing returns takes over in the pursuit of perfection. So it is that Monte Vista urges the Court to receive, but not approve, this imperfect document, put it aside for the time being, and direct the parties to focus their efforts on the implementation phase. If it turns out that implementation of parts of the OBMP are infeasible or unfair, then the parties may be able to agree on modification of the portions of the Phase I goals and/or plan elements in order to produce harmony between the goals and the ways and means.

III. MONTE VISTA WATER DISTRICT NOTES DEFICIENCIES IN PHASE I, OBMP

A. Advisory Committee Role. Page 1-1 of the OBMP states "The Watermaster Advisory Committee was established as the policy setting body and charged with the oversight of Watermaster's discretionary activities." This expression of subordination of the Watermaster to the Advisory committee is not supported by the Judgment and is clearly at odds with the Watermaster independence envisioned by this Courts Ruling of February 19, 1998. In connection with the motion to appoint the nine-member panel as Watermaster, the Court stated:

"However, if the appointment of a nine-member board would permit the Advisory

1 Committee to control the Watermaster, and/or deprive the Watermaster of its ability
2 to administer the Judgment independently and objectively, surely it would be a
3 compelling reason to deny the motion.”

4 Other passages of the Court's Ruling show a clear intent that the relationship of the
5 Watermaster to the Advisory Committee was to be independent, not subordinate.

6 B. Wet Water Recharge. The OBMP recognizes the need for additional
7 recharge facilities in various parts of the basin. There is no recognition, however, that
8 current basin management practices do not promote actual, physical, wet-water recharge of
9 the basin. Monte Vista Water District believes that current programs for *in lieu* recharge
10 and intra-basin transfer of pumping rights, while benign in theory, actually interfere with
11 the needed recharge of the basin and other basin management objectives. For example, if a
12 producer whose well capacity is shut in because of water quality contamination is allowed
13 to transfer production rights to a producer whose production exceeds its pumping share,
14 then no wet water recharge is obtained. Moreover, the basin objective of extracting the
15 contaminated water is not advanced. The OBMP should require these policies and
16 practices followed by the Watermaster to be reexamined in light of the goals of the OBMP.

17 C. Water Quality. The OBMP extensively addresses water quality concerns in
18 the Southern portion of Chino Basin, but pays scant, if any, attention to significant water
19 quality issues in other portions of the Basin. The OBMP should address water quality
20 concerns wherever manifest in the basin, including the Northwestern portion of
21 Management Zone I.
22

23 **IV. MONTE VISTA SUPPORTS INTERIM EXTENSION OF NINE-PERSON**
24 **WATERMASTER PANEL**
25

26 The Phase I OBMP shows diligent effort by the Watermaster and the parties to the
27 Judgment to develop a management plan for the Basin in the public interest, as well as in
28 the self-interest of the water producer community. Based upon this demonstrated effort,

1 the interim appointment of the nine-member board should be continued, but the more
2 permanent appointment should be held under submission by the Court. The performance
3 of the nine-member panel as Watermaster cannot be fully evaluated or endorsed, however,
4 until a final and complete OBMP is prepared. Will the admittedly legitimate financial
5 interests of the producers control the nine-person panel's evaluation of the Phase II,
6 OBMP? Or will enlightened self interest and the public interest in groundwater basin
7 resource management also drive the Phase II, OBMP? Until these questions are answered,
8 the final report card on the nine-member panel cannot be completed.
9

10 Moreover, the Court should not lose sight that the Statement of Decision and Order
11 issued by Judge Turner in this case, more than ten years ago on July 31, 1989, directed the
12 Watermaster and the parties to prepare an optimum basin management program. Little
13 tangible was accomplished under that order until this Court tied the interim appointment
14 and evaluation of the nine-member panel to the preparation of the OBMP. This linkage
15 should be continued, the Court endorsing neither the nine-member panel nor the California
16 Department of Water Resources as permanent Watermaster, until the final OBMP is
17 prepared and in place. The prospect of losing water producer participation/control over
18 management of the Chino Basin groundwater resource has provided powerful incentive to
19 the progress to date on the OBMP.

20 Monte Vista Water District recognizes that the producer parties, including Monte
21 Vista, have substantial financial investments in continuing the *status quo* of management
22 practices in the Chino Basin. The Court in footnote 1, at page 8, of its February 19, 1998
23 Ruling recognized the tendency of those charged with managing the commons to
24 manipulate the system to their own self interest. While changes in the ground rules for the
25 water producers need to be gradual to avoid undue economic dislocation, changes are still
26 needed. Self interest in the *status quo* must not override the public interest in sound
27 resource management in the Chino Basin.
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Monte Vista Water District respectfully requests the court to take these views into consideration.

Dated: September 23, 1999

Respectfully submitted,

McCORMICK, KIDMAN & BEHRENS, LLP



Arthur G. Kidman, Attorney for
Monte Vista Water District

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PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is: 695 Town Center Drive, Suite 1400, Costa Mesa, CA 92626.

On September 23, 1999, I served the foregoing document described as: RESPONSE OF DEFENDANT, MONTE VISTA WATER DISTRICT, TO WATERMASTER MOTION CONCERNING OPTIMUM BASIN MANAGEMENT PLAN, STATUS OF NEGOTIATIONS on the interested parties on the attached service list as follows:

by causing a true copy thereof, enclosed in a sealed envelope, addressed as stated below:

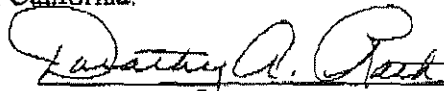
X 1ST CLASS MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

EXPRESS MAIL I am readily familiar with the firm's practice of collection and processing pleadings, discovery and documents for Express Mail service and I personally performed the acts described herein. I deposited the aforementioned document(s) and envelope(s) with Express Mail postage fully prepaid in a mailbox, mail chute or like facility regularly maintained by the United States Postal Service for receipt of Express Mail at Riverside, California on the aforementioned case.

CERTIFIED MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on September 23, 1999 at Costa Mesa, California.


Dorothy A. Roth

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