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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

TENTATIVE RULING

Background

On February 19, 1998, this Court set aside its previous order appointing the California Department of Water Resources ("DWR") as Interim Watermaster and instead appointed a nine-member board consisting of representatives from the Overlying (Agricultural Pool), the Overlying (Non-Agricultural Pool), the Appropriative Pool, and three municipal water districts to serve as **Interim Watermaster** for a twenty-six month period commencing March 1, 1998, and ending June 30, 2000. To ensure that DWR is in a position to assume the duties of Watermaster at the end of the interim appointment should the nine-member board fail to operate independently and effectively, the Court directed the parties to engage in negotiations with DWR related to its takeover of Watermaster operations. The Court further directed the Interim Watermaster to notice a hearing no later than September 30, 1999, to report on the status of the negotiations. The parties were further

1 reminded that the Court's order prohibits the Interim Watermaster from entering into any
2 agreement that DWR will be obligated to assume, i.e., contracts wherein payment and/or
3 performance of any kind whatsoever will be required after June 30, 2000. Current Interim
4 Watermaster employees have been and continue to be reminded that if DWR is
5 appointed as Watermaster at the end of the interim appointment, Watermaster employee
6 positions will terminate on June 30, 2000, without further order of the Court. Further,
7 DWR will not be required to hire current or then-current Interim Watermaster employees
8 upon DWR's appointment; rather Watermaster employees may be rehired at the
9 discretion of DWR and on such terms as DWR deems appropriate.

10 On February 19, 1998, the Court also ordered the Interim Watermaster to notice a
11 hearing on or before October 28, 1999, to consider all parties' input as to the
12 continuance of the nine-member board as **Watermaster** after June 30, 2000. The
13 Court noted that the timely filing of all reports with the Court and the development of an
14 optimum basin management program are of significant interest to the Court in the
15 continuation of the nine-member board as Watermaster. The Court directed the Interim
16 Watermaster to develop an optimum basin management program and to submit the
17 optimum basin management program ("OBMP") first to the Advisory Committee for
18 review and/or action, then to the Court no later than September 30, 1999, or show
19 cause why it could not do so. The Court also set a hearing on October 28, 1999, at
20 1:30 p.m., to consider whether to approve and order full implementation of the
21 program or consider why the program has not been completed.

22 In compliance with the Court's order requiring the Interim Watermaster to develop
23 and to submit an optimum basin management program first to the Advisory Committee
24 for review and/or action, then to the Court no later than September 30, 1999, the
25 Interim Watermaster has filed with the Court: (1) Optimum Basin Management
26 Program Phase I Report, dated August 19, 1999, and (2) Appendix A Public
27 Comments to the Report. The Interim Watermaster requests these documents be
28 filed and accepted by the Court **only as reports** and that the Interim Watermaster be

1 given an additional six months to prepare an implementation plan-- Phase II of the
2 Optimum Basin Management Program Report. The Interim Watermaster further
3 requests that the Court adopt a revised schedule for approval of the final Optimum
4 Basin Management Program (presently set for approval on October 28, 1999) and for
5 input and consideration as to the continuance of the nine-member board as
6 Watermaster after June 30, 2000 (also set for October 28, 1999). The City of Pomona,
7 Monte Vista Water District, and the State of California have filed responses to the
8 motion by the Interim Watermaster.

9
10 Status of Negotiations with DWR

11 The Interim Watermaster reports that on November 18, 1998, the Chief of
12 Watermaster Services wrote to DWR regarding Watermaster services. DWR
13 responded to the letter on January 15, 1999, stating that DWR is ready to resume
14 negotiations but in view of the fact that the Interim Watermaster has been working
15 adequately DWR believes it is in the parties' best interests that negotiations should
16 not be resumed until directed by the Court. The Court notes that the Interim
17 Watermaster and several other parties have expressed concern regarding significant
18 funding issues to be resolved in connection with the development of an
19 implementation plan for the OBMP. It might be the case that DWR is in a superior
20 position to obtain available federal and state funding for the implementation plan;
21 hence, it is crucial that the Interim Watermaster and DWR have in place a plan for the
22 orderly transfer of operations from the nine-member board to the DWR at the end of
23 the interim appointment SHOULD Watermaster or relevant responsible organizations,
24 among other things, experience obstacles to obtaining necessary financing
25 concerning implementation of the OBMP. Accordingly, the Court hereby orders the
26 Interim Watermaster to prepare and submit to DWR and file with the Court no later
27 than November 12, 1999, a proposed contingency plan for the orderly transfer of
28 operations at the end of the interim appointment. DWR is invited to prepare a

1 response to the Interim Watermaster's proposal by no later than January 14, 2000,
2 which, if prepared, shall also be filed with the Court. Assuming DWR is still
3 interested in becoming Watermaster, the Interim Watermaster and DWR shall
4 thereafter meet to develop a joint proposal for the orderly transfer of operations, which
5 shall be submitted to the Court no later than February 18, 2000. This is not an
6 appointment; instead, it is a contingency plan, with no commitment regarding
7 appointment of DWR or any agency and/or person as Watermaster.

8
9 Status of Optimum Basin Management Plan

10 The Court commends the parties on the achievements accomplished to date on
11 the preparation of the OBMP and their commitment to complete a draft implementation
12 program report by February 15, 2000, and a final OBMP by March 31, 2000. The
13 Optimum Basin Management Program Phase I Report describes the issues which
14 need to be addressed. The Phase I Report describes the goals for management of
15 the basin, impediments to those goals, and possible solutions to achieve the goals
16 described. The focus of the Interim Watermaster and the interested parties must now
17 turn to choosing the solutions that will best achieve the goals described and
18 determining how the solutions will be implemented. The Court recognizes this
19 requires further significant work by all of the parties and encourages the parties to
20 stay focused on solving the outstanding implementation issues.

21 Comments received by the court regarding the Optimum Basin Management
22 Program Phase I Report indicate parties may want to edit the report some time in the
23 future. The Court, however, accepts the OBMP Phase I report, including the
24 Appendix A, as a final report in conformance with the Court's Order to show cause
25 why the OBMP has not been submitted. Any discrepancies in the report have been
26 noted by the comments to the report coterminously submitted to the Court as
27 Appendix A. Any further issues which may arise in the course of Phase II
28 implementation discussions can be addressed in Phase II. Closure on Phase I is

1 necessary in order to contravene further delay in Phase II implementation.

2
3 Environmental Concerns

4 An issue has been raised as to the applicability of the California Environmental
5 Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA") to the
6 preparation of the OBMP. For purposes of CEQA a state court is not a public agency
7 and thus is exempt from its requirements. However, an argument may be made that
8 although state courts are exempt from CEQA they do not have the authority to issue
9 orders that would excuse a public agency from complying with CEQA. The Court is
10 mindful of the underlying purpose of CEQA, to ensure the maintenance of a quality
11 environment for the citizens of California. The Court is also mindful of the
12 Legislature's expressed policy that the state take all action necessary to provide its
13 citizens with, among other things, clean air and water, and to ensure that the long-
14 term protection of the environment is the guiding criterion in public decisions. To
15 facilitate resolution of the issue of the application of CEQA and NEPA to the adoption
16 and/or preparation of the OBMP, the Court hereby orders the Interim Watermaster
17 and all other interested parties to appear on November 18, 1999, to show cause why
18 the Court should not order the preparation of an environmental document in
19 compliance with CEQA and NEPA and direct Inland Empire Utilities Agency to
20 proceed as the lead agency to ensure timely preparation of an environmental
21 document, to avoid delay in adoption and implementation of the OBMP. All briefs are
22 to be submitted by October 28, 1999.

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25 DATED: 9/30/99


J. MICHAEL GUNN, Judge

REVISED (9-30-99) TIMELINE

OCT. 28, 1999	NOV. 12, 1999	NOV. 18, 1999 1:30 P. M.	JAN. 14, 2000	FEB. 15, 2000	FEB 18, 2000	MAR. 15, 2000	MAR. 31, 2000	APRIL 27, 2000 1:30 P.M.	JUNE 30, 2000
CEQA/NEPA Briefs submitted to Court	Interim Watermaster submits contingency plan for transfer of operations to DWR	Hearing on CEQA/NEPA	DWR submits response to Interim Watermaster contingency plan for transfer of operations	Completion of Draft Phase II Implementation Report (30-day comment period begins)	Interim Watermaster and DWR submit joint proposal for orderly transfer of operations	Deadline for comments to draft OBMP	Final OBMP submitted to Court	Hearing on final OBMP and continuance of nine-member board as Watermaster	End of Interim Appointment