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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
RANCHO CUCAMONGA DIVISION

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCV 51010  
Judge: The Honorable J. Michael Gunn

SECOND REPORT ON THE STATUS OF  
THE PROCEEDINGS BEFORE THE  
STATE WATER RESOURCES CONTROL  
BOARD ON THE PETITION AND  
APPLICATION SUBMITTED BY  
WESTERN MUNICIPAL WATER  
DISTRICT OF RIVERSIDE COUNTY

Date: January 6, 2000  
Time: 1:30 pm  
Dept: R-8

I. INTRODUCTION.

At a hearing before this Court on November 18, 1999, the Court scheduled a Status Conference for January 6, 2000 at 1:30 p.m. in Department R-8. The purpose of the Status Conference is to inform the Court concerning the status the petition and application submitted by the defendant, Western Municipal Water District ("WMWD"), to the State Board State Water Resources Control Board ("State Board") affecting the Santa Ana River watershed. In scheduling the Status

1 Conference, the Court ordered WMWD to file with court, and serve upon counsel of record in this  
2 case, a written report concerning the status of such proceedings.

3  
4 Pursuant to the Court Order, WMWD hereby submits the following report.

5  
6 II. STATE BOARD HEARINGS.

7  
8 On December 7 and 8, 1999, the State Board conducted hearings at its offices in  
9 Sacramento, California regarding the petition jointly submitted by WMWD and San Bernardino  
10 Valley Municipal Water District ("SBVMWD") to the State Board ("Petition"). The Petition  
11 requests the State Board lift the Declaration of Fully Appropriated Streams for the Santa Ana River  
12 for the limited purpose of considering a water right application submitted by WMWD and  
13 SBVMWD. The water right application requests the State Board grant WMWD and SBVMWD a  
14 right to directly divert and store water for municipal use at the newly constructed Seven Oaks Dam  
15 on the upper reach of the Santa Ana River ("Application"). The water right application was not a  
16 part of the December hearings, but if the State Board approves the Petition, the State Board would  
17 accept the Application for filing and proceed with processing the Application in accordance with  
18 applicable provisions of the Water Code.

19 At the hearings, WMWD and SBVMWD presented direct testimony in support of its  
20 Petition. The persons offering testimony at the hearings were: G. Louis Fletcher, SBVMWD  
21 General Manager; Robert L. Reiter, SBVMWD Assistant General Manager; Donald L. Harriger,  
22 WMWD General Manager; and Bob Beebe, Water Resources Engineer. The substance of the  
23 testimony presented to the State Board was outlined for this Court in the "Report on the Status of  
24 the Proceedings Before the State Water Resources Control Board" filed on November 12, 1999 and  
25 heard on November 18, 1999.

26 Only one party, the San Bernardino Valley Water Conservation District ("Conservation  
27 District"), cross-examined and gave direct testimony in opposition to the Petition at the State Board  
28 hearings. The Conservation District presented two main points in its opposition to the Petition, both

1 of which argued that the Declaration cannot be lifted because there has been no “change in  
2 circumstances” in the Santa Ana River watershed within the meaning of Section 871(b) of the State  
3 Board’s regulations.

4           The Conservation District first argued that no “change in circumstance” has occurred  
5 because there is no actual net increase the amount of water within the watershed. In other words,  
6 unless precipitation has increased within the watershed, there is no qualifying change in circumstances  
7 which would allow the State Board to lift the Declaration. In rebuttal, WMWD and SBVMWD  
8 presented evidence that a “change in circumstance” under Section 871(b) is not limited to changes  
9 which result in an increase amount of precipitation within the watershed. If changes have occurred  
10 that make water previously wasted to the ocean available for beneficial use, this constitutes a “change  
11 in circumstance” and the Declaration should be lifted so that water rights may be granted to the newly  
12 available water. WMWD and SBVMWD demonstrated that construction and operation of Seven  
13 Oaks Dam creates this type of change in circumstance because the dam will make previously wasted  
14 storm waters available for appropriation, diversion, and beneficial use.

15           The Conservation District also argued that unless and until the United States Army  
16 Corps of Engineers (“Army Corps”) has officially approved creating a water conservation pool behind  
17 Seven Oaks Dam, there is no “change in circumstance” because no new water is available for  
18 appropriation. Presently, the Army Corps is reviewing its operating procedures for Seven Oaks Dam  
19 and it has not determined whether a water conservation pool will be allowed. In rebuttal, WMWD  
20 and SBVMWD presented testimony that the mere existence of Seven Oaks Dam creates an  
21 opportunity to appropriate previously unavailable storm waters. Even if a water conservation pool  
22 is not authorized, storm waters will be impounded behind Seven Oaks Dam during storm events until  
23 the threat of downstream flooding has passed. During the periodic impoundment and storage of  
24 storm flows, new water will be available for appropriation, and it is the rights to this new water which  
25 WMWD and SBVMWD seek to secure through their Petition and Application.

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1 III. CONCLUSION.

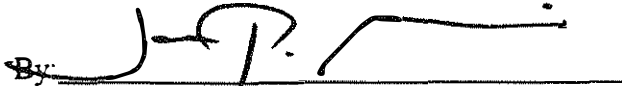
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The parties which appeared at the December hearings of the State Board will submit closing statements to the State Board in written format. The closing statements must be filed on or before February 11, 2000. After closing statements are submitted, the State Board will render its decision. We are unable to provide any estimate as to when a decision might be issued.

In light of the testimony and evidence presented to the State Board, WMWD continues to believe that any action by the State Board concerning either the Petition or the Application will not, and cannot, impact the existing rights under the Orange County Judgment nor establish any right inconsistent with the terms of the Orange County Judgment.

DATED December 29, 1999.

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By: 

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**PROOF OF SERVICE**

I, Sandra Simmons, declare:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Best Best & Krieger LLP, 3750 University Avenue, Suite 400, Riverside, California 92501. On December 29, 1999, I served the within documents:

SECOND REPORT ON THE STATUS OF THE PROCEEDINGS BEFORE  
THE STATE WATER RESOURCES CONTROL BOARD ON THE  
PETITION AND APPLICATION SUBMITTED BY WESTERN  
MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Riverside, California addressed as set forth below.

by causing personal delivery by \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth below.

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

***[SEE ATTACHED SERVICE LIST]***

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 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 December 29, 1999, at Riverside, California.



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P.O. BOX 2000  
SACRAMENTO, CA 95809-2000

LENNA TANNER  
CITY CLERK FOR THE CITY OF CHINO  
P.O. BOX 667  
CHINO, CA 91708-0667

JERRY THIBEAULT  
REGIONAL WATER QUALITY CONTROL  
BOARD  
3737 MAIN STREET, SUITE 500  
RIVERSIDE, CA 92501-3339

MIKE THIES  
SPACE CENTER MIRA LOMA INC.  
3401 S. ETIWANDA AVE, BLDG 503  
MIRA LOMA, CA 91752-1126

DAVID THOMPSON  
GE-ENVIRO REMEDIATION  
640 FREEDOM BUSINESS CTR  
KING OF PRUSSIA, PA 19406

HAROLD TREDWAY  
10841 PARAMOUNT BLVD  
DOWNEY, CA 90241

ARLAN VAN LEEUWEN  
FAIRVIEW FARMS  
6875 PINE AVE  
CHINO, CA 91710-9165

JOHN THORTON  
PSOMAS & ASSOCIATES  
3187 RED HILL AVE, SUITE 250  
COSTA MESA, CA 92626

ERICK VAUGHN  
ANGELICA RENTAL SERVICE  
1575 N. CASE ST  
ORANGE, CA 92867-3735

JAMES WARD  
THOMPSON & COLEGATE  
P.O. BOX 1299  
RIVERSIDE, CA 92502

GEOFFREY VANDENHEUVEL  
CBWCD  
7551 KIMBALL AVE  
CHINO, CA 92710-9269

MARK WARD  
AMERON  
13032 SLOVER AVE  
FONTANA, CA 92335-6990

RAY WELLINGTON  
SAN ANTONIO WATER CO.  
139 N. EUCLID AVE  
UPLAND, CA 91786-6036

CHARLES WHITE  
DEPARTMENT OF WATER RESOURCES  
770 FAIRMONT AVENUE  
GLENDALE, CA 91203-1035

MICHAEL WHITEHEAD  
SAN GABRIEL VALLEY WATER CO  
P.O. BOX 6010  
EL MONTE, CA 91734

MARK WILDERMUTH  
WILDERMUTH ENVIRONMENTAL INC.  
415 N. EL CAMINO REAL, SUITE A  
SAN CLEMENTE, CA 92672

JEROME WILSON  
CBWM BOARD  
6035 FALLING TREE LANE  
ALTA LOMA, CA 91737