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FILED-West District
San Bernardino County Clerk
SEP 30 2002
By *Leslie Richardson*
Deputy

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN BERNARDINO

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,
15 Plaintiff,
16 v.
17 CITY OF CHINO, et al.,
18 Defendants.

Case No. RCV 51010

[Assigned to the Honorable J. Michael
Gunn]

DEFENDANT CUCAMONGA COUNTY
WATER DISTRICT'S OBJECTIONS TO
SPECIAL REFEREE'S REPORT AND
RECOMMENDATION

Date: Oct. 17, 2002
Time: 1:30 p.m.
Dept: R-8

1 OBJECTIONS TO SPECIAL REFEREE’S REPORT AND RECOMMENDATION

2
3 1. INTRODUCTION

4
5 The Special Referee’s request for a briefing schedule on jurisdiction, cost allocation, and
6 other legal issues raises the specter of unwinding the good work and achievements of the parties to
7 the OBMP over issues that do not require resolution. (Special Referee’s Report on Interim Plan
8 Workshop and Recommendation Concerning Subsidence Issues, dated September 17, 2002
9 (“Report”), p. 51.) Furthermore, if the Court asserts jurisdiction over subsidence issues and imposes
10 solutions to such problems, it opens the door to inverse condemnation and other liability should
11 those solutions fail. Accordingly, the Cucamonga County Water District (“District”) urges the Court
12 to decline the Special Referee’s recommendation on this point only.¹

13
14 2. DECIDING ISSUES OF JURISDICTION AND COST ALLOCATION PLACES
15 THE OBMP AT RISK UNNECESSARILY

16
17 With the Court’s guidance, lengthy negotiations and painful compromises, the parties to the
18 Judgment have signed the Peace Agreement, approved the OBMP, and created Rules and
19 Regulations to govern the Chino Basin. No one can reasonably dispute that these agreements have
20 greatly benefitted Chino Basin and everyone who depends upon it:

- 21
22 • Monitoring Program (Element 1) - 165 water meters installed, 20 meters repaired,
23 with 160 new meters to be installed and 50 meters to be repaired. Watermaster is
24 monitoring groundwater levels and groundwater quality at hundreds of locations.

25
26
27 ¹ Other than desiring a solution to the dispute between Defendants City of Chino Hills
28 (“Chino Hills”) and City of Chino (“Chino”), the District takes no position on their
 matter. Similarly, the District does not object to the other issues raised by the Special
 Referee’s Report.

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- Recharge Program (Element 2) - \$20 million in bonds issued by Plaintiff Inland Empire Utilities Agency for recharge. A significant number of proposed facilities are at the 60% design level.
- Water Supply Plan (Element 3) and Supplemental Water Program (Element 5) - The Chino I Desalter purchased from Santa Ana Watershed Project Authority. The Chino I Desalter Expansion design should be concluded by January 31, 2003 and construction completed by December 2003. The Chino II Desalter design should be completed by April 30, 2003 and construction completed by May 2004.
- Groundwater Management Plan (Element 4) - agreement for monitoring and tracing salt loads and allocating recycled water approved for Management Zone 3.
- Salt Management Program (Element 7) - salt budget developed.
- Storage and Recovery Program (Elements 8, 9) - 100,000 acre-feet dry yield program being developed.

Chino Basin Watermaster Draft Quarterly Status Report, dated September 30, 2002.

Throughout this process, the parties who dispute jurisdiction have been able to work around their concerns since they were reached by agreement. Certainly, the parties are bound by the Peace Agreement to take certain actions. However, concluding they are compelled under the Judgment to resolve issues such as subsidence is an entirely different proposition and presents such open-ended liability that the parties will be compelled to protect themselves. The objecting parties will end up litigating jurisdiction and cost allocation issues for every new or unanticipated facet of Basin management in order to protect their position and exposure. The present Chino-Chino Hills dispute

1 is only one example of this risk. It is hard to imagine timely or successful implementation of the
2 OBMP in the face of endless rounds of litigation.

3
4 Ironically, these issues need not be addressed. Although Chino and Chino Hills have not
5 resolved their dispute, jurisdiction and cost allocation was not the basis for the breakdown.
6 Furthermore, even if the Court agrees with the Special Referee that a broader solution in
7 Management Zone 1 is necessary, the parties have not even had a chance to reach agreement on cost
8 allocation.

9
10 3. JURISDICTION OVER SUBSIDENCE ISSUES RISKS INVERSE
11 CONDEMNATION AND OTHER LIABILITY

12
13 To the extent the Court exercises jurisdiction and imposes a solution to subsidence problems
14 through Watermaster, it potentially exposes Watermaster to inverse condemnation liability. Where
15 a public entity participates in the planning, approval, construction or operation of a public project
16 or improvement that injures a plaintiff's property, it is liable for inverse condemnation. In the
17 context of land subsidence, a court may find inverse condemnation liability where:

- 18
19 • Bay Area Rapid Transit District excavated under a city street for subway system.
20 Holtz v. Superior Court, 3 Cal.3d 296, 302-304 (1970).
21
22 • City groundwater pumping program damaged shopping mall. Los Osos Valley
23 Associates v. City of San Luis Obispo, 30 Cal.App.4th 1670, 1680 (1994).
24
25 • County's streets caused water and mud to flow over plaintiff's property. Sheffet v.
26 County of Los Angeles, 3 Cal.App.3d 720, 731 (1970).
27
28

- 1 • Excavation for storm drain damaged adjacent property. Los Angeles County Flood
2 Control Dist. v. Southern Cal. Bldg. & Loan Assn., 188 Cal.App.2d 850, 852 (1961).
3
- 4 • City liable when it approves and accepts dedication of public improvement that
5 causes landslide damage. Blau v. City of Los Angeles, 32 Cal.App.3d 77, 87 (1973).
6

7 Not only is subsidence a risk, but Watermaster may be also liable for:

- 8
- 9 • Any dangerous condition on the facilities operated by Watermaster. Cal. Gov't Code
10 § 835 (West 1995).
11
- 12 • Nuisances created by the facilities. Nestle v. City of Santa Monica, 6 Cal.3d 920,
13 931-937 (1972).
14
- 15 • Any physical damages unrelated to subsidence, but caused by the facilities. E.g.,
16 mistakes during construction, water leaks, etc.
17

18 Although judicial immunities may protect Watermaster, those protections are based on
19 common-law or statutes. Howard v. Drapkin, 222 Cal.App.3d 843, 851-864 (1990). Therefore,
20 those privileges may not protect against a constitutional claim such as inverse condemnation which
21 supersedes common law and statutes. Moreover, those immunities will not protect any public
22 agency Watermaster requires to perform any "fix." Not only is it patently unfair to expose those
23 agencies to such liability, but it may lead them to vigorously contest any Watermaster ordered
24 solution.
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4. CONCLUSION

Legal and practical reasons compel this Court to avoid the issue of jurisdiction, cost allocation and related issues. This is especially true where, as here, those issues need not be decided to resolve the Chino-Chino Hills dispute. Simply put, there is no need to cross that bridge at this time.

Dated: September 27, 2002.

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CHINO BASIN WATERMASTER

Case No. RCV 51010

Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On September 30, 2002 I served the attached:

HEARING DATE: October 17, 2002

- 1) WATERMASTER COMMENTS TO REFEREE REPORT ON INTERIM PLAN AND MOTION FOR ORDER TO PROCEED IN ACCORDANCE WITH THE INTERIM PLAN:
Exhibit "A" - Revised Interim Plan
Exhibit "B" - MZ-1 Interim Plan Monitoring Program - Draft Work Plan
- 2) DEFENDANT CUCAMONGA COUNTY WATER DISTRICT'S OBJECTIONS TO SPECIAL REFEREE'S REPORT AND RECOMMENDATION.
- 3) OPPOSITION OF FONTANA UNION WATER COMPANY TO SPECIAL REFEREE'S RECOMMENDATION TO INSTITUTE A LEGAL PROCEEDING TO DETERMINE EXTENT AND SCOPE OF THE COURT'S JURISDICTION UNDER PARAGRAPH 15 OF THE JUDGMENT.
- 4) JOINDER OF SAN ANTONIO WATER COMPANY TO OPPOSITION OF FONTANA WATER COMPANY.

/ X / BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

See attached service list:

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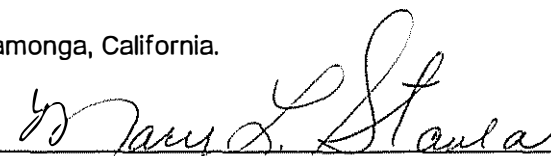
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

FILED West District
Executed on September 30, 2002 in Rancho Cucamonga, California.
San Bernardino County Clerk

SEP 30 2002


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