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**SUPERIOR COURT FOR 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

ORDER CONCERNING
WATERMASTER'S INTERIM PLAN
FOR MANAGEMENT OF
SUBSIDENCE

Date: October 17, 2002
Dept: 8
Time: 1:30 p.m.

I.

INTRODUCTION

On August 29, 2002, a workshop was held to present to the Court, through the Special Referee, the details of Watermaster's interim plan for management of subsidence in Management Zone 1 ("MZ1") of the Chino groundwater basin ("Basin"). The workshop was precipitated by events that began in December 2001, with the filing of a petition for writ of mandate by the City of Chino Hills ("Chino Hills") against the City of Chino ("Chino"). In late January 2002, Chino filed a motion for relief under

1 paragraph 15 of the Judgment herein, which was followed by Watermaster's adoption
2 of the "Proposed Watermaster Interim Plan for Management of Subsidence" ("Interim
3 Plan"), as part of the Optimum Basin Management Program Implementation Plan
4 ("OBMP Implementation Plan") for the Basin.¹

5 On September 18, 2002, the "Special Referee's Report on Interim Plan
6 Workshop and Recommendation Concerning Subsidence Issues" ("Special Referee's
7 Report on Workshop" or "Special Referee's Report") was filed with the Court.
8 "Watermaster Comments to Referee Report on Interim Plan and Motion for an Order
9 to Proceed in Accordance with the Interim Plan" ("Watermaster Comments and
10 Motion") was filed on September 30, 2002, along with: "Defendant Cucamonga
11 County Water District's Objections to Special Referee's Report and Recommendation"
12 ("CCWD's Objections"); "Opposition of Fontana Union Water Company to Special
13 Referee's Recommendation to Institute a Legal Proceeding to Determine Extent and
14 Scope of the Court's Jurisdiction under Paragraph 15 of the Judgment" ("Fontana's
15 Opposition"); "Joinder of San Antonio Water Company to Opposition of Fontana Union
16 Water Company" ("San Antonio Water Company's Joinder"). Chino Hills filed the "City
17 of Chino Hills' Comments to Special Referee's Report on Interim Plan Workshop and
18 Recommendations Concerning Subsidence Issues" ("Chino Hill's Comments") on
19 October 1, 2002. Monte Vista Water District filed the "Monte Vista Statement Re
20 Objections to Referee Report" ("Monte Vista's Statement") on October 10, 2002.
21 Watermaster filed the "Watermaster Response to Comments to Referee's Report"
22 ("Watermaster's Response to Comments") on October 15, 2002. The Court has read
23 and considered each of these briefs, and notes with interest that Chino has filed no
24 objections or comments to the Special Referee's Report, nor has Chino filed any
25 papers with the Court requesting that its motion under paragraph 15 of the Judgment
26 be removed from the Court's calendar or continued.

27
28 ¹ For a complete review of the pleading history, please see Section II D of the Special Referee's Report on
Workshop, which is incorporated herein by this reference.

1 II.

2 SPECIAL REFEREE'S COMMENTS AND RECOMMENDATION

3 The Special Referee's Report includes a technical discussion of the Interim Plan
4 as well as a historical perspective, giving context to the Interim Plan. The Court will not
5 repeat the details of the plan in this order, but instead refers the reader to Sections II A,
6 B & C of the Special Referee's Report, which are incorporated herein by this reference.
7 The Special Referee concludes that the Interim Plan is more in the nature of an "action"
8 than a "plan," referring to the proposal for voluntary forbearance of pumping and use of
9 a substitute water supply, which is to be carried out while a comprehensive monitoring
10 plan is developed and implemented with the ultimate goal of establishing a long-term
11 management plan for subsidence in MZ1. The Special Referee notes that the localized
12 fissuring problem in the City of Chino appears to be driving Watermaster's approach to
13 subsidence, even though subsidence may have occurred and be occurring in a larger
14 portion of MZ1. The Special Referee further notes that one question raised at the
15 workshop is whether the Interim Plan needs to be changed or amplified in some way.
16 (Sp. Ref. Rep. at 46.)

17 The Special Referee's recommendation to the Court is to direct Watermaster to
18 do the following:

- 19 1) Implement the monitoring program which Watermaster
20 outlined in its Interim Plan and the workshop, including all
21 work related to the installation and monitoring of
22 piezometers and extensometers, ground level
23 monitoring, aquifer testing, and all such other actions
24 required to study, analyze, and interpret subsidence and
25 fissuring phenomena in MZ1, and to determine causes in
26 sufficient detail that they can be managed through a
27 long-term plan.

28 ///

1 2) Commence immediately to form and work with the
2 Technical Group to obtain comments and recommendations
3 on the scope, area of investigation, and approach to the
4 monitoring program.

5 3) Begin work with the Technical Group to develop a long-
6 term management plan for MZ1 that is based on the findings
7 of the monitoring program.

8 4) Report to the Court on the implementation of forbearance,
9 initially by the Court hearing scheduled for October 17, 2002,
10 and periodically thereafter in accordance with the following
11 reporting requirements, to document the volunteer
12 participation, amount of forbearance, expected or observed
13 impacts, and any other noteworthy details that pertain to the
14 goal of forbearance to minimize subsidence and fissuring.

15 5) Submit reports to the Court on all interim and long-term
16 efforts to address subsidence and fissuring problems in MZ1
17 by June 30 and December 31 of each year.

18 The Special Referee further recommends that a follow-up workshop be held in
19 January 2003, to assess the status of Watermaster's efforts. Finally, the Special
20 Referee recommends that the Court set a briefing schedule to address certain
21 jurisdiction, cost allocation, and other legal issues.

22
23 III.

24 WATERMASTER'S COMMENTS

25 Watermaster reports that "having received the benefit of the Special Referee's
26 Report," the stakeholders met and conferred. As a result, on September 26, 2002, the
27 Watermaster Advisory Committee and Board received a joint proposal from Chino and
28 Chino Hills for modification of the Interim Plan. The Advisory Committee and the

1 Board accepted the proposal unanimously. Accordingly, the Interim Plan has been
2 modified in several ways since the filing of the Special Referee's Report. First, the
3 revised Interim Plan provides for a forbearance election for one year instead of three
4 years. Further, the Technical Group is charged with assessing whether the current
5 monitoring program is sufficient, and if not, to consider potential improvements,
6 including a broader area of monitoring and analysis. The revised Interim Plan calls for
7 the Technical Group to evaluate a producer's eligibility to receive substitute water each
8 year and consider other feasible methods to encourage additional forbearance within
9 MZ1. Finally, the revised Interim Plan provides that any party may withdraw from
10 forbearance in the event any party initiates litigation to address subsidence in MZ1.

11 Watermaster further reports that with the Interim Plan modifications, and the
12 clarification that Chino and Chino Hills reserve discretion as to which wells listed on
13 Exhibit "E" shall be included in the forbearance action, Chino Hills has agreed to
14 participate at the quantity of 1,500 acre-feet for one year, with a right to renew for
15 subsequent years. In addition, Chino, which previously committed to participate in the
16 forbearance action, has agreed to request a continuance to ^{September 18} ~~August 15~~, 2003, on its
17 pending motion under paragraph 15 of the Judgment. Further, if Chino Hills elects to
18 participate in the forbearance portion of the Interim Plan for a second year, Chino will
19 request a further continuance of its motion until August 13, 2004.

20 Watermaster states that implementation of the revised Interim Plan has begun.
21 Meetings of the Technical Group, i.e., the newly formed MZ 1 Technical Committee,
22 have occurred and have resulted in the completion of the Draft MZ 1 Interim Plan
23 Monitoring Program. Further, because of the consensus recently achieved between
24 Chino Hills and Chino regarding the forbearance portion of the Interim Plan,
25 Watermaster asserts "there is no present case or controversy that requires further
26 briefing to the Court." (Watermaster Comments at 4, 3-5.) Consequently,
27 Watermaster's Comments and Motion requests the Court to not order briefing on the
28 legal issues raised in the Special Referee's Report. This request is reiterated in

1 Watermaster's most recent filing, Watermaster's Response to Comments, which
2 asserts that implementation of the Interim Plan and development of a long-term plan
3 for subsidence will be facilitated if the Court refrains from setting a briefing schedule.

4 Accordingly, Watermaster seeks an order from the Court directing it to (1)
5 implement the Interim Plan Monitoring Program; (2) form and work with the MZ 1
6 Technical Committee; (3) begin to develop a long-term plan for management of
7 subsidence; (4) report to the Court regarding participation in the forbearance program;
8 and (5) increase Watermaster's reporting on subsidence from twice yearly to quarterly.
9 Watermaster also recommends that the Court schedule a follow-up workshop in July
10 2003, at which the parties may present the progress made under the Interim Plan.

11
12 IV.

13 CHINO HILLS' COMMENTS

14 Chino Hills reports that Chino Hills, Watermaster and City of Chino have
15 resolved their issues related to the Interim Plan. Consequently, Chino Hills has agreed
16 to voluntarily reduce its pumping in accordance with the revised Interim Plan.
17 However, it is apparent that issues concerning subsidence remain unresolved. Chino
18 Hills asserts that it is important that the Technical Committee review "the prior 80 plus
19 years of pumping throughout MZ1 to determine the potential causes of subsidence."
20 (Chino Hills' Comments at 2, 15-17.) Chino Hills urges that the Technical Committee
21 needs to assess early on whether the current monitoring and analysis efforts are
22 sufficient and can be extrapolated throughout MZ1, or whether the focal area of
23 Watermaster's monitoring and analysis should be expanded. Chino Hills believes that
24 the phenomena of ground surface fissures and subsidence need to be reviewed and
25 studied thoroughly by the Technical Group. (*Id.* at 2, 19-28.) Chino Hills does not
26 believe that the localized fissuring problem in the City of Chino should define or limit
27 Watermaster's efforts to address subsidence. Despite the issues that remain related
28 to subsidence, Chino Hills concludes that the "interim consensus" reached subsequent

1 to the issuance of the Special Referee's Report, renders "moot" the need for a briefing
2 schedule on Chino's motion under paragraph 15 of the Judgment.

3
4 V.

5 OBJECTIONS AND OPPOSITION TO SPECIAL REFEREE'S REPORT

6 In CCWD's Objections, it is argued that requiring the parties to brief certain legal
7 issues might undermine the cooperative work and achievements of the parties related
8 to the OBMP. It is further argued that if the Court were to assert jurisdiction over
9 subsidence and impose a solution on the parties through Watermaster, it potentially
10 exposes Watermaster and other public agencies to liability for inverse condemnation.
11 Finally, it is asserted that while the parties certainly are bound by the Peace
12 Agreement to take certain actions, it is an entirely different proposition to conclude the
13 parties are compelled under the Judgment to resolve issues such as subsidence.
14 CCWD therefore urges the Court to decline to follow the Special Referee's
15 recommendation to set a briefing schedule. CCWD does not object to the Special
16 Referee's Report in any other respect.

17 ///

18 Fontana's Opposition, which is joined by San Antonio Water Company, also
19 opposes the Special Referee's recommendation to set a briefing schedule. In
20 Fontana's Opposition it is also argued that the Special Referee does not support
21 Watermaster's "consensus" management style, but instead would prefer a "judicial
22 coercive" style of Basin management. As proof that the "consensus" management
23 style works, Fontana surprisingly asserts that not a single contested matter has been
24 placed before the Court for decision since appointment of Watermaster. Perhaps what
25 is meant is that until the Chino/Chino Hills dispute, no contested matter has been
26 placed before the Court for decision since the appointment of Watermaster. One need
27 only review the transcript of the hearing on February 28, 2002, to realize that there is,
28 in fact, a contested matter presently before the Court. Finally, it is argued that the

1 Peace Agreement is a product of consensus and should not be construed as an
2 amendment to the Judgment.

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VI.

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CONCLUSION AND ORDER

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The Court has consistently demonstrated its faith in a consensus-based approach to management of the Basin. Indeed, it was this faith that led the Court to adopt the recommendation of the Special Referee, made in December 1997, to appoint the nine-member board as Watermaster, and to charge the board with the responsibility of adopting the OBMP. It should be apparent to the parties that it is the Court's intention to provide "judicial oversight," not "judicial coercion." But, when faced with legitimate concerns of the parties, the Court must ensure that there is a forum to have such concerns addressed. When the Special Referee's Report was filed, the consensus-based approach had not succeeded in achieving full support of the Interim Plan. Therefore, Court intervention was implicated.

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Given the reports by Watermaster and Chino Hills that the differences between Chino and Chino Hills have been resolved at least for the short term, and assuming that Chino affirmatively asks for a withdrawal or continuance of its motion under paragraph 15 of the Judgment, the Court does not see a reason for further briefing at this time. But, the Court has not forgotten the lengthy discussion regarding jurisdiction over subsidence that occurred on February 28, 2002. At that hearing, both Chino and Chino Hills repeatedly posed the question as to whether or not the Court had assumed jurisdiction over subsidence, because the issue had been raised in connection with Chino Hills' petition for writ of mandate. The Court was unprepared to rule on that issue for two reasons: First, Watermaster, on behalf of the parties, had requested that the Court defer ruling on any jurisdiction issues. Second, and as important, the Court had not received the benefit of full briefing on this issue.

///

1 The Court is concerned that the issue of the extent of the Court's jurisdiction will
2 resurface and it will be called upon to rule without having the benefit of full briefing.
3 Watermaster did not include in its comments the status of Chino Hills' petition for writ
4 of mandate, or of any other pending action that could result in having the issue of the
5 Court's jurisdiction raised again in this Court. To prevent the Court from being
6 "ambushed" on the jurisdiction issue, the Court requests Watermaster to provide
7 regular status reports on other pending actions in which issues concerning the Court's
8 jurisdiction could be raised.

9 Satisfactory proof having been made and good cause appearing, IT IS HEREBY
10 ORDERED AND DECREED as follows:

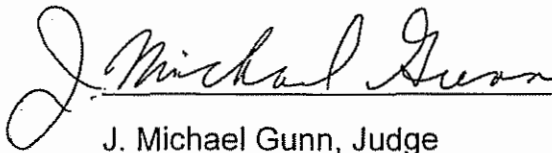
11 Assuming that Chino affirmatively withdraws or continues its motion
12 under paragraph 15 of the Judgment, Watermaster is hereby directed to
13 do the following:

14 1) Implement the Interim Plan Monitoring Program for subsidence,
15 including all work related to the installation and monitoring of
16 piezometers and extensometers, ground level monitoring,
17 aquifer testing, and all such other actions required to study,
18 analyze, and interpret subsidence and fissuring phenomena in
19 MZ1, and to determine causes in sufficient detail that they can
20 be managed through a long-term plan.

21 2) Continue to work with the MZ 1 Technical Committee to obtain
22 comments and recommendations on the scope, area of
23 investigation, and approach to the monitoring program, in
24 furtherance of the objective of having the Technical Committee
25 serve in an advisory capacity to assist Watermaster in the
26 development of a long-term management plan for subsidence in
27 MZ1.
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- 1 3) Develop a long-term management plan for MZ1, by fiscal
2 2004/2005.
- 3 4) Continue to report to the Court on the implementation of
4 forbearance, to document the volunteer participation, amount of
5 forbearance, expected or observed impacts, and any other
6 noteworthy details that pertain to the goal of forbearance to
7 minimize subsidence and fissuring.
- 8 5) Submit quarterly reports to the Court on all interim and long-
9 term efforts to address subsidence and fissuring problems in
10 MZ1, with the first report due December 31, 2002.
- 11 6) Schedule a follow-up workshop for July 17, 2003, to present to
12 the Court through the Special Referee the progress made on
13 implementation of the Interim Plan.
- 14 7) File periodic reports, at least quarterly, to apprise the Court of
15 other actions pending that could cause the jurisdiction issue to
16 resurface.

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18 Dated: October 17, 2002


J. Michael Gunn, Judge

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**SUPERIOR COURT FOR 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
ORDER RECEIVING AND FILING
WATERMASTER'S OBMP STATUS
REPORT NO. 4 AND FINAL INITIAL
STATE OF THE BASIN REPORT

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

I.

OBMP STATUS REPORT

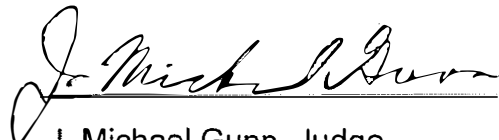
Pursuant to court order dated July 13, 2002, Watermaster is required to submit periodic reports on the progress in implementing the Optimum Basin Management Program ("OBMP") for the Chino groundwater basin. On October 10, 2002, Watermaster transmitted to the Court its fourth OBMP Status Report. The Court appreciates the new format and the fact that the report will be published on Watermaster's website. The report is hereby received and filed.

1 II.

2 INITIAL STATE OF THE BASIN REPORT

3 To assist the Court in monitoring the effectiveness of the OBMP, Watermaster
4 was directed to prepare and file an Initial State of the Basin Report ("ISOB"). On
5 January 29, 2002, Watermaster transmitted a draft ISOB to the Court. After receiving
6 comments from the Special Referee, Watermaster transmitted a revised ISOB. In its
7 transmittal, Watermaster erroneously represented that the transmitted report was the
8 final ISOB, but it was not. On October 10, 2002, Watermaster submitted the final
9 ISOB. The Court hereby accepts the final ISOB report for filing. Further, this order
10 shall serve as a clarification of the Court's earlier order, dated June 19, 2002, in which
11 the revised ISOB report was received and filed, but was erroneously referred to as the
12 final ISOB.

13
14 Dated: October 17, 2002


15 J. Michael Gunn, Judge

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 October 17, 2002 I served the attached:

1. **ORDER CONCERNING WATERMASTER'S INTERIM PLAN FOR MANAGEMENT OF SUBSIDENCE** (Please note that on page 5 of the above stated order, the Court on its own motion has changed the first continuance date for Chino's Paragraph 15 motion to September 18, 2003.)
2. **ORDER RECEIVING AND FILING WATERMASTER'S OBMP STATUS REPORT NO. 4 AND FINAL INITIAL STATE OF THE BASIN REPORT.**

Hearing Date: October 17, 2002

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:
Attorney Service List
Mailing List 1

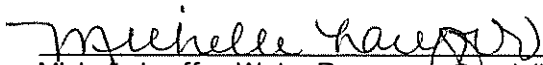
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

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

Executed on October 17, 2002 in Rancho Cucamonga, California.


Michelle Lauffer, Water Resources Specialist
Chino Basin Watermaster

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