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6 SPECIAL REFEREE

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION

10  
11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )

13 Plaintiff, )

14 v. )

15 THE CITY OF CHINO, )

16 Defendants. )

CASE NO. RCV 51010

Judge: Honorable J. Michael Gunn

Date: TBD

Time:

Dept:

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18  
19  
20 **SPECIAL REFEREE'S REPORT ON PROGRESS MADE ON**  
21 **IMPLEMENTATION OF THE WATERMASTER INTERIM PLAN**  
22 **FOR MANAGEMENT OF SUBSIDENCE**  
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	)	TATION OF THE WATERMASTER
14 THE CITY OF CHINO,	)	INTERIM PLAN FOR MANAGE-
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	)	
15 Defendants.	)	
	)	Date: TBD
	)	Time:
	)	Dept:
16	)	
17	)	

18  
19 **I. INTRODUCTION**

20 A workshop was held May 25, 2005, as a follow-up to the workshop held August 29, 2002.  
21 The second workshop was originally scheduled to be held in 2003, pursuant to Court Order  
22 Concerning Watermaster's Interim Plan for Management of Subsidence, dated October 17, 2002  
23 ("2002 Order"). The second workshop was postponed until substantial data collection and analysis  
24 had been completed.

25 The scope of the workshop was limited to presentation of technical data and analysis  
26 completed to date related to the Watermaster Interim Plan for Management of Subsidence ("Interim  
27 Plan"). The presentation was made by Mr. Malone of Wildermuth Environmental, Inc., Watermaster  
28 Engineering Consultant. Mr. Malone, Mr. Wildermuth, and Mr. Riley addressed questions posed

1 by the Special Referee, technical expert Joe Scalmanini, and several others. Consistent with use of  
2 a workshop format, cross-examination was not allowed. A transcript of the workshop has been  
3 prepared and will be filed with the Court by Watermaster.

4 **II. 2002 COURT ORDER**

5 In the 2002 Order, Judge Gunn directed Watermaster to:

- 6 (1) Implement the Interim Plan Monitoring Program for subsidence, including all work  
7 related to piezometers, extensometers, ground-level monitoring, aquifer testing, and  
8 other actions to study, analyze, and interpret subsidence and fissuring in MZ1 and to  
9 determine causes in sufficient detail that they can be managed through a long-term  
10 plan;
- 11 (2) Continue the MZ1 Technical Committee work and have the Technical Committee  
12 serve in an advisory capacity to assist Watermaster in developing a long-term  
13 subsidence management plan for MZ1;
- 14 (3) Develop a long-term management plan by fiscal year 2004/2005;
- 15 (4) Submit quarterly reports to the court on all interim and long-term efforts to address  
16 MZ1 subsidence and fissuring problems, including documentation of participation,  
17 forbearance, impacts, and other “noteworthy details that pertain to the goal of  
18 forbearance to minimize subsidence and fissuring”;
- 19 (5) Schedule a follow-up workshop for July 17, 2003; and
- 20 (6) File reports at least quarterly to apprise the court of any actions pending that could  
21 cause the “jurisdiction issue” to resurface.

22 **III. COMPLIANCE WITH 2002 COURT ORDER**

23 **A. Regular Reports by Watermaster**

24 Watermaster has regularly reported to the court, through its status reports, on the progress  
25 of all work related to Management Zone 1 (“MZ1”) subsidence issues. Watermaster has also  
26 reported that it is not aware of any pending legal actions which have raised issues concerning the  
27 court’s jurisdiction related to subsidence. The City of Chino (“Chino”) has annually asked for  
28 continuances of its Paragraph 15 Motion. The process has been that Chino requests continuance  
after both Chino and the City of Chino Hills (“Chino Hills”) have committed to forbear some  
pumping. (Our files reflect that Chino requested a continuance to September 1, 2005, but we do not  
have a copy of a court order approving that continuance.) Watermaster has reported that the MZ1  
Technical Advisory Committee has been actively meeting.

///

1 **B. Pumping Forbearance Agreements**

2 Annual forbearance agreements have been entered into for the past three years by Chino and  
3 Chino Hills. On April 28, 2005, Watermaster approved continuation of the forbearance agreements  
4 for a fourth year. The fourth year of forbearance will be fiscal year 2005/2006.

5 **C. Court Order and Deadlines**

6 Two of the deadlines set forth in the 2002 Order have not been met. First, a long-term  
7 management plan for MZ1 was to have been completed this fiscal year (by July 1, 2005). Second,  
8 a follow-up Special Referee workshop was not held in July 2003, but, instead, was postponed in  
9 order that a substantial body of work could be completed to study and assess the MZ1 issues.

10 **IV. INTERIM PLAN WORK**

11 **A. Technical Work Completed to Date**

12 The purpose of the second workshop was to hear a description of the work and study that has  
13 been done since the MZ1 Interim Plan was begun, to ascertain whether any conclusions have been  
14 reached, and to obtain a description of the activities that are being undertaken now and that remain  
15 to be done. Mr. Malone's presentation on the technical work and analysis to date formed the bulk  
16 of the workshop. He provided a very detailed description of the monitoring and other technical work  
17 that has been undertaken. Ongoing efforts have included installation of piezometers and an  
18 extensometer, installation of transducers to monitor water levels in a network of wells, and ground-  
19 level and InSAR monitoring for subsidence. Mr. Malone reported several discoveries which he  
20 characterized as significant, including discovery of a groundwater barrier at depth in a location  
21 approximately coincident with the fissuring that has occurred, and that there are two very distinct  
22 aquifer systems. (Reporter's Transcription ("RT") at pp. 44-47)

23 Mr. Malone also indicated that all of the potential causes of the subsidence and fissuring  
24 which had been previously suggested had been reviewed, but that the Interim Plan work has focused  
25 on the hypothesis that the subsidence and fissuring have been caused by subsurface fluid withdrawal:

26 We reviewed all these [other potential causes of subsidence], but what we zeroed in  
27 on was the subsurface withdrawal as our hypothesis. That's what we identified as the  
28 most likely cause of the subsidence that we had observed in the City of Chino . . . so  
our hypothesis was that the groundwater production caused land subsidence and  
fissuring in Chino Basin. . . We also noted that it was likely, or that we were

1 hypothesizing that the production from the confined aquifer system was the main  
2 cause of this recent episode of subsidence and fissuring that was measured in the  
3 early 1990's. So this is what we designed our monitoring program to test, whether  
4 or not this hypothesis was correct.

4 (RT at pp. 32-33) There was no further discussion on the record regarding the nature of the review  
5 that was done as to other potential causes of the subsidence and fissuring.

6 A primary focus of the technical work has been to determine at what point subsidence creates  
7 inelastic compaction versus subsidence which is elastic and can recover. Mr. Malone described the  
8 process to identify:

9 . . . the threshold where the deformation process transitions from elastic to inelastic.  
10 By doing that, we'd be defining the usable volume of the storage reservoir, under  
11 what range of water levels can we operate where we're not causing inelastic  
12 compaction. And that would be a very key finding to any long-term management  
13 plan that might develop out of this study.

12 (RT at pp. 43-44) The presentation included detailed descriptions of "stress-strain diagrams" which  
13 reflect data on the elastic versus inelastic response of the system to pumping. Mr. Malone drew  
14 attention to a "key point" that there appears to have been about two one-hundredths of a foot (0.02  
15 ft.) of permanent compaction over the 2004 pumping season. (RT at pp. 58-59) He indicated that  
16 the ". . . inelastic threshold was crossed at about 250 feet below ground surface during the latter part  
17 of the pumping season." (RT at p. 60) Mr. Malone made it very clear that it is necessary to wait for  
18 "fully recovered water levels" before drawing any final conclusions that the system transitions from  
19 elastic to inelastic compaction when water levels are somewhere below 250 feet below ground  
20 surface. (RT at p. 95)

21 In response to questions as to whether there are sufficient data available now to develop a  
22 long-term plan, Mr. Malone responded that:

23 . . . When we operate in the forbearance agreement where we pump during the  
24 pumping season, but we allow the system to recover during the wintertime months,  
25 . . . we've demonstrated that we're operating generally in an elastic range. . . And so  
26 to how far we can step out of that same pumping pattern and still operate within the  
27 elastic range, we have not determined that yet. But the models hold the promise of  
28 determining that.

27 (RT at p. 93)

28 Mr. Malone explained that the next step in the investigation is to create groundwater models

1 to “. . . simulate the groundwater production’s effects on groundwater levels.” (RT at p. 91) The  
2 model will: “. . . help us provide that linkage between groundwater production and groundwater  
3 levels that would provide a tool to evaluate any management plan that might come out of this.” (RT  
4 at p. 107)

5 In response to a question, Mr. Malone indicated that there are not plans to do further testing  
6 in the southern part of MZ1:

7 We feel like if the stress-strain diagram goes to where it seems to be going, that  
8 we’ve identified this threshold of preconsolidation stress that is the transition  
9 between inelastic and elastic compaction. . . I don’t think we have any further  
10 questions that we’re trying to answer in this southern part of Management Zone 1.  
11 We’re going to be developing the models that will help us provide that linkage  
12 between groundwater production and groundwater levels. . .

13 (RT at p. 107)

#### 14 **B. Recommended Additional Technical Work**

15 Mr. Malone recommended that technical work be continued in the southern part of MZ1 and  
16 that certain technical work be started in the central MZ1 area to the north. For the southern MZ1  
17 area, the recommendation is that monitoring continue (RT at pp. 97-99) and that some of the  
18 dedicated piezometers be replaced (RT at pp. 103-104). In addition, numerical models would be  
19 developed (a one-dimensional compaction model and a three-dimensional groundwater flow and  
20 subsidence model). The three-dimensional model would link:

21 . . . the areal and vertical distribution of pumpage to water level fluctuations and then  
22 the ultimate deformation that occurs in the aquifer system. . . We’ve been working  
23 mostly on this link between water level fluctuation and deformation. The model will,  
24 then, now take us from that to include pumpage, how it affects water level  
25 fluctuations, and then how the water level fluctuations affect deformation.

26 (RT at pp. 99-100)

27 Mr. Malone also discussed expanding the investigation of subsidence, initially via  
28 monitoring, to the central region of MZ1, including the installation of water level transducers in  
existing wells. (RT p. 107) Mr. Malone characterized as speculative the potential need to construct  
a new monitoring facility or facilities in the central region, including a multi-piezometer and/or  
extensometer. (RT at p. 102) He clarified that ground-level survey data, InSAR data, and water-  
level data should be collected in the central MZ1 area before any conclusion would be reached on

1 the need for piezometers or an extensometer. (*Id.*) Expansion of the subsidence investigation into  
2 the central region of MZ1 is prompted by the observation of some historical subsidence in the area,  
3 confounded to some degree by the lack of any known local pumping in the immediate subsidence  
4 area. (RT at pp. 76, 80, 83-84, 87)

### 5 **C. Long-Term Plan Schedule**

6 There was not extensive discussion at the workshop on either a long-term plan or a schedule  
7 for completion of a plan. Mr. Malone indicated that InSAR surveys and ground surveys will be  
8 conducted in both fall 2005 and spring 2006. (RT at p. 104) The modeling would be completed in  
9 the spring of 2006, with a modeling report to follow that summer. (*Id.*) Mr. Wildermuth responded  
10 to a question regarding scheduling by indicating that several more years of studies and model  
11 development and analysis would be required, followed by 12 months to reach an agreement on a  
12 long-term plan. (RT at p. 109) This timing is consistent with the discussion in the 2002 workshop.  
13 At that workshop, in response to the question of how long it would take to start developing a long-  
14 term plan given optimal agreement by all parties, Mr. Wildermuth stated that he thought it would  
15 take three to five years (2002 Workshop Transcript at page 101.) Mr. Slater also clarified at the 2002  
16 workshop that Mr. Wildermuth's three to five years were for the "data development side" and that  
17 "the business deal probably follows soon thereon, and one would expect maybe twelve months to  
18 wrap that piece up." (2002 Workshop Transcript at p. 103.)

## 19 **V. RECOMMENDATION OF SPECIAL REFEREE**

### 20 **A. Preparation of a Summary Report on MZ1 Technical Work**

21 A substantial body of technical work has been completed in the southern MZ1 area.  
22 However, conclusions are still preliminary:

23 . . . With our stress-strain diagram . . . we're seeing that these head declines can  
24 induce permanent compaction. But again this is a preliminary conclusion because  
25 it is still pending fully recovered water levels. We're waiting for those water levels  
to be fully recovered to see if any inelastic compaction did occur over the last  
pumping season.

26 (RT at p. 95) When sufficient time has elapsed for water levels to have fully recovered, it is our  
27 view that a summary report on all of the work presented at the workshop would be extremely helpful.  
28 Even though no modeling has been completed, there appear to be sufficient data to conclude that



1 | there is a threshold depth to water that, if crossed, will likely lead to new inelastic compaction and  
2 | subsidence and ground fissuring. That information should be made available to the parties in a  
3 | summary report as soon as possible. Based on Mr. Malone's presentation, it should be feasible to  
4 | prepare such a report by the middle of August. When the three-dimensional model is prepared, a  
5 | modeling report will be written. In the meantime, there are important data and preliminary findings  
6 | that can be made available very soon that will be of immediate use to the pumpers within MZ1.

7 |         A further recommendation related to a summary report is that the summary report should also  
8 | address the other potential causes of subsidence and fissuring that have been suggested in the past.  
9 | If any of those items cannot be readily addressed, then the summary report should recommend how  
10 | they will be addressed. While the detailed monitoring and testing has been substantial, they have  
11 | not apparently addressed whether subsidence and fissuring might have been partially the result of  
12 | mechanisms other than deep groundwater pumping. The continuing possibility that other  
13 | mechanisms may also be responsible for subsidence is a potential impediment to development of the  
14 | long-term plan.

15 |         As part of this discussion, the summary report should discuss any information related to  
16 | whether any significant subsidence predated the notable subsidence and fissuring since the early  
17 | 1990's, and should describe the historical surveying investigation commissioned by Watermaster to  
18 | address that issue. An important outstanding question is whether any pre-1990's subsidence that  
19 | may have occurred correlates with, or can be attributed to, the large historical changes in  
20 | groundwater levels that predated the Judgment.

21 | **B. Watermaster Issuance of Guidance Criteria.**

22 |         Near the close of the workshop, there was some discussion of what would be included in a  
23 | long-term plan, including possibly expanding the study area to include the central MZ1 region. (RT  
24 | at pp. 123 *et seq.*) The concept of a long-term MZ1 management plan has been part of the  
25 | Watermaster program since it was first articulated in 1999 in the Optimum Basin Management  
26 | Program Phase 1 Report. A long-term management plan was to be formulated during the interim  
27 | plan period, and would be based on investigations, monitoring programs and data assessment. It  
28 | would be adaptive in nature. The workshop discussion noted that the technical work that has been

1 done and that will be done will form the basis for a long-term plan. Mr. Wildermuth indicated that:

2 . . . we haven't felt until very recently, last maybe six or eight months, that we were  
3 at a point where we are getting close to coming up with conclusions from which we  
4 could build a plan on, pull the parties together and talk about their deal making to  
5 implement a plan.

6 (RT at p. 125) As discussed, above, however, development of a long-term plan itself does not appear  
7 to be imminent.

8 In response to questions regarding the possibility of phasing the long-term plan, Mr.  
9 Wildermuth discussed the option of bifurcating the “. . . southern and central portion, try to get the  
10 southern portion going, and then based on the interests of the stakeholders, do something in the  
11 central area.” (RT at p. 125) Mr. Wildermuth also suggested that Watermaster's long-term plan  
12 could range from being “guidance information” to something more aggressive. (RT at p. 108)

13 The concept of providing guidance criteria is a compelling one. It appears, based on the  
14 presentation at the workshop, that Watermaster can very soon alert pumpers in the southern MZ1  
15 area that there is a substantial risk that lowering water levels to below approximately 250 to 260 feet  
16 below ground surface will result in new inelastic compaction and subsidence. This type of  
17 information should formally be made available to the parties as soon as possible, presumably as soon  
18 as a summary report on the MZ1 technical work is completed. The guidance criteria would be issued  
19 by Watermaster in a timely fashion, to be followed by the long-term plan development which  
20 necessarily will require a longer period to complete.

### 21 C. Long-Term Plan and Schedule

22 It is incumbent upon Watermaster now to request that the court extend the period for  
23 completion of a long-term plan for MZ1. The overall testimony indicated that several more years  
24 of technical and modeling work will be required, followed by approximately a year of negotiations  
25 among the parties. The Watermaster should propose a schedule to the court which takes into account  
26 the continuation of data collection and modeling work in the main MZ1 area as well as technical  
27 work in the central MZ1 area. A date should be established for completion of a long-term plan.

28 Whether the long-term plan is ultimately characterized as a management plan is an issue for  
the parties to address. Based on presentation and discussion at the workshop, it is clear that, at the

1 very least, an ongoing monitoring program by Watermaster will be required so that the parties have  
2 full and sufficient information available to them to inform their decisions.

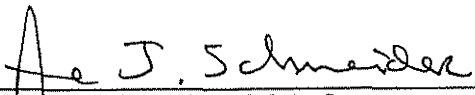
3 **D. Expanded Monitoring in MZ1**

4 The presentation at the workshop, while focused on monitoring and studies in the southern  
5 MZ1 area, indicated that some monitoring work can and should be done in the central MZ1 area,  
6 including installation of transducers in wells, and ground and InSar ground-level monitoring. More  
7 costly and complex efforts involving piezometers and an extensometer would logically be held in  
8 abeyance pending assessment of data collected. A phased long-term plan could include provision  
9 for central MZ1 monitoring work and studies, with future efforts considered and scheduled on an  
10 as-needed basis, while more definitive conclusions are drawn in the southern MZ1 area based on the  
11 extensive work already focused in that area. As noted above, the central MZ1 area appears to  
12 warrant additional investigation in light of detectable subsidence in spite of no significant pumping  
13 stress in the immediate subsidence area. Such additional investigation would also appear important  
14 in light of the overall concept of basin reoperation and hydraulic control, which could result in  
15 locally lower groundwater levels in parts of the basin.

16 **VI. CONCLUSION**

17 The workshop was very productive. Mr. Malone's presentation was excellent. The  
18 Watermaster does not require court approval to direct the preparation of a summary report on the  
19 MZ1 technical work or to issue guidance criteria. The Watermaster, however, should file with the  
20 court a motion for an order to set a schedule for the completion of a long-term plan.

21 Dated: June 16, 2005

22  
23   
24 Anne J. Schneider, Special Referee

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, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On June 21, 2005 I served the following:

**Special Referee's Report on Progress Mad on Implementation of the Watermaster Interim Plan for Management of Subsidence**

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:**  
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 June 21, 2005 in Rancho Cucamonga, California.

  
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