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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 CHINO BASIN MUNICIPAL DISTRICT

11 Plaintiff,

12 vs.

13 CITY OF CHINO, ET AL.

14 Defendant.
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Case No. RCV 51010

[Assigned for All Purposes to the Honorable
MICHAEL GUNN]

**NOTICE OF MOTION AND MOTION IN
SUPPORT OF MOTION TO RE-APPOINT
THE NINE-MEMBER BOARD FOR A
FUTHER FIVE YEAR TERM; MOTION
TO RECEIVE AND FILE STATE OF THE
BASIN REPORT**


Hearing Date: February 9, 2006
Time: 2:00 P.M.
Department: 8

20 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

21 **PLEASE TAKE NOTICE** that on February 9, 2006, at 2:00 p.m., or as soon thereafter as
22 the matter can be heard, at 8303 Haven Avenue, Rancho Cucamonga, CA 91730.

23 This motion is based upon this Notice, Memorandum of Points and Authorities, Declaration
24 of Michael T. Fife and on other matters in this action.

25
26 DATE: January 11, 2006

27 
28 **HATCH & PARENT**
Scott S. Slater
Michael T. Fife
Attorneys for Chino Basin Watermaster

NOTION OF MOTION

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9 **FOR THE COUNTY OF SAN BERNARDINO**

10 CHINO BASIN MUNICIPAL DISTRICT

11 Plaintiff,

12 vs.

13 CITY OF CHINO, ET AL.

14 Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the Honorable
MICHAEL GUNN]

**DECLARATION OF MICHAEL FIFE IN
SUPPORT OF MOTION TO RE-APPOINT
THE NINE-MEMBER BOARD FOR
FURTHER FIVE YEAR TERM; MOTION
TO RECEIVE AND FILE STATE OF THE
BASIN REPORT**

Hearing Date: February 9, 2006
Time: 2:00 P.M.
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20 I Michael Fife under penalty and perjury:

- 21 1. I am an attorney with the law firm of Hatch and Parent licensed to practice law in the
22 State of California.
- 23 2. The Law firm of Hatch and Parent serves as general counsel to the Chino Basin
24 Watermaster.
- 25 3. I have served as general counsel for the Chino Watermaster since February 2000 and
26 am readily familiar with the practices and procedures of all Watermaster Committees and the Board.
- 27 4. The Watermaster Pool Committees, Advisory Committee, and Board considered this
28 motion at their December meetings, and directed legal counsel to file this motion.

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2 5. At its December 15, 2005 meeting the Watermaster Board committed to form a
3 committee to investigate and make recommendations concerning the issue of Watermaster
4 governance by December 31, 2007.



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MICHAEL T. FIFE

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 CHINO BASIN MUNICIPAL DISTRICT

11 Plaintiff,

12 vs.

13 CITY OF CHINO, ET AL.

14 Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the Honorable
MICHAEL GUNN]

**POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO RE-APPOINT
THE NINE-MEMBER BOARD FOR A
FURTHER FIVE YEAR TERM; MOTION
TO RECEIVE AND FILE STATE OF THE
BASIN REPORT**

Hearing Date: February 9, 2006

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20 **I.**

21 **INTRODUCTION**

22 On February 19, 1998, the Court appointed a nine-member Board consisting of
23 representatives from the Overlying (Agricultural) Pool, the Overlying (Non-Agricultural) Pool, the
24 Appropriative Pool, and three municipal water districts to serve as Interim Watermaster for the
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1 through 10 in accordance with the schedule set forth [in the Order] . . .; and (4) Inclusion in such
2 reports of schedule and budget information essentially in a form equivalent to Exhibit "E" and Table
3 4-14 of the Phase I Report; and (5) Watermaster cooperation in the independent assessment and
4 verification of the data included in Reports Nos. 1 through 10 to be provided to the Court by the
5 Special Referee and her technical expert." (September 28, 2000 Order p.6.)
6

7 **A. SATISFACTION OF INITIAL CONDITIONS OF APPOINTMENT**

8 Watermaster has fulfilled all of the Court's five conditions of appointment:

9 1. The terms and condition applicable to the purchase of desalted water were resolved
10 through an agreement known as the Integrated Chino Arlington Desalter Term Sheet and the
11 subsequent formation of the Chino Desalter Authority. Based on this, Western Municipal Water
12 District rescinded its conditional execution of the Peace Agreement on April 25, 2001, by way of
13 Western Resolution 2162. Watermaster submitted this resolution to the Court on September 19,
14 2001.
15

16 2. The Court approved a revised Watermaster Rules and Regulations on July 19, 2001.

17 3. Watermaster has exceeded the requirement to file 10 bi-annual OBMP status reports
18 and since the beginning of 2003 has been filing quarterly status reports. Watermaster has completed
19 a total of 15 such status reports.
20

21 4. Inclusion of schedule and budget information in a form equivalent to that on Exhibit
22 E, Table 4-14 of the Phase I Report has been provided to the Special Referee and the Court
23 periodically and in a satisfactory manner. As the years have passed, the format of this information
24 has departed from the original dictates of the Court, but Watermaster has remained responsive to the
25 expectations of the Special Referee and the Court.
26

27
28 (5) years. The Court will by subsequent orders provide for successive terms or for a successor
Watermaster."

1 5. Watermaster has cooperated in the independent verification of the data included in
2 OBMP status reports through periodic meetings between Watermaster staff and consultants and the
3 Special Referee and the Court's Technical Advisor.
4

5
6 **B. ADDITIONAL CONDITIONS OF RE-APPOINTMENT**

7 As described above, when the nine-member Board was extended for a full five-year term, the
8 Court stated broadly that, "[t]he OBMP progress reports, together with independent assessment of
9 OBMP implementation status, including verification of data to be provided by the Special Referee
10 and her technical expert, will be the basis for consideration of continuing the appointment."
11 (September 28, 2000 Order, p.4.)

12 However, in addition to this broad statement of the basis for continuing the appointment of
13 the nine-member Board, the Court also guidance on specific elements of the OBMP that it would
14 closely consider. "The Court hereby gives notice to the parties that a primary concern of the Court in
15 any future application for reappointment of the nine-member board will be the parties' continued
16 commitment to provide for future desalters and preserve safe yield in accordance with the OBMP."
17 (September 28, 2000 Order p.5.) "The parties are forewarned that any future application for
18 reappointment of the nine-member board may be conditioned on the development of a detailed plan
19 to reach the OBMP goal of 40,000 acre-feet per year of desalting capacity to be installed in [the]
20 southern part of the Basin by 2020." (September 28, 2000 Order p.7.)
21

22 At the September 28, 2000 hearing, the Court also provided additional guidance on the
23 factors that would be relevant to the consideration of re-appointment:
24

- 25 "1. All production meters will be installed;
26 2. Basin monitoring will be completely in place and will have been the basis for the
27 semi-annual reports specified in my Order;
28

1 3. The Recharge Master Plan will be complete and appropriate recharge facilities will
2 have been installed; and

3 4. The OBMP Desalter I Expansion and Desalter II will be installed and operational,
4 with demonstrated delivery of desalter water for municipal use in the Basin.”

5
6 (Handout re September 28, 2000 Order from Court to Watermaster General Counsel and
7 memorialized at the Court’s direction in the September 28, 2000 Notice of Entry of Order.)

8 **C. SATISFACTION OF ADDITIONAL CONDITIONS OF RE-APPOINTMENT**

9 Pursuant to Order of the Court dated November 15, 2001, Watermaster was to prepare an
10 Initial State of the Basin Report and a State of the Basin Report. The Initial State of the Basin Report
11 was prepared in October 2002. In July 2005, Watermaster completed its State of the Basin Report
12 which provides a comprehensive analysis of Watermaster’s management of the Chino Basin and
13 status of OBMP implementation. A copy of the State of the Basin Report is attached to this pleading
14 as Exhibit “A.” As a part of the present Motion, Watermaster respectfully requests the Court to
15 receive and file the State of the Basin Report.
16

17 The State of the Basin Report provides the information necessary to be responsive to the
18 Court’s additional conditions of re-appointment:

19 1. Watermaster’s State of the Basin Report describes the installation of meters as
20 follows: “As of June 1, 2005, Watermaster counted about 530 active agricultural wells. About 390 of
21 these wells are now equipped with operating inline flow meters. Watermaster has budgeted to install
22 meters on 30 additional wells during the fiscal year 2005-06. Of the approximately 110 unmetered
23 wells remaining, approximately 65 are wells producing less than 10 acre-feet per year. The other 45
24 wells are anticipated to become inactive within 18-24 months because of urban development in the
25 southern portion of Chino Basin.” (State of the Basin Report 3-2.)
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1 2. Under OBMP Program Element 1, Watermaster has developed numerous monitoring
2 programs. The accomplishments of these programs are described in detail in the State of the Basin
3 Report.

4 In summary, Watermaster has programs to monitor groundwater level, groundwater
5 production, and artificial recharge. These three programs are described in chapter 3 of the State of
6 the Basin Report. Watermaster also monitors water quality throughout the Basin and these efforts are
7 described in chapter 4 of the State of the Basin Report. Watermaster conducts ground level
8 monitoring and these efforts are currently focused on MZI subsidence issues. The ground level
9 monitoring activities are described in chapter 5 of the State of the Basin Report. Watermaster closely
10 monitors activities at all of the recharge basins and these activities are described in chapter 6 of the
11 State of the Basin Report. Finally, Watermaster conducts detailed monitoring of the condition of
12 hydraulic control, which is the relationship between the groundwater basin and the surface water of
13 the Santa Ana River. This program is described in chapter 8 of the State of the Basin Report and in
14 the May 2004 Hydraulic Control Monitoring Program Final Workplan. The project described in the
15 Hydraulic Control Monitoring Program Final Workplan consisted of the construction of nine wells at
16 an estimated cost of \$1,500,000 (State of the Basin 9-5).

17
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19 3. The parties completed the Recharge Master Plan Phase II Report in August 2001. The
20 Recharge Master Plan described a series of recharge basin improvements that would enhance the
21 water supply of the Basin through the ability to capture more stormflow. Because of the magnitude
22 of the project, the Recharge Master Plan recommended a phased approach to implementation.
23 However, the parties decided that given the importance of the project that implementation should
24 move forward as quickly as possible. The full project was a \$40 million series of construction
25 activities that were completed in the fall of 2004.
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1 The project is anticipated to be fully operational for the 2006 storm season. Based on lessons
2 learned during the 2004-2005 storm season, further refinements to the recharge basins are being
3 developed.

4 4. In 2001, the parties created a Joint Powers Agency known as the Chino Desalter
5 Authority to own and operate the Chino Basin Desalters. The progress of the desalters is reported in
6 great detail in chapter 9.2 of the State of the Basin Report. According to the April 2005 CDA
7 Progress Report, the expansion of the Chino I Desalter and the construction of Chino II are estimated
8 to be complete by February 2006.
9

10 **D. CONDITIONALITY REGARDING WATERMASTER'S REQUEST FOR**
11 **REAPPOINTMENT**

12 This Motion, and the issue of Watermaster governance, has been a subject of extensive
13 discussion between the parties. The Motion was presented to the Pool Committees, the Advisory
14 Committee and the Board at their December meetings. The Motion was unanimously approved for
15 filing by all committees and the Board, and Watermaster is unaware of any present opposition to the
16 re-appointment of the Board. However, as a condition of its approval of the Motion, the Board
17 included a commitment to establish a committee to review and recommend whether changes to the
18 Watermaster governance structure, including composition of the Board and clarification regarding
19 the roles and functions of the various committees and the Board, are necessary. The committee will
20 provide its report no later than December 31, 2007. Logistical matters associated with this
21 committee, including size of the committee and membership, have been left for future discussion by
22 the parties and direction from the Board at a later date.
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III.

MOTION FOR RE-APPOINTMENT

Based on all of the forgoing, Watermaster respectfully requests the Court to re-appoint the nine-member Watermaster Board for another five-year term beginning February 9, 2006 and ending February 9, 2011, acknowledging the Board's commitment to convene a committee which will make recommendations concerning Watermaster governance issues by December 31, 2007.

Dated: January 11, 2006

By: 
HATCH & PARENT
Scott S. Slater
Michael T. Fife
Attorneys for Chino Basin Watermaster

State of Basin Report and Appendix

Refer to our ftp site: cbwm.org/ftp

EXHIBIT 'A'

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

On January 12, 2006, I served the following:

- 1) NOTICE OF MOTION FOR IN SUPPORT OF MOTION TO RE- APPOINT THE NINE MEMBER BOARD FOR A FURTHER FIVE YEAR TERM : MOTION TO RECEIVE AND FILE STATE OF THE BASIN REPORT
- 2) POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO REPAPPOINT THE NINE MEMBER BOARD FOR A FURTHER FIVE YEAR TERM; MOTION TO RECCEIVE AND FILE STATE OF THE BASIN REPORT
- 3) DECLARATION OF MICHAEL FIFE IN SUPPORT OF MOTION TO RE-APPOINT THE NINE MEMBER BOARD FOR FURTHER FIVE YEAR TERM; MOTION TO RECEIVE AND FILE STATE OF THE BASIN REPORT

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 January 12, 2006 in Rancho Cucamonga, California.


PAULA S. MOLTER
Chino Basin Watermaster

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