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FEE EXEMPT

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

JAN 24 2006

BY Mary Vargas DEPUTY

6 SPECIAL REFEREE

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)
14)
15)
16)
17)

Plaintiff,)
v.)
THE CITY OF CHINO,)
Defendants.)

CASE NO. RCV 51010
Judge: Honorable J. Michael Gunn
SPECIAL REFEREE'S COMMENTS
AND RECOMMENDATIONS
CONCERNING MOTION TO RE-
APPOINT THE NINE-MEMBER
BOARD FOR A FURTHER FIVE-
YEAR TERM
Date: February 9, 2006
Time: 2:00 p.m.
Dept: 8

18 I. WATERMASTER MOTION

19 The 1978 Judgment specifies, at paragraph 16, that the Court will provide for successive
20 Watermaster terms or for a successor Watermaster. Watermaster has filed a motion requesting the
21 Court "... to re-appoint the nine-member Watermaster Board for another five-year term beginning
22 February 9, 2006, and ending February 9, 2011." (Motion to Re-Appoint the Nine-Member Board
23 for a Further Five-Year Term, p. 6 ("Motion").) The Special Referee presents this report and
24 recommendation on the Motion. It is recommended that any comments or objections to this report
25 be filed no later than Tuesday, January 30, 2006, and any responses to objections be filed no later
26 than Monday, February 6, 2006.

27 It is reported in the Motion that the Pool Committees, the Advisory Committee, and the
28 Watermaster Board unanimously approved filing of the motion. (Motion, p. 7.) It is also reported

1 that “. . . Watermaster is unaware of any present opposition to the re-appointment of the Board.”
2 (*Id.*) At the same time, however, it is explicitly noted that: “This Motion, and the issue of
3 Watermaster governance, has been a subject of extensive discussion between the parties.” (*Id.*) The
4 extent and scope of the discussion between the parties is not reflected in the Motion, but
5 Watermaster requests that the Court “. . . acknowledge the Board’s commitment to convene a
6 committee which will make recommendations concerning Watermaster governance issues by
7 December 31, 2007. (*Id.* at p. 8.) It appears from the Motion that changes in Watermaster
8 governance are contemplated: The committee is to “review and recommend whether changes to the
9 Watermaster governance structure, including composition of the Board and clarification regarding
10 the roles and functions of the various committees and the Board, are necessary.” (Motion, p. 7.)

11 The Court’s Order Concerning Motion to Extend Nine-Member Board (September 28, 2000)
12 made the appointment of the Nine-Member Board as Watermaster subject to certain conditions,
13 noting: “The failure of any one of these conditions shall be considered by the Court as a compelling
14 reason to reconsider the appointment of a nine member board.” (Order at p. 5.) Watermaster states
15 that it has fulfilled all of the Court’s initial and additional conditions of appointment. Watermaster
16 lists the initial conditions of re-appointment: report on the status of Watermaster’s efforts to resolve
17 terms and conditions related to the purchase of desalted water and to secure the rescission of Western
18 Municipal Water District’s conditional execution of the Peace Agreement; adoption of Watermaster
19 Rules and Regulations; filing of OBMP Status Reports;¹ provision of OBMP schedule and budget
20 information to the Special Referee and Court; and cooperation in the independent verification of data
21 included in OBMP Status Reports. (Motion at pp. 2 *et seq.*) Watermaster recounts that additional
22 conditions of re-appointment include a broad condition and specific conditions. The broad condition
23 is that “OBMP progress reports, together with independent assessment of OBMP implementation
24 status including verification of data to be provided by the Special Referee and her technical expert,
25 will be the basis for consideration of continuing the appointment.” (Motion at p. 4, quoting from
26

27 ¹Status Report No. 15 was due on September 30, 2005. It appears that the report was
28 submitted to the committees and Board for approval, but it is not clear that the report has been filed
with the Court.

1 September 28, 2000 Order at p. 4.) The specific additional re-appointment conditions include:
2 installation of all production meters; basin monitoring; completion and implementation of the
3 Recharge Master Plan; Desalter I expansion and Desalter II installation and operation; and “. . .
4 continued commitment [of the parties] to provide for future desalters and preserve safe yield in
5 accordance with the OBMP.” (Motion at p. 4, quoting from September 28, 2000 Order at p. 5.)
6 Watermaster notes that as to that final specific additional condition, the Court added:

7 The parties are forewarned that any future application for reappointment of a nine-
8 member board may be conditioned on the development of a detailed plan to reach the
9 OBMP goal of 40,000 acre-feet per year of desalting capacity to be installed in [the]
10 southern part of the Basin by 2020.

11 (Motion at p. 4, quoting September 28, 2000 Order at p. 7.)²

12 Watermaster describes the actions it has taken to satisfy the “initial” conditions of
13 appointment. (Motion at pp. 3 *et seq.*) As to the additional conditions of re-appointment,
14 Watermaster’s Motion relies on the State of the Basin Report attached to the Motion as Exhibit A
15 (“Chino Basin Optimum Basin Management Program, State of the Basin Report – 2004” (July 2005)
16 prepared by Wildermuth Environmental Inc. [“SOBR-2004”]). Watermaster’s Motion states that
17 SOBR-2004 describes installation of meters, numerous monitoring programs, completion of the
18 Recharge Master Plan Phase II Report and installation of the Recharge Water Plan facilities, and that
19 the “. . . progress of the desalters is reported in great detail in chapter 9.2. . .” (Motion at p. 7.) The
20 discussion of monitoring notes that: “. . . Watermaster conducts detailed monitoring of the condition
21 of hydraulic control, which is the relationship between the groundwater basin and the surface water
22 of the Santa Ana River.” The Motion is silent as to what the “progress of the desalters” is other than
23 to refer to SOBR-2004. In effect, Watermaster’s Motion relies exclusively on its SOBR-2004 and
24 provides no substantive additional information or explanation as to the adequacy of Watermaster’s
25 efforts to meet the additional conditions of re-appointment regarding future desalters, reaching the
26 goal of 40,000 acre-feet per year (or 40 mgd) of total desalting capacity, preserving basin safe yield,

27
28 ²The September 28, 2000 Order included substantial discussion of future desalters in addition
to the “parties are forewarned” excerpt quoted in Watermaster’s Motion. See Section IV, below.

1 and achieving hydraulic control (other than to monitor the “condition of hydraulic control”).³

2 **II. HISTORY OF WATERMASTER APPOINTMENTS**

3 Chino Basin Municipal Water District (now Inland Empire Utilities Agency [“IEUA”]) was
4 the first Watermaster appointed under the Judgment. Chino Basin Municipal Water District served
5 as Watermaster until April 29, 1997, when the California Department of Water Resources (“DWR”)
6 was appointed as Interim Watermaster, and the Special Referee was asked to consider and prepare
7 a report on a motion to appoint an independent nine-member board as Watermaster. The
8 Watermaster and Advisory Committee had until that time worked together without any reported
9 significant disagreement:

10 The parties appear to concur that the only time the Watermaster has disagreed with
11 the recommendation of the Advisory Committee has led to the current motion to
12 appoint the new Watermaster. . . The underlying issue that triggered the current
13 motion appears to have been the participation of the Watermaster in the question of
14 payment for the groundwater put through a “desalter” facility. [Footnote omitted]

15 (1997 Special Referee Report and Recommendation at p. 4.) It appears to have been generally
16 agreed that the dispute leading to the Motion to appoint the Nine-Member Board related to
17 replenishment water for the desalter. (*Id.*)

18 In the report filed with the Court on December 15, 1997, the Special Referee noted that DWR
19 had been appointed Interim Watermaster, but negotiations with the Department had not been
20 finalized, that the Chino Basin Municipal Water District continued to be recognized as the Interim
21 Watermaster, and that the Advisory Committee was acting as the *de facto* Watermaster. It was
22 further noted that:

23 . . . The fact that the Watermaster has not prepared the Optimum Basin Management
24 Program reflects systemic failure of the Judgment and its Physical Solution, and that
25 failure must weigh heavily in the decision to appoint a new Watermaster.

26 (Report and Recommendation of Special Referee to Court Regarding: (1) Motion for Order that
27 Audit Commissioned by Watermaster is Not a Watermaster Expense, and (2) Motion to Appoint a
28 Nine-Member Watermaster Board, dated December 12, 1997, pp. 31-32.) The recommendation was

29 ³There appears to be confusion between the use of a 40,000 acre-feet per year of desalting
30 capacity goal discussed in the Court’s 2000 Order and the 40 million gallons per day (mgd) number
31 used in SOBR-2004.

1 to appoint the Nine-Member Board as Watermaster for an interim two-year period during which
2 Watermaster was to prepare an Optimum Basin Management Program.

3 On February 19, 1998, the Court set aside its Order Appointing DWR as Interim Watermaster
4 and instead appointed a Nine-Member Board, consisting of representatives from the Overlying
5 (Agricultural) Pool, Overlying (Non-Agricultural) Pool, and the Appropriative Pool, and three
6 municipal water districts, to serve as Interim Watermaster from March 1, 1998, to June 30, 2000.
7 (Ruling dated February 19, 1998, p. 4.) The Court directed the Nine-Member Board to develop and
8 submit for approval an Optimum Basin Management Program ("OBMP"). (*Id.* at p. 10.)
9 Watermaster submitted the OBMP to the Court and the Court finally approved the OBMP, consisting
10 of the Phase I Report and Implementation Plan, subject to certain conditions precedent, on July 13,
11 2000. ("Order Concerning Adoption of OBMP", dated July 13, 2000.)

12 The current Nine-Member Board has served as Watermaster since September 28, 2000.
13 (Order Concerning Motion to Extend Nine-Member Board, September 28, 2000.) In that 2000
14 Order, the Nine-Member Board appointment was continued from the 1998 interim two-year
15 appointment. The term of the appointment ended on September 28, 2005. The Court granted
16 Watermaster's request for an extension of that appointment until February 9, 2006. (Order Granting
17 Motion to Schedule Board Reappointment Hearing and to Extend Term of Board until Hearing Date,
18 dated September 22, 2005.)

19 **III. WATERMASTER HAS COMPLIED WITH MOST CONDITIONS OF RE-**
20 **APPOINTMENT**

21 One of the key elements in the Implementation Plan for the OBMP is the development of a
22 comprehensive monitoring program. Watermaster has successfully implemented a comprehensive
23 monitoring plan for the basin. Watermaster has instituted three groundwater level monitoring
24 programs that are active. A key-well, water quality monitoring program has been implemented in
25 the southern portion of the basin. Watermaster now monitors, quarterly, most active agricultural
26 wells. Watermaster is monitoring surface water in recharge basins to characterize water quality, and
27 water levels are monitored in some recharge basins. Watermaster has developed a surface water
28 monitoring program for the Santa Ana River to determine if significant discharge of Chino Basin

1 groundwater to the river is occurring. Finally, Watermaster has begun a multi-faceted monitoring
2 program for MZ1, which was presented in detail at the Special Referee Workshop held on May 25,
3 2005.

4 Another key element in the OBMP Implementation Plan is the development of a Recharge
5 Master Plan. It is reported that the Phase II Recharge Master Plan was completed in August 2001.
6 It is also reported that a \$44 million facilities improvement project was undertaken, most of which
7 was completed in the fall of 2004. (SOBR-2004 at p. 6-5.) SOBR-2004 provides very detailed
8 information on geology and hydrogeology investigations and analysis, groundwater quality data
9 collection and related assessments, ground level monitoring, hydraulic control monitoring, and
10 describes the efforts to date to monitor basin recharge.

11 In general, the detailed discussion in SOBR-2004 of Watermaster monitoring programs
12 supports the conclusion that Watermaster has met the additional re-appointment conditions as to
13 basin monitoring. It is of concern, however, that the SOBR-2004 discussion of reported monitoring
14 activities also reveals that Watermaster has undertaken certain obligations which it describes only
15 in terms of monitoring and not in terms of substantive basin management decisions. For example,
16 SOBR-2004 includes a discussion of the Regional Water Quality Control Board ("RWQCB") Basin
17 Plan requirements:

18 The RWQCB required irrevocable commitments that ensure that Watermaster and
19 IEUA will take appropriate actions that are triggered by ambient water quality and
20 other time-certain conditions. These commitments are contained in the 2004 Basin
21 Plan Amendment. . . Failure to meet these commitments will cause the TDS and
nitrate objectives to revert back to the antidegradation objectives, and Watermaster
and IEUA will be required to mitigate TDS and nitrate loadings to groundwater based
on the antidegradation objectives back to 2004. . .

22 Watermaster and IEUA will initiate planning for expansion of the Chino Basin
23 desalting program called out in the OBMP in 2004 and have a plan completed and
adopted by the Court in 2005. . .

24 Watermaster and IEUA will monitor conditions in the southern Chino Basin to
25 determine the state of hydraulic control and will modify recharge, production and/or
26 treatment to ensure hydraulic control is maintained and the effects of temporary
losses of hydraulic control are mitigated. . .

27 The Basin Plan Amendment, as it pertains to managing the Chino Basin, is now in
28 effect.

1 (SOBR-2004 at pp. 7-9 *et seq.*) The implications of achieving hydraulic control are not clearly and
2 fully addressed, nor are the implications of not providing a desalter expansion plan to either the
3 Court or the RWQCB in 2005. Watermaster should be required to provide the Court with a complete
4 discussion and analysis of its actions with regard to hydraulic control operation of the basin as those
5 actions relate to requirements of the Judgment to implement the Physical Solution.

6 In addition, although Watermaster reports in the SOBR-2004 on recharge basin monitoring,
7 there is almost no discussion of Watermaster's efforts to replenish overproduction or to balance
8 recharge and "discharge" from the Basin. What little discussion there is (SOBR-2004 at pp. 9-6 *et*
9 *seq.*) is relegated to Chapter 9 of that document entitled "Summary of Other OBMP Activities". Of
10 note, that brief summary chapter appears to contain the only discussion of the meter installation
11 program (one paragraph on page 9-1), the desalter projects (discussed below), and the storage and
12 recovery and DYY programs (SOBR-2004 at pp. 9-3 *et seq.*). Watermaster should have made the
13 effort to extract from the extensive amount of data in SOBR-2004 the basic information the Court
14 requires to readily ascertain whether Watermaster has accomplished the tasks which it was charged
15 to perform as a condition of re-appointment.

16 **IV. WATERMASTER HAS NOT COMPLIED WITH CONDITIONS FOR RE-**
17 **APPOINTMENT AS TO FUTURE DESALTER CAPACITY AND RELATED**
18 **ISSUES**

18 Watermaster's Motion notes that the parties were "... forewarned that any future application
19 for re-appointment . . . may be conditioned on the development of a detailed plan to reach the OBMP
20 goal of 40,000 acre-feet per year of desalting capacity to be installed in [the] southern part of the
21 Basin by 2020." (Motion at p. 4, quoting September 28, 2000 Order at p. 7.) The Order included
22 substantial additional discussion of future desalters in addition to the "parties are forewarned"
23 excerpt:

24 The Court wants to particularly note that the Peace Agreement predicates any future
25 desalting capacity on a reevaluation of the need for additional desalting after the
26 earlier of ten years or the conversion of 20,000 acres of agricultural land. The Court
27 is mindful that while the parties to the Peace Agreement contemplated the
28 construction of future desalters and/or expansion of Chino I and/or Chino II
Desalters, there are no provisions in the Peace Agreement that effectively ensure that
they will be built. In effect, future desalters (and any expansions of the Chino I and
II Desalters) will be built "if and only if" funding from sources other than the Parties
can be secured. The OBMP (Phase I Report and Phase II Implementation Plan) calls

1 for some 40,000 acre-feet per year of desalting capacity to be installed in the southern
2 part of the Basin by 2020. The Court hereby gives notice to the parties that a primary
3 concern of the Court in any future application for reappointment of the nine-member
4 board will be the parties' continued commitment to provide for future desalters and
5 preserve safe yield in accordance with the OBMP.

6 SOBR at page 9-8 discusses groundwater production assumptions based on a modified
7 version of the water supply plan from the OBMP Implementation Plan, and Watermaster's associated
8 replenishment obligation. The latter was estimated "... using the following assumptions pursuant
9 to the Judgment and the Implementation Plan." The second assumption was:

- 10 • OBMP desalter capacity is increased from the current level of 8 million gallons
11 per day (mgd) in 2002/2003 to 40 mgd as per the water supply plan from the
12 Implementation Plan. Half of the production of the desalters will come from
13 decreased rising water and new induced recharge from the Santa Ana River.⁴

14 SOBR-2004 does not include any detailed discussion of how a 40 mgd (or 40 afa) desalter
15 capacity will be achieved, what the effect of using it will be, or how and whether replenishment
16 obligations will be met.⁵ SOBR-2004 states only that:

17 The locations and magnitude of recharge shown in Table 9-4 were based on the
18 requirements of the Peace Agreement to balance recharge and discharge in every area
19 and sub-area. This requirement must be met over a period of time, which was
20 assumed herein as a long-term requirement. Thus, in an individual season or year
21 there might not be a balance between recharge and discharge in an area, sub-area, or
22 the Basin.

23 Balancing recharge and discharge may be critical to the management of the
24 subsidence-prone area in MZ-1. . . In the rest of the Basin, replenishment would be
25 managed to maximize desalter replenishment from a combination of reduced rising
26 water to the Santa Ana River and increased streambed recharge from the Santa Ana
27 River.

28 Throughout the duration of the baseline scenario [2003/2004 through 2019/2020],
groundwater levels in the western part of the Chino Basin remain near or above the
fall 2001 groundwater levels. Groundwater levels in the other parts of Chino Basin
declined over the planning period [October 2003 through September 2028] to levels
that support decreased rising water to the Santa Ana River and increased streambed
recharge from the Santa Ana River. Groundwater levels declined the most in the

⁴This assumption is repeated at SOBR-2004 at p. 8-11. Both the Peace Agreement (§ 7.5)
and Watermaster's Rules and Regulations (§ 7.4) provide for replenishment of desalter pumping.

⁵SOBR-2004 Table 9-4 shows that replenishment obligations are based on a combination of
assumptions that recharge of additional stormwater will be 12,000 afa and "hydraulic control",
although not called that, will produce up to 24,602 afy of inflow from the Santa Ana River in 2028.
At that time, the "replenishment obligation" is shown to be 33,821 afa.

1 Fontana area – as much as 30 to 40 feet near the far eastern edge of the Fontana
2 area. . . The effect of the desalters is evident in the south central part of Chino Basin
where groundwater levels declined in excess of 25 feet.

3 The total storage in the Chino Basin declined monotonically during the baseline
4 scenario from a high of 5,940,000 acre-ft in the fall 2003 to 5,730,000 acre-ft in fall
5 2028 – a decline of about 210,000 acre-ft.⁶ Figure 9-6 shows the estimated
6 groundwater storage for the Chino Basin during the planning period. The modeling
results suggest that the total storage in the basin appears to be asymptotically
approaching a level near 5,700,000 acre-ft. This decline in storage is necessary to
induce the recharge of the Santa Ana River.

7 . . . There is no projected material physical injury to a party to the Judgment or to the
8 Chino Basin from the proposed recharge program in the baseline OBMP scenario.

9 . . . For the members of the Appropriative Pool, the added cost to production will be
10 more than offset by the savings provided by the avoided purchase of supplemental
11 water for desalter replenishment. . . Operating the Basin at this lower level avoids
the cost of purchasing about 24,600 acre-ft/yr of supplemental water at a cost of
about \$6 million if the replenishment water consists of State Water Project water and
about \$2 million if it consists of recycled water.⁷

12 (SOBR-2004 at pp. 9-8 *et seq.*)

13 Although terse, and not up-to-date, this description raises numerous questions and concerns.
14 Watermaster has declined to provide the Court with any discussion of the status of efforts to increase
15 desalter capacity to the approximately 40 afa – which has been a planning number for a considerable
16 time. Watermaster has not described for the Court the effects of the “decline in storage” (“about
17 210,000 acre-ft”) and changes in groundwater levels over the planning period which it only very
18 generally described in the above-quoted excerpt. Watermaster’s Motion refers to SOBR-2004
19 Chapter 9.2 as reporting “in great detail” on the “progress of the desalters.” (Motion at p. 7.)
20 SOBR-2004 provides essentially no discussion of future desalters.⁸

21 _____
22 ⁶The “decline of about 210,000 acre-ft” means, in effect, that the basin would be mined by
23 that amount of water by 2028, and that production in excess of operating safe yield would not be
replenished during that period to that extent.

24 ⁷SOBR-2004 does not address the Judgment implications of Watermaster not replenishing
25 for production over and above operating safe yield.

26 ⁸SOBR-2004 indicates that the CDA Chino I Desalter Expansion and Chino II Desalter
27 Project is estimated to be complete by February 2006. (SOBR-2004 at p. 9-1.) Watermaster does
28 not report on whether the project is on schedule. The SOBR also classifies Desalter III as
“potential”, noting that:

(continued...)

1 **V. THE COURT SHOULD RECEIVE AND FILE THE STATE OF THE BASIN**
2 **REPORT WITH DIRECTIONS AS TO FUTURE REPORTS**

3 The State of the Basin Report is a very detailed report primarily on the state of OBMP
4 implementation. It contains a substantial amount of useful information and analysis. The next State
5 of the Basin Report (“SOBR-2006”) is due to be filed with the annual report in July 2007.⁹

6 Special Referee and the Court’s technical expert have persistently expressed concerns about
7 SOBR-2004 and the initial State of the Basin Report. Special Referee provided comments on the
8

9 _____
10 ⁸(...continued)

11 [t]he southern appropriators are currently planning not to build Desalter III and,
12 instead, to construct new wells north of the high TDS and nitrate areas. All
13 appropriative pool producers are currently engaged in the Peace II process where
14 discussions are being held that will determine if Desalter III will be constructed.

15 Watermaster has not provided the Court with a detailed plan to reach the OBMP goal of 40,000 acre-
16 feet per year of desalting capacity. Watermaster needs to inform the Court whether the “baseline
17 OBMP scenario”, or some other scenario, represents its plan to reach the 40,000 afa goal for
18 desalting. With that clarification, Watermaster then needs to inform the Court whether the Desalter
19 I and II facilities will be operational in 2006, and how it plans to expand from that level of desalter
20 pumping to 40,000 afa. With the latter, Watermaster needs to inform the Court as to impacts
21 associated with its 40,000 afa desalting plan, e.g. replenishment obligations, resultant groundwater
22 levels and storage, and basin yield. Watermaster should tell the Court what is meant by “the avoided
23 purchase of supplemental water for desalter replenishment”.

24 ⁹SOBR-2004 contains data through 2003/2004 and reports on Watermaster “activity” through
25 fall 2004. (SOBR at p. 1-1.) Watermaster Rules and Regulations ¶ 2.21 require Watermaster to
26 prepare and make available an annual report which shall be filed on or before January 31 of each
27 year. On a biannual basis, the annual report shall include an engineering appendix which contains
28 a more specific “state of the basin” report including an “. . . update on the status of individual OBMP
related activities such as monitoring results and Watermaster’s analysis of Hydrologic Balance.”
Under ¶ 2.21, the next SOBR (“SOBR-2006”) would be due January 31, 2007, and will logically
cover data collection through 2005/2006 and Watermaster activity through fall 2006. However, see
paragraph 7.1(b)(iv) which requires that Watermaster:

29 Make its initial report on the then existing state of Hydraulic Balance by July 1, 2003,
30 including any recommendations on Recharge actions which may be necessary under
31 the OBMP. Thereafter Watermaster shall make written reports on the long term
32 Hydrologic Balance in the Chino Basin every two years. . .

33 Watermaster should revise its Regulations to make them consistent. It appears that SOBR-2006
34 should be due in July 2007.

1 initial State of the Basin Report. (“Special Referee’s Report and Recommendation Concerning
2 Supplemental Desalter Report, Supplemental OBMP Report, Watermaster’s 24th Annual Report, and
3 Initial State of the Basin Report”, February 25, 2002.) The main point in those comments was that
4 a true “state of the basin” report would select a baseline and compare changes in basin conditions
5 against that baseline as a way to assess the effectiveness of the OBMP as various program elements
6 are implemented. Specifically:

7 In order to document the “initial” state of the basin for the purposes described above,
8 an “initial” point in time needs to be selected, in this case at a point in advance of
9 actual OBMP activities that will change basin conditions, e.g., before OBMP
10 desalting, before additional recharge, etc. Once that “initial” time is selected, the
11 state of the basin conditions can be specifically described for that time. . . In simple
summary, once an “initial” point in time is selected, the question can be asked at the
end of each topic discussed in a draft report: “what is the state of the basin” at the
selected (“initial”) point in time? A conclusion should be added to each section to
briefly answer that question.

12 (Special Referee Report at p. 8.)

13 Similar comments were conveyed in mid-2005 directly by the Court’s technical expert to
14 Watermaster on SOBR-2004. It was recognized that SOBR-2004 does provide a large amount of
15 detail about conditions in the basin, but focuses almost exclusively on OBMP activities rather than
16 on the actual state of the basin. There is obviously a close relationship between the OBMP and the
17 state of the basin; however, Watermaster already provides status reports on OBMP activities. As
18 was noted for the initial State of the Basin Report, it would be more useful for the SOBR to focus
19 predominantly on the physical state of the basin.

20 The initial State of the Basin Report did not include a reconciliation of pumping and Safe
21 Yield. While there is discussion of pumping in SOBR-2004, there is again no reconciliation of
22 pumping with Safe Yield. It is also unclear whether total wet water recharge has kept pace with
23 increased production from the basin. It appears that wet water recharge, and most notably
24 replenishment, are significantly depressed since 2000/2001. Total replenishment over the previous
25 four years appears to be only about 4,000 acre-feet, despite aggregate pumping over the same time
26 exceeding Safe Yield by substantially more than that amount. (See SOBR-2004 at Table 3-1.) It is
27 essential that Watermaster clearly address the most fundamental of its original charges, that Safe
28 Yield be maintained or that overproduction be replenished. Left unexplained, SOBR-2004 can be

1 interpreted to show that Watermaster is not meeting that obligation. There is likely a rational
2 explanation that will reconcile production and replenishment, but that reconciliation is not included
3 in SOBR-2004, and has not otherwise been presented to the Court.

4 **VI. WATERMASTER SHOULD PROVIDE ADDITIONAL ASSURANCES AND**
5 **RECONCILIATION OF INFORMATION**

6 The Watermaster's reliance on SOBR-2004 leaves important questions unanswered. If the
7 Court determines to continue the appointment of the Nine-Member Board as Watermaster, certain
8 factors should be reconciled and there are certain assurances that should be provided to the Court.
9 Some of these can be prepared in a short amount of time with existing information and some will
10 likely require additional technical work and coordination among the parties.

11 **A. Three Months**

12 Given the importance of Watermaster complying with the Judgment to carry out the Physical
13 Solution, the Court should require a clear and thorough reconciliation of replenishment with total
14 pumping from the basin (including desalter pumping). Watermaster has an obligation under the
15 Judgment to replenish any production over and above operating safe yield. It needs to be clear that
16 Watermaster is now meeting and will continue to meet its Judgment obligation to replenish
17 overproduction. Watermaster should also provide a clear and thorough reconciliation of existing
18 recharge capability (including a discussion of water available for recharge) with projected total future
19 requirements for recharge capability and water available for recharge. In addition, Watermaster
20 should provide a reconciliation of agricultural land conversions and report to the Court how it will
21 handle any possible over-allocation resulting from the Peace Agreement provisions including the
22 provision for "early transfer". (Peace Agreement § 5.3(f), (g) and Rules and Regulations § 6.3.)
23 These reconciliations should be provided by Watermaster within three months.¹⁰

24 Also within a three-month period, Watermaster should provide assurances that it will comply
25 with the Peace Agreement provisions to apply the losses factor (two percent) as of January 1, 2006,
26

27 ¹⁰Watermaster prepared an "Unofficial Reference Version" of the Judgment (undated, circa
28 Attachment 1 describes the Judgment "Amendment Regarding Land Use Conversions", with
detailed tables. Watermaster should consider preparing an updated version of this attachment.

1 as required by the Peace Agreement (Peace Agreement § 5.2(xii)), and that it will continue its 50,000
2 acre-feet limit on accrual of carry-over and supplemental water in storage accounts also as required
3 by the Peace Agreement. (Peace Agreement § 5.2(b)(iv).) These requirements are set forth in the
4 Peace Agreement and have not been changed. Watermaster should report on the status of its actions
5 related to the 6500 afa MZ-1 replenishment obligation. (Peace Agreement at § 5.1(g).) There may
6 be additional Peace Agreement provisions which should be implemented.

7 Within the next three months, Watermaster should also be required to provide to the Court
8 the MZ-1 technical summary report and guidance criteria discussed at length in the Special Referee
9 “Report on Progress Made on Implementation of the Watermaster Interim Plan for Management of
10 Subsidence” (June 16, 2005). Watermaster is remiss in not filing a motion requesting that the
11 deadline for preparation of the long-term MZ-1 management plan be extended. Pursuant to the
12 Court’s 2002 Order, the long-term management plan was to be developed by fiscal year 2004/2005.
13 (“2002 Court Order”.)

14 The next OBMP status report is due March 31, 2006.

15 **B. Six Months**

16 A period of approximately six months is a reasonable period to allow Watermaster to prepare
17 additional submittals related to the key issue of additional desalter capacity. Not later than six
18 months from now, Watermaster should be required to provide the Court with a full discussion of
19 desalter capacity, particularly with regard to the requirement in the Court’s 2000 Order that
20 approximately 40,000 afa of desalter capacity should be developed by the parties. Also in that six-
21 month period, Watermaster should provide full technical and modeling analyses of desalter wellfield
22 design, location, and planned operations for review by the Special Referee and the Court’s technical
23 expert. Given the importance and potential ramifications of desalter pumping operations, full
24 documentation of all models used to support technical analysis should be provided. A full
25 explanation should be provided of all ramifications of alternative desalter scenarios, all hydraulic
26 control implications, and all outcomes including potential mining of the basin. In connection with
27 that analysis, full discussion should be provided regarding any potential Judgment modifications,
28 modifications to Watermaster’s Rules and Regulations, or to the Peace Agreement. This will

1 provide the "great detail" the Watermaster should have provided to the Court in support of its
2 Motion.

3 **C. Twelve Months**

4 Within twelve months, Watermaster should submit to the Court a long-term plan for MZ-1.
5 Postponement to allow collection of additional data and analysis of those data has been reasonable
6 to date, but there appears to be no reason why an MZ-1 long-term plan cannot be completed and
7 submitted to the Court within twelve months.

8 **VII. THE MOTION SHOULD BE CONSTRUED AS A REQUEST FOR RE-
9 APPOINTMENT FOR A TWO-YEAR TERM**

10 In a section on "Conditionality Regarding Watermaster's Request for Re-Appointment",
11 Watermaster implies that the Board was only allowed to file the motion because it committed to
12 establish a committee to review its own governance structure, which committee is to prepare a report
13 by December 31, 2007. The committee's charge will be:

14 . . . to review and recommend whether changes to the Watermaster governance
15 structure, including composition of the Board and clarification regarding the roles
16 and functions of the various committees and the Board, are necessary. The
17 committee will provide its report no later than December 31, 2007. Logistical
18 matters associated with this committee, including size of the committee and
19 membership, have been left for future discussion by the parties and direction from
20 the Board at a later date.

21 (Motion at p. 7.)

22 The current governance structure of the Watermaster Board was established by Court Order
23 dated February 19, 1998 ("1998 Ruling"). That ruling set forth that the Nine-Member Board would
24 consist of two members of the Overlying (Agricultural) Pool appointed by that pool, one member
25 from the Overlying (Non-Agricultural) Pool appointed by that pool, three members from the
26 Appropriative Pool appointed by that pool, one member appointed by the Board of Three Valleys
27 Municipal Water District, one member appointed by the Board of Western Municipal Water District,
28 and one member appointed by the Board of the Chino Basin Municipal Water District [now IEUA].
The 1998 Ruling further provided for staggered three-year terms, for rotation of appointments, and
for inclusion of the State of California in the rotation. No individual was to be allowed to serve
concurrently on the Watermaster Board and the Advisory Committee or Pool Committees (with the

1 exception of representatives from the Overlying (Non-Agricultural) Pool). In its 2000 “Motion to
2 Extend the Nine-Member Board for a Full Five-Year Term”, Watermaster requested that this nine-
3 member structure of the Watermaster Board continue in effect. In its 2000 Order, the Court
4 expressed concern with the City of Chino’s assertion that Court guidance was needed “with respect
5 to the establishment of ‘criteria, procedures and schedules for the rotation of Appropriative Pool
6 members’ serving on the nine-member board.” The parties reached a consensus on a rotation
7 schedule before the hearing on the motion.¹¹

8 Although the Watermaster’s Motion is to re-appoint “the Nine-Member Watermaster Board”
9 for a five-year term, it appears from the motion that significant changes are anticipated with regard
10 to Watermaster governance structure within two years. Because the governance structure of “the
11 Nine-Member Watermaster Board” has been established by the Court’s 1998 Ruling, it will require
12 a Court order to change the governance structure. For this reason, it would be appropriate to
13 interpret Watermaster’s Motion as a request for an interim re-appointment for two years, until such
14 time as the committee has completed its review.

15 **VIII. RECOMMENDATIONS**

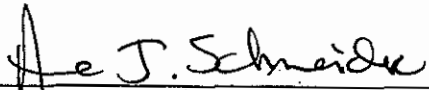
- 16 • It would be appropriate to construe Watermaster’s Motion as a motion for re-
17 appointment for two years.
- 18 • The Court cannot operate in a vacuum and needs additional information to oversee
19 the Judgment; re-appointment should be made conditional on Watermaster’s
20 providing certain reconciliations and assurances, as outlined in Section VI.
- 21 • Under the Peace Agreement , certain provisions were set to commence or expire as
22 of the end of 2005; the Court’s Order should reflect those provisions.
- 23 • The Court should direct Special Referee to conduct workshops with respect to the
24 issues to be addressed by Watermaster.
- 25 • The OBMP status reports have been helpful; Watermaster should be directed to
26

27 ¹¹Watermaster’s “Unofficial Reference Version” of the Judgment includes an “Attachment
28 2” which is the “Rotation Schedule for Representatives to Watermaster”. The attachment indicates
that it was “Approved by the Appropriative Pool September 26, 2000.”

1 continue to prepare regular six-month status reports and to file them with the Court
2 on a timely basis.

- 3 • The Court should receive and file the State of the Basin Report - 2004, with direction
4 to Watermaster as to the scope and emphasis of future reports.

5
6 Dated: January 20, 2006

7
8 
9 Anne J. Schneider, Special Referee

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January 20, 2006

San Bernardino County Superior Court, Department 8
8303 N. Haven Avenue
Rancho Cucamonga, CA 91730
Attn. Courtroom Clerk

Re: Chino Basin Municipal Water District v. The City of Chino
Case Number: RCV 51010

Dear Clerk of the Court:

Enclosed is the *Special Referee's Comments and Recommendations Concerning Motion to Re-Appoint the Nine-Member Board for a Further Five-Year Term*. One copy of the report is to be filed with the Court. The other copy is to be delivered to the Honorable J. Michael Gunn.

Under separate cover a copy of the report is being sent to Ken Manning, Chino Basin Watermaster Chief Executive Officer, with a request that copies of the report be sent to all parties, persons and entities included on Watermaster's service list. Mr. Manning will also be asked to file a proof of service with the Court.

Thank you for your assistance. If you have any questions, please call Ron O'Connor at (916) 447-2166.

Yours very truly,



Anne J. Schneider
Special Referee

AJS:rko
enc.

cc: Kenneth R. Manning
Scott Slater
Michael Fife
Joe Scalmanini
Judith Schurr

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 24, 2006 I served the following:

1) SPECIAL REFEREE'S COMMENTS AND RECOMMENDATIONS CONCERNING MOTION TO RE-APPOINT THE NINE-MEMBER BOARD FOR A FURTHER FIVE-YEAR TERM

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 24, 2006 in Rancho Cucamonga, California.



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