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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO
11 RANCHO CUCAMONGA DISTRICT

12 CHINO BASIN MUNICIPAL WATER)
13 DISTRICT,)

14 Plaintiff,)

15 v.)

16 CITY OF CHINO, *et al.*,)

17 Defendants.)

Case No. RCV 51010
Judge: Hon. J. Michael Gunn

MEMORANDUM OF CITY OF ONTARIO IN
SUPPORT OF MOTION OF WATERMASTER TO
REAPPOINT THE NINE-MEMBER BOARD FOR
A FURTHER FIVE-YEAR TERM AND
OBJECTIONS TO SPECIAL REFEREE'S REPORT
AND RECOMMENDATIONS

Date: February 9, 2006
Time: 2:00 p.m.
Dept: 8

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21 I. **THE COURT SHOULD RULE ON THE WATERMASTER'S MOTION AS**
22 **PRESENTED, NOT AS THE SPECIAL MASTER WOULD HAVE THE COURT**
23 **"CONSTRUE" IT**

24 Paragraph 16 of the 1978 Judgment states that this Court will provide for successive
25 Watermaster terms or for a successor Watermaster. In accordance with this provision, the Watermaster
26 has applied to this Court ". . . to re-appoint the nine-member Watermaster Board for another five-year
27 term beginning February 9, 2006, and ending February 9, 2011." (Motion to Re-Appoint the
28 Nine-Member Board for a Further Five-Year Term, p. 6 ("Motion").)



1 Notwithstanding the unambiguously plain meaning of the Motion, the Special Referee would
2 have this Court “construe” the Motion for a *five* year appointment as a request for a *two* year
3 appointment. “Special Referee's Comments and Recommendations Concerning Motion to
4 Re-appoint the Nine-member Board for a Further Five-year Term” (“Special Referee’s Comments”)
5 pages 14-15.

6 It is inconceivable that the Court would take the Special Referee’s suggestion, and plant in
7 the mouths of the Watermaster and its counsel a motion that they are obviously not making, and in
8 fact oppose. That the Special Referee would make such a disingenuous request of the Court should
9 properly cast doubt on the merits of the Special Referee’s position, a matter to which the City of
10 Ontario next turns.

11 **II. THAT THE WATERMASTER IS ENGAGED IN AN ONGOING REVIEW OF ITS**
12 **GOVERNING STRUCTURE, AND INDEED ALL ITS OPERATIONS, IS HARDLY A**
13 **BASIS TO TRUNCATE THE TERMS OF THE BOARD MEMBERS.**

14 The Special Referee commends to the Court a rejection of the Motion of the Watermaster, and a
15 reappointment of its Board for only a scant two year term on the flimsy basis that:

16 . . . it appears from the motion that significant changes are anticipated with regard to
17 Watermaster governance structure within two years. Because the governance structure of
18 “the Nine-Member Watermaster Board” has been established by the Court's 1998 Ruling,
19 it will require a Court order to change the governance structure. For this reason, it would
20 be appropriate to interpret Watermaster's Motion as a request for an interim
21 re-appointment for two years, until such time as the committee has completed its review.

22 Obviously, in advance of the committee’s review, it is wholly speculative what
23 recommendations will be made, if any. Further, it is speculative that the recommendations of the
24 members of the committee will be accepted at all, let alone in two years. Finally, it is speculative that
25 any motion will be before the Court after two years, let alone what this Court’s ruling will be with
26 respect to it.

27 Granting the motion before the Court in no way preempts the jurisdiction or ability of the
28 Court to make any ruling it wishes on any future motion that arises from the study of the committee.
The Special Referee does not even offer speculation as to why the rejection of the motion before the



1 Court would result in a more thoughtful or effective study.

2 Finally, it is ironic that the Watermaster would be punished by a truncation of the terms of its
3 members for wishing to study how its governance might be made more effective.

4 The special referee does not provide any reasoning for this recommendation except for the
5 obscure pronouncement that “[i]t would be appropriate.” (Special Referee’s Comments, page 15, line
6 16.)

7 **III. THE COURT SHOULD REJECT THE SPECIAL REFEREE’S CALL FOR THE**
8 **SPECIAL REFEREE TO CONDUCT “WORKSHOPS.”**

9 The special referee’s request that the terms of the Watermaster Board be truncated to two years
10 is coupled with a request that: “The Court should direct Special Referee to conduct workshops with
11 respect to the issues to be addressed by Watermaster.” (Special Referee’s Comments, page 15, lines 23-
12 24.)

13 The Special Referee provides no explanation at all as to why the Watermaster is incapable of
14 judicious consideration of the issues before it without the interposition of “workshops” conducted by the
15 Special Referee. The need for this is apparent chiefly to the Special Referee, who labors under a
16 financial conflict of interest in making this suggestion.

17 As this suggestion is coupled with the suggestion that the Court create a false urgency by the
18 truncation of the terms of the Board, it provides another reason to reject the Special Referee’s comment.

19 **IV. THE COURT SHOULD REJECT THE SPECIAL REFEREE’S MINIMIZATION OF**
20 **THE WATERMASTER’S SIGNIFICANT PROGRESS**

21 The City of Ontario joins in the response that the Watermaster will be filing to the Special
22 Referee’s comments concerning the commendable progress that the Watermaster has made.

23 Especially considering the difficulty of the task that the Watermaster has undertaken, its
24 successes have been remarkable. The \$50 million Recharge Master Plan, the dry year storage program
25 developed with the Metropolitan Water District, the over \$300 million committed toward desalting
26 facilities, the 25 million gallons per day of desalting capacity created, the imminent completion of the
27 Chino II desalter and other achievements, should have provoked applause from the Special Referee, but
28 instead evoked no reaction or minimization, coupled with a recommendation for expanding the role of



1 the Special Referee.

2 Instead, the Special Referee focuses upon ongoing tasks that are wholly within the discretion of
3 the Watermaster and its members. As the additional potential tasks were never ordered by the Court to
4 be undertaken, nor any particular action to be taken on them, the Special Referee's disdainful critique
5 that these measures are under consideration but not yet taken is baseless.

6 It is appropriate that the Court and the Watermaster be duly aware of the work that lies ahead,
7 but that is no reason to belittle the work that has been done, or to pronounce the distance that has been
8 traveled a failure.

9 V. **IF THE COURT HAS ANY INCLINATION TO ACCEPT THE BASELESS**
10 **RECOMMENDATIONS OF THE SPECIAL REFEREE, OR REQUIRES FURTHER**
11 **INFORMATION, THE CITY OF ONTARIO JOINS IN ASKING FOR A**
12 **CONTINUANCE ON THE MOTION**

13 The City of Ontario urges that the merits of the motion before the Court are self-evident, and
14 widely supported by the participants, who are best able to discern whether the process to which they are
15 lending their time and efforts is working. The Court should grant the motion now.

16 If the Court wishes more input, however, it should reject the call by the Special Referee for all
17 comments to have been made by "Tuesday, January 30, 2006," (which is incorrect, as that Tuesday is
18 January 31) and instead continue the hearing on the motion.

19 Dated: January 28, 2006

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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 29, 2006, I served the following:

- 1) **COMMENTS AND OPPOSITION TO SPECIAL REFEREE REPORT; DECLARATION OF MICHAEL FIFE IN SUPPORT OF OPPOSITION TO SPECIAL REFEREE REPORT;**
- 2) **MEMORANDUM OF CITY OF ONTARIO IN SUPPORT OF MOTION TO WATERMASTER TO REAPPOINT THE NINE-MEMBER BOARD FOR A FURTHER FIVE-YEAR TERM AND OBJECTIONS TO SPECIAL REFEREE'S REPORT AND RECOMMENDATIONS;**
- 3) **OBJECTIONS BY CUCAMONGA VALLEY WATER DISTRICT TO SPECIAL REFEREE'S REPORT 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

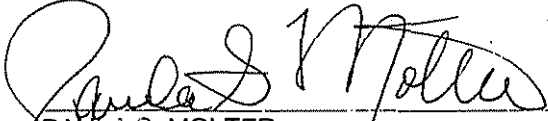
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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 29, 2006 in Rancho Cucamonga, California.



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