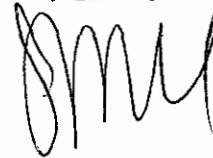


1 SCOTT S. SLATER (State Bar No. 117317)
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FILED - RENCIO Cucamonga District
SUPERIOR COURT
SAN BERNARDINO COUNTY

FEB 06 2006



5 Attorneys For
6 CHINO BASIN WATERMASTER

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO

10 CHINO BASIN MUNICIPAL DISTRICT

Case No. RCV 51010

11 Plaintiff,

[Assigned for All Purposes to the Honorable
MICHAEL GUNN]

12 vs.

13 TRANSMITTAL OF STIPULATION

14 CITY OF CHINO, ET AL.

Hearing Date: February 9, 2006

15 Defendant.

Time: 2:00 p.m.

16 Department: 8

HATCH AND PARENT
21 East Carrillo Street
Santa Barbara, CA 93101

17
18
19 On September 30, 2006, Chino Basin Watermaster ("Watermaster") filed its Comments and
20 Opposition to Special Referee Report. Cucamonga Valley Water District ("CVWD") and the City of
21 Ontario ("Ontario") also filed Oppositions to the Report. Both CVWD and Ontario both requested
22 that the Court continue the February 9, 2006 Hearing so that further briefing can take place.

23 Consistent with Watermaster original Motion to Re-Appoint the Nine-Member Board filed
24 January 12, 2006 and Watermaster's subsequent Opposition, Watermaster believes that timely
25 resolution of the Board re-appointment issue is in the best interests of all parties. For that reason,
26 Watermaster engaged in discussions with CVWD and Ontario with regard to the issues in their
27 filings.

28

TRANSMITTAL OF STIPULATION

1 Watermaster, CVWD and Ontario have entered into a Stipulation which is intended to allow
2 the Court to render a decision on Watermaster's Motion at the February 9, 2006 Hearing. This
3 stipulation is attached to this pleading as Exhibit "A."

4 Based on the terms of this stipulation, Watermaster respectfully requests the Court not to
5 continue the February 9, 2006 Hearing, and instead, at the Hearing to grant Watermaster's Motion to
6 Re-Appoint the Nine-Member Watermaster Board for a Further Five-Year Term until February 9,
7 2011.

8 Dated: ~~January~~ ^{February} 6, 2006

9 By: 

HATCH & PARENT

Scott S. Slater

Michael T. Fife

Attorneys for Chino Basin Watermaster

HATCH AND PARENT
21 East Conillo Street
Santa Barbara, CA 93101

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Exhibit "A"

STIPULATION

The parties to this Stipulation are Chino Basin Watermaster ("Watermaster"), Cucamonga Valley Water District ("CVWD"), and the City of Ontario ("Ontario").

WHEREAS, Watermaster filed a Motion on January 12, 2006 which requested the Court to grant a five-year reappointment of the nine-member Watermaster Board.

WHEREAS, the Special Referee filed a Report regarding Watermaster's Motion on January 21, 2006.

WHEREAS, Watermaster, CVWD, and Ontario each filed responses to the Referee Report on January 30, 2006.

WHEREAS, the responses by CVWD and Ontario each requested a 30-day continuance of the hearing.

WHEREAS, the parties desire the issue of the reappointment of the nine-member Board for another five-year term to be concluded on February 9, 2006.

NOW THEREFORE THE PARTIES TO THIS STIPULATION AGREE AS FOLLOWS:

1. The Court hearing should occur on Thursday, February 9, 2006 without further pleadings among the parties hereto or a continuance.
2. The Court should appoint the 9-Member Board for a five-year term.
3. The Referee and her Technical Assistant are welcome invitees to future Watermaster administered Workshops on the Peace II Process, the plan for Future Desalters and related activities, subject to proper notification being provided by the Watermaster to the parties that the Special Referee and her Technical Assistant will be in attendance. Such attendance by the Referee and her Technical Assistant would be deemed "informal" so as to relieve the parties the requirement to prepare a formal record compiled by a Court Reporter.
4. A Workshop to be administered by the Referee will be set in July of 2006 to address progress on the items referenced in paragraph 3 and thereafter to a further hearing before the Court if necessary.
5. Watermaster acknowledges that it was obliged to report on its plan for Future Desalters on or before September 28, 2005 and that Watermaster has not yet complied

with this requirement. However, it is fully committed to meeting this objective by July of 2006 and it will be prepared to make such a report a part of the Referee Workshop.

Michael Roth

For CHINO BASIN WATERMASTER

Michael Roth on behalf of Joel Moskowitz

For City of Ontario

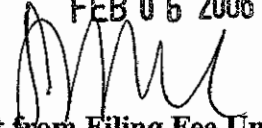
Joel Moskowitz

For Cucamonga County Water District

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8 Attorneys for Defendant
9 MONTE VISTA WATER DISTRICT

FILED-Rancho Cucamonga District
SUPERIOR COURT
SAN BERNARDINO COUNTY

FEB 06 2006


Exempt from Filing Fee Under
Government Code § 6103

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

13 CHINO BASIN MUNICIPAL WATER DISTRICT,
14 Plaintiff,

15 v.

16 THE CITY OF CHINO,
17 Defendants.

18) CASE NO. RCV 51010
19) Assigned for All Purposes to
20) Honorable J. MICHAEL GUNN
21) Department R8
22)
23) MONTE VISTA WATER DISTRICT'S
24) RESPONSE TO OBJECTIONS TO
25) SPECIAL REFEREE'S COMMENTS
26) AND RECOMMENDATIONS
27) CONCERNING MOTION TO
28) REAPPOINT THE NINE-MEMBER
BOARD FOR A FURTHER FIVE-YEAR
TERM; DECLARATION OF MARK
KINSEY
DATE: February 9, 2006
TIME: 2:00 P.M.
DEPT: 8

AND RELATED CROSS-ACTIONS.

1 **I. INTRODUCTION.**

2 Monte Vista Water District supports the Special Referee Comments and Recommendations.
3 The Special Referee recommendations include: (1) a schedule for Watermaster to resolve outstanding
4 OBMP issues; (2) Special Referee workshops to facilitate resolution of those issues; (3) an interim
5 Watermaster term; and (4) subsequent Watermaster reappointment contingent on resolution of those
6 issues. Given Watermaster governance hurdles that still exist, similar requirements imposed by the
7 Court in the past have been the only effective means to develop and implement the OBMP.

8 **II. BACKGROUND OF NINE-MEMBER WATERMASTER APPOINTMENT.**

9 **A. PROBLEM OF ADVISORY COMMITTEE CONTROL.**

10 In 1997, when the nine-member Watermaster was first proposed, the Special Referee noted
11 that the primary standard for evaluating the Watermaster was whether it would independently exercise
12 its discretion in the development and implementation of the OBMP:

13 As stated during the hearing, the question is whether “the
14 tyranny of the majority govern[s] under this judgment, or is it necessary
15 that under those areas that are clearly discretionary—is it necessary to
16 have some independent checks and balances?” (TR at 78:14-18.) The
17 implicit question is whether appointment of the nine-member board will
18 allow the Advisory Committee to continue to govern the Chino Basin.
(December 12, 1997 Special Referee Report, page 8.)

17 **B. INITIAL INTERIM TERM AND COURT OVERSIGHT TO GAUGE SUCCESS.**

18 Although the Special Referee recommended initial appointment of the nine-member board in
19 1997, it found that Advisory Committee control had caused a stalemate in developing and
20 implementing the OBMP. The Special Referee thus recommended Court guidance and oversight in
21 the form of an interim two-year Watermaster term with specified OBMP objectives to determine
22 whether the Watermaster was capable of functioning independently from the Advisory Committee:

23 It is the Special Referee’s recommendation that the Court
24 appoint the nine-member board as Watermaster, but only for an interim,
25 two-year period. Further, the nine-member board should be required to
26 prepare the Optimum Basin Management Program before the end of the
27 interim period. The proposed requirements and schedule are intended to
28 provide the Court with a means to gauge the success of the new
Watermaster. If the nine-member board functions successfully, it will
have provided the Court with an Optimum Basin Management Program
before the end of the two-year period. (Special Referee Report, page
32.)

1 In its 1998 Order, this Court concurred with the Special Referee's finding regarding the need
2 for an independent Watermaster:

3 However, if the appointment of a nine-member board would
4 permit the Advisory Committee to control the Watermaster; and/or
5 deprive the Watermaster of its ability to administer the Judgment
independently and objectively, surely it would be a compelling reason to
deny the motion. (February 19, 1998 Court Ruling, page 3.)

6 Also, this Court in 1998 adopted the Special Referee's recommendation for an interim two
7 year Watermaster term, with reappointment conditioned upon OBMP progress:

8 The parties are hereby informed that one of the measures that
9 will be used by the court in determining whether or not the Nine-
member Board is able to function independently is the progress made on
10 the adoption of the optimum basin management program, which is
discussed *infra*. (February 19, 1998 Court Ruling, page 4.)

11 Finally, this Court in 1998 appointed the Special Referee and technical expert to "report and
12 make recommendations to the court concerning the contents, implementation, effectiveness, and
13 shortcomings of the optimum basin management plan." (February 19, 1998 Court Ruling, page 9.)

14 **C. CONTINUED MONITORING TO ENSURE PROCEDURES.**

15 In September 2000, Watermaster moved this Court for reappointment. The September 2000
16 Special Referee Report and Recommendation found that the Watermaster had not been attentive to
17 court ordered procedures for judicial review and enforcement of Watermaster actions:

18 It appears that Watermaster has been at times inattentive to
19 ~~procedures heretofore adopted by the Court.~~ (September 26, 2000
Special Referee Report, page 15.)

20 The Special Referee explained that Watermaster independence can be effectively evaluated
21 only by continued monitoring of OBMP progress described in periodic reports:

22 Requiring the parties to provide the court with frequent progress
23 reports on implementation of the OBMP will serve the Court in its
24 continuing jurisdiction, and will serve to ensure that the Watermaster is
performing its independent function and keeping to the schedule adopted
25 for OBMP implementation. Because the Implementation Plan does not
describe how Watermaster will routinely demonstrate that the
26 Implementation Plan is being carried out and that implementation of the
OBMP is resulting in water quality improvements, regular and
forthcoming reporting by Watermaster is essential. (September 26, 2000
Special Referee Report, page 11.)

27
28 This Court in its September 28, 2000 Order concurred:

1 OBMP progress reports, together with independent assessment of
2 OBMP implementation status including verification of data to be
3 provided by the Special Referee and her technical expert, will be the
4 basis for consideration of continuing the appointment. (September 28,
5 2000 Order, page 4.)

6 The Court's September 28, 2000 Order contained additional conditions for reappointment,
7 including:

8 The parties are forewarned that any future application for
9 reappointment of a nine-member board may be conditional on the
10 development of a detailed plan to reach the OBMP goal of 40,000 acre-
11 feet per year of desalting capacity to be installed in [the] southern part of
12 the Basin by 2020. (September 28, 2000 Order, page 7.)

13 Thus, Watermaster's success in fulfilling this Court's conditions of reappointment in its
14 September 28, 2000 Order was to serve as a measure of Watermaster independence:

15 The failure of any one of these conditions shall be considered by
16 the Court as a compelling reason to reconsider the appointment of a nine
17 member board. (September 28, 2000 Order, page 5.)

18 **D. REFEREE FINDINGS REGARDING REAPPOINTMENT.**

19 The Special Referee commends Watermaster for complying with most of the conditions of
20 reappointment, including those pertaining to monitoring and recharge. However, the Special Referee
21 finds significant Watermaster deficiencies in reporting on and implementing substantive OBMP
22 elements:

23 It is of concern, however, that the SOBR-2004 discussion of
24 ~~reported monitoring activities also reveals that Watermaster has~~
25 ~~undertaken certain obligations which it describes only in terms of~~
26 ~~monitoring and not in terms of substantive basin management decisions.~~
27 ~~... The implications of achieving hydraulic control are not clearly and~~
28 ~~fully addressed, nor are the implications of not providing a desalter~~
expansion plan to either the Court or the RWQCB in 2005. Watermaster
should be required to provide the Court with a complete discussion and
analysis of its actions with regard to hydraulic control operations of the
basin as those actions relate to requirements of the Judgment to
implement the Physical Solution.

In addition, although Watermaster reports in the SOBR-2004 on
recharge basin monitoring, there is almost no discussion of
Watermaster's efforts to replenish overproduction or to balance recharge
and "discharge" from the Basin. (January 26, 2006 Special Referee
Report, pages 6-7.)

////

1 **III. AN INTERIM TERM WILL FACILITATE OBMP IMPLEMENTATION.**

2 After explaining that the Court has monitored OBMP implementation to ensure Watermaster
3 independence from the Advisory Committee, and after finding that OBMP implementation continues
4 to be deficient in key substantive matters, the Special Referee notes that the reappointment motion is
5 conditioned on review of the Watermaster governance structure within two years. That review will
6 include “the composition of the Board and clarification regarding the roles and functions of the
7 various committees and the Board.” Because Watermaster governance can impede OBMP
8 implementation, and because, as the Special Referee notes, “it appears from the motion that significant
9 changes are anticipated with regard to Watermaster governance structure within two years”, the
10 Special Referee recommends an interim two year reappointment term.¹

11 The City of Ontario objects that “the special referee does not provide any reasoning for this
12 recommendation.” To the contrary, taken in context of the Court’s prior orders in regard to the nine-
13 person Watermaster panel, the Special Referee’s findings concerning deficiencies in Watermaster
14 performance, and the upcoming governance review, Monte Vista believes that the two year extension
15 recommendation by the Special Referee is abundantly supported.

16 The Special Referee has presented compelling reasons for a new interim appointment. First,
17 because proper governance will help ensure successful OBMP implementation, it will be important to
18 promptly review any recommended governance changes.

19 Second, an interim term will serve as an incentive to promptly address OBMP implementation
20 issues. Just as in 1998, the Watermaster needs to address substantive OBMP implementation issues
21 regarding safe yield, recharge and water quality in a timely fashion. Just as in 1998, there is a need for
22 an interim term to determine whether Watermaster will appropriately exercise its independent
23 discretion. Monte Vista believes that the short duration of the 1998 interim appointment and the Court
24 oversight process under the Special Referee effectively created conditions that caused parties to
25 negotiate and adopt the Peace Agreement and OBMP. Monte Vista believes that those conditions,
26 including the interim Watermaster appointment, should be continued.

27 _____
28 ¹ Paragraph 2-4 of the Mark Kinsey Declaration present supporting evidence that the parties

1 Cucamonga Valley Water District ignores the recent history of success under the Court's 1998
2 orders when it asserts that an interim two-year term "would cause the Parties to deviate from their
3 mission to complete work that is significantly more important to the management of the Basin in order
4 to respond to the issues raised by the Referee." The most significant work yet on Basin management
5 took place during the interim two-year term commencing in 1998. Monte Vista believes, to the
6 contrary, that the two year interim term will provide renewed incentive to promptly resolve important
7 Basin management issues in the first year before governance issues need to be confronted in the
8 following year.

9 Objecting parties try to distance themselves from the 1998 historical context by claiming that
10 during the last five years all of Watermaster's major Basin management initiatives have resulted in
11 "consensus based" "successful implementation." However, the successes they cite, recharge and
12 monitoring, although significant, were all expressly recommended by the Special Referee, compelled
13 by order of the Court and carried out with Special Referee and Court oversight. Page 8 of the
14 Watermaster Objection acknowledges that "Watermaster has communicated regularly with the Special
15 Referee" about those requirements.

16 Contrary to objecting party claims that the last five years have been litigation free, both Monte
17 Vista and the City of Chino filed motions to compel the Watermaster to take actions contemplated
18 under the OBMP that got stuck "in committee". The Chino motion is still pending.² Even more
19 significantly, an attorney-manager process that started two years ago to resolve outstanding
20 substantive issues of recharge, over-allocation of agricultural rights, water quality, hydraulic control,
21 safe yield and desalter replenishment has not been successful in addressing these issues, and several
22 technical, legal and financial issues remain.³ Given the governance tension, the Watermaster process
23 has not worked effectively during the last five-year term.

24 ////

27 contemplate changes to the Watermaster and that all parties did not agree on the five-year term.

28 ² See Paragraph 5 of the Mark Kinsey Declaration.

³ See Paragraph 6 of the Mark Kinsey Declaration.

1 **IV. REFEREE WORKSHOPS WILL HELP DEVELOP AND IMPLEMENT THE OBMP.**

2 The Special Referee has recommended an ambitious one-year timeline for Watermaster to
3 address the outstanding substantive OBMP issues.⁴ The Referee recognizes that some of these issues
4 “will likely require additional technical work and coordination among the parties.” The Special
5 Referee thus recommends Special Referee workshops with respect to those issues.

6 The Watermaster objection suggests that the Referee should continue the current practice of
7 informal meetings with Watermaster staff instead. According to the Watermaster objection, formal
8 workshops will “chill” the OBMP process. The Ontario and CVWD objections suggest that the
9 Special Referee “labors under a financial conflict of interest” and seeks “continued employment for
10 the full staff of the Court’s consultants.”

11 Formal Referee workshops have taken place on a continuous basis since 1998 and have
12 effectively characterized and resolve difficult outstanding OBMP issues, facilitated prompt, accurate
13 and efficient disclosure of information and protected the due process interests of the minority parties.

14 Those workshops have focused on the Peace Agreement and OBMP, the Watermaster Rules,
15 the Recharge Master Plan, and Management Zone 1 subsidence and monitoring. The expense of those
16 workshops has been miniscule compared to the incredible number of person-hours (speaking of
17 conflicting interests!) involved in the attorney-manager process. More importantly, those workshops
18 have resulted in closure on the issues and in a complete exposition of all technical issues and
19 supporting evidence.

20 Conversely, the attorney-manager process and informal meetings between Watermaster staff
21 and the Special Referee discourage transparency, encourage single party deals and discourage
22 Watermaster Board oversight and understanding of the OBMP. Thus, by fragmenting the OBMP
23 issues, the attorney-manager process enables the Advisory Committee to control the OBMP process.

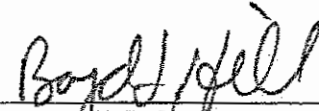
24 _____
25 ⁴ Those issues identified by the Referee include: (1) reconciliation of replenishment with total
26 pumping from the basin (including desalter pumping); (2) reconciliation of existing recharge
27 capability (including a discussion of water available for recharge) with projected total future
28 requirements for recharge capability and water available for recharge; (3) storage loss factor; (4)
storage limits; (5) replenishment obligations; (6) MZ1 management plan; (7) additional desalter
capacity design and operations, including ramifications of desalter pumping and hydraulic control
and Judgment modifications.

1 **V. CONCLUSION.**

2 Monte Vista respectfully requests that this Court adopt the Referee Report and approve the
3 Referee Recommendations. The two year term will serve as an incentive to quickly address
4 outstanding substantive OBMP issues. Formal Special Referee workshops will encourage the open
5 and prompt resolution of those issues and create a transparent process that will discourage Advisory
6 Committee control.

7 DATED: February 6, 2006

MCCORMICK, KIDMAN & BEHRENS, LLP

8
9 By: 

10 ARTHUR G. KIDMAN
11 BOYD L. HILL
12 Attorneys for Defendant
MONTE VISTA WATER DISTRICT

13 Z:\Users Data\bhill\Monte Vista\Response to Objections to Special Referee's Comments re Board Reappointment.doc

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1 later than December 31, 2007.” In making this motion, I left open the specific length for the
2 reappointment of the Watermaster Board because of the expressed desires of certain parties to make
3 changes to the Watermaster Board at the end of the two year review period. True and correct copies of
4 the minutes of those meetings are attached hereto as Exhibit 1.

5 5. Monte Vista’s concerns about the erosion of Watermaster independent discretion have
6 been heightened by certain recent events. First, when Monte Vista expressed concern that
7 Watermaster had abandoned its commitment to assign “salt credits” specified in the Peace Agreement
8 in order to benefit the discharging parties under Regional Board maximum beneficial use standards,
9 Monte Vista’s informal and formal requests were stranded in the Watermaster staff and committee
10 process. Monte Vista was forced to bring a motion before Watermaster took steps to resolve the issue.
11 The City of Chino similarly was forced to bring a motion to cause Watermaster to take action on a
12 Watermaster commitment to carry out separate provisions of the Peace Agreement. The Chino motion
13 is still pending.

14 6. Second, in response to Monte Vista’s motion, Watermaster initiated an attorney-
15 manager process two years ago to resolve outstanding issues of salt credits along with recharge, over-
16 allocation of agricultural rights, water quality, hydraulic control, safe yield and desalter replenishment.
17 That process has consumed hundreds of hours of attorney and manager time. While that process has
18 been somewhat successful in identifying and resolving some issues, several significant technical, legal
19 and financial issues remain. During that process, Monte Vista was only generally made aware of
20 Watermaster staff meetings with the Special Referee, and was led to believe that the Special Referee
21 did not have significant technical or legal concerns with the concept of basin reoperation. Further, the
22 Watermaster staff process of shuttle diplomacy, while producing some breakthrough concessions, has
23 done so by brokering deals with individual parties and presenting each deal singly without
24 comprehensive consideration of the Basin-wide technical, financial, legal and equitable issues. Monte
25 Vista is concerned that this type of limited process might allow Advisory Committee control over the
26 OBMP implementation.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge. Executed this 6th day of February 2006 at Montclair, California.



Mark Kinsey

EXHIBIT 'A'

Minutes Appropriative & Non-Ag Pools

December 8 and 15, 2005

*Motion by Jeske, second by DeLoach, and by unanimous vote - Non-Ag concurred
Moved to approve Consent Calendar Items A through B, as presented*

II. BUSINESS ITEMS

A. MOTION FOR EXTENSION OF THE WATERMASTER BOARD

12/15
Mr. Manning noted that due to the calendar of the court it was necessary to schedule a December meeting and bring this item before the committee members for approval to forward this item to the Advisory Committee and Watermaster Board in order to meet the February 9, 2006 court date. Counsel Fife stated the motion which is in today's meeting packet is the motion that was before this committee a few months prior. At that past meeting a request was made by this committee to approach the Watermaster Board to file an alternate motion to request more time in order to allow the Peace II Agreement to be completed. Counsel did ask the court for an extension and the court granted an extension until February 9, 2006; at the court hearing the judge made it very clear he was willing to move the court date out, however, at that hearing a continuance would not be granted again. Counsel Fife stated it was anticipated the Peace II Agreement would be completed by this time; unfortunately that is not the case, however in order to make the February 9, 2006 hearing date a motion must be filed by January 9, 2006. Mr. Jeske inquired if the motion is to file for "the" nine member board or to appoint "a" board. Counsel Fife stated that counsel represents the board, the board has instructed counsel specifically to file a motion to reappoint "the" nine member board. A discussion ensued with regard to past discussions and the desire to complete the Peace II process prior to making this motion. Mr. Jeske noted that the City of Ontario is not in a position, at this time, to support a motion to reappoint "the" nine member board without the Peace II Agreement process in place. Mr. DeLoach stated that he felt it was clear by past meetings that the majority of this committee was not ready or willing to make a motion regarding the nine member board reappointment until the completion of the Peace II process and that Agreement is not concluded. Mr. DeLoach noted that Cucamonga Valley Water District is not in a position, at this time, to support a motion to reappoint "the" nine member board without the Peace II Agreement process in place. A lengthy discussion ensued with regard to linking or not linking the items of the Peace II Agreement and the issue of the nine member board reappointment together. The question what would happen if no action was taken today was presented. Counsel Fife stated that the issue has not been addressed and that counsel is unclear what happens if it expires, leaving a few options open for the committee to look at. Counsel Fife stated that the court appointed the Watermaster Board and in theory if the Watermaster Board expires the court will take over making the decisions. An extensive discussion ensued with regard to gain clarification of the process. Mr. Manning stated the motion being presented to the Pool today gives the committee members an opportunity to either reaffirm its earlier position, or to change that position, or to modify that position in any way. It was noted that the majority of the committee members felt they have not had enough time for thought and/or discussion on this item to present a motion at this time. Mr. Kinsey commented on the situation at hand which has a time constraint attached to it regarding the February 9, 2006 scheduled court date and a twenty day prior filing date.

Motion by Kinsey, second by Garibay

Motion was made to approve the reappointment of the Watermaster Board for another five year term and to keep this item open for discussion

At 9:52 a.m. the open Appropriative & Non-Agricultural Pool meeting was adjourned and the confidential session convened.

At 10:01 a.m. the confidential session was adjourned and the open Appropriative & Non-Agricultural Pool meeting reconvened.

It was decided more time was needed for discussion and a separate Appropriative Pool member meeting would meet next week prior to the Advisory Committee meeting for the sole purpose of discussing the motion for the reappointment of the Watermaster Board and to bring back a motion at the December 15, 2005 continued Appropriative & Non-Agricultural Pool meeting. It was decided a roll call vote was needed to table this motion until further discussion can take place. A roll call vote was recorded to table the

Exhibit 1, Four Pages

Minutes Appropriative & Non-Ag Pools

December 8 and 15, 2005

Advisory Committee. There are some challenges related to the timing in which the pleading might be filed. Counsel Slater recited paragraph 36a in the Judgment which makes reference to the thirty day notice. A discussion ensued with regard to the statements made by counsel. Mr. Jaske noted that the intention of the provided motion is to create a better working and more effective governance of Watermaster. Mr. Kinsey offered comment and inquired to counsel that if because the motion is different than the Agricultural Pool's motion if a thirty day notice needs to take place; Counsel Slater stated he was simply reading what the Judgment calls out with regards to a pool recommendation to Watermaster for implementation. Counsel Slater stated he is not counsel to the pool, however a considered argument for the pool could be that this is a subject matter that has been under deliberation for several months and the subject matter is not new and that there has been full and fair notice by the other pools of the pleadings specifically. Mr. Manning asked that he reiterate what the motion on the table is in that this pool is recommending the nine members board reappointment contingent upon the formation of a committee which does not cross over into the area that Counsel Slater noted. A question regarding the two year contingency was presented. Mr. Manning stated that this pool is asking for two years, although the base of the motion is this pool is supporting the nine member board reappointment. Mr. Kinsey stated the goal of Monte Vista Water Company is to only improve the processes and advance the governance of the decision makers.

*Motion by Kinsey, second by Garibay, and by unanimous vote - Non-Ag concurred
 Moved to approve to recommend the reappointment of the nine member
 Watermaster Board contingent upon the formation of a Watermaster committee to
 review and make recommendations regarding possible changes in the Watermaster
 governance structure including the roles and functions of the Pools, Advisory
 Committee, and the Watermaster Board of Directors no later than December 31,
 2007, as presented*

*to
 me 5 year
 review*

The Joint Appropriative & Non-Agricultural Pool Meeting Adjourned at 8:50 a.m.

Secretary: _____

Minutes Approved: _____

Minutes Advisory Meeting

December 15, 2005

B. FINANCIAL REPORTS

- 1. Cash Disbursements for the month of November 2005
- 2. Combining Schedule of Revenue, Expenses and Changes in Working Capital for the Period July 1, 2005 through November 30, 2005
- 3. Treasurer's Report of Financial Affairs for the Period November 1, 2005 through November 30, 2005
- 4. Profit & Loss Budget vs. Actual July through November 2005

C. WATER TRANSACTION

- 1. Consider Approval for Transaction of Notice of Sale or Transfer – Monte Vista Water District has agreed to purchase from the City of Chino Hills a portion of the City's water in storage in the amount of 5,000 acre-feet. Date of application: October 18, 2005

*Motion by DeLoach, second by Rodriguez, and by unanimous vote
 Moved to approve Consent Calendar Items A through C, as presented*

II. BUSINESS ITEMS

A. MOTION FOR EXTENSION OF THE WATERMASTER BOARD

Mr. Manning stated the Watermaster Board had asked counsel to prepare a motion to file with the court that would extend the nine member board; that has been done and a copy of that motion is in today's meeting packet. The motion, as represented in the meeting packet, has gone to the Agricultural Pool with their full support. The Appropriative Pool and Non-Agricultural Pool was also in support of the motion, although they approved it with a contingency statement that would outline a review process and a two year time frame by which there would be a governance structure committee that would be appointed. Mr. Manning read the motion that was presented at the continued Appropriative Pool meeting this morning. Counsel Slater inquired to the Committee Members if it was their pleasure to proceed with the motion presented in the meeting packet or the motion which was presented by the Appropriative Pool Committee Members. It was noted the Committee Members wished to go forth with the motion presented by the Appropriative Pool and read by Mr. Manning. Counsel Slater stated that he wanted to call attention to paragraph 38a of the Judgment which requires cross notification of a new recommendation out of either pools. In counsel's view, as this motion has been structured, it is truly not a new motion or a new recommendation originating from the committee, but more or less a condition associated with a request for feedback transmitted by the Board. Counsel Slater stated in giving the existing discussions it would appear that no such additional cross notification is required. Mr. Hultsing inquired to the presented motion and the motion which was approved at the Agricultural Pool meeting on December 6, 2005 differences. A discussion ensued with regard to the motion differences. Counsel Slater stated the Watermaster Board is likely to give weight to the view of the Advisory Committee and Pools as to whether this is new subject matter.

Motion by DeLoach, second by Crosley, and by unanimous vote – Agricultural Pool concurred with the revised motion

Moved to approve the recommendation of the reappointment of the nine member Watermaster Board contingent upon the formation of a Watermaster committee to review and make recommendations regarding possible changes in the Watermaster governance structure including the roles and functions of the Pools, Advisory Committee, and the Watermaster Board of Directors no later than December 31, 2007, as presented

12/15

III. REPORTS/UPDATES

A. WATERMASTER GENERAL LEGAL COUNSEL REPORT

- 1. Attorney Manager Process/Discussion of Peace II Agreement
 Counsel Slater stated there has been an on going process with public workshops to review the Peace II Term Sheet and the process is moving forward; a further report will be given today to the Watermaster Board. There is some desire to obtain feedback on the next

Minutes Watermaster Board
2005

December 15,

include a rather extensive process periods for the Pools to communicate with each other and with the Advisory Committee and the Watermaster Board. If we were to follow precisely the notice and counter notices it could take an abundance of time. Mr. Kuhn stated that he supports the motion. A discussion ensued with regard to the composition and intent of the "new" committee. Mr. Jeske noted the motion included the words, the Pools, the Advisory, and the Watermaster Board to ensure it is an all inclusive process. The intention is to have a cooperative process to look at the governance of Watermaster to include all perspectives and parties. Chair Neufeld offered comments on remarks made by other parties who are very interested in this process. Counsel Slater addressed the chair and the members of the board with the two options that are presently available based upon the fact that the Advisory Committee unanimously voted on this item and forwarded to this board. The first option is to accept the recommendation included in the pleading and move forward or the second option would be to express caution or concern about that motion and hold a public hearing wherein you would have an opportunity to have further discussion with the Advisory Committee which requires a thirty day notice under the rules of the Judgment and will put this situation well into the mid to late January time frame and beyond the date that has been scheduled for filing the pleading. There is nothing that would preclude this board from agendaing a separate matter for schedule, composition, and anything else this board would like to outline with regard to this process and a subsequent meeting and then to refer it through the regular Watermaster process for approval. Mr. Vanden Heuvel expressed his confidence in the system and in the decision making process.

12/15
no 5 year
term

Motion by Vanden Heuvel, second by Kuhn, and by unanimous vote

Moved to approve the recommendation of the reappointment of the nine member Watermaster Board contingent upon the formation of a Watermaster committee to review and make recommendations regarding possible changes in the Watermaster governance structure including the roles and functions of the Pools, Advisory Committee, and the Watermaster Board of Directors by no later than December 31, 2007, as presented

III. REPORTS/UPDATES

A. WATERMASTER GENERAL LEGAL COUNSEL REPORT

1. Attorney Manager Process/Discussion of Peace II Agreement

Counsel Slater stated there has been an on going process with public workshops to review the Peace II Term Sheet and that it is moving forward. There is some desire to obtain feedback on the next steps to further discussions among the stake holder groups. Counsel Slater stated two workshops have been held and there has been significant discussion and input received by Watermaster counsel and staff. It was noted that a technical report will be forthcoming which will respond to all the technically based questions that have been raised at the workshops and in addition staff and legal counsel are drafting answers to the legal questions. Once those reports are formulated, they will be going through the Watermaster process for a decision.

B. GEO/STAFF REPORT

1. Volume Vote Calculations and 85/15 Credit for Non-Agricultural Assignments Review

Mr. Manning stated it was asked that this item be reviewed and an update be provided, however, due to time constraints in having the meetings early in December, a full report will be given as soon as possible on this item.

Added Item:

1 **Jean Cihigoyenetché (Bar No. 105227)**
2 **CIHIGOYENETCHE, GROSSBERG & CLOUSE**
3 8038 Haven Avenue, Suite E
4 Rancho Cucamonga, California 91730
5 909 483-1850

Exempt from Filing Fee
Pursuant to Gov. Code § 6103

FILED-Rancho Cucamonga District
SUPERIOR COURT
SAN BERNARDINO COUNTY

6 Attorneys for INLAND EMPIRE UTILITIES AGENCY

FEB 06 2006



8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN BERNARDINO

10 CHINO BASIN MUNICIPAL WATER)
11 DISTRICT,)

CASE NO.: RCV 51010

12 Plaintiffs,)

Judge: Honorable J. Michael Gunn

13 v.)

**JOINDER OF INLAND EMPIRE
UTILITIES AGENCY IN SUPPORT OF
MOTION OF CHINO BASIN
WATERMASTER TO REAPPOINT
NINE MEMBER BOARD FOR A
FURTHER FIVE YEAR TERM**

14 CITY OF CHINO,)

15 Defendants.)

DATE: February 9, 2006

TIME: 2:00 p.m

DEPT: 8

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19 The INLAND EMPIRE UTILITIES AGENCY ("IEUA") hereby joins in the Motion of
20 the Chino Basin Watermaster ("Watermaster") to re-appoint the nine member Watermaster board
21 for another five year term.

22 **I. THE PARTIES HAVE REALIZED MANY POSITIVE ACCOMPLISHMENTS**
23 **WITHIN THE BASIN SINCE THE APPOINTMENT OF THE NINE MEMBER**
24 **WATERMASTER BOARD**

25 Whereas Watermaster, in response to the comments from the Special Referee, has noted
26 many accomplishments within the Chino Basin since the appointment of the nine member board,
27 IEUA would like to point out certain additional accomplishments which have been realized
28 through cooperative efforts. Initially, IEUA in partnership with the Chino Basin Watermaster,

1 Chino Basin Water Conservation District and the San Bernardino Flood Control District entered
2 into a joint agreement to utilize recharge basins in a positive manner for the benefit of the
3 jurisdiction. Together, they received the ASCE Award for winning design and construction of
4 the recharge improvements under budget. The second phase of the recharge improvements have
5 been initiated with a grant from the Department of Water Resources in the amount of
6 \$5,200,000.00.

7 During 2005, IEUA initiated the recharge of recycled water at Banana & Hickory basins
8 based on the Department of Health Services and Regional Water Quality Control Board
9 landmark "maximum benefit" basin plan. A recycled water recharge permit was granted in April
10 of 2005.

11 Water quality data from the initial recharge operations indicate the potential to recharge
12 from 40,000 to 50,000 acre-feet per year of recycled water in the Chino Basin. This is
13 significantly higher than the Recharge Master Plan which had been adopted by Watermaster in
14 2002 and which in turn assumed recharge estimates of 25,000 acre-feet per year.

15 In June 2005, the IEUA Board of Directors adopted a \$120 million dollar ten year capital
16 improvement program to develop recycled water supplies for the Chino Basin of approximately
17 100,000 acre-feet per year by the year 2015. The State of California and the U.S. Bureau of
18 Reclamation will provide approximately \$45 million dollars in grants and another \$50 million
19 dollars in State of California low interest loans as part of this \$120 million dollar capital
20 improvement project. This is a significant new supply of water to the Chino Basin Watermaster
21 parties which will reduce significantly the need to increase purchases of imported supplies from
22 the Metropolitan Water District and will allow "in lieu" recycled water deliveries for non-
23 agricultural and agricultural pumping in the Chino Basin, which in turn will allow for enhanced
24 management of the Chino Basin.

25 Success has also been enjoyed in the area of salt removal. Salt removal has been greatly
26 enhanced through the IEUA renewable energy project at its regional water recycling plant
27 number five in Chino. This has occurred through reuse of over 500 tons per day of wet dairy
28 manure generating three megawatts of electricity, composting, and discharge of over 25,000 tons

1 of salt into the Santa Ana river interceptor This is equivalent to the Chino desalter salt removal.

2 In December 2005, IEUA submitted to the California Department of Water Resources,
3 the urban water management plan for IEUA, Chino Desalter Authority and the Water Facilities
4 Authority. That plan documents all the activities to optimally develop the Chino Basin ground
5 water supply with the new recycled water program and state of the art water conservation
6 programs which will result in significant improvements in water supply reliability for the Chino
7 Basin.

8 Although IEUA has played an important role in the above-listed achievements, the
9 purpose of this pleading is to emphasize to the court that these achievements were not
10 accomplished by IEUA alone. Rather, they further demonstrate the cooperative efforts between
11 all of the parties to this action.

12
13 Dated: February 6, 2006

CIHIGOYENETCHE, GROSSBERG & CLOUSE

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16 JEAN CIHIGOYENETCHE
17 Attorneys for INLAND EMPIRE UTILITIES
18 AGENCY

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FILED - Rancho Cucamonga District
SUPERIOR COURT
SAN BERNARDINO COUNTY
FEB 06 2006
[Signature]

Exempt from fees pursuant to
Government Code § 6103

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

10 CHINO BASIN MUNICIPAL WATER
11 DISTRICT,

12 Plaintiff,

13 v.

14 THE CITY OF CHINO,

15 Defendants.
16
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Case No. RCV 51010

Judge: Honorable J. Michael Gunn

**CITY OF CHINO HILLS' RESPONSES
TO OBJECTIONS TO COMMENTS
AND RECOMMENDATIONS OF
SPECIAL REFEREE**

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

18 Case Filed:
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CITY OF CHINO HILLS' RESPONSES TO OBJECTIONS TO COMMENTS AND
RECOMMENDATIONS OF SPECIAL REFEREE

1 In her Comments and Recommendations Concerning the Motion to Re-Appoint the
2 Nine-Member Board to a Further Five-Year Term, the Special Referee requested that
3 responses to objections be filed no later than February 6, 2006. What briefly follows are the
4 City of Chino Hills' responses to objections.

5
6 **I. THE ROLE OF THE SPECIAL REFEREE IS NOT BEFORE THE COURT**

7 Out the outset, the City notes that it does not oppose the Chino Basin Watermaster's
8 Motion to Re-Appoint the Nine-Member Board to a Further Five-Year Term and in fact
9 supports its request to re-appoint "for another five-year term beginning February 9, 2006, and
10 ending February 9, 2011." Motion to Re-Appoint, at pg. 6.

11 Much of the objection to the Special Referee's Report, however, stems from her
12 recommendation that she "conduct workshops with respect to the issues to be addressed by
13 Watermaster." Comments and Recommendations, at pg. 15. While the City has not always
14 seen "eye to eye" with the Special Referee, it believes that the Special Referee process has
15 been a valuable tool in resolving the numerous and complex disputes that arise in the basin.
16 Given this, certain comments insinuating an attempt by the Special Referee to extend her role
17 for profit seem unfair; especially in light of the enormous resources, both legal and otherwise,
18 spent at Watermaster meetings.

19 That being said, the role of the Special Referee is not an issue presented by the
20 Watermaster's Motion. Therefore, the City objects to the extent that the objectors seek to
21 curtail the Special Referee's role in Watermaster proceedings. For example, the Cucamonga
22 Valley Water District asserts in its objections to the Special Referee's Report that it would be
23 "in the best interest of the Parties to the Judgment and the ratepayers within the jurisdiction of
24 the Watermaster not to continue the present role of the Special Referee." Objections by
25 CVWD, at pg. 3:3-5. Again, this was not an issue raised by the Watermaster's Motion and it
26 is therefore not properly before this Court.

1 **II. CONCLUSION**

2 The City respectfully requests that the Court grant Watermaster's Motion to Re-
3 Appoint the Nine Member Board.

4

5 DATED: February 6, 2006

Respectfully Submitted,

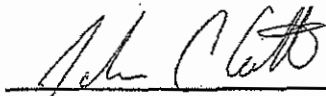
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MARK D. HENSLEY, CITY ATTORNEY
CITY OF CHINO HILLS; and
JENKINS & HOGIN, LLP

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By: JOHN C. COTTI, Attorneys for Plaintiff,
CITY OF CHINO HILLS

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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 February 6, 2006, I served the following:

- 1) **TRANSMITTAL OF STIPULATION;**
- 2) **JOINDER OF INLAND EMPIRE UTILITIES AGENCY IN SUPPORT OF MOTION OF CHINO BASIN WATERMASTER TO RE-APPOINT NINE-MEMBER BOARD FOR A FURTHER FIVE YEAR TERM;**
- 3) **MONTE VISTA WATER DISTRICT'S RESPONSE TO OBJECTIONS TO SPECIAL REFEREE'S COMMENTS AND RECOMMENDATIONS CONCERNING MOTION TO REAPPOINT THE NINE-MEMBER BOARD FOR A FURTHER FIVE-YEAR TERM; DECLARATION OF MARK KINSEY;**
- 4) **CITY OF CHINO HILLS' RESPONSES TO OBJECTIONS TO COMMENTS AND RECOMMENDATIONS OF SPECIAL REFEREE.**

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 February 6, 2006 in Rancho Cucamonga, California.



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