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5 SPECIAL REFEREE
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION
11

12 CHINO BASIN MUNICIPAL WATER
DISTRICT,
13

14 Plaintiff,

15 v.

16
17 THE CITY OF CHINO, et al.

18 Defendants.
19

CASE NO. RCV 51010

Judge: Honorable J. Michael Gunn

SPECIAL REFEREE'S COMMENTS
AND RECOMMENDATIONS
CONCERNING OBMP STATUS
REPORT 2006-02, FUTURE
DESALTING PLANS, AND MZ-1
LONG- TERM PLAN

Date: May 24, 2007

Time: 1:30 p.m.

Dept: 8

20 I.

21 INTRODUCTION

22 On February 16, 2007, Chino Basin Watermaster ("Watermaster") was asked to file: (1)
23 OBMP Status Report 2006—02; (2) a report on the status of plans for future desalting in Chino
24 Basin ("Chino Basin" or "Basin"); (3) a report on the status of Watermaster's long-term plan for
25 Management Zone 1 (MZ-1) and the publication of guidance criteria. (Order Re: Receiving
26 OBMP Status Reports and Annual Reports and Further Action, p.4.) On April 2, 2007,
27 Watermaster filed its "Transmittal of Status Report 2006-02" with attached Exhibits A, B and C
28 ("First Transmittal"). The First Transmittal includes Watermaster's response to the Court's

1 request for status reports on future desalting in the Basin and for a long-term plan for MZ-1. At
2 the request of the Special Referee,¹ Watermaster subsequently filed a “Transmittal of Revised
3 Exhibit C” with attached Exhibits C, C-1 and C-3 (“Second Transmittal”). The Second
4 Transmittal was filed on April 30, 2007. The Special Referee presents these comments and
5 recommendations concerning Watermaster’s transmittals for the Court’s consideration.²

6 **II.**

7 **OBMP STATUS REPORT 2006—02**

8 **A. Status Report Highlights**

9 Watermaster’s OBMP Status Report 2006—02 covers the period from July 2006 to
10 December 2006. The highlights of this status report are as follows:

- 11 • A revision of Watermaster’s groundwater models is currently underway. (See
12 discussion in Section III B below related to peer review of the Chino Basin
13 Numerical Groundwater Flow Model.)
- 14 • Several grant applications to expand the desalters were made under State
15 Proposition 50. Tentative approval for up to \$45 million in grants for desalter
16 expansion has been received.³
- 17 • Preparation of the 2006 State of the Basin Report (“SOBR-2006”) is underway:
18 OBMP Status Report 2006-02 indicates that a draft of the report will be available
19 in the spring of 2007.⁴
- 20 • OBMP Status Report 2006-02 indicates that the San Diego County Water
21 Authority began discussions with Watermaster to develop a storage and recovery
22 program in Chino Basin. Watermaster also is having discussions with Castaic

23
24 ¹ Watermaster’s First Transmittal Exhibit C was practically illegible. California Rules of Court,
25 rule 2.104 requires all papers filed in trial courts to be as legible as printing in type not smaller
26 than 12 points.

27 ² The filing of these comments and recommendations is late due to the filing of Watermaster’s
28 Second Transmittal on April 30, 2007.

³ Watermaster’s First Transmittal mentions tentative approval for \$53 million for desalter
expansion. (See quotation in Section III A below.) OBMP Status Report 2006-02 does not
mention possible federal funding for desalters.

⁴ The final report is due in July 2007.

1 Lake Water Agency and Metropolitan Water District of Southern California
2 regarding new storage and recovery programs in Chino Basin.

3 **B. Comments Regarding SOBR-2006**

4 In anticipation of the publication of SOBR-2006 it is important to reiterate that the
5 concept of a SOBR as first envisioned during the OBMP development process was that a
6 baseline would be selected, against which changes in basin conditions would be compared. The
7 SOBR was intended to provide a means of assessing the effectiveness of the OBMP as its
8 various program elements were implemented. Thus, in its recent order the Court stated:

9 The State of the Basin Report is not intended to be a report on the state of OBMP
10 implementation. The OBMP status reports serve that role. Rather, the State of
11 the Basin Report is intended to be an engineering report on the physical state of
12 the basin, in which basin conditions are compared with a pre-OBMP baseline in
order to measure changes in basin conditions, the effectiveness of the OBMP, and
the effects of any reoperation of the basin.

13 (Order Re: Receiving OBMP Status Reports and Annual Report and Further Action,
14 *supra*, p. 3, Ins. 9-14.)

15 We previously commented that the Initial State of the Basin Report should have included
16 a reconciliation of pumping and Safe Yield. Pumping was discussed in SOBR-2004, but there
17 was no reconciliation of pumping with Safe Yield. It is unclear whether total wet water recharge
18 has kept pace with increased production from the Basin, and it appears that wet water recharge,
19 and most notably replenishment, have been significantly depressed since 2000/2001. One of the
20 most fundamental of Watermaster's original charges is to address and report to the Court on
21 whether or not Safe Yield is being maintained and overproduction is being replenished. It is
22 important that Watermaster reconcile pumping and Safe Yield in SOBR-2006, and either
23 demonstrate that overproduction is being replenished as required by the Judgment, or explain
24 why it is not. There also remains confusion between the amounts of pumping as reported in
25 SOBR-2004 and as reported in the Annual Reports. Reconciliation of pumping with Safe Yield
26 should eliminate that confusion. A clear and complete reconciliation will be helpful to the Court
27 in its consideration of Watermaster Basin reoperation proposals.

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1 III.

2 WATERMASTER'S REPORT ON THE STATUS OF PLANS FOR FUTURE
3 DESALTING

4 A. Watermaster's Filings

5 Watermaster's First Transmittal includes little detail as to how Watermaster intends to
6 expand desalting capacity. The transmittal notes that "responsibilities under the Peace
7 Agreement" of Inland Empire Utilities Agency ("IEUA") and Western Municipal Water District
8 (WMWD) [for future desalters], have been assumed by the Chino Desalter Authority (CDA):

9 Even though Desalter I and II implementation and operation has been
10 assumed by CDA, the Peace Agreement still articulates various responsibilities
11 held by IEUA and Western relative to the initiation of further desalter capacity.
12 These responsibilities relate primarily to the pursuit of funding sources to assist in
13 alleviating the burden associated with the desalters. IEUA and Western, as well
14 as other Chino Basin parties, have been very active in pursuing grant funding to
15 assist in the construction of the next increment of desalter capacity. Attached here
16 as Exhibit "B" is the most recent Funding Priority Ranking for projects under
17 Proposition 50. According to this ranking, the CDA is ranked third for a grant of
18 \$15,000,000 and Western has been ranked 8th and 14th for desalter grants totaling
19 another \$33,000,000.

20 In addition, Western has currently been approved for over \$5 million in
21 grant funding for use on design and construction for desalter capacity. These
22 grant funds have an expiration date of November 2008 and are a current motivator
23 for the scheduling relating to the next increment of desalter capacity, as the parties
24 do not want to lose any funding opportunities.

25 (First Transmittal, p. 2, Ins. 11-26.)

26 Both the First and Second Transmittals focus on the steps needed to finalize the "Peace II
27 Agreement" under the Stakeholder Non-Binding Term Sheet (adopted by Watermaster in May
28 2006). Exhibit C to the Second Transmittal (Revised Chronological Timeline of Peace II
Implementation April 2007) notes twelve steps to be completed before Peace II can be
implemented. (The thirteenth step is implementation actions for Peace II.)

29 The first four steps have already been completed. Steps five through ten are described as
30 "ongoing". Of particular importance are steps seven and eight. Step seven is the completion of a
31 physical project description. Watermaster strives to complete this step by June 1, 2007, but no
32 later than August 1, 2007. Watermaster states:

33 ///

1 The physical description will serve dual purposes: CEQA compliance and
2 impacts analysis for Court review and approval of proposed Peace II actions,
 including Re-Operation and Hydraulic Control requirements.

3 (Second Transmittal, Exh. C at ¶ 7.) It appears that “physical project description” as used in this
4 step refers to the description of the basin management actions proposed in Peace II, not to the
5 description of the plan for the Chino Creek Well Field desalter expansion. Step seven includes
6 the following comment:

7 Watermaster has an internal goal for completing the technical analysis of impacts
8 [presumably, of Peace II basin management actions] by the end of August.
9 Obviously, an earlier designation of the proposed project will expedite the
 technical analysis. (*Id.* at ¶ 3.)

10 Step eight is described as the evaluation of physical impacts of the Peace II basin
11 management actions. Watermaster notes that it will:

12 ... rely upon the [revised Wildermuth] model to evaluate the impacts of the
13 proposed physical project and the respective related elements contemplated by the
14 Peace II Term Sheet; e.g., Basin Re-Operation, Hydraulic Control, Storage and
 Recovery Agreements, Desalting.

15 (Second Transmittal, Exh. C at ¶ 8.) Recharge and replenishment are not mentioned in
16 this step, but they are appropriately included in Exhibit C-1, and should be a part of the
17 integrated project description. The Court may wish to schedule a hearing in September
18 on the status of work outlined in steps 7 and 8.

19 Steps ten and eleven also are of particular significance to the Court. Step ten is
20 the completion of legal instruments necessary for Peace II. This section notes that
21 conditional Court approval for Peace II will not be sought until all required legal
22 instruments have been finalized and all required studies have been completed. Step
23 eleven is obtaining conditional court approval for Peace II. The expected completion is
24 October- December 2007. Watermaster notes:

25 *Summary:* The transmittal of all legal documentation will be accompanied
26 by all required technical analysis and related studies.

27 *Note:* Court approval will be requested in a format consistent with the
 Peace I process, i.e., conditioned upon compliance with CEQA.

28 (Second Transmittal, Exh. C at ¶ 11.)

1 Step twelve is completion of the CEQA process. The timeline for completion is
2 December 2007-September 2008: "Completion of the final documentation is dependent
3 upon multiple variables that will be resolved while the process is ongoing." (Second
4 Transmittal, Exh. C at ¶ 12.)

5 Watermaster's Second Transmittal, Exhibit C-1 also includes a timeline for
6 obtaining conditional approval of Peace II. According to Exhibit C-1 the expected
7 approval date is November 23, 2007. The Court may wish to set that hearing date, along
8 with a follow-up hearing date for Watermaster to report back to the Court with regard to
9 satisfaction of any conditions in its order.

10 In the Second Transmittal Watermaster, for the first time, provided the details as to when
11 it intends to expand desalting capacity. The timeframe details in Exhibits C-2 and C-3 of
12 Watermaster's Second Transmittal appear to be consistent with the engineering report made to
13 the Advisory Committee on March 22, 2007, as noted on pages 5 & 6 of the draft minutes of that
14 meeting:

15 Mr. Wildermuth stated on February 14, 2007 the Regional Board sent to a
16 letter to Inland Empire Utilities Agency (IEUA) and to Chino Basin Watermaster
17 (CBWM) letting them know that they are falling short on our Maximum Benefit
18 commitments as to Hydraulic Control. There is a Hydraulic Monitoring Report
19 that was released last April 2006. There was some modeling work done by
20 Wildermuth Environmental which showed there was a small amount of leakage
21 occurring through the Santa Ana River west of the Chino I Desalter. There was a
22 meeting last November in which we discussed this issue; Orange County Water
23 District also attended this meeting. At that time Mr. Thibeault suggested he
24 would be coming back to IEUA and CBWM with a letter asking for a schedule to
25 get in compliance. The February 14th letter is an official notification to IEUA and
26 CBWM to prepare that schedule with milestones and to show compliance by
27 November 2009. Mr. Thibeault's definition of compliance is to have the solution
28 in place and operating, not necessarily achieving complete Hydraulic Control, but
the solution needs to be in place and operating in 2009. In the February 14th letter
we were given until mid March to prepare that schedule. Subsequently, IEUA
and CBWM have written a letter stating they needed more time to prepare the
schedule. Watermaster's staff has been working on the schedule and staff has put
out its first draft and it is out for review by IEUA and we have asked Scott Burton
to look at it. The schedule is very detailed and it suggests that the best we can do
is to have these wells on line around May, 2012. In an informal conversation with
the Regional Board they appeared to be discontented with the 2012 timeframe and
asked for a second schedule; one that would show the most optimum schedule
with milestones. Both of these schedules will go through the Watermaster
process and will also be reviewed by some of the senior staff at the Chino
Desalter Authority. A discussion ensued with regard to the report given by Mr.
Wildermuth.

1 It is essential that Watermaster reconcile its efforts to take advantage of the Regional
2 Board's Basin Plan Amendment with its Peace II efforts involving this Court. Presumably, a
3 supplemental filing would clarify that Watermaster will not commence hydraulic control
4 operations without court approval, to the extent that commencing hydraulic control operations is
5 inconsistent with the Judgment. In other words, Watermaster should report to the Court how
6 those commitments or representations are consistent with the Judgment, and how any
7 inconsistencies will be resolved. Watermaster's Second Transmittal notes only that:

8 ...Exhibit C also includes a more robust description of the physical actions
9 required to secure hydraulic control in accordance with the Regional Board
10 directives; namely the construction of the Chino Creek Well Field. Exhibits C-2
11 and C-3 contain summaries of the more detailed requirements that are associated
12 with the construction of the Chino Creek Well Field under 'Pragmatic' and
13 'Accelerated' schedules respectively. The two schedules have been submitted to
14 the Regional Water Quality Control Board and reflect similar overall completion
15 dates, regardless of some slightly accelerated intermediate construction
16 activities."

17 (Second Transmittal, p. 2, lns. 11-13.)

18 **B. Review of Chino Basin Numerical Groundwater Flow Model**

19 In its transmittal of OBMP Status Report 2006-02, Watermaster notes the importance of
20 the peer review conducted by Luhdorff & Scalmanini Consulting Engineers:

21 ...Of particular importance is the peer review by Mr. Scalmanini [Joseph
22 Scalmanini, Luhdorff and Scalmanini, Consulting Engineers and Technical Expert
23 advisor to the Special Referee] of the validity of the model to be used by
24 Watermaster in the planning and implementation of the ambitious Basin
25 management techniques anticipated under the Term Sheet. These Basin
26 management techniques will have a significant impact on the manner in which the
27 next increment of desalting capacity is designed, and so it has been difficult to
28 progress further with the desalter planning prior to finalization of the Term Sheet,
which has in turn been dependent on the review by Mr. Scalmanini. Mr.
Scalmanini's review began in July 2006 and his Report was provided to
Watermaster on March 21, 2007. The parties can now proceed to finalize the
Term Sheet.

(First Transmittal, p. 3, lns. 2-10.) The Review of Chino Basin Numerical Groundwater
Flow Model (Updated 2003 Model), prepared by Luhdorff & Scalmanini Consulting
Engineers, March 2007 ("LSCE Review Report") assessed Watermaster's Numerical
Groundwater Flow Model (the Updated 2003 Model) developed by Wildermuth
Environmental Inc. ("WEI Updated 2003 Model"). As noted in OBMP Status Report

1 2006-02, Watermaster's groundwater models are in the process of being revised. The
2 LSCE Review Report concludes that:

3 For planning level analysis, the existing model is a useful and applicable
4 tool to simulate approximate basin response to management actions that involve
5 the quantities and distribution of pumping and recharge in the basin.... [¶] On the
6 other hand, there are a few issues in the model calibration and its application that
7 raise questions or the possibility of challenges to quantitative flow and storage
8 numbers that might be extracted from model output and subsequently used or
9 interpreted in implementation of basin management...While those issues do not
10 invalidate the model for use in planning level analyses, the ultimate intended use
11 of the model is sufficiently significant that those few issues should be addressed
12 before relying on, and using, model output for quantity-related purposes. From
13 interaction in this review with the model's authors, it is understood that such has
14 been the intent through WEI's development and calibration of a 2007
15 Watermaster Model, which has been in work since mid-2006. Thus it is
16 recommended that finalization of basin reoperation details be deferred until the
17 2007 Watermaster Model is completed.

18 (LSCE Review Report, p. 37.) The LSCE Review Report may be accessed through
19 Watermaster's website by using the link to documents on Watermaster's FTP server. For
20 convenience, two copies of the report will be lodged with the Court for its reference.

21 In Watermaster's Second Transmittal Exhibit C, the importance of Mr. Scalmanini's
22 ongoing coordination with Watermaster's engineering consultant, Mr. Wildermuth, is
23 emphasized:

24 Watermaster expects regular and routine communication between Mr.
25 Wildermuth and Mr. Scalmanini *to ensure maximum efficiency and accuracy in
26 court review of the subsequent evaluations of the physical impacts of the proposed
27 project* [italics added].

28 Watermaster expects regular and routine coordination between Mr.
Wildermuth and Mr. Scalmanini *to ensure efficient review* [italics added].

(Second Transmittal, Exh. C at pp. 2 & 3.) The Court may wish to encourage regular and routine
communication between Mr. Wildermuth and Mr. Scalmanini in its next order.

IV.

STATUS OF WATERMASTER'S LONG-TERM PLAN FOR MZ1 AND THE PUBLICATION OF GUIDANCE CRITERIA

In its First Transmittal, Watermaster states that the Board approved an MZ-1 Summary
Report and Guidance Criteria on May 25, 2006. (*Id.* at p. 4.) Watermaster indicates that a "draft
alternative water supply proposal" has been developed "to assist the affected parties in

1 voluntarily modifying their pumping in order to avoid causing water levels to drop below the
2 guidance level, which is 245 feet below the reference point for the PA-7 piezometer at Ayala
3 Park.” (*Ibid.*) Watermaster also states that a draft proposal for further monitoring and technical
4 work also has been developed. (*Ibid.*) Thus, from the First Transmittal it appears that these two
5 proposals will be circulated outside the MZ-1 Technical Committee as the long-term plan,
6 introducing it to the Pool process in April or May. (*Id.* at p. 5, lns. 6-8.)

7 In its Second Transmittal, Watermaster states: “[t]he [long-term] plan is virtually
8 complete. No substantial revisions are contemplated.” (Second Transmittal, Exh. C, at ¶ 9.)
9 Exhibit C-1 of the Second Transmittal specifically shows that the Long-Term Management Plan
10 for MZ-1 will be submitted to the Court on May 2, 2007, and Court review and approval will
11 occur on May 30, 2007. This timeframe might not permit adequate time for the Court to receive
12 any comments on or opposition to the plan. Further, we have not been notified of a hearing date
13 having been set for May 31, 2007. The Court may wish to request that Watermaster confirm
14 whether or not the dates in Exhibit C-1 are accurate.

15 VI.

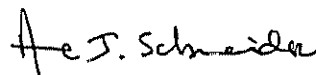
16 RECOMMENDATIONS

- 17 1. Watermaster’s Second Transmittal provides the Court with a timeframe for implementing
18 a long-term plan for MZ-1 and with a detailed timeframe for adding desalting capacity in
19 the Basin. (See Second Transmittal, Exh. C.) We recommend that the Court consider
20 issuing an order requiring Watermaster to comply with the Second Transmittal Exhibit C
21 schedule. We also recommend that the Court consider requiring Watermaster to report to
22 the Court any time Watermaster falls more than 30 days behind schedule to explain the
23 delay and present a revised schedule.
- 24 2. Any proposed plans for reoperation of the Basin will not be analyzed until the revisions
25 to Watermaster’s groundwater models are completed. We recommend the Court consider
26 encouraging Watermaster’s engineering consultant to closely coordinate with the Special
27 Referee’s Technical Expert concerning the progress of modification and application of
28 the models. As Watermaster emphasized in the Second Transmittal, this would “ensure

1 maximum efficiency and accuracy in court review of the subsequent evaluations of the
2 physical impacts of the proposed project.” (Second Transmittal Ex. C at ¶ 4.)

- 3 3. We recommend that the Court require that SOBR-2006 include a reconciliation of
4 pumping and safe yield as discussed in Section II B above to provide the Court with a
5 clear and complete basis for consideration of Watermaster Basin reoperation proposals.
6 The Court should remind Watermaster that a hearing date needs to be scheduled in early
7 September 2007 to receive SOBR-2006 and the Annual Report. Watermaster should
8 allow sufficient time after the filing of the reports for any comments to be received by the
9 Court. This hearing date should also be used for the Court to receive a report from
10 Watermaster on the status of steps 7 and 8 in Watermaster’s Second Transmittal Exhibit
11 C.
- 12 4. We recommend that the Court require Watermaster to submit a supplemental filing
13 before the next Court hearing explaining the relationship between achieving hydraulic
14 control to benefit from the Basin Plan Amendment and obtaining approval of the Court to
15 reoperate the Basin as envisioned in the Peace II Process. This supplemental filing
16 should affirm that Watermaster will not commence Basin reoperation without Court
17 approval to the extent such reoperation would not be consistent with the Judgment.
- 18 5. The Court should require Watermaster to submit a proposed schedule for filing and
19 obtaining Court approval of the Long-Term Plan for MZ-1.
- 20 6. The Court should require Watermaster to set a court date and give notice of a hearing, on
21 or before November 30, 2007, for the Court to consider conditional approval of the Peace
22 II Agreement.
- 23 7. With regard to the May 24, 2007 hearing to receive Watermaster’s transmittals,
24 depending on what responses are filed, the Court may wish to consider waiving
25 appearances by Counsel at the hearing.

26 Dated: May 2, 2007

27 

28 Anne J. Schneider, Special Referee

CHINO BASIN WATERMASTER
Case No. RCV 51010
Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California I am over the age of 18 years and not a party to the within action My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888

On May 4, 2007, I served the following:

- 1) **SPECIAL REFEREE'S COMMENTS AND RECOMMENDATIONS CONCERNING OBMP STATUS REPORT 2006-02, FUTURE DESALTING PLANS, AND MZ-1 LONG-TERM PLAN**

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

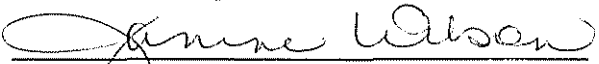
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee

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 May 4, 2007 in Rancho Cucamonga, California



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