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

10 CHINO BASIN MUNICIPAL WATER
11 DISTRICT

12 Plaintiff,

13 vs.

14 CITY OF CHINO, ET AL.

15 Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the
Honorable MICHAEL GUNN]

**WATERMASTER'S CLARIFICATION RE:
SPECIAL REFEREE'S COMMENTS RE:
SUBSIDENCE MANAGEMENT PLAN**

Hearing Date: November 15, 2007
Time: 1:30 P.M.
Department: R8

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19 On August 2, 2007, Watermaster filed a motion for approval of Watermaster's Long-Term
20 Plan for the Management of Subsidence ("Subsidence Management Plan – "SMP"). On October 11,
21 2007, Watermaster filed a Supplemental Filing re Subsidence Long-Term Plan. This filing
22 transmitted to the Court a Stipulation between Watermaster and the City of Chino Hills that
23 requested modifications and clarifications to Watermaster's August 2, 2007 Motion, and transmitted
24 a revised copy of the Subsidence Management Plan. Under the term of the Stipulation, and based on
25 the modifications and clarifications to Watermaster's Motion and the revised Subsidence
26 Management Plan, Chino Hills withdrew its opposition to the Subsidence Management Plan.
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1 Pursuant to the Court's Order dated August 27, 2007, any further oppositions to the
2 Subsidence Management Plan were to be filed by October 19, 2007. No party filed an opposition.

3 On October 15, 2007, the Special Referee filed her Comments and Recommendations
4 regarding the Subsidence Management Plan. The Special Referee recommends that:

5 *The Court should direct Watermaster to proceed with the Long-Term Plan*
6 *as presented, and to report to the Court regarding implementation of and*
7 *revisions to the plan as part of its regular OBMP implementation status*
8 *reporting. (Report 16:18-20.)*

9
10 This recommendation is based on the finding that:

11 *[T]he Long-Term Plan is a reasonable plan to address subsidence and*
12 *fissuring in MZ1. Risks of fissuring and subsidence are such that the*
13 *Court can rest assured that the parties would bring the issue back to the*
14 *Court of the Long-Term Plan were not adapted to future circumstances.*
15 *(Report 17:9-12.)*

16
17 Notwithstanding these recommendations, the Referee offered several comments about the
18 Subsidence Management Plan that Watermaster wishes to address to ensure the completeness of the
19 record. This pleading is filed in order to provide the needed clarification.

20
21 1. The Special Referee comments that: "There is, however, fundamentally nothing in the
22 plan itself related to a recharge plan; recharge planning appears to have been left to other processes."
23 (Report 12:15-17.)

24
25 **Clarification:** The SMP does contemplate recharge but does not require it. Specifically,
26 the SMP states that the MZ1 Technical Committee will contemplate an injection feasibility test this
27 fiscal year. The objective of the test would be to determine if aquifer recharge through injection is a
28

1 viable tool to manage subsidence within the Managed Area. The MZ1 Plan also commits to
2 investigating the influence of pumping in the central and northern regions on subsidence in the
3 southern regions, and that this investigation would include groundwater flow and subsidence
4 modeling. These models will include recharge. The adaptive nature of the MZ1 Plan allows for the
5 inclusion of recharge planning in future versions.
6

7 This approach is consistent with Program Element 4 of the OBMP Implementation Plan
8 which provides in relevant part that the SMP should address data gaps and be “adaptive in nature.”
9

10 2. The Special Referee comments that: “There is no definition of ‘tolerable levels’ and
11 ‘abatement’ when it comes to the ultimate objective . . . It is not clear how Watermaster will make
12 [its] evaluation of the target (‘tolerable levels’ vs. ‘abatement’) is not specified.” (Report 12:17-22.)
13 Similarly, the Special Referee states that: “The Long-Term Plan stops short of specifically defining
14 its target, as described in the stated goal of the plan, to reduce to tolerable levels or abate future land
15 subsidence and ground fissuring.” (Report 13:26-28.)
16

17 **Clarification:** The OBMP Implementation Plan itself does not define “tolerable levels.”
18 Moreover, what is “tolerable” may depend on the weighting of a host of economic and social values
19 that is in fact mooted if subsidence can be neutralized. As demonstrated in the August 2, 2007
20 Motion, the current data indicates that permanent (inelastic) subsidence is virtually non-existent
21 across MZ1, which suggests that future permanent subsidence is in fact controllable (i.e.,
22 manageable through planned pumping and recharge). In other words, given the success of the
23 Interim Plan approach, the MZ1 Technical Committee has not found it necessary to formulate a
24 specific definition of a “tolerable” level of subsidence. What exactly is “tolerable” future permanent
25 subsidence is reserved for a date in the future if the SMP is unable to continue to facilitate conditions
26 of no inelastic subsidence.
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28

1 3. The Special Referee comments that: “The location and distribution of all monitoring
2 wells should be shown on maps” (Report 12:25-26.)

3 **Clarification:** Figure 1-4 in Appendix A (MZ1 Summary Report) shows all monitoring
4 wells that were used during the Interim Plan. While the monitoring network has since been
5 expanded central MZ1, Watermaster has sought to balance the expense of providing a complete
6 record against the cost of completing materials that may be useful but may cause further delays in
7 processing. The filing was confined to that which is centrally relevant to the state of knowledge at
8 the present time. The request is noted and Watermaster can add this to further reporting in the
9 2007/08 MZ1 Annual Report.
10

11 4. The Special Referee comments that there should be maps that show all the wells that
12 are “subject to being classified as Managed Wells.” (Report 12:26-27.)

13 **Clarification:** To the best of Watermaster’s knowledge, there currently are no other wells in
14 the Managed Area that are constructed in such a way that they could be classified as “Managed
15 Wells.”
16

17 5. The Special Referee comments that: “Chino Hills Well 14 is illustrated on Figure 2-1
18 as “managed well,” but is not included on the listing of managed wells in Table 2-1.” (Report
19 12:2713:1.)
20

21 **Clarification:** A revised copy of the Subsidence Management Plan is attached to this
22 pleading as Exhibit “A” in which this typographical error is corrected by deleting Chino Hills Well
23 14 from Figure 2-1.

24 6. The Special Referee states that: “[B]ased on examination of well construction detail
25 in Table 2-2, it would appear that CIM Well 1A should be included as a managed well in Table 2-1.”
26 (Report 13:1-2.)
27
28

1 **Clarification:** Well 1A is east of the Riley Barrier and is not within the Managed Area. In
2 addition, drawdown caused by pumping at Well 1A has not been detected at the Ayala Park
3 piezometers. Thus, Watermaster disagrees that Well 1A should be considered a Managed Well.

4 7. The Special Referee notes that the timing is very short for Watermaster to analyze
5 and compare the survey and InSAR data sets, and recommend a new scope and frequency of data
6 collection by the end of Fall 2007. (Report 13:3-7.)

7 **Clarification:** Attached to this pleading as Exhibit "A" is a revised copy of the Subsidence
8 Management Plan that now alters this commitment to read, "After Fall 2007" (Subsidence
9 Management Plan 2-2.)

10 8. The Special Referee comments that: "There is some internal inconsistency in the
11 Central MZ1 discussion." (Report 13:8.) This "inconsistency" seems to focus on the identification
12 of potential adverse impacts and continued monitoring of horizontal strain in Central MZ1.

13 **Clarification:** It is true that Watermaster has identified that there are potential adverse
14 impacts associated with permanent (inelastic) subsidence. With this statement, all interested
15 stakeholders would agree. It is also true that continued monitoring and further understanding of
16 horizontal strain (i.e., potential fissuring) is a stated objective of future work.

17 9. The Special Referee comments that: "Certain provisions of the Long-Term Plan,
18 while based on the Stipulation, appear to focus on Chino Hills." (Report 1318-19.)

19 **Clarification:** Watermaster is focused on the preparation of a SMP that is consistent with
20 Program Element Four of the OBMP Implementation Plan and the Peace Agreement, not on the
21 conduct of any party or appropriator. It is true that Chino Hills is currently the focus of future
22 Watermaster efforts to assist with water supply planning. Since CIM Well 11A is exempt from
23 requested cessation of pumping for water level recovery, currently Chino Hills is the only party
24 impacted by the Subsidence Management Plan. However, Watermaster's investigation of the causes
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1 of subsidence continues, and Watermaster’s emphasis on providing assistance to Chino Hills should
2 not in any way be construed as an express or implied allegation, contention or admission that the
3 actions, inaction or conduct of any party to the Judgment is a contributing cause of subsidence. No
4 such findings have been requested by Watermaster, and per the stipulation with the City of Chino
5 Hills, Watermaster continues its express request that the Court avoid making any such findings.
6

7 10. The Special Referee states that: “Insufficient argument has been presented with
8 respect to Finding No. 4.” (Report 16:16.)

9 **Clarification:** While the Special Referee believes that Watermaster’s Motion showed that
10 the Subsidence Management Plan is consistent with the OBMP, no argument was made with respect
11 to the Judgment or the Peace Agreement. Iura novit curia. However, additional context is
12 undoubtedly useful to better evaluate Watermaster’s request.
13

14 It is true that neither the Peace Agreement nor the Judgment, expressly reference subsidence
15 per se or about what should be included in the Subsidence Management Plan. Nevertheless, the
16 OBMP Implementation Plan is an Exhibit to the Peace Agreement. The Parties to the Peace
17 Agreement covenanted to “not oppose” Watermaster’s efforts to implement the OBMP as set forth in
18 Exhibit “B” in a manner consistent with the Peace Agreement (Peace Agreement 4.2) and, facing the
19 prospect of opposition, Watermaster was interested in a determination as to whether its action was
20 consistent with the OBMP Implementation Plan and thus within the “safe harbor” provision of the
21 Section 4.2.
22

23 In the present context, as the Referee has already opined that the SMP is consistent with the
24 OBMP and therefore, it follows that it must also be consistent with the Peace Agreement. This view
25 is buttressed by the notion that there is no objection by any party to the Judgment. Qui tacet
26 consentire videtur.
27
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1 Moreover, Paragraph 41 vested Watermaster with the obligation to develop and implement
2 an OBMP. As observed by the Special Referee, the OBMP Implementation Plan *constitutes the*
3 *physical solution under the Judgment.* (Report 2:23.) The genesis of the physical solution doctrine
4 is Article X, Section 2 of the California Constitution, and the notion that where feasible water rights
5 should be exercised efficiently in a manner that stretches available resources to the maximum
6 beneficial use without causing unreasonable harm to other vested right holders or the Basin.

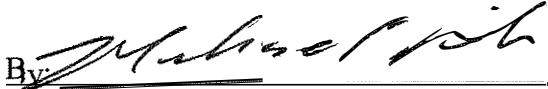
7
8 Paragraph 39 of the Judgment restates these considerations in describing the physical
9 solution at work in the instant case. Legal and practical considerations are important as is the need
10 for flexibility. (Judgment Paragraph 40.) Watermaster and the Court are “free to use existing and
11 future technological, social, institutional and economic options” to achieve these weighty objectives.
12 (Id.)

13
14 Indeed, the scientific knowledge now at Watermaster’s disposal gained after many years of
15 extensive study as well as the substantial efforts applied by Watermaster to date in preparing the
16 SMP are both reflective of and substantial evidence that Watermaster’s actions are consistent with
17 what is contemplated and intended under Paragraph 40. The largely *voluntary* measures included
18 within the SMP equip the producers within MZ1 with knowledge that will afford them the
19 opportunity to individually manage their water portfolios while alerting them to the potential
20 physical consequences of their decision.

21
22 In summary, as noted above, because the Judgment contemplates the adoption of the OBMP
23 by Watermaster, and the Peace Agreement enables the implementation without opposition so long as
24 the implementation was consistent with OBMP as set forth in Exhibit “B.” Accordingly, the
25 substantial and uncontroverted evidence is that the SMP is: consistent with the OBMP and ergo
26 consistent with Paragraph 4.2 of the Peace Agreement and Paragraph 41 of the Judgment.

1 11. The copy of the Subsidence Management Plan submitted to the Court on October 11,
2 2007 omitted a footnote on page 3-1 that was contained in the prior version submitted to the Court.
3 The copy of the Subsidence Management Plan attached to this pleading as Exhibit "A" has correctly
4 replaced this footnote.
5

6
7 Dated: October 25, 2007

8 
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EXHIBIT A

The Management Zone 1
Subsidence Management Plan is on
our ftp site:

www.cbwm.org/ftp

Look in the October 2007
Management Zone 1 Subsidence
Management Plan folder.

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 October 25, 2007, I served the following:

**1) WATERMASTER'S CLARIFICATION RE: SPECIAL REFEREE'S COMMENTS RE:
SUBSIDENCE MANAGEMENT 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 October 25, 2007 in Rancho Cucamonga, California.


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