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SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010

ORDER TO SHOW CAUSE WHY  
COURT SHOULD NOT CONTINUE  
THE HEARING ON MOTION FOR  
APPROVAL OF PEACE II  
DOCUMENTS

Date: Nov. 15, 2007  
Dept: 8  
Time: 1:30 p.m.

Introduction

On October 25, 2007, Chino Basin Watermaster filed a Motion for Approval of Peace II Documents. The motion has three exhibits: A, B & C. Exhibit A consists of a four-page resolution, with twelve attachments (Watermaster Resolution No. 07-05 and Attachments A – L). One of those attachments, Attachment K, has three exhibits (Peace II Agreement and Exhibits 1-3). Exhibit B consists of the Draft – 2007 CBWM Groundwater Model Documentation and Evaluation of the Peace II Project Description, dated October 2007 (hereinafter “Draft Technical Report”). Exhibit C is the

1 Declaration of Mark Wildermuth. The motion, with all of its exhibits and attachments  
2 (Peace II documents), consists of hundreds of pages.

3 It is an extraordinary effort that was made to get the motion and all of the  
4 documents filed before the end of October so the hearing on the motion could be held  
5 before the end of the year. It is obvious that everyone involved in the "Peace II"  
6 process has been working diligently to reach a consensus. The Court appreciates all  
7 of your efforts.

#### 8 Discussion

9 From the Court's review of the motion and attached documents, the question arises  
10 whether or not there is sufficient time for a thorough consideration of the motion before  
11 the end of the year. The Peace II documents include three documents that propose  
12 amendments to the Judgment. Attachments "H" and "I" are proposed Judgment  
13 amendments to address the problem of continued underutilization of Non-Agricultural  
14 Pool rights by allowing additional transferability options. Attachment "J" is a proposed  
15 Judgment amendment that will authorize Watermaster to initiate Basin Re-operation  
16 strategy, which would include an additional 400,000 acre-feet of "controlled overdraft"  
17 over and above the 200,000 acre-feet allowed by the Judgment in 1978.  
18 Watermaster's motion indicates this proposed amendment is of foremost importance to  
19 the Court's analysis. (Motion, p. 14, Ins. 1-3.) Review of these proposed Judgments is  
20 brought under Paragraph 15 of the Judgment.

21 The Peace II documents also include a document that proposes amendments to  
22 the Peace Agreement, Attachment "L." These amendments propose to (1) increase  
23 the 50,000 acre-foot Peace Agreement cap on local supplemental water storage to  
24 100,000 acre-feet, and (2) limit the availability of OBMP credits available through  
25 Rules and Regulations Form 7, to activities whose purpose is to address subsidence  
26 issues. Review of these proposed Peace Agreement amendments is brought under  
27 Paragraph 31 of the Judgment.

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1 A number of other documents are included that propose a variety of miscellaneous  
2 actions. These are to be reviewed under Paragraph 31 of the Judgment. These  
3 documents include: (1) the Purchase and Sale Agreement for water from the Non-  
4 Agricultural Pool; (2) the Supplement to the OBMP Implementation Plan; (3) the Peace  
5 II Agreement; and (4) proposed amendments to Watermaster's Rules and Regulations.

6 Other documents have been submitted to assist the Court in its review. These  
7 include the Project Description and two reports from Dr. David Sunding, analyzing the  
8 economic consequences of the Peace II measures.

9 It is apparent that a considerable amount of time will be spent analyzing the Peace  
10 II documents. Moreover, it appears that there are several distinct orders sought by  
11 Watermaster in this filing (i.e., several motions have been combined in one). When  
12 Watermaster sought Court approval of the Peace Agreement in 2000, three separate  
13 motions were filed: one seeking Court approval of Watermaster's commitment to act  
14 in accordance with the Peace Agreement; one seeking Court approval of the proposed  
15 Judgment Amendments; and one seeking Court approval of amendments to  
16 Watermaster Rules and Regulations.

17 The Court also is concerned that the technical review supporting Basin Re-  
18 operation is not yet complete. The Draft Technical Report is "... labeled a draft report,  
19 because we [Wildermuth Engineering] intend to continue to refine and develop our  
20 analysis as we move forward over the next few months." (Declaration of Mark  
21 Wildermuth, p. 9, Ins. 16-17.) "As of the date of this declaration, additional work is  
22 being done to refine the model projections and this additional work will be included in  
23 a final report." (*Id.* at p. 2, Ins. 14-15.)

24 Watermaster asserts that the technical review is an essential part of the motion.  
25 "Perhaps the most important document that has been submitted to assist the Court is  
26 the technical review of the Basin Re-operation strategy that has been prepared by  
27 Wildermuth Environmental [Draft Technical Report]" (Motion, p. 10, Ins. 1-5.) Because

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1 of the significance of this document, the Court must see the final report before issuing  
2 its ruling on the motion.

3 Finally, the Court is aware of the magnitude of its decision. Watermaster asserts  
4 that the Basin Re-operation strategy "is the centerpiece of the Peace II measures"  
5 (Motion, at p. 11, ln. 4) and "has far reaching implications." (*Id.* at p. 6, ln. 10.) "The  
6 Basin Re-operation strategy is a very large project with significant consequences that  
7 will have impacts for future generations. The initiation of a project of this magnitude  
8 necessitates a high degree of caution." (*Id.* at p. 12, lns. 8-10.) The Court agrees  
9 wholeheartedly that the highest degree of caution must be exercised in considering  
10 the implications of the Basin Re-operation strategy.

11 The Special Referee's report may allay some of the Court's concerns; However, the  
12 Special Referee's report may engender additional concerns that the Court will want  
13 addressed at the hearing on November 29, 2007. Therefore, it is suggested that Mr.  
14 Wildermuth be present, prepared to be sworn, and take the witness stand to testify  
15 regarding the concerns expressed herein and such further questions as may be raised  
16 in the Special Referee's report, which, hopefully, will be filed prior to the November 29,  
17 2007 hearing herein.

#### 18 Order

19 The Court anticipates that a significant investment of time will be necessary to  
20 carefully review the documents. The Court also is most interested in receiving the  
21 Special Referee's Report. Finally, the Court has not yet received Wildermuth  
22 Environmental's final technical analysis and report. For these reasons and because of  
23 the importance of the decision, the Court *motu proprio* intends to continue the hearing  
24 on Watermaster's motion, absent sufficient cause being shown by, among other  
25 things, testimony of Mark Wildermuth elicited on November 29, 2007. To aid the Court  
26 in its preparation for the November 29, 2007 hearing, a declaration by Mark  
27 Wildermuth, showing all of the changes made in the final Technical Report or a red-  
28 lined version of the report, would be helpful.



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 November 15, 2007 I served the following:

**1) ORDER TO SHOW CAUSE WHY COURT SHOULD NOT CONTINUE THE HEARING ON MOTION FOR APPROVAL OF PEACE II DOCUMENTS**

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 November 15, 2007 in Rancho Cucamonga, California.



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