

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

DEC 21 2007

By John M. Talar
Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION
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11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

Plaintiff,

13 v.

14 THE CITY OF CHINO, et al.

15 Defendants.
16

CASE NO. RCV 51010

ORDER CONCERNING MOTION
FOR APPROVAL OF PEACE II
DOCUMENTS

Date: Submitted on Nov. 29, 2007
Dept. 8

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19 **I. Introduction**

20 **A. Watermaster's Filings**

21 On October 25, 2007, Chino Basin Watermaster filed a Motion for Approval of Peace II
22 Documents. Watermaster's motion requests Court approval of three proposed Judgment
23 amendments, a proposed amendment to the Peace Agreement, a Purchase and Sale Agreement
24 for water from the Overlying (Non-Agricultural) Pool, a Supplement to the Optimum Basin
25 Management Program ("OBMP") Implementation Plan, a Peace II Agreement, and proposed
26 amendments to Watermaster's Rules and Regulations. Watermaster requested a November 29,
27 2007 hearing on the motion

28 On November 15, 2007, Watermaster filed a Transmittal of Supplemental Documents,

1 which included the 2007 CBWM Groundwater Model Documentation and Evaluation of the
2 Peace II Project Description, Final Report, dated November 2007. On December 13, 2007,
3 Watermaster filed its Second Transmittal of Supplemental Documents, which included several
4 stipulations.

5 Watermaster filed its Response to Special Referee's Preliminary Comments and
6 Recommendations on Motion for Approval of Peace II Documents on December 14, 2007. The
7 Watermaster's Response noted: "The technical issues raised by the Referee are addressed in a
8 separate document that is being prepared by Mark Wildermuth, which will be filed at a later
9 date." (Watermaster Response p. 2, fn. 2) Mr. Wildermuth's Letter Report to Watermaster on
10 the subject "Evaluation of Alternative 1C and Declining Safe Yield" (December 18, 2007) was
11 filed with the Court December 19, 2007.

12 B. Filings in Support of Watermaster's Motion

13 Numerous filings have been received in support of the Motion. On November 9, 2007,
14 Fontana Union Water Company, San Antonio Water Company, and Monte Vista Water District
15 filed Joinders to Watermaster's motion. The City of Pomona filed a Statement in Support of the
16 motion, also on November 9, 2007. On November 13, 2007, Inland Empire Utilities Agency
17 ("TEUA") filed a Joinder to Watermaster's motion and Declaration of Richard Atwater. Also on
18 November 14, 2007, the City of Chino Hills, the City of Upland, the Agricultural Pool, and
19 Cucamonga Valley Water District filed Joinders to Watermaster's motion.

20 On November 15, 2007, Western Municipal Water District filed a Joinder to
21 Watermaster's motion and Declaration of John Rossi. Also on November 15, 2007, the City of
22 Ontario filed a Joinder to the motion and Declaration of Kenneth Jeske. The third filing on
23 November 15, 2007, was Three Valleys Municipal Water District's Joinder to the motion and
24 Declaration of Jeff Kightlinger. On November 26, 2007, the City of Chino filed a Joinder and
25 Statement in Support of Watermaster Motion to Approve Peace II Documents.

26 On November 29, 2007, Watermaster and the Chino Basin Water Conservation District
27 entered into and filed a stipulation stating the Conservation District's support for the Court's
28 approval of the Peace II Measures in consideration for certain clarifications. Watermaster's

1 second transmittal, filed on November 29, 2007, included a Declaration from Ronald Craig on
2 behalf of the City of Chino Hills, and a Declaration from Eldon Horst for Jurupa Community
3 Services District, both in support of approval of the Peace II Measures.

4 C. Court's Order to Show Cause

5 An Order to Show Cause Why Court Should Not Continue the Hearing on Motion for
6 Approval of Peace II Documents ("OSC") was issued on November 15, 2007. The OSC stated
7 the Court intended to continue the hearing on Watermaster's Motion "... absent sufficient cause
8 being shown by, among other things, testimony of Mark Wildermuth elicited on November 29,
9 2007." (OSC p. 4, Ins. 24-25) The Chino Basin Water Conservation District filed a Response to
10 the OSC on November 19, 2006, and Watermaster filed a Response to Order to Show Cause and
11 Conservation District on November 26, 2007.

12 D. Special Referee Reports

13 Special Referee Anne Schneider's Preliminary Comments and Recommendations on
14 Motion for Approval of Peace II Documents ("Preliminary Report") was filed on November 27,
15 2007. The Special Referee filed her Final Report and Recommendations on Motion for
16 Approval of Peace II Documents on December 20, 2007.

17 E. November 29, 2007 Court Hearing

18 The Court held a hearing on November 29, 2007, with testimony from Mr. Manning and
19 Mr. Wildermuth. The Reporter's Transcript was available December 11, 2007.

20 **II. Discussion**

21 An extraordinary effort has been made to get the motion, all of the supporting and
22 supplemental pleadings and other documents, and the Special Referee reports filed before the
23 end of 2007. The Court has considered all of the pleadings, declarations, reports and other
24 documents, as well as the testimony presented on November 29, 2007. It is obvious that
25 everyone involved in the "Peace II" process has been working diligently. Moreover, the Court is
26 appreciative of the way this case has been managed in recent years. The Court appreciates all of
27 your efforts, including but not limited to the parties, the attorneys, Watermaster and its attorney,
28 the Special Referee, and the Technical Expert's education of the Court in this complex matter.

1 A. Guidance Regarding the Roles of Watermaster and the Special Referee

2 Watermaster asserts that the traditional role of Watermaster and its interaction with the
3 Court is made more complex in Chino Basin by the existence of a Special Referee.
4 Watermaster states that no other adjudicated groundwater basin has both a Watermaster and a
5 Special Referee, and notes that the Judgment does not provide for a referee. (Watermaster
6 Response, *supra*, p. 3, lns. 11-16.) Watermaster asks for guidance as to Watermaster's and the
7 Special Referee's roles.

8 1. Watermaster's Role

9 The Court accepts Watermaster's analysis of its role: "Watermaster's legal existence
10 emanates from the Judgment. All of Watermaster's enumerated powers originate within and
11 arise from the Judgment. It is not a public agency or private entity that has been formed under
12 some general or special law. Its duty is 'to administer and to enforce the provisions of this
13 Judgment and any subsequent instructions or orders of the Court hereunder.' [Citation.] As all
14 special masters, Watermaster operates as an extension of the Court and to meet the needs of the
15 Court in carrying out its obligations under the Judgment and Article X, Section 2 of the
16 California Constitution." (Watermaster Resp. to Sp. Ref. Prelim. Comments, p. 2, lns. 22-25 and
17 p. 3, lns. 1-3.) Although it is not stated in Watermaster's pleadings, it is important to note that it
18 is not Watermaster's duty to be an advocate for any, or for all, of the parties. Watermaster's
19 position with respect to the parties should be neutral.

20 2. Special Referee's Role

21 The Court also accepts the Special Referee's analysis of the role of a referee: "The role
22 of the Special Referee is to (1) provide the court with as full and complete explanations as
23 possible of what the Watermaster requests or of issues that have been brought to the court; and
24 (2) to make recommendations to the court as appropriate." (Sp. Rev. Fin. Report, p. 3, lns. 4-6.)
25 The Special Referee's role in this case is discussed further below.

26 3. Courts Favor Referee in Water Law Determinations

27 The recommendation that trial courts obtain expert advice in water law decisions was
28 recognized by the California Supreme Court long ago: "... in view of the complexity of the

1 factual issues in water cases and the great public interests involved, [it has been recommended]
2 that the trial courts seek the aid of the expert advice and assistance provided for in that section
3 [former Water Code Section 24, now Water Code Section 2000].” (*City of Pasadena v. City of*
4 *Alhambra* (1949) 33 Cal.2d 908, 917.)

5 In this case, it was the parties who first suggested to the Court in the early 1990’s that an
6 order of reference be made to Anne Schneider. That was in connection with motions entitled
7 Joint Motion to Interpret, Enforce, Carry-out, Modify, Amend or Amplify the Judgment Herein
8 (dated August 25, 1992) and California Steel Industries, Inc.’s Notice of Motion to Interpret,
9 Enforce, Carry-out, Modify, Amend, or Amplify Paragraph 7, Page 66 of Exhibit G of the 1978
10 Judgment (dated March 25, 1993).

11 Then in April 1997, the Court, on its own motion, ordered a reference to Anne Schneider
12 under Code of Civil Procedure Section 639, subdivision (d). In that instance, the reference to
13 Anne Schneider was made as an alternative to ordering a reference to the SWRCB under Water
14 Code Sections 2000 *et seq.*, in connection with a Motion for Order that Audit Commissioned by
15 Watermaster is not a Watermaster Expense and Motion to Appoint a Nine-Member Watermaster
16 Board. (Ruling and Order of Special Reference, dated April 29, 1997, pp. 7, & 10.)

17 4. Referee Status in this Case

18 In April 1998, the Court first ordered a reference to Anne Schneider in connection with
19 an uncontested matter: the development of an Optimum Basin Management Program for Chino
20 Basin (“OBMP”). Special Referee Schneider was asked “to report and make recommendations
21 to the court concerning the contents, implementation, effectiveness, and shortcomings of the
22 optimum basin management plan.” (Ruling, dated Feb. 19, 1998, p. 9, lns. 12-16.) The Court
23 authorized the Special Referee “to conduct hearings, if necessary, to ensure the development of
24 all essential elements of the program.” (*Id.* at p. 10, lns. 13-14.)

25 Since that appointment, the Special Referee has been providing expert advice and
26 conducting workshops either at the Court’s request or the request of the parties or Watermaster,
27 as authorized in various court orders. For example, Watermaster requested that a workshop be
28 held to present to the Court through the Special Referee, the Interim Plan for Management of

1 Subsidence. (See Order Scheduling Workshop, dated June 19, 2002, p. 2, lns. 6-10.) The
2 Special Referee also has been requested to monitor the Peace II process and the plan for future
3 desalters and related activities. (Order Re-Appointing Nine-Member Board, dated Feb. 9, 2006,
4 p. 5, lns. 9-17.) It should be clear from this discussion that the Special Referee in this case does
5 not necessarily function as the typical referee described in Watermaster's Response to the
6 Special Referee's Preliminary Report, at page 4.

7 This Court has said on many occasions that the assistance provided by the Special
8 Referee is invaluable. It is the desire of the Court that the Special Referee continue to monitor
9 the contents, implementation, effectiveness and shortcomings (if any) of the OBMP. It is
10 suggested in the Special Referee's Final Report that because of Watermaster's involvement in
11 negotiations related to the OBMP "the Special Referee may be less constrained than
12 Watermaster in raising questions and voicing concerns...." (Sp. Ref. Final Report, p. 3, lns. 13-
13 16.) In participating in the parties' negotiations, Watermaster must not forget that its function is
14 to meet the needs of the Court in carrying out its obligations under the Judgment and Article X,
15 Section 2 of the California Constitution.

16 B. Findings Pertaining to Watermaster's Motion

17 Watermaster's motion requests review and court approval under paragraphs 15 and 31 of
18 the Judgment. Under paragraph 15, the Court reserves jurisdiction to make further or
19 supplemental orders "as may be necessary or appropriate for interpretation, enforcement or
20 carrying out" the Judgment and "to modify, amend or amplify" any of its provisions. Under
21 Judgment paragraph 31, in reviewing Watermaster decisions, "[T]he Court shall require the
22 moving party to notify the active parties...of a date for taking evidence and argument, and on
23 the date so designated shall review de novo the question at issue. Watermaster's findings or
24 decision, if any, may be received in evidence at said hearing, but shall not constitute presumptive
25 or prima facie proof of any fact in issue."

26 In addition to the testimony offered at the hearing on November 29, 2007, Watermaster
27 has presented several declarations and other documentary evidence in support of its motion. The
28 Court has considered all of the evidence presented by Watermaster and finds there is substantial

1 evidence to support Watermaster's implied findings that the proposed Judgment amendments
2 and other Peace II documents will promote the public interest, will protect the rights of the
3 parties, and are consistent with California Constitution Article X, section 2. The key points
4 relied upon by Watermaster, and which were proved to the Court, are enumerated on page 9 of
5 the Special Referee's Final Report and Recommendations on Motion for Approval of Peace II
6 Documents, and are incorporated herein by reference.

7 **III. Order**

8 **SUBJECT TO THE CONTINUING JURISDICTION OF THE COURT, AND TO THE**
9 **SATISFACTION OF THE CONDITIONS SUBSEQUENT LISTED BELOW**, the Court hereby
10 makes the following orders:

- 11 1. The amendments to Judgment Exhibit "I", Judgment Paragraph 8, and Judgment
12 Exhibit "G" are hereby approved.
- 13 2. Watermaster shall proceed in accordance with the second amendment to the Peace
14 Agreement.
- 15 3. Watermaster's adoption of Resolution 07-05 is approved and Watermaster shall
16 proceed in accordance with the terms of the resolution and the documents attached
17 thereto.
- 18 4. The Court hereby adopts the recommendations made in Special Referee's Final
19 Report and Recommendations on Motion for Approval of Peace II Documents, which
20 are incorporated herein by reference.
- 21 5. A hearing is set for Thursday, May 1, 2008, at 2:00 p.m. for the Court to review
22 Watermaster's compliance with the first four conditions listed below.

23 **Conditions Subsequent**

- 24 1. By February 1, 2008, Watermaster shall prepare and submit to the Court a brief to
25 explain the amendments to Judgment Paragraph 8 and Judgment "G".
- 26 2. By February 1, 2008, Watermaster shall prepare and submit to the Court for approval
27 a corrected initial schedule to replace Resolution No. 07-05 Attachment "E", together
28 with an explanation of the corrections made.

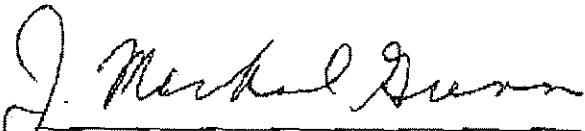
- 1 3. By March 1, 2008, Watermaster shall prepare and submit to the Court for approval a
2 new Hydraulic Control technical report that shall address all factors included in the
3 Special Referee's Final Report and Recommendations. The new Hydraulic Control
4 report shall include technical analysis of the projected decline in safe yield, and a
5 definition and analysis of "new equilibrium" issues.
- 6 4. By April 1, 2008, Watermaster shall report to the Court on the status of CEQA
7 documentation, compliance, and requirements, and provide the Court with assurances
8 that Watermaster's approval and participation in any project that is a "project" for
9 CEQA purposes has been or will be subject to all appropriate CEQA review.
- 10 5. By July 1, 2008, Watermaster shall prepare and submit to the Court a detailed outline
11 of the scope and content of its first Recharge Master Plan update, and shall report its
12 progress by January 1, 2009, and July 1, 2009.
- 13 6. By July 1, 2008, Watermaster shall report to the Court on the development of
14 standards and criteria by which the RWQCB will determine that hydraulic control is
15 achieved and maintained.
- 16 7. By December 31, 2008, Watermaster shall prepare and submit to the Court for
17 approval a revised schedule to replace the corrected initial schedule, which submittal
18 shall include a reconciliation of new yield and stormwater estimates for 2000/01
19 through 2006/07, and a discussion of how Watermaster will account for
20 unreplenished overproduction for that period.
- 21 8. By July 1, 2010, Watermaster shall prepare and submit to the Court for approval an
22 updated Recharge Master Plan. The updated Recharge Master Plan shall include all
23 elements listed in the Special Referee's Final Report and Recommendations.
- 24 9. Watermaster shall comply with all commitments it has made in the Peace II
25 Documents, whether or not specifically included in these conditions subsequent.

26 Watermaster is forewarned that a failure to comply with any of the above conditions subsequent
27 will render the Court's approval of Watermaster's motion null and void. A lack of compliance
28 with the conditions subsequent will also be seen as a failure by Watermaster, through its nine-

1 member Board, to perform its most important duty: to administer and to enforce the provisions of
2 this Judgment and any subsequent instructions or orders of the Court.

3 IT IS SO ORDERED.

4 Dated: December 21, 2007

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7 J. Michael Gunn, Judge

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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.

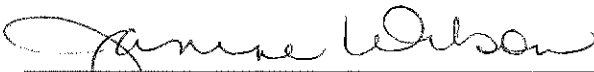
On December 21, 2007 I served the following:

1) ORDER CONCERNING 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 December 21, 2007 in Rancho Cucamonga, California.



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