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7 SPECIAL REFEREE

FEE EXEMPT

FILED  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
RANCHO CUCAMONGA DISTRICT

JUL 30 2008

BY CB. Stuebel DEPUTY

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

10  
11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

14 v.

15 THE CITY OF CHINO, et al.

16 Defendants.

CASE NO. RCV 51010

Judge: Honorable J. Michael Gunn

COMMENTS OF SPECIAL REFEREE  
ON WATERMASTER COMPLIANCE  
WITH DECEMBER 21, 2007 ORDER  
CONDITIONS 1 THROUGH 6,  
MOTION TO RECEIVE AND FILE  
WATERMASTER'S 30<sup>TH</sup> ANNUAL  
REPORT AND STATUS REPORT  
2007-1, AND MOTIONS FOR  
INTERVENTION

Hearing Date: August 21, 2008  
Time: 2:00 p.m.  
Dept: R8

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21 I. INTRODUCTION

22 On December 21, 2007, the court issued an Order Concerning Motion for Approval of  
23 Peace II Documents ("Peace II Order"). The Peace II Order approved Watermaster's October  
24 27, 2007 Motion for Approval of Peace II Documents, subject to nine Conditions Subsequent.  
25 The Peace II Order set a hearing for Thursday, May 1, to review compliance with the first four  
26 Conditions Subsequent. That hearing was continued to August 21, 2008. In the meantime,  
27 Watermaster filed a motion on July 1, 2008, to approve its filings in satisfaction of Conditions  
28 Subsequent 5 and 6. The August 21, 2008 hearing will, therefore, be the first time that the Court

1 will consider Watermaster's filings related to the Peace II Order Conditions Subsequent I  
2 through 6.

3 On April 10, 2008, and July 15, 2008, Watermaster filed motions requesting approval of  
4 intervention by three entities. On July 15, 2008, Watermaster also filed a Motion to Receive and  
5 file Watermaster's 30<sup>th</sup> Annual Report (Fiscal Year 2006-2007) and Status Report 2007-1.<sup>1</sup>

## 6 II. PEACE II ORDER CONDITIONS SUBSEQUENT MOTIONS

### 7 A. Procedural History

8 On December 27, 2007, pursuant to the Court's continuing jurisdiction under the  
9 Judgment in this case, the Court approved certain amendments to the Judgment and directed  
10 Watermaster to proceed in accordance with the suite of documents referred to as "Peace II  
11 Measures". The Court imposed nine Conditions Subsequent in its Peace II Order. Watermaster  
12 has timely prepared and submitted to the Court documents in compliance with conditions I  
13 through 6 of the Peace II Order. Conditions Subsequent one through six are:

- 14 1. By February 1, 2008, Watermaster shall prepare and submit to the Court a brief to  
15 explain the amendments to Judgment Paragraph 8 and Exhibit "G".
- 16 2. By February 1, 2008, Watermaster shall prepare and submit to the Court for approval  
17 a corrected initial schedule to replace Resolution No. 07-05 Attachment "E", together  
18 with an explanation of the corrections made.
- 19 3. By March 1, 2008, Watermaster shall prepare and submit to the Court for approval a  
20 new Hydraulic Control technical report that shall address all factors included in the  
21 Special Referee's Final Report and Recommendations. The new Hydraulic Control  
22 report shall include technical analysis of the projected decline in safe yield, and a  
23 definition and analysis of "new equilibrium" issues.
- 24 4. By April 1, 2008, Watermaster shall report to the Court on the status of CEQA  
25 [California Environmental Quality Act] documentation, compliance, and  
26 requirements, and provide the Court with assurances that Watermaster's approval and

27 <sup>1</sup> On July 1, 2008, Cucamonga Valley Water District filed a Notice of Motion and Motion to Discontinue the  
28 Appointment of the Special Referee. On July 17, 2008, San Antonio Water Company filed a Joinder to that motion.  
I will separately file a response to that motion.

1 participation in any project that is a “project” for CEQA purposes has been or will be  
2 subject to all appropriate CEQA review.

3 5. By July 1, 2008, Watermaster shall prepare and submit to the Court a detailed outline  
4 of the scope and content of its first Recharge Master Plan update, and shall report its  
5 progress by January 1, 2009, and July 1, 2009.

6 6. By July 1, 2008, Watermaster shall report to the Court on the development of  
7 standards and criteria by which the RWQCB [Regional Water Quality Control Board]  
8 will determine that hydraulic control is achieved and maintained.

9 Watermaster timely filed on January 31, 2008, its “Watermaster Compliance with  
10 December 21, 2007 Order Conditions 1 and 2”. Watermaster timely filed on March 3, 2008, its  
11 “Watermaster Compliance with December 21, 2007 Order Condition 3”. Watermaster timely  
12 filed on April 1, 2008, its “Watermaster Compliance with Condition Subsequent Number 4”. On  
13 July 1, 2008, Watermaster timely filed its “Motion to Approve Watermaster’s Filing in  
14 Satisfaction of Condition Subsequent 5; Watermaster Compliance with Condition Subsequent 6”.

15 On April 10, 2008, Monte Vista Water District filed a “Response to Watermaster’s  
16 Compliance with Conditions Subsequent Numbers Three and Four of the Court’s 12/21/2007  
17 Order; Request for Additional Time to Evaluate Watermaster’s Compliance with Condition  
18 Subsequent Number Three; and Withdrawal of Monte Vista Water District’s Joinder to  
19 Watermaster’s Motion for Approval of Peace II Documents.” On April 17, 2008, I filed  
20 “Comments of Special Referee on Watermaster Compliance with December 21, 2007 Order  
21 Conditions 1 through 4” (hereinafter “Referee’s April Comments”). On April 25, 2008,  
22 Watermaster filed “Watermaster’s Response to Comments of Special Referee on Watermaster  
23 Compliance with December 21, 2007 Order Conditions 1 through 4” (“Watermaster Response to  
24 Referee”). On April 29, 2008, Cucamonga Valley Water District filed a “Joinder to  
25 Watermaster’s Response to Comments of Special Referee on Watermaster Compliance with  
26 December 21, 2007 Order Conditions 1 through 4.” Also on April 29, 2008, Western Municipal  
27 Water District and Inland Empire Utilities Agency filed a “Joint Response . . . and Joinder to  
28 Chino Basin Watermaster’s Response to Watermaster Compliance with December 21, 2007

1 Order Conditions 1 through 4.” On July 1, 2008, Watermaster filed its “Motion to Approve  
2 Watermaster’s Filing in Satisfaction of Condition Subsequent 5; Watermaster Compliance with  
3 Condition Subsequent 6.”

4 **B. First Condition Subsequent**

5 As noted in the Referee’s April Comments, Watermaster’s first Condition Subsequent  
6 response amplifies the record with regard to Judgment amendments to Paragraph 8 and Exhibit  
7 “G” approved by the Court’s Peace II Order. With that submittal, the record is now significantly  
8 more complete as to those Judgment amendments.

9 **C. Second Condition Subsequent**

10 The Court’s second Condition Subsequent required Court approval of a corrected initial  
11 schedule. The schedule is important because it shows the quantity of desalter pumping projected  
12 from fiscal year 2006/2007 through 2029/2030, and the quantity of desalter pumping which will  
13 be replenished or not over that period. The Referee’s April Comments noted that the corrected  
14 schedule that Watermaster submitted was the wrong table. The April 25, 2008 Watermaster  
15 Response to Referee attached a revised corrected Table 3-5c Initial Schedule as Exhibit “B”.  
16 That appears to be the correct table. The revised corrected Exhibit B Table 3-5c submitted to the  
17 Court in satisfaction of Condition Subsequent No. 2 should be approved by the Court.

18 The second and seventh Conditions Subsequent are related. Peace II Order Condition  
19 Subsequent No. 7 requires Watermaster to submit a revised schedule to replace this corrected  
20 initial schedule by December 31, 2008.<sup>2</sup> Although recognizing that a reconciliation will be  
21 complicated, the Special Referee’s Final Report and Recommendations on Motion for Approval  
22 of Peace II Documents explained that:

23 . . . for the period 2000/01 through 2006/07, New Yield induced from the Santa

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24 <sup>2</sup> Condition Subsequent No. 7 requires:

25 By December 31, 2008, Watermaster shall prepare and submit to the Court for approval a revised  
26 schedule to replace the corrected initial schedule, which submittal shall include a reconciliation of  
27 new yield and stormwater estimates for 2000/01 through 2006/07, and a discussion of how  
Watermaster will account for unreplenished overproduction for that period.

28 The issues related to the Conditions Subsequent are discussed in detail in the Special Referee’s Preliminary  
Comments and Recommendations on Motion for Approval of Peace II Documents at pp. 12-13 and pp. 35-36, and in  
Special Referee’s Final Report and Recommendations at pp. 19-24.

1 Ana River has been overstated by 37,043 acre-feet and stormwater by 24,000  
2 acre-feet, for a total of 61,043 acre-feet. Watermaster should be directed to  
3 reconcile the New Yield and stormwater estimates it used during the period  
4 2000/01 through 2006/07, with actual conditions as reflected in the Technical  
5 Report, or demonstrate good cause why this should not be done. . . In summary,  
6 the reconciliation should be holistic and “true-up” earlier estimates with data  
7 obtained from actual experience and observed conditions.<sup>3</sup>

8 Judgment Paragraph 45 requires Watermaster to levy and collect assessments in each year to  
9 purchase replenishment water to replace production which exceeded the allocated shares of safe  
10 yield or operating safe yield. Where its estimates of New Yield (and stormwater) were not  
11 ultimately determined to be “proven increases,”<sup>4</sup> Watermaster is obligated to levy and collect  
12 assessments to purchase replenishment water to replace that overproduction.

#### 13 **D. Third Condition Subsequent**

14 In response to the third Condition Subsequent, Watermaster filed a report prepared by  
15 Wildermuth Environmental Inc. (“WEI”) entitled “Response to Condition Subsequent No. 3  
16 from the Order Confirming Motion for Approval of Peace II Documents” (hereinafter “WEI  
17 Final Response Report”). This report is an important document because it is the only  
18 Watermaster report which describes Peace II reoperation for hydraulic control as ultimately  
19 proposed by Watermaster and approved by the Court.<sup>5</sup> As discussed in the Referee’s April  
20 Comments, technical expert Mr. Scalmanini reviewed the report and concluded that it “. . . fully  
21 satisfies the recommendation that it be a stand-alone documentation of what Watermaster has  
22 analyzed as the expected Basin response to its then-proposed reoperation strategy. . . . The WEI  
23 Final Response Report is a thorough documentation of the technical simulation and interpretation  
24 of anticipated Basin response to what Watermaster proposed (now approved) to do in reoperating  
25 the Basin.” Mr. Scalmanini’s extensive comments were attached in full to the Referee’s April

26 <sup>3</sup> Special Referee’s Final Report and Recommendations on Motion for Approval of Peace II Documents, p. 23. I  
27 also recommended that Watermaster should be required to update the schedule by December 31 of each year and to  
28 provide the Court with supporting technical analysis because actual New Yield (and stormwater) quantities will vary  
every year. (*Id.*)

<sup>4</sup> The Peace Agreement defines “New Yield” at § 1.1(aa) as “. . . *proven* increases in yield in quantities greater than  
historical amounts from sources of supply. . .” (Emphasis added.)

<sup>5</sup> The WEI Final Response Report is a report on the WEI computer modeling that analyzes basin reoperation for  
hydraulic control limited to 400,000 acre-feet of mining the Chino Basin through pumping wells to supply water to  
the desalters without replenishment for that pumping. The WEI Final Response Report is not an environmental  
impact report and is not identified as a functional equivalent of an EIR or any other CEQA document. (See  
discussion, *supra.*)

1 Comments. Condition Subsequent No. 3 requires submission of the technical report to the Court  
2 for approval. The report should be approved by the Court.

3 **E. Fourth Condition Subsequent**

4 Condition Subsequent No. 4 required Watermaster to do two things: First, Watermaster  
5 was to report to the Court on the status of CEQA documentation, compliance, and requirements;  
6 and two, Watermaster was to provide the Court with “assurances that Watermaster’s approval  
7 and participation in any project that is a “project for CEQA purposes has been or will be subject  
8 to all appropriate CEQA review.” The Peace II Agreement provides:

9 2.3 Commitments are Consistent with CEQA. The Parties agree and  
10 acknowledge that no commitment will be made to carry out any “project” under  
11 the amendments to the OBMP and within the meaning of CEQA unless and until  
the environmental review and assessment that may be required by CEQA for that  
defined “project” have been completed.

12 (Peace II Agreement, Article II) Watermaster Resolution 07-05 similarly commits Watermaster  
13 not to “carry out any project within the meaning of CEQA unless and until CEQA compliance  
14 has been demonstrated.” (Resolution 07-05, ¶ 15)

15 Watermaster’s submittal in response to Condition Subsequent 4 reported on the status of  
16 CEQA documentation to date, specifically that: (1) Western Municipal Water District (“Western  
17 Municipal”) adopted a categorical exemption in January 2008 for expansion of the Desalter II  
18 facility; (2) Inland Empire Utilities Agency (“IEUA”) anticipates preparing a mitigated negative  
19 declaration for the Chino Creek Wellfield which will supply additional water to the desalters;  
20 and (3) Watermaster would include funds in its 2008/2009 budget for CEQA compliance for  
21 “further items relating to Peace II, including Basin Re-Operation and hydraulic control.”

22 Watermaster reported that the scope of work for these “further items” was being developed:

23 Further items relating to Peace II, including Basin Re-Operations and Hydraulic  
24 Control, are also underway. Watermaster is currently in the process of creating  
its draft budget for 2008-2009, and will budget sufficient funds for this purpose.  
25 Watermaster is informed that Tom Dodson & Associates, the consultant that  
drafted the OBMP PEIR, has been retained for this work and is in the process of  
26 developing a scope of work.

27 Watermaster’s statement that it would have funds earmarked in its 2008/2009 budget for  
28 “further items relating to Peace II, including Basin Re-Operation and hydraulic control” led to

1 my April 1 comment that Watermaster should provide the Court with more information to  
2 explain what its budgeted work would cover.<sup>6</sup> I recommended that the Court require  
3 Watermaster to report back to the Court within some reasonable period of time to further explain  
4 what actions will be taken to comply with CEQA for the hydraulic control and basin reoperation  
5 activities, and the overall changes in the basin that Watermaster's technical work indicates are  
6 going to occur, as well as desalter expansion and construction of the Chino Creek Wellfield.

7 Watermaster's Response to Referee stated that Watermaster is not itself conducting  
8 CEQA review (p. 5, ln. 14), that "Watermaster has no objection to keeping the Court apprised  
9 of the procedural CEQA processing and analysis" (p. 6, lns. 9-10), but that Watermaster  
10 respectfully disagrees that it should return to the Court with a full description of what work  
11 Watermaster would be funding ("further items relating to Peace II, including Basin Re-Operation  
12 and Hydraulic Control") (p. 6, lns. 12-14). In Watermaster's view, it has "already completed a  
13 technical review of impacts similar or the functional equivalent of CEQA" (p. 7, lns. 2-3).<sup>7</sup>

14 <sup>6</sup> Watermaster committed to providing further information to the Court related to CEQA compliance in its  
15 "Stipulation Addressing Monte Vista Water District's Comments in Response to Watermaster's Submittals in  
16 Satisfaction of Conditions Subsequent three and four," which Watermaster submitted to the Court as Exhibit "C" to  
17 its response to Referee's April Comments. Paragraph 4 of the Stipulation states:

18 4. Watermaster shall update the Court within a reasonable period of time the further actions to be  
19 taken in compliance with CEQA for the entire desalter expansion, increased groundwater pumping  
20 for the desalters, hydraulic control and basin reoperation activities, and the overall changes that are  
21 to proceed under the auspices of the Peace II order or as the Court may otherwise order.

22 <sup>7</sup> Watermaster asserts that "... in many ways, Watermaster has already completed a technical review of impacts  
23 similar or the functional equivalent of CEQA." Watermaster states that it has

24 ... easily spent more than a million dollars in technical analysis and modeling of potential adverse  
25 impacts that may be attributable to the Peace II measures. It subjected its work to review by the  
26 assistant to the Special Referee, all independent of CEQA, for the purpose of providing assurances  
27 to the parties, to the Court and to the public generally that adverse impacts were insignificant or  
28 avoided.

(Response to Referee p. 6, ln. 26 to p. 7, ln. 3) The only technical report which analyzes the adopted Peace II  
measures is the WEI Final Response Report submitted in compliance with Condition Subsequent No. 3. As  
technical expert Mr. Scalmanini noted in this April 10, 2008 Comments on the WEI Final Response Report  
(attached to Referee's April Comments):

The majority of "evaluation" of Alternative 1C, basin reoperation, in the WEI Final Response  
Report is conducted via comparison to a "Baseline" that, as far as desalters are concerned, would  
involve the same amount of desalter pumping but with full replenishment of all desalter pumping.  
This operational program was chosen to serve as the Baseline in the WEI Final Response Report  
because "it is currently authorized and will occur without the adoption of the Peace II  
Instruments." Ultimately, the Baseline affords the opportunity to claim that reoperational results  
are not the net change in basin conditions that are projected to occur in the future; rather, some of  
the results of reoperation are discounted by assigning them to the Baseline because those results  
would occur without reoperation. ... In summary, Baseline is projected to cause a number of  
adverse effects (lower groundwater levels throughout much of the basin, decreased groundwater

1 Watermaster's position is that IEUA or Western Municipal will decide what will be done with  
2 CEQA, and if no one challenges the adequacy of what the lead agencies decide to do, then there  
3 is no further role for Watermaster:

4 Watermaster has accepted the determinations of each lead agency, subject to the  
5 rights of any member of public or party to the Judgment to challenge the  
6 determinations within the applicable statute of limitations. Where there is no  
7 comment or challenge and when the statute of limitations have [*sic*] run, there is  
8 no case of [*sic*] controversy before Watermaster regarding CEQA and substantial  
9 evidence supports a finding of CEQA compliance. . .

10 If this Court wishes Watermaster to dictate to the lead agency *how* it should  
11 conduct its CEQA review, Watermaster will of course comply. However, we  
12 respectfully submit that requiring Watermaster to act in this way, rather than  
13 report the actions of others, may have consequences beyond the Peace II  
14 measures and may establish precedent for virtually any project that intersects with  
15 Watermaster's review and regulation.

16 (P. 7, lns. 17-21 and 27-28 to p. 8, lns. 1-3)

17 Several parties filed responses related on the CEQA issue. Cucamonga Valley Water  
18 District's joinder in the Watermaster's Response to Referee argued that Watermaster is not  
19 subject to the CEQA and cannot be a lead agency for CEQA purposes. Further:

20 It is appropriate for Watermaster to ensure that the "Project," as defined in the  
21 Peace II documents, is undergoing appropriate CEQA review and to report the  
22 status of such review to the Court. However, the decision regarding the scope and  
23 extent of appropriate CEQA review should be left to the lead agency.

24 (P. 2, lns. 20-23) No discussion is offered as to how Watermaster can at the same time both  
25 "ensure" that appropriate CEQA review is undertaken and leave all decisions on what is  
26 appropriate to the lead agency parties.

27 The joint response of IEUA and Western Municipal sheds more light on what may be

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28 storage, and substantial decrease in safe yield); but that is summarily dismissed as already  
"authorized". As a result, reoperational results can be described as relatively smaller adverse  
effects, or even an "improvement" in the case of safe yield. . . .

Overall, in the context of what is now presented, the Baseline is set up to take a large part of the  
total impacts resulting from planned operation of the Basin when none of the Baseline-related  
impacts have ever been previously identified or quantified. It's as if tens of feet of groundwater  
level decline, and 100,000 af of decreased groundwater storage, and a loss of 20,000 af of safe  
yield have all been previously "authorized", so the results of reoperation can be incrementally  
described as relatively small or, in the extreme, "better". At a minimum, such a presentation is  
misleading. It would seem that a more thorough and complete explanation of all the impacts that  
will derive from now-approved Basin management should be addressed in the CEQA  
documentation that responds to Condition Subsequent No. 4.



1 undertaken to comply with CEQA. Those parties report that they have engaged the services of  
2 Tom Dodson & Associates (“TDA”) for purposes of reviewing and making CEQA  
3 recommendations for the expansion of Desalter II. TDA’s work resulted in the adoption by  
4 Western Municipal of a categorical exemption for the expansion. TDA has also been engaged by  
5 IEUA to review and make CEQA recommendations related to the location of test wells “and  
6 anticipated future actions in connection with the production of groundwater associated with the  
7 expansion of Desalter II.” (P. 2, Ins. 10-11) Attached to the joint response was a declaration by  
8 Tom Dodson.

9         The Dodson declaration describes *three projects* for which he is preparing environmental  
10 documentation: “The proposed Chino Creek Wellfield (related to hydraulic control), Chino  
11 Desalter Capacity Expansion, and *Basin Re-operation*.” (Dodson Declaration p. 2, Ins. 2-3;  
12 emphasis added) Mr. Dodson explains that the categorical exemption adopted by Western  
13 Municipal addresses “internal physical desalter facility equipment modifications. Associated  
14 activities, to include groundwater production, will be addressed as indicated below.” (P. 2, ln. 26  
15 to p. 3, ln. 2) Mr. Dodson then states, with respect to the “Chino Creek Wellfield Project”, that  
16 an addendum to the OBMP Program Environmental Impact Report has been drafted for  
17 “installation of the test wells and adjacent monitoring wells”. (P. 3, ln. 8) Mr. Dodson identifies  
18 the preparation of the addendum as a first step, with the second step in the “Chino Creek  
19 Wellfield Project” “. . . to install the production well and deliver high salt content water to the  
20 Desalter for treatment and subsequent delivery to potable water supply agencies, such as the City  
21 of Ontario.” (*Id.*, Ins. 13-15) Environmental documentation will follow completion of the test  
22 wells, related modeling, and site selection for production wells. “At this time, it is envisioned  
23 that a Negative Declaration with mitigation measures will be prepared for adoption by the IEUA  
24 . . .” (*Id.*, Ins. 19-21) Mr. Dodson states that it may be necessary, however, to prepare a  
25         narrowly focused Environmental Impact Report . . . if the Initial Study identifies  
26         any potentially significant adverse environmental impacts that cannot be  
27         mitigated to a less than significantly impact level, either on a project specific or  
28         cumulative impact level.

Finally, with respect to what Mr. Dodson refers to as the *third project of Basin Re-*

1 operation, Mr. Dodson states that environmental review of that program has been initiated and  
2 "it is anticipated that a subsequent PEIR, based on the OBMP PEIR, will be prepared." He  
3 further states:

4 A project description that was approved in connection with the Peace II process  
5 has been compiled for internal use and the EIR review process will be  
6 forthcoming. Since the Chino Creek Wellfield project is a component of the  
7 Basin Re-operation program, the new program EIR cannot be completed until that  
8 review process is completed or, alternatively, integrated into the Basin Re-  
9 operation environmental review process. I anticipate about nine to twelve (9-12)  
10 months to complete the process for the Basin Re-operation documentation. We  
11 can initiate the review process for the Basin Re-operation documentation in the  
12 near future through the issuance of a Notice of Preparation and the hosting of area  
13 scoping meetings.

14 (P. 4, Ins. 9-18)<sup>8</sup>

15 The Court could ask IEUA and Western Municipal – rather than Watermaster – to report  
16 back to the Court within some reasonable period of time to explain the further actions they intend  
17 to take in compliance with CEQA, including CEQA analysis of hydraulic control and basin  
18 reoperation activities, and the overall changes that are to occur under the auspices of the Peace II  
19 Order, in addition to desalter expansion and wellfield construction. Whether the ultimate  
20 document is a new program EIR or a subsequent PEIR, the scope of that work will presumably  
21 be set forth in the Notice of Preparation which Mr. Dodson refers to in discussing the "third  
22 project". A further report should be submitted to the Court within some reasonable amount of  
23 time to explain in detail what CEQA work will be undertaken.

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25 <sup>8</sup> Watermaster's Response to Referee states that "Watermaster views the 'Project' as what is described in the  
26 'Project Description'." (P. 7, Ins. 22-23) One of the Peace II documents is the "Project Description". The "Project  
27 Description" included in the Peace II documents is Attachment A to Watermaster Resolution No. 07-05 which, in  
28 turn, is Exhibit A attached to Watermaster's Motion for Approval of Peace II Documents filed on October 25, 2007.  
This seven-page document states that it was "... prepared for use in: ... (c) an environmental impact report to be  
prepared as part of the expansion of the desalters." The "Project Description" (1) discusses the Regional Board's  
2004 Basin Plan Amendment, Watermaster and IEUA commitments including the commitment to achieve hydraulic  
control, and the adverse consequences of not achieving hydraulic control; (2) explains that the project has two main  
features (expansion of the desalter program to 40,000 afy and "strategic reduction in groundwater storage (re-  
operation) that, along with the expanded desalter program, significantly achieves hydraulic control"); and (3) states  
that there are other important facility and operational plans that will occur concurrently with the project but that will  
not be analyzed (recharge expansion projects and expanded storage and recovery programs).

Presumably this is the same as the "project description . . . compiled for internal use" referred to in Mr. Dodson's  
declaration. There is no discussion addressing Mr. Dodson's division of the "Project" into three separately  
evaluated projects for CEQA purposes.

1 **F. Fifth Condition Subsequent**

2 In response to the fifth Condition Subsequent, Watermaster filed a detailed outline of its  
3 updated Recharge Master Plan. Watermaster reports that the outline it has submitted is the  
4 product of a stakeholder process which it facilitates, describes the content of the final updated  
5 Recharge Master Plan, and provides a “roadmap” for the process that will be used to develop that  
6 plan. Condition Subsequent 5 requires Watermaster to submit progress reports on its Recharge  
7 Master Plan update by January 1, 2009, and July 1, 2009. Watermaster attached as Exhibit “B”  
8 to its submittal a “Macro Schedule” for completion of the planned updated and the development  
9 of implementation elements. The updated Recharge Master Plan is scheduled for completion by  
10 July 1, 2010, in accordance with Condition Subsequent No. 8.<sup>9</sup> In addition to the development  
11 of the Recharge Master Plan update, Watermaster reports that a CEQA process will be  
12 undertaken and implementation agreements developed within the next two-year period for the  
13 Recharge Master Plan Update.

14 Watermaster’s pleading describes the ten sections of the updated Recharge Master Plan  
15 outline. The planning process is intended to be iterative. For example, Watermaster indicates  
16 that:

17 Upon completion of analysis of recharge needs, the various options that can be  
18 pursued to meet those needs, and the cost of those options, it is possible that the  
19 parties will want to re-examine their water supply planning expectations and  
20 alternatives. Section 9 of the outline revisits the water supply plans in light of all  
21 the information developed in the previous sections of the Plan. This section will  
22 describe how the parties’ water supply plans will change after the costs of new  
23 storm and supplemental water are incorporated into their water planning. It may  
24 be more economical for some parties to reduce their Chino Basin production and  
25 use other supplies if the cost of increasing supplemental water recharge capacity  
26 exceeds the cost of producing other non-Chino Basin groundwater supplies. The  
27 parties themselves will provide their revised water supply plans. The revised  
28 water supply plans will be integrated and the replenishment obligation will be re-  
projected through 2060. Supplemental water recharge capacity required to meet  
the re-projected replenishment obligations will be described and used as the basis  
for developing the final recharge plan.

(Watermaster Submittal p. 6, lns. 15-27)

<sup>9</sup> Condition Subsequent No. 8 provides: “By July 1, 2010, Watermaster shall prepare and submit to the Court for approval an updated Recharge Master Plan. The updated Recharge Master Plan shall include all elements listed in the Special Referee’s Final Report and Recommendations.” Those elements are discussed in the Special Referee’s Final Report and Recommendations on Motion for Approval of Peace II Documents at pages 26-27.

1 Watermaster's Recharge Master Plan update outline covers the points raised in the  
2 Special Referee Final Report and Recommendations on Motion for Approval of Peace II  
3 Documents with regard to recharge master planning. This submittal is clear and appears to be  
4 comprehensive. Watermaster should be praised for this initial effort.

5 The Recharge Master Plan update is the most important plan that Watermaster will be  
6 developing over the next two years.<sup>10</sup> Watermaster's Motion for Approval of Peace II  
7 Documents explained the overall issue:

8 . . . at the end of the period of Basin Re-operation, a replenishment obligation  
9 relative to the desalters will need to be satisfied. During the period of Re-  
10 operation demands on the Basin will continue to grow, and at the end of the Re-  
11 operation period Watermaster's recharge capabilities may not be sufficient to  
12 meet the desalter replenishment obligation unless this recharge capacity continues  
13 to develop throughout the Re-operation period. The proposed Judgment  
14 amendment regarding Re-operation describes measures that will be taken in order  
15 to continually update and implement the Recharge Master Plan in order to ensure  
16 that sufficient recharge capacity exists in the future, and these commitments are  
17 further mirrored in the Peace II Agreement Article VIII.

18 (Watermaster Peace II Motion p. 15, Ins. 17-26) In addition to complying with the Peace II  
19 Order Condition Subsequent schedule, Watermaster has, therefore, committed to continually  
20 update and implement the Recharge Master Plan.<sup>11</sup> Watermaster's Response to the Special  
21 Referee's Preliminary Comments and Recommendations on Motion for Approval of Peace II  
22 Documents made the consequences of not updating and implementing the Recharge Master Plan  
23 clear: "If Watermaster and the parties are not in compliance with this requirement, then the  
24 controlled overdraft of the Basin must cease." (Watermaster Response to Special Referee  
25 Preliminary Comments p. 31, Ins. 20-21)<sup>12</sup>

26 \_\_\_\_\_  
27 <sup>10</sup> The issue of future recharge capability was discussed at length in the Special Referee's Preliminary Comments  
28 and Recommendations on Motion for Approval of Peace II Documents at pages 13-16 and 63-69, and in the Special  
Referee's Final Comments and Recommendations at pages 25-27.

<sup>11</sup> The amendments to the OBMP approved as part of the Peace II Measures provide:

The Recharge Master Plan will be updated as frequently as necessary and not less than every five  
(5) years, to reflect an appropriate schedule for planning, design, and physical improvements as  
may be required to offset the controlled mining at the end of the Peace Agreement and the end of  
forgiveness for Desalter replenishment.

(Attachment D to Watermaster Resolution No. 07-05, which is Exhibit "A" to Watermaster's Motion for Approval  
of Peace II Documents.)

<sup>12</sup> The amendment to Exhibit "I" of the Judgment, Paragraph 2(b)(1), provides that: "Re-Operation and  
Watermaster's apportionment of controlled overdraft . . . will not be suspended . . . so long as: . . . (ii) Watermaster

1 **G. Sixth Condition Subsequent**

2 Condition Subsequent No. 6 requires Watermaster to report on the development of  
3 Regional Board standards and criteria for determining that hydraulic control is achieved and  
4 maintained. To comply with the Court's Condition Subsequent No. 6, the Watermaster asked the  
5 Regional Board to more precisely define what its hydraulic control standards and criteria are.  
6 This is important because there is no clear definition of how it will be determined when and if  
7 hydraulic control is attained; Watermaster's consulting engineer evaluated whether various basin  
8 reoperation alternatives would achieve "robust" versus "weak" hydraulic control, but "robust"  
9 was not defined.<sup>13</sup> Watermaster has attached a copy of a letter from the Regional Board  
10 addressing the issue of whether hydraulic control is achieved and maintained. Watermaster  
11 indicates that it will continue to work with the Regional Board to "develop and refine the  
12 appropriate standards and criteria." (P. 9, ln. 16)

13 The Regional Board letter states the key conclusion:<sup>14</sup>

14 Based on the technical information provided in these reports, Watermaster and the  
15 Chino Basin Parties are planning to construct the Chino Creek Wellfield, which  
16 will, as stated above, when operating in conjunction with the groundwater level  
17 management program, reduce groundwater discharge to *de minimis* levels from  
18 the Chino North Management Zone to the Santa Ana River and therefore  
19 establish hydraulic control. The groundwater simulation of Watermaster's  
20 Alternative 1C demonstrates a state of hydraulic control that provides the  
21 Regional Board with confidence that robust hydraulic control will be achieved.  
22 We therefore expect that the Watermaster, IEUA, and Chino Basin Parties will  
23 operate the Chino Basin such that the piezometric levels in the desalter wellfields  
24 will closely follow the piezometric levels predicted by the Watermaster 2007  
25 model. . .

26 (Letter pp. 2-3)<sup>15</sup>

---

27 is in substantial compliance with a Court approved Recharge Master Plan."

28 <sup>13</sup> See Special Referee's Final Report and Recommendations on Motion for Approval of Peace II Documents, pp. 24-25.

<sup>14</sup> The Regional Board also clarifies that hydraulic control is defined as the reduction of groundwater discharge from the Chino *North* Management Zone to the Santa Ana River to *de minimis* quantities. This clarification is helpful, since Watermaster and IEUA had previously committed to maintain hydraulic control of subsurface outflows from the *entire* Chino Basin to the Santa Ana River.

<sup>15</sup> The Regional Board, however, does not want to rely solely on modeling. The letter adds:

The Regional Board notes that Watermaster and IEUA established a groundwater monitoring network of wells in the "Hydraulic Control Monitoring Program (HCMP) Workplan" in May 2004. To be able to demonstrate hydraulic control, the Regional Board requires a network of monitoring wells that is capable of unequivocally demonstrating hydraulic control. The

1 If the Regional Board's letter ended at that point, there would be nothing more to say  
2 with respect to compliance with Condition Subsequent No. 6. However, the Regional Board  
3 raises an alarm with respect to Watermaster's "timely achievement of hydraulic control." It  
4 states:

5 To that end, we encourage Judge Gunn to require the appropriate parties to report  
6 on their compliance with the previously established schedule regarding achieving  
7 and maintaining hydraulic control and if such compliance is not maintained to  
8 consider ordering the parties to implement a more aggressive program. Frankly,  
9 it appears that the enthusiasm of the Chino Basin Parties for meeting the  
10 maximum benefit commitments has not maintained the high level we observed  
11 during the earlier maximum development phases. We hope that this is a  
12 misunderstanding on our part.

13 Given the economic benefit of the maximum benefit objectives, we trust that a  
14 concomitant level of effort will be made to ensure that those objectives are  
15 maintained. An aggressive schedule, potentially required by the Court, in support  
16 of the water quality commitments of the Chino Basin Parties would be welcome  
17 by the Regional Board.

18 (Letter p. 3)<sup>16</sup>

19 The Regional Board also requested that Watermaster and IEUA provide "updated  
20 schedules and progress reports to the Executive Officer quarterly on the 15<sup>th</sup> day of July,  
21 October, January, and April until hydraulic control is achieved." The stated purpose of this  
22 request is to "... better monitor compliance with the maximum benefit commitments."

23 Following Watermaster's providing the Regional Board with a letter on July 15, 2008, as  
24 requested by the Regional Board,<sup>17</sup> the Regional Board on July 18, 2008, sent a further letter to

---

25 Watermaster should submit a plan for a proposed network of monitoring wells . . . and a schedule  
26 for the installation of the new monitoring wells to the Executive Officer within six months of  
27 completing the Chino Creek Wellfield design, and no later than June 30, 2009.

28 (Letter p. 3)

<sup>16</sup> The "economic benefit of the maximum benefit objectives" is referring to economic analyses of benefits to basin agencies of the Peace II Agreement and related documents prepared by Dr. David Sunding for Watermaster. His two analyses are described in the Special Referee's Preliminary Comments and Recommendations on Motion for Approval of Peace II Documents, pages 31-33. Dr. Sunding concludes in his second report that the original Peace Agreement and the Peace II measures produce net benefits of over \$904 million in present value terms. (Eighty percent of the net benefits result from the Peace II measures.) Two of the agencies – the City of Ontario and Cucamonga Valley Water District – account for approximately half of the demand for basin water over the 2007-2030 period of study. These two agencies stand to receive over half of the net benefits resulting from the agreements.

<sup>17</sup> Watermaster has not filed its July 15, 2008 response with the Court.

1 Watermaster.<sup>18</sup> The Regional Board letter states that: “We are very disappointed that, in your  
2 July 15<sup>th</sup> letter, you reported that ‘the CCWF (Chino Creek Well Field) start up is projected to  
3 occur in November 2013 which is one year later than projected in March 2007.’” Further:

4       Given the commitments of your agencies, this is unacceptable. This is exactly  
5       why I suggested to you that it would probably be best for the successful  
6       completion of your Maximum Benefit commitments if the requirements and  
7       schedule to achieve the hydraulic control commitments were required and  
8       monitored by the Court.

9       I have scheduled an item for the Regional Board’s September 5, 2008 meeting so  
10       that Watermaster and IEUA may provide information to the Board regarding the  
11       issue. Alternatives the Board could consider if adequate progress is not  
12       demonstrated include requesting that the Court impose and enforce the schedule  
13       for the project to achieve hydraulic control, and scheduling a hearing concerning  
14       whether the Maximum Benefit Objectives continue to be appropriate, given the  
15       repeated slippage in the hydraulic control schedule.

16       The Regional Board did not invent the idea that this Court might have to be relied upon  
17       to enforce and monitor the “requirements and schedule to achieve the hydraulic control  
18       commitments.” The Regional Board’s 2004 Basin Plan amendment recognized that  
19       Watermaster and IEUA:

20       . . . have made clear commitments to the implementation of projects and  
21       management strategies to achieve the “maximum benefit” objectives. . .  
22       Watermaster and IEUA have indicated that the supervision of the Watermaster  
23       program by the San Bernardino County Superior Court will insure that the  
24       Watermaster and IEUA commitments are met.

25       (Attachment to Regional Board Resolution No. R8-2004-001, p. 61)

26       The Court should order Watermaster to report to the Court on the status of its compliance  
27       and progress immediately following the September 5, 2008 Regional Board meeting.<sup>19</sup>

28       <sup>18</sup> Watermaster has not filed the Regional Board’s July 18, 2008 letter with the Court. I received a copy from the  
Regional Board of the Regional Board’s July 18, 2008 letter, which is attached to these comments. Watermaster  
served a copy of the July 18, 2008 Regional Board letter on all parties on July 21, 2008. I am bringing this letter to  
the Court’s attention because the Regional Board reiterates that it may seek the Court’s assistance in enforcing and  
monitoring the “requirements and schedule to achieve hydraulic control commitments.”

<sup>19</sup> In the Court’s October 17, 2002 Order Concerning Watermaster’s Interim Plan for Management of Subsidence,  
the Court expressed concern that an issue related to the Court’s jurisdiction might “resurface”. (The City of Chino  
still has pending a Judgment Paragraph 15 motion related to MZ-1 subsidence issues; pursuant to stipulation, the  
hearing on that motion has been continued until February 10, 2009.) The Court’s October 17, 2002 order stated:

To prevent the Court from being “ambushed” on the jurisdiction issue, the Court requests  
Watermaster to provide regular status reports on other pending actions in which issues concerning  
the Court’s jurisdiction could be raised.

(October 17, 2002 Order, p. 9, Ins. 5-8) The issues raised by the Regional Board would seem to be within the  
purview of the “ambush” request.

1 Watermaster should also be ordered to file with the Court its quarterly reports to the Regional  
2 Board. The prospect of the Court being involved in this matter will motivate Watermaster and  
3 the parties to reach an accommodation with the Regional Board, which would be the most  
4 appropriate outcome.

### 5 III. INTERVENTION MOTIONS

6 Paragraph 60 of the Judgment provides that any “person newly proposing to produce  
7 water from Chino Basin, may become a party to this judgment upon filing a petition in  
8 intervention. Said intervention must be confirmed by order of this Court.” This Court’s Order  
9 Re Intervention Procedures, dated July 14, 1978, authorizes Watermaster to accept petitions in  
10 intervention and accumulate them for filing with the Court periodically.

11 On April 10, 2008, Watermaster filed its Motion Requesting Approval of Intervention of  
12 the Riboli Family/San Antonio Winery and Fuji Natural Foods, Inc. On July 15, 2008,  
13 Watermaster filed its Motion Requesting Approval of Intervention of KCO, LLC (“Koll”).  
14 Watermaster requests that the Court approve Koll’s intervention into the Overlying Non-  
15 Agricultural Pool with an adjudicated production right of 22 acre-feet per year (“afy”) subject to  
16 a full replenishment obligation on all additional water produced from the Chino Basin.<sup>20</sup>  
17 Watermaster requests that the Court approve intervention of Riboli Family/San Antonio Winery  
18 into the Overlying Non-Agricultural Pool with an adjudicated production right of 0 afy, and a  
19 full replenishment obligation on all Chino Basin water it produces. Finally, Watermaster  
20 requests that the Court approve the intervention of Fuji Natural Foods, Inc. into the Agricultural  
21 Pool with a full replenishment obligation. No oppositions to these motions have been filed.  
22 These are the first interventions since 2003.

### 23 IV. MOTIONS TO RECEIVE AND FILE REPORTS

#### 24 A. Annual Report

25 Under paragraph 48 of the Judgment, Watermaster is required to file an annual report by  
26 January 31 of each year for the preceding fiscal year. The annual report is required to detail the

27 \_\_\_\_\_  
28 <sup>20</sup> Watermaster states that the source of the 22 afy will be a transfer to Koll from Sunkist, a member of the Overlying  
Non-Agricultural Pool, which has sold 15 acres of land overlying the Chino Basin to Koll.



1 operation of the pools, review Watermaster activities, and include a certified audit of all  
2 assessments and expenditures. Under the Chino Basin Watermaster Rules and Regulations  
3 (“Rules and Regulations”), the annual report also is to include an update on implementation of  
4 the OBMP and, biennially, an engineering appendix with a specific state of the basin report.  
5 Lastly, the annual report is to include a compilation of any amendments to the Rules and  
6 Regulations and a compilation of Watermaster Resolutions.<sup>21</sup>

7 On July 15, 2008, Watermaster filed the Annual Report for fiscal 2006-2007. This report  
8 is Watermaster’s 30<sup>th</sup> Annual Report. Watermaster asks that this 30<sup>th</sup> Annual Report be received  
9 and filed. It does not appear that Watermaster filed its 29<sup>th</sup> Annual Report, or, if it did, that there  
10 is a Court order accepting that report for filing. The Court’s February 16, 2007 Order approved  
11 the receipt and filing of the 26<sup>th</sup>, 27<sup>th</sup>, and 28<sup>th</sup> Annual Reports. Watermaster should be filing its  
12 annual reports by January 31 of each year.

13 **B. State of the Basin Report - 2006**

14 The biennial “engineering appendix” referred to in the Rules and Regulations has never  
15 been submitted as such, but Watermaster has prepared “state of the basin” reports.<sup>22</sup> The Initial  
16 State of the Basin Report was received and filed pursuant to the Court’s October 17, 2002 Order.  
17 Watermaster’s State of the Basin Report-2004 was received and filed pursuant to the Court’s  
18 February 9, 2006 Order. In its May 23, 2007 Order, the Court ordered Watermaster to file its  
19 2006 State of the Basin Report by July 31, 2007, and to include:

20 . . . a reconciliation of pumping and safe yield for each and every year since 1978  
21 and for the combined period of years from 1978 to current. The reconciliation  
22 will provide the court with a clear and complete basis for consideration of any re-  
23 operation proposals for Chino Basin in connection with the Peace II Agreement  
24 process, and the reconciliation shall clearly explain whether, and the extent to  
25 which, safe yield is being maintained and overproduction is being replenished by  
26 Watermaster.

24 <sup>21</sup> Watermaster Rules and Regulations § 2.21.

25 <sup>22</sup> The Court explained in its February 16, 2007 Order that:

26 The State of the Basin Report is not intended to be a report on the state of OBMP implementation.  
27 The OBMP status reports serve that role. Rather, the State of the Basin Report is intended to be an  
28 engineering report on the physical state of 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.

(February 16, 2007 Order p. 3, Ins. 9-14)

1 (May 23, 2007 Order p. 3, lns. 7-14) Watermaster has not yet filed with the Court the State of  
2 the Basin Report-2006 which was due July 31, 2007.

3 **C. OBMP Status Reports 2007-1 and 2007-2**

4 Watermaster filed its motion on July 15, 2008, asking the Court to receive and file  
5 OBMP Status Report 2007-1. Watermaster has filed status reports on the status of  
6 implementation of the OBMP since ordered to do so by the Court on September 28, 2000. That  
7 order provided:

8 In the exercise of its continuing jurisdiction, the Court shall require periodic  
9 progress reports regarding implementation of the OBMP to ensure that the  
10 Watermaster is performing its independent function and keeping to the schedule  
11 adopted for OBMP implementation. The Court adopts the following schedule for  
12 OBMP reporting: [Report No. 1 - March 31, 2001, through Report No. 10 -  
13 September 30, 2005] Report No. 10 coincides with the end of the appointment of  
14 the Nine-Member Board. The OBMP progress reports, together with independent  
15 assessment of OBMP implementation status, including verification of data to be  
16 provided by the Special Referee and her technical expert, will be the basis for  
17 consideration of continuing the appointment. The Court may schedule hearings to  
18 coincide with some or all of these reports. Alternatively, the Court may, from  
19 time to time, direct the Special Referee to conduct a workshop in lieu of a court  
20 hearing. The reports should follow the format prescribed in Special Referee  
21 Anne Schneider's Report and Recommendation Concerning Motion to Extend  
22 Nine Member Board.

23 (September 28, 2000 Order p. 3, lns. 25-27 to p. 4, lns. 1-22)<sup>23</sup> The Court reappointed the Nine-  
24 Member Board for an additional five-year term until September 30, 2005, subject to the Court's  
25 continuing jurisdiction to reconsider the appointment if Watermaster did not timely comply with  
26 specified conditions, the fifth of which was:

27 5. Watermaster cooperation in the independent assessment and verification of the  
28 data included in Reports Nos. 1 through 10 to be provided to the Court by the  
Special Referee and her technical expert.

(*Id.* p. 6, lns. 26-28)

<sup>23</sup> The Optimum Basin Management Program and OBMP Implementation Plan cover essentially all Watermaster programs and activities. There are nine "Program Elements": (1) Program Element 1 - Develop and Implement Comprehensive Monitoring Program; (2) Program Element 2 - Develop and Implement Comprehensive Recharge Program; (3) Program Element 3 - Develop and Implement Water Supply Plan for the Impaired Areas of the Basin; (4) Program Element 4 - Develop and Implement Comprehensive Groundwater Management Plan for Management Zone 1 (MZ1); (5) Program Element 5 - Develop and Implement Regional Supplemental Water Program; (6) Program Element 6 - Develop and Implement Cooperative Programs with the Regional Board and Other Agencies to Improve Basin Management; (7) Program Element 7 - Develop and Implement Salt Management Program; (8) Program Element 8 - Develop and Implement Groundwater Storage Management Program; and (9) Program Element 9 - Develop and Implement Storage and Recovery Programs.

1 Watermaster's motion for reappointment of the Nine-Member Board for five years was  
2 granted by Court order on February 9, 2006. the Court directed Watermaster to continue to file  
3 OBMP status reports with the Court every six months. The Court discussed status reports again  
4 in its February 16, 2007 Order, noting that:

5 Watermaster's OBMP status reports are intended to describe current  
6 implementation of the OBMP. The reports provide the Court with a tool to aid in  
7 assessing whether or not Watermaster is carrying out the OBMP.

8 (Court Order February 16, 2007 p. 3, lns. 1-3)

9 In its May 23, 2007 Order, the Court ordered Watermaster to file OBMP Status Report  
10 2007-01 (January 2007 through June 2007) by no later than September 1, 2007. Watermaster  
11 has just filed this status report – ten months late. Watermaster has not filed, or even mentioned,  
12 OBMP Status Report 2007-2, which should have been filed by March 1, 2008. If the status  
13 reports are to have any utility, they have to be filed on time. If Watermaster will not timely file  
14 status reports, it should explain to the Court why it will not do so.

15 Status reports should be revamped in order to provide up-to-date information on the  
16 important activities encompassed by the Court's Peace II Order. It may be prudent to require  
17 Watermaster to file quarterly status reports to cover OBMP implementation status, with  
18 comprehensive substantive and procedural information on all Peace II-related activities,  
19 including all basin reoperation and hydraulic control-related actions.<sup>24</sup> Watermaster's submittals  
20 in satisfaction of the Peace II Order conditions subsequent are extremely important, but do not  
21 replace the need for Watermaster to regularly provide the Court with comprehensive and up-to-  
22 date reports on the status of Watermaster actions and issues.

## 23 V. RECOMMENDATIONS

24 Watermaster has responded timely to the Court's Peace II Order Conditions Subsequent

25 <sup>24</sup> There is precedent for requiring quarterly reports. The Court's October 17, 2002 Order Concerning  
26 Watermaster's Interim Plan for Management of Subsidence ordered Watermaster to

27 . . . submit quarterly reports on its efforts to address subsidence and fissuring problems in Chino  
28 Basin Management Zone 1 ("MZ1"). Watermaster intends to change its semi-annual OBMP  
reporting to quarterly reporting and to combine its quarterly progress reports to the Court regarding  
subsidence with its reports concerning OBMP implementation. This, too, is acceptable to the  
Court.

Order p. 3, lns. 1-5)

1 No. 1 through 6. The submittal in response to Condition Subsequent No. 1 provides helpful  
2 explanation for the record related to Judgment amendments. The Court should approve  
3 Watermaster's submittals for Conditions Subsequent Nos. 2 and 3, as discussed above.

4 Compliance with Condition Subsequent No. 4 is at something of an impasse.  
5 Watermaster has reported to the Court on what the CEQA lead agencies (Western Municipal and  
6 IEUA) are doing to comply with CEQA, but has not provided the Court with *assurances*  
7 contemplated by Condition Subsequent No. 4 that all of the actions that will be undertaken in  
8 accordance with the Peace II Order will be subject to all appropriate CEQA review.  
9 Watermaster states that to do so would have "consequences beyond the Peace II measures", but  
10 does not explain what this means.

11 The issue of whether reoperating the basin for hydraulic control will be subjected to  
12 complete and rigorous CEQA review was discussed in the Special Referee's Preliminary  
13 Comments and Recommendations on Motion for Approval of Peace II Documents (p. 30, Ins. 5-  
14 15; p. 69, ln. 17 to p. 70, ln. 11) and the Special Referee's Final Report and Commendations on  
15 Motion for Approval of Peace II Documents (p. 27, ln. 7 to p. 30, ln. 10). The Court's Peace II  
16 Order Condition Subsequent No. 4 reflects these recommendations. The Referee's April  
17 Comments attempted again to address this issue. Watermaster is not persuaded that more is  
18 required, and respectfully refuses to involve itself in CEQA matters unless directly ordered by  
19 the Court to do so. Given this position, I recommend that the Court ask IEUA and Western  
20 Municipal to report regularly to the Court on the status of their CEQA work, to file pertinent  
21 documents with the Court, such as the Notice of Preparation referred to in Mr. Dodson's  
22 Declaration, and to keep the Court apprised of their CEQA efforts, such as the "area scoping  
23 meetings" referred to by Mr. Dodson.

24 Watermaster's detailed outline of its Recharge Master Plan Update is responsive to  
25 Condition Subsequent No. 5. Watermaster's submittal is an excellent, thorough effort.

26 Finally, following up on Watermaster's Condition Subsequent No. 6 submittal,  
27 Watermaster should report to the Court immediately following the Regional Board's scheduled  
28 September 5, 2008 meeting on the status of the issues raised by the Regional Board

1 correspondence related to Regional Board hydraulic control requirements and schedule.  
2 Watermaster should file with the Court its quarterly reports to the Regional Board. If  
3 Watermaster and the parties will not be able to reach an understanding with regard to the  
4 Regional Board's concerns without further Court involvement, Watermaster should advise the  
5 Court immediately.

6 The interventions requested by Watermaster should be granted.

7 The 30<sup>th</sup> Annual Report should be accepted for filing. Watermaster should file a motion  
8 to have the Court receive and file its 29<sup>th</sup> Annual Report. The next annual report should be filed  
9 by January 31, 2009. Watermaster should be ordered to file its State of the Basin Report - 2006  
10 immediately.

11 Watermaster should be ordered to file Status Report 2007-2 within a short period of time.  
12 Watermaster should be ordered to timely file future status reports. Status Report 2008-1 should  
13 be filed by September 1, 2008. Watermaster should revamp its current report format to include  
14 complete and substantive status reports on all OBMP activities and all Peace II reoperation and  
15 hydraulic control actions and issues.

16 In its Order Re-Appointing Nine-Member Board for Further Five-Year Term, the Court  
17 directed:

18 . . . Watermaster, its legal counsel, staff and consultants to ensure that in future  
19 reporting the reports are timely, transparent and responsive to the question of  
20 whether Watermaster is implementing the Peace Agreement and the OBMP in a  
manner consistent with the Judgment and the continuing Orders of this Court.

21 (February 9, 2006 Order p. 4, lns. 22-25) The Court may have to reiterate the importance of  
22 timely, transparent, and responsive Watermaster reporting.

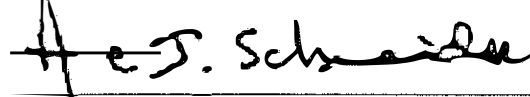
23 The remaining Peace II Order Conditions Subsequent 7 and 8 are important, and will  
24 require the Court's careful attention. Condition Subsequent No. 7 will have ramifications for the  
25 next replenishment assessments which Watermaster must levy by December 31, 2008.

26 Watermaster must explain in its response to Condition Subsequent No. 7 how it will account for  
27 over 60,000 acre-feet of unreplenished overproduction which was allowed during the period  
28 2000/01 through 2006/07.

1 Condition Subsequent No. 8, requiring completion of an updated Recharge Master Plan,  
2 is the most crucial of the Conditions Subsequent. It is this plan that will make it possible for  
3 Watermaster to return to safe yield-based management of the basin by 2030. Once 400,000 acre-  
4 feet is mined from the basin, as allowed by the Peace II Order, Watermaster must be able to both  
5 continue to pump the desalter wells and replenish for that pumping. Depending on the reliability  
6 of water for replenishment use, the ultimate capacity of the additional recharge facilities needed  
7 by the end of Peace II could be daunting. The projected decline in the basin's safe yield makes  
8 this an even more pressing challenge.

9 Dated: July 29, 2008

Respectfully submitted,

10 

11 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 July 21, 2008 I served the following:

1) **LETTER CONCERNING SCHEDULE FOR CONDITION SUBSEQUENT NO. 6**

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 July 21, 2008 in Rancho Cucamonga, California.

  
\_\_\_\_\_  
Alex Pérez  
Chino Basin Watermaster



**California Regional Water Quality Control Board**  
**Santa Ana Region**



Linda S. Adams  
Secretary for  
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221  
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger  
Governor

July 18, 2008

Mr. Ken Manning, Chief Executive Officer  
Chino Basin Watermaster  
9641 San Bernardino Road  
Cucamonga, CA 91730

Rich Atwater, General Manager  
Inland Empire Utilities Agency  
P. O. Box 9020  
Chino Hills, CA 91709

**RESPONSE TO YOUR JULY 15, 2008 LETTER CONCERNING SCHEDULE FOR  
CONDITION SUBSEQUENT NO. 6**

Dear Messrs. Manning and Atwater:

Thank you for your July 15, 2008 letter. I have reviewed the letter and find your continuing inability to meet the Maximum Benefit commitments of your agencies to be disturbing. I view these commitments to be the good faith promises of your agencies, not only to the Regional Board, but also to downstream entities, who accepted your assurances that, in return for Maximum Benefit Objectives, you would perform as promised.

Given the economic benefits that the economic analysis completed by your consultant have demonstrated, it is clear that your residents will accrue enormous benefits from your integrated water resources activities, including those which depend on the Maximum Benefit Water Quality Objectives.

Your agencies have combined to build state-of-the-art wastewater treatment facilities, desalting facilities, recharge basins, and have implemented other difficult projects to further the integrated water resources program in the Chino Basin. Yet, implementation of a well field, critical to your commitment for hydraulic control, is providing challenges that you have not overcome.

We should clarify that our concern is not the initial loss of hydraulic control. The hydraulic control component of your Maximum Benefit commitments was recognized by all as the result of a valid scientific and engineering evaluation, and the Regional Board staff, as well as other stakeholders, recognized that monitoring and assessment might later find that complete hydraulic control had not been achieved. However, Watermaster and IEUA provided strong commitments that, if problems with the effectiveness of hydraulic control were identified in the future, those problems would quickly be remedied.

**California Environmental Protection Agency**





July 18, 2008

We are very disappointed that, in your July 15<sup>th</sup> letter, you reported that, "the CCWF (Chino Creek Well Field) start up is projected to occur in November 2013 which is one year later than projected in March 2007." and "...Since February 2008 there has been no significant progress on the project..." Given the commitments of your agencies, this is unacceptable. This is exactly why I suggested to you that it would probably be best for the successful completion of your Maximum Benefit commitments if the requirements and schedule to achieve the hydraulic control commitments were required and monitored by the Court.

I have scheduled an item for the Regional Board's September 5, 2008 meeting so that Watermaster and IEUA may provide information to the Board regarding the issue. Alternatives the Board could consider if adequate progress is not demonstrated include requesting that the Court impose and enforce the schedule for the project to achieve hydraulic control, and scheduling a hearing concerning whether the Maximum Benefit Objectives continue to be appropriate, given the repeated slippage in the hydraulic control schedule.

Sincerely,



Gerard J. Thibeault  
Executive Officer  
Santa Ana Regional Water Quality Control Board

cc. Regional Board  
Anne Schneider, Special Referee  
Mark Wildermuth, Wildermuth Environmental

*California Environmental Protection Agency*



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July 29, 2008

Kenneth R. Manning  
Chief Executive Officer  
Chino Basin Watermaster  
9641 San Bernardino Road  
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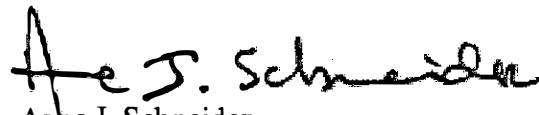
Re: Chino Basin Municipal Water District v. The City of Chino  
Case Number: RCV 51010

Dear Ken:

Enclosed is a copy of the *Comments of Special Referee on Watermaster Compliance with December 21, 2007 Order Conditions 1 through 6, Motion to Receive and File Watermaster's 30<sup>th</sup> Annual Report and Status Report 2007-1, and Motions for Intervention*. Please serve the document on all parties, persons and entities included on Watermaster's service list, and file a proof of service with the Court.

Thank you for your assistance. If you have any questions, please call Deric Wittenborn at (916) 447-2166.

Yours very truly,

  
Anne J. Schneider  
Special Referee

AJK:rko  
enc.

cc: Scott Slater  
Michael Fife  
Joe Scalmanini  
Judith Schurr

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July 29, 2008

San Bernardino County Superior Court, Department 8  
8303 N. Haven Avenue  
Rancho Cucamonga, CA 91730  
Attn. Lois Pahia, Courtroom Clerk

Re: Chino Basin Municipal Water District v. The City of Chino  
Case Number: RCV 51010

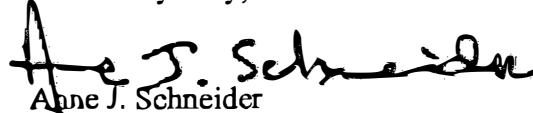
Dear Clerk of the Court:

Enclosed is the *Comments of Special Referee on Watermaster Compliance with December 21, 2007 Order Conditions 1 through 6, Motion to Receive and File Watermaster's 30<sup>th</sup> Annual Report and Status Report 2007-1, and Motions for Intervention*. One copy of the report is to be filed with the Court. The other copy is to be delivered to the Judge.

Under separate cover a copy of the report is being sent to Ken Manning, Chino Basin Watermaster Chief Executive Officer, with a request that copies of the report be sent to all parties, persons and entities included on Watermaster's service list. Mr. Manning will also be asked to file a proof of service with the Court.

Thank you for your assistance. If you have any questions, please call Ron O'Connor at (916) 447-2166.

Yours very truly,

  
Anne J. Schneider  
Special Referee

AJS:rko  
enc.

cc: Kenneth R. Manning  
Scott Slater  
Michael Fife  
Joe Scalmanini  
Judith Schurr

**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 July 30, 2008 I served the following:

- 1) COMMENTS OF SPECIAL REFEREE ON WATERMASTER COMPLIANCE WITH DECEMBER 21, 2007 ORDER CONDITIONS 1 THROUGH 6, MOTION TO RECEIVE AND FILE WATERMASTER'S 30<sup>TH</sup> ANNUAL REPORT AND STATUS REPORT 2007-1, AND MOTIONS FOR INTERVENTION**

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**

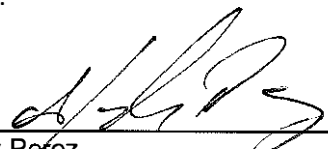
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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 July 30, 2008 in Rancho Cucamonga, California.

  
\_\_\_\_\_  
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Chino Basin Watermaster

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