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*Exempt from filing fees pursuant to
Gov't. Code Section 6103*

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

11 CHINO BASIN MUNICIPAL WATER)
12 DISTRICT,)

13 Plaintiff,)

14 vs.)

15 CITY OF CHINO, et al.)

16 Defendants.)

Case No.: RCV 51010
Judge: Hon. J. Michael Gunn

OPPOSITION OF THE CHINO BASIN
WATER CONSERVATION DISTRICT
TO CUCAMONGA VALLEY WATER
DISTRICT'S MOTION TO DISCONTINUE
THE APPOINTMENT OF THE SPECIAL
REFEREE; JOINDER IN THE RESPONSE
FILED BY THE SPECIAL REFEREE

17 Date: August 21, 2008
18 Time: 2:00 p.m.
19 Dept.: R-8

20 COMES NOW THE CHINO BASIN WATER CONSERVATION DISTRICT (CBWCD) and
21 submits the following Opposition to Cucamonga Valley Water District's Motion to Discontinue the
22 Appointment of the Special Referee and joinder in the response to said motion filed by the Special
23 Referee.

24 I

JOINDER IN THE RESPONSE FILED BY THE SPECIAL REFEREE

25 The Cucamonga Valley Water District has filed a Motion to Discontinue the Appointment of
26 the Special Referee, Anne Schneider, and her technical expert, Joe Scalmanini. The Special Referee
27 has filed a Response to the motion in which the Special Referee sets forth the history of her
28 appointment by the court, the varied duties that the court has asked her to undertake and why a Special

1 Referee is still necessary. The Special Referee also responded to the claims of conflict of interest
2 leveled against her in the motion. CBWCD agrees with and joins in the Special Referee's response and
3 incorporates the response in its entirety as if set forth herein.

4 II

5 **THE COURT SHOULD DENY THE MOTION BECAUSE THE SPECIAL REFEREE'S**
6 **OVERSIGHT OF THE WATERMASTER IS STILL NECESSARY**

7 If the motion is granted, then the Chino Basin Watermaster would in effect operate as the
8 liaison with and as an extension of the court in implementing the judgment and the Peace I and Peace
9 II Accords.

10 With regard to the authority of the court to make changes in the appointment of the Special
11 Referee, it is clear that the court does have that general authority. Paragraph 15 of the judgment states
12 that the court reserved full jurisdiction, power and authority as to all matters contained in the judgment
13 except for certain items that are not relevant to this motion. The purpose for the continuing jurisdiction
14 was to allow the court to make any further or supplemental orders necessary for "interpretation,
15 enforcement or carrying out of this judgment, and to modify, amend or amplify any of the provisions
16 of this judgment." Furthermore, Paragraph 31 of the judgment provides that all actions and decisions
17 of the Watermaster would be subject to de novo review by the court.

18 In order to exercise its continuing jurisdiction, the court has authority under *C.C.P.* § 639(a) to
19 appoint a Special Referee as follows:

20 "(a) When the parties do not consent, the court may upon the written motion of any
21 party, or of its own motion, appoint a referee in the following cases pursuant to
22 the provisions of subdivision (b) of Section 640:

23 ...

24 (3) When a question of fact, other than upon the pleadings, arises upon
25 motion or otherwise, in any stage of the action.

26 (4) When it is necessary for the information of the court in a special
27 proceeding."

28 The court relied upon *C.C.P.* § 639 in making the original appointment of Anne Schneider as

1 the Special Referee. This is consistent with the holding in *City of Pasadena v. City of Alhambra* (1949)
2 33 Cal. 2d 908, 917 in which the court recognized the need for independent expert advice and assistance
3 in water law cases.

4 In reviewing the pleadings in this case, it is clear that over the last eleven years, the court has
5 shown a specific desire to utilize the services of a Special Referee along with the referee's technical
6 expert in monitoring the actions of the Watermaster and Advisory Committee. The court has clearly
7 shown an intent that it wanted to rely upon a completely independent examination and analysis of the
8 actions taken by the Watermaster in evaluating compliance with the terms of the judgment and the
9 Peace I and II Accords.

10 One reason why the court should continue with a Special Referee who is not associated with the
11 Watermaster is that the Watermaster is not truly independent from the entities that oversee it and are
12 taking water out of the basin. The Watermaster organizational structure is composed of representatives
13 from the three Pools and the Advisory Committee has specific oversight and control over the actions
14 of the Watermaster under the terms of the judgment. In fact, with respect to the discretionary functions
15 of the Watermaster, including the preparation and implementation of the OBMP, the Advisory
16 Committee can mandate that the Watermaster take certain actions by an 80 percent vote. If
17 Watermaster disagrees, its only recourse is to bring a motion before the court. The Watermaster is
18 structurally missing a balanced system in that the power lies with the Appropriative Pool which has the
19 largest players. The Special Referee provides balance to this unbalanced structure. Since the
20 organizational structure of the Watermaster is comprised of representatives of the various special
21 interests in the basin, it will never be able to be truly independent of those special interests and can not
22 be a substitute for the role that the Special Referee is currently filling as an advisor to and an extension
23 of the court in interpreting and implementing the terms of the judgment and the Peace I and II Accords.

24 The effect of granting this motion would be to have Watermaster staff and its retained
25 consultants be the principal source of information provided to the court with respect to implementing
26 the terms of the judgment and the Peace I and II Accords. There would be no independent review
27 process that is now provided by the Special Referee. CBWCD does not believe that would be a viable
28 option for the court. The Special Referee receives its direction from the court and not the Watermaster.

1 The staff and consultants employed by the Watermaster would receive their direction from the
2 Watermaster Board and the Advisory Committee. The Watermaster would have the ability to control
3 the flow of information to the court and the balance provided by the Special Referee and her expert
4 consultant in their independent review would be lost. Therefore, the implementation of the judgment
5 and the Peace I and II Accords could be compromised.

6 The purpose of the appointment of a Special Referee was to provide the court with independent
7 analysis and recommendations that the court could then consider in making its decision on the particular
8 issues involved. This purpose would be frustrated if the Special Referee is removed because the
9 Watermaster and its staff and consultants can not provide the same unbiased analysis for the court.

10 While the Watermaster has made commendable progress in recent years in implementing the
11 judgment and the Peace I and II Accords, it has done so under the watchful eye of the Special Referee
12 and the court. (As an example, please see the Comments of the Special Referee on the Watermaster's
13 compliance with Conditions Subsequent No. 1 through 8 in the 12/21/07 order.)

14 Condition Subsequent No. 8 requires completion of an updated Recharge Master Plan and
15 successful completion is critical for the Watermaster to return to a safe yield-based management of the
16 basin. The projected decline in the basin's safe yield makes this a daunting challenge with all of the
17 basin's special interests wanting to protect themselves. The balance provided by the Special Referee's
18 review of the work done by the Watermaster is a critical component in the successful completion of this
19 project.

20 III

21 CONCLUSION


22 The most powerful argument in favor of retaining a Special Referee is that the Watermaster, as
23 an institution, lacks balance. The largest producers have a disproportionate share of the policy making
24 power in the way the Watermaster is structured. Prior to 1997, it was this lack of balance that made the
25 Watermaster dysfunctional and incapable of making difficult policy decisions and fully implementing
26 the judgment. In order to make sure that the judgement was faithfully administered and the public
27 interest served, a counterbalance to the producers was necessary. It was only after the court appointed
28 the Special Referee that significant progress was made in implementing the judgment. The current

1 work of the Watermaster, including the oversight by the Special Referee, should be praised for the
2 productive activities over the last several years. The system as currently constructed has provided a
3 balanced policy making process that has paid big dividends for all the participants and the public.
4 Upsetting the current balance threatens that successful formula and should be rejected by the court. To
5 do otherwise could result in the Watermaster becoming once again ineffective and dysfunctional.

6 Because of the significance of the issues before the court now and in the future, the court should
7 continue to utilize the services of a Special Referee in reviewing and overseeing the work of the
8 Watermaster and its staff and consultants.

9
10 DATED: August 7, 2008

BRUNICK, McELHANEY & BECKETT

11
12 BY: 
13 William J. Brunick
14 Steven K. Beckett
15 Attorneys for CHINO BASIN WATER
16 CONSERVATION DISTRICT
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28

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA }
3 COUNTY OF SAN BERNARDINO }**

4 I, the undersigned, am employed in the aforesaid County, State of California; I am over the age
5 of 18 years, not a party to this action and am employed at 1839 Commercenter West, San Bernardino,
6 California 92408.

7 On August 7, 2008, I served the following document: OPPOSITION OF THE CHINO BASIN
8 WATER CONSERVATION DISTRICT TO CUCAMONGA VALLEY WATER DISTRICT'S
9 MOTION TO DISCONTINUE THE APPOINTMENT OF THE SPECIAL REFEREE; JOINDER IN
10 THE RESPONSE FILED BY THE SPECIAL REFEREE on the interested parties in this action as
11 follows:

12 Janine Wilson
13 Chino Basin Watermaster
14 9641 San Bernardino Road
15 Rancho Cucamonga, California 91730
16 jwilson@cbwm.org

17 BY ELECTRONIC SERVICE to: jwilson@cbwm.org. Receipt of service was confirmed
18 using the Return Receipt Requested feature of electronic mail system.

19 (STATE) I declare under penalty of perjury under the laws of the State of California that the
20 above is true and correct.

21 I declare under penalty of perjury under the laws of the State of California, that the above is true
22 and correct .

23 Executed on August 7, 2008 at San Bernardino, California.

24 
25 P. Jo Ann Quihuis
26
27
28

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 August 7, 2008 I served the following:

1) OPPOSITION OF THE CHINO BASIN WATER CONSERVATION DISTRICT TO CUCAMONGA VALLEY WATER DISTRICT'S MOTION TO DISCONTINUE THE APPOINTMENT OF THE SPECIAL REFEREE; JOINDER IN THE RESPONSE FILED BY THE SPECIAL REFEREE

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

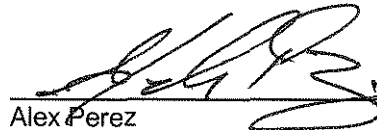
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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 August 7, 2008 in Rancho Cucamonga, California.



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