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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION**

16 CHINO BASIN MUNICIPAL WATER
17 DISTRICT,

18 Plaintiff,

19 vs.

20 CITY OF CHINO, et al.

21 Defendants.

CASE NO. RCV 51010

**EVIDENTIARY OBJECTIONS TO
CUCAMONGA VALLEY WATER
DISTRICT'S MOTION TO
DISCONTINUE THE APPOINTMENT
OF THE SPECIAL REFEREE AND THE
DECLARATION OF JILL N. WILLIS IN
SUPPORT THEREOF**

**[SERVED AND FILED
CONCURRENTLY WITH JOINT
OPPOSITION TO CUCAMONGA
VALLEY WATER DISTRICT'S MOTION
TO DISCONTINUE THE
APPOINTMENT OF THE SPECIAL
REFEREE]**

Date: August 21, 2008

Time: 2:00 p.m.

Dept.: R8

1 **TO WATERMASTER, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Defendants Monte Vista Water District, the City of Chino Hills, and the City of Chino
3 (the "Opposing Parties") jointly lodge the following evidentiary objections to Cucamonga Valley
4 Water District's ("CVWD") Motion to Discontinue the Appointment of the Special Referee (the
5 "Motion"), including the Declaration of Jill N. Willis in support thereof. The Opposing Parties
6 further request that any reference to such inadmissible evidence be stricken and disregarded.

7 **I. INTRODUCTION**

8 Since her appointment in 1997, the Special Referee and her technical assistant have been
9 called upon by the Court to assist in resolving numerous complex disputes involving Watermaster
10 and the parties to the Judgment. Notable among them, the Court tasked the Special Referee with
11 analyzing and reporting on disputes relative to the present governance structure, the Optimum
12 Basin Management Plan, the Peace I and II negotiations, and MZ1 subsidence. The Special
13 Referee's assistance proved invaluable in evaluating and resolving these very technical and often
14 contentious issues. Indeed, "[t]his Court has said on many occasions that the assistance provided
15 by the Special Referee is invaluable." Order Concerning Motion for Approval of Peace II
16 Documents, Dec. 21, 2007, p. 6:7 to 6:8.

17 According to CVWD's Motion, however, the Special Referee is no longer necessary and
18 her appointment should be discontinued. The factual premise underlying the Motion is that
19 Watermaster now functions in an "organized and efficient fashion" under which the parties to the
20 Judgment operate "largely by consensus." Motion, p. 7:14 to 7:16. The rosy picture presented by
21 CVWD bears little resemblance to the truth.

22 As shown below, the Opposing Parties object to the numerous broad generalizations
23 contained in the Motion on the grounds that they are, among others, irrelevant, not based on
24 competent evidence, improper lay opinion, and lack foundation. The Opposing Parties ask the
25 Court to strike this inadmissible evidence from the Motion and supporting papers.

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1 **1. The Court Has Discretion to Strike CVWD’s Motion in its Entirety.**

2 In addition to a concise statement of law, a motion must be supported by and contain
3 citation to the evidence relied on to support the position advanced by the motion. Cal. Rules of
4 Court, rule 3.1113(b). CVWD fails to reference any evidence to advance its position that the
5 Special Referee is no longer necessary or that she has a conflict of interest. The Motion consists
6 entirely of statements that lack foundation or personal knowledge, that are conclusory, or that
7 offer mere speculation and hyperbole. Absent evidentiary support, the Court has discretion to
8 strike CVWD’s speaking motion in its entirety. Code of Civil Procedure §§128.7(b)(3),
9 435(b)(1); *CPF Agency Corp. v. R&S Towing Service* (2005) 34 Cal.Rptr.3d 106, 1020.

10 **2. Statements Regarding the State of the Basin are Improper.**

11 Throughout its Motion, CVWD repeatedly asserts that Watermaster operates by
12 consensus and, because it does, “the Court has not been called upon to resolve contested issues
13 between the parties” in the past six years. *See* Motion at 1:26-27; 7:14-16; 8:6-11; 8:27 - 9:1; 9:8-
14 12; 10:21-23. Nothing could be further from the truth as even a cursory review of the Court’s file
15 reveals a series of lengthy and complex disputes among the Basin stakeholders. CVWD fails to
16 establish any of the necessary preliminary facts to warrant introduction of these statements.
17 Hence, such statements lack foundation. Evidence Code §§700, 701. Such statements are
18 objectionable for the additional reasons that, absent evidentiary support, this “testimony” is not
19 the best evidence of the asserted facts and constitutes hearsay. Evidence Code §§1200(b), 1523.

20 For example, on Page 9, CVWD asserts that “in the past six years, the Court has not
21 been called upon to resolve contested issues between the parties.” Motion at 9:10. The statement
22 is simply not true. No evidence is offered to support the statement. Such a statement, therefore,
23 lacks foundation. The City of Chino’s Motion regarding subsidence and ground fissuring is
24 scheduled before the Court on February 10, 2009. In August 2007, the City of Chino Hills
25 challenged Watermaster’s Motion for Approval of the Long Term Plan, with the Special Referee
26 playing an active role in resolving the dispute. While the Motion was ultimately resolved by
27 stipulation, the Special Referee played an instrumental role in resolving the dispute.

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1 **3. Statements Regarding Special Referee Expenditures are Improper.**

2 The Opposing Parties object to CVWD’s unsupported citation to Watermaster
3 expenditures for Special Referee costs. Motion at 9:21-28. Specifically, CVWD incorrectly
4 states that, “[i]n 2006, the Special Referee and her staff incurred expenses of over \$300,000.”¹
5 Again, CVWD proffers no evidence to support its statement. Absent any evidentiary support,
6 such a statement lacks foundation. Evidence Code §700. In fact, Watermaster’s own budget
7 reveals that in 2006, the Special Referee and her technical assistant incurred an actual cost of
8 \$150,207, less than 3% of total Watermaster expenses and half that asserted by CVWD. *See*
9 Declaration of Mark Kinsey, filed in support of the Opposing Parties’ Joint Opposition, filed
10 under separate cover. As CVWD has provided no competent evidence in support of statement,
11 CVWD’s citation to and reliance on inaccurate and unsupported financial data, and any inferences
12 CVWD draws from that data, should be stricken on foundational grounds. Evidence Code §700.

13 **4. Statements Regarding the Checks and Balances in the Basin Lack Evidentiary**
14 **Support.**

15 CVWD argues that the Watermaster employs “a highly developed and robust system of
16 checks and balances” to imply that the Special Referee is no longer necessary. Motion at 8:28-
17 9:1. As is typical of the Motion, CVWD fails to cite any relevant authority for its argument.
18 Stated in a vacuum, the statement lacks foundation. On what provision of Watermaster’s
19 governing documents is CVWD referring? Watermaster is not a neutral body. The Watermaster
20 Board is made up of producers who represent their own interests. The Special Referee is the only
21 participant that does not have a stake in the Basin and thus provides vital independent analysis
22 and recommendations to the Court regarding Watermaster actions and Basin operation as a whole.

23 Along those lines, CVWD argues that the Special Referee has “insulated” the Court
24 from Watermaster to such an extent that “[a]ll direct communication between Watermaster and
25 the Court has ceased and has been replaced by indirect communication only through the Special
26

27 ¹ CVWD also challenges the assistance of Judith Schurr, a research attorney utilized by the Special Referee, on the
28 ground that the Court has not authorized the Special Referee to retain an assistant. (Motion at 7:4-7.) Such an
argument is petty and especially so given the complex issues the Special Referee is tasked to analyze and the short
time frame within which she has to do so.

1 Referee." Motion at 15:4-6. No credible examples are cited by CVWD. Hence, the statement
2 lacks foundation and obviously relies on hearsay and should be stricken on those grounds.
3 Evidence Code §§700, 1200(b).

4 **5. Statements Regarding Potential Conflicts are Improper.**

5 In Section III(C) of its Motion, CVWD urges that the Special Referee's representation of
6 the Santa Ana Mainstem Local Sponsors during the Water Resources Control Board's
7 consideration of the Santa Ana Water Rights application process creates in her a legal conflict of
8 interest. Motion at 16. As its only support, CVWD offers the appearance pages of three
9 transcripts of Board proceedings at which it considered the Santa Ana application. Willis Decl. at
10 Exhibits A, B and C. For a myriad of reasons, the Willis Declaration and Exhibits A, B and C
11 attached to it are inadmissible and the Opposing Parties object thereto.

12 To state the obvious, that Ms. Schneider appeared on behalf of the Mainstem Sponsors
13 does not, in and of itself, create a conflict in Ms. Schneider. Rules of Professional Conduct, Rule
14 3-310(C). Absent an evidentiary showing that Ms. Scheider's *representation of the Mainstem*
15 *Sponsors at these meetings, not just her appearance on their behalf, fatally conflicts with her role*
16 *as Special Referee, CVWD's citation to this evidence is irrelevant. Evidence Code §350. The*
17 *reliance on Ms. Schneider's appearance alone does not support CVWD's asserted conclusion that*
18 *she is conflicted. Hence, the declaration fails to establish the necessary foundational facts that*
19 *support the ultimate statement.*

20 Even if Ms. Schneider's appearance alone was somehow relevant, that evidence lays
21 insufficient foundation for CVWD's charge that Ms. Schneider representation of the Maintstem
22 Sponsors conflicts with her role as Special Referee. Evidence Code §700. At set forth fully in
23 the Opposing Parties' Opposition, CVWD's unsupported link between Ms. Schneider's
24 representation of the Mainstem Sponsors and her role as Special Referee is far too attenuated to
25 pose an actual conflict. This is especially so given CVWD's complete failure to support its
26 accusation with competent evidence. The Willis Declaration does not provide competent and
27 relevant evidence upon which to consider CVWD's argument that the Special Referee has a
28 conflict of interest. Evidence Code §§350, 700.

1 **6. CVWD's Motion Relies on Inadmissible Hearsay.**

2 The Opposing Parties further object to the Motion to the extent it relies on inadmissible
3 hearsay. Without knowing on what evidentiary basis CVWD seeks to introduce these statements,
4 it is difficult to lodge the appropriate additional objections. If CVWD is attempting to rely on an
5 exception to the hearsay rule by attributing some or all of these statements to the business records
6 exception, for example, CVWD failed to establish that these records were made in the regular
7 course of a business at or near the time of the act, that a qualified witness testifies to their identity
8 and the mode of their preparation; and that the sources of information and method and time of
9 preparation were such as to indicate trustworthiness. See Evidence Code section 1271.

10 In addition, throughout its Motion CVWD makes bald, general assertions without
11 attributing the statement to a speaker, without laying any foundation, and without establishing that
12 the statements are not inadmissible hearsay. One such glaring example is CVWD's statement that
13 "Chino Basin operates largely by consensus." Motion at 13:7-11.

14 Nor does CVWD make any effort to authenticate the statements or exhibits it presents to
15 court. *See, e.g.*, Motion at 9:16-17 ("The Special Referee and her consultants rarely offer
16 substantive changes . . ."). Because CVWD fails to establish the genuineness of this statement,
17 among numerous others, they should be excluded.


18 **7. CONCLUSION**

19 For the foregoing reasons, the Opposing Parties respectfully requests that the Court
20 strike the inadmissible statements from the Motion.

21
22 Dated: August ²____, 2008

JENKINS & HOGIN

23
24 By:



JOHN C. COTTI
Attorneys for the City of Chino Hills

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Dated: August 8, 2008

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Dated: August _____, 2008

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Dated: August _____, 2008

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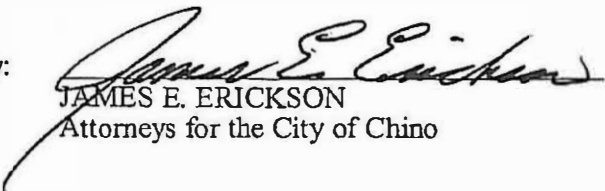
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Dated: August 8, 2008

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PROOF OF SERVICE

1 STATE OF CALIFORNIA)
2 COUNTY OF ORANGE)

3 I am employed in the County of Orange, State of California. I am over the age of eighteen (18)
4 years and not a party to the within action; my business address is: 650 Town Center Drive, Suite 100,
5 Costa Mesa, California 92626.

6 On August 8, 2008, I served the foregoing document described as: **EVIDENTIARY**
7 **OBJECTIONS TO CUCAMONGA VALLEY WATER DISTRICT'S MOTION TO**
8 **DISCONTINUE THE APPOINTMENT OF THE SPECIAL REFEREE AND THE**
9 **DECLARATION OF JILL N. WILLIS IN SUPPORT THEREOF [SERVED AND FILED**
10 **CONCURRENTLY WITH JOINT OPPOSITION TO CUCAMONGA VALLEY WATER**
11 **DISTRICT'S MOTION TO DISCONTINUE THE APPOINTMENT OF THE SPECIAL**
12 **REFEREE]** on the interested parties in this action by placing a true copy thereof enclosed in a
13 sealed envelope addressed as follows :

10 Jannie Wilson
11 Chino Basin Watermaster
12 9641 San Bernardino Road
13 Rancho Cucamonga, California 91730
14 (909) 484-3888

13 [] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing
14 correspondence by mailing. Under that practice it would be deposited with U.S. postal service
15 on that same day with postage fully prepaid at Costa Mesa, California in the ordinary course of
16 business. I am aware that on motion of the party served, service is presumed invalid if postal
17 cancellation date or postage meter date is more than one day after date of deposit for mailing in
18 affidavit.

17 [] (BY OVERNIGHT MAIL) I caused such document to be delivered by overnight mail to the
18 offices of the addressee(s).

19 [XX] (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the offices
20 of the addressee.

21 [] (BY FACSIMILE) I transmitted said document by fax transmission to the fax
22 number(s) indicated

23 [XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the
24 above is true and correct.

25 Executed on August 8, 2008, at Costa Mesa, California.

26 
27 ALLA VAINBERG

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 11, 2008 I served the following:

- 1) **JOINT OPPOSITION TO CUCAMONGA VALLEY WATER DISTRICT'S MOTION TO DISCONTINUE THE APPOINTMENT OF THE SPECIAL REFEREE; DECLARATION OF MARK KINSEY [SERVED AND FILED CONCURRENTLY WITH EVIDENTIARY OBJECTIONS AND REQUEST FOR JUDICIAL NOTICE]**
- 2) **EVIDENTIARY OBJECTIONS TO CUCAMONGA VALLEY WATER DISTRICT'S MOTION TO DISCONTINUE THE APPOINTMENT OF SPECIAL REFEREE AND THE DECLARATION OF JILL N. WILLIS IN SUPPORT THERE OF**
- 3) **JOINT REQUEST FOR JUDICIAL NOTICE**

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

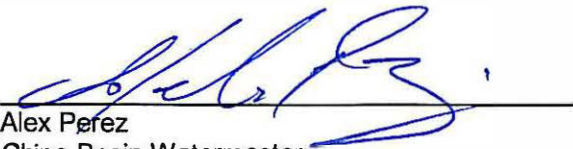
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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 11, 2008 in Rancho Cucamonga, California.



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