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17
18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION**

20 CHINO BASIN MUNICIPAL WATER
DISTRICT,

21 Plaintiff,

22 vs.

23 THE CITY OF CHINO, et al.,

24 Defendants.
25

CASE NO. RCV 51010

**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]**

Date: August 21, 2008

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Dept: R8

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1 Defendants, Monte Vista Water District, the City of Chino Hills, and the City of Chino (the
2 “Opposing Parties”) hereby jointly submit this Opposition to Cucamonga Valley Water District’s
3 Motion to Discontinue the Appointment of the Special Referee.

4 **I. INTRODUCTION**

5 In April 1997, this Court appointed Ann Schneider, an objective and impartial expert in water
6 law, as a Special Referee to serve the Court and the Parties to the 1978 Judgment of the Chino
7 groundwater basin (the “Basin”). The Court also appointed Joe Scalmanini as a Technical Advisor to
8 assist the Special Referee. For more than a decade since, the Special Referee and the Technical
9 Advisor have consistently provided invaluable assistance to the Court, Watermaster, and the Parties in
10 the management of the Basin and the progress of the Optimum Basin Management Plan (“OBMP”).
11 Without this assistance the Court, Watermaster, and other Parties could not have improved upon the
12 deficiencies of the prior Watermaster.¹

13 Watermaster challenged the Special Referee’s role less than a year ago. (Watermaster
14 Response to Special Referee’s Preliminary Comments and Recommendations on Motion for Approval
15 of Peace II Documents, Dec. 14, 2007, p. 5:10 to 5:16; Order Concerning Motion for Approval of
16 Peace II Documents, Dec. 21, 2007, (“Peace II Order”) p. 4:1 to 4:7.) In response, the Court wrote:
17 “This Court has said on many occasions that the assistance provided by the Special Referee is
18 invaluable.” (Peace II Order at p. 6:7 to 6:8.) The Court continued: “The role of the Special Referee
19 is to (1) provide the court with as full and complete explanations as possible of what the Watermaster
20 requests or of issues that have been brought to the court; and (2) to make recommendations to the court
21 as appropriate.” (*Id.* at p. 4:20 to 4:25.)²

22 On June 30, 2008, Cucamonga Valley Water District (“CVWD”) filed a Motion to Discontinue
23 the Appointment of the Special Referee (the “Motion”). Echoing arguments raised in 2006, the Motion
24

25
26 ¹ For brevity’s sake, Opposing Parties will use the term “Special Referee” in this Opposition to mean both the
Special Referee and Technical Advisor.

27 ² On July 31, 2008, Special Referee filed a Response to CVWD’s Notice of Motion and Motion to Discontinue
28 the Appointment of the Special Referee (“Special Referee’s Response to CVWD’s Motion”). Opposing
Parties agree with and hereby join Special Referee’s Response, and incorporate Special Referee’s Response a
though set forth herein..

1 claims that the Special Referee's services are no longer necessary or appropriate for Basin operations.
2 (See Objections by Cucamonga Valley Water District to Special Referee's Report and
3 Recommendations Concerning Motion to Re-Appoint the Nine-Member Board for a Further Five-Year
4 Term, Jan. 30, 2006, pp. 2:5 to 3:7.)

5 The Special Referee ensures that all parties to the Judgment are treated fairly. Her expertise
6 and oversight remain necessary, particularly as Watermaster fails to meet deadlines and maximum
7 benefit objectives. Indeed, in a letter dated July 18, 2008 (the "Regional Board letter"), the California
8 Regional Water Quality Control Board expressed "disappointment" at the Watermaster's lack of
9 progress in fulfilling its commitments. This is only the latest example of the ongoing need for the
10 Special Referee's involvement in the management of the Basin. For the following reasons, the
11 Opposing Parties request that the Court deny the Motion in its entirety.

12 **II. THE COURT, PARTIES, AND WATERMASTER STILL NEED THE SPECIAL**
13 **REFEREE, WHO HAS CONSISTENTLY SERVED AS AN INVALUABLE RESOURCE**

14 This Court has recognized on several occasions that Special Referees are favored in complex,
15 water-related cases. (Ruling and Order of Special Reference, Apr. 29, 1997, p. 7:11 to 7:16, quoting
16 *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 917; Peace II Order at pp. 4:26 to 5:16.)
17 The California Supreme Court has "recommended, in view of the complexity of the factual issues in
18 water cases and the great public interests involved, that the trial courts seek the aid of the expert advice
19 and assistance" of a Special Referee. (*City of Pasadena v. City of Alhambra, supra*, 33 Cal.2d. at 917.)

20 In appointing the Special Referee, this Court recognized Ms. Schneider's expertise in water
21 litigation, her "greater ability to remain objective and impartial" due to her residence outside San
22 Bernardino County, and her familiarity with the Judgment due to prior service for the Court as Special
23 Referee in the Chino Basin. (Order to Show Cause, Mar. 19, 1997, p. 2:1 to 2:11.)

24 Throughout the appointment, the Special Referee has assisted the Court, Watermaster, and the
25 Parties to the Judgment on numerous occasions in invaluable ways. This Opposition will highlight a
26 few key examples of the Special Referee's contributions. The following list is not exhaustive.

27 1. The Special Referee provides technical analysis and recommendations to the Court,
28 Watermaster, and the Parties:

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- At the Court’s request, the Special Referee assessed and verified data contained in Watermaster’s Court-ordered, biannual progress reports on OBMP implementation, and reported to the Court to verify Watermaster’s adherence to the Court-ordered OBMP implementation schedule. (See Order Considering Motion to Re-Appoint Nine-Member Board, Sept. 28, 2000, p. 6:26 to 6:28; see, e.g., Special Referee’s Report and Comments Concerning First OBMP Implementation Status Report, Apr. 19, 2001; Special Referee’s Report and Comments Concerning OBMP Implementation Status Report No. 2, Nov. 15, 2001.) These proved useful, and the Court ordered Watermaster to continue filing these reports. (Order Re-Appointing Nine-Member Board For Further Five-Year Term, Feb. 9, 2006, p. 5:7 to 5:9.)
 - The Special Referee reviewed Watermaster’s proposed Revised Rules and Regulations and recommended the Court approve them on two conditions that the Court imposed: first, that Watermaster revise its definition of “Minimal Producer” to conform to the Judgment; and, second, that Watermaster provide Appendix 1 forms consistent with the Special Referee’s prior report on the proposal. (See Order Granting Final Approval of Watermaster Rules and Regulations, July 19, 2001, p. 2:8 to 2:18.) This is one example of the Special Referee thoroughly reviewing a complicated filing and identifying key issues for the Court, Parties, and Watermaster to address.
 - The Special Referee reviewed Watermaster’s Peace II filings and identified a number of key problems, including a previously-unidentified projected reduction in safe yield. (See Special Referee’s Preliminary Comments and Recommendations on Motion for Approval of Peace II Documents, Nov. 27, 2007; Special Referee’s Final Report and Recommendations on Motion for Approval of Peace II Documents, Dec. 20, 2007, p. 27:16 to 27:18; Peace II Order, pp. 2:5 to 2:11 & 3:12 to 3:16.) In this latest example of Special Referee’s value-added services, the Special Referee navigated through a complex technical report, identified areas of concern, highlighted and explained these concerns for the Court and Parties, and proposed remedies and necessary follow-up steps. These efforts were an invaluable service to the Parties, particularly those without

1 the resources or expertise to fully comprehend and interpret Watermaster's filings.

2 2. The Special Referee provides checks and balances to the tyranny of the majority, assists in
3 disputes between the parties, and helps ensure Watermaster's compliance with its obligations:

- 4 • Despite the Peace Agreement and OBMP provisions providing for the investigation and
5 development of a plan regarding subsidence in the Basin, Watermaster did not address
6 the issue until the City of Chino in or about 2002 filed a motion with the Court
7 regarding this matter. The Special Referee was instrumental in forcing Watermaster to
8 address this matter, which ultimately resulted in an interim plan to study and address the
9 subsidence issue. (See Order on Ex Parte Application for Continuance of Hearing on
10 Motion for Approval of Long Term Plan, Aug. 27, 2007, p. 2.) When Watermaster
11 belatedly developed a proposed "Long Term Plan," which it presented to the Court in
12 August 2007, the Special Referee investigated whether the Plan satisfied Watermaster's
13 charge to develop a pumping and recharge plan to abate subsidence in Management
14 Zone 1. In her report, the Special Referee presented a detailed and thorough analysis of
15 the Long Term Plan and the history that led to its creation. (See Special Referee's
16 Comments and Recommendations Concerning Motion for Approval of Watermaster's
17 Long Term Plan, Oct. 16, 2007, pp. 12 to 14.) The Special Referee was rightly critical
18 of the Plan's failure to identify a specific plan to abate subsidence but ultimately
19 recommended its approval to the Court. Without the Special Referee's assistance,
20 Watermaster could have continued ignoring the City of Chino and the issue of
21 subsidence indefinitely. Although the subsidence and fissuring problem has been abated
22 temporarily, there is no assurance that Watermaster will continue to address this
23 problem in the future; and as a result, the Paragraph 15 motion filed by the City of
24 Chino is still pending on the court calendar for Feb. 10, 2009.
- 25 • On Watermaster's responsibility "to ensure that in future reporting the reports are
26 timely, transparent and responsive to the question of whether Watermaster is
27 implementing the Peace Agreement and the OBMP in a manner consistent with the
28 Judgment and the continuing Orders of this Court" the Court specifically stated, "[t]he

1 Special Referee's report is largely an effort to assist Watermaster in this regard." (Order
2 Re-Appointing Nine-Member Board for Further Five-Year Term, Feb. 9, 2006, p. 4:21
3 to 4:26.) The Special Referee's assistance in this matter ensures that all Parties are
4 reasonably informed on the progress of the OBMP implementation.

5 3. The Special Referee informs the Court as to the status of the Chino Basin:

- 6 • The Special Referee highlighted the significant delay in completing Desalter I
7 Expansion (Order Granting Motion to Conform Minimal Producer Definition in
8 Judgment, Nov. 15, 2001, p. 6:9 to 6:16), and the Court echoed the Special Referee's
9 concern about Watermaster's lack of a plan for future desalters and lack of reporting on
10 recharge capability (Order Re-Appointing Nine-Member Board for Further Five-Year
11 Term, Feb. 9, 2006, p. 3:22 to 3:27).
- 12 • The Court adopted the Special Referee's recommendations requiring substantive
13 clarifications of Watermaster's initial State of the Basin Report. (Order Receiving
14 Supplemental Desalter Report, Feb. 28, 2002, p. 4:1 to 4:8.) As a result, the Initial State
15 of the Basin Report fulfilled its purpose of establishing a "baseline against which
16 progress on the implementation of the OBMP can be measured." (Special Referee's
17 Report and Comments Concerning Draft Final Initial State of the Basin Report, June 26,
18 2002, p. 3:3 to 3:9.)
- 19 • At Watermaster's request, the Special Referee: (1) presented Watermaster's Interim
20 Plan for Management of Subsidence to the Court (Order Receiving Supplemental
21 Desalter Report, June 19, 2002, p. 2:6 to 2:10); (2) informally attended Watermaster
22 workshops on Peace II, future desalters, and other activities (Order Re-Appointing
23 Nine-Member Board for Further Five-Year Term, Feb. 9, 2006, p. 5:9 to 5:11); and (3)
24 performed a workshop addressing Peace II for the Court (*Id.* at p. 5:11 to 5:15).

25 These few examples amply demonstrate that the Special Referee's independent technical and
26 legal expertise is invaluable to the Court, the Parties, Watermaster, and the Chino Basin at large. The
27 Special Referee has been instrumental in a variety of ways to achieving Watermaster's progress since
28 its interim appointment. Removing the Special Referee now would prematurely rob the Court of this

1 vital resource and abandon the Parties to Watermaster's whim. The Special Referee's record does not
2 justify discontinuing her appointment, and the Court should therefore deny the Motion.

3 **III. WATERMASTER HAS NOT PROVEN IT CAN INDEPENDENTLY OVERSEE THE**
4 **CHINO BASIN IN COMPLIANCE WITH THE 1978 JUDGMENT**

5 Since its appointment in 1998, Watermaster has consistently demonstrated it is not prepared to
6 manage the Chino Basin without the Special Referee's oversight and assistance. Recent
7 correspondence from the Regional Water Quality Control Board underscores the ongoing need for the
8 Special Referee.

9 **A. The Court Initially Appointed The Nine-Member Board As Watermaster On**
10 **Merely An Interim Basis, And Simultaneously Appointed The Special Referee To**
11 **Assist the Court.**

12 Upon appointing the Special Referee, the Court first referred two motions, including the motion
13 to appoint the nine-member board, to the Special Referee for review and recommendation. (Ruling and
14 Order of Special Reference, Apr. 29, 1997, p. 10:4 to 10:21.) Based on the Special Referee's
15 recommendations, the Court appointed the nine-member board as interim Watermaster for a twenty-six
16 month period ending June 30, 2000. (Ruling, Feb. 19, 1998, p. 5:24 to 5:25.) At that time, the Court
17 cautioned Watermaster and the Parties to heed the lessons of Garrett Hardin's "The Tragedy of the
18 Commons" and Beryl Crowe's "The Tragedy of the Commons Revisited" in the hopes that the new
19 Watermaster would bring about "the triumph of the commons." (*Id.* at pp. 8 (fn 1), 14:1 to 14:4, & 14
20 (fn 6).) These prescient references remain as vital today as they were then. In the Motion, CVWD
21 argues, "...Watermaster has implemented a successful stakeholder-dominated process..." (Motion, p.
22 9:12 to 9:13.) Even if that were true – and the evidence does not support that it is – a Watermaster
23 dominated by the major producers is precisely the outcome that worried the Court about local control
24 in the first instance.

25 The first task the Court ordered Watermaster to complete was the preparation of the OBMP.
26 (*Id.* at pp. 9:17 to 11:4.) The Court noted that in evaluating Watermaster's performance, it was
27 particularly interested in the "timely filing of all reports with the court and development of an optimum
28 basin management program." (*Id.* at p. 7:25 to 7:27.) The Court asked for further assistance from the
Special Referee, ordering her to "report and make recommendations to the court concerning the

1 contents, implementation, effectiveness, and shortcomings of the optimum basin management plan”
2 and appointed the Technical Advisor to assist the Special Referee. (*Id.* at p. 9:12 to 9:16.)

3 **B. Due To Delays In Completing The OBMP And Ongoing Concerns About**
4 **Watermaster’s Performance, The Court Conditioned Watermaster’s 2000**
5 **Reappointment In Accordance With The Special Referee’s Advice.**

6 Creating the OBMP took longer than the Court expected. (See Order Continuing the Hearing
7 on the Scope and Level of Detail Plan for the OBMP, Oct. 5, 1998; Final Ruling—Sept. 30, 1999
8 Hrng., Oct. 28, 1999; Notice of Rulings and Hearing, Dec. 3, 1999; Order, June 29, 2000; Order
9 Concerning Motion to Extend Nine-Member Board, Sept. 28, 2000, p. 2:4 to 2:5 (“The deadline for
10 approval of the OBMP was continued several times.”).) The OBMP was not completed until July
11 2000, after “intensive settlement negotiations” that culminated in the Peace I agreement among the
12 Parties. (Order Concerning Adoption of OBMP, July 13, 2000, p. 3:3 to 3:6.)

13 The Court approved the OBMP and Peace I on July 13, 2000, but imposed six conditions
14 precedent. (*Id.* at pp. 4:1 to 4:17 & 5:6 to 5:25.) The Court had planned to address the reappointment
15 of the nine-member board at the same time as the final OBMP, but the issue for reappointment was
16 continued to September 28, 2000, so that Watermaster could satisfy all the conditions precedent. (See
17 Report and Recommendation Concerning Motion to Extend Nine-Member Board, Sept. 26, 2000, p.
18 2:28 to 3:4; see also Order, June 29, 2000.)

19 The Special Referee identified several areas of concern with respect to Watermaster’s Motion
20 to Re-Appoint Nine-Member Board. (Report and Recommendation Concerning Motion to Extend
21 Nine-Member Board, Sept. 26, 2000; Order Concerning Motion to Re-Appoint Nine-Member Board,
22 Sept. 28, 2000, pp. 2:16 to 3:8.) The Court recognized the Special Referee’s identification of
23 Watermaster’s repeated failure to fulfill conditions timely. (E.g. Order Concerning Motion to Extend
24 Nine-Member Board, Sept. 28, 2000, pp. 2:16 to 3:8.) Based on the Special Referee’s
25 recommendations, the Court implemented several conditions on reappointment, including a new
26 reporting requirement. (*Id.* at pp. 3:24 to 4:22 and 5:20 to 6:28.)

27 The Court specifically called out the commitment to “preserve safe yield in accordance with the
28 OBMP” as an area of concern in future reappointment applications. (*Id.* at p. 5:6 to 5:10.) Meanwhile,
the Court ordered Watermaster to provide technical data on OBMP implementation to the Special

1 Referee for independent evaluation and presentation to the Court. (*Id.* at 6:26 to 6:28.)

2 **C. By 2006, Watermaster's Continued Dysfunction Resulted In The Court Imposing**
3 **Additional Conditions Upon Reappointing The Nine-Member Board.**

4 In 2006, Watermaster filed a motion for reappointment for an additional five-year term. As
5 noted in Watermaster's motion, an express condition of the reappointment included a commitment by
6 Watermaster to form a committee to evaluate Watermaster's governance structure and to provide
7 recommendations prior to December 31, 2007. (Points and Authorities in Support of Motion to Re-
8 Appoint the Nine-Member Board for a Further Five Year Term; Motion to Receive and File State of
9 the Basin Report, Jan. 12, 2006, p. 7:12 to 7:24; Declaration of Michael Fife in Support of Motion to
10 Re-Appoint the Nine-Member Board for Further Five Year Term; Motion to Receive and File State of
11 the Basin Report, Jan. 12, 2006, p. 2:1 to 2:3.)

12 The Special Referee noted that Watermaster committed to review its own governance structure
13 by the end of 2007 (Special Referee's Comments and Recommendations Concerning Motion to Re-
14 Appoint the Nine-Member Board for a Further Five-Year Term, Feb. 9, 2006, pp. 14:8 to 15:14) and
15 the Court acknowledged as much (Order Re-Appointing Nine-Member Board for Further Five-Year
16 Term, Feb. 9, 2006, p. 5:16 to 5:17).

17 The Court, in its Order re-appointing Watermaster, raised several significant concerns about
18 Watermaster's past and future performance, including plans for basin re-operation and hydraulic
19 control. (See Order Re-Appointing Nine-Member Board for Further Five-Year Term, Feb. 9, 2006, pp.
20 3:14 to 4:4.) The Court stressed, in its Order, that Watermaster must move forward with long-delayed
21 planning to address future desalting. (*Id.* at p. 4:11 to 4:16 and 5:7 to 5:15.)

22 **D. Peace II And Its Aftermath Prove That The Special Referee's Oversight Is**
23 **Necessary To Ensure Compliance With The 1978 Judgment And To Promote The**
Public Interest In The Chino Basin.

24 December 31, 2007, passed, and, to date, Watermaster has not reported on its review and
25 recommendations concerning its governance structure. It is also the Opposing Parties' understanding
26 that Watermaster has not undertaken any steps to accomplish this review, including forming a separate
27 committee as planned. (Kinsey Dec., ¶¶ 2-3, p. 1:24 -2: 4.)

28 Notwithstanding Watermaster's failure to address this express condition of its reappointment,

1 the Special Referee continues to play a vital role in the OBMP progress and Basin management.
2 Watermaster sought Court approval of Peace II in late 2007. (See Order Concerning Motion for
3 Approval of Peace II Documents, Dec. 21, 2007.) The Special Referee evaluated Watermaster's
4 filings, including the technical report, and identified key problems with the Peace II documents. The
5 Special Referee recommended several conditions of approval. (*Id.* at p. 3:12 to 3:16.)

6 Specifically, the Special Referee addressed the technical report's introduction of a projected
7 reduction in safe yield. That concept was not previously identified or conveyed to the parties before
8 the filing of the Peace II documents. (Kinsey Dec., ¶¶ 4-5, p. 2:5 to 2:10.) Since the issue came to
9 light, Watermaster has not provided any meaningful analysis to the Parties or the Court or given any
10 opportunity to revisit the terms of Peace II in light of the changed assumptions. This is currently a
11 source of contention between the Parties.

12 The Court adopted the Special Referee's recommendations and required that Watermaster
13 comply with nine conditions subsequent. (*Id.* at pp. 7:7 to 9:2.) The Court warned Watermaster when
14 it approved Peace II: "Watermaster is forewarned that a failure to comply with any of the above
15 conditions subsequent will render the Court's approval of Watermaster's motion null and void. A lack
16 of compliance with the conditions subsequent will also be seen as a failure by Watermaster, through its
17 nine-member Board, to perform its most important duty: to administer and to enforce the provisions of
18 this Judgment and any subsequent instructions or orders of the Court." (*Id.* at pp. 8:26 to 9:2.)

19 **E. Nothing Has Transpired To Relieve The Ongoing Need For Independent**
20 **Oversight Of the Chino Basin Watermaster By The Special Referee.**

21 As noted above, the Regional Water Quality Control Board has expressed frustration with
22 Watermaster. (See Exh. 1, Regional Board Letter.) The Regional Board Letter calls Watermaster's
23 lack of progress on hydraulic control "unacceptable" and flatly states: "[t]his is exactly why I
24 suggested to you that it would probably be best for the successful completion of your Maximum
25 Benefit commitments if the requirements and schedule to achieve the hydraulic control commitments
26 were required and monitored by the Court." (Exh. 1, Regional Board Letter, July 18, 2008, p. 2.) This
27 letter establishes that Watermaster is not meeting its objectives as outlined in the OBMP. Sent July 18,
28 2008, the Regional Board Letter demonstrates that Watermaster is not ready to stand alone.

1 In sum, the Court set up a governance structure under the Judgment that presently relies upon
2 the interplay between Watermaster and the Special Referee. The Court indicated that it “is very aware
3 that the parties hereto desire local control of the Watermaster function; and the court has no desire to
4 transfer control from the nine-member board provided that Watermaster professionally permits its
5 responsibilities under the judgment.” (Ruling, Feb. 19, 1998, pp. 7:27 to 8:2.) The Court’s Orders
6 reveal concerns with Watermaster’s performance since its interim appointment in February 1998.
7 Watermaster’s failure to review its governance structure exacerbates such concerns.

8 It is possible that over time, if Watermaster successfully implements its governance structure,
9 the need for the Special Referee will naturally diminish to a nullity. However, if Watermaster does not
10 function adequately, then the Court and the Parties will require the functions of the Special Referee
11 indefinitely. Certainly, there is no justification at this time to abandon the Special Referee, a vital part
12 of the Court’s plan and a necessary figure in the progress of the OBMP and Basin management.

13 **IV. THE COSTS OF THE SPECIAL REFEREE’S OVERSIGHT ARE REASONABLE AND**
14 **NECESSARY COMPARED WITH WATERMASTER’S EXPENSES**

15 CVWD asserts that the Special Referee incurred over \$800,000 in charges over the last three
16 years, and more than \$300,000 since July 2007. (Motion, p. 6:8 to 6:9.) The source of those figures is
17 unclear because CVWD provides no evidence to support either figure or its method of calculation.³ As
18 Special Referee’s Response to CVWD’s Motion indicates, CVWD’s assertions are inaccurate and
19 unsupportable. (Special Referee’s Response to CVWD’s Motion, p. 5:16 to 5:25 (fn. 5).) Even if the
20 figures were correct, CVWD ignores the fact that the Special Referee’s costs are a direct result of
21 Watermaster’s and the Parties’ inability to resolve issues without Court intervention. As the Court
22 recently reminded the parties, “the Special Referee has been providing expert advice and conducting
23 workshops either at the Court’s request or the request of the parties or Watermaster, as authorized in
24 various court orders.” (Order Concerning Motion for Approval of Peace II Documents, Dec. 21, 2007,
25 p. 5:25 to 5:27.) The Special Referee (and the Watermaster) serves at the pleasure of the Court; the

26 _____
27 ³ Indeed, the Motion itself appears inconsistent as to Special Referee expenses. (Motion, pp. 6:7 to 6:9 & 9:24 to
28 9:25.) Later in the Motion, CVWD asserts: “In 2006, the Special Referee and her staff incurred expenses of
over \$300,000. For the 2007-2008 fiscal year, these costs are even higher.” (Motion, p. 9:24 to 9:26.) That
contradicts the initial figures CVWD asserts.

1 Special Referee has no power to expand her own role, as the Motion suggests.

2 CVWD next argues that Special Referee's work is duplicative, resulting in double the technical
3 review and double the administrative and legal review. (Motion, p. 9:19 to 9:28.) In fact, the Special
4 Referee does not duplicate Watermaster work, but rather, she provides oversight and peer review for
5 the benefit of the Court, the Parties, and Watermaster. CVWD provides no evidence that the Special
6 Referee or her Technical Advisor have ever duplicated Watermaster work or otherwise inappropriately
7 expended resources.

8 In comparison, the Special Referee's costs in contrast to Watermaster's own budget are minimal.
9 Specifically, in looking at the Special Referee's actual costs in comparison to the total OBMP
10 Implementation costs, over a five fiscal year period (2003 to 2007), the Special Referee and Technical
11 Advisor costs represent approximately three and one-half (3.5) percent of Watermaster's actual OBMP-
12 related expenditures. Many of these expenditures resulted from motions that were filed with the
13 Court by the Parties and from Watermaster's request for the Technical Advisor to undertake a detailed
14 peer review of the groundwater model used to evaluate Basin Re-Operation under the provisions of
15 Peace II. (Kinsey Dec. ¶ 6, p. 2:11 to 2:20.) Plainly, the Special Referee (including the Technical
16 Advisor) costs are less than Watermaster's legal counsel alone; they are obviously not recreating
17 Watermaster's technical, legal, or administrative work from the ground up.

18 Indeed, in defining the Special Referee's role in developing the OBMP, the Court specifically
19 stated: "Special Referee Schneider and Mr. Scalmanini are cautioned not to duplicate the work
20 completed by the task force in making their report to the court; but instead, supplement and modify the
21 previous work where appropriate. Hopefully the aforementioned procedure will enhance and elucidate
22 work already performed, and, at the same time, save money." (Ruling, Feb. 18, 1998, p. 10:3 to 10:7.)
23 Clearly, the Motion's argument that "While Duplication of Functions Was Justified in 1998, It Is No
24 Longer Necessary or Appropriate" (Motion, p. 10:9 to 10:10) misstates the history.

25 The Court benefits from its chosen governance system, as argued above, and the Special
26 Referee frees the Parties to the Judgment from the oppressive burden of each hiring an independent
27 expert to review Watermaster's complex and voluminous filings. Essentially, CVWD ignores the
28 Court's express request that the Special Referee oversee status of OBMP implementation and advise

1 the Court thereon, as well as Watermaster's request that Special Referee be involved in the Peace II
2 process. There is no justification for granting the requested relief.

3 **V. CVWD OFFERS NO EVIDENCE OF ANY CONFLICT BETWEEN MS.**
4 **SCHNEIDER'S ROLE AS SPECIAL REFEREE AND ANY RELATIONSHIP WITH**
5 **SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT**

6 CVWD baldly alleges that the Special Referee has violated several Canons of the Code of
7 Judicial Ethics. Although a Special Referee serving pursuant to Code of Civil Procedure section 638,
8 et seq. must comply with portions of the California Code of Judicial Ethics, CVWD fails to
9 demonstrate any actual violation. For several reasons, there is no basis for discontinuing the Special
10 Referee's appointment for the alleged conflict of interest.

11 First, the Motion contains no evidence of an attorney-client relationship between Ann
12 Schneider and San Bernardino County Flood Control District ("SBCFCD"). The only evidence
13 provided by CVWD is attached to the Declaration of Jill N. Willis, which shows, at most, that Ms.
14 Schneider appeared at a State Water Resources Control Board ("SWRCB") hearing regarding the Santa
15 Ana Water Rights application process on behalf of Santa Ana Mainstem Project Local Sponsors (the
16 "Local Sponsors") on May 2-4, 2007. (Willis Dec., p. 1:9 to 1:10 & Exh. "A".) The Local Sponsors
17 include the Orange County Flood Control District, the Riverside County Flood Control and Water
18 Conservation District, and SBCFCD. The Motion contains no specific details of this appearance or the
19 nature of Ms. Schneider's representation of the Local Sponsors. Ms. Schneider provided the only
20 admissible evidence on this point in her Response to the Motion. It appears that Canons 6D(3)(a)(ii)
21 and 6D(11) do not apply. Furthermore, as Ms. Schneider pointed out, the fact that CVWD sat on its
22 knowledge of this alleged conflict during the Peace II process belies its argument that any conflict
23 requires the Court now to disqualify the Special Referee.

24 Second, even if the Motion demonstrated, with credible and admissible evidence, an attorney-
25 client relationship between Ms. Schneider and SBCFCD, the Motion fails to show any adversity
26 between SBCFCD and Watermaster or any Party to the Judgment. At most, the Motion merely
27 speculates as to some uncertain, future scenario. CVWD argues that a conflict may potentially arise if
28 and when Watermaster develops additional recharge capacity, which might entail significant
interaction between Watermaster and SBCFCD. (Motion, p. 17:15 to 17:17.) However, the law does

1 not require the Special Referee to be removed based on bare speculation. Without current and real
2 adversity between SBCFCD and Watermaster, there is no conflict.

3 Third, CVWD also argues that the appearance of bias exists and requires disqualification under
4 Canon 2A. (Motion, pp. 17:26 to 18:6.) As the Special Referee notes, her representation of the Local
5 Sponsors, which included SBCFC, was disclosed in 1997. (Special Referee's Response to CVWD's
6 Motion, pp. 8:19 to 9:2.) Notwithstanding the Special Referee's disclosure, the Motion contains no
7 evidence of the basis for this alleged, appearance of impartiality. To establish an appearance of bias
8 requires more than a vapid, illusive, speculative scenario. The reality is that water law in California is
9 a small field occupied by a limited number of specialists. It would be nearly impossible to locate a
10 lawyer with Ms. Schneider's expertise and familiarity with the Basin, qualified to serve as a Special
11 Referee in this matter, who lacks any relationship with a Party to the Judgment or to Watermaster. In
12 this very adjudication, some Parties' attorneys would be hard pressed to defend the allegations that
13 CVWD aims exclusively at the Special Referee.

14 Finally, without providing any admissible evidence that the Special Referee is no longer
15 necessary to the Court or the Parties, CVWD would apparently have the nine-member Watermaster
16 board serve without Special Referee's oversight, checks and balances, and peer review. Several
17 members of the nine-member board, however, have direct and demonstrated pecuniary self-interest in
18 the matters before Watermaster. The nine-member board must show that it can manage the
19 groundwater basin according to the 1978 Judgment and in the public interest before the Court should
20 even consider removing the Special Referee's oversight.

21 As noted above, this Court chose Ms. Schneider due to her expertise, her independence, and her
22 familiarity with the case. These reasons still support her appointment. To find another person with
23 Ms. Schneider's qualifications for this post would be next to impossible. CVWD makes no evidentiary
24 showing, but merely speculates as though its hope alone might produce a conflict where none exists.
25 In contrast, Opposing Parties believe there is no present conflict, no appearance of conflict, and no
26 potential conflict requiring the Court to disqualify Ms. Schneider as Special Referee in this matter.

1 **VII. CONCLUSION**

2 For the foregoing reasons, Monte Vista Water District, the City of Chino Hills, and the City of
3 Chino respectfully request that the Court deny Cucamonga Valley Water District's Motion to
4 Discontinue the Appointment of the Special Referee in its entirety.

5 RESPECTFULLY SUBMITTED.

6 Dated: August 8, 2008

MCCORMICK, KIDMAN & BEHRENS, LLP

7
8 By:



Arthur G. Kidman
John Paul Glowacki
Tram T. Tran
Attorneys for Monte Vista Water District

9
10
11 Dated: August _____, 2008

JENKINS & HOGIN

12
13 By:

JOHN COTTI
Attorneys for the City of Chino Hills

14
15 Dated: August _____, 2008

LAW OFFICES OF JIMMY L. GUTIERREZ

16
17 By:

JAMES E. ERICKSON
Attorneys for the City of Chino

1 **VII. CONCLUSION**

2 For the foregoing reasons, Monte Vista Water District, the City of Chino Hills, and the City of
3 Chino respectfully request that the Court deny Cucamonga Valley Water District's Motion to
4 Discontinue the Appointment of the Special Referee in its entirety.

5 **RESPECTFULLY SUBMITTED.**

6 Dated: August _____, 2008

MCCORMICK, KIDMAN & BEHRENS, LLP

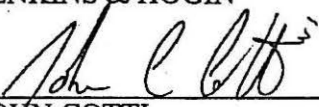
7
8 By:

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9
10
11 Dated: August 7, 2008

JENKINS & HOGIN

12
13 By:



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14
15 Dated: August _____, 2008

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16
17 By:

JAMES E. ERICKSON
Attorneys for the City of Chino

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28

1 **VII. CONCLUSION**

2 For the foregoing reasons, Monte Vista Water District, the City of Chino Hills, and the City of
3 Chino respectfully request that the Court deny Cucamonga Valley Water District's Motion to
4 Discontinue the Appointment of the Special Referee in its entirety.

5 **RESPECTFULLY SUBMITTED.**

6 Dated: August _____, 2008

MCCORMICK, KIDMAN & BEHRENS, LLP

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By:

Arthur G. Kidman
John Paul Glowacki
Tram T. Tran
Attorneys for Monte Vista Water District

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10

11 Dated: August _____, 2008

JENKINS & HOGIN

12

By:

JOHN COTTI
Attorneys for the City of Chino Hills

13

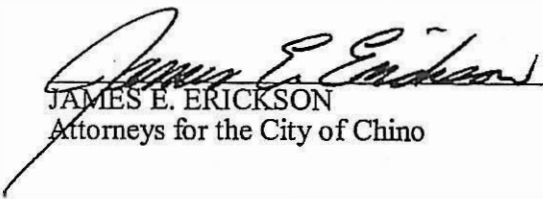
14

15 Dated: August 8, 2008

LAW OFFICES OF JIMMY L. GUTIERREZ

16

By:



JAMES E. ERICKSON
Attorneys for the City of Chino

17

18

19

20

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EXHIBIT 1



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 15th 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

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

DECLARATION

1 MCCORMICK, KIDMAN & BEHRENS, LLP
ARTHUR G. KIDMAN SBN 61719
2 JOHN PAUL GLOWACKI SBN 234055
TRAM T. TRAN SBN 240697
3 650 Town Center Drive, Suite 100
Costa Mesa, California 92626
4 Telephone: 714.755.3100 Fax: 714.755.3110

5 Attorneys for Defendant, MONTE VISTA WATER DISTRICT

6
7 Fee exempt – Gov. Code §§6103 and 27383

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

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 vs.

15 THE CITY OF CHINO, et al.,

16 Defendants.

CASE NO. RCV 51010

Assigned for All Purposes to:
Honorable J. MICHAEL GUNN
Department R8

**DECLARATION OF MARK KINSEY IN
SUPPORT OF JOINT OPPOSITION TO
CVWD'S MOTION TO DISCONTINUE
THE APPOINTMENT OF THE SPECIAL
REFEREE**

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18
19 I, Mark Kinsey, declare as follows:

20 1. I am the General Manager of Monte Vista Water District ("Monte Vista"), a party to
21 the above captioned matter. I have held my present position since November 1998. I am over the age
22 of eighteen years and I have personal knowledge of the following facts. If called to do so, I could and
23 would testify competently to the matters set forth herein.

24 2. In December 2005, it is my understanding that Watermaster unanimously approved a
25 recommendation in favor of the reappointment of the nine-member Watermaster Board contingent
26 upon the formation of a separate Watermaster committee to review and make recommendations
27 regarding the Watermaster governance structure no later than December 31, 2007.

28 ///

1 3. To date, Monte Vista has not received any information regarding the formation of this
2 separate Watermaster committee or any reports or recommendations regarding Watermaster
3 governance structure. It is my understanding that Watermaster has not undertaken any steps to
4 accomplish this review or form this separate Watermaster committee.

5 4. Monte Vista was unaware of any projected substantial decline in safe yield until it
6 obtained Mark Wildermuth's Declaration, filed concurrently with Watermaster's Motion for Approval
7 of Peace II documents on October 25, 2007, which used the newly updated model (2007 Chino Basin
8 Watermaster Groundwater Model) that was not available during the Peace II negotiations.

9 5. A projected substantial decline in safe yield is a different circumstance from the
10 information available to the parties during the negotiation of Peace I and Peace II.

11 6. In looking at the Special Referee's costs compared to Watermaster's costs, Monte Vista
12 evaluated the Special Referee and Technical Expert's actual expenditures for Fiscal Years 2003
13 through 2007 and compared these expenditures to Watermaster's actual OBMP related expenditures
14 for the same five year period. This data was taken directly from Watermaster's Approved Budgets for
15 Fiscal Years 2004 through 2008. Over the noted five fiscal year period, the Special Referee and
16 Technical Expert costs represent approximately three and one-half (3.5) percent of Watermaster's
17 actual OBMP related expenditures. Many of these expenditures resulted from motions that were
18 filed with the Court by the Parties and from Watermaster's request for the Technical Expert to
19 undertake a detailed peer review of the groundwater model used to evaluate Basin Re-Operation
20 under the provisions of Peace II.

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1 7. On or about July 21, 2008, Monte Vista received a copy of a letter dated July 18, 2008
2 from the California Regional Water Quality Control Board to Mr. Ken Manning, Chief Executive
3 Officer of Chino Basin Watermaster. This letter was sent to Monte Vista by way of the Chino Basin
4 Watermaster. Attached as Exhibit "A" to the Joint Opposition to Cucamonga Valley Water District's
5 Motion to Discontinue the Appointment of the Special Referee is a true and correct copy of this
6 Regional Board letter dated July 18, 2008.

7 8. I swear under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct to the best of my knowledge.

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Executed this 7 day of August, 2008 in Montclair, California.



Mark Kinsey

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3 COUNTY OF ORANGE)

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

7 On August 8, 2008, I served the foregoing document described as: **JOINT OPPOSITION TO**
8 **CUCAMONGA VALLEY WATER DISTRICT'S MOTION TO DISCONTINUE THE**
9 **APPOINTMENT OF THE SPECIAL REFEREE; DECLARATION OF MARK KINSEY**
10 **[SERVED AND FILED CONCURRENTLY WITH EVIDENTIARY OBJECTIONS AND**
11 **REQUEST FOR JUDICIAL NOTICE]** on the interested parties in this action by placing a true copy
12 thereof enclosed in a sealed envelope addressed as follows :

13 Jannie Wilson
14 Chino Basin Watermaster
15 9641 San Bernardino Road
16 Rancho Cucamonga, California 91730
17 (909) 484-3888

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

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

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

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

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

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



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.



Alex Perez
Chino Basin Watermaster

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LEAGUE OF CA HOMEOWNERS
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