

1 NOSSAMAN LLP
2 FREDERIC A. FUDACZ, State Bar No. 050546
3 ALFRED E. SMITH, State Bar No. 186257
4 445 South Figueroa Street
5 Thirty-First Floor
6 Los Angeles, California 90071
7 Telephone: (213) 612-7800
8 Facsimile: (213) 612-7801

9 Attorneys for City of Ontario

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11
12
13
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

12 CHINO BASIN MUNICIPAL WATER
13 DISTRICT,

14 Plaintiff,

15 v.

16 CITY OF CHINO, et al.

17 Defendants.

) Case No. RCV 51010

) Assigned for all purposes to the
) Honorable BARRY PLOTKIN

) **CITY OF ONTARIO'S LIMITED
) JOINDER TO CUCAMONGA
) VALLEY WATER DISTRICT'S
) MOTION TO DISCONTINUE THE
) APPOINTMENT OF THE SPECIAL
) REFEREE**

) Hearing

) DATE: September 26, 2008
) TIME: 10:00 a.m.
) PLACE: Dept. R9

1 The City of Ontario ("Ontario") submits the following position statement relative to
2 the hearing scheduled before this Court on September 26, 2008, concerning the Special
3 Referee appointment. By this statement, Ontario does not reflect on the quality of service
4 provided by the Special Referee. Nor does Ontario seek to comment on the conflict of interest
5 issue, or other specific point-by-point arguments and counter-arguments set forth with respect
6 to Cucamonga Valley Water District's motion to discontinue the Special Referee, and the
7 various joinders and oppositions thereto.

8 Indeed, Ontario does not object to the Court's seeking of legal or technical
9 assistance on a case-by-case basis where appropriate under the Judgment – i.e., in the event
10 of contested Watermaster actions or decisions, where the complexity and significance of the
11 issue warrants such expenditure.

12 However, Ontario is concerned with what appears to be a permanent or semi-
13 permanent appointment of a Special Referee when, pursuant to the Judgment herein, the
14 Court has already appointed a Watermaster to serve as the Court's agent to assist the Court in
15 the continuing implementation and administration of the Judgment. (Judgment, ¶ 16) The
16 Special Referee was appointed for a temporary and limited purpose more than ten years ago,
17 and there is no plan or timeline for completing the scope of services for which the Special
18 Referee was appointed.

19 Having both a Court-appointed Watermaster and a Court-appointed Referee
20 simultaneously serve in a groundwater rights adjudication on a permanent or semi-permanent
21 basis is unprecedented. There are numerous adjudicated groundwater basins throughout the
22 State, but none of these basins have two separate agents appointed by the Court and paid by
23 the parties on a long-term basis.

24 The Judgment in this action specifically calls for the appointment of a
25 Watermaster to serve as an arm of the Court. The Judgment calls for the Watermaster to
26 provide specialized advice and assistance to the Court as it retains continuing jurisdiction to
27 implement the Judgment. The Watermaster is not a litigant to advocate on behalf of any
28 individual party. To the contrary, the Watermaster is appointed by the Court to provide direct

1 input to the Court. Case law provides that the role of Watermaster is akin to that of a receiver
2 or a special master. (*U.S. v. Clifford Matley Family Trust* (9th Cir. 2004) 354 F.3d 1154, 1161).
3 However, the appointment of a permanent or semi-permanent Special Referee permits the
4 suggestion that Watermaster's role has been altered or diminished, contrary to the Judgment,
5 and that it is the Special Referee that is effectively functioning as the Court's agent.

6 Ontario is concerned with the liability implications created by interposing a
7 special referee with the status typically enjoyed by Court-appointed Watermasters, who are
8 entitled to immunity from suit. (*Stump v. Sparkman*, 435 U.S. 349, 355-363 (1978) ("Judicial
9 immunity extends as well to those who carry out the orders of judges"); *Atkinson-Baker &*
10 *Assocs., Inc. v. Kolts* (9th Cir. 1993) 7 F.3d 1452, 1454-55; *Gabbert v. Conn.* (9th Cir. 1997)
11 131 F.3d 793, 803, 806, rev'd on other grounds, (1999) 526 U.S. 285 ("Oppenheim enjoys
12 absolute immunity for all activities performed pursuant to his role as special master"); *Kermit*
13 *Const. v. Banco Credito Y Ahorro Ponceno* (1st Cir. 1976) 547 F.2d 1, 3 (immunity applied to
14 court-appointed receivers); *Mullis v. United States Bankruptcy Court for the District of Nevada*
15 (9th Cir. 1987) 828 F.2d 1385, 1390 (immunity applied to court-appointed trustees).

16 This issue is of particular relevance as the Watermaster in the Main San Gabriel
17 Groundwater Basin has been sued for its recharge efforts. The Watermaster in that action has
18 responded to such claims by asserting that it is immune from suit under applicable law.¹
19 Industrial parties have recently taken issue with the Chino Basin Watermaster's recharge
20 efforts in this action. Specifically, General Electric Corporation filed objections to
21 Watermaster's recharge program and pending water rights application before the State Water
22 Resources Control Board.

23 By interposing a Special Referee on what appears to be a permanent or semi-
24 permanent basis, it is unclear if Watermaster retains immunity, or whether that immunity is
25 transferred to the Special Referee. As the parties to the Judgment fund both Watermaster and
26

27
28 ¹ This matter has been briefed by the parties in *San Gabriel Basin Water Quality Authority v. Aerojet-General Corporation, et al.*, United States District Court, Central District, Case No. CV-02-4565. A hearing on this matter has not taken place of yet, as the case is currently stayed for settlement purposes until September 26, 2008.

1 the Special Referee, this structure may not be in the best interests of the parties and the Basin.
2 It may also be inconsistent with the intent of the Judgment, because having two separately
3 appointed agents to serve the Court conceivably undermines Watermaster's core service and
4 direct input to the Court contemplated under the Judgment.²

5 The Judgment contains mechanisms to ensure that all parties have meaningful
6 representation and a meaningful opportunity to participate in the administration of the
7 Judgment. There are various pools, advisory and other committees, representation through
8 the Watermaster Board, and other participatory vehicles set forth in the Judgment designed to
9 be representative of the diverse interests in the Basin. For example, there is an agricultural
10 (overlying) rights pool; an overlying (non-agricultural) rights pool; an appropriative pool; an
11 Advisory Committee comprised of multiple voting representatives from each pool; and a
12 Watermaster Board comprised of 9 members of various parties who serve on a rotating basis.³
13 (Judgment, §§ 16-32). The foregoing procedures set forth in the Judgment provide a number
14 of checks and balances that ensure that the interests of any party or group of parties do not
15 unfairly predominate.

16 In addition, the Judgment provides a procedure whereby any party, irrespective
17 of the nature or quantity of its water rights, may challenge any Watermaster decision before
18 this Court. (Judgment, § 31). Watermaster decisions are also subject to review by this Court
19 on its own motion, or by the Advisory Committee or any Pool Committee. (Judgment, § 31).

20 The Special Referee was appointed 10 years ago for a limited and temporary
21 assignment. (Ruling and Order of Special Reference (April 29, 1997), See Request for Judicial

22
23
24 ² If this Court finds that having two separately appointed agents serve the Court on a long-term basis is
25 appropriate, Ontario submits that this Court should issue a finding that the costs incurred therewith are for a
26 regulatory purpose and therefore exempt from the requirements of Proposition 218. It is ultimately the taxpayers
and ratepayers in the region who fund the additional costs of the Special Referee.

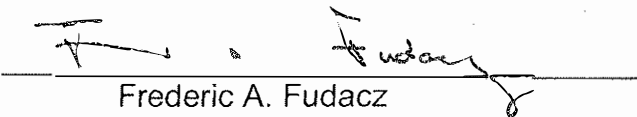
27 ³ The opposition filed by Monte Vista Water District and the City of Chino Hills suggests that Watermaster is
28 subject to the self-interested tyranny of the majority. (Opposition, p. 14). This is demonstrably not the case. The
Judgment has been structured to avoid such a result. For example, the City of Ontario owns approximately 20%
of the water rights in the basin, but based on the rotation schedule to date, has had less than a 4% representation
on the Watermaster Board.

1 Notice, Exhibit 2, submitted by Monte Vista Water District and the City of Chino Hills). In light
2 of the numerous procedural protections, opportunities for comment, participation and judicial
3 review set forth in the Judgment, Ontario questions the unprecedented continuing appointment
4 of both a court-appointed Special Referee and a court-appointed Watermaster funded by the
5 parties, without a plan or timeline to complete the scope of services contemplated by the
6 Special Referee over 10 years ago. The continuation of this circumstance may subject
7 Watermaster to liability not contemplated by the Judgment. Moreover, the landmark progress
8 made in the Basin suggests that Watermaster is performing effectively. Particularly noteworthy
9 has been Watermaster's role in leading a cooperative effort resulting in stakeholder and Court
10 approval of the comprehensive Peace II program, a plan for hydraulic control and basin re-
11 operation, subsidence management in MZ-1, and more.

12 In summary, Ontario does not object to the Court's seeking legal or technical
13 assistance, on a case-by-case basis, where Watermaster actions or decisions are challenged
14 pursuant to the Judgment. However, the need for such assistance does not warrant the
15 continuation of the position of Special Referee on a permanent or semi-permanent basis. The
16 continuation of this appointment compromises the function of Watermaster as contemplated by
17 the Judgment and exposes it unnecessarily to liability.

18
19 DATED: August 27, 2008

NOSSAMAN LLP
Frederic A. Fudacz
Alfred E. Smith

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22 By: 
23 Frederic A. Fudacz
24 Attorneys for City of Ontario
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CHINO BASIN WATERMASTER
Case No. RCV 51010
Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On August 28, 2008 I served the following:

1) **CITY OF ONTARIO'S LIMITED JOINDER TO CUCAMONGA VALLEY WATER DISTRICT'S MOTION TO DISCONTINUE THE APPOINTMENT OF 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 28, 2008 in Rancho Cucamonga, California.



Alex Perez
Chino Basin Watermaster

TERRY CATLIN
2344 IVY CT
UPLAND, CA 91784

KEN WILLIS
LEAGUE OF CA HOMEOWNERS
99 "C" STREET, SUITE 209
UPLAND, CA 91786

ROBERT BOWCOCK
INTEGRATED RESOURCES MGMNT
405 N. INDIAN HILL BLVD
CLAREMONT, CA 91711-4724

JIM W. BOWMAN
CITY OF ONTARIO
303 EAST "B" STREET
ONTARIO, CA 91764

GEOFFREY VANDEN HEUVEL
CBWM BOARD MEMBER
8315 MERRILL AVENUE
CHINO, CA 91710

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

BOB KUHN
669 HUNTERS TRAIL
GLEN DORA, CA 91740

CHARLES FIELD
4415 FIFTH STREET
RIVERSIDE, CA 92501

JAMES CURATALO
CVWD
PO BOX 638
RANCHO CUCAMONGA ,CA
91729-0638

GLEN DURRINGTON
5512 FRANCIS ST
CHINO, CA 91710

Members:

Alfred E. Smith	asmith@nossaman.com
Amy Steinfeld	asteinfeld@bhfs.com
Art Kidman	akidman@mkblawyers.com
Barbara Swanson	Barbara_Swanson@yahoo.com
Bill Dendy	bdendy@aol.com
Carol	marie@tragerlaw.com
Carol Davis	cdavis@lagerlof.com
Chris Swanberg	chris.swanberg@corr.ca.gov
Dan McKinney	dmckinney@rhlaw.com
Diane Sanchez	dianes@water.ca.gov
Eric Garner	elgarner@bbklaw.com
Fred Fudacz	ffudacz@nossaman.com
James P. Morris	jpmorris@bbklaw.com
Jean Cihigoyenetché	Jean_CGC@hotmail.com
jeeinc@aol.com	jeeinc@aol.com
Jennifer Novak	jennifer.novak@doj.ca.gov
Jess Senecal	JessSenecal@lagerlof.com
Jill Willis	jnwillis@bbklaw.com
Jim Markman	jmarkman@rwglaw.com
Jim@city-attorney.com	Jim@city-attorney.com
jimmy@city-attorney.com	jimmy@city-attorney.com
John Cotti	jcotti@localgovlaw.com
John Schatz	jschatz13@cox.net
Joseph S. Aklufi	AandWLaw@aol.com
Kuperberg, Joel	jkuperberg@rutan.com
Mark Hensley	mhensley@localgovlaw.com
Michelle Staples	mstaples@jdplaw.com
smt@tragerlaw.com	smt@tragerlaw.com
Steve Kennedy	skennedy@bbmblaw.com
Steven K. Beckett	skbeckett@bbmblaw.com
Steven Lee	slee@rhlaw.com
Steven R. Orr	sorr@rwglaw.com
Tom Bunn	TomBunn@Lagerlof.com
Tom McPeters	THMcP@aol.com
Tram Tran	ttran@mkblawyers.com
William J. Brunick	bbrunick@bbmblaw.com
William P. Curley	wcurley@rwglaw.com

Members:

Anne Schneider
Joe Scalmanini
Judy Schurr

ajs@eslawfirm.com
jscal@isce.com
jschurr@courts.sbcounty.gov

Members:

Al Lopez	lopezsixto@netzero.net
Andy Malone	amalone@wildermuthenvironmental.com
Anthony La	ala@ci.upland.ca.us
April Woodruff	awoodruff@ieua.org
Arnold Rodriguez	jarodriguez@sarwc.com
Ashok K. Dhingra	ashok.dhingra@m-e.aecom.com
Bill Kruger	citycouncil@chinohills.org
Bill Rice	WRice@waterboards.ca.gov
Bill Thompson	bthompson@ci.norco.ca.us
Bob Feenstra	feenstra@agconceptsinc.com
Bob Kuhn	bgkuhn@aol.com
Bonnie Tazza	bonniet@cvwdwater.com
Brenda Fowler	balee@fontanawater.com
Brian Hess	bhess@niagarawater.com
Butch Araiza	butcharaiza@mindspring.com
Carl Hauge	chauge@water.ca.gov
Charles Field	cdfield@att.net
Charles Moorrees	cmoorrees@sawaterco.com
Cindy LaCamera	clacamera@mwdh2o.com
Craig Stewart	cstewart@geomatrix.com
Curtis Aaron	caaron@fontana.org
Cyndi Windell	cynthia.windell@sce.com
Dan Arrighi	darrighi@sgvwater.com
Dan Hostetler	dghostetler@csupomona.edu
Dan McKinney	dmckinney@rhlaw.com
Dave Argo	argodg@bv.com
Dave Crosley	DCrosley@cityofchino.org
David B. Anderson	danders@water.ca.gov
David D DeJesus	TVMWDDIV2REP@gmail.com
David D DeJesus	davidcicgm@aol.com
David Ringel	david.j.ringel@us.mwhglobal.com
Dennis Dooley	ddooley@angelica.com
Don Galleano	donald@galleanowinery.com
Duffy Blau	Duffy954@aol.com
Eldon Horst	ehorst@jcsd.us
Eunice Ulloa	eulloa@cbwcd.org
Frank Brommenschenkel	frank.brommen@verizon.net
Fred Lantz	flantz@ci.burbank.ca.us
Gene Koopman	GTKoopman@aol.com
Geoffrey Vanden Heuvel	GeoffreyVH@juno.com
Gerard Thibeault	gthibeault@rb8.swrcb.ca.gov
Gerry Foote	gfoote@cbwcd.org
Grace Cabrera	grace_cabrera@ci.pomona.ca.us
Greg Woodside	gwoodside@ocwd.com
Henry Pepper	henry_pepper@ci.pomona.ca.us
James Curatalo	jamesc@cvwdwater.com
James Jenkins	cnomgr@airports.sbcounty.gov
Janine Wilson	jwilson@cbwm.org
Jarlath Oley	joley@mwdh2o.com
Jeff Pierson	jpgierson@unitexcorp.com
Jerry King	jking@psomas.com
Jim Hill	jhill@cityofchino.org
Jim Taylor	jim_taylor@ci.pomona.ca.us
Joe P LeClaire	jleclaire@wildermuthenvironmental.com
John Anderson	janderson@ieua.org
John Ayers	jayers@sunkistgrowers.com
John Bosler	JohnBo@cvwdwater.com
John Huitsing	johnhuitsing@gmail.com
John Thornton	jthornton@psomas.com
John V. Rossi	jrossi@wmwd.com
John Vega	johnv@cvwdwater.com
Jose Galindo	jose_a_galindo@praxair.com

Justin Brokaw
Kathy Kunysz
Kathy Tiegs
Ken Jeske
Ken Kules
Kenneth Willis
Kevin Sage
Kyle Snay
Lisa Hamilton
Mark Hensley
Martin Zvirbulis
Mike Thies
Robert Bowcock

jbrokaw@hughes.net
kkunysz@mwdh2o.com
ktiegs@ieua.org
kjeske@ci.ontario.ca.us
kkules@mwdh2o.com
kwillis@homeowners.org
Ksage@IRMwater.com
kylesnay@gswater.com
Lisa.Hamilton@corporate.ge.com
mhensley@localgovlaw.com
martinz@cvwdwater.com
mthies@spacecenterinc.com
bbowcock@irmwater.com

Members:

Manuel Carrillo	Manuel.Carrillo@SEN.CA.GOV
Mark Kinsey	mkinsey@mvwd.org
Mark Ward	mark_ward@ameron-intl.com
Mark Wildermuth	mwildermuth@wildermuthenvironmental.com
Martha Davis	mdavis@ieua.org
Martin Rauch	martin@rauchcc.com
Martin Zvirbulis	martinz@cvwdwater.com
Maynard Lenhert	directorlenhert@mvwd.org
Michael T Fife	MFife@bhfs.com
Mike Del Santo	mdelsanto@prologis.com
Mike Maestas	mmaestas@chinohills.org
Mike McGraw	mjmccgraw@FontanaWater.com
Mike Thies	mthies@spacecenterinc.com
Mohamed El-Amamy	melamamy@ci.ontario.ca.us.
Nathan deBoom	n8deboom@gmail.com
Pam Wilson	pwilson@bhfs.com
Paul Deutsch	pdeutsch@geomatrix.com
Paul Hofer	farmwatchtoo@aol.com
Paul Lacroix	placroix@reliant.com
Pete Hall	r.pete.hall@cdcr.ca.gov
Peter Hettinga	peterhettinga@yahoo.com
Phil Krause	pkrause@parks.sbcounty.gov
Phil Rosenberg	prosenberg@hargis.com
Rachel R Robledo	rrobledo@bhfs.com
Raul Garibay	raul_garibay@ci.pomona.ca.us
Richard Atwater	Atwater@ieua.org
Rick Hansen	rhansen@tvmwd.com
Rick Rees	rrees@geomatrix.com
Rita Kurth	ritak@cvwdwater.com
Robert Bowcock	bbowcock@irmwater.com
Robert Cayce	rcayce@airports.sbcounty.gov
Robert DeLoach	robertd@cvwdwater.com
Robert Rauch	robert.rauchcc@verizon.net
Robert Tock	rtock@jcsd.us
Robert W. Nicholson	rwnicholson@sgwwater.com
Robert Young	rkyoung@fontanawater.com
Roger Florio	roger.florio@ge.com
Ron Craig	RonC@rbf.com
Sam Fuller	samf@sbumwd.com
Sandra S. Rose	directorrose@mvwd.org
Sandy Lopez	slopez@ci.ontario.ca.us
Scott Burton	sburton@ci.ontario.ca.us
Steve Arbelbide	sarbelbide@californiasteel.com
Tej Pahwa	tpahwa@dtsc.ca.gov
Terry Catlin	tlcatlin@verizon.net
Timothy Ryan	tjryan@sgwwater.com
Tom Love	TLove@ieua.org
Tony Banages	tbanegas@sunkistgrowers.com
Tracy Tracy	ttracy@mvwd.org
Vanessa Hampton	vhampton@jcsd.us
WM Admin Staff	