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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the Honorable
STANFORD E. REICHERT]

**NOTICE OF RULINGS AND ORDER ON
MOTION OF CCG ONTARIO, LLC FOR
LEAVE TO SUE THE CHINO BASIN
WATERMASTER**

Date: August 30, 2013
Time: 1:30 p.m.
Department: R-6

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on August 30, 2013, at 1:30 p.m. in Department R-6,
CCG Ontario, LLC's Motion for Leave to Sue the Chino Basin Watermaster came on regularly
for hearing before the Honorable Stanford E. Reichert. After hearing, the court issued the
RULINGS AND ORDER: Motion of CCG Ontario for Leave to Sue Watermaster, a copy of
which is attached to this Notice.

1 Dated: September 3, 2013

BROWNSTEIN HYATT FARBER
SCHRECK, LLP



4 By: _____

5 SCOTT S. SLATER
6 BRADLEY J. HERREMA
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CHINO BASIN WATERMASTER

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT
AUG 30 2013

BY Virginia Hernandez
DEPUTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,
Defendants

CASE NO. RCV 51010

~~TENTATIVE~~

RULINGS AND ORDER: Motion of
CCG Ontario for Leave to Sue
Watermaster

Date: August 30, 2013

Dept: R-6

Time: 1:30 p.m.

The motion of CCG Ontario, LLC, for leave to sue Chino Basin Watermaster is
denied for the following reasons.

Request for Judicial Notice

- 1) (Exhibit A) 19th annual report of Chino Basin Watermaster fiscal year 1995-1996,
specifically the appendix L-1
- 2) (Exhibit B) the Watermaster joinder to petition in intervention by CCG Ontario
and petition intervention, June 28, 2001
- 3) (Exhibit C) notice of order and stipulation and order for approval of water rights
agreement and stay of proceedings
- 4) (Exhibit D) order granting final approval of Watermaster rules and regulations;

1 approving intervention of CCG Ontario; continuance of hearing re status report;
2 filing of motions to amend judgment–2001.

3 All requests for judicial notice are granted.

4
5 Joinders in Watermaster's opposition:

6 Party	7 Filed	8 Granted, denied or objection by 9 CCG Ontario*
10 City of Pomona	11 August 29, 2013	12 Denied–untimely (see reasoning 13 below)
14 Fontana Union Water 15 Company	16 August 22, 2013	17 Objection: not filed at least nine 18 days prior to the court date under 19 Code of Civil Procedure §1005(b)
20 Overlying 21 (Agricultural) Pool	22 August 22, 2013	23 Objection: not filed at least nine 24 days prior to the court date under 25 Code of Civil Procedure §1005(b)
26 San Antonio Water 27 Company	28 August 21, 2013	Objection: not filed at least nine days prior to the court date under Code of Civil Procedure §1005(b)
Cucamonga Valley water District	August 19, 2013	Granted
Monte Vista Water District	August 19, 2013	Granted
Chino Basin Appropriative Pool	August 19, 2013	Granted

26 The court overrules the objection of CCG to the joinder of Overlying (Agricultural)
27 Pool and grants its joinder on the following grounds:

- 28 1. CCP §1005(b) requires “all papers opposing a motion so noticed shall be filed

1 with the court in a copy served on each party at least nine court days ... before
2 the hearing.”

3 2. A joinder is not an opposition.

4 3. The requirements for a joinder are that 1) it be timely; 2) establish the
5 necessary factual foundation to support the motion; and 3) request affirmative
6 relief on behalf of the joining party. (See, *e.g.*, *Barak v. Quisenberry Law Firm*
7 (2006) 135 Cal.App.4th 654, 661.)

8 4. The court finds all of these requirements satisfied.

9 The court sustains the objection of CCG to the joinders of Fontana Union Water
10 Company and San Antonio Water Company for failing to comply with these
11 requirements.

12
13 Summary of Facts

14 Per the original 1978 judgment, Kaiser Steel Corporation owned 3743 acre-feet of
15 total overlying Nonagricultural Pool rights and 2930.274 acre-feet of the share of
16 safe yield. Kaiser Steel Corporation became Kaiser Resources, and then Kaiser
17 Resources became Kaiser Ventures Inc.

18 CSI interests	CCG interests	Watermaster actions
19 In about 1991, Kaiser 20 Ventures sold part of its 21 property to California 22 Steel Industries (CSI) and 23 the California Speedway 24 Corporation. 25 26 In 1995, Kaiser Ventures 27 and CSI stipulated to their 28 “mutual rights to the		

1 beneficial use of the Joint
2 Water Rights as defined
3 and provided in the Water
4 Rights Acknowledgment.”

5
6 Appendix L-1 is
7 Resolution 95-3 which is a
8 resolution of Watermaster
9 approving the settlement
10 between Kaiser Ventures
11 Incorporated and
12 California Steel Industries
13 and accepting
14 abandonment of water by
15 Kaiser.

16
17 The court approved the
18 water rights agreement and
19 water rights
20 acknowledgment via a
21 court order, but the water
22 rights acknowledgment
23 was never recorded.

24 On August 16, 2000,
25 Kaiser Ventures sold
26 its remaining property
27 holdings and water
28 rights to CCG.

1
2 In 2001, CCG filed
3 petition in
4 intervention
5 requesting the court to
6 recognize that CCG
7 held 630.274 acre-feet
8 as tenants in common
9 with California Steel
10 Industries (CSI). By
11 paying CCG,
12 California Steel
13 Industries had the
14 right to use through
15 June 30, 2004, and
16 CCG had the right the
17 first use thereafter.
18 The request for
19 judicial notice ¶4
20 shows the court
21 approved CCG's
22 petition in
23 intervention and
24 recognized the
25 tenancy in common
26 water right between
27 CCG and California
28 Steel Industries (CSI).

1 March 8, 2007, Chino
2 Basin Watermaster agenda
3 package. I.L.C. BUSINESS
4 ITEMS. Aqua Capital
5 Management requests
6 intervention into the
7 Chino Basin Judgment.
8 Aqua states that it is
9 submitting a Form 5
10 Application to Transfer
11 Annual Production Rights
12 in order to transfer the
13 CCG water rights to Aqua.
14 Upon court approval of
15 Aqua's intervention, Aqua
16 states it will become the
17 successor in interest to
18 these water rights.

19
20 November 18 and 20,
21 2008, Chino Basin
22 Watermaster agenda
23 package I.D.2. Consent
24 Calendar. Aqua has
25 agreed to purchase from
26 CCG all of CCG's water
27 storage as of June 30,
28 2008, and a permanent

		transfer of its share of safe yield of 630.274 acre-feet.
	In December 2008, CCG sold 630.27 acre-feet of safe yield to Aqua. CCG's sale to Aqua Capital Management was without any reference to the joint tenancy of California Steel Industries to the 630.27 acre-feet of safe yield.	

CCG now wants to include Watermaster as a party in its dispute with Aqua Capital Management over what water rights CCG actually sold to Aqua Capital Management, *i.e.*, the effect of any CSI joint tenancy interest in the shares which CCG sold to Aqua. CCG is now attempting to assert causes of action against Watermaster for negligence, negligent misrepresentation, or liability based upon the tort of another doctrine.

Pleadings Summary

1. October 2011. Initial pleading. Complaint. Aqua v. California Steel Industries to quiet title alleging Aqua was unaware of CSI's tenancy in common interest in the 630.274 acre-feet of safe yield.
2. February 2012. California Steel Industries cross-complaint v. Aqua and CCG alleging against CCG slander of title, fraud and concealment through

1 the tort of another.

- 2 3. November 2012, Aqua files a first amended cross-complaint v. CCG;
3 allegations are that Aqua had no knowledge of California Steel Industries's
4 tenancy in common, and alleges against CCG fraud and concealment and
5 negligent misrepresentation during the sale of the water rights.
6 a. January 2013, CCG files cross-complaint v. Aqua for fraud, negligent
7 misrepresentation, breach of contract, and indemnity.
8 b. February 2013, CCG files a first amended cross-complaint [causes of
9 action not specified, but they seem to be similar to the original cross-
10 complaint].
11 c. Proposed cross-complaint/CCG second amended cross-complaint to
12 include Watermaster: subject matter of the instant motion. There is a
13 pending hearing in this separate action on CCG's motion for leave to
14 file a second amended cross-complaint, which now includes
15 Watermaster, for negligence, negligent misrepresentation, and tort of
16 another.

17
18 Legal Arguments, Conclusions, Findings

- 19 1) Watermaster is immune.
20 a) Watermaster is a public entity and has general immunity, and there is no
21 exception allowing CCG to overcome that general immunity.
22 i) The court finds that Watermaster comes within the definition of public
23 employee defined in government code §810.2. That definition includes a
24 "servant", and there is no question that Watermaster serves the court.
25 ii) CCG argues that Watermaster is a court-appointed entity, like a receiver.
26 Watermaster is a special master for the court, not a referee. There is no
27 analogy between a special master and a referee, and CCG offers no
28 applicable authority for such an analogy. Watermaster's duties are

1 qualitatively different than those of a receiver.

2 iii) “The purpose of a receivership is the preservation of property which is the
3 subject of litigation pending its disposition according to the judgment
4 entered.” (*Steinberg v. Goldstein* (1968) 258 Cal.App.2d 692, 698.) A
5 receiver is an agent of the court and “acts for the benefit of all who may
6 have an interest in the receivership property and holds assets for the court
7 and not for the plaintiff or the defendant.” (California Rules of Court,
8 Rule 3.1179(a).)

9 (a) Watermaster preserves no property pending disposition.

10 Watermaster exerts no direct control over a specific property or any
11 assets.

12 (b) Watermaster has no power to dispose of property, and Watermaster
13 has no ownership interest in any water rights which it administers
14 pursuant to the judgment.

15 (c) Watermaster is expressly prohibited by the judgment from owning
16 an interest in real property, such as disputed water rights, and may
17 not hold or dispose of property of another. These functions are
18 reserved to the owners of the water rights arising out of the
19 judgment which is only administered by Watermaster.

20 (d) To comply with bonding requirements, a receiver must be a natural
21 person. (CCP §567). This difference emphasizes the inapplicability
22 of the analogy argued by CCG.

23 (2) Because Watermaster neither holds nor possesses property for
24 disposition by the court, and any money to pay CCG’s judgment would
25 have to come from the parties which fund Watermaster’s expenses, an
26 unjust result.

27 (3) The court accepts the argument of Watermaster that Government Code
28 §818.8 provides specific immunity for an employee (here Watermaster)

1 of a public entity for negligent or intentional misrepresentation.

2 2) There is no legal basis upon which to sue Watermaster. It owes no duty to CCG
3 for any of the alleged causes of action: negligence, negligent misrepresentation, or
4 liability based upon the tort of another doctrine.

5 a) The court finds no legal basis upon which to impose a duty on Watermaster to
6 prepare, monitor, or maintain accurate and complete records of water rights
7 ownership.

8 b) This court is the proper court to define the scope of Watermaster's duties,
9 because Watermaster is a creation of this court's judgment and a servant of
10 this court. The definition of Watermaster's duties is, and should be, restricted
11 to this court pursuant to the judgment.

12 (1) Watermaster duties concern management of Chino Basin groundwater
13 and administration of the judgment concerning water rights, not
14 investigating, reporting, or ensuring title to water rights.

15 c) Watermaster has no duty to investigate, construe or represent title held by any
16 members of any pool.

17 (1) Watermaster's assessment packages and annual reports are not a
18 verification of ownership interests. For the court to make such a
19 finding would turn Watermaster's assessment packages into essential
20 title insurance policies. There is no legal basis for such a finding.

21 (2) The assessment packages cannot be the basis of legal liability. To make
22 them the basis of legal liability would be to give them the status of title
23 reports which they are not in law or reality nor do they purport to be.
24 The court accepts and agrees with the description and purposes of the
25 assessment packages as set forth in Watermaster's opposition.

26 (3) The assessment packages refer to CCG's share, but do not specify the
27 legal ownership of the shares. There is no requirement Watermaster do
28 so. Furthermore, There no legal requirement for Watermaster to

1 investigate, specify, or guarantee the legal status of the shares.

2 d) CCG is unable to cite any such duty in the 69 pages of Chino Basin
3 Watermaster Rules and Regulations, attached as Exhibit E.

4 e) CCG is unable to cite any such duty pursuant to the Judgment.

5 i) Watermaster maintains records and accounts for quantities of water stored
6 in the basin (restated judgment ¶29), but that has nothing to do with title
7 the water rights.

8 ii) With the court finding no duty for Watermaster on any the alleged causes
9 of action, there is also no basis for the court to grant leave for CCG
10 Ontario to sue Watermaster.

11
12 Final Ruling and Order

13 For the reasons set forth herein, the court denies CCG's motion for leave to
14 sue Chino Basin Watermaster.

15
16
17 Dated: August 30, 2013

18 
19 _____
20 Stanford E. Reichert, Judge

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.

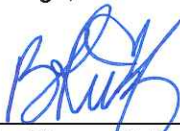
On September 3, 2013 I served the following:

1. RULINGS AND ORDER: MOTION OF CCG ONTARIO FOR LEAVE TO SUE WATERMASTER

- ☒ 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 September 3, 2013 in Rancho Cucamonga, California.



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Chino Basin Watermaster

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