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Fee Exempt Per Gov. Code § 6103

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Attorneys for Defendant, MONTE VISTA WATER DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants.

Case No. RCVRS 51010

Assigned For All Purposes to:
Hon. Stanford E. Reichert
Department: R6

**MONTE VISTA WATER
DISTRICT'S JOINDER OF, AND
SUPPLEMENTAL BRIEF TO,
WATERMASTER'S EX PARTE
APPLICATION TO CONTINUE
HEARING ON MOTION TO REVISE
SECTION 5 OF THE 2013
RECHARGE MASTER PLAN
UPDATE AND RESTATED
JUDGMENT; DECLARATION OF
ARTHUR G. KIDMAN**

Hearing on Ex Parte Application:
Date: Wednesday, October 2, 2013
Time: 8:30 a.m.
Department: R6

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Defendant Monte Vista Water District ("Monte Vista") joins, and supplements, Watermaster's Ex Parte Application to Continue Hearing on Motion to Revise Section 5 of the 2013 Recharge Master Plan Update and Restated Judgment

1 (“Application”). The following additional Defendants have authorized Counsel for Monte
2 Vista to represent to the Court that they each also join in this Joinder.

- 3 1. City of Chino Hills
- 4 2. Cucamonga Valley Water District
- 5 3. Fontana Union Water Company
- 6 4. Fontana Water company
- 7 5. San Antonio Water Company

8 In addition to the points and authorities raised in the Watermaster’s Application, Monte
9 Vista invites the Court’s attention to the City of Fontana’s (“Fontana’s”) noncompliance with
10 Section 31 of the Restated Judgment (“Judgment”) in connection with its Motion to Revise
11 Section 5 of the 2013 Recharge Master plan Update and Restated Judgment (“Motion”).
12 Fontana’s Motion is not ripe for adjudication by this Court under the terms of the Judgment.

13 A fundamental predicate to Fontana’s Motion is notice from the Watermaster to all
14 parties concerning the Watermaster action, which is the subject of Fontana’s Motion.
15 Specifically, Watermaster (rightfully so) has yet to provide notice of the action taken at the
16 June 27, 2013, Watermaster Board meeting. Approved minutes of the June 27, 2013
17 Watermaster Board meeting would have constituted such notice when distributed to the parties
18 in accordance with Section 31 of the Judgment.

19 However, the minutes of the June 27, 2013 Watermaster Board meeting were not
20 approved until the September 26, 2013 Watermaster Board meeting. Approval of the June 27,
21 2013 Watermaster Board meeting minutes was delayed as a result of Fontana’s objections to
22 those minutes. (Please see the attached Kidman declaration.)
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Section 31(c), which is entitled “Time for Motion”, states in relevant part that: “Notice of motion to review any Watermaster action, decision or rule shall be served and filed within ninety (90) days *after such Watermaster action, decision or rule . . .*.”

In addition, the Watermaster Board approval of the 2013 RMPU

- 3 -

JOINDER, AND SUPPLEMENTAL BRIEF, TO WATERMASTER'S EX PARTE APPLICATION TO CONTINUE HEARING ON
FONTANA'S MOTION TO REVISE


1 Amendment is *not* the final action required before the plan is adopted. Another party, namely,
2 the Inland Empire Utilities Agency, must approve the 2013 RMPU Amendment before it can
3 be presented to the Court for review and approval.

4 Fontana filed its Motion on September 24, 2013, which was: (1) two days before the
5 June 27, 2013 Watermaster Board meeting minutes were approved (much less distributed), (2)
6 before the Watermaster Board approved the entire 2013 RMPU Amendment, (3) before the
7 2013 RMPU Amendment was approved by all required parties, and (4) before the 2013 RMPU
8 Amendment has been presented to the Court for review and approval. Since the approved
9 minutes of the Board meeting minutes were NOT distributed to all parties before Fontana's
10 Motion was filed, the subject matter of Fontana's motion is not ripe for adjudication by this
11 Court in accordance with Section 31 of the Judgment.

12 Fontana's motion should be dismissed (without prejudice to refilling) because it is not
13 properly before the court. Or, in the alternative, Fontana's motion should be continued to the
14 December 13, 2013, hearing date when the 2013 RMPU Amendment is properly before the
15 Court.

16 Dated: October 1, 2013

KIDMAN LAW LLP

17 By: 
18 Arthur G. Kidman
19 Andrew B. Gagen
20 Attorneys for Defendant,
21 MONTE VISTA WATER DISTRICT

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1. I am an attorney licensed to practice law in the State of California, and I am a principle at the law firm of Kidman Law, LLP, attorneys of record for MONTE VISTA WATER DISTRICT ("Monte Vista"). The following facts are within my personal knowledge and, if called upon and sworn to do so, I could and would competently testify thereto.

- a) City of Chino Hills
- b) Cucamonga Valley Water District
- c) Fontana Union Water Company
- d) Fontana Water company
- e) San Antonio Water Company

4. Approval of the June 27, 2013 Watermaster Board meeting minutes was denied as a result of Fontana's objections to those minutes.

6. The Watermaster Board did not hold a regular meeting in the month of July and minutes of the June 27, 2013 meeting were not presented to the Watermaster Board at the August meeting.

7. The *draft* minutes of the June 27, 2013 meeting were presented to the August

1 22, 2013 Watermaster Board meeting, but were not approved at that meeting because Fontana
2 expressly objected to the draft minutes. (Attached hereto is a true and correct copy of
3 Fontana's letter dated August 21, 2013, in which Fontana memorialized its objections to the
4 draft minutes.)

5
6 8. The Watermaster Board appointed a subcommittee to review and consider
7 Fontana's objections, which delayed the Watermaster Board's ultimate approval of the minutes
8 of June 27, 2013 Watermaster Board meeting until September 26, 2013. At its September 26,
9 2013 meeting, the Watermaster Board received the report of its subcommittee concerning the
10 minutes of the June 27, 2013 Watermaster Board meeting and approved the minutes of the
11 June 27, 2013 Watermaster Board meeting as submitted to the Watermaster Board on August
12 22, 2013.

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14 9. In addition, on September 26, 2013, the Watermaster Board approved the 2013
15 RMPU Amendment in its entirety. The Watermaster Board approval of the 2013 RMPU
16 Amendment is not the final action required before the plan is adopted. At least one other party,
17 namely Inland Empire Utilities Agency, must approve the 2013 RMPU Amendment before it
18 can be presented to the Court for review and approval.

19
20 10. Fontana filed its Motion on September 24, 2013, which was: (1) two days
21 before the June 27, 2013 Watermaster Board meeting minutes were approved (much less
22 distributed), (2) before the Watermaster Board approved the entire 2013 RMPU Amendment,
23 (3) before the 2013 RMPU Amendment was approved by all required parties, and (4) before
24 2013 RMPU Amendment has been presented to the Court for review and approval.

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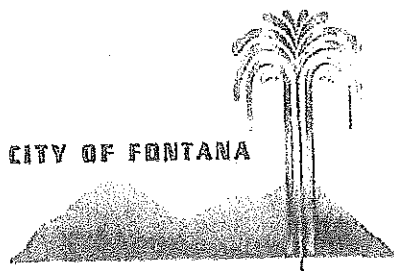
1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct and was executed on September 30, 2013, at Irvine, California.
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5 ARTHUR G. KIDMAN
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DECLARATION OF ARTHUR G. KIDMAN



City of Fontana
Public Works Department
16489 Orange Way
Fontana, CA 92335
(909)350-6760

August 21, 2013

Peter Kavounas, P.E.
General Manager
Chino Basin Watermaster
9641 San Bernardino Rd.
Rancho Cucamonga, Ca. 91730

RE: JUNE 27th BOARD MEETING MINUTES

Dear Mr. Kavounas:

The City of Fontana is concerned that the minutes from the June 27th Chino Basin Watermaster Board Meeting related to business item "A" Task 5 Recharge Master Plan Update Amendment are not an accurate reflection of the dialogue that actually took place. Several pertinent comments were left out of the minutes and in fact comments from three Board Members were completely omitted. The City of Fontana is requesting that the minutes be amended to accurately reflect the discussion that transpired. This issue has been the topic of discussion for over a year now and as you know it has been very controversial. The City respectfully requests that the minutes be amended to include a summary of the complete discussion.

More specifically

Ms. Rojo's comments:

Between the first and second sentence should read some form of:

Throughout the recharge master planning process, I believe the group was has been continually advised that we kinda keep kicking the can down the road as far as allocation.

Between the second and third sentence:

- 1) *Now, based on what has historically been recharged, what we were looking at because most of our city has been undeveloped and most of our storm water rolls off and goes outside the basin, we were looking for opportunities to be incentivized to increase capture of water within the basin and therefore obtain some credit.*

Sentence six after the word "encouraged" should read:

- 2) *So if a party wants to go above and beyond any minimal compliance to try and capture water because it might benefit the residents, they're not being encouraged to do so.*

Mr. Hays comments:

The beginning of sentence three the following wording should be struck "Any recharge FWC can recharge in the basin" and replaced with "to me, any recharge we can maximize in the basin"

End of the last sentence should read some form of "seems like were kind of taking a step backwards" after the word "use".

Mr. Wildermuth comments:

After sentence five in Marks comments Board Member Bowcock asks the question:

So he's referring to a draft and a draft only?

Sentence six after the comma should read:

"so it made it as a recommendation" not "so Mr. Wildermuth made it as a recommendation".

After this the following discussion took place which was almost entirely omitted from the minutes.

After sentence six of Marks comments Board Member Bowcock asked the question:

So did the court adopt it in 2010 or not?

Mr. Wildermuths response was:

Umm... not sure what the exactly what the court did with the document, it did order us to do certain items in the implementation part of it, and that was not part of it. The Judge's ruling said specifically do this, this and this and that was not spoken too. Not any kind of allocation, it was silent after that.

Board Member Bowcock followed up with:

The judge was silent now. So we put it in, and then the judge was silent. But it was in the in the document.

Mr. Wildermuth answered and Board Member Bowcock followed up with:

okay okay... just as a follow up to that, Fontana issued a letter from their council and I haven't seen a response from our council, is there a response of the legal ramifications of what were about to do. I'll just weigh in here, so I don't have to keep coming back but my concern is that in participating in this planning, and it's a planning tool it's no different as I equated to at the last meeting to a water system master plan we plan how pipes were going to be put in the ground, how many fire hydrants were going to do. That's what this is, it's a technical plan of where we're going and what we're going to do and when we're going to do it. Then we put out this message that if people are going to engage in this as a private activity, whether the City of Fontana with Fontana Water Company or with Vulcan material as a private land owner. Whomever at any time we encouraged that activity and we actually had that language in it in 2010, now were late, and then we pull it out, and we put it in, and judge is silent, it's all very very confusing and I just think as a board were sending the wrong message. Because the

project he.. and when I say he I mean that "Fontana" is embarking upon, is actually listed in our master plan as a project we're talking about doing, but if he is going to through other people's money at it... its just conflicting. And that's where I am having problems with it. They have gone to the expense of hiring special counsel who I have tremendous amount of respect for that wrote a letter to us as a Watermaster Board and I have not seen a comment to that, and were ready to adopt it and I'm just not sure. So that's why I'm calling on Scott.

Mr. Slater responded with:

Uh I think... Staffs response is that the issue of allocation and characterization of the water can be confidently and fairly addressed downstream. That there are.. no one is suggesting that the arguments that are being made with regard of how the water should be allocated, provided for, or that there has been a decision as to predicate facts for that. It is something that sequentially staff would prefer to address sequentially. So they would prefer to do it later after and stay on track now. And the intention or the suggestion is, is that, to not include is prejudicial to them. I think staffs point of view is, its non prejudicial they have an open mind the parties have an open mind to address it, they think its more complicated and it deserves additional effort before bringing it to a resolution. And I have looked at the documentation, and there was a letter written to Mr. Jacobs on June 10th which expressly says that this issues is being reserved and I'm opining to you now, that it is reserved, whether there is a practical or a negotiation impact of letting it go by at this juncture is a question of strategy and leverage. But I believe it's the intention of staff to bring this back to you when its ready, and I believe that staff believes that its not ready to bring this to you.

The Chair then interjected with:

I am going to make a motion that we approve staff's recommendation at this point and I am doing it more so that we can create discussion if we're going to alter this thing, I would rather before we alter it have motion out there accepting staff's recommendation, so I'll make that. Is there a 2nd to that (I'll 2nd it) and that's for discussion purposes. Now we've got a motion out there, we've got a second; we have heard discussion from the City of Fontana and Fontana Water Company. Any other comments?

Board Member Hofer:

Just a quick one Mr. Chairman, one of the issues on something like this is, and we've seen it when we went through this last building boom, is the land disappears and that is a huge issue and once its gone it is gone and I think that is something we need to factor in here. And it is just a function of the free market place as it is correct in California but there is a market out there for land and once it is developed its gone. And its, I think there does, it adds an urgency to it because of that very fact because not every piece of land is appropriate for putting water back in the ground, its not economical to access it-- its not in the position. Mark can address these issues much better than I can. But I do think it does give it some urgency so I just wanted to throw that in there.

Board Member Pierson:

Mr. Chairman, I tend to agree with both Paul and Bob, I think Number 1 we have had this previously as a stated goal, now we don't. I think it is sending mixed messages; I think that

we..our obligation is to find opportunities to enhance the basin to enhance the recharge capabilities. Personally I don't think that the MS4 is that great of a capture, but I think if a party is going to go out and attempt to go beyond what would be a normal statutory requirement, then there should be some incentive. I fully understand that we are attempting to abide by a court mandate of bringing this back to them so there is a time line to that and as Paul said there is a timeline to the current development cycle of raw land in which that would be the opportunity for additional recharge. I think that, my personal option is that I would hate to see it go beyond 6-months to be addressed. I think we need to either attempt to schedule a work shop discussion with the parties that are capable of creating MS4 and enhanced recharge. Ya know we need to be proactive and deliver the message, we are favor of to enhance the basin we would like to move this forward as soon as we comply with the court and therefore attempt to bring the Fontana's, the Fontana Waters which are on the side of the have nots together with the side of those that have operating safe yields and try to get to middle ground to where they can understand and agree on a process.

Chairman:

Does the motion the way it stands right now not accomplish what you're trying to accomplish here.

Board Member Pierson:

The motion to approve what has been recommended by staff goes part way. I would like to see something that is more definitive on a timing in which we would get back to looking at this from a staff level going through the pool process and discussions and coming back to the board.

Chairman:

I appreciate your comment, where I am getting confused, is how did it get to the board level without any other discussion through the pool process other than the letters being read. I am honestly confused with that.

Ms. Maurizio:

Just to provide you more with a little more detailed answer to your questions. On pages 81 through 82 of the package, it discusses what was in the 2010 recharge master plan update and it discusses what came out of that and what was placed in the order the conversation about accounting for new yield. But what was not placed in there was items 1 and 2 out of the update that talked about incentivizing incentivizing it that was not placed into the court order which is why we are not addressing that right now. Another comment is regarding the timing issues the 6-months or however long it'll we discuss it that I was going to include under the GVI report, Peter has been working to compile all of the issues that came out of Recharge, Refresh and Reunite and when he comes back from his vacation he intends to discuss it with the board and prioritize everything. So that's the opportunity if the board feels that that should be discussed sooner than later then that's the opportunity to put it higher on the priority list.

Marty Zyurbilis:

Thank you Mr. Chairman Members of the Board: Just a point of clarification on this, we have been down this road, this is not something that just started. When we began the process Peter came on board and began the process of updating the recharge master plan and we came to this issue, it was clear that there are a number depending on your prospective there are legal, contractual, policy implications associated with allocation of water associated with MS4 how its referred to, who gets the credit for it and all those things and it was clear that if we continued and try to include those discussions and resolve that issues as part of that process that we would not make the court deadline for completing the recharge master plan update. So, it was determined at that time that the best approach was really to--to because our obligation to the court as part of the plan was to really to just address the accounting of the MS4 but not as clearly as Mark indicated, not the allocation of it. Even though it had been referred to, so we know it's an issue know one is dismissing that it's an issue and it is important to resolve. Its something that is going to take a little bit of time and work to get there. It's not...clearly it is not that simple. One more point I'll make and then I will sit down. There have been discussion among the parties on potential ways to resolve this, which sort of just smaller group meetings to evaluate the different options that might be considered, and so this is by no means an attempt to sort of to deter parties from investing in recharge and those kinds of things. Its complicated, as many things are at watermaster and think there is a desire on part of the appropriators in total to work through it and resolve it.

Scott Slater:

Mr. Chair and perhaps we have been remiss because this has not been in front of you in a while. So for the 2 minute synopsis try to do it in less. This requirement comes from Peace II and it was bordered honest by the judge who was concerned about our reliance on 400,000 acre feet of controlled overdraft for the desalters. So the court said you may have access to the 400,000 acre feet provided that you put in place a recharge master planning effort that will address where your going to be along the way and at the conclusion of the desalter process when you don't no longer have access to the 400,000 feet. And so the court created requirements and a time line for us to respond to. And what Marty and Staff are trying to say is, that in the process in trying to comply with the precise requirements of the court, it was viewed that we were over performing in Marks initial report and that there was a collected decision to be made that we would not try to eat the elephant in one bite but that we would break it into pieces and address certain things sequentially. So we agreed to what we could agree to at that time and deferred a portion. What is coming before you now, is what staff feels in sufficient to comply and stay on schedule. There is a clear legal policy economic issue that pertains to how the water is allocated that has not been address and is being reserved and the question that your grappling with is when should it be should it be addressed, how soon, and by whom. And so that's what's next and staff has represented that they think it's a 6-month horizon, if the board feels it should be condensed you can direct staff to come back with a schedule or a process under which it going to be handled. But for right now staff's recommendation is to sequence it and not include it in this bag and Fontana and Fontana Water are suggesting --no it aud to be done now.

Chuck Hays:

I agree with Marty's comments and Council's comments there, but I don't believe it's as complicated as everybody makes it sound and I know we have a date with the court and when it has to be done. But to me it's as simple as leaving that language in there that was in the 2010 RMPU and moving the document forward we won't have a timing issue— it's not that complicated. It seems like it's pretty straight forward.

Board Member Bowcock:

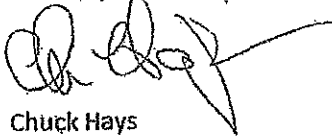
Ya that was my concern, and I agree with exactly, you know, I went to the last meeting and I said god we have made this thing more complicated than it needs to be, let's ratchet it back and just knock all this non-sense off about who is going to do what when, and what things are going to cost and just make it the Master Plan and submit it. My fear is pretty how Chucks articulated it is that you can't un-ring the bell and certainly not at Chino Basin Watermaster. And if it was in a prior document that this is what our intent was and then because we can't agree on our intent anymore we take it out, then it's un-ringing the bell. If it's as simple as leaving those few sentences in, I think then that relays our intent and direct our staff on what to do. It's that whole ya know we say certain things put certain things in writing boom we ring the bell and then we want to go back and undo what we did to the detriment of anyone big small have, have not, it's about what our intent is, that's where I am having the grief, sorry.

Ms. Maurizio:

I think that it is actually little more complicated. When it comes to a large recharge project perhaps the accounting the measurement is not that complicated but a lot of these small MS4 projects there is some concern you know, that they might recharge a lot in the 1st couple years but if there not maintained they won't recharge that much in the future, and so the measurement of it can be complicated. They might not; we really don't expect that they'll ultimately recharge what their projected to and just tracking all of it is very time consuming.

The City of Fontana understands that the Watermaster minutes are only summary minutes, but felt that several key points of the discussion were omitted and respectfully request that Watermaster staff take action to correct the situation.

Sincerely,



Chuck Hays
Director of Public Works

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 October 1, 2013 I served the following:

1. **MONTE VISTA WATER DISTRICT'S JOINDER OF, AND SUPPLEMENTAL BRIEF TO, WATERMASTER'S EX PARTE APPLICATION TO CONTINUE HEARING ON MOTION TO REVISE SECTION 5 OF THE 2013 RECHARGE MASTER PLAN UPDATE AND RESTATED JUDGMENT; DECLARATION OF ARTHUR G. KIDMAN**

/X/ 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.

/X/ 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 October 1, 2013 in Rancho Cucamonga, California.


By Janine Wilson
Chino Basin Watermaster

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