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

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendant.

Case No. RCV 51010

Assigned for All Purposes to the
Honorable STANFORD E. REICHERT

NOTICE OF RULINGS

Hearing Date: October 28, 2011
Time: 10:30 a.m.
Dept: C-1

17 PLEASE TAKE NOTICE THAT on October 28, 2011, at 10:30 a.m. in Department C-1,
18 the Honorable Stanford E. Reichert conducted a hearing and took the following actions:

19 (1) The Court heard evidence concerning Chino Basin Watermaster's ("Watermaster")
20 Motion for Approval of Resolution 2010-04. The Court approved Watermaster's Motion and
21 signed the proposed Order as submitted. A copy of the signed Order is attached to this Notice as
22 Exhibit "A."

23 (2) The Court amended its April 25, 1996, Order to reflect placement of General
24 Electric in the Overlying (Non-Agricultural) Pool.

25 (3) The Court considered the Restated Judgment as submitted by Watermaster, and
26 requested that Watermaster resubmit the document pursuant to a motion that requests the Court to
27 adopt the Restated Judgment as the legally operative version of the Judgment. The Court did not
28

1 place a deadline on submission of this motion.

2

3 Dated: November 1, 2011

BROWNSTEIN HYATT FARBER
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By: 

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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 28 2011

Chris Davis

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

~~Proposed~~ ORDER AFTER HEARING ON
MOTION FOR APPROVAL OF
WATERMASTER RESOLUTION 2010-04

On October 28, 2011, a hearing on Motion for Approval of Watermaster Resolution 2010-04 was held.

On the basis of the pleadings, the declarations, and the testimony and argument offered at the hearing, the Court finds as follows:

1. Western Municipal Water District ("WMWD") has elected to proceed to construct the Future Desalters jointly with Jurupa Community Services District ("Jurupa") and the City of Ontario ("Ontario") (collectively "Expansion Parties") by and through the Chino Basin Desalter Authority ("CDA") as provided in agreements between and among CDA and its members.
2. It is reasonably anticipated that all members of CDA as Parties to the Judgment will agree to exercise good faith and reasonable best efforts towards the timely completion

- 1 of the Expansion Project as it is described in the approved Pre-Design Report
2 (“PDR”).
- 3 3. The Metropolitan Water District of Southern California (“MWD”) has approved the
4 requested \$139 subsidy for the Desalters and WMWD has considered the applicable
5 costs as provided in Section 5.7 of the Peace II Agreement and it has committed to
6 proceed jointly with Jurupa and Ontario through CDA to cause the completion of the
7 Future Desalters.
- 8 4. For the avoidance of doubt, the allocation of the cost of Replenishment Water for the
9 Desalters under the Peace Agreement and its progeny is set forth in Exhibit “D” of
10 Watermaster’s Resolution 2010-04, with acknowledgement that the provisions of
11 Peace Agreement II Section 6.2(b)(ii) which excludes Desalter production in the
12 calculation of an Appropriator’s proportionate responsibility for Desalter
13 Replenishment as subject to being revisited if the net cost of Desalter Water is
14 materially reduced.
- 15 5. The Expansion Parties’ Future Desalter facilities are reasonably calculated to achieve
16 the stated objectives of Future Desalters: (a) yield preservation; (b) water supply; (c)
17 salt management; (d) expanded use of recycled water; and (e) hydraulic control.
- 18 6. The Future Desalters have been designed and will be constructed and operated to
19 Produce water with high total dissolved solids (“TDS”).
- 20 7. Peace Agreement and Peace II Measures’ (as that term is defined in Watermaster
21 Resolution 2010-04 recital number ten) obligations regarding the requirement of
22 providing hydrologic balance in each Management Zone, including Management Zone
23 Number 3 remain in full force and effect.
- 24 8. The Chino Creek Well Field (“CCWF”) will be located in an area that is consistent
25 with the designations in the Supplement to the Optimum Basin Management Program
26 (“OBMP”) and the purposes of the OBMP Implementation Plan. (Peace Agreement
27 7.3(e).)
- 28

- 1 9. The location and the proposed operation of the Future Desalter wells are highly
2 unlikely to result in inelastic subsidence that causes any physical damage to the
3 aquifer, roads or structures
- 4 10. Watermaster has proposed the measures set forth in the Supplemental Environmental
5 Impact Report (“SEIR”) attached to Resolution 2010-04 as Exhibit “F” and will
6 establish measurement and monitoring protocols that if followed, will minimize the
7 long-term risk of inelastic subsidence that might cause physical damage to de minimus
8 levels and will report on these protocols to Watermaster and to the parties.
- 9 11. Prudent well operators will design, construct and operate groundwater production
10 facilities that withstand seasonal fluctuations in water levels.
- 11 12. Water levels that fluctuate more than 35 feet from present levels and that are 20 feet
12 lower than the groundwater level conditions that would occur in the absence of the
13 Phase II Desalter Expansion can be addressed through the proposed SEIR mitigation
14 plan
- 15 13. Watermaster has timely filed its Recharge Master Plan and intends to implement the
16 Plan in a manner that creates hydrologic balance with Management Zone 3 and
17 minimizes adverse impacts of pumping within the Management Zones as required by
18 the Peace Agreement.
- 19 14. The WMWD, Jurupa and Ontario have spent \$15 million in pursuit of the planning,
20 design and construction costs for the Expansion Project (up to \$5 million of which
21 may be reimbursed from third-party grants that will be used for purposes consistent
22 with the grant authorizations) in consideration of and in reliance upon Watermaster’s
23 timely and successful implementation of the Recharge Master Plan. The total cost for
24 the Expansion Project has been projected to be \$116,470,000.
- 25 15. Within 24 months from the adoption of the Resolution, WMWD can reasonably
26 negotiate terms for intervention into the Appropriative Pool or request Watermaster to
27 designate a member of CDA that is also a member of the Appropriative Pool for
28 purposes of accounting for the Desalter Production;

1 16. The designation by Watermaster must not increase the assignee Appropriator's
2 obligations or benefits to Watermaster or under the Judgment, Peace Agreement and
3 the Peace II Measures.

4 17. The requirements set forth in Section 5.5(e) of the Peace II Agreement have been
5 satisfied by WMWD's assumption of project risk, out of pocket costs presently in
6 excess of \$5 million (\$15 million for the Expansion Parties) and the further
7 assumption of capital and operations and maintenance costs in excess of expectations
8 (the cost-cap as for WMWD's portion of expenses). However, this finding is made
9 only with regard to WMWD's obligation under Section 5.5 to complete final binding

10 agreement(s) regarding Future Desalters. This finding is not intended to have any
11 bearing or impact on the sufficiency of WMWD's assumption of risk and costs for any
12 other purpose, including the availability of a reduced uniform loss percentage under
13 Peace II Agreement Section 7.4. This finding also does not affect WMWD's rights or
14 obligations to intervene into the Appropriative Pool on the terms and conditions that
15 may be fairly agreed among the Appropriative Pool and WMWD.

16 18. The MWD has approved the award of \$139 per acre-foot to WMWD for the benefit of
17 the Expansion Project.

18 19. CDA has adopted a Mitigated Negative Declaration for the Expansion Project and it
19 has executed binding water purchase agreements with each of its
20 members and it will timely proceed to implement the Expansion Project in accordance
21 with the PDR.

22
23 On the basis of substantial evidence presented through Watermaster's Motion, the
24 Declarations attached thereto, the testimony presented at the hearing and the above findings, the
25 Court concludes and orders that:

26 1. The above-referenced actions in whole and in part are consistent with the Judgment,
27 the Peace Agreement, the Peace II Measures and the December 21, 2007 Order of the
28 Court (collectively "Prior Directives") and in the event of any inconsistencies between

1 this Order and the language of these Prior Directives, the Prior Directives shall
2 control.

3 2. As approved and conditioned as set forth above, including but not limited to the
4 location and screening of the proposed wells, the CDA Emergency Response Plan, the
5 SEIR mitigation plans applicable for subsidence, water level fluctuations and the
6 improvements identified in the Recharge Master Plan, the above-referenced actions
7 present no threat of Material Physical Injury (Peace Agreement Section 7.3(d)).

8 3. Unless authorized in advance by Watermaster for good cause arising from the need for
9 testing, monitoring, or mitigation, the Parties to the Judgment comprising CDA will

10 not produce groundwater from the deep aquifer system among Desalter wells Nos. 1
11 through 4 as set forth in Peace Agreement II Section 5.8(a)(i)(ii). Watermaster shall
12 have all rights and remedies to redress a violation of this condition, including but not
13 limited to the right to make application to the Court to revisit the allocation of some or
14 all of the 400,000 acre-feet of controlled overdraft, taking into account the specific
15 causes associated with the failure. However, such an application will not require a
16 discontinuance of Desalter operations. (See Judgment Exhibit I; Peace Agreement II,
17 Section 5.8(a)(i)(ii).)

18 4. Watermaster will not otherwise suspend availability of any portion of the 400,000
19 acre-feet of controlled overdraft unless there is a failure to comply with the
20 requirements to complete and implement a Recharge Master Plan as provided in Peace
21 II Agreement Section 7.3.

22 5. Watermaster shall uphold its commitment to the funding for and the timely and
23 successful implementation of a Recharge Master Plan, including achieving hydrologic
24 balance within each Management Zone.

25 6. All Parties to the Judgment that are members of CDA will exercise good faith and
26 reasonable best efforts to support the completion of the Expansion Project as it is
27 defined in and as conditioned by the anticipated CDA approval of the Expansion
28 Project and cause a quarterly report on its progress to be filed with Watermaster.

- 1 7. Watermaster shall assume the complete financial and management responsibility for
2 monitoring baseline water level and groundwater extraction conditions so as to avoid
3 inelastic land subsidence that may cause physical damage as provided in Exhibit "E,"
4 attached to Watermaster's Resolution 2010-04.
- 5 8. No economic mitigation will be required of CDA to address the physical impact of
6 lowered water levels in the Basin, other than the agricultural wells designated in
7 Exhibit "F," attached to Watermaster's Resolution 2010-04.
- 8 9. A specific mitigation plan has been developed in the SEIR to address the agricultural
9 wells (there are no municipal or industrial wells) which will be implemented by the
10 Parties to the Judgment comprising CDA or in their discretion through CDA. The
11 specific criteria for evaluating the impacts are set forth in Exhibit "F," attached to
12 Watermaster's Resolution 2010-04.
- 13 10. Watermaster shall proceed on the basis of the commitments made in Resolution No.
14 2010-04 and on the basis of the factual findings made by the Watermaster Board in the
15 adoption of the Resolution.
- 16 11. Upon the completion of the Future Desalters (the Phase III Expansion) as reflected in
17 the approved revised Chino Desalter Phase 3 Comprehensive Pre-Design Report
18 (CDA PDR) attached to Watermaster's Resolution No. 2010-04 as Exhibit "G," the
19 Parties to the Judgment will have satisfied all individual and collective obligations
20 arising from the Peace Agreement and the OBMP Implementation Plan, Peace II
21 Measures and all prior orders of the Court related to the requirement to construct
22 Desalters in accordance with Peace Agreement II Section 10.2.
- 23 12. WMWD and IEUA are relieved of the funding requirements upon the completed
24 construction of the Expansion Project as set forth in Peace II Agreement Section 10.4.
- 25 13. Localized impacts on the wells will be mitigated as provided in the mitigation plan set
26 forth in Watermaster Resolution 2010-04, Exhibit "F."
- 27 14. Regional impacts attributable to the lowering of the water table across the Basin have
28 been fully analyzed in connection with the Court approval of the Peace II Measures,

1 and fully mitigated by the suite of corresponding offsetting benefits arising under the
2 Peace II Measures. Consequently, CDA and the members of CDA will have no
3 obligation to offset or mitigate any increased costs that may be incurred by Parties to
4 the Judgment that own wells outside of the designated wells.

5 15. At its own expense, Watermaster will monitor water conditions to measure the
6 effectiveness of hydraulic control and subsidence.

7 16. As provided in Section 6.2(b)(ii) the allocation of Replenishment is reserved and
8 committed to offset the Replenishment attributable to the Future Desalter expansion.

9 17. Agreements among the Parties, whatever they may be, for Replenishment, operations,
10 conditions and corresponding consideration without limitations, are unaffected by this
11 determination. However, for the avoidance of doubt, Watermaster Resolution 2010-
12 04, Exhibit "D" accurately summarizes and restates these obligations.

13 18. Watermaster will negotiate with the County of San Bernardino as the party primarily
14 responsible for contamination and all sums obtained will be paid to CDA to offset all
15 of the incremental capital and operations and maintenance expenses incurred by the
16 Parties to the Judgment comprising CDA or in their discretion through CDA.

17 19. Watermaster will continue to require that to the extent any of the Peace II
18 Implementing Measures constitute "projects" within the meaning of the California
19 Environmental Quality Act ("CEQA"), compliance with CEQA will be required as a
20 pre-condition of Watermaster's issuance of any final, binding approvals.

21 20. The actions articulated above and contemplated herein to optimize the beneficial use
22 of the groundwater and the Basin benefit the Basin and the Parties to the Judgment.

23 21. The members of CDA may make application for future relief and assistance from
24 Watermaster to redress potential inequities in redressing water quality concerns only
25 after having first obtained a recommendation for such relief from the Appropriative
26 Pool. The Watermaster retains complete discretion in responding to any such request.

27 22. Within 24 months of the date of Watermaster Resolution 2010-04, WMWD will make
28 an election to either: (a) intervene into the Appropriative Pool on terms it may freely

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negotiate; or (b) consensually assign the production for the desalted water attributable to the Expansion Project on behalf of WMWD to an Appropriative Pool member of the CDA.

IT IS SO ORDERED.

Dated: 10.28.11  J. Reichert
HON. STANFORD E. REICHERT
JUDGE OF THE SUPERIOR COURT

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SB 589820 v1:008350.0001

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 November 1, 2011 I served the following:

- 1. NOTICE OF RULINGS**
- 2. ORDER AFTER HEARING ON MOTION FOR APPROVAL OF WATERMASTER RESOLUTION 2010-04**

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

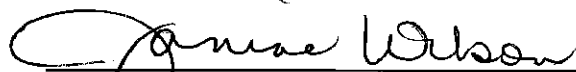
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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 November 1, 2011 in Rancho Cucamonga, California.



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Chino-Basin Watermaster

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