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CHINO BASIN WATERMASTER

FEE EXEMPT

**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.,

Defendants.

Case No. RCV RS 51010

[Assigned for All Purposes to the
Honorable Stanford E. Reichert]

**WATERMASTER'S REPLY IN SUPPORT
OF MOTION FOR COURT TO RECEIVE
AND FILE WATERMASTER'S 40TH
ANNUAL REPORT**

Date: July 24, 2018

Time: 1:30 p.m.

Dept.: S35

[Filed concurrently herewith: Declaration of
Bradley J. Herrema]

I. INTRODUCTION

Each of the Pool Committees and the Advisory Committee *unanimously recommended the adoption by* the Chino Basin Watermaster ("Watermaster") Board of Watermaster's 40th Annual Report ("Report") for the purpose of transmitting it to the Court for its receipt and filing. As initially requested in its February 7, 2018 Motion for Court to Receive and File Watermaster's 40th Annual Report ("Motion"), Watermaster proposed to present live testimony to the Court to ensure the Court and all the parties to the Judgment were fully apprised of the content of the Report and the status of Watermaster's ongoing activities in administering the decree.

1 The Overlying (Agricultural) Pool Committee (“Ag Pool”) has opposed Watermaster’s
2 requested presentation of live testimony at the July 24, 2018 hearing on the Motion (“Hearing”).
3 Moving forward in a manner consistent with the Ag Pool’s opposition would deprive the Court of
4 the ability to directly ask meaningful questions about the contents of the Report that can serve to
5 inform the Court as to whether Watermaster is indeed acting in compliance with the Judgment,
6 the Optimum Basin Management Plan and the Court’s implementing orders. As recent history
7 informs all the parties and the Court, if Watermaster is deviating from the Court’s intention, there
8 is a need to correct course as soon as reasonable – not wait to unwind previous actions.

9 The Watermaster Rules and Regulations regarding written reports do not preclude
10 Watermaster’s presentation of testimony explaining the written report and the Court is
11 empowered under its continuing jurisdiction to question the Watermaster at any time. Moreover,
12 the risk of prejudice has been substantially eliminated by Watermaster’s planned presentation
13 being circumscribed to the contents of the Report – activities that took place during Production
14 Year 2016-2017. Outlines of expected testimony have been shared with the Ag Pool and other
15 parties. If testimony exceeds the contents of the Report, it can be easily addressed by a timely
16 objection. This is a proceeding before the Court – not a jury – and the risk of prejudice to any
17 party given the opportunity for timely objection is miniscule.

18 **II. BACKGROUND**

19 During the April 28, 2017 hearing in this matter, the Court requested and encouraged the
20 parties to periodically come before the Court to apprise it of their progress in addressing the
21 issues before them in the implementation of the Restated Judgment and the Court’s further orders
22 in this matter. (Declaration of Bradley J. Herrema in Support of Watermaster’s Notice of Motion
23 and Motion for Court to Receive and File Watermaster’s 40th Annual Report at ¶ 4, Ex. B,
24 Transcript of April 28, 2017 Hearing, 14:18-15:17.) Recent experiences arising from the Safe
25 Yield Reset process inform all parties that this is both wise counsel and a prudent suggestion.
26 Consequently, Watermaster now seeks permission to be proactive in informing the Court of its
27 ongoing programs through live testimony at the time of the Court’s hearing as to its receipt and
28 filing of the Report. This testimony, as detailed in the Motion and Watermaster’s Request to

1 Present Oral Testimony at Hearing on Motion for Court to Receive and File Watermaster's 40th
2 Annual Report, filed on July 13, 2018, is proposed to be presented by Watermaster's General
3 Manager and its longtime engineering consultant, and would explain the contents of the Report.

4 At their meetings on January 11, 2018, each of the Pool Committees reviewed and
5 unanimously recommended that the Advisory Committee recommend the Watermaster Board
6 adopt the Report and direct its filing with the Court. (Declaration of Bradley J. Herrema in
7 Support of Watermaster's Reply ("Herrema Decl."), at ¶ 3.) At the same meetings, Watermaster's
8 General Manager informed the Overlying (Non-Agricultural) Pool Committee and the
9 Appropriative Pool Committee that Watermaster intended to request the Court receive live
10 testimony when the Report is filed. Neither of the Pool Committees objected to the proposed
11 action. (*Id.* at ¶ 4.) Watermaster did not discuss this during the Ag Pool's meeting on that date as
12 a result of an unforeseen scheduling conflict during the Ag Pool's meeting. (*Id.*)

13 On January 18, 2018, the Advisory Committee reviewed and recommended the
14 Watermaster Board adopt the Report and direct its filing with the Court. (Herrema Decl. at ¶ 5.)
15 Thereafter, on January 25, 2018, the Watermaster Board adopted the Report and approved the
16 filing of the Report with the Court. (*Id.* at ¶ 6.) During the January 25, 2018 meeting,
17 Watermaster legal counsel discussed with the Board the intention to present live testimony during
18 the Hearing. (*Id.*) No Party objected to this action. (*Id.*) On February 7, 2018, Watermaster filed
19 its Motion.

20 At the Ag Pool's February 8, 2018 meeting, Watermaster legal counsel discussed the
21 presentation of live testimony on the Report with the Ag Pool. (Herrema Decl. at ¶ 7.) No
22 objection to this course of action was received at that time. (*Id.*) To keep the Pools informed of
23 Watermaster's intended presentation of live testimony at the Hearing, Watermaster legal counsel
24 emailed each Pool's legal counsel with the proposed outline of testimony to be presented at the
25 Hearing. (*Id.* at ¶ 8.) Thereafter, Watermaster was informed that the Ag Pool intended to oppose
26 Watermaster's request to present live testimony at the Hearing. (*Id.* at ¶ 9.) In an attempt to
27 address the Ag Pool's concerns, Watermaster legal counsel requested an opportunity to discuss
28 the nature and extent of the proposed testimony with the Ag Pool legal counsel to understand any

1 concerns. (*Id.*) Watermaster legal counsel also: (1) provided a list of questions to be asked of the
2 proposed witnesses to Ag Pool legal counsel; (2) continued the hearing date on the Motion in
3 order to facilitate discussions on the matter; (3) offered to limit its questions of the witnesses to
4 those detailed in the list provided to Ag Pool counsel; and, (4) offered the Ag Pool the
5 opportunity to participate in Watermaster's preparation for the Hearing. (*Id.* at ¶¶ 10-12.) As
6 evidenced by the Ag Pool's Opposition, Watermaster has been unable to address the Ag Pool's
7 concerns to its satisfaction.

8 **III. ARGUMENT**

9 **A. The Proposed Testimony is Intended to Provide the Court Additional Detail
10 on Watermaster's Activities During 2016-17**

11 Watermaster's request to present live testimony on the Report is intended to provide the
12 Court a verbal and visual explanation of Watermaster's activities identified in the Report (the
13 document submitted to the Court as Exhibit A to Declaration of Bradley J. Herrema in Support of
14 Watermaster's Notice of Motion and Motion for Court to Receive and File Watermaster's 40th
15 Annual Report). The Report was prepared and passed through the Watermaster Pool Committees,
16 Advisory Committee, and Board for recommendation and Board approval in January 2018. It is
17 directly responsive to the Court's requests for Watermaster to routinely apprise the Court of
18 current events and the achievement of milestones. The Report is a significant milestone and no
19 good purpose is served by limiting the Court to a reading of the written document to ensure that it
20 fully appreciates of the totality of Watermaster efforts in administering the decree.

21 At its January 11, 2018 meeting, the Ag Pool took action to recommend that the Advisory
22 Committee recommend to the Watermaster Board to adopt the Report, along with filing a copy
23 with the Court, subject to any necessary non-substantive changes. (Herrema Decl. at ¶ 3.) It did
24 not raise any objection to the Report failing to comply with Watermaster's Rules and Regulations.
25 As stated in its July 13, 2018 Request to Present Oral Testimony at Hearing on Motion for Court
26 to Receive and File Watermaster's 40th Annual Report, Watermaster intends to offer two
27 witnesses, Watermaster's General Manager and its engineering consultant, who will elaborate
28 upon the contents of the Report, including activities undertaken in Production Year 2016-17 as to

1 the implementation of Watermaster's Optimum Basin Management Program, storage of water in
2 the Basin, compliance with the Sustainable Groundwater Management Act of 2014, monitoring
3 and recharge efforts, and the development and implementation of the Prado Basin Habitat
4 Sustainability Program. The presentation of testimony would also allow the Court the opportunity
5 to ask any questions concerning Watermaster's activities as described in the Report. Such a
6 presentation is consistent with presentations Watermaster has made to the Court in the past. (See
7 *id.* at ¶ 13, Ex. A.)

8 Nothing in the Restated Judgment or the Rules prohibits Watermaster from seeking to
9 present live testimony explaining the contents of an annual report. Section 2.26 of the
10 Watermaster Rules and Regulations do not pertain to the presentation of testimony explaining the
11 contents of the written annual report and the Court has the authority *sua sponte* to hear from
12 Watermaster under its continuing jurisdiction. Such was the practice of the Court for nearly a
13 decade under Judge Gunn.

14 The Ag Pool argues that the presentation of live testimony eliminates the Pool
15 Committees and parties' opportunity to respond to or comment on what Watermaster intends to
16 present to the Court. However, the Ag Pool reviewed and actually recommended adoption of the
17 Report. Watermaster staff and legal counsel indicated at multiple meetings that it intended to
18 present live testimony to the Court as part of the Hearing. As it pledged to do, Watermaster legal
19 counsel provided legal counsel for each of the Pools with the outline of its intended presentation
20 in order to allow Pool legal counsel to act as liaison to individual Pool members so that they may
21 understand the intended presentation. Watermaster legal counsel has provided legal counsel for
22 the Ag Pool with the intended list of questions it would ask the witnesses at the hearing and
23 offered to stipulate that it would restrict questioning to the questions provided. Watermaster legal
24 counsel has offered legal counsel for the Ag Pool, as well as its members, the opportunity to
25 participate in Watermaster staff and legal counsel's preparation for the Hearing. Thus, there can
26 be no surprise.

27 Moreover, this is a Court hearing in which timely objections can be made to questions to
28 avoid prejudice to any party. The risk of prejudice from surprise is miniscule.

1 In summary, no party objects to the Court's receiving and filing of the Report. The Rules
2 and Regulations do not preclude Watermaster's presentation of live testimony expanding upon
3 the contents of the Report and all parties will have had a complete opportunity to participate in
4 the preparation process that will shape the presentation to the Court at the Hearing.

5 **B. The Proposed Testimony Is not Intended to Prejudice any Party**

6 The Ag Pool additionally claims that the presentation of live testimony at the Hearing will
7 prejudice the parties and the Ag Pool because there is an appeal of the Court's April 28, 2017
8 order currently pending and because the Ag Pool may raise certain issues pertaining to storage of
9 water in the Basin to the Court at some point in the future. Watermaster's planned testimony is
10 intended only to explain the contents of the Report and ensure a full and fair understanding of its
11 contents, which was unanimously recommended for adoption by the Pool Committees and the
12 Advisory Committee, and adopted by the Watermaster Board.

13 The Report pertains to activities that that were undertaken in Production Year 2016-17
14 and, as described above, no party objected to the Report's description of those activities. In its
15 discussions with legal counsel for the Ag Pool, Watermaster counsel have offered to limit the
16 proposed presentation to topics that the Ag Pool does not believe will be prejudicial; however, Ag
17 Pool legal counsel has not indicated that the Ag Pool believes any testimony may be presented
18 without prejudicing the Parties.

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1 **IV. CONCLUSION**

2 For the reasons stated in the Motion and in this Reply, Watermaster respectfully requests
3 that the Court receive and file the Report, and, as the Court wishes, to permit the presentation of
4 testimony at the July 24, 2018 hearing.

5
6 Dated: July 17, 2018

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

By: 

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BRADLEY J. HERREMA
CHRISTOPHER R. GUILLEN
ATTORNEYS FOR
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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.,

Defendants.

Case No. RCV RS 51010

[Assigned for All Purposes to the
Honorable Stanford E. Reichert]

**DECLARATION OF BRADLEY J.
HERREMA IN SUPPORT OF
WATERMASTER'S REPLY IN SUPPORT
OF MOTION FOR COURT TO RECEIVE
AND FILE WATERMASTER'S 40TH
ANNUAL REPORT**

Date: July 24, 2018
Time: 1:30 p.m.
Dept.: S35

[Filed concurrently herewith: Reply In Support
of Watermaster's Motion for Court to Receive
and File Watermaster's 40th Annual Report]

I, Bradley J. Herrema, declare as follows:

1. I am an attorney duly admitted to practice before all of the courts of this State, and am a shareholder in the law firm of Brownstein Hyatt Farber Schreck, LLP, counsel of record for Chino Basin Watermaster ("Watermaster"). I have personal knowledge of the facts stated in this declaration, except where stated on information and belief, and, if called as a witness, I could and would competently testify to them under oath. I make this declaration in support of the above-

1 referenced request.

2 2. As legal counsel for Watermaster, I am familiar with Watermaster's practices and
3 procedures, as well as actions taken by the Pool Committees, Advisory Committee, and Board.

4 3. At their meetings on January 11, 2018, each of the Pool Committees reviewed and
5 unanimously recommended that the Advisory Committee recommend the Watermaster Board
6 adopt the 40th Annual Report ("Report") and direct its filing with the Court.

7 4. At their January 11, 2018 meetings, Watermaster's General Manager informed the
8 Overlying (Non-Agricultural) Pool Committee and the Appropriative Pool Committee that
9 Watermaster intended to request the Court receive live testimony when the Report is filed. No
10 member of either Pool Committee objected to the proposed action. The intention to request that
11 the Court receive live testimony was not discussed at the Ag Pool meeting that day due to
12 unforeseen scheduling conflicts during the meeting.

13 5. On January 18, 2018, the Advisory Committee reviewed and recommended the
14 Watermaster Board adopt the Report and direct its filing with the Court.

15 6. On January 25, 2018, the Watermaster Board adopted the Report and approved the
16 filing of the Report with the Court. During the January 25, 2018 meeting, Watermaster legal
17 counsel, Scott Slater, discussed with the Board the intention to present live testimony during the
18 Court's hearing as to the receipt and filing of the Report. No Party objected to this action at that
19 time.

20 7. At the Ag Pool's February 8, 2018 regular Committee meeting, I discussed the
21 presentation of live testimony on the Report. No objection to this course of action was received at
22 that time.

23 8. On March 23, 2018, I emailed each of the Pool Committees' legal counsel an
24 outline of the testimony to be presented at the hearing on the Report.

25 9. Following my March 23, 2018 email to legal counsel for each of the Pool
26 Committees, I was informed that the Ag Pool intended to oppose Watermaster's request to
27 present live testimony at the hearing on the Report. In response, I requested the opportunity to
28 discuss the proposed testimony with the Ag Pool's legal counsel before any such opposition was

1 filed.

2 10. On March 30, 2018, I emailed the Ag Pool's legal counsel a list of questions
3 planned to be asked of the proposed witnesses at the hearing on the Report.

4 11. On March 30, 2018, I received an email from the Ag Pool's legal counsel
5 requesting that the hearing on the Report, calendared for April 13, 2018, be continued. In
6 response to this email, I caused to be filed an Amended Notice of Motion for Court to Receive
7 and File Watermaster's 40th Annual Report, continuing the hearing on the matter to May 25,
8 2018.

9 12. On May 22, 2018, I sent an email to the Ag Pool's legal counsel, in which I
10 reiterated Watermaster's offer to the Ag Pool regarding the presentation of live testimony at the
11 hearing on the Report. My email stated that I had previously shared with the Ag Pool's legal
12 counsel the outline and list of questions of the testimony to be presented at the hearing on the
13 Report and offered to restrict questioning at the hearing to that list of questions, as well as
14 offering Ag Pool legal counsel the opportunity to attend a preparation meeting with the witnesses
15 that would testify.

16 13. For the Court's convenience, attached hereto as **Exhibit A** is a copy of the Notice
17 of November 13, 2008 Rulings filed and served by Watermaster in this matter.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct. Dated this 17th day of July, 2018, at San Marino, California.

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23 _____
24 Bradley J. Herrema
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Exhibit A

Notice of November 13, 2008 Rulings

1 SCOTT S. SLATER (State Bar No. 117317)
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER
DISTRICT

Plaintiff,

vs.

CITY OF CHINO, ET AL.

Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the
Honorable JOHN P. WADE]

**NOTICE OF NOVEMBER 13, 2008
RULINGS**

PLEASE TAKE NOTICE that on November 13, 2008 at 8:30 a.m. in Department S-32, the
Honorable John P. Wade conducted a hearing on a number of motions. The Court Ordered
Watermaster to provide this notice of the outcome of the hearing.

The Court considered the following motions:

1. *Watermaster Compliance with December 21, 2007 Order Conditions One and Two*
2. *Watermaster Compliance with December 21, 2007 Order Condition Three*
3. *Watermaster Compliance with Condition Subsequent Number Four*
4. *Motion to Approve Watermaster's Filing in Satisfaction of Condition Subsequent 5;
Watermaster Compliance with Condition Subsequent 6*

1 Good cause having been shown, the Court granted all of the motions.

2 The Court received and filed Watermaster's 29th and 30th Annual Reports.

3 The Court received and filed Watermaster's Status Reports 2007-01 and 2007-02.

4 The Court indicated that in lieu of further written status reports, the Court will conduct a
5 series of hearings in order to monitor the progress of Watermaster.

6 The Court set a hearing for February 2, 2009, and to continue to February 3, 2009, if
7 necessary. At this hearing Watermaster is to present testimony on:

8 1. What is being done to implement the Physical Solution and to assure that
9 implementation will be successful.

10 2. How will recharge be accomplished in the future. What is the Recharge Master Plan
11 and the numerical basis for the plan.

12 3. What is the Optimum Basin Management Program, both from a historical standpoint
13 and as it is currently.

14 4. What progress has been made by the Watermaster to form a separate committee to
15 review and make recommendations regarding Watermaster's governing structure.

16
17 The Court instructed all parties that intend to present testimony to submit a list of witnesses.
18 Watermaster is instructed to additionally provide an outline of its proposed testimony prior to the
19 hearing.

20
21 The Court considered Cucamonga Valley Water District's *Motion to Discontinue the*
22 *Appointment of the Special Referee*.

23 The Court cited several reasons why it would not grant the motion at this time. The Court
24 cited its recent assignment to the case and indicated that if it has particular questions, the most
25 expeditious way to get answers is to have Miss Schneider answer those questions. The Court also
26 cited Watermaster's apparent non-compliance with certain conditions and deadlines. Finally the
27
28

1 Court noted that the matter is in a transitional phase with conditions of approval to be monitored and
2 enforced and the Court needs assistance during this transitional phase.

3
4 The Court noted that from this point on, questions and requests for assistance from the
5 Special Referee will be specifically referred to the Special Referee in written Orders from the Court.

6
7
8 Dated: November 19, 2008

BROWNSTEIN HYATT FARBER SCHRECK, LLP

9
10
11 By: 

12 Scott S. Slater

13 Michael T. Fife

14 Attorneys For Chino Basin Watermaster

15 SB 490065 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 21, 2008 I served the following:

1) NOTICE OF NOVEMBER 13, 2008 RULINGS

☒ 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

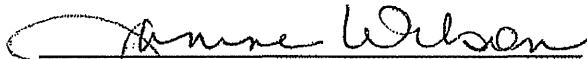
☐ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

☐ 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 21, 2008 in Rancho Cucamonga, California.


Janine Wilson
Chino Basin Watermaster

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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 July 17, 2018 served the following:

1. WATERMASTER'S REPLY IN SUPPORT OF MOTION FOR COURT TO RECEIVE AND FILE WATERMASTER'S 40TH ANNUAL REPORT

/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 July 17, 2018 in Rancho Cucamonga, California.



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Chino Basin Watermaster

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