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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE**
12 **SOUTHERN DISTRICT**
13

14 UNITED STATES OF AMERICA,
15 Plaintiff,

17 vs.

19 FALLBROOK PUBLIC UTILITY
20 DISTRICT, *et al.*,
21 Defendants.

Civil Action No. 51-cv-01247-GPC-RBB

16 **WATERMASTER OF THE SANTA**
17 **MARGARITA RIVER**
18 **WATERSHED RESPONSE TO**
19 **OBJECTIONS TO ANNUAL**
20 **WATERMASTER REPORT FOR**
21 **WATER YEAR 2014-15 BY**
22 **GREGORY BURNETT; CINDY L.**
23 **BARKER; and ROBYN M.**
24 **GARRISON**

Date: January 13, 2017
Time: 1:30 p.m.
Dept.: 2D

Hon. Gonzalo P. Curiel

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I.

INTRODUCTION

On October 14, 2016, the Watermaster submitted the Annual Watermaster Report for Water Year 2014-15 (“Report”) to the Court for posting to the electronic docket (Docket Nos. 5534 through 5534-3) and a copy of the Report was mailed to all individuals on the Watermaster Distribution List (See Docket No. 5534), as well as interested parties who requested copies. On October 17, 2016, the Court posted the Annual Watermaster Report for Water Year 2014-15 (Docket Nos. 5534 through 5534-3) to the docket. Pursuant to Section II of the “Order For The Appointment Of A Watermaster; Powers and Duties.” (“Watermaster Order”) entered by the Court on March 13, 1989 (Docket No. 4809), any party may file an objection to the Report within thirty (30) days of service of the Report.

II.

OBJECTING PARTIES

A. Burnett

On November 9, 2016, Gregory Burnett (“Burnett”) submitted written objections to the Report (“Burnett Objection”) as filed on November 15, 2016 (Docket No. 5546), containing certain concerns related to the Report and other extraneous comments. Burnett is the owner of real property located in Section 8, Township 7 South, Range 3 East, in the County of Riverside (“Burnett Property”), as well as the owner of Thomas Mountain Ranch, a large 265-acre custom home development comprising of forty-six (46) home sites ranging from two (2) to four (4) acres (“Thomas Mountain Ranch”), which is located in Section 5, Township 7 South, Range 3 East, in the County of Riverside. Both the Burnett Property and Thomas Mountain Ranch predecessor parcels are identified in Interlocutory Judgment 33 (Docket No. 4436), in which the Court retains continuing jurisdiction with respect to all surface water and certain ground water

1 in the Anza Ground Water Basin (“Anza Basin”), if any, found on the lands
2 described in Exhibit “B” of Interlocutory Judgment 33 (Docket No. 4436).

3 Burnett is also named as a defendant (Docket No. 5369) in the Cahuilla
4 Band of Indians’ Second Amended Complaint-In-Intervention (Docket No. 5182)
5 and the Ramona Band of Cahuilla’s Second Amended Complaint-In-Intervention
6 (Docket No. 5181). These filings of the complaints by the Tribes are referred to
7 herein as “the Adjudication.” Burnett’s status as a defendant is further evidenced
8 by the instances that Burnett filed various papers pertaining to the Tribes’
9 complaints including: (1) July 2, 2007 Opposition Brief to Plaintiff-Intervenors’
10 Joint Motion for Order on Service and Notification of Tribal Water Right’s
11 Claim and Memorandum of Points and Authorities in Support Thereof
12 (Docket No. 4935); (2) June 13, 2008 Memorandum of Points and Authorities in
13 Partial Opposition to Motion to Temporarily Stay the Proceeding; Declaration of
14 Gregory V. Burnett in Support Thereof (Docket Nos. 5018 and 5018-2); (3)
15 January 5, 2009 Status Report (Docket No. 5080) where he argued the Stay
16 should be lifted and landowners ‘should be allowed an expedited resolution of
17 this lawsuit to remove the cloud placed on the title to their respective properties’
18 (page 1, lines 16 through 18); and (4) April 8, 2009 Notice of Motion and Motion
19 to Quash Service of Summons, or in the Alternative, Motion to Dismiss;
20 Memorandum of Points and Authorities and Declaration in Support (Docket Nos.
21 5111 and 5112).

22 B. Barker

23 On November 8, 2016, Cindy Barker (“Barker”) submitted written
24 objections to the Report (“Barker Objection”) as filed on November 15, 2016
25 (Docket No. 5544), containing certain concerns related to the Report and other
26 extraneous comments. Barker is the owner of property located in Section 8,
27 Township 7 South, Range 3 East, in the County of Riverside, California (“Barker
28 Property”), which is located in the Anza Basin in the upper Santa Margarita

1 River Watershed (“SMRW” or “Watershed”). The Barker Property is part of
2 Parcel No. 234 identified in Interlocutory Judgment 33 (Docket No. 4436), in
3 which the Court retains continuing jurisdiction with respect to all surface water
4 and certain ground water in the Anza Basin, if any, found on the lands described
5 in Exhibit “B” of the Interlocutory Judgment 33 (Docket No. 4436).
6 Additionally, the Watermaster is informed and believes Barker is married to
7 Gregory Burnett, who also filed an objection to the Report (Docket No. 5546).

8 Barker is also named as a defendant (Docket No. 5369) in the Cahuilla
9 Band of Indians’ Second Amended Complaint-In-Intervention (Docket No. 5182)
10 and the Ramona Band of Cahuilla’s Second Amended Complaint-In-Intervention
11 (Docket No. 5181).

12 C. Garrison

13 On November 8, 2016, Robyn Garrison (“Garrison”) submitted objections
14 to the Report (“Garrison Objection”) as filed November 15, 2016 (Docket No.
15 5545), containing certain concerns related to the Report and other extraneous
16 comments. Garrison is the owner of several properties located in the Anza area
17 and it was determined the Garrison Properties are subject to the provisions of the
18 Interlocutory Judgment 33 (Docket No. 4436) and Interlocutory Judgment 33A
19 (Docket No. 4322 through 4322-1), and therefore are subject to the jurisdiction of
20 the Court.

21 Garrison is also named as a defendant (Docket No. 5369) in the Cahuilla
22 Band of Indians’ Second Amended Complaint-In-Intervention (Docket No. 5182)
23 and the Ramona Band of Cahuilla’s Second Amended Complaint-In-Intervention
24 (Docket No. 5181).

25 **III.**

26 **BACKGROUND**

27 A. The Watermaster Office

28 On January 25, 1951, the United States of America filed this instant action

1 to seek a judicial determination of all respective water rights within the SMRW.
2 The Final Judgment and Decree was entered on May 8, 1963 (Docket No. 4489),
3 and subsequently appealed to the U.S. Court of Appeals. A Modified Final
4 Judgment and Decree was entered on April 6, 1966 (Docket No. 4768).

5 On March 13, 1989, the Court issued the Watermaster Order (Docket No.
6 4809) appointing the Watermaster to administer and enforce the provisions of the
7 Modified Final Judgment and Decree and subsequent orders of this Court. The
8 Watermaster Order describes the Watermaster's powers and duties as well as
9 procedures for funding and operating the Watermaster office. On February 7,
10 1989, the Court issued an order appointing a Steering Committee ("Steering
11 Committee Order") (Docket No. 4805) that is currently comprised of
12 representatives from the United States, represented by Camp Pendleton, Marine
13 Corps Base, Eastern Municipal Water District, Fallbrook Public Utility District,
14 Metropolitan Water District of Southern California, Pechanga Band of Luiseño
15 Mission Indians, Rancho California Water District, and Western Municipal
16 Water District. The purposes of the Steering Committee are to assist the Court
17 and Watermaster, facilitate litigation, and fund the Watermaster office.

18 The duties of the Watermaster are specified by Court Order. One of the
19 principal duties of the Watermaster is to prepare and submit to the Court the
20 annual report that includes findings and conclusions regarding surface water and
21 groundwater availability and use, imported and exported supplies, reservoir
22 operations, water quality, threats to water supplies, water rights, and the annual
23 budget for the Watermaster office. An annual report has been prepared and
24 submitted by the Watermaster since Water Year 1988-89 to present. The
25 Watermaster is also responsible for the administration of agreements and
26 memoranda of understanding between various parties related to water operations
27 in the Watershed, pursuant to Court Order (Docket No. 4809).

28 ///

1 IV.
2 GENERAL STATEMENT AS TO OBJECTIONS OR CONCERNS OF
3 BURNETT, BARKER AND GARRISON TO THE
4 WATERMASTER REPORT

5 The Watermaster has made a determination that the Burnett, Barker and
6 Garrison properties, and their water rights are within Court jurisdiction and,
7 therefore, are subject to the provisions of Interlocutory Judgment 33 (Docket No.
8 4436) and Interlocutory Judgment 33A (Docket No. 4322 through 4322-1). In
9 addition, the Watermaster has determined that the lands for Thomas Mountain
10 Ranch are subject to Court jurisdiction.

11 The Watermaster is informed and believes that Barker and Garrison were
12 members of the Anza Valley Municipal Advisory Council (“AVMAC”), which is
13 a citizens group appointed by the 3rd District Supervisor of the Riverside County
14 Board of Supervisors. This group acts as a liaison between the County Board and
15 the residents in the Anza Valley on various critical issues. The Adjudication and
16 the Cahuilla and Ramona complaints-in-intervention are often a topic at the
17 AVMAC meetings.

18 Additionally, the Watermaster is informed and believes Barker and
19 Garrison are members of the individual Landowners’ Group (“Landowners’
20 Group”) represented by legal counsel, and are part of the ongoing settlement
21 negotiations being overseen by the Honorable Ruben B. Brooks in this instant
22 action.

23 Burnett was originally on the Anza-Aguanga Citizen’s for Water Rights
24 (“AACWR”), an organization of landowners formed specifically to coordinate
25 defense of the Tribes’ complaints. The efforts by AACWR led to the formation
26 of the Landowners’ Group participating in the settlement negotiations. Burnett
27 was represented by an attorney for the Landowners’ Group for his various filings,
28 as listed above. However, the Watermaster believes that Burnett is no longer

1 actively involved in this group, but Barker and Garrison are believed to be
2 members of this group.

3 Burnett, Barker and Garrison have been active participants in the
4 Adjudication and for the majority of the time have been represented by legal
5 counsel in the litigation. All three parties have expressed concerns regarding the
6 effort of both Tribes' Second Amended Complaints-In-Intervention in this
7 Adjudication and the potential of being enjoined from withdrawing ground water
8 in the Anza Basin.

9 The development of real estate has become problematic in light of the
10 County of Riverside and the State of California's interpretation of the Technical,
11 Managerial and Financial ("TMF") Assessment process imposed by the Safe
12 Drinking Act of 1996, and the Tribes Second Amended Complaints-In-
13 Intervention which could potentially affect ground water production in the Anza
14 Basin.

15 The inability of the parties to resolve the ongoing litigation and the
16 inability of Watermaster to quantify and certify the water rights of Burnett,
17 Barker and Garrison under the TMF Assessment process seem to be the primary
18 reason for filing the three objections (Docket Nos. 5544, 5545, and 5546) rather
19 than substantive flaws related to the Watermaster Report.

20 The Watermaster will address specific objections as it relates to the
21 Watermaster Report.

22 V.

23 SPECIFIC WATERMASTER RESPONSE TO OBJECTIONS TO 24 WATERMASTER REPORT

25 1. Garrison Objection

26 The Garrison Objection suggests that the Watermaster has not provided the
27 Anza Basin residents information about the "Indian lawsuit." The Watermaster
28 has provided information to Anza Basin residents in various presentations and

1 communications over the last nine (9) years. Due to ongoing settlement
2 negotiations, some information is considered confidential and cannot be provided
3 by the Watermaster. The parties are progressing with settlement negotiations
4 subject to Court supervision for resolution of the Tribes' water rights, as well as
5 other parties in the Adjudication.

6 On April 8, 2008, the Watermaster hosted a public meeting which included
7 a presentation, question and answer session, and handouts for local Anza
8 residents concerning the case and the claims filed by the two Tribes.

9 Anza area residents were invited to join various landowner groups that
10 organized to hire water rights' attorneys to represent the landowners in the
11 Tribes' federal reserved water rights claims. As indicated above, Garrison is
12 believed to be a member of the principal Landowners' Group participating in the
13 settlement negotiations.

14 The Watermaster has been available to answer questions, and has answered
15 questions and provided information that does not violate the confidentiality of the
16 settlement negotiations to numerous landowners, water rights' attorneys and
17 consultants hired by Anza landowners.

18 The Watermaster acknowledges the difficulties the Riverside County TMF
19 requirements have placed on the Anza community both as to represented, as well
20 as, unrepresented parties in the Adjudication. The Watermaster has explained to
21 Garrison's consultant numerous times that the Court, and thus the Watermaster,
22 do not have the authority to issue water supply permits. The County of Riverside
23 is responsible for issuing well permits and approving community water systems
24 under the State Water Resources Control Board ("SWRCB") Drinking Water
25 Program. The Watermaster cannot certify water rights in an adjudicated basin
26 that has not been quantified. The Adjudication is currently under a Stay pending
27 ongoing settlement negotiations related to the Tribes' federal reserved water
28 rights claims.

1 Item 1 of Garrison Letter (First Paragraph, Page 4 of Letter)

2 The material in Item 1 of the Garrison letter is not a topic contained in the
3 Report, nor does the Watermaster or the Court have the authority to approve
4 developments, community water systems or issue well permits.

5 Item 2 of Garrison Letter (Item No. 2, Last Paragraph, Page 2 and
6 continuing on to Page 3 of Letter)

7 The jurisdictional determination made in Domenigoni Valley pursuant to
8 Interlocutory Judgment 36 entitled “Findings of Fact, Conclusions of Law, and
9 Interlocutory Judgment No. 36, Warm Springs Creek Sub-Watershed”
10 (Docket No. 4409) and Interlocutory Judgment 36-A entitled “Warm Springs
11 Creek Sub-Watershed Interlocutory Judgment 36-A; Findings of Fact,
12 Conclusions of Law and Interlocutory Judgment 36 A, Respecting Lands in the
13 Sub-Watershed of Warm Springs Creek Upstream From the Boundary of the
14 Murrieta-Temecula Ground Water Area” (Docket No. 4457 through 4457-1) is
15 not a quantification of the referred to rights. The Watermaster reports on ground
16 water levels in Domenigoni Valley pursuant to the November 21, 1994
17 Memorandum of Understanding entitled “Memorandum of Understanding and
18 Agreement on Operation of Domenigoni Valley Reservoir” between
19 Metropolitan Water District of Southern California, Fallbrook Public Utility
20 District, Rancho California Water District and the United States of America
21 (Docket No. 4843). Section 5.5 of the Report is merely the Watermaster
22 reporting on administration and enforcement of Court orders.

23 The Watermaster administers and enforces the provisions of the Modified
24 Final Decree and Order and all subsequent orders of the Court. The Watermaster
25 does not have the authority to provide “assistance and guidance” or use a
26 “general rule of thumb” at the Watermaster’s discretion. The Watermaster
27 answers to the Court as to all the provisions of the Judgment.

28 ///

1 Item 3 of Garrison Letter (General Commentary throughout Letter)

2 The Report of the Watermaster evidences the variety of duties undertaken
3 by the Watermaster in the administration of the Judgment as to use, quantity and
4 restrictions of use of water in the Anza Basin. This information gathered by the
5 Watermaster, is contained in the Report. Quantity and limitations of use may
6 well be further defined in any settlement or subsequent Court orders in this
7 current litigation.

8 2. Barker Objection

9 Since Barker's objection to the Watermaster Report is essentially identical
10 to the Garrison Objection, Watermaster incorporates fully herein, as though set
11 forth in full, the same responses as stated to the Garrison Objection.

12 As to the cost of the administration of the Watermaster, it is not funded by
13 taxpayers' dollars as Barker asserts. The Watermaster office is funded by annual
14 assessments to Steering Committee members as outlined in the Watermaster
15 Order. There are a total of seven (7) Steering Committee members. The
16 Watermaster office receives four (4) quarterly Steering Committee assessments
17 from each Steering Committee member during each water year (October 1
18 through 30).¹ Annual assessments are determined by dividing the approved
19 budget by seven (7). For example, for Water Year 2015-16, the budget was
20 approved in the amount of \$716,100 with Steering Committee members paying
21 four (4) quarterly assessments of \$25,575, totaling \$102,300, as approved by the
22 Court in the Annual Watermaster Report for Water Year 2013-14 (Docket Nos.
23 5490 through 5490-3). For Water Year 2016-17, the budget is \$772,100, as
24 approved by the Court upon acceptance of this Report for Water Year 2014-15.

25 3. Burnett Objection

26 Concern No. 1, Report of High Nitrate Concentration (Item No. 1, Page 2

27 ¹ The United States of America, represented by Marine Corps Base, Camp Pendleton, pays its
28 Steering Committee assessment in one (1) annual payment through established U.S.
Government vendor payment procedures.

1 of Letter):

2 The Burnett Objection states that the Report is inaccurate or incomplete
3 because the Report does not provide data regarding high nitrates that were
4 reported in the Anza Valley in the past. Section 9.1 of the Report discusses
5 general threats to long-term water supply that have been reported in previous
6 reports and Section 9.2 describes previous reporting of high nitrates in the Anza
7 Valley. The Report specifically states that high nitrate concentrations were
8 reported in Anza Valley in the Annual Watermaster Report for Water Year 1993-
9 94 (Docket No. 5190). The Report also specifically states that the high nitrate
10 concentrations were based on data collected by the United States Geological
11 Survey (“USGS”). Water quality and monitoring are the responsibility of the
12 Regional Water Quality Control Board of the San Diego Region (“Regional
13 Board”) and local entities.

14 Concern No. 2, Lack of Monitoring (Item No. 2, Pages 2-3 of Letter):

15 Water levels in subject wells in the Watershed are measured periodically
16 by various water entities and reported to Watermaster. Historically, ground water
17 levels in the Watershed are shown in Section 4.3 of the Watermaster Report. For
18 the Anza Basin, the ground water levels for Anza Mutual Water Company Well
19 No. 1 have been published in the Annual Report as Figure 4.4 since Water Year
20 1989-90 and the hydrograph provides a representative illustration of ground level
21 trends for the Anza Basin. Such a typical hydrograph is provided in the Annual
22 Report for other basins in the Watershed. Certainly, additional monitoring wells
23 for the Anza Basin would be desirable subject to budgetary restraints of the
24 Watermaster. The Watermaster is presently participating in the development of a
25 California Statewide Groundwater Elevation Monitoring (“CASGEM”) program
26 that will provide an expanded monitoring network for the Anza Basin.

27 Concern No. 3, Overdraft (Item No. 3, Pages 3-4 of Letter):

28 The Burnett Objection claims the Report does not have data to support the

1 “warning” that the Anza Valley had previous concerns of overdraft. The Report
2 specifically states: “*Previous* Watermaster reports have noted concerns about
3 overdraft conditions in Anza Valley ...”. The Report notes the previous studies
4 for the area and that no further studies have been conducted regarding
5 determination of overdraft.

6 The parties involved in the settlement negotiations have evaluated
7 overdraft but no specific studies have been published and the Watermaster cannot
8 include any studies or other information developed as part of the settlement
9 negotiations because such information is confidential at the present time.

10 Concern No. 4 (Pages 4-5 of Letter):

11 The Watermaster did not make any “determination” regarding overdraft
12 conditions or high nitrate water quality conditions. The Report merely reports on
13 previous studies for the Anza Basin.

14 The Watermaster is administering water rights in accordance with the
15 duties and responsibilities outlined in the Watermaster Order (Docket No. 4809),
16 and with respect to the Anza Area, in accordance with Interlocutory Judgment 33
17 (Docket No. 4436), Interlocutory Judgment 33A (Docket No. 4322 through 4322-
18 1), and Interlocutory Judgment 41 (Docket No. 4430).

19 Water right activity monitoring is included in the Report. Various sections
20 of the Report include water right reporting, including but not limited to, Sections
21 3, 4 and 7 related to production and use of the various water rights, and Section 6
22 which provides a description of the various water rights. The Watermaster
23 administers and enforces the provisions of the Modified Judgment and Final
24 Decree and all subsequent orders of the Court. The entire Report is an example
25 of that administration and monitoring represented by 800 Court filings in this
26 case since 1966.

27 The Watermaster continues to provide technical support to members of the
28 public and the ongoing settlement negotiations related to the complaints filed by

1 the Tribes. The Watermaster is unable to report on confidential settlement
2 negotiations and therefore cannot report on many current activities in the Anza
3 Basin.

4 **VI.**

5 **RECENT DEVELOPMENTS**

6 The State of California has recently adopted on September 29, 2016,
7 Senate Bill 1263 ("SB1263") which imposes on SWRCB, the responsibility and
8 duty to provide a dependable safe supply of drinking water. SB1263 would
9 prohibit a local primary agency from issuing a permit to operate a public water
10 supply system without concurrence of the State Board. This may allow residents
11 to deal directly with the State of California for small water suppliers to secure
12 permits to operate a small water system. This may address Burnett, Barker and
13 Garrison's concerns as to land development.

14 Watermaster will continue to make the Annual Report available to the
15 applicants involved in the TMF process and to the represented and unrepresented
16 parties in the ongoing settlement negotiations. Watermaster, along with
17 engineering representatives of the parties continue to meet to develop the
18 technical data which will form the basis of settlement of the Adjudication and
19 water management in the area.

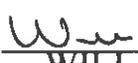
20 **VII.**

21 **CONCLUSION**

22 The Watermaster requests that the Report be accepted and approved by the
23 Court.

24 Dated: December 8, 2016

BRUNICK, McELHANEY & KENNEDY

25 By:  
26 **WILLIAM BRUNICK, Attorney for**
27 **WATERMASTER SANTA**
28 **MARGARITA RIVER WATERSHED**

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA }
3 COUNTY OF SAN BERNARDINO}

4 I am employed in the County of San Bernardino, State of California. I am over the age
5 of 18 and not a party to the within action; my business address is 1839 Commercenter West,
6 San Bernardino, California 92408-3303.

7 On December 8, 2016, I served the foregoing document described as:
8 **WATERMASTER OF THE SANTA MARGARITA RIVER WATERSHED RESPONSE**
9 **TO OBJECTIONS TO ANNUAL WATERMASTER REPORT FOR WATER YEAR**
10 **2014-15 BY GREGORY BURNETT; CINDY L. BARKER; AND ROBYN M.**
11 **GARRISON** on the interested parties in this action by placing a true copy thereof enclosed in
12 sealed envelopes addressed as follows:

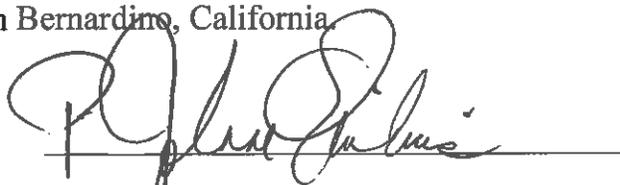
13 **SEE ATTACHED DISTRIBUTION LIST**

14 XX BY MAIL AS FOLLOWS: I am "readily familiar" with the firm's practice of collection
15 and processing correspondence for mailing. Under that practice it would be deposited with the
16 U.S. Postal Service on that same day with postage thereon fully prepaid at San Bernardino,
17 California in the ordinary course of business. I am aware that on motion of the party served,
18 service is presumed invalid if postal cancellation date or postage meter date is more than one
19 day after date of deposit for mailing in affidavit.

20 ___ BY ELECTRONIC MAIL AS FOLLOWS: On this date, the aforesaid document was
21 transmitted by electronic mail to the person(s) whose name(s) and e-mail address are listed.
22 The transmission(s) were reported without error.

23 X (STATE) I declare under penalty of perjury under the laws of the State of California
24 that the above is true and correct.

25 Executed on December 8, 2016, at San Bernardino, California.

26 
27
Jo Anne Quihuis

Honorable Gonzalo P. Curiel
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