

JUN 05 2003

By *Nancy L. DeWing* Deputy

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

10 CHINO BASIN MUNICIPAL WATER
11 DISTRICT,

12 Plaintiff,

13 vs.

14 CITY OF CHINO, et al.,

15 Defendants
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19

CASE NO. RCV 51010

ORDER CONCERNING
GROUNDWATER STORAGE
PROGRAM FUNDING AGREEMENT--
AGREEMENT NO. 49960.

Date: June 5, 2003

Dept: 8

Time: 1:30 p.m.

20
21 Background

22 Program Element 9 of the court-approved Implementation Plan for the Chino
23 Basin Optimum Basin Management Program ("OBMP") calls for the development and
24 implementation of storage and recovery programs to ensure that Chino Basin water and
25 storage capacity are put to maximum beneficial use. The initial target for the
26 cumulative quantity of water to be held in storage is an additional 500,000 acre-feet.
27 (Implementation Plan, Program Element 9, subdivision (c)(iv)(a).) In developing
28 storage and recovery programs, Watermaster is to give first priority to storage and

1 recovery programs that provide broad mutual benefits to the parties to the Judgment.
2 (*Id.* at subdivision (c)(iv)(b).)

3 Watermaster has taken the first step in developing storage and recovery
4 programs, by negotiating a Dry Year Yield ("DYY") Program for the Basin.
5 Watermaster seeks review, under paragraph 31 of the Judgment, of its approval on
6 March 27, 2003, of the Groundwater Storage Program Funding Agreement No. 49960
7 ("Funding Agreement"). The Funding Agreement contains the financial terms for a new
8 100,000 acre-foot storage account for Metropolitan Water District of Southern
9 California ("MWD").¹

10 Watermaster requests an order from this Court "declaring that the [Funding]
11 Agreement is consistent with its responsibilities under the Peace Agreement."² (Motion,
12 p. 2, lines 2-3.) Watermaster asserts that the question to be decided by the Court is
13 whether or not the Funding Agreement satisfies Watermaster's commitments under
14 section 5.2 (c) of the Peace Agreement. Consistent with the Implementation Plan, the
15 Peace Agreement provides, at section 5.2(c)(iv)(b), that Watermaster is to give first
16 priority to storage and recovery programs that provide broad mutual benefits to the
17 parties to the Judgment.

18
19 Discussion

20 A. Funding Agreement is not a "Storage Agreement" as that term is used in the
21 Judgment.

22 The Judgment provides, at paragraph 28, that groundwater storage agreements
23 are to contain terms that will preclude operations having a substantial adverse impact
24 on other producers. The Judgment further provides, at Exhibit "I," that groundwater
25 storage agreements are to contain specified information related to storage.

26
27
28 ¹ MWD has three existing storage accounts.

² All references to "Peace Agreement" are to the Chino Basin Peace Agreement, dated June 29, 2000.

1 Watermaster takes the position that the Funding Agreement itself is not a
2 "Storage Agreement," as that term is used in the Judgment. "[W]hile the [Funding]
3 Agreement commits the parties to allocate 100,000 AF of the 500,000 AF Storage and
4 Recovery Program to Metropolitan, the specific location and operation of the facilities
5 necessary to accomplish this commitment must still be analyzed by Watermaster
6 under the Material Physical Injury standard of the Peace Agreement and Rules and
7 Regulations. This approval will take the form of Watermaster approval of the Local
8 Agency Agreements by way of a Storage and Recovery Application filed under Article
9 X of Watermaster's Rules and Regulations.

10 "The [Funding] Agreement itself contemplates the necessity of such further
11 Watermaster approval. The Agreement contains the provisions that: 'Watermaster
12 reserves the right to approve the location and amount of storage and extraction
13 pursuant to this Agreement, in accordance with the Judgment, OBMP and its policies
14 applicable to the Judgment Parties.' [Citation.]" (Motion, p. 8, lines 11-22.) The Court
15 is concerned that the quoted language does not clearly state that a Storage
16 Agreement allowing use of the 100,000 acre-feet storage account contemplated by the
17 Funding Agreement has not yet been completed and must still be approved by both
18 Watermaster and this Court. As noted, Watermaster indicates that approval of a
19 Storage Agreement will be in "the form of Watermaster approval of the Local Agency
20 Agreements by way of a Storage and Recovery Application filed under Article X of
21 Watermaster's Rules and Regulations." It is not clear to the Court how or in what form
22 this approval process will be conducted. However, it is clear that until Watermaster
23 and this Court approve the Local Agency Agreements and Storage and Recovery
24 Application, or some equivalent approval process is completed, the storage and
25 recovery program cannot be undertaken. The Judgment mandates that the Funding
26 Agreement be reviewed in this context.

27 ///

28 ///

1 B. The Court's review of the evidence is "de novo."

2 Under paragraph 31 of the Judgment the Court's review of any Watermaster
3 action or decision is "de novo." Watermaster's findings, if any, may be received in
4 evidence at the hearing but shall not constitute presumptive or prima facie proof of any
5 fact in issue. Of course, this does not mean that Watermaster's decision is entitled to
6 no weight at all. (Cf. *Fukuda v. City of Angels* (1999) 20 Cal. 4th 805, 817.) The key is
7 that the Court looks at the evidence anew.

8
9 C. The weight of the evidence supports the finding of "broad mutual benefit."

10 As noted in the introduction, both the Implementation Plan for the OBMP and the
11 Peace Agreement, which facilitates implementation of the OBMP, provide criteria to
12 guide Watermaster in evaluating a storage and recovery program. "Watermaster shall
13 prioritize its efforts to regulate and condition the storage and recovery of water
14 developed in a Storage and Recovery Program for the mutual benefit of the parties to
15 the Judgment and give first priority to Storage and Recovery Programs that provide
16 broad mutual benefits..." (Implementation Plan, Program Element 9, subdivision
17 (c)(iv)(b); Peace Agreement, section 5.2 (c)(iv)(b).)

18 In support of its motion, Watermaster offers a copy of the Funding Agreement
19 itself (Exhibit 1), copies of the two Watermaster staff reports, upon which the Advisory
20 Committee and Board's decisions were based (Exhibits 2 & 3), and copies of previous
21 storage agreements with MWD (Exhibits 4-6). The Court has received no objections to
22 the evidence, nor any opposition to the motion. The evidence submitted establishes
23 the following.

24 In November 2000, MWD issued a request for proposals for groundwater
25 storage programs using funds from Proposition 13. In January 2001, Watermaster and
26 IEUA jointly submitted a proposal to MWD for a groundwater conjunctive use storage
27 program. In April 2001, MWD approved the proposal, which includes funding in the
28 amount of \$27.5 million to be used for new production facilities—wells and wellhead

1 treatment facilities. The new facilities will provide new pumping capacity for
2 participating parties. Of the \$27.5 million, \$9 million will come from the California
3 Department of Water Resources ("DWR"), using Proposition 13 funds, and \$19.5
4 million will come from MWD. MWD will advance \$1.6 million to IEUA for costs
5 associated with CEQA compliance and preliminary engineering studies, including
6 modeling of the Basin. CEQA approvals were completed in December 2002.

7 The term of the storage program is 25 years, with optional five-year renewal
8 terms, up to a maximum term of 50 years. The storage target for the program is
9 100,000 acre-feet per year, which is to be stored by MWD in wet years. The annual
10 yield target is 33,000 acre-feet per year, which is to be produced from the Basin in
11 times of imported water shortages, using the new facilities. A key point in the program
12 is that MWD will allow local control and use of the facilities to be constructed. Hence,
13 the new facilities will provide infrastructure that will be of general benefit to Basin
14 pumpers.

15 Several Appropriative Pool members will be participating in the Program: Cities
16 of Chino, Chino Hills, Ontario, Pomona³, Upland, and the Cucamonga County and
17 Monte Vista Water Districts. San Antonio Water Company, Fontana Water Company
18 and Jurupa Community Services District have also initiated negotiations concerning
19 their participation. When MWD delivers in-lieu water into the new storage account, that
20 water is to be provided to the participating entity at no cost, resulting in a deferred
21 water cost. When MWD calls for extraction of the water, it will pay the operation and
22 maintenance costs of the extraction facilities attributed to its use of the facilities, and
23 also will pay the unit electrical cost for pumping the stored water. Further, MWD will
24 pay an administrative fee of \$132,000 to offset the Watermaster staff time necessary to
25 administer the program, which will require detailed record keeping. The administrative
26 fee will be escalated using the lesser of 2.5% or the consumer price index.

27
28 ³ Three Valley Municipal Water District is a party to the Funding Agreement to facilitate the City of
Pomona's participation.

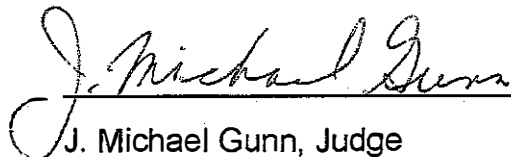
1 The benefits, costs and obligations of the Funding Agreement will be passed on
2 to the participating entities. Further, the DYY Program will have general benefits for
3 Basin Pumpers. The DYY Program benefits were addressed in Watermaster's Dry
4 Year Yield Project Memorandum ("DYY Memorandum"), dated February 13, 2003
5 (Exhibit 2); they are listed on page 6 of the DYY Memorandum. Black and Veatch
6 estimated cash flows for benefits and costs over the life of the program, and prepared a
7 financial analysis (Attachment III to the DYY Memorandum), which quantifies program
8 benefits. Black and Veatch also prepared a conceptual facilities report related to the
9 DYY Program (Attachment XII to the DYY Memorandum). Black and Veatch concludes
10 the DYY Program "will effectively meet overlying demands via in-lieu water deliveries.
11 Furthermore, the program meets the goals of the Basin's ... (OBMP), which are:
12 Enhance basin water supplies [¶] Protect and enhance water quality [¶] Enhance
13 management of the basin [¶] Equitably finance the OBMP" (Attachment XII, p. 5.)

14 Ruling

15 The Court finds that the weight of the evidence supports Watermaster's finding
16 that the DYY Program, as described in the Funding Agreement, will provide broad
17 mutual benefits to the parties to the Judgment.

18 The Court further finds that Watermaster's approval of the Funding Agreement
19 is consistent with its responsibilities under the Peace Agreement, which, in turn,
20 facilitates implementation of the court-approved OBMP.

21
22
23 Dated: June 5, 2003


J. Michael Gunn, Judge

Watermaster Files

FILED-Rancho Cucamonga District
SAN BERNARDINO COUNTY
SUPERIOR COURT

CHINO BASIN WATERMASTER

Case No. RCV 51010

Chino Basin Municipal Water District v. The City of Chino

JUN 12 2003

By *[Signature]* Deputy
[Signature]

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, 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On June 11, 2003 I served the following that were heard on:

June 5, 2003, 1:30 p.m., Dept. R8

- A. **Order Concerning Groundwater Storage Program Funding Agreement – Agreement No. 49960**
- B. **Order Receiving Watermaster's 25th Annual Report and Status Reports Nos. 5 & 6; Order Confirming Intervention of Niagara Bottling Company**

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:
Attorney 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 June 11, 2003 in Rancho Cucamonga, California.

Mary Staula
Mary Staula
Chino Basin Watermaster

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Updated 6/11/03

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