

FILED  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
RANCHO CUCAMONGA DISTRICT

JUN 24 2004

BY Wanda Lewis  
DEPUTY

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

CHINO BASIN MUNICIPAL WATER DISTRICT,  
Plaintiff,  
vs.  
CITY OF CHINO, et al.,  
Defendants

CASE NO. RCV 51010

ORDER APPROVING STORAGE AND RECOVERY PROGRAM  
STORAGE AGREEMENT RE IMPLEMENTATION OF DRY YEAR  
YIELD STORAGE PROJECT

Date: June 24, 2004  
Dept: R8  
Time: 1:30 p.m.

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Background

On July 13, 2000, this Court ordered Chino Basin Watermaster ("Watermaster") to adopt the goals and plans of the Optimum Basin Management Program ("OBMP") Phase I Report, dated August 19, 1999, (Phase I Report) and to implement them through the Implementation Plan for the OBMP for the Chino Basin ("Implementation Plan"), in a manner consistent with the Chino Basin Peace Agreement, dated June 29, 2000, ("Peace Agreement") and the Implementation Plan. The goals of the Phase I

1 Report include the development of conjunctive-use programs, to optimize the use of  
2 the Chino Basin for in-basin producers and the people of California. (Phase I Report,  
3 p. 3-3.) In furtherance of this goal, the Implementation Plan provides for the  
4 development of storage and recovery programs.

5 In carrying out the Implementation Plan, Watermaster negotiated a Dry Year  
6 Yield Program ("DYY Program") for Chino Basin. On June 5, 2003, this Court found  
7 that the DYY Program, as described in the Groundwater Storage Program Funding  
8 Agreement No. 49960 ("Funding Agreement"), will provide broad mutual benefits to the  
9 parties to the Judgment and is consistent with Watermaster's responsibilities under  
10 the Peace Agreement, which facilitates implementation of the OBMP. Watermaster  
11 now seeks court approval of the "Storage And Recovery Program Storage Agreement  
12 Between Chino Basin Watermaster, Inland Empire Utilities Agency and Three Valleys  
13 Municipal Water District Regarding Implementation of the Dry Year Yield Project"  
14 ("DYY Storage Agreement"). The DYY Storage Agreement authorizes Inland Empire  
15 Utilities Agency, Three Valleys Municipal Water District and many of their retail  
16 agencies to participate with Metropolitan Water District of Southern California  
17 ("MWD") in the use of a maximum of 100,000 acre-feet of storage space in Chino  
18 Basin, through in-lieu recharge.

19 Discussion

20 "[F]ull jurisdiction, power and authority are retained and reserved to the Court"  
21 to enable the Court "to make such further or supplemental order or directions as may  
22 be necessary or appropriate" to interpret, enforce or carry out the Judgment.  
23 (Judgment, ¶ 15.) Subsurface storage space in a groundwater basin is a public  
24 resource, which must be put to beneficial use under Article X, section 2 of the  
25 California Constitution. (*Central and West Basin Water Replenishment District v.*  
26 *Southern California Water Company* (2003) 109 Cal.App.4<sup>th</sup> 891, 905, mod. 110  
27 Cal.App.4<sup>th</sup> 352.)

1 Groundwater storage in Chino Basin is directed and controlled by  
2 Watermaster. The Judgment provides that no use shall be made of the storage  
3 capacity of Chino Basin except pursuant to written agreement with Watermaster.  
4 (Judgment, ¶ 12.) The Judgment further provides that the reservoir capacity of the  
5 Basin may be utilized for storage and conjunctive use of supplemental water, if  
6 undertaken under Watermaster control and regulation. (Judgment, ¶ 11.) Finally, the  
7 Judgment provides that agreements for storage "shall first be approved by written  
8 order of the Court" and must include terms that will "preclude operations which will  
9 have a substantial adverse impact on other producers." (Judgment, ¶ 28.)

10 Currently, there are three types of storage accounts: Excess Carry-Over  
11 Storage, Local Storage of Supplemental Water, and Non-Party Storage Accounts.  
12 According to Watermaster's 26<sup>th</sup> Annual Report, at the end of fiscal 2002-2003 there  
13 were 108,178.61 acre-feet in Excess Carry-Over Storage and 81,179.810 acre-feet in  
14 Local Storage of Supplemental Water. Non-Party Storage consists of MWD's three  
15 existing storage accounts: Cyclic Storage Account (32,700 acre-feet), Trust Storage  
16 Account (13,100 acre-feet), and Short-Term Conjunctive Use Account (no water  
17 currently stored.) A fourth account will be created under the DYY Storage Agreement.  
18 Once the DYY Storage Account is created, the Trust Storage Account will be closed  
19 and water currently stored in that account will be transferred to the DYY Storage  
20 Account and accounted for in that account. In addition, Watermaster anticipates that  
21 no new water will be placed into the Cyclic Storage Account and the existing stored  
22 water will be gradually removed, until it is empty.

23 The Implementation Plan provides that the amount of storage that can safely be  
24 used by producers and Watermaster is about 500,000 acre-feet, including water in  
25 existing storage accounts. Storage in excess of this amount will preemptively require  
26 mitigation. (Implementation Plan, p. 38.) Under the terms of the DYY Storage  
27 Agreement, there will be no more than 100,000 acre-feet of supplemental water stored  
28 in the Basin. Existing storage is approximately 235,000 acre-feet. Hence, the

1 proposed storage is well within the estimated safe storage capacity of the Basin, as  
2 defined in the Implementation Plan.

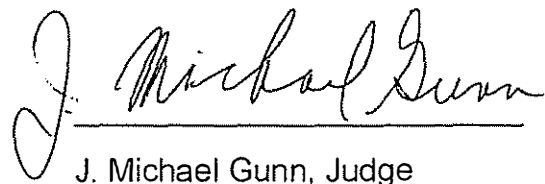
3 The DYY Storage Agreement calls for the development of Annual Operating  
4 Plans, which will provide estimated schedules and locations for the delivery of all  
5 water into and out of storage, on a monthly basis, for the upcoming fiscal year. The  
6 Annual Operating Plan is to be submitted to Watermaster for approval and is to have  
7 sufficient detail to allow Watermaster to assess the potential for any adverse impacts  
8 on producers. Pursuant to Judgment paragraph 28, Watermaster may not approve an  
9 Annual Operating Plan that will have a substantial adverse impact on producers.

10 No contests were filed to the application for approval of the DYY Storage  
11 Agreement. All three pools unanimously approved the DYY Storage Agreement on  
12 March 16, 2004. The Advisory Committee and Board of Directors unanimously  
13 approved the DYY Storage Agreement on March 25, 2004.

14 Good cause appearing therefore, the Court finds that the DYY Storage  
15 Agreement is consistent with the Judgment and Implementation Plan, and is unlikely to  
16 have any adverse impacts on a party to the Judgment. Watermaster's Motion for  
17 Approval of the DYY Storage Agreement is hereby GRANTED; the DYY Storage  
18 Agreement is hereby approved for the storage of a maximum of 100,000 acre feet.  
19 Starting with the OBMP quarterly status report covering the time period ending June  
20 30, 2004, Watermaster shall include a report of operations under the DYY Storage  
21 Agreement.

22 ///

23 Dated: June 24, 2004

  
J. Michael Gunn, Judge

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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 June 24, 2004 I served the following:

**ORDER APPROVING STORAGE AND RECOVERY PROGRAM STORAGE AGREEMENT RE IMPLEMENTATION OF DRY YEAR YIELD STORAGE PROJECT**

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 June 24, 2004 in Rancho Cucamonga, California.

  
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