

FEE EXEMPT

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FILED-West District
San Bernardino County Clerk

OCT 13 2004

Brenda Carr

Attorneys For
CHINO BASIN WATERMASTER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 vs.

15 CITY OF CHINO, et al.,

16 Defendants.

Case No. RCV 51010

[Assigned for All Purposes to the Hon. J. Michael
Gunn]

NOTICE OF MOTION AND MOTION
FOR AN ORDER DIRECTING
WATERMASTER TO PROCEED IN
ACCORDANCE WITH THE PEACE
AGREEMENT AS AMENDED BY THE
FIRST AMENDMENT TO THE PEACE
AGREEMENT

Hearing Date: December 2, 2004
Hearing Time: 2:00 p.m.
Dept: R8

20 PLEASE TAKE NOTICE that on December 2, 2004, at 2:00 p.m., Watermaster will
21 respectfully request the Court to acknowledge that Watermaster has adopted a resolution
22 supporting and approving the Peace Agreement as amended by the First Amendment to the Peace
23 Agreement, and that Watermaster and the parties to the Peace Agreement have committed to
24 implement the goals and plans of the OBMP Phase I Report through the Implementation Plan in
25 a manner consistent with the Peace Agreement as so amended. Watermaster will also request the
26 Court to find that the Peace Agreement as amended by the First Amendment to the Peace
27 Agreement remains consistent with the OBMP and with Watermaster's duties under the
28

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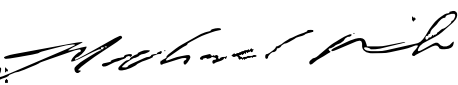
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Judgment. Finally, Watermaster will request the Court to enter an Order directing Watermaster to proceed in accordance with the Peace Agreement as amended by the First Amendment to the Peace Agreement.

This request will be based upon this Notice of Motion, and the accompanying Points and Authorities and Declaration of Michael T. Fife.

Dated: 10/13/04

HATCH & PARENT, A LAW CORPORATION

By: 
Scott S. Slater
Michael T. Fife
Attorneys for
CHINO BASIN WATERMASTER

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POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR AN ORDER
DIRECTING WATERMASTER TO
PROCEED IN ACCORDANCE WITH
THE PEACE AGREEMENT AS
AMENDED BY THE FIRST
AMENDMENT TO THE PEACE
AGREEMENT

Hearing Date: December 2, 2004
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21 I.

22 INTRODUCTION

23 At its September 30, 2004 meeting, the Watermaster Board adopted Resolution 2004-03,
24 according to which Watermaster commits to proceed in accordance with the Peace Agreement as
25 amended by the First Amendment to the Peace Agreement. A true and correct copy of Resolution
26 2004-03 is attached to this motion as Exhibit "A." By this motion, Watermaster requests this
27 Court to enter an Order directing Watermaster to proceed in accordance with the Peace
28

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Santa Barbara, CA 93101

1 Agreement as amended by the First Amendment to the Peace Agreement. A true and correct copy
2 of the First Amendment to the Peace Agreement is attached to this motion as Exhibit "B."

3 **II.**

4 **PEACE AGREEMENT BACKGROUND**

5 On June 29, 2000, the Watermaster Board unanimously adopted the goals and plans of
6 the Optimum Basin Management Program ("OBMP") Phase I Report consistent with the Peace
7 Agreement and the Implementation Plan (Exhibit "B" to the Peace Agreement). On that same
8 day, Watermaster adopted Resolution 2000-05 (Exhibit "A" to the Peace Agreement), through
9 which Watermaster resolved that it will proceed in accordance with the OBMP Implementation
10 Plan and the Peace Agreement, and further that it will comply with the terms and conditions
11 described in Article V of the Peace Agreement.

12 On July 13, 2000, the Court issued an Order which acknowledged that Watermaster had
13 adopted a resolution supporting and approving the Peace Agreement, and that Watermaster and
14 the parties to the Peace Agreement had committed to carry out elements of the OBMP in
15 accordance with the Peace Agreement. The Court also recognized that the Peace Agreement is
16 consistent with the OBMP. The Court found that Watermaster's support and approval of the
17 Peace Agreement and its commitment to implement the OBMP Phase I Report through the
18 provisions of the OBMP Implementation Plan is in furtherance of the Physical Solution set forth
19 in the Judgment and is in furtherance of Article X, Section 2 of the California Constitution.
20 Based on these findings, the Court ordered Watermaster (1) to adopt the goals and plans of the
21 Phase I Report and implement them through the Implementation Plan, and (2) to proceed in a
22 manner consistent with the Peace Agreement and the OBMP Implementation Plan.

23 While Watermaster is not a party to the Peace Agreement, many of the operative elements
24 of the Peace Agreement require Watermaster to perform certain actions in order to fulfill the
25 negotiated settlement between the parties to the Peace Agreement. Through Watermaster's
26 Resolution, and the Court Order directing Watermaster to proceed in accordance with the Peace
27 Agreement, the parties were able to implement the terms of their agreement.

28

1 III.

2 BACKGROUND OF THE FIRST AMENDMENT TO THE PEACE AGREEMENT

3 On March 11, 2004, Monte Vista Water District filed a "Motion for an Order Compelling
4 Watermaster to Establish a Program to Equitably Allocate Benefits from Water Quality
5 Mitigation Measures Under the Physical Solution" ("Monte Vista Motion").

6 The Monte Vista Motion had its genesis in the issue of Salt Credits and the potential
7 inequities resulting from the adoption by the Regional Water Quality Control Board of the Basin
8 Plan Amendment.

9 A. Basin Plan Amendment Background

10 The Santa Ana Regional Water Quality Control Board ("RWQCB") adopted the existing
11 Basin Plan for the Santa Ana Watershed under Resolution No. 94-1 on March 11, 1994. On
12 January 22, 2004, the RWQCB adopted Resolution No. R8-2004-0001 amending the Basin Plan
13 to incorporate an updated TDS and nitrogen management plan including revised subbasin
14 boundaries; revised TDS and nitrate-nitrogen water quality objectives for groundwater; revised
15 TDS and nitrogen wasteload allocations; revised reach designations, and TDS and nitrogen
16 objectives and beneficial uses for specific surface waters. On September 30, 2004, the State
17 Water Resources Control Board approved the Basin Plan Amendments.

18 The Basin Plan amendments are the product of numerous studies on nitrogen and TDS
19 management conducted by the Nitrogen-TDS Task Force. Watermaster staff and Chino Basin
20 parties participated in those studies and in the Basin Plan Amendment. These studies were the
21 result of concerns expressed by numerous wastewater and water supply agencies during the 1994
22 revisions to the Basin Plan. The agencies' main concerns were that the Basin Plan placed severe
23 restrictions on available wastewater reclamation opportunities in a time of increased water
24 demand, and that the nitrate-nitrogen and TDS objectives for groundwater had been established
25 without sufficient data and rigor.

26 In response, the recent Basin Plan Amendment, among other things, utilizes "maximum
27 benefit" objectives according to which greater opportunities for recycled water reclamation are
28 made possible so long as certain narrative management objectives are attained. Those narrative

1 management objectives essentially incorporate provisions of the OBMP Implementation Plan.
2 Thus, the Basin Plan Amendment uses salt removal and other salt management aspects of the
3 OBMP to support higher “maximum benefit” objectives, thereby significantly expanding
4 wastewater reclamation activities.

5 ***B. Salt Credits Background***

6 Salt Credits were defined by the Peace Agreement to be an assignable credit that may be
7 granted by the RWQCB and computed by Watermaster from OBMP activities that result from
8 removal of salt from the Basin, or that result in a decrease in the amount of salt that enters the
9 Basin. (Peace Agreement section 1.1(rr).) The Peace Agreement provides that Watermaster shall
10 assign to members of the Appropriative Pool Salt Credits under the OBMP. (Peace Agreement
11 section 5.5). The concept behind Salt Credits was an expectation that the RWQCB would create
12 a mitigation program that would allow salt loading activities, such as recycled water recharge, to
13 proceed through mitigation credits created by OBMP salt removal activities. These credits may
14 have provided an equitable allocation of economic benefit to entities that did not engage in salt
15 loading activities if they were able to transfer such credits in a market-based transaction.

16 The most recent Basin Plan Amendment may eliminate the need for Salt Credits as
17 described in Sections 1.1(rr) and 5.5 of the Peace Agreement because it broadly permits activities
18 such as recycled water recharge to occur based on commitments by Watermaster and the Inland
19 Empire Utilities Agency to proceed with the salt removal activities of the OBMP. This general
20 acknowledgment by the RWQCB that the salt removal activities of the OBMP will sufficiently
21 mitigate the impacts associated with activities such as recycled water recharge, replaces the need
22 for a Salt Credits program.

23 ***C. Equitable Allocation of Benefits from Water Quality Mitigation Measures***

24 While the Basin Plan Amendment will have great benefits to the Chino Basin as a whole,
25 the Monte Vista Motion articulates the position that Monte Vista, and other entities which do not
26 engage in salt loading activities, made certain concessions in the Peace Agreement in exchange
27 for an expectation of an equitable allocation of salt mitigation benefits through assignment of
28

1 Salt Credits. The primary locus of these concessions is found in section 7.5 of the Peace
2 Agreement.

3 Peace Agreement section 7.5 articulates a hierarchy of sources of water that may be used
4 as replenishment for groundwater production by the desalters. This hierarchy includes the
5 following four elements:

- 6 (a) Watermaster Desalter Replenishment account composed of 25,000 acre-feet of
7 water abandoned by Kaiser pursuant to the "Salt Offset Agreement" dated
8 October 21, 1993, between Kaiser and the RWQCB, and other water previously
9 dedicated by the Appropriative Pool.
- 10 (b) New Yield of the Basin.
- 11 (c) Safe Yield of the Basin.
- 12 (d) Additional Replenishment Water purchased by Watermaster, the costs of which
13 shall be levied as an Assessment by Watermaster.(Peace Agreement § 7.5.)

14 The second tier in this hierarchy is New Yield. (Peace Agreement section 7.5(b).) This
15 New Yield includes the additional stormwater yield that will be provided to the Basin through the
16 operation of the improved recharge facilities constructed through implementation of
17 Watermaster's Recharge Master Plan. Implementation of the Recharge Master Plan is a \$40
18 million project that is anticipated to result in an average of 12,000 acre-feet per year of additional
19 storm water yield to the Basin. One-half of the cost of this program is paid for through
20 Proposition 13 grant funding, one-quarter is funded through IEUA, and the members of the
21 Appropriative Pool are financing one-quarter.

22 The Monte Vista Motion argues that under Section 7.5 of the Peace Agreement, certain
23 entities are both directly and indirectly providing pro rata financial support for implementation of
24 the Recharge Master Plan and other OBMP activities, and yet are not receiving a proportional
25 benefit since the yield from that project is to be used to satisfy the replenishment obligation of
26 the desalters, the direct benefit of which accrues disproportionately to those entities which receive
27 benefit from the salt removal function of those facilities.

28

1 In response, on March 25, 2004, the Watermaster Board directed staff and legal counsel
2 to convene a process that would be responsive to the relief requested by the Monte Vista Motion.
3 Staff and legal counsel convened the attorney/manager group and began meeting with the parties
4 in April. While these meetings continue, a solution to the Salt Credits issue has emerged in the
5 form of a First Amendment to the Peace Agreement.

6 IV.

7 DESCRIPTION OF THE FIRST AMENDMENT

8 The First Amendment to the Peace Agreement is an elegant and complete resolution of
9 the relief requested by the Monte Vista Motion. The essence of the First Amendment is an
10 agreement that the equitable concept of Salt Credits can be eliminated from the Peace Agreement
11 if the obligation to dedicate the storm flow component of New Yield for Desalter Replenishment
12 is also eliminated from the Peace Agreement.

13 Section one of the First Amendment results in a complete resolution of all issues
14 concerning Salt Credits because it simply eliminates the concept of Salt Credits from the Peace
15 Agreement altogether.

16 Section two of the First Amendment then provides the balance to the loss of expectation
17 of equitable benefit that was to be derived from the Salt Credit concept by eliminating the new
18 stormwater yield from the implementation of the Recharge Master Plan from the hierarchy of
19 water available for desalter replenishment. While New Yield remains the second tier of source
20 water for desalter replenishment, the increment of water that is due to the new stormwater yield
21 is removed from this replenishment source. This is easily done from a Watermaster accounting
22 standpoint because at its April 24, 2003 Advisory Committee and Board meetings, Watermaster
23 elected to utilize an average figure of 12,000 acre-feet per year of new stormwater recharge to
24 account for the increment of New Yield attributable to implementation of the Recharge Master
25 Plan.

26 The 12,000 acre-feet figure represents the amount of additional stormwater that has been
27 estimated will be recharged to the Basin because of the improvements made to the recharge
28 facilities through the implementation of the Recharge Master Plan. According to the April 24,

1 2003 approval, this figure will be re-examined for accuracy after five years. This 12,000 acre-
2 foot figure is used in section two of the First Amendment in order to identify the increment of
3 water under discussion; the present Motion should not be construed as requesting the Court to
4 Order Watermaster to utilize such a figure.

5 Section three of the First Amendment then contains an assurance to the parties that, other
6 than as amended, Section 7.5 of the Peace Agreement shall remain in full force and effect
7 unaltered by the First Amendment. Section three is clear that if Watermaster finds it necessary to
8 assess a Replenishment Assessment pursuant to Peace Agreement § 7.5(d), nothing about the
9 First Amendment shall be construed to require Watermaster to levy that assessment separately
10 against the parties that receive desalted water.

11 The First Amendment to the Peace Agreement does not result in any changes to the Peace
12 Agreement that would alter the findings made by the Court in its July 13, 2000 Order concerning
13 the Peace Agreement.

14 The Peace Agreement as amended remains consistent with the OBMP. The concept of
15 Salt Credits as described in the Peace Agreement was not an element of OBMP implementation
16 except as the method through which the RWQCB would permit various OBMP activities (such
17 as recycled water recharge) to occur. With the adoption of the Basin Plan Amendment, these
18 activities will be permitted by the RWQCB without the use of a Salt Credits program.

19 In addition, the First Amendment will not impair the implementation of the desalter
20 element of the OBMP. Indeed, Jurupa Community Services District, by correspondence to
21 Watermaster dated September 8, 2004, expressed support for the Amendment while noting in
22 connection with that support the distinction between Safe Yield and Operating Safe Yield and
23 that CDA members are not required to dedicate their allocation of stormwater recharge for
24 desalter replenishment purposes. Section 7.5 of the Peace Agreement remains in effect and
25 continues to provide a process for obtaining replenishment water. The elimination of the
26 stormwater recharge component of New Yield from the second tier of the list of desalter
27 replenishment sources will not inhibit Watermaster's ability to fulfill its replenishment duties
28 under the Judgment. Ultimately, the desalter replenishment obligation will be met through Safe

1 Yield or through actual purchases of replenishment water, and these replenishment sources
2 remain intact despite the First Amendment.

3 Finally, the Peace Agreement as amended by the First Amendment will in no way change
4 Watermaster's commitment to implement the OBMP Phase I Report through the provisions of
5 the OBMP Implementation Plan in furtherance of the Physical Solution set forth in the Judgment
6 and in furtherance of Article X, section 2 of the California Constitution.

7 V.

8 **PROCEDURE FOR AMENDMENT OF PEACE AGREEMENT**

9 **A. The Terms of the Peace Agreement Govern Amendments to the Agreement**

10 Amendments to the Peace Agreement are governed by Peace Agreement § 10.14:

11 Amendments and/or Changes to Agreement.

- 12 (a) Any amendments and/or changes to this Agreement must be in writing, signed by
13 a duly authorized representative of the Parties hereto, and must expressly state the
14 mutual intent of the Parties to amend this Agreement as set forth herein. The
15 Parties to this Agreement recognize that the terms and conditions of this
16 Agreement, which are set forth herein in the Sections preceding this Section have
17 been arrived at through the collective negotiations by the Parties.
- 18 (b) The Parties hereby agree that no amendments and/or changes may be made to this
19 Agreement without the express written approval of each Party to this Agreement,
20 provided that upon request, no such approval shall be unreasonably withheld.

21 While Watermaster is not a signatory to the Peace Agreement, it did adopt a resolution by
22 which it committed itself to proceed in accordance with the terms of the Peace Agreement (Peace
23 Agreement Exhibit "A"). Similarly here, Watermaster is not a signatory to the First Amendment
24 to the Peace Agreement. However, on September 30, 2004, the Watermaster Board voted to
25 adopt Resolution 2004-03. Resolution 2004-03 mirrors Resolution 2000-05 and commits
26 Watermaster to proceed in accordance with the Peace Agreement as amended by the First
27 Amendment to the Peace Agreement.

1 The Peace Agreement takes the form of a contract between certain parties to the
 2 Judgment. Not every party to the Judgment was a signatory to the Peace Agreement. The Peace
 3 Agreement did not require Court approval. Rather, the Court approved Watermaster's adoption
 4 of Resolution 2000-05 and issued an Order directing Watermaster to proceed in accordance with
 5 the Peace Agreement. Similarly here, Watermaster's request to the Court is not for approval of
 6 the First Amendment itself, but rather for an approval of Watermaster's adoption of Resolution
 7 2004-03 and for an Order directing Watermaster to proceed in accordance with the Peace
 8 Agreement as so amended.

9 **B. Status of Approval of First Amendment**

10 As of the filing of this Motion, most of the parties to the Peace Agreement have approved
 11 the First Amendment. Based on the dates of consideration that the parties have reported,
 12 Watermaster believes that all approvals will be complete by the time of the hearing on this
 13 Motion. Watermaster will file a subsequent status report with the Court prior to the hearing
 14 reporting on the completed status of approvals. As of the date of this Motion, the status of
 15 approvals is as follows:

17	Three Valleys Municipal Water District	Approved
18	Monte Vista Water District	Approved
19	City of Pomona	Approved
20	City of Ontario	Approved
21	City of Upland	Will go to Council on October 25 th
22	City of Chino	Will go to Council on October 19 th
23	Western Municipal Water District	Will go to Board on October 20 th
24	San Antonio Water Company	Approved
25	Chino Basin Water Conservation District	Approved
26	Cucamonga Valley Water District	Will go to Board on October 26 th
27	Fontana Union Water Company	Will go to Board on October 27 th
28	City of Chino Hills	Approved

1	Jurupa Community Services District	Will go to Board on October 27th
2	State of California	In process for approval
3	Agricultural Pool	Approved
4	Non-Agricultural Pool	Approved
5	Appropriative Pool	Approved
6	Inland Empire Utilities Agency	Approved

7 Approval by Kaiser Ventures, Inc. ("Kaiser"), a signatory to the Peace Agreement, is not
 8 necessary for the First Amendment. Kaiser sold the last of its water rights in the Chino Basin to
 9 CCG, Ontario on, August 16, 2000, leaving it without any water rights in the Chino Basin.
 10 Watermaster General Counsel has communicated with Kaiser's attorney of record, Mr. Terry
 11 Cook, and it is Kaiser's position that because it has sold its water rights, it is not necessary to
 12 receive Kaiser's consent to the First Amendment. (Correspondence with Watermaster General
 13 Counsel as described in Declaration of Michael T. Fife attached here as Exhibit "C".)

14 The Peace Agreement is a contract, and as such it may be abandoned or rights under the
 15 contract waived by the parties at any stage of their performance. (*Pennel v. Pond Union School*
 16 *Dist.* (1973) 29 Cal.App.3d 832, 837-38 [abandonment]; *Martin v. Butter* (1949) 93 Cal.App.2d
 17 562, 566 [abandonment]; *Old Republic Ins. Co. v. FSR Brokerage, Inc.* (2000) 80 Cal.App.4th
 18 666, 678 [waiver]; *Peal v. Gulf Red Cedar Co. of California, Inc.* (1936) 15 Cal.App.2d 196, 199
 19 [waiver].) Upon abandonment, parties are released from any further performance owed to each
 20 other. (*Martin v. Butter, supra*, 93 Cal.App.2d at p. 566; *Honda v. Reed* (1958) 156 Cal.App.2d
 21 536, 540.) Waiver, on the other hand, is the intentional relinquishment of a known right by one
 22 party only. (*Old Republic Ins. Co. v. FSR Brokerage, Inc., supra*, 80 Cal.App.4th at p. 678.)
 23 Abandonment of a contract and waiver of a contractual right are both dependent upon the intent
 24 of the parties. (*Busch v. Globe Industries* (1962) 200 Cal.App.2d 315, 320 [abandonment]; *Peal*
 25 *v. Gulf Red Cedar Co. of California, Inc., supra*, 15 Cal.App.2d at p. 199 [abandonment and
 26 waiver].) By its statements, Kaiser has indicated an intent to abandon the Peace Agreement or to
 27 waive the amendment procedures contained therein. (*See Lubin v. Lubin* (1956) 144 Cal.App.2d
 28 781, 796 ["An abandonment of a contract ... may be accomplished by the repudiation of the

1 contract by one of the parties and by the acquiescence of the other party in such repudiation.”];
2 *Old Republic Ins. Co. v. FSR Brokerage, Inc., supra*, 80 Cal.App.4th at p. 678 [“California courts
3 will find waiver when a party intentionally relinquishes a right or when that party’s acts are so
4 inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has
5 been relinquished.”], quoting *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 33-34.)
6 Kaiser sold all of its water rights in the Chino Basin more than four years ago, and has stated that
7 the sale of its water rights implies that its signature is not necessary for an amendment to the
8 Peace Agreement. Accordingly, approval of the First Amendment does not require the approval
9 of Kaiser pursuant to Peace Agreement § 10.14.

10 VI.

11 CONCLUSION

12 Based on the foregoing, Watermaster respectfully requests the Court to acknowledge that
13 Watermaster has adopted a resolution supporting and approving the Peace Agreement as
14 amended by the First Amendment to the Peace Agreement, and that Watermaster and the parties
15 to the Peace Agreement have committed to implement the goals and plans of the OBMP Phase I
16 Report through the Implementation Plan in a manner consistent with the Peace Agreement as so
17 amended. Watermaster also respectfully requests the Court to find that the Peace Agreement as
18 amended by the First Amendment to the Peace Agreement remains consistent with the OBMP
19 and with Watermaster’s duties under the Judgment. Finally, Watermaster respectfully requests
20 the Court to enter an Order directing Watermaster to proceed in accordance with the Peace
21 Agreement as amended by the First Amendment to the Peace Agreement.

22
23 Dated: 10/13/04

HATCH & PARENT, A LAW CORPORATION


24
25 By: 
26 Scott S. Slater
27 Michael T. Fife
28 Attorneys for
CHINO BASIN WATERMASTER

Exhibit
A

WATERMASTER RESOLUTION
NO. 2004-03

**RESOLUTION OF THE CHINO BASIN WATERMASTER TO
PROCEED IN ACCORDANCE WITH THE PEACE
AGREEMENT AS AMENDED**

WHEREAS, the Judgment in the Chino Basin Adjudication, *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino Superior Court No. RCV 51010, created the Watermaster and directed it to perform the duties as provided in the Judgment or ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction; and

WHEREAS, the Judgment directs Watermaster to develop an OBMP subject to the limitations contained in the Judgment; and

WHEREAS, the Parties entered into that certain "Peace Agreement" dated June 29, 2000; and

WHEREAS, Watermaster adopted Resolution 2000-05 which was attached to the Peace Agreement as Exhibit "A," whereby Watermaster resolved to proceed with implementation of the OBMP in accordance with the Peace Agreement; and

WHEREAS, the Court Ordered Watermaster to proceed with implementation of the OBMP in accordance with the Peace Agreement in its Order dated July 13, 2000; and

WHEREAS, the parties are executing a First Amendment to the Peace Agreement a copy of which First Amendment is attached hereto as Exhibit "A."

NOW, THEREFORE, IT IS HEREBY RESOLVED AND DETERMINED THAT:

1. The goals and plans in the Phase I Report and their implementation as provided in and consistent with the Implementation Plan and the Peace Agreement as amended by the First Amendment are in furtherance of the physical solution set forth in the Judgment and Article X, Section 2 of the California Constitution.
2. Although not a signatory, the Chino Basin Watermaster Board supports and approves the Peace Agreement negotiated by the parties thereto and as amended by the First Amendment to the Peace Agreement.
3. Subject to the unanimous approval of the First Amendment to the Peace Agreement by the Parties, Watermaster will proceed in accordance with the OBMP Implementation Plan and the Peace Agreement as amended.
4. The Watermaster Board will transmit a request to the Court to issue an Order authorizing and directing Watermaster to proceed in accordance with this Resolution.

Exhibit
B

FIRST AMENDMENT TO PEACE AGREEMENT CHINO BASIN

THIS FIRST AMENDMENT TO PEACE AGREEMENT ("Agreement") is dated the 2nd of September 2004 regarding the Chino Groundwater Basin.

RECITALS

A. The Parties entered into that certain "Peace Agreement" dated June 29, 2000. The Peace Agreement was approved by the Court in San Bernardino Superior Court Case No. RCV 51010.

B. Section 5.5 of the Peace Agreement provided for Watermaster assignment of "Salt Credits." Certain parties to the Peace Agreement contend that Salt Credits were intended as a benefit to compensate non-discharging Appropriators for their obligation under Section 7.5(b) of the Peace Agreement to provide their share of the storm flow Recharge component of New Yield for Desalter Replenishment. The storm flow Recharge component of New Yield has been established by Watermaster at 12,000 acre-feet per annum.

C. Pursuant to that contention, Monte Vista Water District brought a "Motion for an Order Compelling Watermaster to Establish a Program to Equitably Allocate Benefits from Water Quality Mitigation Measures Under the Physical Solution" on March 11, 2004.

D. The Parties have agreed that if the obligation to dedicate the storm flow Recharge component of New Yield for Desalter Replenishment is eliminated from the Peace Agreement, then Salt Credits can be eliminated from the Peace Agreement. The Parties intend that the storm flow Recharge component of New Yield will remain assigned to the individual Appropriators as a component of Safe Yield, and will not be independently dedicated to Desalter Replenishment, even if it subsequently becomes determined to be part of the Safe Yield in accordance with Section 4.5 of the Peace Agreement and Sections 6.2 and 6.5 of the Watermaster Rules and Regulations.

E. Except as set forth herein, the Parties to the Peace Agreement have agreed that Desalter Replenishment will continue to be provided for as set forth in Section 7.5 of the Peace Agreement, as amended, with Desalter Replenishment being provided from the following sources in order of priority: (a) the 25,000 acre-feet of Kaiser water; (b) New Yield other than the 12,000 acre-feet of storm flow Recharge; (c) Safe Yield and (d) Additional Replenishment Water purchased by Watermaster.

NOW THEREFORE, in consideration of the covenants and conditions herein contained, and for other good and valuable consideration the receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Salt Credits Deleted.** Sections 1.1(rr) and 5.5 of the Peace Agreement are hereby deleted.

2. **Stormwater Component of New Yield Dedicated to Appropriators.**
The 12,000 acre-feet of storm flow Recharge determined by Watermaster to be part of New Yield shall be allocated to the Appropriators according to their percentages of Safe Yield under the Judgment. Notwithstanding section 7.5(c) of the Peace Agreement, those amounts will continue to be dedicated in those percentages to the Appropriators if that storm flow Recharge is subsequently determined to be Safe Yield. Section 7.5(b) of the Peace Agreement is hereby amended to read:

“New Yield, other than the storm flow Recharge component thereof, unless the water Produced and treated by the Desalters is dedicated by a purchaser of the desalted water to offset the price of desalted water to the extent of the dedication.”

3. **Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect and nothing in this First Amendment shall be construed to require Watermaster to levy the Replenishment Assessment contemplated by subdivision (d) of Section 7.5 thereof separately against the Parties that receive desalted water

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED: **CITY OF ONTARIO**

BY: _____

DATED: **CITY OF POMONA**

BY: _____

[Signatures continued on following pages]

DATED:

CITY OF UPLAND

BY: _____

DATED:

STATE OF CALIFORNIA

BY: _____

DATED:

CITY OF CHINO

BY: _____

DATED:

**CUCAMONGA COUNTY WATER
DISTRICT**

BY: _____

DATED:

**MONTE VISTA WATER
DISTRICT**

BY: _____

[Signatures continued on following pages]

DATED:

**FONTANA UNION WATER
COMPANY**

BY: _____

DATED:

CITY OF CHINO HILLS

BY: _____

DATED:

**JURUPA COMMUNITY
SERVICES DISTRICT**

BY: _____

DATED:

AGRICULTURAL POOL

BY: _____

DATED:

APPROPRIATIVE POOL

BY: _____

[Signatures continued on following pages]

DATED: **NON-AGRICULTURAL POOL**

BY: _____

DATED: **INLAND EMPIRE UTILITY
AGENCY**

BY: _____

DATED: **THREE VALLEYS MUNICIPAL
WATER DISTRICT**

BY: _____

DATED: **KAISER VENTURES, INC.**

BY: _____

DATED: **WESTERN MUNICIPAL
WATER DISTRICT**

BY: _____

[Signatures continued on following pages]

DATED:

**SAN ANTONIO WATER
COMPANY**

BY: _____

DATED:

**CHINO BASIN WATER
CONSERVATION DISTRICT**

BY: _____

Exhibit

C

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2 Michael T. Fife (State Bar No. 203025)
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8 Attorneys For
9 CHINO BASIN WATERMASTER

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 vs.

17 CITY OF CHINO, et al.,

18 Defendants.

Case No. RCV 51010

[Assigned for All Purposes to the Hon. J. Michael
Gunn]

DECLARATION OF MICHAEL T. FIFE
IN SUPPORT OF MOTION FOR AN
ORDER DIRECTING WATERMASTER
TO PROCEED IN ACCORDANCE WITH
THE PEACE AGREEMENT AS
AMENDED BY THE FIRST
AMENDMENT TO THE PEACE
AGREEMENT

Hearing Date: December 2, 2004
Hearing Time: 2:00 p.m.
Dept: R8

19
20
21 I, Michael T. Fife, declare as follows:


- 22
23 1. I am an attorney with the law firm of Hatch & Parent and am licensed to practice law in
24 the State of California.
25 2. Hatch & Parent serves as General Counsel to the Chino Basin Watermaster.
26 3. In my capacity as General Counsel I have participated in the negotiations regarding the
27 First Amendment to the Peace Agreement.
28

- 1 4. I have personal knowledge of the process associated with the First Amendment to the
2 Peace Agreement and all of the ancillary processes described in Watermaster's Points and
3 Authorities in Support of Motion for an Order Directing Watermaster to Proceed in
4 Accordance with the Peace Agreement as Amended by the First Amendment to the Peace
5 Agreement.
- 6 5. At its September 30, 2004 meeting, the Watermaster Board adopted Resolution 2004-03,
7 according to which Watermaster commits to proceed in accordance with the Peace
8 Agreement as amended by the First Amendment to the Peace Agreement.
- 9 6. On June 29, 2000, the Watermaster Board unanimously adopted the goals and plans of
10 the Optimum Basin Management Program ("OBMP") Phase I Report consistent with the
11 Peace Agreement and the Implementation Plan (Exhibit "B" to the Peace Agreement).
12 On that same day, Watermaster adopted Resolution 2000-05 (Exhibit "A" to the Peace
13 Agreement), through which Watermaster resolved that it will proceed in accordance with
14 the OBMP Implementation Plan and the Peace Agreement, and further that it will comply
15 with the terms and conditions described in Article V of the Peace Agreement.
- 16 7. On March 11, 2004, Monte Vista Water District filed a "Motion for an Order Compelling
17 Watermaster to Establish a Program to Equitably Allocate Benefits from Water Quality
18 Mitigation Measures Under the Physical Solution" ("Monte Vista Motion").
- 19 8. The Santa Ana Regional Water Quality Control Board ("RWQCB") adopted the existing
20 Basin Plan for the Santa Ana Watershed under Resolution No. 94-1 on March 11, 1994.
21 On January 22, 2004, the RWQCB adopted Resolution No. R8-2004-0001 amending the
22 Basin Plan to incorporate an updated TDS and nitrogen management plan including
23 revised subbasin boundaries; revised TDS and nitrate-nitrogen water quality objectives
24 for groundwater; revised TDS and nitrogen wasteload allocations; revised reach
25 designations, and TDS and nitrogen objectives and beneficial uses for specific surface
26 waters.
- 27 9. On September 30, 2004, the State Water Resources Control Board approved the Basin
28 Plan Amendments.

- 1 10. The Basin Plan amendments are the product of numerous studies on nitrogen and TDS
2 management conducted by the Nitrogen-TDS Task Force. Watermaster staff and Chino
3 Basin parties participated in those studies and in the Basin Plan Amendment. These
4 studies were the result of concerns expressed by numerous wastewater and water supply
5 agencies during the 1994 revisions to the Basin Plan.
- 6 11. On March 25, 2004, the Watermaster Board directed staff and legal counsel to convene a
7 process that would be responsive to the relief requested by the Monte Vista Motion. Staff
8 and legal counsel convened the attorney/manager group and began meeting with the
9 parties in April.
- 10 12. At its April 24, 2003 Advisory Committee and Board meetings, Watermaster elected to
11 utilize an average figure of 12,000 acre-feet per year of new stormwater recharge to
12 account for the increment of New Yield attributable to implementation of the Recharge
13 Master Plan.
- 14 13. Jurupa Community Services District, by correspondence to Watermaster dated September
15 8, 2004, expressed support for the Amendment while noting in connection with that
16 support the distinction between Safe Yield and Operating Safe Yield and that CDA
17 members are not required to dedicate their allocation of stormwater recharge for desalter
18 replenishment purposes.
- 19 14. As of the date of the Motion, the status of approvals is as follows:
- | | | |
|----|---|--|
| 20 | Three Valleys Municipal Water District | Approved |
| 21 | Monte Vista Water District | Approved |
| 22 | City of Pomona | Approved |
| 23 | City of Ontario | Approved |
| 24 | City of Upland | Will go to Council on October 25 th |
| 25 | City of Chino | Will go to Council on October 19 th |
| 26 | Western Municipal Water District | Will go to Board on October 20 th |
| 27 | San Antonio Water Company | Approved |
| 28 | Chino Basin Water Conservation District | Approved |

- 1 Cucamonga Valley Water District Will go to Board on October 26th
- 2 Fontana Union Water Company Will go to Board on October 27th
- 3 City of Chino Hills Approved
- 4 Jurupa Community Services District Will go to Board on October 27th
- 5 State of California In process for approval
- 6 Agricultural Pool Approved
- 7 Non-Agricultural Pool Approved
- 8 Appropriative Pool Approved
- 9 Inland Empire Utilities Agency Approved
- 10 15. Kaiser Ventures, Inc. ("Kaiser"), sold the last of its water rights in the Chino Basin to
- 11 CCG, Ontario, on August 16, 2000, leaving it without any water rights in the Chino
- 12 Basin.
- 13 16. On October 4-5, 2004, I communicated with Kaiser's attorney of record, Mr. Terry Cook,
- 14 and Mr. Cook expressed the position that because Kaiser has sold its water rights, it is not
- 15 necessary to receive Kaiser's consent to the First Amendment.
- 16 17. I swear under penalty of perjury that the foregoing is true and correct to the best of my
- 17 knowledge and belief.

18
19 Dated: 10/13/04

18
19 
20 By: _____
21 Michael T. Fife
22 Attorney for
23 CHINO BASIN WATERMASTER
24
25
26
27
28

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 October 13, 2004 I served the following:

- NOTICE OF MOTION AND MOTION FOR AN ORDER DIRECTING WATERMASTER TO PROCEED IN ACCORDANCE WITH THE PEACE AGREEMENT AS AMENDED BY THE FIRST AMENDMENT TO THE PEACE AGREEMENT
- POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER DIRECTING WATERMASTER TO PROCEED IN ACCORDANCE WITH THE PEACE AGREEMENT AS AMENDED BY THE FIRST AMENDMENT TO THE PEACE AGREEMENT

/_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

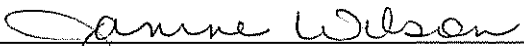
/__/_/ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/__/_/ 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 October 13, 2004 in Rancho Cucamonga, California.



Janine Wilson,
Chino Basin Watermaster

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