

REID & HELLYER

A Professional Corporation
STEVEN G. LEE, State Bar No. 138168
3880 Lemon Street, Fifth Floor
Post Office Box 1300
Riverside, California 92502-1300
Telephone: (951) 682-1771
Facsimile: (951) 686-2415

Attorneys for The Agricultural Pool Committee of the Chino Basin

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 51010

) The Hon. John P. Wade

) **THE AGRICULTURAL POOL**
) **COMMITTEE OF THE CHINO BASIN'S**
) **COMMENTS TO CHINO BASIN**
) **WATERMASTER'S MOTION FOR**
) **APPROVAL OF TEMPLATE STORAGE**
) **AND RECOVERY AGREEMENT**

) DATE: August 11, 2009

) TIME: 9:30

) DEPT.: S32

The Agricultural Pool Committee of the Chino Basin (hereinafter "Ag Pool") hereby submits the following comments to Chino Basin Watermaster's Motion for Approval of Template Storage and Recovery Agreement:

I

INTRODUCTION

On December 21, 2007, after a three year effort by the stakeholders in the Chino Basin, the Court signed an Order approving the suite of documents that have come to be known as the Peace II measures. The Peace II measures constitute a hallmark achievement in basin management and in the ability of parties with varying economic interests to work together for the common benefit of the entire Chino Basin.

1 One of the key provisions in Peace II dealt with a mechanism for freeing up previously
2 "stranded" Overlying (Non-Agricultural) Pool groundwater that had accumulated in storage, and
3 transferring it to Watermaster. Under Peace II, this water was "for use as replenishment for the
4 Desalters and for use in connection with a Storage and Recovery Program." (See Watermaster's
5 Motion - Exhibit "B"; first paragraph of Recitals.) Prior to the Peace II measures, this water was
6 incapable of being used for either replenishment or for use in connection with a Storage and
7 Recovery Program.

8 By way of Watermaster's Motion, Watermaster, (with guidance from the Pools, Advisory
9 Committee and Board), has made a policy decision that approval of the Template Storage and
10 Recovery Agreement will act to provide a funding mechanism to meet the future capital
11 improvement obligations required of the Appropriative Pool under the Recharge Master Plan.
12 Watermaster asserts that the proceeds derived from a sale of this unique block of water at this time,
13 and the use of such funds, outweighs the policy argument that water should never be exported from
14 the basin without being replenished. Watermaster correctly states that the Template Storage and
15 Recovery Agreement has broad support as it was approved by the Appropriative Pool and by the
16 Overlying (Non-Agricultural) Pool on June 11, 2009 and by the Advisory Committee and the
17 Watermaster Board on June 25, 2009.

18 The planned auction of Overlying (Non-Agricultural) Pool water currently held in storage
19 and the funds derived from such an auction, is viewed as a superior finance mechanism by the
20 Appropriative Pool. Specifically, the excess auction funds would be used to finance the
21 Appropriative Pool's share of future capital improvements under the Recharge Master Plan.
22 Watermaster also views the current prolonged drought and difficulty in obtaining a reliable source
23 for imported water by many water purveyors, as a key time to sell this unique block of the Overlying
24 (Non-Agricultural) Pool water for a price that may not be seen again, should wet winters return to
25 our area. On June 16, 2009 (at its regularly scheduled Ag Pool Committee Meeting) the Ag Pool
26 "abstained" from taking a position on the Template Storage and Recovery Agreement as it felt a
27 further analysis of the policy considerations behind the auction and export of water should be
28 reviewed, with serious consideration being given for other competing policy concerns.

1 The Ag Pool does not have a direct financial benefit (as does the Appropriative Pool) if
2 Watermaster's motion is granted by this Court. However, as an indirect beneficiary, the Ag Pool is
3 very interested in policy decisions that are made that affect the long-term interests of everyone in the
4 Chino Basin. As such, the Ag Pool has deemed it necessary to provide its comments and analysis
5 relating to Watermaster's Motion for Approval of Template Storage and Recovery Agreement.

6 II

7 ANALYSIS

8 The Ag Pool's abstention on June 16, 2009, was two-fold. First, that the Ag Pool needed
9 additional time to review the proposed Template Storage and Recovery Agreement to ascertain if
10 the Template Agreement would cause "Material Physical Injury" and if the planned proceeds from
11 the auction were in fact being properly earmarked to be used in a manner that met the definition of
12 "Broad Mutual Benefit." Specifically, were strict enough controls in place to ensure that the
13 proceeds from the auction could only be used as a finance vehicle for the Appropriative Pool's share
14 of capital improvements under the Court approved Recharge Master Plan? Second, whether the
15 export (out of the basin) of a unique block of Overlying (Non-Agricultural) Pool water makes good
16 public policy, in light of the view that water will likely become more valuable with time. This
17 second analysis is based upon the policy consideration that if water is going to become more
18 valuable, we shouldn't be exporting water, rather, we should keep everything we can within the
19 basin to meet future demand.

20 At the June 16, 2009 Ag Pool Committee Meeting, the members of the Ag Pool Committee
21 fully supported the Storage and Recovery Plan (Program element 9 of the Optimum Basin
22 Management Program ("OBMP")). Concerns were raised by members of the Ag Pool that although
23 this block of water was unique in many ways, any export of water outside the Chino Basin, (with no
24 replenishment obligation) could create a precedent that would not be good policy and which some
25 members of the Ag Pool viewed as contrary to the 1978 Judgment (specifically paragraph 7(b) of
26 Exhibit "H" to the Judgment).

27 In response to this concern and in an effort to more fully educate all Pool members about the
28 specifics of the Motion for Approval of the Template Storage and Recovery Agreement and the

1 water auction process, Watermaster staff scheduled a workshop that was held on July 16, 2009.
2 In response to concerns raised at the July 16th Workshop, Watermaster legal counsel made revisions
3 to the Motion for Approval of the Template Storage and Recovery Agreement. One key revision
4 made to the Motion which directly addressed one of the concerns of the Ag Pool, provided for the
5 inclusion of additional language to the Motion and to the [Proposed] Order. Paragraph 4 of the
6 [Proposed] Order now provides that "this finding [i.e., the sale of 40,000 acre feet of Overlying
7 Non-Agricultural Pool water in storage] may not be used as precedent for future export proposals . .
8 . " This language helps to alleviate the Ag Pool's concerns about setting precedent as it relates to
9 any future export of water from the Chino Basin without that export incurring a replenishment
10 obligation.

11 Following the July 16, 2009 workshop, Watermaster counsel also included additional
12 language (see page 11 of the Motion, lines 4 through 12) that further defines how all excess funds
13 obtained from the auction will be used to ensure strict compliance with the Court approved
14 Recharge Master Plan. This additional language also helps alleviate the concern by the Ag Pool that
15 all excess funds from the auction be used exclusively for capital improvements related to
16 production, storage, treatment and distribution of water in the Chino Basin and for no other purpose.

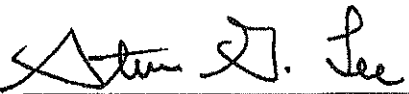
17 III

18 CONCLUSION

19 The Ag Pool fully supports a storage and recovery program as mandated under program
20 element 9 of the OBMP. However, the Ag Pool desires to voice its policy concern and have it noted
21 on the record, that export of water from the basin, without a replenishment obligation being
22 imposed, should be avoided in the future, absent a finding by the Court that compelling reasons
23 support such action.

24 DATED: July 29, 2009

REID & HELLYER
A PROFESSIONAL CORPORATION

25 By: 
26

27 Steven G. Lee
28 Attorneys for The Agricultural Pool
Committee of the Chino Basin

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 29, 2009 I served the following:

- 1) THE AGRICULTURAL POOL COMMITTEE OF THE CHINO BASIN'S COMMENTS TO CHINO BASIN WATERMASTER'S MOTION FOR APPROVAL OF TEMPLATE STORAGE AND RECOVERY AGREEMENT**

☒ 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

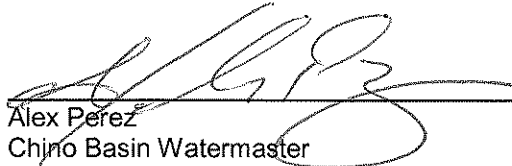
☐ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

☐ 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 July 29, 2009 in Rancho Cucamonga, California.



Alex Perez
Chino Basin Watermaster

MICHAEL CAMACHO
6055 ZIRCON AVE.
RANCHO CUCAMONGA, CA 91701

KEN WILLIS
LEAGUE OF CA HOMEOWNERS
99 "C" STREET, SUITE 209
UPLAND, CA 91786

ROBERT BOWCOCK
INTEGRATED RESOURCES MGMNT
405 N. INDIAN HILL BLVD
CLAREMONT, CA 91711-4724

MICHAEL WHITEHEAD
P.O. BOX 6010
EL MONTE, CA 91734

GEOFFREY VANDEN HEUVEL
CBWM BOARD MEMBER
8315 MERRILL AVENUE
CHINO, CA 91710

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

BOB KUHN
669 HUNTERS TRAIL
GLEN DORA, CA 91740

CHARLES FIELD
4415 FIFTH STREET
RIVERSIDE, CA 92501

JAMES CURATALO
CVWD
PO BOX 638
RANCHO CUCAMONGA, CA
91729-0638

GLEN DURRINGTON
5512 FRANCIS ST
CHINO, CA 91710

JOHN ROSSI
WMWD
PO BOX 5286
RIVERSIDE, CA 92517-5286

Members:

Bob Bowcock	bbowcock@irmwater.com
Manuel Carrillo	Manuel.Carrillo@SEN.CA.GOV
Mark Kinsey	mkkinsey@mvwd.org
Mark Ward	mark_ward@ameron-intl.com
Mark Wildermuth	mwildermuth@wildermuthenvironmental.com
Martha Davis	mdavis@ieua.org
Martin Rauch	martin@rauchcc.com
Martin Zvirbulis	martinz@cvwdwater.com
Marvin Shaw	mshaw@ieua.org
Maynard Lenhert	directorlenhert@mvwd.org
Michael T Fife	MFife@bhfs.com
Mike Del Santo	mdelsanto@prologis.com
Mike Maestas	mmaestas@chinohills.org
Mike McGraw	mjmcmgraw@FontanaWater.com
Mike Thies	mthies@spacecenterinc.com
Mohamed El-Amamy	melamamy@ci.ontario.ca.us.
Nathan deBoom	n8deboom@gmail.com
Pam Wilson	pwilson@bhfs.com
Paul Deutsch	pdeutsch@geomatrix.com
Paul Hofer	farmwatchtoo@aol.com
Paul Lacroix	placroix@reliant.com
Peggy Asche	peggy@wvwd.org
Pete Hall	r.pete.hall@cdcr.ca.gov
Peter Hettinga	peterhettinga@yahoo.com
Phil Krause	pkrause@parks.sbcounty.gov
Phil Rosenberg	prosenberg@hargis.com
Rachel R Robledo	rrobledo@bhfs.com
Raul Garibay	raul_garibay@ci.pomona.ca.us
Richard Atwater	Atwater@ieua.org
Rick Hansen	rhansen@tvmwd.com
Rick Rees	rrees@geomatrix.com
Rita Kurth	ritak@cvwdwater.com
Robert Cayce	rcayce@airports.sbcounty.gov
Robert DeLoach	robertd@cvwdwater.com
Robert Rauch	robert.rauchcc@verizon.net
Robert Tock	rtock@jcsd.us
Robert W. Nicholson	rwnicholson@sgvwater.com
Robert Young	rkyoung@fontanawater.com
Roger Florio	roger.florio@ge.com
Ron Craig	RonC@rbf.com
Ryan Shaw	rshaw@ieua.org
Sam Fuller	samf@sbvmwd.com
Sandra S. Rose	directorrose@mvwd.org
Sandy Lopez	slopez@ci.ontario.ca.us
Scott Burton	sburton@ci.ontario.ca.us
Steve Arbelbide	sarbelbide@californiasteel.com
Tej Pahwa	tpahwa@dtsc.ca.gov
Terry Catlin	ticatlin@verizon.net
Timothy Ryan	tjryan@sgvwater.com
Tom Love	TLove@ieua.org
Tony Banages	tbanegas@sunkistgrowers.com
Tracy Tracy	ttracy@mvwd.org
Vanessa Hampton	vhampton@jcsd.us
WM Admin Staff	

Members:

Al Lopez	lopezsixto@netzero.net
Andy Malone	amalone@wildermuthenvironmental.com
Anthony La	ala@ci.upland.ca.us
April Woodruff	awoodruff@ieua.org
Arnold Rodriguez	jarodriguez@sarwc.com
Bill Kruger	citycouncil@chinohills.org
Bill Rice	WRice@waterboards.ca.gov
Bill Thompson	bthompson@ci.norco.ca.us
blaffoon@rb8.swrcb.ca.gov	blaffoon@rb8.swrcb.ca.gov
Bob Bowcock	bbowcock@irmwater.com
Bob Feenstra	bobfeenstra@gmail.com
Bob Kuhn	bgkuhn@aol.com
Bonnie Tazza	bonniet@cvwdwater.com
Brenda Fowler	balee@fontanawater.com
Brian Hess	bhess@niagarawater.com
Carl Hauge	chauge@water.ca.gov
Charles Field	cdfield@att.net
Charles Moorrees	cmoorrees@sawaterco.com
Cindy LaCamera	clacamera@mw2dh.com
Craig Stewart	cstewart@geomatrix.com
Cruz Diaz	cruzdiaz1965@hotmail.com
Curtis Aaron	caaron@fontana.org
Cyndi Windell	cynthia.windell@sce.com
Dan Arrighi	darrighi@sgvwater.com
Dan Hostetler	dghostetler@csupomona.edu
Dan McKinney	dmckinney@rhlaw.com
Dave Argo	argodg@bv.com
Dave Crosley	DCrosley@cityofchino.org
David B. Anderson	danders@water.ca.gov
David D DeJesus	tvmwddiv2rep@gmail.com
David D DeJesus	davidciigm@aol.com
David Ringel	david.j.ringel@us.mwhglobal.com
Dennis Dooley	ddooley@angelica.com
Don Galleano	donald@galleanowinery.com
Duffy Blau	Duffy954@aol.com
Eldon Horst	ehorst@jcsd.us
Eunice Ulloa	eulloa@cbwcd.org
Frank Brommenschenkel	frank.brommen@verizon.net
Fred Lantz	flantz@ci.burbank.ca.us
Gene Koopman	GTKoopman@aol.com
Geoffrey Vanden Heuvel	GeoffreyVH@juno.com
Gerard Thibeault	gthibeault@rb8.swrcb.ca.gov
Gerry Foote	gfoote@cbwcd.org
Grace Cabrera	grace_cabrera@ci.pomona.ca.us
Greg Woodside	gwoodside@ocwd.com
Henry Pepper	henry_pepper@ci.pomona.ca.us
James Curatalo	jamesc@cvwdwater.com
James Jenkins	cnomgr@airports.sbcounty.gov
Jane Farwell	jfarwell@waterrights.swrcb.ca.gov
Janine Wilson	jwilson@cbwm.org
Jarlath Oley	joley@mw2dh.com
Jeff Pierson	jpierson@unitexcorp.com
Jerry King	jking@psomas.com
Jim Hill	jhill@cityofchino.org
Jim Taylor	jim_taylor@ci.pomona.ca.us
Joe P LeClaire	jleclaire@wildermuthenvironmental.com
John Anderson	janderson@ieua.org
John Ayers	jayers@sunkistgrowers.com
John Bosler	JohnBo@cvwdwater.com
John Huitsing	johnhuitsing@gmail.com
John Thornton	jthornton@psomas.com
John V. Rossi	jrossi@wmwd.com

Members:

Alfred E. Smith	asmith@nossaman.com
Amy Steinfeld	asteinfeld@bhfs.com
Andrew Lazenby	lazenbyag@bv.com
Art Kidman	akidman@mkblawyers.com
Barbara Swanson	Barbara_Swanson@yahoo.com
Beth Barry	bethb@cvwdwater.com
Bob Feenstra	bobfeenstra@gmail.com
Carol	marie@tragerlaw.com
Carol Davis	cdavis@lagerlof.com
Chris Swanberg	chris.swanberg@corr.ca.gov
Dan McKinney	dmckinney@rhlaw.com
Eric Garner	elgarner@bbklaw.com
Fred Fudacz	ffudacz@nossaman.com
Jean Cihigoyenetché	Jean_CGC@hotmail.com
jeeinc@aol.com	jeeinc@aol.com
Jennifer Novak	jennifer.novak@doj.ca.gov
Jill Willis	jnwillis@bbklaw.com
Jim Markman	jmarkman@rwglaw.com
Jim@city-attorney.com	Jim@city-attorney.com
jimmy@city-attorney.com	jimmy@city-attorney.com
John Cotti	jcotti@localgovlaw.com
John Schatz	jschatz13@cox.net
Joseph S. Aklufi	AandWLaw@aol.com
Kuperberg, Joel	jkuperberg@rutan.com
Mark Hensley	mhensley@localgovlaw.com
Michelle Staples	mstaples@jdplaw.com
Rodney Baker	rodbaker03@yahoo.com
smt@tragerlaw.com	smt@tragerlaw.com
Steve Kennedy	skennedy@bbmblaw.com
Steven K. Beckett	skbeckett@bbmblaw.com
Steven Lee	slee@rhlaw.com
Steven R. Orr	sorr@rwglaw.com
Tom Bunn	TomBunn@Lagerlof.com
Tom McPeters	THMcP@aol.com
Tram Tran	ttran@mkblawyers.com
William J. Brunick	bbrunick@bbmblaw.com
William P. Curley	wcurley@rwglaw.com

John Vega
Justin Brokaw
Kathy Kunysz
Kathy Tiegs
Ken Jeske
Ken Kules
Kenneth Willis
Kevin Sage
Kyle Snay
Lisa Hamilton
Maria Klachko Blair
Mark Hensley
Martin Zvirbulis
Mike Thies
tsenl@dwq.swrcb.ca.gov

johnv@cvwdwater.com
jbrokaw@hughes.net
kkunysz@mwdh2o.com
Kathyt@cvwdwater.com
kjeske@eee.org
kkules@mwdh2o.com
kwillis@homeowners.org
Ksage@IRMwater.com
kylesnay@gswater.com
Lisa.Hamilton@corporate.ge.com
mklachko-blair@bhfs.com
mhensley@localgovlaw.com
martinz@cvwdwater.com
mthies@spacecenterinc.com
tsenl@dwq.swrcb.ca.gov