

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, ET AL.,

Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the Honorable
JOHN P. WADE]

**[REVISED PROPOSED] ORDER ON
WATERMASTER'S MOTION FOR
APPROVAL OF TEMPLATE STORAGE
AND RECOVERY AGREEMENT**

Having read, reviewed and considered all pleadings filed in support and in response, if any, to the Watermaster's Motion for Approval of Template Storage and Recovery Agreement, including the argument of counsel presented at the August 11, 2009 hearing, and good cause appearing therefore,

THE COURT FINDS THAT:

(1) The proposed Storage and Recovery Agreement will not cause Material Physical Injury, as that is defined in the June 2000 Peace Agreement, so long as the final Agreement is conditioned upon adherence to the Judgment, the Peace Agreement, and the requirement that the recovery of the water does not cause permanent subsidence. The Court hereby incorporates the findings and recommendations of Watermaster's staff, as expressed in the June 25, 2009 Advisory

1 Committee and Board's staff report and supplemental staff report attached to Watermaster's Motion
2 as Exhibit "C."

3 (2) The proposed allocation of benefits from implementation of the Template Storage
4 and Recovery Agreement, as described in Watermaster's Motion and in the June 25, 2009 staff
5 report and supplemental staff report to the Advisory Committee and Board, will provide broad
6 mutual benefits consistent with the Peace Agreement. To meet the broad mutual benefit standard,
7 Watermaster conditioned its approval on a commitment that the revenues received from the auction
8 that are in excess of the purchase price set forth in the Purchase and Sale Agreement, be placed in
9 an interest bearing escrow account and earmarked by Watermaster for the following purpose:

10
11 "Upon receipt of a written recommendation from the Appropriative Pool
12 and further Board approval, Watermaster may authorize the use of excess
13 revenues received from the Purchase and Sale Agreement for capital
14 improvements to be spread equitably among management zones and that
15 are: (i) designed, approved and scheduled for timely implementation under
16 the Court approved Recharge Master Plan or any approved yield
17 enhancement/preservation program and (ii) will facilitate Watermaster's
18 recharge goals of maintaining hydrologic balance within each
19 Management Zone and the Basin. "Capital improvements" means
20 physical facilities that will be actually used in the production, storage,
21 treatment and distribution of water that will recharge the Chino Basin,
22 including but not limited to recharge basins, injection wells, pipelines and
23 water supplies. The qualifying capital improvements may facilitate
24 recharge directly or indirectly through approved in-lieu strategies."

25 The Court's approval of the Template Storage and Recovery Agreement is conditioned upon
26 compliance with this condition. Watermaster shall provide an accounting to the parties on an
27 appropriate basis and in a form reasonably intended to allow the parties to evaluate Watermaster's
28 compliance with this condition. If any party believes that Watermaster is not in compliance with
the condition, then it may file an objection and request review by the Court. The objecting party
shall meet and confer with Watermaster prior to the filing of its objection.

(3) The Court finds that the proposed Template Storage and Recovery Agreement
contains sufficient detail to allow the Court to evaluate and approve the Template Agreement.
However, because the Template Agreement is not yet in the final form, the Court hereby Orders

1 Watermaster to provide notice to all parties when the Template Agreement is in the final form.
2 Within 30 days of such Notice, any party who believes that the final Agreement differs substantially
3 from the Template Agreement, may provide Watermaster with a notice that the party believes the
4 Agreement differs and that this difference causes harm to that individual or to the Basin. In such
5 event, Watermaster will schedule a hearing with the Court to consider the matter. The scope of
6 such hearing shall be strictly limited to that aspect of the final Agreement that differs from the
7 Template Agreement and the harm caused to the moving party or to the Basin. If no such notice is
8 received by Watermaster within 30 days of Watermaster's Notice, the final Agreement shall be
9 presumed approved.

10 (4) The export of the water that will be auctioned is not prohibited by the Judgment and
11 does not trigger the replenishment requirement of Judgment, Exhibit "H," Paragraph 7(b).
12 However, this finding is specifically limited to the quantity of water that is the subject of the
13 Template Storage and Recovery Agreement. This finding may not be used as precedent for future
14 export proposals and this finding shall not apply to any water placed in to the storage account in
15 addition to the initial amount.

16 On the basis of the foregoing, Watermaster's Motion is hereby GRANTED.
17
18

19 August 11, 2009

The Honorable John P. Wade

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 August 4, 2009 I served the following:

1) [REVISED PROPOSED] ORDER ON 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

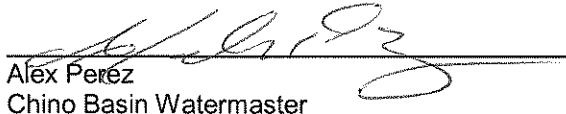
☐ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

☐ 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 August 4, 2009 in Rancho Cucamonga, California.


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