

FILED **FREE EXEMPT**  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

SEP 17 2009

BY Olivia McDonald  
DEPUTY

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]

JPW  
~~[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 the  
14 Appropriative Pool share of capital improvements to be spread equitably  
15 among management zones and that are: (i) designed, approved and  
16 scheduled for timely implementation under the Court approved Recharge  
17 Master Plan or any approved yield enhancement/preservation program and  
18 (ii) will facilitate Watermaster's recharge goals of maintaining hydrologic  
19 balance within each Management Zone and the Basin. "Capital  
20 improvements" means physical facilities that will be actually used in the  
21 production, storage, treatment and distribution of water that will recharge  
22 the Chino Basin, including but not limited to recharge basins, injection  
23 wells, pipelines and water supplies. The qualifying capital improvements  
24 may facilitate recharge directly or indirectly through approved in-lieu  
25 strategies."

26 The Court's approval of the Template Storage and Recovery Agreement is conditioned upon  
27 compliance with this condition. Watermaster shall provide an accounting to the parties on an  
28 appropriate basis and in a form reasonably intended to allow the parties to evaluate Watermaster's  
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 *September 15*  
19 *August 11, 2009*

*John P. Wade*  
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 July 20, 2009 I served the following:

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

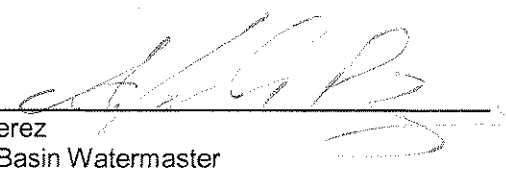
/ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ 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 July 20, 2009 in Rancho Cucamonga, California.

  
\_\_\_\_\_  
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Chino Basin Watermaster

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