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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

Assigned for All Purposes to the Honorable
Stanford E. Reichert

**THE AGRICULTURAL POOL
COMMITTEE OF THE CHINO BASIN'S
RESPONSE TO PARAGRAPH 31 MOTION
BY THE OVERLYING (NON-
AGRICULTURAL) POOL COMMITTEE**

DATE: May 14, 2010

TIME: 10:30 a.m.

DEPT.: C-1

The Agricultural Pool Committee of the Chino Basin (hereinafter "Ag Pool") hereby submits the following response to the motion by the Overlying (Non-Agricultural) Pool Committee (hereinafter "Non-Ag") for Court Review of Watermaster Actions pursuant to Section 31 of Judgment:

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

1 entire Chino Basin. By way of the Non-Ag Pool's paragraph 31 motion, this consensus building
2 model of basin management has been severely strained and may be in danger of reverting back to
3 the contentious, distrustful, and sometimes chaotic environment with predated the Peace I and Peace
4 II measures. Transparency and trust are vital components to the future effective management of the
5 Chino Basin.

6 The Ag Pool does not have a direct financial benefit (as do the Appropriative Pool and Non-
7 Ag Pool) in the pending motion that is before this Court. However, as an indirect beneficiary, the
8 Ag Pool is very interested in policy decisions that were agreed upon by the various stakeholders, but
9 which now are being challenged, due to perceived legal deficiencies in the notice given by
10 Watermaster relating to the purchase of the Non-Ag Pool water.

11 The legal issue before this Court, along with the underlying long-term storage and recovery
12 plan (program element 9 of the Optimum Basin Management Program or OBMP) and its
13 implementation, are of the utmost importance to all Chino Basin stakeholders, including the Ag
14 Pool. As such, the Ag Pool deems it necessary to provide a response to the pending Paragraph 31
15 Motion. In order to more fully understand the key role that the Ag Pool has played and continues to
16 play in the Chino Basin, a brief look back may be helpful to the Court.

17 II

18 BACKGROUND

19 Under paragraph 44 of the 1978 Judgment, the Agricultural Pool received a fixed allocation
20 of the safe yield of the Chino Basin in the amount of 414,000 acre feet in any five consecutive years.
21 Exhibit H to the Judgment addressed the allocation of unused agricultural water: "[T]o the extent
22 that, in any five years, any portion of the share of Safe Yield allocated to the Overlying
23 (Agricultural) Pool is not produced, such water shall be available for reallocation to the members of
24 the Appropriative Pool . . ."¹ The Judgment does not provide any further guidance about the
25 calculation of the reallocation.

26
27
28 ¹The cited language then establishes priorities for the allocation, first to compensate for any
reduction in Operating Safe Yield, second to land conversion, and third to act as a supplement to
Operating Safe Yield for appropriators.

1 The first year of reallocation was fiscal year (FY) 1983-84, the sixth full fiscal year of the
2 Judgment. During each of the five consecutive prior fiscal years, agricultural production was less
3 than 82,800 AF/year. The cumulative underproduction was in excess of 81,000 AF. The amount
4 reallocated in FY 1983-84 was 26,355 AF, which bears no obvious relation to the amount of the
5 under use of agricultural rights in the prior five-year period. After FY 1987-88, and following
6 negotiations between the Ag Pool and the Appropriative Pool, the Appropriative Pool agreed to pay
7 for all future Ag Pool assessments and costs in exchange for the amount of the unused agricultural
8 water rights in the *prior* fiscal year (i.e., no need to base reallocation on five consecutive fiscal
9 years.) After FY 1999-2000, and following Peace I being signed, the amount reallocated in a year
10 now equals the amount of unused agricultural water rights. The amount of "extra" water from the
11 "accelerated" or "early" transfer under Peace I has resulted in a multi-million dollar value to the
12 Appropriative Pool during the past years, and will continue to result in a substantial monetary value
13 to the Appropriative Pool through 2030. Consequently, under section 5.4(a) of the Peace I
14 agreement, all assessments and expenses of the Ag Pool are paid by the Appropriative Pool.²

15 Additionally, the Ag Pools contribution of water rights in the form of supplying
16 replenishment water for use in the desalter, was a major factor in the success of the desalter
17 program. Its contribution not only had substantial monetary value, but it continues to be vital to the
18 continued success of the desalter and in obtaining hydraulic control in the Chino Basin, a key
19 provision of the Peace II measures.

20 III 21 ANALYSIS

22 As is evident from a review of the Non-Ag paragraph 31 motion, as well as the Oppositions
23 of the Watermaster and the Appropriative Pool, the legal issue presented before this Court is
24 whether notice was properly given under the Purchase and Sale Agreement. Watermaster, in its
25 Opposition, has described different means of notice and service. Watermaster also specifically
26

27 ²The explanation of how and why the Ag Pool's expenses are paid has been included in this
28 Response as the Non-Ag made reference to this fact in its pending paragraph 31 motion. It
questions why this arrangement exists and also questions why its costs and expenses should not be
borne by the Appropriative Pool.

1 identifies what the dispute is about as does the Appropriative Pool in its Opposition. Given the fact
2 that the Purchase and Sale Agreement concerns *only* the Appropriative Pool and Non-Ag Pool or
3 Watermaster staff, and given the fact that the issue has been competently and fully briefed, the Ag
4 Pool chooses not to address the merits of the pending motion before this Court.

5 IV

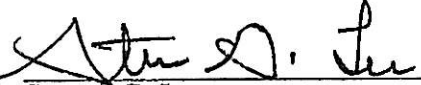
6 CONCLUSION

7 The Ag Pool fully supports a storage and recovery program as mandated under program
8 element 9 of the OBMP and as agreed to by all stakeholders under the Peace II measures. Its
9 implementation is essential to the effective and wise management of the Chino Basin. The Ag Pool,
10 as a minority stakeholder in the Chino Basin, is also mindful that the rights of minority stakeholders
11 in the Chino Basin need to be honored, respected and protected. The current dispute has only
12 underscored the importance of this concept, at a time when the Watermaster Board is considering
13 whether to weaken the decision-making authority of Pools or Pool members whose views conflict
14 with the majority, as suggested by comments made at the April 2010 Watermaster Board meeting.
15 The Ag Pool fully supports further oversight by this Court, to ensure that the rights of all
16 stakeholders in the Chino Basin are adequately protected.

17 The Ag Pool encourages the Court to schedule workshop-type hearings (on a quarterly or
18 other periodic basis) as was suggested by this Court (at an earlier ex parte hearing on April 2, 2010).
19 The Ag Pool views such workshop-type hearings as a further opportunity for the Court to better
20 understand the program elements of the OBMP, as well as to provide oversight for matters of basin-
21 wide concern to the various stakeholder under the Judgment and Peace I and II measures. It may
22 also assist in avoiding disputes, like the instant dispute, from coming before this Court.

23 DATED: April 23, 2010

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24
25 By: 
26 Steven G. Lee
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28 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 April 26, 2010 I served the following:

1) THE AGRICULTURAL POOL COMMITTEE OF THE CHINO BASIN'S RESPONSE TO PARAGRAPH 31 MOTION BY THE OVERLYING (NON- AGRICULTURAL) POOL COMMITTEE

☒ 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 April 26, 2010 in Rancho Cucamonga, California.



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