

FEE EXEMPT

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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.,

Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the Honorable
STANFORD E. REICHERT]

**SUPPLEMENT TO MOTION FOR COURT
APPROVAL OF 2013 AMENDMENT TO
2010 RECHARGE MASTER PLAN
UPDATE**

Date: April 4, 2014
Time: 1:30 p.m.
Dept.: R-6

1 **I. INTRODUCTION**

2 In accordance with the Court's December 13, 2013 order, the Chino Basin Watermaster
3 ("Watermaster") and the Inland Empire Utilities Agency ("IEUA") hereby supplement their
4 November 4, 2013 Motion for Approval of the 2013 Amendment to the 2010 Recharge Master
5 Plan Update ("2013 Amendment"), as to Section 5 of the 2013 Amendment. The Court should
6 approve Section 5 because it contains monitoring, reporting and accounting practices necessary to
7 estimate local project stormwater recharge and new yield, which fairly balance the accuracy of
8 the resulting recharge and new yield estimates with the efficiencies and cost effectiveness of the
9 approach, in satisfaction of the Court's *Order Approving Watermaster Compliance with*
10 *Condition Subsequent Number Eight and Approving Procedures to be Used to Allocate Surplus*
11 *Agricultural Pool Water in the Event of a Decline in Safe Yield*, dated October 8, 2010 ("October
12 8, 2010 Order").

13 **II. BACKGROUND**

14 On November 4, 2013, Watermaster and IEUA jointly filed their *Motion for Court*
15 *Approval of 2013 Amendment to 2010 Recharge Master Plan Update* ("Motion for Approval").
16 The Motion for Approval requested the Court's approval of the 2013 Amendment to the 2010
17 Recharge Master Plan Update in its entirety, and a finding that the 2013 Amendment satisfies the
18 Court's orders and directions regarding amendment of the 2010 Recharge Master Plan Update
19 contained in the Court's October 8, 2010 Order. Prior to that time, Watermaster had moved the
20 Court, and the Court had agreed to consolidate its hearing on the Motion for Approval with its
21 hearing on the City of Fontana's ("Fontana") September 24, 2013, *Motion to Revise Section 5 of*
22 *the 2013 Recharge Master Plan Update and Restated Judgment* ("Fontana Motion"). (*Order*
23 *Granting Chino Basin Watermaster's Ex Parte Application to Continue Hearing on Motion to*
24 *Revise Section 5 of the 2013 Recharge Master Plan Update and Restated Judgment* (Oct. 3,
25 2013), p. 2.)

26 On November 18, 2013, Fontana and Watermaster entered into a stipulation¹ whereby

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¹ *Stipulation Regarding City of Fontana's Motion to Revise Section 5 of the 2013 Recharge*
28 *Master Plan Update and Restated Judgment* (Nov. 18, 2014) ("Stipulation").

1 Watermaster agreed to convene a facilitated process among Watermaster party stakeholders, with
2 the objective of obtaining a comprehensive resolution of the concerns set forth in the Fontana
3 Motion and regarding an anticipated recharge application for the Vulcan Pit project (referred to as
4 the "Disputed Matters") could be achieved. (See Stipulation, at 2:11-15.)

5 Pursuant to the Stipulation, Watermaster and IEUA amended their Motion for Approval to
6 remove Section 5 of the 2013 Amendment from the scope of their request for Court approval of
7 the 2013 Amendment. (*Amendment to Motion for Court Approval of 2013 Amendment to 2010*
8 *Recharge Master Plan Update* (Dec. 5, 2013); see also, Stipulation, ¶ 5.) After a December 13,
9 2013 hearing, the Court issued an *Order Approving Watermaster's 2013 Amendment to 2010*
10 *Update to Recharge Master Plan and Intervention of TAMCO*, approving the 2013 Amendment,
11 with the exception of Section 5, and finding it to be consistent with the Court's October 8, 2010
12 Order.

13 Watermaster and Fontana reported to the Court on February 14, 2014² that after four
14 meetings as part of the facilitated resolution process, consensus would not be reached on
15 resolution of the Disputed Matters. (*Update Regarding Facilitated Discussion Process* (Feb. 14,
16 2014), p. 2.) Accordingly, Watermaster and Fontana requested that the April 4, 2014 hearing on
17 the Fontana Motion and the Motion for Approval, as to Section 5 of the 2013 Amendment,
18 remain on calendar, with briefing to occur consistent with the schedule ordered by the Court at
19 the December 13, 2013 hearing.

20 For the convenience of the Court, Watermaster and IEUA now provide this supplemental
21 briefing, including the information from their Motion for Approval necessary for the Court's
22 consideration of their request for approval of Section 5 of the 2013 Amendment, and a finding
23 that Section 5 satisfies the Court's October 8, 2010, Order.

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27 ² Watermaster counsel additionally provided the court with a verbal status update during the
28 December 13, 2013 hearing, and Watermaster and Fontana jointly updated the Court via a
January 15, 2014 *Update Regarding Facilitated Discussion Process*.

1 **III. THE COURT SHOULD APPROVE SECTION 5 OF THE 2013 AMENDMENT**
2 **AND FIND IT IS CONSISTENT WITH THE COURT'S OCTOBER 8, 2010**
3 **ORDER TO AMEND THE 2010 RMPU**

4 **A. Development of Section 5 of the 2013 Amendment**

5 Specific to the development of Section 5, the Court's October 8, 2010 Order required
6 Watermaster to convene the committee described in item 3 of section 7.1 of the 2010 RMPU
7 "...to develop the monitoring, reporting, and accounting practices that will be required to estimate
8 local project stormwater recharge and new yield...." (October 8, 2010 Order, at 4:19-14.) As
9 explained in the Motion for Approval, in preparing the 2013 Amendment, Watermaster convened
10 a Steering Committee to undertake the necessary work to amend the 2010 Recharge Master Plan
11 Update in conformance with the Court's October 8, 2010 Order. (Motion for Approval, at 4:23-
12 25.) In June 2012, the Steering Committee began its investigation as to the nature and occurrence
13 of Municipal Separate Storm Sewer System ("MS4") projects. A subcommittee of the Steering
14 Committee was formed to review the formal process used by the MS4 permittees (land use
15 control entities) to review and approve MS4 projects. (2013 Amendment, at 5-2.)

16 Ultimately, the Steering Committee developed the monitoring, reporting, and accounting
17 practices required to estimate stormwater recharge and any resultant New Yield associated with
18 compliance with the requirements of the Regional Water Quality Control Board's permit for
19 MS4s. (*Order Approving 2013 Amendment to 2010 RMPU* (Dec. 13, 2013), at 4:27-5:9.) As part
20 of this process, the Steering Committee considered three alternatives for these practices, including
21 the annual estimation of recharge and New Yield for specific projects with a "true up" at the time
22 of a later Safe Yield recalculation, an indirect estimation as part of periodic Safe Yield
23 recalculations, and a hybrid approach. (Motion for Approval, at pp. 6-7; September 26, 2013
24 Watermaster Board meeting staff and consultants' presentation ("Staff Presentation") at 16,
25 attached as Exhibit "D" to Declaration of Bradley J. Herrema in Support of Motion for Approval
26 ("Herrema Decl.")) As to each of these alternatives, the Steering Committee considered
27 timeliness of estimates, the relative cost of each, and the expected relative accuracy of the
28 estimates generated through each alternative. (Motion for Approval, at p. 7; Staff Presentation, at
16.) The Steering Committee recommended, and Section 5 of the 2013 Amendment includes, the

1 hybrid approach based on the efficiencies and cost effectiveness of the approach, combined with
2 the accuracy of the resulting estimates. (Motion for Approval, at p. 7; Staff Presentation, at 17.)
3 The Steering Committee recommended the hybrid approach because the Committee determined
4 that: 1) monitoring and verification of each project's recharge would be difficult; 2) recharge will
5 be diffuse throughout the Basin and impact to Basin supplies will be variable (it will difficult to
6 quantify effect until considerable recharge has occurred), and 3) the hybrid approach provides
7 accurate estimates in a cost effective manner. (Staff Presentation, at 17.)

8 **B. Watermaster and IEUA Approval of Section 5 of the 2013 Amendment**

9 At its September 26, 2013 regular meeting, the Watermaster Board considered the 2013
10 Amendment in its entirety, including Section 5. As part of its consideration, the Board reviewed
11 the Staff Report and was provided with the Staff Presentation. Considering the evidence before
12 it, the Board adopted Resolution 2013-06, including the adoption of the findings therein, and
13 authorized Watermaster legal counsel to move the Court for approval of the 2013 Amendment.
14 (Motion for Approval, at 9:17-22; Herrema Decl., at ¶ 5.)

15 The Board adopted Resolution 2013-06's findings, which included findings that:

- 16 • The 2013 Amendment is timely and responsive to the Court's October 2010 Order;
- 17 • The Steering Committee developed the monitoring, reporting, and accounting
18 practices and criteria necessary to estimate and evaluate local project stormwater
19 recharge and New Yield, as described in section 5 of the 2013

20 Amendment.(Motion for Approval, p. 10.)

21 On the basis of its findings, through Resolution 2013-06, the Board approved the 2013
22 Amendment in its entirety, and resolved that the 2013 Amendment, including Section 5, is based
23 on sound technical analysis and adequately amends the 2010 Recharge Master Plan Update in
24 light of changed economic, legislative, and hydrologic conditions within the State of California.
25 (Motion for Approval, at p. 10.) The Board further resolved that the 2013 Amendment to the
26 2010 Recharge Master Plan Update is responsive to the Court's order to develop the monitoring,
27 reporting, and accounting practices that will be required to estimate local project stormwater
28 recharge and new yield. (Motion for Approval, at pp. 10-11.) At its October 16, 2013 regular

1 Board meeting, the IEUA Board of Directors adopted Resolution 2013-10-1, approving the 2013
2 Amendment in its entirety. (Motion for Approval, at 12:19-22; Declaration of Jean
3 Cihigoyenetché filed in support of Motion for Approval (“Cihigoyenetché Decl.”), ¶ 4.)

4 As recounted in Watermaster and IEUA’s Motion for Approval, in addition to the final
5 consideration of the entirety of the 2013 Amendment, Section 5 was presented to the Pool
6 Committees, Advisory Committee and Watermaster Board for their review and intermediate
7 approval. The Advisory Committee and Board approved Section 5 in June 2013. (Motion for
8 Approval, at 9:13-16; Staff Presentation, at 32.)

9 At the June 27, 2013 Watermaster Board meeting, representatives of the City of Fontana
10 opposed the approval of Section 5, based on its position that additional language regarding the
11 allocation of credit for recharged stormwater should be included in the Section. (Motion for
12 Approval, at p. 11.) Fontana did not challenge the monitoring, reporting and accounting practices
13 contained in Section 5. (Fontana Motion, p. 5.) The Watermaster Board considered Fontana’s
14 concerns, deliberated and commented on its requests, and, nevertheless approved Section 5, based
15 on the recommendation that the issue of how to incentivize conduct and provide credits in the
16 allocation of recharged water was premature and that Fontana’s request, along with the positions
17 of all other stakeholders, would most appropriately be addressed through processes proposed to
18 take place in 2013 and 2014. (See Motion for Approval, at 11:20-25; Herrema Decl., Exhibit
19 “A,” at pp. 12-13.) Specifically, it is the intent of Watermaster to facilitate the resolution of all
20 stakeholders’ concerns regarding the finance, credits and allocation of stormwater recharge and to
21 evaluate these proposals in calendar year 2014. (Motion for Approval, at 11:25-27.) The General
22 Manager’s Business Plan for 2014 includes this work item and the Board itself expressly stated
23 that it supported the prompt resolution of this subject as rationale in finding that Fontana’s request
24 was premature. (Motion for Approval, at 11:28-12:2; Herrema Decl., Exhibit “A,” at pp. 13-14,
25 19-20.)

26 C. **Section 5 of the 2013 Amendment Satisfies the Requirements of the Court’s**
27 **October 8, 2010 Order.**

28 As recounted above, the Court’s October 8, 2010 Order ordered Watermaster to convene

1 the committee described in item 3 of section 7.1 of the 2010 RMPU “ ... to develop the
2 monitoring, reporting, and accounting practices that will be required to estimate local project
3 stormwater recharge and new yield...” (October 8, 2010 Order, at 4:19-14.) As described in
4 section III.A above, through the Steering Committee, Watermaster developed, and the 2013
5 Amendment includes the monitoring, reporting, and accounting practices required to estimate
6 local project stormwater recharge and New Yield, contained in Section 5 of the 2013
7 Amendment. (Motion for Approval, at 13:5-13; see 2013 Amendment, at 5-4 through 5-9; Staff
8 Presentation, at 2, 16-17.)

9 On the basis of the evidence before them – and which is before the Court through this
10 Motion – both the Watermaster and IEUA Boards made the specific findings set forth in
11 Resolutions 2013-06 and 2013-10-1 and reasonably concluded that the 2013 Amendment –
12 including Section 5 - satisfies the requirements of an amendment to the Recharge Master Plan and
13 the specific requirements of this Court’s October 2010 Order. (Motion for Approval, at 13:24-28;
14 Resolution 2013-06, Finding 2; IEUA Resolution 2013-10-1, ¶ 6, attached to Cihigoyenetché
15 Decl. as Exhibit “A.”) As described above, the Court should find the same and approve Section 5
16 as responsive to the Court’s October 8, 2010 Order.

17 **IV. CONCLUSION**

18 On the basis of the evidence presented with Watermaster and IEUA’s prior Motion for
19 Approval, Watermaster and IEUA found that the Steering Committee developed the monitoring,
20 reporting, and accounting practices and criteria necessary to estimate and evaluate local project
21 stormwater recharge and New Yield, as described in Section 5, and, accordingly, approved them
22 for inclusion in the 2013 Amendment. Accordingly, Watermaster and IEUA request that the
23 Court approve Section 5, as it contains unopposed monitoring, reporting and accounting practices
24 necessary to estimate local project stormwater recharge and new yield, which fairly balance the
25 accuracy of the resulting recharge and new yield estimates with the efficiencies and cost
26 effectiveness of the approach, in satisfaction of the Court’s October 8, 2010 Order.

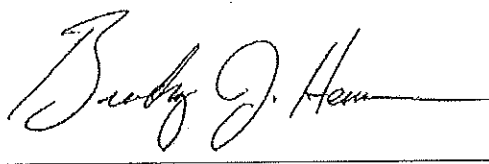
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1 On this basis, Watermaster and IEUA request that the Court order Watermaster and IEUA
2 proceed as proposed with the 2013 Amendment as the operative Recharge Master Plan, including
3 Section 5.

4
5 Dated: February 28, 2014


BROWNSTEIN HYATT FARBER
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8
9 By: 

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12 ATTORNEYS FOR
13 CHINO BASIN WATERMASTER

14 Dated: February 28, 2014

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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
STANFORD E. REICHERT]

**[PROPOSED] ORDER APPROVING
SECTION 5 OF WATERMASTER'S 2013
AMENDMENT TO 2010 RECHARGE
MASTER PLAN UPDATE**

Date: April 4, 2014

Time: 1:30 p.m.

Dept.: R-6

Having read, reviewed and considered all pleadings filed in support and in response, if any, including the testimony presented at the April 4, 2014 hearing, and good cause appearing therefore, the Court finds as follows:

I. Incorporation of Findings in December 13, 2013 Order

The Court hereby incorporates its findings and orders set forth in its December 13, 2013 *Order Approving Watermaster's 2013 Amendment to 2010 Update to Recharge Master Plan and Intervention of TAMCO*.

II. Development of Section 5 of the 2013 Amendment to the 2010 Recharge Master Plan

The Court's *Order Approving Watermaster Compliance with Condition Subsequent Number*

1 *Eight and Approving Procedures to be Used to Allocate Surplus Agricultural Pool Water in the*
2 *Event of a Decline in Safe Yield, dated October 8, 2010* (“October 8, 2010 Order”), required
3 Watermaster to convene the committee described in item 3 of section 7.1 of the 2010 RMPU “...to
4 develop the monitoring, reporting, and accounting practices that will be required to estimate local
5 project stormwater recharge and new yield....” (October 8, 2010 Order, at 4:19-14.)

6 In preparing the 2013 Amendment to the 2010 Recharge Master Plan Update (“2013
7 Amendment”), Watermaster convened a Steering Committee to undertake the necessary work to
8 amend the 2010 Recharge Master Plan Update in conformation with the Court’s October 8, 2010
9 Order. In June 2012, the Steering Committee began its investigation as to the nature and occurrence
10 of Municipal Separate Storm Sewer System (“MS4”) projects. A subcommittee of the Steering
11 Committee was formed to review the formal process used by the MS4 permittees to review and
12 approve MS4 projects.

13 The Steering Committee developed the monitoring, reporting, and accounting practices
14 required to estimate stormwater recharge and any resultant New Yield associated with compliance
15 with the requirements of the Regional Water Quality Control Board’s permit for MS4s. As part of
16 this process, the Steering Committee considered three alternatives for these practices, including the
17 annual estimation of recharge and New Yield for specific projects with a “true up” at the time of a
18 later Safe Yield recalculation, an indirect estimation as part of periodic Safe Yield recalculations,
19 and a hybrid approach. As to each of these alternatives, the Steering Committee considered
20 timeliness of estimates, the relative cost of each, and the expected relative accuracy of the estimates
21 generated through each alternative. The Steering Committee recommended, and Section 5 of the
22 2013 Amendment includes, the hybrid approach based on the efficiencies and cost effectiveness of
23 the approach, combined with the accuracy of the resulting estimates.

24 **III. Approval of Section 5 of the 2013 Amendment**

25 In addition to the final consideration of the entirety of the 2013 Amendment, Section 5 was
26 presented to the Pool Committees, Advisory Committee and Watermaster Board for their review
27 and intermediate approval. The Advisory Committee and Board approved Section 5 in June 2013.

1 Via Resolution 2013-06, the Watermaster Board approved the 2013 Amendment in its entirety, and
2 resolved that the 2013 Amendment, including Section 5, is based on sound technical analysis and
3 adequately amends the 2010 Recharge Master Plan Update in light of changed economic,
4 legislative, and hydrologic conditions within the State of California. The Board further resolved that
5 the 2013 Amendment to the 2010 Recharge Master Plan Update is responsive to the Court's order
6 to develop the monitoring, reporting, and accounting practices that will be required to estimate local
7 project stormwater recharge and new yield. At its October 16, 2013 regular Board meeting, the
8 IEUA Board of Directors adopted Resolution 2013-10-1, approving the 2013 Amendment in its
9 entirety.

10 At the June 27, 2013 Watermaster Board meeting, representatives of the City of Fontana
11 opposed the approval of Section 5, based on its position that additional language regarding the
12 allocation of credit for recharged stormwater should be included in the Section. Fontana did not
13 challenge the monitoring, reporting and accounting practices contained in Section 5. The
14 Watermaster Board considered Fontana's concerns, deliberated and commented on its requests, and,
15 approved Section 5, based on the recommendation that the issue of how to incentivize conduct and
16 provide credits in the allocation of recharged water was premature and that Fontana's request, along
17 with the positions of all other stakeholders, would most appropriately be addressed through
18 processes proposed take place this year and next and be concluded in 2014.

19 **IV. Order**

20 The Court hereby Orders as follows:

21 1) Section 5 of the 2013 Amendment to the 2010 Recharge Master Plan Update is
22 responsive to the Court's October 8, 2010 Order. Specifically, the Court finds that Watermaster has
23 satisfied the Court's order to convene the committee described in item 3 of section 7.1 of the
24 updated Recharge Master Plan to develop the monitoring, reporting, and accounting practices
25 required to estimate local project stormwater recharge and new yield. The monitoring, reporting
26 and accounting practices selected in Section 5 fairly balance the accuracy of the resulting recharge
27 and new yield estimates with the efficiencies and cost effectiveness of the approach.

2) On this basis, the Court approves Watermaster proceeding with the 2013 Amendment as the effective Recharge Master Plan, including Section 5, as updated.

April __, 2014

The Honorable Stanford E. Reichert

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 February 28, 2014 I served the following:

1. SUPPLEMENT TO MOTION FOR COURT APPROVAL OF 2013 AMENDMENT TO 2010 RECHARGE MASTER PLAN UPDATE

2. [Proposed] ORDER APPROVING SECTION 5 OF 2013 AMENDMENT TO 2010 RECHARGE MASTER PLAN UPDATE

- /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 February 28, 2014 in Rancho Cucamonga, California.



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