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

CHINO BASIN MUNICIPAL WATER DISTRICT,
Plaintiff,
vs.
CITY OF CHINO, et al.,
Defendants

CASE NO. RCV 51010
ORDER GRANTING MOTION TO CONFORM MINIMAL PRODUCER DEFINITION IN JUDGMENT;
RATIFYING WATERMASTER'S PROSECUTION OF WATER RIGHTS PETITION AND APPLICATION;
ACKNOWLEDGING TRANSMITTAL OF UPDATED JUDGMENT;
RECEIVING OBMP STATUS REPORT NO. 2 AND DESALTER STATUS REPORT

Date: November 15, 2001
Dept: 8
Time: 2:00 p.m.

On November 15, 2001, the Court held a hearing on Watermaster's Motion to Conform Minimal Producer Definition in Judgment to 10 Acre-Foot Per Year as Provided in Watermaster Rules and Regulations (hereinafter "Watermaster's Motion to Conform Minimal Producer Definition"), Watermaster Request for Ratification and Confirmation of Authority to Prosecute a Water Rights Petition, Water Rights Application to Appropriate and to Hold Water Rights in Trust (hereinafter "Request for Ratification Re Water Rights"), Transmittal of Updated Judgment, OBMP

1 Implementation Status Report No. 2 (hereinafter "OBMP Report No. 2") and Desalter
2 Status Report. Satisfactory proof having been made and good cause appearing, IT IS
3 HEREBY ORDERED AND DECREED:
4

5 I.

6 MOTION TO CONFORM MINIMAL PRODUCER DEFINITION

7 Final approval was given for the Chino Basin Watermaster Rules and
8 Regulations ("CBWRR") on July 19, 2001, subject to a commitment by the Chino Basin
9 Watermaster (hereinafter "Watermaster") to remove the inconsistency between the
10 definition of Minimal Producer in CBWRR (ten acre-feet per year) and the definition of
11 Minimal Producer in the Judgment herein (five acre-feet per year). To resolve the
12 inconsistency, Watermaster seeks to amend the Judgment to change the definition of
13 Minimal Producer to any producer whose production does not exceed ten acre-feet per
14 year.

15 The Court has considered Watermaster's Motion to Conform Minimal Producer
16 Definition, in which it is reported that all three Pools, the Advisory Committee, and the
17 nine-member board serving as Watermaster (hereinafter "Watermaster Board") have
18 voted unanimously to amend the Judgment to conform the Judgment definition of
19 Minimal Producer to the definition contained in CBWRR. No opposition has been filed.

20 The Court also has received and considered the Special Referee's Report and
21 Recommendation Concerning Motion to Conform Minimal Producer Definition. The
22 Court approves and hereby adopts the Special Referee's recommendation that
23 Watermaster's Motion to Conform Minimal Producer Definition be granted.

24 Accordingly, Paragraph 4(j) of the Judgment is hereby amended to read:

25 Minimal Producer—Any producer whose production does not exceed ten acre-
26 feet per year."

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1 II.

2 REQUEST FOR JUDICIAL DECLARATION RE HOLDING WATER RIGHTS IN
3 TRUST

4 Watermaster seeks a judicial declaration that it may take the following actions
5 notwithstanding limitations in the Judgment concerning Watermaster's ownership of
6 real property: (1) prosecute a petition with the State Water Resources Control Board
7 ("SWRCB") for a limited revision of the SWRCB's declaration of the Santa Ana River
8 as a fully appropriated stream (hereinafter "Petition"); (2) prosecute an application to
9 appropriate unappropriated water from the Santa Ana River System (hereinafter
10 "Application"); (3) hold any water rights secured under the Application "in trust" for the
11 benefit of the parties to the Judgment. (Req. for Ratification, at 1-2.)

12 The Court has considered Watermaster's Request for Ratification Re Water
13 Rights. The Court also has considered the Special Referee's Report and
14 Recommendation Concerning Authority to Pursue Water Rights Petition. The Court is
15 aware that the proposed actions are in conflict with the plain meaning of paragraph 19
16 of the Judgment. However, the Court has approved Watermaster's adoption of an
17 Optimum Basin Management Program ("OBMP") for the Chino Groundwater Basin
18 ("hereinafter Basin"); furthermore surface water recharge of the Basin is an essential
19 element of the OBMP. The Court also is aware that a diversion of surface water flows
20 may require a permit from the SWRCB; i.e., that a permit from the SWRCB may be
21 necessary to accomplish fully the Recharge Element of the OBMP.

22 The Court notes that one solution would be to modify paragraph 19 of the
23 Judgment. Watermaster does not seek an express modification of the Judgment, but
24 instead seeks a declaration from the Court ratifying its actions in prosecuting the
25 Petition and Application with the SWRCB. The Court agrees with the Special Referee
26 that securing water rights in trust will not compromise Watermaster's objective role as
27 steward of the Basin and is not inconsistent with the intent of the Court expressed in
28 paragraph 19 of the Judgment. The Court has the authority to effectively modify

1 paragraph 19 of the Judgment by ratifying Watermaster's actions. The Court finds that
2 it is appropriate in this instance that Watermaster acquire an interest in real property to
3 facilitate an arrangement that is in the public's best interest and the best interests of
4 the parties to the Judgment, so long as the real property interest to be acquired will be
5 held in trust for the benefit of the parties.

6 The Court adopts and incorporates in full herein the Special Referee's Report
7 and Recommendation Concerning Authority to Pursue Water Rights Petition. The
8 Court declares that Watermaster may pursue its Petition and Application only "in trust
9 for the benefit of the parties" as necessary to carry out the Recharge Element of the
10 OBMP. Because there is no express authority in the Judgment for Watermaster to
11 acquire water rights in trust, in the future Watermaster is advised to obtain Court
12 approval before filing any further petition or application with the SWRCB. Existing
13 permits issued by the SWRCB that are held by Watermaster for purposes of recharge
14 should be amended to reflect that the water rights are held by Watermaster in trust for
15 the benefit of the parties to accomplish recharge of the Basin as envisioned by the
16 Judgment.

17 Watermaster shall hold the water rights in trust in accordance with the terms
18 and conditions of Resolution No. 01-16, *A Resolution of the Chino Basin Watermaster*
19 *to Establish Terms and Conditions under which Watermaster May Hold Water Rights*
20 *in Trust for the Parties to the Judgment Consistent with the Judgment and the Peace*
21 *Agreement*, attached hereto, marked "Exhibit A," and incorporated herein by this
22 reference. So long as Watermaster holds water rights, Resolution No. 01-16 shall not
23 be amended or revoked without prior Court approval. The Court or any party may
24 enforce this provision through the use of an order to show cause.

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1 III.

2 TRANSMITTAL OF "UPDATED JUDGMENT"

3 Watermaster staff has produced an unofficial compilation of the Judgment
4 herein, entitled "Updated Judgment," which is intended to incorporate amendments
5 that have been made to the Judgment since it was first issued in 1978. Watermaster
6 has transmitted a copy to the Court indicating its intention of distributing this
7 compilation as an unofficial reference tool. The Special Referee has expressed some
8 concerns regarding the format, accuracy, and completeness of this compilation. In the
9 Special Referee's Report and Recommendation Concerning Transmittal of Updated
10 Judgment, it is recommended that certain corrections be made to this compilation
11 before it is distributed. The Court approves the Special Referee's Report and
12 Recommendation Concerning Transmittal of Updated Judgment, which is incorporated
13 herein by this reference. Watermaster is directed to make the corrections noted by the
14 Special Referee and to make any other corrections, as appropriate, and resubmit the
15 compilation to the Court before distributing it. Further, when distributing the
16 compilation, Watermaster should include a warning that it does not intend that any
17 party to the Judgment rely on the compilation in lieu of researching the Court file. The
18 Court file remains the official source for all Judgment amendments and all orders
19 pertaining to the Judgment.

20
21 IV.

22 OBMP IMPLEMENTATION

23 Desalter Status Report

24 In its Order dated April 19, 2001, the Court set a special hearing to receive a
25 status report from Watermaster on the desalter component of the OBMP. The Court
26 has considered Watermaster's Desalter Status Report. The Court also has considered
27 the Special Referee's Report and Comments Concerning Desalter Status Report.
28

1 It appears that progress has been made in the negotiations concerning the
2 Desalter I Expansion and Desalter II Project. (The Court notes that the negotiations
3 also cover the expansion of the Arlington Desalter, but that expansion is not part of the
4 OBMP.) The Term Sheet and Bridge Agreement are complex documents, which no
5 doubt, took a considerable amount of time and effort to complete. The Court
6 commends the parties' efforts. However, the Court urges the parties to complete and
7 execute the water supply agreements as soon as practicable, as well as the
8 agreement governing the purchase and sale of the existing desalter facility.

9 The Court also is concerned with the apparent two-year delay in completing the
10 Desalter I Expansion. The Court adopts and incorporates herein the Special Referee's
11 Report and Comments Concerning Desalter Status Report. Watermaster is directed to
12 submit within 30 days a Supplemental Desalter Status Report, addressing the change
13 of schedule, funding, and design and construction plans for the desalter component of
14 the OBMP. The Supplemental Desalter Status Report should also include a proposed
15 timeframe for the completion of negotiations related to the water supply agreements
16 and the agreement governing the purchase and sale of the existing desalter facility.

17 OBMP Status Report No. 2

18 Watermaster is required to submit periodic reports to the Court concerning the
19 progress made in implementing the OBMP. Watermaster submitted its first report on
20 March 30, 2001. Watermaster submitted its second progress report on September 30,
21 2001. The Court has considered Watermaster's OBMP Status Report No. 2 and the
22 Special Referee's Report and Comments Concerning OBMP Implementation Status
23 Report No. 2. The Court congratulates the parties on the significant progress that has
24 been made on the monitoring and recharge components of the OBMP. The Court
25 also is pleased with Watermaster's reports on its cooperative efforts with other entities
26 and the storage and recovery program. But the Court shares the Special Referee's
27 concern that the OBMP Status Report No. 2 does not address the schedule and
28 budget status for each of the OBMP Program Elements. The Court also is concerned

1 that an Initial State of the Basin report has not yet been completed. The Initial State of
2 the Basin Report is to serve as a measure for judging the overall effectiveness of the
3 OBMP. It is essential to the exercise of the Court's continuing jurisdiction that the
4 report be filed promptly.

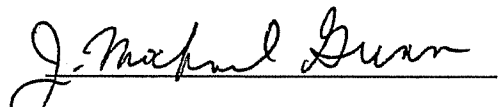
5 Accordingly, Watermaster is directed to file within 30 days a Supplemental
6 OBMP Status Report No. 2, which addresses the schedule and budget status for each
7 of the OBMP Program Elements and ongoing CEQA compliance. Watermaster also is
8 directed to file an Initial State of the Basin Report no later than January 31, 2002,
9 which is also the date by which the Annual Report must be filed. Watermaster is
10 reminded to request and give notice of a hearing date in February for the Court to
11 receive the Annual Report.

12
13 V.

14 INDEPENDENT ASSESSMENT OF OBMP IMPLEMENTATION STATUS

15 When the Court appointed the Watermaster Board to an additional five-year
16 term, it indicated that the OBMP progress reports, together with an independent
17 assessment of OBMP implementation status, including verification of data by the
18 Special Referee and her Technical Expert, Mr. Joe Scalmanini, would be the basis for
19 consideration of continuing the appointment at the end of the term. To facilitate the
20 independent verification of OBMP implementation status, the Special Referee
21 recommends that two to four meetings a year be scheduled between Mr. Scalmanini
22 and Watermaster staff and consultants to supplement the written progress reports filed
23 semi-annually by Watermaster. The Court adopts the recommendation and requests
24 Watermaster to convene the first of such meetings within 30 days.

25
26 Dated: November 15, 2001


J. Michael Gunn, Judge

Resolution No. 01-16

A RESOLUTION OF THE CHINO BASIN WATERMASTER TO ESTABLISH
TERMS AND CONDITIONS UNDER WHICH WATERMASTER MAY HOLD
WATER RIGHTS IN TRUST FOR THE PARTIES TO THE JUDGMENT
CONSISTENT WITH THE JUDGMENT AND THE PEACE AGREEMENT.

WHEREAS, the Judgment in the Chino Basin Adjudication, *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino Superior Court Case No. RCV. 51010, created the Watermaster and directed it to perform the duties as provided in the Judgment or ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction; and

WHEREAS, paragraph 19 of the Judgment states that: "Watermaster may purchase, lease, acquire and hold all necessary facilities and equipment; provided, that it is not the intent of the Court that Watermaster acquire any interest in real property or substantial capital assets"; and

WHEREAS, the paragraph 5.1 (h) of the Peace Agreement provides a construction of paragraph 19 of the Judgment by the parties thereto in which it is declared that: "Watermaster shall not own Recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. It shall never own real property. However, Watermaster may own water rights in trust for the benefit of the parties to the Judgment"; and

WHEREAS, this interpretation of paragraph 19 was unanimously approved by each of the respective parties, the Advisory Committee and the Watermaster Board in approving the Peace Agreement; and

WHEREAS, consistent with the parties' written construction, Watermaster has long held two water rights, identified as Permit 19895 and Permit 20753, to surface water in the Chino Basin without objection from any party to the Judgment; and

WHEREAS, surface water has been previously allocated inter-se among the parties to the 1978 Judgment, and Watermaster has made efforts to preserve and protect the continued and expanded recharge of Basin water for the benefit of all parties to the Judgment; and

WHEREAS, many of the parties to the judgment have signed the Santa Ana River and Chino Basin Water Right Accord dated September 15, 2000, which represents an agreement between the Chino Basin parties and the Orange County Water District contemplates that Watermaster may file an application to appropriate water "in trust" on behalf of the parties to the Judgment; and

WHEREAS, the principal mechanism of the Santa Ana River and Chino Basin Water Right Accord through which the Chino Basin parties can protect their right to use the surface water is through an application filed by Watermaster with the State Water Resources Control Board requesting a confirmation of those rights; and

WHEREAS, such water rights should not belong to any individual entity since the recharge goals of the Optimum Basin Management Program ("OBMP") are intended to benefit the Chino Basin as a whole as a common pool resource; and

WHEREAS, the parties to the Judgment continue to believe that the best way to secure the rights to utilize the surface water resources of the Chino Basin is through water rights held by the Watermaster as trustee for the parties to the Judgment; and

WHEREAS, Watermaster has held numerous meetings, workshops and hearings with stakeholders and parties to the Judgment coincident with the approval of the Peace Agreement and subsequent filing of an application to appropriate water, representing that the proposed construction of

paragraph 19 of the Judgment means that water rights held by Watermaster will be held solely for the benefit of the parties to the Judgment, all without objection by any person; and

WHEREAS, a consistent construction has been memorialized and published in the Post-Order Memorandum dated October 26, 2000, and in the Watermaster Request for Ratification and Confirmation of Authority to Prosecute a Water Rights petition, Water Rights Application to Appropriate and to Hold Water Rights in Trust dated October 15, 2001; and

WHEREAS, the parties to the Judgment believe that it would be beneficial for Watermaster to determine the limitations upon Watermaster's authority with regard to Water Rights held in trust by Watermaster; and

WHEREAS, Watermaster intends to establish a trust and hold such water rights subject to certain equitable duties to deal with the property for the benefit of the parties to the Judgment.

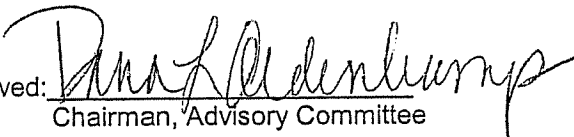
NOW THEREFORE, IT IS HEREBY RESOLVED AND DETERMINED THAT:

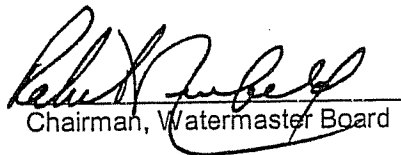
1. Definitions.

- a. "Watermaster" means the entity created by the Court in the Judgment in the Chino Basin Adjudication, *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino Superior Court Case No. RCV 51010, as it exists as an entity separate from any of the entities of which it is constituted.
 - b. "Water Rights: means any permit or license issued by the State Water Resources Control Board for the use of water.
 - c. "Party to the Judgment" means a party to the Judgment in the Chino Basin Adjudication, *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino County Superior Court Case NO. RCV 51010.
2. Watermaster shall hold the Water Rights as trustee for the benefit of the Parties to the Judgment in accordance with the terms and conditions of this Resolution.
 3. The Water Rights shall be held by Watermaster in a fiduciary capacity, and Watermaster shall have no substantive rights with regard to the Water Rights held by it.
 4. The Water Rights shall be used and managed by Watermaster in accordance with the terms, conditions and requirements of the Judgment and the Peace Agreement and in furtherance of the Optimum Basin Management Program.
 5. Watermaster may not sell, lease, transfer, or in any way encumber said Water Rights except at the express direction of the Parties to the Judgment as expressed through the three Pool Committees, the advisory committee and the board and as approved by the Court.
 6. Watermaster may only take actions regarding the Water Rights it holds that are in the best interests of the Parties to the Judgment considered as a whole, which interest shall be determined solely through the expression the three Pool committees, the Advisory Committee and the Board.
 7. Watermaster shall deal impartially with the Parties to the Judgment and shall act impartially in communicating with them and in managing the Water Rights, taking into account any differing interests of the Parties to the Judgment.

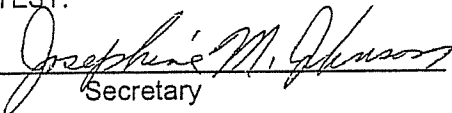
Exhibit "A"

8. Watermaster shall act in the highest good faith towards the Parties to the Judgment, and must not use its position to gain any advantage over the Parties to the Judgment.
9. Any benefits in whatever form that are derived from the Water Rights shall inure to the Parties to the Judgment according to the preference of the Parties to the Judgment as expressed by the three Pool Committees, the Advisory Committee and the Board.
10. Watermaster shall not use or deal with the Water Rights for its own profit or for any other purpose unconnected with the trust, nor take part in any transaction in which it has an interest adverse to any Party to the Judgment.
11. Watermaster shall pay, contest, release, prosecute, adjust, compromise, or settle any claim involving the Water Rights only at the express direction of the Parties to the Judgment expressed through the three Pool Committees, the Advisory Committee and the Board and as approved by the Court.
12. Watermaster shall keep the Parties to the Judgment reasonably informed of its administration of the Water Rights.
13. Upon reasonable request by a Party to the Judgment, Watermaster shall make full disclosure of information relevant to that Party's beneficial interest in the Water Rights.
14. Watermaster shall keep accurate and complete records and shall provide an annual accounting to each Party to the Judgment of the quantity of water used under the Water Rights and the nature of such use.

Approved: 
Chairman, Advisory Committee


Chairman, Watermaster Board

ATTEST:


Secretary

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

I, Josephine Johnson, Secretary of the Chino Basin Watermaster, DO
HEREBY CERTIFY that the foregoing Resolution being No. 01-16, was adopted on October 25, 2001 at
a regular meeting of the Chino Basin Watermaster Board by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CHINO BASIN WATERMASTER

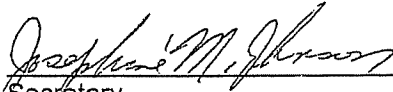

Secretary

Exhibit "A"