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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN BERNARDINO

15 CHINO BASIN MUNICIPAL WATER
DISTRICT,

16 Plaintiff,

17 v.

18 CITY OF CHINO, et al.,

19 Defendant.

Case No. RCVRS51010

[Assigned for All Purposes to the Honorable
Gilbert G. Ochoa]

**NOTICE OF MOTION AND MOTION
FOR COURT APPROVAL OF 2023
RECHARGE MASTER PLAN UPDATE**

Date: December 1, 2023
Time: 10:00 a.m.
Dept.: S24

*[Filed concurrently herewith: Declaration of
Bradley J. Herrema; Declaration of Jean
Cihigoyenetché; Declaration of Edgar Tellez
Foster; [Proposed] Order]*

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 1, 2023, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department S24 of the above entitled Court located at 247 West Third Street, San Bernardino, California 92415, the Chino Basin Watermaster (“Watermaster”) and the Inland Empire Utilities Agency (“IEUA”) will and hereby do move the Court for an order approving the 2023 Recharge Master Plan Update (“2023 RMPU”). Approval of the 2023 RMPU is warranted as it conforms to and satisfies the requirements of the Peace Agreements, prior orders of this Court, and the Judgment.

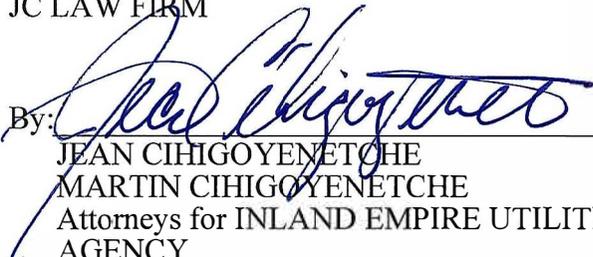
This Motion is based on the Memorandum of Points and Authorities attached hereto, the Declarations of Bradley J. Herrema, Jean Cihigoyenette, and Edgar Tellez Foster and the exhibits attached thereto filed concurrently herewith, the pleadings and papers on file in this case, and any oral argument the Court entertains on this matter.

Dated: October 10, 2023

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 
SCOTT S. SLATER
BRADLEY J. HERREMA
LAURA K. YRACEBURU
Attorneys for CHINO BASIN WATERMASTER

Dated: October 9, 2023

JC LAW FIRM
By: 
JEAN CIHIGOYENETTE
MARTIN CIHIGOYENETTE
Attorneys for INLAND EMPIRE UTILITIES AGENCY

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Chino Basin Watermaster (“Watermaster”) and the Inland Empire Utilities Agency
4 (“IEUA”) hereby jointly request the Court’s approval of the 2023 Recharge Master Plan Update
5 (“2023 RMPU”).¹ The 2023 RMPU complies with and satisfies the requirements of the Peace
6 Agreements, prior orders of this Court, and the Restated Judgment, and, on this basis, the Court
7 should approve the 2023 RMPU.

8 **II. BACKGROUND**

9 **A. The Recharge Master Plan**

10 In its December 21, 2007 Order approving the Peace II Agreement, the Court required
11 Watermaster to satisfy a number of conditions subsequent. Condition subsequent number eight
12 required Watermaster to update its Recharge Master Plan. The Judgment operates on the
13 fundamental premise that, through the Physical Solution, overproduction can be replenished with
14 the recharge of supplemental water. Consequently, under the Judgment, no party is limited in the
15 amount of groundwater that it may pump from the Basin, provided that sufficient funds are
16 provided by the parties to purchase available replenishment water to offset any pumping above
17 the Safe Yield of the Basin. (*See* Plaintiff’s Post Trial Memorandum, July 12, 1978, 5:5-12.)

18 In broad terms, the purpose of the Recharge Master Plan is to articulate the manner in
19 which Watermaster will fulfill its responsibilities under the Judgment to ensure that groundwater
20 production from the Chino Basin in excess of the Safe Yield is offset, bucket for bucket, by
21 replenishment in accordance with the Physical Solution. Success is dependent upon making
22 projections in the Recharge Master Plan concerning anticipated production of groundwater from
23 the Basin, the availability of imported water supplies, and the facilities necessary to make use of
24 those imported supplies. (*See* Peace II Agreement, Article VIII.)

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27 ¹ A copy of the 2023 RMPU is attached to Exhibit C to the Declaration of Bradley J. Herrema,
28 filed concurrently with this Motion (“Herrema Decl.”), as Exhibit C to Watermaster’s Resolution
No. 2023-06, Resolution of the Chino Basin Watermaster Regarding the Adoption of the 2023
Recharge Master Plan Update.

1 In addition, Watermaster’s discretion with regard to the manner in which recharge
2 activities are conducted is constrained by commitments made in the Peace and Peace II
3 Agreements. Implementation of the Recharge Master Plan recommendations must satisfy these
4 commitments. (*See, e.g.*, Peace II Agreement, § 8.4.) Fundamentally, the purpose of the
5 Recharge Master Plan Update is to ensure that: (i) if at any time during the period when the
6 400,000 acre-feet of Basin Re-Operation water is being produced that water were to become
7 unavailable; and, (ii) when the 400,000 acre-feet has been exhausted under the Court authorized
8 schedule, then, Watermaster and the parties will have the ability to offset all overproduction.

9 **B. Update Requirements for Recharge Master Plan**

10 Section 8.1 of the Peace II Agreement requires that Watermaster and IEUA update the
11 Recharge Master Plan “to address how the Basin will be contemporaneously managed to secure
12 and maintain Hydraulic Control and subsequently operated at a new equilibrium at the conclusion
13 of the period of Re-Operation.” (Peace II Agreement, § 8.1.)² The Recharge Master Plan must
14 contain recharge estimations and summaries of the projected water supply availability, as well as
15 the physical means to accomplish the projected recharge quantities. (*Id.*) Specifically, the Peace
16 II Agreement envisions that updates to the Recharge Master Plan will:

17 . . . reflect an appropriate schedule for planning, design, and
18 physical improvements as may be required to provide reasonable
19 assurance that following the full beneficial use of the groundwater
20 withdrawn in accordance with the Basin Re-Operation and
authorized controlled overdraft, that sufficient Replenishment
Replenishment obligations.

21 (*Id.*) The Peace II Agreement requires that Watermaster and IEUA update and amend the
22 Recharge Master Plan as frequently as necessary, and not less frequently than every five years.

23 (*Id.*)

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27 ² A copy of Article VIII of the Peace II Agreement is attached to Exhibit C of the Herrema Decl.
28 filed concurrently with this Motion, as Exhibit A to Watermaster’s Resolution No. 2023-06,
Resolution of the Chino Basin Watermaster Regarding the Adoption of the 2023 Recharge Master
Plan Update.

1 **C. Past Recharge Master Plan Updates**

2 In the Court’s December 21, 2007 order approving the Peace II Agreement, the Court
3 directed Watermaster to prepare and submit the first update to the Recharge Master Plan by July
4 1, 2010. Accordingly, on June 30, 2010, Watermaster submitted its 2010 Recharge Master Plan
5 Update (“2010 RMPU”). And, on October 8, 2010, the Court issued an order finding that the
6 2010 RMPU was responsive to the Court’s order approving the Peace II Agreement. (October 8,
7 2010 Order Approving Watermaster Compliance with Condition Subsequent Number Eight and
8 Approving Procedures to be Used to Allocate Surplus Agricultural Pool Water in the Event of a
9 Decline in Safe Yield (“October 8, 2010 Order”), 4:3-4.)

10 To address certain state legislation and in response to the recommendations in the 2010
11 RMPU and the October 8, 2010 Order, Watermaster submitted the 2013 Amendment to the 2010
12 Recharge Master Plan Update (“2013 RMPU”) to the Court on November 4, 2013.³ On
13 December 13, 2013, the Court issued an order approving the 2013 RMPU, except section 5
14 thereof, which was approved by the Court on April 25, 2014. (December 13, 2013 Order
15 Approving Watermaster’s 2013 Amendment to 2010 Update to Recharge Master Plan and
16 Intervention of TAMCO – Amended; April 25, 2014 Ruling and Order.)

17 On October 9, 2018, Watermaster and IEUA submitted the 2018 RMPU, which did not
18 recommend construction of any new recharge facilities. (Watermaster and IEUA’s October 9,
19 2018 Motion for Court Approval of 2018 Recharge Master Plan Update.) On December 28,
20 2018, the Court issued an order approving the 2018 RMPU. (December 28, 2018 Order
21 Approving Watermaster’s 2018 Recharge Master Plan Update.)

22 Since the Court’s approval of the 2018 RMPU, Watermaster and IEUA have planned,
23 designed, or constructed the five feasible recharge projects identified in the 2013 RMPU. (2013
24 RMPU, § 1.1.3, Table 1-1.) These projects, once completed, will provide a projected increase in
25 stormwater recharge of 4,800 acre-feet per year (“AFY”) and recycled water recharge capacity of

26 _____
27 ³ See the October 8, 2010 Order; Watermaster and IEUA’s November 4, 2013 Motion for Court
28 Approval of 2013 Amendment to 2010 Recharge Master Plan Update; Request for Intervention
by TAMCO (“November 4, 2013 Motion”) and the 2013 RMPU for further detail as to the need
for and development of the 2013 RMPU.

1 7,100 AFY. (*Id.*) Three of the five projects have been completed. (2023 RMPU, § 1.1.3.) The
2 Wineville/Jurupa/RP3 project is underway with completion estimated by the end of 2023. (*Id.*)
3 The Montclair Basin project is expected to begin construction in 2024 and be completed in 2024.
4 (*Id.*)

5 **D. Development of the 2023 RMPU**

6 In compliance with the Peace II Agreement and the Court’s orders, Watermaster, with the
7 assistance of its consultant, West Yost Associates (“West Yost”), began the process of updating
8 the Recharge Master Plan by defining the scope of the 2023 RMPU at the February 11, 2021
9 Appropriative Pool Committee and Overlying (Non-Agricultural) Pool Committee meetings; the
10 April 8, 2021 Pool Committee meetings; and the April 15, 2021 Recharge Investigation and
11 Projects Committee (“RIPComm”) meeting. (Declaration of Edgar Tellez Foster [“Tellez Foster
12 Decl.”] at ¶¶ 3–6.) Watermaster convened the Recharge Master Plan Update Steering Committee
13 through RIPComm⁴ in October 2022 and held three meetings on October 10, 2022, January 19,
14 2023, and July 20, 2023 to develop the 2023 RMPU. (*Id.* at ¶ 9.) Watermaster also held a
15 stakeholder workshop on August 22, 2023. (*Id.*) Stakeholders, including IEUA, participated in
16 this process. (*Id.* at ¶¶ 9–10.)

17 These meetings included discussions of: (1) changed conditions in the Basin since the
18 2018 RMPU, (2) replenishment needs and capacity in the Basin, (3) groundwater response to
19 projected pumping, recharge and replenishment, (4) existing and planned recharge facilities, (5)
20 future recharge requirements, (6) renewal and replacement needs of recharge assets, and (7)
21 conclusions and recommendations arising from the 2023 RMPU process. (*Id.* at ¶ 9.) RIPComm
22 discussions largely focused on the impact of availability of imported water and MS4 projects.
23 (*Id.*) Pursuant to scoping discussions in early 2021 and subsequent budget approval by the
24 Watermaster Board on May 27, 2021, Watermaster additionally leveraged and incorporated
25 existing data and analysis from the Safe Yield Annual Data Collection and Evaluation reports and
26 the 2020 Safe Yield Recalculation effort into the 2023 RMPU.⁵ (E.g., 2023 RMPU, §§ 2.3.3, 4.1,

27 ⁴ The IEUA/Watermaster Joint Projects Committee and RMPU Steering Committee were
28 combined into the RIPComm. (Tellez Foster Decl. at ¶ 8.)

⁵ While separate from the 2023 RMPU development process, the 2020 Safe Yield Recalculation

1 5.1, 5.4, 6.3.)

2 Watermaster solicited input from IEUA throughout the drafting process. (Herrema Decl.
3 at ¶ 3.) The 2023 RMPU was widely released on August 14, 2023 for additional comment
4 through September 5, 2023. (*Id.* at ¶¶ 3, 4.) Watermaster received comments from the Water
5 Facilities Authority, Cucamonga Valley Water District (“CVWD”) and Monte Vista Water
6 District. (*Id.* at ¶ 4.) Watermaster addressed these comments,⁶ and in the case of CVWD, met
7 with staff to provide additional information, and released a final draft 2023 RMPU to all
8 stakeholders on September 8, 2023. (*Id.* at ¶¶ 4.)

9 No new recharge projects were considered during the development of the 2023 RMPU.⁷
10 (2023 RMPU, § 1.1.3, Table 1-1.) Rather, the 2023 RMPU concludes that the existing and
11 planned recharge facilities, as identified in the 2018 RMPU, 2013 RMPU and elsewhere, are
12 sufficient to satisfy Watermaster’s obligations until the next Recharge Master Plan Update in
13 2028. (*Id.* at §§ 1.1.3, 6, 8.3, 8.4.) As such, the 2023 RMPU’s implementation plan includes a
14 recommendation that in Watermaster “continue the implementation of the final recommended
15 2013 RMPU yield enhancement projects.” (*Id.* at § 8.4.)

16 **E. Watermaster and IEUA Approval of the 2023 RMPU**

17 The 2023 RMPU has been unanimously approved by both the Watermaster and IEUA
18 Boards. On September 14, 2023, the Watermaster Pool Committees reviewed the 2023 RMPU
19 and the Appropriative Pool and the Overlying (Agricultural) Pool unanimously recommended that
20 the Advisory Committee recommend the Watermaster Board approve the 2023 RMPU and adopt

21 _____
22 involved significant stakeholder participation on issues relevant to the 2023 RMPU. (See
23 Watermaster Motion Regarding 2020 Safe Yield Reset, Amendment of Restated Judgment,
24 Paragraph 6, dated May 27, 2020, pp. 13-16 [describing stakeholder review and engagement
25 opportunities]; Orders re Chino Basin Watermaster Motion Regarding 2020 Safe Yield Reset,
26 Amendment of Restated Judgment, Paragraph 6, dated July 31, 2020, pp. 3, 7 [finding
27 stakeholder engagement adequate] and p. 4 [ordering that Watermaster has satisfied the
28 requirements for resetting of the Safe Yield] .)

⁶ Comments and written responses are included as Appendix C of the 2023 RMPU.

⁷ Although no new recharge projects were considered, a renewal and replacement (“R&R”) plan was added to the 2023 RMPU given the aging recharge system assets and absence of basin-wide assessment of recharge systems. (2023 RMPU, § 7.) The R&R plan (1) inventories recharge assets; (2) estimates useful life and remaining useful life; (3) estimates unit costs; and (4) develops renewal intervals and costs, projects renewal or replacement dates and costs, and develops a 10-year forecast. (*Id.*)

1 Resolution 2023–06. (Herrema Decl. at ¶ 5.) The Overlying (Non-Agricultural) Pool
2 unanimously recommended its representatives support approval and adoption at the Advisory
3 Committee and Watermaster Board subject to changes they deem appropriate. (*Id.* at ¶ 5.) On
4 September 21, 2023, the Advisory Committee reviewed the 2023 RMPU and unanimously
5 recommended that the Watermaster Board adopt the 2023 RMPU. (*Id.* at ¶ 6.) And, at its regular
6 meeting on September 28, 2023, the Watermaster Board received a presentation on the 2023
7 RMPU, reviewed the Staff Report regarding the 2023 RMPU, and unanimously adopted
8 Resolution 2023-06, Resolution of the Chino Basin Watermaster Regarding the Adoption of the
9 2023 Recharge Master Plan Update. (*Id.* at ¶¶ 7–9, Exs. A–C.) Watermaster further directed
10 Watermaster legal counsel to move this Court for approval of the 2023 RMPU. (*Id.* at ¶ 9.)

11 Watermaster’s Resolution 2023-06 includes findings that:

- 12 • There exists sufficient recharge capacity to meet future replenishment obligations
13 identified in the 2023 RMPU. If Basin Re-Operation were terminated prior to
14 2030, Watermaster would be able to increase its replenishment activity in order to
15 maintain hydrologic balance within the Basin, in compliance with the Recharge
16 Master Plan.
- 17 • Watermaster and interested parties thoroughly evaluated changed circumstances
18 since the time of the 2018 RMPU and how these changes affect the Recharge
19 Master Plan, and this evaluation is included in Sections 3, 4, and 5 of the 2023
20 RMPU.
- 21 • Watermaster and interested parties thoroughly evaluated the existing and planned
22 recharge facilities in the Basin as compared to the Basin’s recharge needs, and this
23 evaluation is included in Sections 2 and 7 of the 2023 RMPU. Section 7’s renewal
24 and replacement plan is a new component of the Recharge Master Plan to address
25 aging recharge assets in the absence of basin-wide renewal and replacement
26 planning.
- 27 • Watermaster and interested parties considered the need for future recharge
28 capacity by comparing the projected future recharge requirements of the Basin and

1 physical capacity to achieve that requirement and concluded that the existing
2 recharge capacity and facilities on which it relies are sufficient until the next
3 Recharge Master Plan update in 2028. This evaluation is included in Section 6 of
4 the RMPU.

- 5 • Using the information and analysis contained in Sections 1 through 7 of the 2023
6 RMPU, Watermaster and interested parties developed recommendations and an
7 implementation plan for the 2023 RMPU, which are included in Section 8 of the
8 2023 RMPU.
- 9 • The development of the 2023 RMPU complies with the requirements for an update
10 to the Recharge Master Plan.

11 (Herrema Decl. at ¶ 9, Ex. C.)

12 On the basis of these findings, the Board found that:

- 13 • The 2023 RMPU is based on sound technical analysis and adequately updates the
14 2018 RMPU in light of changed economic, legislative, and hydrologic conditions
15 within the State of California and in satisfaction of the Peace II Agreement and the
16 Court’s Orders.
- 17 • Based upon the 2023 RMPU, there exists sufficient recharge capacity to meet
18 future replenishment obligations identified in the 2023 RMPU through 2045. If
19 Basin Re-Operation were terminated prior to 2030, Watermaster would be able to
20 increase its replenishment activity in order to maintain hydrologic balance within
21 the Basin, in compliance with the Recharge Master Plan.
- 22 • Watermaster adopts the 2023 RMPU as the guidance document for the further
23 development of the recharge facilities within the Basin.
- 24 • Pursuant to the Peace II Agreement Section 8.1, Watermaster and IEUA will
25 update the Recharge Master Plan not less frequently than once every five years.
26 The Plan will next be updated no later than 2028.

27 (Herrema Decl. at ¶ 9, Ex. C.)

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1 At its September 20, 2023 regular Board meeting, the IEUA Board of Directors adopted
2 Resolution 2023-9-5, Resolution of the Board of Directors of the Inland Empire Utilities Agency,
3 San Bernardino County, California, Adopting the 2023 Update to the Recharge Master Plan,
4 approving the 2023 RMPU. (Declaration of Jean Cihigoyenette at ¶ 4, Ex. A.)

5 **III. THE COURT SHOULD APPROVE THE 2023 RMPU**

6 As described above, the 2023 RMPU satisfies the requirements of the Peace Agreements,
7 the prior orders of this Court, and the Judgment. The 2023 RMPU evaluates: (1) changed
8 circumstances in the Basin since the 2018 RMPU (2023 RMPU, §§ 3–5), (2) existing and planned
9 recharge facilities in the Basin as compared to recharge requirements (*Id.* at §§ 2, 7), (3) the need
10 for future recharge capacity (*Id.* at § 6), and (4) recommendations and an implementation plan for
11 the 2028 RMPU (*Id.* at § 8). Based on the 2023 RMPU, Watermaster found that there exists
12 sufficient recharge capacity to meet future replenishment obligations. In other words, as required
13 by the Peace II Agreement, the 2023 RMPU addresses “how the Basin will be contemporaneously
14 managed to secure and maintain Hydraulic Control and subsequently operated at a new
15 equilibrium at the conclusion of the period of Re-Operation.” (Peace II Agreement, § 8.1.)

16 Furthermore, on the basis of the evidence before them – and which is before the Court
17 through this Motion – both the Watermaster and IEUA Boards made the specific findings set
18 forth in their Resolutions 2023-06 and 2023-9-5 and reasonably concluded that the 2023 RMPU
19 satisfies the requirements of an amendment to the Recharge Master Plan. No party has objected
20 to, and Watermaster is unaware of any party that opposes, the Court’s approval of the 2023
21 RMPU. (Herrema Decl., ¶ 11.)

22 **IV. CONCLUSION**

23 For the reasons stated above, Watermaster and IEUA request that the Court approve the
24 2023 RMPU and Watermaster’s use of the 2023 RMPU as its Recharge Master Plan.

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Dated: October 10, 2023

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 
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Dated: October 9, 2023

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CHINO BASIN WATERMASTER

Case No. RCVRS 51010

Chino Basin Municipal Water District v. City of Chino, et al.

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 action within. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On October 10, 2023, I served the following:

1. NOTICE OF MOTION AND MOTION FOR COURT APPROVAL OF 2023 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 the United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:
See attached service list: Mailing List 1

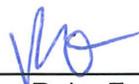
/ ___ / BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ ___ / 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.
See attached service list: Master Email Distribution List

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 10, 2023 in Rancho Cucamonga, California.



By: Ruby Favela Quintero
Chino Basin Watermaster

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