

**CHINO BASIN WATERMASTER
NON-AGRICULTURAL POOL MEETING**

2:30 p.m. – March 4, 2010

*Mr. Bob Bowcock, Chair, Non-Agricultural Pool
Mr. Kevin Sage, Vice-Chair Non-Agricultural Pool*

At The Offices Of

**Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730**

REVISED AGENDA

PLEASE NOTE: At the request of the Chairman of the Non-Agricultural Pool the previous agenda has been modified to this new version.

THIS IS A CALL-IN MEETING ONLY. Call-in number:

(800) 930-9525, passcode 917924

CALL-IN CONFIDENTIAL SESSION – 2:45pm

Call-in number and passcode will be provided to parties by calling or emailing:

**Bob Bowcock
Kevin Sage**

bbowcock@irmwater.com
ksage@irmwater.com

(909) 621-1266

CALL TO ORDER

AGENDA - ADDITIONS/REORDER

I. CONSENT CALENDAR

Note: All matters listed under the Consent Calendar are considered to be routine and non-controversial and will be acted upon by one motion in the form listed below. There will be no separate discussion on these items prior to voting unless any members, staff, or the public requests specific items be discussed and/or removed from the Consent Calendar for separate action.

A. INTERVENTION INTO THE AGRICULTURAL POOL

Intervention of Rafael Treto into the Agricultural Pool (*Page 93*)

II. BUSINESS ITEMS

III. REPORTS/UPDATES

IV. INFORMATION

1. Newspaper Articles (*Page 103*)

V. POOL MEMBER COMMENTS

VI. OTHER BUSINESS

VII. CONFIDENTIAL SESSION - POSSIBLE ACTION

Pursuant to the Non-Agricultural Pool Rules & Regulations, a Confidential Session will be held during the Watermaster Pool meeting for the purpose of discussion and possible action.

1. Non-Agricultural Pool Information Request – *FOR DISCUSSION ONLY*
Provide Input to Staff Regarding Non-Agricultural Pool Information Request Regarding Construal of Purchase and Sale Agreement (*Pages 97-102*)
2. Motion for court review
3. Accounting of amounts paid by Non-Ag Pool in respect of expenses of Ag Pool

VIII. FUTURE MEETINGS

Thursday, March 4, 2010	1:00 p.m.	Appropriative Meeting @ CBWM
Thursday, March 4, 2010	2:30 p.m.	Non-Agricultural Pool Meeting @ CBWM
Thursday, March 4, 2010	3:30 p.m.	MZ1 Technical Committee Meeting @ CBWM
Thursday, March 11, 2010	9:00 a.m.	Agricultural Pool Meeting @ IEUA
Thursday, March 18, 2010	8:00 a.m.	IEUA DYY Meeting @ CBWM
Thursday, March 18, 2010	9:00 a.m.	Advisory Committee Meeting @ CBWM
Thursday, March 25, 2010	11:00 a.m.	Watermaster Board Meeting @ CBWM
Thursday, March 25, 2010	1:00 p.m.	Recharge Master Plan Workshop @ CBWM

Meeting Adjourn



CHINO BASIN WATERMASTER

I. CONSENT CALENDAR

A. INTERVENTION INTO THE AGRICULTURAL POOL





CHINO BASIN WATERMASTER

9641 San Bernardino Road, Rancho Cucamonga, Ca 91730
Tel: 909.484.3888 Fax: 909.484.3890 www.cbwm.org

KENNETH R. MANNING
Chief Executive Officer

STAFF REPORT

DATE: March 4, 2010
TO: Committee Members
SUBJECT: Intervention into Agricultural Pool

SUMMARY

Recommendation – Staff recommends approval of the Intervention of Rafael Treto into the Agricultural Pool.

BACKGROUND

According to Paragraph 60 of the Judgment:

"[Any] person newly proposing to produce water from the Chino Basin may become a party to this Judgment upon filing a petition in intervention. Said intervention must be confirmed by order of this Court. Such intervener shall thereafter be a party bound by this judgment and entitled to the rights and privileges accorded under the Physical Solution herein, through the pool to which the Court shall assign such intervener."

According to Watermaster's Rules and Regulations section 2.27:

"Watermaster will receive and make recommendations regarding petitions for intervention and accumulate them for filing with the Court from time to time (Judgment paragraph. 60 and Order re Intervention Procedures, July 14, 1978.)"

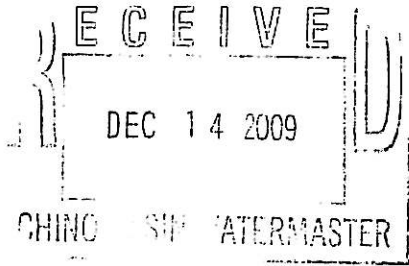
Watermaster received a petition to Intervene into the Judgment from Rafael Treto dated December 10, 2009. Treto recently drilled a well on his property at 13160 Bon View Avenue in Ontario. The City does not have a potable water line in this area. The five-acre farm at this address has five cows, 12 horses, approximately two acres of grass, and a small house. The estimated annual water production is approximately ten acre-feet, and as such, the well will be metered.

Staff recommends approval of the intervention into the Agricultural Pool.

Actions:

- 3-04-10 Appropriative Pool
- 3-04-10 Non-Agricultural Pool
- 3-11-10 Agricultural Pool
- 3-18-10 Advisory Committee
- 3-25-10 Watermaster Board

Date: 12/10/2009



Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730
Attn: Kenneth R. Manning, CEO

Subject: Intervention into Chino Basin Watermaster

Dear Mr. Manning:

I, or the company I represent (see below), request intervention into the Chino Basin Watermaster Judgment. I/we request that the Watermaster attorneys process the Intervention paperwork through the Court.

Number of wells One

Permission is granted to obtain drilling logs from DeChenne Water Well Drilling Co.

Location(s) of wells (including addresses, parcel numbers, and landmarks): 13160 Bonview Ave. Ontario CA, 91761

Type of usage (Irrigation, Dairy, Domestic, etc.)
Domestic

Property Owner (Well Owner) Information:

Name: Rafael Treto
Address: 14163 Peral Ct. Chino CA 91710
Phone: (909) 393-9248 Email: tratos@sbcglobal.net

Property Occupant (Well User) Information (if different from Owner):

Name: SAME
Address: _____
Phone: _____ Email: _____

Representative Handling Intervention:

Name: _____ Title: _____
Address: _____
Phone: _____ Email: _____

Sincerely,
Signed: Rafael Treto Print name Rafael Treto

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CHINO BASIN WATERMASTER

VII. CONFIDENTIAL SESSION

1. **NON-AGRICULTURAL POOL
INFORMATION REQUEST – *FOR
DISCUSSION ONLY***





CHINO BASIN WATERMASTER

9641 San Bernardino Road, Rancho Cucamonga, Ca 91730
Tel: 909.484.3888 Fax: 909.484.3890 www.cbwm.org

KENNETH R. MANNING
Chief Executive Officer

STAFF REPORT

DATE: March 4, 2010
TO: Appropriative Pool Members
SUBJECT: Pools regarding interpretation of the Purchase and Sale Agreement

SUMMARY

Staff requests input from the Pools regarding interpretation of the Purchase and Sale Agreement with reference to the question of the date of transfer of the Non-Agricultural Pool water out of the individual accounts of the Non-Agricultural Pool members. The answer to this question has implications regarding the application of storage losses to this water.

DISCUSSION

On multiple occasions in February the Non-Agricultural Pool has requested information from staff concerning the date on which the June 30, 2007 water in Non-Agricultural Pool storage was transferred out of the accounts of the Non-Agricultural Pool members and where that water is currently located.

In response, Mr. Manning requested legal counsel to prepare a memorandum outlining the issues associated with this transfer. The primary issue concerns the application of losses to the account. Currently Watermaster staff has assumed that the water remained in the Non-Agricultural Pool members' accounts until the end of fiscal year 2009 (ie., June 2009) and has debited the losses from those accounts resulting in negative storage balances for some Non-Agricultural Pool parties. Watermaster has not yet applied losses for FY 09-10.

Watermaster counsel responded to Mr. Manning's request with the attached memorandum. The conclusion of legal counsel's analysis is that the *Purchase and Sale Agreement* is silent as to the effective date of transfer of the water out of the Non-Agricultural Pool storage accounts and thus to the question of the application of losses to the account. Legal counsel recommended reference of the issue to the Pools for input about how the *Purchase and Sale Agreement* should be construed.

No action is requested at this time.

Actions:

- March 4, 2010 Appropriative Pool –
- March 4, 2010 Non-Agricultural Pool –
- March 11, 2010 Agricultural Pool –
- March 18, 2010 Advisory Committee –
- March 25, 2010 Watermaster Board –

Memorandum

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DATE: February 24, 2010
TO: Ken Manning
FROM: General Counsel
RE: Non-Agricultural Pool Information Request

At the February 18, 2010 Advisory Committee meeting, the Non-Agricultural Pool requested information concerning the date on which the Non-Agricultural Pool's June 30, 2007 stored water (in the language of the Purchase and Sale Agreement, the "Storage Transfer Quantity") was transferred, and into whose name the water was transferred. The answer to this question may implicate policy decisions, particularly with regard to the question of how losses will be applied to the Storage Transfer Quantity, if at all. The Purchase and Agreement is silent on the question of possession and how losses were to be assessed in the period of time between the execution of the Agreement and the date at which Watermaster tendered payment. This memorandum has been prepared to summarize these issues, facilitate discussion and to create a framework to receive input from the Pools.

I. Date of Transfer

A. Facts

On January 14, 2010, Watermaster tendered the first payment under the Purchase and Sale Agreement to the members of the Non-Agricultural Pool. This tender of payment was accompanied by a letter from Watermaster which described the current balance of each Pool member's storage account. The storage balances described in these letters were based on an assumption that the Storage Transfer Quantity remained in the accounts of the Non-Agricultural Pool members until at least the end of the fiscal year 2009 (June 30, 2009). Because the water remained with the Non-Agricultural Pool members for the two years from June 30, 2007 until June 30, 2009, the Non-Agricultural Pool members' storage accounts were charged for two years of 2% losses. However, since the Purchase and Sale Agreement specified that the amount of water to be transferred (the Storage Transfer Quantity) is, "equivalent to the total quantity of water held in storage by the members of the Overlying (Non-Agricultural) Pool held in storage on June 30, 2007 . . ." with various adjustments, Watermaster then transferred this amount out of the storage accounts. The net result of this procedure is that some members of the Non-Agricultural Pool

now have negative storage balances. In particular, California Steel now has a negative balance of approximately 185 acre-feet. As a negative balance, this amount should be charged to such parties as a replenishment obligation.

Losses on the water have not yet been applied for fiscal year 2009-2010.

B. Analysis

While it is convenient to speak of Watermaster bookkeeping in terms of a physical transfer of water that occurs at a discrete point in time, the reality of Watermaster's customary practice and procedure focuses on an "effective date" for such activities, with the actual bookkeeping changes taking place during the yearly process of developing the Assessment Package consistent with Paragraph 29 of the Judgment.

Establishing an effective date as to when a transfer of possession of the Storage Transfer Quantity occurred has implications for Watermaster accounting and as to how losses are imposed.

The Purchase and Sale Agreement was approved by the Court on December 21, 2007. For purposes of its internal accounting, Watermaster immediately debited the storage account for the Non-Agricultural Pool and transferred legal ownership of 8,530 acre-feet from Vulcan to San Antonio Water Company (the "Special Transfer Quantity") as provided in Paragraph I of the Purchase and Sale Agreement. Conversely, Watermaster's internal accounting has continued to assess storage losses of 2% against the quantity of stored water in the Non-Agricultural Pool members' storage accounts because possession of the water had not fully transferred to Watermaster and Watermaster assumed that the groundwater remained within the possession of the Non-Agricultural Pool until at least the end of FY 2008-2009.

If this accounting approach were validated, it would have to be harmonized with the obligation of the Non-Agricultural Pool to make available a specific quantity of water held in storage "equivalent to the total quantity of water held in storage ... on June 30, 2007" less applicable deductions for desalter replenishment and the Special Transfer Quantity. The practical implication is that this would require the Non-Agricultural Pool to call upon its members to make-up the loss to satisfy the stated amount, but it would protect the expectation of Watermaster that a specific quantity would be transferred by its tender of payment in accordance with the price schedule.

A second view might be that despite Watermaster's internal accounting, given that the Non-Agricultural Pool had no right to produce the stored water, that the burden associated with a delay in exercising its rights under the Purchase and Sale Agreement should be borne by Watermaster with a segregation of the stored water occurring on the date the Agreement was approved. In effect, the stored water would be deemed to have been placed in escrow beyond the right of either the Non-Agricultural Pool or Watermaster to access at the time of approval of the Purchase and Sale Agreement in 2007. The delay in the functional close of escrow on the Storage Transfer Quantity was within the control of Watermaster. Consequently, the initially designed Storage Transfer Quantity should bear the uniform loss of 2% per year and Watermaster's actual purchase would be reduced by the quantity of the loss. This approach may have implications for the timeliness of a Paragraph 31 Motion review of the removal of the water from the Non-Agricultural Pool storage accounts since such removal will be deemed to have occurred in 2007.

A third view might be that the full amount of water held in storage by the Non-Agricultural Pool as of June 30, 2007 (the "Storage Quantity") is already to be assessed a 10% contribution

for desalter replenishment. Since neither the Non-Agricultural Pool nor the Watermaster had the right to produce the water during the two years between the Court approval and the effective date of Watermasters' delivery of its Notice of Intent to Purchase, the burden should be satisfied from the dedicated quantity for desalter replenishment. In this way the Non-Agricultural Pool would receive the expected remuneration for the water and Watermaster would pay the schedule price on a per acre-foot basis. However, the intended dedication towards desalter replenishment would be credited (reduced) by the uniform losses. Thus, instead of at 10% dedication to desalter replenishment, a 6 percent (10% – 2% [2008]– 2% [2009]) would be assessed. This approach would require Court validation in order to reconcile it with the Peace II Agreement section 9.2.

II. Location of Stored Water

Paragraph (4) of the November 5, 2009 *Plan Regarding Disposition Of Water Purchased From The Non-Agricultural Pool Pursuant To The Peace II Purchase And Sale Agreement* (aka "Plan B") directed Watermaster to create a storage account called the "Purchased Water Account" and to hold the Storage Transfer Quantity in that account. Plan B says:

- (4) Watermaster shall hold the Purchased Water Account in trust for the members of the Appropriative Pool, and shall allocate the water held in the Purchased Water Account according to direction from the Appropriative Pool. However, pursuant to the Purchase and Sale Agreement and the Peace II Agreement, the water may only be used pursuant to a Storage and Recovery Program or for use as Desalter Replenishment.

Watermaster is currently holding the Storage Transfer Quantity pursuant to this direction. Watermaster lacks discretion to use the Storage Transfer Quantity for other than a permissible purpose. The exact allocation and ultimate disposition of the Storage Transfer Quantity may require an approval of a Storage and Recovery Agreement. However, having tendered payment in accordance with the price schedule, possession of the water now lies with Watermaster, subject to a resolution of the uniform loss issue identified above.

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