

SANTA ANA RIVER AND CHINO BASIN WATER RIGHT ACCORD

THIS ACCORD, dated September 15, 2000, is by and between ORANGE COUNTY WATER DISTRICT ("OCWD"), INLAND EMPIRE UTILITIES AGENCY ("IEUA," formerly known as Chino Basin Municipal Water District), CITY OF CHINO ("CHINO"), CITY OF ONTARIO ("ONTARIO"), CITY OF POMONA ("POMONA"), CUCAMONGA COUNTY WATER DISTRICT ("CUCAMONGA"), and MONTE VISTA WATER DISTRICT ("MONTE VISTA").

EXPLANATORY RECITALS

A. In 1969, the Orange County Superior Court entered a stipulated judgment in *Orange County Water District v. City of Chino, et al.*, Orange County Superior Court Case No. 117628 (the "1969 Judgment"), declaring water rights in the Santa Ana River Watershed (the "Watershed") as between the water users in basins above (the "Upper Area") and below (the "Lower Area") Prado Dam. OCWD and IEUA were among the signatory parties to the stipulation for the 1969 Judgment. CHINO, ONTARIO, POMONA, CUCAMONGA and MONTE VISTA were parties (or successors-in-interest to the parties) to the actions and cross-actions that were dismissed and resolved as a result of the stipulations leading to the 1969 Judgment. OCWD is located in the Lower Area; all other parties to this Accord are located in the Upper Area.

B. In 1978, the San Bernardino County Superior Court entered a stipulated judgment in the case of *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino County Superior Court Case No. 164327 (the "1978 Judgment"), declaring water rights within the Chino Basin in the Upper Area. All parties to this Accord were parties to the 1978 Judgment.

C. On or about November 5, 1992, Orange County Water District ("OCWD") filed an Application with the State Water Resources Control Board ("SWRCB") to appropriate water from the Santa Ana River (the "Application"). The Application was supplemented by OCWD on or about August 21, 1998. OCWD contends that the Application is consistent with the rights declared under the 1969 Judgment and, as noted below, OCWD will ask SWRCB to incorporate the entire 1969 Judgment into any permit/license to divert water resulting from the Application

D. On or about September 2, 1999, OCWD filed a Petition with the SWRCB for a limited revision of SWRCB Order WR89-25 (as amended) declaring the Watershed to be fully appropriated (the "Petition"). The Petition is under submission before the SWRCB as a predicate to further proceedings on the Application.

E. Some Upper Area parties were concerned that the Application and Petition could affect Upper Area water rights declared by the 1969 Judgment and 1978 Judgment. Therefore, on or about November 16, 1999, OCWD, IEUA and other entities entered into a Memorandum of Understanding (“MOU”) concerning the effect of the Petition and Application under the 1969 Judgment.

F. IEUA, CHINO, ONTARIO, POMONA, CUCAMONGA and MONTE VISTA (the “Protesting Parties”) protested the Petition before the SWRCB. The Protesting Parties contend that Upper Area rights declared in the 1969 Judgment and 1978 Judgment could become subordinate to the OCWD permit/license rights if the Application and Petition are granted.

G. The Protesting Parties and some of the other parties to the 1978 Judgment (all collectively, “Chino Basin Parties”) continue to have concern about the effect of the Petition and Application upon water rights declared in the 1969 Judgment and 1978 Judgment. The Court in the Chino Basin Adjudication recently endorsed and ordered the Chino Basin Watermaster to adopt an Optimum Basin Management Program (“OBMP”). Implementation of the OBMP will require use of additional quantities of Upper Area water to which the Chino Basin Parties currently assert unexercised rights under the 1969 Judgment and 1978 Judgment.

H. OCWD contends that the 1969 Judgment and applicable law prohibits the export of water native to the Watershed (“native water”) for use outside of the Watershed. The Chino Basin Parties dispute OCWD’s contention.

I. The parties hereto have met and discussed their respective rights to divert, extract, conserve, store and otherwise use waters, including reclaimed waters, originating both within and outside of the Watershed, and have reached the following Accord, the provisions of which are subject to re-opener as set forth below. The Protesting Parties wish to reach an understanding with OCWD which will clarify the effect of the Petition and Application.

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AGREEMENTS

NOW THEREFORE, the Parties agree as follows:

1. **AFFIRMATION OF 1969 JUDGMENT:**

a. **Acknowledgment of Rights.** The parties hereto acknowledge and affirm the rights set forth in the 1969 Judgment, including the "Declaration of Rights" contained in Paragraph 4 thereof, and they agree, subject to those rights, not to object to the uses of water allowed under the 1969 Judgment and under law.

b. **No Diminishment of Rights.** OCWD represents that nothing in the Application and Petition is intended to diminish rights of the Upper Area parties as they are declared in the 1969 Judgment and 1978 Judgment, and OCWD covenants that OCWD shall not assert that anything in the Petition or Application diminishes those rights. The Protesting Parties represent that nothing in any future SWRCB filing by the Chino Basin Parties as provided in Paragraph 6 hereof, is or will be intended to diminish rights of the Lower Area parties as they are declared in the 1969 Judgment and the 1978 Judgment.

2. **RECAPTURE/EXPORT OF UNUSED IMPORTED WATER:**

a. **Acknowledgment of Rights.** OCWD agrees that the Protesting Parties, and those Chino Basin Parties who become third party beneficiaries under paragraph 7 hereof, have rights to use, re-use, recycle, store, recapture and/or export an amount of water equal to any amount of non-native water which the Chino Basin Parties have imported or may import for use within the Watershed which is not consumptively used or otherwise lost as set forth in subparagraph 2(c) hereof.

b. **Representation.** The Protesting Parties represent that, as of the date of this Accord, the total amount of such previously imported water in Chino Basin, which has not been consumptively used or otherwise lost and, therefore, is available for re-use or export, is no more than 100,000 acre feet of non-native water.

c. **Subject to Accounting.** This Accord as to non-native water is subject to the condition that the Protesting Parties will provide to OCWD in writing every twelve (12) months, in conjunction with the development of the Chino Basin Watermaster annual report, an accurate and detailed accounting of the Chino Basin Parties' imports, use, loss and release of native and non-native water for the prior twelve month period, including loss of water through consumptive use, evaporation, transpiration, percolation losses, transmission losses, and any other losses. The accounting of the Chino Basin Parties shall be performed by the Chino Basin Watermaster. The first such accounting is due to the OCWD by January 31, 2001 and the following reports are due every twelve (12) months thereafter.

d. **Review of Accounting.** OCWD may seek review and verification of the accounting by the Santa Ana River Watermaster. The parties hereto shall use their best efforts to resolve any issues in regard to the accounting through the Santa Ana River Watermaster.

3. **STORAGE/RECOVERY/EXPORT PROGRAMS**

a. **Acknowledgment of Right** Pursuant to the conditions set forth in Paragraph 2 of this Accord, the parties acknowledge and agree that OCWD and the Chino Basin Parties have the right to import and store non-native water within the Watershed, and to recover non-native water which is not consumptively used or otherwise lost through consumptive use, evaporation, transpiration, percolation losses, transmission losses, and any other losses, and export the recovered water from the Watershed, and to contract with third parties to exercise such rights.

b. **Notice.** The Protesting Parties agree to provide advance notice to OCWD, by and through the Chino Basin Watermaster, of any project or proposed project by a Chino Basin Party to export water produced from the Chino Basin for use outside the Watershed, and to provide, upon request by OCWD pursuant to Paragraph 5(c), a special accounting with regard to such project. OCWD agrees to provide advance notice to the Protesting Parties, by and through the Chino Basin Watermaster, of any OCWD project or proposed project to export water produced from the Orange County Basin for use outside the Watershed, and to provide, upon request by a Protesting Party pursuant to Paragraph 5(c), a special accounting with regard to such project .

4. **ALL RIGHTS RESERVED AS TO EXPORT OF NATIVE WATER:**

a. **Reservation of Rights.** Without prejudice to the position of any of the parties to this Accord, the parties hereto will leave for future resolution the issue of whether the Chino Basin Parties or OCWD can export native water from the Watershed. The issue reserved for future determination applies to the export from the Watershed of all native water, regardless of whether it is captured surface water, extracted groundwater, or recycled water.

b. **Representation** The Protesting Parties represent that the Chino Basin Parties have no current proposal to export native water under active consideration. OCWD represents that it has no current proposal to export native water under active consideration. For purposes of this Accord, OCWD's distribution of water to entities which are or may become member agencies of OCWD does not constitute an export.

c. **Service Area and Disposal Exception.** Notwithstanding the foregoing, the parties to this Accord have no objection (I) to the continued uses of native water by Chino Basin Parties or water producers within OCWD within their respective service areas or (ii) to the continued export outside the Watershed by Chino Basin Parties or by water producers within OCWD of used native water through their respective wastewater disposal systems, so long as such export includes

only water used within that party's service area and is consistent with the current pattern of that party's wastewater disposal system.

5. **OCWD RIGHT TO TERMINATE ACCORD.**

a. **Right to Terminate.** Once OCWD receives notice under Paragraph 3(c) or otherwise learns that one or more of the Chino Basin Parties proposes or undertakes a project to export native water for use outside the Watershed, OCWD may question or challenge such project proposal, and OCWD shall have the right to terminate this Accord. Once the Protesting Parties receive notice under Paragraph 3(c) or otherwise learn that OCWD proposes or undertakes a project to export native water for use outside the Watershed, the Protesting Parties may question or challenge such project proposal, and one or more of the Protesting Parties shall have the right to terminate this Accord as to itself.

b. **Notice of Termination.** Prior to exercise of its right to terminate the Accord, a party seeking to terminate shall give advance written notice of intent to terminate to the other parties to this Accord, specifying the export project proposal and its objections thereto and requesting reasonable written assurance within thirty (30) days from the party proposing the project that the project does not involve export of native water. If the party seeking to terminate, in its sole discretion, determines that it has received satisfactory assurance, then that party shall withdraw its notice of termination. Upon receipt of notice of intent to terminate, the affected party shall cease efforts to implement the project until the earlier of (I) ninety days or (ii) withdrawal of the notice of termination.

c. **Exhaustion of Accounting Procedure.** If there is a dispute whether the proposed project results in the export of native water or imported water, OCWD and the Protesting Parties agree to first utilize a special accounting of the imports, use, loss and release of native and non-native water prepared by the Chino Basin Watermaster (if the export is by Chino Basin Parties) or OCWD (if the export is by OCWD), and, if a dispute still exists, to use their best efforts to resolve the dispute through review and verification of the special accounting by the Santa Ana River Watermaster before proceeding to terminate the Accord.

6. **SWRCB PROCEEDINGS.**

a. **Incorporation of Accord.** Within ten (10) business days of execution of this Accord, OCWD shall submit a true and correct copy hereof to the SWRCB. OCWD and the Protesting Parties hereby request and consent to an SWRCB condition incorporating this Accord into any order, permit or license issued by the SWRCB in response to the Petition or the Application.

b. **Withdrawal of Protests.** Subject to the express condition that the SWRCB issue an order on the Petition which incorporates this Accord as a part of the order and as part of any

SANTA ANA RIVER AND
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9-15-00 for execution

Protesting Parties hereby request and consent to an SWRCB condition incorporating this Accord into any order, permit or license issued by the SWRCB in response to the Application.

b. **Withdrawal of Protests.** Subject to the express condition that the SWRCB issue an order on the Application which incorporates this Accord as a part of the order and as part of any subsequent permit or license issued as a result of that order, the Protesting Parties hereby withdraw their protests and opposition to the Petition and the Application. So long as OCWD complies with the provisions of the Accord, the Protesting Parties shall take no further action in any forum to protest, oppose or interfere with the processing, review and grant of such Petition and Application or to cooperate with or fund any other entity in doing so.

c. **Chino Basin Filings.** OCWD hereby acknowledges that the Chino Basin Watermaster and/or one or more other agencies, on behalf of the Chino Basin Parties, may file one or more applications to appropriate native or imported water, including applications to re-divert reclaimed water, for use within the Watershed, and a petition for limited revision of SWRCB Order WR89-25 on behalf of Chino Basin Parties in order to implement the OBMP ("Chino Basin Filings"). OCWD hereby agrees that any such petition should be dealt with in an expedited fashion, and agrees to support a request by the Chino Basin Parties for an expedited hearing on the petition. OCWD further agrees that if any such filing(s) is made by or on behalf of the Chino Basin Parties on or before September 30, 2001, and if such filing(s) seeks rights to the same or a lesser quantity of water as OCWD's Application as supplemented or amended, then OCWD agrees that the Chino Basin Filing(s) may be treated by the SWRCB as filed on the same date of priority as the respective OCWD Application and Petition, under authority of Water Code §1253. So long as such filing(s) are consistent with OCWD's water rights under the 1969 Judgment, the 1978 Judgment and this Accord, OCWD has no current plan to challenge such filing(s) and if, upon review of such filing(s), OCWD finds any unexpected issue that causes objection, OCWD will work in good faith with the filing party(s) to resolve such objections.

7. **INTENDED THIRD PARTY BENEFICIARIES:** The Chino Basin Parties who agree to be bound by and comply with all of the terms of this Accord are intended third party beneficiaries of this Accord.

The foregoing is agreed, effective September 15, 2000.

Approved as to form:

By: Chris S. Jell
Legal Counsel

ORANGE COUNTY WATER
DISTRICT

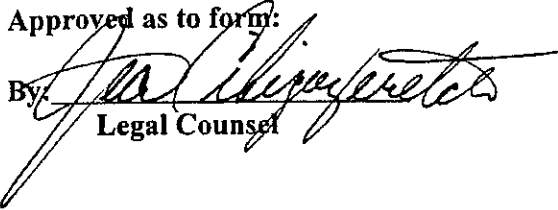
By: Joe Pickler

Its President

By: William J. Mills
General Manager

SANTA ANA RIVER AND
CHINO BASIN WATER
RIGHT ACCORD
9-15-00

Approved as to form:

By: 
Legal Counsel

INLAND EMPIRE UTILITIES
AGENCY

By: 

Its _____

Approved as to form:

By: _____
City Attorney

THE CITY OF CHINO

By: _____
Its _____

Approved as to form:

By: _____
City Attorney

THE CITY OF ONTARIO

By: _____
Its _____

Approved as to form:

By: _____
City Attorney

THE CITY OF POMONA

By: _____
Its _____

Approved as to form:

By: _____
Legal Counsel

CUCAMONGA COUNTY WATER
DISTRICT

By: _____
Its _____

SANTA ANA RIVER AND
CHINO BASIN WATER
RIGHT ACCORD
9-15-00 for execution

Approved as to form:

By: _____
Legal Counsel

Approved as to form:

By: _____
City Attorney

Approved as to form:

By: _____
City Attorney

Approved as to form:

By: _____
City Attorney

Approved as to form:

By: _____
Legal Counsel

INLAND EMPIRE UTILITIES
AGENCY

By: _____

Its _____

THE CITY OF CHINO

By: _____

Its Mayor

THE CITY OF ONTARIO

By: _____

Its _____

THE CITY OF POMONA

By: _____

Its _____

CUCAMONGA COUNTY WATER
DISTRICT

By: _____

Its _____

Approved as to form:

By: _____
Legal Counsel

INLAND EMPIRE UTILITIES
AGENCY

By: _____
Its _____

Approved as to form:

By: _____
City Attorney

THE CITY OF CHINO

By: _____
Its _____

Approved as to form:

By: *E. J. Gannon*
City Attorney

THE CITY OF ONTARIO

By: *Guy D'Amico*
Its CITY MANAGER

Approved as to form:

By: _____
City Attorney

THE CITY OF POMONA

By: _____
Its _____

Approved as to form:

By: _____
Legal Counsel

CUCAMONGA COUNTY WATER
DISTRICT

By: _____
Its _____

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Approved as to form:

By: _____
Legal Counsel

Approved as to form:

By: _____
City Attorney

Approved as to form:

By: _____
City Attorney

Approved as to form:

By: *Anthony Alvarado*
City Attorney

Approved as to form:

By: _____
Legal Counsel

INLAND EMPIRE UTILITIES
AGENCY

By: _____

Its _____

THE CITY OF CHINO

By: _____

Its _____

THE CITY OF ONTARIO

By: _____

Its _____

THE CITY OF POMONA

By: *Douglas Dunlap*

Douglas Dunlap

Its City Manager

CUCAMONGA COUNTY WATER
DISTRICT

By: _____

Its _____

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Approved as to form:

By: _____
City Attorney

THE CITY OF POMONA

By: _____
Its _____

Approved as to form:

DISTRICT
By: Gene Tana.ka
Legal Counsel

CUCAMONGA COUNTY WATER

By: [Signature]
Its GENERAL MANAGER

Approved as to form:

By: _____
Legal Counsel

MONTE VISTA WATER DISTRICT

By: _____
Its _____

SANTA ANA RIVER AND
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Approved as to form:

By: Arthur S. Rudman
Legal Counsel

MONTE VISTA WATER DISTRICT

By: Maureen J. King
Its General Manager