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Attorneys for Main San Gabriel Basin Watermaster

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 UPPER SAN GABRIEL VALLEY
13 MUNICIPAL WATER DISTRICT,

14 Plaintiff,

15 vs.

16 CITY OF ALHAMBRA, et al.,

17 Defendants.

Case No: C 924 128

Assigned for all purposes to:
Honorable Maureen Duffy-Lewis
Dept. 38

**MOTION OF WATERMASTER FOR
ORDER APPROVING CYCLIC
STORAGE AGREEMENT;
DECLARATION OF STEPHEN
JOHNSON IN SUPPORT THEREOF**

Hearing

Date: June 3, 2019
Time: 9:30 a.m.
Dept.: Dept. 38
RES ID: 299482581410

1 **I. INTRODUCTION.**

2 The Main San Gabriel Basin Watermaster ("Watermaster") hereby seeks an
3 order of Court approving the cyclic storage agreement ("Agreement") between Watermaster
4 and United Rock Products Corporation ("United Rock"), which Watermaster has executed
5 subject to Court approval. Watermaster believes that the Agreement is in the best interest of
6 the Main San Gabriel Basin ("Basin") and the parties in this action and within the administrative
7 powers granted Watermaster under the terms of the Judgment entered herein. Court approval
8 is sought in accordance with Paragraph 34(n) of the Judgment which gives Watermaster
9 power to enter into cyclic storage agreements subject to approval of this Court.

10 **II. THE CYCLIC STORAGE AGREEMENT IS CONSISTENT WITH THE JUDGMENT**
11 **AND IN THE BEST INTEREST OF THE BASIN AND THE PARTIES.**

12 **A. The Cyclic Storage Agreement.**

13 The Agreement before the Court is a Cyclic Storage agreement. The Agreement
14 involves utilization of groundwater storage capacity of the Basin for cyclic or regulatory storage
15 of Supplemental Water for subsequent recovery or Watermaster credit by the storing entity.
16 The Agreement provides that United Rock may purchase up to 170 acre-feet of Supplemental
17 Water, through Watermaster, in advance of United Rock's Replacement Water requirements.
18 United Rock will be allowed to pre-purchase Replacement Water at the current year's rate.
19 Water placed in United Rock's cyclic storage account may be credited to United Rock's
20 production or overproduction and is subject to all applicable terms of the Judgment and
21 Watermaster's Rules and Regulations. (The Agreement is attached hereto as Exhibit "1" to the
22 declaration of Stephen Johnson).

23 **B. The Judgment Authorizes Watermaster To Enter Into Cyclic Storage**
24 **Agreements.**

25 Pursuant to Section 25 of the Judgment, spreading, injecting or otherwise
26 recharging water in the Basin is restricted. However, pursuant to Sections 25 and 34(n) of the
27 Judgment, Watermaster is authorized to enter into Cyclic Storage agreements, to be approved
28

1 by the Court with all such agreements to be in accord with the Uniform Rules and Conditions of
2 Cyclic Storage agreements adopted by Watermaster. (Rules and Regulations of Main San
3 Gabriel Basin Watermaster, § 26(a-i)). Section 34(n)(1-4) of the Judgment grants
4 Watermaster the following authority with respect to cyclic storage agreements:

5 "To enter into appropriate contracts, to be approved by the Court,
6 for utilization of Ground Water storage capacity of the Basin for
7 cyclic or regulatory storage of Supplemental Water by parties and
8 non-parties, for subsequent recovery or Watermaster credit by the
9 storing entity, pursuant to uniform rules and conditions, which shall
10 include provision for:

- 11 (1) Watermaster control of all spreading or injection and extraction
12 scheduling and procedures for such stored water;
13 (2) calculation by Watermaster of any special costs, damages or
14 burdens resulting from such operations;
15 (3) determination by Watermaster of, and accounting for, all losses
16 in stored water; and
17 (4) payment to Watermaster for the benefit of the parties hereto of
18 all special costs, damages or burdens incurred. . ."

19 The Agreement is consistent with the Judgment and the Rules and Regulations
20 adopted by Watermaster. The Agreement includes provisions for: (1) Watermaster's control of
21 spreading, storage, and use of stored water; (2) Watermaster's calculation of all water spread
22 and removed pursuant to this Agreement; (3) the requirement that water delivered shall be
23 subject to Watermaster's "Criteria for Delivery of Supplemental Water"; (4) a determination by
24 Watermaster that a reduction in delivery rate of Supplemental Water requires a proration of all
25 cyclic storage rights in the Basin; (5) a determination by Watermaster of, and accounting for,
26 all losses in stored water; and (6) payment by United Rock to Watermaster for all special costs,
27 damages, or burdens incurred.


1 The Agreement utilizes the standard form for Cyclic Storage agreements
2 developed by Watermaster staff, including the Watermaster Engineer and General Counsel.
3 (Johnson Decl., ¶ 8). The Agreement provides for the utilization of the Basin's available
4 storage capacity subject to all terms and conditions of the Judgment entered herein. (Johnson
5 Decl., ¶¶ 3, 7). The Agreement further contains a number of provisions to protect Watermaster
6 and the parties herein from any losses or damages incurred in connection with the storage of
7 water under the Agreement. (Johnson Decl., ¶¶ 3, 9). The Agreement has been duly
8 executed, subject to Court approval, by both Watermaster and United Rock. (Johnson Decl.,
9 ¶¶ 10, 11).

10 **III. CONCLUSION.**

11 For the reasons set forth above, Watermaster believes that the Agreement is
12 consistent with the Judgment, within the powers of Watermaster specified in the Judgment,
13 and in the best interest of the Basin. Watermaster respectfully requests this Court's approval
14 of the Agreement.

15
16 DATED: April 23, 2019

NOSSAMAN LLP
Frederic A. Fudacz
Alfred E. Smith

17
18
19 By: 
20 Alfred E. Smith
21 Attorneys for Main San Gabriel Basin Watermaster
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DECLARATION OF STEPHEN JOHNSON

I, Stephen B. Johnson, declare as follows:

1. I am the Engineer for the Main San Gabriel Basin Watermaster ("Watermaster"). I have personal knowledge of the following facts, and if called to testify as a witness, I could and would competently testify thereto. This declaration is submitted in support of the motion by Watermaster for an order approving Watermaster's execution of the Cyclic Storage agreement ("Agreement") between Watermaster and United Rock Products Corporation ("United Rock").

2. The purpose of the Agreement is to utilize the groundwater storage capacity of the Basin for cyclic or regulatory storage of Supplemental Water. The Agreement provides that United Rock may purchase up to 170 acre-feet of Supplemental Water, through Watermaster, in advance of United Rock's Replacement Water requirements.

3. The Judgment prescribes the Basin be operated, to the extent possible, between elevation 200 feet and 250 feet above mean sea level at the Baldwin Park Key Well representing approximately 400,000 acre-feet. As of March 29, 2019 the groundwater elevation at the Baldwin Park Key Well was 189.2 feet. Furthermore, Watermaster has entered into Cyclic Storage agreements in a cumulative amount of 332,000 acre-feet. Consequently, there is available storage to accommodate an additional 170 acre-feet in a Cyclic Storage account and there should be no adverse impact to the Basin.

4. Watermaster has applied a \$100 per acre-foot surcharge on Producers' Replacement Water requirements as a means of encouraging pre-delivery of Supplemental Water into Producer Cyclic Storage accounts, thus avoiding a Replacement Water requirement.

5. The Basin has experienced drought conditions over the past seven years. The lack of stormwater runoff, and concomitant replenishment to the Basin, has resulted in decreasing groundwater levels. Producer deliveries of Supplemental Water into Cyclic Storage accounts have helped maintain groundwater levels in the Basin. As of March 31,

1 2019, approximately 160,000 acre-feet were in Cyclic Storage representing an approximate
2 additional 20 feet for the groundwater levels in the Basin.

3 6. Watermaster, the Upper San Gabriel Valley Municipal Water District, and
4 the Metropolitan Water District of Southern California ("MWD") have entered into an agreement
5 whereby approximately 80,000 acre-feet of Supplemental Water has been delivered to the
6 Basin with a commitment from Watermaster to purchase approximately 16,000 acre-feet per
7 year over five consecutive years. Similar to Cyclic Storage deliveries, the pre-delivery of MWD
8 water will help to stabilize Basin groundwater levels.

9 7. United Rock will be allowed to pre-purchase Replacement Water at the
10 current year's rate. Water placed in United Rock's Cyclic Storage account may be credited to
11 its overproduction, and is subject to all applicable terms of the Judgment and Watermaster's
12 Rules and Regulations. The Agreement specifies the maximum amount of water that may be
13 stored in the Basin by United Rock at any point in time.

14 8. The Agreement utilizes the standard form for individual party cyclic
15 storage agreements developed by Watermaster staff, including the Watermaster Engineer and
16 General Counsel.

17 9. The Agreement between Watermaster and United Rock has been
18 reviewed by counsel for Watermaster. The Agreement provides for utilization of the Basin's
19 storage capacity and contains a number of provisions designed to protect Watermaster and
20 the parties herein from any losses or damages incurred in connection with the storage of water
21 under the Agreement.

22 10. At the regularly scheduled public meeting of Watermaster on April 3, 2019,
23 Watermaster authorized the Agreement, subject to Court approval. Thereafter, Watermaster
24 directed counsel to petition this Court for approval of the Agreement.

25 11. The true and correct Agreement executed by both Watermaster and
26 United Rock, subject to approval by this Court, is attached hereto as Exhibit "1."

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

3 Executed on April 22, 2019, at Covina, California.


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STEPHEN JOHNSON
Engineer
Main San Gabriel Basin Watermaster

EXHIBIT 1

INDIVIDUAL PARTY CYCLIC STORAGE AGREEMENT

THIS AGREEMENT, entered into as of this 3rd day of April 2019, by and between UNITED ROCK PRODUCTS CORPORATION (herein referred to as "Producer") and the MAIN SAN GABRIEL BASIN WATERMASTER, a court appointed entity established by the Superior Court of the State of California in and for the County of Los Angeles, (herein referred to as "Watermaster").

RECITALS

- A. Water rights have been adjudicated in the Main San Gabriel Basin (herein referred to as "the Basin") according to the Judgment in Los Angeles County Superior Court; Civil Action No. 924128 entitled "Upper San Gabriel Valley Municipal Water District vs. City of Alhambra, et al." Said Judgment established Watermaster as the court empowered entity responsible for managing the Basin and authorized Watermaster to purchase Supplemental Water for replenishment of the Basin (herein referred to as "Supplemental Water"). Such purchase of Supplemental Water shall be made through three Responsible Agencies, as defined in the Judgment, which have a source of Supplemental Water to the Basin.
- B. Spreading, injecting or otherwise recharging water in the Basin is restricted according the Section 25 of the amended Judgment; however, pursuant to Section 34(n) of said Amended Judgment, Watermaster is authorized to enter into cyclic storage agreements, to be approved by the Court, for utilization of ground-water storage capacity in the Basin for cyclic or regulatory storage of Supplemental Water, for subsequent recovery and use or Watermaster credit by the storing entity, with all such agreements to be in accord with Uniform Rules and Conditions adopted by Watermaster.
- C. To provide for the spreading of water for cyclic storage, Watermaster and the Los Angeles County Flood Control District have heretofore entered

into an agreement whereby the Flood Control District will undertake the responsibilities associated with actual spreading operations in the Basin.

- D. The following cyclic Storage Agreement is made pursuant to the Uniform Rules and Conditions adopted by Watermaster.

COVENANTS

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties hereto do hereby agree as follows:

1. **Definitions**

The definitions contained in the above-mentioned Judgment are hereby incorporated by this reference and made a part hereof.

2. **Agreement Status**

The rights granted under this Agreement shall have priority for storing water and responsibilities for losses of stored water in accordance with Watermaster's Uniform Rules and Conditions of Cyclic Storage Agreements.

3. **Delivery, Amount, and Ownership of Stored Water**

Producer may, subject to the conditions hereinafter set forth, cause to be spread in the Basin State Project Water which will be stored for Producer's account until such time as needed by Producer to meet Supplemental Water requirements placed on it by Watermaster. The amount of water to be stored in the Basin for Producer hereunder shall not exceed **170 acre-feet** at any point in time. Producer shall acquire and retain during the term hereof (or any extensions thereof) ownership of all water stored for its account hereunder until such time as said water is produced by Producer, transferred by Watermaster as a credit to Producer's subsequent Replacement Water obligation or lost pursuant to Section 2 hereof.

4.0 **Watermaster Control of Spreading, Storage, and Use of Stored Water**

All water stored for Producer's account pursuant to this Agreement shall be ordered by Watermaster through a Responsible Agency and spread by

the Los Angeles County Flood Control District in accordance with its said agreement with Watermaster. The time, place, and amount of such spreading within the Basin shall be approved in advance by Watermaster provided that when the water level of the Baldwin Park Key Well is at or above elevation 250 Watermaster shall not allow Supplemental Water to be spread in the Basin unless otherwise approved by the Court or shall limit such spreading activities to specific spreading grounds.

4.1 Criteria for Delivery of Supplemental Water

Producer shall comply with Watermaster's "Criteria for Delivery of Supplemental Water," January 1996, adopted by Watermaster Resolution 4-96-138, April 3, 1996.

4.2 Controls by Watermaster

Notwithstanding any other provisions of this Agreement, Watermaster reserves the right to order the cessation or reduction in delivery rate of water being spread for cyclic storage if, in its judgment, Watermaster determines:

- a. that water previously authorized to be stored under this Cyclic Storage Agreement would cause the elevation of the ground water in the Basin to adversely affect the Basin's highest utilitarian operations; or
- b. that such cessation or reduction in delivery rate is necessary to prorate the cyclic storage rights of all Cyclic Storage Agreements in the Basin; or
- c. that the spreading of Supplemental Water to meet Replacement Water requirements would be jeopardized by the continued spreading of water for cyclic storage when considering the necessity to protect the elevation of the Baldwin Park Key Well.

4.3 Reports of Spreading

Producer shall issue a quarterly report to Watermaster indicating the amount of water which Producer has delivered or caused to be spread hereunder for storage for Producer's account. Such reports shall be due on the last day of the month next succeeding the end of the relevant

quarter, i.e., April 30, July 31, October 31, and January 31, and shall be subject to Watermaster's verification.

5. Loss of Water

Watermaster shall determine and assign losses in water stored for Producer's account in the Basin, assuming that cyclic stored water floats on top of the groundwater supplies. Such losses shall be determined by accounting for all losses of natural water which would have replenished the Basin had water not been in cyclic storage, and Watermaster shall apportion such losses among all storing entities pursuant to and in accordance with Watermaster's Uniform Rules and Conditions governing cyclic storage.

6. Payment Provisions

Producer shall pay to Watermaster the established rates for Supplemental Water to be delivered into Producer's Individual Party Cyclic Storage Account. Watermaster will order Supplemental Water from the Responsible Agencies and will pay the Responsible Agencies' established rates for Supplemental Water.

7. Accounting for Removal of Water from the Basin

Watermaster shall account for the removal of water by the Producer from the Basin as follows:

- a. The first water which a Producer produces from the Basin in a Fiscal Year shall be Carry-over of unused rights in accordance with Section 49 of the Judgment which provides that "The first water in the succeeding Fiscal Year shall be deemed produced pursuant to such Carry-over Rights.";
- b. The next such water so produced shall be temporary transferred water rights, if any;
- c. The next such water so produced shall be a Producer's share of the Operating Safe Yield for that Fiscal Year;
- d. The next such water so produced shall be a Producer's water stored pursuant to a valid Individual Party Cyclic Storage Agreement.

8. **Rent, or Offset Credit**

It is hereby agreed that there is no charge, rent, assessment or expense incurred by reason of the storage rights granted hereunder, nor is there any credit or offset for the benefits thereof, nor shall there be any charge for the use of physical facilities including service connections, flood control channels, spreading basins or hydrologic services utilized in connection with the storage rights granted herein.

9. **Indemnity Clause**

Producer shall save and hold harmless Watermaster and its officers, agents, and employees from any and all costs, damages or liability resulting or alleged to result from the storage of water pursuant to this Agreement and shall provide Watermaster with the defense or costs of defense of any action brought against Watermaster, its officers, agents, or employees arising or alleged to arise by reasons of the storage of water in the Basin for Producer's account.

10. **Term**

The term of this Agreement shall commence on the day, month, and year first above written and shall terminate **five years** thereafter unless previously terminated or extended as hereinafter provided. By the mutual agreement of the parties hereto, and without further court approval, this Agreement may be extended for additional terms, not to exceed five years each, provided Watermaster shall report its intention to consider an extension of this Agreement in its minutes of a meeting held prior to its meeting when any such extension request shall be acted upon.

11. **Effective Date of Agreement**

This Agreement shall become effective only upon Court approval hereof and Watermaster shall petition the Court for such approval.

12. **Termination**

For a material breach hereunder, any party hereto may terminate this Agreement upon thirty-(30) days' written notice to the other parties hereto.

13. **Notices**

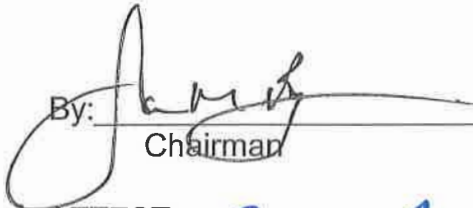
Any notice required hereunder may be given by mail, postage, prepaid, addressed as follows:

TO: Main San Gabriel Basin Watermaster
Attn: Executive Officer
725 North Azusa Avenue
Azusa, California 91702

TO: United Rock Products Corporation
Attn: Robert W. Bowcock
Integrated Resources Management
405 N. Indian Hill Boulevard
Claremont, CA 91711-4600

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by its authorized officers.


MAIN SAN GABRIEL BASIN WATERMASTER

By:  _____
Chairman

ATTEST:

By:  _____
Secretary

APPROVED AS TO FORM AND EXECUTION:

By:  _____
Attorney for Watermaster

PRODUCER

By: W.J.T. Boyd
General Manager/Designee

ATTEST:

By: [Signature]
Asst. Secretary

APPROVED AS TO FORM AND EXECUTION:

By: [Signature]
Attorney for PRODUCER



Journal Technologies Court Portal

Court Reservation Receipt

Reservation

Reservation ID:
299482581410

Status:
RESERVED

Reservation Type:
Motion re: (Petition of Watermaster for
Appointment of Successor Watermaster
Member for Calendar Year 2019 Term)

Number of Motions:
1

Case Number:
C924128

Case Title:
UPPER SAN GABRIEL VALLEY MUNICIPAL
WATER DISTRICT vs CITY OF ALHAMBRA

Filing Party:
MAIN SAN GABRIEL BASIN WATERMASTER

Location:
Stanley Mosk Courthouse - Department 38

Date/Time:
June 3rd 2019, 9:30AM

Confirmation Code:
CR-GVKVHMYSZ2PYAYUDT

Fees

Description	Fee	Qty	Amount
Motion re: (name extension) *** Fees Exempted by Gov Code 6103.1 ***	60.00	1	0.00
TOTAL			\$0.00

Payment

Amount:
\$0.00

Type:
GOVT_EXEMPT

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