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5 Attorneys for
 6 **CHINO BASIN WATERMASTER**

7
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF SAN BERNARDINO

10
 11 CHINO BASIN MUNICIPAL WATER
 12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the Honorable
 STANFORD E. REICHERT]

**STATUS REPORT ON WATERMASTER'S
 SAFE YIELD REDETERMINATION AND
 RESET**

Date: August 21, 2015

Time: 1:30 p.m.

Dept: R-6

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 19 Pursuant to the Court's continuing jurisdiction and the prior orders of this Court, the
 20 Chino Basin Watermaster ("Watermaster") is responsible for setting Safe Yield and administering
 21 the decree. This Status Report is provided to advise the Court of Watermaster's ongoing efforts
 22 and its expected time for the completion of previously ordered actions. Watermaster respectfully
 23 requests that the Court accept the Status Report and approve the proposed timeline for
 24 completion, by its adoption of the proposed Order, attached hereto for the Court's convenience
 25 and consideration.

26 **I. BACKGROUND**

27 The Basin's Safe Yield¹ was initially set in the Judgment at 140,000 acre-feet per year.

28 ¹ The Basin's Safe Yield is defined within the Judgment as: "The long-term average annual

(Restated Judgment, ¶ 6.) Pursuant to Court order, Watermaster has been directed to reset the Safe Yield, subject to the Court's continuing jurisdiction. (July 13, 2000 Order Concerning Adoption of OBMP; July 19, 2001 Order Granting Final Approval of Watermaster Rules and Regulations; Approving Intervention of CCG Ontario, LLC; Continuance of Hearing re Status Report; Filing of Motions to Amend Judgment; see Restated Judgment, ¶¶ 4.(x), 15.(a), Exhibit "H", ¶ 10.(a)(1);.)

In 2000, in developing the Implementation Plan for the Optimum Basin Management Program ("OBMP"), as part of Program Elements 8 (Develop and Implement Groundwater Storage Management Program) and 9 (Develop and Implement Storage and Recovery Programs), the Parties planned that, based on the need for additional data regarding the Basin, in year 2010/11 and every ten years thereafter, Watermaster would re-determine and reset the Basin's Safe Yield² for the following ten-year period, using new data and information that would become available for the first time, following the Peace Agreement. (OBMP Implementation Plan, pp. 44-45, Watermaster Rules and Regulations, § 6.5; see Watermaster's April 11, 2014 Status Report on Watermaster's Safe Yield Recalculation ("April 2014 Status Report"), at 2:7-13.)

II. PRESENT RE-DETERMINATION AND RESET PROCESS

A. Model Update and Initial Stakeholder Meetings

As described in Watermaster's April 2014 Status Report, at the close of the ten-year period that was identified in the OBMP Implementation Plan and the Rules and Regulations, in the opinion of its technical expert, Watermaster was not able to competently perform the required re-determination and reset because of insufficient data and the absence of important analytical tools; namely, the ability to model the operation of the groundwater basin. (April 2014 Status Report, 2:20-24.) In addition, the need to complete competing projects impacted available staff and consultant time. (April 2014 Status Report, 2:24-25.) After beginning, in 2010/2011, the

quantity of ground water (excluding replenishment or stored water but including return flow to the Basin from use of replenishment or stored water) which can be produced from the Basin under cultural conditions of a particular year without causing an undesirable result." (Restated Judgment, ¶ 4.(x).)

² The Implementation Plan additionally provided for the computation and reset of the Basin's storage loss rate, but this has been superseded by an alternative mechanism, pursuant the Peace II Agreement. (OBMP Implementation Plan, p. 45; Peace II Agreement, ¶ 7.4.)

1 process of methodically gathering and analyzing the data from time of the Peace Agreement
2 forward, and during the past four years, Watermaster has caused the collection of all required data
3 and fully funded the work of its hydrologic consultant in updating its hydrologic model of the
4 movement of water within the Basin ("Basin Model"), and is now able to complete the required
5 re-determination and reset. (April 2014 Status Report, 3:2-9.)

6 As described in the April 2014 Status Report, following its completion of its forensic
7 exercise of data collection, model update and model calibration, Watermaster began the process
8 of obtaining stakeholder input as to the Safe Yield reset process and peer review of the updated
9 Basin Model. (April 2014 Status Report, 3:10-12.) Between Summer 2013 and November of
10 2014, Watermaster held workshops and technical modeling review sessions specifically in regard
11 to the update to the model and Watermaster staff and consultants conducted numerous meetings
12 with smaller subsets of interested Parties. (April 2014 Status Report, 3:12-15.)

13 After the filing of the April 2014 Status Report, and throughout the summer and early fall
14 of 2014, meetings and discussions among stakeholders continued. On July 10, 2014, the
15 Appropriative Pool Committee took action to request that Watermaster convene regular meetings,
16 occurring twice each month, to allow the Pool members to attempt to reach consensus as to the
17 issues surrounding the redetermination and reset of the Basin's Safe Yield. (Declaration of
18 Bradley J. Herrema in Support of Status Report on Watermaster's Safe Yield Redetermination
19 and Reset ("Herrema Decl."), at ¶ 3.) On September 16, 2014, a Board workshop was held
20 regarding the Safe Yield redetermination and reset issues. (Herrema Decl., at ¶ 4.) In October
21 and November of 2014, the Watermaster parties, at the Pool Committee, Advisory Committee
22 and Watermaster Board meetings, discussed various technical approaches to the determination
23 and reset, though no action was taken. (Herrema Decl., at ¶ 5.)

24 **B. Watermaster Facilitated Process**

25 On November 20, 2014, the Advisory Committee requested that Watermaster convene a
26 facilitated process to identify and resolve all issues related to the successful completion of the
27 Safe Yield redetermination for consideration by the Pool Committees, Advisory Committee and
28 Watermaster Board in May 2015. (Herrema Decl., at ¶ 6.) On November 25, 2014, the

1 Watermaster Board adopted the Advisory Committee's recommendation with certain
2 clarifications regarding the selection of a facilitator for that process. (Herrema Decl., at ¶ 7.)

3 In December 2014, in response to a request by the Advisory Committee, the Watermaster
4 Board agreed to allow Watermaster legal counsel to serve as the facilitator in this process.
5 (Herrema Decl., at ¶ 7.) In early January, the process began in earnest, among a group of parties
6 signatory to a Facilitation and Non-Disclosure Agreement, with the Watermaster Board
7 additionally agreeing to the terms of that agreement in regard to the services of its counsel and
8 staff in attempting to facilitate resolution among the parties.

9 The parties to the facilitation process met at least weekly and, in many cases, multiple
10 times per week, in an attempt to achieve consensus as to the Safe Yield redetermination and reset
11 issues. (Herrema Decl., at ¶ 8.) In total, in addition to the many informal meetings and
12 discussions that took place, the group of parties met more than 30 times. (*Ibid.*) In recognition of
13 the complexity of the issues at hand and the substantial progress that was being made by these
14 parties, it was agreed that the timeframe for completion of the facilitation process should be
15 extended to allow consensus to be reached if at all possible. (Herrema Decl., at ¶ 9.) As the
16 discussions elucidated the potential terms of resolution among the parties to the facilitation,
17 parties to the Judgment that were not signatories to the facilitation agreement were briefed so that
18 they might be prepared to receive and evaluate any agreement among the parties to the facilitation
19 agreement. (Herrema Decl., at ¶ 10.)

20 **C. Stakeholder Agreement Upon Key Principles**

21 On May 27, 2015, all but one of the then active parties to the Facilitation and Non-
22 Disclosure Agreement reached agreement on certain key principles embodied in the Safe Yield
23 Summary of Non-Binding Key Principles Derived from Facilitated Process ("Key Principles"),
24 attached to the declaration of Bradley J. Herrema as Exhibit "A." Generally, the Key Principles
25 address the redetermined and reset Safe Yield along with agreements by the parties as to their
26 recommendations as to how the reset should be implemented.

27 Upon their agreement to the Key Principles, the parties thereto distributed the Key
28 Principles to the parties to the Watermaster Judgment that had not been participating in the

1 facilitation process, as well as to the Watermaster Board for review and discussion at its May 28,
2 2015 regular meeting. (Herrema Decl., at ¶ 11.) At its May 28, 2015 meeting, the Watermaster
3 Board requested input on the Key Principles from the parties that were not part of the facilitated
4 process and directed staff to convene a special meeting to discuss any concerns of those parties
5 prior to its next regulatory scheduled meeting. (Herrema Decl., at ¶ 12.) The Board also
6 requested that staff begin drafting a status report for its consideration at its regularly scheduled
7 June 2015 meeting. At the June 25, 2015 meeting, Watermaster Board approved filing this Status
8 Report in substantial conformance with its contents at the time of that meeting, subject to
9 additional input from the members of the Pool Committees. (Herrema Decl., at ¶ 16.)

10 At their June 11, 2015 regular meetings, the Overlying (Non-Agricultural) Pool
11 Committee and the Overlying (Agricultural) Pool Committee both approved the Key Principles,
12 including specific modifications that had been approved by the Appropriative Pool Committee
13 during its June 11, 2015 Committee meeting. (Herrema Decl., at ¶ 13.) As stated in the Key
14 Principles, each approving Party or Pool intends to continue to negotiate in good faith, with the
15 goal to reduce the Key Principles into a binding instrument for execution no later than September
16 1, 2015. (Herrema Decl., at ¶ 14; Herrema Decl., Exh. "A", at p. 1.) Upon finalization of such an
17 instrument, the parties will, as expediently as is practicable, present the final document to their
18 respective governing bodies for approval and adoption. It is anticipated that the approval process
19 by the respective governing bodies may take as long as 30 days to complete. (Herrema Decl., at ¶
20 14.) Watermaster's reasonable belief, therefore, is that it will be able to file its motion by
21 October 1, 2015. (Herrema Decl., at ¶ 15.)

22 **III. WATERMASTER'S RECOMMENDATION AND REQUEST**

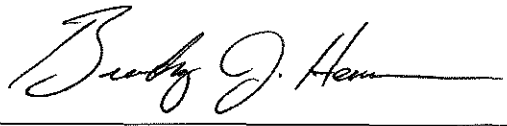
23 In light of the substantial progress towards the comprehensive resolution of issues
24 pertinent to the implementation of the Safe Yield Reset, Watermaster respectfully requests the
25 Court accept this Status Report and await further filings in support of the Key Principles as they
26 may be reduced to a final binding legal instrument. Watermaster anticipates that it will be able to
27 complete preparation and filing of the legal instruments along with a supporting record for the
28 Court's review no later than October 1, 2015 (see Herrema Decl., at ¶ 16), pursuant to the

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proposed order filed herewith.

Dated: July 10, 2015

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

By: 

SCOTT S. SLATER
BRADLEY J. HERREMA
ATTORNEYS FOR
CHINO BASIN WATERMASTER

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN BERNARDINO

12 CHINO BASIN MUNICIPAL WATER
13 DISTRICT,

14 Plaintiff,

15 v.

16 CITY OF CHINO, et al.,

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Case No. RCV 51010

[Assigned for All Purposes to the Honorable
STANFORD E. REICHERT]

**DECLARATION OF BRADLEY J.
HERREMA IN SUPPORT OF STATUS
REPORT ON WATERMASTER'S SAFE
YIELD REDETERMINATION AND
RESET**

Date: August 21, 2015
Time: 1:30 p.m.
Dept: R-6

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21 I, Bradley J. Herrema, declare:

22 1. I am an attorney duly admitted to practice before all of the courts of this State, and
23 am a shareholder in the law firm of Brownstein Hyatt Farber Schreck, LLP, counsel of record for
24 Chino Basin Watermaster ("Watermaster"). I have personal knowledge of the facts stated in this
25 declaration, except where stated on information and belief, and if called as a witness, I could and
26 would competently testify to them under oath. I make this declaration in support of the above-
27 referenced status report.

28 2. As legal counsel for Watermaster, I am familiar with Watermaster's practices and

1 procedures, as well as actions taken by the Pool Committees, Advisory Committee and Board.

2 3. After the filing of the April 2014 Status Report, throughout the summer and early
3 fall of 2014, the Appropriative Pool Committee met to determine a strategy for approaching Safe
4 Yield Recalculation and Reset. On July 10, 2014, the Appropriative Pool requested that
5 Watermaster convene regular meetings, occurring twice each month, to allow the Pool members
6 to attempt to reach consensus as to the issues surrounding the redetermination and reset of the
7 Basin's Safe Yield.

8 4. On September 16, 2014, a Board workshop was held regarding the Safe Yield
9 redetermination and reset issues.

10 5. In October and November of 2014, the Watermaster parties, through discussions at
11 the meetings of the Pool Committees, Advisory Committee, and Watermaster Board, discussed
12 various technical approaches to the redetermination and reset, though no action was taken.

13 6. On November 20, 2014, the Advisory Committee requested that Watermaster
14 convene a facilitated process to identify and resolve all issues related to the successful completion
15 of the Safe Yield redetermination for consideration by the Pool Committees, Advisory
16 Committee, and Watermaster Board in May 2015.

17 7. On November 25, 2014, the Watermaster Board adopted the Advisory
18 Committee's recommendation with certain clarifications regarding the selection of a facilitator for
19 that process. In December, 2014, in response to a request by the Advisory Committee, the
20 Watermaster Board agreed to allow Watermaster legal counsel, Scott Slater, to serve as the
21 facilitator in this process.

22 8. During the months of January through May, 2015, the parties to the facilitation
23 process met at least weekly and, in many cases, multiple times per week, in an attempt to achieve
24 consensus as to the safe yield redetermination and reset issues. In total, in addition to many
25 informal meetings and discussions that took place, the group of parties met more than 30 times.

26 9. In recognition of the complexity of the issues at hand and the substantial progress
27 that was being made by the participating parties, it was agreed by the Board, through action at its
28 March and April 2015 regular meetings, that the timeframe for completion of the facilitation

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DECLARATION OF BRADLEY J. HERREMA IN SUPPORT OF STATUS REPORT ON WATERMASTER'S
SAFE YIELD REDETERMINATION AND RESET

1 process should be extended to allow consensus to be reached if at all possible.

2 10. As the discussions elucidated the potential terms of resolution among the parties to
3 the facilitation, parties to the Judgment that were not signatories to the facilitation agreement
4 were briefed so that they might be prepared to receive and evaluate any agreement among the
5 parties to the facilitation agreement.

6 11. On May 27, 2015, all but one of the then-active parties to the Facilitation and Non-
7 Disclosure Agreement reached agreement on certain key principles embodied in the Safe Yield
8 Summary of Non-Binding Key Principles Derived from Facilitated Process ("Key Principles"),
9 attached hereto as Exhibit "A". Upon agreement to the Key Principles, the parties thereto
10 distributed the Key Principles to the Watermaster Judgment parties that had not been participating
11 in the facilitation process, as well as to the Watermaster Board for review and discussion at its
12 May 28, 2015 regular meeting.

13 12. At its May 28, 2015 meeting, the Watermaster Board requested input on the Key
14 Principles from the parties that were not part of the facilitated process and directed staff to
15 convene a special meeting to discuss any concerns of those parties prior to its next regulatory
16 scheduled meeting. The Board also requested that staff begin drafting a status report for its
17 consideration at its regularly scheduled June 2015 meeting.

18 13. At their June 11, 2015 regular meetings, the Overlying (Non-Agricultural) Pool
19 Committee and the Overlying (Agricultural) Pool Committee both approved the Key Principles
20 including specific agreed modifications as they had been approved by the Appropriate Pool
21 Committee during its June 11, 2015 Committee meeting.

22 14. Consistent with the Key Principles, good faith negotiations between the Parties
23 and Pools that approved the Key Principles have begun, and will continue until such time that a
24 binding instrument can be memorialized and executed. Once the parties memorialize the Key
25 Principles into a binding agreement, they will be required to present the agreement to their
26 respective governing bodies for approval and adoption. I reasonably anticipate the approval
27 process to be complete in approximately 30 days.

28 15. Watermaster has proposed a schedule for completion of the previously-ordered

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1 Safe Yield Recalculation and Reset that is reasonably calculated to allow Watermaster to return to
2 the Court for its consideration and possible approval not later than October 1, 2015.

3 16. At the June 25, 2015 Watermaster Board meeting, the Board approved filing the
4 Status Report on Watermaster's Safe Yield Redetermination and Reset in substantial
5 conformance with its contents as presented to the Board at the meeting. The Board allowed for
6 the members of the Pool Committees to provide any further input on the Status Report by the date
7 of their next regular meetings, July 9, 2015, and directed that the Status Report be filed with the
8 Court on July 10, 2015.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct. Dated this 10th day of July, 2015, at Rancho Cucamonga, CA.
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15 Bradley J. Herrema
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Exhibit A

SAFE YIELD RESET SUMMARY OF NON-BINDING KEY PRINCIPLES DERIVED FROM FACILITATED PROCESS

These Non-Binding Key Principles are the product of good faith bargaining among the initialing parties reflecting a substantial consensus moving forward to re-set Safe Yield contemplated by the Judgment, the Peace Agreement(s) and the OBMP. Although support is not unanimous, the parties are initialing these *Non-Binding* Key Principles, each signifying an intention to continue to negotiate in good faith to reduce these principles into a binding instrument(s), whatever form it may take, for execution no later than September 1, 2015 and to coordinate further briefings of the Court in support of their good faith intentions. The Safe Yield is not to be reset unless and until the binding agreements are finalized among the parties. No person or party waives any right to object to the documentation of these key principles in binding instruments or binds any individual or institution by its initialing of this document.

Each of the initialing parties acknowledges their individual duty and collective stewardship obligation to manage the precious water resources of this State and more specifically the waters of the Chino Basin in accordance with the Constitutional requirements set forth in Article X, Section 2. This process exemplifies their individual and collective best efforts towards the optimum management of groundwater in the Basin to ensure the maximum reasonable and beneficial use thereof.

The initialing parties invite all other parties to the Judgment to participate in good faith to document final binding agreements to re-set Safe Yield and to implement the use of Chino Basin to promote sound resources conservation and stewardship practices as contemplated by the Judgment, the Peace Agreements and the OBMP.

The facilitated process shall remain privileged and confidential and its content not subject to disclosure pursuant to California Evidence Code Section 1152.

Safe Yield Reset

1. Safe Yield Reset. 135,000 AFY.
2. Effective Date. Upon Court approval of the Safe Yield Reset, July 1, 2010, the implementation of the reset will occur on July 1, 2014, but with no retroactive accounting. For the avoidance of doubt, this means Watermaster will not change prior accounting of its prior allocation of Safe Yield and Operating Safe Yield among the parties for years prior to July 1 2014.
3. Reset again in 2020 for the period 2021-2030.
4. Safe Yield evaluations shall be consistent with the April 10, 2015 Tech Memo prepared by Wildermuth Environmental (See Exhibit "A"):
 - (a) Use normalized long-term hydrology: 1921 to present date.

JUNE 11, 2015 POOLS – APPROVED SAFE YIELD KEY PRINCIPLES

- (b) Long-term hydrology will be expanded to include data from each year from now until 2030.
 - (c) Long-term hydrology accounts for short-term climatic variations, wet and dry.
 - (d) Watermaster will ensure that all production by all parties to the Judgment is reported and accounted for.
 - (e) Collect data concerning cultural conditions annually, with cultural conditions including, but not limited to, land use, water use practices, production, and facilities.
 - (f) Evaluate the potential need for the exercise of prudent management discretion to impose measures as may be required to avoid or mitigate undesirable results including, but not limited to, subsidence, water quality degradation, and unreasonable pump lifts.
 - (g) If evaluation of data appears to suggest a material change from existing and projected conditions or threatened undesirable results, then a more significant evaluation and a model run will be undertaken.
 - (h) A budget will be developed for the annual data collection, data evaluation and model run efforts with an agreed methodology for the allocation of expenses among the parties.
 - (i) A model run will be completed in connection with the 2020 Reset and again in 2025 in a manner consistent with Exhibit “A” the April 10, 2015 Wildermuth Environmental Technical Memorandum.
5. An interim correction and a Safe Yield Reset will occur when Watermaster has conducted a higher level of evaluation, as referenced in paragraph 4 above and with the advice and counsel of the Pools and Advisory Committee in the exercise of prudent management discretion, a conclusion is reached that Safe Yield must be changed by an amount greater (plus or minus) than 2.5%.
6. Peer review of Watermaster collection and application of data may be undertaken by all Pools annually.

Safe Storage Management

1. Safe Storage Management. 130,000 AF. The parties will support the prudent management objective of protecting against Material Physical Injury and Undesirable Results. Further explanation to be provided in a technical memorandum.
2. Safe Storage Reserve
 - (a) Safe Storage Reserve means a quantity of water held in storage that is sufficient to ensure protection against a precipitous drop in water levels and undesirable results while a more comprehensive plan can be developed by the parties.
 - (b) Appropriative Pool stored water in non-supplemental stored water accounts will be the only water subject to this provision.
 - (c) The Appropriative Pool parties will be responsible for ensuring such quantities are present in the Reserve, shared among them in accordance with their

JUNE 11, 2015 POOLS – APPROVED SAFE YIELD KEY PRINCIPLES

- relative percentage of their quantity of non-supplemental held in groundwater in storage on July 1, 2015, if and when the quantity of Appropriative Pool stored water in non-supplemental stored water accounts decreases to a gross quantity of 150,000 AF.
- (d) 100,000 AF of the Safe Storage Reserve water will be available for use in the event of an emergency, provided that any stored water withdrawn would be replenished within 36 months of the withdrawal and the withdrawal will not cause Material Physical Injury.
 - (e) Absent a Storage Management Plan, up to a maximum of 30,000 AF of the Safe Storage Reserve water will be available after 2024 for the exclusive purpose of the dedication to Desalter Replenishment in furtherance of the OBMP and the maintenance of Hydraulic Control. The withdrawal of this water must not cause Material Physical Injury.
 - (f) Parties remain subject to the terms of the Peace Agreement.
4. The Appropriative Pool, in coordination with other interested Pools and Parties, will exercise best efforts to develop and recommend, and Watermaster will obtain Court approval, of a Storage Management Plan that may be substituted in whole or in part for the above referenced Safe Storage Management commitments. The Appropriative Pool, in coordination with other interested Pools and Parties, will exercise best efforts to develop a Storage Management Plan for presentation to Watermaster and the Court for approval within twenty-four (24) months of the Court approved Safe Yield Reset. Both the Ag Pool and the Appropriative Pool must approve any Storage Management Plan before it can be presented to the Watermaster, provided that if, after exercising good faith and best efforts to reach a mutually acceptable agreement within 1 year from the initiation of negotiations, then either Pool may submit its proposal to Watermaster, and then to the Court, for review and approval within 24 months.
5. Consistent with a Tech Memo to be provided, storage losses will be reduced from 2% to 600 AFY (across all water in storage) upon completion of hydraulic control. Storage losses for storage accounts held by persons other than parties to the Judgment will be consistent with the Peace Agreement(s).
6. Storage of water will be managed consistent with the Peace Agreement(s).

Storm Water

1. Historic Storm Water Programs. (2001-2014). Projects approved and being implemented during 2001-2014 that capture Storm Water that is the result of approved Storm Water Programs (e.g., CBFIP and its extensions) will be distributed as Safe Yield and there will be no deduction against Safe Yield or requirement that the quantity of Storm Water Recharge be the subject of a “backfill” from unused Agricultural Pool water.

JUNE 11, 2015 POOLS – APPROVED SAFE YIELD KEY PRINCIPLES

2. **Interim Programs.** For the term of the Peace Agreement, Storm Water that is obtained from the funding and implementation of new projects [baseline projects will be listed] will be *temporarily* considered New Yield until there is a Safe Yield Reset. There will be no “backfill” of this water.
3. **Safe Yield Reset.** Upon any Safe Yield Reset, any quantity of Storm Water New Yield will become Safe Yield but without creating a requirement for “backfill” as an apportionment of Safe Yield. This means that the Storm Water will be considered a part of the Safe Yield and therefore its allocation as prescribed will not create a backfill obligation.
4. Any member of the Appropriative Pool that elects, in its complete discretion, not to participate in Storm Water capture improvement Program that has been approved by the Appropriative Pool, may “opt out” of the participation by providing reasonable notice to the members of the Appropriative Pool and offering the other members of the Appropriative Pool the right to acquire that portion of the water by assuming the respective position of the party opting out by assignment of all rights and responsibilities
 - (a) In the event that one or more members of the Appropriative Pool elect to “opt out” of an approved Storm Water Program, they will permanently waive and relinquish, without limitation of qualification, the right to all the benefits accruing under that specific Storm Water Program.
 - (b) The Pool member opting out will assume no further financial obligation attributable to the Storm Water Program that is subject to the Pool’s approval.
 - (c) In exchange for assuming the financial obligation associated therewith, Fontana Water Company shall have the right exclusive all right, title and interest in the water supply made available by the approved Storm Water Program for any member of the Appropriative Pool that “opts out” of the approved Storm Water Program up to a cumulative maximum quantity of 2,000 AFY. After Fontana Water has obtained a cumulative maximum of 2,000 AFY under this provision, and if other members of the Appropriative Pool request to participate pro-rata in the assignment of the respective rights subject to an “opt out”, then the available water will be distributed among the members of the Appropriative Pool that express an intention to participate, pro rata, including Fontana Water Company. This right of assignment will survive the expiration of the Peace Agreement for the life of the “Storm Water Program” as it may be approved pursuant to the same terms and conditions generally applicable to all participants under Paragraph (a) above.

JUNE 11, 2015 POOLS – APPROVED SAFE YIELD KEY PRINCIPLES

- (d) This opt-out and opt-in opportunity applies to those project included in the RMPU Amendment approved by the Court in 2013, and any projects subsequently approved by the AP.

Santa Ana River Underflow

1. 2001-2014 SARUNY. As a compromise between competing claims and contractual interpretations, induced recharge from the Santa Ana River that is attributable to the Desalters for the period of 2001-2014 will be deemed to be a portion of the Safe Yield and unavailable to be produced by the Desalters without incurring a replenishment assessment.
2. 2015-2030 SARUNY. Will be quantified as the equivalent of fifty percent of the cumulative annual Desalter Production. Induced recharge from the Santa Ana River that is attributable to the Desalters for the period of 2015-2030 will be taken as a deduction against Safe Yield for this period and applied to off-set the groundwater production of the Desalters.
 - (a) After backfilling any decline in Safe Yield, water that is not produced by the Agricultural Pool will be used to off-set claims for surplus Agricultural Pool water under the Early Transfer provision of the Peace Agreement and to satisfy Land Use Conversions.
 - (b) Shortages will be shared pro rata among the competing Early Transfer and Land Use Conversion claims.
3. 2031-2060 SARUNY. SARUNY and Desalter replenishment will be subject to the negotiation of a new and separate agreement among the Parties, unless otherwise agreed SARUNY will not be backfilled.

Accounting Post 2030

1. After the initial term of the Peace Agreement (2030) Peace II provisions relating to the distribution of surplus (unpumped) water by the Agricultural Pool requiring that claims for the Early Transfer of 32,800 AFY and for Land Use Conversions be treated equally are expressly repealed, including changes to the Rules and Regulations arising out of the Peace II Agreement and those ordered by the Court pursuant to its October 8, 2010 Order. The parties confirm that in any Peace Agreement extension term, the changes to Judgment Section 10(b)(3)(i) effectuated by paragraph 4.4(c) of the Peace Agreement, allocating 2.0 acre-feet of unallocated Safe Yield water for each converted acre, shall remain in effect.

Desalters and Re-Operation

1. Amend schedule for access to Re-Operation water to ensure that any water that would be unused before 2030 (presently estimated to be 27,500 acre-feet) is available to be pumped before 2030 and allow for a gradual reduction in the availability of Re-Operation water. For the initial 5 year period following the approval of the revised schedule the expected Desalter Replenishment obligation would be 2,000 AFY and then gradually increasing by 2,000-3,000 AFY every two years until the maximum Desalter Replenishment obligation is reached its maximum.
2. **Reservation of Rights.** The parties reserve their respective rights and remedies arising from the Judgment and the Peace Agreements, whatever they may be, to pursue, promote, design, plan, finance and implement Desalter Replenishment in furtherance of the OBMP and to allocate costs attributable thereto. Notwithstanding this reservation, the parties expressly waive their right to seek a re-evaluation of Desalter Replenishment arising from Paragraph 6.2(b) of the Peace II Agreement.

Supplemental Water Recharge

1. Watermaster will engage in best efforts as required by the Peace Agreements to pursue the recharge of Supplemental Water to create hydrologic balance within the Basin and within each management zone.

**Justification to Redetermine the Safe Yield
using Long-Term Average Hydrology
and Current and Future Cultural Conditions**

The Safe Yield of the Chino Basin is defined within the Judgment as:

The *long-term average* annual quantity of ground water (excluding replenishment or stored water but including return flow to the Basin from use of replenishment or stored water) which can be produced from the Basin under *cultural conditions* of a particular year without causing an undesirable result. (emphasis added)

The “long-term average annual quantity of ground which can be produced from the Basin” is directly related to the long-term average hydrologic conditions, such as precipitation. The “cultural conditions” refer to the overlying land uses and water-management practices that affect the net recharge to the Basin, including channel lining, land use conversions from agricultural lands with inefficient irrigation practices to urban settings with highly efficient irrigation practices, installation and operation of the Chino Desalter well fields, etc.

The Judgment additionally provides for a Physical Solution to provide maximum flexibility and adaptability in order that Watermaster and the Court may be free to use existing and future technological, social, institutional and economic options, in order to maximize beneficial use of the waters of Chino Basin. (Restated Judgment, ¶ 40)

Subject to these requirements, Watermaster was to develop an optimum basin management program [OBMP] that both preserved the quantity of the Basin's waters and maximized their beneficial use. (Restated Judgment, ¶ 41).

Watermaster's OBMP Implementation Plan called for an initial redetermination of Basin's Safe Yield in 2010/2011, using monitoring data that would be gathered for the first time during 2000/01 through 2009/10. (OBMP Implementation Plan, pages 44-45 [Program Element 8 – Develop and Implement Groundwater Storage Management Program, Program Element 9 – Develop and Implement Storage and Recovery Programs]). This requirement is additionally carried forward in Section 6.5 of Watermaster's Rules and Regulations, which states that the “Safe Yield shall be recalculated in year 2010/11 based upon data from the ten-year period 2000/01 to 2009/10.”

To redetermine the Safe Yield in strict adherence to the language in the OBMP Implementation Plan and Section 6.5 of Watermaster's Rules and Regulations would require the exclusive use of data from 2000/01 to 2009/10. Use of this approach to redetermine the Safe Yield contradicts the definition of Safe Yield in the Judgment and the spirit of the Physical Solution. Consider the following:

1. Is the period 2000/01 to 2009/10 representative of *long-term average* hydrologic conditions? No. Figure 1 is a time-series chart of precipitation in the vicinity of the Chino Basin for the period 1900-2014. The figure illustrates that 2000/01 to 2009/10 is part of the current dry period that began in 1998 and continues to the present. Using 2000/01 to 2009/10 as the base period will cause the redetermined Safe Yield to be lower than a Safe Yield redetermined using *long-term average* hydrologic conditions.

2. Are the cultural conditions of 2000/01 to 2009/10 representative of current and future cultural conditions? No. During 2000/01 to 2009/10, agricultural land uses continued to be replaced by urban uses, and the new and increasing pumping of the Chino Desalter well fields have caused a significant change in the groundwater hydrology of the southern portion of the Chino Basin. These changes have continued to occur to the present, and have changed the net recharge to the Chino Basin.

The most technically-defensible methodology to redetermine Safe Yield of the Chino Basin that is consistent with the definition of Safe Yield in the Judgment and Physical Solution requires the following:

1. Use the data collected during 2000/01 to 2009/10 in the re-calibration process for the Watermaster's groundwater-flow model.
2. Utilize a long-term historical record of precipitation falling on current and future land uses to estimate the long-term average net recharge to the Basin.
3. Describe the current and future water-management practices including the plans for pumping and supplemental-water recharge.
4. With the information generated in [2] and [3] above, use the groundwater-flow model to redetermine the net recharge to the Chino Basin and to establish the Safe Yield for the current and near-future conditions.

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the Honorable
STANFORD E. REICHERT]

**[PROPOSED] ORDER REGARDING
WATERMASTER'S SAFE YIELD
REDETERMINATION AND RESET**

Date: August 21, 2015
Time: 1:30 p.m.
Dept: R-6

The Court having read, reviewed and considered the July 10, 2015 Status Report on
Watermaster's Safe Yield Redetermination and Reset ("Status Report"), including all declarations
attached thereto, IT IS HEREBY ORDERED that:

1. The Court accepts Watermaster's Status Report; and
2. Watermaster is ordered to file, not later than October 1, 2015, a motion for the
Court's approval as to the redetermined and reset Safe Yield along with the
parties' recommendations as to how the reset should be implemented ("Safe Yield

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Reset Motion”). Upon Watermaster’s filing of the Safe Yield Reset Motion, the Court shall set a hearing date and a briefing schedule.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

CHINO BASIN WATERMASTER

Case No. RCV 51010

Chino Basin Municipal Water District v. The City of Chino

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

On July 10, 2015 I served the following:

1. **STATUS REPORT ON WATERMASTER'S SAFE YIELD REDETERMINATION AND RESET**
2. **DECLARATION OF BRADLEY J. HERREMA IN SUPPORT OF STATUS REPORT ON WATERMASTER'S SAFE YIELD REDETERMINATION AND RESET**
3. **[PROPOSED] ORDER REGARDING WATERMASTER'S SAFE YIELD REDETERMINATION AND RESET**

☒ BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by 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.

☒ 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.

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

Executed on July 10, 2015 in Rancho Cucamonga, California.



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