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CHINO BASIN WATERMASTER

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]

**WATERMASTER'S OPPOSITION TO
THE CITY OF CHINO'S MOTION TO
PERMIT CHINO TO CONDUCT
DISCOVERY**

Date: February 26, 2016
Time: 1:30 P.M.
Dept.: R-6

I. INTRODUCTION

The Court should deny the City of Chino's ("City") December 24, 2015 Motion to Permit Chino to Conduct Discovery ("Motion"), because the City has not established that discovery is either appropriate or necessary in this case. Watermaster acts as the administrator of the Judgment, with direct accountability to the Court. The City has not cited any authority for the proposition that conducting discovery *upon Watermaster* itself is permissible. It does not explain why, in this case, the Court's review of a Watermaster motion arising under the Court's continuing jurisdiction should be expanded beyond the record before the Watermaster. Moreover, it has not identified any factual information that has yet to be made available by

1 Watermaster or otherwise articulated how any information it does not have has any bearing on its
2 arguments regarding Watermaster's Motion regarding 2015 Safe Yield Reset Agreement,
3 Amendment of Restated Judgment, Paragraph 6 ("Safe Yield Reset Motion").

4 **II. BACKGROUND**

5 The Court has maintained continuing jurisdiction, upon application of any party, the
6 Watermaster, the Advisory Committee or Pool Committees, to issue "further or supplemental
7 orders or directions as may be necessary or appropriate for interpretation, enforcement or carrying
8 out this Judgment and to modify, amend or amplify any of the provisions of this Judgment."
9 (Restated Judgment, ¶ 15.) By motion brought pursuant to Paragraph 15, Watermaster is seeking
10 to amend the Judgment in order to reset the Safe Yield, seeking supplemental orders in
11 compliance with the prior orders of this Court, and recommending interpretations of these same
12 prior orders.

13 Specifically, the genesis of Watermaster's request is found in the Optimum Basin
14 Management Program Implementation Plan ("Implementation Plan"), first approved by the Court
15 in June of 2000. (Implementation Plan, at p. 44; Order Concerning Adoption of OBMP (July 13,
16 2000), at p. 4 [directing Watermaster to proceed according to the Implementation Plan].)
17 Pursuant to the Court's direction arising from the initial adoption of the Implementation Plan,
18 Watermaster was expressly obligated to recommend to the Court a re-determination of the Safe
19 Yield after 2010. (Implementation Plan, at p. 44.) Toward that end, for a period of more than
20 five years, Watermaster has held open workshops and produced background reports at the request
21 of the Board and the Pools, as well as individual parties, on the subject matter of the
22 redetermination and reset of the Safe Yield.

23 All of the information pertinent to the Safe Yield Reset Motion and the City's expressed
24 concerns¹ has been continuously maintained by Watermaster and routinely made available to all
25 Parties, including the City, consistent with the Judgment and pursuant to Watermaster's regular
26 procedures. The information was referenced in Staff Reports and in the materials presented to the
27

28 ¹ The City has participated in virtually all of the meetings, negotiations, and hearings and has
been long aware of the Parties' positions and the available documents.

1 Pool Committees, Advisory Committee, and the Watermaster Board. The evidence in support of
2 the Safe Yield Reset Motion, as well as the City's legal and policy arguments, was presented to,
3 and considered by, the Board. The Board considered that evidence, made findings, and adopted a
4 resolution supported by its findings. The basis for Watermaster's recommendation for the 2015
5 Safe Yield Reset Agreement (2015 SYRA) has been referenced in the Safe Yield Reset Motion.
6 At no time prior to Watermaster's decision to recommend the 2015 SYRA did the City identify
7 new or additional information that was necessary or should be made available before Watermaster
8 acted.

9 The Court *ordered* Watermaster to undertake a redetermination of Safe Yield; it has not
10 done so on its own initiative. Watermaster has recommended a redetermination responsive to the
11 Court's order. Watermaster has also recommended a judicial construction of the Court's prior
12 orders and approval of Court-Approved Management Agreements, in light of the identified
13 decline in Safe Yield, which is consistent with the Judgment and the Court's directive to
14 implement the OBMP. It is the opinion of Watermaster that these strategies are consistent with
15 the physical solution and the California Constitution, and will be protective of the Basin.
16 Watermaster has recommended a proposed resolution to the Court and seeks judicial confirmation
17 of the proposed direction.

18 When it had an opportunity to do so, before the Pool Committees, the Advisory
19 Committee, and the Board, the City offered no factual basis, cited no evidence of any kind, and
20 made no requests of Watermaster to gather, generate, or produce additional information of any
21 kind. Instead, the entirety of its objections arose from legal conclusions pertaining to the hardship
22 of reducing Safe Yield instead of continuing pumping at a level above the Safe Yield, arguing the
23 relative unfairness of implementing the proposed Safe Storage Management Measures, and
24 construing portions of Court-Approved Management Agreements.

25 Having failed to request information prior to the September 24, 2015 Watermaster Board
26 action, the City now desires to conduct discovery on other Parties and on Watermaster itself. The
27 City makes this request even though:

- 28
- City representatives have attended, and the City has been represented at, these meetings

1 and it has been provided countless opportunities to review expert reports, and interview
2 staff and consultants as to the subject matter of the motion;

- 3 • The City requested and was extended opportunities for its professional consultants to
4 interview Mr. Wildermuth and to explore his modeling and engineering analysis;
- 5 • Mr. Wildermuth's work and methodology were peer reviewed by representatives from the
6 Appropriative Pool; and
- 7 • All arithmetic calculations concerning quantities of water held in storage, production
8 rights, and assessments are presently available.

9 For these reasons, and as further discussed below, discovery is neither appropriate nor necessary
10 in this instance. On this basis, Watermaster respectfully requests that the Court deny the City's
11 Motion.

12 **III. DISCOVERY IS INAPPROPRIATE AND UNNECESSARY IN THIS INSTANCE**

13 The City's Motion seeks discovery as to the pending Watermaster Safe Yield Reset
14 Motion, which requests that the Court reset the Safe Yield and order Watermaster to comply with
15 the provisions of the 2015 SYRA. The Safe Yield Reset Motion is the culmination of a process
16 that began almost five years ago, which was required by a Court order in 2000. The process has
17 included workshops, meetings, and facilitated negotiations that were open to all Parties to the
18 Judgment. Watermaster is unaware of, and the City has not identified, any additional relevant
19 information the City might be able to obtain through discovery.

20 **A. Post-Judgment Discovery is Generally Unavailable**

21 The initial context for evaluating the City's request is California's discovery law.
22 California law does not provide for post-judgment discovery as a matter of right. (See Code Civ.
23 Proc., § 2016.010 et seq. (Civil Discovery Act), § 2024.020.) In appropriate cases, post-judgment
24 discovery may be available in the event of a new trial, and upon application to the Court. (Code
25 Civ. Proc., § 2024.050, subd. (a).)

26 Case law does reveal limited instances in which courts have properly considered requests
27 for post-judgment discovery, which generally fall into two categories: revision of judgments in
28 marital dissolution cases (see *In re Marriage of Boblitt* (2014) 223 Cal.App.4th 1004, 1024

1 [construing Code Civ. Proc., section 2024.050, subd. (a) as “allowing a motion to reopen
2 discovery in a marital dissolution proceeding”]; *In re Marriage of Hixson* (2003) 111 Cal.App.4th
3 1116 [pursuant to Family Code, section 2556, superior court has discretion to allow a party to
4 conduct post-judgment discovery relating to community estate assets that were not previously
5 adjudicated by the judgment]), and claims of insolvency by judgment creditors (Code Civ. Proc.,
6 §§ 708.020 & 708.030 [authorizing interrogatories and inspection demands as to judgment
7 creditors].)

8 Here, no new trial has been set,² but a hearing has been scheduled for a pending motion
9 filed pursuant to Court’s continuing jurisdiction. Code of Civil Procedure, section 2024.050 does
10 not provide for discovery under these circumstances. Similarly, the City cites to no provision
11 equivalent to section 2556 of the Family Code, upon which the Court could base re-opening
12 discovery, as was done in the marriage dissolution cases, nor does it identify any compelling
13 reason such as those presented in sections 708.020 and 708.030 of the Code of Civil Procedure.
14 Seeing no express statutory authorization, we turn to the Judgment itself.

15 **B. The Judgment’s Review Procedures do not Provide for Discovery**

16 1. The Watermaster Decision Making Process does not Provide for Discovery
17 The Judgment tasks Watermaster with specific responsibilities, including the
18 administration and enforcement of the provisions of the Judgment, along with any subsequent
19 instructions or orders of the Court thereunder. (Restated Judgment, ¶ 15.) Nowhere is discovery
20 referenced.

21 Arising under Paragraph 15, in fulfillment of an obligation in administering the decree,
22 Watermaster has filed a motion to the Court regarding subject matter where it has no independent
23 power itself to bind any Party or the Court. Court review and approval is required to amend the
24 Judgment and to construe Court orders. Watermaster may merely offer its recommendation and
25 request approvals and further Court Orders.

26 The Safe Yield Reset Motion is the result of Watermaster’s compliance with an Order of
27 the Court approving the Implementation Plan. (See Order Concerning Adoption of OBMP (July

28 ² See Motion, at 8:19-21 [“...the hearing on the Watermaster Motion is not technically a trial.”]

1 13, 2000), OBMP Implementation Plan, at p. 44.) The process through which Watermaster acts,
2 including making recommendations to the Court, is prescribed in the Judgment to which the
3 Parties stipulated.

4 The Watermaster decision-making and review process begins in the three Pool
5 Committees created by the Judgment. (Restated Judgment, ¶¶ 32, 43.) Each Pool Committee
6 reviews the proposed action or recommendation, develops a recommended course of action, and
7 conveys that recommendation to the Advisory Committee. (Restated Judgment, ¶¶ 32, 38, subd.
8 (a).) The Advisory Committee, composed of representatives from each of the Pools, then studies
9 the action recommended by the Pool Committees and recommends a course of action to the
10 Watermaster. (Restated Judgment, ¶ 38, subd. (b).) The Advisory Committee has the ability to
11 review and recommend actions on all discretionary determinations made by Watermaster. (*Ibid.*)
12 The entire process is open and transparent, and Watermaster takes no action unless and until this
13 exhaustive process is completed. Ultimately, in matters such as the amendment of the Judgment
14 to reset the Safe Yield, the Court is requested to approve Watermaster's recommendations
15 generated through the process, which are in the best interests of the Basin.

16 Watermaster is an extension of the Court, charged with implementing and administering
17 the Judgment and the Court's subsequent instructions and orders. That process is open to all
18 Judgment Parties, as are all Watermaster records. (See Watermaster Resolution 01-03
19 [procedures and guidelines for information requests], Exhibit 1 to Declaration of Peter Kavounas
20 in Support of Watermaster's Opposition to the City of Chino's Motion to Permit Chino to
21 Conduct Discovery ("Kavounas Decl."), at ¶ 4.) Watermaster's website has a simple information
22 request form by which any Party can obtain information on Watermaster processes and
23 decisions.³ As is true of every Party to the Judgment, the City has unrestricted access to
24 Watermaster records. If there is a right to conduct post-Judgment discovery, it does not arise
25 under the Judgment as it is written.

26 For the convenience of the Court, and occasionally at its request, Watermaster has

27 ³ The form and instructions are available at:
28 <http://cbwm.org/docs/requestforinfo/20120229%20Request%20For%20Information%20Form--PDF%20Form%20Version.pdf>.

1 customarily offered declarations and witnesses in support of pending motions brought pursuant to
2 Paragraph 15 so that the Court may receive direct responses to any specific questions it may have.
3 We know of no instance in which discovery has been authorized in connection with the Court's
4 continuing jurisdiction in this case. (Declaration of Bradley J. Herrema in Support of
5 Watermaster's Opposition to the City of Chino's Motion to Permit Chino to Conduct Discovery
6 ("Herrema Decl."), at ¶ 7.)

7 2. The Paragraph 31 Process for Review of Watermaster Actions does not
8 Warrant Discovery Here

9 Watermaster actions are subject to review on a motion brought by any party or on the
10 Court's own motion pursuant to Paragraph 31. (Restated Judgment, ¶ 31.) Although in the
11 present matter there is no Watermaster action other than the filing of the motion, if the review
12 procedures under Paragraph 31 are imposed upon a motion filed pursuant to Paragraph 15, the
13 Watermaster recommendation would be subject to *de novo* review.

14 This means that the Court has the duty to *independently* review the evidence to determine
15 whether substantial evidence exists to support the Watermaster recommendation. The prescribed
16 process arising under Paragraph 31 may be initiated through a noticed motion seeking Court
17 approval or rejection of the Watermaster action. (Restated Judgment, ¶ 31, subd. (b).) Each
18 motion will lead to a noticed hearing, at which the Court may take evidence and argument as part
19 of its *de novo* review. (Restated Judgment, ¶ 31, subd (d).)

20 Typically, *de novo*, refers to a review of the evidence from the beginning with no
21 deference given. (See *Shaoxing County Huayue Import & Export v. Bhaumik* (2011) 191
22 Cal.App.4th 1189, 1196; *First Ave. W. Bldg., LLC v. James (In re Onecast Media, Inc.)* (9th Cir.
23 2006) 439 F.3d 558, 561.) The Judgment – the Parties' stipulated agreement as to the processes
24 and procedures for all Watermaster operations – describes this as a hearing – not a new trial
25 phase. The City's attempt to characterize the hearing on a noticed motion as a new trial is
26 inaccurate and is a rejection of those stipulated processes.

27 Paragraph 31(d) does reference the possibility that a Court hearing on a motion thereunder
28 may include the presentation of evidence. However, the Paragraph 31 review procedures do not

1 provide for discovery prior to a hearing on a noticed motion. (See Restated Judgment, ¶ 31.)
2 And, even if discovery were nonetheless appropriate in connection with the “presentation of
3 evidence” (see Restated Judgment, ¶ 31, subd. (d)), it cannot be here, at this late date and given
4 the context of this request.

5 **C. Discovery regarding Watermaster Actions in the Furtherance of its Role as**
6 **Fact-Finder is Inappropriate**

7 In its role as an arm of the Court, Watermaster carries out judicial direction in the
8 administration of the Judgment and this Court’s orders, under the Court’s supervision. These
9 activities may include making factual findings in support of its determinations and making
10 recommendations to the Court regarding what is in the best interests of the Basin.

11 The processes by which quasi-judicial decisions are made are not subject to discovery.
12 (See *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768, 772, citing *U.S. v. Morgan* (1941)
13 313 U.S. 409, 422 [“examination of a judge would be destructive of judicial responsibility”].) In
14 recommending approval of the 2015 SYRA, Watermaster was functioning as an arm of this
15 Court, and was acting as the preliminary finder of fact, much like a referee. As such,
16 Watermaster should not be compelled to subject itself to discovery.

17 The City bases its request for discovery as to Watermaster on its claim that Watermaster
18 “possesses much of the information related to the issues related to the [2015] SYRA and has
19 acted as an advocate for the Parties against Chino....” (Motion, at 10:4-12.) Thus, the City will
20 almost certainly request discovery relating to Watermaster “acts performed in the exercise of [its]
21 duties,” (see *Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 853 [quasi-judicial immunity
22 applies to persons other than judges when performing subordinate judicial duties]), including the
23 processes by which it approved the 2015 SYRA (*City of Fairfield, supra*, 14 Cal.3d at 772), acts
24 for which discovery as to Watermaster would not be appropriate. As of the date of this filing, the
25 City has not pointed to *any* relevancy nexus between the information it wishes to discover and
26 Watermaster’s Safe Yield Motion.

27 Because general law and the Judgment do not provide an express right of discovery and
28 given Watermaster’s administrative responsibilities and direct accountability to the Court,

1 whatever discovery opportunities there may be must therefore derive from the Court's exercise of
2 its equitable powers overseeing the implementation of the physical solution and the Judgment.
3 The City has not identified any facts or circumstances that warrant authorization here.

4 **D. All Information the City Might Seek through Discovery is Already Available**
5 **to It**

6 As best as can be determined from the City's Motion, all information that the City might
7 seek through discovery has been and is available to it, though the City has chosen not to avail
8 itself of the means in which it might access this information prior to Watermaster's filing of the
9 Safe Yield Reset Motion. (Kavounas Decl., at ¶¶ 3, 4.) The Court should not allow the City to
10 consciously ignore existing processes and then wait until the completion of a five-year process to
11 assert the post-decisional need for information. The City should have undertaken its request for
12 information before the Watermaster Board action, thereby exhausting the equivalent of an
13 administrative remedy arising under the Judgment. Whatever information the City may wish to
14 ascertain through discovery at this point could and should have been obtained through the
15 existing Watermaster processes long before Watermaster's filing of its Safe Yield Reset Motion.
16 For the Court to rule otherwise, and allow eleventh hour and fifty-ninth minute discovery, serves
17 to chill participation by others and encourage them to delay airing their grievances, skip the
18 Watermaster processes and place the subject matter squarely on the Court's doorstep for
19 resolution.

20 It bears repeating that the Watermaster process leading up to the Board's determination on
21 its recommendation to the Court as to the reset of Safe Yield and Watermaster's Safe Yield Reset
22 Motion was open to and included active participation by the City. (Kavounas Decl., at ¶ 5;
23 Herrema Decl., at ¶¶ 2, 4.) A substantial number of meetings have taken place throughout the
24 five-year Safe Yield Reset process, all of which were open to the City, and the vast majority of
25 which, it participated in. (*Ibid.*)

26 The Safe Yield Reset process began with an update to the hydrologic model ("Basin
27 Model") of the movement of water in the Basin. (See *Status Report on Watermaster's Safe Yield*
28 *Recalculation* (Apr. 11, 2014) ("2014 Status Report"), at 2:24-3:5.) After a period of data

1 collection and analysis, Watermaster began the process of obtaining stakeholder input as to the
2 Safe Yield reset process and peer review of the updated Basin Model. (2014 Status Report, at
3 3:10-12.) Watermaster held four workshops, on July 28, 2013, August 29, 2013, December 18,
4 2013, and January 21, 2014, at which it described the Basin Model update and Safe Yield
5 recalculation. (2014 Status Report, at 3:12-15.) On January 30, 2014 and March 3, 2014,
6 Watermaster consultants hosted two technical modeling review sessions specifically regarding the
7 update of the Basin Model. (2014 Status Report, at 3:12-15.) Watermaster staff and consultants
8 also conducted numerous meetings with technical experts of subsets of interested parties to detail
9 the Basin Model and update process. (See Status Report on Watermaster's Safe Yield
10 Redetermination and Reset (July 10, 2015) ("2015 Status Report"), at 3:9-12.) The City, along
11 with other stakeholders, had the opportunity to participate in each of the workshops and model
12 review sessions, and participated on multiple occasions. (Kavounas Decl., at ¶ 6.)

13 At the request of the Advisory Committee, in early 2015, a facilitated negotiation process
14 began among a group of parties signatory to a Facilitation and Non-Disclosure Agreement
15 (FANDA). (2015 Status Report, at 4:5-6.) The goal of the facilitated process was to reach
16 consensus as to the Safe Yield redetermination and reset issues. (2015 Status Report, at 4:9-11.)
17 The parties to the facilitated process met at least weekly and, in many cases, multiple times per
18 week. (*Ibid.*) The group of parties to the facilitated process met over 30 times in total. (2015
19 Status Report, at 4:11-12.) The City, as a member of the Appropriative Pool, was a signatory to
20 the FANDA⁴ and its representatives were present during the facilitated discussions. (Herrema
21 Decl., at ¶ 2.) During this process, the City of Chino requested, and was provided, the
22 opportunity for its technical expert to meet with Watermaster's consultant, Mr. Wildermuth.⁵

23 ⁴ The fact that certain documents generated during these facilitated discussions were agreed to be
24 precluded from disclosure by the FANDA does not mean that specific facts are not independently
25 demonstrable. The City asks the Court to allow it to cast a very broad net in the hopes that it will
26 elicit some further documentation for its claims, but makes no assertion as to what documents it
27 hopes to find, or which might be necessary to its claims.

28 ⁵ During a November 5, 2015 teleconference regarding the possibility of the City moving the
Court to continue the then-calendared December 18, 2015 hearing date and the City's desire to
conduct discovery, Watermaster legal counsel indicated to Mr. Gutierrez that the City was free to
interview Mr. Wildermuth again regarding any questions on the Updated Basin Model and the
redetermination of the Safe Yield, but that if Mr. Gutierrez wished to question Mr. Wildermuth
under oath, he should seek the Court's authorization to do so. (Herrema Decl., at ¶ 5.)

1 (Herrema Decl., at ¶ 3.)

2 On May 27, 2015, the active parties to the FANDA, other than Chino, reached agreement
3 on certain “Key Principles” to be included in the 2015 SYRA. (2015 Status Report, at 4:21-23.)
4 At its regularly scheduled May 28, 2015 Board meeting, Watermaster counsel Scott Slater briefed
5 the Board and Parties on the facilitated negotiation process and the terms encompassed in the Key
6 Principles. (See Transcript of May 28, 2015 Watermaster Board Meeting, Exhibit 1 to Herrema
7 Decl., ¶ 6.) Following Mr. Slater’s presentation, the City’s City Attorney Jimmy Gutierrez
8 addressed the Board with his concerns regarding the Key Principles. (*Id.*, at 13-18.) In particular,
9 Mr. Gutierrez explained that the City objected to the Safe Storage Management Measures and the
10 reset of Safe Yield to 135,000 acre-feet annually. (*Ibid.*) After Mr. Gutierrez had finished,
11 multiple Board members questioned both Mr. Slater and Mr. Gutierrez regarding the City’s
12 concerns, before passing a motion to proceed with directing counsel to assist in negotiations
13 pursuant to the Key Principles. (*Id.*, at 19-27.) Multiple Board members asked Mr. Gutierrez
14 follow-up questions, and Mr. Slater elaborated on several of the provisions to which Chino
15 objected. (*Id.*, at p. 18-20.) The Board’s instruction legal counsel to assist in the drafting of a
16 binding instrument incorporating the Key Principles came after substantial discussion, much of
17 which arose out of Chino’s expressed concerns. (*Id.*, at 21-27.)

18 During the months of June, July, and August, 2015, Watermaster legal counsel assisted
19 the Parties in drafting what became the 2015 SYRA. (Safe Yield Reset Motion, at 9:2-14.) The
20 Agreement, its exhibits, and a draft of Resolution 2015-06, were presented to the Pool
21 Committees for review and comment at their September regular meetings; Resolution 2015-06
22 was approved by the Advisory Committee at its regular meeting on September 17, 2015 and the
23 Board adopted Resolution 2015-06 at its regular meeting on September 24, 2015. (*Id.*) The City
24 was represented during the drafting process and at these Appropiative Pool Committee, Advisory
25 Committee, and Watermaster Board meetings. (Herrema Decl., at ¶ 4.)

26 Mr. Gutierrez again addressed the Board at its September 24, 2015 meeting. While Mr.
27 Gutierrez’s declaration states that he “was not given any response” by the Board to the questions
28 he posed on September 24, 2015, this is because his questions were part of a larger presentation in

1 his admonishment to the Board to honor its obligations. (See Transcript of September 24, 2015
2 Watermaster Board Meeting, Exhibit 2 to Herrema Decl., ¶ 6, at 16-17.) Moreover, Mr.
3 Gutierrez's questions did not pertain to any factual information related to the 2015 SYRA and he
4 did not request from the Board any information of the type that the City claims it now must obtain
5 through discovery, and it is clear that the City's position as to whether the Board should
6 recommend the 2015 SYRA to the Court was before the Board at the time of its determination.

7 Finally, the City has not identified any information within Watermaster's control or
8 possession to which it has been denied access through regular Watermaster processes that
9 necessitates the conduct of discovery at this time. The City's desired information consists of
10 evidence allowing it to make a factual showing regarding the "need" for the 2015 SYRA
11 provisions regarding Desalter-Induced Recharge (Motion, at p. 6:1-9) and evidence confirming
12 the City's characterization of the determination of Safe Yield. (Motion, at p. 6:16-25.) Yet, the
13 City already makes specific factual allegations as to the alleged impacts of the SYRA and the
14 improper reset of the Safe Yield. (Motion, at pp. 3:18-24, 4:6-18; see also City of Chino's
15 Supplement to Status Report on Watermaster's Safe Yield Redetermination and Reset (Aug. 11,
16 2015) [detailing the factual bases for the City's objection to the 2015 SYRA and its Safe Storage
17 Management Measures].) It is unclear what further information the City believes it requires
18 discovery to obtain. Further, the 2015 SYRA's effects on water held in storage are shown in the
19 exhibits to the 2015 SYRA filed along with the Safe Yield Reset Motion. (Safe Yield Reset
20 Motion, Att. 1 [2015 SYRA], Exh. "C".) The City therefore already appears to have the
21 information it needs to allege impacts. At the time of the hearing on the Safe Yield Reset Motion,
22 it will have had almost three months to review and prepare its papers supporting its allegations.

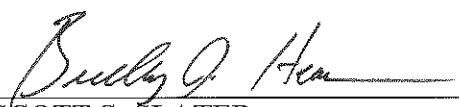
23 **IV. CONCLUSION**

24 Watermaster does not contend there is no circumstance in which discovery would be
25 appropriate, given the Court's continuing jurisdiction, its equitable authority, and Watermaster's
26 role in implementing the Judgment. However, for the reasons stated above, discovery is neither
27 appropriate nor necessary in this instance. The City is opposing a Watermaster motion arising
28 under the Court's continuing jurisdiction where it is making a recommendation for further orders

1 pursuant to Paragraph 15. Neither California law nor the Judgment provide procedures for
2 discovery and it should not be permitted in this instance against Watermaster, given the
3 continuing and complete access to information that has been provided to the City and the
4 substantial delay in making the request. The City's Motion should therefore be denied.

5
6 Dated: January 19, 2016

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

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10 By: 
11 SCOTT S. SLATER
12 BRADLEY J. HERREMA
13 ATTORNEYS FOR
14 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,

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16 CITY OF CHINO, et al.,

17 Defendant.

Case No. RCV 51010

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

**DECLARATION OF PETER KAVOUNAS
IN SUPPORT OF WATERMASTER'S
OPPOSITION TO THE CITY OF CHINO'S
MOTION TO PERMIT CHINO TO
CONDUCT DISCOVERY**

Date: February 26, 2016
Time: 1:30 P.M.
Dept.: R-6

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22 I, Peter Kavounas, declare:

23 1. I currently serve as the General Manager of the Chino Basin Watermaster
24 ("Watermaster"). I have served in this capacity since September 4, 2012. I have personal
25 knowledge of the facts stated in this declaration, except where stated on information and belief,
26 and if called as a witness, I could and would competently testify to them under oath.

27 2. As the General Manager of Watermaster, I am intimately familiar with actions
28

1 taken by the Pool Committees, Advisory Committee, and the Watermaster Board, and the
2 directives to staff from the Board. My role as General Manager includes attending all Pool
3 Committee, Advisory Committee, and Watermaster Board meetings.

4 3. All of the information pertinent to the Safe Yield Reset Motion and the City's
5 expressed concerns has been continuously maintained by Watermaster and routinely made
6 available to all Parties, consistent with the Judgment and pursuant to Watermaster's regular
7 procedures.

8 4. Consistent with the requirements of Watermaster Resolution No. 01-03(attached
9 hereto as Attachment "1"), Watermaster documents and records are available by request to any
10 party to the Judgment, and Watermaster's website has an information request form by which any
11 party may obtain information on Watermaster processes and decisions. The City did not file a
12 request for information related to the Safe Yield reset process, the Safe Yield Reset Motion and
13 the City's expressed concerns prior to Watermaster's filing of the Safe Yield Reset Motion.

14 5. The Watermaster process leading up to the Board's determination on its
15 recommendation to the Court as to the reset of Safe Yield and Watermaster's Safe Yield Reset
16 Motion was open to and included active participation by the City. A substantial number of
17 meetings have taken place throughout the five-year Safe Yield Reset process, all of which were
18 open to the City, and the vast majority of which, it participated in.

19 6. The City, along with other stakeholders, had the opportunity to participate in
20 multiple Basin Model workshops and model review sessions with Watermaster consultants and
21 other experts, and participated on multiple occasions.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct to the best of my knowledge.

24
25 Executed on January 19, 2016, at Rancho Cucamonga, California.

26
27 
PETER KAVOUNAS

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Exhibit 1

**RESOLUTION No.01-03
A RESOLUTION OF THE CHINO BASIN WATERMASTER
ADOPTING PROCEDURES, GUIDELINES AND FEE SCHEDULE
FOR RELEASE OF INFORMATION AND DOCUMENTS**

WHEREAS, Chino Basin Watermaster is appointed by the Court to administer the terms of the Judgment; and

WHEREAS, it is appropriate for Watermaster to make Watermaster records available for public review, consistent with proper and efficient functioning of the Watermaster office and with protection of sensitive, personnel and privileged information; and

WHEREAS, it is necessary and proper for Watermaster to adopt standardized procedures for the release of information and documents and establish a fee schedule.

NOW THEREFORE, BE IT RESOLVED BY THE CHINO BASIN WATERMASTER as follows:

Resolution 01-03 and the attached Procedures, Guidelines and Fee Schedule of the Chino Basin Watermaster for the Release of Information and Documents shall become effective upon adoption by the Chino Basin Watermaster Board and Resolution No. 99-01 will be rescinded in its entirety.

THE FOREGOING RESOLUTION was adopted this 15th day of February 2001.

**CHINO BASIN WATERMASTER
PROCEDURE, GUIDELINES AND FEE SCHEDULE FOR
RELEASE OF INFORMATION AND DOCUMENTS**

I. PURPOSE

The purpose of this procedure is to delineate the procedure to be used, the guidelines to follow and the fees to be charged for costs associated with the release of information and documents. This procedure is effective upon adoption of Resolution 01-03.

II. PROCEDURE

A. GENERAL

Watermaster staff will attempt to respond to written requests for copies of documents within 10 working days following receipt of the request.

B. FORMS

A Request for Information Form will be completed and appropriately approved prior to responding to a request for information. Certain information and documents described in III.C below will require the Requestor to provide a "signed release" from an individual, company or agency.

III. GUIDELINES

Watermaster staff will consider requests for information and documents on a case-by-case basis, subject to the following guidelines:

- A. The Requestor must provide Watermaster staff with the reason or purpose for their request for information.
- B. The following records will be generally made available:
These records reflect actions taken by Watermaster. Reproduction of these records will be subject to the limitations set forth in the following paragraph.
 - 1. Agendas
 - 2. Minutes
 - 3. Resolutions
 - 4. Published Committee Reports
 - 5. Annual Reports
- C. The following records will generally not be available:
 - 1. Discussions of or references to pending, threatened or on-going matters of litigation;
 - 2. Discussions of or references to pending contract negotiations (including internal drafts of contracts);
 - 3. Attorney or engineer records concerning the topics identified in subparagraphs B.1 or B.2;
 - 4. Attorney work papers;
 - 5. Recommendations of attorney or engineer prior to public Watermaster discussion or action;
 - 6. Personnel, or personal information regarding Watermaster members, staff and/or employees; and
 - 7. Unpublished drafts and working copies of committee reports; and
 - 8. Materials received by Watermaster stamped "Confidential" by the sender.

- D. **Signed Release**
If a request is made specifically relating to a particular individual, company or agency that would require a release for information which has not previously been made public or which contains the status or operations of a particular individual, company or agency, the Requestor must provide a "signed release" form from the individual, the company or the agency allowing Watermaster to release the information being requested. Any such release shall be subject to the limitations stated in these guidelines.
- E. **Confidential Pool Information**
In the event information is given to Watermaster and must be returned or has been authorized by the Agricultural Pool representatives to be released to consultants or other public agencies, such information shall be provided with a stamped endorsement on each page that such information is confidential and shall be maintained confidential by the recipient.
- F. **Inspection of Watermaster Records**
Due to limited space and limited staff, inspection of Watermaster records may be allowed only through prior arrangement and will be subject to the guidelines outlined above.
- G. **Waiver of Required Fees**
Fees will be waived for parties of the Watermaster and public agencies who reciprocate with a similar waiver of fees.

IV FEE SCHEDULE

- A. Copies will be made available subject to the procedures and guidelines outlined and upon payment of reasonable fees to cover the costs associated with copying and handling.

An additional fee will be charged, as necessary, for actual costs associated with any request for information requiring special research or input.

- B. Watermaster shall charge the following reasonable fees:

1. Photocopies (8 1/2" x 11" or 8 1/2" x 14)	\$ 0.50	per page *
	\$ 5.00	minimum
2. Facsimiles	\$ 0.30	per page
3. Board or Committee agendas only	\$ 40.00	annually
4. Board or Committee full agenda packages	\$500.00	annually
5. Electronic data/text equal to one (1) printed page	\$ 0.15	per page
6. Computer diskette	\$ 0.60	each
7. CD Rom	\$ 2.00	each
8. Mailing	Applicable First-Class Postal Rate	
9. Information requiring special research or input	Direct Costs	

* \$0.50 changed from \$0.15 per page by approval of the Watermaster Board on August 24, 2006

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8 Attorneys for
9 **CHINO BASIN WATERMASTER**

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.,

17 Defendant.

Case No. RCV 51010

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

**DECLARATION OF BRADLEY J.
HERREMA IN SUPPORT OF
WATERMASTER'S OPPOSITION TO THE
CITY OF CHINO'S MOTION TO PERMIT
CHINO TO CONDUCT DISCOVERY**

Date: February 26, 2016
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, and counsel of record
24 for Chino Basin Watermaster ("Watermaster"). I have personal knowledge of the facts stated in
25 this declaration, except where stated on information and belief, and if called as a witness, I could
26 and would competently testify to them under oath. I make this declaration in support of the
27 above-referenced filing.

28 2. The City of Chino, as a member of the Appropriative Pool, was a signatory to the

1 Facilitation and Non-Disclosure Agreement (FANDA) executed by the participants in facilitated
2 negotiations to reset the Safe Yield among the Judgment Parties. City of Chino representatives
3 were present and participated in facilitated negotiations until the other active Parties in the
4 process agreed on the non-binding Key Principles pursuant to which final negotiations took place.

5 3. During the FANDA negotiation process, the City of Chino requested, and was
6 provided, the opportunity to have its technical expert meet with Watermaster consultant Mark
7 Wildermuth.

8 4. During the months of June, July, and August, 2015, Watermaster legal counsel
9 assisted the Parties in drafting what became the 2015 SYRA. The City was represented during
10 the drafting process and at the September 2015 Appropriative Pool Committee, Advisory
11 Committee, and Watermaster Board meetings at which the 2015 SYRA and Watermaster
12 Resolution 2015-06 were considered.

13 5. During a November 5, 2015 teleconference among Mr. Gutierrez, Mr. Scott Slater
14 and I regarding the possibility of the City moving the Court for a continuation of the then-
15 calendared December 18, 2015 hearing date and the City's desire to conduct discovery,
16 Watermaster legal counsel indicated to Mr. Gutierrez that the City was free to interview Mr.
17 Wildermuth again regarding any questions on the Updated Basin Model and the redetermination
18 of the Safe Yield, but that if Mr. Gutierrez wished to question Mr. Wildermuth under oath, he
19 should seek the Court's authorization to do so.

20 6. Watermaster maintains audio recordings of all Board meetings, along with
21 approved meeting minutes, on its website at <http://www.cbwm.org/meetings.htm>. At my request,
22 the Word Processing department at Brownstein Hyatt Farber Schreck transcribed the portions of
23 the May 28, 2015 and September 24, 2015 Board meetings that were related to the Safe Yield
24 Redetermination and 2015 SYRA. I, along with Watermaster staff, reviewed a rough draft of the
25 transcript for accuracy. The transcript of the May 28, 2015 Board meeting is attached hereto as
26 Attachment "1". The transcript of the September 24, 2015 Board meeting is attached hereto as
27 Attachment "2". Both transcripts are true and accurate representations of the discussions at these
28 the Board meetings.

1 7. In my experience representing Watermaster, and in my review of the records of
2 prior Watermaster proceedings, I know of no instance in which discovery has been authorized in
3 connection with the Court's continuing jurisdiction in this case.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct to the best of my knowledge. Dated this 19th day of January, 2016,
6 at Rancho Cucamonga, California.

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9 BRADLEY J. HERREMA

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Exhibit 1

5/28/15 Watermaster Board Meeting
Minute Marker: (0:21:00) to (2:04:17)

Chairman: Item II. C. Safe Yield Recalculation and Reset Facilitated Process. I think the way we're going to do it is, first of all I'm going to thank our staff, Peter, Danni and our counsel Scott and Brad, as well as the Wildermuth folks have worked very hard on this, Mark and Andy in particular. For all the hours and hours of effort and angst and hard work, I will not say that we're there but we're pretty far along. I was prepared, yesterday if necessary, to speak on not letting hundreds, if not thousands of hours, be, I don't want to say wasted, but certainly put aside, not coming to agreements to making things happen. I've always been a big believer on this. That it should be a negotiated resolution, that we don't want to have to go to court, if we do, everyone knows how to do that, but the only one who would win on that are the lawyers and the consultants who are going to get paid for that. So, with that, I'd like to have Peter and Scott give us a report, a full and complete report, have any of the Board have any questions on that, then if there is anybody who wants to speak on a particular issue, I understand there may be a couple, although I don't have any speaker cards, I know there are a couple of speakers that would like to speak and the Board can certainly ask them questions as well before we get into a Board discussion. So, we have the full table of what's going to be said by participants, both the FANDA group and any of the other pools. With that, I'll turn it over to Scott and Peter.

Kavounas: Mr. Chairman, members of the Board, yesterday the group that's been affectionately known as the FANDA group, those parties that signed the Facilitation and Nondisclosure Agreement, reached agreement on terms of, on key principles in concept and the group initialed it. That has been distributed and is available to you. And perhaps the best way to approach today is by starting with the facilitator's report from Scott, who worked tirelessly to make this happen, and then we can, I would recommend that we receive input from the other Pools. Of course the Non-Ag Pool has probably nothing to say because they haven't received anything yet. The Ag Pool received it yesterday afternoon and hasn't had much time but it might be worth hearing any thoughts they may have and then we can offer some suggestions on how the Board can proceed from here on.

Chairman: One thing, I thought the Non-Ag Pool received it yesterday afternoon.

Slater: Yeah I did transmit it to them yesterday.

Chairman: Okay, alright.

Kavounas: Late in any case, Late.

Chairman: I just want to be sure enough that because this is being taped and watched and so I wanted to be clear that it was actually received by them, perhaps not the earliest opportunity, but certainly yesterday afternoon the Non-Ag received it and they can make their own decisions on what to do about that.

Slater: Ok, thank you Peter. Mr. Chair, members of the Board, it's been a long and arduous journey. A little comedy before we start, I was trying to explain to my son what it was we were working on and I kept saying the FANDA group and he thought I meant panda and he said, well dad you're kind of engaged in a little ninja war, and I said, yeah we're doing kung fu FANDA. And so look, this is the, I've been doing this for 30 years. I've been facilitating, probably, 20 and done in this context and others and this is absolutely 100% the hardest process I've ever been through, without question. And here's what I want to tell you what we were gonna do and in terms of going over the content and then I'll respond to questions that the Board may have at the conclusion of that and I also want to provide a context for why it was so hard. And I'm gonna start with that and then I'll give you specifics.

This was unlike other facilitations that we've done around here which included a big idea element. One of things that I've always believed in is that through the power of collaboration people can raise all boats and everybody can do better by working in a coordinated fashion. And, unfortunately in this context both by the virtue of where we sat in the position of an overarching drought, where we are in the timeline, where we are with regard with the issues that people are willing to talk about. It really wasn't an opportunity to pursue a big idea or something that was gonna add, be additive, and in more or less we have postponed that discussion until what's next. And so unfortunately for everybody in the room and we who were facilitating is this largely about what people call a misery index, how to share the pain, and it was no inconsequential amount of pain. There is no party who walks away from this process better off than when they started.

Other than in knowing that the long-term, as some have phrased the golden goose, which is the miracle of the Chino basin and now it has been the life blood of the Inland Empire economy, is protected and the parties assume their stewardship role and carry it forward but not without some pretty significant reduction and contractual expectations and that has a monetary value, that has a water supply value, and we recognize that more than ever in a period of drought.

So I wanna start with where I think we are. The Board in a November/December time frame charged me and your staff with the obligation of facilitating a session and we were asked to work with the group. There were certain procedures and protocols set in place where by they would agree to protect the confidences. There was an agreement signed and we were directed to work with a group and to try and come up with an arrangement and it is always our intention to try to pursue unanimity. And in this instance we did not achieve unanimity. We are about 90% of the production within the appropriative pool plus the three munis who have had their representatives initial and sign. That occurred yesterday afternoon around three o'clock.

We have been communicating with the designated point person for the ag pool, Tracey Egoscue, for about a month and half, two months now. And there has been good faith communication going in both directions. They did not receive the

final version of the completed version until yesterday around three so my understanding is it's under a good faith evaluation by the ag pool as we speak. The non-ag pool has largely been an observer and at the direction of all of the parties, there was intention not to directly affect the interests of the non-ag pool. They will, of course, be a beneficiary of an agreement which is seamless, transparent and capable of implementation. And so consequently, the non-ag pool received the completed document yesterday for the first time and there was a modest briefing by Peter of Director Bowcock yesterday to explain the terms and so they will have an opportunity to be briefed further.

Before I launch into the summary of the individual terms, I wanna again note that the city of Chino and San Antonio Water Company both have for independent reasons expressed objections. I wanna go through the report and I will complete its summary in full and then I will return to the objections as I know them to be from both San Antonio Water and from the city of Chino and to put those in context and then they may wish to stand up and to make their own points.

I say to the parties in the audience who participated in the FANDA process, it's not my intention to divulge any of the content of the negotiations before we start. I'm gonna provide a summary of what the terms are and in the event that I misspeak in any way, shape or form it is a language on paper that controls and anything that I say is not to be construed as being inconsistent with the words on paper. So I will try to be delicate and adhere to what you've put in writing. So, any questions before I go?

Okay, so we begin with what lawyers know as precatory language but it sets a context for what it is that they were trying to accomplish, that is the members of the FANDA group. There is an explanation that they tried in good faith to come up with a complete and total resolution of the issues before them and that the people who initialed the document were doing so to express their good faith intention to proceed to negotiate and complete final agreements which carry forward these key principles and in so doing they believe that they are doing, carrying out the provisions of Article 10, Section 2, the OBPM, and that it's nonexclusive. They understand that the non-ag pool is out there. They would invite the non-ag pool to participate, they would invite the ag pool to participate, and they recognize that SAWCo and the city of Chino are not yet on board and there is a good faith intention on all parts, on all parties parts, if it were possible to include everybody into these principles they would want to accomplish that result. So, even though the FANDA principles have been drafted that does not mean that there's an end to good faith dialogue.

With regard to the subject of safe yield Reset, the safe yield is being proposed to be reset at 135,000 acre-feet a year. And without, again I will respond to questions about this but I think the key philosophy that's embedded in this 135 recommendation is found in Attachment A which is a Wildermuth Tech Memo and if the group will pardon me in using a phrase that I commonly used in a facilitation process I'm gonna ask you to clear the mechanism.

Clear the mechanism because often times when we approach problem solving we bring with it our baggage of our preconceptions about how things should be and how they should be determined and I think through a process of dialogue give and take and education over a four month period people began to understand and listen to each other and understand in what I would call an effort to “do the right thing.” And in the notion of the safe yield Reset at 135 is embracing a long-term hydrology, embracing a long-term hydrology and why would you do that. You embrace a long-term hydrology because it is the associated best practices in the profession of people who set safe yields to use the longest periods of record reasonable and possible and in this instance Wildermuth has a hydrology record going back to 1921 and to the present date. And mindful of the contractual commitments that are in the OBMP, the long-term hydrology also intends to use the corroborated data that was developed between 2001 and really the present time in corroborating the long-term dataset.

So, in coming to the 135, it is key to note that it is a long-term hydrology which has the benefit of the reported collected measured data which then increases the integrity of the model and its use on a long-term hydrology. And the long-term hydrology evaluating for peaks and valleys in rainfall and precip. over that extended period resulted in a congruence between use of the ten year period which is referenced in the OBMP, and best practices. There was an intention to set the yield in, beginning in 2011, which would then set up a 10 year reset in 2020 for the period 2021 to 2030. The methodology to be used is sort of a cook book, now it's not the end all, it's not intended to be everything that would be done and can be embellished as we go forward but it is a set of, a cook book or an explanation so no one is confused about what will be undertaken in the process of resetting a safe yield. Again, as I said it will be a long-term hydrology and it will be expanded to include datasets as they accrue over time. It will account for variations in climatic conditions, wet and dry, and that the integrity of this effort is dependent upon having accurate production data by all the parties and so Watermaster will take the charge of ensuring that there is production data that's properly analyzed.

I think one of the things that comes out of the tech memo and is reflected here is that really what changes is not long-term hydrology so much as what's happening on the ground in terms of cultural conditions. And those cultural conditions can change by virtue of hardscape, development patterns, how much water people pump and where over time and so that there will be a persistent, relentless collection of data to make sure that the hydrology supports the continuation of a yield at 135. We're going to require evaluation, and prudent management discretion, to impose measures that can avoid undesirable results as they might evolve over time and undesirable results is a definition that comes from California case law, it's not vague, it's not ambiguous, there are specified examples one of those things is land subsidence, one's called water quality degradation, one's an unreasonable pump lift. So these things are gonna be evaluated. If there's a suggestion in the collection of the data that, hey we need to take a deeper, more significant look, we have the ability to do that and course correct.

There will be a budget for this activity because nobody wants to sign up for seven figure annual analysis and people want to make sure that the money that is being expended by Watermasters is done prudently. There will be a model run in connection with the resets in 2020 and in 2025 in manner consistent with Exhibit A so it's not a blind modeling exercise. Everybody will be able to refer to the cook book which is referenced in Exhibit A and the modelling will be done in that context. There is the prospect for interim correction to occur. There is a general view that no interim correction should be required unless the deviation is gonna be up or down 2.5% so unless there was a deviation from the predicted hydrology, predicted safe yield, in excess of 2.5% we would continue for the period and allow the reset process to follow it's normal course. This could result in a 15 year establishment of safe yield which is consistent with parties' desire to have long-term security and reliability in their urban water management plans and in approving water supply assessments for new development.

It's also important to the parties that there be peer review and that this be baked in annually or as frequently as the parties desire, to have full understanding of all of the inputs that are being developed by Watermaster and its consultants in this process. That's the first piece of this, it's intended to be consistent with best management practices and there is and I'll come back to what the objections are that are shared, predominantly by the city of Chino, but also SAWCo in this element.

On safe storage management, and I will call this for the avoidance of doubt, for the avoidance of doubt as to whether or not the last 15 year period is the new normal or just a continuation of the long-term 100 year cycle, in which case would be offset by a wet period to be coming. The notion is that 130 thousand acre-feet of water will be set aside in a safe storage reserve. And that safe storage reserve is again for the avoidance of doubt and protection of the basin to make sure that ample water beneath the feet of the parties today remains in storage and is there as a buffer against any precipitous drop in water table or undesirable result or material physical injury, until a safe storage management plan can be developed or substituted by the parties on a 24 month schedule.

The appropriative pool is responsible for allocating that responsibility to respond to that and of the 130 thousand acre-feet, 100 is to be maintained in the safe storage reserve, while 30 thousand of the safe storage reserve will be available to be withdrawn for one purpose only and for one use only and that is to offset Desalter production implementation of the OBMP. So you have of the 130, you have 100 which is in a safe storage reserve that has a conditionality of having to be replenished and only can be withdrawn in the event of an emergency. You have 30 thousand which is available to be withdrawn only for the Desalter replenishment. You still have the overarching protections that are contained in the Peace agreement about how you regulate storage. And again as I said before, the appropriative pool is going to be tasked the with responsibility of developing a substitute plan or a better mouse trap within 24 months. What happens if they don't do that? If they don't do that, these handcuffs prevail and they contain

until, they continue until they are replaced. So it is the fail safe provision that if they can come up with a better mouse trap that makes sense and present it and take it to the court and get it approved, that will prevail. But in absence of that these hand cuffs are in existence.

It's also important to note that this anticipates the conclusion of the hydraulic control plan and that with that there will be a reduction of losses from storage to deminimus this has been quantified by Mr. Wildermuth at about 600 acre-feet and so that would be the expectation of the parties is that loss from storage account number would be hard wired into this arrangement which is taken to the court.

Then with regard to storm water, there is, rather than hit each one of these points I'm just going to summarize what the intention is. Storm water program, the implementation of the recharge master plan is very important, everybody recognizes that there's been a great effort to move forward in that regard. The underlying concern of the parties is how to apportion the benefits for contributions made towards the storm water projects and a basic underlying conundrum of people being, who are not necessarily, who do not necessarily have the financial wherewithal or the interest in investing in a storm water program for whatever reason and others that do and the way that the programs works presently is if 50% of the pool decided to go forward there's a notion that they could drag into that process people who didn't necessarily want to participate. So the accommodation on the storm water element here is to address that and to allow the storm water program to go forward on a basis of the 50% of the pool wanting to do something, but if somebody wanted not to go forward, a party decided that it was too expensive for its rate payers or its needs, it would have the ability to opt out.

And while that might otherwise create pressure or a burden on the parties who wanted to continue, the intention here is to allow that opt out to be covered by Fontana Water Company first who is willing to take the share of the storm water program that anybody any member of the appropriative pool does not want to participate in so we call that a put. So if one of the parties in the appropriative pool doesn't want to go forward, they raise their hand, they say they're opting out and they put their responsibility over to Fontana Water Company who assumes that responsibility and we move forward.

The treatment here also cures any question about how Watermaster accounts for this water on a go-forward basis and it makes it clear that there will be a fence, on a forward basis, a fence drawn around the programs developed for this supply and it will be available to those people who fund it. And in a retrospective it will be made part of safe yield which is allocated in accordance with party share of safe yield thereby disposing of the historical "backfill" problem.

With regard to Santa Ana underflow, probably no issue is as difficult because of the pure financial consequences and I'll just set this up as a juxtaposition. There

are various competing theories about what the Peace agreement says and required with regard to allocation to benefits of Santa Ana river underflow.

Now you'll recall that Santa Ana river underflow is made available by hydraulic control and the implementation of the Desalter program. It generates new water and in so, there is a contractual, there's a difference in contractual views about how that should be treated. This proposes a resolution of that and it proposes a resolution by looking at the period from 2001 and 2014 and folding that into safe yield. It takes a look at the period between 2015 and 2030 and ostensibly creates a deduction from safe yield and requires then that any unused ag water or surplus ag water be made available for purposes of backfilling the decline in safe yield. This has been agreed for the parties between 2015 and 2030 and I'm just going to put a price tag on this element for you so you can appreciate that while the moto here, the thesis, do the right thing, do the right thing. The do the right thing meant protecting the basin against the potential of double counting. That is taking water and then taking it also as a contractual entitlement. So taking it as safe yield and then taking it on top, again, as a contractual entitlement. Not expressing an opinion as to whether that's right or wrong, the fact is that many producers in the room had a contractual expectation that they would be able to receive the benefit of 187 thousand acre-feet, 187 thousand acre-feet of contractual entitlement which would be used for the purposes of offsetting Desalter replenishment.

That's a \$120 million obligation that or prospective benefit that they thought they were getting and for whatever reason they're not going to get. With regards to what happens between 2031 and 2060, it's clear there that whatever inflow is resulting from Santa Ana River and the Desalter operations will be folded into the safe yield and this issue will not continue beyond the initial phase of the initial term of the Peace agreement.

There's an arrangement that clarifies what happens post 2030 with regard to the issue that is known as sort of a standalone is backfill, and I'll do my best to inlay non Watermaster nomenclature simply say that the ag pool priority creates surplus from year to year. That unused agricultural water then cascades into the appropriative pool in a priority and there is an age old, sorry at least since 2000, discrepancy in how that should be treated. There are those people who believe that the early transfer provision which was negotiated in the peace agreement requires that the early transfer priority of 32 thousand acre-feet be honored first before anything. And there are those people in the land use conversion agencies who believe that their land use conversion rights of two acre foot per acre should be honored first. There was an accommodation between those two competing views for the balance of the Peace agreement and that means to the extent that there's insufficient ag surplus water to cover both of those claims that they are met pro rata or reduced pro rata.

At the conclusion of 2030 all of those arrangements go away. It is clearly stated that the land use conversions are entitled to two acre foot per acre and those

arguments will be whatever they will be for the next generation of the Watermaster family. But the two acre foot will remain in effect.

With regard to the Desalters and the Desalters' operations you may recall that when we did the Peace agreement initially, we were obliged to send a schedule to the court identifying the schedule for under which water would be withdrawn the reoperation account. There was two columns effectively created, one column for the existing Desalters and the second column for the expansion. And that in some ways was security for Watermaster's completion of the hydraulic control project which we are now on the precipice of completing in a matter of maybe days, weeks, certainly not years. And so it has been pointed out that there's actually an overhang of 27 thousand acre-feet. What does that mean? It means that by the conclusion of the Peace agreement there would 27 thousand acre-feet of water, the Peace II Agreement, 27 thousand acre-feet of water which would not have been made available for Desalter replenishment and that would be a waste so in addition to that the belief is to try to create a soft landing and since the parties have successfully completed their multi-hundred million dollar Desalter project that there would be an opportunity to adjust this schedule and to bring forward some of that water for the purposes of Desalter replenishment.

And last but not least, we understand that there are, actually second, penultimate here, we understand that there are parties who think that the basin is rich in native stored water on top of the water that is presently stored in storage accounts, storage accounts and then native water. And there are some herculean obligations that lie ahead and they're making it clear that there needs to be the full utilization of any and all tools, creativity and otherwise, to address the very significant economic and water supply challenges ahead. So there is a reservation of rights by the parties and with regard to Desalter replenishment as how they may go about that. And then the last part of that reservation is that in consideration for all the other things going here, the parties are bringing certainty to how the Desalters are operating and there was a reopener provision which was contained within the Peace II Agreement which had to do with the economics of the Desalters and that some parties had the ability to reopen the Desalter financing plan and to contend that the operation of the Desalters had become more than economic and in, relatively economically unfair to other parties and required a revisiting of the underwriting of the replenishment and that is being surrendered pursuant to this paragraph.

Lastly, there is a commitment to supplemental recharge because the parties know it to be the key to future success. And so let me go back to, just again, the misery index here, while the clear context is do the right thing, do the right thing, be responsible stewards, it is true that there are 187 thousand acre-feet of contractual expectancy which is associated with what we know as SARUNY which is not gonna be available under this deal for the parties, the 187 thousand acre-feet. There's a projected reduction in safe yield going from 140 to 135 over the balance of the Peace Agreement. That doesn't change, that's an addition 75 thousand acre-feet. And there's 130 thousand acre-feet at least 100 of which is gonna be

maintained in a safe storage reserve bring to, which could be sequestered. Which brings the total volume to 362 thousand acre-feet expectations which the parties are limiting themselves in some way and at a price of about \$600 an acre foot in the common market today, that's over \$215 million financial obligation that they have found a way to work through.

So with that, breath here, deep breath, with that, we did have a lack of unanimity and this was not, in my opinion, the result of any lack of effort on our part. I first wanna talk about SAWCo and if I again, SAWCo's in the room, and if I misstate the objection in any way you can clarify for the record. The San Antonio Water Company was a participant in FANDA from the beginning. They did come to the meetings, they did collaborate, they were there. Substantively, they had two issues which prevailed and we could not resolve while they did participate. The first is on the start date, they held rather strong views that the start day should be the year following court approval. And so, what that would in effect do is put this arrangement off for one additional year before it was implemented so they were asking for a delay from after the court approved it and not allowing it to be implemented in the present year. That was the first concern.

And then the second concern is, they felt the 2.5% governor was too tight, it should be 5% and that we should not be resetting safe yield unless and until we were outside of 5% change. And, I mean, I'll be happy to, and other parties in the room can respond to it. But those positions were not acceptable to the balance of participants and then there was also a concern about whether the process had been conducted in good faith because of some of the shuttle diplomacy tactics that I used through the process. In my experience that is common and customary and certainly appreciated SAWCo's participation from the outset and I wanna represent to you that I did not think there was anything untoward or unusual about that, respectful as I am of their point of view.

And then lastly, by letter of April 27, SAWCo expressed the view that unanimity was going to be required to implement this provision. That is not my opinion. That unanimity was going to be required and I can respond to that in great detail if you'd like but the intention here is that no unanimity is required because there is a court order and whatever we would be doing would be in further implementation and not going back in time. And I see Teri standing up so, whether you wanna handle it now or when we're done.

Chairman: Let's have you finish...

Slater: Okay.

Chairman: and then we'll have the other parties...

Slater: So then with regard to the city Chino, like SAWCo, the city of Chino participated in actually were one of the architects of the FANDA Agreement. They came well represented and participated fully and fairly throughout the entire process, made

their points of view well known and understood and so I will do my best to describe for you the nature of their concerns.

The first set of concerns pertain to the safe yield reset. Their position, I believe, is that the safe yield should be reset at 140 thousand acre-feet, not 135. That's the first element. The second element is that, of that is that there should be a consideration of the vast quantity of water that is held in native storage within this basin, independent of the water that's being held in storage accounts, but the vast quantity of water that's held in storage should allow a storage component to be included in safe yield setting, and then sort of as an adjunct or corollary to that, you should be able to produce water from the basin until you were tripping a threshold of significance or a concern about causing an undesirable result and that we have, at Watermaster, been too vague about our articulation of thresholds for undesirable results and that there needs to be a better linkage between the amount of water that is produced and a cause and effect of undesirable results.

I also believe that they would like to see an expressed commitment towards recognizing future hydrology and in specific, climate change. There is an emerging climate change science, there's climate change modeling and that there would be a potential to subject the modelling exercise to the rigors of climate change approach and that that might yield new, better or different information.

With regard to safe storage management, I think in this regard there's likely an objection to a quantity but more importantly the inter se allocation formula. Instead of an approach which takes into account the total quantity of water that's in storage, there is the belief that this approach, the one that is here in lieu of, or instead of, an approach that they would support, which was one based on operating safe yield, unfairly discriminates against the city of Chino who happens to have a very large and perhaps the largest quantity of water held in storage today. I think there are concerns about the safe, sorry the storm water element and how it would be applied, measured, in creating a fence around storm water and resetting safe yield and their concerns have been around Santa Ana river underflow that I think the city of Chino actually coined the phrase SARU which is Santa Ana river underflow that is not new yield and thereby Santa Ana river underflow that is not new yield then has a contractual fate which does not result in being backfilled.

I think they're against the collapsing of buckets from the Desalters and are not in favor of making available all of the water that's in the Desalter reoperation accounts to provide the soft landing and that highlights, I think, what their concerns are, again they're here and I'm sure they can respond in greater detail. So, in winding up a long journey, very complicated, I complement each and every person who showed up every day for now four months and change on what is absolutely by far, without question the most difficult, painful allocation of risk and responsibility that I've ever participated in so I'm happy to answer any questions on that and when we're done I also have some recommendations on status or what's next.

Chairman: Take a breath. Thank you, Scott. Thank you very much. Why don't we...

Bowcock: Just a quick question...

Chairman: ...other than the objections, if there's a housekeeping or other questions that you have for Scott or Peter then go ahead, Dr. Bowcock?

Bowcock: Thank you, as you articulated the role of the non-ag pool up until now has been to allow this process to run its course and we've intentionally taken a hands-off position. Based on what I'm hearing from staff and this is perhaps a staff question, Scott, as facilitator, we went through the waiver process as the Watermaster Board, parties signed as members of FANDA, do we consider that process concluded? Is one door closing so that now another door can open and that will change our position as to how we, as a pool, perhaps might like to participate? Because there will be implications if this goes to agreement or contract.

Slater: So my answer, my belief, my good faith belief is we were assigned a responsibility and I believe we have discharged that responsibility by concluding the process. That doesn't mean people will stop talking, there will be good faith discussion I think there are, so I'll go there now Mr. Chair. The next thing that has to happen is there are two things that have to happen. If the FANDA principles are acceptable to the other pools then we wanna begin drafting as soon as possible because we're pledging to be done by September 1 so we're gonna need June, we're gonna need July and people start taking vacations in August and we need the time to get there by September 1.

Second thing is, and I think that this is, well I know this is true until somebody stands up and says I'm wrong, the expectation is that the FANDA principles, if they were acceptable to the other pools, and the Board concurred the of desire the parties would be that a status report would be prepared forthwith to be brought back to you as a Board at the next board meeting for filing with the court which they would transmit the principles and they would tell the court, here are the principles we've been hard at work at this, we're in the midst of drafting agreements and all of that would be what's called 1152. For non-lawyers it means protected by the evidence code, you don't need a confidentiality agreement per se maybe the lawyers will feel differently but I think 1152 provides a protection that any of the documents can't be introduced or used in a court proceeding. We're gonna have multiple drafts there will be errors in the drafts, but the process that you, the FANDA process or process that was set up by this Board would be, that phase would be ending and we'd be starting a drafting phase.

Bowcock: Thank you that answered my question. I just wanted to make sure that that line was drawn, there's no ambiguity and we can move forward and participate in good faith now.

Chairman: Any other questions for Scott otherwise I'll entertain the representative of SAWCo. Go ahead.

Layton: We haven't received what you have in front you, just so you know. We were part of the process. We came forth with separate proposals. One was to separate the safe yield from this other process to hopefully get here quicker but it was shot down. Our proposal also was to have a 5% deviation and it was our proposal first and it was changed to 2.5% and we asked why and wanted some technical basis behind that. We also felt like the safe yield should be set after the court order because we were right now in the midst of a pumping year right now. As far as I know, the safe yield is still 140 so we were concerned with the effective date also.

We continued to participate up 'til we were concerned with the opening of the Peace Agreements and that's why we sent the letter. We participated up 'til, I think, May 14 was the date that we withdrew from the process and basically we withdrew because we felt like we could no longer, our information or our input was no longer being accepted or considered so that's the reason why we did it.

Chairman: So when the principles were shared with the Board, that was just shared with the Board not distributed? I just wanna understand the process I don't want...

Bowcock: Yeah but the process...

Chairman: I don't think it was intended, I mean it came late yesterday afternoon so it's not like the Boards had a lot of time with it.

Kavounas: Right, the principles were developed yesterday afternoon as soon as we were done we sent them out immediately to the counsel for the ag pool and to the Board yesterday afternoon, evening. And then we cleaned up, collected signatures, printed and presented the document and put it on everybody's place today so it's...

Chairman: So that can be made available for...

Kavounas: It is available at the back table...

Chairman: Okay, it is. So other than San Antonio Water Company was there anybody else that was originally in the FANDA group that didn't participate at some point going forward?

Slater: No, look no.

Chairman: Okay.

Slater: Robust participation.

Chairman: Okay. Does anybody on the Board have a question for San Antonio about their position? Scott laid it out pretty clearly I think. What was stated was kind of reiterated what Scott had read out. Okay. Chino?

Gutierrez : Thank you President Elie, I'm Jimmy Gutierrez City Attorney for the city of Chino. Thank you for allowing me this time. Before I begin I'd like to state that the city of Chino has great interest in this. We have three council members, city manager, director of public works here. I'd like to introduce them. First is Councilwoman Ulloa, secondly Councilman Glenn Duncan and third Council Member Tom Haughey, our city manager Matt Ballantyne is here...

Truong: Jimmy, could you please speak up a little louder?

Gutierrez: I'm sorry.

Truong: Thank you.

Gutierrez: Let me say it all over again. Our Councilwoman Eunice Ulloa is present, Councilman Glenn Duncan is present, Councilman Tom Haughey is present, City Manager Matt Ballantyne is present, Public Works Director Jose Alire is present and Water Manager Dave Crosley is present sitting behind me. So I wanna thank you for allowing this process to go forward and all the participants in the process we participated fully to the very end, including yesterday. But we have some strong reservations about how this proposal or how this plan affects the City of Chino, so I'll start with the bottom line and I'll go from there.

The bottom line is that the city of Chino is in growth mode. We have a population of nearly 80 thousand. We're scheduled to go to 130 thousand. Virtually all of the land in the City of Chino is entitled, hasn't been built out. The developers are pressing us every day for consideration, infrastructure, not water but water treatment facilities and we're in a move. The problem for us is that because of the conversion of agricultural land this proposal takes water out of the bucket from which the land use conversions take place and as that water comes out of the bucket by all these proposals there's less and less in that pool to provide water to the land as it gets converted. Well that's one of the reasons why, and even with the new arrangement we're not getting a full allocation because, as you know, the unproduced ag water is oversubscribed by 9,800 acre-feet at the moment. And because of this, we have made a point to be thrifty by saving our water. That's why we have a large water storage account. Because we know that into the future the lines will cross between what water becomes available to us out of a percentage of operating safe yield, a percentage of early transfer and a percentage of land use conversion water and we will evolve with the point in time where we'll be in shortage and we'll have to start buying water. And that is what drives our concern.

Let me just give you an order of a magnitude right now. This is kind of rough because I took the last assessment package, and according to the last assessment

package the unappropriated ag water was oversubscribed by 9,800 acre-feet but there was 49,000 acre-feet of under produced ag water that was available. So if we reduce the safe yield by 5,000 acre-feet then that number is reduced by 5,000 acre-feet. And then if allow the allocation of safe yield to be utilized to offset the Desalter water replenishment obligation, which is already an obligation of all the appropriators, that number drops from 49,000 acre-feet to 15,000 acre-feet and so there's progressively less and less water for Chino to have for its ag use conversions and so those two lines will cross much quicker, Chino will deplete its storage account and we'll be having to buy water because of this arrangement.

And my message to you, my request to you is, do not sanction the plan that does this because what it does is it unfairly imposes a loss on Chino's water rights in the favor of other appropriators and I don't say that with any intent to offend anyone here. I've been very careful with my remarks to all of the appropriators. I've spoken candidly with each of them and I've been very careful not to offend them and I'm not trying to do that now but what I'm trying to do is point out what the problem is for us and why we do not consent to this proposal or this plan at this point in time.

So let me be just a little more specific in terms of how this happens. I'll call it plan one. Plan one provides that the appropriators take half of the Desalter water production from safe yield when that happens that reduces the amount of water available for land use conversion and our view is that there is nothing in the judgment or the agreements that provides that. There is no guaranteed expectancy of new yield from the Desalter production for this use. There is a possibility that if there is new yield from the Desalter production then that new yield will go forward to help reduce everybody's replenishment obligation but that obligation exists. The city of Chino has its share of that obligation as well. And our view is that it's not part of what's there and it shouldn't be there and we've made that point known. I won't belabor it but I wanted you to know that's why we object.

The second point is that this whole concept of the safe storage. Right now the proposal is to take 130 thousand acre-feet out of the appropriator storage accounts, in effect give it up, because the plan is that it can't be used unless two things happen. Number one there's got to be an emergency, which presumably would be approved by the Board and number it's got to be paid back. Effectively speaking, we lose a water. So that's one part of it because the water that exists in storage now has already been allocated and it's been approved, it's been approved by the Board. In the assessment packages the Board approves the amount of water that goes into storage. I have the document for November of last year when that approval took place. So the city of Chino has vested water rights in the storage accounts and we don't want to take it out.

Now let me give you an idea of how harshly this hurts the city of Chino 'cause I think the numbers will cause you to understand why our position is very substantial and our reasons are very reasonable. The proposal right now is that the loss from the storage be allocated in proportion to the amount of water in

storage. Currently, and this according to last assessment package, there's 231 thousand acre-feet in storage accounts. Of that, Chino has 65 thousand acre-feet in storage account or 28% of the water in storage. So that means that if the allocation of the 130 thousand acre-feet is divided up proportionately Chino would have to contribute 28% of the 130 thousand acre-feet. That's 36 thousand acre-feet of water with a value of \$18 million at the going rate of \$504 per acre-feet.

What we had proposed is that if there's going to be an allocation of that loss the allocation should take place in the same manner that the water was distributed. I mean the real issue here is, with all due respect Mr. Vanden Heuvel, your request that that over produced ag water be paid back. But when it was allocated it was allocated according to percent of operating safe yield. Chino have 7.3% of operating safe yield so if the 130 thousand were allocated based upon the same methodology that it was apportioned out in the first place 7.3% of the 130 thousand would be 9,490 acre-feet compared to 36 thousand acre-feet.

So if this plan goes forward, if you approve it you're eliminating 56% of the water that has already been confirmed to Chino in its storage accounts. We think that's a very reasonable position to take. We think we have a very substantial interest. And I understand that again, with all due respect to the other appropriators, that it's an issue among the appropriators and it's an issue that I don't think the Watermaster Board should be involved with. I think that's an issue that if the other parties have they should go to court and ask the court to resolve the issue not this Board because there is a substantial unfairness falling upon the city of Chino and we would hate to see you be a party to that unfairness. So that's our request.

Now on the safe yield reset, which probably is properly in your court, we have a couple of views I want to express. I think Scott did a pretty good job of expressing them but let me express it to you this way. The methodology that is being proposed to use to determine the safe yield number in my view is not a methodology called for in the judgment. The judgment provides in paragraph 39 and 40 that all of the waters of the Chino basin has to be made available for beneficial use to the parties who are entitled that water. That includes surface waters and water underground. And it seems to me that the assessment should be with, what water is needed and how are we gonna allocate it? Not start off from a mechanical position that says this is a water that should be available.

What has happened is that the safe yield concept has been converted into a net recharge concept which means safe yield is equivalent to the amount of water that's being recharged into the groundwater basin and it throws everything else off. The judgment doesn't say that. The judgment doesn't say use a recharge method. The judgment doesn't say you can't use water in storage. So the methodology, in my view, is wrong. Not only that, if the methodology was gonna be used it's not being fully used because the long-term net average recharge is

140 or more. If you're gonna look back for 91 years and you look at the long-term average it's 140 or more, it's not less.

The idea that's expressed in the principles is that and I don't necessarily agree with it but it makes sense. The idea that's expressed in these guiding principles is that past recharge equals future recharge. So what we're saying is we're gonna look to the past to predict the future. I don't think that's necessarily correct that's why we suggested that climate change should be introduced as a way to determine what the long-term average is, in other words we looked at the past but we looked at the future. But even if you're looking to the past the process doesn't honor the past because the past suggests more, and if the concept is that the past hydrology equals future hydrology then we shouldn't have any problem because long-term, even though we're in a drought now, water will change and that will be recovered. So even on a net recharge methodology it's not a true net recharge methodology.

The next thing that's important is that the judgment requires that a determination of undesirable result be made as a component of the safe yield determination and no undesirable result has been identified. The question is, what is the undesirable result that has occurred because we continue to pump 140 thousand acre-feet per year? What is the undesirable result that has occurred or will occur that compels us to go to 135? None has been identified, yet that's a requirement of the judgment. Yet lip service has been made to subsidence but there is no relationship between safe yield and subsidence.

In Chino we had that problem several years ago and we spent a lot of money studying it so did Watermaster, thank you for that, and we determined that it wasn't a function of safe yield it was a function of the soil quality under the ground, the location of the wells, the depth of the wells, the level of pumping would virtually solve that problem by not pumping in those areas. And at that time nobody has ever discovered, then or now no one has ever suggested that subsidence was caused by the safe yield. As a matter of fact there was no discussion back when we had the subsidence number and right now I understand that there's subsidence in Pomona, there's subsidence in Ontario and I understand that because we've gone through it.

But I understand also that there hasn't been that much study of what's going on there so we don't know what the cause it. All I know is what we found to be the case in Chino and that had to do with the type of soil and I think until we know why there are subsidence in those areas we shouldn't say that subsidence is an undesirable result.

But the other point is this, is that there is a belief that we shouldn't touch water in storage. That taking water in excess of the net recharge is something bad. It's something not, undesirable result but I submit to you that we've been doing that all along. We have been taking more water out of the basin, in excess of recharge that has been authorized by the court. 200 thousand acre-feet was originally authorized in the judgment and then under the concept of hydraulic control,

another 400 thousand acre-feet has been authorized even though Mark Wildermuth original said that it should be 600 thousand acre-feet that should be pumped. So when we pumped, we pumped 400 thousand acre-feet to achieve hydraulic control, taking water from the storage was a good thing.

The other thing is if we're going to back and reset, the safe yield to a time in the past, I know that's not the proposal. Then we've overproduced five thousand acre-feet a year since whatever the date would have been and there's no undesirable result. So, I suggest to you that the method is not correct, it is not in compliance with the judgment and it doesn't give real credence to what the judgment says, which is providing water to the parties for beneficial use and to use that resource that's there. We have anywhere from 6 to 8 million acre-feet of water in the ground and the position that has been advanced is that we can't touch it. I've always compared it to the following: assume that a person lives on a \$140,000 a year salary and that person receives an inheritance of \$8 million. They can't touch the \$8 million dollars. It doesn't make sense. Now, I'm not saying that we pump foolishly and that we take as much as we want. I'm not saying that. I want you to understand that I'm not saying that. But what I'm saying is that before make a determination that we can't take water from storage, we should have reason for why.

One of the interesting things that Mark Wildermuth has stated, and correct me if I'm wrong Mark, but I think you've stated this, is that there is a point that could be reached some time where we get to a level that we shouldn't get to and therefore we need to stop pumping in excess of that amount. But that analysis hasn't been made yet. We don't know what level that is. And so what I'm saying to you is that this methodology is not complete. That's why we don't support it. We could support it if it included some other items. I mean, I had a communication with Scott, was it Tuesday, Tuesday afternoon, Wednesday afternoon, where we made some of these suggestions. But, you know, it just wasn't going to work.

So, the big picture, and here's the other thing that I want to say, is that for whatever reason and no criticism of anybody, but for whatever reason, we have used water in storage. Maybe in the early years when there really wasn't much activity by the Watermaster. I mean, that's why we have the Board because the prior Watermaster really didn't do what it need to do. But, in those years past, you know, the judgment wasn't implemented that well. I think since 2000 it's been implemented a lot better. So the whole concept of we're dropping water levels precipitously, no longer is the case. Water levels are maintaining.

But here's something else that we did, and it was a smart thing that we did. We used water in storage to help finance the Desalters. If those of us who joined up with take-or-pay agreements to give money to this Desalter Authority or buy water. We were able to do so by making that commitment and that money was used to pay for the Desalters and operate the Desalters. The other money came from the control overdraft that was authorized. And if it wasn't for that control

overdraft together with a promise of the parties to contribute replenishment water to the Desalters, the Desalters would not have been economically feasible. It was economically feasible because the water in storage was used to help finance and because of that we're not losing water to the Santa Ana River. Instead we're drawing water back from the Santa Ana River into the basin. So that's an example of taking water in storage of which was a good thing. And it's not foolishly being taken any longer, you know. And again, I don't meant to criticize anybody, I'm not criticizing because I'm not an advocate for going to the past. I'm talking about going to the future. But, on the other hand, I think we have a pretty good track record since 2000 and I think we can continue doing the same kinds of creative things that we did with the Desalter and we have to understand that a component of financing that is using water in the storage unless, of course, there's an undesirable result.

That's true for the recharge programs. I think you can finance recharge programs by using water in storage and not create any problems for the basin because the concept that's before now about safe yield resetting is a net recharge theory. Well a net recharge theory then we should do more recharge. And it's not that we don't have enough water that falls, it's that because of all of the impervious surfaces, we don't have enough water percolating into the basin. And so that takes away from the natural recharge. But remember, we have a substitute for it. Because ag, the ag group, the farmers, God bless you guys, because the farmers stopped pumping because they stopped farming because they sold their land because they sold the dairies because it moved away. Something that I've experienced over the decades. There was less water taken from the south end of the basin so water started spilling away. That was another phenomenon that took place. A cultural phenomenon, an economic phenomenon. So the amount of recharge was reduced because we were losing water into the basin. And what we do? We came up with a manmade solution which was put in Desalters. It worked. But Desalters became a substitute for the production that the ag had. So what I'm saying is that there is an answer for it and I think we need to look ahead to the answer.

I'll conclude now, I don't want to bore you. But, I want you to understand that, you know, our position is thoughtful. Our position is based upon what the documents say. Our position is based upon the science as we understand it. Our position is based also on our interests and our need to take care of our future population. And so with that, I'll end but, and I want to thank you so much for giving me this time to speak to you.

Chairman: Does anybody have any questions? I guess I have a question. Does the City of Chino actually contend that, as the arm of the Court, this Board should ignore what its consultant, after much, much effort, determined was an appropriate and technically-sound safe yield because the City of Chino just says so? I mean, is there a, do you have a counterproposal that says, 140's the right number other than the City, you essentially somebody, one person saying, right now, their lawyer, that it's ok basically. What I hear from this is we've been doing it for

years so what's the big deal? 140's fine, let's wait until there's a real problem. And then I also heard you say that subsidence isn't really a problem and we shouldn't really be worried about it, we've got 6 to 8 million gallons sitting, 6 to 8 million acre-feet, excuse me, sitting way down there, so we really don't need to concern ourselves with it. And I hear that in the context of, knowing full well that we have judgment. We've got two peace agreements, we've got an OBMP, we've got a whole series of other documents and agreements that me as a lawyer and sitting as a board member here, is extraordinarily concerned with that we do the right thing at the right time for the basin as a whole and not for one entity's belief or contention. So, help me out here Jimmy, how, explain to me why we should ignore all that history because somebody says, hey don't, don't look at that. You know, don't worry about all that, don't worry about what the consultants say. We've been good for so long let's, well we're fine now.

Gutierrez: On the issue of safe yield reset I'm not asking the Board to ignore what the consultants says. I'm not asking that because I recognize that the way the judgment is written and the way the Order was that there is a basis for the Board to act. My statement about the Board not getting it all is on the issues between the parties based on the agreements between the parties. All I'm saying to you on the safe yield is, understand why our position is what it is. And maybe you'll take that into consideration and suggest something different. But I'm not telling you can't do it. I'm not saying that. Does that clear up your question?

Chairman: Okay, yeah. Is there a...

Slater: Mr. Chair?

Chairman: Yeah.

Slater: I just, I also wanted to make clear that that there may be a process in nomenclature point. To describe what the city, aside from the legal point about how safe yield is set, hold that aside. What the city of Chino is saying is that under certain circumstances it may make sense to withdraw water from storage. Under certain circumstances it may make sense to do that. The precedent in this basin has been since the depletion that pre-existed the '78 judgment is that it was authorized as "overdraft." So the first instance was the controlled overdraft that was allowed for the soft landing beginning in 1978. And the second was for ReOp. That was processed as overdraft not as safe yield. So, my point would be that there is an avenue to pursue that, it's just not part of a safe yield reset. It would be making a, making a plea for control, to authorize overdraft.

Chairman: Anybody else?

Jeske: Yes. So there's nothing in this agreement that would prevent such an action in the future if the parties and the Board felt it appropriate?

Slater: None whatsoever.

Gutierrez: That's a good question, if I may comment. We would feel a whole lot better about it if there was some provision that says, safe yield, taking water from the basin is not an exclusion from the safe yield recalc because that's what the suggestion is of the dialogue and the language. It implies you cannot take water from storage. And I think that water from storage can be component of safe yield. Nothing in the judgment says otherwise. But that's my comment, thank you.

Chairman: Thank you.

Slater: I do not believe that there's anything in the decree, or sorry, the principles that would preclude a party have an issue on some motion of the Board or in connection with some overarching public purpose as it has in the past. Promoting an authorized withdrawal under overdraft. It's just not part of this process, is all.

Chairman: Correct me if I'm wrong. I'm reading the 130 thousand acre-foot as a safety valve. That, that, those that agreed to it, I mean, that, that...

Slater: It's for the avoidance of doubt. It's a safety value to give the, to give everyone in the community assurance that there's water there being held in storage.

Chairman: And that our, our grandchildren won't have to worry about it...

Slater: Until, I also want to, you know, represent that they, they, the members of the appropriative pool have the ability to come forward with the substitute mousetrap. Something that's different. For presentation to the Board and to the court for approval which could be different. The reservation or the sequestration of the water, if you will, under the circumstances is only unless and until a substitute plan is developed.

Gutierrez: If I might add, forgive me for interrupting, but this is an important point. The safe management plan is wholly unnecessary so long as the concept of safe yield is don't take water from storage. The don't take water from storage element of safe yield assures that water will not be extracted from the basin in excess of net native recharge. That's your safe management plan.

Chairman: Is there anybody else? Is there anybody else from the audience that would like to comment before we move on to Board discussion? Okay.

Vanden Heuvel: Scott had some recommendations...

Chairman: Oh yeah. Why don't we.

Jeske: Maybe before we go way forward our pool has not been part of the discussions but we do have a comment. Based on what our Board member and myself saw this morning when we received the e-mail and it does deal with storage and this is something I think would be very simple to do. The concept of safe storage has been introduced. And when you look in safe storage, Section 4, we've already alluded to the go-forward where the appropriators may come up with an alternate

storage plan. And there's a unique change in term from safe storage to storage management plan. Hence, Director Bowcock's question on has FANDA ended and will we now have an open process? As you know, our pool has members with storage, intends to continue to have members with storage. So, if we're looking at a storage management plan as part of our storage review on our agenda for the rest of this year, it should not be exclusive to the appropriators as is shown in Section 4. It should include all the pools, or at least those with storage, the non-ag and the appropriators in that discussion.

Slater: Mr., Mr. Chair, if I can respond to Mr. Jeske. The intention of the FANDA group was not to affect or include the non-ag storage at all. So there's a fence around the non-ag storage entirely and, and so, the intention was is that there would be no in fact, no effect on non-ag stored water.

Jeske: So reflect it in the final documents.

Slater: Yes.

Chairman: Okay

Kavounas: And I would add to that that when the discussion goes to storage management all three pools will be involved.

Chairman: Scott, you had recommendations?

Slater: Sorry, it's my opinion that, my recommendation is that we move on to, to being able to file a status report and distribute the FANDA principles to the court if the other pools are amenable. We recognized that the non-ag pool has never seen the document until last night although, again, there is an intention not to affect any right within the pool. And only to further their interest by imposing a stewardship that's in furtherance of OBMP. The non, the ag pool has seen it but has only got the full draft yesterday, so I think our intention would be, if you would direct staff to prepare a status report and bring it back to you for your consideration at the next board meeting with the intention of distributing the FANDA principles to, or transmitting those to the court. And in the process give the other pools the opportunity to evaluate what's going on. And the reason for us to move forward with that frankly is, as your lawyer, and wanting to have you make a good showing with the court and in continuance of the task that you've already started, I can assure you that it is possible, it's actually reasonable, to expect the parties complete the drafting by September 1. And I use the precedent of the Peace agreement. We completed the key terms in the Peace agreement on May 14 and handed in a complete package to the Court on June 20. And you can check your documents to see how thick and all of the attachments that went into that. We were able to do that. And I think if we have the concerted effort, we can meet a September timeframe. If we lose the month of June on the drafting exercise, I'm afraid that with vacations in August, we'll have to slip further. So my suggestion is, that we be directed to prepare a staff report and bring it back, that the other

pools be given a reasonable period of time to express their point, and that we begin the operation of drafting. I want to give everybody a rest. And including myself and staff. I think we need a week off, so we're on Thursday, I'd like to take a week off and then come back the week after and get after it.

Chairman: Director Vanden Heuvel.

Vanden Heuvel: Yeah, I, I've been pretty quiet here and it's not because my mind is inactive. In all fairness to the overlying non-ag pool and the ag pool, we really haven't seen this as a pool. There was a transmittal of this to the ag pool's attorney. I found out about that about 4:15 and so that's, that's when I heard it was there and then was able to see it. My colleagues on the ag pool have not had a chance to review it. And the ag pool has been pretty clear about its concerns. And so I don't think it's fair to not give the ag pool and the overlying non-ag pool an opportunity to meaningfully evaluate what's here and have to chance to engage with the appropriative pool. And so, what I think would be a fair process is for us as a Watermaster Board to set up a special board meeting about, I would say, the third week of June. With a mandate to the staff to bring to the Board at that special meeting a term sheet agreed to by all three pools. And that would give the ag pool and the overlying non-ag pool about a week here to evaluate it, digest it and then engage with the appropriative pool during the first and second week of June and hopefully come to a resolution by the pool meetings and then have the pools pass on this and bring it to a special meeting of the Board. That third week and then we could instruct you to begin drafting a pleading for the Court if that's, if that's the next step. But I am very concerned with the part of the recommendation that assumes that the FANDA proposal that was only just initialed yesterday is therefore acceptable to everybody. And I'm, I'm not saying it is or it isn't. It's just it's not fair to those who have not been part of that to presuppose and sense that they would approve it as is and since you need a break anyway given and since you need a break anyway, given the two pools a week to kind of get their digest it and then engage with you in a week from now I think is reasonable.

Bowman: Mr. Chair?

Chairman: Director Bowman

Bowman: You know there's been a lot of effort by everyone and it's been a good faith effort and I think a continuation of that is a force at this point. And it seems like every reasonable request to make that extension and come back to us and considering all that's been invested in not only time but money and reputation and we're all under very specific direction and to meet those timetables we need to be on the same page and I would support that.

Kuhn: If what Jeff just said was a motion I would certainly second it.

Vanden Heuvel: Yeah if it would, my motion would be that we set a special Watermaster Board meeting for the third week of June with instruction to staff to bring to that meeting a principle sheet agreed to by the three pools.

Chairman: You know I think, so okay we have a motion that is seconded by Director Vanden Heuvel and Director Kuhn. Director Galleano, did you want a competing motion you wanted to make or...

Galleano: I gave it to Bob and I wanted his learned tenure on this Board to...

Kuhn: I have it and I think what we're doing is covering exactly what we're asking for.

Chairman: Here's the concern I have with the way the motion is drafted. I think it, first of all mandating that they come back with an agreement I think is a mistake. I think secondly that it's, it's too much time. I think we lose some momentum in time that's built up. I think my preference would be that rather than putting onus on staff again to come back with a report, that if it is acceptable why not let's get going as soon as it's acceptable rather than putting a three week timeframe on it? I think we can set a placeholder meeting for June 8 if there is an agreement, which is the Monday after a week plus off. I think it's pushing it too far out. I think it's not, while the actual final document was produced yesterday, it, the main principles over time, it's my understanding that they were communicated. Whether it was actually seen, I get you have to see the whole final document but it's my understanding that they were communicated to the ag pool that I know there may be some people within the ag pool that have some issue with some time that they need. I'm really concerned about kicking, basically and Bob you've been the one that keeps saying let's not kick this can down the road and what this motion does is kick it down the road three weeks.

Galleano: Let me read the statement and I think I'm the guy that kind of drew the line in the sand...

Gutierrez: Correct.

Galleano: And so all the support of this Board except my good friend here, if my memory serves me.

Kuhn: Correct.

Galleano: But listen to this and see if it appeals to you. Direct staff and counsel to prepare a status report to the court for consideration by the Board at its next meeting. Direct counsel and staff to commence coordinating drafting the binding agreement based on FANDA key principles unless either the ag pool or non-ag pool expresses concern with the principles by close of business June 3. If either of the pools express concern with the principles the Board will promptly convene a special meeting to evaluate the concerns and to take any appropriate further action. Now I think that says exactly what Jeff and Bob just said. I think it's a little bit more direct.

Kuhn: The only difference is that when we set this special meeting into it gives everyone an opportunity, I don't have any problem coming back at that next meeting with the drawn up documents and at the special meeting directing you to file with the court. I think it's really what Geoff's motion is...

Vanden Heuvel: Exactly. And I appreciate the sentiments there Don, that are embedded that. What I don't think, what Scott went through today is a, there's a lot of components to it with a lot of implications. And while the ag pool has, for the last six weeks or so, been in discussions, some of the elements of this particular document were new yesterday. Some elements of this document that are of great interest to the agricultural pool and we have professionals that we have access to that need some time to actually analyse this and prepare a full report to us on the implications of all of these various components and pieces. We have a pool that represents and I think sometimes folks forget that we have the State of California is a member of our pool, the County of San Bernardino actively participates with our pool in addition to various farming interests, not just dairy but the crops as well. So we have a fairly diverse pool.

We've had very good attendance. We've had many, many special meetings trying to be as responsive of possible over the last six or eight weeks. I don't know how many meetings we've had, but quite a few but in fairness to them we've only just seen the whole thing, well my colleagues haven't seen it yet because they haven't received it and in fairness to our professional people that we rely on for advice they need some time to digest this and understand it so I don't think it's, you know my suggestion here is not just off the fly here. It's with consultation with leadership of my pool and this is the time that they feel is reasonable to evaluate this and to be able to meaningfully engage with the family here to get to the results that we all want. And looking at what we need to do, it seems like actually setting up a special board meeting for that third week of June so that we, so that gives us a deadline and for staff to work to get the pools and we're entering, I appreciated Bob Bowcock's question, we are entering a different relationship amongst the family now and that allows for much more dialogue and interaction and that gives us that time with that deadline to get to closure and then hopefully we get there, we're successful and then we've got a week to the next board meeting, until the regular board meeting in which we can get at least a status report prepared and we can authorized then that at the June meeting. So I think our end point is the same as what Don described but I think we do in fairness, the ag pool and over at non-ag as well needs the time to be able to evaluate this.

Chairman: If we go to the third week, that's basically just one week before our board meeting...

Vanden Heuvel: No but remember what has to happen by the third week Steve, by the third week...

Chairman: Hang on.

- Vanden Heuvel: By the third week we need to be completed with agreements, in principle that include all of the parties. And then if we reach that then the pleading for the court. We know that we can get that done in a week.
- Galleano: What I think we need to do is adopt these principles of agreement because it states very clearly in there and it addresses Jimmy's position that each signifying an intention to continue to negotiate in good faith to reduce these principles into a binding instrument. I say give this document the green light to proceed. That's what we asked for and they brought it.
- Chairman: I agree with you there, and by the way I'll second Director Galleano's competing motion. Okay. Scott, did you want to discuss something? Huh?
- Slater: inaudible
- Chairman: Oh we don't have to follow Robert's exclusively so I want the Board to have a plethora of options, so that the Board can decide.
- Slater: We represent the nine, that's our job, that's you. Okay? So I think that preparation for a status report which relies on the principles is not a difficult thing, the preparation of the status report is not that difficult of a thing to do and we could prepare it in a compressed timeframe. I think that there's an indication at the bottom of the principles which is an indication that other parties are invited to participate, I think the intention here was clearly to get, the effort was to get clearly secure the consent in support of the ag pool and non-ag pool and I think the parties in the FANDA group truly believe that as tendered that that's going to be forthcoming. So where I'm going is a loss of a week from our standpoint. It just means that the people in the room are going to have to work harder in a shorter period of time. But I think from our standpoint loss of a week is not, it's not critical.
- Kinsey: If I could ask the Chair, we have two competing motions. I'm not even sure what the first one is. I mean I get the gist of it, but I don't know exactly what it says and I believe I heard terms like mandate the completion of agreement between three parties. I can't support language that mandates the Pools to anything.
- Vanden Heuvel: If I could explain the task that we would give to the staff would be to attempt to, not mandate, they can't force people to do anything, but their attempt, what they should be involved in over between now and that special meeting is getting an agreement of all the parties, of all the pools on this, I won't say this set of principles, on a set of principles. So that would, it's not that we're mandating them to get a result, we're mandating, we're directing them as to what they are to attempt to do. So that hopefully addresses your concern about a mandate. I don't, you know, with all due respect to Don, I mean these principles, you know they represent enormous progress but they've been taken place in a process which did not include a significant part of the Watermaster family. I think that we have an opportunity to get us all much closer, if not all together, but I will speak very

strongly for my colleagues on the ag pool. They need the time to evaluate. And I don't think what we're asking for is unreasonable.

Kinsey: Jeff, if you took the motion that Don had and what it says is the second one is direct counsel and staff to commence coordinating drafting of a binding agreement based on the key FANDA principles unless either the ag or non-ag pools express concern of the principles by close of business of June 3. If that June 3 date was changed and extended to provide the pools with more time to basically say we have significant concerns with the principles or we're okay with the principles or minor changes to the principles maybe. I can't speak for the FANDA group, in terms of your willingness to change the principles, would that help, help your concerns and terms? It's really just, it's really the different approaches to achieve the same thing. I'm more comfortable with Don's written motion and again I think to try to be responsive to, I think your, your very fair statements of just receiving the document are as we get extended out for some additional time if that would help.

Vanden Heuvel: And I appreciate you working with me here to try to find accommodation. I would prefer not to have put the ag pool in position to say we object. I would prefer to be more positive and give us a little bit of space to try to work our way through this. And with the way that the motion, the competing motion is set up the ag pool would have to say we object by the third, and then what?

Galleano: That was an arbitrary number. I've got a calendar in front of me, if it makes you, if it creates more comfort to extend it to the 18th, then we'll extend it to the 18th.

Kavounas: The next Pool meeting is the 11th.

Kuhn: It's a special meeting...

Jeske: Look next board meeting is on the 11th. That's a good time for pools to take a more official position, so any time after that ought to be appropriate. Instead of pools objecting they ought to provide input.

Kinsey: So if you modify that to say express concerns with principles by close of business June 11th, 2015?

Jeske: Well or 12th, let them write it up.

Vanden Heuvel: Well my anticipation is that the ag pool will, as quickly as possible, schedule meetings amongst itself and receive the advice of its professionals and seek to reach out as we have responded to everything else that's come from the FANDA group, we've been very responsive, I think staff can vouch for us. We've been and I would prefer that, you know, we'll get going and we'll do our best and we'll communicate then to Scott if that's the point person and then we'll try to engage. If we have concerns, I think there will very likely will be some, but I can't presuppose that, but we'll get whatever there is within the next week or so. But then there needs to be some time for engagement.

- Kinsey: I think for the benefit of the group I would like to reread the motion as proposed to be modified as...
- Kuhn: I can tell you the people in the audience aren't hearing you.
- Kinsey: They're not hearing me? Okay. The motion directs staff and counsel to prepare a status report to the court for consideration by the Board at its next meeting, so that would be the fourth meeting, the regular meeting of June, direct counsel and staff to commence coordinating drafting of a binding agreement based on key, on the FANDA key principles unless either the ag pool or non-ag pool express concerns with the principles by close of business June 12, 2015, that would be the Friday after the pool meetings. And then if either of the pools express concerns with the principles, the Board will promptly convene a special meeting to evaluate the concerns of taking any appropriate further action. That would be Mr. Galleano's motion modified for the date.
- Galleano: We'll make it Mark's motion because it might be more popular.
- Elie: I seriously doubt it, Don.
- Vanden Heuvel: Here's my concern with do you really want the Watermaster Board to be the referee between the pools or would you rather have Scott work with the pools to try to work this out, okay? The way I hear the motion, it's like if the ag pool is left with two choices accept it as is or let everybody know we don't accept it and let the Watermaster Board try to work it out and I just don't think that's constructive. And I don't think it's fair. Because I think we could probably work something out, but you have to give us the time to do it.
- Chairman: Okay. Scott do you have a suggestion to move it along?
- Slater: I think if you view the motion in good faith that I would be available immediately to do whatever's necessary, as well as the rest of the staff to go through what's going on with the non-ag pool, to explain it to them, to talk to the ag pool and to run shuttle diplomacy or do whatever we can before the date. And if it's not worked out by the date then yeah you have the check in. So just because we're not setting it till the date doesn't mean we're inactive.
- Vanden Heuvel: I can agree with that.
- Chairman: So it would be something to the effect of based on the FANDA key principles and anything else that can be agreed on and then we'll set a special meeting for the...
- Kavounas: If necessary.
- Chairman: If necessary for the 16th, that's a Tuesday. Hopefully Watermaster is available. So we're not interfering with the advisory committee process such that if a deal is done before then, we don't need to have the meeting and in fact this agreement and etc., can happen before the close of business on the 12th. Can we get...

Vanden Heuvel: Why don't we just skip the, why don't we say the 16th and if we got an agreement then they can proceed right in with drafting and if they don't, the end point is that at the next board meeting they've got to have something ready for the court however we get there. And there's an opportunity for a special meeting if by the 16th it doesn't look like we got it worked out.

Slater: Mr. Chair again look the status report can be prepared. What I want to do is alert everybody here to start working schedules for the week of June 16. So I'm going to be optimistic and think okay we're going to get it done and we're going to put it on people's calendars and butts are going to be in seats very soon thereafter to get a get it going. So do you have free time until the 16th?

Vanden Heuvel: We don't.

Chairman: You don't. The drafters...

Vanden Heuvel: Can you draft that, can you compose a motion that all of us can agree to? Because the last thing I want is us not be able to be done...

Slater: I think the Kinsey motion with the date with the direction to staff to work with each of the pools and among the pools to facilitate any further inclusion changes, whatever and bring it back to the Board on the 16th is what you want, right?

Vanden Heuvel: Has he characterized, Mark, an acceptable motion to you?

Kinsey: Yes.

Vanden Heuvel: Alright then I'll withdraw my motion and support Mark.

Galleano: See I told you it'd work.

Chairman: Is there a second?

Rodriguez: Second.

Chairman: Seconded by Arnold, Director Rodriguez, sorry.

Heuvel: Well I supported it.

Chairman: Okay, seconded by Director Vanden Heuvel.

Heuvel: But if Arnold wants the...

Chairman: Alright. Any further discussion?

Vanden Heuval: No.

Chairman: All in favor say aye.

Heuvel: Aye.

Chairman: Aye. Any opposed? Alright motion carries.

Galleano: Mercy. I did good huh?

Chairman: Legal counsel report?

Kavounas: Mr. Chair?

Chairman: Yes? Oh there's more, you're not letting me go.

Kavounas: Very briefly I wanted to, I just wanted to express a sentiment just on my behalf. This FANDA process has been a very lengthy process, it's gone, it's consumed an inordinate amount of time and that part of it is coming to end, but I wanted to recognize Scott's efforts. I've never seen anybody work this hard against so many odds of getting something done. So the mere fact that you have a set of key principles in front of you, recognizing that the other pools just saw it, but the fact that you have a set of key principles is a real testament to Scott's ability to do this. I also want to recognize Brad for being a tremendous resource to rely on for Scott as well as for myself and a great reference to all the documents and great analysis. I would also like to recognize Danni, who spent countless hours every time somebody in that room said what if we did it this way it meant hours of spreadsheets that Danni did at all times of day and night, including weekends and Fridays and Friday nights and so on.

Joe was also a tremendous contributor to the success of the team effort, first thing that the FANDA group asked for was a secure FTP site and just snapped the fingers and Joe made it magically appear and it worked fairly seamlessly as a way of communicating to everyone on how that worked. The meetings that we had, whether they were conference call meetings or whether they were meetings in person, sometimes multiple meetings in the room, that couldn't have happened without the support of Anna, who put out agendas, attendance sheets, handouts, as well as Janine. We had Bianca, we basically turned Watermaster into a catering service for a while, bringing in food, whether it was breakfast or lunch and threatened dinner at times. That wouldn't have happened without the support of Anna and Jeanie and Bianca and also as you saw Frank and Bill and Justin, anytime we needed, whether it was chairs moved, whether it was tables moved, things rearranged they were all there and all happened seamlessly to have literally dozens of meetings in the last two months. So I just wanted to, I appreciate how important your time is. I did want to take two minutes to recognize them.

Chairman: Thank you Peter.

Kavounas: And not to, not to minimize the effort of everybody else, of course Mark who was in the middle of running his own consulting business, traveling literally to Hawaii and DC and at a moment's notice "Mark can you write us a tech memo".

Exhibit 2

9/24/15 Watermaster Board Meeting
Minute Marker: (0:00:59) to (1:11:29)

Elie: [00:59] Alright, Item II-A, Chino Basin Safe Yield Redetermination and Reset. Before I turn it over to staff I would like to let everybody know that it's my inclination not to entertain any motions until staff's presentation has been completed as well as any comments or objections to the recommendation. I feel that it's been a long road and a lot of time and effort has gone into this and as the arm of the court we need to hear what we need to hear and we need to hear everything before we can really consider a motion to approve or do something else. So with that I'll turn it over to you Peter and Scott, however you guys have set it up. And of course if the board has questions feel free to ask of staff as it's going along. We're not going to change the way we do things but I just, I think that it's important that this be vetted out so we can truly judge what's going on and how things should proceed.

Kavounas: Well thank you Mr. Chairman. Good morning and good morning to the members of the Board. We have for you an item which is a recommendation to adopt Resolution 2015-06, endorsing the Safe Yield Reset Agreement and directing legal counsel to prepare and file moving papers recommending the agreement with the court. And as we tried to have as our custom would like to let you know the background that led up to this point and as well give you full information about the resolution itself. So when you vote on it you've been fully briefed and are aware of the content. So with that, here's the outline of the information that we plan to cover today. We'll talk to you about the requirement to reset the safe yield, the process that we followed to date which is well over two years at this point. We'll give you a description of the pertinent provisions of the 2015 Safe Yield Reset Agreement. We've received letters from the city of Chino and Jurupa Community Services District, so we'll describe to you those concerns and we'll give you some context for your consideration. And then we'll walk you through the main provisions of the Resolution 2015-06 and then briefly tell you what the next steps would be. That and the background of the staff report that's been written that gives more detail than we intend to give you in this presentation. However, we wanted to bring these items to you. We have incorporated an opportunity for discussion at the end of each section. I'm happy to take questions along the way. So on the Requirement to Reset, Watermaster is, Watermaster Requirement to Reset comes from the OBMP Implementation Plan adopted in the year 2000. And at that time Watermaster was required to install meters in the non-exempt production and to, after waiting 10 years after the meters were installed, gathering the data to reset the safe yield of the basin, and this is also reflected in Watermaster rules and regulations. The metering, the required metering was done, completed in about a three-year period, 2000-2002, and the monitoring that's required by the OBMP Implementation Plan began in 2001. So, after 10 years of metered production and gathering the extra data, Watermaster began to update the basin model. Now, it began in 2010, completed that in approximately 2013. The model was successfully calibrated, which is an essential

element of having a good functioning model, and the cost of that effort to the parties over that 3+, four year period time was \$1,000,000. Along the way, between then and now the model and the output of the model has been peer reviewed, especially by the appropriative pool who came to the conclusion that the Watermaster Engineer's Model is a good model to use.

In terms of the process that we followed to reset the yield, we started with an initial workshop in July 2013 and the remainder of 2013 and early 2014 we had a number of additional workshops, modeling review sessions, meetings with individual parties and at the request of the parties started facilitating twice monthly workshops in July 2014. We gave the board a briefing in September 2014. Following that in November 2014, at the request of the advisory committee, Watermaster Board convened to facilitate a process and again, at the advisory committee request authorized Mr. Slater, our legal counsel, to serve as the facilitator to that process. An agreement was developed that was called the Facilitation and Non-Disclosure Agreement, which we affectionately started calling the FANDA, and it was executed by parties to the facilitated process. That process began in earnest in February and I have to tell you from my personal experience, it represented great commitment by the parties that showed up at the meetings. We had well over 30 meetings so we put 30 on the slide. It was probably closer to 40. People put great effort, they came prepared, they came ready to discuss, negotiate their position and also to give if it meant reaching some agreement. They came with a sincere desire and engaged in really good faith negotiations. The result of that was a set of binding key principles that everybody signed and agreed to represent and recommend to the governing boards for adoption. Along the way we filed a status report with the Court in July 2010.

Elie: 2015.

Kavounas: Excuse me, 2015, thank you. And the key principles then moved from the stage of being a 3, 4 page document to being a fully fleshed out binding legal agreement. This came to you in August, last month, and the board referred the agreement to the Pools and Advisory Committee for advice and counsel. So this last month in September, the agreement has gone through and was approved by unanimous vote by the Agricultural Pool, the Non-Agricultural Pool, and by majority vote by the appropriative pool with the abstention by Jurupa and SAWCo and a vote "no" being cast by the city of Chino. Following that, the Advisory Committee met on September 17 and by majority vote recommends the board's adoption of the resolution that's in front of you today. Again, the votes on that were yes by everyone, abstentions by Jurupa and SAWCo and "no" by the city of Chino.

I'd like to move on and give you a description of the agreement itself. It's an agreement that is among the parties to the agreement, similar to the Peace agreement. Watermaster is not a party to the agreement, it is simply looking to endorse and implement if the court orders it. The agreement represents a

resolution of differing opinions of how to implement the prior court approved management agreements in the event of a decline of safe yield. And addresses three main areas: the safe yield reset, Watermaster accounting, and safe storage management. Those are Articles 4, 5, and 6 of the agreement. In case you are wondering there are a total of ten articles and the others cover things like definitions, acknowledgements and covenants, dispute resolution and other general provisions. The focus of our presentation is going to be on Articles 4, 5, 6, that is the essence and the meat of the agreement. Again, the full agreement is in your packet and is an exhibit to the resolution. Each of those three areas is supported by exhibits and specifically the safe yield reset. The first of the three is supported by a technical memorandum written by Watermaster's Engineer and we'll, in a second, we'll tell you what's in that. As well as a proposed order that would be required to amend the judgment to reset the yield from 140,000 to 135,000. The second element, Watermaster Accounting, is supported by an exhibit which is intended to give examples of how storm water recharge would be accounted for in the future, in an effort to avoid interpretation disputes in the future. As well as is supported by an exhibit that changes the approved desalter replenishment schedule. Lastly, the safe storage management provision of the agreement is supported by a table that indicates the current stored water account balances. And then two technical memoranda, again, prepared by Watermaster's Engineer. One on storage losses and one on the storage management approach. So of the three, starting with the safe yield reset, the agreement is to reset the safe yield, changing it from 140,000 acre-feet to 135,000 acre-feet. The methodology is described in a technical memorandum and this would be effective in July 1, 2010. At the same time this provision of the agreement confirms Watermaster's Accounting since 2010 and is explicit that the accounting since then is not to be changed. The agreement provides certainty and calls out that the next reset would happen in the year 2020 and then again in 2030. It provides for annual data collection and evaluation and if that annual data collection and evaluation leads us to believe that an interim correction is required, we would proceed to do that if that's more than 2½ percent of a correction, either up or down. And finally, it provides for a continuing peer review by the parties of the technical tools that are used by Watermaster's Engineer. My opinion, 25 years of experience, the methodology is industry standard and very appropriate for Chino Basin. Next, I'd like to invite Mark to give you a description of what's included in the tech memo that supports the safe yield reset methodology.

Wildermuth: Thank you, Peter. We prepared three technical memoranda to support this effort. The first technical memorandum describes a methodology that we recommend for resetting, or recalculating that recharge and resetting safe yield. And it hinges off two main principles that come out of the definition of safe yield. That is long-term hydrologic conditions and cultural conditions which are consistent with the period in which the period of time were going to use the safe yield. There are five steps in doing that. The first is to bring the models current and calibrate them and demonstrate that they're calibrated. The second step is to update the hydrology of the model for calculating recharge. The third is to update cultural conditions, and we update those cultural conditions to current and future cultural conditions. In

the fourth step we calculate net recharge, and net recharge is the beginning of safe yield. Finally, we go through a process to determine if pumping water at that net recharge will cause undesired results or material-physical injury or MPI. If those occur, then adjustments are made to the net recharge to arrive at a safe yield.

Elie: Thank you, Mark. As I mentioned in the beginning, if you have, I see a question.

Chairman: Director Vanden Heuvel _____

Vanden Heuvel: Yeah, you went over that previous slide really fast and I would like you to actually walk us through point five.

Wildermuth: Very well. So all the steps 1-4 leads us to come up with, I'm going to say industry standard, estimate of what net recharge in the basin is. And net recharge is basically what you can produce without changing the storage in the basin over the long term. So you basically would be pumping half the net recharge. However, in analyzing where the basin will go and pumping it there, it may be that we may have material physical injury or undesirable results. We could cause subsidence if we allow pumping to occur at that rate. We may have conditions where production is unsustainable. In which case we have to go back and find a way to mitigate that and keep that net recharge. If we can't mitigate it then we're going to have to set the safe yield lower than the net recharge. So, this is a process which will occur after the net recharge is initially estimated.

Vanden Heuvel: Great, should I... You said it really fast and I wanted to make sure that I understood it. You said something about no change in storage? What did you say?

Wildermuth: Well, other than the planned reductions in storage, if you pump at the net recharge over the long term there will be no change in storage.

Vanden Heuvel: So is that really the standard that, that's what we're trying to gauge whatever activity is going on is that the long term objective is to not change other than the planned, but to have no unplanned changes in storage?

Wildermuth: Yes.

Vanden Heuvel: Okay, thank you.

Wildermuth: I'll try to talk slower.

Vanden Heuvel: Thank you.

Kavounas: Thank you, Mark. Again, we're giving you the highlights. Any one of these topics can go on, well it has gone on for months. So we can give you a lot more in depth but again, we're relying on the staff report to carry a heavier portion of the information. In terms of the second element of the 2015 Safe Yield Reset Agreement is the recharge accounting. And this element was necessary to resolve

questions the parties had as to how do we apply our existing agreements in light of the fact that the safe yield is to be lower. And so this provision of the agreement looks at storm water recharge and again, confirms the way storm water recharge was accounted for up until now and the same for Desalter- induced recharge. A storm water recharge is also contemplated for how it's to be accounted for with respective projects moving forward and has a provision for any of the parties to the agreement opting out what happens in that circumstance. As far as the Desalter- induced recharge, the agreement confirms that the Desalter-induced recharge will be renegotiated at the end of the Peace agreement, at the end of 2030. It's explicitly spelled out.

Chairman: Wait, I'm sorry, it's explicitly spell out in the Peace agreement or it's explicitly spelled out in this agreement?

Kavounas: In the 2015, in this agreement, is explicitly spelled out that the provisions of the Desalter-induced recharge will be renegotiated post 2030.

Chairman: Got it.

Kavounas: And also spells out that the Peace II provisions about the priority between land-use conversion and early transfer will also expire. And finally, there was a discussion about the reoperation schedule, and if you recall there's 400,000 acre-feet of reoperation that was separated into two separate portions; 225,000 acre-feet that's already been used up, 175,000 that remains. This provision creates a schedule by which the 175,000 portion of the 400,000 is to be used. And it is proposed that this schedule would replace the schedule that's currently approved. And actually the new schedule is attached as one of the exhibits to make it clear, and again avoid possible future confusion and misunderstanding. And it helps the appropriators ease into an obligation for the Desalter replenishment and use up that amount before the peace agreement expires.

Third element of the safe yield reset agreement has to do with safe storage in the basin. The safe storage covers three different elements and one is the safe storage reserve, the other is the creation of a storage management plan within two years and then the third is a calculation of what storage losses would be after hydraulic control is attained. As far as the safe storage reserve portion, the agreement asks Watermaster to set aside a quantity of 130,000 acre-feet of local water, non-supplemental water, that appropriators have in their stored water accounts. It does not concern the non-appropriators. This would be triggered if the balance of non-supplemental water reaches 150,000 acre-feet and Watermaster is to give annual notices of how much water is in storage as a way of, as a warning in case we get lower. There is currently 230,000 acre-feet of water in storage, well above the 130,000 and if you add supplemental water to that there is over 350,000 acre-feet of water in storage. So, we believe it is highly unlikely that this save storage reserve will actually be tapped as a measure to protect the basin. But in case it does, of that...

Chairman: I'm sorry, what would the balance be today approximately?

Kavounas: The balance today, non-supplemental accounts is 230,000.

Chairman: Okay, thank you.

Kavounas: That 130,000 is looked at in two different lights. 30,000 of that is available for the appropriators to use. If that storage reserve is still there in its protective measure, after 2024 30,000 of that can be used toward desalter replenishment. The other 100,000 is restricted to some extent in the sense that if an appropriator needs it in case of an emergency they can take it out but they would have to replenish it within three years' time. Should the safe storage reserve be necessary, it would be in effect, but it would eventually be replaced by storage management plan. Storage management plan, the parties are committing to devote their best efforts to develop a storage management plan within two years. This plan would have to be approved by each one of the three pools and if a pool feels that the plan or the progress on a plan by the other pools is not satisfactory, they are free to propose their own plan after 12 months. While the plan is being developed, Watermaster would continue to accept and process applications for recharge, storage and recovery of supplemental water. And the idea here is that let's not stop reaping the benefit of our basin while we're developing a storage management plan. Third provision of the safe storage portion of the agreement is that we had always contemplated that storage losses would be reduced from 2% to 1% or less after hydraulic control is achieved. In anticipation of that happening, we asked Watermaster's engineer to come up with an estimate of what that number would be. That number is 0.07% down from 2% and it's memorialized in this agreement. And, if anything, this is a reminder to the parties that while safe yield is going down, the losses of their stored water accounts will be diminished actually giving them a little more access to water in the basin. Supporting exhibits to the provisions of safe storage. One is Exhibit C, which is a table showing the stored water account balances by the parties. And the other are two tech memos, which once again Mark will give you a high-level overview of what's included. One is on the storage loss calculation, the other one is on storage management.

Wildermuth: For about a couple years Wildermuth Environmental's at a Watermaster request has done analysis on the state of hydraulic control. The anticipation that the construction and operation of the Chino Creek Wellfield will achieve hydraulic control. And we have done a lot of simulation work on that using the best available planning information. And the most updated schedule of production for CDA. And given that work we came to the conclusion that in early 2016 we should achieve hydraulic control, using it, we call it de minimus standard. The discharge from Chino North towards the Santa Ana River will be less than 1000 acre-feet. Another conclusion we're able to make is an estimate of a uniform storage loss rate and this is a typical Wildermuth plot. It looks complicated but it's very simple. Along the bottom here we have an estimate of the water in storage and along the y-axis here we have the subsurface outflow after hydraulic

control is achieved, as a function of storage. So, it's got some end points which are kind of interesting but for most of the time we have this nice uniform slope. That's the slope of our linear relationship between subsurface discharge from Chino North towards the Santa Ana River, against the accumulated water in all storage accounts and carryover storage. The slope of that line is the uniform loss rate at 0.7%.

Kavounas: .07, 0.07.

Wildermuth: 0.07%.

Chairman: And right now, right now we're at 2?

Wildermuth: 2%, not...

Chairman: Well this is substantial reduction.

Wildermuth: Okay, we're done with the algebra lesson. A final technical memoranda we prepared is quite lengthy and it deals with the storage management program. And in particular we were asked to take a look at the impacts of the safe storage management measures and to answer very specific questions related to that. This is an outline of what's in that technical memorandum. The main issues we're trying to avoid, material/physical injury or undesirable results in looking at storage management. Again, subsidence in the northwest area of the Chino Basin. Generally, sustainability that we can produce water and more specifically production sustainability in the Jurupa area. If I was to go through three of the questions, three out of the four questions that were in there real quickly, excuse me. First, these questions, what's the likelihood that the appropriative parties will need to access the 100,000 acre-foot part of the safe storage reserve in the first two years and then we actually generalize that to the next five years. And the answer is it's not very likely at all. Our best estimates say that we'll be storing water, increasing the water in storage through 2023, which is well beyond two years and five years.

Chairman: What do you base that on?

Wildermuth: Planned production, planned and observe production, by the appropriators. If you, the historical accumulation to water and storage accounts up to now, what their planned production is they all track. So, absent some externality, we should be storing water through the mid-2020s, which is well beyond the two and five year period that we're looking at. It's also the case that the next two years there's not enough installed production capacity to pull the existing water in excess carryover down. You know, down to 130.

Chairman: Wait, I'm sorry, can you go back to that slide? Can you say that again? What do you mean that they don't have the production capacity? You mean it's not physically possible to pump that much water?

Wildermuth: It's not physically possible to go off of imported water and increase production at a rate that they could pull it down to 130. And there also is a lot of water quality issues here too and it probably, that's unlikely in the next five years they could do it. Next question was asked will withdrawals from storage during the interim plan period, the two year period, will it cause material physical injury, you know, actual or potential material physical injury or undesirable results. And the answer to that question is no. The simple answer. Now, the storage management plan was to extend out into the future, excuse me, the safe storage management measures, that is the 130,000 acre-foot limit. The question was, would we be able to manage that withdrawal. In our projections, the amount of water in storage reaches about 460,000 acre-feet by the mid 2020s and then would pull down in the out years down to 2040. Well, the question is would Watermaster have the ability to manage the withdrawals without, and to prevent MPI. And the answer is yes. Any transfer that's done, in lieu that results in an avoided wet water replenishment, is the subject of MPI. Watermaster has lots of tools in its tool chest to track the changes in the basin and to observe or project future occurrence of MPI, and that's all described in the technical memorandum.

Chairman: Go back, please. Sorry, I didn't get a chance to write that. So, these points that are here are what you are using to, that's, I recognize this in the report but these bullet points on these two slides are what, backup what you just said.

Wildermuth: Basically we have the ability to review any transfer that could lead to an MPI, avoid a replenishment. And the second major bullet is that we are doing a lot of work now to monitor the basin. We do an assessment of the cumulative impact of transfers and by keeping the planning projections up we'll kind of, we'll know where pumping is going to occur in the future and we can look out and see things and bring that to the attention of Watermaster.

Chairman: Okay, thank you.

Kavounas: So that was the, Mark's description of, that was the information that's in the technical memoranda. These were used as a basis by the parties to reach the agreement on the safe storage management of the basin in the future, as well as the first technical memo that he described were he reached the conclusion and Mark, I need you to tell me that's true, the conclusion that the safe yield would be set at 135 down from 140.

Wildermuth: Yes.

Kavounas: And so these are the key provisions of the agreement and while, of course, you've had the opportunity to ask questions along the way we'd like to just pause for a moment and make sure there's clarity on the Board's part on the provisions of the agreement.

Chairman: I had a question. You talked about the 135 just now. Am I correct that initially if we had not gone through this whole process, it's likely the recommendation would have been 130,000 acre-feet based on prior methodologies?

Slater: Mr. Chair, members of the Board, if I can answer that this way. I think there was a contention made by at least one party to the process that the methodology provided for their interpretation and methodology provided for in the rules and regulations in the OBMP would have led to a calculation based on 130. There were also competing calculations that put the number at 135 and 140, and it was a consideration of all those points of input that ultimately led to a more refined articulation of how safe yield should be set in the tech memo and took all of those things into consideration without invading the 1152 FANDA process. Took all of those things into consideration from all inputs which led to the 135.

Chairman: Thank you. Any other questions from the board before we move to the next section?

Jeske: I had one, when I looked at the storage, it appears there is nothing in there that would prevent the sale or storage or transfer of stored water.

Slater: That is absolutely correct. There is nothing that prohibits the sale or transfer and I think my...

Bowcock: Except for regular rules and regulations.

Jeske: Except our regular process for...

Chairman: I mean, it's not just a free world. We still have to manage it.

Jeske: Right.

Slater: Absolutely not. There's an elaborate architecture of approval, removal or what we call recovery/recapture and that is not impacted and I think what was implicit in Mark's point and I want to put an exclamation on it is, the 130 is there as a safe, 130,000 acre-feet is set as a safe storage reserve but it is not inviolate. The parties have the ability to invade the reserve for emergency purposes, to pull down the water on condition that they repay and what Mark's point essentially is that the withdrawal from the 130 can be managed consistent with those provisions that you mentioned, Mr. Chair, which protect against undesirable results and material physical injury.

Chairman: Thank you. Anybody else have questions...

Jeske: Mr. Chairman. It's also my understanding and that of the nonagricultural pool committee that neither this Agreement, the Safe Yield Agreement, or its implementation would adversely affect the rights of the members of the nonagricultural pool existing on this date which includes transfer and storage rights existing as of today.

- Chairman: I hate to use the word adversely that sounds very lawyer like, but...
- Slater: The intention is to have no effect to chance the rules that are in place and just so for the avoidance of doubt, there is also the provision where a party who wants to store water can separate the storage and recovery under our existing rules and regulations.
- Jeske: And members of the nonagricultural pool may continue to store, carry over and excess carry over water and produce it without any deductions that are not already in place?
- Slater: Although Watermaster is not a party to the agreement on the basis of our review of the agreement and embedded in staff's endorsement or recommended endorsement as well as based upon input from the parties who have supported the agreement, there is no such limitation.
- Chairman: Okay, anybody else? Next section sir?
- Kavounas: Okay, thank you Mr. Chairman. Next, before we introduce the resolution to you, we wanted to, now that the agreement has been described, wanted to take a moment and describe to you some of the concerns that have been expressed by two parties, the city of Chino and Jurupa Community Services District. So, we've done a summary. The City of Chino noted its concerns various times to you here at a board meeting verbally, in a written brief to the court and also during oral presentation at the court hearing, as well as in a letter to Watermaster which was distributed to you when we got it. The City's concerns, we loosely categorize them into three categories. The first one is procedure, and in terms of procedure, our summary of the City's concern is that the City contends that Watermaster has taken sides on behalf of the parties that are recommending the agreement against Chino, violating Watermaster's obligation to remain neutral.

For your consideration of this resolution and endorsement of the agreement, we offer to you that the Watermaster's counsel and staff served in a facilitation role at the Board's direction. The facilitator's role was to assist the parties to reach an agreement and to the extent possible, reach consensus. The resolution is an endorsement of the agreement and has been recommended to the Board by each of the pools, the advisory committee and the negotiating representatives of approximately 90% of the production rights in the basin. The agreement is consistent with Article 10, Section 2 of the California Constitution, the judgment and the court approved management agreements. So we offer that to you as context in considering the City's concern about procedure.

The second category of the City's concern is regarding Desalter-induced recharge and the city contends that the 2015 Agreement, the way it treats the Desalter-induced recharge is not consistent with the judgment, the Peace Agreement and the appropriative pool pooling plan which do not permit basin water to be allocated to the Desalters and that such water must be allocated to the

appropriators. Again, for your consideration we offer there is no specific authority in the judgment or the court approved management agreements that supports the City's contention. Moreover, the treatment of the Desalter-induced recharge in the agreement is consistent with the Peace II Agreement, paragraph 7.1, which provides that for the term of the Peace II Agreement, no party will ask that recharge attributable to the desalters be allocated to the parties as part of producible safe yield so that it may be used to offset Desalter production.

The third category of the City's concern has to do with the storage management, and specifically, the safe storage reserve. The City has more water in storage than any other appropriator, and what I read into their comments is that they believe it's not fair that the share, that their share of the safe storage reserve, if it were to go into effect, would be proportionally higher for them, and they also contend that the safe storage reserve provisions will confiscate a portion of the City's water in storage. For your consideration again in reviewing this item, the use of the basin's storage capacity is subject to Watermaster regulation according to the judgment, paragraph 11. We understand the agreement, the proposed agreement, that is a request for Watermaster to maintain a reasonable portion of the quantity of water in storage to ensure that withdrawals from authorized storage accounts are safe, sustainable and will not cause material physical injury or undesirable results, and it's in effect until a storage management plan can be developed. So, to that end, the safe storage reserve is temporary. It's only until a management plan is developed and adopted and actually we expect that to be a two year period of time. The City has not identified any use of its water for those next two years. The likelihood of reaching the water in reserve is very low as Mark Wildermuth has supported in his tech memo, and again as Mr. Slater pointed out, production of water in safe storage is not prohibited, although it has limitations in the manner that the water may be withdrawn from storage.

And finally, the City is not treated any differently than all the other appropriators in this agreement. That's a high level overview of this City's three main concerns.

Chair: Great. I assume we'll hear from the City. I know that the lawyer is here. I want to be sure I understand that [loudness of the voice changes] Mark's earlier answer – so 80,000 acre feet in addition to safe yield would have to be withdrawn by somebody – somebodies – in order for this SS – whatever you call it – safe storage management to even take effect.

Kavounas: Yes. The non-supplemental water accounts of the appropriators would have to go down from the current approximately 230,000 to 150[,000] before the reserve is triggered, if you will.

Chair: And that still gives a 20,000 acre/foot cushion even before that. Okay. So it's really 100,000, in some sense. Okay.

Kavounas: Second I'd like to introduce to the Board a concern that was expressed by Jurupa Community Services District. This was sent by letter yesterday. We distributed to the Board this morning...

Chair: Let's not just say yesterday. Last night at about 8:30 p.m. Right? I mean – it's fair. It was 8:30 the night before this hearing. So, let's – you know. Judges wouldn't read it if the hearing were the next day. So, as an arm of the court, I'd prefer things to be coming in more timely...

Kavounas: So we distributed electronically. We have copies at the back table. We also have copies in your packets. So you're informed. And I would summarize the letter. It's a multiple page letter. But I would summarize it in saying that the District has withheld support for the agreements requesting clarification by Watermaster that land use conversion claims will be given a prior and paramount priority to early transfer and Desalter induced recharge backfill and reallocation of unproduced ag water. So, you need to consider that in considering this resolution.

And, for your consideration, we offer that the proposed clarification that they ask Watermaster to provide is not consistent with Peace II measure's amendment of Section 6.3 of the Watermaster Rules and Regulations.

That went into effect in our accounting for priority among early transfer to land use conversion claims has been in effect since 2006 and 7. The court issued an order in 2010 addressing the allocation of the unproduced ag pool water and setting it the way it's contemplated. And finally, the treatment of unproduced ag pool water is part of the non-binding key principles that Jurupa was party to and signed. [43:02]

So, with that, Mr. Chairman, we've given you an overview of the agreement. We've given you an overview of the concerns that two parties have expressed. And if the Board is ready, we can give you an overview of what's in resolution 2015-06 in terms of findings and recommendations.

Chair: Any questions from the Board on this part of Peter's presentation remarks? No. Okay. Go ahead.

Kavounas: Thank you. In terms of findings, we tried to fit some and perhaps too ambitiously on this slide, so the font is a little small. There's nothing in this text that isn't included in your staff report. It's also included in your resolution. This is word for word. So I just wanted to touch on some highlights.

One of the findings the Board would be making in adopting this resolution is that this agreement, as proposed, provides more efficient administration of the judgment. And there are some bullets explaining why that is. The Board would be making a finding that the tech memo that supports the reset supports the reset of the safe yield to 135,000 acre/feet per year. And that the reset of the safe yield pursuant to this agreement is consistent with Article 10, Section 2 of the

California Constitution, is consistent with the Judgment, the court approved management agreements and prudent professional standards.

Part of the Board's findings would be that the accounting for recharge as proposed in this Agreement is appropriate and is consistent with the court-approved management agreements to enable a fair, balanced and efficient administration of the judgment, as requested by the parties, the pools and the Advisory Committee. And the amendment of the current court approved schedule, accounting for the Desalter-induced recharge, is appropriate and it's in furtherance of the judgment and the court approved management agreements.

Chair: And are we also – am I correct that we're setting, if we approve this – that would be five years from now we're not going to redo it. We just know it's a technical issue, not a negotiation issue.

Kavounas: It being . . .

Chair: It being the actual reset. So in 2020 and 2030, a process is tripped that's already in place rather than having to do all this again.

Kavounas: Correct. And the technical memorandum provides methodology that has been generally accepted as methodology we'll follow and the timeline that we would follow. Part of the Board's findings also include that the finding that the storage management is an appropriate mechanism to ensure the withdrawals from authorized storage accounts are safe, sustainable, and will not cause material physical injury or undesirable results, and that the establishment of the safe storage reserve, if triggered, does not unnecessarily restrict the withdrawal of water from storage accounts, and it lists the reasons why, which I described to you earlier. And are also supported by the tech memo.

Chair: Something in there confuses me. Your first point says "quantities of storage are in excess of 350,000 ac/ft," but the number I was given earlier was different.

Kavounas: The number I mentioned earlier – 230,000 – is non-supplemental water. 350,000 is supplemental plus non-supplemental. So it's all the water in the storage water accounts.

In adopting Resolution 2015-06, the Board would be resolving to endorse this 2015 Safe Yield Reset Agreement as consistent with Article 10, Section 2 of the Constitution, the judgment and the court-approved management agreements. The Board would be also resolving that consistent with the proposed Order, Watermaster will comply with the provisions of the agreement. There is some legal resolution about CEQA, and the Board would also resolve to transmit the resolution to court and recommend approval of the agreement. And the resolution would also include the direction to counsel to prepare and file a motion with the court pursuant to the previous paragraph.

And that's a quick fly-over of the Resolution itself. I thought we'd take a moment and pause to review the Resolution, if you'd like, before we tell you the last slide is on the further process that we would follow

Chair: Any questions from the Board? Go ahead.

Kavounas: Okay. So, in terms of process, what we anticipate would happen is that pools and parties would consider approval and execution of the final agreement. Legal counsel would prepare and file a motion recommending approval of the proposed Judgment amendment and to order Watermaster to comply with the provisions of the Agreement, and that the court would set a hearing date, presumably more than 30 days away. And a briefing schedule for consideration of the motion.

Chair: What happens if the Board does not approve the Resolution?

Slater: As a – Mr. Chair and members of the Board. As a matter of process, the item comes to you with support from each of the three pools in the Advisory Committee. Therefore, if the Board – the Board really has two choices here – either to approve the resolution or to, as we say, shine a yellow light on the subject matter and return it to the Advisory Committee for further action, and further recommendation based upon a concern that the Board may have expressed.

Chair: Thank you. Any other questions for the Board? Okay. Is that the end of your presentation?

Kavounas: That concludes our presentation.

Chair: Anything further from counsel or staff? Hearing none, is there a party or parties that wish to address the Board on this issue? Do we do speaker cards, here Anna? No.?

Kavounas: No.

Chair: Okay. Anybody? Mr. Corbin.

Corbin: Thank you, Mr. Chair and members of the Board. Chairpersons of the Watermaster pools, Watermaster staff and respected colleagues. [voice distant]

Yesterday evening, the Board of Directors of the Jurupa Community Services District chose not to approve the 2015 Safe Yield Reset Agreement before you today. They request that you take the following comments into consideration in making your decisions today, and choose not to act on the Agreement for the following reasons. And, specifically, not for the legal reasons presented in the letter at 8:30 yesterday evening, but for the comments that I have here this morning.

The Board asked me to communicate to you that they understand that this is a historic action. The first reset of the safe yield since the judgment itself. We're today at a critical turning point with no mechanism to turn back the clock once the action is taken. And in context of that fundamental risk, and some of our following concerns, we ask that you not act on the Agreement today.

The past chairman on the Watermaster Board, the late Robert 'Bob' Craig, was personally engaged with you, with everyone in this room to develop a solution and solutions that could benefit all parties, and not specifically just JCSD. If you would tell me as part of this process to continue on in the discussions, to not pull yourself out apart from them, because let's see if there is a solution that could help make JCSD whole, whereas whole as we can be under the circumstances. We understand there are some trying circumstances. And not let's just try to fight to be right, because everyone in this room has an equal argument that they are as right or more right than our position. And we've known for years that this day was coming, and that there were issues tied up into this decision. And we had hoped that this Agreement would have solved some of those problems – not either promulgate them or made them worse.

Last time, I believe I stood here, maybe during the beginning of this process, the Board was told that we're going to look to grow the pie. One of the only solutions to our problem is to grow the pie, not to divide it. Our contention that it's 2015 Safe Yield Reset Agreement divides the pie. It gives us part of the bookends in which the Board needs in order to make a decision, a worst case scenario in our opinion, a dividing of the waters of the Chino Basin in all of the agreements that have been layered on top of the judgment for more than a decade.

We've known for years, and we've been well aware that unproduced ag water is over-subscribed. We've known for years – we've been well aware that the premise of new yield created by the desalters was problematic in the declining safe yield environment. And for years we've been well aware that all parties had investment-backed expectations for their participation in the \$250,000,000 plus desalter program. And for years we were all well aware that there were equally passionate in articulate opinions on the hydrology period that could and should be used to reset the safe yield itself. These are only some of the major issues that we had hoped to address in the development of a comprehensive solution within the basin.

We now today have the benefit of looking back and seeing what the impacts of those agreements are and what it's done to our basin and to the parties. And not to take that into consideration in the agreement, we feel, is a mistake. Because what happens when you grow the pie, we can step off of our particular legal opinions and come to a solution to help ourselves be made whole – not so much for each individual party or for our agency budgets, but for the people we serve. And for the people that rely on the waters of this basin for their homes and their businesses and for new development, in our particular case at JCSD.

We believe we have a creative and engaged industrial sector that's been very, very open about and interested in developing private and public partnerships that support a sustainable basin. We have agricultural parties that are organized together that truly understand the importance and role to help support and lead a sustainable Chino Basin. And our – ask of you today is to not leave all that talent on the bench and to go back in a very, very short period of time, and ask either the Advisory Committee or whatever administrative process you need to help develop what the bookend is on the high end of the spectrums involved in the solution to this situation and move the agreement forward expeditiously after that. Thank you very much.

Chair: Alright. Anyone else? Mr. Gutierrez.

Gutierrez: Yes, good morning, Board Members. Good morning, parties. Good morning representatives of the parties. Good morning pool members. I am Jimmy Gutierrez. I make the following remarks on behalf of the City of Chino. And I ask them to be included in your minutes.

Before you begin to bless this Agreement, please tell me why. Please tell me what part of the judgment I have not followed. Please tell me what part of the court orders I have violated. Please tell me what provision of the peace agreements I have defaulted upon. I say "I" because I am Chino. I have lived in Chino. I've raised my family in Chino. I have a law practice in Chino. I've represented many people in Chino. They look to me for their support. They look to me to speak for them.

During what we have called the Safe Yield Reset Process, I have participated. I have stated Chino's views clearly and thoughtfully. When it became clear that the parties were asking to shift their obligation to replenish the desalter water under the peace agreement to the City of Chino, I objected. I informed you of the huge negative impact the City of Chino. You have heard me before. But I will not repeat myself. I will not repeat the substance of the letter of Chino's Mayor Dennis Yeats, which you have before you. Instead, I apologize. I apologize in advance. I apologize for what I am going to ask you.

I think I'm entitled to ask. I think the citizens and landowners of the City of Chino are entitled to ask you. So please tell me – how is the reallocation of basin water under the agreement fair to Chino? What entitles the parties to Chino's water? How does your approval of this agreement show the court that you are enforcing the judgment and the court's orders?

Yesterday, Pope Francis addressed America. Here are a few of his words. Climate change is a problem that can no longer be left to a future generation. We still have time to make a change. To use a telling phrase of the Reverend Martin Luther King, we can say that we have defaulted on a promissory note and now is the time to honor it. Today, with this agreement, you are asked to approve a

default of the parties' obligation to replenish the desalter water. You still have time. You still have time to honor that obligation.

Chairman: Anyone else? Going once, going twice. Oh, Rosemary?

Hoerning: Mr. Chair, members of the board, my name is Rosemary Hoerning and I'm the appropriative pool chair and I just wanted to mention, I mean, Peter, Mr. Kavounas and Mark Wildermuth have done a really good job at recapping the effort level that has gone into producing the documents that are before you today. I know that the appropriative pool, as a whole, we've worked to try and develop an agreement that sets the safe yield based upon standard industry hydraulic analysis that would basically and cultural conditions and some parties feel very pressed on that issue as well but we bring that to you because we think that's an appropriate safe yield that would allow us to continue to operate and manage the basin in a prudent way. It's important to, it has been a resounding theme within the appropriative pool, to make sure that we establish the safe yield and we operate in a continued optimum basin management plan philosophy. And so all the effort and discussions that have occurred over the last several months and investment by the party members in that process are embedded in the documents that are before you today.

Again, we had a majority approval at the appropriative pool for the resolution that's in front of you today and an endorsement of the agreement that goes along with it. We do have parties that don't, that have not approved as Mr. Kavounas articulated and speakers today have presented the reason why they would like further consideration. Again, the City of Chino, Jurupa Community Services District obviously are opposed to the agreement documents and SAWCo abstained. Again, a lot of effort was put forth in this, we have majority of the pool that feel the document is ready for your review and consideration and generally hot off the press, I mean there was changes to the document, you know, as late as last week to consider some other pool comments to further clarify the content of the agreement so, anyway I just offer that too you and am available for any questions you might have for me.

Chairman: Thank you Ms. Hoerning. Anybody else wish to comment before I close the uh, and open it up for board discussion? Seeing no one. What's the board's pleasure, Mr. Kuhn?

Kuhn: Just so the board has something to speak about, I never would as a board member and certainly has been vocal in the past. Appreciate all of the effort by everybody that has gotten us to this point, but so that we do have something to speak about I'm gonna make the recommendation that we adopt the resolution 2015-06 endorsing the 2015 Safe Yield Reset Agreement and direct legal counsel to prepare in the moving papers recommending agreement to the court. I'd like to make that as a motion so that we do have something to discuss at this level.

Elie: We have a motion, is there a second?

Bowman: Second.

Chairman: Seconded by Director Bowman. Discussion? Make another motion you want to open it up or you, unless there's somebody else that wants to take the...

Kuhn: Well you made the point of Jurupa's letter coming in late last night, I can appreciate what is in that letter and they are asking for clarification. I think we got clarification today. It's probably not back in writing to them, but at the same time, I think the majority of those comments probably should have been at the pool level and certainly at the appropriator level and should have been discussed over the last six months, not necessarily today at this level. I think what they're asking for is, maybe, something that it's time we pass this on and let the ultimate decision maker make that decision and if those comments need to be heard, they need to be heard at that level, not here. We're not going to resolve this thing, in my opinion, in a timely fashion if we keep discussing it.

Chairman: Mr. Bowman?

Bowman: I would wholeheartedly agree. You know, this has been a long and arduous, open, transparent process. The opportunity to participate at all levels.

Truong: Director Bowman, is your microphone on?

Chairman: Yes.

Bowman: Yes. How's that? Better?

Chairman: I've never had trouble hearing you before.

Bowman: Yeah I know. But um, you know, as an arm of the court, and any judge, if this is where this is going, is going to consider how involved were you? Did you participate, not only lodge your concerns, but the art of compromise is how you reach consensus and agreement, whether its legal or political and these are very complex agreements and I would suggest that any party that walks away totally happy has not been a real participant in the process. Everybody has to share and everybody has to give to reach a consensus on the ability to continue the health of this basin and follow the direction of the court. It's a matter of mediation and that's what courts like. They don't like contention, they don't like hold outs, they like participation. And we've done that, our staff, everybody in this process has been a champion to get to this point and we need to move on.

Chairman: Any other director want to comment on the motion? Dr. Vanden Heuvel

Vanden Heuvel: Yeah, I think Councilman Bowman said it eloquently and I just want to associate myself with his comments.

Chairman: Anyone else?

Galleano: I'll be voting no. I represent Western Municipal Water District. One of our, under our umbrellas, Jurupa Community Services District and board of directors was asking for you to take no action today but after 30 days some of these issues can be resolved. I will be supporting that position.

Chairman: Anyone else? Before I, Director Kinsey.

Kinsey: Just real briefly I think, as we've been talking about this for many, many months, I hear it was Director Vanden Heuvel that, probably two years ago, said that this will be a painful process because we're allocating less. I think I constantly encourage patience on the board to allow the parties to work through a very difficult process of overlaying a reduction in water supply on top of several documents that have successfully lead to the management of the Chino basin. But that was a very difficult process. It took time, parties have reached close to consensus or probably as nearly as much as possible. We are hearing some of the difficulties and the pain of implementing the safe yield reset under our existing agreements and then I think the idea of growing the pie, I don't think moving this item forward through the process stops the opportunity of growing the pie. I mean, I don't think we can continue to do that. So, again, I'm supportive of moving the process forward and then also support of continuing to work to grow the pie for the benefit of all of us.

Chairman: I will say for my agency, taking on my IEUA hat, we are working all the time to try and grow that pie and are working on several fronts to enhance the ability to recharge in the Chino basin and, you know, my perspective of looking at all of these issues is we are an arm of the court as Councilman Bowman correctly identified and we are his eyes and ears right now and for better or worse, I also practice in this area and kind of look at this as, how would I perceive this if I was actually the only judge and I think on the Jurupa side of issues, the letter, certainly from the lawyers, to me, look like they are asking for an advisory opinion and I know judges don't like to give that but I don't see anything in there that can't be continued to worked on whether or not this resolution passes.

As far as the city of Chino issues, I'll just take exception to the, I take exception to the mayor's letter, and I will personally tell Dennis this, that if I were just the judge, the part telling me what my job is and what it isn't was not viewed positively, it didn't affect my judgment or view of this. Nonetheless, I don't think that was really helpful to the process. I also don't think that plaintiff pleas of woe is me without citation to authority are really helpful to resolving it. We can agree to disagree. I disagree with the points and based on the information that's in the staff report, as well as the very hard work of all three of the individual pools and the advisory committee and literally thousands of hours of both staff and attorney time to get us to this recommendation from the advisory committee, I think because of the importance of this, unless another board member has a comment, I think I'm going to ask for a roll call vote so that we have a clear, especially since we've had an indication of a no vote. So, unless anyone else has comments I'm going to close the hearing. Hearing none. Anna?

Truong: Director Jeske?

Jeske: Yes.

Truong: Hofer?

Hofer: Yes.

Truong: Director Rodriguez?

Rodriguez: No.

Truong: Director Vanden Heuvel?

Heuvel: Yes.

Truong: Director Bowman?

Bowman: Yes.

Truong: Director Kinsey?

Kinsey: Yes.

Truong: Director Kuhn?

Kuhn: Yes.

Truong: Director Galleano?

Galleano: Nope. You know the one point you...

Chairman: Wait, there is one more vote.

Truong: I'm sorry. Chair Elie.

Chairman: Yes.

Truong: Thank you.

Galleano: The point that Mark made in the entire presentation, is what we should really be talking about and that is that big red dot that says the Jurupa Community Service District mystery dot. You might bring that slide back, you've got two issues that are significant.

Kinsey: A slide we showed today?

Galleano: Yeah.

Chairman: Yeah, I mean the vote, it passes. If there is something else that needs to be addressed, let's take it on the next item or next meeting...

Speaker 1: Board member comments. We've got board member comments coming up.

Chairman: Yeah, that's fine. Let's go to II.B., Exhibit G, Physical Solution Transfer Rate Substitution.

Kavounas: Thank you, and Mr. Chairman, for clarification I believe that was 7...

Truong: 7-2.

Jeske: ...7-2. Motion carries.

Chairman: Motion carries. Sorry, did I need to actually say that? Sorry.

Kavounas: Just in case.

Chairman: Oh, she forgot to have me vote, so you know.

Kavounas: Well, thank you Mr. Chairman and thank you to the members of the board. This is not an easy issue. It's been deliberated a lot and I appreciate all of the thought and consideration by the board as well.

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 January 19, 2016 I served the following:

1. **WATERMASTER'S OPPOSITION TO THE CITY OF CHINO'S MOTION TO PERMIT CHINO TO CONDUCT DISCOVERY**
2. **DECLARATION OF PETER KAVOUNAS IN SUPPORT OF WATERMASTER'S OPPOSITION TO THE CITY OF CHINO'S MOTION TO PERMIT CHINO TO CONDUCT DISCOVERY**
3. **DECLARATION OF BRADLEY J. HERREMA IN SUPPORT OF WATERMASTER'S OPPOSITION TO THE CITY OF CHINO'S MOTION TO PERMIT CHINO TO CONDUCT DISCOVERY**

/ X / 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.

/ X / BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

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

Executed on January 19, 2016 in Rancho Cucamonga, California.



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