

**FEE EXEMPT**

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

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

**Case No. RCV 51010**

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

**WATERMASTER'S REPLY TO  
OPPOSITIONS TO MOTION  
REGARDING 2015 SAFE YIELD RESET  
AGREEMENT, AMENDMENT OF  
RESTATED JUDGMENT, PARAGRAPH 6**

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1 Watermaster recommends resetting and reducing the Safe Yield by 5,000 acre-feet per  
2 year (AFY) (~3%) and seeks the Court's direction as to the appropriate interpretation of the  
3 Court's prior orders. Watermaster's Safe Yield Reset Motion also recommends a suite of yield  
4 accounting and management actions for the Court's consideration, which are in the best interests  
5 of the Basin, authorized by the Judgment, supported by substantial evidence, and consistent with  
6 Watermaster's continuing course of conduct over the past nine years.

7 The City of Chino ("City") is the lone dissenting voice as to the Safe Yield reset,  
8 preferring that the Court reject Watermaster's recommendation and, in spite of its technical  
9 evaluation, maintain the same level of authorized extractions. However, the City presents no  
10 evidence as to why Watermaster's assessment of the Safe Yield is technically flawed or overly  
11 conservative.

12 The City's contentions regarding the yield accounting and history of approvals for the  
13 Desalters are unsupported and contrary to the plain meaning of existing Court Approved  
14 Management Agreements.<sup>1</sup> In addition, the City has taken issue with Watermaster's  
15 recommendations to protect the basin from harm attributable to the withdrawal of large quantities  
16 of groundwater already in storage, claiming them to be punitive, unfair and as a "taking" of the  
17 City's stored water. However, the alleged "taking" arises from the City's mischaracterization of a  
18 management plan designed to prevent harm, still subject to a stakeholder process yet to be  
19 initiated but pledged to be timely completed, with regulations that must be uniform in their  
20 application among all members of the Appropriative Pool, and that does not currently and will not  
21 ultimately prevent the withdrawal of stored water by the City and others.

22  
23 <sup>1</sup> The 2015 Safe Yield Reset Agreement defines the Court Approved Management Agreements to  
24 comprise: [1] the Chino Basin Peace Agreement, dated June 29, 2000, as subsequently amended  
25 in September 2004 and December, 2007; [2] the Peace II Measures (Court approved on Dec. 21,  
26 2007; [3] the OBMP Implementation Plan dated June 29, 2000, as supplemented in December  
27 2007; [4] the Recharge Master Plan, dated 1998, as updated in 2010 and amended in 2013; [5] the  
28 Watermaster Rules and Regulations dated June 2000 as amended; [6] the October 8, 2010 Order  
Approving Watermaster's Compliance with Condition Subsequent Number Eight and Approving  
Procedures to be used to Allocate Surplus Agricultural Pool Water in the Event of a Decline in  
Safe Yield; and [7] Watermaster Resolution 2010-04 ("Resolution of the Chino Basin  
Watermaster regarding Implementation of the Peace II Agreement and the Phase III Desalter  
Expansion in Accordance with the December 21, 2007 Order of the San Bernardino Superior  
Court"). (2015 SYRA, p. 1)

Meanwhile, the Jurupa Community Services District (JCSD) opposes the Watermaster's suite of recommendations in a single regard: JCSD contends that the quantity of groundwater to be reallocated from members within the Agricultural Pool and made available to the urban agencies providing retail service to lands formerly receiving water through Agricultural Pool Production (agricultural conversion) be fixed and undiminished, regardless of competing claims for that supply. Despite nine years of continuous application of earlier Court orders that share the converted water among competing claims, JCSD contends the interpretation is incorrect because, in its opinion, the Court hasn't previously said so in precisely the correct manner. JCSD's contrary interpretation will provide no greater level of assurance that the Basin can be optimally managed as required by the Judgment and will in fact, disrupt and unwind nearly a decade of previous water allocations.

## **I. INTRODUCTION**

It has been nearly 15 years since the Court ordered Watermaster to comply with the Optimum Basin Management Program Implementation Plan<sup>2</sup> ("OBMP Implementation Plan") and approved Watermaster's 2001 Rules and Regulations,<sup>3</sup> both of which explicitly provide for the redetermination and reset of the Safe Yield. (Watermaster Rules and Regulations, § 6.5 ["Recalculation of Safe Yield. The Safe Yield shall be recalculated in year 2010/11 based upon data from the ten-year period 2000/01 to 2009/10."]; OBMP Implementation Plan, p. 45 ["The following actions will be completed in years four through fifty, commencing in fiscal year 2003/04: In year 2010/11 and every ten years thereafter, compute safe yield and storage loss rate for prior ten-year period, and reset safe yield and storage loss rate for the next ten-year period."]) As has been described to the Court in Watermaster's status reports regarding the Safe Yield reset process,<sup>4</sup> its Safe Yield Reset Motion,<sup>5</sup> and its Opposition to the City of Chino's Motion to Permit

<sup>2</sup> Order Concerning Adoption of OBMP (July 13, 2000), at pp. 4-5.

<sup>3</sup> Order Granting Final Approval of Watermaster Rules and Regulations; Approving Intervention of CCG Ontario, LLC; Continuance of Hearing re Status Report; Filing of Motions to Amend Judgment (July 19, 2001).

<sup>4</sup> See, Status Report on Watermaster's Safe Yield Recalculation (Apr. 11, 2014), at p. 3:2-18; Status Report on Watermaster's Safe Yield Redetermination and Reset (July 10, 2015), at p. 3:6-12.

<sup>5</sup> Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, filed October 23, 2015, at p. 6:14-19.

1 Chino to Conduct Discovery,<sup>6</sup> Watermaster initiated the process for its compliance with the  
2 Court's orders nearly five years ago,<sup>7</sup> and it has been diligent in its pursuit of the input and  
3 assistance of the Parties to the Judgment as part of its compliance with its redetermination and  
4 reset obligation.

5 Fundamentally, Watermaster's Safe Yield Reset Motion is responsive to the Court ordered  
6 obligation to reset the Safe Yield – the evidence before the Court supports the proposed reset of  
7 the Safe Yield to 135,000 acre-feet per year (AFY), and Watermaster requests further orders from  
8 the Court, pursuant to its continuing jurisdiction, that confirm the application of the Court's prior  
9 orders upon a decline in the Safe Yield. All but one party in the Basin – the City – agrees that it  
10 should be reset to 135,000 AFY. The remaining objections of the City and JCSD – excluding the  
11 City's characterization of the Safe Storage Reserve – devolve from their proposed alternative and  
12 preferred interpretation as to how the Court Approved Management Agreements will function in  
13 the event of a reduced Safe Yield and the acknowledgment of Desalter-Induced Recharge.

14 For the reasons previously expressed in its Safe Yield Reset Motion, as well as those set  
15 forth below, Watermaster requests that the Court grants its motion, notwithstanding the  
16 oppositions of the City and JCSD.

17 **II. THE PROPOSED RESET TO 135,000 AFY IS RESPONSIVE TO COURT**  
18 **ORDER, PROTECTS THE BASIN, AND CONSISTENT WITH THE JUDGMENT**

19 **A. Substantial Evidence Before the Court Supports the Reset of the Safe Yield at**  
20 **135,000 AFY**

21 For the avoidance of doubt and to provide complete clarity to the Parties and to the Court,  
22 Watermaster's hydrologist developed a Reset Technical Memorandum (Exhibit "A" to the 2015

23 <sup>6</sup> Filed January 19, 2015.

24 <sup>7</sup> The City's claim that Watermaster has not provided adequate notice of the Safe Yield reset  
25 (City Opposition, at p. 28:24-27) is contrary to the evidence of the extensive notice that has been  
26 provided. In addition to the provisions of the OBMP Implementation Plan and Rules and  
27 Regulations, and its participation at virtually every meeting in the present Safe Yield reset process  
28 (See, Declaration of Bradley J. Herrema in Support of Watermaster's Opposition to City of  
Chino's Motion to Permit Chino to Conduct Discovery, at ¶¶ 2-5), the annual approval of  
budgeted expenses for the process and the reports to the Pool Committees, Advisory Committee,  
Watermaster Board and this Court, the Watermaster adopted notices of the intent to change the  
Safe Yield each year during the period of 2004-2011. (Supplemental Declaration of Danielle  
Maurizio in Support of Watermaster's Reply to Opposition to Motion Regarding 2015 Safe Yield  
Reset Agreement, Amendment of Restated Judgment, Paragraph 6 ("Maurizio Supp. Decl."), at ¶  
15, Exh. 4.)

1 SYRA) articulating the step-by-step methodology for the evaluation of the Safe Yield. The  
2 methodology described in the Reset Technical Memorandum integrates the Updated Basin  
3 Model, which has incorporated data from the 2000/2001-2009/2010 period, as required by the  
4 OBMP Implementation Plan, along with long-term hydrology from 1921 to the date of the reset  
5 evaluation. (Reset Technical Memorandum, at p. 2.) Mr. Wildermuth, Watermaster's longtime  
6 hydrologic consultant, on whose opinion Watermaster and the Court have relied<sup>8</sup> over the past 15  
7 years, believes the approach to be a prudent and reasonable professional methodology, consistent  
8 with professional custom, standard and practice. (Wildermuth Decl., at ¶ 6; Reset Technical  
9 Memorandum, at p. 2.)

10 Using the Updated Basin Model and the methodology described in the Reset Technical  
11 Memorandum, the Safe Yield for the 2010/2011-2019/2020 time period identified in the OBMP  
12 Implementation Plan and Watermaster's Rules and Regulations is 135,000 AFY. (Wildermuth  
13 Decl., at ¶ 12.) A long-term hydrology was used, the now prevailing cultural conditions of the  
14 Basin were evaluated, and the need to protect against "undesirable results" considered.

15 The City has not provided evidence indicating that the Court Approved Management  
16 Agreements would require that the Safe Yield be set at any other quantity.<sup>9</sup> Instead the City has a  
17 list of objections to the Safe Yield Reset Motion's request to reduce the "Historic Basin Safe  
18 Yield of 140,000 Acre Feet," as it claims that this would deviate from the Judgment's "expansive  
19 Safe Yield standard." (City of Chino's Opposition to Watermaster's Motion Regarding 2015  
20 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6 (hereafter "City  
21 Opposition"), 15:16-18.) These can be characterized generally as two types of objections: (i)  
22 objections to the manner in which the concept of Safe Yield is construed and (ii) objections  
23 regarding the manner in which the Updated Basin Model was utilized in the Safe Yield  
24 evaluation.

25 \_\_\_\_\_  
26 <sup>8</sup> See Wildermuth Decl., at ¶ 4 [noting certain Orders issued by the Court in reliance on the 2003  
27 Chino Basin Groundwater Model or updates thereto]; see also, e.g., Order Concerning Motion for  
28 Approval of Peace II Documents (Dec. 21, 2007); Order Concerning Adoption of OBMP (July  
13, 2000).

<sup>9</sup> JCSD does not oppose the proposed change in the Safe Yield. (See JCSD Opposition, at p. 1:7-8).



1 First, as to construing Safe Yield, by definition, the OBMP ensures that the quantity and  
2 quality of the Basin's water resources be preserved and the beneficial use of the Basin  
3 maximized. (Restated Judgment, ¶ 41.) As described in the Reset Technical Memorandum and  
4 the Supplemental Declaration of Mark Wildermuth in Support of Watermaster's Reply to  
5 Oppositions to Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated  
6 Judgment, Paragraph 6 ("Wildermuth Supp. Decl."), the work done pursuant to the OBMP  
7 Implementation Plan allows for maximum beneficial use of the Basin's waters to be made, such  
8 that the Safe Yield need not be reduced due to potential undesirable results of pumping at a  
9 certain level within the Basin. (Reset Technical Memorandum, at p. 1; Wildermuth Supp. Decl.,  
10 ¶ 7.) This is not a talismanic adherence to the "net recharge" of the Basin, but an adaptive  
11 management regime that ensures compliance with the Constitutional mandate to maximize the  
12 resource. Accordingly, this tension – managing to maximize the beneficial use while avoiding  
13 undesirable results – cannot mean that Watermaster should wait for undesirable results to actually  
14 occur before revising its course of action. In fact, such "reactive" strategies would be counter to  
15 good Basin management practices and the OBMP.

16 While the City has repeatedly discussed the fact that the Basin contains a large quantity of  
17 water in storage, this alone is not a justification to set the Safe Yield above the annual average  
18 quantity of water that may be produced without an undesirable result. Since the early 1900s, it is  
19 estimated that more than 2.1 million AF has been withdrawn from the Basin in excess of recharge  
20 during that period. (Wildermuth Decl., ¶ 16; see also Wildermuth Decl., Exh. 1, § 7.3.4  
21 [estimating a decline in Basin storage between 1922 and 2015 of approximately 2.1 million acre-  
22 feet].) Whatever historical cushion there may have been in the Basin has been substantially  
23 reduced by pre-OBMP conduct.

24 Restated Judgment paragraph 13 enjoins each Party to the Judgment from production in  
25 excess of the parties rights, other than pursuant to the Physical Solution – which provides for  
26 replenishment of water pumped in excess of a Party's right – or pursuant to a stored water  
27 agreement. (Restated Judgment, ¶ 13.)<sup>10</sup> Since the entry of the Judgment, groundwater

28 <sup>10</sup> See Restated Judgment, Exhibit "I" (Engineering Appendix), ¶ 3.(a) ["Accumulated Overdraft.

1 extractions in excess of the recharge rate have been reviewed and approved by the Court as  
2 “overdraft” and not as Safe Yield of the Basin. (Restated Judgment, ¶ Exhibit “I”, 2.(b), 3.(a).)

3 Second, as for the reliance on the Updated Basin Model, the City does not quarrel with the  
4 Updated Basin Model’s ability to simulate the movement of groundwater within the Basin. (City  
5 Opposition, 15:19-17:5.) Rather, its comments focus on further improvements. The City argues  
6 the Updated Basin Model must not itself determine the Safe Yield (City Opposition 16:15-18  
7 [“The 2013 Model does not produce data about the ‘long term average quantity of ground water  
8 which can be produced from the Basin.’ It only produces data that estimates the amount of water  
9 that has been recharged into the Basin in the past, which is then used to extrapolate a future  
10 amount of recharge.”]) Watermaster agrees that the 2013 Model should not be a substitute for  
11 decision-making. A fair reading of the Reset Technical Memorandum demonstrates that the  
12 model is a technical instrument used *in support of* decision-making, but the Model itself does not  
13 make decisions.

14 The City additionally claims that the Updated Basin Model does not produce data that can  
15 be used to determine the occurrence of an undesirable result or “connect an undesirable result to  
16 any level of production,” meaning, in the City’s opinion, that an “essential element of the Safe  
17 Yield definition has been dismissed.” (City Opposition, 16:19-17:2.) This allegation suggests a  
18 misunderstanding of the model, its inputs, and its use. Again, as described in the Reset Technical  
19 Memorandum, the Updated Basin Model is not used in a vacuum, but is an instrument that  
20 supports the exercise of professional analysis and judgment concerning the totality of the  
21 conditions that are monitored in the Basin. (Wildermuth Supp. Decl., at ¶¶ 11-13.)

22 Finally, in regard to the concerns raised by the City’s expert, Watermaster’s consultant has  
23 considered the effects of climate change on precipitation in the Basin, both over the historical  
24 record and those projected to occur, but does not believe that the predictive modeling scenarios  
25 that are generally available *at this time* are accurately calibrated to the historical rainfall in the  
26 Basin, and accordingly are not reliable as a predictive tool. (Wildermuth Supp. Decl., ¶ 27.)

27 - During the operation of this Judgment and Physical Solution, the overdraft accumulated from  
28 and after the effective date of the Physical Solution and resulting from an excess of Operating  
Safe Yield over Safe Yield shall not exceed 200,000 acre feet.”])

1 Should the accuracy of the calibration improve, Watermaster has the flexibility to include it in  
2 future re-sets. (Wildermuth Supp. Decl., ¶ 28.)

3 **B. The Safe Storage Reserve will Ensure the Basin's Protection while the Effects**  
4 **of the Reset May be Evaluated**

5 The Governor has declared that, due to drought conditions, a State of Emergency is  
6 prevailing in this State. (Executive Order B-29-15 (Apr. 1, 2015), at ¶ 2.) Stored water may be  
7 called upon to alleviate short-term and long-term shortages as well as to off-set new production  
8 from Desalters. Coupled with the historical depletion from the Basin and the reduction in Safe  
9 Yield, Watermaster seeks to establish uniform rules to manage the safe withdrawal of  
10 groundwater from storage.

11 All storage of water within the Basin – both Supplemental Water and Excess Carryover  
12 Water – must be done pursuant to agreement with Watermaster. (Restated Judgment, ¶ 11, ¶ 12,  
13 Exhibit “H” (Appropriative Pool Pooling Plan), ¶ 12 [“Carry-over. Any appropriator who  
14 produces less than his assigned share of Operating Safe Yield may carry such unexercised right  
15 forward for exercise in subsequent years....In the event the aggregate carry-over by any  
16 appropriator exceeds its share of Operating Safe Yield, such appropriator shall, as a condition of  
17 preserving such surplus carry-over, execute a storage agreement with Watermaster.”];  
18 Watermaster Rules and Regulations, § 8.1(e).) All storage capacity shall be subject to regulation  
19 and control by Watermaster. (Peace Agreement § 5.2(c).)

20 The storage of water within the Basin is expressly made subject to these conditions within  
21 the Court Approved Management Agreements (Peace Agreement, § 5.2; OBMP Implementation  
22 Plan, Program 8, at subd. (a)(i); Watermaster Rules and Regulations, § 8.1(a)) and withdrawal of  
23 water from storage is *already subject to the limitation* that it be done without Material Physical  
24 Injury.<sup>11</sup> (Watermaster Rules and Regulations, § 8.1(j) [“No Material Physical Injury.

25 <sup>11</sup> "Material Physical Injury" means material injury that is attributable to the Recharge, Transfer,  
26 storage and recovery, management, movement or Production of water, or implementation of the  
27 OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence,  
28 increases in pump lift (lower water levels) and adverse impacts associated with rising  
groundwater. Material Physical Injury does not include "economic injury" that results from other  
than physical causes. Once fully mitigated, physical injury shall no longer be considered to be  
material;" (Peace Agreement, ¶ 1.1(y); see also Watermaster Rules and Regulations, § 1.1(uu).)

1 Watermaster will ensure that any party to the Judgment may Recapture water in a manner  
2 consistent with the Peace Agreement, the OBMP, the Judgment and these Rules and Regulations.  
3 Watermaster shall not approve a Recapture plan if it is inconsistent with the terms of Peace  
4 Agreement or will cause Material Physical Injury to any party to the Judgment or the Basin. Any  
5 potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused  
6 by the Recapture of water by any person shall be fully and reasonably mitigated as a condition of  
7 approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the  
8 request for Recapture must be denied.”)]

9 The City objects to Watermaster’s recommendation to establish a contingent Safe Storage  
10 Reserve – the restrictions of which only arise should it become necessary – on the basis of the  
11 quantity of water in storage now. Instead, without explanation, it would prefer an allocation of  
12 responsibility based on each member of the Appropriative Pool’s percentage share of the  
13 Operating Safe Yield. However, there is no nexus between a Party’s stored water and its share of  
14 Operating Safe Yield.

15 The restrictions of the contingent Safe Storage Reserve proposed by Watermaster address  
16 the quantity of water held in storage and apportions the responsibility uniformly among all  
17 members of the Appropriative Pool and the impacts of Reserve’s restrictions would be  
18 proportionate among all Appropriators in relation to their quantity of stored water. (See 2015  
19 SYRA, ¶ 6.2(a), Exhibit “C”.) Consequently, the impact of the management program will be  
20 spread among the parties in the same manner that the impact of Material Physical Injury from  
21 withdrawal of stored water might arise – proportionately based on the quantity of water in  
22 storage.

23 It is true that the City has amassed a large reserve of stored water. This is attributable to  
24 the fact that it has successfully secured assignments of groundwater from agricultural users  
25 supported, in large part, by the distribution of recycled water. (Maurizio Supp. Decl., ¶ 8; Exh.  
26 1.) The City does not presently pump any portion of its share of Safe Yield, preferring to store its  
27 annual entitlement. (Maurizio Supp. Decl., at ¶¶ 12, 13; Exh. 1; Exh. 2.) No reasonable  
28 construction of the 2015 SYRA’s Safe Storage Reserve can remotely suggest a taking of stored

1 water in violation of Article I, Section 19 [of the California Constitution] resulting from the Safe  
2 Storage Reserve's restrictions on the excess carry over water.<sup>12</sup>

3 Initially, a takings claim cannot be ripe because the Safe Storage Reserve is contingent  
4 and dependent upon the failure to prepare a substitute plan. First, there must be "a final decision  
5 regarding the application of the regulations to the property at issue" to support a takings claim.  
6 (*Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson Cty.* (1985) 473 U.S. 172,  
7 186.) As one California court explained, a court cannot determine a regulation's economic  
8 impact until a regulation has actually been applied. (*Jefferson St. Ventures, LLC v. City of Indio*  
9 (2015) 236 Cal.App.4th 1175, 1195.) There is substantial uncertainty as to whether the  
10 challenged measure will ever be invoked. The process to prepare a plan will begin in earnest this  
11 year and be presented to the Court upon completion. If the City, or, for that matter, any Party, is  
12 dissatisfied with the final plan and contends that new plan or the Safe Storage Reserve will  
13 effectuate a taking, it could bring the claim to the Court's attention at that time.

14 Second, the only compensable right under California water law is a right to beneficial  
15 use," and the City has not presented any evidence of a beneficial use of stored water. (*Casitas*  
16 *Mun. Water Dist. v. U.S.* (Fed.App. 2013) 708 F.3d 1340, 1353.) The demonstration of a  
17 beneficial use cannot be merely hypothetical, and storage of water, in and of itself, is not a  
18 beneficial use. (*Casitas*, 708 F.3d at 1356.) Substantial evidence offered by the City  
19 demonstrates that it has no present beneficial use of its stored water. The City's failure to  
20 Produce water user its annual production rights for the past four years.

21 During the past four production years (Production Years 2011-2012 through 2014-2015),  
22 the City had *no assessable groundwater production from the Basin*, and in three of those years  
23 more than 12,000 acre-feet of water were transferred into its Excess Carryover stored water  
24 account. (Declaration of David Crosley, Exhibit "A", p. 2A; Maurizio Supp. Decl., ¶ 12.) If  
25 there are proposed uses or sales of the stored water to third parties that might be impacted by the

26  
27 <sup>12</sup> Non-Supplemental Stored Water is what is referred to as Excess Carryover water, as a producer  
28 may carryover up to its annual Safe Yield or Operating Safe Yield right each year without  
requiring a storage agreement. (Restated Judgment, Exhibit "G", ¶ 7; Exhibit "H", ¶ 10;  
Watermaster Rules and Regulations, at §§ 1.1, subd. (hh), 8.1, subd. (e).)

1 Safe Storage Reserve, the City has offered no evidence to this effect.

2 Moreover, a takings claimant cannot possess a property right that is inconsistent with  
3 “background principles of state law.” (*Casitas Mun. Water Dist. v. United States* (2011) 102 Fed.  
4 Cl. 443, 446, 474, citing *Lucas v. S. Carolina Coastal Council* (1992) 505 U.S. 1003, 1029.)  
5 Here, the City’s alleged right to withdraw from storage, *subject to* Watermaster’s regulatory  
6 authority over storage accounts, as embodied in the Court-Approved Management Agreements.  
7 That is, the City holds water in storage, subject to Watermaster’s power to regulate withdrawals  
8 of water storage to protect against Material Physical Injury. (Restated Judgment, ¶¶ 11, 12, 28;  
9 Watermaster Rules and Regulations, §8.1(j); Peace Agreement, § 5.2.) The Safe Storage Reserve  
10 is in furtherance of Watermaster’s authority to regulate groundwater storage and the Watermaster  
11 Rules and Regulations that govern the recapture of stored water. It is not a new limitation on  
12 previously vested rights.

13 **III. THE 2015 SYRA’S ACCOUNTING PROVISIONS SEEK THE COURT’S**  
14 **CONFIRMATION OF THE EFFECT OF THE COURT APPROVED**  
**MANAGEMENT AGREEMENTS IN EVENT OF DECLINE IN SAFE YIELD**

15 **A. Watermaster’s Motion is a Paragraph 15 Request for Judgment Amendment**  
16 **and Further Orders**

17 Arising under Paragraph 15 of the Restated Judgment, in fulfillment of an obligation in  
18 administering the decree, Watermaster has moved the Court regarding subject matter where it has  
19 no power itself to bind any Party or the Court. Court review and approval is required to amend  
20 the Restated Judgment and to construe the Court’s prior orders. Watermaster may merely offer  
21 its recommendation and request approvals and further Court Orders. As described in  
22 Watermaster’s Opposition to the City of Chino’s Motion to Permit Chino to Conduct Discovery,  
23 filed January 19, 2016, Watermaster’s Safe Yield Reset Motion is a request, pursuant to  
24 Paragraph 15, for amendment of the Restated Judgment and further orders.

25 Contrary to the characterizations of both JCSD and the City, the Safe Yield Reset Motion  
26 does not request a change to the provisions of the Court-Approved Management Agreements, but  
27 is a request that the Court confirm the 2015 SYRA’s interpretation of the manner in which  
28 Watermaster should comply with the provisions of those agreements. (See, Restated Judgment, ¶

15 [“Said continuing jurisdiction is provided for the purpose of enabling the Court, upon application of...the Watermaster...to make such further or supplemental orders or directions as may be necessary or appropriate for interpretation, enforcement or carrying out of this Judgment, and to modify, amend or amplify any of the provisions of this Judgment.”)] Watermaster does not suggest new or different language for any agreement.

All but two Parties to the Judgment, either independently or as members of a Pool, have either taken positions of endorsement<sup>13</sup> or have not opposed Watermaster’s Safe Yield Reset Motion. While indicative of the general lack of disagreement with the Motion, it is also relevant to the Court’s interpretative and enforcing order under the provisions of Section 15<sup>14</sup>. The vast majority of Parties subject to the Judgment and the Court Approved Management Agreements concur with Watermaster’s recommendations.

Contrary to the City’s extensive arguments (City Opposition, pp. 40:23-54:26), the Court need not withhold approval of the Safe Yield Reset Motion based on the City’s claim that the Parties are unable to approve the 2015 SYRA as it offers an agreed interpretation to facilitate the seamless, efficient administration of the Judgment and the OBMP. Watermaster proposes no new project or program that is being called to the Court’s attention pursuant to Paragraph 31 of the Judgment. It is not requesting an amendment of the any of the Court’s prior orders, or the Court Approved Management Agreements.

Paragraph 40 of the Judgment expressly states that the Court’s “retained jurisdiction will be utilized, where appropriate to supplement the discretion herein, granted to Watermaster.” (Restated Judgment, ¶ 40.) It cannot be that the Court is without jurisdiction in the absence of

<sup>13</sup> As of February 1, 2016, the following Parties are signatory to the 2015 SYRA: (i) the Agricultural Pool, (ii) Three Valleys Municipal Water District, (iii) Cucamonga Valley Water District, (iv) Inland Empire Utilities Agency, (v) the City of Upland, (vi) Monte Vista Water District, (vii) Monte Vista Irrigation Company, (viii) the City of Pomona, (ix) Fontana Water Company, and (x) Fontana Union Water Company. (Supplemental Declaration of Peter Kavounas in Support of Watermaster’s Reply to Oppositions to Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, at ¶ 4.) The City has also brought suit against at least two Parties on the basis of their approvals (see, Notice of Related Case, *City of Chino v. Monte Vista Water Dist., et al.* (Dec. 31, 2015); Notice of Related Case, *City of Chino v. Cucamonga Valley Water District* (Jan. 28, 2016)), which may have had chilling effect on additional approvals.

<sup>14</sup> While JCSD cites the criteria used by the Court in its prior order amending the Judgment (JCSD Opposition, at p. 10:3-6, 10:22-25), no such amendment is sought here.

1 unanimous support of the Parties to issue further orders in implementing the Physical Solution.  
2 This is the express purpose of exercising continuing jurisdiction. (*City of Pasadena v. City of*  
3 *Alhambra* (1949) 33 Cal.2d 908, 937 [“retention of jurisdiction to meet future problems and  
4 changing conditions is recognized as an appropriate method of carrying out the policy of the state  
5 to utilize all water available”]<sup>15</sup>.);

6 Further, the City’s claim that the public agency Parties to the Judgment cannot validly  
7 approve the 2015 SYRA because they have failed to comply with the California Environmental  
8 Quality Act (CEQA) misconstrues California law and misapplies the law of this case. CEQA  
9 compliance is only required when an agency approves a project. A “project” under CEQA is  
10 defined as any activity which may cause either a direct physical change in the environment, or a  
11 reasonably foreseeable indirect physical change in the environment, and is either (1) undertaken  
12 directly by a public agency, (2) supported through public agency contracts, grants, subsidies,  
13 loans or other public assistance, or (3) involves the issuance of a lease, permit, license, certificate,  
14 or other entitlement for use by a public agency. (Public Resources Code § 21065; CEQA  
15 Guidelines § 15378.)

16 The motion before the Court does not seek approval of a project. As described in section  
17 I, above, the Watermaster moved the Court to grant the Safe Yield Reset Motion *after years of*  
18 *discussions* among the Parties to build consensus for basin management. The 2015 SYRA simply  
19 asks the Court to: (i) approve of the reset of the Basin’s Safe Yield pursuant to the Court  
20 Approved Management Agreements confirming prior practice and the continuous course of  
21 conduct under prior orders; (ii) direct the manner in which Watermaster should account for  
22 various components of the recharge to the Basin in implementing the Court-Approved  
23 Management Agreements; and (iii) approve the establishment of Safe Storage Management  
24 Measures, intended to ensure that withdrawals of groundwater from authorized storage accounts  
25 within the Basin are safe, sustainable, and will not cause Material Physical Injury or undesirable  
26 results. (See Safe Yield Reset Motion, at 9). None of these Court actions require additional

27 <sup>15</sup> See also, *Allen v. Cal. Water & Tel. Co.* (1946) 29 Cal.2d 466, 488; *City of Los Angeles v. City*  
28 *of Glendale* (1943) 23 Cal.2d 68, 81; *Central and West Basin Replenishment District v. Southern*  
*California Water Company* (2003) 109 Cal.App.4th 891, 902.)



1 CEQA analysis, as the Court is not subject to CEQA.

2 The City also argues that the individual agency approvals of the 2015 SYRA were  
3 projects under CEQA because they had the potential for environmental impacts. The City is  
4 wrong. First, the City ignores that nothing in the 2015 SYRA commits any of the signatory  
5 agencies to a “definite course of action in regard to a project.” (See CEQA Guidelines, §  
6 15352(a) [emphasis added]; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139; see  
7 *Cedar Fair v. City of Santa Clara* (2011) 194 Cal.App.4th 1150, 1162; *Concerned McCloud*  
8 *Citizens v. McCloud Community Services Dist.* (2007) 147 Cal.App.4th 181, 192-93.) To the  
9 contrary, the 2015 SYRA expressly provides that “[t]he Parties acknowledge and agree that this  
10 Agreement provides for the further administration of the Judgment by Watermaster following the  
11 reset of the Safe Yield, pursuant to the Court’s continuing jurisdiction, and that no commitment is  
12 being made to carry out any ‘project’ within the meaning of CEQA unless and until the  
13 environmental review and assessment that may be required by CEQA for that defined ‘project’  
14 have been completed.” (2015 SYRA, ¶ 1.5.)

15 Second, Watermaster has moved the Court for an order, pursuant to its continuing  
16 jurisdiction, amending the Judgment and confirming the application of the Court Approved  
17 Management Agreements. The Court’s order granting the motion and directing Watermaster’s  
18 accounting, does not require environmental review under CEQA. (*Hillside Memorial Park &*  
19 *Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534, 550.) As in *Hillside*, the  
20 Judgment here sets forth a physical solution and reserves jurisdiction to the Court to amend this  
21 physical solution. (Restated Judgment, ¶ 15(a).) The request by Watermaster, consistent with the  
22 consensus of the vast majority of the Parties to the Judgment, to alter the Safe Yield is simply that  
23 – a request, without an ability to carry out that action.

24 Third, the consensus of the parties as described in the 2015 SYRA does nothing more  
25 than describe their intended course of conduct pursuant to the Court Approved Management  
26 Agreements, which preceded the 2015 SYRA. Unless and until the Court acts, the SYRA does  
27 not commit any agency to do anything. As emphasized above, the 2015 SYRA states “no  
28 commitment is being made to carry out any ‘project’ within the meaning of CEQA unless and

1 until the environmental review and assessment that may be required by CEQA for that defined  
2 ‘project’ have been completed.” (2015 SYRA, ¶ 1.5.)

3 Simply put, the City misconstrues its quoted language from *Hillside* as providing for  
4 CEQA analysis at the time of the Court’s decision, when it provided that, while a groundwater  
5 basin adjudication judgment amendment did not require CEQA analysis, the adjudication’s  
6 physical solution “will not preclude compliance with CEQA as to future projects to the extent  
7 such projects do not conflict with the physical solution.” (*Hillside*, 205 Cal.App.4th at 551.) This  
8 cannot be read to refer to the amendment of the Judgment itself as the court had previously found  
9 that such amendment was not a CEQA project. (*Id.*, at 550.)

10 Assuming *arguendo* that the action constituted a “project”, the City provides no  
11 evidentiary support for possible impacts it raises. Given that any future “project” would be  
12 contingent on compliance with CEQA – both pursuant to the 2015 SYRA and the Court’s prior  
13 order regarding the OBMP – there is no legal requirement to delay the Court’s consideration of  
14 the Safe Yield Reset Motion and Watermaster’s implementation of the Court Approved  
15 Management Agreements.

16 **B. All Members of the Appropriative Pool Proportionally Share the Effect of the**  
17 **Decline in Safe Yield**

18 The rights of the members of the Appropriative Pool Parties are such that they bear all  
19 effects of any change in the Basin’s Safe Yield. (Restated Judgment, ¶ 44. [“The foregoing acre  
20 foot allocations to the overlying pools are fixed. Any subsequent change in the Safe Yield shall  
21 be debited or credited to the Appropriative Pool. Basin water available to the Appropriative Pool  
22 without replenishment obligation may vary from year to year as the Operating Safe Yield is  
23 determined by Watermaster pursuant to the criteria set forth in Exhibit “I.”]) The Appropriative  
24 Rights decreed by the Restated Judgment are to a share, expressed as a percentage, of the portion  
25 of the Safe Yield that remains after the paramount overlying rights of the members of the  
26 Overlying (Agricultural) and Overlying (Non-Agricultural) Pools are satisfied. (See Restated  
27 Judgment, Exhibit “E”.) Accordingly, all of the members of the Appropriative Pool with rights in  
28 the Operating Safe Yield are affected by a decline in the Basin’s Safe Yield.

1 The Judgment foresaw the conversion of land in agricultural production to development  
2 that would be under the service of the members of the Appropriative Pool, and provided that  
3 water that is unproduced by the members of the Overlying (Agricultural) Pool ("Unproduced  
4 Agricultural Water") could be made available for use by the Appropriators. The manner in which  
5 Unproduced Agricultural Water is allocated among the Appropriators follows from the Court  
6 Approved Management Agreements. Based on the first priority of Unproduced Agricultural  
7 Water to supplement any declines in the Basin's Safe Yield (Restated Judgment, Exh. H, ¶ 10),  
8 and the Peace II Agreement provisions providing that Desalter Induced Recharge will not be  
9 included in the Safe Yield for the initial term of the Peace Agreement (Peace II Agreement, ¶  
10 7.1), discussed further in section III.C, below, the effects of the Safe Yield reset, as described in  
11 the 2015 SYRA, are felt by the Appropriators in the reduction in their allocations of Unproduced  
12 Agricultural Water through their Land Use Conversion and Early Transfer Claims.

13 While both the City (City Opposition, at p. 2:14-23) and JCSD (Opposition to  
14 Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated  
15 Judgment, Paragraph 6, filed by JCSD on January 19, 2016 (hereafter "JCSD Opposition"), at p.  
16 9:4-12) have opposed the Safe Yield Reset Motion and estimated the claimed impacts of the  
17 Court's approval of the 2015 SYRA on the allocations of water to each,<sup>16</sup> each of the  
18 Appropriators would be affected by the reduction in available water for Land Use Conversion and  
19 Early Transfer Claims, and it is clear that no member of the Appropriative Pool does or could  
20 come out better than it was prior to the reduction in the Safe Yield and the implementation of the  
21 provisions of the Court-Approved Management Agreements. (See Maurizio Suppl. Decl., ¶¶ 15-  
22 21, Exh. 3.) While each Appropriator is affected differently, given its percentage of the  
23 Operating Safe Yield and the Early Transfer quantity, and the degree to which land within its  
24 service territory was formerly under agricultural irrigation and it had been allocated Unproduced  
25 Agricultural Water based on the conversion of that property to service by the Appropriator, these

26 <sup>16</sup> It should be noted that JCSD's estimate utilizes its proffered interpretation as to the priority of  
27 Land use Conversion claims over Early Transfer claims in the allocation of Unproduced  
28 Agricultural Water among the members of the Appropriative Pool. (See Declaration of Todd  
Corbin in Support of Opposition to Watermaster's Motion regarding 2015 Safe Yield Reset  
Agreement, Amendment of Restated Judgment, Paragraph 6, ¶ 8.)

1 differing degrees of impacts are the result of evenhanded and uniform application, as the  
2 reductions in the Appropriators' Early Transfer and Land Use Conversion claims are done on a  
3 pro rata basis across the total claims of each.

4 **C. The Use of Desalter-Induced Recharge to Offset Desalter Production was**  
5 **Agreed to in the Peace II Agreement and Ordered by the Court: There is no**  
6 **Confiscation or Ultra-Vires Allocation of Operating Safe Yield.**

7 Both Chino and JCSD object to the proposed accounting for Desalter-Induced Recharge  
8 that is described in Paragraph 5.2 of the 2015 SYRA – Chino claims that the Peace II Agreement  
9 does not authorize the use of such water to offset Desalter Production (Chino Opposition, at pp.  
10 11:24-12:26) and both Chino and JCSD object to the effects that allocating the Desalter-Induced  
11 Recharge to Desalter production (and not as part of the allocable Safe Yield) have on the quantity  
12 of Unproduced Agricultural Water available for reallocation after compensating for a reduction in  
13 the Safe Yield and, in turn, their own Land Use Conversion Claims. (JCSD Opposition, at pp.  
14 8:20-9:2; Chino Opposition, at pp. 21:15-24:5.)

15 The Court may take judicial notice of its own voluminous files that pertain to the  
16 circumstances that gave rise to the construction of the Desalters and the administration of the  
17 OBMP. In brief summary, the Court ordered Watermaster to construct and operate 30 MGD of  
18 desalter capacity in 2000 and reserved the obligation for Future Desalters pursuant to its  
19 continuing jurisdiction.

20 In December of 2007, the Court approved the Peace II Agreement along with amendments  
21 to the OBMP Implementation Plan that laid the groundwork for the design, construction and now  
22 operation of the last 10 MGD of desalting capacity required by the OBMP. The new water that  
23 would be induced into the Basin by the operation of the Desalter and the Basin Re-

24 As described in the 2015 SYRA and Watermaster's Safe Yield Reset Motion, Desalter-  
25 Induced Recharge is "induced recharge that arises from or is attributable to the Desalters." (2015  
26 SYRA, ¶ 5.2.) Such water is explicitly part of the definition of New Yield found in the Peace I  
27 Agreement:

28 "New Yield" means proven increases in yield in quantities greater

1 than historical amounts from sources of supply including, but not  
2 limited to, capture of rising water, capture of available storm flow,  
3 **operation of the Desalters (including the Chino I Desalter),**  
4 **induced Recharge** and other management activities implemented  
5 and operational after June 1, 2000.” (Peace Agreement, ¶1.1(aa)  
6 (emphasis added.)

7 Pursuant to Section 7.1 of the Peace II Agreement approved by this Court in 2007, this  
8 water is not to be considered part of the allocable Safe Yield during the initial term of the Peace  
9 Agreement so that it will be available for Desalter Production rather than for use by individual  
10 parties to the Judgment, and “neither Watermaster nor the Parties will request that Safe Yield be  
11 recalculated in a manner” that does so. (Peace II Agreement, § 7.1.) Paragraph 5.2(b) of the  
12 2015 SYRA concisely contains the parties’ agreement as to the methodology for estimation of the  
13 quantity of Desalter-Induced Recharge that, pursuant to paragraphs 6.2(a)(iii) and 7.1 of the  
14 Peace II Agreement, is allocated to offset Desalter production and is not considered Safe Yield.  
15 There is no redistribution of Operating Safe Yield as alleged by the City.

16 Neither the City nor JCSD dispute that the first priority for Unproduced Agricultural  
17 Water is to supplement the Operating Safe Yield allocations of the Appropriators should they be  
18 reduced as a result of a reduction in the Safe Yield. (Restated Judgment, Exhibit “H”, ¶ 10.(a)(1).  
19 Based on the language of Peace II Agreement Section 7.1, it is as though the Safe Yield has  
20 declined by 5,000 AFY plus the annual quantity of Desalter-Induced Recharge, and the  
21 supplementing of the Appropriators’ Operating Safe Yield rights and the effect of the same on the  
22 Appropriators’ allocations of Unproduced Agricultural Water for Land Use Conversion and Early  
23 Transfer claims is the result that flows from the Court Approved Management Agreements.

24 **D. The Allocation of Unproduced Agricultural Water Contemplated in the 2015**  
25 **SYRA is Consistent with Watermaster’s Course of Conduct Pursuant to**  
26 **Court Approved Management Agreements for the Past Nine Years**

27 As described above, the priority system pursuant to which Unproduced Agricultural Water  
28 is allocated among the members of the Appropriative Pool originates in Exhibit “H” to the  
Restated Judgment – the Appropriative Pool Pooling Plan. (Restated Judgment, Exhibit “H”, ¶  
10(a).) As the allocation of Unproduced Agricultural Water contemplated in paragraph 5.2(b) of  
the 2015 SYRA is consistent with manner in which Watermaster has conducted such allocation

1 for the past nine years – without objection from any Party (Maurizio Supp. Decl., at ¶ 8) – the  
2 central issue raised by JCSD’s opposition is whether, in light of the Court Approved Management  
3 Agreements, Watermaster has correctly interpreted that priority system in giving equal priority to  
4 claims for reallocated water pursuant to the Land Use Conversion and Early Transfer  
5 mechanisms.

6 Pursuant to Paragraph 38(a) of the Restated Judgment, Watermaster implements Pool  
7 Committee policy recommendations for administration of the particular Pools. (Restated  
8 Judgment, 38(a).) Since the entrance of the Judgment, Watermaster has administered the  
9 provisions of the Pooling Plan regarding allocation of Unproduced Agricultural Water, including  
10 allocation based on Land Use Conversion Claim, as the allocation framework has evolved over  
11 the course of the implementation of the Physical Solution.

12 Pursuant to the provisions of the Court-Approved Management Agreements, Watermaster  
13 has administered the allocation of the Unproduced Agricultural Water, including the allocation of  
14 production rights based on Land Use Conversion and Early Transfer claims. The rights of the  
15 Appropriators subject to the stipulated Restated Judgment are subject to the terms therein, which  
16 must be construed as a whole. (See *Dow vs. Lassen Irrigation Co.* (2013) 216 Cal.App.4th 766.)  
17 In seeking the Court’s granting of the Safe Yield Reset Motion, Watermaster is not seeking to  
18 change to the terms of the Court Approved Management Agreements, but is seeking the Court’s  
19 confirmation of the interpretation of the manner in which Watermaster should administer them.

20 1. Background on Land Use Conversion and Early Transfer Claims

21 The 1978 Judgment in this case is unique among such groundwater basin adjudication  
22 decrees in that it anticipated the conversion of land in agricultural use at that time, and provided  
23 for the transition of the right to use water appurtenant to that property by the Appropriator that  
24 would eventually provide municipal water service to that property.<sup>17</sup> Pursuant to paragraph 10(b)

25 <sup>17</sup> See Plaintiff’s Post-Trial Memorandum, 8:10-21 [“Unallocated Safe Yield Water. It is  
26 contemplated that over a long period of years, agricultural production may well fall substantially  
27 below the aggregate amount of the Safe Yield right allocated to the pool. That Safe Yield right  
28 will remain available for agricultural use, but in a given year or a series of years there may be a  
substantial amount of Safe Yield Water which is not pumped by Overlying Agricultural Pool  
parties. The Judgment adopts a formula for allocating that unpumped water among the members  
of the Appropriative Pool by first,, replacing any reductions in Safe Yield (the full impact of

1 of the Appropriative Pool Pooling Plan (Judgment, Exh. "H"), Appropriators who undertook to  
2 permanently provide water service to lands that had been put to use for irrigated agriculture for  
3 the immediately preceding five years could submit a land use conversion claim to Watermaster,  
4 pursuant to which Watermaster would allocate excess Ag Pool water on a pro rata basis to satisfy  
5 such claims. (Judgment, Exh. "H", ¶ 10(b)(2).) Pursuant to the original 1978 Judgment, an  
6 appropriator was limited, through the conversion mechanism, to no more than one-half of the  
7 average amount of water that was actually used on the land prior to its conversion. (Judgment,  
8 Exh. "H", ¶ 10(b)(3).) Any water left over after satisfaction of the conversion claims was to be  
9 added to the Operating Safe Yield. (Judgment, Exh. "H", ¶ 10(b)(3).)

10 In 1995, the parties undertook a process pursuant to which the Judgment was amended to  
11 include the designation of a defined area in which land use conversion, for purposes of  
12 Reallocation of Unproduced Ag Water could occur<sup>18</sup> ("Conversion Area No. 1") and establishing  
13 a formula pursuant to which the amount of a conversion claim would be calculated. (November  
14 17, 1995 Order Approving Amendments to Judgment; see Restated Judgment, Exh. "H", ¶  
15 10(b)(3).) Pursuant to this formula, each acre converted from agricultural use to municipal  
16 service would receive an allocation of 2.6 acre-feet, with one-half this amount being allocated to  
17 the appropriator undertaking service of the property, and the other 1.3 acre-feet being allocated to  
18 the appropriative pool as a whole. Any shortfall of water available for land use conversion was to  
19 be spread amongst the parties on a pro rata basis.

20 The Peace Agreement further revised the formula used in the case of Ag Pool land use  
21 conversion. (Order Approving Post-Order Memorandum and Confirming Judgment  
22 Modifications (Apr. 19, 2001), p. 3.) Pursuant to this revision, the quantity of water allocated to  
23 each converted acre was reduced to 2.0 acre-feet, but the entirety of this quantity was to be  
24 allocated to the appropriator undertaking service of the converted property. (*Id.*, at p. 3.) This  
25 amendment did not alter the procedure for addressing shortfalls in water available to satisfy

26 which falls on the Appropriative Pool), and then to recognize the conversion of agricultural land  
27 to municipal and domestic purposes."]

28 <sup>18</sup> At that time, a list of "conversion-eligible" parcels outside Conversion Area No. 1 was also  
developed.

1 conversion claims. The Peace Agreement additionally introduced the “Early Transfer”  
2 mechanism, which provides for the reallocation of Unproduced Ag Water to the Appropriative  
3 Pool on an annual basis, rather than according to the five year increment that had previously been  
4 described in the Appropriative Pool Pooling Plan. Paragraph 5.3(g) of the Peace Agreement  
5 required that Watermaster approve an Early Transfer of water to the Appropriative Pool in an  
6 amount of not less than 32,800 acre-feet per year, which was the expected approximate quantity  
7 of Unproduced Ag Water. The actual quantity of water subject to Early Transfer each year was to  
8 be the greater of (i) 32,800 acre-feet or (ii) 32,800 acre-feet plus the actual quantity of  
9 Unproduced Ag Water for that Fiscal Year that is remaining after all the land use conversions  
10 were satisfied. (Peace Agreement, ¶ 5.3(g).)<sup>19</sup> As described above, while the Peace Agreement’s  
11 introduction of the concept of Early Transfer did away with the five year incremental evaluation  
12 of the quantity of Unproduced Agricultural Water, in favor of an annual evaluation, Peace  
13 Agreement Paragraph 5.3(g) was somewhat ambiguous as to how the Early Transfer relates to the  
14

15  
16 <sup>19</sup> Paragraph 5.3(g) further described the mechanism for the Early Transfer as follows:

17 (i) The Early Transfer water shall be annually allocated among the  
18 members of the Appropriative Pool in accordance with their pro-  
19 rata share of the initial Safe Yield.

20 (ii) The Transfer shall not limit the Production right of the  
21 Agricultural Pool under the Judgment to Produce up to 82,800 acre-  
22 feet of water in any year or 414,000 acre-feet in any five years as  
23 provided in the Judgment.

24 (iii) The combined Production of all parties to the Judgment shall  
25 not cause a Replenishment assessment on the members of the  
26 Agricultural Pool. The Agricultural Pool shall be responsible for  
27 any Replenishment obligation created by the Agricultural Pool  
28 Producing more than 414,000 acre-feet in any five-year period.

(iv) The parties to the Judgment and Watermaster shall Produce  
water in accordance with the Operating Safe Yield and shall  
procure sufficient quantities of Replenishment Water to satisfy  
over-Production requirements, whatever they may be, and avoid  
Material Physical Injury to any party to the Judgment or the Basin;

(v) Nothing herein shall be construed as modifying the procedures  
or voting rights within or by the members of the Agricultural Pool.



1 hierarchy for Reallocation described in the Appropriative Pool Pooling Plan.<sup>20</sup> In order to  
2 harmonize the concept of Early Transfer with Watermaster's prior procedures in regard to land  
3 use conversion and the reallocation of Unproduced Ag Water, section 6.3 of the Rules and  
4 Regulations was created to specify the hierarchy as between land use conversion and the Early  
5 Transfer. At the time of their approval by the Court in June 2001, section 6.3(a) read:

6 In each year, the 82,800 acre-feet being that portion of the Safe  
7 Yield made available to the Agricultural Pool under the Judgment,  
shall be made available:

8 To the Agricultural Pool to satisfy all demands for overlying  
9 Agricultural Pool lands;

10 To land use conversions that were completed prior to October 1,  
2000;

11 To land use conversions that have been completed after October 1,  
12 2000; and

13 To the Early Transfer of 32,800 acre-feet from the Agricultural  
14 Pool to the Appropriative Pool in accordance with their pro-rata  
assigned share of Operating Safe Yield.

15 (Rules and Regulations, § 6.3(a).)

16 <sup>20</sup> Since the 1978 Judgment, Paragraph 10(a) of the Appropriative Pool Pooling Plan  
17 (Exhibit "H" to the Restated Judgment) has described the mechanism for reallocation of  
18 Unproduced Water as follows:

19 To the extent that, in any five years, any portion of the share of Safe  
20 Yield allocated to the Overlying (Agricultural) Pool is not  
21 produced, such water shall be available for reallocation to members  
of the Appropriative Pool, as follows:

22 (a) Priorities. - Such allocation shall be made in the following  
sequence:

23 (1) to supplement, in the particular year, water available from  
24 Operating Safe Yield to compensate for any reduction in the Safe  
25 Yield by reason of recalculation thereof after the tenth year of  
operation hereunder.

26 (2) pursuant to conversion claims as defined in Subparagraph  
(b) hereof.

27 (3) as a supplement to Operating Safe Yield, without regard to  
28 reductions in Safe Yield.

1 Section 6.3(c) of the Rules and Regulations described the manner in which Unproduced  
2 Agricultural Water would be allocated in the event that, though Production by the Overlying  
3 (Agricultural) Pool did not exceed its allocation in a single year or over a five year period, that  
4 total Production from all of Ag Pool Production, Land Use Conversion claims and Early Transfer  
5 exceeded 82,800 AFY. In that case, the members of the Appropriative Pool were required to  
6 procure sufficient quantities of Replenishment Water to satisfy over-Production obligations,  
7 whatever they may be, with specific provision made for the allocation of the costs of such  
8 Replenishment Water. (2001 Rules and Regulations, § 6.3(c).)

9 The Peace Agreement provisions related to Early Transfer were subject to re-opener  
10 provisions and were reconsidered in the Peace II process. As part of the Peace II Measures, the  
11 parties agreed to a modification of section 6.3(c)<sup>21</sup> to eliminate the possible incurrence of a  
12 Replenishment obligation associated with over-allocation of Unproduced Ag Water, and agreed  
13 to a proportional reduction in the reallocation to members of the Appropriative Pool,<sup>22</sup> As part of  
14 its obligations under the Conditions Subsequent arising out of the Court's approval of the Peace II

15 \_\_\_\_\_  
16 <sup>21</sup> While the Peace II Agreement provides for the addition of this section, among others, to  
17 Watermaster's Rules and Regulations, the Watermaster has not yet undertaken a restated version  
18 of the Rules and Regulations that includes this section. (Peace II Agreement, at ¶ 4.3  
19 [acknowledging all Parties' assent to revisions to the Rules and Regulations approved in  
20 Watermaster Resolution No. 07-05].)

21 <sup>22</sup> "(c) In the event actual Production from the Agricultural Pool does not exceed 82,800 acre-feet  
22 in any one year or 414,000 acre-feet in any five years but total allocation from all the uses set  
23 forth in section 6.3(a) above exceeds 82,800 in any year, the amount of water made available to  
24 the members of the Appropriative Pool under section 6.3(a) shall be reduced pro rata in  
25 proportion to the benefits received by each member of the Appropriative Pool through such  
26 allocation. This reduction shall be accomplished according to the following procedure:

27 1. All of the amounts to be made available under 6.3(a) shall  
28 be added together. This amount shall be the "Potential Acre-Feet  
Available" for Reallocation.

29 2. Each Appropriative Pool member's requested share of the  
Potential Acre-Feet Available for Reallocation shall be determined.  
This share shall be expressed as a percentage share of the Potential  
Acre-Feet Available for Reallocation.

30 3. Each Appropriative Pool member's share of the Potential  
Acre-Feet Available for Reallocation shall be reduced pro rata  
according to the percentage determined in 2 above."

1 Measures, in March 2008, Watermaster made a filing with the Court in response to Condition  
2 Subsequent Three.<sup>23</sup> In response to Watermaster's filings, Monte Vista Water District ("Monte  
3 Vista") submitted comments expressing concern over the procedures that would be used to  
4 calculate reallocation of Unproduced Agricultural Pool water in the event of a decline in Safe  
5 Yield.

6 By stipulation dated April 25, 2008, Watermaster committed to develop procedures that  
7 would be responsive to Monte Vista's concerns and to submit them to the Court for approval as  
8 part of the updated Recharge Master Plan and Watermaster's submission in compliance with  
9 Condition Subsequent Number Eight. (Watermaster Compliance with Condition Subsequent  
10 Eight (June 30, 2010), at p. 12.) Specific to the Unproduced Agricultural Water allocation, the  
11 stipulation between Watermaster and Monte Vista required Watermaster to produce certain  
12 information regarding an expected future range of Overlying (Agricultural) Pool production.  
13 Watermaster produced this information and at the June 26, 2008 Appropriative Pool meeting, the  
14 Appropriative Pool decided to convene a subcommittee to discuss the development of a procedure  
15 to respond to Watermaster's information provided. (Watermaster Compliance with Condition  
16 Subsequent Eight (June 30, 2010), at p. 12.)

17 After the meeting of the subcommittee and review of a proposed policy, on December 18,  
18 2008, the Watermaster Board approved the agreed upon procedures and instructed counsel to  
19 include a description of these procedures in the filing to be made in compliance with Condition  
20 Subsequent Eight. (Watermaster Compliance with Condition Subsequent Eight (June 30, 2010),  
21 at p. 12.) This procedure was subsequently approved by the Court pursuant to its October 8, 2010  
22 Order Approving Watermaster's Compliance with Condition Subsequent Number Eight and  
23 **Approving Procedures to be Used to Allocate Surplus Agricultural Pool Water in the Event**  
24 **of a Decline in Safe Yield** (emphasis added).<sup>24</sup> The resolution was approved at the December  
25 2008 meetings of the three Pools, Advisory Committee, and the Board (Watermaster Compliance

26 <sup>23</sup> Condition Subsequent Number Three required Watermaster to prepare and submit for approval  
27 a new Hydraulic Control technical report addressing factors in the Special Referee's Final Report  
28 and Recommendations, as well as a technical analysis of the projected decline in safe yield and a  
definition and analysis of "new equilibrium" issues.

<sup>24</sup> The JCSD Opposition omits a discussion of this order.

1 with Condition Subsequent Eight, at p. 12), and no party opposed Watermaster's submittal to the  
2 Court requesting its order of the same. (Order Approving Watermaster's Compliance with  
3 Condition Subsequent Number Eight and Approving Procedures to be Used to Allocate Surplus  
4 Agricultural Pool Water in the Event of a Decline in Safe Yield (Oct. 8, 2010), at p. 3.)

5 The procedure that was agreed upon and approved by the Board, and, subsequently, the  
6 Court, is detailed in a December 8, 2008 memorandum from Watermaster General Counsel to the  
7 Appropriative Pool. The procedure specifies that, in the event that Operating Safe Yield is  
8 reduced because of a reduction in Safe Yield, Watermaster will follow the reallocation hierarchy  
9 provided for in the Appropriative Pool Pooling Plan by first applying the unallocated Ag Pool  
10 water to compensate the Appropriative Pool members for the reduction in Safe Yield. (Restated  
11 Judgment, Exhibit "H", paragraph 10(a).) If, thereafter, there is unallocated water left,  
12 Watermaster will then follow the remainder of the hierarchy and reallocate unallocated  
13 Agricultural Pool water next to land use conversion claims and Early Transfer, and then to  
14 supplement the Operating Safe Yield without regard to reductions in Safe Yield.

15 2. Watermaster has Allocated Unproduced Agricultural Water in the Manner  
16 Contemplated in the 2015 SYRA for Nine Years without Objection

17 The crux of the issue raised by JCSD is whether, following a decline in the Basin's Safe  
18 Yield, in its administration of the Appropriative Pool Pooling Plan, Watermaster should be  
19 directed to allocate Unproduced Agricultural Water among the members of the Appropriative  
20 Pool in the manner posited by JCSD – an originalist interpretation of the Pooling Plan, as it has  
21 not been formally amended – or in the manner in which Watermaster has done since the Court's  
22 approval of the Peace II Agreement (Maurizio Supp. Decl., at ¶ 8), as paragraph 5.2(b) of the  
23 2015 SYRA provides. Watermaster has construed the Appropriative Pool Pooling Plan pursuant  
24 to the Peace II Measures' amendment to section 6.3(c) of the Rules and Regulations, and would  
25 continue to allocate Unproduced Agricultural Pool water to members of the Appropriative Pool in  
26 that manner, consistent with the Court's 2010 Order specifically pertaining to how to proceed in  
27 the event of a decline in Safe Yield, and as described in paragraph 5.2(b) of the 2015 SYRA.  
28 Watermaster requests the Court's confirmation of the appropriateness of its prior accounting and

1 instruction to proceed consistent with its present practices.

2 **IV. CONCLUSION**

3 Paragraphs 39, 40 and 41 represent the cornerstone of the Judgment's Physical Solution.  
4 Paragraph 39 commands compliance with Article X, § 2 of the California Constitution and  
5 maximizing beneficial use. Paragraph 40 empowers Watermaster and the Court with maximum  
6 flexibility to address issues as they may arise in the future within the framework of the Judgment.  
7 Paragraph 41 tasks Watermaster with the responsibility to adopt an OBMP.

8 These considerations lead to the conception, design, approval, construction and ongoing  
9 implementation of a prolific program that has facilitated expanded use of recycled water, the  
10 construction of 40,000 AFY of new desalting capacity, recharge facilities, water transfers and the  
11 storage and recovery of large quantities of water in the Basin over the past 15 years. At the same  
12 time, these advancements must be undertaken in such a way to avoid harm to the Basin given  
13 emerging hydrologic and cultural realities.

14 An intricate set of checks and balances enables this to occur through substantial  
15 stakeholder input as a guide to Watermaster decision-making, such as the very process that  
16 unfolded here. In the end, the Court is available to consider the wisdom of Watermaster's actions  
17 and its recommendations and the Judgment makes it clear its continuing jurisdiction is tailor  
18 made for this specific purpose.

19 Watermaster has judiciously recommended that the Safe Yield be reset to 135,000 AFY in  
20 light of the best available information to protect the Basin against harm. It also seeks to place a  
21 failsafe measure of protections on the withdrawal of water from storage in the event a substitute  
22 plan cannot be agreed upon by stakeholders. And, finally it seeks to secure confirmation from the  
23 Court on certain existing accounting interpretations that will allow Watermaster to levy  
24 assessments for its operations and to allow the Parties to plan the next increment of actions under  
25 the OBMP. In rebuttal, the opposing Parties offer unsupported interpretations inconsistent with  
26 law, prior agreements, and Watermaster's custom and practice.

27 For all these reasons, Watermaster believes its recommendations are in the best interest of  
28 the Basin and are being made in furtherance of its good faith administration of its responsibilities

1 under the Judgment. Upon its fair review of the record, we respectfully request the Court's  
2 concurrence.

3 Dated: February 1, 2016

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By: 

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**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 February 1, 2016 I served the following:

1. WATERMASTER'S REPLY TO OPPOSITIONS TO MOTION REGARDING 2015 SAFE YIELD RESET AGREEMENT, AMENDMENT OF RESTATED JUDGMENT, PARAGRAPH 6

/ 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**

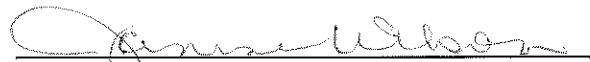
/ / BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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

Executed on February 1, 2016 in Rancho Cucamonga, California.

  
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