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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BERNARDINO**

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendants.

CASE NUMBER: RCV 51010

Honorable Stanford E. Reichert

**CITY OF CHINO'S RESPONSES TO
JUDGE REICHERT'S QUESTIONS**

Date: May 6, 2016
Time: 1:30 p.m.
Dept.: R6

(FEE- EXEMPT PURSUANT TO GOVERNMENT
CODE § 6103)

21
22 **THE CITY OF CHINO SUBMITS ITS RESPONSES TO JUDGE REICHERT'S**
23 **QUESTIONS DATED MARCH 22, 2016:**

24 **I.**

25 **INTRODUCTION**

26 The City of Chino submits its responses to the Court's questions; but responds to the
27 Court's Questions in the following order: (i) Question 3, (ii) Question 1, and (iii) Question 2.
28

1 II.

2 RESPONSE TO QUESTION 3

3 QUESTION 3:

4 The court understands that this might seem very basic, but the court does not
5 understand exactly how a reduction in Safe Yield affects Operating [sic] Safe Yield?

6 RESPONSE TO QUESTION 3:

7 This response first explains Operating Safe Yield and then how Operating Safe Yield
8 is affected by a change in the Safe Yield.

9
10 Operating Safe Yield is the share of the Safe Yield allocated to the Appropriative Pool.
11 Its amount of the Safe Yield is variable – unlike the amount of the Safe Yield allocated to the
12 Overlying Agricultural Pool and the Overlying Non Agricultural Pool.

13 Operating Safe Yield is increased or decreased due to increases or decreases in the
14 Safe Yield. Stated differently, increases in the Safe Yield are added to the Operating Safe
15 Yield; and decreases in the Safe Yield are deducted from the Operating Safe Yield. Increases
16 or decreases in the Safe Yield are not added to or deducted from the other Pools – unless the
17 Safe Yield were reduced to less than the allocations to the other Pools.

18 For example, an increase of 10,000 acre-feet (AF) in the Safe Yield amount of 140,000
19 AF would be added to the Operating Safe Yield. In this example, the Operating Safe Yield of
20 49,834 AF would be increased to 59,834 AF.

21 Conversely, a decrease of 10,000 AF in the Safe Yield amount of 140,000 AF would
22 be deducted from the Operating Safe Yield. In this example, the Operating Safe Yield of
23 49,834 AF would be decreased to 39,834 AF.

24 This hypothetical increase or decrease of 10,000 AF in the Safe Yield would require a
25 corresponding change in the amount of the Safe Yield allocated to the Appropriative Pool –
26 the Operating Safe Yield. The requirement is in Paragraph 44 of the Judgment, which states:

27 *“Any subsequent change in the Safe Yield shall be debited or credited to the*
28 *Appropriative Pool.”*

1 Paragraph 44 of the Judgment allocates the Safe Yield of 140,000 AF to each pool and
2 declares that the Safe Yield amounts allocated to the overlying pools are fixed.

3
4 However, a decrease in the Operating Safe Yield that results from a decrease in the
5 Safe Yield is restored to the Operating Safe Yield.

6 The restoration comes from the unproduced Agricultural Pool water.

7 The provision in the Judgment providing for the restoration is Section 10 of Exhibit H
8 to the Judgment. It states as follows:

9 *"To the extent that, in any five years, any portion of the share of Safe Yield*
10 *allocated to the Overlying (Agricultural) Pool is not produced, such water shall*
11 *be available for reallocation to the members of the Appropriative Pool, as*
12 *follows: (a) Such allocation shall be made in the following sequence: (1) to*
13 *supplement, in the particular year, water available from Operating Safe Yield*
14 *to compensate for any reduction in the Safe Yield by reason of recalculation*
15 *thereof. . . (2) pursuant to conversion claims . . . "*

16 Therefore, a reduction in the Safe Yield reduces the Operating Safe Yield of
17 Appropriative Pool; but the reduction in the Operating Safe Yield is restored from the
18 unproduced Agricultural Pool water.

19
20 There is one more effect of the Safe Yield reduction. The reduction in the Safe Yield
21 also decreases the amount of the unproduced Agricultural Pool water. Thus, there is less
22 unproduced Agricultural Pool water to allocate to the Appropriators with Land Use
23 Conversion claims pursuant to Section 10(a)(2) of Exhibit H to the Judgment.

24
25 In the case of a hypothetical 10,000 AF decrease in the Safe Yield, a corresponding
26 decrease in the Operating Safe Yield occurs. Then, the 10,000 AF decrease in the Operating
27 Safe Yield is restored to the Operating Safe Yield from the unproduced Agricultural Pool
28 water. The net effect of the 10,000 AF decrease in the Safe Yield is described succinctly as

1 follows:

- 2 ➤ Safe Yield decreases by 10,000 AF.
- 3 ➤ Operating Safe Yield remains at the amount before the decrease in the Safe Yield.
- 4 ➤ Unproduced Overlying Agricultural Pool water decreases by 10,000 AF.
- 5 ➤ Appropriators with Land Use Conversion Claims bear the loss of the 10,000 AF in
- 6 the Safe Yield.

7 **III.**

8 **RESPONSE TO QUESTION 1**

9 **QUESTION 1:**

10 **The court does not understand “Desalter-induced recharge.”**

11 **Peace Agreement I, 1.1(aa) and SYRA 1.1(m) include it within the definition of**

12 **New Yield.**

13 **Does Desalter-induced recharge physically occur?**

14 **Is it an accounting concept?**

15 **Is it something more, less, or additional?**

16

17 **RESPONSE TO QUESTION 1:**

18 **Definition and Purpose**

19 The term “Desalter-induced recharge” is not in Peace I Paragraph 1.1(aa). The term is

20 not in the definition of New Yield. The term is a fiction created for the SYRA.

21 The definition of New Yield in Peace I Paragraph 1.1(aa) reads:

22 *“New Yield” means proven increases in yield in quantities greater than historical*

23 *amounts from sources of supply including but not limited to, capture of rising water,*

24 *capture of available storm flow, operation of the Desalters (including the Chino I*

25 *Desalter), induced Recharge and other management activities implemented after June*

26 *1, 2000.*

27 Paragraph 1.1(aa) of Peace I does not contain the term “Desalter-induced recharge” nor

28 does it use the term. If the term “Desalter-induced recharge” had any purpose, Peace I would

1 have defined it. The fact that the Peace Agreements do not define “Desalter-induced
2 recharge” means that the term had no original meaning and served no purpose to the operation
3 of the basin at the time of Peace I and that the other defined terms sufficiently articulated the
4 purposes of the Peace Agreements.

5 However, the absence of the term “Desalter-induced recharge” from the definition of
6 “New Yield” is not important to the implementation of the Peace Agreements. What is
7 important about the New Yield concept and its use in the Peace Agreements is the comparison
8 that it requires. The New Yield concept requires a comparison between the total amount of
9 water recharging the Basin at the time of Peace I and thereafter – in 2000 and afterwards.

10 One purpose of Peace I is hydraulic control. It was recognized that the amount of
11 water recharging the Chino Basin from the Santa Ana River had been decreasing, because the
12 agricultural producers were producing less water from the south end of the Chino Basin.
13 Because of the elevated hydraulic gradients that resulted from the reduced agricultural
14 production, from the south end of the Chino Basin was discharging into the Santa Ana River.
15 Therefore, Peace I sought to reverse this dynamic and thereby stop the loss of Basin Water
16 into the Santa Ana River and start to draw River Water back into the Chino Basin.

17 For this reason, the New Yield concept requires a comparison of the amount of water
18 recharging the basin in year 2000 and the amount of water recharging the basin since then.
19 The comparison is described in the New Yield definition as follows:

20 *“New Yield” means proven increases in yield in quantities greater than*
21 *historical amounts from sources of supply including . . .”* [Paragraph 1.1(aa),
22 Peace I].

23 Similarly, the required comparison is an integral element of Peace I and Peace II:

- 24 • Paragraph 7.5 of Peace I states that replenishment for the desalters shall be
25 provided from several sources of water including New Yield.
- 26 • Paragraph 6.2 of Peace II also states that replenishment for the desalters shall be
27 provided from several sources of water including New Yield.
- 28 • Paragraph 7.1 of Peace II requires Watermaster to make annual findings of the

1 quantity of New Yield *“that is made available by Basin Re-Operation including*
2 *that portion that is specifically attributable to the Existing and Future Desalters.”*

3 However, the comparison required by the New Yield concept is excluded from SYRA.
4 Instead, the SYRA introduces the term “Desalter-induced recharge” in Paragraph 5.2; but it
5 fails to define the term even though Watermaster counsel has drafted definitions of every term
6 in Peace I and Peace II. The court suggests this new term is defined in SYRA Paragraph
7 1.1(m). It is not. Paragraph 1.1(m) merely repeats the definition of New Yield exactly as it is
8 defined in Peace I, Paragraph 1.1(aa).

9 The failure to define “Desalter-induced recharge” is significant; and it is purposeful.

10 The purpose of introducing the term “Desalter-induced recharge” without defining it is
11 to allow it to be used as a substitute for New Yield and thereby avoid making the required
12 comparison between the amount of water recharging the basin in 2000 and the amount of
13 water recharging the basin since 2000 in order to determine whether or not there is any New
14 Yield water. Therefore, SYRA Paragraph 5.2 becomes a substitute for the factual findings
15 required by Paragraphs 6.2(a)(iii) and 7.1 of Peace II that water recharging the basin from all
16 sources, including water labeled Desalter-induced recharge, is greater than the amount of
17 water recharged in 2000.

18 Without the requirement to make factual findings that New Yield water actually exists,
19 Paragraph 5.2 directs Watermaster to “account for” or treat Desalter-induced recharge as
20 equal to “fifty percent of the total Desalter Production.” It also directs Watermaster to treat
21 Desalter-induced recharge “as having been produced by the Desalters.”

22 Further, Paragraph 5.2 permits Watermaster to escape proving the existence of New
23 Yield water and avoid contradicting its position that recharge of the basin has decreased.

24 In essence, the term “Desalter-induced recharge” is a fiction that obfuscates the
25 purpose of taking of Safe Yield in order to reduce the Desalter Production.

26 ///

27 ///

28 ///

1 **Desalter-induced recharge.**

2 Santa Ana River Water has flowed into the Chino Basin at various times and has been
3 included as a source of recharge. The River Water flows into the Chino Basin when the
4 gradient of Basin Water in the south end of the Chino Basin is lower than the gradient of the
5 River Water in the Santa Ana River. The flow of River Water into the Chino Basin occurred
6 due to the production of Basin Water by agricultural producers in the south end of the Chino
7 Basin. This flow of River Water from the Santa Ana River into the Chino Basin has been
8 called Santa Ana River Underflow or SARU.

9 Therefore, the answer to the Court's question is that there appears to be water that
10 flows into the Chino Basin from the Santa Ana River.

11 However, the difference between the SYRA and the Peace Agreements is whether the
12 water meets the definition of New Yield. The SYRA avoids the question and the required
13 determination.

14 In addition, no evidence has been presented that the flow of River Water into the
15 Chino Basin constitutes New Yield.

16 Furthermore, Watermaster has taken the position that recharge into the Chino Basin
17 from all sources has decreased and seeks to reduce the Safe Yield. Watermaster also has
18 found that New Yield does not exist in its annual assessment packages. [Assessment Package
19 Appendix B in Exhibit A to the Crosley Declaration dated January 19, 2016 in Support of
20 Chino's Opposition to Watermaster's Motion].

21 In essence, River Water does appear to be flowing into the Chino Basin; and the record
22 indicates that the River Water does not constitute New Yield. Therefore, the River Water
23 cannot be used or "accounted" for reduction of the Desalter Production.

24
25 **Accounting Concept**

26 Yes, the term "Desalter-induced recharge" is an accounting concept.

27 SYRA Paragraph 5.2 avoids the requirement of making the factual finding that water
28 recharging the Chino Basin constitutes New Yield under the Peace Agreements.

Instead, SYRA Paragraph 5.2 directs Watermaster to “account for” or treat Desalter-induced recharge as equal to “*fifty percent of the total Desalter Production*” and to treat Desalter-induced recharge “*as having been produced by the Desalters.*”

SYRA Paragraph 5.2 next directs Watermaster to make the crucial accounting maneuver. It directs Watermaster to “*reduce Safe Yield by an amount equal to fifty (50) percent of the total Desalter Production, up to a maximum of twenty-thousand (20,000) AFY, and require a corresponding supplementation by the reallocation of available unproduced Agricultural Pool’s share of the Basin Safe Yield.*”

However, this accounting maneuver is prohibited by the Judgement. Paragraphs 44 and 9 of the Judgment do not permit an allocation of the Safe Yield for any purpose including the purpose of offsetting the Desalter Production. Likewise, Paragraph 9 and Exhibit H, Section 10 of the Judgment do not permit an allocation of Unproduced Agricultural Pool water to offset the Desalter Production.

Something More, Less, or Additional

YES. SYRA 5.2 is a device predicated on a fiction. It is a device that seeks to take Safe Yield without proving that New Yield exists.

Fundamentally, there is no need to take Safe Yield where New Yield truly exists.

IV.

RESPONSE TO QUESTION 2

QUESTION 2:

If it is not a violation of FANDA,

- 1) Can some party explain how the parties arrived at the figure 50% of the total Desalter production (up to a maximum of the 20,000 AF of recharge)
- 2) Then explain why Watermaster should reduce Safe Yield by that amount each year.

1 **RESPONSE 2:**

2 The City of Chino was not involved in the drafting of the SYRA and is not privy to the
3 reason for the insertion of the 50% formula.

4
5 Watermaster should not reduce the Safe Yield by any amount, because the Judgment
6 prohibits any allocations different from those that have been adjudicated in the Judgment.

7
8 Respectfully submitted.

9
10 Dated: April 1, 2016

GUTIERREZ, FIERRO & ERICKSON, APC

11
12 By: _____

13 Jimmy L. Gutierrez
14 Attorneys for the City of Chino
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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.

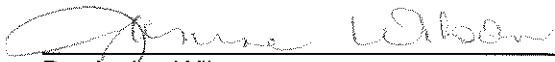
On April 1, 2016 I served the following:

1. CTIY OF CHINO'S RESPONSES TO JUDGE REICHERT'S QUESTIONS

- /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 April 1, 2016 in Rancho Cucamonga, California.


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