

**FEE EXEMPT**

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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 FURTHER  
RESPONSE TO ORDER FOR  
ADDITIONAL BRIEFING**

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

On March 22, 2016, the Court issued its Order for Additional Briefing and Continuing Hearing for All Matters Currently Scheduled for April 8 to May 6, 2016 ("Order"). On April 1, Watermaster filed its Response to Order for Additional Briefing as to the Court's questions 1-3 as stated on page 2 of its Order ("Watermaster's Response"). Upon review of the City of Chino's and Jurupa Community Services District's ("JCSD") responses, Watermaster provides this supplemental response.

**1) Does Desalter-induced recharge physically occur? Is it an accounting concept? Is it something more, less, or additional?**

In its response to the Court's first question, the City of Chino contends that Watermaster has improperly crafted result-oriented characterizations of New Yield and Desalter-induced recharge to support its accounting practices. The City contends that induced recharge is not New

1 Yield but rather “it is a fiction created for SYRA.”<sup>1</sup> The City’s contentions are counterfactual.

2 The City’s argument is based on its assertion that the term induced recharge was “not in  
3 the definition of New Yield” and further, that Desalter-induced New Yield was not an intended  
4 consequence of the Desalters as initially agreed pursuant to the Peace Agreement. Both these  
5 assertions are incorrect.

6 As described in Watermaster’s Response in regard to the Court’s questions 1 and 2,  
7 Desalter-induced recharge unequivocally meets the definition of New Yield. Indeed, this was the  
8 subject of significant Watermaster briefing in response to questions raised by the Court’s Special  
9 Referee at the time the Court considered and approved the Peace Agreement and the OBMP  
10 Implementation Plan.<sup>2</sup> This fact is also recited in the 2002 Court approved Watermaster Rules  
11 and Regulations to implement Peace Agreement:

12 New Yield is expected to result from a variety of conditions,  
13 including but not limited to enhanced Basin management, increased  
14 stormwater Recharge, induced Recharge from operation of the  
Desalters, injection, and changes in land use patterns.<sup>3</sup>

15 Moreover, the Peace II Agreement expressly identified Desalter-induced recharge as a  
16 specific form of New Yield for unique treatment, (as distinguished from all other forms of New  
17 Yield). Section 7.1 of the Peace II Agreement is actually entitled “New Yield Attributable to the  
18 Desalters” and unambiguously declares how it is to be handled in the event of a redetermination  
19 of Safe Yield.

20 In the Project Description presented to the Court in connection with the evaluation of the  
21 Peace II Measures, it states that “New Yield is expected to come from...new induced recharge of  
22 the Santa Ana River upstream of Prado Dam.”<sup>4</sup> This New Yield is calculated based on the  
23 amount of recharge induced by the Desalters and not, as the City suggests, on “a comparison  
24 between the *total amount of water recharging the Basin* at the time of Peace I and thereafter...”  
25 The availability of this New Yield for the ascribed purposes was not conditioned on an increased  
26 Safe Yield. The City cites no authority for its proposed interpretation, and it is inconsistent with  
27 the record of approval for the Peace Agreement, the Peace II Measures and Watermaster’s  
28 subsequent accounting for individual sources of new supply on a source by source basis; e.g.

1 stormwater, Desalter-induced recharge.

2           **2.) How did the parties arrive at the figure of 50% of the total Desalter**  
3           **production (up to a maximum of 20,000 AFY of recharge) to be deemed**  
4           **induced recharge? Why should Watermaster reduce Safe Yield by that**  
5           **amount each year?**

6           The projection of 50% of Desalter production as the quantity of the Desalter-Induced  
7           Recharge (as a form of New Yield) was the product of technical analysis undertaken by  
8           Watermaster's hydrologic consultant utilizing the 2013 updated groundwater model. The  
9           analysis was presented in technical review sessions and described in the draft model update  
10          reports that were made available to all stakeholders. All stakeholders were provided the  
11          opportunity to review and comment on this analysis. Watermaster is not aware of any concern or  
12          objection previously expressed by any person concerning the manner in which this projection was  
13          done.

14          **3) How does a reduction in Safe Yield affect Operating Safe Yield?**

15          Both responses provided by the City of Chino and JCSD omit a key fact: Section 6.3(c) of  
16          the Watermaster Rules and Regulations, as amended pursuant to the Peace II Measures provides  
17          that water unused by members of the Agricultural Pool shall be divided equally between Land  
18          Use Conversions and Early Transfers. The Court's October 8, 2010 Order<sup>5</sup> provides that this  
19          shall be done even if the Safe Yield declines. For the first time, approximately five years  
20          following this Order, the City and JCSD would set it aside and thereby unwind accounting, Court  
21          approvals and agreements impliedly if not expressly made in reliance thereon.

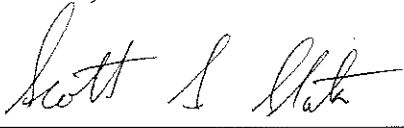
22          **4) To Jurupa Community Services District (JCSD) and Watermaster: In its reply,**  
23          **Watermaster points out that JCSD in its opposition did not address the Court's October 8,**  
24          **23, 2010 Order Approving Watermaster's Compliance with Condition Subsequent Number**  
25          **Eight and Approving Procedures to be used to Allocate Surplus Agricultural Pool Water in**  
26          **the Event of a Decline in Safe Yield. To JCSD: please do so by additional briefing date set**  
27          **forth below: April 1, 2016. To Watermaster: please file any additional reply by the briefing**  
28          **date set forth below: April 11, 2016.**

1 The Chino Basin is one of the largest groundwater basins in Southern California,  
2 representing a water source for more than 1 million residents of the Inland Empire in support of a  
3 billion dollar economy. As the Court is completely aware, the Court Approved Management  
4 Agreements were the subject of exhaustive consideration and deliberation by the Parties with  
5 continuing oversight by this Court. While the agreements and subject matter are admittedly  
6 complex, they are commensurate with the important issues that must be addressed in the  
7 management of the Basin.

8 It has been nearly nine years since this Court approved the Peace II Measures ordering  
9 Watermaster to proceed with the Desalter expansion, and more than five years after this Court  
10 issued a further order confirming the methodology for distributing water among appropriators to  
11 satisfy Land Use Conversions and as an Early Transfer in the event of a decline in Safe Yield.  
12 JCSD's objection at this time is inconsistent with the manner in which the Parties – including  
13 JCSD – have agreed and the Court has previously ordered<sup>6</sup> that the Basin be managed.

14 Dated: April 11, 2016

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16 By: 

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22 <sup>1</sup> City of Chino's Responses at p. 4 line 20.

23 <sup>2</sup> See, e.g., Post Order Memorandum, October 26, 2000 at p. 12 "[I]t is possible if not probable  
24 that the Desalters will serve to induce some new or additional Recharge beyond the quantities  
25 achieved in the present historical record."

26 <sup>3</sup> Watermaster Rules and Regulations, § 6.2(e) (emphasis added).

<sup>4</sup> Peace II Measures, Attachment "A" Project Description for the 2007 Amendment to the Chino Basin Optimum Basin Management Program. at p. 5.

<sup>5</sup> Section III(6) of 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.

<sup>6</sup> The issue having been submitted previously for express ruling by the Court in its October 8, 2010 Order is subject to issue preclusion while the delay in raising the matter post-completion of the Desalters themselves is prejudicial and subject to waiver by laches.

**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 11, 2016 I served the following:

1. WATERMASTER'S FURTHER RESPONSE TO ORDER FOR ADDITIONAL BRIEFING

/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**

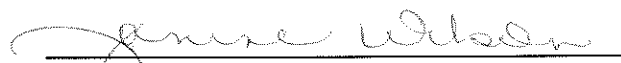
/ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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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 April 11, 2016 in Rancho Cucamonga, California.



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