

FEE EXEMPT

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Attorneys for  
**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.,  
  
Defendants.

**Case No. RCV 51010**

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

**NOTICE OF SERVICE OF TENTATIVE  
ORDERS**

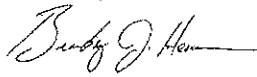
DATE: September 23, 2016  
TIME: 1:30 P.M.  
DEPT.: S35

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

**PLEASE TAKE NOTICE** that on September 19, 2016, the Court prepared Tentative Rulings for the hearings on all motions set for hearing on September 23, 2016. The Court's clerk required Watermaster to pick up and serve the tentative orders, copies of which are attached hereto as Exhibit A.

Dated: September 19, 2016

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

By: 

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

# Exhibit A

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**FILED**  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

SEP 19 2016

BY Tiffany Kretzmeier  
Tiffany Kretzmeier, Deputy

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

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NOS. RCV 51010  
CIVDS 1518945

Tentative Rulings

Date: September 23, 2016  
Time: 1:30 PM  
Department: S35

CITY OF CHINO,

Plaintiff,

vs.

Cucamonga Water District, et al.

Defendants

PLEASE TAKE NOTICE that the location of the hearings on all motions for the above-captioned cases have changed. The hearings on all the motions currently scheduled for September 23, 2016, will be heard at 1:30 PM in Department 35 (10<sup>th</sup> Floor) of the San Bernardino Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

Also, PLEASE TAKE NOTICE that tentative orders for the motions in case RCV 51010 are attached as follows:

1 A. Orders for Watermaster's Motion Regarding 2015 Safe Yield Reset  
2 Agreement, Amendment of Restated Judgement, Paragraph 6.

- 3 1. Rulings Re Objections of City of Chino to Declaration of Kavounas
- 4 2. Rulings Re Objections of City of Chino to Declaration of Wildermuth

5 B. City of Chino Motion to Permit Chino to Conduct Discovery

- 6 1. ORDER Re Pomona, et al. Objections to Declaration of Gutierrez in Support  
7 of Chino's Motion to Conduct Discovery
- 8 2. ORDER Re Chino's Objections to Declaration of Egoscue in Support of Ag  
9 Pool's Opposition to Chino's Motion to Conduct Discovery
- 10 3. ORDER Re Chino's Objections to Declaration of Herrema in Support of  
11 Watermaster's Opposition to Chino's Motion to Conduct Discovery
- 12 4. ORDER Re Chino's Objections to Declaration of Kavounas in Support of  
13 Watermaster's Opposition to Chino's Motion to Conduct Discovery

14  
15 FURTHER ORDERS

16 A. The court further ORDERS that no additional briefs shall be filed in response  
17 to the tentative orders attached. The court dispensed with brief page limits and even  
18 requested further briefing on certain issues. The court concludes that counsel have  
19 had more than adequate opportunity to brief their positions. Briefing on the motions  
20 set for September 23, 2016, has closed until further orders of this court.

21 B. The court further admonishes counsel that for the oral arguments of the  
22 motions, counsel should not repeat arguments already set forth in their briefs. The  
23 court has spent innumerable hours reading all the briefs and filings, considering all  
24 the arguments and evidence of all counsel, and reaching the tentative decisions and  
25 orders set forth in the tentative orders. Ordinarily, repetition of arguments set forth  
26 in the briefs are unlikely to make the arguments any more persuasive.

27 ///

28 ///



1 Dated: September 19, 2016  
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6 Stanford E. Reichert, Judge  
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7 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SAN BERNARDINO  
9

10 CHINO BASIN MUNICIPAL WATER )  
11 DISTRICT, )  
12 Plaintiff, )  
13 vs. )  
14 CITY OF CHINO, et al., )  
15 Defendants )  
16  
17

Case No. RCV 51010

[Proposed]

ORDERS for Watermaster's Motion  
Regarding 2015 Safe Yield Reset  
Agreement, Amendment of Restated  
Judgement, Paragraph 6

Date: September 23, 2016  
Time: 1:30 PM  
Department: S35

18 Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement,  
19 Amendment of Restated Judgment, Paragraph 6, joined by The Chino Basin  
20 Overlying (Agricultural) Pool Committee and The Inland Empire Utilities Agency  
21 ("IEUA") and opposed by Jurupa Community Services District ("JCSD") and the  
22 City of Chino ("Chino") is granted in part and denied in part for the reasons set forth  
23 herein. The court grants the motion with respect to amending the restated judgment  
24 to reset the Safe Yield of the basin to 135,000 AFY. However, the court denies the  
25 motions to amend the schedule for access to Re-Operation Water. The court makes  
26 additional orders with respect to access for Re-Operation Water as set forth herein.  
27 The court denies the motion to institute Safe Storage Management Measures.  
28

1 REQUEST FOR JUDICIAL NOTICE

2 The court grants request for judicial notice of JCSD as follows:

- 3 1. Restated Judgment (“Judgment”) in case number RCV 51010.
- 4 2. Implementation Plan Optimum Basin Management Program for the Chino Basin
- 5 (“OBMP Implementation Plan”).
- 6 3. Chino Basin Watermaster Rules and Regulations (“Rules and Regulations”).
- 7 4. 2015 Safe Yield Reset Agreement (“SYRA”).
- 8 5. Order Concerning Motion for Approval of Peace II Documents (“2007 Order”)
- 9 in case number RCV 51010.
- 10 6. 2000 Peace Agreement Chino Basin (“Peace I Agreement” or “Peace I”).
- 11 7. Watermaster Compliance with Condition Subsequent Number Eight: Proposed
- 12 Order Submitted Concurrently.
- 13 8. Peace II Agreement: party support for Watermaster’s OBMP Implementation
- 14 Plan, Settlement and Release of Claims Regarding Future Desalters (“Peace II
- 15 Agreement” or “Peace II”).

16  
17 JOINDERS AND FILINGS

18 A. Watermaster's motion regarding 2015 Safe Yield Reset Agreement,  
19 amendment of restated Judgement, Paragraph 6

20 1. City of Chino’s objections to declaration of Kavounas submitted with  
21 Watermaster’s Motion regarding 2015 Safe Yield Reset Agreement, Amendment of  
22 Restated Judgment, Paragraph 6.

23 Rulings in separate document.

24 2. City of Chino’s objections to declaration of Wildermuth submitted with  
25 Watermaster’s Motion regarding 2015 Safe Yield Reset Agreement, Amendment of  
26 Restated Judgment, Paragraph 6.

27 Rulings in separate document.

1 B. The following parties joined in Watermaster's motion:

- 2 1. Overlying (Agricultural) Pool  
3 2. Inland Empire Utilities Agency

4 C. Oppositions to Watermaster's motion

- 5 1. City of Chino with supporting documents  
6 a) Declaration of Robert Shibatani, physical hydrologist  
7 b) Declaration of David Crosley, civil engineer, water and environmental  
8 manager for City of Chino  
9 2. Jurupa Community Services District (JCSD) with supporting documents  
10 a) Request for judicial notice identified above  
11 b) Declaration of Todd Corbin, general manager of JCSD  
12 c) Declaration of Robert Donlan, attorney

13 D. Watermaster's reply to oppositions to motion regarding 2015 Safe Yield  
14 Reset Agreement, amendment of Restate Judgement, Paragraph 6

- 15 1. Supplemental declaration of Kavounas  
16 a) City of Chino's objections Kavounas supplemental declaration in  
17 support of Watermaster's reply the Chino opposition  
18 b) Watermaster's Response to City of Chino's objections to supplemental  
19 declaration of Peter Kavounas in support of Watermaster's reply to  
20 Chino's Opposition to Motion regarding 2015 Safe Yield Reset  
21 Agreement, Amendment of Restated Judgment, Paragraph 6  
22 I) Motion to strike denied. The court finds that the declaration did not  
23 raise new issues.  
24 II) All objections overruled.  
25 2. Supplemental declaration of Wildermuth  
26 a) City of Chino's objections to Wildermuth supplemental declaration in  
27 support of Watermaster's reply to Chino opposition.  
28 b) Watermaster's Response to City of Chino's objections to supplemental

1 declaration of Mark Wildermuth in support of Watermaster's reply to  
2 Chino's Opposition to Motion regarding 2015 Safe Yield Reset  
3 Agreement, Amendment of Restated Judgment, Paragraph 6.

4 I) Motion to strike denied. The court finds that the declaration did not  
5 raise new issues.

6 II) All objections overruled.

7 3. Declaration of Danielle Maurizio, assistant general manager of Chino  
8 Basin

9 a) City of Chino's objections to supplemental declaration of Danielle D.  
10 Maurizio in support of Watermaster's reply to chino opposition

11 b) Watermaster's Response to City of Chino's objections to supplemental  
12 declaration of Danielle E. Maurizio in support of Watermaster's reply to  
13 Chino's Opposition to Motion regarding 2015 Safe Yield Reset  
14 Agreement, Amendment of Restated Judgment, Paragraph 6

15 I) Motion to strike denied. The court finds that the declaration did not  
16 raise new issues.

17 II) All objections overruled.

18 4. Joinders in Watermaster's reply to oppositions

19 a) Overlying (Agricultural) Pool

20 b) City of Pomona and (in one pleading document)

21 I) City of Upland

22 II) Monte Vista Water District

23 III) Cucamonga Valley Water District

24 IV) Fontana Union Water Company

25  
26 E. In an order Dated March 22, 2016, the court served the parties with questions  
27 and a request for further briefing in response to the questions. The responses were  
28 as follows:

1. Jurupa Community Services District response to Judge Reichert's request for clarification filed April 1, 2016.
2. City of Chino's responses to Judge Reichert's questions, filed April 1, 2016.
3. Watermaster's response to order for additional briefing filed April 1, 2016.
  - a) Chino's reply to Watermaster's response to order for additional briefing, filed April 11, 2016.
  - b) Jurupa Community Services District's additional response to Judge Reichert's request for clarification, filed April 11, 2016
4. Watermaster's further response to order for additional briefing, filed April 11, 2016

## I. INTRODUCTION, DEFINITIONS, BACKGROUND

A. The 1978 judgment in Chino Basin Municipal Water District v. City of Chino (San Bernardino Superior Court Case No. 51010) set the Safe Yield of the Chino Basin at 140,000 acre-feet per year (AFY), but reserved continuing jurisdiction to the Court to amend the Judgment, inter alia, to redetermine the Safe Yield after the first 10 years of operation of the Physical Solution established under the Judgment. The Physical Solution identified three groups of parties (Pools) with water interests in the Chino Basin, and set forth their allocations as follows:

Pool	Allocation	Acre-feet Yearly Allocation
Overlying (Agricultural) Pool*	414,000 acre-feet in any five (5) consecutive years [note: $414,000 \div 5 = 82,800$ per	82,800

	year]	
Overlying (Non-agricultural) Pool**	7,366 acre-feet	7,366
Appropriative Pool***	49,834 acre-feet	49,834
	Yearly total allocation	140,000

\*The members of this pool included dairy farms.

\*\*The members of this pool include businesses which use water in their production processes.

\*\*\*The members of this pool include cities and water companies. They “appropriate” the water by pumping and selling it.

This motion is the first time the court has redetermined the Safe Yield since the Judgment was entered in 1978.

B. Since the entry of the judgment, the Court has previously approved agreements to implement the Physical Solution (“Court Approved Management Agreements”).

There is no dispute that the court has the authority and duty to independently review the evidence de novo and determine whether proposals by Watermaster or any party comply with the Judgment and the Court Approved Management Agreements.

(Restated Judgment ¶31(d).) The Court Approved Management Agreements are:

1. The Chino Basin Peace Agreement (Peace I Agreement), dated June 29, 2000, as subsequently amended in September 2004 and December 2007.

- a. In 2000 the parties executed Peace Agreement Chino Basin (Peace I Agreement) and agreed to Watermaster’s adoption of the Optimum Basin Management Plan (OBMP) Implementation Plan. At about the same time, the court ordered Watermaster to proceed in a manner consistent with Peace I and the OBMP, including Program Element 8

1 (Develop and Implement Groundwater Storage Management Program)  
2 and Program Element 9 (Develop and Implement Storage and  
3 Recovery Programs). The implementation plan acknowledged the need  
4 to obtain better production data through the metering of non-exempt  
5 production within the basin. Program Elements 8 and 9 provided for  
6 Watermaster to redetermine and reset the Basin's Safe Yield in the year  
7 2010/11. The basis of the redetermination and reset would be  
8 production data derived from the collection of additional data regarding  
9 the parties' production (*i.e.*, parties who pumped water out of the Basin)  
10 within the basin during the 10-year period 2000/01 through 2009/10.  
11 b. The Peace I Agreement introduced the installation of Desalters in the  
12 southwest portion of the basin. The Desalters pump ground water  
13 from the aquifer and supply that water to water companies and other  
14 users. By pumping water out of the aquifer, the Desalters also lowered  
15 the ground water table to help obtain Hydrologic Control, *i.e.*,  
16 preventing Chino Basin ground water from reaching the Santa Ana  
17 River south of the Basin. The Santa Ana River is a major source of  
18 water for Orange County, and water impurities and contaminants, some  
19 of which came from the Chino Basin dairy farms ("salts") were in the  
20 groundwater flowing from the Basin into the Santa Ana River. The  
21 Desalter capacity has now expanded to 20 MGD as provided in the  
22 OBMP Implementation Plan to protect against a decline in Safe Yield  
23 and for water quality benefits, but the court reserved the question of  
24 how "Future Desalter" capacity would be addressed. The Chino Basin  
25 Desalter Authority (CDA), which includes the City of Chino,  
26 participated in the construction of the Desalters which represented a  
27 substantial engineering and financial undertaking. These Desalters were  
28 completed and fully operational in 2006.



1       2. The Peace II Measures (court approved on December 21, 2007).

2           a. In 2007, the parties entered into the Peace II Agreement. The objective  
3           was to increase the Desalter capacity to 40 MGD to achieve the OBMP  
4           Implementation Plan objectives. In order to do this, the parties  
5           designed and financed an additional 10 million gallons per day (MGD)  
6           of expanded Desalter capacity. The expansion of the Desalters to the  
7           full plant capacity will be completed in 2017. With the completion of  
8           this construction, Hydraulic Control will be achieved. Hydraulic  
9           Control now means only a de minimus amount of groundwater will  
10          flow from the Chino Basin south into the Santa Ana River. In fact, the  
11          Desalters now have lowered the water table in the south end of the  
12          Basin so that ground water is now flowing from the Santa Ana River  
13          north into the Chino Basin. This is called Re-Operation water.

14          3. The Optimum Basin Management Plan (OBMP) Implementation Plan  
15          dated June 29, 2000, was supplemented in December 2007.

16          4. The Recharge Master Plan, dated 1998, was updated in 2010 and  
17          amended in 2013.

18          5. The Watermaster Rules and Regulations dated June 2000, as amended.

19          6. The October 8, 2010 Order Approving Watermaster's Compliance with  
20          Condition Subsequent Number Eight and Approving Procedures to be used to  
21          Allocate Surplus Agricultural Pool Water in the Event of a Decline in Safe Yield.

22          7. Watermaster Resolution 2010-04 ("Resolution of the Chino Basin  
23          Watermaster regarding Implementation of the Peace II Agreement and the Phase III  
24          Desalter Expansion in Accordance with the December 21, 2007 Order of the San  
25          Bernardino Superior Court").

26  
27       C. Additional background for motion.

28           1. At the September 24, 2015 Watermaster Board Meeting, the board

1 adopted Resolution 2015-06: Resolution of the Chino Basin Watermaster regarding  
2 the 2015 Safe Yield Reset Agreement (SYRA).

3 2. Watermaster through a Facilitation and Non-Disclosure Agreement  
4 (FANDA) attempted to obtain agreement as to all issues regarding Safe Yield  
5 redetermination and reset allocation. Those issues included not only a reset of the  
6 Safe Yield from 140,000 acre-feet per year to 135,000 acre-feet per year, but also  
7 Watermaster's accounting for reallocations related to Court Approved Management  
8 Agreements, and a method of allocations for water storage called the Safe Storage  
9 Management Agreements.

- 10 a) The FANDA process took place starting in November 2014, and through  
11 at least 30 meetings, by May 27, 2015, all but one of the then-active parties  
12 to the FANDA reached a non-binding agreement among their negotiating  
13 representatives on certain key principles (apparently also called the "term  
14 sheet") embodied in the Safe Yield Summary of Non-Binding Key  
15 Principles Derived from the Facilitated Process.
- 16 b) The parties continued to negotiate, with a goal of reducing the Key  
17 Principles into a binding instrument for execution by September 1, 2015.  
18 That agreement is identified as the 2015 Safe Yield Reset Agreement  
19 (SYRA). The Appropriative Pool, the Overlying (Agricultural) Pool, and  
20 the Three Valleys Municipal Water District approved the 22 page  
21 agreement, as did many other parties. The City of Chino refused to sign  
22 the agreement.
- 23 c) On September 24, 2015, the board at its regular meeting adopted  
24 resolution 2015-06, and previously – on September 17, 2015 – the advisory  
25 committee approved resolution 2015-06: "Resolution of Chino Basin  
26 Watermaster regarding 2015 Safe Yield Reset Agreement (SYRA)."
- 27 d) Watermaster's instant motion asks the court to address the issues covered  
28 in the SYRA as follows:

- 1 I) The reset of the Basin Safe Yield from 140,000 acre-foot per year (AFY)  
2 to 135,000 AFY pursuant to the Restated Judgment, the OBMP  
3 Implementation Plan, and Watermaster's Rules and Regulations;  
4 II) The manner in which Watermaster should account for various  
5 components of the recharge to the Basin implementing the Court-  
6 Approved Management Agreements; and  
7 III) Establishment of Safe Storage Management Measures (SSMM)  
8 intended to ensure that withdrawals of groundwater from authorized  
9 storage accounts within the Basin are safe, sustainable, and will not  
10 cause Material Physical Injury or undesirable results.  
11

12 D. SUMMARY RULINGS: In its motion, Watermaster requests an order  
13 acknowledging the 2015 Safe Yield Reset Agreement and ordering Watermaster to  
14 proceed in accordance with its terms with respect to amending the restated judgment  
15 to reset the Safe Yield of the Basin from 135,000 AFY to 135,000 AFY and  
16 amending the schedule for access to Re-Operation water (water pumped by the  
17 Desalters). For the reason set forth herein, the court grants the motion with respect  
18 to amending the restated judgment to reset the Safe Yield of the basin to 135,000  
19 AFY. However, the court denies the motions to amend the schedule for access to  
20 Re-operation water. The court makes additional orders with respect to access for Re-  
21 Operation water as set forth herein. The court denies the motion to institute Safe  
22 Storage Management Measures.  
23  
24

25 III. The court adopts the provisions of Article 4-SAFE YIELD RESET TO 135,000  
26 AFY of the SYRA AND ORDERS AS FOLLOWS.  
27

28 4.1 Safe Yield Reset. Consistent with the prior orders of the Court pursuant to its

1 continuing jurisdiction, effective July 1, 2010 and continuing until June 30, 2020, the  
2 Safe Yield for the Basin is reset at 135,000 AFY. For all purposes arising under the  
3 Judgment, the Peace Agreements and the OBMP Implementation Plan, the Safe  
4 Yield shall be 135,000 AFY, without exception, unless and until Safe Yield is reset in  
5 accordance with the procedures set forth in this order, and determined by the Court  
6 pursuant to its retained continuing jurisdiction.  
7

8 4.2 Scheduled Reset. Watermaster will initiate a process to evaluate and reset the  
9 Safe Yield by July 1, 2020 as further provided in this order. Subject to the provisions  
10 of Paragraph 4.3 below, the Safe Yield, as it is reset effective July 1, 2020 will  
11 continue until June 30, 2030. Watermaster will initiate the reset process no later than  
12 January 1, 2019, in order to ensure that the Safe Yield, as reset, may be approved by  
13 the court no later than June 30, 2020. Consistent with the provisions of the OBMP  
14 Implementation Plan, thereafter Watermaster will conduct a Safe Yield evaluation  
15 and reset process no less frequently than every ten years. This Paragraph is deemed  
16 to satisfy Watermaster's obligation, under Paragraph 3.(b) of Exhibit "I" to the  
17 Restated Judgment, to provide notice of a potential change in Operating Safe Yield.  
18

19 4.3 Interim Correction. In addition to the scheduled reset set forth in Paragraph  
20 4.2 above, the Safe Yield may be reset in the event that, with the recommendation  
21 and advice of the Pools and Advisory Committee and in the exercise of prudent  
22 management discretion described in Paragraph 4.5(c), below, Watermaster  
23 recommends to the court that the Safe Yield must be changed by an amount greater  
24 (more or less) than 2.5% of the then-effective Safe Yield.  
25

26 4.4 Safe Yield Reset Methodology. The Safe Yield has been reset effective July 1,  
27 2010 and shall be subsequently evaluated pursuant to the methodology set forth in  
28 the Reset Technical Memorandum. The reset will rely upon long-term hydrology and

1 will include data from 1921 to the date of the reset evaluation. The long-term  
2 hydrology will be continuously expanded to account for new data from each year,  
3 through July 2030, as it becomes available. This methodology will thereby account  
4 for short-term climatic variations, wet and dry. Based on the best information  
5 practicably available to Watermaster, the Reset Technical Memorandum sets forth a  
6 prudent and reasonable professional methodology to evaluate the then prevailing  
7 Safe Yield in a manner consistent with the Judgment, the Peace Agreements, and the  
8 OBMP Implementation Plan. In furtherance of the goal of maximizing the  
9 beneficial use of the waters of the Chino Basin, Watermaster, with the  
10 recommendation and advice of the Pools and Advisory Committee, may supplement  
11 the Reset Technical Memorandum's methodology to incorporate future advances in  
12 best management practices and hydrologic science as they evolve over the term of  
13 this order.  
14

15 4.5 Annual Data Collection and Evaluation. In support of its obligations to  
16 undertake the reset in accordance with the Reset Technical Memorandum and this  
17 order, Watermaster shall annually undertake the following actions:

18 (a) Ensure that, unless a Party to the Judgment is excluded from reporting,  
19 all production by all Parties to the Judgment is metered, reported, and reflected in  
20 Watermaster's approved Assessment Packages;

21 (b) Collect data concerning cultural conditions annually with cultural  
22 conditions including, but not limited to, land use, water use practices, production,  
23 and facilities for the production, generation, storage, recharge, treatment, or  
24 transmission of water;

25 (c) Evaluate the potential need for prudent management discretion to avoid  
26 or mitigate undesirable results including, but not limited to, subsidence, water quality  
27 degradation, and unreasonable pump lifts. Where the evaluation of available data  
28 suggests that there has been or will be a material change from existing and projected

1 conditions or threatened undesirable results, then a more significant evaluation,  
2 including modeling, as described in the Reset Technical Memorandum, will be  
3 undertaken; and,

4 (d) As part of its regular budgeting process, develop a budget for the  
5 annual data collection, data evaluation, and any scheduled modeling efforts, including  
6 the methodology for the allocation of expenses among the Parties to the Judgment.  
7 Such budget development shall be consistent with section 5.4(a) of the Peace  
8 Agreement.

9  
10 4.6 Modeling. Watermaster shall cause the Basin Model to be updated and a  
11 model evaluation of Safe Yield, in a manner consistent with the Reset Technical  
12 Memorandum, to be initiated no later than January 1, 2024, in order to ensure that  
13 the same may be completed by June 30, 2025.

14  
15 4.7 Peer Review. The Pools shall be provided with reasonable opportunity, no  
16 less frequently than annually, for peer review of the collection of data and the  
17 application of the data collected in regard to the activities described in Paragraphs  
18 4.4, 4.5, and 4.6 above.

19  
20 4.8 No Retroactive Accounting. Notwithstanding that the initial Safe Yield reset,  
21 described in Paragraph 4.1 above, shall be effective as of July 1, 2010, Watermaster  
22 will not, in any manner, including through the approval of its Assessment Packages,  
23 seek to change prior accounting of the prior allocation of Safe Yield and Operating  
24 Safe Yield among the Parties to the Judgment for production years prior to July 1,  
25 2014.

26  
27 IV. THE COURT FURTHER ORDERS AS FOLLOWS:

28 A. The court amends the restated judgment ¶6 and sets the safe yield to 135,000

1 AFY for the following reasons:

2 1. The court accepts the findings and conclusions of Wildermuth for the  
3 following reasons. Those conclusions are set forth in the reset technical  
4 memorandum.

5 a) Wildermuth has been the authoritative resource for the parties and the  
6 court during the pendency of the case for the last 15 years.

7 b) Wildermuth has performed a detailed analysis with substantiated facts and  
8 findings in the reset technical memorandum, the supplemental declaration  
9 of Mark Wildermuth in support of Watermaster's reply to oppositions to  
10 the motion regarding 2015 safe yield reset agreement, and the memo to  
11 restated judgment, paragraph 6 a.k.a. Wildermuth supplemental declaration.

12 c) The court accepts the net recharge approach and calculations set forth in  
13 the Wildermuth report.

14 d) The Wildermuth report gives the most comprehensive analysis and credible  
15 evaluation of the historic condition of the Basin.

16 e) The court does not accept the conclusions of Robert Shibatani for the  
17 following reasons:

18 I) Shibatani recognizes that the net recharge calculation is a legitimate  
19 approach to a determination of Safe Yield.

20 II) The Shibatani approach is unnecessarily quantitative. The Wildermuth  
21 analysis allows for the definitions required for the analysis of the Chino  
22 basin, including cultural conditions and undesirable results.

23 III) Wildermuth has considered the effects of climate change of  
24 Basin precipitation. The court accepts Wildermuth's conclusion that  
25 there are not any better predictive modeling scenarios generally available  
26 at this time accurately calibrated to the historical rainfall and are  
27 therefore not reliable as a predictive tool.

28 2. The Restated Judgment's definition of Safe Yield includes the

1 consideration of the evolutionary land-use conditions the need to protect the Basin  
2 against undesirable results.

3 3. No party has objected to the reduction in Safe Yield, except the city of  
4 Chino. Chino's objections were discussed and rejected/overruled for the reasons set  
5 forth in Joinders and Filings, Section A.2 above.

6 4. The reduction safe yield is consistent with the Court-Approved  
7 Management Agreements.

8 5. The court finds that the SYRA sets forth an approach to a  
9 determination of future Safe Yield determinations in a manner consistent with the  
10 Court Approved Management Agreements.

11 a) The declaration of Peter Wildermuth and the supporting documentation,  
12 analysis supports the court's conclusion.

13 b) Wildermuth declaration, paragraph 14, states his opinion that the basin  
14 protection measures to which the parties have agreed and the 2015 Safe  
15 Yield Reset Agreement will ensure that the Basin is not harmed by  
16 extraction of 135,000 AFY through fiscal 2020.

17 I) Although the court concludes the Safe Storage Management Measures  
18 are useful and advisable, the court concludes there is no specific factual  
19 basis requiring the Safe Yield reset to include Safe Storage Management  
20 Measures. Therefore the court concludes that even without the Safe  
21 Storage Management Measures, reduction of Safe Yield to 135,000 AFY  
22 will not harm the Basin.

23 II) The 2013 Chino Basin Groundwater Model Update and Recalculation  
24 of Safe Yield Pursuant to the Peace Agreement is sufficiently  
25 documented and the court finds the data reliable.

26 c) Wildermuth declaration, paragraph 15, states that the Basin protection  
27 measures to which the parties have agreed and the 2015 Safe Yield Reset  
28 Agreement, including the Safe Storage Management Measures, will ensure



1 that the Basin is not harmed by extractions of the 20,000 AF that was  
2 allocated in the past 4 years and would have been allocated if the Safe Yield  
3 have been reset to 135,000 AFY in 2011.

4 I) However, again Wildermuth does not specifically address the necessity  
5 of the Safe Storage Measures with respect to complying with the Court  
6 Approved Management Agreements. Therefore, the court again  
7 concludes that even without the Safe Storage Management Measures,  
8 reduction of Safe Yield to 135,000 AFY will not harm the Basin.

9 II) Again, the 2013 Chino Basin Groundwater Model Update and  
10 Recalculation of Safe Yield Pursuant to the Peace Agreement is  
11 sufficiently documented and the court finds the data reliable.

12 d) Therefore, the court concludes that the extraction of 135,000 AFY is  
13 consistent with the Court Approved Management Agreements and does  
14 not create any undesirable result or Material Physical Injury to the Basin.  
15

16 B. The measures set forth in Article 4 are consistent with the Physical Solution  
17 under the judgment and Article X, section 2 of the California Constitution.  
18

19 C. Paragraph 6 of the Restated Judgment is hereby amended to read as follows:  
20 "Safe Yield. The Safe Yield of the Basin is 135,000 acre feet per year."

21 1. The effective date of this amendment of Paragraph 6 of the Restated  
22 Judgement is July 1, 2010.  
23  
24

25 V. SAFE YIELD RESET AGREEMENT (SYRA): WATERMASTER  
26 ALLOCATION HISTORY, EARLY TRANSFERS, AND THE DESALTERS

27 A. The 1978 Judgment as amended

28 1. The 1978 Judgment ¶44 made the following allocation of rights to Safe

Yield in the Chino Basin ("the physical solution"):

Pool	Allocation
Overlying (Agricultural) Pool	414,000 acre-feet in any 5 consecutive years (82,800 acre-feet per year)* **
Overlying (Non-agricultural) Pool	7366 acre-feet per year**
Appropriative Pool	49,834 acre-feet per year
Total	140,000 acre-feet per year

\*Note:  $414,000 \div 5 = 82,800$ . 82,800 acre-feet per year has been the basis of calculations for the Appropriative Pool going forward from the judgment.

\*\*Note: the rights of the members of the Overlying (Agricultural) Pool and the Overlying (Non-Agricultural) Pool are fixed (Restated Judgment ¶8, ¶44, see also Exhibits "C" and "D" to the Restated Judgment). **Therefore the effect of a decline of the safe yield is borne entirely by the members of the Appropriative Pool (Restated Judgment ¶9).**

2. The Judgment ¶1(x) defines Safe Yield as "the long-term average annual quantity of groundwater (excluding replenishment or stored water but including return flow to the basin from use of replenishment or stored water) which can be produced [*i.e.*, pumped] from the basin under cultural conditions of the particular year without causing an undesirable result."

3. The judgment fixed the amount of water production (pumping) that could be allocated to the Overlying (Agricultural) Pool and the Overlying (Non-agricultural) Pool. However, the Appropriative Pool allocation could be changed.

a) The court concludes that the disputes in the oppositions concern relationship between unproduced (*i.e.*, unpumped) Overlying Agricultural Pool water (hereinafter Ag Pool water) and the water available to the Appropriative Pool.

4. Exhibit "T" to the judgment is the Engineering Appendix. It discusses

1 Hydraulic Control and Re-Operation, which are described in more detail below.  
2 Section 3 defines Operating Safe Yield as consisting in any “year of the  
3 Appropriative Pool’s share of Safe Yield of the Basin, plus any controlled overdraft  
4 of the Basin which Watermaster may authorize.”

5 a) Section 3(b) states that “in no event shall Operating Safe Yield in any  
6 year be less than the Appropriative Pool’s share of Safe Yield, nor shall it  
7 exceed such share of Safe Yield by more than 10,000 acre feet. The initial  
8 Operating Safe Yield is hereby set at 54,834 acre feet per year.”

9 I) The figure of 54,834 acre feet per year is the initial 1978 Judgment  
10 allocation of 49,834 acre-feet per year plus 5,000 acre feet per year. The  
11 additional 5,000 AFY comes from 200,00 acre-feet of overdraft (water  
12 pumped without a replenishment obligation) allocated by the Judgment  
13 to the Appropriative Pool, and the overdraft will be exhausted in  
14 2016/2017. (Watermaster Motion Regarding 2015 Safe Yield Reset  
15 Agreement, Amendment of Restated Judgement, Paragraph 6, page 3,  
16 line 27.)

17 b) Operating Safe Yield has also come to mean water that the  
18 Appropriative Pool could produce/pump without having to purchase  
19 replenishment water. (Exhibit “H” ¶5.)

20 5. Exhibit “H” to the judgment described the Appropriative Pool Pooling  
21 Plan. Paragraph 10 described “Unallocated Safe Yield Water” as follows: “to the  
22 extent that, in any 5 years, any portion of the share of Safe Yield allocated to the  
23 Overlying (Agricultural) Pool is not produced, such water shall be available for  
24 reallocation to members of the Appropriative Pool as follows:

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

26 (1) to supplement, in the particular year, water available from Operating Safe  
27 Yield to compensate for any reduction in the Safe Yield by reason of  
28 recalculation thereof after the tenth year of operation hereunder. [This

1 Exhibit H ¶10(a)(1) priority is sometimes called ‘unproduced Agricultural Pool  
2 water’ or ‘unproduced Ag Pool water.’ The current credited production  
3 (pumping) for agricultural groundwater is about 33,600 AFY, but that includes  
4 agricultural land irrigated with reclaimed water. The actual groundwater  
5 production for agricultural purposes is about 22,000 AFY. (Jurupa Services  
6 District’s response to Judge Reichert’s Request for Clarification, March 22,  
7 2016, page 2, lines 8–10.))]

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

9 (3) as a supplement to Operating Safe Yield, without regard to reductions in  
10 Safe Yield.”

11 6. In an order dated November 17, 1995, Conversion Claims were defined  
12 in Exhibit “H” ¶10(b) [this is the Subparagraph (b) to which the preceding  
13 paragraph--page 19, line 8--refers]. Peace I modified this definition in Exhibit “H”  
14 ¶10(b) to now state as follows:

15 (b) Conversion Claims. The following procedures may be utilized by any  
16 appropriator:

17 1) Record of Unconverted Agricultural Acreage. Watermaster shall maintain  
18 on an ongoing basis a record with appropriate related maps of all agricultural  
19 acreage within the Chino Basin subject to being converted to appropriative  
20 water use pursuant to the provisions of this paragraph. An initial  
21 identification of such acreage as of June 30, 1995 is attached hereto as  
22 Appendix 1.

23 (2) Record of Water Service Conversion. Any appropriator who undertakes  
24 to permanently provide water service to lands subject to conversion may  
25 report such intent to change water service to Watermaster. Watermaster  
26 should thereupon verify such change in water service and shall maintain a  
27 record and account for each appropriator of the total acreage involved.  
28 Should, at any time, converted acreage return to water service form the

1 Overlying (Agricultural) Pool, Watermaster shall return such acreage to  
2 unconverted status and correspondingly reduce or eliminate any allocation  
3 accorded to the appropriator involved.

4 (3) Allocation of Safe Yield Rights

5 (i) For the term of the Peace Agreement in any year in which sufficient  
6 unallocated Safe Yield from the Overlying (Agricultural) Pool is available for  
7 such conversion claims, Watermaster shall allocate to each appropriator with  
8 the conversion claim 2.0 acre-feet of unallocated Safe Yield water for each  
9 converted acre for which conversion has been approved and recorded by  
10 Watermaster.

11 (ii) In any year in which the unallocated Safe Yield water from the Overlying  
12 (Agricultural) Pool is not sufficient to satisfy all outstanding conversion claims  
13 pursuant to subparagraph (i) herein above, Watermaster shall establish  
14 allocation percentages for each appropriator with conversion claims. The  
15 percentages shall be based upon the ratio of the total of such converted  
16 acreage approved and recorded for each appropriators's [sic] account in  
17 comparison to the total of converted acreage approved and recorded for all  
18 appropriators. Watermaster shall apply such allocation percentage for each  
19 appropriator to the total unallocated Safe Yield water available for conversion  
20 claims to derive the amount allocable to each appropriator.

21 7. CONCLUSION: With the 1995 amendments, the Judgment set a  
22 prioritized list of claims upon unproduced Ag Pool water.

23 Ag Pool water--1995 Judgment amendment

24 82,800 AFY of the Ag Pool's water available to the Appropriative Pool with  
25 Appropriative Pool claims prioritized as follows:

26 (1) to supplement, in the particular year, water available from Operating Safe  
27 Yield to compensate for any reduction in the Safe Yield by reason of recalculation  
28 thereof after the tenth year of operation as required by the Judgement;

(2) pursuant to conversion claims as defined in Subparagraph (b) of Exhibit “H”  
¶10(b);  
(3) as a supplement to Operating Safe Yield, without regard to reductions in Safe Yield.

The court notes that there is currently more than 49,000 AFY of unproduced Agricultural Pool water available. (Jurupa Services District’s response to Judge Reichert’s Request for Clarification, March 22, 2016 page 2, lines 10–14.)

B. The 2000 Peace Agreement a.k.a. Peace I

1. With the agreements made in Peace I, the elements of Desalters and of water transfers entered the water allocations to the parties.

2. Peace I Section V-Watermaster Performance defined how Watermaster was to perform regarding procedures for Recharge and Replenishment. In paragraph ¶5.3(g), Watermaster was ordered to approve an “Early Transfer” from the Agricultural Pool to the Appropriative Pool of not less than 32,800 acre-feet per year which was the expected approximate quantity of water not produced by the Agricultural Pool. ¶5.3(g)(i) further stated that “the quantity of water subject to Early Transfer under this paragraph shall be the greater of (i) 32,800 acre-feet or (ii) 32,800 acre-feet plus the actual quantity of water not produced by the Agricultural Pool for that Fiscal Year that is remaining after all the land use conversions are satisfied pursuant to” the following provision: “the Early Transfer water shall be annually allocated among members of the Appropriative Pool in accordance with their pro-rata share of the initial Safe Yield.” The court notes that after this deduction, the Safe Yield water available to the Agricultural Pool became 50,000 acre-feet per year.

3. Peace I also introduced the construction and operation of Desalters in Section VII. ¶7.5 described replenishment for the Desalters provided from the following sources in the following order:

a) Watermaster Desalter replenishment account composed of 25,000 acre-feet

1 of water abandoned by Kaiser and other water previously dedicated by the  
2 Appropriative Pool;

3 (b) New Yield of the Basin, unless the water Produced and treated by the  
4 Desalters is dedicated by purchaser of the Desalter water to offset the price of  
5 Desalter water to the extent of the dedication;

6 (c) Safe Yield of the Basin, unless the water Produced and treated by the  
7 Desalters is dedicated by a purchaser of the desalted water to offset the price of  
8 Desalter water to the extent of the dedication; [and then]

9 d) Additional Replenishment Water purchased by Watermaster, the cost of  
10 which shall be levied as an Assessment by Watermaster.

11 4. The court also concludes that the conversion claims have priority over  
12 the Early Transfers because the conversion claims pre-existed the Early Transfer  
13 allocations. The conversion claims came into existence with the 1995 Judgment  
14 amendment. The Early Transfers came into existence with Peace I in 2000. The  
15 Early Transfers must be interpreted in the context of the pre-existing 1995 Judgment  
16 amendment.

17 5. CONCLUSION: With Peace I, there were major changes regarding the  
18 allocation of water among the parties as set forth in the following table.

19 Ag Pool water	Status and/or change 20 result	Comments
21 1995 Judgment 22 amendment	23 82,800 AFY of the Ag 24 Pool's water available to 25 the Appropriate Pool with 26 Appropriative Pool claims 27 prioritized as follows: 28 (1) to supplement, in the particular year, water available from Operating	

	Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof after the tenth year of operation hereunder. (2) pursuant to conversion claims as defined in Subparagraph (b) hereof. (3) as a supplement to Operating Safe Yield, without regard to reductions in Safe Yield.	
2000 Peace I–Desalters start construction and pumping water	Early Transfers of 32,800 AFY of Ag Pool water going straight to the Appropriative Pool (leaving 50,000 AFY to Ag Pool). The remaining Ag Pool water is subject to Appropriative Pool’s prioritized claims.	New Yield (with conditions) is source of water to replenish water pumped by the Desalters. Therefore Desalters do not affect Safe Yield or Operating Safe Yield. Water produced/pumped by the Desalters is not added to or subtracted from yield of the Basin.

The court concludes that Peace I interrelated Early Transfers and conversion claims in the following way. The Appropriative Pool received unproduced Ag Pool water in at least the amount of 32,800 AFY, but the Appropriative Pool could receive



1 more unproduced Ag Pool water if the Ag Pool did not produce/pump its leftover  
2 50,000 AFY after subtracting the Appropriative Pools conversion claims at the rate  
3 of 2 acre-feet per year per converted acre.

4 However, the court also concludes that Peace I did not rearrange the priority  
5 of allocation claims on unproduced/unpumped water. The priorities of the  
6 judgment remain. Specifically, the priority set forth in Judgment, Exhibit "H,"  
7 Paragraph 10.

8 EXAMPLE 1: So, for example in a particular year,

9 1. If one Appropriative Pool producer/pumper (*e.g.*, municipality, such as the City of  
10 Chino) had 1000 acres of converted land resulting in 2000 acre-feet of conversion  
11 claims (1000 acres x 2.0 acre feet of water/one acre converted), and assuming those  
12 were the only conversion claims; and

13 2. If the Ag Pool produced/pumped only 33,600 AFY leaving 49,200 AFY available  
14 for further allocation (82,800 AFY– 33,600 AFY= 49,200 AFY; the court notes that  
15 33,600 AFY is the approximate Ag Pool credited production [Jurupa response to  
16 court's clarification request, page 2, lines 9-10], but the court is using this figure only  
17 for illustration); then,

18 3. The Ag Pool water that would be available to the Appropriative Pool would be  
19 based on the following calculation

Example 1-A	Explanation	Comments
Initial Ag Pool allocation	82,800 AFY	
Ag Pool production/pumping	- 33,600 AFY	Assumption
Initial balance after production	49,200 AFY	(82,800 acre-feet – 33,600 acre-feet = 49,200 acre-feet per year)
Conversion claims	- 2000 acre-feet	1000 acres x 2.0 acre feet of water/one acre converted = 2000

		acre-feet per year. The subtraction for satisfying conversion claims before any reallocation. The conversion claims are applied first because they are set forth in the 1995 Amendment to the Judgment
Ag Pool balance after reduction for conversion claims	47,200 AFY	(49,200 acre-feet - 2000 acre-feet = 47,200 acre-feet per year) Balance: Ag Pool water available to Appropriative Pool after conversion priority claims pursuant to Judgment Exhibit "H" Paragraph 10.
Reduction for Early Transfers	- 32,800 AFY	The Early Transfer is now applied because Early Transfers were instituted in Peace I in 2000. The Early Transfer from 82,800 AFY allocation leaving 50,000 AFY for the Ag Pool itself to produce/pump and for additional claims by the Appropriative Pool pursuant to Peace I and Peace II.*
Balance: Ag Pool water available to the Appropriative Pool	14,400 AFY	(47,200 acre-feet - 32,800 acre-feet = 14,400 acre-feet per year.) This is the total Ag Pool water

1 2 3 4 5 6 7 8	after conversion priority claims and Early Transfers	available for reallocation to Appropriative Pool for production/pumping after subtraction of conversion priority claims of 2,000 acre-feet per year from and the 32,800 Early Transfer from the allotment of Ag Pool water.**
9		

10 \*It appears to the court that for convenience, many parties first simply take the  
11 reduction of the 32,800 acre-feet for Early Transfers and start these calculations with  
12 50,000 acre-feet of Ag Pool water.

- 13 1. That calculation is simply to start with the 50,000 acre-feet of  
14 unproduced/unpumped Ag Pool water and then subtract the amount 33,600  
15 acre-feet command that was actually pumped in this example. The result is  
16 16,400 acre-feet available for conversion claims.
- 17 2. Then subtract the 2,000 acre-feet for conversion claims to get the 14,400 acre-  
18 feet of Ag Pool water available for allocation to the Appropriative Pool
- 19 3. However, this procedure is inconsistent with the judgment and Peace  
20 Agreements as interpreted by the court for the reasons stated above.

21 \*\*The also court notes that the particular producer who serviced the converted acres  
22 would actually be able to pump the additional conversion claim water as an  
23 allocation.

24 EXAMPLE 2: The following example demonstrates complications arising  
25 from a decrease in the amount of Ag Pool water available to the Appropriative Pool.  
26 If the Ag Pool produced/pumped more than 48,000 AFY there would be no  
27 available water for the Appropriative Pool.  
28

1	Example 2		Comment
2	Initial Ag Pool	82,800 AFY	
3	allocation		
4	Ag Pool	48,000 AFY	Assumption
5	production/pumping		
6	Initial balance after	34,800 AFY	82,800 acre-feet – 48,000 acre-feet =
7	production		34,800 acre-feet per year
8	Conversion claims	- 2000 acre-	The subtraction for satisfying
9		feet	conversion claims before any
10			reallocation. (1000 acres x 2.0 acre
11			feet of water/one acre converted =
12			2000 acre-feet).
13	Balance: 10	32,800 AFY	34,800 acre-feet – 2,000 acre-feet =
14			32,800 acre-feet per year. Ag Pool
15			Water Available after conversion
16			priority claims pursuant to Judgment
17			Exhibit “H” Paragraph
18	Reduction for Early	- 32,800 AFY	Early Transfer of 32,800 AFY from
19	Transfers		82,800 AFY allocation leaving 50,000
20			AFY for the Ag Pool itself to
21			produce/pump. Any water which the
22			Ag Pool did not produce/pump water
23			up to the 50,000 AFY would be
24			available for allocation to the
25			Appropriative Pool pursuant to Peace
26			I and Peace II.*
27	Balance: Ag Pool	0 AFY	32,800 acre-feet -32,800 acre-feet = 0
28	water available after		acre-feet per year. There would be no

1 2 3 4 5 6 7	conversion priority claims and Early Transfers	Ag Pool water available for reallocation to Appropriative Pool after subtraction of conversion priority claims of 2,000 acre-feet and the 32,800 Early Transfer of unproduced/unpumped from the allotment of Ag Pool water.
8 9 10 11	<p>Conclusion:</p> <p>Under this scenario, the Appropriative Pool would not get any additional allocation from Ag Pool water</p>	

C. The 2007 Peace II Agreement (Peace II)

1. Peace II Agreement Paragraphs 6.2(a)(iii) and 7.1 further defined the accounting for the Desalters and Desalter Production Offsets. Paragraph 6.2(a)(iii) states as follows in pertinent part:

Peace II Desalter Production Offsets. To facilitate Hydraulic Control through Basin Re-Operation, [court note: that is, water pumped by the Desalters] in accordance with the 2007 Supplement to the OBMP Implementation Plan and the amended Exhibits G and I to the Judgment, additional sources of water will be made available for purposes of Desalter Production and thereby some or all of a Replenishment obligation. With these available sources, the Replenishment obligation attributable to Desalter production in any year will be determined by Watermaster as follows:

- (a) Watermaster will calculate the total Desalter Production for the preceding year and then apply a credit against the total quantity from: . . .
- (iii) New Yield (other than Stormwater (Peace Agreement Section 7.5(b)); . . .
- (v) Safe Yield that may be contributed by the parties (Peace Agreement Section 7.5(c));

1 (vi) any Production of groundwater attributable to the controlled overdraft  
2 authorized pursuant to amended Exhibit I to the Judgment. [The Judgment  
3 allowed for a temporary controlled overdraft, *i.e.*, production/pumping  
4 without replenishment, in order to achieve Hydraulic Control.]

5 Paragraph 7.1 provides as follows:

6 New Yield Attributable to the Desalters. Watermaster will make an annual  
7 finding as to the quantity of New Yield that is made available by Basin Re-  
8 Operation including that portion that is specifically attributable to the Existing  
9 and Future Desalters. Any subsequent recalculation of New Yield as Safe  
10 Yield by Watermaster will not change the priority set forth above for  
11 offsetting Desalter production as set forth in Article VII, Section 7.5 of the  
12 Peace Agreement. For the initial term of the Peace Agreement, neither  
13 Watermaster nor the Parties will request that Safe Yield be recalculated in a  
14 manner that incorporates New Yield *attributable to the Desalters* [emphasis in  
15 original] into a determination of Safe Yield so that this source of supply will be  
16 available for Desalter Production rather than for use by individual parties to  
17 the Judgment.

18 2. Additionally, in 2007 Peace II ¶1.1(d) defined Re-Operation as “the  
19 controlled overdraft [pumping without replenishment] of the Basin by the managed  
20 withdrawal of groundwater Production for the Desalters and the potential increase in  
21 the cumulative un-replenished Production from 200,000 [acre-feet] authorized by  
22 paragraph 3 Engineering Appendix Exhibit I to the Judgment, to 600,000 acre-feet  
23 for the express purpose of securing and maintaining Hydraulic Control as a  
24 component of the Physical Solution.” The Peace II agreement amended the Restated  
25 Judgment’s Engineering Appendix to specify the additional 400,000 acre-feet that  
26 would be dedicated exclusively to the purpose of Desalter replenishment (Restated  
27 Judgement Exhibit “I” §2(b)[3]).

28 3. Peace II injected confusion into the definitions in the chain of

1 agreements. This confusion is identified in Chino's Opposition to Watermaster's  
2 Motion regarding 2015 Safe Yield Reset Agreement Amendment of Restated  
3 Judgment, Paragraph 6, page 18, lines 19-28: Peace II, Paragraph 6.2(a)(iii) gives  
4 Watermaster a basis to calculate the total Desalter production from the preceding  
5 year and then apply against that production/pumping a "credit" (*i.e.*, a reduction)  
6 which included a number of factors, including New Yield referencing Peace I,  
7 paragraph 7.5(b). The court must resolve this confusion because it is the central  
8 opposition of JCSD, and it is an important issue going forward for the administration  
9 of water allocations.

10 a) Peace I, paragraph 1.1(aa) defines New Yield as "proven increases in yield  
11 in quantities greater than historical amounts from sources of supply  
12 including, but not limited to, operation of the Desalters (including the  
13 Chino I Desalter), induced Recharge and other management activities  
14 implemented in operational after June 1, 2000."

15 I) The court concludes that New Yield in the above paragraph means  
16 water produced/pumped by the Desalters, because that is how yield is  
17 always used, *e.g.*, Safe Yield, Operating Safe Yield, etc., and the source  
18 of supply is the Desalters as identified in the definition.

19 II) So, New Yield includes water produced/pumped by the Desalters.

20 b) Peace I, paragraph 1.1(nn) defines "Recharge and Recharge Water as  
21 "introduction of water to the Basin, directly or indirectly, ... ." Recharge  
22 references the physical act of introducing water to the Basin."

23 c) The conclusion of the court is that after Peace II, the definition New Yield  
24 now includes both Desalter operation *i.e.*, production/pumping from the  
25 Desalters, **and** induced Recharge (*i.e.*, groundwater flowing back into the  
26 Basin from the Santa Ana River as the result of Desalter operation).

27 I) Up to and including Peace II, Desalter production and recharge had  
28 always been defined as New Yield, and excluded from Safe Yield.

1 d) In its response to Judge Reichert's questions, Chino argued that SYRA's  
2 failure to give a specific definition to "Desalter-induced recharge" was  
3 purposeful because the failure allowed SYRA to use "Desalter-induced  
4 recharge" synonymously with New Yield. The court does not find  
5 "Desalter-induced recharge" to be synonymous with New Yield. The  
6 court finds that "Desalter-induced recharge" is only synonymous with  
7 "induced Recharge." Therefore Desalter-Inducted Recharge is included in  
8 the definition of New Yield, as set forth in Peace I ¶1(aa): "induced  
9 Recharge and other management activities implemented in operational  
10 after June 1, 2000" includes Desalter-induced recharge

11 I) . The court further finds that "Desalter-induced recharge" and  
12 "induced Recharge" mean water flowing back into the Basin from the  
13 Santa Ana River due to production/pumping by the Desalters lowering  
14 the ground water table in the Basin. Finally, the court notes that New  
15 Yield includes Desalter production and Desalter-induced recharge as  
16 well as Desalter overdraft.

17 (a) This result is exactly what the Desalters were designed to  
18 accomplish. They have achieved Hydraulic Control, meaning they  
19 have lowered the water table at the south end of the Basin, so that  
20 only a de minimus amount of Basin water is flows into the Santa  
21 Ana River.

22 (b) In fact the Desalters have accomplished their design objective so  
23 well that now some water flows from the Santa Ana River into the  
24 Chino Basin. The court finds that his water is New Yield as set  
25 forth above.

26 II) The court further finds that "Desalter-induced recharge" aka "induced  
27 Recharge" is measureable, part of which comes from the Santa Ana  
28 River, and is set forth in Watermaster's response to the court's



questions. This water is also known as Santa Ana River Underflow or SARU.

4. Peace II specified Desalter production/pumping replenishment to include induced Recharge, controlled overdraft, and other sources set forth in Peace II ¶6.2(a). The Peace I and Peace II agreements did not specify any additional sources of Desalter replenishment, such as Ag Pool water or Safe Yield.

5. CONCLUSION:

Now, after Peace II, there were additional sources of water for the Basin, the Desalter operation/Desalter-induced recharge, as well as they historical overdraft, as summarized below.

Ag Pool water		Comments
1995 Judgment amendment	82,800 AFY of the Ag Pool's water available to the Appropriate Pool with Appropriative Pool claims prioritized as follows: (1) to supplement, and the particular year, water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof after the tenth year of operation hereunder. (2) pursuant to conversion claims as defined in Subparagraph (b) hereof.	

	(3) as a supplement to Operating Safe Yield, without regard to reductions in Safe Yield.	
2000 Peace I–Desalters start construction and pumping water	Early Transfers of 32,800 AFY of Ag Pool water now go to the Appropriative Pool (leaving 50,000 AFY to Ag Pool). The remaining Ag Pool water is subject to Appropriative Pool’s prioritized claims. Peace I §1.1(aa) defines New Yield to include water produced/pumped from the Desalters.	New Yield (with conditions) is source of water to replenish water pumped by the Desalters. Water produced/pumped by the Desalters is New Yield and sourced by induced recharge and overdraft, As New Yield, water pumped by the Desalters is not Safe Yield or Safe Operating Yield. That water is “yield” attributable to a specific sources of supply not included in Safe Yield.  (Watermaster’s Response to Order for Additional Briefing, page 5, line 22-23.) Therefore Desalter operations do not affect

		Safe Yield or Operating Safe Yield. Water produced/pumped by the Desalters is not added to or subtracted from yield of the Basin. Water produced/pumped by the Desalters has a separate allocation.
2007 Peace II-overdraft increased	Additional 400,000 AF above the 200,000 AF provided in the Judgment for a total of 600,000 AF.	This is a diminishing pumping allocation as the overdraft goes to 0 in 2017. Its purpose was to help establish Hydraulic Control.
Peace II Desalters	Peace II ¶7.1 requires Desalter production (defined as New Yield) excluded from the definition of Safe Yield.	Desalter production reaches above 20,000 AFY. Watermaster's Response to Order for Additional Briefing, Exhibit 1.

The court concludes that Peace II did not change any of the priorities for claims on actual water production. Peace II addressed Desalter replenishment and production/pumping but did affect the priorities for allocations of unproduced Ag Pool water.

1 VI. SYRA ARTICLE 5-STORMWATER RECHARGE PLAN AND  
2 WATERMASTER ACCOUNTING ANALYSIS

3 In the instant motion, Watermaster asks the court to approve 1) a stormwater  
4 recharge plan, and 2) an accounting for allocation transfers as set forth in the Safe  
5 Yield and Reset Agreement (SYRA). The court will address these proposals  
6 separately.

7 A. Stormwater Recharge—SYRA ¶5.1

8 SYRA ¶5.1 sets forth the following provisions regarding Stormwater Recharge.

9 5.1 Stormwater Recharge. After the Effective Date and until termination of this  
10 Agreement, the Parties expressly consent to Watermaster's accounting for Basin  
11 recharge arising from stormwater as follows:

12 (a) 2001-2014 Stormwater Recharge Program. Stormwater recharge that  
13 arises from or is attributable to the 2001-2014 Stormwater Recharge Program shall  
14 be: (i) New Yield for the period 2001-2014 in the manner that it has been distributed  
15 through approved Watermaster Assessment Packages; and (ii) Safe Yield in each  
16 subsequent year. For the 2001-2014 Stormwater Recharge Program, Watermaster  
17 shall cause no reduction against Safe Yield requiring supplementation by the  
18 reallocation of a portion of the unproduced Overlying (Agricultural) Pool's share of  
19 the Basin's Safe Yield.

20 (b) Post-2014 Stormwater Recharge Projects. For the remainder of the  
21 term of the Peace Agreement, inclusive of an extension term, if any, stormwater  
22 recharge that arises from or is attributable to Post-2014 Stormwater Recharge  
23 Projects shall be allocated as set forth in this Paragraph 5.1(b).

24 (i) Interim Accounting between Resets. For any and all Post-2014  
25 Stormwater Recharge Projects completed in the interim period between  
26 subsequent Safe Yield resets, Net New Recharge attributable to specific Post-  
27 2014 Stormwater Recharge Projects shall be New Yield, as that term is defined  
28 in the Peace Agreement and will be allocated based upon observed and

1 quantified annual net-increases rather than projected future estimates of  
2 annual performance. New Yield attributable to Post-2014 Stormwater  
3 Recharge Projects shall be credited annually to the Project participants, in the  
4 Production Year in which such New Yield actually arises. Post-2014  
5 Stormwater Recharge Project New Yield is in addition to Safe Yield and  
6 therefore by definition it shall cause no reduction against Safe Yield requiring  
7 supplementation by the reallocation of a portion of the unproduced Overlying  
8 (Agricultural) Pool's share of the Basin's Safe Yield.

9 (ii) Post-Safe Yield Reset Accounting for Post-2014 Stormwater  
10 Recharge Projects. Upon any reset of the Safe Yield after 2015, any Net New  
11 Recharge that occurs as a result of specific Post-2014 Stormwater Recharge  
12 Projects that have been previously approved and fully implemented at the time  
13 of the reset shall be considered as a potential change in cultural conditions as  
14 provided in the Reset Technical Memorandum and thereafter considered a  
15 component of the Safe Yield, if the Post-2014 Stormwater Recharge Projects  
16 to which the Net New Recharge is attributable have been constructed and in  
17 operation for a minimum of five (5) years prior to the reset. The Net New  
18 Recharge will be measured and accounted for and will be made available  
19 exclusively to the members of the Appropriative Pool in accordance with  
20 Paragraph 5.1(c) below. Following a reset of the Safe Yield, Post-2014  
21 Stormwater Recharge Project recharge will be included within Safe Yield and  
22 its separate measurement and allocation shall cause no reduction against Safe  
23 Yield requiring supplementation by the reallocation of a portion of the  
24 unproduced Overlying (Agricultural) Pool's share of the Basin's Safe Yield.  
25 Moreover, Post-2014 Stormwater Recharge Projects that have been fully  
26 constructed and in operation for less than five (5) years, or the Net New  
27 Recharge from which is otherwise not included as a component of Safe Yield  
28 pursuant to the Reset Technical Memorandum, will be treated "as if" the Net

1 New Recharge were Safe Yield for the limited and exclusive purpose of  
2 quantifying the annual supplementation by the reallocation of a portion of the  
3 unproduced Overlying (Agricultural) Pool's share of the Basin's Safe Yield.  
4 Examples of how Watermaster will conduct the accounting described in this  
5 Section 5.1(b) (ii) are included in Exhibit "B" hereto.

6 (c) Participation in Post-2014 Stormwater Recharge Programs. The Parties  
7 contemplate that Post-2014 Stormwater Recharge Projects, such as those projects  
8 described in Watermaster's Court-approved 2013 Amendment to 2010 Recharge  
9 Master Plan Update, may be completed after the after the Effective Date, as part of  
10 suites of such Projects (each suite of Projects, a "Post-2014 Stormwater Recharge  
11 Program" and collectively, "Post-2014 Stormwater Recharge Programs").  
12 Watermaster shall prepare an estimate of the Net New Recharge projected to arise  
13 from or be attributable to proposed Post-2014 Stormwater Recharge Programs.  
14 Based on this pre-approval estimate, Watermaster shall quantify each member of the  
15 Appropriative Pool's proportionate share of the potential Net New Recharge  
16 benefits in accordance with its percentage of Operating Safe Yield and calculate its  
17 corresponding capital financing obligations. Each Appropriative Pool member's  
18 proportionate share of the potential Program Net New Recharge benefits and  
19 corresponding financing obligations shall be referred to as its "Participation Share" in  
20 the Program. The Participation Shares in a particular Program shall remain  
21 unchanged regardless of actual Program yield. Within six months of the Effective  
22 Date, Watermaster, with the recommendation and advice of the Pools and Advisory  
23 Committee, will develop rules and regulations for the definition of Post-2014  
24 Stormwater Programs and Participation Shares therein.

25 Any member of the Appropriative Pool may elect, in its discretion, not to  
26 participate in certain Post-2014 Stormwater Recharge Programs. In the case a  
27 member of the Appropriative Pool has cast a final vote against an approved Post-  
28 2014 Stormwater Recharge Program, then that member may elect, in its complete

1 discretion, to opt out of its Participation Share, by providing written notice to the  
2 members of the Appropriative Pool, within ninety (90) days of the approval of the  
3 Post-2014 Stormwater Recharge Program. Notice shall be provided through a  
4 request that the election be placed on the agenda of a regularly scheduled meeting of  
5 the Appropriative Pool, and offering the other members of the Appropriative Pool  
6 the right to assume its respective Participation Share of stormwater recharge New  
7 Yield or Safe Yield attributable to the Post-2014 Stormwater Recharge Program,  
8 along with the Pool member's assumption of all applicable rights and responsibilities.

9 (i) In the event that one or more members of the Appropriative  
10 Pool voting against the approval of a Post- 2014 Stormwater Recharge  
11 Program elects to opt out of its Participation Share therein, each shall  
12 permanently waive and relinquish, without limitation, all right to all the  
13 benefits accruing under its Participation Share of a Post-2014 Stormwater  
14 Recharge Program;

15 (ii) An Appropriative Pool member electing to opt out of participation  
16 in a Post-2014 Stormwater Recharge Program shall be assigned no further  
17 financial obligation attributable to a Participation Share in the Post-2014  
18 Stormwater Recharge Program that was the subject of the election;

19 (iii) Fontana Water Company (FWC), a member of the Appropriative  
20 Pool, and any successor in interest thereto, shall have the first priority and  
21 exclusive right and obligation to acquire the Participation Shares, representing  
22 up to 2,000 AFY (cumulative maximum) of projected annual average recharge  
23 arising from or attributable to one or more Post-2014 Stormwater Recharge  
24 Programs, which may be made available by one or more members of the  
25 Appropriative Pool opting out of the Post-2014 Stormwater Recharge  
26 Programs. If Participation Shares in Post-2014 Stormwater Recharge  
27 Programs are available in excess of FWC's first priority right of up to 2,000  
28 AFY under this provision, then each member of the Appropriative Pool may

1 elect to participate in the acquisition of the excess Participation Shares along  
2 with its corresponding assumption of duties associated therewith. Available  
3 Participation Shares shall be distributed among the members of the  
4 Appropriative Pool electing to acquire the Participation Shares, pro rata based  
5 on the total number of members electing to acquire, including FWC. The  
6 acquisition of any obligations and benefits pursuant to this Paragraph shall  
7 survive the expiration of the Peace Agreement, for the life of the Post-2014  
8 Stormwater Recharge Program, pursuant to the same terms and conditions  
9 generally applicable to all Project Participants.

10 (iv) FWC shall have a right of first refusal (ROFR) as to any transfer,  
11 lease, or assignment (collectively "transfer") of any portion of a Participation  
12 Share by any member of the Appropriative Pool until a cumulative maximum  
13 of 2,000 AFY of Participation Shares has been acquired by FWC. Any  
14 member of the Appropriative Pool desiring to transfer any portion of its  
15 Participation Share will provide sixty (60) days written notice of its intention to  
16 transfer to FWC along with a copy of any agreement and accompanied by a  
17 reasonable description of the transfer. Upon its receipt of written notice,  
18 FWC may, in its complete discretion, elect to match the offer and the  
19 Appropriative Pool member providing its notice of intention to transfer must  
20 sell the identified Participation Shares. After FWC has acquired a cumulative  
21 total of 2,000 AFY of Participation Shares, its right to share in Post-2014  
22 Stormwater Recharge Programs shall be limited to the provisions of Paragraph  
23 5.1(c)(iii) above. FWC's ROFR, as described in this Section 5.1(c)(iv), shall be  
24 limited only to those transfers as to which the City of Ontario is not the  
25 proposed transferee.

26 B. Analysis and orders

27 The court approves the Stormwater Recharge Plan as set forth in SYRA ¶5.1  
28 and orders Watermaster and the parties to comply for the following reasons:



1           1.     There have been no objections to this aspect of SYRA.

2           2.     The court notes that the previous Court Approved Management  
3 Agreements have not covered the aspects of stormwater recharge addressed in this  
4 paragraph.

5           3.     The court finds that the Stormwater Recharge Plan is consisted with the  
6 Court Approved Management Agreements.

7           4.     This method of dealing with stormwater recharge has the agreement of  
8 the parties. There has not been any opposition to these terms of SYRA.

9           5.     There not appear to the court to be a legal or practical reason why these  
10 provisions cannot be implemented without regard to the other terms of SYRA.

11          6.     The court recognizes that Stormwater Recharge is a necessary element  
12 for achieving the objectives of the Court Approved Management agreements.

13          7.     The court also notes that paragraph 5.1(c) provides flexibility for future  
14 stormwater recharge “yield enhancement” projects and a mechanism whereby  
15 members of the Appropriative Pool can opt out.

16          8.     The court finds that Watermaster’s prior allocation and accounting for  
17 stormwater recharge is consistent with the Court Approved Management  
18 Agreements both before and after the Safe Yield reset.

19          9.     The stormwater recharge is consistent with the Article X Section 2 of  
20 the California Constitution.

21  
22 C.     Desalter-Induced Recharge Allocations, Early Transfers, Land Use  
23 Conversion–SYRA ¶5.2 and SYRA ¶5.3.

24           SYRA ¶5.2 sets forth the following provisions regarding Desalter Induced  
25 Recharge, and SYRA ¶5.3 sets forth the following provisions regarding Post 2030  
26 Land Use Conversions and Early Transfers.

27 5.2    Desalter-Induced Recharge. After the Effective Date and until termination of  
28 this Agreement, the parties expressly consent to Watermaster’s accounting for Basin

1 recharge arising from or attributable the Desalters as follows:

2 (a) 2001-2014 Desalter-Induced Recharge. Induced recharge that arises  
3 from or is attributable to the Desalters for the period of production years 2001-2014  
4 shall be accounted for as Safe Yield, in the manner it has been distributed through  
5 approved Watermaster Assessment Packages, shall not be considered New Yield, and  
6 shall not be considered to have been available for production by the Desalters.

7 (b) 2015-2030 Desalter-Induced Recharge. For the production years of  
8 2015- 2030, Watermaster shall account for induced recharge that arises from or is  
9 attributable to the Desalters as equal to fifty (50) percent of the total Desalter  
10 Production during each applicable production year up to a maximum of twenty-  
11 thousand (20,000) AFY of recharge. Consistent with Paragraph 6.2(a)(iii) of the  
12 Peace II Agreement, Watermaster shall deem the induced recharge as having been  
13 produced by the Desalters. During each applicable production year, Watermaster  
14 shall reduce Safe Yield by an amount equal to fifty (50) percent of the total Desalter  
15 Production, up to a maximum of twenty-thousand (20,000) AFY, and require a  
16 corresponding supplementation by the reallocation of available unproduced  
17 Agricultural Pool's share of the Basin's Safe Yield.

18  
19 Claims for reallocation of the remaining unproduced quantity of the Agricultural  
20 Pool's share of Safe Yield shall be satisfied consistent with section 6.3(c) of  
21 Watermaster's Rules and Regulations, as amended as part of the Peace II Measures,  
22 and the October 8, 2010 Order Approving Watermaster's Compliance with  
23 Condition Subsequent Number Eight and Approving Procedures to be used to  
24 Allocated Surplus Agricultural Pool Water in the Event of a Decline in Safe Yield.

25 (c) 2031-2060 Desalter-Induced Recharge. Should the term of the Peace  
26 Agreement be extended pursuant to Paragraph 8.4 thereof, the treatment of Desalter-  
27 Induced Recharge shall be subject to the negotiation of a new and separate  
28 agreement among the Parties to the Judgment. The accounting provided for in

1 Section 5.2(b), above, shall be without prejudice to the negotiation of such a new and  
2 separate agreement among the Parties to the Judgment. Unless otherwise agreed by  
3 the Parties or ordered by the court, during the extension term, Watermaster shall not  
4 consider such recharge to require supplementation by the reallocation of a portion of  
5 the unproduced Agricultural Pool's share of Safe Yield.

6  
7 5.3 Post-2030 Priority among Land Use Conversion and Early Transfer Claims.

8 At the expiration of the Peace II Agreement, the Peace II provisions relating to the  
9 distribution of surplus water by the Agricultural Pool requiring that claims for the  
10 Early Transfer of 32,800 AFY and for Land Use Conversion be treated equally are  
11 expressly repealed including (i) the amendment to Section 6.3(c) of Watermaster's  
12 Rules and Regulations, pursuant to the Peace II measures, and (ii) Section III.(6) of  
13 the October 8, 2010 Order Approving Watermaster's Compliance with Condition  
14 Subsequent Number Eight and Approving Procedures to be used to Allocate Surplus  
15 Agricultural Pool Water in the Event of a Decline in Safe Yield. In any Peace  
16 Agreement extension term, the previous changes to Restated Judgment, Exhibit "H",  
17 Paragraph 10(b)(3)(i) effectuated by Paragraph 4.4(c) of the Peace Agreement, which,  
18 to the extent sufficient unallocated Safe Yield from the Agricultural Pool is available  
19 for conversion claims, allocate 2.0 acre-feet of unallocated Safe Yield water for each  
20 converted acre, shall remain in effect.

21  
22 D. The court now summarizes the effect of these SYRA proposals as follows:

Ag Pool water		Comments
1995 Judgment amendment	82,800 AFY of the Ag Pool's water available to the Appropriate Pool with Appropriative Pool claims prioritized as follows:	

	<p>(1) to supplement, and the particular year, water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof after the tenth year of operation hereunder.</p> <p>(2) pursuant to conversion claims as defined in Subparagraph (b) hereof.</p> <p>(3) as a supplement to Operating Safe Yield, without regard to reductions in Safe Yield.</p>	
<p>2000 Peace I— Desalters start construction and pumping water</p>	<p>Early Transfers of 32,800 AFY of Ag Pool water now goes to the Appropriative Pool (leaving 50,000 AFY to Ag Pool). The remaining Ag Pool water is subject to Appropriative Pool's prioritized claims.</p>	<p>New Yield (with conditions) is source of water to replenish water pumped by the Desalters. Therefore Desalters do not affect Safe Yield or Operating Safe Yield. Water produced/pumped by the Desalters is not added to or subtracted from Safe Yield or</p>

		Operating Safe Yield of the Basin.
2007 Peace II-overdraft increased	Additional 400,000 AF above the 200,000 AF provided in the Judgment for a total of 600,000 AF.	This is a diminishing pumping allocation as the overdraft goes to 0 in 2017.
SYRA proposal: Step 4 (see column to right for Steps 1-3): SYRA ¶5.2(b) subtracts 50% of total Desalter production up to 20,000 AFY from Ag Pool Water and then adds that 50% of total Desalter production up to 20,000 AFY to Safe Yield (to make up for the subtraction in Step 3).*	SYRA proposal Step 1: The Desalter production/pumping up to 20,000 AFY is allocated to the Desalters, not as Safe Yield or Safe Operating Yield [or New Yield]. Step 2: Under SYRA ¶5.2(b) one-half of the source of Desalter production up to 20,000 AFY is attributed to "Desalter-induced recharge." Desalter-induced Recharge means water flowing back into the Basin from the Santa Ana River. Step 3: SYRA then subtracts the other half of Desalter production up to 20,000 AFY from Safe Yield.	
<b>Additional SYRA Effects: Step 5</b> (see above for Steps 1-4)		

1 The Ag Pool water allocation is reduced by up to 20,000 AFY for the Desalters.  
2 SYRA is unclear where the priority lies with respect to priority of allocation as  
3 required by Judgment Exhibit "H" Paragraph 10. The court orders that those  
4 priorities must be followed. Because the court has ordered that those priorities be  
5 followed, court concludes that it cannot order these provisions of SYRA. At best  
6 SYRA is ambiguous with respect to following the priorities set by the Judgment  
7 and the Court Approved Management Agreements. At worst, SYRA contradicts  
8 them.

9 \* So, the court concludes that previous to SYRA, the Desalter water was considered  
10 to have its own source (Desalter-Induced Recharge and/or overdraft) and its own  
11 production allocation (New Yield). Now under SYRA:

12 1) All of the induced recharge gets allocated to water produced/pumped by the  
13 Desalters.

14 2) Watermaster reduces Safe Yield by 50% of the Desalter production up to 20,000  
15 AFY.

16 3) Then, Watermaster adds to Safe Yield 50% of the Desalter production up to  
17 20,000 AFY, from water allocated to the Ag Pool, to make up for (aka backfill) the  
18 reduction in Safe Yield allocated to Desalter production.

19 4) This means that the availability of Ag Pool water does down and thereby the  
20 availability of unproduced Ag Pool water for the priorities set forth in the Judgment  
21 and the Court Approved Management Agreements. The priorities are also set forth in  
22 Watermaster Rules and Regulations ¶6.3(a).

23 5) Elaborating on Example 1 from Section V.B.2 of this order above, the court's  
24 analysis is as follows

Example 1-B	Explanation	Comment
Initial Ag Pool allocation	82,800 AFY	Judgment
Ag Pool	- 33,600 AFY	Assumption based the current

production/pumping		credited production (pumping) for agricultural groundwater is about 33,600 AFY, but that includes agricultural land irrigated with reclaimed water. The actual groundwater production for agricultural purposes is about 22,000 AFY. Jurupa Services District's response to Judge Reichert's Request for Clarification, March 22, 2016 page 2, lines 8–10.]
Initial balance after production	49,200 AFY	82,800 acre-feet – 33,600 acre-feet = 49,200 acre-feet
Conversion claims	- 2000 acre-feet	Assumption: The subtraction for satisfying conversion claims before any reallocation. (1000 acres x 2.0 acre feet of water/one acre converted = 2000 acre-feet).
Balance:	47,200 AFY	49,200 acre-feet - 2000 acre-feet = 47,200 acre-feet. Ag Pool Water available after conversion priority claims pursuant to Judgment Exhibit "H" Paragraph 10
Reduction for Early Transfers	- 32,800 AFY	Basic Early Transfer from 82,800 AFY allocation leaving 50,000 AFY for the Ag Pool itself to

		produce/pump and for additional claims by the Appropriative Pool pursuant to Peace I and Peace II.*
Balance	14,400 AFY	(47,200 acre-feet - 32,800 acre-feet = 14,400 acre-feet. This is the Ag Pool water available for reallocation to Appropriative Pool after subtraction of conversion priority claims of 2,000 acre-feet from and the 32,800 Early Transfer of unproduced/unpumped from the allotment of Ag Pool water.

Now, to examine the effect of SYRA on the Appropriative Pool

Starting balance available Ag Pool water	14,400 AFY	Total Ag Pool water available for production/pumping from the example above
Desalter reallocation	- 20,000 AFY	SYRA Desalter reallocation: 20,000 AFY of Desalter production is allocated from Ag Pool water to Safe Yield.
Balance:	- 5,600 AFY	A negative amount. This plausible scenario assumes 2,000 AFY of conversion claims. The negative balance shows that this scenario under SYRA would not leave sufficient Ag Pool water for



		that amount of conversion
		claims. In order to meet
		conversion claims and Early
		Transfer allocations, the Ag Pool
		would only be able to
		produce/pump 26,000 AFY, well
		below their current credited
		pumping. Calculation follows:
		82,800/initial allocation
		– 26,000/pumped = 56,800
		56,800 – 2,000/conversion
		claims = 54,800
		54,800 – 32,800/Early Transfer
		= 20,000
		20,000 – 20,000/Desalter
		reduction from Ag Pool
		Allocation = 0

The court concludes that there is no basis in the Judgement or any of the Court Approved Management Agreements for the post SYRA result identified in the plausible scenario above.

E. Further Analysis and orders:

1. The court denies Watermaster's motion with respect to the implementation of ¶5.2 and ¶5.3 of SYRA for the following reason:

- a) The court concludes that SYRA paragraphs 5.2 and 5.3 fundamentally change the allocations of Appropriative Pool and of Ag Pool water. Those fundamental changes are inconsistent with the Judgment and the Court-Approved Management Agreements

- 1           b)   Peace I and Peace II both define Desalter production as within the  
2           definition of New Yield and therefore outside of the definition of Safe  
3           Yield. Through a several step re-allocation reassignment described  
4           above and summarized in this section of the court's order. SYRA now  
5           moves Desalter production into Safe Yield. The parties have not  
6           demonstrated any legal or practical requirement which allows this.  
7           Peace I and Peace II prohibit this.
- 8           c)   The court concludes that Peace II Agreement Paragraphs 6.2(a)(iii) and  
9           7.1 provide that through 2030 (the initial term of Peace I Agreement as  
10          set forth in ¶8.2) recharge attributable to the Desalters is allocated for  
11          Desalter Production and not allocated as Safe Yield producible (*i.e.*,  
12          water available to be pumped without a replenishment obligation by  
13          purchase or otherwise).
- 14          I)   Peace II ¶7.1 excluded New Yield attributable to the Desalters from  
15          a determination of Safe Yield, at least for the 30 year term of Peace  
16          Agreement.
- 17          II)   Peace I ¶1.1(aa) defines New Yield to include induced Recharge.
- 18               (a)   The court finds that induced Recharge includes Desalter-  
19               induced recharge.
- 20          III)   The court finds that Peace I ¶7.5 defines replenishment water for  
21          the Desalters includes New Yield, but not Safe Yield.
- 22          IV)   The court finds that Peace II ¶7.1 states that no party can  
23          incorporate New Yield attributable to the Desalters into Safe Yield.
- 24               (a)   In contradiction to Peace I and Peace II, SYRA ¶5.2(a)  
25               explicitly defines Desalter-induced recharge as Safe Yield, in  
26               contradiction to Peace I and Peace II.
- 27          V)   In contradiction to the Peace I and Peace II, the court finds that  
28          SYRA attempts to incorporate New Yield from the Desalters into

1 Safe Yield through the accounting method of 1) taking Desalter  
2 induced yield water coming from Desalter-induced recharge, then 2)  
3 moving that water into Safe Yield, then 3) backfilling Safe Yield  
4 from unproduced Ag Pool water.

- 5 d) The analysis above shows that these SYRA provisions are contrary to  
6 the Judgment and the Court Approved Management Agreements,  
7 specifically Peace I and Peace II. These provisions can prevent the  
8 application of the Judgment provisions regarding conversion claims.  
9 They are invalid.
- 10 e) There is no basis in the Judgment or the Court Approved Management  
11 Agreements for the attribution of water production from Desalters into  
12 the definition of Safe Yield.
- 13 f) There is no basis in the Judgment or any of the Court Approved  
14 Management Agreements for the splitting and reallocation of Desalter  
15 production/pumping to one-half to Desalter-induced recharge and one-  
16 half to Safe Yield.
- 17 g) There is no basis in the Judgment or any of the Court Approved  
18 Management Agreements to reallocate Ag Pool water to Safe Yield to  
19 make up for the Safe Yield reallocated to the Desalters.
- 20 h) Due to the Desalters, there is now recharge coming from the Santa Ana  
21 River back into the Chino Basin. SYRA Paragraph 5.2(b) takes the  
22 Peace I and Peace II agreements one step—wrongfully—farther by  
23 identifying how this recharge quantity will be estimated, *i.e.*, 50% of  
24 Desalter Production, and then further specifies that amount of recharge  
25 will be allocated to Desalter production and not to the parties as part of  
26 their allocation of the Safe Yield. There is no legal basis in the  
27 Judgment or the Court Approved Management Agreements for this  
28 redefinition of Safe Yield to include of 50% of Desalter Production up

1 to 20,000 AFY through a mechanism of passing the amounts through  
2 the Appropriative Pool allocation.

3 i) SYRA attempts now to remove the special exception for New Yield  
4 from Desalter induced recharge and production and incorporate it into  
5 Safe Yield. The mechanism by which SYRA attempts to do this is by 1)  
6 taking half of the Desalter production and sourcing that  
7 production/pumping from Desalter induced recharge from the Santa  
8 Ana River and 2) sourcing the other half from the Appropriative Pool  
9 through unproduced Ag Pool water. The court concludes and finds  
10 that this attempt is not justified because it can interfere with the priority  
11 of claims on unproduced Ag Pool water set forth in the judgment and  
12 the Court-Approved Management Agreements.

13 j) SYRA ¶5.2 and ¶5.3 contradict and conflict with Peace I and Peace II.

14 I) Peace II ¶7.1 requires neither Watermaster nor the parties to request  
15 that safe yield be recalculated in a manner that incorporates New  
16 Yield *attributable to the Desalters* into the determination of Safe Yield  
17 so that this source of supply will be available for Desalter  
18 Production rather than for use by individual parties to the judgment.  
19 (Emphasis in original.)

20 II) SYRA now includes New Yield in the determination of Safe Yield in  
21 two ways.

22 (a) First, SYRA takes up to 20,000 AFY away from Safe Yield  
23 through Desalter Production.

24 (b) Second, SYRA adds back up to 20,000 AFY to Safe Yield  
25 from unproduced Ag Pool water.

26 (c) The net change to Safe Yield is 0, but available Ag Pool water  
27 for allocation is reduced up to 20,000 AFY. This re-  
28 allocation, re-accounting, is not justified or supported in the

1 Peace I, Peace II, Watermaster Rules and Regulations, or the  
2 court's orders of implementation.

- 3 k) The court does not find a legal or factual basis for determining a post-  
4 2030 priority among land use conversion and early transfer claims. The  
5 priority is set forth in the judgment and as specified in this order  
6 l) The court's 2010 order does not require the implementation of ¶5.2 or  
7 ¶5.3.

8 Section III.(6) of the October 8, 2010 order states:

9 Watermaster is ordered to utilize the procedures regarding the re-  
10 allocation of surplus Agricultural Pool water the event of a  
11 decline in Safe Yield as described in the December 2008 staff  
12 report and the December 4, 2008 memorandum from legal  
13 counsel. Specifically, in the event that Operating Safe Yield is  
14 reduced because of a reduction in Safe Yield, Watermaster will  
15 follow the hierarchy provided for in the Judgment, exhibit "H,"  
16 by first applying the unproduced Agricultural Pool water to  
17 compensate Appropriative Pool members for the reduction in  
18 Safe Yield. (Judgment, Exhibit "H," paragraph 10 (a).) If there  
19 is unallocated water left, Watermaster will then follow the  
20 remainder of the hierarchy and reallocate unallocated Agricultural  
21 Pool water next to conversion claims then to supplement the  
22 Operating Safe Yield without regard to reductions in Safe Yield  
23 according to the guidance provided by Peace Agreement I & II  
24 and Watermaster's rules and regulations as amended. If, after  
25 applying the unallocated Agricultural Pool water to compensate  
26 the Appropriate Pool members for the reduction in Safe Yield,  
27 the actual combined production from the Safe Yield made  
28 available to the Agricultural Pool, which includes overlying

1 Agricultural Pool uses combined with land use conversions and  
2 the Early Transfer, exceeds 82,800 in any year, the amount of  
3 water available to members of the Appropriative Pool shall be  
4 reduced pro rata in proportion to the benefits received according  
5 to the procedures outlined in Watermaster Rules and  
6 Regulations.

7 a) In considering the reference to Watermaster Rules and Regulations  
8 in the preceding paragraph, the court now considers the order vague. In  
9 the instant order, the court has clarified that Watermaster must follow the  
10 priorities set forth in the Judgment for allocations of unproduced Ag Pool  
11 water.

12 I) The court has the continuing jurisdiction to interpret and apply  
13 its previous orders in light of changing circumstances. In light of the  
14 instant motion, the court it doing so.

15 II) JCSD correctly points out that pursuant to the Judgment ¶15 the  
16 court is authorized “to make such further or supplemental orders or  
17 directions as may be necessary or appropriate for interpretation,  
18 enforcement or tearing out of this judgment ... .”

19 III) Because there has not been a reset in Safe Yield, the court  
20 does not find that there has been a detrimental reliance on the court’s  
21 October 8, 2010 Order. This would not be the first time that the  
22 court’s orders and interpretations thereof have the subject of further  
23 litigation.

24 b) Watermaster’s further response to order for additional briefing, filed  
25 April 11, page 3, lines 15-19 states:

26 Both responses provided by the City of Chino and JCSD omit  
27 the key fact: Section 6.3(c) Watermaster Rules and Regulations,  
28 as amended pursuant to Peace II measures provides that water

1 unused by members of the Agricultural Pool shall be divided  
2 equally between Land Use Conversions and Early Transfers. The  
3 Court's October 8, 2010 Order provides that this shall be done  
4 even if the safe yield declines. For the first time, approximately  
5 five years following this Order, the City and JCSD would set it  
6 aside and thereby unwind accounting, court approvals, and  
7 agreements impliedly if not expressly made in reliance thereon.

8 c) No party has offered any specific detriment that would occur from  
9 the court's instant orders regarding the priorities.

10 d) Watermaster is relying on its own interpretation of its own rules and  
11 regulations which the court does not accept for the reasons set forth  
12 herein. The court has clarified its October 8, 2010 Order.

13 I) The court finds also that in the current circumstances, the  
14 application of that Order III.(6) is also ambiguous. SYRA's reference  
15 to that order's provision does not help in its clarification or application.

16 II) Watermaster argues that "in the event that Operating State Yield  
17 is reduced because of a reduction in Safe Yield, Watermaster will follow  
18 the reallocation hierarchy provided for in the Appropriative Pool  
19 Pooling Plan by first applying the unallocated Ag Pool water to  
20 compensate the Appropriate Pool members for the reduction in safe  
21 yield. (Restated Judgment, exhibit "H), paragraph 10 (a).) If, thereafter,  
22 there is unallocated water left, Watermaster then followed the  
23 remainder of the hierarchy and reallocate unallocated agricultural Pool  
24 water next to land use conversion claims and Early Transfer, and then  
25 to supplement the Operating Safe Yield without regard reductions in  
26 safe yield." (Watermaster's Reply to Oppositions to Motion regarding  
27 2015 Safe Yield Recent Agreement, Amendment Restated Judgment,  
28 Paragraph 6, page 24, lines 7-14.)

1                   III)       This argument equates land use conversion claims and  
2 Early transfer claims. This argument is incorrect for the reasons stated  
3 herein. Additionally:

4                   (a) The court's order filed October 8, 2010, paragraph III.(6)  
5 actually states:

6                   Watermaster is ordered to utilize the procedures regarding the  
7 re-allocation of surplus Agricultural Pool water in the event of  
8 a decline in Safe Yield as described in the December 2008  
9 staff report and December 4, 2008 memorandum from legal  
10 counsel. Specifically, in the event that the Operating Safe  
11 Yield is reduced because of a reduction in Safe Yield,  
12 Watermaster will follow the hierarchy provided for in the  
13 Judgment, Exhibit "H," by first applying the unallocated  
14 Agricultural Pool water to compensate the Appropriate Pool  
15 members for the reduction in Safe Yield. (Judgment, Exhibit  
16 "H," Paragraph 10(a).) If there is unallocated water left,  
17 Watermaster will then follow the remainder of the hierarchy  
18 and reallocate unallocated Agricultural Pool water next to  
19 conversion claims then to supplement Operating Safe Yield  
20 without regard to reductions in Safe Yield according to the  
21 guidance provided by Peace Agreement I & II and  
22 Watermaster's Rules and Regulations as amended. If, after  
23 applying the unallocated Agricultural Pool water to  
24 compensate the Appropriate Pool members for the  
25 reduction in Safe Yield, the actual combined production from  
26 the Safe Yield made available to the Agricultural Pool, which  
27 includes overlying Agricultural Pool uses combined with land  
28 use conversions and the early transfer, exceeds 82,800 in any



1 year, the amount of water available to members of the  
2 Appropriative Pool shall be reduced pro rata in proportion to  
3 benefits received according to the procedures outlined in the  
4 Watermaster Rules and Regulations.

5 IV) This paragraph III.(6) provides no basis to equate land use  
6 conversions and Early Transfers. The specific language of the order  
7 requires Watermaster to follow the hierarchy in Judgment, Exhibit "H"  
8 which does not include, or even mention, Early Transfers. Early  
9 transfers were an aspect of Peace I, and the court has interpreted and  
10 ordered the hierarchy to require conversion claims to have priority over  
11 Early Transfer claims.

12 e) The court rejects and denies the implementation of SYRA ¶5.3  
13 specifically because, as with SYRA ¶5.2, this provision has the same  
14 problems of interpretation of the court's 2010 Order Approving  
15 Watermaster's Compliance with Condition Subsequent Number Eight and  
16 Approving Procedures to be used to Allocate Surplus Agricultural Pool  
17 Water in the Event of a Decline in Safe Yield.

18 f) Watermaster's erroneous interpretation of the order of priorities is  
19 not a basis to continue that erroneous interpretation. If Watermaster has  
20 to make a reallocation, then it must do so in order to follow the court's  
21 order. A wrong practice can be long-standing, and still be wrong. A wrong  
22 practice cannot be a basis of prejudice.

23 g) The court rejects any argument that this issue is subject to issue  
24 preclusion. The specific issues raised by the oppositions to the motion  
25 have not been specifically addressed by the court. They are not barred by  
26 laches. The issues have been timely raised within the context of the instant  
27 motion, and the court always retains jurisdiction to modify its orders as  
28 those orders are drawn to the attention of the court, and the court

determines they require modification for the reasons set forth in this order.

F. Dispute re priority of claims

A dispute has arisen concerning the priority of claims. The dispute concerns the priority of allocation claims to unproduced/unpumped Ag Pool water. The 1978 Judgment, Exhibit "H," Paragraph 10 was very specific as set forth in section A of this ruling above. For convenience, it is repeated here.

Paragraph 10 described "Unallocated Safe Yield Water" as follows:

To the extent that, in any 5 years, any portion of the share of Safe Yield allocated to the Overlying (Agricultural) Pool is not produced, such water shall be available for reallocation to members of the Appropriative Pool as follows:

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

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

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

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

Confusion has arisen with respect to the relationship between the Judgment, Exhibit "H," Paragraph 10 on the one hand, and Watermaster Rules and Regulations ¶6.3(a) on the other. Watermaster Rules and Regulations ¶6.3(a) states as follows:

Accounting of Unallocated Agricultural Portion of Safe Yield. In each year, the 82,800 acre-feet being that portion of the Safe Yield Made available to the Agricultural Pool under the Judgment, shall be made available:

- 1 (i) To the Agricultural Pool to satisfy all demands for overlying  
2 Agricultural Pool lands;  
3 (ii) To land-use conversions were completed prior to October 1,  
4 2000;  
5 (iii) To land use conversions that have been completed after October  
6 1, 2000; and  
7 (iv) To the Early Transfer of 32,800 acre-feet from the Agricultural  
8 Pool to the Appropriative Pool in accordance with their pro-rather  
9 assigned share of Operating State Yield.

10 The confusion arises because Watermaster Rules and Regulation ¶6.3(a) does  
11 not explicitly confirm the priority of allegations set forth in the Judgment and as  
12 ordered by the court.

13 Chino has argued that

14 [T]he members of the Appropriative Pool have received the right to  
15 participate in annual allocations of the Unproduced Agricultural Pool  
16 Water instead of every five years called “Early Transfers” (Paragraph  
17 5.3(f-g), Peace Agreement) and the right to an equal priority of Early  
18 Transfers with Land Use Conversion Claims, which have a higher  
19 priority under the Judgment, in order to maximize the amount of their  
20 Early Transfer water to the appropriators do not have Land Use  
21 Conversion Claims. (Paragraph 3.1(a)(i) and Attachment “F”, Peace II  
22 Agreement). City of Chino’s Opposition Watermaster Motion  
23 regarding 2015 Safe Yield Reset Agreement, Amendment of Restated  
24 Judgment, Paragraph 6, page 13, lines 19-25.

25 Attachment “F” refers to the Watermaster Rules and Regulations 6.3(c). As  
26 stated above, the court finds Watermaster Rules and Regulations 6.3(c) ambiguous.

27 The court finds that the Judgment must govern and take priority and  
28 precedent for the interpretation of any Watermaster rule or regulation, including

1 Watermaster Rules and Regulations 6.3(c).

2 At this time, the court additionally orders as follows:

3 A. The order of priorities set forth in the Judgment, Exhibit "H," Paragraph  
4 10 must be followed; and

5 B. Watermaster Rules and Regulations ¶ 6.3, and particularly ¶¶ 6.3(a) and (c),  
6 are to be interpreted to follow the priorities set forth in Judgment, Exhibit "H,"  
7 Paragraph 10. In particular, conversion claims are to receive a higher priority than  
8 Early Transfer claims for the following reasons:

9 (1) The conversion claims are set forth in the judgment;

10 (2) Early Transfer claims were a creation of Peace I;

11 (3) Early Transfer claims did not affect the priority of claims set forth in  
12 the judgment;

13 (4) Early Transfer claims were ordered after the judgment and so must  
14 be considered subordinate to the original terms of the judgment.

15 (5) The parties to Peace I made their agreement in the context of the  
16 judgment and therefore used the Judgment priorities as a basis for additional  
17 allocations of Ag Pool water.

18  
19 V. SAFE STORAGE MANAGEMENT MEASURES

20 A. Through the facilitation and nondisclosure agreement (FANDA) Watermaster  
21 attempted to facilitate an agreement among all parties avoid an accelerated  
22 cumulative draw on Excess Carry Over stored water in order to avoid undue risks.  
23 SYRA had provisions to establish a mechanism for a safe storage reserve of 130,000  
24 AF of water in the non-Supplemental Water storage accounts of the members of the  
25 Appropriative Pool as a reserve sufficient to protect the Basin. However, the  
26 concern for basin protection was balanced with temporary needs in the event of an  
27 emergency or to support Desalter Replenishment. Up to 100,000 AF could be  
28 accessed in the event of an emergency subject to conditions

- a) The plan which Watermaster attempted to facilitate is identified in SYRA as “the safe storage reserve and safe storage management plan” or the safe storage management measures (SSMM).
- b) The City of Chino (Chino) has the largest component of Excess Carry-Over water and was the most significantly affected party.
- c) Chino refused to agree to SSMM.

B. The court rejects the adoption of the Safe Storage Management Measures set forth in the SYRA Article 6. The court is not going to set forth the provisions of SYRA Article 6 because the court is rejects the article as a whole.

C. The court rejects Article 6 of SYRA for the following reasons:

1. Watermaster states that access to safe storage in the short term is extremely remote.
2. The volume in stored water accounts of Appropriative Pool members is about 357,000 AF as of June 30, 2014.
3. The Judgment Parties presently lack the infrastructure capability (wells and pipelines) that would produce the quantity of water from storage that would trigger production from the safe storage reserve that is identified in SYRA.
4. Article 6 is essentially a statement of intent without specificity of implementation. The court refuses to consider or authorize an inchoate plan.
  - a) Although Watermaster argues that the Safe Storage Management Agreement provisions are still subject to “stakeholder process get to be initiated” (Watermaster’s Reply to Oppositions to Motion regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, page 1, line 18), the court does not approve policy statements and therefore rejects any implementation.
5. The Safe Storage Technical Memorandum (Exhibit E to the motion)

1 does not set forth a factual basis for the court to order the parties to proceed with  
2 the provisions of Article 6. While the memorandum states that the SSMM will not  
3 cause Material Physical Injury or undesirable results, the memorandum does not  
4 include that the SSMM are essential to the OBMP.

- 5 a) However, the court encourages the parties to continue to negotiate  
6 SSMM, and notwithstanding this ruling, the court of course reserves the  
7 option to revisit the plan set forth in Article 6 or similar storage  
8 management plans.

9 6. The court notes that from 2000 to 2014, the short-term actual measured  
10 net recharge was less total rights allocated to the judgment Parties by as much as  
11 130,000 AF.

- 12 a) From this the court concludes that during this period from 2000 to  
13 2014, after offsets for production, there was recharge to the basin in  
14 excess of what water was actually produced by as much as 130,000 AF.  
15 b) This recharge was accounted for in the storage of Excess Carry-Over  
16 water.  
17 c) The court finds that Watermaster was not biased in its facilitation for  
18 the SYRA.

19 7. The court does not reach the arguments of Chino that the SSMM  
20 constitutes a “taking”.

21 8. The safe storage measures are not required by the physical solution of  
22 the Judgment, Peace I, Peace II, the court approved management agreements, the  
23 OBMP, the court orders of implementation, or Article X, section 2 of the California  
24 Constitution.

25  
26 D. Additional bases for ruling

27 1. The court has refused to implement the sections of SYRA identified  
28 above for the reasons set forth above. In the court’s view, those reasons are

1 sufficient under the law. Therefore, the court has not addressed other objections  
2 raised by the parties, such as those of the City of Chino, that Watermaster has failed  
3 to prove a change in circumstances, that Watermaster has improperly advocated for  
4 certain parties, that the parties are collaterally estopped from re-litigating the parties'  
5 rights, that the parties are equitably estopped from reducing their replenishment  
6 obligations, that SYRA fails to comply with CEQA, that SYRA provisions resulted in  
7 an unlawful taking of Chino's property.

8         2. Although the court understands the necessity of accounting for  
9 Desalter induced recharge from the Santa Ana River, the court does not find a basis  
10 in the law, the Judgment, or the Court Approved Management Agreements for  
11 simultaneously reducing Safe Yield and adding unproduced/unpumped Ag Pool  
12 water to account for Desalter induced recharge.

13             a) The court encourages the parties and Watermaster to continue  
14 efforts to come to an agreement on the allocation of Desalter induced  
15 recharge.

16         3. Withdrawal of water from storage is already subject to limitations that it  
17 be done without Material Physical Injury. (Watermaster Rules and Regulations, ¶8.1.)

18         4. Watermaster argues that the court should approve SYRA because it is  
19 only a confirmation of "interpretation of the manner in which Watermaster should  
20 comply with the provisions of the Court Approved Management Agreements.  
21 (Watermaster's Reply to Oppositions to Motion regarding 2015 Safe Yield Reset  
22 Agreement, Amendment of Restated Judgment, Paragraph 6, page 10, line 26.)

23             a) The court does not accept this argument. The court interprets  
24 SYRA as an attempt for a major qualitative revision of the Court Approved  
25 Management Agreements, but the Court Approved Management  
26 Agreements do not support the SYRA revision for the reasons stated  
27 herein.

28             b) Although many parties have approved SYRA, parties' approval or

disapproval of SYRA is not a legal basis for the court to enforce SYRA. The court must look to the previous agreements of the parties, the previous court orders, the Court approved Management Agreements, the Judgement, and the California Constitution.,

Date: September 23, 2016

Judge Stanford E. Reichert  
San Bernardino County Superior Court



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

11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT,

13 Plaintiff,

14 vs.

15 CITY OF CHINO, et al.,

16 Defendants  
17

CASE NO. RCV 51010

[Proposed]  
Rulings Re Objections of City of Chino  
to Declaration of Kavounas

Date: September 23, 2016  
Time: 1:30 PM  
Department: S35

18 With respect to all of the objections of the City of Chino to the declaration of  
19 Kavounas, the court's rulings are in the following format:  
20

21 Declaration citation

22 Objection and Watermaster response

23 Ruling  
24

25 1. "To date, Watermaster has paid WEI approximately \$1,125,000 for the work  
26 undertaken in the creation of the Updated Basin Model and the Updated Basin  
27 Model's calculation of the Basin yield during this Safe Yield recalculation and  
28 reset process." (Para. 3, lines 5-7.)

1 Lacks foundation. (Evid. C. §702.)

2 Irrelevant and immaterial. (Evid. C. §350.)

3 **WATERMASTER'S RESPONSE:**

4 Evidence Code Section 210 defines relevant evidence as evidence, including  
5 evidence relevant to the credibility of a witness or hearsay declarant, having any  
6 tendency in reason to prove or disprove any disputed fact that is of consequence  
7 to the determination of the action. The statement provides background  
8 information on the work performed by WEI, which helps to form the basis of  
9 Watermaster's motion. Evidence Code Section 403(a)(2) sets forth that  
10 foundation is sufficient where the "preliminary fact is within the personal  
11 knowledge of a witness concerning the subject matter of his testimony." As  
12 declarant is the General Manager for the Watermaster and declares that he has  
13 knowledge of the actions taken, he has the appropriate foundation for this  
14 statement.

15 Overruled

16  
17 2. "At the request of the members of the Appropriative Pool, Watermaster  
18 facilitated discussion sessions among the Parties." (Para. 5, lines 14-15.)

19 Lacks foundation. (Evid. C. §702.)

20 Irrelevant and immaterial. (Evid. C. §350.)

21 **WATERMASTER'S RESPONSE:**

22 Evidence Code Section 210 defines relevant evidence as evidence, including  
23 evidence relevant to the credibility of a witness or hearsay declarant, having any  
24 tendency in reason to prove or disprove any disputed fact that is of consequence  
25 to the determination of the action. The statement provides background as to the  
26 action taken by the Watermaster and at whose request. Evidence Code Section  
27 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is  
28 within the personal knowledge of a witness concerning the subject matter of his

1 testimony." As declarant is the General Manager for the Watermaster and  
2 declares that he has knowledge of the actions taken, he has the appropriate  
3 foundation for this statement.

4 Overruled

5  
6 3. "Watermaster staff and consultants additionally conducted numerous meetings  
7 with smaller subsets of interested Parties." (Para. 5, lines 15-16.)

8 Lacks foundation. (Evid. C. §702.)

9 Irrelevant and immaterial. (Evid. C. §350.)

10 **WATERMASTER'S RESPONSE:**

11 Evidence Code Section 210 defines relevant evidence as evidence, including  
12 evidence relevant to the credibility of a witness or hearsay declarant, having any  
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15 action taken by the Watermaster and at his request. Evidence Code Section  
16 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is  
17 within the personal knowledge of a witness concerning the subject matter of his  
18 testimony." As declarant is the General Manager for the Watermaster and  
19 declares that he has knowledge of the actions taken, he has the appropriate  
20 foundation for the statement.

21 Overruled

22  
23 4. "WEI has indicated to Watermaster and the Parties that its Updated Basin  
24 Model can competently, reasonably, and accurately perform the required basin  
25 yield recalculation arising from the OBMP Implementation Plan and prior orders  
26 of this Court." (Para. 7, lines 17-19.)

27 Irrelevant and immaterial. (Evid. C. §350.)

28 Lacks foundation. (Evid. C. §702.)

1 Hearsay. (Evid. C. §1200.)

2 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

3 Oral testimony inadmissible to prove contents of a writing. (Evid. C. §1523.)

4 **WATERMASTER'S RESPONSE:**

5 Evidence Code Section 210 defines relevant evidence as evidence, including  
6 evidence relevant to the credibility of a witness or hearsay declarant, having any  
7 tendency in reason to prove or disprove any disputed fact that is of consequence  
8 to the determination of the action. The statement is relevant as it goes to the  
9 Watermaster's decision to rely upon the model prepared by WEI. Evidence Code  
10 Section 403(a)(2) sets forth that foundation is sufficient where the "preliminary  
11 fact is within the personal knowledge of a witness concerning the subject matter  
12 of his testimony." As declarant is the General Manager for the Watermaster,  
13 declared that he attended all of the meetings, and is including the statement in his  
14 declaration, he has the appropriate foundation for this statement. There is no  
15 out-of-court statement being offered for the truth of the matter asserted in the  
16 statement so there is no validity to the hearsay objection. Finally, there is no  
17 testimony in this statement being offered to prove the content of the writing.

18 Overruled

19  
20 5. "There is no evidence of any kind that has been presented to Watermaster that  
21 suggests that the Updated Basin Model developed by Mr. Wildermuth under the  
22 direction of Watermaster is insufficient to perform the evaluation described  
23 in the Reset Technical Memorandum." (Para. 7, lines 17-22.)

24 Irrelevant and immaterial. (Evid. C. §350.)

25 Lacks foundation. (Evid. C. §702.)

26 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

27 Oral testimony inadmissible to prove the contents of a writing. (Evid. C. § 1523.)

28 **WATERMASTER'S RESPONSE:**

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2 evidence relevant to the credibility of a witness or hearsay declarant, having any  
3 tendency in reason to prove or disprove any disputed fact that is of consequence  
4 to the determination of the action. The statement is relevant as it goes to the  
5 Watermaster's decision to rely upon the model prepared by WEI. Evidence Code  
6 Section 403(a)(2) sets forth that foundation is sufficient where the "preliminary  
7 fact is within the personal knowledge of a witness concerning the subject matter  
8 of his testimony." As declarant is the General Manager for the Watermaster,  
9 declared that he attended all of the meetings, and is including the statement in his  
10 declaration, he has the appropriate foundation for this statement. There is no  
11 out-of-court statement being offered for the truth of the matter asserted in the  
12 statement so there is no validity to the hearsay objection. Finally, there is no  
13 testimony in this statement being offered to prove the content of the writing.

14 Overruled

15  
16 6. "Experts hired by the Parties to review the updated Basin Model have  
17 indicated that it is a reliable tool for simulating the movement of water within the  
18 Basin, and to my knowledge, no party contests that this is the case." (Para. 7,  
19 lines 22-24.)

20 Irrelevant and immaterial. (Evid. C. §350.)

21 Lacks foundation. (Evid. C. §702.)

22 Hearsay. (Evid. C. §1200.)

23 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

24 Oral testimony inadmissible to prove contents of a writing. (Evid. C. §1523.)

25 **WATERMASTER'S RESPONSE:**

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27 evidence relevant to the credibility of a witness or hearsay declarant, having any  
28 tendency in reason to prove or disprove any disputed fact that is of consequence

1 to the determination of the action. The statement is relevant as it goes to the  
2 Watermaster's decision to rely upon the model prepared by WEI. Evidence Code  
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4 fact is within the personal knowledge of a witness concerning the subject matter  
5 of his testimony." As declarant is the General Manager for the Watermaster,  
6 declared that he attended all of the meetings, and is including the statement in his  
7 declaration, he has the appropriate foundation for this statement. There is no  
8 out-of-court statement being offered for the truth of the matter asserted in the  
9 statement so there is no validity as to the hearsay objection. Finally, there is no  
10 testimony in this statement being offered to prove the content of the writing.

11 Overruled

12  
13 7. "In October and November of 2014, the Watermaster Parties, at the Pool  
14 Committee, Advisory Committee and Watermaster Board meetings, discussed  
15 various approaches to the determination and reset." (Para. 10, lines 3-5.)

16 Irrelevant and immaterial. (Evid. C. §350.)

17 Lacks foundation. (Evid. C. §702.)

18 Hearsay. (Evid. C. §1200.)

19 **WATERMASTER'S RESPONSE:**

20 Evidence Code Section 210 defines relevant evidence as evidence, including  
21 evidence relevant to the credibility of a witness or hearsay declarant, having any  
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28 declared that he attended all of the meetings, and is including the statement in his

1 declaration, he has the appropriate foundation for this statement. There is no  
2 out-of-court statement being offered for the truth of the matter asserted in the  
3 statement so there is no validity to the hearsay objection.

4 Overruled

5  
6 8. "In November, 2014, the Advisory Committee requested, and the  
7 Watermaster Board adopted, the Advisory Committee's recommendation that  
8 Watermaster convene a facilitated process to identify and resolve all issues related  
9 to the successful completion of the Safe Yield redetermination for consideration  
10 by the Pool Committees, Advisory Committee and Watermaster Board in mid-  
11 2015." (Para. 10, lines 5-9.)

12 Irrelevant and immaterial. (Evid. C. §350.)

13 Lacks foundation. (Evid. C. §702.)

14 Hearsay. (Evid. C. §1200.)

15 **WATERMASTER'S RESPONSE:**

16 Evidence Code Section 210 defines relevant evidence as evidence, including  
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18 tendency in reason to prove or disprove any disputed fact that is of consequence  
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23 of his testimony." As declarant is the General Manager for the Watermaster,  
24 declared that he attended all of the meetings, and is including the statement in his  
25 declaration, he has the appropriate foundation for this statement. There is no  
26 out-of-court statement being offered for the truth of the matter asserted in the  
27 statement so there is no validity to the hearsay objection.

28 Overruled

1  
2 9. "In order to protect the confidentiality of their discussions, as well as to  
3 preserve Watermaster counsel's ability to full and fairly represent Watermaster, a  
4 substantial number of parties executed a Facilitation and Non- Disclosure  
5 Agreement (FANDA)." (Para. 12, lines 14-16.)

6 Irrelevant and immaterial. (Evid. C. §350.)

7 Lacks foundation. (Evid. C. §702.)

8 Hearsay. (Evid. C. §1200.)

9 Oral testimony inadmissible to prove the contents of a writing. (Evid. C. §1523.)

10 **WATERMASTER'S RESPONSE:**

11 Evidence Code Section 210 defines relevant evidence as evidence, including  
12 evidence relevant to the credibility of a witness or hearsay declarant, having any  
13 tendency in reason to prove or disprove any disputed fact that is of consequence  
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15 Watermaster's decision. Evidence Code Section 403(a)(2) sets forth that  
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17 knowledge of a witness concerning the subject matter of his testimony." As  
18 declarant is the General Manager for the Watermaster, declared that he attended  
19 all of the meetings, and is including the statement in his declaration, he has the  
20 appropriate foundation for this statement. There is no out-of-court statement  
21 being offered for the truth of the matter asserted in the statement so there is no  
22 validity to the hearsay objection. Finally, there is no testimony in this statement  
23 being offered to prove the content of the writing.

24 Overruled

25  
26 10. "The parties to the facilitation process met at least weekly and, in many cases,  
27 multiple times per week, in an attempt to achieve consensus as to the Safe Yield  
28 reevaluation and reset issues. In total, in addition to the many informal meetings



1 and discussions that took place, the group of parties met more than 30 times."  
2 (Para. 13.)

3 Irrelevant and immaterial. (Evid. C. §350.)

4 Lacks foundation. (Evid. C. §702.)

5 **WATERMASTER'S RESPONSE:**

6 Evidence Code Section 210 defines relevant evidence as evidence, including  
7 evidence relevant to the credibility of a witness or hearsay declarant, having any  
8 tendency in reason to prove or disprove any disputed fact that is of consequence  
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12 knowledge of a witness concerning the subject matter of his testimony." As  
13 declarant is the General Manager for the Watermaster, declared that he attended  
14 all of the meetings, and is including the statement in his declaration, he has the  
15 appropriate foundation for this statement.

16 Overruled

17  
18 11. "On August 26, 2015, agreement was reached as to a substantially complete  
19 draft of the 2015 Safe Yield Reset Agreement." (Para. 15, lines 3-5.)

20 Irrelevant and immaterial. (Evid. C. §350.)

21 Lacks foundation. (Evid. C. §702.)

22 Hearsay. (Evid. C. §1200.)

23 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

24 Oral testimony inadmissible to prove the contents of a writing. (Evid. C. §1523.)

25 **WATERMASTER'S RESPONSE:**

26 Evidence Code Section 210 defines relevant evidence as evidence, including  
27 evidence relevant to the credibility of a witness or hearsay declarant, having any  
28 tendency in reason to prove or disprove any disputed fact that is of consequence

1 to the determination of the action. The statement is relevant as it goes to the  
2 Watermaster's decision. Evidence Code Section 403(a)(2) sets forth that  
3 foundation is sufficient where the "preliminary fact is within the personal  
4 knowledge of a witness concerning the subject matter of his testimony." As  
5 declarant is the General Manager for the Watermaster, declared that he attended  
6 all of the meetings, and is including the statement in his declaration, he has the  
7 appropriate foundation for this statement. There is no out-of-court statement  
8 being offered for the truth of the matter asserted in the statement so there is no  
9 validity to the hearsay objection. Finally, there is no testimony in this statement  
10 being offered to prove the content of the writing. It is simply a summary.

11 Overruled

12  
13 12. "Attached hereto as Attachment "I" is the staff presentation, Resolution  
14 2015-06: Resolution of the Chino Basin Watermaster Regarding 2015 Safe Yield  
15 Reset Agreement, that was given to the Board at its September 24, 2015  
16 meeting." (Para. 17, lines 12-14.)  
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1 Irrelevant and immaterial. (Evid. C. §350.)

2 Lacks foundation. (Evid. C. §702.)

3 Hearsay. (Evid. C. §1200.)

4 Oral testimony inadmissible to prove the contents of a writing. (Evid. C. §1523.)

5 **WATERMASTER'S RESPONSE:**

6 Evidence Code Section 210 defines relevant evidence as evidence, including  
7 evidence relevant to the credibility of a witness or hearsay declarant, having any  
8 tendency in reason to prove or disprove any disputed fact that is of consequence  
9 to the determination of the action. This statement identifies the title of the  
10 exhibit and provides background information on the exhibit. Evidence Code  
11 Section 403(a)(2) sets forth that foundation is sufficient where the "preliminary  
12 fact is within the personal knowledge of a witness concerning the subject matter  
13 of his testimony." As declarant is the General Manager for the entity that  
14 prepared the exhibit and he attended the meeting in question, he has the  
15 appropriate foundation for this statement. There is no out-of-court statement at  
16 issue in this paragraph. Finally, there is no testimony in this statement being  
17 offered to prove the content of the writing.

18 Overruled

19  
20 13. "Attached hereto as Attachment "2" is the Staff Report, Chino Basin Safe  
21 Yield Redetermination and Reset, that was included in the September 24,2015  
22 Watermaster Board Meeting agenda." (Para. 17, lines 14-16.)  
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1 Irrelevant and immaterial. (Evid. C. §350.)

2 Lacks foundation. (Evid. C. §702.)

3 Hearsay. (Evid. C. §1200.)

4 Oral testimony inadmissible to prove contents of a writing. (Evid. C. §1523.)

5 **WATERMASTER'S RESPONSE:**

6 Evidence Code Section 210 defines relevant evidence as evidence, including  
7 evidence relevant to the credibility of a witness or hearsay declarant, having any  
8 tendency in reason to prove or disprove any disputed fact that is of consequence  
9 to the determination of the action. This statement identifies the title of the  
10 exhibit and provides background information on the exhibit. Evidence Code  
11 Section 403(a)(2) sets forth that foundation is sufficient where the "preliminary  
12 fact is within the personal knowledge of a witness concerning the subject matter  
13 of his testimony." As declarant is the General Manager for the entity that  
14 prepared the exhibit and he attended the meeting question, he has the appropriate  
15 foundation for this statement. There is no out-of-court statement at issue in this  
16 paragraph. Finally, there is no testimony in this statement being offered to prove  
17 the content of the writing.

18 Overruled

19  
20 14. "Based on their participation in the process described above, it is my belief  
21 that the Parties to the Judgment have engaged in peer review of the Safe Yield  
22 evaluation and have an understanding of implementation challenges in  
23 Watermaster accounting in light of a decline." (Para. 19, lines 20-22.)  
24  
25  
26  
27  
28

1 Irrelevant and immaterial. (Evid. C. §350.)

2 Lacks foundation. (Evid. C. §702.)

3 Hearsay. (Evid. C. §1200.)

4 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

5 **WATERMASTER'S RESPONSE:**

6 Evidence Code Section 210 defines relevant evidence as evidence, including  
7 evidence relevant to the credibility of a witness or hearsay declarant, having any  
8 tendency in reason to prove or disprove any disputed fact that is of consequence  
9 to the determination of the action. The statement identifies the basis for his  
10 opinion. Evidence Code Section 403(a)(2) sets forth that foundation is sufficient  
11 where the "preliminary fact is within the personal knowledge of a witness  
12 concerning the subject matter of his testimony." As declarant is the General  
13 Manager for the entity that worked with the parties, and attended the meetings,  
14 he has the appropriate foundation for this statement. There is no out-of-court  
15 statement at issue in this paragraph. Finally, the witness is permitted to offer his  
16 lay opinion and the objection goes to weight, not admissibility.

17 Overruled

18  
19 15. "Pursuant to the 2013 Amendment to the 2010 Recharge Master Plan Update  
20 ('2013 RMPU Amendment'), presented to and approved by the Court in October  
21 2013, Watermaster has developed and is in the process of implementing a group  
22 of 'yield enhancement' projects." (Para. 20, lines 23-26.)

23 Irrelevant and immaterial. (Evid. C. §350.)

24 Lacks foundation. (Evid. C. §702.)

25 Hearsay. (Evid. C. §1200.)

26 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

27 Improper expert opinion. (Evid. C. §801.)

28 Oral testimony inadmissible to prove contents of a writing. (Evid. C. §1523.)

**WATERMASTER'S RESPONSE:**

Evidence Code Section 210 defines relevant evidence as evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. This statement provides background information on what the Watermaster did. Evidence Code Section 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is within the personal knowledge of a witness concerning the subject matter of his testimony." As declarant is the General Manager for the entity that worked with, assisted, and is in the process of implementing, he has the appropriate foundation for this statement. There is no out-of-court statement at issue in this paragraph. There is no testimony in this statement being offered to prove the content of the writing. While there is no opinion testimony the statement, to the degree there was, it would go to weight, not admissibility.

Overruled

16. "The composition of the suite of yield enhance [sic] projects has changed somewhat since the Court's October 2013 approval of the 2013 RMPU Amendment, and the currently contemplated suite of improvements is projected to result in an average of approximately 6,410 acre-feet of additional annual stormwater recharge to the Chino Basin." (Para. 20, lines 26-1.)

Irrelevant and immaterial. (Evid. C. §350.)

Lacks foundation. (Evid. C. §702.)

Hearsay. (Evid. C. §1200.)

Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

Improper expert opinion. (Evid. C. §801.)

Oral testimony inadmissible to prove the contents of a writing. (Evid. C. §1523.)

**WATERMASTER'S RESPONSE:**

Evidence Code Section 210 defines relevant evidence as evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. The statement provides background information on what the Watermaster did and is doing. Evidence Code Section 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is within the personal knowledge of a witness concerning the subject matter of his testimony." As declarant is the General Manager for the entity that worked with, assisted, and is in the process of implementing, he has the appropriate foundation for this statement. There is no out-of-court statement at issue in this paragraph. There is no testimony in this statement being offered to prove the content of the writing. While there is no opinion testimony in the statement, to the degree there was, it would go to weight, not admissibility.

Overruled

17. "There may be members of the Appropriative Pool that, because of the projected future water demands within their systems and their existing supply portfolios, do not desire the additional projected recharge associated with new stormwater projects." (Para. 21, lines 2-4.)

Irrelevant and immaterial. (Evid. C. §350.)

Lacks foundation. (Evid. C. §702.)

Hearsay. (Evid. C. §1200.)

Improper lay opinion; opinion based improper matter. (Evid. C. §§800, 803.)

#### **WATERMASTER'S RESPONSE:**

Evidence Code Section 210 defines relevant evidence as evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. The statement provides background

1 information on what the Watermaster did. Evidence Code Section 403(a)(2) sets  
2 forth that foundation is sufficient where the "preliminary fact is within the  
3 personal knowledge of a witness concerning the subject matter of his testimony."  
4 As declarant is the General Manager for the entity that worked with, assisted, and  
5 is in the process of implementing, he has the appropriate foundation for this  
6 statement. There is no out-of-court statement at issue in this paragraph. While  
7 there is no opinion testimony in the statement, to the degree there was, it would  
8 go to weight, not admissibility.

9 Overruled

10  
11 18. "There are other parties within the Appropriative Pool, particularly those  
12 with service areas in which there has been substantial growth since the time of  
13 the 1978 entrance of the Judgment, that may desire to assume the financial  
14 obligations of those parties in exchange for the potential net new recharge that is  
15 projected to arise from the suite of projects." (Para. 21, lines 4-8.)

16 Irrelevant and immaterial. (Evid. C. §350.)

17 Lacks foundation. (Evid. C. §702.)

18 Hearsay. (Evid. C. §1200.)

19 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

20 **WATERMASTER'S RESPONSE:**

21 Evidence Code Section 210 defines relevant evidence as evidence, including  
22 evidence relevant to the credibility of a witness or hearsay declarant, having any  
23 tendency in reason to prove or disprove any disputed fact that is of consequence  
24 to the determination of the action. This statement provides background on what  
25 the Watermaster did. Evidence Code Section 403(a)(2) sets forth that foundation  
26 is sufficient where the "preliminary fact is within the personal knowledge of a  
27 witness concerning the subject matter of his testimony." As declarant is the  
28 General Manager for the entity that worked with, assisted, and is in the process of



1 implementing, he has the appropriate foundation for this statement. There is no  
2 out-of-court statement at issue in this paragraph. While there is no opinion  
3 testimony in this statement, to the degree there was, it would go to weight, not  
4 admissibility.

5 Overruled

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8 Dated: September 23, 2016  
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11 Stanford E. Reichert, Judge  
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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO  
10

11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT,

13 Plaintiff,

14 vs.

15 CITY OF CHINO, et al.,

16 Defendants  
17

CASE NO. RCV 51010

[Proposed]  
Rulings Re Objections of City of Chino  
to Declaration of Wildermuth

Date: September 23, 2016  
Time: 1:30 PM  
Department: S35

18  
19 With respect to all of the objections of the City of Chino to the declaration of  
20 Wildermuth, the court's rulings are in the following format:

21 Declaration citation

22 Objection and Watermaster response

23 Ruling  
24

25 1. "The original 2003 Chino Basin Groundwater Model was developed by me  
26 and under my direction, as have been all of the updates to that model, including  
27 the significant updates in 2006 and 2007." (Para. 4, lines 3-5.)  
28

Lacks foundation. (Evid. C. §702.)

1 Irrelevant and immaterial. (Evid. C. §350.)

2 Hearsay. (Evid. C. §1200.)

3 Oral testimony inadmissible to prove contents of a writing. (Evid. C. §1523.)

4 **WATERMASTER'S RESPONSE:**

5 Evidence Code Section 210 defines relevant evidence as evidence, including  
6 evidence relevant to the credibility of a witness or hearsay declarant, having any  
7 tendency in reason to prove or disprove any disputed fact that is of  
8 consequence to the determination of the action. This statement provides  
9 background information on the 2003 Chino Basin Groundwater Model and the  
10 declarant's involvement with the model. Evidence Code Section 403(a)(2) sets  
11 forth that foundation is sufficient where the "preliminary fact is within the  
12 personal knowledge of a witness concerning the subject matter of his  
13 testimony." As the declarant developed the model and its updates, he has the  
14 appropriate foundation for the statement. There is no out-of-court statement  
15 being offered for the truth of the matter asserted in this statement so there is no  
16 validity to the hearsay objection. Finally, there is no testimony in the statement  
17 being offered to prove the content of a writing.

18 Overruled

19  
20 2. "These prior versions of the model served as the basis for the Parties'  
21 agreement to and this Court's approval of the Peace I measures, and were used  
22 in the evaluation, pursuant to the California Environmental Quality Act, of the  
23 storage and recovery project with the Metropolitan Water District of Southern  
24 California referred to as the Dry Year Yield Agreement." (Para. 4, lines 5-8.)

25 Lacks foundation. (Evid. C. §702.)

26 Hearsay. (Evid. C. §1200.)

27 Irrelevant and immaterial. (Evid. C. §350.)

28 Improper lay opinion based on improper matter. (Evid. C. §§800, 803.)

1 **WATERMASTER'S RESPONSE:**

2 Evidence Code Section 210 defines relevant evidence as evidence, including  
3 evidence relevant to the credibility of a witness or hearsay declarant, having any  
4 tendency in reason to prove or disprove any disputed fact that is of  
5 consequence to the determination of the action. This statement provides  
6 background information on the 2003 Chino Basin Groundwater Model as well  
7 as subsequent versions of their use. Evidence Code Section 403(a)(2) sets forth  
8 that foundation is sufficient where the "preliminary fact is within the personal  
9 knowledge of a witness concerning the subject matter of his testimony." As the  
10 declarant developed the model and its updates and knows how they were used,  
11 he has the appropriate foundation for the statement. There is no out-of-court  
12 statement being offered for the truth of the matter asserted in this statement so  
13 there is no validity to the hearsay objection. Finally, there is no testimony in the  
14 statement being offered to prove the content of a writing.

15 Overruled

16  
17 3. "The Regional Water Quality Control Board for the Santa Ana Region  
18 ('Regional Board') accepted the model's predictions for evaluation and approval  
19 of Watermaster's proposal that the Basin be managed under the 'Maximum  
20 Benefit' mechanism." (Para. 4, lines 9-11)

21 Lacks foundation. (Evid. C. §702.)

22 Irrelevant and immaterial. (Evid. C. §350.)

23 Hearsay. (Evid. C. §1200.)

24 Improper lay opinon; opinion based on improper matter. (Evid. C. §§800, 803.)

25 **WATERMASTER'S RESPONSE:**

26 Evidence Code Section 210 defines relevant evidence as evidence, including  
27 evidence relevant to the credibility of a witness or hearsay declarant, having any  
28 tendency in reason to prove or disprove any disputed fact that is of

1 consequence to the determination of the action. This statement provides  
2 background information on the 2003 Chino Basin Groundwater Model as well  
3 as subsequent versions of their use. Evidence Code Section 403(a)(2) sets forth  
4 that foundation is sufficient where the "preliminary fact is within the personal  
5 knowledge of a witness concerning the subject matter of his testimony." As the  
6 declarant developed the model and its updates, and knows how they were used,  
7 he has the appropriate foundation for the statement. There is no out-of-court  
8 statement being offered for the truth of the matter asserted in this statement so  
9 there is no validity to the hearsay objection. Finally, the declarant is not  
10 offering an opinion, expert or otherwise, in this statement. The declarant is  
11 summarizing his understanding of certain events.

12 Overruled.

13  
14 4. "An updated version of the 2007bmodel provided the basis for the Parties'  
15 decision-making in the process of finalizing the 2013 Amendment to the 2010  
16 Recharge Master Plan Update, approved by this Court in October 2013, and has  
17 been used by the Regional Board in order to evaluate the achievement of  
18 Hydraulic Control within the Basin." (Para. 4, lines 11-15.)

19 Irrelevant and immaterial. (Evid. C. §350.)

20 Lacks foundation. (Evid. C. §702.)

21 Hearsay. (Evid. C. §1200.)

22 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

23 **WATERMASTER'S RESPONSE:**

24 Evidence Code Section 210 defines relevant evidence as evidence, including  
25 evidence relevant to the credibility of a witness or hearsay declarant, having any  
26 tendency in reason to prove or disprove any disputed fact that is of consequence  
27 to the determination of the action. This statement provides background  
28 information on the 2003 Chino Basin Groundwater Model as well as subsequent

versions of their use. Evidence Code Section 403(a)(2) sets forth that foundation is sufficient where the “preliminary fact is within the personal knowledge of a witness concerning the subject matter of his testimony.” As the declarant developed the model and its updates and knows how they were used, he has the appropriate foundation for the statement. There is no out-of-court statement being offered for the truth of the matter asserted in this statement so there is no validity to the hearsay objection. Finally, the declarant is not offering an opinion, expert or otherwise, in the statement. The declarant is summarizing his understanding of certain events.

Overruled

5. "The most recent 2013 update ('the 2013 Model') is an update of the and an improvement upon the 2003 model and its updates." (Para. 5, lines 16-17.)

Irrelevant and immaterial. (Evid. C. §350.)

Lacks foundation. (Evid. C. §702.)

**WATERMASTER'S RESPONSE:**

Evidence Code Section 210 defines relevant evidence as evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. This statement provides background information on the 2013 updated model. Evidence Code Section 403(a)(2) sets forth that foundation is sufficient where the “preliminary fact is within the personal knowledge of a witness concerning the subject matter of his testimony.” As the declarant developed the model and its updates and knows how they were used, he has the appropriate foundation for the statement.

Overruled

6. "Construction of the 2013 Model, its calibration and application to evaluate

1 and update the Safe Yield of the Chino Basin is described in a draft report  
2 entitled Draft -- 2013 Chino Basin Groundwater Model Update and  
3 Recalculation of Safe Yield Pursuant to Peace Agreements (attached hereto as  
4 'Exhibit I ').'' (Para. 5, lines 17-20.)

5 Irrelevant and immaterial. (Evid. C. §350.)

6 Lacks foundation. (Evid. C. §702.)

7 Hearsay. (Evid. C. §1200.)

8 **WATERMASTER'S RESPONSE:**

9 Evidence Code Section 210 defines relevant evidence as evidence, including  
10 evidence relevant to the credibility of a witness or hearsay declarant, having any  
11 tendency in reason to prove or disprove any disputed fact that is of consequence  
12 to the determination of the action. This statement provides background  
13 information on the 2013 Model and the information contained within the Draft  
14 -- 2013 Chino Basin Groundwater Model Update and Recalculation of Safe Yield  
15 Pursuant to Peace Agreement. Evidence Code Section 403(a)(2) sets forth that  
16 foundation is sufficient where the "preliminary fact is within the personal  
17 knowledge of a witness concerning the subject matter of his testimony." As the  
18 declarant developed the model and its updates and knows how they were used,  
19 he has the appropriate foundation for the statement. There is no out-of-court  
20 statement being offered for the truth of the matter asserted in this statement so  
21 there is no validity to the hearsay objection.

22 Overruled

23  
24 7. Exhibit 1 ("Draft--2013 Chino Basin Groundwater Model Update and  
25 Recalculation of Safe Yield Pursuant to Peace Agreements"), attached to  
26 Declaration of Mark Wildermuth.

27 Irrelevant and immaterial. (Evid. C. §350.)

28 Lacks foundation. (Evid. C. §702.)

1 Hearsay. (Evid. C. §1200.)

2 Improper expert opinion. (Evid. C. §801.)

3 **WATERMASTER'S RESPONSE:**

4 Evidence Code Section 210 defines relevant evidence as evidence, including  
5 evidence relevant to the credibility of a witness or hearsay declarant, having any  
6 tendency in reason to prove or disprove any disputed fact that is of consequence  
7 to the determination of the action. This statement provides background  
8 information on the 2013 Model and the information contained within the Draft  
9 – 2013 Chino Basin Groundwater Model Update and Recalculation of Safe Yield  
10 Pursuant to Peace Agreement. Evidence Code Section 403(a)(2) sets forth that  
11 foundation is sufficient where the “preliminary fact is within the personal  
12 knowledge of a witness concerning the subject matter of his testimony.” As the  
13 declarant developed the model and its updates and knows how they were used,  
14 he has the appropriate foundation for the statement. There is no out-of-court  
15 statement being offered for the truth of the matter asserted in this statement so  
16 there is no validity to the hearsay objection. Further, the declarant is a  
17 consulting expert and he has the appropriate basis for such an opinion.

18 Overruled

19  
20 8. "The 2013 Model is the result of approximately three years of model  
21 development and application efforts." (Para. 6, lines 23-24.)

22 Irrelevant and immaterial. (Evid. C. §350.)

23 Lacks foundation. (Evid. C. §702.)

24 **WATERMASTER'S RESPONSE:**

25 Evidence Code Section 210 defines relevant evidence as evidence, including  
26 evidence relevant to the credibility of a witness or hearsay declarant, having any  
27 tendency in reason to prove or disprove any disputed fact that is of consequence  
28 to the determination of the action. This statement provides background



1 information on the 2013 Model. Evidence Code Section 403(a)(2) sets forth that  
2 foundation is sufficient where the “preliminary fact is within the personal  
3 knowledge of a witness concerning the subject matter of his testimony.” As the  
4 declarant developed the model and its updates and knows how they were used,  
5 he has the appropriate foundation for the statement.

6 Overruled

7  
8 9. "In brief, the 2013 Model includes and expands upon the hydrogeologic data  
9 included in the 2003 and 2007 Models, incorporating new production data,  
10 precipitation data, hydrogeologic data, and interpretations of them." (Para. 5,  
11 lines 20-22.)

12 Irrelevant and immaterial. (Evid. C. §350.)

13 Lacks foundation. (Evid. C. §702.)

14 Hearsay. (Evid. C. §1200.)

15 Improper expert opinion. (Evid. C. §801.)

16 **WATERMASTER'S RESPONSE:**

17 Evidence Code Section 210 defines relevant evidence as evidence, including  
18 evidence relevant to the credibility of a witness or hearsay declarant, having any  
19 tendency in reason to prove or disprove any disputed fact that is of consequence  
20 to the determination of the action. This statement provides background  
21 information on the 2013 Model. Evidence Code Section 403(a)(2) sets forth that  
22 foundation is sufficient where the “preliminary fact is within the personal  
23 knowledge of a witness concerning the subject matter of his testimony.” As the  
24 declarant developed the model and its updates and knows how they were used,  
25 he has the appropriate foundation for the statement. Further, while the  
26 declarant is a consulting expert, he is not giving an expert opinion in this  
27 statement. He is simply summarizing the document for the Court's benefit.

28 Overruled

10. "Based on the modeling and calibration efforts detailed above, it is my opinion that Watermaster now has the ability to, and can competently, reasonably, and accurately perform the required basin yield reevaluation arising from the OBMP Implementation Plan and prior orders of this Court." (Para. 6, lines 24-27.)

Irrelevant and immaterial. (Evid. C. §350.)

Lacks foundation. (Evid. C. §702.)

Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

Improper expert opinion. (Evid. C. §801.)

**WATERMASTER'S RESPONSE:**

Evidence Code Section 210 defines relevant evidence as evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. This statement provides background information on the 2013 Model. Evidence Code Section 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is within the personal knowledge of a witness concerning the subject matter of his testimony." As the declarant developed the model and its updates and knows how they were used, he has the appropriate foundation for the statement. Further, the declarant is a consulting expert and he has the appropriate basis for such an opinion.

Overruled

11. "The Updated Basin Model has been calibrated with a high degree of confidence and has been peer reviewed by representatives of the Parties to the Judgment." (Para. 7, lines 28-1.)

Irrelevant and immaterial. (Evid. C. §350.)

Lacks foundation. (Evid. C. §702.)

1 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

2 Improper expert opinion. (Evid. C. §801.)

3 Hearsay. (Evid. C. §1200.)

4 **WATERMASTER'S RESPONSE:**

5 Evidence Code Section 210 defines relevant evidence as evidence, including  
6 evidence relevant to the credibility of a witness or hearsay declarant, having any  
7 tendency in reason to prove or disprove any disputed fact that is of consequence  
8 to the determination of the action. This statement provides background  
9 information on the 2013 Model. Evidence Code Section 403(a)(2) sets forth that  
10 foundation is sufficient where the "preliminary fact is within the personal  
11 knowledge of a witness concerning the subject matter of his testimony." As the  
12 declarant developed the model and its updates and knows how they were used,  
13 he has the appropriate foundation for the statement. Further, the declarant is a  
14 consulting expert and he has the appropriate basis for such an opinion.

15 Overruled

17 12. "Hydraulic Control will be achieved in fiscal 2016." (Para. 8, lines 8-10.)

18 Irrelevant and immaterial. (Evid. C. §350.)

19 Lacks foundation. (Evid. C. §702.)

20 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

21 Improper expert opinion. (Evid. C. §801.)

22 Hearsay. (Evid. C. §1200.)

23 **WATERMASTER'S RESPONSE:**

24 Evidence Code Section 210 defines relevant evidence as evidence, including  
25 evidence relevant to the credibility of a witness or hearsay declarant, having any  
26 tendency in reason to prove or disprove any disputed fact that is of consequence  
27 to the determination of the action. This statement provides background  
28 cremation on the 2013 Model. Evidence Code Section 403(a)(2) sets forth that

1 foundation is sufficient where the "preliminary fact is within the personal  
2 knowledge of a witness concerning the subject matter of his testimony." As the  
3 declarant developed the model and its updates and knows how they were used, he  
4 has the appropriate foundation for the statement. Further, the declarant is a  
5 consulting expert and he has the appropriate basis for such an opinion.

6 Overruled

7  
8 13. "In 2007, WMWD proposed to assume the obligation of pursuing the  
9 Future Desalters and they were subsequently joined by the Jurupa Community  
10 Services District and the City of Ontario." (Para. 9, lines 11-13.)

11 Irrelevant and immaterial. (Evid. C. §350.)

12 Lacks foundation. (Evid. C. §702.)

13 Hearsay. (Evid. C. §1200.)

14 **WATERMASTER'S RESPONSE:**

15 Evidence Code Section 210 defines relevant evidence as evidence, including  
16 evidence relevant to the credibility of a witness or hearsay declarant, having any  
17 tendency in reason to prove or disprove any disputed fact that is of consequence  
18 to the determination of the action. This statement provides background on what  
19 occurred. Evidence Code Section 403(a)(2) sets forth that foundation is  
20 sufficient where the "preliminary fact is within the personal knowledge of a  
21 witness concerning the subject matter of his testimony." As the declarant worked  
22 closely with Watermaster, he has an understanding of what occurred and what  
23 was involved in various proposals. Further, there is no out-of-court statement  
24 being offered for the truth of the matter asserted.

25 Overruled

26  
27 14. "The proposed allocation of Re-Operation water at the time of the Peace II  
28 Agreement was developed to ensure the completion of the additional 10 MGD

1 of desalting capacity by WMWD and to reflect its capital commitments." (Para.  
2 9, lines 14-17.)

3 Irrelevant and immaterial. (Evid. C. §350.)

4 Lacks foundation. (Evid. C. §702.)

5 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

6 Improper expert opinion. (Evid. C. §801.)

7 Hearsay. (Evid. C. §1200.)

8 **WATERMASTER'S RESPONSE:**

9 Evidence Code Section 210 defines relevant evidence as evidence, including  
10 evidence relevant to the credibility of a witness or hearsay declarant, having any  
11 tendency in reason to prove or disprove any disputed fact that is of consequence  
12 to the determination of the action. This statement provides background  
13 information on the Re-operation water in the way allocation was developed.

14 Evidence Code Section 403(a)(2) sets forth that foundation is sufficient where the  
15 "preliminary fact is within the personal knowledge of a witness concerning the  
16 subject matter of his testimony." As the declarant developed the model and its  
17 updates and knows how they were used, he has the appropriate foundation for  
18 the statement. Further, the declarant is a consulting expert and he has the  
19 appropriate basis for such an opinion. There is no out-of-court statement at  
20 issue in this paragraph.

21 Overruled

22  
23 15. "At the time of the Court's approval of the Peace Agreement and OBMP  
24 Implementation Plan, it was believed that the Safe Yield might be larger than  
25 was stated in the Judgment." (Para. 10, lines 18-20.)

26 Irrelevant and immaterial. (Evid. C. §350.)

27 Lacks foundation. (Evid. C. §702.)

28 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

Improper expert opinion. (Evid. C. §801.) Hearsay. In (Evid. C. §1200.)

**WATERMASTER'S RESPONSE:**

Evidence Code Section 210 defines relevant evidence as evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. This statement provides background information on the Re-Operation water in the way the allocation was developed. Evidence Code Section 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is within the personal knowledge of a witness concerning the subject matter of his testimony." As the declarant developed the model and its updates and knows how they were used, he has the appropriate foundation for the statement. Further, the declarant is a consulting expert and he has the appropriate basis for such an opinion. There is no out-of-court statement at issue in this paragraph.

Overruled

16. "At the time of the development of the 2013 Model, despite the construction of the Desalters and the implementation of the Peace II Measures, the evaluation of available production data, long-term hydrology and prevailing cultural conditions suggested that there may have been a decline in Safe Yield." (Para. 10, lines 20-23.)

Irrelevant and immaterial. (Evid. C. §350.)

Lacks foundation. (Evid. C. §702.)

Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

Improper expert opinion. (Evid. C. §801.)

Hearsay. (Evid. C. §1200.)

**WATERMASTER'S RESPONSE:**

Evidence Code Section 210 defines relevant evidence as evidence, including

evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. This statement provides background information on the Re-Operation water and the way the allocation was developed. Evidence Code Section 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is within the personal knowledge of a witness concerning the subject matter of his testimony." As the declarant developed the model and its updates and knows how they were used, he has the appropriate foundation for the statement. Further, the declarant is a consulting expert and he has the appropriate basis for such an opinion. There is no out-of-court statement at issue in this paragraph.

Overruled

17. "I, with my staff at my direction, prepared the following Exhibits to the Agreement: Exhibit 'A,' the Reset Technical Memorandum; Exhibit 'D,' the Storage Losses Technical Memorandum; and, Exhibit 'E,' the Safe Storage Management Technical Memorandum." (Para. 11, lines 24-28.)

Irrelevant and immaterial. (Evid. C. §350.)

Lacks foundation. (Evid. C. §702.)

#### **WATERMASTER'S RESPONSE:**

Evidence Code Section 210 defines relevant evidence as evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. This statement provides background information on it. Evidence Code Section 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is within the personal knowledge of a witness concerning the subject matter of his testimony." As the declarant developed the exhibits and knows how they were used, he has the appropriate

1 foundation for the statement.

2 Overruled

4 18. Exhibit "A" to the Safe Yield Reset Agreement: the Reset Technical  
5 Memorandum. (Para. 11, lines 26-27.)

6 Irrelevant and immaterial. (Evid. C. §350.)

7 Lacks foundation. (Evid. C. §702.)

8 Hearsay. (Evid. C. §1200.)

9 **WATERMASTER'S RESPONSE:**

10 Evidence Code Section 210 defines relevant evidence as evidence, including  
11 evidence relevant to the credibility of a witness or hearsay declarant, having any  
12 tendency in reason to prove or disprove any disputed fact that is of consequence  
13 to the determination of the action. This statement provides background  
14 information on the exhibits. Evidence Code Section 403(a)(2) sets forth that  
15 foundation is sufficient where the "preliminary fact is within the personal  
16 knowledge of a witness concerning the subject matter of his testimony." As the  
17 declarant developed the exhibits and knows how they were used, he has the  
18 appropriate foundation for the statement. There is no out-of-court statement at  
19 issue in this paragraph.

20 Overruled

22 19. Exhibit "D" to the Safe Yield Reset Agreement: the Storage Losses  
23 Technical Memorandum. (Para. 11, line 27.)

24 Irrelevant and immaterial. (Evid. C. §350.)

25 Lacks foundation. (Evid. C. §702.)

26 Hearsay. (Evid. C. §1200.)

27 **WATERMASTER'S RESPONSE:**

28 Evidence Code Section 210 defines relevant evidence as evidence, including



evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. This statement provides background information on the exhibits. Evidence Code Section 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is within the personal knowledge of a witness concerning the subject matter of his testimony." As the declarant developed the exhibits and knows how they were used, he has the appropriate foundation for the statement. There is no out-of-court statement at issue in this paragraph.

Overruled

20. Exhibit "E" to the Safe Yield Reset Agreement: the Safe Storage Management Technical Memorandum. (Para. 11, lines 27-28.)

Irrelevant and immaterial. (Evid. C. §350.)

Lacks foundation. (Evid. C. §702.)

Hearsay. (Evid. C. §1200.)

**WATERMASTER'S RESPONSE:**

Evidence Code Section 210 defines relevant evidence as evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. This statement provides background information on the exhibits. Evidence Code Section 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is within the personal knowledge of a witness concerning the subject matter of his testimony." As the declarant developed the exhibits and knows how they were used, he has the appropriate foundation for the statement. There is no out-of-court statement at issue in this paragraph.

Overruled

1  
2 21. "Using the 2013 Model and the methodology described in the Reset  
3 Technical Memorandum, the Safe Yield for the 2010/2011-2019/2020 time  
4 period identified in the OBMP Implementation Plan and Watermaster's Rules  
5 and Regulations is approximately 135,000 afy." (Para. 12, lines 1-3.)

6 Irrelevant and immaterial. (Evid. C. §350.)

7 Lacks foundation. (Evid. C. §702.)

8 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

9 Improper expert opinion. (Evid. C. §801.)

10 Hearsay. (Evid. C. §1200.)

11 **WATERMASTER'S RESPONSE:**

12 Evidence Code Section 210 defines relevant evidence as evidence, including  
13 evidence relevant to the credibility of a witness or hearsay declarant, having any  
14 tendency in reason to prove or disprove any disputed fact that is of consequence  
15 to the determination of the action. Evidence Code Section 403(a)(2) sets forth  
16 that foundation is sufficient where the "preliminary fact is within the personal  
17 knowledge of a witness concerning the subject matter of his testimony." As the  
18 declarant developed the information he has the appropriate foundation for the  
19 statement. Further, declarant is a consulting expert and he has the appropriate  
20 basis for such an opinion. There is no out-of-court statement at issue in this  
21 paragraph.

22 Overruled

23  
24 22. "In my opinion, the methodology described in the Reset Technical  
25 Memorandum is consistent with the Judgment, OBMP Implementation Plan and  
26 the Court's prior orders." (Para. 13, lines 4-5.)

27 Irrelevant and immaterial. (Evid. C. §350.)

28 Lacks foundation. (Evid. C. §702.)

1 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

2 Improper expert opinion. (Evid. C. §801.)

3 Hearsay. (Evid. C. §1200.)

4 **WATERMASTER'S RESPONSE:**

5 Evidence Code Section 210 defines relevant evidence as evidence, including  
6 evidence relevant to the credibility of a witness or hearsay declarant, having any  
7 tendency in reason to prove or disprove any disputed fact that is of consequence  
8 to the determination of the action. Evidence Code Section 403(a)(2) sets forth  
9 that foundation is sufficient where the "preliminary fact is within the personal  
10 knowledge of a witness concerning the subject matter of his testimony." As the  
11 declarant developed the information he has the appropriate foundation for the  
12 statement. Further, the declarant is a consulting expert and he is the appropriate  
13 basis for such an opinion. There is no out-of-court statement at issue in this  
14 paragraph.

15 Overruled

16  
17 23. "Specifically, the Updated Basin Model has incorporated data from the  
18 2000/2001-2009/2010 period, along with long-term hydrology from 1921 to the  
19 date of the reset evaluation." (Para. 13, lines 6-7)

20 Irrelevant and immaterial. (Evid. C. §350.)

21 Lacks foundation. (Evid. C. §702.)

22 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

23 Improper expert opinion. (Evid. C. §801.) 7.)

24 Hearsay. (Evid. C. §1200.)

25 **WATERMASTER'S RESPONSE:**

26 Evidence Code Section 210 defines relevant evidence as evidence, including  
27 evidence relevant to the credibility of a witness or hearsay declarant, having any  
28 tendency in reason to prove or disprove any disputed fact that is of consequence

1 to the determination of the action. Evidence Code Section 403(a)(2) sets forth  
2 that foundation is sufficient where the "preliminary fact is within the personal  
3 knowledge of a witness concerning the subject matter of his testimony." As the  
4 declarant developed the information he has the appropriate foundation for the  
5 statement. Further, the declarant is a consulting expert and he has the  
6 appropriate basis for such an opinion. There is no out-of-court statement at  
7 issue in this paragraph.

8 Overruled

9  
10 24. "Based on my experience in the field of groundwater hydrology and years of  
11 experience in the Chino Basin, I believe the approach to be a prudent and  
12 reasonable professional methodology, consistent with professional custom,  
13 standard and practice." (Para. 13, lines 7-10.)

14 Irrelevant and immaterial. (Evid. C. §350.)

15 Lacks foundation. (Evid. C. §702.)

16 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

17 Improper expert opinion. (Evid. C. §801.)

18 Hearsay. (Evid. C. §1200.)

19 **WATERMASTER'S RESPONSE:**

20 Evidence Code Section 210 defines relevant evidence as evidence, including  
21 evidence relevant to the credibility of a witness or hearsay declarant, having any  
22 tendency in reason to prove or disprove any disputed fact that is of consequence  
23 to the determination of the action. Evidence Code Section 403(a)(2) sets forth  
24 that foundation is sufficient where the "preliminary fact is within the personal  
25 knowledge of a witness concerning the subject matter of his testimony." As the  
26 declarant developed the information he has the appropriate foundation for the  
27 statement. Further, the declarant is a consulting expert any of the appropriate  
28 basis for such an opinion. There is no out-of-court statement at issue in this

1 paragraph.

2 Overruled

3  
4 25. "In my opinion, the Basin protection measures to which the parties have  
5 agreed in the 2015 Safe Yield Reset Agreement will ensure that the Basin is not  
6 harmed by extractions of 135,000 afy of water through fiscal 2020." (Para. 14,  
7 lines 11-13.)

8 Irrelevant and immaterial. (Evid. C. §350.)

9 Lacks foundation. (Evid. C. §702.)

10 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

11 Improper expert opinion. (Evid. C. §801.)

12 Hearsay. (Evid. C. §1200.)

13 **WATERMASTER'S RESPONSE:**

14 Evidence Code Section 210 defines relevant evidence as evidence, including  
15 evidence relevant to the credibility of a witness or hearsay declarant, having any  
16 tendency in reason to prove or disprove any disputed fact that is of consequence  
17 to the determination of the action. Evidence Code Section 403(a)(2) sets forth  
18 that foundation is sufficient where the "preliminary fact is within the personal  
19 knowledge of a witness concerning the subject matter of his testimony." As the  
20 declarant developed the information he has the appropriate foundation for the  
21 statement. Further, the declarant is a consulting expert and he has the  
22 appropriate basis for such an opinion. There is no out-of-court statement at  
23 issue in this paragraph.

24 Overruled

25  
26 26. "In my opinion, the Basin protection measures to which the parties have  
27 agreed in the 2015 Safe Yield Reset Agreement, including the Safe Storage  
28 Management Measures, will ensure that the Basin is not harmed by extractions of

1 the 20,000 af that was allocated in the past four years than would have been  
2 allocated if the Safe Yield had been reset to 135,000 afy in 2011." (Para. 15, lines  
3 14-17.)

4 Irrelevant and immaterial. (Evid. C. §350.)

5 Lacks foundation. (Evid. C. §702.)

6 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

7 Improper expert opinion. (Evid. C. §801.)

8 Hearsay. (Evid. C. §1200.)

9 **WATERMASTER'S RESPONSE:**

10 Evidence Code Section 210 defines relevant evidence as evidence, including  
11 evidence relevant to the credibility of a witness or hearsay declarant, having any  
12 tendency in reason to prove or disprove any disputed fact that is of consequence  
13 to the determination of the action. Evidence Code Section 403(a)(2) sets forth  
14 that foundation is sufficient where the "preliminary fact is within the personal  
15 knowledge of a witness concerning the subject matter of his testimony." As the  
16 declarant developed the information he has the appropriate foundation for the  
17 statement. Further, the declarant is a consulting expert and he has the  
18 appropriate basis for such an opinion. There is no out-of-court statement at  
19 issue in this paragraph.

20 Overruled

22 27. "Using methodology consistent with prudent professional standards,  
23 Watermaster's hydrologic consultant estimates that since the early 1900s, more  
24 than 2.1 million af has been withdrawn from the Basin in excess of recharge to  
25 the Basin." (Para. 16, lines 18-20.)

26 Irrelevant and immaterial. (Evid. C. §350.)

27 Lacks foundation. (Evid. C. §702.)

28 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803.)

1 Improper expert opinion. (Evid. C. §801.)

2 Hearsay. (Evid. C. §1200.)

3 **WATERMASTER'S RESPONSE:**

4 Evidence Code Section 210 defines relevant evidence as evidence, including  
5 evidence relevant to the credibility of a witness or hearsay declarant, having any  
6 tendency in reason to prove or disprove any disputed fact that is of consequence  
7 to the determination of the action. Evidence Code Section 403(a)(2) sets forth  
8 that foundation is sufficient where the "preliminary fact is within the personal  
9 knowledge of a witness concerning the subject matter of his testimony." As the  
10 declarant developed the information he has the appropriate foundation for the  
11 statement. Further, the declarant is a consulting expert and he is the appropriate  
12 basis for such an opinion. There is no out-of-court statement at issue in this  
13 paragraph.

14 Overruled

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17 Dated: September 23, 2016  
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20 Stanford E. Reichert, Judge  
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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO  
10

11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )

13 Plaintiff,

14 vs.

15 CITY OF CHINO, et al.,

16 Defendants  
17

CASE NO. RCV 51010

[Proposed] ORDER

City of Chino Motion to Permit Chino to  
Conduct Discovery

Date: September 23, 2016  
Time: 1:30 PM  
Department: S35

18  
19 The City of Chino has moved to conduct discovery on the issues raised by  
20 Watermaster's motion regarding 2015 Safe Yield Reset Agreement, and amendment  
21 of Restated Judgment, Paragraph 6. Chino seeks discovery with respect to a number  
22 of parties, the Non-Agricultural (Overlying) Pool, the Overlying (Agricultural) Pool,  
23 and Watermaster. The court denies the motion for the reason set forth herein.  
24

25 OPPOSITIONS

26 A) Watermaster

27 B) The Non-Agricultural (Overlying) Pool

28 C) The Overlying (Agricultural) Pool joined by the State of California and the



1 Non-Agricultural (Overlying) Pool

2 D) The following parties of the Appropriative Pool as a group:

- 3 1) City of Pomona
- 4 2) City of Upland
- 5 3) City of Ontario
- 6 4) San Antonio Water District
- 7 5) Monte Vista Water District
- 8 6) Cucamonga Valley Water District
- 9 7) Fontana Union Water Company

10 a) This opposition also contained objections to the declaration of  
11 Jimmy Gutierrez in support of Chino's motion. All the objections  
12 are overruled. See separate document for orders and rulings.  
13

14 ADDITIONAL FILINGS

15 A) City of Chino's objections to declaration of Herrema support of  
16 Watermaster's opposition to City of Chino's motion to permit Chino to conduct  
17 discovery

18 1) Watermaster's response to City of Chino objections to declaration of  
19 Herrema

20 2) See separate document for orders and rulings.

21 B) City of Chino's objections to declaration of Kavounas in support of  
22 Watermaster's opposition to the City of Chino's motion to permit Chino to conduct  
23 discovery.

24 1) Watermaster's response to City of Chino's objections to declaration of  
25 Kavounas

26 2) See separate document for orders and rulings.

27 C) City of Chino's objections to declaration of Tracy Egoscue.

28 1) See separate document for orders and rulings

1  
2 ORDERS and RULINGS

3 The court denies the motion of the city of Chino to reopen discovery for the  
4 following reasons:

5 A) The court does not find a legal basis for Chino's request.

6 1) Chino cites CCP §2024.050(b) for a list of factors for the court's  
7 consideration. The court evaluates those factors as follows:

8 a) The necessity and the reasons for the discovery.

9 b) The diligence or lack of diligence of the party seeking the discovery  
10 or the hearing of a discovery motion, and the reasons that the  
11 discovery was not completed, or that the discovery motion is not  
12 heard earlier.

13 c) Any likelihood that permitting the discovery or hearing the discovery  
14 motion will prevent the case from going to trial on the date set, or  
15 otherwise interfere with the trial calendar, or result in prejudice to  
16 any other party.

17 d) The length of time that has elapsed any date previously set, the date  
18 presently set, for the trial of the action.

19 2) The thrust of the motion is that Chino must conduct discovery to  
20 defend itself from the adverse impacts of SYRA, to show the flaws in the Safe  
21 Yield reset, and to prepare for trial.

22 a) There is no trial in this case. The judgment was entered by  
23 stipulation in 1978. To call the hearing on Safe Yield reset and  
24 related issues a "trial" is a mischaracterization of the proceeding.

25 I) There is no merit to Chino's contention that the underlying  
26 action is not litigated. There is no basis in law, and Chino cites  
27 none, to conclude a stipulated judgment means the case was not  
28 litigated.

1 II) The SYRA motion is an evidentiary hearing on a post-judgment  
2 motion. *In re Marriage of Boblitt* (2014) 223 Cal.App.4th 1004.

3 III) Post judgment matters for the court have been fully  
4 litigated, briefed, and argued. There is no necessity for further  
5 discovery just to have the parties repeat what is in the  
6 declarations.

7 IV) Any adverse impacts on Chino stored water and water  
8 rights under the judgment have also been fully litigated, argued,  
9 and briefed in the SYRA motion. Discovery will not add  
10 anything to the facts already set out in Chino's briefing,  
11 declarations, and exhibits.

12 V) All of the information which Chino seeks by way of discovery is  
13 already available to Chino. For example, Wildermuth's  
14 conclusions and all of the bases for his conclusions are set forth  
15 in his declaration and exhibits. All of the information regarding  
16 yield, pumping, and allocations is already available to Chino. The  
17 court will not permit discovery when all of the information is  
18 equally available to all parties. Chino through its representatives  
19 was present during the facilitated discussions under the  
20 Facilitation and Non-Disclosure Agreement (FANDA).  
21 (Watermaster's opposition to the city of Chino's motion to  
22 permit Chino to conduct discovery, page 10, line 13-page 11, line  
23 1.)

24 VI) In the related SYRA motion, the court has not ordered the  
25 Safe Storage Management Measures proposed by Watermaster.  
26 Therefore, Chino's arguments with respect to conducting  
27 discovery in this area are moot. Even if they were not moot, no  
28 discovery is necessary for the reasons set forth in this order

1 including the extensive briefing, declarations, and exhibits  
2 submitted with respect to the SYRA motion.

3 VII) With respect to the reduction in Safe Yield from 140,000  
4 AFY to 135,000 AFY similarly the court finds no discovery  
5 necessary for the reasons set forth in this order, including the  
6 extensive briefing, declarations, and exhibits submitted with  
7 respect to the SYRA motion

8 b) The court does not find that there are any facts in dispute which  
9 require additional discovery. With respect to SYRA, all of the facts  
10 are laid out in the briefing for Watermaster's motion regarding 2015  
11 Safe Yield Reset Agreement, Amendment of Restated Judgment,  
12 Paragraph 6 (SYRA Motion). The court estimates the briefing for  
13 that motion to consist of about 350 pages, and the court estimates  
14 the exhibits to be about 1100 pages. Chino has not presented any  
15 evidence or information to raise a factual dispute which requires  
16 additional discovery. Chino only argues legal conclusions and the  
17 relative unfairness of the Safe Storage Management Measures and  
18 interpretations of Court-Approved Management Agreements.

19 I) All of the factual bases for all the opinions and are set forth in  
20 the declarations and exhibits for the SYRA Motion. The  
21 motion's impact is well briefed. There is no necessity for  
22 additional examination or testimony.

23 II) There is no necessity for Chino to make any additional factual  
24 showing respect to the motion. Chino argues that it needs  
25 admissible evidence, but such evidence is necessary only for trial,  
26 not a motion. In the context of a motion, the court may exercise  
27 its discretion consider all relevant facts, and Chino has not  
28 identified any relevant facts that could only be obtained through

1 formal discovery.

2 III) There is also no merit to Chino's argument that Chino did  
3 not have discovery on the issues such as the 2000 Peace I  
4 Agreement, 2007 Peace II Agreement, or the OBMP, because  
5 they did not exist before the judgment. These documents, and  
6 the court orders thereon, have been in existence for years. Any  
7 request for discovery on them is untimely. Any request for  
8 discovery on them is also unnecessary because the parties all have  
9 access to the same information.

10 IV) The questions which the SYRA Motion presents are for  
11 the court to determine the legal effect of the proposed Safe Yield  
12 reduction. The legal analysis is set forth in the court's lengthy  
13 order for that motion.

14 c) To characterize Watermaster as adverse to Chino is also erroneous.  
15 Watermaster is a creation of the court, not a party, and not adverse  
16 to any party to the judgment. The court will not permit any  
17 discovery with respect to Watermaster.

18 d) The court does not see any necessity for Chino to obtain  
19 information from other parties regarding Chino's own  
20 circumstances, rights, and objections.

21 e) Chino speaks in terms of "ownership" Safe Yield percentages. (See,  
22 for example, City of Chino's Supplement to Status Report On  
23 Watermaster's Safe Yield Redetermination and Reset (Exhibit C to  
24 Declaration of Jimmy L. Gutierrez, page 3, line 20).)

25 I) This is incorrect. The court finds that Chino does not "own" (as  
26 that word is ordinarily used) any percentage of Safe Yield. The  
27 legal rights of the appropriators are determined by the court  
28 through the Judgment and Court Approved Management

1 Agreements.

2 II) Chino's claim that it possesses rights to stored water does not  
3 automatically ensure a right to pump such water if the court  
4 determines that to do so would cause an undesirable result to the  
5 Basin. The Overlying (Agricultural) Pool notes that it does not  
6 address the issue of whether Chino as a "guaranteed right" to  
7 pump any amount of water regardless of the impact to the Basin.

8 f) Regarding Chino's argument that some parties, including The  
9 Overlying (Agricultural) Pool, have not acknowledged the alleged  
10 adverse impacts that the Agreement, the court finds that the claims  
11 and defenses of the parties are all well set forth in the SYRA motion  
12 briefing.

13 g) It would be counterproductive to the hours of the facilitated  
14 negotiations resulting in Watermaster's Resolution 2015-06.

15 h) It would create additional delay.

16 i) There is no new "lawsuit." The subject matter is a post judgment  
17 motion involving an evidentiary hearing. (The Overlying  
18 (Agricultural) Pool opposition, page 10, line 23.)

19 j) The City of Pomona opposition, page 2, line 8, points out that  
20 Chino is seeking permission to conduct discovery on opposing  
21 parties in an attempt to obtain evidence that will allegedly disprove  
22 the findings and recommendations made in the Watermaster motion  
23 and the 2015 Safe Yield Reset Agreement and the disproportionate  
24 adverse impact on Chino's water rights.

25 k) The City of Pomona also argues that good cause is a requirement,  
26 and Chino has failed to show good cause for the reasons set forth  
27 above.

28 l) The court accepts the City of Pomona's argument (opposition, page

1 3, line 20) that Chino never identifies what evidence the opposing  
2 parties might possess that will support Chino's conclusions that  
3 approval of SYRA will take 36,757 AF of water held and Chino's  
4 Excess Carry Over account and 20,000 AF of overall safe yield  
5 amount resulting in a corresponding reduction in Chino's allocation.  
6 All the information is equally available to all parties.  
7  
8  
9

10 Dated: September 23, 2016  
11  
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Stanford E. Reichert, Judge  
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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO  
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11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )

13 Plaintiff,

14 vs.

15 CITY OF CHINO, et al.,

16 Defendants  
17

CASE NO. RCV 51010

[Proposed] ORDER Re Pomona et al.  
Objections to Declaration of Gutierrez in  
Support of Chino Motion to Conduct  
Discovery

Date: September 23, 2016  
Time: 1:30 PM  
Department: S35

18 With respect to the opposing parties' (City of Pomona, et al.,) objections City of  
19 Chino's declaration of Jimmy L. Gutierrez in support of its motion to conduct  
20 discovery, the court rules as follows:  
21

22	Statement Objected To	Grounds for Objection	Ruling
23	1. "The Parties that stipulated to	• Lack of Foundation (Evid.	Overruled
24	the Judgment herein now seek	Code §§ 400-403) as to the	
25	an order to reallocate basin	contents of the Judgment and	
26	water in ways that are contrary	the two court orders.	
27	to the 37- year old Judgment	• Inadmissible secondary	
28	and two court orders; but they	evidence of the contents of the	



1	make the request through	Judgment and the two court	
2	Watermaster." (J. Gutierrez	orders. (Evid. Code §§1521,	
3	Decl. 2:1-4)	1523.)	
4		• Argumentative.	
5	2. "Rather than bring their request	• Lack of Foundation (Evid.	Overruled
6	to redefine the rights of the	Code §§ 400-403) as to the	
7	Parties to the waters of the	contents of the order.	
8	Chino Basin, they have	• Argumentative.	
9	prevailed upon Watermaster to	• Inadmissible secondary	
10	file the Watermaster Motion	evidence of the contents of the	
11	now set for hearing on	Judgment. (Evid. Code §§ 1521,	
12	February 26, 2016; and	1523.)	
13	Watermaster has succumbed to		
14	their entreaties despite Judge		
15	Gunn's 2007 order warning		
16	Watermaster against taking		
17	sides." (J. Gutierrez Decl. 2:4-8)		
18	3. "The request to direct	• Lack of Foundation (Evid.	Overruled
19	Watermaster to implement	Code §§400-403) and calls for	
20	the 2015 Safe Yield Reset	speculation (Evid. Code §702)	
21	Agreement ("SYRA")	as declarant does not establish	
22	adversely impacts CHINO'S	personal knowledge of the	
23	stored water and annual	matters stated.	
24	rights to the waters of the	• Inadmissible opinion	
25	Chino Basin." (J. Gutierrez	testimony. (Evid. Code §§	
26	Decl. 2:8-10)	800, 801.)	
27		• Argumentative.	
28			

1	4.	"So far, Watermaster and the Parties have ignored Chino's concerns and objections to the proposed SYRA." (J. Gutierrez Decl. 2:10-11)	<ul style="list-style-type: none"> <li>• Argumentative .</li> </ul>	Overruled
2				
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10	5.	"The Watermaster motion alludes to conditions, dangers and risks as the basis for the SYRA; but they are not disclosed." (J. Gutierrez Decl. 2:11-12)	<ul style="list-style-type: none"> <li>• Argumentative .</li> <li>• Inadmissible secondary evidence of the contents of the Motion. (Evid. Code §§1521, 1523.)</li> </ul>	Overruled
11				
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17	6.	"Representatives of CHINO including myself have objected to the SYRA, because it will reallocate Basin Safe Yield water from CHINO and Jurupa Community Services District ("JCSD") to the other Parties to the Judgment and Peace Agreements over CHINO'S objections." (J. Gutierrez Decl. 3:12-15)	<ul style="list-style-type: none"> <li>• Argumentative.</li> <li>• Hearsay (Evid. Code §1200), as it references out of court statements offered to prove the truth of the matter asserted.</li> </ul>	Overruled
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1	7.	"Nevertheless, Watermaster filed the Watermaster Motion and Watermaster asks the Court to acknowledge the SYRA and to order Watermaster to comply with the SYRA." (J. Gutierrez Decl. 3:15-16)	<ul style="list-style-type: none"> <li>• Inadmissible secondary evidence of the contents of the motion. (Evid. Code §§1521, 1523.)</li> <li>• Argumentative .</li> </ul>	Overruled
2	8.	"Therefore, Watermaster necessarily seeks an order that requires Watermaster to take 20,000 acre-feet of water annually from the Safe Yield and to use it to reduce the Parties' obligation to pay for replenishment water to offset the Desalter production." (J. Gutierrez Decl. 3:17-19)	<ul style="list-style-type: none"> <li>• Inadmissible secondary evidence of the contents of the motion. (Evid. Code §§1521, 1523.)</li> <li>• Inadmissible opinion testimony. (Evid. Code §§800, 801.)</li> <li>• Argumentative.</li> </ul>	Overruled
3	9.	"In this way, Watermaster has positioned itself in favor of the Parties and against CHINO despite CHINO'S objection to the Watermaster Board." (J. Gutierrez Decl. 3:19-21)	<ul style="list-style-type: none"> <li>• Argumentative.</li> <li>• Inadmissible opinion testimony. Evid. Code §§800, 801.)</li> <li>Lack of Foundation (Evid. Code §§400-403) and calls for speculation (Evid. Code §702) as declarant does not establish personal knowledge of the matters stated.</li> </ul>	Overruled

10.	"The fact that this information will not be available to CHINO is one reason why CHINO should be permitted to conduct discovery." (J. Gutierrez Decl. 4:5-6)	<ul style="list-style-type: none"> <li>• Argumentative.</li> <li>• Inadmissible opinion testimony. (Evid. Code §§800, 801.)</li> <li>• Argumentative</li> </ul>	Overruled
11.	"In May and June 2015, Watermaster legal counsel Scott Slater and the parties in the mediated process developed a term sheet called the Key Principles document (the "Term Sheet") that became the seminal document from which the SYRA was written." (J. Gutierrez Decl. 4:7-9)	<ul style="list-style-type: none"> <li>• Argumentative .</li> <li>• Lacks relevance. (Evid. Code §350.)</li> <li>• Lacks foundation (Evid. Code §§400-403) and calls for speculation (Evid. Code § 702) as declarant does not establish personal knowledge of the matter asserted.</li> </ul>	Overruled

12.	<p>"During this time, it became clear to me and other CHINO representatives that the Term Sheet or any agreement derived from the Term Sheet was inimical to CHINO'S rights to the waters of the Chino Basin, which are guaranteed to CHINO under the Judgment including its stored water and its annual allocation of Basin Safe Yield water for its land use conversion claims."(J. Gutierrez Decl. 4:10-14)</p>	<ul style="list-style-type: none"> <li>• Argumentative.</li> <li>• Inadmissible opinion evidence. (Evid. Code §§ 800, 801.)</li> <li>• Inadmissible secondary evidence of the contents of the writings. (Evid. Code §§1521, 1523.)</li> <li>• Lack of foundation (Evid. Code §§ 400-403) and calls for speculation (Evid. Code §702) as declarant does not establish personal knowledge of the matter asserted.</li> <li>• Hearsay (Evid. Code §1200) as it refers to out of court statements offered to prove the truth of the matter asserted.</li> </ul>	Overruled
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1	13.	"The Term Sheet calls for the	• Lack of foundation (Evid. Code §§400-403) and calls	Overruled
2		confiscation of 36,757 acre-feet	for speculation (Evid. Code	
3		of CHINO'S stored water (held	§702) as declarant does not	
4		in its Excess Carry Over	establish personal	
5		(ECO) storage account)." (J.	knowledge of the matter	
6		Gutierrez Decl. 4:14-15)	asserted.	
7			• Argumentative.	
8			• Inadmissible secondary	
9			evidence of the contents of	
10			a writing (Evid. Code	
11			§§1521, 1523.)	
12			• Inadmissible opinion	
13			testimony. (Evid. Code	
14			§§800, 801.)	
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1	14. "The Term Sheet also calls for the	• Lack of foundation (Evid. Code §§400-403) and calls	Overruled
2	transfer of 20,000 acre-feet from	for speculation (Evid. Code	
3	the annual Safe Yield amount (and	§702) as declarant does not	
4	then the annual unproduced	establish personal	
5	Agricultural Pool amount) which	knowledge of the matter	
6	will result in a corresponding	asserted.	
7	reduction in the annual allocation of	• Argumentative.	
8	basin safe yield water to Chino for	• Inadmissible secondary	
9	its land conversion claims." (J.	evidence of the contents of	
10	Gutierrez Decl. 4:15-19)	the writing. (Evid. Code	
11		§§1521, 1523.)	
12		• Inadmissible opinion	
13		evidence. (Evid. Code	
14		§§800, 801.)	
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15.	<p>“Based upon these adverse impacts, Chino representatives and I communicated are objections regarding the Term Sheet.” (J. Gutierrez Decl. 4:19-20)</p>	<ul style="list-style-type: none"> <li>• Lack of foundation (Evid. Code §§400-403) and calls for speculation (Evid. Code §702 as declarant does not establish personal knowledge of the matter asserted.</li> <li>• Argumentative.</li> <li>• Inadmissible secondary evidence of the writing. (Evid. Code §§1521, 1523.)</li> <li>• Inadmissible opinion evidence. (Evid. Code §§800, 801.)</li> </ul>	Overruled
16.	<p>"When the members of the Appropriative Pool were asked to initial the Term Sheet as an indication of non-binding support, CHINO representatives did not initial it." (J. Gutierrez Decl. 4:20-22)</p>	<ul style="list-style-type: none"> <li>• Lacks relevance. (Evid. Code § 50.)</li> </ul>	Overruled



17.	"...Mr. Slater stated that the storage management plan described in the Term Sheet would become the permanent plan." (J. Gutierrez Decl. 5:3-4)	<ul style="list-style-type: none"> <li>• Hearsay (Evid. Code §1200), as it refers to out of court statements offered to prove the truth of the matter asserted.</li> <li>• Inadmissible secondary evidence of the contents of the writing. (Evid. Code §§1521, 1523.)</li> </ul>	Overruled
18.	"I explained in detail that the Term Sheet, if implemented, would take 36,757 acre-feet of CHINO's stored water and would divert 20,000 acre-feet of Safe Yield water (and then from the unproduced Agricultural Pool water), from which CHINO receives Basin Safe Yield water to satisfy land use conversion claims." (J Gutierrez Decl. 5:8-11	<p>Hearsay (Evid. Code §1200), as these are out of court statements offered to prove the truth of the matter asserted.</p> <p>Inadmissible secondary evidence of the contents of the writing. (Evid. Code §§1521, 1523.)</p> <p>Argumentative.</p> <p>Inadmissible opinion evidence. (Evid. Code §§800, 801.)</p>	Overruled

19.	<p>“It was clear to me that the watermaster board dismissed Chino’s concerns about the adverse impacts of the term sheet on Chino’s stored water and water rights.” (J. Gutierrez Decl. 5:17-19)</p>	<ul style="list-style-type: none"> <li>• Argumentative.</li> <li>• Lack of foundation (Evid. Code §§400-403) as declarant is not establish personal knowledge.</li> <li>• Inadmissible opinion testimony. (Evid. Code §§800, 801.)</li> </ul>	Overruled
20.	<p>“The minutes confirm Watermaster Board’s dismissiveness towards Chino’s concern. [Agenda Item II.C.C Yield Recalculation and Reset Facilitated Process, Facilitator’s Report and Possible Action].” (J. Gutierrez Declaration 5:22-24)</p>	<ul style="list-style-type: none"> <li>• Argumentative.</li> <li>• Inadmissible secondary evidence of contents of the writing. (Evid. Code §§1521, 1523.)</li> </ul>	Overruled

1	21.	"The minutes for this agenda	Lacks relevance. (Evid. Code	Overruled
2		item failed to show my	§§350.)	
3		appearance before the		
4		Watermaster board and any		
5		summary or reference of my		
6		explanation and requests to the		
7		Watermaster Board.)" (J.		
8		Gutierrez Decl. 5:24-26		
9	22.	"However, the Status Report	• Argumentative .	Overruled
10		does not discuss the substance	• Inadmissible secondary	
11		of the Term Sheet, the	evidence of the contents	
12		confiscation of CHINO'S	of the writing. (Evid.	
13		water in storage, the	Code §§ 1521, 1523.)	
14		reallocation of Basin Safe	• Lacks relevance. (Evid.	
15		Yield among the Parties, the	Code § 350.)	
16		adverse impacts of the Term		
17		Sheet on CHINO, and		
18		CHINO'S concerns about		
19		those adverse impacts." (J.		
20		Gutierrez Decl. 6:8-11)		
21				
22				

1	23.	"Because the Status Report	• Lacks relevance.	Overruled
2		filed by Watermaster Counsel	(Evid. Code §350.)	
3		did not disclose the adverse	• Argumentative.	
4		impacts of the Term Sheet on	• Lack of foundation.	
5		CHINO, CHINO'S requests	(Evid. Code §§400-403.)	
6		to the Watermaster Board and	• Inadmissible opinion	
7		the Watermaster Board's	evidence. (Evid. Code	
8		dismissiveness toward	§§800, 801.)	
9		CHINO, I believed it was	• Inadmissible secondary	
10		important to bring these	evidence of the contents of	
11		matters to the Court's attention	the writing. (Evid. Code	
12		including Watermaster's	§§1521, 1523.)	
13		advocacy in favor of the		
14		Parties and against CHINO."		
15		(J. Gutierrez Decl. 6:12-16)		

1	24.	“In it, I explained the adverse	• Inadmissible	Overruled
2		impacts of the Term Sheet on	secondary evidence of	
3		Chino stored water and its	the contents of the	
4		future annual water allocations.	writing. (Evid. Code	
5		I also explain how the Term	§§1521, 1523.)	
6		Sheet is contrary to the	• Argumentative	
7		Judgment and to prior Court	• Lacks relevance. (Evid.	
8		orders, which direct	Code §§350.)	
9		Watermaster to proceed in		
10		accordance with the Peace		
11		Agreement and worn		
12		Watermaster against acting as		
13		an advocate for any of the		
14		parties.” (J. Gutierrez Decl.		

1	25.	"One important set of factual	• Argumentative .	Overruled
2		issues relates to the "storage	• Inadmissible secondary	
3		reserve" required by the Term	evidence of the contents	
4		Sheet. Essentially, the Term	of the writing . (Evid.	
5		Sheet requires a limit on the	Code §§1521, 1523.)	
6		Parties' use or sale of 130,000	• Inadmissible opinion	
7		acre-feet of water from their	evidence. (Evid. Code §§	
8		storage accounts. Therefore,	800, 801.)	
9		the foundational factual issues	• Lack of foundation. (Evid.	
10		appear to be:	Code §§ 400-403)	
11		a) the need to curtail the use or		
12		sale of water held in storage		
13		accounts;		
14		b)the need to curtail the use or		
15		sale of the quantity of		
16		130,000 acre-feet of water;		
17		c) the need to curtail the use or		
18		sale of water in Excess Carry		
19		Over ("ECO") storage		
20		accounts but not water and		
21		supplemental storage		
22		accounts.		
23		d)the need to create the 130,000		
24		acre-feet "storage reserve"		
25		based upon the ration of a		
26		party's ECO water in storage		
27		to all ECO water in storage on		
28		July 1, 2015." (J. Gutierrez Decl 6-18-22)		

1	26.	"Another important set of	• Argumentative.	Overruled
2		factual issues relates to the	• Inadmissible secondary	
3		diversion of water from the	evidence of the contents of	
4		Safe Yield and then from the	the writing. (Evid. Code	
5		quantity of unproduced	§§1521, 1523.)	
6		agricultural water required by	• Inadmissible opinion	
7		the Term Sheet. Essentially, the	evidence. (Evid. Code	
8		Term Sheet requires a diversion	§§800, 801.)	
9		of 20,000 acre-feet of water	• Lack of foundation (Evid.	
10		from the Safe Yield for desalter	Code §§400-403.)	
11		replenishment. Therefore, the		
12		foundational factual issues		
13		appear to be		
14		a) the need to reduce the		
15		Parties' obligation to		
16		replenish desalter		
17		production;		
18		b) the need to divert water from		
19		the annual Safe Yield amount		
20		and then from the annual		
21		unproduced Agricultural Pool		
22		water amount in order to		
23		reduce the Desalter		
24		replenishment obligation		
25		rather than satisfy land use		
26		conversion claims of the		
27		appropriators – mainly Chino		
28		and Jurupa;		
		c) the need to change the Court		

1	27.	“Another important set of	• Argumentative.	Overruled
2		factual issues relates to	• Inadmissible secondary	
3		reducing the Safe Yield of the	evidence of the contents of	
4		Chino Basin from 140,100	the writing. (Evid. Code	
5		35,000 acre-feet required by	§§1521, 1523.)	
6		the Term Sheet. Therefore,	• Inadmissible opinion	
7		the foundational factual issues	evidence. (Evid. Code §§800,	
8		appear to be:	801.)	
9		a) the need to deviate from	• Lack of foundation. (Evid.	
10		the Judgments criteria for	Code §§400-403.)	
11		determining the safe		
12		yield;		
13		b) the need to consider long-		
14		term past hydrology for		
15		determining the State		
16		Yield;		
17		c) the need to exclude the		
18		millions of acre-feet of		
19		groundwater the basin		
20		from the State Yield;		
21		d) the need to limit cultural		
22		conditions to physical		
23		conditions influencing		
24		recharge. (J. Gutierrez		
25		Decl. 7:10-20		
26				
27				
28				



1	28.	"Again, the minutes confirm	• Argumentative.	Overruled
2		the Watermaster Board's	• Inadmissible secondary	
3		dismissiveness toward	evidence of the contents	
4		CHINO'S concerns. [Agenda	of the writing. (Evid. Code	
5		Item II.A., Chino Basin Safe	§§1521, 1523.)	
6		Yield Redetermination and	• Inadmissible opinion	
7		Reset]." (J. Gutierrez Decl.	evidence. (Evid. Code §§	
8		9:24-26)		
9	29.	"The minutes for this agenda	• Argumentative.	Overruled
10		item fail to refer to <u>Mayor Yates'</u>	• Inadmissible secondary	
11		letter. They fail to show my	evidence of the contents	
12		appearance before the	of the writing. (Evid. Code	
13		Watermaster Board and any	§§1521, 1523.)	
14		summary or reference of my	• Lacks relevance. (Evid.	
15		request to acknowledge the	Code § 350.)	
16		adverse impacts of the SYRA		
17		on Chino and my questions to		
18		the Watermaster Board." (J.		
19		Gutierrez Decl. 9:26-10:3)		
20				
21				

1	30.	"I do not know whether the	• Lacks relevance. (Evid.	Overruled
2		Motion and declarations with	Code § 350.)	
3		their attachments were presented		
4		to the other Parties or their		
5		attorneys before it was filed, but		
6		none of it was presented to me		
7		or other CHINO representatives.		
8		I received the Watermaster		
9		Motion for the first time only		
10		after it was filed, ... ." (J.		
11		Gutierrez Decl. 10:8-10)		

1	31.	“The Watermaster Motion includes	• Argumentative.	Overruled
2		a Declaration of Mark Wildermuth	• Lack of foundation.	
3		in which he expresses her opinions	(Evid. Code §§400-403.)	
4		about the Safe Yield of the Chino	• Inadmissible secondary	
5		Basin. However, he fails to	evidence of the contents	
6		provide support about the	of the declaration. (Evid.	
7		following factual issues:	Code §§1521, 1523.)	
8		a) whether the 2013 Model	• Inadmissible opinion	
9		simulates about the Chino	evidence. (Evid. Code	
10		Basin in the context of	§§800, 801.)	
11		proposed Safe Yield;		
12		b) the information the 2013		
13		Model produced;		
14		c) the assumptions used by the		
15		2013 model;		
16		d) the information from the		
17		2013 model used to		
18		determine the Safe Yield;		
19		other related matters.” (J.		
20		Gutierrez Decl. 9:26-10:3)		

1	32.	"Presumably, however, Watermaster and other proponents of the SYRA will seek to introduce his testimony." (J. Gutierrez Decl. 10:21-22)	<ul style="list-style-type: none"> <li>• Argumentative.</li> <li>• Lack of Foundation (Evid. Code §§ 400-403) and calls for speculation (Evid. Code § 702) as declarant does not establish personal knowledge.</li> </ul>	Overruled
12	33.	"Unless his opinions on these issues will be excluded from the Watermaster Motion, I will be at a disadvantage in the trial of the factual issues related to the Watermaster Motion and underlying SYRA unless I am provided the opportunity to take the deposition of Mr. Wildermuth in order to determine the basis of his opinions on these issues." (J. Gutierrez Decl. 10:22-25)	<ul style="list-style-type: none"> <li>• Argumentative.</li> <li>• Lacks relevance. (Evid. Code §350.)</li> <li>• Lack of foundation as declarant does not establish personal knowledge of the matters stated. (Evid. Code §§400-403.)</li> <li>• Inadmissible opinion evidence. (Evid. Code §§ 800, 801.)</li> </ul>	Overruled

1	34.	"The Final Report appears to	• Lack of Foundation (Evid.	Overruled
2		be a revision of the Draft	Code §§ 400-403) and calls	
3		Report bearing the same title	for speculation (Evid.	
4		but dated January 2014." (J.	Code	
5		Gutierrez Decl. 11:2-3)	§ 702) as declarant does not	
6			establish personal knowledge	
7			of the matters stated.	
8			• Argumentative.	
9				
10				
11				
12	35.	"This link is the first time I	• Lacks relevance. (Evid.	Overruled
13		learned of the existence of the	Code §350.)	
14		Final Report. I have read the		
15		Draft Report. I have only		
16		skimmed the Final Report and I		
17		am unable to determine		
18		revisions have been made to		
19		the Draft Report, especially		
20		because the Final Report does		
21		not denote the revisions." (J.		
22		Gutierrez Decl. 11:4-7)		
23				
24				
25				

36.	"Since the Final Report provides information about the condition of the Chino Basin and factual issues related to the Safe Yield reset and the SYRA, I need to depose Mr. Wildermuth about the differences between the two Reports, the basis of those differences and, most importantly, about the relationship of the information in the Final Report to the Basin Safe Yield and to the Storage Management Plan." (J. Gutierrez Decl. 11:7-11)	<ul style="list-style-type: none"> <li>• Argumentative.</li> <li>• Lacks relevance. (Evid. Code §350.)</li> </ul>	Overruled
37.	"I also realized that I would need to conduct discovery in order to present the factual basis on the above described factual issues about the impact of the SYRA, on CHINO'S water rights, which are not contained in the Watermaster Motion." (J. Gutierrez Decl. 11:14-16)	<ul style="list-style-type: none"> <li>• Argumentative</li> <li>• Inadmissible secondary evidence of the contents of the Declaration. (Evid. Code §§1521, 1523.)</li> </ul>	Overruled

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1 Dated: September 23, 2016

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4 Stanford E. Reichert, Judge  
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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO  
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11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )

13 Plaintiff, )

14 vs. )

15 CITY OF CHINO, et al., )

16 Defendants )  
17

CASE NO. RCV 51010

[Proposed] ORDER Re Chino's  
Objections to Declaration of Egoscue in  
Support of Ag Pool's Opposition to  
Chino's Motion to Conduct Discovery

Date: September 23, 2016

Time: 1:30 PM

Department: S35

18  
19 With respect to the objections of the City of Chino to the declaration of Tracy  
20 Egoscue in support of Ag Pool's opposition to the city of Chino's motion to permit  
21 Chino to conduct discovery, the court's rulings are in the following format:

22 Statement:

23 Objection:

24 Ruling: Overruled.

25  
26 1. "Ag Pool has been a participant in the facilitated mediation regarding the  
27 Safe Yield reset, where all but one of the participants of the facilitated  
28 negotiations approved a non-binding agreement to serve as key principles for  
Safe Yield reset negotiations." (Para. 2, lines 6-8.)



1 Objection: Lacks foundation. (Evid. C. §702.)

2 Irrelevant and immaterial. (Evid. C. §350.)

3 Ruling: Overruled

4  
5 2. "Ag Pool has been a participant in multiple workshops and negotiation  
6 meetings with Watermaster and other Parties to the Judgment regarding the Safe  
7 Yield reset and related issues." (Para. 3, lines 9-10.)

8 Objection: Lacks foundation. (Evid. C. §702.)

9 Irrelevant and immaterial. (Evid. C. §350.)

10 Ruling: Overruled.

11  
12 3. "I, as counsel to the Ag Pool, have been served with all reports and status  
13 updates generated during the mediation process as they were submitted to the  
14 Court." (Para. 4, lines 11-12.)

15 Objection: Lacks foundation. (Evid. C. §702.) Irrelevant and immaterial. (Evid.  
16 C. §350.)

17 Ruling: Overruled.

18  
19 4. "On September 23, 2015, I caused the Ag Pool's responses to the RFAs and  
20 FIs to be served on the parties to the judgment through Watermaster, true and  
21 correct copies of which are attached hereto as exhibits 3 and 4. Ag Pool objected  
22 to the RFAs and FIs on various grounds, including the following: The RFAs and  
23 FIs were not in compliance with applicable California statutes because any  
24 discovery cutoff date for the action had long since passed (Code of Civ. Proc.  
25 §§2024.050 and 2024.030); there is no automatic right to conduct discovery under  
26 the Civil Discovery Act in connection with a post judgment motion; leave of the  
27 court to conduct discovery had not been obtained; and the discovery requests  
28 were based on bad faith and harassment as Chino failed to even attempt to secure

1 an order to open discovery." (Para. 6, lines 18-26.)

2 Objection: Lacks foundation. (Evid. C. §702.)

3 Irrelevant and immaterial. (Evid. C. §350.)

4 hearsay. (Evid. C. §1200.)

5 Oral testimony inadmissible to prove the contents of a writing. (Evid. C. §1523)

6 Ruling: Overruled.

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8 Dated: September 23, 2016

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11 Stanford E. Reichert, Judge  
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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO  
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11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT,

13 Plaintiff,

14 vs.

15 CITY OF CHINO, et al.,

16 Defendants  
17  
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CASE NO. RCV 51010

[Proposed] ORDER Re Chino's  
Objections to Declaration of Herrema in  
Support of Watermaster's Opposition to  
Chino's Motion to Conduct Discovery

Date: September 23, 2016  
Time: 1:30 PM  
Department: S35

19 With respect to all of the objections of the City of Chino to the declaration of  
20 Bradley Herrema in support of Watermaster's opposition to the City of Chino's  
21 motion to permit Chino to conduct discovery, the court's rulings are in the  
22 following format:

23 Declaration citation

24 Objection and Watermaster response

25 Ruling  
26

27 1. "The City of Chino, as a member of the Appropriative Pool, was a  
28 signatory to the Facilitation and Non-Disclosure Agreement (FANDA)

1 executed by the participants in facilitated negotiations to reset the Safe Yield  
2 among the Judgment Parties." (Para. 2, page 1, line 28 through page 2, line 2.)

3 Objection and Watermaster response:

4 Lacks foundation. (Evid. C. §702.)

5 Irrelevant and immaterial. (Evid. C. §350)

6 **WATERMASTER'S RESPONSE:**

7 The declarant states in paragraph number 1 of his declaration that he is counsel  
8 of record for the Chino Basin Watermaster and has personal knowledge of the  
9 facts stated in the declaration. Evidence Code Section 210 defines relevant  
10 evidence as evidence, including evidence relevant to the credibility of a witness  
11 or hearsay declarant, having any tendency in reason to prove or disprove any  
12 disputed fact that is of consequence to the determination of the action. This  
13 statement provides background information for the Court's benefit. Evidence  
14 Code Section 403(a)(2) sets forth that foundation is sufficient where the  
15 "preliminary fact is within the personal knowledge of a witness concerning the  
16 subject matter of his testimony." As the declarant is counsel for the  
17 Watermaster and declares that he has knowledge of the fact from his own  
18 personal knowledge, he has the appropriate foundation for this statement.

19 Ruling: Overruled.

21 2. "City of Chino representatives were present and participated in facilitated  
22 negotiations until the other active Parties in the process agreed on the non-  
23 binding Key Principles pursuant to which final negotiations took place."  
24 (Para. 2, lines 2-4.)

25 Objection: Lacks foundation. (Evid. C. §702)

26 Irrelevant and immaterial. (Evid. C. §350)

27 **WATERMASTER'S RESPONSE:**

28 The declarant states in paragraph number 1 of his declaration that he is

1 counsel of record for the Chino Basin Watermaster and has personal  
2 knowledge of the facts stated in the declaration. Evidence Code Section 210  
3 defines relevant evidence as evidence, including evidence relevant to the  
4 credibility of a witness or hearsay declarant, having any tendency in reason  
5 to prove or disprove any disputed fact that is of consequence to the  
6 determination of the action. This statement provides background  
7 information for the Court's benefit. Evidence Code Section 403(a)(2) sets  
8 forth that foundation is sufficient where the "preliminary fact is within the  
9 personal knowledge of a witness concerning the subject matter of his  
10 testimony." As the declarant is counsel for the Watermaster and declares  
11 that he has knowledge of the fact from his own personal knowledge, he has  
12 the appropriate foundation for this statement.

13 Ruling: Overruled.

14  
15 3. "During the FANDA negotiation process, the City of Chino requested,  
16 and was provided, the opportunity to have its technical expert meet with  
17 Watermaster consultant Mark Wildermuth." (Para. 3, lines 5-7.)

18 Objection and Watermaster response:

19 Lacks foundation. (Evid. C. §702)

20 Irrelevant and immaterial. (Evid. C. §350)

21 **WATERMASTER'S RESPONSE:**

22 The declarant states in paragraph number 1 of his declaration that he is  
23 counsel of record for the Chino Basin Watermaster and has personal  
24 knowledge of the facts stated in the declaration. Evidence Code Section  
25 210 defines relevant evidence as evidence, including evidence relevant to the  
26 credibility of a witness or hearsay declarant, having any tendency in reason  
27 to prove or disprove any disputed fact that is of consequence to the  
28 determination of the action. This statement provides background

1 information for the Court's benefit. Evidence Code Section 403(a)(2) sets  
2 forth that foundation is sufficient where the "preliminary fact is within the  
3 personal knowledge of a witness concerning the subject matter of his  
4 testimony." As the declarant is counsel for the Watermaster and declares  
5 that he has knowledge of the fact from his own personal knowledge, he has  
6 the appropriate foundation for this statement.

7 Ruling: Overruled.

8  
9 4. "During the months of June, July, and August, 2015, Watermaster legal  
10 counsel assisted the Parties in drafting what became the 2015 SYRA." (Para.  
11 4, lines 8-9.)

12 Objection and Watermaster response:

13 Lacks foundation. (Evid. C. §702)

14 Irrelevant and immaterial. (Evid. C. §350)

15 **WATERMASTER'S RESPONSE:**

16 The declarant states in paragraph number 1 of his declaration that he is counsel  
17 of record for the Chino Basin Watermaster and has personal knowledge of the  
18 facts stated in the declaration. Evidence Code Section 210 defines relevant  
19 evidence as evidence, including evidence relevant to the credibility of a witness  
20 or hearsay declarant, having any tendency in reason to prove or disprove any  
21 disputed fact that is of consequence to the determination of the action. This  
22 statement provides background information for the Court's benefit. Evidence  
23 Code Section 403(a)(2) sets forth that foundation is sufficient where the  
24 "preliminary fact is within the personal knowledge of a witness concerning the  
25 subject matter of his testimony." As the declarant is counsel for the  
26 Watermaster and declares that he has knowledge of the fact from his own  
27 personal knowledge, he has the appropriate foundation for this statement.

28 Ruling: Overruled.

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5 Dated: September 23, 2016

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Stanford E. Reichert, Judge

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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO  
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11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )

13 Plaintiff,

14 vs.

15 CITY OF CHINO, et al.,

16 Defendants  
17  
18

CASE NO. RCV 51010

[Proposed] ORDER Re Chino's  
Objections to Declaration of Kavounas  
in Support of Watermaster's Opposition  
to Chino's Motion to Conduct Discovery

Date: September 23, 2016  
Time: 1:30 PM  
Department: S35

19 With respect to all of the objections of the City of Chino to the declaration of  
20 Peter Kavounas support of Watermaster's opposition to the City of Chino's  
21 motion to conduct discovery, the court's rulings are in the following format:

22 Declaration statement citation

23 Objection and Watermaster response

24 Ruling  
25

26 1. As the General Manager of Watermaster, I am intimately familiar  
27 with actions taken by the Pool Committees, Advisory Committee, and  
28



1 the Watermaster Board, and the directives to staff from the Board. My  
2 role as General Manager includes attending all Pool Committee,  
3 Advisory Committee, and Watermaster Board meetings." (Para. 2, lines  
4 28-3.).  
5

6 Irrelevant and immaterial. (Evid. C. §350)

7 **WATERMASTER'S RESPONSE:**

8 Evidence Code Section 210 defines relevant evidence as evidence, including  
9 evidence relevant to the credibility of a witness or hearsay declarant, having  
10 any tendency reason to prove or disprove any disputed fact that is of  
11 consequence to the determination of the action. This statement provides a  
12 basis for the declarant's knowledge.  
13

14 Ruling: Overruled.

15  
16 2. "All of the information pertinent to the Safe Yield Reset Motion and the  
17 City's expressed concerns has been continuously maintained by Watermaster  
18 and routinely made available to all Parties, consistent with the Judgment and  
19 pursuant to Watermaster's regular procedures." (Para. 3, lines 4-7.)

20 Objection and Watermaster response:

21 Lacks foundation. (Evid. C. §702)

22 Irrelevant and immaterial. (Evid. C. §350)

23 **WATERMASTER'S RESPONSE:**

24 Evidence Code Section 210 defines relevant evidence as evidence, including  
25 evidence relevant to the credibility of a witness or hearsay declarant,  
26 having any tendency in reason to prove or disprove any disputed fact  
27 that is of consequence to the determination of the action. Evidence  
28

1 Code Section 403(a)(2) sets forth that foundation is sufficient where the  
2 "preliminary fact is within the personal knowledge of a witness  
3 concerning the subject matter of his testimony." As the declarant is the  
4 General Manager for the Watermaster and declares that he has knowledge  
5 of the actions taken, he has the appropriate foundation for this statement.  
6

7 Ruling: Overruled.  
8

9 3. "Consistent with the requirements of Watermaster Resolution No. 01-03  
10 (attached hereto as Attachment "1"), Watermaster documents and records are  
11 available by request to any party to the Judgment, and Watermaster's website  
12 has an information request form by which any party may obtain information  
13 on Watermaster processes and decisions. The City did not file a request for  
14 information related to the Safe Yield reset process, the Safe Yield Reset  
15 Motion and the City's expressed concerns prior to Watermaster's filing of the  
16 Safe Yield Motion." (Para. 4, lines 8-13.)  
17  
18

19 Lacks foundation. (Evid. C. §702)

20 Irrelevant and immaterial. (Evid. C. §350)  
21

22 **WATERMASTER'S RESPONSE:**

23 Evidence Code Section 210 defines relevant evidence as evidence, including  
24 evidence relevant to the credibility of a witness or hearsay declarant, having  
25 any tendency in reason to prove or disprove any disputed fact that is of  
26 consequence to the determination of the action. Evidence Code Section  
27 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is  
28 within the personal knowledge of a witness concerning the subject matter of

1 his testimony." As the declarant is the General Manager for the Watermaster  
2 and declares that he has knowledge of the actions taken, he has the  
3 appropriate foundation for this statement.

4 Ruling: Overruled.

5  
6 4. "The Watermaster process leading up to the Board's determination on  
7 its recommendation to the Court as to the reset of Safe Yield and  
8 Watermaster's Safe Yield Reset Motion was open to and included active  
9 participation by the City. A substantial number of meetings have taken  
10 place throughout the five-year Safe Yield Reset process, all of which  
11 were open to the City, and the vast majority of which, it participated in."  
12 (Para. 5, lines 14-18.)

13 Objection and Watermaster response:

14 Irrelevant and immaterial. (Evid. C. §350)

15 Lacks foundation. (Evid. C. §702)

16 **WATERMASTER'S RESPONSE:**

17 Evidence Code Section 210 defines relevant evidence as evidence, including  
18 evidence relevant to the credibility of a witness or hearsay declarant, having  
19 any tendency in reason to prove or disprove any disputed fact that is of  
20 consequence to the determination the action. Evidence Code Section  
21 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is  
22 within the personal knowledge of a witness concerning the subject matter of  
23 his testimony." As the declarant is the General Manager for the Watermaster  
24 and declares that he has knowledge of the actions taken, he has the  
25 appropriate foundation for this statement.

26 Ruling: Overruled.

27  
28 5. "There is no evidence of any kind that has been presented to Watermaster that

1 suggests that the Updated Basin Model developed by Mr. Wildermuth under the  
2 direction of Watermaster is insufficient to perform the evaluation described in the  
3 Reset Technical Memorandum.” (Para.7, lines 17-22.)

4 Objection and Watermaster response:

5 Irrelevant and immaterial. (Evid. C. §350)

6 Lacks foundation. (Evid. C. §702)

7 Improper lay opinion; opinion based on improper matter. (Evid. C. §§800, 803)

8 Oral testimony inadmissible to prove the contents of a writing. (Evid. C.  
9 §1523)

10 **WATERMASTER'S RESPONSE:**

11 Evidence Code Section 210 defines relevant evidence as evidence, including  
12 evidence relevant to the credibility of a witness or hearsay declarant, having  
13 any tendency in reason to prove or disprove any disputed fact that is of  
14 consequence to the determination of the action. Evidence Code Section  
15 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact  
16 is within the personal knowledge of a witness concerning the subject matter  
17 of his testimony." As the declarant is the General Manager for the  
18 Watermaster and declares that he has knowledge of the actions taken, he  
19 has the appropriate foundation for this statement. This statement does not  
20 contain an opinion. Finally, there is no testimony in this statement being  
21 offered to prove the content of the writing.

22 Ruling: Overruled.

24 6. "The City, along with other stakeholders, had the opportunity to  
25 participate in multiple Basin Model workshops and model review sessions  
26 with Watermaster consultants and other experts, and participated on  
27 multiple occasions. (Para. 6, lines 19-21.)

28 Objection and Watermaster response:

1 Irrelevant and immaterial. (Evid. C. §350)

2 Lacks foundation. (Evid. C. §702)

3 **WATERMASTER'S RESPONSE:**

4 Evidence Code Section 210 defines relevant evidence as evidence, including  
5 evidence relevant to the credibility of a witness or hearsay declarant, having  
6 any tendency in reason to prove or disprove any disputed fact that is of  
7 consequence to the determination of the action. Evidence Code Section  
8 403(a)(2) sets forth that foundation is sufficient where the "preliminary fact is  
9 within the personal knowledge of a witness concerning the subject matter of  
10 his testimony." As the declarant is the General Manager for the  
11 Watermaster and declares that he has knowledge of the actions taken, he has  
12 the appropriate foundation for this statement.

13 Ruling: Overruled.

14  
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16 Dated: September 23, 2016

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19 Stanford E. Reichert, Judge  
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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 September 19, 2016, I served the following:

1. NOTICE OF SERVICE OF TENTATIVE ORDERS
  - A. ORDERS FOR WATERMASTER'S MOTION REGARDING 2015 SAFE YIELD RESET AGREEMENT, AMENDMENT OF RESTATED JUDGMENT, PARAGRAPH 6
    1. RULINGS RE OBJECTIONS OF CITY OF CHINO TO DECLARATION OF KAVOUNAS
    2. RULINGS RE OBJECTIONS OF CITY OF CHINO TO DECLARATION OF WILDERMUTH
  - B. CITY OF CHINO MOTION TO PERMIT CHINO TO CONDUCT DISCOVERY
    1. ORDER RE POMONA, ET AL. OBJECTIONS TO DECLARATION OF GUTIERREZ IN SUPPORT OF CHINO'S MOTION TO CONDUCT DISCOVERY
    2. ORDER RE CHINO'S OBJECTIONS TO DECLARATION OF EGOSCUE IN SUPPORT OF AG POOL'S OPPOSITION TO CHINO'S MOTION TO CONDUCT DISCOVERY
    3. ORDER RE CHINO'S OBJECTIONS TO DECLARATION OF HERREMA IN SUPPORT OF WATERMASTER'S OPPOSITION TO CHINO'S MOTION TO CONDUCT DISCOVERY
    4. ORDER RE CHINO'S OBJECTIONS TO DECLARATION OF KAVOUNAS IN SUPPORT OF WATERMASTER'S OPPOSITION TO CHINO'S MOTION TO CONDUCT DISCOVERY

/X/ BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:  
**See attached service list: Mailing List 1**

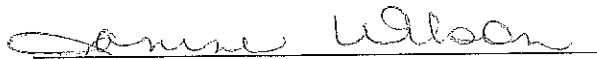
/ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

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

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

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

  
By: Janine Wilson  
Chino Basin Watermaster

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Jessie Ruedas  
Jesus Placentia  
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Joe Grindstaff  
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