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CITY OF CHINO, et al.,

Defendants.

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

Vs.

Case No: RCV 51010

Assigned for All Purposes to the Honorable Stanford E. Reichert

CITY OF ONTARIO'S RESP

CITY OF ONTARIO'S RESPONSES TO QUESTIONS FOR CLARIFICATION

Date: September 23, 2016 Time: 1:30 P.M. Dept.: S-35

Зори

Pursuant to the Court's Order at the September 23, 2016 hearing on Chino Basin Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement ("SYRA"), Amendment of Restated Judgment, Paragraph 6 (the "Watermaster Motion"), the City of Ontario ("Ontario") hereby submits the following responses to certain questions for clarification that were submitted to the Court on or about October 7, 2016:

5 II. Chino Basin Watermaster ("Watermaster")

Watermaster Question No. 1 – Desalter Production v. New Yield:

(a) The Judgment and the Court Approved Management Agreements define Safe Yield,[] Operating Safe Yield,[] and New Yield[] as groundwater that can be pumped or

CITY OF ONTARIO'S RESPONSES TO QUESTIONS FOR CLARIFICATION

extracted. All Parties to the Judgment are expressly enjoined from Producing ground water from the Chino Basin other than as authorized.[] For example, Basin Reoperation, as controlled overdraft – Production without Replenishment – was authorized by the Court through a Judgment Amendment in 2007, to effectuate Hydraulic Control. However, the Court's Proposed Orders state that New Yield means "water pumped or produced/pumped by the Desalters." (Proposed Orders, 30:15-18.[]) Watermaster observes that the literal meaning of this phrase could be to equate the entirety of the groundwater the Desalters "Produce" with "New Yield." Pursuant to this literal interpretation, the Desalters could produce groundwater without offset by any other source of Basin yield or incurring any replenishment obligation. On the other hand, given conflicting language elsewhere in the Court's Proposed Orders, does the Court instead mean that the groundwater Produced by the Desalters is composed of New Yield caused by Desalter Production ("Desalter-induced recharge"),[] Basin Re-Operation,[] and, to the extent these sources along with the others identified in Peace II Agreement paragraph 6.2(a) are insufficient to fully offset Desalter Production, then a replenishment assessment is required?

(b) Would the Court appreciate a clarification by way of an accounting of the physical consequences under both of the above interpretations?

Ontario's Response to Watermaster Question No. 1:

Watermaster should provide clarification by accounting for the financial and physical consequences of the entire Tentative Order.

Watermaster Question No. 2 – SYRA Condition Precedent:

(a) Paragraph 2.1 of the 2015 Safe Yield Reset Agreement (SYRA) includes an express condition precedent to the parties' agreement to Watermaster's actions under the Agreement, which is the Court's approval of the Agreement's entire suite of Safe Yield reset and accounting provisions as a settlement and compromise of all competing claims. Do the Court's Proposed Orders mean that, despite the limitations in paragraph 2.1, the Court will order some portions of the parties' compromise agreement (e.g., Stormwater recharge) but not others (e.g Re-Operation)?

- (b) Have the required procedures been followed by Watermaster under the Restated Judgment and Court Approved Management Agreements that would enable the Court to order the performance of individual portions of the Agreement regardless of Paragraph 2.1?
- (c) If not, what are the further procedures that should be followed by Watermaster and the Parties, if less than the entire suite of Safe Yield reset and accounting provisions (e.g. Stormwater and Re-Operation) are approved?
- (c) [sic]Would the Court appreciate a clarification by way of a Watermaster accounting of the financial and physical consequences attributable to the incremental impact of the Court's accepting some but not all of the SYRA provisions? If so, Watermaster would require further direction from the Court as to which elements of the SYRA should be analyzed.

Ontario's Response to Watermaster Question No. 2:

This question should be clarified. Although it is written broadly to address whether the Court may order any part of the SYRA without ordering other parts, Watermaster argued the Court should consider specifically whether to approve the revised schedule for access to Re-Operation water without approving all parts of the SYRA. Accordingly, this question calls for briefing as to whether the proper procedures have been followed for the Court to approve the revised schedule for access to Re-Operation water on standalone basis.

II. Monte Vista Water District, Cucamonga Valley Water District, City of Pomona, and City of Upland ("Four Agencies")

Four Agencies Question No. 2:

How will the portion of the Tentative Ruling that denied the motions to amend the schedule for access to Re-Operation Water for Desalter replenishment (TR at p. 10) be reconciled with the other portions of the Tentative Ruling that pertain to Desalter replenishment?

Ontario's Response to Four Agencies Question No. 2:

This question needs to be clarified. It alludes to the existence of "other portions of the Tentative Ruling that pertain to Desalter replenishment" without identifying them. Unless the relevant portions of the Tentative Ruling are identified, the question is susceptible to multiple

interpretations, and it will be impossible or difficult to fully respond.

Four Agencies Question No. 3:

Should the Tentative Ruling that restores the priority access of Conversion Claims (over Early Transfers) to unused Ag Pool water (TR p.22 passim) also restore Conversion Claims to 1.3 AFY per acre of land use conversion in order to be consistent with the 1995 Amendment to the Judgment?

Ontario's Response to Four Agencies Question No. 3:

This question may be disregarded by the Court. The Judgment establishes a conversion factor of 2.0 AFY per acre of land use conversion. (See Judgement, Exhibit H at § 10(b)(3)(i).) This conversion factor cannot be reset to 1.3 AFY per acre without an amendment to the Judgment, and no such amendment is before the Court. No further briefing or consideration of this question should be required.

III. Overlying (Agricultural) Pool ("Ag Pool")

Ag Pool Question No. 2 – Safe Storage Management Measures:

On Page 61 of 63, paragraph 6 under Section V., Safe Storage Management Measures, the Court notes that from 2000 to 2014, the short-term actual measured net recharge was less total rights allocated to the Judgment Parties by as much as 130,000 AFY, and this water was accounted for in the Excess Carry-Over storage accounts. (Proposed Orders, 61:9-11.) On Page 62 of 63 of the tentative (Proposed Orders) at line 16, the Court indicates that withdrawal of water from storage is already subject to limitations, and references Watermaster Rules and Regulations section 8.1. (Proposed Orders, 62:16-17.) By these references, is the Court indicating that (i) pursuant to the Judgment and Peace Agreements, no water currently in storage (including Excess Carry-Over water or water stored without a storage agreement) may be pumped without permission from Watermaster and a specific finding of no Material Physical Injury; and (ii) that when/if all water currently in storage is used along with the allocated Safe Yield production rights (predicted under the efficient market assumption by Wildermuth),

1 producing this water in storage will not result in unauthorized overdraft? 2 Ontario's Response to Ag Pool Question No. 2: 3 This question needs to be clarified as follows: Supplemental Water is not part of the 4 "paper water" issue that the Ag Pool question addresses with respect to SYRA's Safe Storage 5 Management Measures. Accordingly, if any limitations are imposed on the withdrawal of water 6 from storage as a result of these proceedings, such limitations would not apply to Supplemental 7 Water. 8 9 IV. City of Chino ("Chino") 10 Chino Question No. 3: 11 Under Attachment "2" to the Watermaster Motion entitled "Safe Yield Reset 12 Implementation Desalter Replenishment Accounting Illustration", will Watermaster account for 13 the quantities of water listed in Column G of Attachment "2" by deducting the annual amounts of 14 water in Column G from unallocated water in the basin? 15 Ontario's Response to Chino Question No. 3: 16 If the Court decides that this question should be addressed, clarification is needed as to 17 whether "unallocated water in the basin" refers to unproduced Ag water, or if not, what does that 18 phrase mean? 19 20 Dated: October 28, 2016 NOSSAMAN LLP FREDERIC A. FUDACZ 21 GINA R. NICHOLLS 22 23 Frederic A. Fudacz 24 Attorneys for CITY OF ONTARIO 25 26 27

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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 October 28, 2016 I served the following:

	1. CITY OF ONTARIO'S RESPONSES TO QUESTIONS FOR CLARIFICATION
<u>X</u> /	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.
<u>' X</u> /	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 October 28, 2016 in Rancho Cucamonga, California.

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