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

Chino Basin Municipal Water District,

Plaintiff,

v.

City of Chino, et al.,

Defendants.

Case No. RCV 51010

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

**WATERMASTER'S RESPONSE TO
QUESTIONS FOR CLARIFICATION IN
FINAL ORDERS FOR WATERMASTER'S
MOTION REGARDING 2015 SAFE YIELD
RESET AGREEMENT, AMENDMENT OF
RESTATED JUDGMENT, PARAGRAPH 6**

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

In response to the Court's order at the September 23, 2016 hearing, six parties and Watermaster have submitted a total of 12 questions, 11 of which address three groups of common topics:

- (1) The allocation of Desalter-Induced Recharge and its relationship to the 135,000 AFY Safe Yield (see City of Chino's Questions for Clarification re Tentative Ruling, filed October 7, 2016 ("City of Chino Questions") questions 1-3, Court-Authorized Questions re Court's Tentative Ruling re Watermaster's Motion re 2015 Safe Yield Reset Agreement, filed October 7, 2016 ("Monte

Vista, et al., Questions”) question 1, Overlying (Agricultural) Pool’s Questions for Clarification Regarding Proposed Orders for Watermaster’s Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, filed October 7, 2016 (“Overlying (Agricultural) Pool Questions”) Question 1, and Watermaster’s Questions for Clarification in Final Orders for Watermaster’s Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, filed October 7, 2016 (“Watermaster Questions”)question 1),

(2) The potential effect of the Court’s approval of portions – but not all – of the 2015 Safe Yield Rest Agreement (SYRA) (see Monte Vista, et al., Questions, Question 2, Watermaster Questions, question 2), and

(3) The Court’s findings regarding the priority between Land Use Conversion and Early Transfer claims (see Monte Vista, et al., Questions Question 3, Watermaster Questions, questions 3 and 4).

One remaining question addresses restrictions on extractions of stored water (Overlying (Agricultural) Pool Questions, question 2).

For the Court’s convenience, Watermaster provides context and background as to why the Court should address each of these groups of common topics and the Overlying (Agricultural) Pool’s question in any final ruling.

Group One: Desalter-Induced Recharge (New Yield) Accounting

All Parties to the Judgment are expressly enjoined from Producing¹ groundwater from the Chino Basin other than as authorized (Restated Judgment, ¶ 13) to protect the Basin and Parties from “undesirable results.”² While the Parties are not limited in the quantities that they may

¹ “Produce or Produced – To pump or extract ground water from Chino Basin.” (Restated Judgment, ¶ 4.(q).)

² “Safe Yield is the long-term average annual quantity of ground water (excluding replenishment or stored water but including return flow to the Basin from use of replenishment or stored water) which can be produced from the Basin under cultural conditions of a particular year without causing an undesirable result.” (Restated Judgment, ¶ 4.(x).) See also the Peace Agreement’s definition of “Material Physical Injury” (Peace Agreement, 1.1(y) [“Material Physical Injury” means material injury that is attributable to the Recharge, Transfer, storage and recovery,

1 Produce, the Judgment requires that, beyond the permitted Controlled Overdraft comprising an
2 initial 200,000 AF and an additional 400,000 AF of Re-Operation water (Restated Judgment,
3 Exhibit “I”, ¶¶ 2.(b), 3.(a)), there must be bucket for bucket replenishment to offset Production in
4 excess of the Basin’s Safe Yield. (Restated Judgment, ¶¶ 13, 42.)

5 The two exceptions to bucket for bucket replenishment noted above were expressly
6 authorized by the Court as follows. First in 1978, upon the adoption of the Judgment, the Court
7 authorized 200,000 AF as “controlled overdraft.” (Restated Judgment Exhibit “I”, ¶ 3.(a).)
8 Second, in 2007, upon an amendment in furtherance of Basin Re-Operation, the Court authorized
9 an additional 400,000 AF of unreplenished pumping by the Desalters again as “controlled
10 overdraft.” (Restated Judgment Exhibit “I”, ¶ 2.(b).) In the latter case, and particularly relevant
11 to the Court’s Tentative Orders, Exhibit “I” states that the “controlled overdraft” that was being
12 made available to be Produced by the Desalters “pursuant to Re-Operation *does not constitute*
13 *New Yield or...Safe Yield...*” (Restated Judgment Exhibit “I”, ¶2(b)(3).) Therefore, it is
14 important for the future administration of the Restated Judgment for the Court to reconcile any
15 finding that Desalter Production is New Yield (Tentative Orders 30:23-26) on the one hand, with
16 Restated Judgment, Exhibit “I” ¶ 2(b)(3) on the other hand.

17 For context, the attached chart depicts the arithmetic implication of the Court’s Tentative
18 Orders, which appear to find that all Desalter Production is “New Yield” as opposed to finding
19 that “New Yield” (Desalter-Induced Recharge) could be Produced by the Desalters. The Court’s
20 reconciliation of the Restated Judgment language referenced above, and the basis for authorizing
21 the additional groundwater Production, will be important in guiding Watermaster in the future
22 administration of the decree.

23 Providing clarity as to the Group One questions is also important because Watermaster
24 and the Parties need guidance as to whether they may establish the 135,000 AFY Safe Yield
25

26 management, movement or Production of water, or implementation of the OBMP, including, but
27 not limited to, degradation of water quality, liquefaction, land subsidence, increases in pump lift
28 (lower water levels) and adverse impacts associated with rising groundwater. Material Physical
Injury does not include "economic injury" that results from other than physical causes. Once fully
mitigated, physical injury shall no longer be considered to be material.”]

1 proposed under the SYRA as including Desalter-Induced Recharge³ so long as Watermaster
2 allocates it to offset Desalter Production in accordance with Peace Agreement §6.2(a)(vi), or if
3 Watermaster instead must quantify the Safe Yield at 135,000 less the quantity of the Desalter-
4 Induced Recharge, even though there is no difference in physical, legal, or accounting impacts
5 between the two approaches. That is, the results differ only in form, not substance.

6 **Group Two: SYRA Condition Precedent**

7 The SYRA is the product of the Facilitation and Non-Disclosure Agreement (FANDA)
8 process, during which the parties to that agreement comprehensively settled and compromised
9 their disagreements, so as to enable Watermaster to implement the CAMAs through and
10 following the reset of Safe Yield. The Court's decision to approve some, but not all, of the
11 SYRA's provisions can materially advantage one party over another, in that the full benefit of the
12 parties' intended settlement and compromise is not achieved, as one or more parties may be
13 denied the consideration for which it bargained. By answering the questions in Group Two, the
14 Court can gain a complete understanding of the physical and economic consequences at issue
15 among the Parties and resolved by the SYRA.

16 The answers to the Group Two questions provide the Court with an opportunity to clearly
17 describe the sections of the SYRA that the Court is approving and thereby charging Watermaster
18 to implement. Further, the answers can provide guidance to Watermaster on implementation and
19 whether there are measures that may be undertaken by Watermaster and the Parties to address the
20 Court's concerns so that they may return to the Court for approval of the entire SYRA to preserve
21 the expected balance of benefits and burdens from the compromise.

22 **Group Three: Priority of Land Use Conversions**

23 The Appropriative Pool Pooling Plan⁴ has allocated water that is unproduced by the
24 members of the Overlying (Agricultural) Pool ("Unproduced Agricultural Water") to members of
25

26 ³ Provided, however, that the Desalter-Induced Recharge New Yield is dedicated to offset
27 Desalter Production, as required by Paragraph 7.2 of the Peace II Agreement, and not distributed
28 to the members of the Appropriative Pool as Operating Safe Yield. This is also the treatment of
Desalter-Induced Recharge provided for in Paragraph 5.2(b) of the SYRA.

⁴ The Appropriative Pool Pooling Plan is found in Exhibit "H" to the Restated Judgment.

1 the Appropriative Pool pursuant to Land Use Conversion claims since the 1978 Judgment. Since
2 that time, the Parties have agreed to, and the Court has approved and directed Watermaster to
3 implement, certain modifications to the manner in which Unproduced Agricultural Water is
4 allocated among the members of the Appropriative Pool, including allocations through Land Use
5 Conversion and Early Transfer claims.⁵ In some cases, these agreements were part of larger
6 agreements resolving disputes among the Parties.

7 So that Watermaster may properly implement the Court's orders, the answers will provide
8 the Court an opportunity to early identify the method for allocation of surplus water from the
9 Agricultural Pool to provide guidance and avoid future conflicts. The answers can also allow the
10 Court to address the effect of the Court's determination on the priority of Land Use Conversion
11 and Early Transfer claims, as well as the prior Court orders that, on their face, involve changes to
12 the provisions of Section 10 of the Appropriative Pool Pooling Plan, section 6.3 of Watermaster's
13 Rules and Regulations, and the terms of the CAMAs and prior stipulated Court orders which
14 involved Land Use Conversion and Early Transfer.

15 **Remaining Question: Extractions of Stored Water**

16 The Overlying (Agricultural) Pool proposes a two-part question (Overlying (Agricultural)
17 Pool Questions, question 2) arising from the Court's Tentative Orders' rejection of the SYRA's
18 Safe Storage Management Measures (SSMM). The Overlying (Agricultural) Pool's two-part
19 question asks whether the Tentative Orders require: (i) Watermaster's approval and a specific
20 finding that no Material Physical Injury will result from a proposed recovery of water from
21 storage, and (ii) whether the cumulative pumping of groundwater, inclusive of stored water and
22 Safe Yield production rights, will cause unauthorized overdraft.

23 Providing answers to the Agricultural Pool's questions can provide further clarification of
24 the applicable standards to be applied by Watermaster to the storage and recovery of groundwater
25 under the Judgment and the CAMAs, and whether a finding by Watermaster that there will not be

26 _____
27 ⁵ For a detailed background of the evolution of the Appropriative Pool's methodology for the
28 allocation of Unproduced Agricultural Water, see section III.D.1. of Watermaster's Reply to
Oppositions to Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated
Judgment, Paragraph 6, filed February 1, 2016.

1 Material Physical Injury for the production of the stored water is sufficient to satisfy the
2 requirement. (Rules and Regulations, §8.1)

3 So that Watermaster may properly implement the Court's orders, the answer will provide
4 the Court an opportunity to clearly identify the method for possible recovery of water from
5 storage. Watermaster and the Parties may also be able to redress any deficiencies in the SSMM
6 that are identified by the Court so that with further modification, the SSMM might be
7 subsequently presented to the Court for its consideration and approval.

8
9 Dated: October 28, 2016

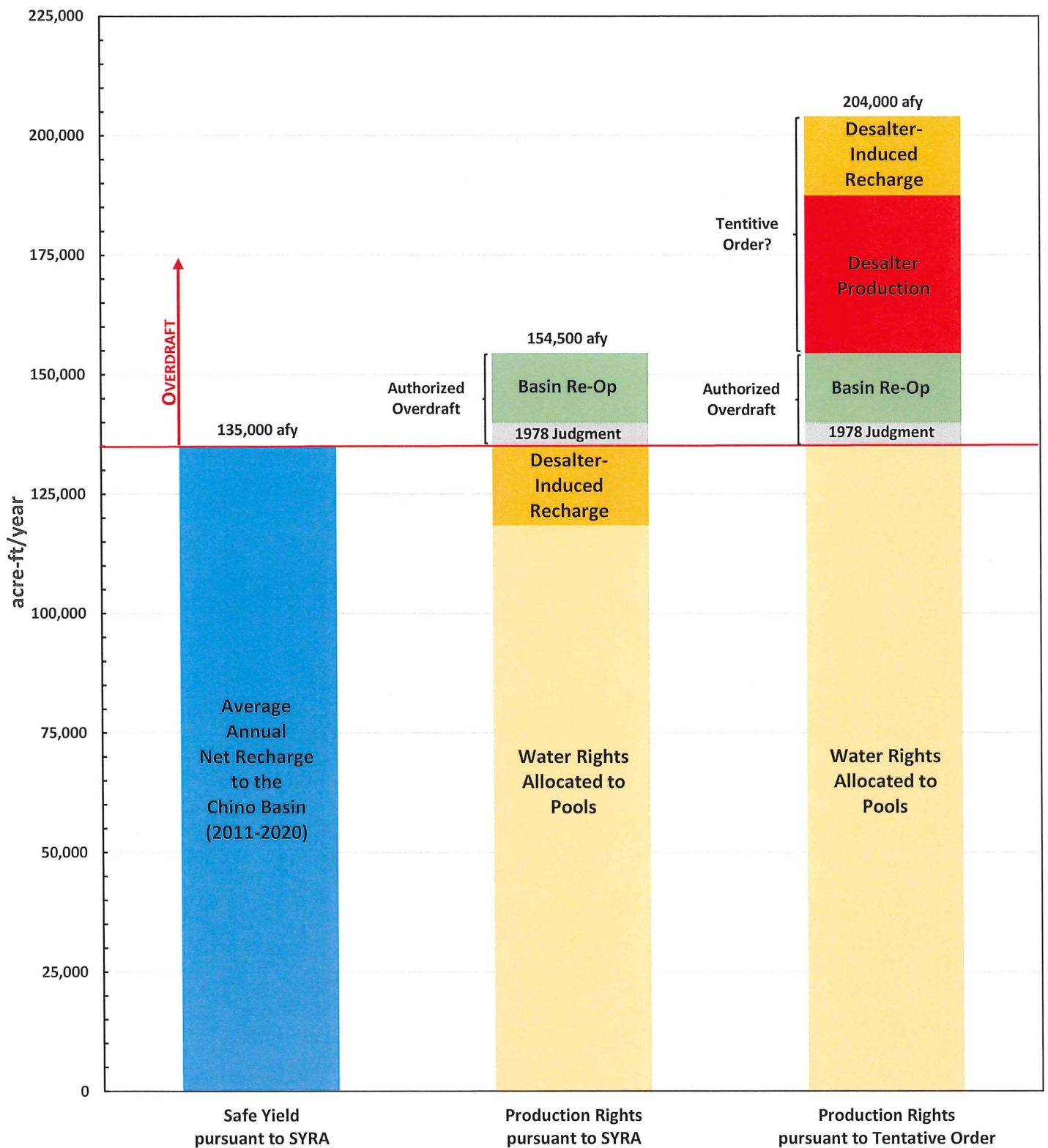
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Safe Yield vs Production Rights (*Production Year 2016-17*)



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. WATERMASTER'S RESPONSE TO QUESTIONS FOR CLARIFICATION IN FINAL ORDERS FOR WATERMASTER'S MOTION REGARDING 2015 SAFE YIELD RESET AGREEMENT, AMENDMENT OF RESTATED JUDGMENT, PARAGRAPH 6

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

See attached service list: Mailing List 1

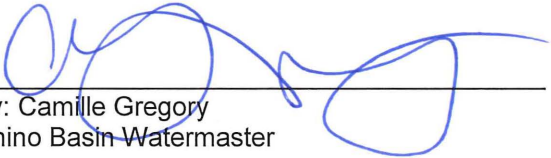
/ ___ / BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ ___ / 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 October 28, 2016 in Rancho Cucamonga, California.



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