

FEE EXEMPT

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CHINO BASIN WATERMASTER

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

10
11 Chino Basin Municipal Water District,

12 Plaintiff,

13 v.

14 City of Chino, et al.,

15 Defendants.

Case No. RCV 51010

[Assigned for All Purposes to the
Honorable Stanford E. Reichert]

**NOTICE OF HEARING AND REVISED
PROPOSED ORDER RE SYRA AND
RESPONSE TO QUESTIONS; ISSUE FOR
FURTHER BRIEFING**

DATE: April 28, 2017

TIME: 1:30 P.M.

DEPT.: S35

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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on February 22, 2017, the Court in the above entitled action issued a revised proposed order on Chino Basin Watermaster’s (“Watermaster”) Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6 (the “Watermaster’s Motion”). A copy of the revised proposed order is attached hereto as Exhibit 1.

Additionally, the Court set a hearing on the revised proposed order for April 28, 2017 at 1:30 p.m. in Department S35 of the above entitled Court. The Court has ordered further briefing on the issue identified in the proposed order as follows:

- 1. Initial briefs are due to be served and filed by 4:00 p.m. on March 10, 2017;
- 2. Opposition briefs are due to be served and filed by 4:00 p.m. on March 24, 2017; and,
- 3. Reply briefs are due to be served and filed by 4:00 p.m. April 7, 2017.

Dated: February 23, 2017

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

By: 

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

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 22 2017

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

Revised Proposed Order Re SYRA and
Response to Questions; Issue for Further
Briefing

Date: April 28, 2017
Time: 1:30 PM
Department: S35

CITY OF CHINO,

Plaintiff,

vs.

Cucamonga Water District, et al.

Defendants

PLEASE TAKE NOTICE that the revised proposed order for the SYRA
reset motion in case RCV 51010 is attached. A hearing is set for the revised
proposed order for April 28, 2017, 1:30 PM, Dept. S35 of the above-entitled court.

NOTES RE REVISED PROPOSED ORDER

A. For convenience of the parties and counsel, the court has shown the revisions
in the proposed order. Parts of the order the court intends to delete are ~~stricken~~ and
additions are shown in the following font.

1 B. The court understands that it was in error in defining all Desalter-produced
2 water as “Re-operation water.” “Re-operation water is specifically defined as the
3 “controlled overdraft”, and “controlled overdraft” consists only of the 200,000 acre-
4 feet (AF) of water authorized in the 1978 judgement (Restated Judgment, Exhibit I,
5 ¶3.(a)) plus the 400,000 AF of water the court authorized in 2007. Attachment 2,
6 “Safe Yield Reset Implementation Desalter Replenishment Accounting Illustration
7 (Per Peace II Agreement, Section 6.2 (PIIA, 6.2 and June 11, 2015 Key Principles) to
8 Watermaster’s motion filed October 23, 2015 shows the 400,000 AF starting in 2006
9 to be completely exhausted by the end of 2025. This Re-Operation water aka.
10 “controlled overdraft” can be pumped with no replenishment obligation.
11

12 I. FURTHER ORDERS: Responses to parties’ questions

13 In its response to questions for clarification filed October 28, 2016, Watermaster
14 grouped most of the parties’ questions generally into three groups, with some
15 additional individual questions.. The court will address those questions here.

16 1) Group 1: The allocation of Desalter-induced recharge and its relationship to the
17 135,000 AFY Safe Yield. More specifically,

18 a) Is new yield part of safe yield or operating safe yield? Where is it included?

19 b) Overlying (Agricultural) Pool question: Does Safe Yield includes the 20,000
20 AFY induced as result of pumping of the desalters? The assumption being
21 that the full desalter production is 40,000 AFY with close to 50% being
22 induced into the Chino basin.

23 2) Group 2: The potential effect of the court’s approval of only portions of the
24 SYRA.

25 a) The court has answered this question by reconsidering its draft order. The
26 court has accepted Watermaster’s argument that approval of “some, but not
27 all, of SYRA’s provisions can materially advantage one party over another.”

28 The court agrees that by approving only portions of SYRA, “the full benefit of

1 the parties intended settlement and compromise is not achieved, as one or
2 more parties may be denied the consideration for which it bargained.

3 b) Therefore, the court determined that SYRA is not severable, except for
4 resetting the safe yield at 135,000 AFY the reason set forth in the draft order.
5 No further briefing in response to this question is necessary.

6 3) Group 3: The court's findings regarding the priority between land use conversion
7 and early transfer claims.

8 a) The court believes it made it clear to Watermaster and the parties that the
9 court was not going to reconsider any of its order with respect to the priority
10 of land use conversions. Therefore, the group 3 questions are irrelevant.

11 i) The court does not find a legal basis to adapt its legal conclusions to
12 misunderstandings of the court's orders under which the parties and
13 Watermaster have proceeded.

14 ii) Regarding the question of the Monte Vista Water group regarding the
15 restoration of conversion claims to 1.3 AFY: The draft order does not
16 restore conversion claims to 1.3 AFY. The judgement sets 2.0 AFY for
17 each converted acre.

18 iii) The court confirms its draft orders; no further briefing required in
19 response to this group of questions.

20 4) Additional question from Watermaster regarding the retroactive application. This
21 question requires the court to speculate on the consequences of its rulings and
22 orders. The court rules on the legal issues involved. If Watermaster and the
23 parties wish to engage the court on specific physical consequences of the court's
24 order, the court will consider starting the process to engage a special referee as
25 Judge Gunn did.

26 5) Additional question from the Overlying (Agricultural) Pool regarding Safe Storage
27 Management Measures. As with the determination of priorities regarding land use
28 conversions and early transfer claims, the court believes it made it clear to

1 Watermaster and the parties that the court has made a firm determination on this
2 issue as set forth in the draft order. No further briefing on this question is
3 necessary.

4 a) The court concludes that the status quo with respect to stored water remains
5 in effect. If a specific party has a specific question regarding extraction of
6 stored water, the proper vehicle would be a specific motion to the court
7 outside of the complexities of SYRA.

8 6) Responses to specific questions:

9 a) Watermaster questions:

10 i) Desalter production v. New Yield

11 (1) The court's revised order addresses both questions. The court does not
12 need any further clarification or accounting for the reasons set forth in
13 the revised proposed order.

14 ii) SYRA condition precedent.

15 (1) The court's revised orders address all these questions. The court does
16 not need any further clarification or accounting.

17 iii) Priority of land use conversions.

18 (1) For question 3.(a), the court finds no response necessary because the
19 court does not need to rule on the effect its ruling. The court makes its
20 rulings according to the law. If Watermaster wants the court to start
21 engaging in making predictions on the practical effect of its rulings, as
22 above, the court will consider starting the process to engage a special
23 referee as Judge Gunn did.

24 (2) The court concludes that if Watermaster has misinterpreted the court's
25 orders and rulings, that is for Watermaster to fix, subject to any
26 approval which the law requires.

27 (3) Question 3.(b), which runs on for 7 lines, the court finds too vague to
28 answer.

1 (4) The court emphasizes again that the court's ruling regarding land use
2 conversions is firm.

3 iv) Retroactive application.

4 (1) Again, Watermaster has asked to court to speculate on the practical
5 effect of its legal orders. The court makes legal rulings and decisions,
6 and unless assisted by a special referee, will not engage determining the
7 practical impact of its orders. If Watermaster has misinterpreted the
8 court's orders and rulings, that is for Watermaster to fix, subject to any
9 approval which the law requires.

10 (a) The question itself requires the court to speculate on what
11 Watermaster "may" have done in misinterpreting and then relying
12 on its own misinterpretation of the court's orders.

13 b) Overlying (Agricultural) Pool questions:

14 i) Safe Yield v. Desalter-induced Recharge

15 (1) The Overlying (Agricultural) Pool succinctly asks: does Safe Yield
16 include the 20,000 AFY induced as a result of pumping of the
17 Desalters? The assumption being that the full Desalter production is
18 40,000 AFY with close to 50% being induced into the Chino Basin.

19 (a) This is the question for further briefing, as set forth in section II'
20 below.

21 (i) The Four Agencies restated the question as follows: "specifically,
22 these questions regard the safe yield reset to 135,000 AFY
23 relative to the Desalter-induced Recharge as New Yield."

24 (Responses to Court-Authorized Questions Records Tentative
25 Ruling By Watermaster's Motion Re 2015 Safe Yield Reset
26 Agreement, page 2, lines 9-10.)

27 (2) Safe Storage Management Measures

28 (a) The Overlying (Agricultural) Pool asked about water currently in

1 storage being pumped without permission from Watermaster and a
2 specific finding of no Material Physical Injury.

3 (b) The court is not imposing any of the Safe Storage Management
4 Measures, and the status quo remains in effect. Therefore no
5 further briefing is necessary on this issue.

6 c) City of Ontario questions:

7 i) In response to Watermaster question number 2, the City of Ontario
8 correctly points out that the question calls for briefing as to whether the
9 proper procedures have been followed for the court to approve the revised
10 schedule operation of water on a standalone basis.

11 (1) However, no response is necessary because the court is not ordering
12 any part of SYRA other than the Safe Yield reset to 135,000 AFY.
13 Therefore a revised schedule of operation of water on a standalone
14 basis is irrelevant.

15 ii) The City of Ontario also pointed out a problem with Monte Vista Water
16 District aka "The Four Agencies" question number 2 being made with
17 respect to the other portions of the tentative ruling that pertain the desalter
18 replenishment without identifying them.

19 (1) While this is true, no further ruling is necessary because the court is not
20 ordering any part of SYRA other than the Safe Yield reset to 135,000
21 AFY.

22 d) Monte Vista Water District On Behalf of itself, Cucamonga Valley Water
23 District, City of Pomona, and City of Upland (aka "The Four Agencies" aka
24 "Responding AP Members") questions:

25 i) The court dealt with all these questions thoroughly above as part of the
26 group questions.

27 7) City of Chino questions:

28 a) The three questions from the City of Chino all relate to know Watermaster

1 will account for Desalter-induced Recharge (column G) on its own, by
2 deducting it from annual safe yield, or by deducting it from unallocated water
3 in the basin. Chino refers to column G of the Safe Yield Reset
4 Implementation Desalter Replenishment Accounting Illustration (per Peace II
5 Agreement, Section 6.2 (PII A, 6.2) and June 11, 2015 Key Principles).

6 b) These questions are really the subject of the additional briefing with respect to
7 how Desalter-induced New Yield relates to Safe Yield. This is a subject on
8 which the court sets additional briefing as set forth in section II below.

9 8) Responses of other parties to questions posed.

10 a) The court has considered all the responses in the court's formulation set forth
11 above. The court notes the City of Ontario correctly points out it would be
12 Watermaster to provide clarification by accounting for the financial and
13 physical consequences of the entire tentative order, not court to do so..

14 II. ISSUE FOR FURTHER BRIEFING

15 A. In addition to the reasons set forth in the attached revised proposed order, the
16 court concludes that Peace I ¶7.5-Replenishment Water, Peace II Article VI-
17 Groundwater Production By And Replenishment For Desalters, and Peace II Article
18 VII-Yield Accounting cover how Desalter-replenishment including Desalter-induced
19 Recharge relates to the 135,000 AFY Safe Yield for the following additional reasons:

20 1. Except for the Safe Yield reset to 135,000 AFY, as set forth in the proposed
21 order, the court has ruled that no part of SYRA will be enforced. The court
22 orders no further briefing on this issue.

23 2. The court starts with the premise established in the Judgment and all the
24 Court-Approved Management Agreements the Safe Yield is the maximum
25 amount of water that can be produced/pumped from the Chino Basin without a
26 replenishment obligation. Pursuant to this proposed order, the Safe Yield is
27 135,000 AFY.

28 a) Peace II, Article V-Future Desalters, ¶5.1 identifies the plan to increase the

1 Desalter capacity to produce about 40,000 AFY of groundwater. This plan
2 has been accomplished.

3 b) Peace II ARTICLE VI-GROUNDWATER PRODUCTION BY AND
4 REPLENISHMENT FOR DESALTERS, sets forth the designated
5 sources of Desalter replenishment..

6 c) Peace II, ARTICLE VI, ¶6.2 sets forth how Watermaster will calculate the
7 total Desalter Production for the preceding year and then apply a credit
8 [i.e., a reduction] against the total quantity from sources including New
9 Yield [defined in Peace I] excluding Stormwater (Peace Agreement Section
10 7.5(b).)

11 I) Nowhere in Judgment or any of the Court-Approved Management
12 Agreements does the 40,000 AFY get divided up and reassigned to
13 other pools.

14 d) At the time of Peace II, the parties and the court must have contemplated
15 Desalter production in excess of Desalter-induced recharge because of the
16 credit structure of Peace II ARTICLE VI and the identification of 40,000
17 AFY of Desalter production.

18 e) The court concludes that Desalter-induced recharge can only be applied as
19 set forth in Peace II ARTICLE VI and ARTICLE VII which includes
20 Peace I's definition of "New Yield."

21 f) The court also concludes that any relationship between Desalter-induced
22 Recharge and the resetting of Safe Yield to 135,000 has been previously
23 defined, and the court confirms those definitions. In summary, they are:

24 I) Peace I ¶7.5: This set up sources and the priorities for replenishment
25 water for the Desalters.

26 (a) Peace I ¶1.1(aa) defined "New Yield" to include proven increases in
27 yield from sources including operation of the Desalters and induced
28 Recharge.

1 II) Peace II addressed future Desalters in Article V. In Article VI, Peace II
2 confirmed the priority of Replenishment Water in Peace I ¶7.5, and in
3 Peace II ¶6.2 set forth the priorities to offset Desalter production.

4 III) Peace II Article VII, specifically ¶7.1, confirmed the Peace I ¶ 7.5
5 priorities for offsetting Desalter production and was explicit: “For the
6 initial term of the Peace Agreement, neither Watermaster nor the
7 Parties will request that Safe Yield be recalculated in a manner that
8 incorporates New Yield *attributable to the Desalters* into the determination
9 of Safe Yield” (Emphasis in original.)

10 (a) The court’s intended ruling is that:

11 (i) Desalter-induced recharge is New Yield;

12 (ii) Peace II ¶7.1 prevents Safe Yield recalculation to incorporate
13 New Yield (from the Desalters);

14 (iii) Therefore, Desalter-induced recharge has no relationship to Safe
15 Yield, at least for the term of the Peace agreements.

16 g) The court also concludes that as Re-operation water (*i.e.*, controlled
17 overdraft) comes to an end, Desalter-induced Recharge can be an
18 additional source of water for the Basin, but only as set forth in Peace I
19 and Peace II, as set forth therein, to replenish the Desalters as New Yield.

20 h) Desalter-induced Recharge, which is part of New Yield, has a specific
21 purpose as set forth in Peace II: “so that this source of supply will be
22 available for Desalter Production rather than for use by individual parties
23 to the Judgment.”

24 B. Keeping in mind that the court only considers legal issues for arguments
25 regarding its rulings, the court sets the following briefing schedule on the issues set
26 forth in Section II above. No briefing on any other issue is permitted.

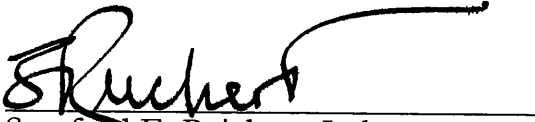
27 1. Initial briefs are due to be served and filed by March 10, 2017, 4:00 PM

28 2. Opposition briefs are due to be served and filed by March 24, 4:00PM.

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- 3. Reply briefs are due to be served and filed by April 7, 2017, 4:00 PM.
- 4. The final hearing on the proposed order is set for April 28, 2017, 1:30 PM, Dept. S35, unless continued by the court depending on the nature and extent of the briefing.

Dated: 2.22.17


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)

Case No. RCV 51010
[Revised Proposed]
ORDERS for Watermaster's Motion
Regarding 2015 Safe Yield Reset
Agreement, Amendment of Restated
Judgement, Paragraph 6
Date:
Time: 1:30 PM
Department: S35

17
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.

25 However, the court denies **all other parts of SYRA including** the motions
26 to amend the schedule for access to Re-Operation Water **and**. ~~The court denies~~ the
27 motion to institute Safe Storage Management Measures. The court makes additional
28 orders **regarding priorities and** ~~with respect to access for Re-Operation~~ **Desalter**

1 water as set forth herein.

2
3 **REQUEST FOR JUDICIAL NOTICE**

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

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

18
19 **JOINDERS AND FILINGS**

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

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

25 Rulings in separate document.

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

1 Rulings in separate document.

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

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

5 C. Oppositions to Watermaster's motion

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

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

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

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

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

7 II) All objections overruled.

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

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

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

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

18 II) All objections overruled.

19 4. Joinders in Watermaster's reply to oppositions

20 a) Overlying (Agricultural) Pool

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

22 I) City of Upland

23 II) Monte Vista Water District

24 III) Cucamonga Valley Water District

25 IV) Fontana Union Water Company

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 1. Jurupa Community Services District response to Judge Reichert's
- 2 request for clarification filed April 1, 2016.
- 3 2. City of Chino's responses to Judge Reichert's questions, filed April 1,
- 4 2016.
- 5 3. Watermaster's response to order for additional briefing filed April 1,
- 6 2016.
- 7 a) Chino's reply to Watermaster's response to order for additional briefing,
- 8 filed April 11, 2016.
- 9 b) Jurupa Community Services District's additional response to Judge
- 10 Reichert's request for clarification, filed April 11, 2016
- 11 4. Watermaster's further response to order for additional briefing, filed
- 12 April 11, 2016

14 **SEPTEMBER 23, 2016, HEARING AND ADDITIONAL BRIEFING**

15 After extensive briefing and consideration, on September 23, 2016,

16 the court held a hearing on the 2015 SYRA and related motions. Before

17 the hearing, the court had issued an lengthy (over 60 pages) proposed

18 order. At the hearing on September 23, there was extensive oral

19 argument, and the court concluded that some aspects of the court's

20 proposed order were confusing or erroneous. Therefore, the ordered that

21 there be even further briefing, and the court ordered additional briefing

22 through questions by the parties about the proposed order. In its order

23 entitled "Revised Proposed Order Re SYRA in Response to Questions:

24 Issues for Further Briefing," and the current order, the court has

25 addressed the parties' questions.

27 **I. INTRODUCTION, DEFINITIONS, BACKGROUND**

28 A. The 1978 judgment in *Chino Basin Municipal Water District v. City of Chino* (San

1 Bernardino Superior Court Case No. 51010) set the Safe Yield of the Chino Basin at
 2 140,000 acre-feet per year (AFY), but reserved continuing jurisdiction to the court to
 3 amend the Judgment, inter alia, to redetermine the Safe Yield after the first 10 years
 4 of operation of the Physical Solution established under the Judgment. The Physical
 5 Solution identified three groups of parties (Pools) with water interests in the Chino
 6 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 ÷ 5 = 82,800 per year]	82,800
Overlying (Non-agricultural) Pool**	7,366 acre-feet	7,366
Appropriative Pool***	49,834 acre-feet	49,834
	Yearly total allocation	140,000

20 *The members of this pool included dairy farms.

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

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

25 Over the course of the Court-Approved Management Agreements
 26 (set forth in the next section), the court allowed up to 600,000 AF of
 27 water to be produced/pumped out of the Chino Basin without any
 28 replenishment obligation. “While the parties are not limited in the

1 quantities of water they may produce, the Judgment requires that beyond
2 the permitted Controlled Overdraft comprising an initial 200,000 AF and an
3 additional 400,000 AF of Re-operation water (Restated Judgment, Exhibit
4 "I", ¶¶ 2.(b), 3.(a)), there must be a bucket for bucket replenishment [and
5 associated cost to the producer/pumper] to offset production in excess of
6 the Basin's Safe Yield. (Restated Judgment, ¶¶ 13, 42)." (Watermaster's
7 Response to Questions for Clarification in Final Orders for Watermaster's
8 Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of
9 Restated Judgment, Paragraph 6, page 2, line 23 to page 3, line 4, filed
10 October 28, 2016.)

11 The court notes that this total "controlled overdraft" *i.e.*, pumping
12 without replenishment cost, (aka "Re-Operation Water") of 600,000 AF
13 has just about been exhausted.

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

16
17 B. Since the entry of the judgment, the court has previously approved agreements to
18 implement the Physical Solution ("Court Approved Management Agreements" aka
19 "CAMA"). There is no dispute that the court has the authority and duty to
20 independently review the evidence de novo and determine whether proposals by
21 Watermaster or any party comply with the Judgment and the Court Approved
22 Management Agreements. (Restated Judgment ¶31(d).) The Court Approved
23 Management Agreements are:

24 1. The Chino Basin Peace Agreement (Peace I Agreement), dated June 29,
25 2000, as subsequently amended in September 2004 and December 2007.

26 a. In 2000 the parties executed Peace Agreement Chino Basin (Peace I
27 Agreement) and agreed to Watermaster's adoption of the Optimum
28 Basin Management Plan (OBMP) Implementation Plan. At about the

1 same time, the court ordered Watermaster to proceed in a manner
2 consistent with Peace I and the OBMP, including Program Element 8
3 (Develop and Implement Groundwater Storage Management Program)
4 and Program Element 9 (Develop and Implement Storage and
5 Recovery Programs). The implementation plan acknowledged the need
6 to obtain better production data through the metering of non-exempt
7 production within the Basin. Program Elements 8 and 9 provided for
8 Watermaster to redetermine and reset the Basin's Safe Yield in the year
9 2010/11. The basis of the redetermination and reset would be
10 production data derived from the collection of additional data regarding
11 the parties' production (*i.e.*, parties who pumped water out of the Basin)
12 within the basin during the 10-year period 2000/01 through 2009/10.
13 The study for redetermination and reset was not completed
14 until 2015, and the motion regarding determination and reset
15 was not filed until December 2015.

- 16 b. The Peace I Agreement introduced the installation of Desalters in the
17 southwest portion of the Basin. The Desalters pump ground water
18 from the aquifer and supply that water to water companies and other
19 users. By pumping water out of the aquifer, the Desalters also lowered
20 the ground water table to help obtain Hydrologic Control, *i.e.*,
21 preventing Chino Basin ground water from reaching the Santa Ana
22 River south of the Basin. The Santa Ana River is a major source of
23 water for Orange County, and water impurities and contaminants, some
24 of which came from the Chino Basin dairy farms ("salts") were in the
25 groundwater flowing from the Basin into the Santa Ana River. The
26 Desalter capacity has now expanded to ~~20~~ 40 MGD (40 million
27 gallons per day) as provided in the OBMP Implementation Plan to
28 protect against a decline in Safe Yield and for water quality benefits, but

1 the court reserved the question of how "Future Desalter" capacity
2 would be addressed. The Chino Basin Desalter Authority (CDA),
3 which includes the City of Chino, participated in the construction of the
4 Desalters which represented a substantial engineering and financial
5 undertaking. These Desalters were completed and fully operational in
6 2006.

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

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

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

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

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

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

28 7. Watermaster Resolution 2010-04 ("Resolution of the Chino Basin

1 Watermaster regarding Implementation of the Peace II Agreement and the Phase III
2 Desalter Expansion in Accordance with the December 21, 2007 Order of the San
3 Bernardino Superior Court”).

4
5 C. Additional background for motion.

6 1. At the September 24, 2015 Watermaster Board Meeting, the board
7 adopted Resolution 2015-06: Resolution of the Chino Basin Watermaster regarding
8 the 2015 Safe Yield Reset Agreement (SYRA).

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

16 a) The FANDA process took place starting in November 2014, and through
17 at least 30 meetings, by May 27, 2015, all but one of the then-active parties
18 to the FANDA reached a non-binding agreement among their negotiating
19 representatives on certain key principles (apparently also called the “term
20 sheet”) embodied in the Safe Yield Summary of Non-Binding Key
21 Principles Derived from the Facilitated Process.

22 b) The parties continued to negotiate, with a goal of reducing the Key
23 Principles into a binding instrument for execution by September 1, 2015.
24 That agreement is identified as the 2015 Safe Yield Reset Agreement
25 (SYRA). The Appropriative Pool, the Overlying (Agricultural) Pool, and
26 the Three Valleys Municipal Water District approved the 22-page
27 agreement, as did many other parties. The City of Chino refused to sign
28 the agreement.

1 c) On September 24, 2015, the board at its regular meeting adopted
2 resolution 2015-06, and previously – on September 17, 2015 – the advisory
3 committee approved resolution 2015-06: “Resolution of Chino Basin
4 Watermaster regarding 2015 Safe Yield Reset Agreement (SYRA).”

5 d) Watermaster’s instant motion asks the court to address the issues covered
6 in the SYRA as follows:

7 I) The reset of the Basin Safe Yield from 140,000 acre-fee per year (AFY)
8 to 135,000 AFY pursuant to the Restated Judgment, the OBMP
9 Implementation Plan, and Watermaster’s Rules and Regulations;

10 II) The manner in which Watermaster should account for various
11 components of the recharge to the Basin implementing the Court-
12 Approved Management Agreements; and

13 III) Establishment of Safe Storage Management Measures (SSMM)
14 intended to ensure that withdrawals of groundwater from authorized
15 storage accounts within the Basin are safe, sustainable, and will not
16 cause Material Physical Injury or undesirable results.

17
18 D. SUMMARY RULNGS:

19 In its motion, Watermaster requests an order acknowledging the 2015 Safe
20 Yield Reset Agreement and ordering Watermaster to proceed in accordance with its
21 terms with respect to amending the restated judgment to reset the Safe Yield of the
22 Basin from 135,000 AFY to 135,000 AFY and amending the schedule for access to
23 Re-Operation water (~~water pumped by the Desalters~~). For the reason set forth
24 herein, the court grants the motion with respect to amending the restated judgment
25 to reset the Safe Yield of the basin to 135,000 AFY. However, the court denies **the**
26 **rest of the motions including** the motions to amend the schedule for access to
27 Re-operation water ~~pumped by the Desalters (“Desalter water”)~~ and ~~The court~~
28 **denies and** the motion to institute Safe Storage Management Measures. The court

1 makes additional orders with respect to Desalter water as set forth herein.

3 **II. Severability of SYRA**

4 Watermaster has questioned whether the court can sever SYRA and
5 enforce certain sections and not others. For the following reasons, except
6 for the Safe Yield reset itself, the court has concluded that it cannot
7 enforce some of sections and not others:

8 A. Watermaster itself has argued that SYRA is an integrated document
9 which cannot be divided.

10 1. Watermaster's "Response to Questions for Clarification, etc."
11 filed October 28, 2016, states: "the SYRA is the product of the Facilitation
12 and Non-Disclosure Agreement (FANDA) process, during which the parties
13 to that agreement comprehensively settled and compromised their
14 disagreements, so as to enable Watermaster to implement the CAMA's
15 through and following the reset of Safe Yield.

16 a) The court does not find a basis for this characterization. *Most*
17 of the parties settled and compromised their disagreements,
18 but not all, notably the city of Chino and Jurupa Community
19 Services District.

20 2. Watermaster further argues that approving "some, but not all,
21 of SYRA's provisions can materially advantage one party over another, in
22 that the full benefit of the parties intended settlement and compromise is
23 not achieved, as one or more parties may be denied the consideration for
24 which it bargained."

25 a) For the reasons set forth below, the court refuses to adopt
26 SYRA in whole. Following Watermaster's own all-or-nothing
27 argument, the court must conclude that not only is there no
28 legal basis to enforce part of SYRA, but also that it is

1 fundamentally unfair to the parties to enforce portions of SYRA
2 for which the parties did not bargain.

3 3. However, the court concludes there is a qualitative difference
4 between the safe yield reset and the balance of SYRA.

5 a) The request to reduce the Safe Yield to 135,000 AFY is a legal
6 determination for the court.

7 b) The request to reduce Safe Yield is based on the Reset
8 Technical Memorandum report and model. That memorandum
9 has nothing to do with interactions, bargaining, or allocations
10 among the parties.

11 I) There ample technical and scientific support for the reset in
12 the Technical Memorandum and the 2013 Chino Basin
13 Groundwater Model Update and Recalculation of Safe Yield
14 Pursant to the Peace Agreement prepared by Wildermuth
15 Environmental, Inc. dated October 2015.

16 c) The request to reduce Safe Yield is in response to the court
17 order itself to evaluate the yield every 10 years

18 I) Although the study should have been done in 2010, at least
19 it was completed in 2015.

20 II) None of the other aspects of SYRA were pursuant to a court
21 order.

22 III) The safe yield reset is a legal determination for the
23 court. There is no "bargained-for exchange" for the court
24 to consider.

25 d) Therefore for these reasons and those set forth in section III
26 below ~~III~~ the court adopts the following provisions of Article 4-
27 SAFE YIELD RESET TO 135,000 AFY of the SYRA AND ORDERS
28 AS FOLLOWS:

1 4.1 Safe Yield Reset. Consistent with the prior orders of the Court pursuant to its
2 continuing jurisdiction, effective July 1, 2010 and continuing until June 30, 2020, the
3 Safe Yield for the Basin is reset at 135,000 AFY. For all purposes arising under the
4 Judgment, the Peace Agreements and the OBMP Implementation Plan, the Safe
5 Yield shall be 135,000 AFY, without exception, unless and until Safe Yield is reset in
6 accordance with the procedures set forth in this order, and determined by the Court
7 pursuant to its retained continuing jurisdiction.

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

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

26
27 4.4 Safe Yield Reset Methodology. The Safe Yield has been reset effective July 1,
28 2010 and shall be subsequently evaluated pursuant to the methodology set forth in

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

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

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

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

26 (c) Evaluate the potential need for prudent management discretion to avoid
27 or mitigate undesirable results including, but not limited to, subsidence, water quality
28 degradation, and unreasonable pump lifts. Where the evaluation of available data

1 suggests that there has been or will be a material change from existing and projected
2 conditions or threatened undesirable results, then a more significant evaluation,
3 including modeling, as described in the Reset Technical Memorandum, will be
4 undertaken; and,

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

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

15
16 4.7 Peer Review. The Pools shall be provided with reasonable opportunity, no
17 less frequently than annually, for peer review of the collection of data and the
18 application of the data collected in regard to the activities described in Paragraphs
19 4.4, 4.5, and 4.6 above.

20
21 4.8 No Retroactive Accounting. Notwithstanding that the initial Safe Yield reset,
22 described in Paragraph 4.1 above, shall be effective as of July 1, 2010, Watermaster
23 will not, in any manner, including through the approval of its Assessment Packages,
24 seek to change prior accounting of the prior allocation of Safe Yield and Operating
25 Safe Yield among the Parties to the Judgment for production years prior to July 1,
26 2014.

27
28 III. IV. THE COURT FURTHER ORDERS AS FOLLOWS:

1 A. The court amends the restated judgment ¶6 and sets the safe yield to 135,000
2 AFY for the following reasons:

3 1. The court accepts the findings and conclusions of Wildermuth for the
4 following reasons. Those conclusions are set forth in the reset Technical
5 Memorandum.

- 6 a) Wildermuth has been the authoritative resource for the parties and the
7 court during the pendency of the case for the last 15 years.
- 8 b) Wildermuth has performed a detailed analysis with substantiated facts and
9 findings in the reset technical memorandum, the supplemental declaration
10 of Mark Wildermuth in support of Watermaster's reply to oppositions to
11 the motion regarding 2015 Safe Yield Reset Agreement, and the memo to
12 restated judgment, paragraph 6 aka Wildermuth supplemental declaration.
- 13 c) The court accepts the net recharge approach and calculations set forth in
14 the Wildermuth report.
- 15 d) The Wildermuth report gives the most comprehensive analysis and credible
16 evaluation of the historic condition of the Basin.
- 17 e) The court does not accept the conclusions of Robert Shibatani for the
18 following reasons:
- 19 I) Shibatani recognizes that the net recharge calculation is a legitimate
20 approach to a determination of Safe Yield.
- 21 II) The Shibatani approach is unnecessarily quantitative. The Wildermuth
22 analysis allows for the definitions required for the analysis of the Chino
23 Basin, including cultural conditions and undesirable results.
- 24 III) Wildermuth has considered the effects of climate change of
25 Basin precipitation. The court accepts Wildermuth's conclusion that
26 there are not any better predictive modeling scenarios generally available
27 at this time accurately calibrated to the historical rainfall and are
28 therefore not reliable as a predictive tool.

1 2. The Restated Judgment's definition of Safe Yield includes the
2 consideration of the evolutionary land-use conditions the need to protect the Basin
3 against undesirable results.

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

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

9 5. The court finds that the provisions of SYRA set for in Section II
10 above set forth an approach to a determination of future Safe Yield determinations
11 in a manner consistent with the Court Approved Management Agreements.

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

14 b) Wildermuth declaration, paragraph 14, states his opinion that the Basin
15 protection measures to which the parties have agreed and the 2015 Safe
16 Yield Reset Agreement will ensure that the Basin is not harmed by
17 extraction of 135,000 AFY through fiscal 2020. However, again the
18 court emphasizes that its ruling is not based on the agreement of
19 the parties. The court's ruling is based upon the Restated
20 Judgment, the Court Approved Management Agreements, and its
21 legal conclusions supported by the technical analyses identified in
22 the court's order.

23 I) Although the court concludes the Safe Storage Management Measures
24 are useful and advisable, the court concludes there is no specific factual
25 basis requiring the Safe Yield reset to include Safe Storage Management
26 Measures. Therefore the court concludes that even without the Safe
27 Storage Management Measures, reduction of Safe Yield to 135,000 AFY
28 will not harm the Basin.

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

4 c) Wildermuth declaration, paragraph 15, states that the Basin protection
5 measures to which the parties have agreed and the 2015 Safe Yield Reset
6 Agreement, including the Safe Storage Management Measures, will ensure
7 that the Basin is not harmed by extractions of the 20,000 AF that was
8 allocated in the past 4 years and would have been allocated if the Safe Yield
9 have been reset to 135,000 AFY in 2011.

10 I) However, again Wildermuth does not specifically address the necessity
11 of the Safe Storage Measures with respect to complying with the Court
12 Approved Management Agreements. Therefore, the court again
13 concludes that even without the Safe Storage Management Measures,
14 reduction of Safe Yield to 135,000 AFY will not harm the Basin.

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

18 d) Therefore, the court concludes that the extraction of 135,000 AFY is
19 consistent with the Court Approved Management Agreements and does
20 not create any undesirable result or Material Physical Injury to the Basin.
21

22 B. The measures set forth in Article 4 are consistent with the Physical Solution
23 under the judgment and Article X, section 2 of the California Constitution.
24

25 C. Paragraph 6 of the Restated Judgment is hereby amended to read as follows:
26 “Safe Yield. The Safe Yield of the Basin is 135,000 acre feet per year.”

27 1. The effective date of this amendment of Paragraph 6 of the Restated
28 Judgement is July 1, 2010.

1
2
3 ¶ IV. SAFE YIELD RESET AGREEMENT (SYRA): WATERMASTER
4 ALLOCATION HISTORY, EARLY TRANSFERS, AND THE DESALTERS

5 A. The 1978 Judgment as amended

6 1. The 1978 Judgment ¶44 made the following allocation of rights to Safe
7 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

8
9
10
11
12
13
14
15 *Note: $414,000 \div 5 = 82,800$. 82,800 acre-feet per year has been the basis of
16 calculations for the Appropriative Pool going forward from the judgment.

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

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

27 3. The judgment fixed the amount of water production (pumping) that
28 could be allocated to the Overlying (Agricultural) Pool and the Overlying (Non-

1 agricultural) Pool. However, the Appropriative Pool allocation could be changed.

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

6 4. Exhibit "I" to the judgment is the Engineering Appendix. It discusses
7 Hydraulic Control and Re-Operation, which are described in more detail below.
8 Section 3 defines Operating Safe Yield as consisting in any "year of the
9 Appropriative Pool's share of Safe Yield of the Basin, plus any controlled overdraft
10 of the Basin which Watermaster may authorize."

- 11 a) Section 3(b) states that "in no event shall Operating Safe Yield in any
12 year be less than the Appropriative Pool's share of Safe Yield, nor shall it
13 exceed such share of Safe Yield by more than 10,000 acre feet. The initial
14 Operating Safe Yield is hereby set at 54,834 acre feet per year."

15 I) The figure of 54,834 acre feet per year is the initial 1978 Judgment
16 allocation of 49,834 acre-feet per year plus 5,000 acre feet per year. The
17 additional 5,000 AFY comes from 200,000 acre-feet of overdraft (water
18 pumped without a replenishment obligation) allocated by the Judgment
19 to the Appropriative Pool. **This overdraft total was later increased**
20 **by 400,000 AF to a total of 600,000 AF.** The overdraft will be
21 exhausted in 2016/2017. (Watermaster Motion Regarding 2015 Safe
22 Yield Reset Agreement, Amendment of Restated Judgement, Paragraph
23 6, page 3, line 27.)

- 24 b) Operating Safe Yield has also come to mean water that the
25 Appropriative Pool could produce/pump without having to purchase
26 replenishment water. (Exhibit "H" ¶5.)

27 5. Exhibit "H" to the judgment described the Appropriative Pool Pooling
28 Plan, paragraph 10 described "Unallocated Safe Yield Water" as follows: "to the

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

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

5 (1) to supplement, in the particular year, water available from Operating Safe
6 Yield to compensate for any reduction in the Safe Yield by reason of
7 recalculation thereof after the tenth year of operation hereunder. [This
8 Exhibit H ¶10(a)(1) priority is sometimes called ‘unproduced Agricultural Pool
9 water’ or ‘unproduced Ag Pool water.’ The current credited production
10 (pumping) for agricultural groundwater is about 33,600 AFY, but that includes
11 agricultural land irrigated with reclaimed water. The actual groundwater
12 production for agricultural purposes is about 22,000 AFY. (Jurupa Services
13 District’s response to Judge Reichert’s Request for Clarification, March 22,
14 2016, page 2, lines 8–10.)]

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

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

18 6. In an order dated November 17, 1995, Conversion Claims were defined
19 in Exhibit “H” ¶10(b) [this is the Subparagraph (b) to which the preceding
20 paragraph--page 49 22, line 8 16--refers]. Peace I modified this definition in Exhibit
21 “H” ¶10(b) to state as follows:

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

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

1 Appendix 1.

2 (2) Record of Water Service Conversion. Any appropriator who undertakes
3 to permanently provide water service to lands subject to conversion may
4 report such intent to change water service to Watermaster. Watermaster
5 should thereupon verify such change in water service and shall maintain a
6 record and account for each appropriator of the total acreage involved.
7 Should, at any time, converted acreage return to water service from the
8 Overlying (Agricultural) Pool, Watermaster shall return such acreage to
9 unconverted status and correspondingly reduce or eliminate any allocation
10 accorded to the appropriator involved.

11 (3) Allocation of Safe Yield Rights

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

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

28 7. CONCLUSION: With the 1995 amendments, the Judgment set a

1 prioritized list of claims upon unproduced Ag Pool water.

2 Ag Pool water--1995 Judgment amendment

3 82,800 AFY of the Ag Pool's water available to the Appropriative Pool with
4 Appropriative Pool claims prioritized as follows:

5 (1) to supplement, in the particular year, water available from Operating Safe
6 Yield to compensate for any reduction in the Safe Yield by reason of recalculation
7 thereof after the tenth year of operation as required by the Judgment;

8 (2) pursuant to conversion claims as defined in Subparagraph (b of Exhibit "H"
9 ¶10(b);

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

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

15
16 B. The 2000 Peace Agreement aka Peace I

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

19 2. Peace I Section V-Watermaster Performance defined how Watermaster
20 was to perform regarding procedures for Recharge and Replenishment. In paragraph
21 ¶5.3(g), Watermaster was ordered to approve an "Early Transfer" from the
22 Agricultural Pool to the Appropriative Pool of not less than 32,800 acre-feet per year
23 which was the expected approximate quantity of water not produced by the
24 Agricultural Pool. ¶5.3(g)(i) further stated that "the quantity of water subject to Early
25 Transfer under this paragraph shall be the greater of (i) 32,800 acre-feet or (ii) 32,800
26 acre-feet plus the actual quantity of water not produced by the Agricultural Pool for
27 that Fiscal Year that is remaining after all the land use conversions are satisfied
28 pursuant to" the following provision: "the Early Transfer water shall be annually

1 allocated among members of the Appropriative Pool in accordance with their pro-
2 rata share of the initial Safe Yield.” The court notes that after this deduction, the
3 Safe Yield water available to the Agricultural Pool became 50,000 acre-feet per year.

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

7 a) Watermaster Desalter replenishment account composed of 25,000 acre-feet
8 of water abandoned by Kaiser and other water previously dedicated by the
9 Appropriative Pool;

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

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

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

18 4. The court also concludes that the conversion claims have priority over
19 the Early Transfers because the conversion claims pre-existed the Early Transfer
20 allocations. The conversion claims came into existence with the 1995 Judgment
21 amendment. The Early Transfers came into existence with Peace I in 2000. The
22 Early Transfers must be interpreted in the context of the pre-existing 1995 Judgment
23 amendment.

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

Ag Pool water	Status and/or change result	Comments
1995 Judgment	82,800 AFY of the Ag	

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amendment	Pool's water available to the Appropriate Pool with Appropriative Pool claims prioritized as follows: (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	New Yield (with conditions) is source of water to replenish water pumped by the Desalters. Under Peace I therefore Desalters do not affect Safe Yield or Operating

	prioritized claims.	Safe Yield. Water produced/pumped by the Desalters is not added to or subtracted from Safe Yield of the Basin.
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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 more unproduced Ag Pool water if **1)** the Ag Pool did not produce/pump its leftover 50,000 AFY and **2) also** after subtracting from the **50,000 AFY** the Appropriative Pool’s conversion claims at the rate of 2 acre-feet per year per converted acre.

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

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

1. If one Appropriative Pool producer/pumper (*e.g.*, municipality, such as the City of Chino) had 1000 acres of converted land resulting in 2000 acre-feet of conversion claims (1000 acres x 2.0 acre feet of water/one acre converted), and assuming those were the only conversion claims; and
2. If the Ag Pool produced/pumped only 33,600 AFY leaving 49,200 AFY available for further allocation (82,800 AFY– 33,600 AFY= 49,200 AFY; the court notes that 33,600 AFY is the approximate Ag Pool credited production [Jurupa response to court’s clarification request, page 2, lines 9-10], but the court is using this figure only for illustration); then,

3. The Ag Pool water that would be available to the Appropriative Pool would be 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 comes 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 after conversion priority claims and Early Transfers	14,400 AFY	(47,200 acre-feet - 32,800 acre-feet = 14,400 acre-feet per year.) This is the total Ag Pool water 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.**

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

1. That calculation is simply to start with the 50,000 acre-feet of unproduced/unpumped Ag Pool water and then subtract the amount 33,600 acre-feet that was actually pumped in this example. The result is 16,400 acre-feet available for conversion claims.
2. Then subtract the 2,000 acre-feet for conversion claims to get the 14,400 acre-feet of Ag Pool water available for allocation to the Appropriative Pool.
3. However, this procedure is inconsistent with the judgment and Peace

1 Agreements as interpreted by the court for the reasons stated above.

2 **The also court notes that the particular producer who serviced the converted acres
3 would actually be able to pump the additional conversion claim water as an
4 allocation.

5
6 EXAMPLE 2: The following example demonstrates complications arising
7 from a decrease in the amount of Ag Pool water available to the Appropriative Pool.
8 If the Ag Pool produced/pumped more than 48,000 AFY there would be no
9 available water for the Appropriative Pool.

10 Example 2		Comment
11 Initial Ag Pool 12 allocation	82,800 AFY	
13 Ag Pool 14 production/pumping	48,000 AFY	Assumption
15 Initial balance after 16 production	34,800 AFY	82,800 acre-feet – 48,000 acre-feet = 34,800 acre-feet per year
17 Conversion claims	- 2000 acre- 18 feet	The subtraction for satisfying 19 conversion claims before any 20 reallocation. (1000 acres x 2.0 acre 21 feet of water/one acre converted = 2000 acre-feet).
22 Balance:	32,800 AFY	34,800 acre-feet – 2,000 acre-feet = 23 32,800 acre-feet per year. Ag Pool 24 Water Available after conversion 25 priority claims pursuant to Judgment 26 Exhibit “H” Paragraph
27 Reduction for Early 28 Transfers	- 32,800 AFY	Early Transfer of 32,800 AFY from 82,800 AFY allocation leaving 50,000

		AFY for the Ag Pool itself to produce/pump. Any water which the Ag Pool did not produce/pump water up to the 50,000 AFY would be available for allocation to the Appropriative Pool pursuant to Peace I and Peace II.
Balance: Ag Pool water available after conversion priority claims and Early Transfers	0 AFY	32,800 acre-feet -32,800 acre-feet = 0 acre-feet per year. There would be no 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.
<p>Conclusion:</p> <p>Under this scenario, the Appropriative Pool would not get any additional allocation from Ag Pool water</p>		

6. Regarding replenishment for the Desalters, Peace I ¶7.5 sets forth the hierarchy of sources of replenishment water for the Desalters as follows:

Replenishment Water. Replenishment for the Desalters shall be provided from the following sources in the following order of priority.

(a) Watermaster Desalter Replenishment account composed of 25,000 acre-feet of water abandoned by Kaiser pursuant to the

1 "Salt Offset Agreement" dated October 21, 1993, between Kaiser
2 and the RWQB, and other water previously dedicated by the
3 Appropriative Pool.

4 (b) New Yield of the Basin, unless the water Produced and
5 treated by the Desalters is dedicated by a purchaser of the desalters
6 water to offset the price of the salted water to the extent of the
7 dedication;

8 (c) Safe Yield of the Basin, unless the water Produced and
9 treated by the Desalters is dedicated by a purchaser of the the
10 salted water to offset the price of the salted water to the extent of
11 the dedication;

12 (d) Additional Replenishment Water purchased by
13 Watermaster, the cost of which shall be levied as an Assessment by
14 Watermaster.

15
16 C. The 2007 Peace II Agreement (Peace II)

17 1. Peace II Agreement ~~Paragraphs 6.2(a)(iii) and 7.1~~ Article VI-
18 Groundwater by and Replenishment for Desalters and Article VII-Yield
19 Accounting further defined the accounting for the Desalters and Desalter
20 Production Offsets.

21 2. Peace II Paragraph 6.2(a)(iii) states as follows in pertinent part:
22 Peace II Desalter Production Offsets. To facilitate Hydraulic Control through
23 Basin Re-Operation, [court note: that is, water pumped by ~~the Desalters as~~
24 part of the 600,000 AF controlled overdraft] in accordance with the 2007
25 Supplement to the OBMP Implementation Plan and the amended Exhibits G
26 and I to the Judgment, additional sources of water will be made available for
27 purposes of Desalter Production and thereby some or all of a Replenishment
28 obligation. With these available sources, the Replenishment obligation

1 attributable to Desalter production in any year will be determined by
2 Watermaster as follows:

3 (a) Watermaster will calculate the total Desalter Production for the
4 preceding year and then apply a credit against the total quantity from: . . .

5 (iii) New Yield (other than Stormwater (Peace Agreement Section
6 7.5(b)); . . .

7 v) Safe Yield that may be contributed by the parties (Peace
8 Agreement Section 7.5(c));

9 (vi) any Production of groundwater attributable to the controlled
10 overdraft authorized pursuant to amended Exhibit I to the Judgment.

11 [The Judgment allowed for a temporary controlled overdraft, *i.e.*,
12 initially 200,000 AF and then an additional 400,000 AF total
13 production/pumping starting in 2007 and ending in 2026 without
14 replenishment, in order to achieve Hydraulic Control. (Safe Yield Reset
15 Implementation Desalter Replenishment Accounting Illustration (per
16 Peace II Agreement, Section 6.2 (PIIA, 6.2) and June 11, 2015 Key
17 Principles)—Exhibit C to Attachment 1, Watermaster’s Motion regarding
18 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
19 Paragraph 6.]

20 Paragraph 7.1 provides as follows:

21 New Yield Attributable to the Desalters. Watermaster will make an annual
22 finding as to the quantity of New Yield that is made available by Basin Re-
23 Operation including that portion that is specifically attributable to the Existing
24 and Future Desalters. Any subsequent recalculation of New Yield as Safe
25 Yield by Watermaster will not change the priority set forth above for
26 offsetting Desalter production as set forth in Article VII, Section 7.5 of the
27 Peace Agreement. For the initial term of the Peace Agreement, neither
28 Watermaster nor the Parties will request that Safe Yield be recalculated in a

1 manner that incorporates New Yield *attributable to the Desalters* [emphasis in
2 original] into a determination of Safe Yield so that this source of supply will be
3 available for Desalter Production rather than for use by individual parties to
4 the Judgment.

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

15 3. ~~Peace II injected confusion into the definitions in the chain of~~
16 ~~agreements. This confusion is identified in Chino’s Opposition to Watermaster’s~~
17 ~~Motion regarding 2015 Safe Yield Reset Agreement Amendment of Restated~~
18 ~~Judgment, Paragraph 6, page 18, lines 19-28: Peace II, Paragraph 6.2(a)(iii) gives~~
19 ~~Watermaster a basis to calculate the total Desalter production from the preceding~~
20 ~~year and then apply against that production/pumping a “credit” (i.e., a reduction)~~
21 ~~which included a number of factors, including New Yield referencing Peace I,~~
22 ~~paragraph 7.5(b). The court must resolve this confusion because it~~ **This credit**
23 **procedure is the central opposition of JCSD, and it is an important issue going**
24 **forward for the administration of water allocations:**

- 25 a) Peace I, paragraph 1.1(aa) defines New Yield as “proven increases in yield
26 in quantities greater than historical amounts from sources of supply
27 including, but not limited to, operation of the Desalters (including the
28 Chino I Desalter), induced Recharge and other management activities

1 implemented in operational after June 1, 2000.”

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

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

7 b) Peace I, paragraph 1.1(nn) defines “Recharge and Recharge Water as
8 “introduction of water to the Basin, directly or indirectly,” Recharge
9 references the physical act of introducing water to the Basin.”

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

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

16 d) Peace II was consistent with Peace I. Peace II provided that the
17 parties would avoid some or all or a replenishment obligation for
18 Desalter production by getting credit/reduction against that
19 production from sources such as New Yield which includes
20 induced Recharge.

21 I) Peace I defined New Yield to include “operation of the
22 Desalters” and “induced Recharge.”

23 II) The court concludes that the Peace I and Peace II when read
24 together recognized that some of the water which the
25 Desalters produced/pumped came from induced recharge form
26 the Santa Ana River.

27 III) Peace II was not explicit it stating that the Desalter
28 production offset should follow the priorities of Peace I ¶7.5,

1 but the court concludes that the replenishment water, *i.e.*,
2 Desalter-induced recharge, must follow the priorities of Peace
3 I.

4 (a) The agreements must be read together and interpreted
5 together because they form a context for each other.

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

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

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

27 (b) In fact the Desalters have accomplished their design objective so
28 well that now some water flows from the Santa Ana River into the

1 Chino Basin. The court finds that his water is New Yield as set
2 forth above.

3 II) The court further finds that “Desalter-induced recharge” aka “induced
4 Recharge” is measureable, part of which comes from the Santa Ana
5 River, and is set forth in Watermaster’s response to the court’s
6 questions. This water is also known as Santa Ana River Underflow or
7 SARU.

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

12 5. CONCLUSION:

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

Ag Pool water		Comments
17 1995 Judgment 18 amendment	19 82,800 AFY of the Ag 20 Pool’s water available to 21 the Appropriate Pool with 22 Appropriative Pool claims 23 prioritized as follows: 24 (1) to supplement, and the 25 particular year, water 26 available from Operating 27 Safe Yield to compensate 28 for any reduction in the Safe Yield by reason of recalculation thereof after	

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	<p>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.</p>	
<p>2000 Peace I–Desalters start construction and pumping water</p>	<p>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.</p>	<p>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 specific sources of supply not included in Safe Yield. (Watermaster’s</p>

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		<p>Response to Order for Additional Briefing, page 5, line 22-23.)</p> <p>Therefore at the time of Peace I Desalter operations did not affect Safe Yield or Operating Safe Yield. Water produced/pumped by the Desalters is WAS not added to or subtracted from yield of the Basin. Water produced/pumped by the Desalters has had a separate allocation.</p>
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. However, Peace II	Desalter production reaches above 20,000 AFY. Watermaster's Response to Order for Additional Briefing, Exhibit 1.

	<p>Article VI identifies offsets for Desalter production, which includes New Yield the meaning of which includes induced Recharge. (Peace I, ¶1.1(aa).)</p>	
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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 not affect the priorities for allocations of unproduced Ag Pool water.

~~VI~~ V. SYRA ARTICLE 5-STORMWATER RECHARGE PLAN AND WATERMASTER ACCOUNTING ANALYSIS

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

~~A. Stormwater Recharge SYRA ¶5.1. SYRA ¶5.1 sets forth the following provisions regarding Stormwater Recharge:~~

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

~~(a) 2001-2014 Stormwater Recharge Program. Stormwater recharge that arises from or is attributable to the 2001-2014 Stormwater Recharge Program shall be: (i) New Yield for the period 2001-2014 in the manner that~~

1 ~~it has been distributed through approved Watermaster Assessment Packages;~~
2 ~~and (ii) Safe Yield in each subsequent year. For the 2001-2014 Stormwater~~
3 ~~Recharge Program, Watermaster shall cause no reduction against Safe Yield~~
4 ~~requiring supplementation by the reallocation of a portion of the unproduced~~
5 ~~Overlying (Agricultural) Pool's share of the Basin's Safe Yield.~~

6 ~~(b) — Post-2014 Stormwater Recharge Projects. For the remainder of~~
7 ~~the term of the Peace Agreement, inclusive of an extension term, if any,~~
8 ~~stormwater recharge that arises from or is attributable to Post-2014~~
9 ~~Stormwater Recharge Projects shall be allocated as set forth in this Paragraph~~
10 ~~5.1(b).~~

11 ~~(i) — Interim Accounting between Resets. For any and all Post-~~
12 ~~2014 Stormwater Recharge Projects completed in the interim period~~
13 ~~between subsequent Safe Yield resets, Net New Recharge attributable~~
14 ~~to specific Post-2014 Stormwater Recharge Projects shall be New~~
15 ~~Yield, as that term is defined in the Peace Agreement and will be~~
16 ~~allocated based upon observed and quantified annual net increases~~
17 ~~rather than projected future estimates of annual performance. New~~
18 ~~Yield attributable to Post-2014 Stormwater Recharge Projects shall be~~
19 ~~credited annually to the Project participants, in the Production Year in~~
20 ~~which such New Yield actually arises. Post-2014 Stormwater Recharge~~
21 ~~Project New Yield is in addition to Safe Yield and therefore by~~
22 ~~definition it shall cause no reduction against Safe Yield requiring~~
23 ~~supplementation by the reallocation of a portion of the unproduced~~
24 ~~Overlying (Agricultural) Pool's share of the Basin's Safe Yield.~~

25 ~~(ii) — Post-Safe Yield Reset Accounting for Post-2014~~
26 ~~Stormwater Recharge Projects. Upon any reset of the Safe Yield after~~
27 ~~2015, any Net New Recharge that occurs as a result of specific Post-~~
28 ~~2014 Stormwater Recharge Projects that have been previously approved~~

1 and fully implemented at the time of the reset shall be considered as a
2 potential change in cultural conditions as provided in the Reset
3 Technical Memorandum and thereafter considered a component of the
4 Safe Yield, if the Post-2014 Stormwater Recharge Projects to which the
5 Net New Recharge is attributable have been constructed and in
6 operation for a minimum of five (5) years prior to the reset. The Net
7 New Recharge will be measured and accounted for and will be made
8 available exclusively to the members of the Appropriative Pool in
9 accordance with Paragraph 5.1(c) below. Following a reset of the Safe
10 Yield, Post-2014 Stormwater Recharge Project recharge will be included
11 within Safe Yield and its separate measurement and allocation shall
12 cause no reduction against Safe Yield requiring supplementation by the
13 reallocation of a portion of the unproduced Overlying (Agricultural)
14 Pool's share of the Basin's Safe Yield. Moreover, Post-2014
15 Stormwater Recharge Projects that have been fully constructed and in
16 operation for less than five (5) years, or the Net New Recharge from
17 which is otherwise not included as a component of Safe Yield pursuant
18 to the Reset Technical Memorandum, will be treated "as if" the Net
19 New Recharge were Safe Yield for the limited and exclusive purpose of
20 quantifying the annual supplementation by the reallocation of a portion
21 of the unproduced Overlying (Agricultural) Pool's share of the Basin's
22 Safe Yield. Examples of how Watermaster will conduct the accounting
23 described in this Section 5.1(b) (ii) are included in Exhibit "B" hereto.

24 (c) ~~Participation in Post-2014 Stormwater Recharge Programs.~~ The
25 Parties contemplate that Post-2014 Stormwater Recharge Projects, such as
26 those projects described in Watermaster's Court-approved 2013 Amendment
27 to 2010 Recharge Master Plan Update, may be completed after the after the
28 Effective Date, as part of suites of such Projects (each suite of Projects, a

1 ~~“Post-2014 Stormwater Recharge Program” and collectively, “Post-2014~~
2 ~~Stormwater Recharge Programs”). Watermaster shall prepare an estimate of~~
3 ~~the Net New Recharge projected to arise from or be attributable to proposed~~
4 ~~Post-2014 Stormwater Recharge Programs. Based on this pre-approval~~
5 ~~estimate, Watermaster shall quantify each member of the Appropriative Pool’s~~
6 ~~proportionate share of the potential Net New Recharge benefits in accordance~~
7 ~~with its percentage of Operating Safe Yield and calculate its corresponding~~
8 ~~capital financing obligations. Each Appropriative Pool member’s~~
9 ~~proportionate share of the potential Program Net New Recharge benefits and~~
10 ~~corresponding financing obligations shall be referred to as its “Participation~~
11 ~~Share” in the Program. The Participation Shares in a particular Program shall~~
12 ~~remain unchanged regardless of actual Program yield. Within six months of~~
13 ~~the Effective Date, Watermaster, with the recommendation and advice of the~~
14 ~~Pools and Advisory Committee, will develop rules and regulations for the~~
15 ~~definition of Post-2014 Stormwater Programs and Participation Shares therein.~~

16 ~~Any member of the Appropriative Pool may elect, in its discretion, not~~
17 ~~to participate in certain Post-2014 Stormwater Recharge Programs. In the~~
18 ~~case, a member of the Appropriative Pool has cast a final vote against an~~
19 ~~approved Post-2014 Stormwater Recharge Program, then that member may~~
20 ~~elect, in its complete discretion, to opt out of its Participation Share, by~~
21 ~~providing written notice to the members of the Appropriative Pool, within~~
22 ~~ninety (90) days of the approval of the Post-2014 Stormwater Recharge~~
23 ~~Program. Notice shall be provided through a request that the election be~~
24 ~~placed on the agenda of a regularly scheduled meeting of the Appropriative~~
25 ~~Pool, and offering the other members of the Appropriative Pool the right to~~
26 ~~assume its respective Participation Share of stormwater recharge New Yield or~~
27 ~~Safe Yield attributable to the Post-2014 Stormwater Recharge Program, along~~
28 ~~with the Pool member's assumption of all applicable rights and~~

1 responsibilities.

2 (i) ~~In the event that one or more members of the~~
3 ~~Appropriative Pool voting against the approval of a Post-2014~~
4 ~~Stormwater Recharge Program elects to opt out of its Participation~~
5 ~~Share therein, each shall permanently waive and relinquish, without~~
6 ~~limitation, all right to all the benefits accruing under its Participation~~
7 ~~Share of a Post-2014 Stormwater Recharge Program;~~

8 (ii) ~~An Appropriative Pool member electing to opt out of~~
9 ~~participation in a Post-2014 Stormwater Recharge Program shall be~~
10 ~~assigned no further financial obligation attributable to a Participation~~
11 ~~Share in the Post-2014 Stormwater Recharge Program that was the~~
12 ~~subject of the election;~~

13 (iii) ~~Fontana Water Company (FWC), a member of the~~
14 ~~Appropriative Pool, and any successor in interest thereto, shall have the~~
15 ~~first priority and exclusive right and obligation to acquire the~~
16 ~~Participation Shares, representing up to 2,000 AFY (cumulative~~
17 ~~maximum) of projected annual average recharge arising from or~~
18 ~~attributable to one or more Post-2014 Stormwater Recharge Programs,~~
19 ~~which may be made available by one or more members of the~~
20 ~~Appropriative Pool opting out of the Post-2014 Stormwater Recharge~~
21 ~~Programs. If Participation Shares in Post-2014 Stormwater Recharge~~
22 ~~Programs are available in excess of FWC's first priority right of up to~~
23 ~~2,000 AFY under this provision, then each member of the~~
24 ~~Appropriative Pool may elect to participate in the acquisition of the~~
25 ~~excess Participation Shares along with its corresponding assumption of~~
26 ~~duties associated therewith. Available Participation Shares shall be~~
27 ~~distributed among the members of the Appropriative Pool electing to~~
28 ~~acquire the Participation Shares, pro rata based on the total number of~~

1 ~~members electing to acquire, including FWC. The acquisition of any~~
2 ~~obligations and benefits pursuant to this Paragraph shall survive the~~
3 ~~expiration of the Peace Agreement, for the life of the Post-2014~~
4 ~~Stormwater Recharge Program, pursuant to the same terms and~~
5 ~~conditions generally applicable to all Project Participants.~~

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

23 ~~B. Analysis and orders re Stormwater Recharge Plan SYRA ¶5.1~~

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

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

27 ~~2. The court notes that the previous Court Approved Management~~
28 ~~Agreements have not covered the aspects of stormwater recharge addressed in this~~

1 paragraph.

2 3. ~~The court finds that the Stormwater Recharge Plan is consistent with the~~
3 ~~Court Approved Management Agreements.~~

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

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

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

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

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

16 9. ~~The stormwater recharge is consistent with the Article X Section 2 of~~
17 ~~the California Constitution.~~

18 A. Stormwater Recharge—SYRA ¶5.1

19 1. Although there have been no objections to this aspect of
20 SYRA, the court denies its enforcement because the court finds that
21 SYRA’s provisions regarding anything other than they Safe Yield reset
22 cannot be severed for the reasons set forth in Section II above.

23 B. Desalter-Induced Recharge Allocations, Early Transfers, Land Use
24 Conversion—SYRA ¶5.2 and SYRA ¶5.3.

25 1. Because these provisions are major sources of contention
26 among the parties, the court will set them forth in their entirety.

27 SYRA ¶5.2 sets forth the following provisions regarding Desalter Induced
28 Recharge, and SYRA ¶5.3 sets forth the following provisions regarding Post 2030

1 Land Use Conversions and Early Transfers.

2 5.2 Desalter-Induced Recharge. After the Effective Date and until
3 termination of this Agreement, the parties expressly consent to Watermaster's
4 accounting for Basin recharge arising from or attributable the Desalters as
5 follows:

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

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

24
25 Claims for reallocation of the remaining unproduced quantity of the
26 Agricultural Pool's share of Safe Yield shall be satisfied consistent with section
27 6.3(c) of Watermaster's Rules and Regulations, as amended as part of the
28 Peace II Measures, and the October 8, 2010 Order Approving Watermaster's

1 Compliance with Condition Subsequent Number Eight and Approving
2 Procedures to be used to Allocated Surplus Agricultural Pool Water in the
3 Event of a Decline in Safe Yield.

4 (c) 2031-2060 Desalter-Induced Recharge. Should the term of the
5 Peace Agreement be extended pursuant to Paragraph 8.4 thereof, the
6 treatment of Desalter-Induced Recharge shall be subject to the negotiation of
7 a new and separate agreement among the Parties to the Judgment. The
8 accounting provided for in Section 5.2(b), above, shall be without prejudice to
9 the negotiation of such a new and separate agreement among the Parties to the
10 Judgment. Unless otherwise agreed by the Parties or ordered by the court,
11 during the extension term, Watermaster shall not consider such recharge to
12 require supplementation by the reallocation of a portion of the unproduced
13 Agricultural Pool's share of Safe Yield.

14
15 5.3 Post-2030 Priority among Land Use Conversion and Early Transfer
16 Claims. At the expiration of the Peace II Agreement, the Peace II provisions
17 relating to the distribution of surplus water by the Agricultural Pool requiring
18 that claims for the Early Transfer of 32,800 AFY and for Land Use
19 Conversion be treated equally are expressly repealed including (i) the
20 amendment to Section 6.3(c) of Watermaster's Rules and Regulations,
21 pursuant to the Peace II measures, and (ii) Section III.(6) of the October 8,
22 2010 Order Approving Watermaster's Compliance with Condition Subsequent
23 Number Eight and Approving Procedures to be used to Allocate Surplus
24 Agricultural Pool Water in the Event of a Decline in Safe Yield. In any Peace
25 Agreement extension term, the previous changes to Restated Judgment,
26 Exhibit "H", Paragraph 10(b)(3)(i) effectuated by Paragraph 4.4(c) of the
27 Peace Agreement, which, to the extent sufficient unallocated Safe Yield from
28 the Agricultural Pool is available for conversion claims, allocate 2.0 acre-feet

1 of unallocated Safe Yield water for each converted acre, shall remain in effect.

2
3 D. The court summarizes the effect of these SYRA proposals ¶5.2 and ¶5.3 as
4 follows:

Ag Pool water		Comments
5 6 1995 Judgment 7 amendment 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	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.	
27 28 2000 Peace I- Desalters start	Early Transfers of 32,800 AFY of Ag Pool water now	New Yield (with conditions) is source of

<p>1 construction and 2 pumping water</p>	<p>3 goes to the Appropriative 4 Pool (leaving 50,000 AFY to 5 Ag Pool). The remaining Ag 6 Pool water is subject to 7 Appropriative Pool's 8 prioritized claims.</p>	<p>9 water to replenish water 10 pumped by the 11 Desalters. Therefore 12 Desalters do not affect 13 Safe Yield or Operating 14 Safe Yield. Water 15 produced/pumped by 16 the Desalters is not 17 added to or subtracted 18 from Safe Yield or 19 Operating Safe Yield of 20 the Basin.</p>
<p>21 2007 Peace II- 22 overdraft increased</p>	<p>23 Additional 400,000 AF 24 above the 200,000 AF 25 provided in the Judgment 26 for a total of 600,000 AF.</p>	<p>27 This is a diminishing 28 pumping allocation as the overdraft goes to 0 in 2017.</p>
<p>29 SYRA proposal: 30 (see column to right 31 for <i>Steps 1-3</i>): 32 <i>Step 4</i>: SYRA ¶5.2(b) 33 subtracts 50% of total 34 Desalter production 35 up to 20,000 AFY 36 from Ag Pool Water 37 and then adds that 38 50% of total Desalter production up to 20,000 AFY to Safe</p>	<p>39 SYRA proposal <i>Step 1</i>: The 40 Desalter 41 production/pumping up to 42 20,000 AFY is allocated to 43 the Desalters, not as Safe 44 Yield or Safe Operating 45 Yield [or New Yield]. 46 <i>Step 2</i>: Under SYRA ¶5.2(b) 47 one-half of the source of 48 Desalter production up to 20,000 AFY is attributed to "Desalter-induced</p>	

<p>1 Yield (to make up for 2 the subtraction in 3 <i>Step 3</i>).*</p>	<p>recharge.” Desalter-induced Recharge means water flowing back into the Basin from the Santa Ana River. <i>Step 3</i>: SYRA then subtracts the other half of Desalter production up to 20,000 AFY from Safe Yield.</p>	
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9 **Additional SYRA Effects: *Step 5*** (see above for *Steps 1-4*)
10 The Ag Pool water allocation is reduced by up to 20,000 AFY for the Desalters.
11 SYRA is unclear where the priority lies with respect to priority of allocation as
12 required by Judgment Exhibit “H” Paragraph 10. The court orders that those
13 priorities must be followed. Because the court has ordered that those priorities be
14 followed, court concludes that it cannot order these provisions of SYRA in
15 **addition to SYRA’s not being severable.** At best SYRA is ambiguous with
16 respect to following the priorities set by the Judgment and the Court Approved
17 Management Agreements. At worst, SYRA contradicts them.

18 *So, the court concludes that previous to SYRA, the Desalter water ~~was considered~~
19 ~~to have its own source (Desalter Induced Recharge and/or overdraft) and its own~~
20 ~~production allocation (New Yield) production/pumping could be offset from a~~
21 **prioritized list of sources including New Yield (induced recharge).** Now
22 under SYRA:

- 23 1) All of the induced recharge gets allocated to water produced/pumped by the
24 Desalters.
- 25 2) Watermaster reduces Safe Yield by 50% of the Desalter production up to 20,000
26 AFY.
- 27 3) Then, Watermaster adds to Safe Yield 50% of the Desalter production up to
28 20,000 AFY, from water allocated to the Ag Pool, to make up for (aka backfill) the

1 reduction in Safe Yield allocated to Desalter production.

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

6 5) Elaborating on Example 1 from Section ~~V.B.2~~ **IV.B.5** of this order above, the
7 court's analysis is as follows

Example 1-B	Explanation	Comment
Initial Ag Pool allocation	82,800 AFY	Judgment
Ag Pool production/pumping	- 33,600 AFY	Assumption based the current 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	14,400 AFY	Total Ag Pool water available for
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available Ag Pool water		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	<p>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:</p> $82,800/\text{initial allocation}$ $- 26,000/\text{pumped} = 56,800$ $56,800 - 2,000/\text{conversion claims} = 54,800$ $54,800 - 32,800/\text{Early Transfer} = 20,000$ $20,000 - 20,000/\text{Desalter reduction from Ag Pool}$

		Allocation = 0
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3 The court concludes that there is no basis in the Judgment or any of the Court
4 Approved Management Agreements for the post SYRA result identified in the
5 plausible scenario above.

6
7 E. Further Analysis and orders:

8 1. In addition to SYRA's not being severable, the court denies
9 Watermaster's motion with respect to the implementation of ¶5.2 and ¶5.3 of SYRA
10 for the following reason:

- 11 a) The court concludes that SYRA paragraphs 5.2 and 5.3 fundamentally
12 change the allocations of Appropriative Pool and of Ag Pool water.
13 Those fundamental changes are inconsistent with the Judgment and the
14 Court Approved Management Agreements
- 15 b) Peace I and Peace II both define Desalter production as within the
16 definition of New Yield and therefore outside of the definition of Safe
17 Yield. Through a several step re-allocation reassignment described
18 above and summarized in this section of the court's order, SYRA now
19 moves Desalter production into Safe Yield. The parties have not
20 demonstrated any legal ~~or practical requirement~~ **basis** which allows this.
21 Peace I and Peace II prohibit this.
- 22 c) The court concludes that Peace II Agreement Paragraphs 6.2(a)(iii) and
23 7.1 provide that through 2030 (the initial term of Peace I Agreement as
24 set forth in ¶8.2) recharge attributable to the Desalters is allocated for
25 Desalter Production and not allocated as Safe Yield producible (*i.e.*,
26 water available to be pumped without a replenishment obligation by
27 purchase or otherwise).
- 28 I) Peace II ¶7.1 excluded New Yield attributable to the Desalters from

1 a determination of Safe Yield, at least for the 30 year term of Peace
2 Agreement.

3 II) Peace I ¶1.1(aa) defines New Yield to include induced recharge.

4 (a) The court finds that induced recharge includes Desalter-
5 induced recharge.

6 III) The court finds that Peace I ¶7.5 defines replenishment water for
7 the Desalters includes New Yield, but not Safe Yield.

8 IV) The court finds that Peace II ¶7.1 states that no party can
9 incorporate New Yield attributable to the Desalters into Safe Yield.

10 (a) In contradiction to Peace I and Peace II, SYRA ¶5.2(a)
11 explicitly defines Desalter-induced recharge as Safe Yield, in
12 contradiction to Peace I and Peace II.

13 V) In contradiction to the Peace I and Peace II, the court finds that
14 SYRA attempts to incorporate New Yield from the Desalters into
15 Safe Yield through the accounting method of 1) taking Desalter
16 induced yield water coming from Desalter-induced recharge, then 2)
17 moving that water into Safe Yield, then 3) backfilling Safe Yield
18 from unproduced Ag Pool water.

19 (a) This is an unacceptable circumvention of the court's
20 orders based on Peace I and Peace II.

21 d) The analysis above shows that these SYRA provisions are contrary to
22 the Judgment and the Court Approved Management Agreements,
23 specifically Peace I and Peace II. These SRYA provisions can prevent
24 the application of the Judgment provisions regarding conversion claims.
25 They are invalid.

26 e) There is no basis in the Judgment or the Court Approved Management
27 Agreements for the attribution of water production from Desalters into
28 the definition of Safe Yield.

- 1 f) There is no basis in the Judgment or any of the Court Approved
2 Management Agreements for the splitting and reallocation of Desalter
3 production/pumping to one-half to Desalter-induced recharge and one-
4 half to Safe Yield.
- 5 g) There is no basis in the Judgment or any of the Court Approved
6 Management Agreements to reallocate Ag Pool water to Safe Yield to
7 make up for the Safe Yield reallocated to the Desalters.
- 8 h) Due to the Desalters, there is now recharge coming from the Santa Ana
9 River back into the Chino Basin. SYRA Paragraph 5.2(b) takes the
10 Peace I and Peace II agreements one step—wrongfully—farther by
11 identifying how this recharge quantity will be estimated, *i.e.*, 50% of
12 Desalter Production, and then further specifies that amount of recharge
13 will be allocated to Desalter production and not to the parties as part of
14 their allocation of the Safe Yield. There is no legal basis in the
15 Judgment or the Court Approved Management Agreements for this
16 redefinition of Safe Yield to include of 50% of Desalter Production up
17 to 20,000 AFY through a mechanism of passing the amounts through
18 the Appropriative Pool allocation.
- 19 i) SYRA attempts now to remove the special exception for New Yield
20 from Desalter induced recharge and production and incorporate it into
21 Safe Yield. The mechanism by which SYRA attempts to do this is by 1)
22 taking half of the Desalter production and sourcing that
23 production/pumping from Desalter induced recharge from the Santa
24 Ana River and 2) sourcing the other half from the Appropriative Pool
25 through unproduced Ag Pool water. The court concludes and finds
26 that this attempt is not justified because it can interfere with the priority
27 of claims on unproduced Ag Pool water set forth in the judgment and
28 the Court-Approved Management Agreements.

1 I) The court notes that Peace II, Article VII-Yield Accounting,
2 ¶7.2(d) discusses a contingency if Western Municipal Water
3 District (WMWD) and the Appropriative Pool “do not reach
4 agreement on apportionment of controlled overdraft of
5 Future Desalters, then no later than August 31, 2009, the
6 members of the Appropriative Pool will submit a plan to
7 Watermaster that achieves the identified goals of increasing
8 the physical capacity of the Desalters and potable water use
9 of approximately 40,000 acre-feet of groundwater
10 production from the Desalters from the Basin no later than
11 2012.”

12 II) The court concludes that the Desalter production of 40,000
13 acre-feet has been under discussion since Peace II in 2007.

14 III) However, the court cannot accept the resolution set forth
15 in SYRA for the reasons stated in this order.

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

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

23 II) SYRA now includes New Yield in the determination of Safe Yield in
24 two ways.

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

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

1 (c) The net change to Safe Yield is 0, but available Ag Pool water
2 for allocation is reduced up to 20,000 AFY. This re-allocation
3 and re-accounting, is not justified or supported in the Peace I,
4 Peace II, Watermaster Rules and Regulations, or the court's
5 orders of implementation, the Judgment, or the CAMAs.

6 (d) The following chain shows SYRA's violations of the
7 previous orders:

8 (i) Desalter-induced recharge is New Yield. (Peace
9 ¶1(aa).)

10 (ii) Peace II ¶7.1 prevents New Yield from being
11 incorporated within Safe Yield.

12 (iii) SYRA moves 20,000 AFY of Desalter-induced
13 recharge to the Ag Pool.

14 (iv) Then SYRA moves the 20,000 of Desalter-
15 induced recharge (now characterized as Ag Pool
16 Water) into Safe Yield.

17 (v) Therefore, SRYA recalculates Safe Yield to
18 incorporate New Yield in violation of Peace II
19 ¶7.1

20 (vi) Moving the 20,000 AFY of Desalter-induced
21 Recharge through the portal of the Ag Pool
22 water does not change its definition of New
23 Yield.

24 k) The court does not find a legal ~~or factual basis~~ for determining a post-
25 2030 priority among land use conversion and early transfer claims. The
26 priority is set forth in the judgment and as specified in this order

27 l) In addition to SYRA's not being severable, the court's 2010 order
28 does not require the implementation of ¶5.2 or ¶5.3.

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

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

28 I) In considering the reference to Watermaster Rules and

1 Regulations in the preceding paragraph, if the order is vague, the
2 court now ~~considers the order vague~~ clarifies it. In the instant order,
3 the court has clarified that Watermaster must follow the priorities set
4 forth in the Judgment for allocations of unproduced Ag Pool water.

5 II) The court has the continuing jurisdiction to interpret and apply
6 its previous orders in light of changing circumstances. In light of the
7 instant motion, the court is doing so.

8 III) JCSD correctly points out that pursuant to the Judgment
9 ¶15 the court is authorized “to make such further or supplemental
10 orders or directions as may be necessary or appropriate for
11 interpretation, enforcement or tearing out of this judgment”

12 IV) Because there has not been a reset in Safe Yield, the court
13 does not find that there has been a detrimental reliance on the court’s
14 October 8, 2010 Order. This would not be the first time that the
15 court’s orders and interpretations thereof have the subject of further
16 litigation.

17 V) Watermaster’s further response to order for additional briefing,
18 filed April 11, page 3, lines 15-19 states:

19 Both responses provided by the City of Chino and JCSD omit
20 the key fact: Section 6.3(c) Watermaster Rules and Regulations,
21 as amended pursuant to Peace II measures provides that water
22 unused by members of the Agricultural Pool shall be divided
23 equally between Land Use Conversions and Early Transfers. The
24 Court’s October 8, 2010 Order provides that this shall be done
25 even if the safe yield declines. For the first time, approximately
26 five years following this Order, the City and JCSD would set it
27 aside and thereby unwind accounting, court approvals, and
28 agreements impliedly if not expressly made in reliance thereon.

1 m) No party has offered any specific detriment that would occur from
2 the court's instant orders regarding the priorities.

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

6 I) Watermaster cannot use its own interpretations of the
7 court's orders to contradict the court's interpretation. The final
8 decision is the court's, not Watermaster's.

9 II) If there is any ambiguity that Watermaster finds ~~The court finds~~
10 ~~also that in~~ the current circumstances for the application of that Order
11 III.(6) ~~is may also be ambiguous~~ the court clarifies it now. SYRA's
12 reference to that order's provision does not help in its clarification or
13 application.

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

27 IV) This argument equates land use conversion claims and
28 Early transfer claims. This argument is incorrect for the reasons stated

1 herein. Additionally:

2 (a) The court's order filed October 8, 2010, paragraph III.(6)
3 ~~actually states~~ is quoted in full in section "I" above:

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

1 ~~benefits received according to the procedures outlined in the~~
2 ~~Watermaster Rules and Regulations.~~

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

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

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

21 q) The court rejects any argument that this issue is subject to issue
22 preclusion. The specific issues raised by the oppositions to the motion
23 have not been specifically addressed by the court. They are not barred by
24 laches. The issues have been timely raised within the context of the instant
25 motion, and the court always retains jurisdiction to modify its orders as
26 those orders are drawn to the attention of the court, and the court
27 determines they require modification for the reasons set forth in this order.
28

1 F. Dispute re priority of claims

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

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

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

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

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

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

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

20 Confusion has arisen with respect to the relationship between the Judgment,
21 Exhibit "H," Paragraph 10 on the one hand, and Watermaster Rules and Regulations
22 ¶6.3(a) on the other. Watermaster Rules and Regulations ¶6.3(a) states as follows:

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

27 (i) To the Agricultural Pool to satisfy all demands for overlying
28 Agricultural Pool lands;

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

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

11 Chino has argued that

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

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

25 The court finds that the Judgment must govern and take priority and
26 precedent for the interpretation of any Watermaster rule or regulation, including
27 Watermaster Rules and Regulations 6.3(c).

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

1 A. The order of priorities set forth in the Judgment, Exhibit “H,” Paragraph
2 10 must be followed; and

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

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

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

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

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

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

16
17 **¶ VI. SAFE STORAGE MANAGEMENT MEASURES**

18 A. Through the facilitation and nondisclosure agreement (FANDA) Watermaster
19 attempted to facilitate an agreement among all parties avoid an accelerated
20 cumulative draw on Excess Carry Over stored water in order to avoid undue risks.

21 SYRA had provisions to establish a mechanism for a safe storage reserve of 130,000
22 AF of water in the non-Supplemental Water storage accounts of the members of the
23 Appropriative Pool as a reserve sufficient to protect the Basin. However, the
24 concern for basin protection was balanced with temporary needs in the event of an
25 emergency or to support Desalter Replenishment. Up to 100,000 AF could be
26 accessed in the event of an emergency subject to conditions

27 a) The plan which Watermaster attempted to facilitate is identified in
28 SYRA as “the safe storage reserve and safe storage management plan”

1 or the safe storage management measures (SSMM).

2 b) The City of Chino (Chino) has the largest component of Excess Carry-
3 Over water and was the most significantly affected party.

4 c) Chino refused to agree to SSMM.

5
6 B. The court rejects the adoption of the Safe Storage Management Measures set
7 forth in the SYRA Article 6. The court is not going to set forth the provisions of
8 SYRA Article 6 because the court is rejects the article as a whole.

9
10 C. The court rejects Article 6 of SYRA for the following reasons:

11 1. SYRA is not severable as set forth above.

12 2. Watermaster states that access to safe storage in the short term is
13 extremely remote.

14 3. The volume in stored water accounts of Appropriative Pool members is
15 about 357,000 AF as of June 30, 2014.

16 4. The Judgment Parties presently lack the infrastructure capability (wells
17 and pipelines) that would produce the quantity of water from storage that would
18 trigger production from the safe storage reserve that is identified in SYRA.

19 5. Article 6 is essentially a statement of intent without specificity of
20 implementation. The court refuses to consider or authorize an inchoate plan.

21 a) Although Watermaster argues that the Safe Storage Management
22 Agreement provisions are still subject to “stakeholder process get to be
23 initiated” (Watermaster’s Reply to Oppositions to Motion regarding
24 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
25 Paragraph 6, page 1, line 18), the court does not approve policy
26 statements and therefore rejects any implementation.

27 6. The Safe Storage Technical Memorandum (Exhibit E to the motion)
28 does not set forth a factual basis for the court to order the parties to proceed with

1 the provisions of Article 6. While the memorandum states that the SSMM will not
2 cause Material Physical Injury or undesirable results, the memorandum does not
3 include that the SSMM are essential to the OBMP.

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

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

11 a) From this the court concludes that during this period from 2000 to
12 2014, after offsets for production, there was recharge to the basin in
13 excess of what water was actually produced by as much as 130,000 AF.

14 b) This recharge was accounted for in the storage of Excess Carry-Over
15 water.

16 ~~e) The court finds that Watermaster was not biased in its facilitation for~~
17 ~~the SYRA.~~

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

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

24
25 D. Additional bases for ruling

26 1. The court has refused to implement the sections of SYRA identified
27 above for the reasons set forth above. In the court’s view, those reasons are
28 sufficient under the law. Therefore, the court has not addressed other objections

1 raised by the parties, such as those of the City of Chino, that Watermaster has failed
2 to prove a change in circumstances, that Watermaster has improperly advocated for
3 certain parties, that the parties are collaterally estopped from re-litigating the parties'
4 rights, that the parties are equitably estopped from reducing their replenishment
5 obligations, that SYRA fails to comply with CEQA, that SYRA provisions resulted in
6 an unlawful taking of Chino's property.

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

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

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

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

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

27 b) Although many parties have approved SYRA, parties' approval or
28 disapproval of SYRA is not a legal basis for the court to enforce SYRA.

1 The court must look to the previous agreements of the parties, the
2 previous court orders, the Court Approved Management Agreements, the
3 Judgement, and the California Constitution.,

4
5 Date: _____

6
7
8 _____
9 Judge Stanford E. Reichert
10 San Bernardino County Superior Court
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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 February 23, 2017 I served the following:

1. NOTICE OF HEARING AND REVISED PROPOSED ORDER RE SYRA AND RESPONSE TO QUESTIONS; ISSUE FOR FURTHER BRIEFING

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.

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 February 23, 2017 in Rancho Cucamonga, California.



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