

FEE EXEMPT

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

11 CHINO BASIN MUNICIPAL WATER )  
DISTRICT, )

13 Plaintiff, )

14 v. )

15 CITY OF CHINO, et al., )

16 Defendants. )

CASE NUMBER: RCV 51010  
[Assigned for All Purposes to Honorable  
Stanford E. Reichert, Dept. S35]

**CITY OF CHINO'S RESPONSE TO  
COURT AUTHORIZED FURTHER  
BRIEFING RE REVISED TENTATIVE  
ORDER RE WATERMASTER'S  
MOTION RE 2015 SAFE YIELD RESET  
AGREEMENT**

Date: April 28, 2017  
Time: 1:30 p.m.  
Dept.: S35

(FEE- EXEMPT PURSUANT TO GOVERNMENT  
CODE § 6103)

21  
22 TO: JUDGE STANFORD E. REICHERT, WATERMASTER AND PARTIES  
23

24 The City of Chino submits this Response to the brief of the Responding AP Members  
25 consisting of the Monte Vista Water District, Cucamonga Valley Water District, City of  
26 Pomona and City of Upland (hereafter called the "4AP Members").  
27 ///  
28 ///

1 INTRODUCTION

2  
3 In their Response to the Court’s request for further briefing on one single legal issue,  
4 the answer of the 4AP Members, like the answer of Watermaster, introduces something much  
5 different than a clarification of the Court’s September 23, 2016 ruling. The 4AP Members  
6 seek a specific outcome identical to the outcome sought by Watermaster. The 4AP Members  
7 desire to reduce the Safe Yield by an additional 20,000 AFY (an amount equal to one half of  
8 the alleged Desalter-Induced Recharge) and thereby reset the Safe Yield at 115,000 AFY.  
9 Their purpose is to allocate 20,000 AFY of net basin recharge to offset the Desalter  
10 Production. Like Watermaster, the 4AP Members request the Court to implement Paragraph  
11 5.2 of the Safe Yield Reset Agreement (“SYRA”).

12  
13 The consequence of their request is the depletion of the unproduced Agricultural Pool  
14 water, which also leads to the reduction of the amount of the unproduced Agricultural Pool  
15 water available to satisfy the Land Use Claims of the City of Chino, the Jurupa Community  
16 Services District and ultimately the City of Ontario.

17  
18 In addition, the 4AP Members seek the appointment of a special referee pursuant to  
19 Code of Civil Procedure §639. However, their request does not satisfy the requirements of  
20 Code of Civil Procedure §639. Specifically, the request of the 4AP Members does not  
21 constitute a “written motion” and it does not specify any “question of fact” that has arisen in  
22 the current stage of this proceeding. If the “question of fact” relates to resetting the Safe  
23 Yield, the 4AP Members have already acquiesced in the Court’s determination of the Safe  
24 Yield by virtue of their Joinder dated February 1, 2016 to Watermaster’s Reply Brief. If a  
25 “question of fact” pertains to any other issue, the 4AP Members have not identified it.

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28 ///

1 **A. Chino Incorporates its Response to “Chino Basin Watermaster’s Response to**  
2 **February 22, 2017 Order” Herein**

3  
4 The City of Chino incorporates its Response to “Chino Basin Watermaster’s Response  
5 to February 22, 2017 Order” herein, as it addresses the legal issues contained in the brief filed  
6 by the 4AP Members.

7  
8 **B. The 4AP Members Proposed Outcome is Inappropriate**

9  
10 In the context of the Court’s request for briefing on one legal issue, the 4AP Members  
11 seek specific outcomes that require formal motions in order to be considered by the Court.

12  
13 The 4AP Members request the Court to reconsider its entire effort of determining the  
14 basin’s Safe Yield. Watermaster has filed a motion for this purpose, albeit in the context of  
15 seeking Court approval of an agreement about many other issues. The 4AP Members have  
16 joined in Watermaster’s request to reset the basin Safe Yield including the Technical  
17 Memorandum for resetting the Safe Yield. Finally, the Court has ruled on resetting of the  
18 Safe Yield and approved the methodology contained in the Technical Memorandum.  
19 (ORDER at pages 11:25, 13:3 through 16:26).

20  
21 Notwithstanding this entire history and effort, the 4AP Members, at this final stage of  
22 the proceedings on the Watermaster Motion, now seek to reset the Safe Yield based upon an  
23 argument that finds no support in any of the documents submitted to the Court on the issue.  
24 In particular, the 4AP Members propose a method for determining the Safe Yield that is  
25 contrary to *net recharge* method adopted by the Court.

26 ///

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28 ///

1 **C. The Brief of the 4AP Members Fails to Comply with the Requirements of Code of**  
2 **Civil Procedure §639 for the Appointment of a Special Referee**

3  
4 Although the 4AP Members invoke Code of Civil Procedure §639, they fail to satisfy  
5 its requirements. In pertinent part, it provides as follows:

6  
7 *(a) When the parties do not consent, the court may, upon the written motion of*  
8 *any party, or its own motion, appoint a referee in the following cases pursuant to*  
9 *the provisions of subdivision (b) of Section 640:*

10 *(3) When a question of fact, other than upon the pleadings, arises upon motion or*  
11 *otherwise, in any stage of the action,*

12  
13 Nevertheless, the 4AP Members have not filed a written motion although they are  
14 permitted to do so. Furthermore, the 4AP Members have not specified any *question of fact*  
15 that has arisen in these proceedings.

16 Instead, the 4AP Members refer to “the law of the case” but that legal principle is  
17 inapposite as there is no appellate ruling on the Court’s question. The 4AP Members also  
18 request a special referee to “assist the Court, Watermaster, and the parties in the determination  
19 of facts and application of the “law of the case in this matter.” (p. 5:3-7).

20 However, the Court has not requested a special referee. Watermaster has not requested  
21 a special referee. The other parties to the Judgment have not requested a special referee.

22 The 4AP Members invoke the “determination of facts” without identifying any. The  
23 4AP Members also invoke “the law of the case” but there is no appellate ruling on the Court’s  
24 question and referees are not appointed to determine legal issues.

25 The City of Chino may be open to a special referee depending on the factual questions  
26 to be submitted. However, the 4AP Members have not communicated any such factual  
27 questions.

28 Until the 4AP Members complies with Code of Civil Procedure §639, the Court may

1 not consider the request for the appointment of a special referee.

2  
3 **D. The 4AP Members Request to Reset the Safe Yield to 115,000 AFY is Harmful to**  
4 **Land Use Conversion Rights**

5  
6 Like Watermaster's desired outcome, the request of the 4AP Members produces harm.  
7 By reducing the Safe Yield to 115,000 AFY in order to take 20,000 AFY from the basin's  
8 Safe Yield for desalter replenishment, the unproduced Agricultural Pool Water must be  
9 diverted to restore the Operating Safe Yield and thereby reduce the amount of that water  
10 available to satisfy Land Use Conversion claims. The request of the 4AP Members will harm  
11 the City of Chino and Jurupa Community Services District and ultimately the City of Ontario.

12  
13 **E. Conclusion**

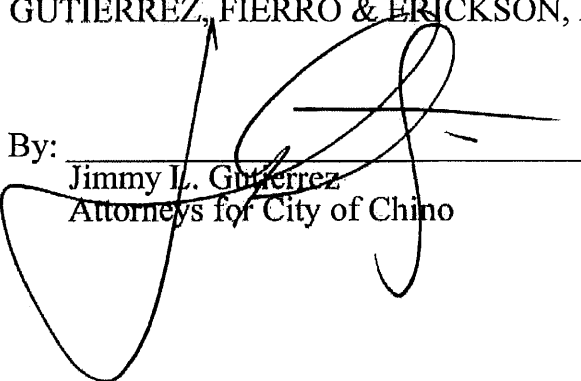
14  
15 The request of the 4AP Members to reset the Safe Yield to 115,000 should be denied  
16 for the reasons set forth herein and in Chino's Responses to Watermaster's Brief.

17 In addition, the 4AP Members request to appoint a special referee should be denied for  
18 the reasons set forth herein.

19  
20 Respectfully submitted.

21  
22 Dated: March 24, 2017

GUTIERREZ, FIERRO & ERICKSON, A.P.C.

23  
24 By:   
25 Jimmy L. Gutierrez  
26 Attorneys for City of Chino  
27  
28

**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 March 24, 2017 I served the following:

1. CITY OF CHINO'S RESPONSE TO COURT AUTHORIZED FURTHER BRIEFING RE REVISED TENTATIVE ORDER RE WATERMASTER'S MOTION RE 2015 SAFE YIELD RESET AGREEMENT

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 March 24, 2017 in Rancho Cucamonga, California.

  
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