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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,)

12)
13 Plaintiff,)

14 v.)

15 CITY OF CHINO, et al.,)

16 Defendants.)
17)
18)
19)
20)

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

**CITY OF CHINO'S REPLY TO
RESPONSES OF WATERMASTER,
4AP MEMBERS, ONTARIO AND
JURUPA**

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 (hereafter "Chino") submits this Reply to the Response briefs of
25 Watermaster, 4AP Members, City of Ontario and Jurupa Community Services District.

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1 I.

2 INTRODUCTION

3 The Court is adopting the *Net Recharge* method to reset the Safe Yield from 140,000
4 AFY to 135,000 AFY at the urging of Watermaster and some of the Parties to the Judgment
5 including the 4AP Members but not Chino.

6 The *Net Recharge* method is described in the Technical Memorandum, attached to the
7 Watermaster Motion. Under the *Net Recharge* method, the Safe Yield of the basin is equated
8 with the amount of water that recharges the basin from all sources; but it excludes any amount
9 of water stored in the basin.

10 The effect of the *Net Recharge* method limits the Parties' production to no more than
11 the amount of water that is recharged into the basin annually from all sources – 135,000 AFY
12 (unless the Parties replenish all production in excess of this limit). Therefore, the limit on the
13 total annual production is the amount of water that recharges the basin, annually.

14 Under the *Net Recharge* method and the supporting documentation submitted with the
15 Watermaster Motion, the conclusion is that there is less water recharging the basin. Stated
16 differently, there is no *New Yield*. There is no *New Yield*, because the amount of water
17 recharging the basin from all sources has decreased. The recharge has not increased.

18 Contrary to the *Net Recharge* method, Watermaster and the 4AP Members seek to take
19 20,000 AFY from the *Safe Yield* in order to offset the desalter production, on the premise that
20 the desalters have caused Santa Ana River water to flow into the basin, which they call
21 Desalter-Induced Recharge. Their justification for taking water from the *Safe Yield* for
22 desalter replenishment is Paragraph 7.1 of Peace II. The problem with this justification is that
23 there is no *New Yield*.

24 However, they attempt to circumvent the requirement to find that *New Yield* has
25 occurred by arguing that the river water flowing into the basin is *New Yield*. They ignore the
26 requirement to demonstrate that the current yield of the basin from all sources exceeds the
27 basin's historical yield. This is the definition of *New Yield*; but it cannot occur where the
28 yield of the basin has decreased.

1 They cannot circumvent this fact by using a new term - “Desalter-Induced Recharge” –
2 one that does not appear in the Judgment or Peace Agreements. But, the issue is not one of
3 terminology. The issue is the amount of recharge or yield. There is either more water
4 recharging the basin from all sources or there is not. Here, there is less.

5 The fact that there is less recharge means that *New Yield* has not occurred and that the
6 Safe Yield is the only source of replenishment water.

7 II.

8 WATERMASTER MISSTATES CHINO’S POSITION

9 Watermaster’s Further Response dated March 24, 2017 (“Further Response”) repeats
10 its request to take 20,000 acre feet of Safe Yield for desalter replenishment.

11 Watermaster’s Further Response fails to state that Chino’s Response dated March 10,
12 2010 asked Watermaster whether it intended to account for the Desalter-Induced Recharge
13 from the Safe Yield or from storage. [In its Further Response, Watermaster states it is taking
14 the replenishment water from the Safe Yield].

15 Watermaster’s Further Response mischaracterizes Chino’s Response dated March 10,
16 2010 to the question posed by the Agricultural Pool. Chino states that the Agricultural Pool’s
17 question “*is hypothetical because there is no evidence that a DIR amount of 20,000 exists in*
18 *any identified year.*” This is different from Watermaster’s characterization of Chino’s
19 statement. Chino does not state that “DIR was not measured in Mr. Wildermuth’s Chino
20 Basin Groundwater Model Update.” Chino does not provide any value for DIR and certainly
21 not 20,000 AFY as Watermaster states.

22 Watermaster disagrees with the position of the 4AP Members that the DIR should be
23 excluded from the Safe Yield recalculation. Instead, Watermaster asserts that the DIR must
24 be included in the Safe Yield recalculation but “sequestered” from the Safe Yield for desalter
25 replenishment.

26 The difference between Watermaster and the 4AP Members leads to the same result.
27 They both proposed to take 20,000 AFY from the Safe Yield for desalter replenishment.
28 However, the result is contrary to the Judgment and Peace Agreements.

1 III.

2 4AP MEMBERS HAVE ACQUIESCED IN THE RECHARGE METHOD
3 FOR CALCULATING THE SAFE YIELD

4 In their March 24, 2017 Response, the 4AP Members advance a new basis for seeking
5 to reset the Safe Yield to 115,000 AFY. They state that a contradiction exists between the
6 Court's ruling and their position that the Safe Yield includes 20,000 AFY of Desalter-Induced
7 Recharge. They state that the "*accounting solution*" offered by Watermaster fails to resolve
8 the contradiction. They then argue that 20,000 AFY of Desalter-Induced Recharge is not Safe
9 Yield and would be removed from the Safe Yield recalculation. Under their "*method*," the
10 Safe Yield should be reduced to 115,000 AFY. This would lead to restoring the OSY with
11 25,000 AFY of unproduced Agricultural Pool water and reducing the amount of that water
12 available for land use conversion claims.

13 However, the *Recharge Method* for determining the Safe Yield set forth in the
14 Technical Memorandum includes all the water that recharges the basin in the Safe Yield
15 recalculation. The Technical Memorandum does not provide for the exclusion of any water
16 that recharges the basin from the Safe Yield recalculation. Thus, the alleged "*contradiction*"
17 requiring the resolution sought by the 4AP Members is not supported by the *Recharge Method*
18 set forth in the Technical Memorandum.

19 Then, the 4AP Members argue that the Technical Memorandum is contrary to
20 Paragraph 4(x) of the Restated Judgment, Paragraph 7.1 of Peace II and the Court's ruling;
21 but they do not explain how the Technical Memorandum is contradicted by these provisions.
22 Instead, they refer to a sentence in the Wildermuth March 9, 2017 declaration wherein he
23 states that the Safe Yield includes all inputs into the basin and includes the inflow from the
24 Santa Ana River; but the sentence is consistent with the Technical Memorandum.

25 At this juncture, it should be noted that the 4AP Members have acquiesced in the
26 *Recharge Method* set forth in the Technical Memorandum in two material ways:

- 27 • The 4AP Members approved and executed the SYRA that contains the
28 Technical Memorandum as Exhibit A. [Paragraph 4, Declaration of Peter

1 Kavounas dated February 1, 2016 filed in support of Watermaster's Reply to
2 Oppositions to the Watermaster Motion.]

- 3 • The 4AP Members filed a Joinder dated February 1, 2016 to Watermaster's
4 Reply Brief, which asserts the propriety of the *Recharge Method* to reset the
5 Safe Yield as set forth in the Technical Memorandum. [Pages 3:20 to 4:12,
6 Watermaster Reply Brief dated February 1, 2016.]

7 The arguments to reset the Safe Yield to 115,000 AFY advanced by the 4AP Members
8 lack merit. Furthermore, the 4AP Members should not be permitted to argue for a deviation
9 from the *Recharge Method* for recalculating the Safe Yield to 115,000 AFY, because they
10 have acquiesced in the *Recharge Method*.

11 IV.

12 ONTARIO MISINTERPRETS WATERMASTER'S RESPONSE

13 Ontario misses the point about Watermaster's plan to allocate the Safe Yield. Ontario
14 appears to read Watermaster's plan in the context of "*backfilling*" - meaning the restoration of
15 the Operating Safe Yield from the unproduced Agricultural Pool water where the Safe Yield
16 is reduced due to a recalculation of the Safe Yield.

17 Ontario does not appear to see that Watermaster plans to take the desalter-induced
18 recharge directly from the Safe Yield. It also misses the effect of the plan, which is to *backfill*
19 this proposed reduction in the Safe Yield from the unproduced Agricultural Pool water. The
20 plan and its effect are shown in Watermaster's illustration on page 5, lines 1-6.

21 Ontario also fails to see that Watermaster's plan will lead to a corresponding reduction
22 of the unproduced Agricultural Pool Water and thereby reduce the amount of such water
23 available for Land Use Conversion claims.

24 V.

25 JURUPA IS MISTAKEN ABOUT WATERMASTER'S RESPONSE

26 Jurupa appears to be mistaken about Watermaster's interpretation of the Court's Order,
27 as Watermaster's interpretation would allocate Safe Yield for desalter replenishment contrary
28 to the Judgment and the Peace Agreements.

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VI.
CONCLUSION

The Responses to the Court's question present requests for determinations that are beyond the scope the Watermaster Motion.

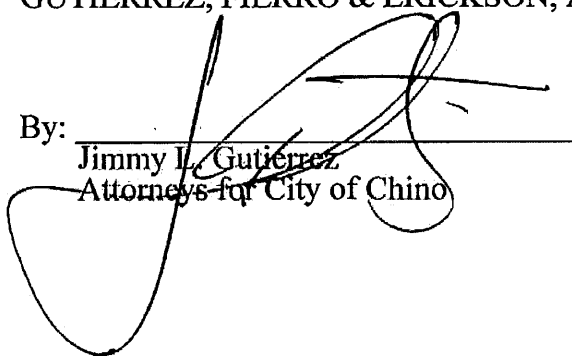
The Watermaster Motion requests the Court to approve the SYRA and the *revised schedule*. The Court has indicated its intent to deny these requests but to reset the Safe Yield under the Court's jurisdiction. The Watermaster Motion does not request the Court to sequester the Santa Ana River from the Safe Yield under Paragraph 7.1 of Peace II. The Watermaster Motion does not request the Court to exclude the Santa Ana River from the recalculation of the Safe Yield.

These new requests by Watermaster and the 4AP Members are not properly before the Court. They should be denied for this reason and the other reasons set forth in this Reply and in Chino's Response.

Respectfully submitted.

Dated: April 7, 2017

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

By: 
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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 April 7, 2017 I served the following:

1. CITY OF CHINO'S REPLY TO RESPONSES OF WATERMASTER, 4 AP MEMBERS, ONTARIO AND JURUPA

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 April 7, 2017 in Rancho Cucamonga, California.



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