

LAW OFFICES OF
BEST BEST & KRIEGER LLP
300 SOUTH GRAND AVENUE, 25TH FLOOR
LOS ANGELES, CALIFORNIA 90071

1 GENE TANAKA (State Bar No. 101423)
2 BEST BEST & KRIEGER LLP
3 2001 N. Main Street, Suite 390
4 Walnut Creek, CA 94596
5 Telephone: (925) 977-3300
6 Facsimile: (925) 977-1870
7 gene.tanaka@bbklaw.com

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FEE EXEMPT

5 PAETER E. GARCIA (State Bar No. 199580)
6 BEST BEST & KRIEGER LLP
7 300 South Grand Ave., 25th Floor
8 Los Angeles, California 90071
9 Telephone: (213) 617-8100
10 Facsimile: (213) 617-7480
11 paeter.garcia@bbklaw.com

12 Attorneys for Defendant and Appellant
13 CUCAMONGA VALLEY WATER DISTRICT

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN BERNARDINO

16 CHINO BASIN MUNICIPAL WATER
17 DISTRICT,

18 Plaintiff,

19 v.

20 CITY OF CHINO, et al.,

21 Defendants.

Case No. RCV 51010

DEFENDANT AND APPELLANT
CUCAMONGA VALLEY WATER
DISTRICT'S NOTICE OF APPEAL

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CUCAMONGA VALLEY'S NOTICE OF APPEAL

LAW OFFICES OF
BEST BEST & KRIEGER LLP
300 SOUTH GRAND AVENUE, 25TH FLOOR
LOS ANGELES, CALIFORNIA 90071


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NOTICE OF APPEAL

Defendant and Appellant Cucamonga Valley Water District appeals from the Orders for Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement, etc., entered on April 28, 2017. Copies of the Orders are attached as Exhibit A.

Dated: June 23, 2017

BEST BEST & KRIEGER LLP

By: 

GENE TANAKA
PAETER E. GARCIA
Attorneys for Defendant and Appellant
CUCAMONGA VALLEY WATER
DISTRICT

EXHIBIT A

FEE EXEMPT

1 SCOTT S. SLATER (State Bar No. 117317)
BRADLEY J. HERREMA (State Bar No. 228976)
2 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**
1020 State Street
3 Santa Barbara, CA 93101-2711
Telephone: 805.963.7000
4 Facsimile: 805.965.4333

5 Attorneys for
CHINO BASIN WATERMASTER

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

11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

12 Plaintiff,

14 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 RULINGS AFTER HEARING
ON WATERMASTER'S MOTION
REGARDING 2015 SAFE YIELD RESET
AGREEMENT, AMENDMENT OF
RESTATED JUDGMENT, PARAGRAPH 6**

DATE: April 28, 2017

TIME: 1:30 p.m.

DEPT.: S35

20 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

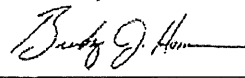
21 PLEASE TAKE NOTICE that, on April 28, 2017 at 1:30 p.m. in Department S35 of the
22 above-entitled Court, the Honorable Stanford E. Reichert conducted a hearing and issued its
23 Additional/Final Further Revised Proposed Order Re SYRA and Additional/Final Rulings and
24 Order for Oral Argument, a copy of which is attached hereto as Exhibit 1, and its ORDERS for
25 Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated
26 Judgment, Paragraph 6, a copy of the Orders is attached hereto as Exhibit 2.

27 The Court additionally granted each of Watermaster's October 28, 2016 Motion for Court
28

1 Approval of Temporary Substitute Rate for Physical Solution Transfers Under Exhibit "G" to the
2 Judgment, Watermaster's December 12, 2016 Request for Court to Receive and File 38th
3 Watermaster Annual Report, and Watermaster's March 24, 2017 Request for Court to Receive
4 and File Watermaster Semi-Annual OBMP Status Reports.

5 Dated: April 28, 2017

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

7 By: 

8 SCOTT S. SLATER
9 BRADLEY J. HERREMA
10 ATTORNEYS FOR
11 CHINO BASIN WATERMASTER

12 038350\0036\15647646.1

BROWNSTEIN HYATT FARBER SCHRECK, LLP
1020 State Street
Santa Barbara, CA 93101-2711

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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 28 2017

BY *Tiffany Kretzmeier*
TAFANY KRETZMEIER, DEPUTY

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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 No. RCV 51010

ORDERS for Watermaster's Motion
Regarding 2015 Safe Yield Reset
Agreement, Amendment of Restated
Judgement, Paragraph 6

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

Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement,
Amendment of Restated Judgment, Paragraph 6, joined by The Chino Basin
Overlying (Agricultural) Pool Committee and The Inland Empire Utilities Agency
("IEUA") and opposed by Jurupa Community Services District ("JCSD") and the
City of Chino ("Chino") is granted in part and denied in part for the reasons set forth
herein. The court grants the motion with respect to amending the restated judgment
to reset the Safe Yield of the basin to 135,000 AFY.

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

1 water as set forth herein.

2 Additionally, the court orders that the Safe Yield reset to 135,000 AFY is an
3 event that requires a “recalculation” with the definition of Judgment, Exhibit “H”
4 ¶10.

6 **REQUEST FOR JUDICIAL NOTICE**

7 The court grants requests for judicial notice of JCSD as follows:

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

22 **JOINDERS AND FILINGS**

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

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

28 Rulings in separate document.

1 2. City of Chino's objections to declaration of Wildermuth submitted with
2 Watermaster's Motion regarding 2015 Safe Yield Reset Agreement, Amendment of
3 Restated Judgment, Paragraph 6
4 Rulings in separate document.

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

- 6 1. Overlying (Agricultural) Pool
- 7 2. Inland Empire Utilities Agency

8 C. Oppositions to Watermaster's motion

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

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

- 19 1. Supplemental declaration of Kavounas
 - 20 a) City of Chino's objections Kavounas supplemental declaration in
21 support of Watermaster's reply the Chino opposition
 - 22 b) Watermaster's Response to City of Chino's objections to supplemental
23 declaration of Peter Kavounas in support of Watermaster's reply to
24 Chino's Opposition to Motion regarding 2015 Safe Yield Reset
25 Agreement, Amendment of Restated Judgment, Paragraph 6

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

28 II) All objections overruled.

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- 2. Supplemental declaration of Wildermuth
 - a) City of Chino’s objections to Wildermuth supplemental declaration in support of Watermaster’s reply to Chino opposition.
 - b) Watermaster’s Response to City of Chino’s objections to supplemental declaration of Mark Wildermuth in support of Watermaster’s reply to Chino’s Opposition to Motion regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6.
 - I) Motion to strike denied. The court finds that the declaration did not raise new issues.
 - II) All objections overruled.
- 3. Declaration of Danielle Maurizio, assistant general manager of Chino Basin
 - a) City of Chino’s objections to supplemental declaration of Danielle D. Maurizio in support of Watermaster’s reply to chino opposition
 - b) Watermaster’s Response to City of Chino’s objections to supplemental declaration of Danielle E. Maurizio in support of Watermaster’s reply to Chino’s Opposition to Motion regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6
 - I) Motion to strike denied. The court finds that the declaration did not raise new issues.
 - II) All objections overruled.
- 4. Joinders in Watermaster's reply to oppositions
 - a) Overlying (Agricultural) Pool
 - b) City of Pomona and (in one pleading document)
 - I) City of Upland
 - II) Monte Vista Water District
 - III) Cucamonga Valley Water District
 - IV) Fontana Union Water Company

1 E. In an order Dated March 22, 2016, the court served the parties with questions
2 and a request for further briefing in response to the questions. The responses were
3 as follows:

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

16 F. At the hearing on February 22, 2017, the court ordered that the parties may
17 file questions regarding the court's tentative draft order, and the court set a briefing
18 schedule. In response, the court received the following:

- 19 1. Filed March 10, 2017-Chino Basin Watermaster response to February
20 22, 2017 order
- 21 2. Filed March 10, 2017-City of Chino's response to issue in section II of
22 Judge Reichert's revised proposed order re SYRA
- 23 3. Filed March 10, 2017-Responding AP members (Monte Vista Water
24 District, Cucamonga Valley Water District, City of Pomona, and City of Upland)
25 filed March 10, 2017
- 26 4. Filed March 24, 2017-Chino Basin Watermaster further response to
27 February 22, 2017 order
- 28 5. Filed March 24, 2017-City of Chino's response to court authorized

1 further briefing re revised tentative order re Watermaster's motion re 2015 Safe Yield
2 reset Agreement

3 6. Filed March 24, 2017-City of Chino's response to Chino Basin
4 Watermaster's response to February 22, 2017 order

5 7. Filed March 24, 2017-City of Ontario's response regarding issue for
6 further briefing

7 8. Filed March 24, 2017-Jurupa Community Services District opposition
8 to Monte Vista Water District's response to court's February 22, 2017 order re SYRA
9 and response to questions [joins in the opposition filed by the City of Ontario]

10 9. Filed March 24, 2017-Responding AP members response to both
11 Watermaster and City of Chino's further briefing re revised tentative order re
12 Watermaster's motion re 2015 Safe Yield Reset Agreement

13 10. Filed April 4, 2017-errata to City of Chino's response to Chino Basin
14 Watermaster's response to February 22, 2017 order

15 11. Filed April 7, 2017-Chino Basin Watermaster further response to
16 February 22, 2017 order

17 12. Filed April 7, 2017-City of Chino's reply to responses of Watermaster,
18 4AP Members, Ontario and Jurupa

19 13. Filed April 7, 2017-Jurupa Community Services District's limited reply
20 to City of Chino's response to Chino Basin Watermaster's response to February 22,
21 2017 order, dated March 24, 2017

22 14. Filed April 7, 2017-Responding AP Members reply to opposition briefs
23 re revised tentative order re Watermaster's motion re 2015 Safe Yield Reset
24 Agreement

25 15. Filed April 27, 2017, request by Chino basin desalter authority member
26 agencies regarding desalter pumping

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

2 After extensive briefing and consideration, on September 23, 2016, the court
3 held a hearing on the 2015 SYRA and related motions. Before the hearing, the court
4 had issued a lengthy (over 60 pages) proposed order. At the hearing on September
5 23, there was extensive oral argument, and the court concluded that some aspects of
6 the court’s proposed order were confusing or erroneous. Therefore, the ordered that
7 there be even further briefing, and the court ordered additional briefing through
8 questions by the parties about the proposed order. In its order entitled “Revised
9 Proposed Order Re SYRA in Response to Questions: Issues for Further Briefing,”
10 and the current order, the court addressed the parties’ questions.

11
12
13 **I. INTRODUCTION, DEFINITIONS, BACKGROUND**

14 A. The 1978 judgment in *Chino Basin Municipal Water District v. City of Chino* (San
15 Bernardino Superior Court Case No. 51010) set the Safe Yield of the Chino Basin at
16 140,000 acre-feet per year (AFY), but reserved continuing jurisdiction to the court to
17 amend the Judgment, inter alia, to redetermine the Safe Yield after the first 10 years
18 of operation of the Physical Solution established under the Judgment. The Physical
19 Solution identified three groups of parties (Pools) with water interests in the Chino
20 Basin, and set forth their allocations as follows:

21

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)	7,366 acre-feet	7,366

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1	Pool**		
2	Appropriative	49,834 acre-feet	49,834
3	Pool***		
4		Yearly total allocation	140,000

5 *The members of this pool included dairy farms.

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

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

10 Over the course of the Court-Approved Management Agreements (set forth in
11 the next section), the court allowed up to 600,000 AF of water to be
12 produced/pumped out of the Chino Basin without any replenishment obligation.

13 “While the parties are not limited in the quantities of water they may produce, the
14 Judgment requires that beyond the permitted Controlled Overdraft comprising an
15 initial 200,000 AF and an additional 400,000 AF of Re-operation water (Restated
16 Judgment, Exhibit “I”, ¶¶ 2.(b), 3.(a)), there must be a bucket for bucket
17 replenishment [and associated cost to the producer/pumper] to offset production in
18 excess of the Basin’s Safe Yield. (Restated Judgment, ¶¶ 13, 42).” (Watermaster’s
19 Response to Questions for Clarification in Final Orders for Watermaster’s Motion
20 Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
21 Paragraph 6, page 2, line 23 to page 3, line 4, filed October 28, 2016.)

22 The court notes that this total “controlled overdraft” i.e., pumping without
23 replenishment cost, (aka “Re-Operation Water”) of 600,000 AF has just about been
24 exhausted.

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

27
28 B. Since the entry of the judgment, the court has previously approved agreements to

1 implement the Physical Solution (“Court Approved Management Agreements” aka
2 “CAMA”). There is no dispute that the court has the authority and duty to
3 independently review the evidence de novo and determine whether proposals by
4 Watermaster or any party comply with the Judgment and the Court Approved
5 Management Agreements. (Restated Judgment ¶31(d).) The Court Approved
6 Management Agreements are:

7 1. The Chino Basin Peace Agreement (Peace I Agreement), dated June 29,
8 2000, as subsequently amended in September 2004 and December 2007.

9 a. In 2000 the parties executed Peace Agreement Chino Basin (Peace I
10 Agreement) and agreed to Watermaster’s adoption of the Optimum
11 Basin Management Plan (OBMP) Implementation Plan. At about the
12 same time, the court ordered Watermaster to proceed in a manner
13 consistent with Peace I and the OBMP, including Program Element 8
14 (Develop and Implement Groundwater Storage Management Program)
15 and Program Element 9 (Develop and Implement Storage and
16 Recovery Programs). The implementation plan acknowledged the need
17 to obtain better production data through the metering of non-exempt
18 production within the Basin. Program Elements 8 and 9 provided for
19 Watermaster to redetermine and reset the Basin’s Safe Yield in the year
20 2010/11. The basis of the redetermination and reset would be
21 production data derived from the collection of additional data regarding
22 the parties’ production (i.e., parties who pumped water out of the Basin)
23 within the basin during the 10-year period 2000/01 through 2009/10.
24 The study for redetermination and reset was not completed until 2015,
25 and the motion regarding determination and reset was not filed until
26 October 2015.

27 b. The Peace I Agreement introduced the installation of Desalters in the
28 southwest portion of the Basin. The Desalters pump ground water

1 from the aquifer and supply that water to water companies and other
2 users. By pumping water out of the aquifer, the Desalters also lowered
3 the ground water table to help obtain Hydrologic Control, i.e.,
4 preventing Chino Basin ground water from reaching the Santa Ana
5 River south of the Basin. The Santa Ana River is a major source of
6 water for Orange County, and water impurities and contaminants, some
7 of which came from the Chino Basin dairy farms (“salts”) were in the
8 groundwater flowing from the Basin into the Santa Ana River. The
9 Desalter capacity has now expanded to 40 MGD (40 million gallons per
10 day) as provided in the OBMP Implementation Plan to protect against a
11 decline in Safe Yield and for water quality benefits, but the court
12 reserved the question of how “Future Desalter” capacity would be
13 addressed. The Chino Basin Desalter Authority (CDA), which includes
14 the City of Chino, participated in the construction of the Desalters
15 which represented a substantial engineering and financial undertaking.
16 These Desalters were completed and fully operational in 2006.

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

- 18 a. In 2007, the parties entered into the Peace II Agreement. The objective
19 was to increase the Desalter capacity to 40 MGD to achieve the OBMP
20 Implementation Plan objectives. In order to do this, the parties
21 designed and financed an additional 10 million gallons per day (MGD)
22 of expanded Desalter capacity. The expansion of the Desalters to the
23 full plant capacity will be completed in 2017. With the completion of
24 this construction, Hydraulic Control will be achieved. Hydraulic
25 Control now means only a de minimus amount of groundwater will
26 flow from the Chino Basin south into the Santa Ana River. In fact, the
27 Desalters now have lowered the water table in the south end of the
28 Basin so that ground water is now flowing from the Santa Ana River

1 north into the Chino Basin. ~~This is called Re-Operation water.~~

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

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

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

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

10 7. Watermaster Resolution 2010-04 ("Resolution of the Chino Basin
11 Watermaster regarding Implementation of the Peace II Agreement and the Phase III
12 Desalter Expansion in Accordance with the December 21, 2007 Order of the San
13 Bernardino Superior Court").

14
15 C. Additional background for motion

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

19 2. Through a Facilitation and Non-Disclosure Agreement (FANDA),
20 Watermaster attempted to obtain agreement as to all issues regarding Safe Yield
21 redetermination and reset allocation. Those issues included not only a reset of the
22 Safe Yield from 140,000 acre-feet per year to 135,000 acre-feet per year, but also
23 Watermaster's accounting for reallocations related to Court Approved Management
24 Agreements, and a method of allocations for water storage called the Safe Storage
25 Management Agreements.

26 a) The FANDA process took place starting in November 2014, and
27 through at least 30 meetings, by May 27, 2015, all but one of the then-
28 active parties to the FANDA reached a non-binding agreement among

1 their negotiating representatives on certain key principles (apparently
2 also called the “term sheet”) embodied in the Safe Yield Summary of
3 Non-Binding Key Principles Derived from the Facilitated Process.

- 4 b) The parties continued to negotiate, with a goal of reducing the Key
5 Principles into a binding instrument for execution by September 1,
6 2015. That agreement is identified as the 2015 Safe Yield Reset
7 Agreement (SYRA). The Appropriative Pool, the Overlying
8 (Agricultural) Pool, and the Three Valleys Municipal Water District
9 approved the 22-page agreement, as did many other parties. The City
10 of Chino refused to sign the agreement.
- 11 c) On September 24, 2015, the board at its regular meeting adopted
12 resolution 2015-06, and previously – on September 17, 2015 – the
13 advisory committee approved resolution 2015-06: “Resolution of Chino
14 Basin Watermaster regarding 2015 Safe Yield Reset Agreement
15 (SYRA).”
- 16 d) Watermaster’s instant motion asks the court to address the issues
17 covered in the SYRA as follows:
- 18 I) The reset of the Basin Safe Yield from 140,000 acre-fee per year (AFY)
19 to 135,000 AFY pursuant to the Restated Judgment, the OBMP
20 Implementation Plan, and Watermaster’s Rules and Regulations;
 - 21 II) The manner in which Watermaster should account for various
22 components of the recharge to the Basin implementing the Court-
23 Approved Management Agreements; and
 - 24 III) Establishment of Safe Storage Management Measures (SSMM)
25 intended to ensure that withdrawals of groundwater from authorized
26 storage accounts within the Basin are safe, sustainable, and will not
27 cause Material Physical Injury or undesirable results.
- 28

1 D. SUMMARY RULINGS:

2 In its motion, Watermaster requests an order acknowledging the 2015 Safe
3 Yield Reset Agreement and ordering Watermaster to proceed in accordance with its
4 terms with respect to amending the restated judgment to reset the Safe Yield of the
5 Basin from 135,000 AFY to 135,000 AFY and amending the schedule for access to
6 Re-Operation water. For the reasons set forth herein, the court grants the motion
7 with respect to amending the restated judgment to reset the Safe Yield of the basin to
8 135,000 AFY. However, the court denies the rest of the motions including the motions
9 to amend the schedule for access to Re-operation water and the motion to institute
10 Safe Storage Management Measures. The court makes additional orders with respect
11 to Desalter water as set forth herein.

12
13 **II. Severability of SYRA**

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

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

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

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

1 2. Watermaster further argues that approving “some, but not all, of
2 SYRA’s provisions can materially advantage one party over another, in that the full
3 benefit of the parties intended settlement and compromise is not achieved, as one or
4 more parties may be denied the consideration for which it bargained.”

5 a) For the reasons set forth below, the court refuses to adopt SYRA in
6 whole. Following Watermaster’s own all-or-nothing argument, the
7 court must conclude that not only is there no legal basis to enforce part
8 of SYRA, but also that it is fundamentally unfair to the parties to
9 enforce portions of SYRA for which the parties did not bargain.

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

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

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

17 I) There ample technical and scientific support for the reset in the
18 Technical Memorandum and the 2013 Chino Basin Groundwater
19 Model Update and Recalculation of Safe Yield Pursant to the Peace
20 Agreement prepared by Wildermuth Environmental, Inc. dated
21 October 2015.

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

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

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

27 III) The safe yield reset is a legal determination for the court. There
28 is no “bargained-for exchange” for the court to consider.

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

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

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

23
24 4.3 Interim Correction. In addition to the scheduled reset set forth in Paragraph
25 4.2 above, the Safe Yield may be reset in the event that, with the recommendation
26 and advice of the Pools and Advisory Committee and in the exercise of prudent
27 management discretion described in Paragraph 4.5(c), below, Watermaster
28 recommends to the court that the Safe Yield must be changed by an amount greater

1 (more or less) than 2.5% of the then-effective Safe Yield.

2
3 4.4 Safe Yield Reset Methodology. The Safe Yield has been reset effective July 1,
4 2010 and shall be subsequently evaluated pursuant to the methodology set forth in
5 the Reset Technical Memorandum. The reset will rely upon long-term hydrology and
6 will include data from 1921 to the date of the reset evaluation. The long-term
7 hydrology will be continuously expanded to account for new data from each year,
8 through July 2030, as it becomes available. This methodology will thereby account
9 for short-term climatic variations, wet and dry. Based on the best information
10 practicably available to Watermaster, the Reset Technical Memorandum sets forth a
11 prudent and reasonable professional methodology to evaluate the then prevailing
12 Safe Yield in a manner consistent with the Judgment, the Peace Agreements, and the
13 OBMP Implementation Plan. In furtherance of the goal of maximizing the
14 beneficial use of the waters of the Chino Basin, Watermaster, with the
15 recommendation and advice of the Pools and Advisory Committee, may supplement
16 the Reset Technical Memorandum's methodology to incorporate future advances in
17 best management practices and hydrologic science as they evolve over the term of
18 this order.

19
20 4.5 Annual Data Collection and Evaluation. In support of its obligations to
21 undertake the reset in accordance with the Reset Technical Memorandum and this
22 order, Watermaster shall annually undertake the following actions:

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

26 (b) Collect data concerning cultural conditions annually with cultural
27 conditions including, but not limited to, land use, water use practices, production,
28 and facilities for the production, generation, storage, recharge, treatment, or

1 transmission of water;

2 (c) Evaluate the potential need for prudent management discretion to avoid
3 or mitigate undesirable results including, but not limited to, subsidence, water quality
4 degradation, and unreasonable pump lifts. Where the evaluation of available data
5 suggests that there has been or will be a material change from existing and projected
6 conditions or threatened undesirable results, then a more significant evaluation,
7 including modeling, as described in the Reset Technical Memorandum, will be
8 undertaken; and,

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

14
15 4.6 Modeling. Watermaster shall cause the Basin Model to be updated and a
16 model evaluation of Safe Yield, in a manner consistent with the Reset Technical
17 Memorandum, to be initiated no later than January 1, 2024, in order to ensure that
18 the same may be completed by June 30, 2025.

19
20 4.7 Peer Review. The Pools shall be provided with reasonable opportunity, no
21 less frequently than annually, for peer review of the collection of data and the
22 application of the data collected in regard to the activities described in Paragraphs
23 4.4, 4.5, and 4.6 above.

24
25 4.8 No Retroactive Accounting. Notwithstanding that the initial Safe Yield reset,
26 described in Paragraph 4.1 above, shall be effective as of July 1, 2010, Watermaster
27 will not, in any manner, including through the approval of its Assessment Packages,
28 seek to change prior accounting of the prior allocation of Safe Yield and Operating

1 Safe Yield among the Parties to the Judgment for production years prior to July 1,
2 2014.

3
4
5 **III. THE COURT FURTHER ORDERS AS FOLLOWS:**

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

8 1. The court accepts the findings and conclusions of Wildermuth for the
9 following reasons. Those conclusions are set forth in the reset Technical
10 Memorandum.

- 11 a) Wildermuth has been the authoritative resource for the parties and the
12 court during the pendency of the case for the last 15 years.
- 13 b) Wildermuth has performed a detailed analysis with substantiated facts
14 and findings in the reset technical memorandum, the supplemental
15 declaration of Mark Wildermuth in support of Watermaster's reply to
16 oppositions to the motion regarding 2015 Safe Yield Reset Agreement,
17 and the memo to restated judgment, paragraph 6 aka Wildermuth
18 supplemental declaration.
- 19 c) The court accepts the net recharge approach and calculations set forth
20 in the Wildermuth report.
- 21 d) The Wildermuth report gives the most comprehensive analysis and
22 credible evaluation of the historic condition of the Basin.
- 23 e) The court does not accept the conclusions of Robert Shibatani for the
24 following reasons:
- 25 I) Shibatani recognizes that the net recharge calculation is a legitimate
26 approach to a determination of Safe Yield.
- 27 II) The Shibatani approach is unnecessarily quantitative. The Wildermuth
28 analysis allows for the definitions required for the analysis of the Chino

1 Basin, including cultural conditions and undesirable results.

2 III) Wildermuth has considered the effects of climate change of
3 Basin precipitation. The court accepts Wildermuth's conclusion that
4 there are not any better predictive modeling scenarios generally available
5 at this time accurately calibrated to the historical rainfall and are
6 therefore not reliable as a predictive tool.

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

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

13 4. The reduction safe yield is consistent with the Court-Approved
14 Management Agreements.

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

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

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

28 I) Although the court concludes the Safe Storage Management Measures

1 are useful and advisable, the court concludes there is no specific factual
2 basis requiring the Safe Yield reset to include Safe Storage Management
3 Measures. Therefore the court concludes that even without the Safe
4 Storage Management Measures, reduction of Safe Yield to 135,000 AFY
5 will not harm the Basin.

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

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

15 I) However, again Wildermuth does not specifically address the necessity
16 of the Safe Storage Measures with respect to complying with the Court
17 Approved Management Agreements. Therefore, the court again
18 concludes that even without the Safe Storage Management Measures,
19 reduction of Safe Yield to 135,000 AFY will not harm the Basin.

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

23 d) Therefore, the court concludes that the extraction of 135,000 AFY is
24 consistent with the Court Approved Management Agreements and does
25 not create any undesirable result or Material Physical Injury to the Basin.
26

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

1
2 C. Paragraph 6 of the Restated Judgment is hereby amended to read as follows:

3 “Safe Yield. The Safe Yield of the Basin is 135,000 acre feet per year.”

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

6
7
8 **IV. SAFE YIELD RESET AGREEMENT (SYRA): WATERMASTER**
9 **ALLOCATION HISTORY, EARLY TRANSFERS, AND THE**
10 **DESALTERS**

11 A. The 1978 Judgment as amended

12 1. The 1978 Judgment ¶44 made the following allocation of rights to Safe
13 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

14
15
16
17
18
19
20
21 *Note: $414,000 \div 5 = 82,800$. 82,800 acre-feet per year has been the basis of
22 calculations for the Appropriative Pool going forward from the judgment.

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

28 2. The Judgment ¶1(x) defines Safe Yield as “the long-term average annual

1 quantity of groundwater (excluding replenishment or stored water but including
2 return flow to the basin from use of replenishment or stored water) which can be
3 produced [*i.e.*, pumped] from the basin under cultural conditions of the particular
4 year without causing an undesirable result.”

5 3. The judgment fixed the amount of water production (pumping) that
6 could be allocated to the Overlying (Agricultural) Pool and the Overlying (Non-
7 agricultural) Pool. However, the Appropriative Pool allocation could be changed.

8 a) The court concludes that the disputes in the oppositions concern
9 relationship between unproduced (*i.e.*, unpumped) Overlying
10 Agricultural Pool water (aka Ag Pool water) and the water available to
11 the Appropriative Pool.

12 4. Exhibit “I” to the judgment is the Engineering Appendix. It discusses
13 Hydraulic Control and Re-Operation, which are described in more detail below.

14 Section 3 defines Operating Safe Yield as consisting in any “year of the
15 Appropriative Pool’s share of Safe Yield of the Basin, plus any controlled overdraft
16 of the Basin which Watermaster may authorize.”

17 a) Section 3(b) states that “in no event shall Operating Safe Yield in any
18 year be less than the Appropriative Pool’s share of Safe Yield, nor shall
19 it exceed such share of Safe Yield by more than 10,000 acre feet. The
20 initial Operating Safe Yield is hereby set at 54,834 acre feet per year.”

21 I) The figure of 54,834 acre feet per year is the initial 1978 Judgment
22 allocation of 49,834 acre-feet per year plus 5,000 acre feet per year. The
23 additional 5,000 AFY comes from 200,000 acre-feet of overdraft (water
24 pumped without a replenishment obligation) allocated by the Judgment
25 to the Appropriative Pool. This overdraft total was later increased by
26 400,000 AF to a total of 600,000 AF. The overdraft will be exhausted
27 in 2016/2017. (Watermaster Motion Regarding 2015 Safe Yield Reset
28 Agreement, Amendment of Restated Judgement, Paragraph 6, page 3,

1 line 27.)

2 b) Operating Safe Yield has also come to mean water that the
3 Appropriative Pool could produce/pump without having to purchase
4 replenishment water. (Exhibit “H” ¶5.)

5 5. Exhibit “H” to the judgment described the Appropriative Pool Pooling
6 Plan, paragraph 10 described “Unallocated Safe Yield Water” as follows: “to the
7 extent that, in any 5 years, any portion of the share of Safe Yield allocated to the
8 Overlying (Agricultural) Pool is not produced, such water shall be available for
9 reallocation to members of the Appropriative Pool as follows:

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

11 (1) to supplement, in the particular year, water available from Operating Safe
12 Yield to compensate for any reduction in the Safe Yield by reason of
13 recalculation thereof after the tenth year of operation hereunder. [This
14 Exhibit H ¶10(a)(1) priority is sometimes called ‘unproduced Agricultural Pool
15 water’ or ‘unproduced Ag Pool water.’ The current credited production
16 (pumping) for agricultural groundwater is about 33,600 AFY, but that includes
17 agricultural land irrigated with reclaimed water. The actual groundwater
18 production for agricultural purposes is about 22,000 AFY. (Jurupa Services
19 District’s response to Judge Reichert’s Request for Clarification, March 22,
20 2016, page 2, lines 8–10.)]

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

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

24 6. In an order dated November 17, 1995, Conversion Claims were defined
25 in Exhibit “H” ¶10(b) [this is the Subparagraph (b) to which the preceding
26 paragraph--page 23, line 21--refers]. Peace I modified this definition in Exhibit “H”
27 ¶10(b) to state as follows:

28 (b) Conversion Claims. The following procedures may be utilized by any

1 appropriator:

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

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

17 (3) Allocation of Safe Yield Rights

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

24 (ii) In any year in which the unallocated Safe Yield water from the Overlying
25 (Agricultural) Pool is not sufficient to satisfy all outstanding conversion claims
26 pursuant to subparagraph (i) herein above, Watermaster shall establish
27 allocation percentages for each appropriator with conversion claims. The
28 percentages shall be based upon the ratio of the total of such converted

1 acreage approved and recorded for each appropriators's [sic] account in
2 comparison to the total of converted acreage approved and recorded for all
3 appropriators. Watermaster shall apply such allocation percentage for each
4 appropriator to the total unallocated Safe Yield water available for conversion
5 claims to derive the amount allocable to each appropriator.

6 7. CONCLUSION: With the 1995 amendments, the Judgment set a
7 prioritized list of claims upon unproduced Ag Pool water.

8 Ag Pool water--1995 Judgment amendment

9 82,800 AFY of the Ag Pool's water available to the Appropriative Pool with
10 Appropriative Pool claims prioritized as follows:

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

14 (2) pursuant to conversion claims as defined in Subparagraph (b of Exhibit "H"
15 ¶10(b);

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

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

21
22 B. The 2000 Peace Agreement aka Peace I

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

25 2. Peace I Section V-Watermaster Performance defined how Watermaster
26 was to perform regarding procedures for Recharge and Replenishment. In paragraph
27 ¶5.3(g), Watermaster was ordered to approve an "Early Transfer" from the
28 Agricultural Pool to the Appropriative Pool of not less than 32,800 acre-feet per year

1 which was the expected approximate quantity of water not produced by the
2 Agricultural Pool. ¶5.3(g)(i) further stated that “the quantity of water subject to Early
3 Transfer under this paragraph shall be the greater of (i) 32,800 acre-feet or (ii) 32,800
4 acre-feet plus the actual quantity of water not produced by the Agricultural Pool for
5 that Fiscal Year that is remaining after all the land use conversions are satisfied
6 pursuant to” the following provision: “the Early Transfer water shall be annually
7 allocated among members of the Appropriative Pool in accordance with their pro-
8 rata share of the initial Safe Yield.” The court notes that after this deduction, the
9 Safe Yield water available to the Agricultural Pool became 50,000 acre-feet per year.

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

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

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

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

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

24 4. The court also concludes that the conversion claims have priority over
25 the Early Transfers because the conversion claims pre-existed the Early Transfer
26 allocations. The conversion claims came into existence with the 1995 Judgment
27 amendment. The Early Transfers came into existence with Peace I in 2000. The
28 Early Transfers must be interpreted in the context of the pre-existing 1995 Judgment

1 amendment.

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

4 Ag Pool water	5 Status and/or change 6 result	7 Comments
8 1995 Judgment 9 amendment	10 82,800 AFY of the Ag 11 Pool's water available to 12 the Appropriate Pool with 13 Appropriative Pool claims 14 prioritized as follows: 15 (1) to supplement, in the 16 particular year, water 17 available from Operating 18 Safe Yield to compensate 19 for any reduction in the 20 Safe Yield by reason of 21 recalculation thereof after 22 the tenth year of 23 operation hereunder. 24 (2) pursuant to conversion 25 claims as defined in 26 Subparagraph (b) hereof. 27 (3) as a supplement to 28 Operating Safe Yield, without regard to reductions in Safe Yield.	
27 2000 Peace I-Desalters 28 start construction and	Early Transfers of 32,800 AFY of Ag Pool water	New Yield (with conditions) is source of

<p>1 pumping water</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p>	<p>going straight to the</p> <p>Appropriative Pool</p> <p>(leaving 50,000 AFY to</p> <p>Ag Pool). The remaining</p> <p>Ag Pool water is subject</p> <p>to Appropriative Pool's</p> <p>prioritized claims.</p>	<p>water to replenish water</p> <p>pumped by the</p> <p>Desalters. Under Peace</p> <p>I therefore Desalters do</p> <p>not affect Safe Yield or</p> <p>Operating Safe Yield.</p> <p>Water</p> <p>produced/pumped by</p> <p>the Desalters is not</p> <p>added to or subtracted</p> <p>from Safe Yield of the</p> <p>Basin.</p>
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13 The court concludes that Peace I interrelated Early Transfers and conversion
14 claims in the following way. The Appropriative Pool received unproduced Ag Pool
15 water in at least the amount of 32,800 AFY, but the Appropriative Pool could receive
16 more unproduced Ag Pool water if 1) the Ag Pool did not produce/pump its leftover
17 50,000 AFY and 2) also after subtracting from the 50,000 AFY the Appropriative
18 Pool's conversion claims at the rate of 2 acre-feet per year per converted acre.

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

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

- 24 1. If one Appropriative Pool producer/pumper (e.g., municipality, such as the City of
- 25 Chino) had 1000 acres of converted land resulting in 2000 acre-feet of conversion
- 26 claims (1000 acres x 2.0 acre feet of water/one acre converted), and assuming those
- 27 were the only conversion claims; and
- 28 2. If the Ag Pool produced/pumped only 33,600 AFY leaving 49,200 AFY available

1 for further allocation (82,800 AFY– 33,600 AFY= 49,200 AFY; the court notes that
 2 33,600 AFY is the approximate Ag Pool credited production [Jurupa response to
 3 court’s clarification request, page 2, lines 9-10], but the court is using this figure only
 4 for illustration); then,

5 3. The Ag Pool water that would be available to the Appropriative Pool would be
 6 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

1			"H" Paragraph 10.
2	Reduction for Early	- 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.*
3	Transfers		
4			
5			
6			
7			
8			
9			
10			
11	Balance: Ag Pool	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.**
12	water available to the		
13	Appropriative Pool		
14	after conversion		
15	priority claims and		
16	Early Transfers		
17			
18			
19			
20			
21			
22			

23 *It appears to the court that for convenience, many parties first simply take the
24 reduction of the 32,800 acre-feet for Early Transfers and start these calculations with
25 50,000 acre-feet of Ag Pool water.

- 26 1. That calculation is simply to start with the 50,000 acre-feet of
27 unproduced/unpumped Ag Pool water and then subtract the amount 33,600
28 acre-feet that was actually pumped in this example. The result is 16,400 acre-

1 feet available for conversion claims.

2 2. Then subtract the 2,000 acre-feet for conversion claims to get the 14,400 acre-
3 feet of Ag Pool water available for allocation to the Appropriative Pool.

4 3. However, this procedure is inconsistent with the judgment and Peace
5 Agreements as interpreted by the court for the reasons stated above.

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

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

Example 2		Comment
Initial Ag Pool allocation	82,800 AFY	
Ag Pool production/pumping	48,000 AFY	Assumption
Initial balance after production	34,800 AFY	82,800 acre-feet – 48,000 acre-feet = 34,800 acre-feet per year
Conversion claims	- 2000 acre- feet	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:	32,800 AFY	34,800 acre-feet – 2,000 acre-feet = 32,800 acre-feet per year. Ag Pool Water Available after conversion

		priority claims pursuant to Judgment Exhibit "H" Paragraph
Reduction for Early 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.

Conclusion:
Under this scenario, the Appropriative Pool would not get any additional allocation from Ag Pool water

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

1 acre-feet of water abandoned by Kaiser pursuant to the "Salt Offset
2 Agreement" dated October 21, 1993, between Kaiser and the RWQB, and
3 other water previously dedicated by the Appropriative Pool.

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

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

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

12
13 C. The 2007 Peace II Agreement (Peace II)

14 1. Peace II Agreement Article VI-Groundwater Production by and
15 Replenishment for Desalters and Article VII-Yield Accounting further defined the
16 accounting for the Desalters and Desalter Production Offsets.

17 2. Peace II Paragraph 6.2(a)(iii) states as follows in pertinent part:

18 Peace II Desalter Production Offsets. To facilitate Hydraulic Control through
19 Basin Re-Operation, [court note: that is, water pumped as part of the 600,000
20 AF controlled overdraft] in accordance with the 2007 Supplement to the
21 OBMP Implementation Plan and the amended Exhibits G and I to the
22 Judgment, additional sources of water will be made available for purposes of
23 Desalter Production and thereby some or all of a Replenishment obligation.
24 With these available sources, the Replenishment obligation attributable to
25 Desalter production in any year will be determined by Watermaster as follows:

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

28 (iii) New Yield (other than Stormwater (Peace Agreement Section

1 7.5(b)); . . .

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

4 (vi) any Production of groundwater attributable to the controlled
5 overdraft authorized pursuant to amended Exhibit I to the Judgment.
6 [The Judgment allowed for a temporary controlled overdraft, *i.e.*,
7 initially 200,000 AF and then an additional 400,000 AF total
8 production/pumping starting in 2007 and ending in 2026 without
9 replenishment, in order to achieve Hydraulic Control. (Safe Yield Reset
10 Implementation Desalter Replenishment Accounting Illustration (per
11 Peace II Agreement, Section 6.2 (PIIA, 6.2) and June 11, 2015 Key
12 Principles)–Exhibit C to Attachment 1, Watermaster’s Motion regarding
13 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
14 Paragraph 6.]

15 Paragraph 7.1 provides as follows:

16 New Yield Attributable to the Desalters. Watermaster will make an annual
17 finding as to the quantity of New Yield that is made available by Basin Re-
18 Operation including that portion that is specifically attributable to the Existing
19 and Future Desalters. Any subsequent recalculation of New Yield as Safe
20 Yield by Watermaster will not change the priority set forth above for
21 offsetting Desalter production as set forth in Article VII, Section 7.5 of the
22 Peace Agreement. For the initial term of the Peace Agreement, neither
23 Watermaster nor the Parties will request that Safe Yield be recalculated in a
24 manner that incorporates New Yield *attributable to the Desalters* [emphasis in
25 original] into a determination of Safe Yield so that this source of supply will be
26 available for Desalter Production rather than for use by individual parties to
27 the Judgment.

28 2. Additionally, in 2007 Peace II ¶1.1(d) defined Re-Operation as “the

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

10 3. Peace II, Paragraph 6.2(a)(iii) gives Watermaster a basis to calculate the
11 total Desalter production from the preceding year and then apply against that
12 production/pumping a “credit” (*i.e.*, a reduction) which included a number of
13 factors, including New Yield referencing Peace I, paragraph 7.5(b). This credit
14 procedure is an important issue going forward for the administration of water
15 allocations:

- 16 a) Peace I, paragraph 1.1(aa) defines New Yield as “proven increases in
17 yield in quantities greater than historical amounts from sources of
18 supply including, but not limited to, operation of the Desalters
19 (including the Chino I Desalter), induced Recharge and other
20 management activities implemented in operational after June 1, 2000.”
- 21 I) The court concludes that New Yield in the above paragraph means
22 water produced/pumped by the Desalters, because that is how yield is
23 always used, e.g., Safe Yield, Operating Safe Yield, etc., and the source
24 of supply is the Desalters as identified in the definition.
- 25 II) So, New Yield includes water produced/pumped by the Desalters.
- 26 b) Peace I, paragraph 1.1(nn) defines “Recharge and Recharge Water as
27 “introduction of water to the Basin, directly or indirectly,” Recharge
28 references the physical act of introducing water to the Basin.”

- 1 c) The conclusion of the court is that after Peace II, the definition New
2 Yield now includes both Desalter operation, *i.e.*, production/pumping
3 from the Desalters, and induced Recharge (*i.e.*, groundwater flowing
4 back into the Basin from the Santa Ana River as the result of Desalter
5 operation).
- 6 d) Peace II was consistent with Peace I. Peace II provided that the parties
7 would avoid some or all or a replenishment obligation for Desalter
8 production by getting credit/reduction against that production from
9 sources such as New Yield which includes induced Recharge.
- 10 I) Peace I defined New Yield to include “operation of the Desalters” and
11 “induced Recharge.”
- 12 II) The court concludes that the Peace I and Peace II when read together
13 recognized that some of the water which the Desalters
14 produced/pumped came from induced recharge form the Santa Ana
15 River.
- 16 III) Peace II was not explicit it stating that the Desalter production
17 offset should follow the priorities of Peace I ¶7.5, but the court
18 concludes that the replenishment water, *i.e.*, Desalter-induced recharge,
19 must follow the priorities of Peace I.
- 20 (a) The agreements must be read together and interpreted together
21 because they form a context for each other.
- 22 e) In its response to Judge Reichert’s questions, Chino argued that SYRA’s
23 failure to give a specific definition to “Desalter-induced recharge” was
24 purposeful because the failure allowed SYRA to use “Desalter-induced
25 recharge” synonymously with New Yield. The court does not find
26 “Desalter-induced recharge” to be synonymous with New Yield. The
27 court finds that “Desalter-induced recharge” is only synonymous with
28 “induced Recharge.” Therefore Desalter-Inducted Recharge is included

1 in the definition of New Yield, as set forth in Peace I ¶1(aa): “induced
2 Recharge and other management activities implemented in operational
3 after June 1, 2000” includes Desalter-induced recharge.

4 I) . The court further finds that “Desalter-induced recharge” and
5 “induced Recharge” mean water flowing back into the Basin from the
6 Santa Ana River due to production/pumping by the Desalters lowering
7 the ground water table in the Basin. Finally, the court notes that New
8 Yield includes Desalter production and Desalter-induced recharge.

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

14 (b) In fact the Desalters have accomplished their design objective so
15 well that now some water flows from the Santa Ana River into the
16 Chino Basin. The court finds that his water is New Yield as set
17 forth above.

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

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

27 5. CONCLUSION:

28 Now, after Peace II, there were additional sources of water for the Basin, the

1 Desalter operation/Desalter-induced recharge, as well as the historical overdraft, as
 2 summarized below.

Ag Pool water		Comments
4 1995 Judgment 5 amendment 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	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.	
25 2000 Peace I-Desalters 26 start construction and 27 pumping water 28	Early Transfers of 32,800 AFY of Ag Pool water now go to the Appropriative Pool	New Yield (with conditions) is source of water to replenish water pumped by the

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	<p>(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>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 Response to Order for Additional Briefing, page 5, line 22-23.) Therefore at the time of Peace I Desalter operations did not affect Safe Yield or Operating Safe Yield. Water produced/pumped by the Desalters was not added to or subtracted from yield of the Basin. Water</p>
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		produced/pumped by the Desalters had a separate allocation.
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 Article VI identifies offsets for Desalter production, which includes New Yield the meaning of which includes induced Recharge. (Peace I, ¶1.1(aa).)	Desalter production reaches above 20,000 AFY. Watermaster's Response to Order for Additional Briefing, Exhibit 1.

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.

1 **V. SYRA ARTICLE 5-STORMWATER RECHARGE PLAN AND**
2 **WATERMASTER ACCOUNTING ANALYSIS**

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

7 A. Stormwater Recharge–SYRA ¶5.1

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

12
13 B. Desalter-Induced Recharge Allocations, Early Transfers, Land Use
14 Conversion–SYRA ¶5.2 and SYRA ¶5.3.

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

17 SYRA ¶5.2 sets forth the following provisions regarding Desalter Induced
18 Recharge, and SYRA ¶5.3 sets forth the following provisions regarding Post 2030
19 Land Use Conversions and Early Transfers.

20 5.2 Desalter-Induced Recharge. After the Effective Date and until
21 termination of this Agreement, the parties expressly consent to Watermaster’s
22 accounting for Basin recharge arising from or attributable the Desalters as
23 follows:

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

1 production by the Desalters.

2 (b) 2015-2030 Desalter-Induced Recharge. For the production years
3 of 2015- 2030, Watermaster shall account for induced recharge that arises
4 from or is attributable to the Desalters as equal to fifty (50) percent of the total
5 Desalter Production during each applicable production year up to a maximum
6 of twenty-thousand (20,000) AFY of recharge. Consistent with Paragraph
7 6.2(a)(iii) of the Peace II Agreement, Watermaster shall deem the induced
8 recharge as having been produced by the Desalters. During each applicable
9 production year, Watermaster shall reduce Safe Yield by an amount equal to
10 fifty (50) percent of the total Desalter Production, up to a maximum of
11 twenty-thousand (20,000) AFY, and require a corresponding supplementation
12 by the reallocation of available unproduced Agricultural Pool's share of the
13 Basin's Safe Yield.

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15 Claims for reallocation of the remaining unproduced quantity of the
16 Agricultural Pool's share of Safe Yield shall be satisfied consistent with section
17 6.3(c) of Watermaster's Rules and Regulations, as amended as part of the
18 Peace II Measures, and the October 8, 2010 Order Approving Watermaster's
19 Compliance with Condition Subsequent Number Eight and Approving
20 Procedures to be used to Allocated Surplus Agricultural Pool Water in the
21 Event of a Decline in Safe Yield.

22 (c) 2031-2060 Desalter-Induced Recharge. Should the term of the
23 Peace Agreement be extended pursuant to Paragraph 8.4 thereof, the
24 treatment of Desalter-Induced Recharge shall be subject to the negotiation of
25 a new and separate agreement among the Parties to the Judgment. The
26 accounting provided for in Section 5.2(b), above, shall be without prejudice to
27 the negotiation of such a new and separate agreement among the Parties to the
28 Judgment. Unless otherwise agreed by the Parties or ordered by the court,

1 during the extension term, Watermaster shall not consider such recharge to
2 require supplementation by the reallocation of a portion of the unproduced
3 Agricultural Pool's share of Safe Yield.

4
5 5.3 Post-2030 Priority among Land Use Conversion and Early Transfer
6 Claims. At the expiration of the Peace II Agreement, the Peace II provisions
7 relating to the distribution of surplus water by the Agricultural Pool requiring
8 that claims for the Early Transfer of 32,800 AFY and for Land Use
9 Conversion be treated equally are expressly repealed including (i) the
10 amendment to Section 6.3(c) of Watermaster's Rules and Regulations,
11 pursuant to the Peace II measures, and (ii) Section III.(6) of the October 8,
12 2010 Order Approving Watermaster's Compliance with Condition Subsequent
13 Number Eight and Approving Procedures to be used to Allocate Surplus
14 Agricultural Pool Water in the Event of a Decline in Safe Yield. In any Peace
15 Agreement extension term, the previous changes to Restated Judgment,
16 Exhibit "H", Paragraph 10(b)(3)(i) effectuated by Paragraph 4.4(c) of the
17 Peace Agreement, which, to the extent sufficient unallocated Safe Yield from
18 the Agricultural Pool is available for conversion claims, allocate 2.0 acre-feet
19 of unallocated Safe Yield water for each converted acre, shall remain in effect.

20
21 C. The court summarizes the effect of these SYRA proposals ¶5.2 and ¶5.3 as
22 follows:

Ag Pool water		Comments
1995 Judgment amendment	82,800 AFY of the Ag Pool's water available to the Appropriate Pool with Appropriative Pool claims prioritized as follows:	

	<p>(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.</p> <p>(2) pursuant to conversion claims as defined in Subparagraph (b) hereof.</p> <p>(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 goes to the Appropriative Pool (leaving 50,000 AFY to Ag Pool). The remaining Ag Pool water is subject to Appropriative Pool’s prioritized claims.</p>	<p>New Yield (with conditions) is source of water to replenish water pumped by the Desalters. Therefore Desalters do not affect Safe Yield or Operating Safe Yield. Water produced/pumped by the Desalters is not added to or subtracted from Safe Yield or</p>

1			Operating Safe Yield of the Basin.
2			
3	2007 Peace II-	Additional 400,000 AF	This is a diminishing
4	overdraft increased	above the 200,000 AF	pumping allocation as
5		provided in the Judgment	the overdraft goes to 0
6		for a total of 600,000 AF.	in 2017.
7	SYRA proposal:	SYRA proposal <i>Step 1</i> : The	
8	(see column to right	Desalter	
9	for <i>Steps 1-3</i>):	production/pumping up to	
10	<i>Step 4</i> : SYRA ¶5.2(b)	20,000 AFY is allocated to	
11	subtracts 50% of total	the Desalters, not as Safe	
12	Desalter production	Yield or Safe Operating	
13	up to 20,000 AFY	Yield [or New Yield].	
14	from Ag Pool Water	<i>Step 2</i> : Under SYRA ¶5.2(b)	
15	and then adds that	one-half of the source of	
16	50% of total Desalter	Desalter production up to	
17	production up to	20,000 AFY is attributed to	
18	20,000 AFY to Safe	“Desalter-induced	
19	Yield (to make up for	recharge.” Desalter-induced	
20	the subtraction in	Recharge means water	
21	<i>Step 3</i>).*	flowing back into the Basin	
22		from the Santa Ana River.	
23		<i>Step 3</i> : SYRA then subtracts	
24		the other half of Desalter	
25		production up to 20,000	
26		AFY from Safe Yield.	
27	Additional SYRA Effects: <i>Step 5</i> (see above for <i>Steps 1-4</i>)		
28	The Ag Pool water allocation is reduced by up to 20,000 AFY for the Desalters.		

1 SYRA is unclear where the priority lies with respect to priority of allocation as
 2 required by Judgment Exhibit "H" Paragraph 10. The court orders that those
 3 priorities must be followed. Because the court has ordered that those priorities be
 4 followed, court concludes that it cannot order these provisions of SYRA in
 5 addition to SYRA's not being severable. At best SYRA is ambiguous with respect
 6 to following the priorities set by the Judgment and the Court Approved
 7 Management Agreements. At worst, SYRA contradicts them.

8 *So, the court concludes that previous to SYRA, the Desalter water
 9 production/pumping could be offset from a prioritized list of sources including New
 10 Yield (induced recharge). Now under SYRA:

11 1) All of the induced recharge gets allocated to water produced/pumped by
 12 the Desalters.

13 2) Watermaster reduces Safe Yield by 50% of the Desalter production up to
 14 20,000 AFY.

15 3) Then, Watermaster adds to Safe Yield 50% of the Desalter production up
 16 to 20,000 AFY, from water allocated to the Ag Pool, to make up for (aka backfill) the
 17 reduction in Safe Yield allocated to Desalter production.

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

22 5) Elaborating on Example 1-A from Section IV.B.5 of this order above, the
 23 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)

1			for agricultural groundwater is
2			about 33,600 AFY, but that
3			includes agricultural land irrigated
4			with reclaimed water. [The
5			actual groundwater production
6			for agricultural purposes is about
7			22,000 AFY. Jurupa Services
8			District's response to Judge
9			Reichert's Request for
10			Clarification, March 22, 2016
11			page 2, lines 8-10.]
12	Initial balance after	49,200 AFY	82,800 acre-feet – 33,600 acre-
13	production		feet = 49,200 acre-feet
14	Conversion claims	- 2000 acre-feet	Assumption: The subtraction for
15			satisfying conversion claims
16			before any reallocation. (1000
17			acres x 2.0 acre feet of water/one
18			acre converted = 2000 acre-feet).
19	Balance:	47,200 AFY	49,200 acre-feet - 2000 acre-feet
20			= 47,200 acre-feet. Ag Pool
21			Water available after conversion
22			priority claims pursuant to
23			Judgment Exhibit "H" Paragraph
24			10
25	Reduction for Early	- 32,800 AFY	Basic Early Transfer from 82,800
26	Transfers		AFY allocation leaving 50,000
27			AFY for the Ag Pool itself to
28			produce/pump and for

1			additional claims by the
2			Appropriative Pool pursuant to
3			Peace I and Peace II.*
4	Balance	14,400 AFY	(47,200 acre-feet - 32,800 acre-
5			feet = 14,400 acre-feet. This is
6			the Ag Pool water available for
7			reallocation to Appropriative
8			Pool after subtraction of
9			conversion priority claims of
10			2,000 acre-feet from and the
11			32,800 Early Transfer of
12			unproduced/unpumped from the
13			allotment of Ag Pool water.

14
15 Now, to examine the effect of SYRA on the Appropriative Pool:

16	Starting balance	14,400 AFY	Total Ag Pool water available for
17	available Ag Pool		production/pumping from the
18	water		example above
19	Desalter reallocation	- 20,000 AFY	SYRA Desalter reallocation:
20			20,000 AFY of Desalter
21			production is allocated from Ag
22			Pool water to Safe Yield.
23	Balance:	- 5,600 AFY	A negative amount. This
24			plausible scenario assumes 2,000
25			AFY of conversion claims. The
26			negative balance shows that this
27			scenario under SYRA would not
28			leave sufficient Ag Pool water for

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		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: 82,800/initial allocation - 26,000/pumped = 56,800 56,800 - 2,000/conversion claims = 54,800 54,800 - 32,800/Early Transfer = 20,000 20,000 - 20,000/Desalter reduction from Ag Pool Allocation = 0
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The court concludes that there is no basis in the Judgement or any of the Court Approved Management Agreements for the post SYRA result identified in the plausible scenario above.

D. Further Analysis and orders:

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

- a) The court concludes that SYRA paragraphs 5.2 and 5.3 fundamentally change the allocations of Appropriate Pool and of Ag Pool water. Those fundamental changes are inconsistent with the Judgment and the

1 Court Approved Management Agreements

2 b) Peace I and Peace II both define Desalter production as within the
3 definition of New Yield and therefore outside of the definition of Safe
4 Yield. Through a several step re-allocation reassignment described
5 above and summarized in this section of the court's order, SYRA now
6 moves Desalter production into Safe Yield. The parties have not
7 demonstrated any legal ~~or practical requirement~~ basis which allows this.
8 Peace I and Peace II prohibit this.

9 c) The court concludes that Peace II Agreement Paragraphs 6.2(a)(iii) and
10 7.1 provide that through 2030 (the initial term of Peace I Agreement as
11 set forth in ¶8.2) recharge attributable to the Desalters is allocated for
12 Desalter Production and not allocated as Safe Yield producible (*i.e.*,
13 water available to be pumped without a replenishment obligation by
14 purchase or otherwise).

15 I) Peace II ¶7.1 excluded New Yield attributable to the Desalters from
16 a determination of Safe Yield, at least for the 30 year term of Peace
17 Agreement.

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

19 (a) The court finds that induced recharge includes Desalter-
20 induced recharge.

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

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

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

28 V) In contradiction to the Peace I and Peace II, the court finds that

1 SYRA attempts to incorporate New Yield from the Desalters into
2 Safe Yield through the accounting method of 1) taking Desalter
3 induced yield water coming from Desalter-induced recharge, then 2)
4 moving that water into Safe Yield, then 3) backfilling Safe Yield
5 from unproduced Ag Pool water.

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

8 d) The analysis above shows that these SYRA provisions are contrary to
9 the Judgment and the Court Approved Management Agreements,
10 specifically Peace I and Peace II. These SRYA provisions can prevent
11 the application of the Judgment provisions regarding conversion claims.
12 They are invalid.

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

16 f) There is no basis in the Judgment or any of the Court Approved
17 Management Agreements for the splitting and reallocation of Desalter
18 production/pumping to one-half to Desalter-induced recharge and one-
19 half to Safe Yield.

20 g) There is no basis in the Judgment or any of the Court Approved
21 Management Agreements to reallocate Ag Pool water to Safe Yield to
22 make up for the Safe Yield reallocated to the Desalters.

23 h) Due to the Desalters, there is now recharge coming from the Santa Ana
24 River back into the Chino Basin. SYRA Paragraph 5.2(b) takes the
25 Peace I and Peace II agreements one step—wrongfully—farther by
26 identifying how this recharge quantity will be estimated, *i.e.*, 50% of
27 Desalter Production, and then further specifies that amount of recharge
28 will be allocated to Desalter production and not to the parties as part of

1 their allocation of the Safe Yield. There is no legal basis in the
2 Judgment or the Court Approved Management Agreements for this
3 redefinition of Safe Yield to include of 50% of Desalter Production up
4 to 20,000 AFY through a mechanism of passing the amounts through
5 the Appropriative Pool allocation.

6 i) SYRA attempts now to remove the special exception for New Yield
7 from Desalter induced recharge and production and incorporate it into
8 Safe Yield. The mechanism by which SYRA attempts to do this is by 1)
9 taking half of the Desalter production and sourcing that
10 production/pumping from Desalter induced recharge from the Santa
11 Ana River and 2) sourcing the other half from the Appropriative Pool
12 through unproduced Ag Pool water. The court concludes and finds
13 that this attempt is not justified because it can interfere with the priority
14 of claims on unproduced Ag Pool water set forth in the judgment and
15 the Court-Approved Management Agreements.

16 I) The court notes that Peace II, Article VII-Yield Accounting, ¶7.2(d)
17 discusses a contingency if Western Municipal Water District
18 (WMWD) and the Appropriative Pool “do not reach agreement on
19 apportionment of controlled overdraft of Future Desalters, then no
20 later than August 31, 2009, the members of the Appropriative Pool
21 will submit a plan to Watermaster that achieves the identified goals
22 of increasing the physical capacity of the Desalters and potable water
23 use of approximately 40,000 acre-feet of groundwater production
24 from the Desalters from the Basin no later than 2012.”

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

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

- 1 j) SYRA ¶5.2 and ¶5.3 contradict and conflict with Peace I and Peace II.
- 2 I) Peace II ¶7.1 requires neither Watermaster nor the parties to request
- 3 that safe yield be recalculated in a manner that incorporates New
- 4 Yield *attributable to the Desalters* into the determination of Safe Yield
- 5 so that this source of supply will be available for Desalter
- 6 Production rather than for use by individual parties to the judgment.
- 7 (Emphasis in original.)
- 8 II) SYRA now includes New Yield in the determination of Safe Yield in
- 9 two ways.
- 10 (a) First, SYRA takes up to 20,000 AFY away from Safe Yield
- 11 through Desalter Production.
- 12 (b) Second, SYRA adds back up to 20,000 AFY to Safe Yield
- 13 from unproduced Ag Pool water.
- 14 (c) The net change to Safe Yield is 0, but available Ag Pool water
- 15 for allocation is reduced up to 20,000 AFY. This re-allocation
- 16 and re-accounting, is not justified or supported in the Peace I,
- 17 Peace II, Watermaster Rules and Regulations, or the court's
- 18 orders of implementation, the Judgment, or the CAMAs.
- 19 (d) The following chain shows SYRA's violations of the previous
- 20 orders:
- 21 (i) Desalter-induced recharge is New Yield. (Peace
- 22 ¶1(aa).)
- 23 (ii) Peace II ¶7.1 prevents New Yield from being
- 24 incorporated within Safe Yield.
- 25 (iii) SYRA moves 20,000 AFY of Desalter-induced
- 26 recharge to the Ag Pool.
- 27 (iv) Then SYRA moves the 20,000 of Desalter-induced
- 28 recharge (now characterized as Ag Pool Water) into

1 Safe Yield.

2 (v) Therefore, SRYA recalculates Safe Yield to incorporate
3 New Yield in violation of Peace II ¶7.1

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

7 k) The court does not find a legal ~~or factual basis~~ for determining a post-
8 2030 priority among land use conversion and early transfer claims. The
9 priority is set forth in the judgment and as specified in this order

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

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

13 Watermaster is ordered to utilize the procedures regarding the re-
14 allocation of surplus Agricultural Pool water the event of a
15 decline in Safe Yield as described in the December 2008 staff
16 report and the December 4, 2008 memorandum from legal
17 counsel. Specifically, in the event that Operating Safe Yield is
18 reduced because of a reduction in Safe Yield, Watermaster will
19 follow the hierarchy provided for in the Judgment, exhibit "H,"
20 by first applying the unproduced Agricultural Pool water to
21 compensate Appropriative Pool members for the reduction in
22 Safe Yield. (Judgment, Exhibit "H," paragraph 10 (a).) If there
23 is unallocated water left, Watermaster will then follow the
24 remainder of the hierarchy and reallocate unallocated Agricultural
25 Pool water next to conversion claims then to supplement the
26 Operating Safe Yield without regard to reductions in Safe Yield
27 according to the guidance provided by Peace Agreement I & II
28 and Watermaster's rules and regulations as amended. If, after

1 applying the unallocated Agricultural Pool water to compensate
2 the Appropriate Pool members for the reduction in Safe Yield,
3 the actual combined production from the Safe Yield made
4 available to the Agricultural Pool, which includes overlying
5 Agricultural Pool uses combined with land use conversions and
6 the Early Transfer, exceeds 82,800 in any year, the amount of
7 water available to members of the Appropriative Pool shall be
8 reduced pro rata in proportion to the benefits received according
9 to the procedures outlined in Watermaster Rules and
10 Regulations.

11 I) In considering the reference to Watermaster Rules and
12 Regulations in the preceding paragraph, if the order is vague, the court
13 now clarifies it. In the instant order, the court has clarified that
14 Watermaster must follow the priorities set forth in the Judgment for
15 allocations of unproduced Ag Pool water.

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

19 III) JCSD correctly points out that pursuant to the Judgment
20 ¶15 the court is authorized “to make such further or supplemental
21 orders or directions as may be necessary or appropriate for
22 interpretation, enforcement or tearing out of this judgment”

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

28 V) Watermaster’s further response to order for additional briefing,

1 filed April 11, page 3, lines 15-19 states:

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

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

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

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

20 II) If there is any ambiguity that Watermaster finds the current
21 circumstances for the application of that Order III.(6) the court clarifies
22 it now. SYRA's reference to that order's provision does not help in its
23 clarification or application.

24 III) Watermaster argues that "in the event that Operating Safe
25 Yield is reduced because of a reduction in Safe Yield, Watermaster will
26 follow the reallocation hierarchy provided for in the Appropriative Pool
27 Pooling Plan by first applying the unallocated Ag Pool water to
28 compensate the Appropriate Pool members for the reduction in safe

1 yield. (Restated Judgment, exhibit “H), paragraph 10 (a).) If, thereafter,
2 there is unallocated water left, Watermaster then followed the
3 remainder of the hierarchy and reallocate unallocated agricultural Pool
4 water next to land use conversion claims and Early Transfer, and then
5 to supplement the Operating Safe Yield without regard reductions in
6 safe yield.” (Watermaster’s Reply to Oppositions to Motion regarding
7 2015 Safe Yield Recent Agreement, Amendment Restated Judgment,
8 Paragraph 6, page 24, lines 7-14.)

9 IV) This argument equates land use conversion claims and
10 Early transfer claims. This argument is incorrect for the reasons stated
11 herein. Additionally:

12 (a) The court’s order filed October 8, 2010, paragraph III.(6)
13 is quoted in full in section “I” above:

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

- 21 o) Additionally, the court rejects and denies the implementation of SYRA
22 ¶5.3 specifically because, as with SYRA ¶5.2, this provision has the
23 same problems of interpretation of the court’s 2010 Order Approving
24 Watermaster’s Compliance with Condition Subsequent Number Eight
25 and Approving Procedures to be used to Allocate Surplus Agricultural
26 Pool Water in the Event of a Decline in Safe Yield.
- 27 p) Watermaster’s erroneous interpretation of the order of priorities is not a
28 basis to continue that erroneous interpretation. If Watermaster has to

1 make a reallocation, then it must do so in order to follow the court's
2 order. A wrong practice can be long-standing, and still be wrong. A
3 wrong practice cannot be a basis of prejudice.

4 q) The court rejects any argument that this issue is subject to issue
5 preclusion. The specific issues raised by the oppositions to the motion
6 have not been specifically addressed by the court. They are not barred
7 by laches. The issues have been timely raised within the context of the
8 instant motion, and the court always retains jurisdiction to modify its
9 orders as those orders are drawn to the attention of the court, and the
10 court determines they require modification for the reasons set forth in
11 this order.

12
13 E. Dispute re priority of claims

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

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

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

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

24 (1) to supplement, and the particular year, water available from
25 Operating Safe Yield to compensate for any reduction in the Safe Yield
26 by reason of recalculation thereof after the tenth year of operation
27 hereunder.

28 (2) pursuant to conversion claims as defined in Subparagraph (b)

1 hereof.

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

4 Confusion has arisen with respect to the relationship between the Judgment,
5 Exhibit “H,” Paragraph 10 on the one hand, and Watermaster Rules and Regulations
6 ¶6.3(a) on the other. Watermaster Rules and Regulations ¶6.3(a) states as follows:

7 Accounting of Unallocated Agricultural Portion of Safe Yield. In each
8 year, the 82,800 acre-feet being that portion of the Safe Yield Made
9 available to the Agricultural Pool under the Judgment, shall be made
10 available:

- 11 (i) To the Agricultural Pool to satisfy all demands for overlying
12 Agricultural Pool lands;
- 13 (ii) To land-use conversions were completed prior to October 1,
14 2000;
- 15 (iii) To land use conversions that have been completed after October
16 1, 2000; and
- 17 (iv) To the Early Transfer of 32,800 acre-feet from the Agricultural
18 Pool to the Appropriative Pool in accordance with their pro-rather
19 assigned share of Operating State Yield.

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

23 Chino has argued that

24 [T]he members of the Appropriative Pool have received the right to
25 participate in annual allocations of the Unproduced Agricultural Pool
26 Water instead of every five years called “Early Transfers” (Paragraph
27 5.3(f-g), Peace Agreement) and the right to an equal priority of Early
28 Transfers with Land Use Conversion Claims, which have a higher

1 priority under the Judgment, in order to maximize the amount of their
2 Early Transfer water to the appropriators do not have Land Use
3 Conversion Claims. (Paragraph 3.1(a)(i) and Attachment "F", Peace II
4 Agreement). City of Chino's Opposition Watermaster Motion
5 regarding 2015 Safe Yield Reset Agreement, Amendment of Restated
6 Judgment, Paragraph 6, page 13, lines 19-25.

7 Attachment "F" refers to the Watermaster Rules and Regulations 6.3(c). As
8 stated above, the court finds Watermaster Rules and Regulations 6.3(c) ambiguous.

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

12
13 **At this time, the court additionally orders as follows:**

14 A. The order of priorities set forth in the Judgment, Exhibit "H," Paragraph
15 10 must be followed; and

16 B. Watermaster Rules and Regulations ¶ 6.3, and particularly ¶¶6.3(a) and (c),
17 are to be interpreted to follow the priorities set forth in Judgment, Exhibit "H,"
18 Paragraph 10. In particular, the court orders conversion claims are to receive a
19 higher priority than Early Transfer claims for the following reasons:

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

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

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

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

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

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3 **VI. SAFE STORAGE MANAGEMENT MEASURES**

4 A. Through the facilitation and nondisclosure agreement (FANDA) Watermaster
5 attempted to facilitate an agreement among all parties avoid an accelerated
6 cumulative draw on Excess Carry Over stored water in order to avoid undue risks.
7 SYRA had provisions to establish a mechanism for a safe storage reserve of 130,000
8 AF of water in the non-Supplemental Water storage accounts of the members of the
9 Appropriative Pool as a reserve sufficient to protect the Basin. However, the
10 concern for basin protection was balanced with temporary needs in the event of an
11 emergency or to support Desalter Replenishment. Up to 100,000 AF could be
12 accessed in the event of an emergency subject to conditions

- 13 a) The plan which Watermaster attempted to facilitate is identified in
14 SYRA as “the safe storage reserve and safe storage management plan”
15 or the safe storage management measures (SSMM).
16 b) The City of Chino (Chino) has the largest component of Excess Carry-
17 Over water and was the most significantly affected party.
18 c) Chino refused to agree to SSMM.

19
20 B. The court rejects the adoption of the Safe Storage Management Measures set
21 forth in the SYRA Article 6. The court is not going to set forth the provisions of
22 SYRA Article 6 because the court is rejects the article as a whole.

23
24 C. The court rejects Article 6 of SYRA for the following reasons:

- 25 1. SYRA is not severable as set forth above.
26 2. Watermaster states that access to safe storage in the short term is
27 extremely remote.
28 3. The volume in stored water accounts of Appropriative Pool members is

1 about 357,000 AF as of June 30, 2014.

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

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

7 a) Although Watermaster argues that the Safe Storage Management
8 Agreement provisions are still subject to “stakeholder process get to be
9 initiated” (Watermaster’s Reply to Oppositions to Motion regarding
10 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
11 Paragraph 6, page 1, line 18), the court does not approve policy
12 statements and therefore rejects any implementation.

13 6. The Safe Storage Technical Memorandum (Exhibit E to the motion)
14 does not set forth a factual basis for the court to order the parties to proceed with
15 the provisions of Article 6. While the memorandum states that the SSMM will not
16 cause Material Physical Injury or undesirable results, the memorandum does not
17 include that the SSMM are essential to the OBMP.

18 7. The court notes that from 2000 to 2014, the short-term actual measured
19 net recharge was less total rights allocated to the judgment Parties by as much as
20 130,000 AF.

21 a) From this the court concludes that during this period from 2000 to
22 2014, after offsets for production, there was recharge to the basin in
23 excess of what water was actually produced by as much as 130,000 AF.

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

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

28 9. The safe storage measures are not required by the physical solution of

1 the Judgment, Peace I, Peace II, the court approved management agreements, the
2 OBMP, the court orders of implementation, or Article X, section 2 of the California
3 Constitution.

4
5
6 **VII. The Safe Yield Reset and Ag Pool Water: Recalculation**

7 A. The court finds that the Safe Yield reset to 135,000 AFY is a “recalculation”
8 within the definition of Judgment, Exhibit “H” ¶10.

9 1. SYRA used the term “reset” to describe lowering the Safe Yield to
10 135,000 AFY.

11 a) Now that the court has rejected all of SYRA except the lowering of Safe
12 Yield to 135,000 AFY, the court finds that “reset” is a legally unjustified
13 and legally incorrect term for describing the lowering the Safe Yield to
14 135,000 AFY. For the reasons stated herein, the court finds that
15 lowering the Safe Yield to 135,000 is a recalculation within the
16 definition of Judgment, Exhibit “H” ¶10(a)(1). For the rest of this
17 order, the court will correctly use the term recalculation for lowering the
18 Safe Yield from 140,000 AFY to 135,000 AFY.

19 b) Wildermuth himself calls it a recalculation. Exhibit 1 to his declaration
20 is entitled Declaration of Mark Wildermuth-2013 Chino Basin
21 Groundwater Model Update and *Recalculation* of Safe Yield Pursuant to
22 all the Peace Agreements. [Emphasis added.]

23 c) The recalculation to 135,000 is pursuant to the “tenth year” of
24 operation evaluation required by the Judgment.

25 d) Watermaster and the City of Ontario argue to the contrary, but the
26 “reset” lowering of Safe Yield fits any ordinary definition of the word
27 “recalculation.”

28 I) The whole point of the SYRA motion, related motions, and series of

1 hearings has been for the court to determine how to integrate the
 2 reduction of the Safe Yield from 140,000 AFY to 135,000 AFY.
 3 The court finds this reduction to be a recalculation of the Safe Yield
 4 into the current reality of the Chino Basin.

5 (a) In the context of SYRA, the use of the term “reset” might have
 6 made some legal sense. However, now that the court has
 7 rejected everything but the reduction, the label “reset” has no
 8 basis in fact or law.

9 II) The court cannot find any other way to reconcile these provisions and
 10 their interpretations while keeping the ruling consistent with reality.
 11 The reduction in Safe Yield is a recalculation, no matter how subtle the
 12 attorneys’ arguments are.

13 2. Therefore, the court finds and orders that the first 5,000 AFY of any
 14 unproduced Ag Pool water now has a top priority over any other claims, such as
 15 conversion claims and early transfers, and that 5,000 AFY of Ag Pool water be
 16 allocated to Operating Safe Yield pursuant to Judgment Exhibit H ¶10(a).

- 17 a) This 5,000 AFY has top priority because it is part of the Judgment.
- 18 b) To further illustrate the court’s orders, based on the tables in sections
 19 IV.B.5 and V.C.5 above

Example 1-B	Explanation	Comment
Initial Ag Pool allocation	82,800 AFY	Judgment
Subtract 5,000 AFY	- 5,000	Safe Yield recalculation reduction pursuant to Judgment Exhibit H ¶10
Ag Pool production/pumping	- 33,600 AFY	Assumption based the current credited production (pumping) for agricultural groundwater is

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		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 and reset	44,200 AFY	82,800 acre-feet - 5,000 - 33,600 acre-feet = 44,200 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:	42,200 AFY	44,200 acre-feet - 2000 acre-feet = 42,200 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	9,400 AFY	(42,200 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 the recalculation reallocation, the 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.

VIII. Safe Yield Reset and Desalter-Induced Recharge

The court concludes and orders that Desalter-Induced Recharge is only to be applied to offset Desalter production. The court’s analysis involves going back to the basics of the judgment and the Peace Agreements.

A. The Revised Judgment

1. The Judgment ¶I.4.(x) defines “Safe Yield” as “the long-term average annual quantity of groundwater . . . which can be produced from the Basin under cultural conditions of a particular year without causing an undesirable result.”

2. The Judgment ¶I.4.(l) defines “Operating Safe Yield” as “the annual amount of water which Watermaster shall determine, pursuant to the criteria specified in Exhibit “T”, can be produced from Chino Basin by the Appropriative Pool parties free of replenishment obligation under the Physical Solution herein.

a) Exhibit “T” is the Engineering Appendix which has come to include the

1 definitions of Hydraulic Control, Re-Operation water, and Desalter
2 production.

- 3 3. Judgment Exhibit “H” ¶10 Unallocated Safe Yield Water states:
4 “to the extent that, in any five years, any portion of the share of
5 Safe Yield allocated to the Overlying (Agricultural) pool is not
6 produced, such water shall be available for reallocation to members of
7 the appropriate pool, as follows:

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

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

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

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

17
18 B. The 2000 Peace Agreement I

19 1. Peace I Section I(ee) defines “Operating Safe Yield” as the “annual
20 amount of groundwater which Watermaster shall determine, pursuant to criteria
21 specified in Exhibit “I” to the judgment, can be produced from Chino Basin by the
22 Appropriate Pool free of Replenishment obligation under the Physical Solution.
23 Watermaster shall include any New Yield in determining Operating Safe Yield.”

- 24 a) This is a modification of the definition of “Operating Safe Yield” from
25 the Judgment. In fact, the court notes “IV-Mutual Covenants, ¶ 4.5
26 Construction of “Operating Yield” Under the Judgment. Exhibit I to
27 the Judgment shall be construed to authorize Watermaster to include
28 New Yield as a component of Operating Safe Yield.”

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2 C. The 2007 Peace Agreement II

3 1. Article VII Yield Accounting, ¶7.1 New Yield Attributable to the
4 Desalters states “for the initial term of the Peace Agreement, neither Watermaster
5 nor the Parties will request that Safe Yield be recalculated in a manner that
6 incorporates New Yield *attributable to the Desalters* into the determination of Safe Yield
7 so that this source of supply will be available for Desalter Production rather than for
8 use by individual parties to the Judgment.” (Emphasis in original.)
9

10 D. The Safe Yield Recalculation and Desalter-Induced Recharge

11 1. Watermaster correctly states that that desalter induced recharge can
12 only be used to offset desalter production. From this Watermaster concludes that
13 Safe Yield of 135,000 acre-feet per year must include Desalter-induced recharge.
14 This conclusion is wrong.

- 15 a) Through many avenues, Watermaster has attempted to include
16 Desalter-Induced Recharge (with the new abbreviation of “DIR”)
17 within the definition of Safe Yield.
18 b) Watermaster has never explicitly offered an explanation of why
19 Watermaster has attempted so diligently to convince the court to
20 include Desalter-Induced Recharge within the definition of Safe Yield.
21 I) The court considers that Watermaster’s explanation might include an
22 argument that if Desalter-Induced Recharge is not included within the
23 definition of Safe Yield, the parties could produce/pump water from
24 Desalters without limit, with the result that water could be drained from
25 the Santa Ana River without limit. That result would be not only
26 detrimental to the hydrology of the entire region, but also legally
27 unjustified.
28 c) In its latest argument, Watermaster has offered to “sequester” the

1 portion of Safe Yield attributable to Desalter-Induced Recharge.

2 I) The court does not accept this characterization of Desalter
3 production/pumping allocation because it is simply a characterization
4 of an accounting.

5 II) The “sequestration” has no basis in the CAMA’s and adds a new, vague,
6 undefined term to an already complicated structure of accounting.

7 III) Watermaster argues “that Desalter-Induced Recharge is an inflow
8 to the Basin and therefore a component of Safe Yield.”

9 (a) The court rejects this argument because it contradicts the
10 requirement of Peace II that for the initial term of the Peace
11 Agreement, Safe Yield will not be recalculated to include New Yield
12 attributable to the Desalters.

13 (b) Desalter-Induced Recharge is the source of (and offset to) New
14 Yield attributable to the Desalters. That New Yield cannot be
15 included in Safe Yield. So, so under Peace II, Safe Yield also does
16 not include Desalter-Induced Recharge. (Peace I ¶ 1.1(aa)-definition
17 of New Yield; Peace I ¶7.5-Replenishment Water; Peace II ¶6.2-
18 Peace II Desalter Production Offsets.)

19 IV) The Responding AP Members argue that the court can only be
20 consistent in its orders if the court resets the Safe Yield to 115,000
21 AFY. The court also rejects this argument for the following reasons.

22 (a) Using Watermaster's own proposal, the court recognizes that there is
23 some logic to the position of the Responding AP Members because
24 1) if the 20,000 AFY is “sequestered” that it is not available for
25 production/pumping without a replenishment obligation and 2)
26 then the reality is the safe yield should be 135,000 AFY - 20,000
27 AFY for a net of 115,000 AFY.

28 (b) However, the court concludes that the structure set up by the

1 Judgment, Peace I, and Peace II require that there be separate
2 analyses for Safe Yield and New Yield attributable to the Desalters.

3 (i) The analysis for Safe Yield is illustrated in this order Sec. VII.5.a
4 above.

5 (ii) The analysis for Desalter-Induced Recharge and New Yield
6 attributable to the Desalters is described in Peace I and Peace II
7 and the further order as set forth herein.

8 (iii) Watermaster has been accounting for these analyses since 2007,
9 so it should not be a problem for Watermaster to to continue to
10 do so.

11 (c) The Responding AP Members also argues that the technical
12 reports show that the basin can safely only sustain 135,000 AFY.

13 (d) However, in Exhibit 1 to the Declaration of Mark Wildermuth -
14 2013 Chino Basin Groundwater Model Update and Recalculation of
15 Safe Yield Pursuant to Peace Agreements, section 1.2.3, “the
16 updated Watermaster Model was used to estimate Santa Ana River
17 Underflow New Yield (SARUNY) from the desalters and
18 reoperation from both the calibration and planning periods.
19 SARUNY means the same thing as that term *Desalter Induced Recharge*
20 as used in the 2015 Safe Yield Reset Agreement.” This definition is
21 repeated in section 7.3.7.

22 (e) The Wildermuth declaration filed March 10, 2017, with the Chino
23 Basin Watermaster Response to February 22, 2017 Order section
24 7.3.7 which states:

25 (i) “The net Santa Ana River recharge in the fiscal year spending
26 July 1999 through June 2000 [one year] is the baseline from
27 which to measure SARUNY, which was estimated to be
28 -2,153 acre-ft/yr, indicating that the Chino Basin discharged to

1 the Santa Ana River more water than was recharged by the River
2 into the Basin. . . . Table 7-10 compares Chino Desalter
3 production and SARUNY over the period of July 2000 through
4 July 2030. . . . The effect of 's the Chino Desalters and
5 reoperation becomes clear in 2005 when SARUNY reaches about
6 50 percent of CDA production. The New Yield results from the
7 implementation of the Chino Desalters is consistent with the
8 planning estimates that were assumed during the development of
9 the Peace Agreements.⁵

- 10 (f) Table 7-10 shows that starting in 2017, the ratio of new yield to
11 CDA production is about an average of 45 percent, meaning that
12 New Yield Desalter-Induced Recharge those years is about 45% of
13 the Desalter production.
- 14 (g) From these facts the court concludes that the Wildermuth Safe Yield
15 reset/recalculation has taken into account the Desalter-Induced
16 Recharge and production, so there is no need to reduce the Safe
17 Yield ~~to~~ 115,000 AFY as argued by the Responding AP Members.
- 18 (h) The Peace Agreement offsets for new yield production attributable
19 to the Desalters are an accounting requirement process, not a feature
20 of determination of Safe Yield.
- 21 (i) The court also concludes that the reset/recalculation has included
22 the contractual features of the Peace Agreements, and one of those
23 features is that Safe Yield not be recalculated to incorporate New
24 Yield attributable to the Desalters. Wildermuth has considered this
25 feature.
- 26 (j) Again, therefore the safe yield of 135,000 AFY does not include
27 New Yield attributable to the Desalters.

28 2. The court still concludes for the term of Peace I (*i.e.*, until 2030), Safe

1 Yield not be recalculated in a manner that incorporates New Yield attributable to the
2 Desalters into the determination of Safe Yield.

3 a) The 20,000 AFY of Desalter-Induced Recharge is not included with the
4 definition of Safe Yield for the term of the Peace Agreements. To rule
5 otherwise would contradict the Peace Agreements.

6 b) The court analogizes its ruling to the controlled overdraft allowed to
7 achieve hydraulic control. That aspect of production/pumping was not
8 allocated to Safe Yield. The court orders that Desalter-Induced
9 Recharge New Yield remain unallocated to Safe Yield.

10 c) The court does not address the City of Chino's briefing regarding the
11 Safe Yield Implementation Replenishment Accounting Illustration (Per
12 Peace II agreement, Section 6.2 (PIIA, 6.2) and June 11, 2015 Key
13 Principles) Watermaster motion filed October 23, 2015, Exhibit "F"
14 Attachment 2 for the following reasons:

15 I) Chino asks if the Column G – Desalter-Induced Recharge
16 replenishment water was coming from Desalter production.

17 II) Footnote 4 for this Column G states that "the desalter-induced
18 recharge projection in the table is now shown at 50% of the annual total
19 desalter production for years 2015 through 2030. Desalter -induced
20 recharge from 2001 to 2014 (187,000 acre-feet) will be deemed Safe
21 Yield and not available to offset Desalter production."

22 III) As part of its order that SYRA cannot be implemented, the court
23 rejects the Safe Yield Reset Implementation Desalter Replenishment
24 Accounting Illustration.

25 IV) The City of Ontario has argued that Desalter Induced Recharge
26 to offset Desalter production should be "backfilled" from Safe Yield.
27 The court rejects this argument for the following reasons:

28 (a) This is merely a characterization of what SYRA proposed to do, and,

1 for the reasons already stated, the court has rejected SYRA except
2 for the Safe Yield recalculation.

3 (b) The Judgment, the Peace Agreements, and the CAMA's do not
4 support this accounting, again for the reasons already stated.

5 (c) Again, for the reasons stated herein, the court rejects that Ontario's
6 argument that a Safe Yield recalculation to 135,000 AFY is not a
7 "Safe Yield recalculation." The argument has no merit and is
8 completely unpersuasive.

9 (d) The court finds that the definitions of Safe Yield and New Yield are
10 sufficiently set forth in the Judgment, Peace I and Peace II.

11 (i) Watermaster does not point to any specific conflict between the
12 court's current/instant order and the court's order implementing
13 Watermaster Resolution 07-05, and the court finds none.

14 (ii) The court reaffirms the definitions of Peace II which have been
15 in effect for 10 years, and of course the definitions of the
16 Judgement and Peace I.

17 (iii) The court finds no basis for Watermaster's attempt to define
18 Desalter-Induced Recharge into directly, indirectly, Safe Yield or
19 by a "sequester."

20 (iv) In reaffirming the definitions of the Judgment, Peace I, and
21 Peace II, the court of course also notes the definition of "Safe
22 Yield" in the Judgment ¶I.1(x) inclusive of "undesirable result,"
23 and the "Material Physical Injury" of Peace I ¶I.1 (y).

24 V) The court finds and orders that Desalter production is not Safe Yield
25 and Desalter production is to be offset only as provided in Peace II.
26
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28 **IX. Additional Bases for Rulings**

1 A. The court has refused to implement the sections of SYRA identified above for
2 the reasons set forth above. In the court's view, those reasons are sufficient under
3 the law. Therefore, the court has not addressed other objections raised by the
4 parties, such as those of the City of Chino, that Watermaster has failed to prove a
5 change in circumstances, that Watermaster has improperly advocated for certain
6 parties, that the parties are collaterally estopped from re-litigating the parties' rights,
7 that the parties are equitably estopped from reducing their replenishment obligations,
8 that SYRA fails to comply with CEQA, that SYRA provisions resulted in an unlawful
9 taking of Chino's property.

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

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

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


26 2. The court finds that the rulings herein will not cause material physical
27 injury or an undesirable result.

28 a) Although many parties have approved SYRA, parties' approval or

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disapproval of SYRA is not a legal basis for the court to enforce SYRA.
The court must look to the previous agreements of the parties, the
previous court orders, the Court Approved Management Agreements,
the Judgement, and the California Constitution.

Date: 4-28-17



Judge Stanford E. Reichert
San Bernardino County Superior Court

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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 28 2017

BY *Tiffany Pretzmer*
TIFFANY PRETZMER, DEPUTY

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

CHINO BASIN MUNICIPAL WATER DISTRICT, Plaintiff,)	CASE NOS. RCV 51010
)	CIVDS 1518945
vs.)	Additional/Final Further Revised
)	Proposed Order Re SYRA and
)	Additional/Final Rulings and Order for
)	Oral Argument
CITY OF CHINO, et al., Defendants)	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 additional/final further revised proposed order for the SYRA reset motion in case RCV 51010 is attached. A hearing is set for the additional/further revised proposed order for April 28, 2017, 1:30 PM, Dept. S35

1 of the above-entitled court.

2 NOTES RE FURTHER REVISED PROPOSED ORDER

3 A. Attached are two versions of the additional further revised proposed order.

4 1. One version, for the convenience of the parties, has parts of the order
5 which the court has added in the following **font**. From the previous proposed order,
6 filed April 18, 2017, the court has ~~stricken~~ anything that relates to limiting production
7 /pumping of the Desalters. Court has not made any other substantive changes in the
8 additional/further revised proposed orders from those orders filed April 18, 2017.

9 a) The court has received and considered the request by Chino Basin Desalter
10 Authority Member Agencies regarding desalter pumping.

11 b) The court concludes that the court should not have made any orders
12 whatsoever with respect to limiting production/pumping of the desalters in
13 its previous orders for the following reasons:

14 I) Such orders were outside of the scope of any briefing regarding SYRA
15 and the motions, requests, and disputes concerning SYRA.

16 II) Any limitation on Desalter production/pumping would require
17 additional briefing and unreasonably postpone the resolution of SYRA
18 motion, requests, and disputes.

19 III) In further review of the court's tentative rulings, the court further
20 concludes that there were no legal or factual reasons set forth in the
21 briefing for the court to make such an order.

22 (a) Therefore, from the previous proposed rulings, the parties are not to
23 derive any conclusions on how the court might rule with respect to a
24 request to limit Desalter production/pumping. This was only
25 tentative ruling without sufficient briefing by the parties and
26 sufficient analysis by the court. In the court's current view, it is
27 erroneous.

28 (b) Specifically, to help the parties, the court has ordered stricken from

1 the additional safe yield reset agreement motion and additional
2 further revised proposed rulings and orders, the court has stricken:

3 (i) page 2 of 84: lines 5-6,

4 (ii) page 75 of 84: line 7-8, and

5 (iii) page 77 of 84: lines 8-10.

6 (a) The court has also deleted these lines from the additional safe yield
7 reset agreement motion additional final rulings and order

8 2. The other version of the additional/further revised proposed order has
9 all the changes incorporated into a final, "clean" proposed order as of 4/28/17.

10 B. Therefore the court's conclusion is the only remaining issue for oral argument
11 is whether the Safe Yield reset to 135,000 AFY is an event that requires a
12 recalculation within the definition of the Judgment, Exhibit "H" ¶10 for the reasons
13 set forth in the additional/further revised proposed order.

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15 Dated: 4-28-17

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19 Stanford E. Reichert, Judge

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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 No. RCV 51010
[Additional/Further Revised Proposed]
ORDERS for Watermaster’s Motion
Regarding 2015 Safe Yield Reset
Agreement, Amendment of Restated
Judgement, Paragraph 6
Date: April 28, 2017
Time: 1:30 PM
Department: S35

Watermaster’s Motion Regarding 2015 Safe Yield Reset Agreement,
Amendment of Restated Judgment, Paragraph 6, joined by The Chino Basin
Overlying (Agricultural) Pool Committee and The Inland Empire Utilities Agency
 (“IEUA”) and opposed by Jurupa Community Services District (“JCSD”) and the
City of Chino (“Chino”) is granted in part and denied in part for the reasons set forth
herein. The court grants the motion with respect to amending the restated judgment
to reset the Safe Yield of the basin to 135,000 AFY.

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

1 water as set forth herein.

2 **Additionally, the court orders that the Safe Yield reset to 135,000 AFY is**
3 **an event that requires a “recalculation” with the definition of the Judgment,**
4 **Exhibit “H” ¶10.**

5 ~~Additionally, the order orders that production/pumping of the Desalters is~~
6 ~~limited to 20,000 AFY.~~

7
8 **REQUEST FOR JUDICIAL NOTICE**

9 The court grants requests for judicial notice of JCSD as follows:

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

23
24 **JOINDERS AND FILINGS**

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

- 27 1. City of Chino’s objections to declaration of Kavounas submitted with
28 Watermaster’s Motion regarding 2015 Safe Yield Reset Agreement, Amendment of

1 Restated Judgment, Paragraph 6

2 Rulings in separate document.

3 2. City of Chino's objections to declaration of Wildermuth submitted with
4 Watermaster's Motion regarding 2015 Safe Yield Reset Agreement, Amendment of

5 Restated Judgment, Paragraph 6

6 Rulings in separate document.

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

8 1. Overlying (Agricultural) Pool

9 2. Inland Empire Utilities Agency

10 C. Oppositions to Watermaster's motion

11 1. City of Chino with supporting documents

12 a) Declaration of Robert Shibatani, physical hydrologist

13 b) Declaration of David Crosley, civil engineer, water and environmental
14 manager for City of Chino

15 2. Jurupa Community Services District (JCSD) with supporting documents

16 a) Request for judicial notice identified above

17 b) Declaration of Todd Corbin, general manager of JCSD

18 c) Declaration of Robert Donlan, attorney

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

21 1. Supplemental declaration of Kavounas

22 a) City of Chino's objections Kavounas supplemental declaration in
23 support of Watermaster's reply the Chino opposition

24 b) Watermaster's Response to City of Chino's objections to supplemental
25 declaration of Peter Kavounas in support of Watermaster's reply to
26 Chino's Opposition to Motion regarding 2015 Safe Yield Reset
27 Agreement, Amendment of Restated Judgment, Paragraph 6

28 I) Motion to strike denied. The court finds that the declaration did not

1 raise new issues.

2 II) All objections overruled.

3 2. Supplemental declaration of Wildermuth

4 a) City of Chino's objections to Wildermuth supplemental declaration in
5 support of Watermaster's reply to Chino opposition.

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

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

12 II) All objections overruled.

13 3. Declaration of Danielle Maurizio, assistant general manager of Chino

14 Basin

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

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

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

23 II) All objections overruled.

24 4. Joinders in Watermaster's reply to oppositions

25 a) Overlying (Agricultural) Pool

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

27 I) City of Upland

28 II) Monte Vista Water District

1 III) Cucamonga Valley Water District

2 IV) Fontana Union Water Company

3 E. In an order Dated March 22, 2016, the court served the parties with questions
4 and a request for further briefing in response to the questions. The responses were
5 as follows:

6 1. Jurupa Community Services District response to Judge Reichert's
7 request for clarification filed April 1, 2016.

8 2. City of Chino's responses to Judge Reichert's questions, filed April 1,
9 2016.

10 3. Watermaster's response to order for additional briefing filed April 1,
11 2016.

12 a) Chino's reply to Watermaster's response to order for additional briefing,
13 filed April 11, 2016.

14 b) Jurupa Community Services District's additional response to Judge
15 Reichert's request for clarification, filed April 11, 2016

16 4. Watermaster's further response to order for additional briefing, filed
17 April 11, 2016

18 **F. At the hearing on February 22, 2017, the court ordered that the parties**
19 **may file questions regarding the court's tentative draft order, and the court set a**
20 **briefing schedule. In response, the court received the following:**

21 1. **Filed March 10, 2017-Chino Basin Watermaster response to**
22 **February 22, 2017 order**

23 2. **Filed March 10, 2017-City of Chino's response to issue in section II**
24 **of Judge Reichert's revised proposed order re SYRA**

25 3. **Filed March 10, 2017-Responding AP members (Monte Vista Water**
26 **District, Cucamonga Valley Water District, City of Pomona, and City of Upland)**
27 **filed March 10, 2017**

28 4. **Filed March 24, 2017-Chino Basin Watermaster further response to**

1 February 22, 2017 order

2 5. Filed March 24, 2017-City of Chino's response to court authorized
3 further briefing re revised tentative order re Watermaster's motion re 2015 Safe
4 Yield reset Agreement

5 6. Filed March 24, 2017-City of Chino's response to Chino Basin
6 Watermaster's response to February 22, 2017 order

7 7. Filed March 24, 2017-City of Ontario's response regarding issue for
8 further briefing

9 8. Filed March 24, 2017-Jurupa Community Services District
10 opposition to Monte Vista Water District's response to court's February 22, 2017
11 order re SYRA and response to questions [joins in the opposition filed by the City
12 of Ontario]

13 9. Filed March 24, 2017-Responding AP members response to both
14 Watermaster and City of Chino's further briefing re revised tentative order re
15 Watermaster's motion re 2015 Safe Yield Reset Agreement

16 10. Filed April 4, 2017-errata to City of Chino's response to Chino Basin
17 Watermaster's response to February 22, 2017 order

18 11. Filed April 7, 2017-Chino Basin Watermaster further response to
19 February 22, 2017 order

20 12. Filed April 7, 2017-City of Chino's reply to responses of
21 Watermaster, 4AP Members, Ontario and Jurupa

22 13. Filed April 7, 2017-Jurupa Community Services District's limited
23 reply to *City of Chino's response to Chino Basin Watermaster's response*
24 *to February 22, 2017 order, dated March 24, 2017*

25 14. Filed April 7, 2017-Responding AP Members reply to opposition
26 briefs re revised tentative order re Watermaster's motion re 2015 Safe Yield
27 Reset Agreement

28 15. Filed April 17, Request by Chino Basin Desalter Authority Member

1 Agencies regarding Desalter Pumping.

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

3 After extensive briefing and consideration, on September 23, 2016,
4 the court held a hearing on the 2015 SYRA and related motions. Before
5 the hearing, the court had issued an lengthy (over 60 pages) proposed
6 order. At the hearing on September 23, there was extensive oral
7 argument, and the court concluded that some aspects of the court's
8 proposed order were confusing or erroneous. Therefore, the ordered that
9 there be even further briefing, and the court ordered additional briefing
10 through questions by the parties about the proposed order. In its order
11 entitled "Revised Proposed Order Re SYRA in Response to Questions:
12 Issues for Further Briefing," and the current order, the court addressed
13 the parties' questions.

14
15
16 **I. INTRODUCTION, DEFINITIONS, BACKGROUND**

17 A. The 1978 judgment in *Chino Basin Municipal Water District v. City of Chino* (San
18 Bernardino Superior Court Case No. 51010) set the Safe Yield of the Chino Basin at
19 140,000 acre-feet per year (AFY), but reserved continuing jurisdiction to the court to
20 amend the Judgment, inter alia, to redetermine the Safe Yield after the first 10 years
21 of operation of the Physical Solution established under the Judgment. The Physical
22 Solution identified three groups of parties (Pools) with water interests in the Chino
23 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	82,800

	year]	
Overlying (Non-agricultural) Pool**	7,366 acre-feet	7,366
Appropriative Pool***	49,834 acre-feet	49,834
	Yearly total allocation	140,000

*The members of this pool included dairy farms.

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

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

Over the course of the Court-Approved Management Agreements (set forth in the next section), the court allowed up to 600,000 AF of water to be produced/pumped out of the Chino Basin without any replenishment obligation. “While the parties are not limited in the quantities of water they may produce, the Judgment requires that beyond the permitted Controlled Overdraft comprising an initial 200,000 AF and an additional 400,000 AF of Re-operation water (Restated Judgment, Exhibit “I”, ¶¶ 2.(b), 3.(a)), there must be a bucket for bucket replenishment [and associated cost to the producer/pumper] to offset production in excess of the Basin’s Safe Yield. (Restated Judgment, ¶¶ 13, 42).” (Watermaster’s Response to Questions for Clarification in Final Orders for Watermaster’s Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, page 2, line 23 to page 3, line 4, filed October 28, 2016.)

The court notes that this total “controlled overdraft” *i.e.*, pumping without replenishment cost, (aka “Re-Operation Water”) of 600,000 AF

1 has just about been exhausted.

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

4
5 B. Since the entry of the judgment, the court has previously approved agreements to
6 implement the Physical Solution (“Court Approved Management Agreements” aka
7 “CAMA”). There is no dispute that the court has the authority and duty to
8 independently review the evidence de novo and determine whether proposals by
9 Watermaster or any party comply with the Judgment and the Court Approved
10 Management Agreements. (Restated Judgment ¶31(d).) The Court Approved
11 Management Agreements are:

12 1. The Chino Basin Peace Agreement (Peace I Agreement), dated June 29,
13 2000, as subsequently amended in September 2004 and December 2007.

14 a. In 2000 the parties executed Peace Agreement Chino Basin (Peace I
15 Agreement) and agreed to Watermaster’s adoption of the Optimum
16 Basin Management Plan (OBMP) Implementation Plan. At about the
17 same time, the court ordered Watermaster to proceed in a manner
18 consistent with Peace I and the OBMP, including Program Element 8
19 (Develop and Implement Groundwater Storage Management Program)
20 and Program Element 9 (Develop and Implement Storage and
21 Recovery Programs). The implementation plan acknowledged the need
22 to obtain better production data through the metering of non-exempt
23 production within the Basin. Program Elements 8 and 9 provided for
24 Watermaster to redetermine and reset the Basin’s Safe Yield in the year
25 2010/11. The basis of the redetermination and reset would be
26 production data derived from the collection of additional data regarding
27 the parties’ production (*i.e.*, parties who pumped water out of the Basin)
28 within the basin during the 10-year period 2000/01 through 2009/10.

1 The study for redetermination and reset was not completed
2 until 2015, and the motion regarding determination and reset
3 was not filed until October 2015.

- 4 b. The Peace I Agreement introduced the installation of Desalters in the
5 southwest portion of the Basin. The Desalters pump ground water
6 from the aquifer and supply that water to water companies and other
7 users. By pumping water out of the aquifer, the Desalters also lowered
8 the ground water table to help obtain Hydrologic Control, *i.e.*,
9 preventing Chino Basin ground water from reaching the Santa Ana
10 River south of the Basin. The Santa Ana River is a major source of
11 water for Orange County, and water impurities and contaminants, some
12 of which came from the Chino Basin dairy farms (“salts”) were in the
13 groundwater flowing from the Basin into the Santa Ana River. The
14 Desalter capacity has now expanded to ~~20~~ 40 MGD (40 million
15 gallons per day) as provided in the OBMP Implementation Plan to
16 protect against a decline in Safe Yield and for water quality benefits, but
17 the court reserved the question of how “Future Desalter” capacity
18 would be addressed. The Chino Basin Desalter Authority (CDA),
19 which includes the City of Chino, participated in the construction of the
20 Desalters which represented a substantial engineering and financial
21 undertaking. These Desalters were completed and fully operational in
22 2006.

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

- 24 a. In 2007, the parties entered into the Peace II Agreement. The objective
25 was to increase the Desalter capacity to 40 MGD to achieve the OBMP
26 Implementation Plan objectives. In order to do this, the parties
27 designed and financed an additional 10 million gallons per day (~~MGD~~)
28 of expanded Desalter capacity. The expansion of the Desalters to the

1 full plant capacity will be completed in 2017. With the completion of
2 this construction, Hydraulic Control will be achieved. Hydraulic
3 Control now means only a de minimus amount of groundwater will
4 flow from the Chino Basin south into the Santa Ana River. In fact, the
5 Desalters now have lowered the water table in the south end of the
6 Basin so that ground water is now flowing from the Santa Ana River
7 north into the Chino Basin. ~~This is called Re-Operation water.~~

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

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

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

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

16 7. Watermaster Resolution 2010-04 ("Resolution of the Chino Basin
17 Watermaster regarding Implementation of the Peace II Agreement and the Phase III
18 Desalter Expansion in Accordance with the December 21, 2007 Order of the San
19 Bernardino Superior Court").

20
21 C. Additional background for motion

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

25 2. Through a Facilitation and Non-Disclosure Agreement (FANDA),
26 Watermaster attempted to obtain agreement as to all issues regarding Safe Yield
27 redetermination and reset allocation. Those issues included not only a reset of the
28 Safe Yield from 140,000 acre-feet per year to 135,000 acre-feet per year, but also

1 Watermaster's accounting for reallocations related to Court Approved Management
2 Agreements, and a method of allocations for water storage called the Safe Storage
3 Management Agreements.

- 4 a) The FANDA process took place starting in November 2014, and
5 through at least 30 meetings, by May 27, 2015, all but one of the then-
6 active parties to the FANDA reached a non-binding agreement among
7 their negotiating representatives on certain key principles (apparently
8 also called the "term sheet") embodied in the Safe Yield Summary of
9 Non-Binding Key Principles Derived from the Facilitated Process.
- 10 b) The parties continued to negotiate, with a goal of reducing the Key
11 Principles into a binding instrument for execution by September 1,
12 2015. That agreement is identified as the 2015 Safe Yield Reset
13 Agreement (SYRA). The Appropriative Pool, the Overlying
14 (Agricultural) Pool, and the Three Valleys Municipal Water District
15 approved the 22-page agreement, as did many other parties. The City
16 of Chino refused to sign the agreement.
- 17 c) On September 24, 2015, the board at its regular meeting adopted
18 resolution 2015-06, and previously – on September 17, 2015 – the
19 advisory committee approved resolution 2015-06: "Resolution of Chino
20 Basin Watermaster regarding 2015 Safe Yield Reset Agreement
21 (SYRA)."
- 22 d) Watermaster's instant motion asks the court to address the issues
23 covered in the SYRA as follows:
- 24 I) The reset of the Basin Safe Yield from 140,000 acre-fee per year (AFY)
25 to 135,000 AFY pursuant to the Restated Judgment, the OBMP
26 Implementation Plan, and Watermaster's Rules and Regulations;
27 II) The manner in which Watermaster should account for various
28 components of the recharge to the Basin implementing the Court-

1 Approved Management Agreements; and

2 III) Establishment of Safe Storage Management Measures (SSMM)
3 intended to ensure that withdrawals of groundwater from authorized
4 storage accounts within the Basin are safe, sustainable, and will not
5 cause Material Physical Injury or undesirable results.
6

7 D. SUMMARY RULINGS:

8 In its motion, Watermaster requests an order acknowledging the 2015 Safe
9 Yield Reset Agreement and ordering Watermaster to proceed in accordance with its
10 terms with respect to amending the restated judgment to reset the Safe Yield of the
11 Basin from 135,000 AFY to 135,000 AFY and amending the schedule for access to
12 Re-Operation water ~~(water pumped by the Desalters)~~. For the reasons set forth
13 herein, the court grants the motion with respect to amending the restated judgment
14 to reset the Safe Yield of the basin to 135,000 AFY. However, the court denies ~~the~~
15 ~~rest of the motions including~~ the motions to amend the schedule for access to
16 Re-operation water ~~pumped by the Desalters (“Desalter water”)~~ and ~~The court~~
17 ~~denies~~ and the motion to institute Safe Storage Management Measures. The court
18 makes additional orders with respect to Desalter water as set forth herein.
19

20 **II. Severability of SYRA**

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

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

27 1. Watermaster’s “Response to Questions for Clarification, etc.”
28 filed October 28, 2016, states: “the SYRA is the product of the Facilitation

1 and Non-Disclosure Agreement (FANDA) process, during which the parties
2 to that agreement comprehensively settled and compromised their
3 disagreements, so as to enable Watermaster to implement the CAMA's
4 through and following the reset of Safe Yield."

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

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

14 a) For the reasons set forth below, the court refuses to adopt
15 SYRA in whole. Following Watermaster's own all-or-nothing
16 argument, the court must conclude that not only is there no
17 legal basis to enforce part of SYRA, but also that it is
18 fundamentally unfair to the parties to enforce portions of SYRA
19 for which the parties did not bargain.

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

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

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

28 I) There ample technical and scientific support for the reset in

1 the Technical Memorandum and the 2013 Chino Basin
2 Groundwater Model Update and Recalculation of Safe Yield
3 Pursuant to the Peace Agreement prepared by Wildermuth
4 Environmental, Inc. dated October 2015.

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

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

9 II) None of the other aspects of SYRA were pursuant to a court
10 order.

11 III) The safe yield reset is a legal determination for the
12 court. There is no "bargained-for exchange" for the court
13 to consider.

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

18 4.1 Safe Yield Reset. Consistent with the prior orders of the Court pursuant to its
19 continuing jurisdiction, effective July 1, 2010 and continuing until June 30, 2020, the
20 Safe Yield for the Basin is reset at 135,000 AFY. For all purposes arising under the
21 Judgment, the Peace Agreements and the OBMP Implementation Plan, the Safe
22 Yield shall be 135,000 AFY, without exception, unless and until Safe Yield is reset in
23 accordance with the procedures set forth in this order, and determined by the Court
24 pursuant to its retained continuing jurisdiction.

25
26 4.2 Scheduled Reset. Watermaster will initiate a process to evaluate and reset the
27 Safe Yield by July 1, 2020 as further provided in this order. Subject to the provisions
28 of Paragraph 4.3 below, the Safe Yield, as it is reset effective July 1, 2020 will

1 continue until June 30, 2030. Watermaster will initiate the reset process no later than
2 January 1, 2019, in order to ensure that the Safe Yield, as reset, may be approved by
3 the court no later than June 30, 2020. Consistent with the provisions of the OBMP
4 Implementation Plan, thereafter Watermaster will conduct a Safe Yield evaluation
5 and reset process no less frequently than every ten years. This Paragraph is deemed
6 to satisfy Watermaster's obligation, under Paragraph 3.(b) of Exhibit "I" to the
7 Restated Judgment, to provide notice of a potential change in Operating Safe Yield.
8

9 4.3 Interim Correction. In addition to the scheduled reset set forth in Paragraph
10 4.2 above, the Safe Yield may be reset in the event that, with the recommendation
11 and advice of the Pools and Advisory Committee and in the exercise of prudent
12 management discretion described in Paragraph 4.5(c), below, Watermaster
13 recommends to the court that the Safe Yield must be changed by an amount greater
14 (more or less) than 2.5% of the then-effective Safe Yield.
15

16 4.4 Safe Yield Reset Methodology. The Safe Yield has been reset effective July 1,
17 2010 and shall be subsequently evaluated pursuant to the methodology set forth in
18 the Reset Technical Memorandum. The reset will rely upon long-term hydrology and
19 will include data from 1921 to the date of the reset evaluation. The long-term
20 hydrology will be continuously expanded to account for new data from each year,
21 through July 2030, as it becomes available. This methodology will thereby account
22 for short-term climatic variations, wet and dry. Based on the best information
23 practicably available to Watermaster, the Reset Technical Memorandum sets forth a
24 prudent and reasonable professional methodology to evaluate the then prevailing
25 Safe Yield in a manner consistent with the Judgment, the Peace Agreements, and the
26 OBMP Implementation Plan. In furtherance of the goal of maximizing the
27 beneficial use of the waters of the Chino Basin, Watermaster, with the
28 recommendation and advice of the Pools and Advisory Committee, may supplement

1 the Reset Technical Memorandum's methodology to incorporate future advances in
2 best management practices and hydrologic science as they evolve over the term of
3 this order.

4
5 4.5 Annual Data Collection and Evaluation. In support of its obligations to
6 undertake the reset in accordance with the Reset Technical Memorandum and this
7 order, Watermaster shall annually undertake the following actions:

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

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

15 (c) Evaluate the potential need for prudent management discretion to avoid
16 or mitigate undesirable results including, but not limited to, subsidence, water quality
17 degradation, and unreasonable pump lifts. Where the evaluation of available data
18 suggests that there has been or will be a material change from existing and projected
19 conditions or threatened undesirable results, then a more significant evaluation,
20 including modeling, as described in the Reset Technical Memorandum, will be
21 undertaken; and,

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

27
28 4.6 Modeling. Watermaster shall cause the Basin Model to be updated and a

1 model evaluation of Safe Yield, in a manner consistent with the Reset Technical
2 Memorandum, to be initiated no later than January 1, 2024, in order to ensure that
3 the same may be completed by June 30, 2025.

4
5 4.7 Peer Review. The Pools shall be provided with reasonable opportunity, no
6 less frequently than annually, for peer review of the collection of data and the
7 application of the data collected in regard to the activities described in Paragraphs
8 4.4, 4.5, and 4.6 above.

9
10 4.8 No Retroactive Accounting. Notwithstanding that the initial Safe Yield reset,
11 described in Paragraph 4.1 above, shall be effective as of July 1, 2010, Watermaster
12 will not, in any manner, including through the approval of its Assessment Packages,
13 seek to change prior accounting of the prior allocation of Safe Yield and Operating
14 Safe Yield among the Parties to the Judgment for production years prior to July 1,
15 2014.

16
17 **III. IV. THE COURT FURTHER ORDERS AS FOLLOWS:**

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

20 1. The court accepts the findings and conclusions of Wildermuth for the
21 following reasons. Those conclusions are set forth in the reset Technical
22 Memorandum.

23 a) Wildermuth has been the authoritative resource for the parties and the
24 court during the pendency of the case for the last 15 years.

25 b) Wildermuth has performed a detailed analysis with substantiated facts
26 and findings in the reset technical memorandum, the supplemental
27 declaration of Mark Wildermuth in support of Watermaster's reply to
28 oppositions to the motion regarding 2015 Safe Yield Reset Agreement,

1 and the memo to restated judgment, paragraph 6 aka Wildermuth
2 supplemental declaration.

3 c) The court accepts the net recharge approach and calculations set forth
4 in the Wildermuth report.

5 d) The Wildermuth report gives the most comprehensive analysis and
6 credible evaluation of the historic condition of the Basin.

7 e) The court does not accept the conclusions of Robert Shibatani for the
8 following reasons:

9 I) Shibatani recognizes that the net recharge calculation is a legitimate
10 approach to a determination of Safe Yield.

11 II) The Shibatani approach is unnecessarily quantitative. The Wildermuth
12 analysis allows for the definitions required for the analysis of the Chino
13 Basin, including cultural conditions and undesirable results.

14 III) Wildermuth has considered the effects of climate change of
15 Basin precipitation. The court accepts Wildermuth's conclusion that
16 there are not any better predictive modeling scenarios generally available
17 at this time accurately calibrated to the historical rainfall and are
18 therefore not reliable as a predictive tool.

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

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

25 4. The reduction safe yield is consistent with the Court-Approved
26 Management Agreements.

27 5. The court finds that the provisions of SYRA set for in Section II
28 above set forth an approach to a determination of future Safe Yield determinations

1 in a manner consistent with the Court Approved Management Agreements.

- 2 a) The declaration of Peter Wildermuth and the supporting
3 documentation, analysis supports the court's conclusion.
- 4 b) Wildermuth declaration, paragraph 14, states his opinion that the Basin
5 protection measures to which the parties have agreed and the 2015 Safe
6 Yield Reset Agreement will ensure that the Basin is not harmed by
7 extraction of 135,000 AFY through fiscal 2020. However, again the
8 court emphasizes that its ruling is not based on the agreement
9 of the parties. The court's ruling is based upon the Restated
10 Judgment, the Court Approved Management Agreements, and
11 its legal conclusions supported by the technical analyses
12 identified in the court's order.
- 13 I) Although the court concludes the Safe Storage Management Measures
14 are useful and advisable, the court concludes there is no specific factual
15 basis requiring the Safe Yield reset to include Safe Storage Management
16 Measures. Therefore the court concludes that even without the Safe
17 Storage Management Measures, reduction of Safe Yield to 135,000 AFY
18 will not harm the Basin.
- 19 II) The 2013 Chino Basin Groundwater Model Update and Recalculation
20 of Safe Yield Pursuant to the Peace Agreement is sufficiently
21 documented and the court finds the data reliable.
- 22 c) Wildermuth declaration, paragraph 15, states that the Basin protection
23 measures to which the parties have agreed and the 2015 Safe Yield
24 Reset Agreement, including the Safe Storage Management Measures,
25 will ensure that the Basin is not harmed by extractions of the 20,000 AF
26 that was allocated in the past 4 years and would have been allocated if
27 the Safe Yield have been reset to 135,000 AFY in 2011.
- 28 I) However, again Wildermuth does not specifically address the necessity

1 of the Safe Storage Measures with respect to complying with the Court
2 Approved Management Agreements. Therefore, the court again
3 concludes that even without the Safe Storage Management Measures,
4 reduction of Safe Yield to 135,000 AFY will not harm the Basin.

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

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

12
13 B. The measures set forth in Article 4 are consistent with the Physical Solution
14 under the judgment and Article X, section 2 of the California Constitution.

15
16 C. Paragraph 6 of the Restated Judgment is hereby amended to read as follows:
17 "Safe Yield. The Safe Yield of the Basin is 135,000 acre feet per year."

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

20
21
22 **¶ IV. SAFE YIELD RESET AGREEMENT (SYRA): WATERMASTER**
23 **ALLOCATION HISTORY, EARLY TRANSFERS, AND THE**
24 **DESALTERS**

25 A. The 1978 Judgment as amended

26 1. The 1978 Judgment ¶44 made the following allocation of rights to Safe
27 Yield in the Chino Basin ("the physical solution"):

28

Pool	Allocation
------	------------

1	Overlying (Agricultural) Pool	414,000 acre-feet in any 5
2		consecutive years (82,800
3		acre-feet per year)* **
4	Overlying (Non-agricultural) Pool	7366 acre-feet per year**
5	Appropriative Pool	49,834 acre-feet per year
6	Total	140,000 acre-feet per year

7 *Note: $414,000 \div 5 = 82,800$. 82,800 acre-feet per year has been the basis of
8 calculations for the Appropriative Pool going forward from the judgment.

9 **Note: the rights of the members of the Overlying (Agricultural) Pool and
10 the Overlying (Non-Agricultural) Pool are fixed (Restated Judgment ¶8, ¶44, see also
11 Exhibits "C" and "D" to the Restated Judgment). **Therefore the effect of a**
12 **decline of the safe yield is borne entirely by the members of the Appropriative**
13 **Pool (Restated Judgment ¶9).**

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

19 3. The judgment fixed the amount of water production (pumping) that
20 could be allocated to the Overlying (Agricultural) Pool and the Overlying (Non-
21 agricultural) Pool. However, the Appropriative Pool allocation could be changed.

22 a) The court concludes that the disputes in the oppositions concern
23 relationship between unproduced (*i.e.*, unpumped) Overlying
24 Agricultural Pool water (aka Ag Pool water) and the water available to
25 the Appropriative Pool.

26 4. Exhibit "T" to the judgment is the Engineering Appendix. It discusses
27 Hydraulic Control and Re-Operation, which are described in more detail below.

28 Section 3 defines Operating Safe Yield as consisting in any "year of the

1 Appropriative Pool's share of Safe Yield of the Basin, plus any controlled overdraft
2 of the Basin which Watermaster may authorize."

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

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

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

19 5. Exhibit "H" to the judgment described the Appropriative Pool Pooling
20 Plan, paragraph 10 described "Unallocated Safe Yield Water" as follows: "to the
21 extent that, in any 5 years, any portion of the share of Safe Yield allocated to the
22 Overlying (Agricultural) Pool is not produced, such water shall be available for
23 reallocation to members of the Appropriative Pool as follows:

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

25 (1) to supplement, in the particular year, water available from Operating Safe
26 Yield to compensate for any reduction in the Safe Yield by reason of
27 recalculation thereof after the tenth year of operation hereunder. [This

28 Exhibit H ¶10(a)(1) priority is sometimes called 'unproduced Agricultural Pool

1 water' or 'unproduced Ag Pool water.' The current credited production
2 (pumping) for agricultural groundwater is about 33,600 AFY, but that includes
3 agricultural land irrigated with reclaimed water. The actual groundwater
4 production for agricultural purposes is about 22,000 AFY. (Jurupa Services
5 District's response to Judge Reichert's Request for Clarification, March 22,
6 2016, page 2, lines 8-10.)]

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

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

10 6. In an order dated November 17, 1995, Conversion Claims were defined
11 in Exhibit “H” ¶10(b) [this is the Subparagraph (b) to which the preceding
12 paragraph--page 19 24, line 8 7--refers]. Peace I modified this definition in Exhibit
13 “H” ¶10(b) to state as follows:

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

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

22 (2) Record of Water Service Conversion. Any appropriator who undertakes
23 to permanently provide water service to lands subject to conversion may
24 report such intent to change water service to Watermaster. Watermaster
25 should thereupon verify such change in water service and shall maintain a
26 record and account for each appropriator of the total acreage involved.
27 Should, at any time, converted acreage return to water service form the
28 Overlying (Agricultural) Pool, Watermaster shall return such acreage to

1 unconverted status and correspondingly reduce or eliminate any allocation
2 accorded to the appropriator involved.

3 (3) Allocation of Safe Yield Rights

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

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

20 7. CONCLUSION: With the 1995 amendments, the Judgment set a
21 prioritized list of claims upon unproduced Ag Pool water.

22 Ag Pool water--1995 Judgment amendment

23 82,800 AFY of the Ag Pool's water available to the Appropriative Pool with
24 Appropriative Pool claims prioritized as follows:

- 25 (1) to supplement, in the particular year, water available from Operating Safe
26 Yield to compensate for any reduction in the Safe Yield by reason of recalculation
27 thereof after the tenth year of operation as required by the Judgment;
28 (2) pursuant to conversion claims as defined in Subparagraph (b of Exhibit "H"

1 ¶10(b);

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

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

7
8 B. The 2000 Peace Agreement aka Peace I

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

11 2. Peace I Section V-Watermaster Performance defined how Watermaster
12 was to perform regarding procedures for Recharge and Replenishment. In paragraph
13 ¶5.3(g), Watermaster was ordered to approve an "Early Transfer" from the
14 Agricultural Pool to the Appropriative Pool of not less than 32,800 acre-feet per year
15 which was the expected approximate quantity of water not produced by the
16 Agricultural Pool. ¶5.3(g)(i) further stated that "the quantity of water subject to Early
17 Transfer under this paragraph shall be the greater of (i) 32,800 acre-feet or (ii) 32,800
18 acre-feet plus the actual quantity of water not produced by the Agricultural Pool for
19 that Fiscal Year that is remaining after all the land use conversions are satisfied
20 pursuant to" the following provision: "the Early Transfer water shall be annually
21 allocated among members of the Appropriative Pool in accordance with their pro-
22 rata share of the initial Safe Yield." The court notes that after this deduction, the
23 Safe Yield water available to the Agricultural Pool became 50,000 acre-feet per year.

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

27 a) Watermaster Desalter replenishment account composed of 25,000 acre-feet
28 of water abandoned by Kaiser and other water previously dedicated by the

1 Appropriative Pool;

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

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

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

10 4. The court also concludes that the conversion claims have priority over
11 the Early Transfers because the conversion claims pre-existed the Early Transfer
12 allocations. The conversion claims came into existence with the 1995 Judgment
13 amendment. The Early Transfers came into existence with Peace I in 2000. The
14 Early Transfers must be interpreted in the context of the pre-existing 1995 Judgment
15 amendment.

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

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

	<p>for any reduction in the Safe Yield by reason of recalculation thereof after the tenth year of operation hereunder.</p> <p>(2) pursuant to conversion claims as defined in Subparagraph (b) hereof.</p> <p>(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 going straight to the Appropriative Pool (leaving 50,000 AFY to Ag Pool). The remaining Ag Pool water is subject to Appropriative Pool’s prioritized claims.</p>	<p>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 Safe Yield. Water produced/pumped by the Desalters is not added to or subtracted from Safe Yield of the Basin.</p>

The court concludes that Peace I interrelated Early Transfers and conversion claims in the following way. The Appropriative Pool received unproduced Ag Pool

1 water in at least the amount of 32,800 AFY, but the Appropriative Pool could receive
 2 more unproduced Ag Pool water if 1) the Ag Pool did not produce/pump its
 3 leftover 50,000 AFY and 2) also after subtracting from the 50,000 AFY the
 4 Appropriative Pool's conversion claims at the rate of 2 acre-feet per year per
 5 converted acre.

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

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

11 1. If one Appropriative Pool producer/pumper (e.g., municipality, such as the City of
 12 Chino) had 1000 acres of converted land resulting in 2000 acre-feet of conversion
 13 claims (1000 acres x 2.0 acre feet of water/one acre converted), and assuming those
 14 were the only conversion claims; and

15 2. If the Ag Pool produced/pumped only 33,600 AFY leaving 49,200 AFY available
 16 for further allocation (82,800 AFY - 33,600 AFY = 49,200 AFY; the court notes that
 17 33,600 AFY is the approximate Ag Pool credited production [Jurupa response to
 18 court's clarification request, page 2, lines 9-10], but the court is using this figure only
 19 for illustration); then,

20 3. The Ag Pool water that would be available to the Appropriative Pool would be
 21 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)

1	Conversion claims	- 2000 acre-feet	1000 acres x 2.0 acre feet of
2			water/one acre converted = 2000
3			acre-feet per year.
4			The subtraction for satisfying
5			conversion claims comes before
6			any reallocation. The conversion
7			claims are applied first because
8			they are set forth in the 1995
9			Amendment to the Judgment
10	Ag Pool balance after	47,200 AFY	(49,200 acre-feet - 2000 acre-feet
11	reduction for		= 47,200 acre-feet per year)
12	conversion claims		Balance: Ag Pool water available
13			to Appropriative Pool after
14			conversion priority claims
15			pursuant to Judgment Exhibit
16			"H" Paragraph 10.
17	Reduction for Early	- 32,800 AFY	The Early Transfer is now applied
18	Transfers		because Early Transfers were
19			instituted in Peace I in 2000. The
20			Early Transfer from 82,800 AFY
21			allocation leaving 50,000 AFY for
22			the Ag Pool itself to
23			produce/pump and for additional
24			claims by the Appropriative Pool
25			pursuant to Peace I and Peace II.*
26	Balance: Ag Pool	14,400 AFY	(47,200 acre-feet -32,800 acre-feet
27	water available to the		= 14,400 acre-feet per year.)
28	Appropriative Pool		This is the total Ag Pool water

<p>1 after conversion 2 priority claims and 3 Early Transfers</p>		<p>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.**</p>

10 *It appears to the court that for convenience, many parties first simply take the
11 reduction of the 32,800 acre-feet for Early Transfers and start these calculations with
12 50,000 acre-feet of Ag Pool water.

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

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

24
25 EXAMPLE 2: The following example demonstrates complications arising
26 from a decrease in the amount of Ag Pool water available to the Appropriative Pool.
27 If the Ag Pool produced/pumped more than 48,000 AFY there would be no
28 available water for the Appropriative Pool.

1	Example 2		Comment
2	Initial Ag Pool	82,800 AFY	
3	allocation		
4	Ag Pool	48,000 AFY	Assumption
5	production/pumping		
6	Initial balance after	34,800 AFY	82,800 acre-feet – 48,000 acre-feet =
7	production		34,800 acre-feet per year
8	Conversion claims	- 2000 acre-	The subtraction for satisfying
9		feet	conversion claims before any
10			reallocation. (1000 acres x 2.0 acre
11			feet of water/one acre converted =
12			2000 acre-feet).
13	Balance:	32,800 AFY	34,800 acre-feet – 2,000 acre-feet =
14			32,800 acre-feet per year. Ag Pool
15			Water Available after conversion
16			priority claims pursuant to Judgment
17			Exhibit “H” Paragraph
18	Reduction for Early	- 32,800 AFY	Early Transfer of 32,800 AFY from
19	Transfers		82,800 AFY allocation leaving 50,000
20			AFY for the Ag Pool itself to
21			produce/pump. Any water which the
22			Ag Pool did not produce/pump water
23			up to the 50,000 AFY would be
24			available for allocation to the
25			Appropriative Pool pursuant to Peace
26			I and Peace II.
27	Balance: Ag Pool	0 AFY	32,800 acre-feet -32,800 acre-feet = 0
28	water available after		acre-feet per year. There would be no

<p>1 conversion priority 2 claims and Early 3 Transfers</p>		<p>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>
<p>8 Conclusion: 9 Under this scenario, the Appropriative Pool would not get any additional 10 allocation from Ag Pool water</p>		

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

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

17 (a) Watermaster Desalter Replenishment account composed
18 of 25,000 acre-feet of water abandoned by Kaiser pursuant to the
19 "Salt Offset Agreement" dated October 21, 1993, between Kaiser
20 and the RWQB, and other water previously dedicated by the
21 Appropriative Pool.

22 (b) New Yield of the Basin, unless the water Produced and
23 treated by the Desalters is dedicated by a purchaser of the desalters
24 water to offset the price of the salted water to the extent of the
25 dedication;

26 (c) Safe Yield of the Basin, unless the water Produced and
27 treated by the Desalters is dedicated by a purchaser of the the
28 salted water to offset the price of the salted water to the extent of

1 the dedication;

2 (d) Additional Replenishment Water purchased by
3 Watermaster, the cost of which shall be levied as an Assessment by
4 Watermaster.
5

6 C. The 2007 Peace II Agreement (Peace II)

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

11 2. Peace II Paragraph 6.2(a)(iii) states as follows in pertinent part:
12 Peace II Desalter Production Offsets. To facilitate Hydraulic Control through
13 Basin Re-Operation, [court note: that is, water pumped by the Desalters as
14 part of the 600,000 AF controlled overdraft] in accordance with the 2007
15 Supplement to the OBMP Implementation Plan and the amended Exhibits G
16 and I to the Judgment, additional sources of water will be made available for
17 purposes of Desalter Production and thereby some or all of a Replenishment
18 obligation. With these available sources, the Replenishment obligation
19 attributable to Desalter production in any year will be determined by
20 Watermaster as follows:

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

23 (iii) New Yield (other than Stormwater (Peace Agreement Section
24 7.5(b)); . . .

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

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

1 [The Judgment allowed for a temporary controlled overdraft, *i.e.*,
2 initially 200,000 AF and then an additional 400,000 AF total
3 production/pumping starting in 2007 and ending in 2026 without
4 replenishment, in order to achieve Hydraulic Control. (Safe Yield Reset
5 Implementation Desalter Replenishment Accounting Illustration (per
6 Peace II Agreement, Section 6.2 (PIIA, 6.2) and June 11, 2015 Key
7 Principles)–Exhibit C to Attachment 1, Watermaster’s Motion regarding
8 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
9 Paragraph 6.]

10 Paragraph 7.1 provides as follows:

11 New Yield Attributable to the Desalters. Watermaster will make an annual
12 finding as to the quantity of New Yield that is made available by Basin Re-
13 Operation including that portion that is specifically attributable to the Existing
14 and Future Desalters. Any subsequent recalculation of New Yield as Safe
15 Yield by Watermaster will not change the priority set forth above for
16 offsetting Desalter production as set forth in Article VII, Section 7.5 of the
17 Peace Agreement. For the initial term of the Peace Agreement, neither
18 Watermaster nor the Parties will request that Safe Yield be recalculated in a
19 manner that incorporates New Yield *attributable to the Desalters* [emphasis in
20 original] into a determination of Safe Yield so that this source of supply will be
21 available for Desalter Production rather than for use by individual parties to
22 the Judgment.

23 2. Additionally, in 2007 Peace II ¶1.1(d) defined Re-Operation as “the
24 controlled overdraft [pumping without replenishment] of the Basin by the managed
25 withdrawal of groundwater Production for the Desalters and the potential increase in
26 the cumulative un-replenished Production from 200,000 [acre-feet] authorized by
27 paragraph 3 Engineering Appendix Exhibit I to the Judgment, to 600,000 acre-feet
28 for the express purpose of securing and maintaining Hydraulic Control as a

1 component of the Physical Solution.” The Peace II agreement amended the Restated
2 Judgment’s Engineering Appendix to specify the additional 400,000 acre-feet that
3 would be dedicated exclusively to the purpose of Desalter replenishment (Restated
4 Judgement Exhibit “I” §2(b)[3]).

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

- 15 a) Peace I, paragraph 1.1(aa) defines New Yield as “proven increases in
16 yield in quantities greater than historical amounts from sources of
17 supply including, but not limited to, operation of the Desalters
18 (including the Chino I Desalter), induced Recharge and other
19 management activities implemented in operational after June 1, 2000.”
- 20 I) The court concludes that New Yield in the above paragraph means
21 water produced/pumped by the Desalters, because that is how yield is
22 always used, e.g., Safe Yield, Operating Safe Yield, etc., and the source
23 of supply is the Desalters as identified in the definition.
- 24 II) So, New Yield includes water produced/pumped by the Desalters.
- 25 b) Peace I, paragraph 1.1(nn) defines “Recharge and Recharge Water as
26 “introduction of water to the Basin, directly or indirectly,” Recharge
27 references the physical act of introducing water to the Basin.”
- 28 c) The conclusion of the court is that after Peace II, the definition New

1 Yield now includes both Desalter operation, *i.e.*, production/pumping
2 from the Desalters, and induced Recharge (i.e., groundwater flowing
3 back into the Basin from the Santa Ana River as the result of Desalter
4 operation).

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

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

12 I) Peace I defined New Yield to include "operation of the
13 Desalters" and "induced Recharge."

14 II) The court concludes that the Peace I and Peace II when read
15 together recognized that some of the water which the
16 Desalters produced/pumped came from induced recharge from
17 the Santa Ana River.

18 III) Peace II was not explicit it stating that the Desalter
19 production offset should follow the priorities of Peace I ¶7.5,
20 but the court concludes that the replenishment water, *i.e.*,
21 Desalter-induced recharge, must follow the priorities of Peace
22 I.

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

25 e) In its response to Judge Reichert's questions, Chino argued that SYRA's
26 failure to give a specific definition to "Desalter-induced recharge" was
27 purposeful because the failure allowed SYRA to use "Desalter-induced
28 recharge" synonymously with New Yield. The court does not find

1 “Desalter-induced recharge” to be synonymous with New Yield. The
2 court finds that “Desalter-induced recharge” is only synonymous with
3 “induced Recharge.” Therefore Desalter-Inducted Recharge is included
4 in the definition of New Yield, as set forth in Peace I ¶1(aa): “induced
5 Recharge and other management activities implemented in operational
6 after June 1, 2000” includes Desalter-induced recharge.

7 I) . The court further finds that “Desalter-induced recharge” and
8 “induced Recharge” mean water flowing back into the Basin from the
9 Santa Ana River due to production/pumping by the Desalters lowering
10 the ground water table in the Basin. Finally, the court notes that New
11 Yield includes Desalter production and Desalter-induced recharge as
12 ~~well as Desalter overdraft.~~

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

18 (b) In fact the Desalters have accomplished their design objective so
19 well that now some water flows from the Santa Ana River into the
20 Chino Basin. The court finds that his water is New Yield as set
21 forth above.

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

27 4. Peace II specified Desalter production/pumping replenishment to
28 include induced Recharge, controlled overdraft, and other sources set forth in Peace

1 II ¶6.2(a). The Peace I and Peace II agreements did not specify any additional
2 sources of Desalter replenishment, such as Ag Pool water or Safe Yield.

3 5. CONCLUSION:

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

7 Ag Pool water		Comments
8 1995 Judgment 9 amendment	10 82,800 AFY of the Ag 11 Pool's water available to 12 the Appropriate Pool with 13 Appropriative Pool claims 14 prioritized as follows: 15 (1) to supplement, and the 16 particular year, water 17 available from Operating 18 Safe Yield to compensate 19 for any reduction in the 20 Safe Yield by reason of 21 recalculation thereof after 22 the tenth year of 23 operation hereunder. 24 (2) pursuant to conversion 25 claims as defined in 26 Subparagraph (b) hereof. 27 (3) as a supplement to 28 Operating Safe Yield, without regard to reductions in Safe Yield.	

<p>1 2000 Peace I–Desalters 2 start construction and 3 pumping water 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</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 Response to Order for Additional Briefing, page 5, line 22-23.) Therefore at the time of Peace I Desalter operations did not affect Safe Yield or Operating Safe Yield. Water produced/pumped by</p>
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		<p>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>
<p>2007 Peace II-overdraft increased</p>	<p>Additional 400,000 AF above the 200,000 AF provided in the Judgment for a total of 600,000 AF.</p>	<p>This is a diminishing pumping allocation as the overdraft goes to 0 in 2017. Its purpose was to help establish Hydraulic Control.</p>
<p>Peace II Desalters</p>	<p>Peace II ¶7.1 requires Desalter production (defined as New Yield) excluded from the definition of Safe Yield. However, Peace II Article VI identifies offsets for Desalter production, which includes New Yield the meaning of which includes induced Recharge. (Peace I, ¶1.1(aa).)</p>	<p>Desalter production reaches above 20,000 AFY. Watermaster's Response to Order for Additional Briefing, Exhibit 1.</p>

The court concludes that Peace II did not change any of the priorities for

1 claims on actual water production. Peace II addressed Desalter replenishment and
2 production/pumping but did not affect the priorities for allocations of unproduced
3 Ag Pool water.

4
5
6 **~~VI~~ V. SYRA ARTICLE 5-STORMWATER RECHARGE PLAN AND**
7 **WATERMASTER ACCOUNTING ANALYSIS**

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

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

14 ~~5.1 Stormwater Recharge. After the Effective Date and until termination~~
15 ~~of this Agreement, the Parties expressly consent to Watermaster's accounting~~
16 ~~for Basin recharge arising from stormwater as follows:~~

17 ~~(a) 2001-2014 Stormwater Recharge Program. Stormwater recharge~~
18 ~~that arises from or is attributable to the 2001-2014 Stormwater Recharge~~
19 ~~Program shall be: (i) New Yield for the period 2001-2014 in the manner that~~
20 ~~it has been distributed through approved Watermaster Assessment Packages;~~
21 ~~and (ii) Safe Yield in each subsequent year. For the 2001-2014 Stormwater~~
22 ~~Recharge Program, Watermaster shall cause no reduction against Safe Yield~~
23 ~~requiring supplementation by the reallocation of a portion of the unproduced~~
24 ~~Overlying (Agricultural) Pool's share of the Basin's Safe Yield.~~

25 ~~(b) Post-2014 Stormwater Recharge Projects. For the remainder of~~
26 ~~the term of the Peace Agreement, inclusive of an extension term, if any,~~
27 ~~stormwater recharge that arises from or is attributable to Post-2014~~
28 ~~Stormwater Recharge Projects shall be allocated as set forth in this Paragraph~~

1 5.1(b).

2 ~~(i) Interim Accounting between Resets. For any and all Post~~
3 ~~2014 Stormwater Recharge Projects completed in the interim period~~
4 ~~between subsequent Safe Yield resets, Net New Recharge attributable~~
5 ~~to specific Post-2014 Stormwater Recharge Projects shall be New~~
6 ~~Yield, as that term is defined in the Peace Agreement and will be~~
7 ~~allocated based upon observed and quantified annual net increases~~
8 ~~rather than projected future estimates of annual performance. New~~
9 ~~Yield attributable to Post-2014 Stormwater Recharge Projects shall be~~
10 ~~credited annually to the Project participants, in the Production Year in~~
11 ~~which such New Yield actually arises. Post-2014 Stormwater Recharge~~
12 ~~Project New Yield is in addition to Safe Yield and therefore by~~
13 ~~definition it shall cause no reduction against Safe Yield requiring~~
14 ~~supplementation by the reallocation of a portion of the unproduced~~
15 ~~Overlying (Agricultural) Pool's share of the Basin's Safe Yield.~~

16 ~~(ii) Post-Safe Yield Reset Accounting for Post-2014~~
17 ~~Stormwater Recharge Projects. Upon any reset of the Safe Yield after~~
18 ~~2015, any Net New Recharge that occurs as a result of specific Post-~~
19 ~~2014 Stormwater Recharge Projects that have been previously approved~~
20 ~~and fully implemented at the time of the reset shall be considered as a~~
21 ~~potential change in cultural conditions as provided in the Reset~~
22 ~~Technical Memorandum and thereafter considered a component of the~~
23 ~~Safe Yield, if the Post-2014 Stormwater Recharge Projects to which the~~
24 ~~Net New Recharge is attributable have been constructed and in~~
25 ~~operation for a minimum of five (5) years prior to the reset. The Net~~
26 ~~New Recharge will be measured and accounted for and will be made~~
27 ~~available exclusively to the members of the Appropriative Pool in~~
28 ~~accordance with Paragraph 5.1(e) below. Following a reset of the Safe~~

1 Yield, Post-2014 Stormwater Recharge Project recharge will be included
2 within Safe Yield and its separate measurement and allocation shall
3 cause no reduction against Safe Yield requiring supplementation by the
4 reallocation of a portion of the unproduced Overlying (Agricultural)
5 Pool's share of the Basin's Safe Yield. Moreover, Post-2014
6 Stormwater Recharge Projects that have been fully constructed and in
7 operation for less than five (5) years, or the Net New Recharge from
8 which is otherwise not included as a component of Safe Yield pursuant
9 to the Reset Technical Memorandum, will be treated "as if" the Net
10 New Recharge were Safe Yield for the limited and exclusive purpose of
11 quantifying the annual supplementation by the reallocation of a portion
12 of the unproduced Overlying (Agricultural) Pool's share of the Basin's
13 Safe Yield. Examples of how Watermaster will conduct the accounting
14 described in this Section 5.1(b) (ii) are included in Exhibit "B" hereto.

15 (c) ~~Participation in Post-2014 Stormwater Recharge Programs. The~~
16 ~~Parties contemplate that Post-2014 Stormwater Recharge Projects, such as~~
17 ~~those projects described in Watermaster's Court-approved 2013 Amendment~~
18 ~~to 2010 Recharge Master Plan Update, may be completed after the after the~~
19 ~~Effective Date, as part of suites of such Projects (each suite of Projects, a~~
20 ~~"Post-2014 Stormwater Recharge Program" and collectively, "Post-2014~~
21 ~~Stormwater Recharge Programs"). Watermaster shall prepare an estimate of~~
22 ~~the Net New Recharge projected to arise from or be attributable to proposed~~
23 ~~Post-2014 Stormwater Recharge Programs. Based on this pre-approval~~
24 ~~estimate, Watermaster shall quantify each member of the Appropriative Pool's~~
25 ~~proportionate share of the potential Net New Recharge benefits in accordance~~
26 ~~with its percentage of Operating Safe Yield and calculate its corresponding~~
27 ~~capital financing obligations. Each Appropriative Pool member's~~
28 ~~proportionate share of the potential Program Net New Recharge benefits and~~

1 corresponding financing obligations shall be referred to as its "Participation
2 Share" in the Program. The Participation Shares in a particular Program shall
3 remain unchanged regardless of actual Program yield. Within six months of
4 the Effective Date, Watermaster, with the recommendation and advice of the
5 Pools and Advisory Committee, will develop rules and regulations for the
6 definition of Post-2014 Stormwater Programs and Participation Shares therein.

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

21 (i) In the event that one or more members of the
22 Appropriative Pool voting against the approval of a Post-2014
23 Stormwater Recharge Program elects to opt out of its Participation
24 Share therein, each shall permanently waive and relinquish, without
25 limitation, all right to all the benefits accruing under its Participation
26 Share of a Post-2014 Stormwater Recharge Program;

27 (ii) An Appropriative Pool member electing to opt out of
28 participation in a Post-2014 Stormwater Recharge Program shall be

1 assigned no further financial obligation attributable to a Participation
2 Share in the Post-2014 Stormwater Recharge Program that was the
3 subject of the election;

4 ~~(iii) — Fontana Water Company (FWC), a member of the~~
5 ~~Appropriative Pool, and any successor in interest thereto, shall have the~~
6 ~~first priority and exclusive right and obligation to acquire the~~
7 ~~Participation Shares, representing up to 2,000 AFY (cumulative~~
8 ~~maximum) of projected annual average recharge arising from or~~
9 ~~attributable to one or more Post-2014 Stormwater Recharge Programs,~~
10 ~~which may be made available by one or more members of the~~
11 ~~Appropriative Pool opting out of the Post-2014 Stormwater Recharge~~
12 ~~Programs. If Participation Shares in Post-2014 Stormwater Recharge~~
13 ~~Programs are available in excess of FWC's first priority right of up to~~
14 ~~2,000 AFY under this provision, then each member of the~~
15 ~~Appropriative Pool may elect to participate in the acquisition of the~~
16 ~~excess Participation Shares along with its corresponding assumption of~~
17 ~~duties associated therewith. Available Participation Shares shall be~~
18 ~~distributed among the members of the Appropriative Pool electing to~~
19 ~~acquire the Participation Shares, pro rata based on the total number of~~
20 ~~members electing to acquire, including FWC. The acquisition of any~~
21 ~~obligations and benefits pursuant to this Paragraph shall survive the~~
22 ~~expiration of the Peace Agreement, for the life of the Post-2014~~
23 ~~Stormwater Recharge Program, pursuant to the same terms and~~
24 ~~conditions generally applicable to all Project Participants.~~

25 ~~(iv) — FWC shall have a right of first refusal (ROFR) as to any~~
26 ~~transfer, lease, or assignment (collectively “transfer”) of any portion of a~~
27 ~~Participation Share by any member of the Appropriative Pool until a~~
28 ~~cumulative maximum of 2,000 AFY of Participation Shares has been~~

1 acquired by FWC. Any member of the Appropriative Pool desiring to
2 transfer any portion of its Participation Share will provide sixty (60)
3 days written notice of its intention to transfer to FWC along with a
4 copy of any agreement and accompanied by a reasonable description of
5 the transfer. Upon its receipt of written notice, FWC may, in its
6 complete discretion, elect to match the offer and the Appropriative
7 Pool member providing its notice of intention to transfer must sell the
8 identified Participation Shares. After FWC has acquired a cumulative
9 total of 2,000 AFY of Participation Shares, its right to share in Post-
10 2014 Stormwater Recharge Programs shall be limited to the provisions
11 of Paragraph 5.1(c)(iii) above. FWC's ROFR, as described in this
12 Section 5.1(c)(iv), shall be limited only to those transfers as to which the
13 City of Ontario is not the proposed transferee.

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

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

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

18 2. ~~The court notes that the previous Court Approved Management~~
19 ~~Agreements have not covered the aspects of stormwater recharge addressed in this~~
20 ~~paragraph.~~

21 3. ~~The court finds that the Stormwater Recharge Plan is consisted with the~~
22 ~~Court Approved Management Agreements.~~

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

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

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

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

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

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

9 A. Stormwater Recharge—SYRA ¶5.1

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

14
15 B. Desalter-Induced Recharge Allocations, Early Transfers, Land Use
16 Conversion—SYRA ¶5.2 and SYRA ¶5.3.

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

19 SYRA ¶5.2 sets forth the following provisions regarding Desalter Induced
20 Recharge, and SYRA ¶5.3 sets forth the following provisions regarding Post 2030
21 Land Use Conversions and Early Transfers.

22 5.2 Desalter-Induced Recharge. After the Effective Date and until
23 termination of this Agreement, the parties expressly consent to Watermaster’s
24 accounting for Basin recharge arising from or attributable the Desalters as
25 follows:

26 (a) 2001-2014 Desalter-Induced Recharge. Induced recharge that
27 arises from or is attributable to the Desalters for the period of production
28 years 2001-2014 shall be accounted for as Safe Yield, in the manner it has been

1 distributed through approved Watermaster Assessment Packages, shall not be
2 considered New Yield, and shall not be considered to have been available for
3 production by the Desalters.

4 (b) 2015-2030 Desalter-Induced Recharge. For the production years
5 of 2015- 2030, Watermaster shall account for induced recharge that arises
6 from or is attributable to the Desalters as equal to fifty (50) percent of the total
7 Desalter Production during each applicable production year up to a maximum
8 of twenty-thousand (20,000) AFY of recharge. Consistent with Paragraph
9 6.2(a)(iii) of the Peace II Agreement, Watermaster shall deem the induced
10 recharge as having been produced by the Desalters. During each applicable
11 production year, Watermaster shall reduce Safe Yield by an amount equal to
12 fifty (50) percent of the total Desalter Production, up to a maximum of
13 twenty-thousand (20,000) AFY, and require a corresponding supplementation
14 by the reallocation of available unproduced Agricultural Pool's share of the
15 Basin's Safe Yield.

16
17 Claims for reallocation of the remaining unproduced quantity of the
18 Agricultural Pool's share of Safe Yield shall be satisfied consistent with section
19 6.3(c) of Watermaster's Rules and Regulations, as amended as part of the
20 Peace II Measures, and the October 8, 2010 Order Approving Watermaster's
21 Compliance with Condition Subsequent Number Eight and Approving
22 Procedures to be used to Allocated Surplus Agricultural Pool Water in the
23 Event of a Decline in Safe Yield.

24 (c) 2031-2060 Desalter-Induced Recharge. Should the term of the
25 Peace Agreement be extended pursuant to Paragraph 8.4 thereof, the
26 treatment of Desalter-Induced Recharge shall be subject to the negotiation of
27 a new and separate agreement among the Parties to the Judgment. The
28 accounting provided for in Section 5.2(b), above, shall be without prejudice to

1 the negotiation of such a new and separate agreement among the Parties to the
 2 Judgment. Unless otherwise agreed by the Parties or ordered by the court,
 3 during the extension term, Watermaster shall not consider such recharge to
 4 require supplementation by the reallocation of a portion of the unproduced
 5 Agricultural Pool's share of Safe Yield.

6
 7 5.3 Post-2030 Priority among Land Use Conversion and Early Transfer
 8 Claims. At the expiration of the Peace II Agreement, the Peace II provisions
 9 relating to the distribution of surplus water by the Agricultural Pool requiring
 10 that claims for the Early Transfer of 32,800 AFY and for Land Use
 11 Conversion be treated equally are expressly repealed including (i) the
 12 amendment to Section 6.3(c) of Watermaster's Rules and Regulations,
 13 pursuant to the Peace II measures, and (ii) Section III.(6) of the October 8,
 14 2010 Order Approving Watermaster's Compliance with Condition Subsequent
 15 Number Eight and Approving Procedures to be used to Allocate Surplus
 16 Agricultural Pool Water in the Event of a Decline in Safe Yield. In any Peace
 17 Agreement extension term, the previous changes to Restated Judgment,
 18 Exhibit "H", Paragraph 10(b)(3)(i) effectuated by Paragraph 4.4(c) of the
 19 Peace Agreement, which, to the extent sufficient unallocated Safe Yield from
 20 the Agricultural Pool is available for conversion claims, allocate 2.0 acre-feet
 21 of unallocated Safe Yield water for each converted acre, shall remain in effect.

22
 23 C. The court summarizes the effect of these SYRA proposals ¶5.2 and ¶5.3 as
 24 follows:

Ag Pool water		Comments
1995 Judgment amendment	82,800 AFY of the Ag Pool's water available to the Appropriate Pool with	

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	<p>Appropriative Pool claims prioritized as follows:</p> <p>(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.</p> <p>(2) pursuant to conversion claims as defined in Subparagraph (b) hereof.</p> <p>(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 goes to the Appropriative Pool (leaving 50,000 AFY to Ag Pool). The remaining Ag Pool water is subject to Appropriative Pool’s prioritized claims.</p>	<p>New Yield (with conditions) is source of water to replenish water pumped by the Desalters. Therefore Desalters do not affect Safe Yield or Operating Safe Yield. Water produced/pumped by the Desalters is not</p>

1			added to or subtracted
2			from Safe Yield or
3			Operating Safe Yield of
4			the Basin.
5	2007 Peace II-	Additional 400,000 AF	This is a diminishing
6	overdraft increased	above the 200,000 AF	pumping allocation as
7		provided in the Judgment	the overdraft goes to 0
8		for a total of 600,000 AF.	in 2017.
9	SYRA proposal:	SYRA proposal <i>Step 1</i> : The	
10	(see column to right	Desalter	
11	for <i>Steps 1-3</i>):	production/pumping up to	
12	<i>Step 4</i> : SYRA ¶5.2(b)	20,000 AFY is allocated to	
13	subtracts 50% of total	the Desalters, not as Safe	
14	Desalter production	Yield or Safe Operating	
15	up to 20,000 AFY	Yield [or New Yield].	
16	from Ag Pool Water	<i>Step 2</i> : Under SYRA ¶5.2(b)	
17	and then adds that	one-half of the source of	
18	50% of total Desalter	Desalter production up to	
19	production up to	20,000 AFY is attributed to	
20	20,000 AFY to Safe	“Desalter-induced	
21	Yield (to make up for	recharge.” Desalter-induced	
22	the subtraction in	Recharge means water	
23	<i>Step 3</i>).*	flowing back into the Basin	
24		from the Santa Ana River.	
25		<i>Step 3</i> : SYRA then subtracts	
26		the other half of Desalter	
27		production up to 20,000	
28		AFY from Safe Yield.	

1 **Additional SYRA Effects: Step 5** (see above for *Steps 1-4*)

2 The Ag Pool water allocation is reduced by up to 20,000 AFY for the Desalters.
3 SYRA is unclear where the priority lies with respect to priority of allocation as
4 required by Judgment Exhibit "H" Paragraph 10. The court orders that those
5 priorities must be followed. Because the court has ordered that those priorities be
6 followed, court concludes that it cannot order these provisions of SYRA in
7 addition to SYRA's not being severable. At best SYRA is ambiguous with
8 respect to following the priorities set by the Judgment and the Court Approved
9 Management Agreements. At worst, SYRA contradicts them.

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

15 1) All of the induced recharge gets allocated to water produced/pumped by
16 the Desalters.

17 2) Watermaster reduces Safe Yield by 50% of the Desalter production up to
18 20,000 AFY.

19 3) Then, Watermaster adds to Safe Yield 50% of the Desalter production up
20 to 20,000 AFY, from water allocated to the Ag Pool, to make up for (aka backfill) the
21 reduction in Safe Yield allocated to Desalter production.

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

26 5) Elaborating on Example 1-A from Section ~~V.B.2~~ IV.B.5 of this order
27 above, the court's analysis is as follows

Example 1-B	Explanation	Comment
-------------	-------------	---------

1	Initial Ag Pool	82,800 AFY	Judgment
2	allocation		
3	Ag Pool	- 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.]
4	production/pumping		
5			
6			
7			
8			
9			
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11			
12			
13			
14			
15			
16	Initial balance after	49,200 AFY	82,800 acre-feet – 33,600 acre-
17	production		feet = 49,200 acre-feet
18	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).
19			
20			
21			
22			
23	Balance:	47,200 AFY	49,200 acre-feet - 2000 acre-feet
24			= 47,200 acre-feet. Ag Pool
25			Water available after conversion
26			priority claims pursuant to
27			Judgment Exhibit "H" Paragraph
28			10

1	Reduction for Early	- 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.*
2	Transfers		
3			
4			
5			
6			
7			
8	Balance	14,400 AFY	(47,200 acre-feet -32,800 acre-
9			feet = 14,400 acre-feet. This is
10			the Ag Pool water available for
11			reallocation to Appropriative
12			Pool after subtraction of
13			conversion priority claims of
14			2,000 acre-feet from and the
15			32,800 Early Transfer of
16			unproduced/unpumped from the
17			allotment of Ag Pool water.

18

19 Now, to examine the effect of SYRA on the Appropriative Pool:

20	Starting balance	14,400 AFY	Total Ag Pool water available for production/pumping from the example above
21	available Ag Pool		
22	water		
23	Desalter reallocation	- 20,000 AFY	SYRA Desalter reallocation: 20,000 AFY of Desalter production is allocated from Ag Pool water to Safe Yield.
24			
25			
26			
27	Balance:	- 5,600 AFY	A negative amount. This plausible scenario assumes 2,000
28			

1		AFY of conversion claims. The
2		negative balance shows that this
3		scenario under SYRA would not
4		leave sufficient Ag Pool water for
5		that amount of conversion
6		claims. In order to meet
7		conversion claims and Early
8		Transfer allocations, the Ag Pool
9		would only be able to
10		produce/pump 26,000 AFY, well
11		below their current credited
12		pumping. Calculation follows:
13		82,800/initial allocation
14		- 26,000/pumped = 56,800
15		56,800 - 2,000/conversion
16		claims = 54,800
17		54,800 - 32,800/Early Transfer
18		= 20,000
19		20,000 - 20,000/Desalter
20		reduction from Ag Pool
21		Allocation = 0

22 The court concludes that there is no basis in the Judgement or any of the Court
 23 Approved Management Agreements for the post SYRA result identified in the
 24 plausible scenario above.

25
 26 D. Further Analysis and orders:

- 27 1. In addition to SYRA's not being severable, the court denies
 28 Watermaster's motion with respect to the implementation of ¶5.2 and ¶5.3 of SYRA

1 for the following reason:

- 2 a) The court concludes that SYRA paragraphs 5.2 and 5.3 fundamentally
3 change the allocations of Appropriative Pool and of Ag Pool water.
4 Those fundamental changes are inconsistent with the Judgment and the
5 Court Approved Management Agreements
- 6 b) Peace I and Peace II both define Desalter production as within the
7 definition of New Yield and therefore outside of the definition of Safe
8 Yield. Through a several step re-allocation reassignment described
9 above and summarized in this section of the court's order, SYRA now
10 moves Desalter production into Safe Yield. The parties have not
11 demonstrated any legal ~~or practical requirement~~ basis which allows this.
12 Peace I and Peace II prohibit this.
- 13 c) The court concludes that Peace II Agreement Paragraphs 6.2(a)(iii) and
14 7.1 provide that through 2030 (the initial term of Peace I Agreement as
15 set forth in ¶8.2) recharge attributable to the Desalters is allocated for
16 Desalter Production and not allocated as Safe Yield producible (*i.e.*,
17 water available to be pumped without a replenishment obligation by
18 purchase or otherwise).
- 19 I) Peace II ¶7.1 excluded New Yield attributable to the Desalters from
20 a determination of Safe Yield, at least for the 30 year term of Peace
21 Agreement.
- 22 II) Peace I ¶1.1(aa) defines New Yield to include induced recharge.
- 23 (a) The court finds that induced recharge includes Desalter-
24 induced recharge.
- 25 III) The court finds that Peace I ¶7.5 defines replenishment water for
26 the Desalters includes New Yield, but not Safe Yield.
- 27 IV) The court finds that Peace II ¶7.1 states that no party can
28 incorporate New Yield attributable to the Desalters into Safe Yield.

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

4 V) In contradiction to the Peace I and Peace II, the court finds that
5 SYRA attempts to incorporate New Yield from the Desalters into
6 Safe Yield through the accounting method of 1) taking Desalter
7 induced yield water coming from Desalter-induced recharge, then 2)
8 moving that water into Safe Yield, then 3) backfilling Safe Yield
9 from unproduced Ag Pool water.

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

- 12 d) The analysis above shows that these SYRA provisions are contrary to
13 the Judgment and the Court Approved Management Agreements,
14 specifically Peace I and Peace II. These SRYA provisions can prevent
15 the application of the Judgment provisions regarding conversion claims.
16 They are invalid.
- 17 e) There is no basis in the Judgment or the Court Approved Management
18 Agreements for the attribution of water production from Desalters into
19 the definition of Safe Yield.
- 20 f) There is no basis in the Judgment or any of the Court Approved
21 Management Agreements for the splitting and reallocation of Desalter
22 production/pumping to one-half to Desalter-induced recharge and one-
23 half to Safe Yield.
- 24 g) There is no basis in the Judgment or any of the Court Approved
25 Management Agreements to reallocate Ag Pool water to Safe Yield to
26 make up for the Safe Yield reallocated to the Desalters.
- 27 h) Due to the Desalters, there is now recharge coming from the Santa Ana
28 River back into the Chino Basin. SYRA Paragraph 5.2(b) takes the

1 Peace I and Peace II agreements one step—wrongfully—farther by
2 identifying how this recharge quantity will be estimated, *i.e.*, 50% of
3 Desalter Production, and then further specifies that amount of recharge
4 will be allocated to Desalter production and not to the parties as part of
5 their allocation of the Safe Yield. There is no legal basis in the
6 Judgment or the Court Approved Management Agreements for this
7 redefinition of Safe Yield to include of 50% of Desalter Production up
8 to 20,000 AFY through a mechanism of passing the amounts through
9 the Appropriative Pool allocation.

10 i) SYRA attempts now to remove the special exception for New Yield
11 from Desalter induced recharge and production and incorporate it into
12 Safe Yield. The mechanism by which SYRA attempts to do this is by 1)
13 taking half of the Desalter production and sourcing that
14 production/pumping from Desalter induced recharge from the Santa
15 Ana River and 2) sourcing the other half from the Appropriative Pool
16 through unproduced Ag Pool water. The court concludes and finds
17 that this attempt is not justified because it can interfere with the priority
18 of claims on unproduced Ag Pool water set forth in the judgment and
19 the Court-Approved Management Agreements.

20 I) The court notes that Peace II, Article VII-Yield Accounting,
21 ¶7.2(d) discusses a contingency if Western Municipal Water
22 District (WMWD) and the Appropriative Pool “do not reach
23 agreement on apportionment of controlled overdraft of
24 Future Desalters, then no later than August 31, 2009, the
25 members of the Appropriative Pool will submit a plan to
26 Watermaster that achieves the identified goals of increasing
27 the physical capacity of the Desalters and potable water use
28 of approximately 40,000 acre-feet of groundwater

1 production from the Desalters from the Basin no later than
2 2012.”

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

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

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

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

14 II) SYRA now includes New Yield in the determination of Safe Yield in
15 two ways.

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

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

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

25 (d) The following chain shows SYRA’s violations of the
26 previous orders:

27 (i) Desalter-induced recharge is New Yield. (Peace
28 ¶1(aa).)

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- (ii) Peace II ¶7.1 prevents New Yield from being incorporated within Safe Yield.
- (iii) SYRA moves 20,000 AFY of Desalter-induced recharge to the Ag Pool.
- (iv) Then SYRA moves the 20,000 of Desalter-induced recharge (now characterized as Ag Pool Water) into Safe Yield.
- (v) Therefore, SRYA recalculates Safe Yield to incorporate New Yield in violation of Peace II ¶7.1
- (vi) Moving the 20,000 AFY of Desalter-induced Recharge through the portal of the Ag Pool water does not change its definition of New Yield.

- k) The court does not find a legal ~~or factual~~ basis for determining a post-2030 priority among land use conversion and early transfer claims. The priority is set forth in the judgment and as specified in this order
- l) In addition to SYRA's not being severable, the court's 2010 order does not require the implementation of ¶5.2 or ¶5.3.

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

Watermaster is ordered to utilize the procedures regarding the re-allocation of surplus Agricultural Pool water the event of a decline in Safe Yield as described in the December 2008 staff report and the December 4, 2008 memorandum from legal counsel. Specifically, in the event that Operating Safe Yield is reduced because of a reduction in Safe Yield, Watermaster will follow the hierarchy provided for in the Judgment, exhibit "H," by first applying the unproduced Agricultural Pool water to

1 compensate Appropriative Pool members for the reduction in
2 Safe Yield. (Judgment, Exhibit “H,” paragraph 10 (a).) If there
3 is unallocated water left, Watermaster will then follow the
4 remainder of the hierarchy and reallocate unallocated Agricultural
5 Pool water next to conversion claims then to supplement the
6 Operating Safe Yield without regard to reductions in Safe Yield
7 according to the guidance provided by Peace Agreement I & II
8 and Watermaster’s rules and regulations as amended. If, after
9 applying the unallocated Agricultural Pool water to compensate
10 the Appropriate Pool members for the reduction in Safe Yield,
11 the actual combined production from the Safe Yield made
12 available to the Agricultural Pool, which includes overlying
13 Agricultural Pool uses combined with land use conversions and
14 the Early Transfer, exceeds 82,800 in any year, the amount of
15 water available to members of the Appropriative Pool shall be
16 reduced pro rata in proportion to the benefits received according
17 to the procedures outlined in Watermaster Rules and
18 Regulations.

19 I) In considering the reference to Watermaster Rules and
20 Regulations in the preceding paragraph, **if the order is vague, the**
21 **court now considers the order vague clarifies it.** In the instant order,
22 the court has clarified that Watermaster must follow the priorities set
23 forth in the Judgment for allocations of unproduced Ag Pool water.

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

27 III) JCSD correctly points out that pursuant to the Judgment
28 ¶15 the court is authorized “to make such further or supplemental

1 orders or directions as may be necessary or appropriate for
2 interpretation, enforcement or tearing out of this judgment”

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

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

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

20 m) No party has offered any specific detriment that would occur from the
21 court’s instant orders regarding the priorities.

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

25 I) Watermaster cannot use its own interpretations of the
26 court’s orders to contradict the court’s interpretation. The final
27 decision is the court’s, not Watermaster’s.

28 II) If there is any ambiguity that Watermaster finds ~~The court finds~~

1 also ~~that in~~ the current circumstances ~~for~~ the application of that Order
2 III.(6) ~~is may also be ambiguous~~ the court clarifies it now. SYRA's
3 reference to that order's provision does not help in its clarification or
4 application.

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

18 IV) This argument equates land use conversion claims and
19 Early transfer claims. This argument is incorrect for the reasons stated
20 herein. Additionally:

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

23 ~~Watermaster is ordered to utilize the procedures regarding the~~
24 ~~re-allocation of surplus Agricultural Pool water in the event of~~
25 ~~a decline in Safe Yield as described in the December 2008~~
26 ~~staff report and December 4, 2008 memorandum from legal~~
27 ~~counsel. Specifically, in the event that the Operating Safe~~
28 ~~Yield is reduced because of a reduction in Safe Yield,~~

1 Watermaster will follow the hierarchy provided for in the
2 Judgment, Exhibit "H," by first applying the unallocated
3 Agricultural Pool water to compensate the Appropriate Pool
4 members for the reduction in Safe Yield. (Judgment, Exhibit
5 "H," Paragraph 10(a).) If there is unallocated water left,
6 Watermaster will then follow the remainder of the hierarchy
7 and reallocate unallocated Agricultural Pool water next to
8 conversion claims then to supplement Operating Safe Yield
9 without regard to reductions in Safe Yield according to the
10 guidance provided by Peace Agreement I & II and
11 Watermaster's Rules and Regulations as amended. If, after
12 applying the unallocated Agricultural Pool water to
13 compensate the Appropriate Pool members for the
14 reduction in Safe Yield, the actual combined production from
15 the Safe Yield made available to the Agricultural Pool, which
16 includes overlying Agricultural Pool uses combined with land
17 use conversions and the early transfer, exceeds 82,800 in any
18 year, the amount of water available to members of the
19 Appropriate Pool shall be reduced pro rata in proportion to
20 benefits received according to the procedures outlined in the
21 Watermaster Rules and Regulations.

22 (b) This paragraph III.(6) provides no basis to equate land use
23 conversions and Early Transfers. The specific language of the
24 order requires Watermaster to follow the hierarchy in Judgment,
25 Exhibit "H" which does not include, or even mention, Early
26 Transfers. Early transfers were an aspect of Peace I, and the
27 court has interpreted and ordered the hierarchy to require
28 conversion claims to have priority over Early Transfer claims.

- 1 o) **Additionally**, the court rejects and denies the implementation of SYRA
2 ¶5.3 specifically because, as with SYRA ¶5.2, this provision has the
3 same problems of interpretation of the court's 2010 Order Approving
4 Watermaster's Compliance with Condition Subsequent Number Eight
5 and Approving Procedures to be used to Allocate Surplus Agricultural
6 Pool Water in the Event of a Decline in Safe Yield.
- 7 p) Watermaster's erroneous interpretation of the order of priorities is not a
8 basis to continue that erroneous interpretation. If Watermaster has to
9 make a reallocation, then it must do so in order to follow the court's
10 order. A wrong practice can be long-standing, and still be wrong. A
11 wrong practice cannot be a basis of prejudice.
- 12 q) The court rejects any argument that this issue is subject to issue
13 preclusion. The specific issues raised by the oppositions to the motion
14 have not been specifically addressed by the court. They are not barred
15 by laches. The issues have been timely raised within the context of the
16 instant motion, and the court always retains jurisdiction to modify its
17 orders as those orders are drawn to the attention of the court, and the
18 court determines they require modification for the reasons set forth in
19 this order.

20
21 D. Dispute re priority of claims

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

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

27 To the extent that, in any 5 years, any portion of the share of Safe Yield
28 allocated to the Overlying (Agricultural) Pool is not produced, such

1 water shall be available for reallocation to members of the
2 Appropriative Pool as follows:

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

4 (1) to supplement, and the particular year, water available from
5 Operating Safe Yield to compensate for any reduction in the Safe Yield
6 by reason of recalculation thereof after the tenth year of operation
7 hereunder.

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

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

12 Confusion has arisen with respect to the relationship between the Judgment,
13 Exhibit “H,” Paragraph 10 on the one hand, and Watermaster Rules and Regulations
14 ¶6.3(a) on the other. Watermaster Rules and Regulations ¶6.3(a) states as follows:

15 Accounting of Unallocated Agricultural Portion of Safe Yield. In each
16 year, the 82,800 acre-feet being that portion of the Safe Yield Made
17 available to the Agricultural Pool under the Judgment, shall be made
18 available:

19 (i) To the Agricultural Pool to satisfy all demands for overlying
20 Agricultural Pool lands;

21 (ii) To land-use conversions were completed prior to October 1,
22 2000;

23 (iii) To land use conversions that have been completed after October
24 1, 2000; and

25 (iv) To the Early Transfer of 32,800 acre-feet from the Agricultural
26 Pool to the Appropriative Pool in accordance with their pro-rather
27 assigned share of Operating State Yield.

28 The confusion arises because Watermaster Rules and Regulation ¶6.3(a) does

1 not explicitly confirm the priority of allegations set forth in the Judgment and as
2 ordered by the court.

3 Chino has argued that

4 [T]he members of the Appropriative Pool have received the right to
5 participate in annual allocations of the Unproduced Agricultural Pool
6 Water instead of every five years called “Early Transfers” (Paragraph
7 5.3(f-g), Peace Agreement) and the right to an equal priority of Early
8 Transfers with Land Use Conversion Claims, which have a higher
9 priority under the Judgment, in order to maximize the amount of their
10 Early Transfer water to the appropriators do not have Land Use
11 Conversion Claims. (Paragraph 3.1(a)(i) and Attachment “F”, Peace II
12 Agreement). City of Chino’s Opposition Watermaster Motion
13 regarding 2015 Safe Yield Reset Agreement, Amendment of Restated
14 Judgment, Paragraph 6, page 13, lines 19-25.

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

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

20
21 **At this time, the court additionally orders as follows:**

22 A. The order of priorities set forth in the Judgment, Exhibit “H,” Paragraph
23 10 must be followed; and

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

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

- 1 (2) Early Transfer claims were a creation of Peace I;
- 2 (3) Early Transfer claims did not affect the priority of claims set forth in
- 3 the judgment;
- 4 (4) Early Transfer claims were ordered after the judgment and so must
- 5 be considered subordinate to the original terms of the judgment.
- 6 (5) The parties to Peace I made their agreement in the context of the
- 7 judgment and therefore used the Judgment priorities as a basis for additional
- 8 allocations of Ag Pool water.

9

10 **¶ VI. SAFE STORAGE MANAGEMENT MEASURES**

11 A. Through the facilitation and nondisclosure agreement (FANDA) Watermaster
12 attempted to facilitate an agreement among all parties avoid an accelerated
13 cumulative draw on Excess Carry Over stored water in order to avoid undue risks.
14 SYRA had provisions to establish a mechanism for a safe storage reserve of 130,000
15 AF of water in the non-Supplemental Water storage accounts of the members of the
16 Appropriative Pool as a reserve sufficient to protect the Basin. However, the
17 concern for basin protection was balanced with temporary needs in the event of an
18 emergency or to support Desalter Replenishment. Up to 100,000 AF could be
19 accessed in the event of an emergency subject to conditions

- 20 a) The plan which Watermaster attempted to facilitate is identified in
- 21 SYRA as “the safe storage reserve and safe storage management plan”
- 22 or the safe storage management measures (SSMM).
- 23 b) The City of Chino (Chino) has the largest component of Excess Carry-
- 24 Over water and was the most significantly affected party.
- 25 c) Chino refused to agree to SSMM.

26

27 B. The court rejects the adoption of the Safe Storage Management Measures set
28 forth in the SYRA Article 6. The court is not going to set forth the provisions of

1 SYRA Article 6 because the court is rejects the article as a whole.

2
3 C. The court rejects Article 6 of SYRA for the following reasons:

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

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

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

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

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

14 a) Although Watermaster argues that the Safe Storage Management
15 Agreement provisions are still subject to “stakeholder process get to be
16 initiated” (Watermaster’s Reply to Oppositions to Motion regarding
17 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
18 Paragraph 6, page 1, line 18), the court does not approve policy
19 statements and therefore rejects any implementation.

20 6. The Safe Storage Technical Memorandum (Exhibit E to the motion)
21 does not set forth a factual basis for the court to order the parties to proceed with
22 the provisions of Article 6. While the memorandum states that the SSMM will not
23 cause Material Physical Injury or undesirable results, the memorandum does not
24 include that the SSMM are essential to the OBMP.

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

1 7. The court notes that from 2000 to 2014, the short-term actual measured
2 net recharge was less total rights allocated to the judgment Parties by as much as
3 130,000 AF.

4 a) From this the court concludes that during this period from 2000 to
5 2014, after offsets for production, there was recharge to the basin in
6 excess of what water was actually produced by as much as 130,000 AF.

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

9 ~~c) The court finds that Watermaster was not biased in its facilitation for
10 the SYRA.~~

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

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

17
18
19 **VII. The Safe Yield Reset and Ag Pool Water: Recalculation**

20 **A. The court finds that the Safe Yield reset to 135,000 AFY is a**
21 **“recalculation” within the definition of Judgment, Exhibit “H” ¶10.**

22 **1. SYRA used the term “reset” to describe lowering the Safe Yield to**
23 **135,000 AFY.**

24 a) **Now that the court has rejected all of SYRA except the lowering of**
25 **Safe Yield to 135,000 AFY, the court finds that “reset” is a legally**
26 **unjustified and legally incorrect term for describing the lowering the**
27 **Safe Yield to 135,000 AFY. For the reasons stated herein, the court**
28 **finds that lowering the Safe Yield to 135,000 is a recalculation**

1 within the definition of Judgment, Exhibit “H” ¶10(a)(1). For the
2 rest of this order, the court will correctly use the term recalculation
3 for lowering the Safe Yield from 140,000 AFY to 135,000 AFY.

4 b) Wildermuth himself calls it a recalculation. Exhibit 1 to his
5 declaration is entitled Declaration of Mark Wildermuth-2013 Chino
6 Basin Groundwater Model Update and *Recalculation* of Safe Yield
7 Pursuant to all the Peace Agreements. [Emphasis added.]

8 c) The recalculation to 135,000 is pursuant to the “tenth year” of
9 operation evaluation required by the Judgment.

10 d) Watermaster and the City of Ontario argue to the contrary, but the
11 “reset” lowering of Safe Yield fits any ordinary definition of the
12 word “recalculation.”

13 I) The whole point of the SYRA motion, related motions, and series
14 of hearings has been for the court to determine how to integrate
15 the reduction of the Safe Yield from 140,000 AFY to 135,000
16 AFY. The court finds this reduction to be a recalculation of the
17 Safe Yield into the current reality of the Chino Basin.

18 (a) In the context of SYRA, the use of the term “reset” might
19 have made some legal sense. However, now that the court
20 has rejected everything but the reduction, the label “reset”
21 has no basis in fact or law.

22 II) The court cannot find any other way to reconcile these
23 provisions and their interpretations while keeping the ruling
24 consistent with reality. The reduction in Safe Yield is a
25 recalculation, no matter how subtle the attorneys’ arguments
26 are.

27 2. Therefore, the court finds and orders that the first 5,000 AFY of any
28 unproduced Ag Pool water now has a top priority over any other claims, such as

1 conversion claims and early transfers, and that 5,000 AFY of Ag Pool water be
 2 allocated to Operating Safe Yield pursuant to Judgment Exhibit H ¶10(a).

3 a) This 5,000 AFY has top priority because it is part of the Judgment.

4 b) To further illustrate the court's orders, based on the tables in
 5 sections IV.B.5 and V.D.5 above

Example 1-B	Explanation	Comment
Initial Ag Pool allocation	82,800 AFY	Judgment
Subtract 5,000 AFY	- 5,000	Safe Yield recalculation reduction pursuant to Judgment Exhibit H ¶10
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 and reset	44,200 AFY	82,800 acre-feet – 5,000 - 33,600 acre-feet = 44,200 acre-feet

1	Conversion claims	- 2000 acre-feet	Assumption: The subtraction
2			for satisfying conversion claims
3			before any reallocation. (1000
4			acres x 2.0 acre feet of
5			water/one acre converted =
6			2000 acre-feet).
7	Balance:	42,200 AFY	44,200 acre-feet - 2000 acre-
8			feet = 42,200 acre-feet. Ag
9			Pool Water available after
10			conversion priority claims
11			pursuant to Judgment Exhibit
12			"H" Paragraph 10
13	Reduction for Early	- 32,800 AFY	Basic Early Transfer from
14	Transfers		82,800 AFY allocation leaving
15			50,000 AFY for the Ag Pool
16			itself to produce/pump and for
17			additional claims by the
18			Appropriative Pool pursuant to
19			Peace I and Peace II.
20	Balance	9,400 AFY	(42,200 acre-feet -32,800 acre-
21			feet = 14,400 acre-feet. This is
22			the Ag Pool water available for
23			reallocation to Appropriative
24			Pool after subtraction of the
25			recalculation reallocation, the
26			conversion priority claims of
27			2,000 acre-feet from and the
28			32,800 Early Transfer of

		unproduced/unpumped from the allotment of Ag Pool water.
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VIII. Safe Yield Reset and Desalter-Induced Recharge

The court concludes and orders that Desalter-Induced Recharge is only to be applied to offset Desalter production. ~~However, the court also orders that Desalter production is limited to 20,000 AFY for the term of Peace I.~~ The court’s analysis involves going back to the basics of the judgment and the Peace Agreements.

A. The Revised Judgment

1. The Judgment ¶I.4.(x) defines “Safe Yield” as “the long-term average annual quantity of groundwater . . . which can be produced from the Basin under cultural conditions of a particular year without causing an undesirable result.”

2. The Judgment ¶I.4.(1) defines “Operating Safe Yield” as “the annual amount of water which Watermaster shall determine, pursuant to the criteria specified in Exhibit “I”, can be produced from Chino Basin by the Appropriative Pool parties free of replenishment obligation under the Physical Solution herein.

a) Exhibit “I” is the Engineering Appendix which has come to include the definitions of Hydraulic Control, Re-Operation water, and Desalter production.

3. Judgment Exhibit “H” ¶10 Unallocated Safe Yield Water states: “to the extent that, in any five years, any portion of the share of Safe Yield allocated to the Overlying (Agricultural) pool is not produced, such water shall be available for reallocation to members of the appropriative pool, as follows:

1 (a) **Priorities.**-Such allocation shall be made in the following
2 sequence:

3 (1) to supplement, in the particular year, water available
4 from Operating Safe Yield to compensate for any reduction in the
5 Safe Yield by reason of recalculation thereof after the tenth year of
6 operation hereunder.

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

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

11
12 **B. The 2000 Peace Agreement I**

13 **I. Peace I Section I(ee) defines “Operating Safe Yield” as the “annual**
14 **amount of groundwater which Watermaster shall determine, pursuant to criteria**
15 **specified in Exhibit “I” to the judgment, can be produced from Chino Basin by**
16 **the Appropriative Pool free of Replenishment obligation under the Physical**
17 **Solution. Watermaster shall include any New Yield in determining Operating**
18 **Safe Yield.”**

19 **a) This is a modification of the definition of “Operating Safe Yield”**
20 **from the Judgment. In fact, the court notes “IV-Mutual Covenants,**
21 **¶ 4.5 Construction of “Operating Yield” Under the Judgment.**
22 **Exhibit I to the Judgment shall be construed to authorize**
23 **Watermaster to include New Yield as a component of Operating**
24 **Safe Yield.”**

25
26 **C. The 2007 Peace Agreement II**

27 **I. Article VII Yield Accounting, ¶7.1 New Yield Attributable to the**
28 **Desalters states “for the initial term of the Peace Agreement, neither**

1 Watermaster nor the Parties will request that Safe Yield be recalculated in a
2 manner that incorporates New Yield *attributable to the Desalters* into the
3 determination of Safe Yield so that this source of supply will be available for
4 Desalter Production rather than for use by individual parties to the Judgment.”
5 (Emphasis in original.)
6

7 **D. The Safe Yield Recalculation and Desalter-Induced Recharge**

8 ~~1. The legal problem for the court is to reconcile the Judgment, Peace~~
9 ~~I and Peace II with the 20,000 AFY of Desalter Production. The court solves~~
10 ~~this problem as follows.~~

11 2. Watermaster correctly states that that desalter induced recharge
12 can only be used to offset desalter production. From this Watermaster concludes
13 that Safe Yield of 135,000 acre-feet per year must include Desalter-induced
14 recharge. This conclusion is wrong.

15 a) Through many avenues, Watermaster has attempted to include
16 Desalter-Induced Recharge (with the new abbreviation of “DIR”)
17 within the definition of Safe Yield.

18 b) Watermaster has never explicitly offered an explanation of why
19 Watermaster has attempted so diligently to convince the court to
20 include Desalter-Induced Recharge within the definition of Safe
21 Yield.

22 I) The court considers that Watermaster’s explanation might include
23 an argument that if Desalter-Induced Recharge is not included
24 within the definition of Safe Yield, the parties could produce/pump
25 water from Desalters without limit, with the result that water could
26 be drained from the Santa Ana River without limit. That result
27 would be not only detrimental to the hydrology of the entire region,
28 but also legally unjustified.

1 c) In its latest argument, Watermaster has offered to “sequester” the
2 portion of Safe Yield attributable to Desalter-Induced Recharge.

3 I) The court does not accept this characterization of Desalter
4 production/pumping allocation because it is simply a
5 characterization of an accounting.

6 II) The “sequestration” has no basis in the CAMA’s and adds a new,
7 vague, undefined term to an already complicated structure of
8 accounting.

9 III) Watermaster argues “that Desalter-Induced Recharge is an
10 inflow to the Basin and therefore a component of Safe Yield.”

11 (a) The court rejects this argument because it contradicts the
12 requirement of Peace II that for the initial term of the Peace
13 Agreement, Safe Yield will not be recalculated to include New
14 Yield attributable to the Desalters.

15 (b) Desalter-Induced Recharge is the source of (and offset to)
16 New Yield attributable to the Desalters. That New Yield cannot
17 be included in Safe Yield. So, so under Peace II, Safe Yield also
18 does not include Desalter-Induced Recharge. (Peace I ¶
19 1.1(aa)-definition of New Yield; Peace I ¶7.5-Replenishment
20 Water; Peace II ¶6.2-Peace II Desalter Production Offsets.)

21 IV) The Responding AP Members argue that the court can only
22 be consistent in its orders if the court resets the Safe Yield to
23 115,000 AFY. The court also rejects this argument for the
24 following reasons.

25 (a) Using Watermaster's own proposal, the court recognizes that
26 there is some logic to the position of the Responding AP
27 Members because 1) if the 20,000 AFY is “sequestered” that it is
28 not available for production/pumping without a replenishment

1 obligation and 2) then the reality is the safe yield should be
2 135,000 AFY - 20,000 AFY for a net of 115,000 AFY.

3 (b) However, the court concludes that the structure set up by the
4 Judgment, Peace I, and Peace II require that there be separate
5 analyses for Safe Yield and New Yield attributable to the
6 Desalters.

7 (i) The analysis for Safe Yield is illustrated in this order Sec.
8 VII.5.a above.

9 (ii) The analysis for Desalter-Induced Recharge and New
10 Yield attributable to the Desalters is described in Peace I and
11 Peace II and the further order as set forth herein.

12 (iii) Watermaster has been accounting for these analyses
13 since 2007, so it should not be a problem for Watermaster to
14 continue to do so.

15 (c) The Responding AP Members also argues that the technical
16 reports show that the basin can safely only sustain 135,000 AFY.

17 (d) However, in Exhibit 1 to the Declaration of Mark
18 Wildermuth - 2013 Chino Basin Groundwater Model Update and
19 Recalculation of Safe Yield Pursuant to Peace Agreements,
20 section 1.2.3, "the updated Watermaster Model was used to
21 estimate Santa Ana River Underflow New Yield (SARUNY) from
22 the desalters and reoperation from both the calibration and
23 planning periods. SARUNY means the same thing as that term
24 *Desalter Induced Recharge* as used in the 2015 Safe Yield
25 Reset Agreement." This definition is repeated in section 7.3.7.

26 (e) The Wildermuth declaration filed March 10, 2017, with the
27 Chino Basin Watermaster Response to February 22, 2017 Order
28 section 7.3.7 which states:

1 (i) “The net Santa Ana River recharge in the fiscal year spending
2 July 1999 through June 2000 [one year] is the baseline from
3 which to measure SARUNY, which was estimated to be
4 -2,153 acre-ft/yr, indicating that the Chino Basin discharged
5 to the Santa Ana River more water than was recharged by the
6 River into the Basin. . . . Table 7-10 compares Chino Desalter
7 production and SARUNY over the period of July 2000
8 through July 2030. . . . The effect of ‘s the Chino Desalters
9 and reoperation becomes clear in 2005 when SARUNY
10 reaches about 50 percent of CDA production. The New Yield
11 results from the implementation of the Chino Desalters is
12 consistent with the planning estimates that were assumed
13 during the development of the Peace Agreements.

14 (f) Table 7-10 shows that starting in 2017, the ratio of new yield to
15 CDA production is about an average of 45 percent, meaning that
16 New Yield Desalter-Induced Recharge those years is about 45%
17 of the Desalter production.

18 (g) From these facts the court concludes that the Wildermuth
19 Safe Yield reset/recalculation has taken into account the
20 Desalter-Induced Recharge and production, so there is no need
21 to reduce the Safe Yield two 115,000 AFY as argued by the
22 Responding AP Members.

23 (h) The Peace Agreement offsets for new yield production
24 attributable to the Desalters are an accounting requirement
25 process, not a feature of determination of Safe Yield.

26 (i) The court also concludes that the reset/recalculation has
27 included the contractual features of the Peace Agreements, and
28 one of those features is that Safe Yield not be recalculated to

1 incorporate New Yield attributable to the Desalters. Wildermuth
2 has considered this feature.

3 (j) Again, therefore the safe yield of 135,000 AFY does not include
4 New Yield attributable to the Desalters.

5 3. The court still concludes for the term of Peace I (*i.e.*, until 2030),
6 Safe Yield not be recalculated in a manner that incorporates New Yield
7 attributable to the Desalters into the determination of Safe Yield.

- 8 a) The 20,000 AFY of Desalter-Induced Recharge is not included with
9 the definition of Safe Yield for the term of the Peace Agreements.
10 To rule otherwise would contradict the Peace Agreements.
- 11 b) The court analogizes its ruling to the controlled overdraft allowed to
12 achieve hydraulic control. That aspect of production/pumping was
13 not allocated to Safe Yield. The court orders that Desalter-Induced
14 Recharge New Yield remain unallocated to Safe Yield.
- 15 c) The court does not address the City of Chino's briefing regarding the
16 Safe Yield Implementation Replenishment Accounting Illustration
17 (Per Peace II agreement, Section 6.2 (PIIA, 6.2) and June 11, 2015
18 Key Principles) Watermaster motion filed October 23, 2015, Exhibit
19 "F" Attachment 2 for the following reasons:

- 20 I) Chino asks if the Column G – Desalter-Induced Recharge
21 replenishment water was coming from Desalter production.
- 22 II) Footnote 4 for this Column G states that “the desalter-induced
23 recharge projection in the table is now shown at 50% of the annual
24 total desalter production for years 2015 through 2030. Desalter -
25 induced recharge from 2001 to 2014 (187,000 acre-feet) will be
26 deemed Safe Yield and not available to offset Desalter production.”
- 27 III) As part of its order that SYRA cannot be implemented, the
28 court rejects the Safe Yield Reset Implementation Desalter

1 **Replenishment Accounting Illustration.**

2 **IV) The City of Ontario has argued that Desalter Induced**
3 **Recharge to offset Desalter production should be “backfilled” from**
4 **Safe Yield. The court rejects this argument for the following**
5 **reasons:**

6 **(a) This is merely a characterization of what SYRA proposed to**
7 **do, and, for the reasons already stated, the court has rejected**
8 **SYRA except for the Safe Yield recalculation.**

9 **(b) The Judgment, the Peace Agreements, and the CAMA’s do**
10 **not support this accounting, again for the reasons already stated.**

11 **(c) Again, for the reasons stated herein, the court rejects that**
12 **Ontario’s argument that a Safe Yield recalculation to 135,000**
13 **AFY is not a “Safe Yield recalculation.” The argument has no**
14 **merit and is completely unpersuasive.**

15 **(d) The court finds that the definitions of Safe Yield and New**
16 **Yield are sufficiently set forth in the Judgment, Peace I and**
17 **Peace II.**

18 **(i) Watermaster does not point to any specific conflict between**
19 **the court’s current/instant order and the court’s order**
20 **implementing Watermaster Resolution 07-05, and the court**
21 **finds none.**

22 **(ii) The court reaffirms the definitions of Peace II which**
23 **have been in effect for 10 years, and of course the definitions**
24 **of the Judgement and Peace I.**

25 **(iii) The court finds no basis for Watermaster's attempt to**
26 **define Desalter-Induced Recharge into directly, indirectly,**
27 **Safe Yield or by a “sequester.”**

28 **(iv) In reaffirming the definitions of the Judgment, Peace I,**

1 and Peace II, the court of course also notes the definition of
2 “Safe Yield” in the Judgment ¶I.1(x) inclusive of
3 “undesirable result,” and the “Material Physical Injury” of
4 Peace I ¶I.1 (y).

5 V) The court finds and orders that Desalter production is not Safe Yield
6 and Desalter production is to be offset only as provided in Peace II.
7

8 **IX. Additional Bases for Rulings**

9 A. The court has refused to implement the sections of SYRA identified above for
10 the reasons set forth above. In the court’s view, those reasons are sufficient under
11 the law. Therefore, the court has not addressed other objections raised by the
12 parties, such as those of the City of Chino, that Watermaster has failed to prove a
13 change in circumstances, that Watermaster has improperly advocated for certain
14 parties, that the parties are collaterally estopped from re-litigating the parties’ rights,
15 that the parties are equitably estopped from reducing their replenishment obligations,
16 that SYRA fails to comply with CEQA, that SYRA provisions resulted in an unlawful
17 taking of Chino’s property.
18

19 B. Although the court understands the necessity of accounting for Desalter
20 induced recharge from the Santa Ana River, the court does not find a basis in the
21 law, the Judgment, or the Court Approved Management Agreements for
22 simultaneously reducing Safe Yield and adding unproduced/unpumped Ag Pool
23 water to account for Desalter induced recharge.

24 1. ~~The court encourages the parties and Watermaster to continue efforts~~
25 ~~to come to an agreement on the allocation of Desalter induced recharge.~~

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

28 1. Watermaster argues that the court should approve SYRA because it is

1 only a confirmation of “interpretation of the manner in which Watermaster should
2 comply with the provisions of the Court Approved Management Agreements.
3 (Watermaster’s Reply to Oppositions to Motion regarding 2015 Safe Yield Reset
4 Agreement, Amendment of Restated Judgment, Paragraph 6, page 10, line 26.)

5 a) The court does not accept this argument. The court interprets SYRA as
6 an attempt for a major qualitative revision of the Court Approved
7 Management Agreements, but the Court Approved Management
8 Agreements do not support the SYRA revision for the reasons stated
9 herein.

10 2. The court finds that the rulings herein will not cause material physical
11 injury or an undesirable result.

12 a) Although many parties have approved SYRA, parties’ approval or
13 disapproval of SYRA is not a legal basis for the court to enforce SYRA.
14 The court must look to the previous agreements of the parties, the
15 previous court orders, the Court Approved Management Agreements,
16 the Judgment, and the California Constitution.

17
18 Date: _____
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22 Judge Stanford E. Reichert
23 San Bernardino County Superior Court
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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 No. RCV 51010 [Additional/Final Revised Proposed] ORDERS for Watermaster’s Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgement, Paragraph 6 Date: April 28, 2017 Time: 1:30 PM Department: S35
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Watermaster’s Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, joined by The Chino Basin Overlying (Agricultural) Pool Committee and The Inland Empire Utilities Agency (“IEUA”) and opposed by Jurupa Community Services District (“JCSD”) and the City of Chino (“Chino”) is granted in part and denied in part for the reasons set forth herein. The court grants the motion with respect to amending the restated judgment to reset the Safe Yield of the basin to 135,000 AFY.

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

1 water as set forth herein.

2 Additionally, the court orders that the Safe Yield reset to 135,000 AFY is an
3 event that requires a “recalculation” with the definition of Judgment, Exhibit “H”
4 ¶10.

6 **REQUEST FOR JUDICIAL NOTICE**

7 The court grants requests for judicial notice of JCSD as follows:

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

22 **JOINDERS AND FILINGS**

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

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

28 Rulings in separate document.

1 2. City of Chino's objections to declaration of Wildermuth submitted with
2 Watermaster's Motion regarding 2015 Safe Yield Reset Agreement, Amendment of
3 Restated Judgment, Paragraph 6

4 Rulings in separate document.

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

- 6 1. Overlying (Agricultural) Pool
7 2. Inland Empire Utilities Agency

8 C. Oppositions to Watermaster's motion

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

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

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

- 1 2. Supplemental declaration of Wildermuth
- 2 a) City of Chino's objections to Wildermuth supplemental declaration in
- 3 support of Watermaster's reply to Chino opposition.
- 4 b) Watermaster's Response to City of Chino's objections to supplemental
- 5 declaration of Mark Wildermuth in support of Watermaster's reply to
- 6 Chino's Opposition to Motion regarding 2015 Safe Yield Reset
- 7 Agreement, Amendment of Restated Judgment, Paragraph 6.
- 8 I) Motion to strike denied. The court finds that the declaration did not
- 9 raise new issues.
- 10 II) All objections overruled.
- 11 3. Declaration of Danielle Maurizio, assistant general manager of Chino
- 12 Basin
- 13 a) City of Chino's objections to supplemental declaration of Danielle D.
- 14 Maurizio in support of Watermaster's reply to chino opposition
- 15 b) Watermaster's Response to City of Chino's objections to supplemental
- 16 declaration of Danielle E. Maurizio in support of Watermaster's reply to
- 17 Chino's Opposition to Motion regarding 2015 Safe Yield Reset
- 18 Agreement, Amendment of Restated Judgment, Paragraph 6
- 19 I) Motion to strike denied. The court finds that the declaration did not
- 20 raise new issues.
- 21 II) All objections overruled.
- 22 4. Joinders in Watermaster's reply to oppositions
- 23 a) Overlying (Agricultural) Pool
- 24 b) City of Pomona and (in one pleading document)
- 25 I) City of Upland
- 26 II) Monte Vista Water District
- 27 III) Cucamonga Valley Water District
- 28 IV) Fontana Union Water Company

1 E. In an order Dated March 22, 2016, the court served the parties with questions
2 and a request for further briefing in response to the questions. The responses were
3 as follows:

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

16 F. At the hearing on February 22, 2017, the court ordered that the parties may
17 file questions regarding the court's tentative draft order, and the court set a briefing
18 schedule. In response, the court received the following:

- 19 1. Filed March 10, 2017-Chino Basin Watermaster response to February
20 22, 2017 order
- 21 2. Filed March 10, 2017-City of Chino's response to issue in section II of
22 Judge Reichert's revised proposed order re SYRA
- 23 3. Filed March 10, 2017-Responding AP members (Monte Vista Water
24 District, Cucamonga Valley Water District, City of Pomona, and City of Upland)
25 filed March 10, 2017
- 26 4. Filed March 24, 2017-Chino Basin Watermaster further response to
27 February 22, 2017 order
- 28 5. Filed March 24, 2017-City of Chino's response to court authorized

1 further briefing re revised tentative order re Watermaster's motion re 2015 Safe Yield
2 reset Agreement

3 6. Filed March 24, 2017-City of Chino's response to Chino Basin
4 Watermaster's response to February 22, 2017 order

5 7. Filed March 24, 2017-City of Ontario's response regarding issue for
6 further briefing

7 8. Filed March 24, 2017-Jurupa Community Services District opposition
8 to Monte Vista Water District's response to court's February 22, 2017 order re SYRA
9 and response to questions [joins in the opposition filed by the City of Ontario]

10 9. Filed March 24, 2017-Responding AP members response to both
11 Watermaster and City of Chino's further briefing re revised tentative order re
12 Watermaster's motion re 2015 Safe Yield Reset Agreement

13 10. Filed April 4, 2017-errata to City of Chino's response to Chino Basin
14 Watermaster's response to February 22, 2017 order

15 11. Filed April 7, 2017-Chino Basin Watermaster further response to
16 February 22, 2017 order

17 12. Filed April 7, 2017-City of Chino's reply to responses of Watermaster,
18 4AP Members, Ontario and Jurupa

19 13. Filed April 7, 2017-Jurupa Community Services District's limited reply
20 to City of Chino's response to Chino Basin Watermaster's response to February 22,
21 2017 order, dated March 24, 2017

22 14. Filed April 7, 2017-Responding AP Members reply to opposition briefs
23 re revised tentative order re Watermaster's motion re 2015 Safe Yield Reset
24 Agreement

25 15. Filed April 27, 2017, request by Chino basin desalter authority member
26 agencies regarding desalter pumping

27

28

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

2 After extensive briefing and consideration, on September 23, 2016, the court
3 held a hearing on the 2015 SYRA and related motions. Before the hearing, the court
4 had issued a lengthy (over 60 pages) proposed order. At the hearing on September
5 23, there was extensive oral argument, and the court concluded that some aspects of
6 the court’s proposed order were confusing or erroneous. Therefore, the ordered that
7 there be even further briefing, and the court ordered additional briefing through
8 questions by the parties about the proposed order. In its order entitled “Revised
9 Proposed Order Re SYRA in Response to Questions: Issues for Further Briefing,”
10 and the current order, the court addressed the parties’ questions.

11
12
13 **I. INTRODUCTION, DEFINITIONS, BACKGROUND**

14 A. The 1978 judgment in *Chino Basin Municipal Water District v. City of Chino* (San
15 Bernardino Superior Court Case No. 51010) set the Safe Yield of the Chino Basin at
16 140,000 acre-feet per year (AFY), but reserved continuing jurisdiction to the court to
17 amend the Judgment, inter alia, to redetermine the Safe Yield after the first 10 years
18 of operation of the Physical Solution established under the Judgment. The Physical
19 Solution identified three groups of parties (Pools) with water interests in the Chino
20 Basin, and set forth their allocations as follows:

21

Pool	Allocation	Acre-feet Yearly Allocation
22 23 24 25 26 27 28 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)	7,366 acre-feet	7,366

1	Pool**		
2	Appropriative	49,834 acre-feet	49,834
3	Pool***		
4		Yearly total allocation	140,000

5 *The members of this pool included dairy farms.

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

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

10 Over the course of the Court-Approved Management Agreements (set forth in
11 the next section), the court allowed up to 600,000 AF of water to be
12 produced/pumped out of the Chino Basin without any replenishment obligation.
13 “While the parties are not limited in the quantities of water they may produce, the
14 Judgment requires that beyond the permitted Controlled Overdraft comprising an
15 initial 200,000 AF and an additional 400,000 AF of Re-operation water (Restated
16 Judgment, Exhibit “I”, ¶¶ 2.(b), 3.(a)), there must be a bucket for bucket
17 replenishment [and associated cost to the producer/pumper] to offset production in
18 excess of the Basin’s Safe Yield. (Restated Judgment, ¶¶ 13, 42).” (Watermaster’s
19 Response to Questions for Clarification in Final Orders for Watermaster’s Motion
20 Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
21 Paragraph 6, page 2, line 23 to page 3, line 4, filed October 28, 2016.)

22 The court notes that this total “controlled overdraft” i.e., pumping without
23 replenishment cost, (aka “Re-Operation Water”) of 600,000 AF has just about been
24 exhausted.

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

27
28 B. Since the entry of the judgment, the court has previously approved agreements to

1 implement the Physical Solution (“Court Approved Management Agreements” aka
2 “CAMA”). There is no dispute that the court has the authority and duty to
3 independently review the evidence de novo and determine whether proposals by
4 Watermaster or any party comply with the Judgment and the Court Approved
5 Management Agreements. (Restated Judgment ¶31(d).) The Court Approved
6 Management Agreements are:

7 1. The Chino Basin Peace Agreement (Peace I Agreement), dated June 29,
8 2000, as subsequently amended in September 2004 and December 2007.

- 9 a. In 2000 the parties executed Peace Agreement Chino Basin (Peace I
10 Agreement) and agreed to Watermaster’s adoption of the Optimum
11 Basin Management Plan (OBMP) Implementation Plan. At about the
12 same time, the court ordered Watermaster to proceed in a manner
13 consistent with Peace I and the OBMP, including Program Element 8
14 (Develop and Implement Groundwater Storage Management Program)
15 and Program Element 9 (Develop and Implement Storage and
16 Recovery Programs). The implementation plan acknowledged the need
17 to obtain better production data through the metering of non-exempt
18 production within the Basin. Program Elements 8 and 9 provided for
19 Watermaster to redetermine and reset the Basin’s Safe Yield in the year
20 2010/11. The basis of the redetermination and reset would be
21 production data derived from the collection of additional data regarding
22 the parties’ production (i.e., parties who pumped water out of the Basin)
23 within the basin during the 10-year period 2000/01 through 2009/10.
24 The study for redetermination and reset was not completed until 2015,
25 and the motion regarding determination and reset was not filed until
26 October 2015.
- 27 b. The Peace I Agreement introduced the installation of Desalters in the
28 southwest portion of the Basin. The Desalters pump ground water

1 from the aquifer and supply that water to water companies and other
2 users. By pumping water out of the aquifer, the Desalters also lowered
3 the ground water table to help obtain Hydrologic Control, i.e.,
4 preventing Chino Basin ground water from reaching the Santa Ana
5 River south of the Basin. The Santa Ana River is a major source of
6 water for Orange County, and water impurities and contaminants, some
7 of which came from the Chino Basin dairy farms (“salts”) were in the
8 groundwater flowing from the Basin into the Santa Ana River. The
9 Desalter capacity has now expanded to 40 MGD (40 million gallons per
10 day) as provided in the OBMP Implementation Plan to protect against a
11 decline in Safe Yield and for water quality benefits, but the court
12 reserved the question of how “Future Desalter” capacity would be
13 addressed. The Chino Basin Desalter Authority (CDA), which includes
14 the City of Chino, participated in the construction of the Desalters
15 which represented a substantial engineering and financial undertaking.
16 These Desalters were completed and fully operational in 2006.

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

- 18 a. In 2007, the parties entered into the Peace II Agreement. The objective
19 was to increase the Desalter capacity to 40 MGD to achieve the OBMP
20 Implementation Plan objectives. In order to do this, the parties
21 designed and financed an additional 10 million gallons per day (MGD)
22 of expanded Desalter capacity. The expansion of the Desalters to the
23 full plant capacity will be completed in 2017. With the completion of
24 this construction, Hydraulic Control will be achieved. Hydraulic
25 Control now means only a de minimus amount of groundwater will
26 flow from the Chino Basin south into the Santa Ana River. In fact, the
27 Desalters now have lowered the water table in the south end of the
28 Basin so that ground water is now flowing from the Santa Ana River

1 north into the Chino Basin. ~~This is called Re-Operation water.~~

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

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

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

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

10 7. Watermaster Resolution 2010-04 ("Resolution of the Chino Basin
11 Watermaster regarding Implementation of the Peace II Agreement and the Phase III
12 Desalter Expansion in Accordance with the December 21, 2007 Order of the San
13 Bernardino Superior Court").

14
15 C. Additional background for motion

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

19 2. Through a Facilitation and Non-Disclosure Agreement (FANDA),
20 Watermaster attempted to obtain agreement as to all issues regarding Safe Yield
21 redetermination and reset allocation. Those issues included not only a reset of the
22 Safe Yield from 140,000 acre-feet per year to 135,000 acre-feet per year, but also
23 Watermaster's accounting for reallocations related to Court Approved Management
24 Agreements, and a method of allocations for water storage called the Safe Storage
25 Management Agreements.

26 a) The FANDA process took place starting in November 2014, and
27 through at least 30 meetings, by May 27, 2015, all but one of the then-
28 active parties to the FANDA reached a non-binding agreement among

1 their negotiating representatives on certain key principles (apparently
2 also called the “term sheet”) embodied in the Safe Yield Summary of
3 Non-Binding Key Principles Derived from the Facilitated Process.

- 4 b) The parties continued to negotiate, with a goal of reducing the Key
5 Principles into a binding instrument for execution by September 1,
6 2015. That agreement is identified as the 2015 Safe Yield Reset
7 Agreement (SYRA). The Appropriative Pool, the Overlying
8 (Agricultural) Pool, and the Three Valleys Municipal Water District
9 approved the 22-page agreement, as did many other parties. The City
10 of Chino refused to sign the agreement.
- 11 c) On September 24, 2015, the board at its regular meeting adopted
12 resolution 2015-06, and previously – on September 17, 2015 – the
13 advisory committee approved resolution 2015-06: “Resolution of Chino
14 Basin Watermaster regarding 2015 Safe Yield Reset Agreement
15 (SYRA).”
- 16 d) Watermaster’s instant motion asks the court to address the issues
17 covered in the SYRA as follows:
- 18 I) The reset of the Basin Safe Yield from 140,000 acre-fee per year (AFY)
19 to 135,000 AFY pursuant to the Restated Judgment, the OBMP
20 Implementation Plan, and Watermaster’s Rules and Regulations;
- 21 II) The manner in which Watermaster should account for various
22 components of the recharge to the Basin implementing the Court-
23 Approved Management Agreements; and
- 24 III) Establishment of Safe Storage Management Measures (SSMM)
25 intended to ensure that withdrawals of groundwater from authorized
26 storage accounts within the Basin are safe, sustainable, and will not
27 cause Material Physical Injury or undesirable results.
- 28

1 D. SUMMARY RULINGS:

2 In its motion, Watermaster requests an order acknowledging the 2015 Safe
3 Yield Reset Agreement and ordering Watermaster to proceed in accordance with its
4 terms with respect to amending the restated judgment to reset the Safe Yield of the
5 Basin from 135,000 AFY to 135,000 AFY and amending the schedule for access to
6 Re-Operation water. For the reasons set forth herein, the court grants the motion
7 with respect to amending the restated judgment to reset the Safe Yield of the basin to
8 135,000 AFY. However, the court denies the rest of the motions including the motions
9 to amend the schedule for access to Re-operation water and the motion to institute
10 Safe Storage Management Measures. The court makes additional orders with respect
11 to Desalter water as set forth herein.

12
13 **II. Severability of SYRA**

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

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

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

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

1 2. Watermaster further argues that approving “some, but not all, of
2 SYRA’s provisions can materially advantage one party over another, in that the full
3 benefit of the parties intended settlement and compromise is not achieved, as one or
4 more parties may be denied the consideration for which it bargained.”

5 a) For the reasons set forth below, the court refuses to adopt SYRA in
6 whole. Following Watermaster’s own all-or-nothing argument, the
7 court must conclude that not only is there no legal basis to enforce part
8 of SYRA, but also that it is fundamentally unfair to the parties to
9 enforce portions of SYRA for which the parties did not bargain.

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

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

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

17 I) There ample technical and scientific support for the reset in the
18 Technical Memorandum and the 2013 Chino Basin Groundwater
19 Model Update and Recalculation of Safe Yield Pursant to the Peace
20 Agreement prepared by Wildermuth Environmental, Inc. dated
21 October 2015.

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

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

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

27 III) The safe yield reset is a legal determination for the court. There
28 is no “bargained-for exchange” for the court to consider.

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

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

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

23
24 4.3 Interim Correction. In addition to the scheduled reset set forth in Paragraph
25 4.2 above, the Safe Yield may be reset in the event that, with the recommendation
26 and advice of the Pools and Advisory Committee and in the exercise of prudent
27 management discretion described in Paragraph 4.5(c), below, Watermaster
28 recommends to the court that the Safe Yield must be changed by an amount greater

1 (more or less) than 2.5% of the then-effective Safe Yield.

2
3 4.4 Safe Yield Reset Methodology. The Safe Yield has been reset effective July 1,
4 2010 and shall be subsequently evaluated pursuant to the methodology set forth in
5 the Reset Technical Memorandum. The reset will rely upon long-term hydrology and
6 will include data from 1921 to the date of the reset evaluation. The long-term
7 hydrology will be continuously expanded to account for new data from each year,
8 through July 2030, as it becomes available. This methodology will thereby account
9 for short-term climatic variations, wet and dry. Based on the best information
10 practicably available to Watermaster, the Reset Technical Memorandum sets forth a
11 prudent and reasonable professional methodology to evaluate the then prevailing
12 Safe Yield in a manner consistent with the Judgment, the Peace Agreements, and the
13 OBMP Implementation Plan. In furtherance of the goal of maximizing the
14 beneficial use of the waters of the Chino Basin, Watermaster, with the
15 recommendation and advice of the Pools and Advisory Committee, may supplement
16 the Reset Technical Memorandum's methodology to incorporate future advances in
17 best management practices and hydrologic science as they evolve over the term of
18 this order.

19
20 4.5 Annual Data Collection and Evaluation. In support of its obligations to
21 undertake the reset in accordance with the Reset Technical Memorandum and this
22 order, Watermaster shall annually undertake the following actions:

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

26 (b) Collect data concerning cultural conditions annually with cultural
27 conditions including, but not limited to, land use, water use practices, production,
28 and facilities for the production, generation, storage, recharge, treatment, or

1 transmission of water;

2 (c) Evaluate the potential need for prudent management discretion to avoid
3 or mitigate undesirable results including, but not limited to, subsidence, water quality
4 degradation, and unreasonable pump lifts. Where the evaluation of available data
5 suggests that there has been or will be a material change from existing and projected
6 conditions or threatened undesirable results, then a more significant evaluation,
7 including modeling, as described in the Reset Technical Memorandum, will be
8 undertaken; and,

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

14
15 4.6 Modeling. Watermaster shall cause the Basin Model to be updated and a
16 model evaluation of Safe Yield, in a manner consistent with the Reset Technical
17 Memorandum, to be initiated no later than January 1, 2024, in order to ensure that
18 the same may be completed by June 30, 2025.

19
20 4.7 Peer Review. The Pools shall be provided with reasonable opportunity, no
21 less frequently than annually, for peer review of the collection of data and the
22 application of the data collected in regard to the activities described in Paragraphs
23 4.4, 4.5, and 4.6 above.

24
25 4.8 No Retroactive Accounting. Notwithstanding that the initial Safe Yield reset,
26 described in Paragraph 4.1 above, shall be effective as of July 1, 2010, Watermaster
27 will not, in any manner, including through the approval of its Assessment Packages,
28 seek to change prior accounting of the prior allocation of Safe Yield and Operating

1 Safe Yield among the Parties to the Judgment for production years prior to July 1,
2 2014.

3
4
5 **III. THE COURT FURTHER ORDERS AS FOLLOWS:**

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

8 1. The court accepts the findings and conclusions of Wildermuth for the
9 following reasons. Those conclusions are set forth in the reset Technical
10 Memorandum.

11 a) Wildermuth has been the authoritative resource for the parties and the
12 court during the pendency of the case for the last 15 years.

13 b) Wildermuth has performed a detailed analysis with substantiated facts
14 and findings in the reset technical memorandum, the supplemental
15 declaration of Mark Wildermuth in support of Watermaster's reply to
16 oppositions to the motion regarding 2015 Safe Yield Reset Agreement,
17 and the memo to restated judgment, paragraph 6 aka Wildermuth
18 supplemental declaration.

19 c) The court accepts the net recharge approach and calculations set forth
20 in the Wildermuth report.

21 d) The Wildermuth report gives the most comprehensive analysis and
22 credible evaluation of the historic condition of the Basin.

23 e) The court does not accept the conclusions of Robert Shibatani for the
24 following reasons:

25 I) Shibatani recognizes that the net recharge calculation is a legitimate
26 approach to a determination of Safe Yield.

27 II) The Shibatani approach is unnecessarily quantitative. The Wildermuth
28 analysis allows for the definitions required for the analysis of the Chino

1 Basin, including cultural conditions and undesirable results.

2 III) Wildermuth has considered the effects of climate change of
3 Basin precipitation. The court accepts Wildermuth's conclusion that
4 there are not any better predictive modeling scenarios generally available
5 at this time accurately calibrated to the historical rainfall and are
6 therefore not reliable as a predictive tool.

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

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

13 4. The reduction safe yield is consistent with the Court-Approved
14 Management Agreements.

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

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

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

28 I) Although the court concludes the Safe Storage Management Measures

1 are useful and advisable, the court concludes there is no specific factual
2 basis requiring the Safe Yield reset to include Safe Storage Management
3 Measures. Therefore the court concludes that even without the Safe
4 Storage Management Measures, reduction of Safe Yield to 135,000 AFY
5 will not harm the Basin.

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

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

15 I) However, again Wildermuth does not specifically address the necessity
16 of the Safe Storage Measures with respect to complying with the Court
17 Approved Management Agreements. Therefore, the court again
18 concludes that even without the Safe Storage Management Measures,
19 reduction of Safe Yield to 135,000 AFY will not harm the Basin.

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

23 d) Therefore, the court concludes that the extraction of 135,000 AFY is
24 consistent with the Court Approved Management Agreements and does
25 not create any undesirable result or Material Physical Injury to the Basin.
26

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

1
2 C. Paragraph 6 of the Restated Judgment is hereby amended to read as follows:

3 “Safe Yield. The Safe Yield of the Basin is 135,000 acre feet per year.”

4 1. The effective date of this amendment of Paragraph 6 of the Restated
5 Judgement is July 1, 2010.
6
7

8 **IV. SAFE YIELD RESET AGREEMENT (SYRA): WATERMASTER**
9 **ALLOCATION HISTORY, EARLY TRANSFERS, AND THE**
10 **DESALTERS**

11 A. The 1978 Judgment as amended

12 1. The 1978 Judgment ¶44 made the following allocation of rights to Safe
13 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

14
15
16
17
18
19
20
21 *Note: $414,000 \div 5 = 82,800$. 82,800 acre-feet per year has been the basis of
22 calculations for the Appropriative Pool going forward from the judgment.

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

28 2. The Judgment ¶1(x) defines Safe Yield as “the long-term average annual

1 quantity of groundwater (excluding replenishment or stored water but including
2 return flow to the basin from use of replenishment or stored water) which can be
3 produced [*i.e.*, pumped] from the basin under cultural conditions of the particular
4 year without causing an undesirable result.”

5 3. The judgment fixed the amount of water production (pumping) that
6 could be allocated to the Overlying (Agricultural) Pool and the Overlying (Non-
7 agricultural) Pool. However, the Appropriative Pool allocation could be changed.

8 a) The court concludes that the disputes in the oppositions concern
9 relationship between unproduced (*i.e.*, unpumped) Overlying
10 Agricultural Pool water (aka Ag Pool water) and the water available to
11 the Appropriative Pool.

12 4. Exhibit “T” to the judgment is the Engineering Appendix. It discusses
13 Hydraulic Control and Re-Operation, which are described in more detail below.

14 Section 3 defines Operating Safe Yield as consisting in any “year of the
15 Appropriative Pool’s share of Safe Yield of the Basin, plus any controlled overdraft
16 of the Basin which Watermaster may authorize.”

17 a) Section 3(b) states that “in no event shall Operating Safe Yield in any
18 year be less than the Appropriative Pool’s share of Safe Yield, nor shall
19 it exceed such share of Safe Yield by more than 10,000 acre feet. The
20 initial Operating Safe Yield is hereby set at 54,834 acre feet per year.”

21 I) The figure of 54,834 acre feet per year is the initial 1978 Judgment
22 allocation of 49,834 acre-feet per year plus 5,000 acre feet per year. The
23 additional 5,000 AFY comes from 200,000 acre-feet of overdraft (water
24 pumped without a replenishment obligation) allocated by the Judgment
25 to the Appropriative Pool. This overdraft total was later increased by
26 400,000 AF to a total of 600,000 AF. The overdraft will be exhausted
27 in 2016/2017. (Watermaster Motion Regarding 2015 Safe Yield Reset
28 Agreement, Amendment of Restated Judgement, Paragraph 6, page 3,

1 line 27.)

2 b) Operating Safe Yield has also come to mean water that the
3 Appropriative Pool could produce/pump without having to purchase
4 replenishment water. (Exhibit “H” ¶5.)

5 5. Exhibit “H” to the judgment described the Appropriative Pool Pooling
6 Plan, paragraph 10 described “Unallocated Safe Yield Water” as follows: “to the
7 extent that, in any 5 years, any portion of the share of Safe Yield allocated to the
8 Overlying (Agricultural) Pool is not produced, such water shall be available for
9 reallocation to members of the Appropriative Pool as follows:

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

11 (1) to supplement, in the particular year, water available from Operating Safe
12 Yield to compensate for any reduction in the Safe Yield by reason of
13 recalculation thereof after the tenth year of operation hereunder. [This
14 Exhibit H ¶10(a)(1) priority is sometimes called ‘unproduced Agricultural Pool
15 water’ or ‘unproduced Ag Pool water.’ The current credited production
16 (pumping) for agricultural groundwater is about 33,600 AFY, but that includes
17 agricultural land irrigated with reclaimed water. The actual groundwater
18 production for agricultural purposes is about 22,000 AFY. (Jurupa Services
19 District’s response to Judge Reichert’s Request for Clarification, March 22,
20 2016, page 2, lines 8–10.)]

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

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

24 6. In an order dated November 17, 1995, Conversion Claims were defined
25 in Exhibit “H” ¶10(b) [this is the Subparagraph (b) to which the preceding
26 paragraph--page 23, line 21--refers]. Peace I modified this definition in Exhibit “H”
27 ¶10(b) to state as follows:

28 (b) Conversion Claims. The following procedures may be utilized by any

1 appropriator:

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

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

17 (3) Allocation of Safe Yield Rights

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

24 (ii) In any year in which the unallocated Safe Yield water from the Overlying
25 (Agricultural) Pool is not sufficient to satisfy all outstanding conversion claims
26 pursuant to subparagraph (i) herein above, Watermaster shall establish
27 allocation percentages for each appropriator with conversion claims. The
28 percentages shall be based upon the ratio of the total of such converted

1 acreage approved and recorded for each appropriators's [*sic*] account in
2 comparison to the total of converted acreage approved and recorded for all
3 appropriators. Watermaster shall apply such allocation percentage for each
4 appropriator to the total unallocated Safe Yield water available for conversion
5 claims to derive the amount allocable to each appropriator.

6 7. CONCLUSION: With the 1995 amendments, the Judgment set a
7 prioritized list of claims upon unproduced Ag Pool water.

8 Ag Pool water--1995 Judgment amendment

9 82,800 AFY of the Ag Pool's water available to the Appropriative Pool with
10 Appropriative Pool claims prioritized as follows:

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

14 (2) pursuant to conversion claims as defined in Subparagraph (b of Exhibit "H"
15 ¶10(b);

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

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

21
22 B. The 2000 Peace Agreement aka Peace I

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

25 2. Peace I Section V-Watermaster Performance defined how Watermaster
26 was to perform regarding procedures for Recharge and Replenishment. In paragraph
27 ¶5.3(g), Watermaster was ordered to approve an "Early Transfer" from the
28 Agricultural Pool to the Appropriative Pool of not less than 32,800 acre-feet per year

1 which was the expected approximate quantity of water not produced by the
2 Agricultural Pool. ¶5.3(g)(i) further stated that “the quantity of water subject to Early
3 Transfer under this paragraph shall be the greater of (i) 32,800 acre-feet or (ii) 32,800
4 acre-feet plus the actual quantity of water not produced by the Agricultural Pool for
5 that Fiscal Year that is remaining after all the land use conversions are satisfied
6 pursuant to” the following provision: “the Early Transfer water shall be annually
7 allocated among members of the Appropriative Pool in accordance with their pro-
8 rata share of the initial Safe Yield.” The court notes that after this deduction, the
9 Safe Yield water available to the Agricultural Pool became 50,000 acre-feet per year.

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

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

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

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

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

24 4. The court also concludes that the conversion claims have priority over
25 the Early Transfers because the conversion claims pre-existed the Early Transfer
26 allocations. The conversion claims came into existence with the 1995 Judgment
27 amendment. The Early Transfers came into existence with Peace I in 2000. The
28 Early Transfers must be interpreted in the context of the pre-existing 1995 Judgment

1 amendment.

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

4 Ag Pool water	5 Status and/or change 6 result	7 Comments
8 1995 Judgment 9 amendment	10 82,800 AFY of the Ag 11 Pool's water available to 12 the Appropriate Pool with 13 Appropriative Pool claims 14 prioritized as follows: 15 (1) to supplement, in the 16 particular year, water 17 available from Operating 18 Safe Yield to compensate 19 for any reduction in the 20 Safe Yield by reason of 21 recalculation thereof after 22 the tenth year of 23 operation hereunder. 24 (2) pursuant to conversion 25 claims as defined in 26 Subparagraph (b) hereof. 27 (3) as a supplement to 28 Operating Safe Yield, without regard to reductions in Safe Yield.	
27 2000 Peace I-Desalters 28 start construction and	Early Transfers of 32,800 AFY of Ag Pool water	New Yield (with conditions) is source of

<p>1 pumping water</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p>	<p>going straight to the</p> <p>Appropriative Pool</p> <p>(leaving 50,000 AFY to</p> <p>Ag Pool). The remaining</p> <p>Ag Pool water is subject</p> <p>to Appropriative Pool's</p> <p>prioritized claims.</p>	<p>water to replenish water</p> <p>pumped by the</p> <p>Desalters. Under Peace</p> <p>I therefore Desalters do</p> <p>not affect Safe Yield or</p> <p>Operating Safe Yield.</p> <p>Water</p> <p>produced/pumped by</p> <p>the Desalters is not</p> <p>added to or subtracted</p> <p>from Safe Yield of the</p> <p>Basin.</p>
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13 The court concludes that Peace I interrelated Early Transfers and conversion
14 claims in the following way. The Appropriative Pool received unproduced Ag Pool
15 water in at least the amount of 32,800 AFY, but the Appropriative Pool could receive
16 more unproduced Ag Pool water if 1) the Ag Pool did not produce/pump its leftover
17 50,000 AFY and 2) also after subtracting from the 50,000 AFY the Appropriative
18 Pool's conversion claims at the rate of 2 acre-feet per year per converted acre.

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

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

- 24 1. If one Appropriative Pool producer/pumper (*e.g.*, municipality, such as the City of
25 Chino) had 1000 acres of converted land resulting in 2000 acre-feet of conversion
26 claims (1000 acres x 2.0 acre feet of water/one acre converted), and assuming those
27 were the only conversion claims; and
- 28 2. If the Ag Pool produced/pumped only 33,600 AFY leaving 49,200 AFY available

1 for further allocation (82,800 AFY– 33,600 AFY= 49,200 AFY; the court notes that
 2 33,600 AFY is the approximate Ag Pool credited production [Jurupa response to
 3 court’s clarification request, page 2, lines 9-10], but the court is using this figure only
 4 for illustration); then,

5 3. The Ag Pool water that would be available to the Appropriative Pool would be
 6 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

1			"H" Paragraph 10.
2	Reduction for Early	- 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.*
3	Transfers		
4			
5			
6			
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11	Balance: Ag Pool	14,400 AFY	
12	water available to the		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.**
13	Appropriative Pool		
14	after conversion		
15	priority claims and		
16	Early Transfers		
17			
18			
19			
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22			

23 *It appears to the court that for convenience, many parties first simply take the
 24 reduction of the 32,800 acre-feet for Early Transfers and start these calculations with
 25 50,000 acre-feet of Ag Pool water.

- 26 1. That calculation is simply to start with the 50,000 acre-feet of
 27 unproduced/unpumped Ag Pool water and then subtract the amount 33,600
 28 acre-feet that was actually pumped in this example. The result is 16,400 acre-

- 1 feet available for conversion claims.
- 2 2. Then subtract the 2,000 acre-feet for conversion claims to get the 14,400 acre-
- 3 feet of Ag Pool water available for allocation to the Appropriative Pool.
- 4 3. However, this procedure is inconsistent with the judgment and Peace
- 5 Agreements as interpreted by the court for the reasons stated above.

6 **The also court notes that the particular producer who serviced the converted acres

7 would actually be able to pump the additional conversion claim water as an

8 allocation.

9

10 **EXAMPLE 2:** The following example demonstrates complications arising

11 from a decrease in the amount of Ag Pool water available to the Appropriative Pool.

12 If the Ag Pool produced/pumped more than 48,000 AFY there would be no

13 available water for the Appropriative Pool.

Example 2		Comment
Initial Ag Pool allocation	82,800 AFY	
Ag Pool production/pumping	48,000 AFY	Assumption
Initial balance after production	34,800 AFY	82,800 acre-feet – 48,000 acre-feet = 34,800 acre-feet per year
Conversion claims	- 2000 acre-feet	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:	32,800 AFY	34,800 acre-feet – 2,000 acre-feet = 32,800 acre-feet per year. Ag Pool Water Available after conversion

1			priority claims pursuant to Judgment Exhibit "H" Paragraph
2			
3	Reduction for Early	- 32,800 AFY	Early Transfer of 32,800 AFY from
4	Transfers		82,800 AFY allocation leaving 50,000
5			AFY for the Ag Pool itself to
6			produce/pump. Any water which the
7			Ag Pool did not produce/pump water
8			up to the 50,000 AFY would be
9			available for allocation to the
10			Appropriative Pool pursuant to Peace
11			I and Peace II.
12	Balance: Ag Pool	0 AFY	32,800 acre-feet -32,800 acre-feet = 0
13	water available after		acre-feet per year. There would be no
14	conversion priority		Ag Pool water available for
15	claims and Early		reallocation to Appropriative Pool
16	Transfers		after subtraction of conversion
17			priority claims of 2,000 acre-feet and
18			the 32,800 Early Transfer of
19			unproduced/unpumped from the
20			allotment of Ag Pool water.

21 Conclusion:
 22 Under this scenario, the Appropriative Pool would not get any additional
 23 allocation from Ag Pool water

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

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

- 28 (a) Watermaster Desalter Replenishment account composed of 25,000

1 acre-feet of water abandoned by Kaiser pursuant to the "Salt Offset
2 Agreement" dated October 21, 1993, between Kaiser and the RWQB, and
3 other water previously dedicated by the Appropriative Pool.

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

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

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

12
13 C. The 2007 Peace II Agreement (Peace II)

14 1. Peace II Agreement Article VI-Groundwater Production by and
15 Replenishment for Desalters and Article VII-Yield Accounting further defined the
16 accounting for the Desalters and Desalter Production Offsets.

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

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

28 (iii) New Yield (other than Stormwater (Peace Agreement Section

1 7.5(b)); . . .

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

4 (vi) any Production of groundwater attributable to the controlled
5 overdraft authorized pursuant to amended Exhibit I to the Judgment.
6 [The Judgment allowed for a temporary controlled overdraft, *i.e.*,
7 initially 200,000 AF and then an additional 400,000 AF total
8 production/pumping starting in 2007 and ending in 2026 without
9 replenishment, in order to achieve Hydraulic Control. (Safe Yield Reset
10 Implementation Desalter Replenishment Accounting Illustration (per
11 Peace II Agreement, Section 6.2 (PIIA, 6.2) and June 11, 2015 Key
12 Principles)–Exhibit C to Attachment 1, Watermaster’s Motion regarding
13 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
14 Paragraph 6.]

15 Paragraph 7.1 provides as follows:

16 New Yield Attributable to the Desalters. Watermaster will make an annual
17 finding as to the quantity of New Yield that is made available by Basin Re-
18 Operation including that portion that is specifically attributable to the Existing
19 and Future Desalters. Any subsequent recalculation of New Yield as Safe
20 Yield by Watermaster will not change the priority set forth above for
21 offsetting Desalter production as set forth in Article VII, Section 7.5 of the
22 Peace Agreement. For the initial term of the Peace Agreement, neither
23 Watermaster nor the Parties will request that Safe Yield be recalculated in a
24 manner that incorporates New Yield *attributable to the Desalters* [emphasis in
25 original] into a determination of Safe Yield so that this source of supply will be
26 available for Desalter Production rather than for use by individual parties to
27 the Judgment.

28 2. Additionally, in 2007 Peace II ¶1.1(d) defined Re-Operation as “the

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

10 3. Peace II, Paragraph 6.2(a)(iii) gives Watermaster a basis to calculate the
11 total Desalter production from the preceding year and then apply against that
12 production/pumping a “credit” (*i.e.*, a reduction) which included a number of
13 factors, including New Yield referencing Peace I, paragraph 7.5(b). This credit
14 procedure is an important issue going forward for the administration of water
15 allocations:

16 a) Peace I, paragraph 1.1(aa) defines New Yield as “proven increases in
17 yield in quantities greater than historical amounts from sources of
18 supply including, but not limited to, operation of the Desalters
19 (including the Chino I Desalter), induced Recharge and other
20 management activities implemented in operational after June 1, 2000.”

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

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

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

- 1 c) The conclusion of the court is that after Peace II, the definition New
2 Yield now includes both Desalter operation, *i.e.*, production/pumping
3 from the Desalters, and induced Recharge (*i.e.*, groundwater flowing
4 back into the Basin from the Santa Ana River as the result of Desalter
5 operation).
- 6 d) Peace II was consistent with Peace I. Peace II provided that the parties
7 would avoid some or all or a replenishment obligation for Desalter
8 production by getting credit/reduction against that production from
9 sources such as New Yield which includes induced Recharge.
- 10 I) Peace I defined New Yield to include “operation of the Desalters” and
11 “induced Recharge.”
- 12 II) The court concludes that the Peace I and Peace II when read together
13 recognized that some of the water which the Desalters
14 produced/pumped came from induced recharge form the Santa Ana
15 River.
- 16 III) Peace II was not explicit it stating that the Desalter production
17 offset should follow the priorities of Peace I ¶7.5, but the court
18 concludes that the replenishment water, *i.e.*, Desalter-induced recharge,
19 must follow the priorities of Peace I.
- 20 (a) The agreements must be read together and interpreted together
21 because they form a context for each other.
- 22 e) In its response to Judge Reichert’s questions, Chino argued that SYRA’s
23 failure to give a specific definition to “Desalter-induced recharge” was
24 purposeful because the failure allowed SYRA to use “Desalter-induced
25 recharge” synonymously with New Yield. The court does not find
26 “Desalter-induced recharge” to be synonymous with New Yield. The
27 court finds that “Desalter-induced recharge” is only synonymous with
28 “induced Recharge.” Therefore Desalter-Inducted Recharge is included

1 in the definition of New Yield, as set forth in Peace I ¶1(aa): “induced
2 Recharge and other management activities implemented in operational
3 after June 1, 2000” includes Desalter-induced recharge.

4 I) . The court further finds that “Desalter-induced recharge” and
5 “induced Recharge” mean water flowing back into the Basin from the
6 Santa Ana River due to production/pumping by the Desalters lowering
7 the ground water table in the Basin. Finally, the court notes that New
8 Yield includes Desalter production and Desalter-induced recharge.

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

14 (b) In fact the Desalters have accomplished their design objective so
15 well that now some water flows from the Santa Ana River into the
16 Chino Basin. The court finds that his water is New Yield as set
17 forth above.

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

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

27 5. CONCLUSION:

28 Now, after Peace II, there were additional sources of water for the Basin, the

1 Desalter operation/Desalter-induced recharge, as well as the historical overdraft, as
 2 summarized below.

Ag Pool water		Comments
4 1995 Judgment 5 amendment 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	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.	
25 2000 Peace I-Desalters 26 start construction and 27 pumping water 28	Early Transfers of 32,800 AFY of Ag Pool water now go to the Appropriative Pool	New Yield (with conditions) is source of water to replenish water pumped by the

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	<p>(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>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 Response to Order for Additional Briefing, page 5, line 22-23.) Therefore at the time of Peace I Desalter operations did not affect Safe Yield or Operating Safe Yield. Water produced/pumped by the Desalters was not added to or subtracted from yield of the Basin. Water</p>
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		produced/pumped by the Desalters had a separate allocation.
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 Article VI identifies offsets for Desalter production, which includes New Yield the meaning of which includes induced Recharge. (Peace I, ¶1.1(aa).)	Desalter production reaches above 20,000 AFY. Watermaster's Response to Order for Additional Briefing, Exhibit 1.

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.

1 **V. SYRA ARTICLE 5-STORMWATER RECHARGE PLAN AND**
2 **WATERMASTER ACCOUNTING ANALYSIS**

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

7 A. Stormwater Recharge–SYRA ¶5.1

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

12
13 B. Desalter-Induced Recharge Allocations, Early Transfers, Land Use
14 Conversion–SYRA ¶5.2 and SYRA ¶5.3.

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

17 SYRA ¶5.2 sets forth the following provisions regarding Desalter Induced
18 Recharge, and SYRA ¶5.3 sets forth the following provisions regarding Post 2030
19 Land Use Conversions and Early Transfers.

20 5.2 Desalter-Induced Recharge. After the Effective Date and until
21 termination of this Agreement, the parties expressly consent to Watermaster’s
22 accounting for Basin recharge arising from or attributable the Desalters as
23 follows:

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

1 production by the Desalters.

2 (b) 2015-2030 Desalter-Induced Recharge. For the production years
3 of 2015- 2030, Watermaster shall account for induced recharge that arises
4 from or is attributable to the Desalters as equal to fifty (50) percent of the total
5 Desalter Production during each applicable production year up to a maximum
6 of twenty-thousand (20,000) AFY of recharge. Consistent with Paragraph
7 6.2(a)(iii) of the Peace II Agreement, Watermaster shall deem the induced
8 recharge as having been produced by the Desalters. During each applicable
9 production year, Watermaster shall reduce Safe Yield by an amount equal to
10 fifty (50) percent of the total Desalter Production, up to a maximum of
11 twenty-thousand (20,000) AFY, and require a corresponding supplementation
12 by the reallocation of available unproduced Agricultural Pool's share of the
13 Basin's Safe Yield.

14
15 Claims for reallocation of the remaining unproduced quantity of the
16 Agricultural Pool's share of Safe Yield shall be satisfied consistent with section
17 6.3(c) of Watermaster's Rules and Regulations, as amended as part of the
18 Peace II Measures, and the October 8, 2010 Order Approving Watermaster's
19 Compliance with Condition Subsequent Number Eight and Approving
20 Procedures to be used to Allocated Surplus Agricultural Pool Water in the
21 Event of a Decline in Safe Yield.

22 (c) 2031-2060 Desalter-Induced Recharge. Should the term of the
23 Peace Agreement be extended pursuant to Paragraph 8.4 thereof, the
24 treatment of Desalter-Induced Recharge shall be subject to the negotiation of
25 a new and separate agreement among the Parties to the Judgment. The
26 accounting provided for in Section 5.2(b), above, shall be without prejudice to
27 the negotiation of such a new and separate agreement among the Parties to the
28 Judgment. Unless otherwise agreed by the Parties or ordered by the court,

1 during the extension term, Watermaster shall not consider such recharge to
 2 require supplementation by the reallocation of a portion of the unproduced
 3 Agricultural Pool's share of Safe Yield.

4
 5 5.3 Post-2030 Priority among Land Use Conversion and Early Transfer
 6 Claims. At the expiration of the Peace II Agreement, the Peace II provisions
 7 relating to the distribution of surplus water by the Agricultural Pool requiring
 8 that claims for the Early Transfer of 32,800 AFY and for Land Use
 9 Conversion be treated equally are expressly repealed including (i) the
 10 amendment to Section 6.3(c) of Watermaster's Rules and Regulations,
 11 pursuant to the Peace II measures, and (ii) Section III.(6) of the October 8,
 12 2010 Order Approving Watermaster's Compliance with Condition Subsequent
 13 Number Eight and Approving Procedures to be used to Allocate Surplus
 14 Agricultural Pool Water in the Event of a Decline in Safe Yield. In any Peace
 15 Agreement extension term, the previous changes to Restated Judgment,
 16 Exhibit "H", Paragraph 10(b)(3)(i) effectuated by Paragraph 4.4(c) of the
 17 Peace Agreement, which, to the extent sufficient unallocated Safe Yield from
 18 the Agricultural Pool is available for conversion claims, allocate 2.0 acre-feet
 19 of unallocated Safe Yield water for each converted acre, shall remain in effect.
 20

21 C. The court summarizes the effect of these SYRA proposals ¶5.2 and ¶5.3 as
 22 follows:

Ag Pool water		Comments
1995 Judgment amendment	82,800 AFY of the Ag Pool's water available to the Appropriate Pool with Appropriative Pool claims prioritized as follows:	

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	<p>(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.</p> <p>(2) pursuant to conversion claims as defined in Subparagraph (b) hereof.</p> <p>(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 goes to the Appropriative Pool (leaving 50,000 AFY to Ag Pool). The remaining Ag Pool water is subject to Appropriative Pool’s prioritized claims.</p>	<p>New Yield (with conditions) is source of water to replenish water pumped by the Desalters. Therefore Desalters do not affect Safe Yield or Operating Safe Yield. Water produced/pumped by the Desalters is not added to or subtracted from Safe Yield or</p>

		Operating Safe Yield of the Basin.
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.
<p>SYRA proposal: (see column to right for <i>Steps 1-3</i>):</p> <p><i>Step 4</i>: SYRA ¶5.2(b) subtracts 50% of total Desalter production up to 20,000 AFY from Ag Pool Water and then adds that 50% of total Desalter production up to 20,000 AFY to Safe Yield (to make up for the subtraction in <i>Step 3</i>).*</p>	<p>SYRA proposal <i>Step 1</i>: The Desalter production/pumping up to 20,000 AFY is allocated to the Desalters, not as Safe Yield or Safe Operating Yield [or New Yield].</p> <p><i>Step 2</i>: Under SYRA ¶5.2(b) one-half of the source of Desalter production up to 20,000 AFY is attributed to “Desalter-induced recharge.” Desalter-induced Recharge means water flowing back into the Basin from the Santa Ana River.</p> <p><i>Step 3</i>: SYRA then subtracts the other half of Desalter production up to 20,000 AFY from Safe Yield.</p>	
<p>Additional SYRA Effects: <i>Step 5</i> (see above for <i>Steps 1-4</i>)</p> <p>The Ag Pool water allocation is reduced by up to 20,000 AFY for the Desalters.</p>		

1 SYRA is unclear where the priority lies with respect to priority of allocation as
 2 required by Judgment Exhibit "H" Paragraph 10. The court orders that those
 3 priorities must be followed. Because the court has ordered that those priorities be
 4 followed, court concludes that it cannot order these provisions of SYRA in
 5 addition to SYRA's not being severable. At best SYRA is ambiguous with respect
 6 to following the priorities set by the Judgment and the Court Approved
 7 Management Agreements. At worst, SYRA contradicts them.

8 *So, the court concludes that previous to SYRA, the Desalter water
 9 production/pumping could be offset from a prioritized list of sources including New
 10 Yield (induced recharge). Now under SYRA:

11 1) All of the induced recharge gets allocated to water produced/pumped by
 12 the Desalters.

13 2) Watermaster reduces Safe Yield by 50% of the Desalter production up to
 14 20,000 AFY.

15 3) Then, Watermaster adds to Safe Yield 50% of the Desalter production up
 16 to 20,000 AFY, from water allocated to the Ag Pool, to make up for (aka backfill) the
 17 reduction in Safe Yield allocated to Desalter production.

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

22 5) Elaborating on Example 1-A from Section IV.B.5 of this order above, the
 23 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)

1			for agricultural groundwater is
2			about 33,600 AFY, but that
3			includes agricultural land irrigated
4			with reclaimed water. [The
5			actual groundwater production
6			for agricultural purposes is about
7			22,000 AFY. Jurupa Services
8			District's response to Judge
9			Reichert's Request for
10			Clarification, March 22, 2016
11			page 2, lines 8–10.]
12	Initial balance after	49,200 AFY	82,800 acre-feet – 33,600 acre-
13	production		feet = 49,200 acre-feet
14	Conversion claims	- 2000 acre-feet	Assumption: The subtraction for
15			satisfying conversion claims
16			before any reallocation. (1000
17			acres x 2.0 acre feet of water/one
18			acre converted = 2000 acre-feet).
19	Balance:	47,200 AFY	49,200 acre-feet - 2000 acre-feet
20			= 47,200 acre-feet. Ag Pool
21			Water available after conversion
22			priority claims pursuant to
23			Judgment Exhibit "H" Paragraph
24			10
25	Reduction for Early	- 32,800 AFY	Basic Early Transfer from 82,800
26	Transfers		AFY allocation leaving 50,000
27			AFY for the Ag Pool itself to
28			produce/pump and for

1			additional claims by the
2			Appropriative Pool pursuant to
3			Peace I and Peace II.*
4	Balance	14,400 AFY	(47,200 acre-feet - 32,800 acre-
5			feet = 14,400 acre-feet. This is
6			the Ag Pool water available for
7			reallocation to Appropriative
8			Pool after subtraction of
9			conversion priority claims of
10			2,000 acre-feet from and the
11			32,800 Early Transfer of
12			unproduced/unpumped from the
13			allotment of Ag Pool water.

14
15 Now, to examine the effect of SYRA on the Appropriative Pool:

16	Starting balance	14,400 AFY	Total Ag Pool water available for
17	available Ag Pool		production/pumping from the
18	water		example above
19	Desalter reallocation	- 20,000 AFY	SYRA Desalter reallocation:
20			20,000 AFY of Desalter
21			production is allocated from Ag
22			Pool water to Safe Yield.
23	Balance:	- 5,600 AFY	A negative amount. This
24			plausible scenario assumes 2,000
25			AFY of conversion claims. The
26			negative balance shows that this
27			scenario under SYRA would not
28			leave sufficient Ag Pool water for

1		that amount of conversion
2		claims. In order to meet
3		conversion claims and Early
4		Transfer allocations, the Ag Pool
5		would only be able to
6		produce/pump 26,000 AFY, well
7		below their current credited
8		pumping. Calculation follows:
9		82,800/initial allocation
10		– 26,000/pumped = 56,800
11		56,800 – 2,000/conversion
12		claims = 54,800
13		54,800 – 32,800/Early Transfer
14		= 20,000
15		20,000 – 20,000/Desalter
16		reduction from Ag Pool
17		Allocation = 0

18 The court concludes that there is no basis in the Judgment or any of the Court
 19 Approved Management Agreements for the post SYRA result identified in the
 20 plausible scenario above.

21
 22 D. Further Analysis and orders:

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

26 a) The court concludes that SYRA paragraphs 5.2 and 5.3 fundamentally
 27 change the allocations of Appropriative Pool and of Ag Pool water.

28 Those fundamental changes are inconsistent with the Judgment and the

1 Court Approved Management Agreements

2 b) Peace I and Peace II both define Desalter production as within the
3 definition of New Yield and therefore outside of the definition of Safe
4 Yield. Through a several step re-allocation reassignment described
5 above and summarized in this section of the court's order, SYRA now
6 moves Desalter production into Safe Yield. The parties have not
7 demonstrated any legal ~~or practical requirement~~ basis which allows this.
8 Peace I and Peace II prohibit this.

9 c) The court concludes that Peace II Agreement Paragraphs 6.2(a)(iii) and
10 7.1 provide that through 2030 (the initial term of Peace I Agreement as
11 set forth in ¶8.2) recharge attributable to the Desalters is allocated for
12 Desalter Production and not allocated as Safe Yield producible (*i.e.*,
13 water available to be pumped without a replenishment obligation by
14 purchase or otherwise).

15 I) Peace II ¶7.1 excluded New Yield attributable to the Desalters from
16 a determination of Safe Yield, at least for the 30 year term of Peace
17 Agreement.

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

19 (a) The court finds that induced recharge includes Desalter-
20 induced recharge.

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

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

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

28 V) In contradiction to the Peace I and Peace II, the court finds that

1 SYRA attempts to incorporate New Yield from the Desalters into
2 Safe Yield through the accounting method of 1) taking Desalter
3 induced yield water coming from Desalter-induced recharge, then 2)
4 moving that water into Safe Yield, then 3) backfilling Safe Yield
5 from unproduced Ag Pool water.

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

8 d) The analysis above shows that these SYRA provisions are contrary to
9 the Judgment and the Court Approved Management Agreements,
10 specifically Peace I and Peace II. These SRYA provisions can prevent
11 the application of the Judgment provisions regarding conversion claims.
12 They are invalid.

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

16 f) There is no basis in the Judgment or any of the Court Approved
17 Management Agreements for the splitting and reallocation of Desalter
18 production/pumping to one-half to Desalter-induced recharge and one-
19 half to Safe Yield.

20 g) There is no basis in the Judgment or any of the Court Approved
21 Management Agreements to reallocate Ag Pool water to Safe Yield to
22 make up for the Safe Yield reallocated to the Desalters.

23 h) Due to the Desalters, there is now recharge coming from the Santa Ana
24 River back into the Chino Basin. SYRA Paragraph 5.2(b) takes the
25 Peace I and Peace II agreements one step—wrongfully—farther by
26 identifying how this recharge quantity will be estimated, *i.e.*, 50% of
27 Desalter Production, and then further specifies that amount of recharge
28 will be allocated to Desalter production and not to the parties as part of

1 their allocation of the Safe Yield. There is no legal basis in the
2 Judgment or the Court Approved Management Agreements for this
3 redefinition of Safe Yield to include of 50% of Desalter Production up
4 to 20,000 AFY through a mechanism of passing the amounts through
5 the Appropriative Pool allocation.

6 i) SYRA attempts now to remove the special exception for New Yield
7 from Desalter induced recharge and production and incorporate it into
8 Safe Yield. The mechanism by which SYRA attempts to do this is by 1)
9 taking half of the Desalter production and sourcing that
10 production/pumping from Desalter induced recharge from the Santa
11 Ana River and 2) sourcing the other half from the Appropriative Pool
12 through unproduced Ag Pool water. The court concludes and finds
13 that this attempt is not justified because it can interfere with the priority
14 of claims on unproduced Ag Pool water set forth in the judgment and
15 the Court-Approved Management Agreements.

16 I) The court notes that Peace II, Article VII-Yield Accounting, ¶7.2(d)
17 discusses a contingency if Western Municipal Water District
18 (WMWD) and the Appropriative Pool “do not reach agreement on
19 apportionment of controlled overdraft of Future Desalters, then no
20 later than August 31, 2009, the members of the Appropriative Pool
21 will submit a plan to Watermaster that achieves the identified goals
22 of increasing the physical capacity of the Desalters and potable water
23 use of approximately 40,000 acre-feet of groundwater production
24 from the Desalters from the Basin no later than 2012.”

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

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

- 1 j) SYRA ¶5.2 and ¶5.3 contradict and conflict with Peace I and Peace II.
- 2 I) Peace II ¶7.1 requires neither Watermaster nor the parties to request
- 3 that safe yield be recalculated in a manner that incorporates New
- 4 Yield *attributable to the Desalters* into the determination of Safe Yield
- 5 so that this source of supply will be available for Desalter
- 6 Production rather than for use by individual parties to the judgment.
- 7 (Emphasis in original.)
- 8 II) SYRA now includes New Yield in the determination of Safe Yield in
- 9 two ways.
- 10 (a) First, SYRA takes up to 20,000 AFY away from Safe Yield
- 11 through Desalter Production.
- 12 (b) Second, SYRA adds back up to 20,000 AFY to Safe Yield
- 13 from unproduced Ag Pool water.
- 14 (c) The net change to Safe Yield is 0, but available Ag Pool water
- 15 for allocation is reduced up to 20,000 AFY. This re-allocation
- 16 and re-accounting, is not justified or supported in the Peace I,
- 17 Peace II, Watermaster Rules and Regulations, or the court's
- 18 orders of implementation, the Judgment, or the CAMAs.
- 19 (d) The following chain shows SYRA's violations of the previous
- 20 orders:
- 21 (i) Desalter-induced recharge is New Yield. (Peace
- 22 ¶1(aa).)
- 23 (ii) Peace II ¶7.1 prevents New Yield from being
- 24 incorporated within Safe Yield.
- 25 (iii) SYRA moves 20,000 AFY of Desalter-induced
- 26 recharge to the Ag Pool.
- 27 (iv) Then SYRA moves the 20,000 of Desalter-induced
- 28 recharge (now characterized as Ag Pool Water) into

1 Safe Yield.

2 (v) Therefore, SRYA recalculates Safe Yield to incorporate
3 New Yield in violation of Peace II ¶7.1

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

7 k) The court does not find a legal ~~or factual basis~~ for determining a post-
8 2030 priority among land use conversion and early transfer claims. The
9 priority is set forth in the judgment and as specified in this order

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

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

13 Watermaster is ordered to utilize the procedures regarding the re-
14 allocation of surplus Agricultural Pool water the event of a
15 decline in Safe Yield as described in the December 2008 staff
16 report and the December 4, 2008 memorandum from legal
17 counsel. Specifically, in the event that Operating Safe Yield is
18 reduced because of a reduction in Safe Yield, Watermaster will
19 follow the hierarchy provided for in the Judgment, exhibit "H,"
20 by first applying the unproduced Agricultural Pool water to
21 compensate Appropriative Pool members for the reduction in
22 Safe Yield. (Judgment, Exhibit "H," paragraph 10 (a).) If there
23 is unallocated water left, Watermaster will then follow the
24 remainder of the hierarchy and reallocate unallocated Agricultural
25 Pool water next to conversion claims then to supplement the
26 Operating Safe Yield without regard to reductions in Safe Yield
27 according to the guidance provided by Peace Agreement I & II
28 and Watermaster's rules and regulations as amended. If, after

1 applying the unallocated Agricultural Pool water to compensate
2 the Appropriate Pool members for the reduction in Safe Yield,
3 the actual combined production from the Safe Yield made
4 available to the Agricultural Pool, which includes overlying
5 Agricultural Pool uses combined with land use conversions and
6 the Early Transfer, exceeds 82,800 in any year, the amount of
7 water available to members of the Appropriative Pool shall be
8 reduced pro rata in proportion to the benefits received according
9 to the procedures outlined in Watermaster Rules and
10 Regulations.

11 I) In considering the reference to Watermaster Rules and
12 Regulations in the preceding paragraph, if the order is vague, the court
13 now clarifies it. In the instant order, the court has clarified that
14 Watermaster must follow the priorities set forth in the Judgment for
15 allocations of unproduced Ag Pool water.

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

19 III) JCSD correctly points out that pursuant to the Judgment
20 ¶15 the court is authorized “to make such further or supplemental
21 orders or directions as may be necessary or appropriate for
22 interpretation, enforcement or tearing out of this judgment”

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

28 V) Watermaster’s further response to order for additional briefing,

1 filed April 11, page 3, lines 15-19 states:

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

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

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

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

20 II) If there is any ambiguity that Watermaster finds the current
21 circumstances for the application of that Order III.(6) the court clarifies
22 it now. SYRA's reference to that order's provision does not help in its
23 clarification or application.

24 III) Watermaster argues that "in the event that Operating Safe
25 Yield is reduced because of a reduction in Safe Yield, Watermaster will
26 follow the reallocation hierarchy provided for in the Appropriative Pool
27 Pooling Plan by first applying the unallocated Ag Pool water to
28 compensate the Appropriate Pool members for the reduction in safe

1 yield. (Restated Judgment, exhibit “H), paragraph 10 (a).) If, thereafter,
2 there is unallocated water left, Watermaster then followed the
3 remainder of the hierarchy and reallocate unallocated agricultural Pool
4 water next to land use conversion claims and Early Transfer, and then
5 to supplement the Operating Safe Yield without regard reductions in
6 safe yield.” (Watermaster’s Reply to Oppositions to Motion regarding
7 2015 Safe Yield Recent Agreement, Amendment Restated Judgment,
8 Paragraph 6, page 24, lines 7-14.)

9 IV) This argument equates land use conversion claims and
10 Early transfer claims. This argument is incorrect for the reasons stated
11 herein. Additionally:

12 (a) The court’s order filed October 8, 2010, paragraph III.(6)
13 is quoted in full in section “I” above:

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

- 21 o) Additionally, the court rejects and denies the implementation of SYRA
22 ¶5.3 specifically because, as with SYRA ¶5.2, this provision has the
23 same problems of interpretation of the court’s 2010 Order Approving
24 Watermaster’s Compliance with Condition Subsequent Number Eight
25 and Approving Procedures to be used to Allocate Surplus Agricultural
26 Pool Water in the Event of a Decline in Safe Yield.
- 27 p) Watermaster’s erroneous interpretation of the order of priorities is not a
28 basis to continue that erroneous interpretation. If Watermaster has to

1 make a reallocation, then it must do so in order to follow the court's
2 order. A wrong practice can be long-standing, and still be wrong. A
3 wrong practice cannot be a basis of prejudice.

4 q) The court rejects any argument that this issue is subject to issue
5 preclusion. The specific issues raised by the oppositions to the motion
6 have not been specifically addressed by the court. They are not barred
7 by laches. The issues have been timely raised within the context of the
8 instant motion, and the court always retains jurisdiction to modify its
9 orders as those orders are drawn to the attention of the court, and the
10 court determines they require modification for the reasons set forth in
11 this order.

12
13 E. Dispute re priority of claims

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

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

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

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

24 (1) to supplement, and the particular year, water available from
25 Operating Safe Yield to compensate for any reduction in the Safe Yield
26 by reason of recalculation thereof after the tenth year of operation
27 hereunder.

28 (2) pursuant to conversion claims as defined in Subparagraph (b)

1 hereof.

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

4 Confusion has arisen with respect to the relationship between the Judgment,
5 Exhibit “H,” Paragraph 10 on the one hand, and Watermaster Rules and Regulations
6 ¶6.3(a) on the other. Watermaster Rules and Regulations ¶6.3(a) states as follows:

7 Accounting of Unallocated Agricultural Portion of Safe Yield. In each
8 year, the 82,800 acre-feet being that portion of the Safe Yield Made
9 available to the Agricultural Pool under the Judgment, shall be made
10 available:

- 11 (i) To the Agricultural Pool to satisfy all demands for overlying
12 Agricultural Pool lands;
- 13 (ii) To land-use conversions were completed prior to October 1,
14 2000;
- 15 (iii) To land use conversions that have been completed after October
16 1, 2000; and
- 17 (iv) To the Early Transfer of 32,800 acre-feet from the Agricultural
18 Pool to the Appropriative Pool in accordance with their pro-rather
19 assigned share of Operating State Yield.

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

23 Chino has argued that

24 [T]he members of the Appropriative Pool have received the right to
25 participate in annual allocations of the Unproduced Agricultural Pool
26 Water instead of every five years called “Early Transfers” (Paragraph
27 5.3(f-g), Peace Agreement) and the right to an equal priority of Early
28 Transfers with Land Use Conversion Claims, which have a higher

1 priority under the Judgment, in order to maximize the amount of their
2 Early Transfer water to the appropriators do not have Land Use
3 Conversion Claims. (Paragraph 3.1(a)(i) and Attachment “F”, Peace II
4 Agreement). City of Chino’s Opposition Watermaster Motion
5 regarding 2015 Safe Yield Reset Agreement, Amendment of Restated
6 Judgment, Paragraph 6, page 13, lines 19-25.

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

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

12
13 **At this time, the court additionally orders as follows:**

14 A. The order of priorities set forth in the Judgment, Exhibit “H,” Paragraph
15 10 must be followed; and

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

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

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

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

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

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

1
2
3 **VI. SAFE STORAGE MANAGEMENT MEASURES**

4 A. Through the facilitation and nondisclosure agreement (FANDA) Watermaster
5 attempted to facilitate an agreement among all parties avoid an accelerated
6 cumulative draw on Excess Carry Over stored water in order to avoid undue risks.
7 SYRA had provisions to establish a mechanism for a safe storage reserve of 130,000
8 AF of water in the non-Supplemental Water storage accounts of the members of the
9 Appropriative Pool as a reserve sufficient to protect the Basin. However, the
10 concern for basin protection was balanced with temporary needs in the event of an
11 emergency or to support Desalter Replenishment. Up to 100,000 AF could be
12 accessed in the event of an emergency subject to conditions

- 13 a) The plan which Watermaster attempted to facilitate is identified in
14 SYRA as “the safe storage reserve and safe storage management plan”
15 or the safe storage management measures (SSMM).
16 b) The City of Chino (Chino) has the largest component of Excess Carry-
17 Over water and was the most significantly affected party.
18 c) Chino refused to agree to SSMM.

19
20 B. The court rejects the adoption of the Safe Storage Management Measures set
21 forth in the SYRA Article 6. The court is not going to set forth the provisions of
22 SYRA Article 6 because the court is rejects the article as a whole.

23
24 C. The court rejects Article 6 of SYRA for the following reasons:

- 25 1. SYRA is not severable as set forth above.
26 2. Watermaster states that access to safe storage in the short term is
27 extremely remote.
28 3. The volume in stored water accounts of Appropriative Pool members is

1 about 357,000 AF as of June 30, 2014.

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

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

7 a) Although Watermaster argues that the Safe Storage Management
8 Agreement provisions are still subject to “stakeholder process get to be
9 initiated” (Watermaster’s Reply to Oppositions to Motion regarding
10 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
11 Paragraph 6, page 1, line 18), the court does not approve policy
12 statements and therefore rejects any implementation.

13 6. The Safe Storage Technical Memorandum (Exhibit E to the motion)
14 does not set forth a factual basis for the court to order the parties to proceed with
15 the provisions of Article 6. While the memorandum states that the SSMM will not
16 cause Material Physical Injury or undesirable results, the memorandum does not
17 include that the SSMM are essential to the OBMP.

18 7. The court notes that from 2000 to 2014, the short-term actual measured
19 net recharge was less total rights allocated to the judgment Parties by as much as
20 130,000 AF.

21 a) From this the court concludes that during this period from 2000 to
22 2014, after offsets for production, there was recharge to the basin in
23 excess of what water was actually produced by as much as 130,000 AF.

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

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

28 9. The safe storage measures are not required by the physical solution of

1 the Judgment, Peace I, Peace II, the court approved management agreements, the
2 OBMP, the court orders of implementation, or Article X, section 2 of the California
3 Constitution.

4
5
6 **VII. The Safe Yield Reset and Ag Pool Water: Recalculation**

7 A. The court finds that the Safe Yield reset to 135,000 AFY is a “recalculation”
8 within the definition of Judgment, Exhibit “H” ¶10.

9 1. SYRA used the term “reset” to describe lowering the Safe Yield to
10 135,000 AFY.

- 11 a) Now that the court has rejected all of SYRA except the lowering of Safe
12 Yield to 135,000 AFY, the court finds that “reset” is a legally unjustified
13 and legally incorrect term for describing the lowering the Safe Yield to
14 135,000 AFY. For the reasons stated herein, the court finds that
15 lowering the Safe Yield to 135,000 is a recalculation within the
16 definition of Judgment, Exhibit “H” ¶10(a)(1). For the rest of this
17 order, the court will correctly use the term recalculation for lowering the
18 Safe Yield from 140,000 AFY to 135,000 AFY.
- 19 b) Wildermuth himself calls it a recalculation. Exhibit 1 to his declaration
20 is entitled Declaration of Mark Wildermuth-2013 Chinó Basin
21 Groundwater Model Update and *Recalculation* of Safe Yield Pursuant to
22 all the Peace Agreements. [Emphasis added.]
- 23 c) The recalculation to 135,000 is pursuant to the “tenth year” of
24 operation evaluation required by the Judgment.
- 25 d) Watermaster and the City of Ontario argue to the contrary, but the
26 “reset” lowering of Safe Yield fits any ordinary definition of the word
27 “recalculation.”
- 28 I) The whole point of the SYRA motion, related motions, and series of

1 hearings has been for the court to determine how to integrate the
 2 reduction of the Safe Yield from 140,000 AFY to 135,000 AFY.
 3 The court finds this reduction to be a recalculation of the Safe Yield
 4 into the current reality of the Chino Basin.

5 (a) In the context of SYRA, the use of the term “reset” might have
 6 made some legal sense. However, now that the court has
 7 rejected everything but the reduction, the label “reset” has no
 8 basis in fact or law.

9 II) The court cannot find any other way to reconcile these provisions and
 10 their interpretations while keeping the ruling consistent with reality.
 11 The reduction in Safe Yield is a recalculation, no matter how subtle the
 12 attorneys’ arguments are.

13 2. Therefore, the court finds and orders that the first 5,000 AFY of any
 14 unproduced Ag Pool water now has a top priority over any other claims, such as
 15 conversion claims and early transfers, and that 5,000 AFY of Ag Pool water be
 16 allocated to Operating Safe Yield pursuant to Judgment Exhibit H ¶10(a).

- 17 a) This 5,000 AFY has top priority because it is part of the Judgment.
- 18 b) To further illustrate the court’s orders, based on the tables in sections
 19 IV.B.5 and V.C.5 above

20 Example 1-B	Explanation	Comment
21 Initial Ag Pool	82,800 AFY	Judgment
22 allocation		
23 Subtract 5,000 AFY	- 5,000	Safe Yield recalculation reduction pursuant to Judgment Exhibit H 24 ¶10
25		
26 Ag Pool	- 33,600 AFY	Assumption based the current
27 production/pumping		credited production (pumping) 28 for agricultural groundwater is

		Appropriative Pool pursuant to Peace I and Peace II.
Balance	9,400 AFY	(42,200 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 the recalculation reallocation, the 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.

VIII. Safe Yield Reset and Desalter-Induced Recharge

The court concludes and orders that Desalter-Induced Recharge is only to be applied to offset Desalter production. The court’s analysis involves going back to the basics of the judgment and the Peace Agreements.

A. The Revised Judgment

1. The Judgment ¶I.4.(x) defines “Safe Yield” as “the long-term average annual quantity of groundwater . . . which can be produced from the Basin under cultural conditions of a particular year without causing an undesirable result.”

2. The Judgment ¶I.4.(l) defines “Operating Safe Yield” as “the annual amount of water which Watermaster shall determine, pursuant to the criteria specified in Exhibit “T”, can be produced from Chino Basin by the Appropriative Pool parties free of replenishment obligation under the Physical Solution herein.

a) Exhibit “T” is the Engineering Appendix which has come to include the

1 definitions of Hydraulic Control, Re-Operation water, and Desalter
2 production.

- 3 3. Judgment Exhibit "H" ¶10 Unallocated Safe Yield Water states:
4 "to the extent that, in any five years, any portion of the share of
5 Safe Yield allocated to the Overlying (Agricultural) pool is not
6 produced, such water shall be available for reallocation to members of
7 the appropriative pool, as follows:

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

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

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

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

17
18 B. The 2000 Peace Agreement I

19 1. Peace I Section I(ee) defines "Operating Safe Yield" as the "annual
20 amount of groundwater which Watermaster shall determine, pursuant to criteria
21 specified in Exhibit "T" to the judgment, can be produced from Chino Basin by the
22 Appropriative Pool free of Replenishment obligation under the Physical Solution.
23 Watermaster shall include any New Yield in determining Operating Safe Yield."

- 24 a) This is a modification of the definition of "Operating Safe Yield" from
25 the Judgment. In fact, the court notes "IV-Mutual Covenants, ¶ 4.5
26 Construction of "Operating Yield" Under the Judgment. Exhibit I to
27 the Judgment shall be construed to authorize Watermaster to include
28 New Yield as a component of Operating Safe Yield."

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C. The 2007 Peace Agreement II

1. Article VII Yield Accounting, ¶7.1 New Yield Attributable to the Desalters states “for the initial term of the Peace Agreement, neither Watermaster nor the Parties will request that Safe Yield be recalculated in a manner that incorporates New Yield *attributable to the Desalters* into the determination of Safe Yield so that this source of supply will be available for Desalter Production rather than for use by individual parties to the Judgment.” (Emphasis in original.)

D. The Safe Yield Recalculation and Desalter-Induced Recharge

1. Watermaster correctly states that that desalter induced recharge can only be used to offset desalter production. From this Watermaster concludes that Safe Yield of 135,000 acre-feet per year must include Desalter-induced recharge. This conclusion is wrong.

- a) Through many avenues, Watermaster has attempted to include Desalter-Induced Recharge (with the new abbreviation of “DIR”) within the definition of Safe Yield.
- b) Watermaster has never explicitly offered an explanation of why Watermaster has attempted so diligently to convince the court to include Desalter-Induced Recharge within the definition of Safe Yield.
- I) The court considers that Watermaster’s explanation might include an argument that if Desalter-Induced Recharge is not included within the definition of Safe Yield, the parties could produce/pump water from Desalters without limit, with the result that water could be drained from the Santa Ana River without limit. That result would be not only detrimental to the hydrology of the entire region, but also legally unjustified.
- c) In its latest argument, Watermaster has offered to “sequester” the

1 portion of Safe Yield attributable to Desalter-Induced Recharge.

- 2 I) The court does not accept this characterization of Desalter
3 production/pumping allocation because it is simply a characterization
4 of an accounting.
- 5 II) The “sequestration” has no basis in the CAMA’s and adds a new, vague,
6 undefined term to an already complicated structure of accounting.
- 7 III) Watermaster argues “that Desalter-Induced Recharge is an inflow
8 to the Basin and therefore a component of Safe Yield.”

- 9 (a) The court rejects this argument because it contradicts the
10 requirement of Peace II that for the initial term of the Peace
11 Agreement, Safe Yield will not be recalculated to include New Yield
12 attributable to the Desalters.
- 13 (b) Desalter-Induced Recharge is the source of (and offset to) New
14 Yield attributable to the Desalters. That New Yield cannot be
15 included in Safe Yield. So, so under Peace II, Safe Yield also does
16 not include Desalter-Induced Recharge. (Peace I ¶ 1.1(aa)-definition
17 of New Yield; Peace I ¶7.5-Replenishment Water; Peace II ¶6.2-
18 Peace II Desalter Production Offsets.)

- 19 IV) The Responding AP Members argue that the court can only be
20 consistent in its orders if the court resets the Safe Yield to 115,000
21 AFY. The court also rejects this argument for the following reasons.
- 22 (a) Using Watermaster's own proposal, the court recognizes that there is
23 some logic to the position of the Responding AP Members because
24 1) if the 20,000 AFY is “sequestered” that it is not available for
25 production/pumping without a replenishment obligation and 2)
26 then the reality is the safe yield should be 135,000 AFY - 20,000
27 AFY for a net of 115,000 AFY.
- 28 (b) However, the court concludes that the structure set up by the

1 Judgment, Peace I, and Peace II require that there be separate
2 analyses for Safe Yield and New Yield attributable to the Desalters.

3 (i) The analysis for Safe Yield is illustrated in this order Sec. VII.5.a
4 above.

5 (ii) The analysis for Desalter-Induced Recharge and New Yield
6 attributable to the Desalters is described in Peace I and Peace II
7 and the further order as set forth herein.

8 (iii) Watermaster has been accounting for these analyses since 2007,
9 so it should not be a problem for Watermaster to to continue to
10 do so.

11 (c) The Responding AP Members also argues that the technical
12 reports show that the basin can safely only sustain 135,000 AFY.

13 (d) However, in Exhibit 1 to the Declaration of Mark Wildermuth -
14 2013 Chino Basin Groundwater Model Update and Recalculation of
15 Safe Yield Pursuant to Peace Agreements, section 1.2.3, "the
16 updated Watermaster Model was used to estimate Santa Ana River
17 Underflow New Yield (SARUNY) from the desalters and
18 reoperation from both the calibration and planning periods.
19 SARUNY means the same thing as that term *Desalter Induced Recharge*
20 as used in the 2015 Safe Yield Reset Agreement." This definition is
21 repeated in section 7.3.7.

22 (e) The Wildermuth declaration filed March 10, 2017, with the Chino
23 Basin Watermaster Response to February 22, 2017 Order section
24 7.3.7 which states:

25 (i) "The net Santa Ana River recharge in the fiscal year spending
26 July 1999 through June 2000 [one year] is the baseline from
27 which to measure SARUNY, which was estimated to be
28 -2,153 acre-ft/yr, indicating that the Chino Basin discharged to

1 the Santa Ana River more water than was recharged by the River
2 into the Basin. . . . Table 7-10 compares Chino Desalter
3 production and SARUNY over the period of July 2000 through
4 July 2030. . . . The effect of 's the Chino Desalters and
5 reoperation becomes clear in 2005 when SARUNY reaches about
6 50 percent of CDA production. The New Yield results from the
7 implementation of the Chino Desalters is consistent with the
8 planning estimates that were assumed during the development of
9 the Peace Agreements.

- 10 (f) Table 7-10 shows that starting in 2017, the ratio of new yield to
11 CDA production is about an average of 45 percent, meaning that
12 New Yield Desalter-Induced Recharge those years is about 45% of
13 the Desalter production.
- 14 (g) From these facts the court concludes that the Wildermuth Safe Yield
15 reset/recalculation has taken into account the Desalter-Induced
16 Recharge and production, so there is no need to reduce the Safe
17 Yield two 115,000 AFY as argued by the Responding AP Members.
- 18 (h) The Peace Agreement offsets for new yield production attributable
19 to the Desalters are an accounting requirement process, not a feature
20 of determination of Safe Yield.
- 21 (i) The court also concludes that the reset/recalculation has included
22 the contractual features of the Peace Agreements, and one of those
23 features is that Safe Yield not be recalculated to incorporate New
24 Yield attributable to the Desalters. Wildermuth has considered this
25 feature.
- 26 (j) Again, therefore the safe yield of 135,000 AFY does not include
27 New Yield attributable to the Desalters.

28 2. The court still concludes for the term of Peace I (*i.e.*, until 2030), Safe

1 Yield not be recalculated in a manner that incorporates New Yield attributable to the
2 Desalters into the determination of Safe Yield.

3 a) The 20,000 AFY of Desalter-Induced Recharge is not included with the
4 definition of Safe Yield for the term of the Peace Agreements. To rule
5 otherwise would contradict the Peace Agreements.

6 b) The court analogizes its ruling to the controlled overdraft allowed to
7 achieve hydraulic control. That aspect of production/pumping was not
8 allocated to Safe Yield. The court orders that Desalter-Induced
9 Recharge New Yield remain unallocated to Safe Yield.

10 c) The court does not address the City of Chino's briefing regarding the
11 Safe Yield Implementation Replenishment Accounting Illustration (Per
12 Peace II agreement, Section 6.2 (PIIA, 6.2) and June 11, 2015 Key
13 Principles) Watermaster motion filed October 23, 2015, Exhibit "F"
14 Attachment 2 for the following reasons:

15 I) Chino asks if the Column G – Desalter-Induced Recharge
16 replenishment water was coming from Desalter production.

17 II) Footnote 4 for this Column G states that "the desalter-induced
18 recharge projection in the table is now shown at 50% of the annual total
19 desalter production for years 2015 through 2030. Desalter -induced
20 recharge from 2001 to 2014 (187,000 acre-feet) will be deemed Safe
21 Yield and not available to offset Desalter production."

22 III) As part of its order that SYRA cannot be implemented, the court
23 rejects the Safe Yield Reset Implementation Desalter Replenishment
24 Accounting Illustration.

25 IV) The City of Ontario has argued that Desalter Induced Recharge
26 to offset Desalter production should be "backfilled" from Safe Yield.
27 The court rejects this argument for the following reasons:

28 (a) This is merely a characterization of what SYRA proposed to do, and,

1 for the reasons already stated, the court has rejected SYRA except
2 for the Safe Yield recalculation.

3 (b) The Judgment, the Peace Agreements, and the CAMA's do not
4 support this accounting, again for the reasons already stated.

5 (c) Again, for the reasons stated herein, the court rejects that Ontario's
6 argument that a Safe Yield recalculation to 135,000 AFY is not a
7 "Safe Yield recalculation." The argument has no merit and is
8 completely unpersuasive.

9 (d) The court finds that the definitions of Safe Yield and New Yield are
10 sufficiently set forth in the Judgment, Peace I and Peace II.

11 (i) Watermaster does not point to any specific conflict between the
12 court's current/instant order and the court's order implementing
13 Watermaster Resolution 07-05, and the court finds none.

14 (ii) The court reaffirms the definitions of Peace II which have been
15 in effect for 10 years, and of course the definitions of the
16 Judgement and Peace I.

17 (iii) The court finds no basis for Watermaster's attempt to define
18 Desalter-Induced Recharge into directly, indirectly, Safe Yield or
19 by a "sequester."

20 (iv) In reaffirming the definitions of the Judgment, Peace I, and
21 Peace II, the court of course also notes the definition of "Safe
22 Yield" in the Judgment ¶I.1(x) inclusive of "undesirable result,"
23 and the "Material Physical Injury" of Peace I ¶I.1 (y).

24 V) The court finds and orders that Desalter production is not Safe Yield
25 and Desalter production is to be offset only as provided in Peace II.
26
27

28 **IX. Additional Bases for Rulings**

1 A. The court has refused to implement the sections of SYRA identified above for
2 the reasons set forth above. In the court's view, those reasons are sufficient under
3 the law. Therefore, the court has not addressed other objections raised by the
4 parties, such as those of the City of Chino, that Watermaster has failed to prove a
5 change in circumstances, that Watermaster has improperly advocated for certain
6 parties, that the parties are collaterally estopped from re-litigating the parties' rights,
7 that the parties are equitably estopped from reducing their replenishment obligations,
8 that SYRA fails to comply with CEQA, that SYRA provisions resulted in an unlawful
9 taking of Chino's property.

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

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

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

26 2. The court finds that the rulings herein will not cause material physical
27 injury or an undesirable result.

28 a) Although many parties have approved SYRA, parties' approval or

1 disapproval of SYRA is not a legal basis for the court to enforce SYRA.
2 The court must look to the previous agreements of the parties, the
3 previous court orders, the Court Approved Management Agreements,
4 the Judgement, and the California Constitution.
5

6 Date: _____
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10 Judge Stanford E. Reichert
11 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 April 24, 2017 I served the following:

1. NOTICE OF RULINGS AFTER HEARING ON WATERMASTER'S MOTION REGARDING 2015 SAFE YIELD RESET AGREEMENT, AMENDMENT OF RESTATED JUDGMENT, PARAGRAPH 6

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

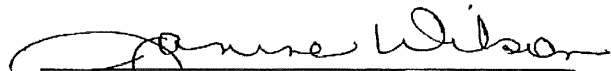
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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 28, 2017 in Rancho Cucamonga, California.


By: Janine Wilson
Chino Basin Watermaster

BRIAN GEYE
AUTO CLUB SPEEDWAY
9300 CHERRY AVE
FONTANA, CA 92335

BOB KUHN
THREE VALLEYS MWD
669 HUNTERS TRAIL
GLENORA, CA 91740

ROBERT BOWCOCK
INTEGRATED RESOURCES MGMNT
405 N. INDIAN HILL BLVD
CLAREMONT, CA 91711-4724

STEVE ELIE
IEUA
17017 ESTORIL STREET
CHINO HILLS, CA 91709

GINO L. FILIPPI
CBWM BOARD MEMBER
305 N. 2ND AVE., PMB #101
UPLAND, CA 91786

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

DON GALLEANO
WMWD
4220 WINEVILLE ROAD
MIRA LOMA, CA 91752

BOB DiPRIMIO
CBWM BOARD MEMBER
11142 GARVEY AVENUE
EL MONTE, CA 91733

JAMES CURATALO
CUCAMONGA VALLEY WATER DIST
PO BOX 638
RANCHO CUCAMONGA, CA 91729

JEFF PIERSON
PO BOX 1440
LONG BEACH, CA 90801-1440

ALLEN HUBSCH
LOEB & LOEB LLP
10100 SANTA MONICA BLVD.
SUITE 2200
LOS ANGELES, CA 90067

BOB FEENSTRA
2720 SPRINGFIELD ST,
ORANGE, CA 92867

Members:

Allen W. Hubsch	ahubsch@loeb.com
Andrew Gagen	agagen@kidmanlaw.com
Arthur Kidman	akidman@kidmanlaw.com
Catharine Irvine	cirvine@DowneyBrand.com
Dan McKinney	dmckinney@douglascountylaw.com
David Aladjem	daladjem@downeybrand.com
Eddy Beltran	ebeltran@kidmanlaw.com
Fred Fudacz	ffudacz@nossaman.com
Fred Galante	fgalante@awattorneys.com
Jean Cihigoyenetché	Jean@thejclawfirm.com
Jill Willis	jwillis@bbklaw.com
Jim Markman	jmarkman@rwglaw.com
Jimmy Gutierrez - Law Offices of Jimmy Gutierrez (jimmylaredo@gmail.com)	jimmylaredo@gmail.com
jimmy@city-attorney.com	jimmy@city-attorney.com
Joel Kuperberg	jkuperberg@rutan.com
John Harper	jrharper@harperburns.com
John Schatz	jschatz13@cox.net
Mark D. Hensley	mhensley@hensleylawgroup.com
Martin Cihigoyenetché	marty@thejclawfirm.com
Michelle Staples	mstaples@jdtplaw.com
Nick Jacobs	njacobs@somachlaw.com
Paeter E. Garcia	paeter.garcia@bbklaw.com
Randy Visser	RVisser@sheppardmullin.com
Robert E. Donlan	red@eslawfirm.com
Rodney Baker	rodbaker03@yahoo.com
Steve Kennedy	skennedy@bmklawplc.com
Timothy Ryan	tjryan@sgwater.com
Tom Bunn	TomBunn@Lagerlof.com
Tom McPeters	THMcP@aol.com
Tracy J. Egoscue	tracy@egoscuelaw.com
Trish Geren	tgeren@sheppardmullin.com
William J Brunick	bbrunick@bmbllawoffice.com

Members:

Agnes Cheng	agnes.cheng@cc.sbcounty.gov
Al Lopez	alopez@wmwd.com
Alfonso Ruiz Jr.	Alfonso.Ruiz@gerdau.com
Amanda Coker	acoker@cityofchino.org
Andrea Olivas	aolivas@jcsd.us
Andrew Silva	Andrew.Silva@cao.sbcounty.gov
Andy Campbell	acampbell@ieua.org
Andy Malone	amalone@weewater.com
Ankita Patel	apatel@niagarawater.com
Anna Truong	ATruong@cbwm.org
April Robitaille	arobitaille@bhfs.com
April Woodruff	awoodruff@ieua.org
Arnold "AJ" Gerber	agerber@parks.sbcounty.gov
Arnold Rodriguez	jarodriguez@sarwc.com
Art Bennett	citycouncil@chinohills.org
Ashok Dhingra	ash@akdconsulting.com
Ben Lewis	benjamin.lewis@gswater.com
Ben Peralta	bperalta@tvmwd.com
Bill Thompson	bthompson@ci.norco.ca.us
Bob Bowcock	bbowcock@irmwater.com
Bob DiPrimio	rjdiprimio@sgwater.com
Bob Feenstra	bobfeenstra@gmail.com
Bob Kuhn	bgkuhn@aol.com
Bob Kuhn	bkuhn@tvmwd.com
Bob Page	bpage@cao.sbcounty.gov
Brad Herrema	bherrema@bhfs.com
Brandon Howard	brahoward@niagarawater.com
Brenda Fowler	balee@fontanawater.com
Brenda Trujillo	brendatrujillo@chinohills.org
Brent Yamasaki	byamasaki@mwdh2o.com
Brian Geye	bgeye@autoclubspeedway.com
Brian Hess	bhess@niagarawater.com
Brian Thomas	bkthomas@jcsd.us
Camille Gregory	cgregory@cbwm.org
Carol Bennett	cbennett@tkeengineering.com
Carol Boyd	Carol.Boyd@doj.ca.gov
Carolina Sanchez	csanchez@weewater.com
Casey Costa	ccosta@chinodesalter.org
Chad Blais	cblais@ci.norco.ca.us
Charles Field	cdfield@att.net
Charles Linder	Charles.Linder@nrgenergy.com
Charles Moorrees	cmoorrees@sawaterco.com
Chino Hills City Council	citycouncil@chinohills.org
Chris Berch	CBerch@ieua.org
Christopher R. Guillen	cguillen@bhfs.com
Chuck Hays	chays@fontana.org
Cindy Cisneros	cindyc@cvwdwater.com
Cindy LaCamera	clacamera@mwdh2o.com
Cindy Li	Cindy.li@waterboards.ca.gov
Craig Miller	CMiller@wmwd.com
Craig Stewart	Craig.Stewart@amec.com
Cris Fealy	cifealy@fontanawater.com
Curtis Paxton	cpaxton@chinodesalter.org
Curtis Stubbings	Curtis_Stubbings@praxair.com
Dan Arrighi	darrighi@sgwater.com
Dan Chadwick	dchadwick@fontana.org
Danielle Soto	danielle_soto@CI.POMONA.CA.US
Darron Poulsen	darron_poulsen@ci.pomona.ca.us
Daryl Grigsby	daryl_grigsby@ci.pomona.ca.us
Dave Argo	daveargo46@icloud.com
Dave Crosley	DCrosley@cityofchino.org
David D DeJesus	tvmwddiv2rep@gmail.com

David De Jesus	ddejesus@tvmwd.com
David Huskey	David.Huskey@cdcr.ca.gov
David Lovell	dlovell@dpw.sbcounty.gov
David Penrice	dpenrice@acmwater.com
David Ringel	david.j.ringel@us.mwhglobal.com
David Starnes	david.starnes@mcmcn.net
Dennis Dooley	ddooley@angelica.com
Dennis Mejia	dmejia@ci.ontario.ca.us
Dennis Williams	dwilliams@geoscience-water.com
Diana Frederick	diana.frederick@cdcr.ca.gov
Don Galleano	dongalleano@icloud.com
Earl Elrod	earl.elrod@verizon.net
Edgar Tellez Foster	etellezfoster@cbwm.org
Eric Fordham	eric_fordham@geopentech.com
Eric Garner	eric.garner@bbklaw.com
Eric Leuze	Eric.Leuze@nrgenergy.com
Eric Tarango	edtarango@fontanawater.com
Erika Clement	Erika.clement@sce.com
Eunice Ulloa	eulloa@cbwcd.org
Felix Hamilton	felixhamilton.chino@yahoo.com
Frank Brommenschenkel	frank.brommen@verizon.net
Frank Yoo	FrankY@cbwm.org
Gabby Garcia	ggarcia@mvwd.org
Gailyn Watson	gwatson@airports.sbcounty.gov
Geoffrey Kamansky	gkamansky@niagarawater.com
Geoffrey Vanden Heuvel	geoffreyvh60@gmail.com
Gerald Yahr	yahrj@koll.com
Giannina Espinoza	gia.espinoza@gerdau.com
Gina Nicholls	gnicholls@nossaman.com
Gino L. Filippi	Ginoffvine@aol.com
Gloria Rivera	gloriar@cvwdwater.com
Grace Cabrera	grace_cabrera@ci.pomona.ca.us
Greg Woodside	gwoodside@ocwd.com
Henry DeHaan	hpdehaan@verizon.net
James Curatalo	jamesc@cvwdwater.com
James Jenkins	cnomgr@airports.sbcounty.gov
James McKenzie	jmckenzie@dpw.sbcounty.gov
Jane Anderson	janderson@jcsd.us
Janine Wilson	JWilson@cbwm.org
Jasmin A. Hall	jhall@ieua.org
Jason Marseilles	jmarseilles@ieua.org
Jason Pivovarov	jpivovarov@ieua.org
Jean Perry	JPerry@wmwd.com
Jeanina M. Romero	jromero@ci.ontario.ca.us
Jeannette Vagnozzi	jvagnozzi@ci.upland.ca.us
Jeffrey L. Pierson	jpierson@intexcorp.com
Jesse White	jesse.white@gerdau.com
Jessie Ruedas	Jessie@thejclawfirm.com
Jesus Placentia	jplacentia@cityofchino.org
Jill Willis	jnwillis@bbklaw.com
Jim Bowman	jbowman@ci.ontario.ca.us
Jim Taylor	jim_taylor@ci.pomona.ca.us
Jo Lynne Russo-Pereyra	jolynner@cvwdwater.com
Joanne Chan	jchan@wmwd.org
Joe Graziano	jgraz4077@aol.com
Joe Grindstaff	jgrindstaff@ieua.org
Joe Joswiak	JJoswiak@cbwm.org
Joe P LeClaire	leclairj@cdmsmith.com
Joel Ignacio	jignacio@ieua.org
John Abusham	john.abusham@nrg.com
John Bosler	johnb@cvwdwater.com
John Huitsing	johnhuitsing@gmail.com
John Lopez and Nathan Cole	customerservice@sarwc.com
John V. Rossi	jrossi@wmwd.com

Jon Lambeck	jlambeck@mwdh2o.com
Jose Alire	jalire@cityofchino.org
Jose Galindo	jose_a_galindo@praxair.com
Josh Swift	jmswift@fontanawater.com
Joshua Aguilar	jaguilar@ieua.org
Julie Cavender	julie.cavender@cdcr.ca.gov
Julie Saba	jsaba@jcsd.us
Justin Brokaw	jbrokaw@marygoldmutualwater.com
Justin Nakano	JNakano@cbwm.org
Justin Scott Coe	jscottcoe@mvwd.org
Karen Johnson	kejwater@aol.com
Kathleen Brundage	kathleen.brundage@californiasteel.com
Kathy Kunysz	kkunysz@mwdh2o.com
Kathy Tieg	Kathyt@cvwdwater.com
Kati Parker	kparker@ieua.org
Kati Parker - Inland Empire Utilities Agency	(katiandcraig@verizon.net)
	katiandcraig@verizon.net
Katie Gienger	kgienger@ontarioca.gov
Keith Person	keith.person@waterboards.ca.gov
Kelly Berry	KBerry@sawpa.org
Ken Jeske	kjeske1@gmail.com
Ken Waring	kwarling@jcsd.us
Kevin Blakeslee	kblakeslee@dpw.sbcounty.gov
Kevin Sage	Ksage@IRMwater.com
Krystn Bradbury	kbradbury@ontarioca.gov
Kurt Berchtold	kberchtold@waterboards.ca.gov
Kyle Snay	kylesnay@gswater.com
Landon Kern	lkern@cityofchino.org
Laura Mantilla	lmantilla@ieua.org
Lawrence Dimock	lawrence.dimock@cdcr.ca.gov
Lee Moore	Lee.Moore@nrgenergy.com
Linda Jadeski	ljadeski@wvwd.org
Linda Minky	LMinky@BHFS.com
Lisa Lemoine	LLemoine@wmwd.com
Lisa Snider	lsnider@ieua.org
Marco Tule	marco.tule@nrg.com
Maribel Sosa	Maribel_Sosa@ci.pomona.ca.us
Mark Wiley	mwiley@chinohills.org
Marsha Westropp	MWestropp@ocwd.com
Martin Zvirbulis	martinz@cvwdwater.com
Mathew C. Ballantyne	mballantyne@cityofchino.org
Matthew H. Litchfield	mlitchfield@wvwd.org
Michael Sigsbee	msigsbee@ci.ontario.ca.us
Mike Blazevic	mblazevic@weiwater.com
Mike Maestas	mikem@cvwdwater.com

Members:

Maria Flores
Maria Mendoza-Tellez
Marilyn Levin
Mario Garcia
Mark Kinsey
Mark Wildermuth
Marla Doyle
Martha Davis
Martin Rauch
Meg McWade
Melanie Otero
Melissa L. Walker
Michael Adler
Michael Camacho
Michael Cruikshank
Michael P. Thornton
Michael T Fife
Michael Thompson
Mike Sigsbee
Monica Heredia
Moore, Toby
Nadeem Majaj
Nadia Picon-Aguirre
Nathan deBoom
Neetu Gupta
Nicole Escalante
Noah Golden-Krasner
Pam Sharp
Pam Wilson
Patty Jett
Paul Deutsch
Paul Hofer
Paul Hofer
Paul Leon
Paula Lantz
Penny Alexander-Kelley
Pete Hall
Pete Hall
Pete Vicario
Peter Hettinga
Peter Kavounas
Peter Rogers
Peter Thyberg
Rachel Avila
Rachel Ortiz
Ramsey Haddad
Randall McAlister
Raul Garibay
Ray Wilkings
Rene Salas
Richard Zuniga
Rick Darnell
Rick Hansen
Rick Rees
Rick Zapien
Rita Pro
Robert C. Hawkins
Robert DeLoach
Robert Neufeld
Robert Stockton
Robert Tock
Robert Wagner

mflores@ieua.org
MMendoza@weewater.com
marilyn.levin@doj.ca.gov
mgarcia@tvmwd.com
mkinsey@mvwd.org
mwilderdmuth@weewater.com
marla_doyle@ci.pomona.ca.us
mdavis@ieua.org
martin@rauchcc.com
meg_mcwade@ci.pomona.ca.us
melanie_otero@ci.pomona.ca.us
mwalker@dpw.sbcounty.gov
michael.adler@mcmcn.net
Mcamacho@pacificaservices.com
MCruikshank@DBStephens.com
mthornton@tkeengineering.com
MFife@bhfs.com
michael.thompson@cdcr.ca.gov
msigsbee@ci.ontario.ca.us
mheredia@chinohills.org
TobyMoore@gswater.com
nmajaj@chinohills.org
naguirre@wvwd.org
n8deboom@gmail.com
ngupta@ieua.org
NEscalante@ci.ontario.ca.us
Noah.goldenkrasner@doj.ca.gov
PSharp@chinohills.org
pwilson@bhfs.com
pjett@spacecenterinc.com
paul.deutsch@amec.com
farmwatchtoo@aol.com
farmerhofer@aol.com
pleon@ci.ontario.ca.us
paula_lantz@ci.pomona.ca.us
Palexander-kelley@cc.sbcounty.gov
pete.hall@cdcr.ca.gov
rpetehall@gmail.com
PVicario@cityofchino.org
peterhettinga@yahoo.com
PKavounas@cbwm.org
progers@chinohills.org
Peter.Thyberg@cdcr.ca.gov
R.Avila@MPGLAW.com
rortiz@nossaman.com
ramsey.haddad@californiasteel.com
randall.mcalister@ge.com
raul_garibay@ci.pomona.ca.us
rwilkings@autoclubspeedway.com
Rene_Salas@ci.pomona.ca.us
richard.zuniga@nov.com
Richard.Darnell@nrgenergy.com
rhansen@tvmwd.com
Richard.Rees@amec.com
rzapien@cbwm.org
rpro@cityofchino.org
RHawkins@earthlink.net
robertadeloach1@gmail.com
robneu1@yahoo.com
bstockton@wmwd.com
rtock@jcsd.us
rwagner@wbecorp.com

Rogelio Matta	rmatta@fontana.org
Roger Florio	roger.florio@ge.com
Roger Han	roger_han@praxair.com
Ron Craig	ronc@mbakerintl.com
Ron LaBrucherie, Jr.	ronLaBrucherie@gmail.com
Ronald C. Pietersma	rcpietersma@aol.com
Rosemary Hoerning	rhoerning@ci.upland.ca.us
Ryan Shaw	RShaw@wmwd.com
Sandra S. Rose	directorrose@mvwd.org
Sarah Schneider	sarah.schneider@amec.com
Scott Burton	sburton@ci.ontario.ca.us
Scott Runyan	srunyan@cc.sbcounty.gov
Scott Slater	sslater@bhfs.com
Seth J. Zielke	sjzielke@fontanawater.com
Shaun Stone	sstone@ieua.org
Sheri Rojo	smrojo@aol.com
Sonya Barber	sbarber@ci.upland.ca.us
Sonya Bloodworth	sbloodworth@wmwd.com
Sophie Akins	Sophie.Akins@cc.sbcounty.gov
Steve Riboli	steve.riboli@sanantoniowinery.com
Steve Smith	ssmith@ieua.org
Steven J. Elie	selie@ieua.org
Steven J. Elie	s.elie@mpglaw.com
Suki Chhokar	schhokar@sdcwa.org
Susan Collet	scollett@jcsd.us
Sylvie Lee	slee@ieua.org
Taya Victorino	tayav@cvwdwater.com
Teri Layton	tlayton@sawaterco.com
Terry Catlin	tcatlin@wfajpa.org
Tim Barr	tbarr@wmwd.com
Todd Corbin	tcorbin@jcsd.us
Todd Minten	tminten@chinodesalter.org
Tom Cruikshank	tcruikshank@spacecenterinc.com
Tom Harder	tharder@thomashardercompany.com
Tom Haughey	tom@haugheyinsurance.com
Tom O'Neill	toneill@ci.ontario.ca.us
Toni Medel	mmedel@rbf.com
Van Jew	vjew@mvwd.org
Veva Weamer	vweamer@weewater.com
Vicki Hahn	vhahn@tvmwd.com
Vicky Rodriguez	vrodriagu@ci.ontario.ca.us
Vivian Castro	VCastro@cbwcd.org
W. C. "Bill" Kruger	citycouncil@chinohills.org
William Urena	wurena@angelica.com

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 June 23, 2017 I served the following:

1. DEFENDANT AND APPELLANT CUCAMONGA VALLEY WATER DISTRICT'S NOTICE OF APPEAL

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 June 23, 2017 in Rancho Cucamonga, California.


By: Camille Gregory
Chino Basin Watermaster

BRIAN GEYE
AUTO CLUB SPEEDWAY
9300 CHERRY AVE
FONTANA, CA 92335

BOB KUHN
THREE VALLEYS MWD
669 HUNTERS TRAIL
GLENORA, CA 91740

ROBERT BOWCOCK
INTEGRATED RESOURCES MGMNT
405 N. INDIAN HILL BLVD
CLAREMONT, CA 91711

STEVE ELIE
IEUA
17017 ESTORIL STREET
CHINO HILLS, CA 91709

GINO L. FILIPPI
CBWM BOARD MEMBER
305 N. 2ND AVE., PMB #101
UPLAND, CA 91786

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

DON GALLEANO
WMWD
4220 WINEVILLE ROAD
MIRA LOMA, CA 91752

BOB DiPRIMIO
CBWM BOARD MEMBER
11142 GARVEY AVENUE
EL MONTE, CA 91733

JAMES CURATALO
CUCAMONGA VALLEY WATER DIST
PO BOX 638
RANCHO CUCAMONGA, CA 91729

JEFF PIERSON
PO BOX 1440
LONG BEACH, CA 90801-1440

ALLEN HUBSCH
LOEB & LOEB LLP
10100 SANTA MONICA BLVD.
SUITE 2200
LOS ANGELES, CA 90067

BOB FEENSTRA
2720 SPRINGFIELD ST,
ORANGE, CA 92867

Members:

Agnes Cheng	agnes.cheng@cc.sbcounty.gov
Al Lopez	alopez@wmwd.com
Alfonso Ruiz Jr.	Alfonso.Ruiz@gerdau.com
Amanda Coker	acoker@cityofchino.org
Andrea Olivas	aolivas@jcsd.us
Andrew Silva	Andrew.Silva@cao.sbcounty.gov
Andy Campbell	acampbell@ieua.org
Andy Malone	amalone@weewater.com
Ankita Patel	apatel@niagarawater.com
Anna Truong	ATruong@cbwm.org
anne middleton	amiddleton@sdca.org
April Robitaille	arobitaille@bhfs.com
April Woodruff	awoodruff@ieua.org
Arnold "AJ" Gerber	agerber@parks.sbcounty.gov
Arnold Rodriguez	jarodriguez@sarwc.com
Art Bennett	citycouncil@chinohills.org
Ashok Dhingra	ash@akdconsulting.com
Ben Lewis	benjamin.lewis@gswater.com
Ben Peralta	bperalta@tvmwd.com
Bill Thompson	bthompson@ci.norco.ca.us
Bob Bowcock	bbowcock@irmwater.com
Bob DiPrimio	rjdiprimio@sgvwater.com
Bob Feenstra	bobfeenstra@gmail.com
Bob Kuhn	bgkuhn@aol.com
Bob Kuhn	bkuhn@tvmwd.com
Bob Page	bpage@cao.sbcounty.gov
Brad Herrema	bherrema@bhfs.com
Brandon Howard	brahoward@niagarawater.com
Brenda Fowler	balee@fontanawater.com
Brenda Trujillo	brendatrujillo@chinohills.org
Brent Yamasaki	byamasaki@mwdh2o.com
Brian Geye	bgeye@autoclubspeedway.com
Brian Hess	bhess@niagarawater.com
Brian Thomas	bkthomas@jcsd.us
Cameron Andreasen	memphisbelle38@outlook.com
Camille Gregory	cgregory@cbwm.org
Carol Bennett	cbennett@tkeengineering.com
Carol Boyd	Carol.Boyd@doj.ca.gov
Carolina Sanchez	csanchez@weewater.com
Casey Costa	ccosta@chinodesalter.org
Chad Blais	cblais@ci.norco.ca.us
Charles Field	cdfield@att.net
Charles Linder	Charles.Linder@nrgenergy.com
Charles Moorrees	cmoorrees@sawaterco.com
Chino Hills City Council	citycouncil@chinohills.org
Chris Berch	CBerch@ieua.org
Christopher R. Guillen	cguillen@bhfs.com
Chuck Hays	chays@fontana.org
Cindy Cisneros	cindyc@cvwdwater.com
Cindy LaCamera	clacamera@mwdh2o.com
Cindy Li	Cindy.li@waterboards.ca.gov

Craig Miller	CMiller@wmwd.com
Craig Stewart	Craig.Stewart@amec.com
Cris Fealy	cifealy@fontanawater.com
Curtis Paxton	cpaxton@chinodesalter.org
Curtis Stubbings	Curtis_Stubbings@praxair.com
Dan Arrighi	darrighi@sgvwater.com
Dan Chadwick	dchadwick@fontana.org
Danielle Soto	danielle_soto@CI.POMONA.CA.US
Darron Poulsen	darron_poulsen@ci.pomona.ca.us
Daryl Grigsby	daryl_grigsby@ci.pomona.ca.us
Dave Argo	daveargo46@icloud.com
Dave Crosley	DCrosley@cityofchino.org
David De Jesus	ddejesus@tvmwd.com
David Huskey	David.Huskey@cdcr.ca.gov
David Lovell	dlovell@dpw.sbcounty.gov
David Penrice	dpenrice@acmwater.com
David Ringel	david.j.ringel@us.mwhglobal.com
David Starnes	david.starnes@mcmcn.net
Dennis Dooley	ddooley@angelica.com
Dennis Mejia	dmejia@ci.ontario.ca.us
Dennis Williams	dwilliams@geoscience-water.com
Diana Frederick	diana.frederick@cdcr.ca.gov
Don Galleano	dongalleano@icloud.com
Earl Elrod	earl.elrod@verizon.net
Edgar Tellez Foster	etellezfoster@cbwm.org
Eric Fordham	eric_fordham@geopentech.com
Eric Garner	eric.garner@bbklaw.com
Eric Leuze	Eric.Leuze@nrgenergy.com
Eric Tarango	edtarango@fontanawater.com
Erika Clement	Erika.clement@sce.com
Eunice Ulloa	eulloa@cbwcd.org
Eunice Ulloa - Chino Basin Water Conservation District (eulloa@cityofchino.org)	eulloa@cityofchino.org
Felix Hamilton	felixhamilton.chino@yahoo.com
Frank Brommenschenkel	frank.brommen@verizon.net
Frank Yoo	FrankY@cbwm.org
Gabby Garcia	ggarcia@mvwd.org
Gailyn Watson	gwatson@airports.sbcounty.gov
Geoffrey Kamansky	gkamansky@niagarawater.com
Geoffrey Vanden Heuvel	geoffreyvh60@gmail.com
Gerald Yahr	yahrj@koll.com
Giannina Espinoza	gia.espinoza@gerdau.com
Gina Nicholls	gnicholls@nossaman.com
Gino L. Filippi	Ginoffvine@aol.com
Gloria Rivera	gloriar@cvwdwater.com
Grace Cabrera	grace_cabrera@ci.pomona.ca.us
Greg Woodside	gwoodside@ocwd.com
Henry DeHaan	hpdehaan@verizon.net
James Curatalo	jamesc@cvwdwater.com
James Jenkins	cnomgr@airports.sbcounty.gov
James McKenzie	jmckenzie@dpw.sbcounty.gov
Jane Anderson	janderson@jcsd.us
Janine Wilson	JWilson@cbwm.org

Jasmin A. Hall
Jason Marseilles
Jason Pivovarovff
Jean Perry
Jeanina M. Romero
Jeannette Vagnozzi
Jeffrey L. Pierson
Jesse White
Jessie Ruedas
Jesus Placentia
Jim Bowman
Jim Taylor
Jo Lynne Russo-Pereyra
Joanne Chan
Joe Graziano
Joe Grindstaff
Joe Joswiak
Joel Ignacio
John Abusham
John Bosler
John Huitsing
John Lopez and Nathan Cole
John V. Rossi
Jon Lambeck
Jose Alire
Jose Galindo
Joseph P. LeClaire (jleclaire@dbstephens.com)

jhall@ieua.org
jmarseilles@ieua.org
jpivovarovff@ieua.org
JPerry@wmwd.com
jromero@ci.ontario.ca.us
jvagnozzi@ci.upland.ca.us
jpierson@intexcorp.com
jesse.white@gerdau.com
Jessie@thejclawfirm.com
jplasencia@cityofchino.org
jbowman@ci.ontario.ca.us
jim_taylor@ci.pomona.ca.us
jolyenner@cvwdwater.com
jchan@wwwd.org
jgraz4077@aol.com
jgrindstaff@ieua.org
JJoswiak@cbwm.org
jignacio@ieua.org
john.abusham@nrg.com
johnb@cvwdwater.com
johnhuitsing@gmail.com
customerservice@sarwc.com
jrossi@wmwd.com
jlambeck@mwdh2o.com
jalire@cityofchino.org
jose_a_galindo@praxair.com

Josh Swift
Joshua Aguilar
Julie Cavender
Julie Saba
Justin Brokaw
Justin Nakano
Justin Scott Coe
Karen Johnson
Kathleen Brundage
Kathy Kunysz
Kathy Tiegs
Kati Parker
Kati Parker - Inland Empire Utilities Agency (katiandcraig@verizon.net)

jleclaire@dbstephens.com
jmswift@fontanawater.com
jaguilar@ieua.org
julie.cavender@cdcr.ca.gov
jsaba@jcsd.us
jbrokaw@marygoldmutualwater.com
JNakano@cbwm.org
jscottcoe@mvwd.org
kejwater@aol.com
kathleen.brundage@californiasteel.com
kkunysz@mwdh2o.com
Kathyt@cvwdwater.com
kparker@ieua.org

Katie Gienger
Keith Person
Kelly Berry
Ken Jeske
Ken Waring
Kevin Blakeslee
Kevin Sage
Krystn Bradbury
Kurt Berchtold
Kyle Snay
Landon Kern

katiandcraig@verizon.net
kgienger@ontarioca.gov
keith.person@waterboards.ca.gov
KBerry@sawpa.org
kjeske1@gmail.com
kwarling@jcsd.us
kblakeslee@dpw.sbcounty.gov
Ksage@IRMwater.com
kbradbury@ontarioca.gov
kberchtold@waterboards.ca.gov
kylesnay@gswater.com
lkern@cityofchino.org

Laura Mantilla
Lawrence Dimock
Lee Moore
Linda Jadeski
Linda Minky
Lisa Lemoine
Lisa Snider
Marco Tule
Maribel Sosa
Mark Wiley
Marsha Westropp
Martin Zvirbulis
Mathew C. Ballantyne
Matthew H. Litchfield
Michael Sigsbee
Mike Blazevic
Mike Maestas

lmantilla@ieua.org
lawrence.dimock@cdcr.ca.gov
Lee.Moore@nrgenergy.com
ljadeski@wwd.org
LMinky@BHFS.com
LLemoine@wmwd.com
lsnider@ieua.org
marco.tule@nrg.com
Maribel_Sosa@ci.pomona.ca.us
mwiley@chinohills.org
MWestropp@ocwd.com
martinz@cvwdwater.com
mballantyne@cityofchino.org
mlitchfield@wwd.org
msigsbee@ci.ontario.ca.us
mblazevic@weewater.com
mikem@cvwdwater.com

Members:

Maria Flores	mflores@ieua.org
Maria Mendoza-Tellez	MMendoza@weewater.com
Marilyn Levin	marilyn.levin@doj.ca.gov
Mario Garcia	mgarcia@tvmwd.com
Mark Kinsey	mkinsey@mvwd.org
Mark Wildermuth	mwildermuth@weewater.com
Marla Doyle	marla_doyle@ci.pomona.ca.us
Martha Davis	mdavis@ieua.org
Martin Rauch	martin@rauchcc.com
Melanie Otero	melanie_otero@ci.pomona.ca.us
Melissa L. Walker	mwalker@dpw.sbcounty.gov
Michael Adler	michael.adler@mcmcnet.net
Michael Camacho	MCamacho@pacificaservices.com
Michael Cruikshank	MCruikshank@DBStephens.com
Michael P. Thornton	mthornton@tkeengineering.com
Michael T Fife	MFife@bhfs.com
Michael Thompson	michael.thompson@cdcr.ca.gov
Mike Sigsbee	msigsbee@ci.ontario.ca.us
Monica Heredia	mheredia@chinohills.org
Moore, Toby	TobyMoore@gswater.com
Nadeem Majaj	nmajaj@chinohills.org
Nadia Picon-Aguirre	naguirre@wvwd.org
Nathan deBoom	n8deboom@gmail.com
Neetu Gupta	ngupta@ieua.org
Nicole Escalante	NEscalante@ci.ontario.ca.us
Noah Golden-Krasner	Noah.goldenkrasner@doj.ca.gov
Pam Sharp	PSharp@chinohills.org
Pam Wilson	pwilson@bhfs.com
Patty Jett	pjett@spacecenterinc.com
Paul Deutsch	paul.deutsch@amec.com
Paul Hofer	farmwatchtoo@aol.com
Paul Hofer	farmerhofer@aol.com
Paul Leon	pleon@ci.ontario.ca.us
Paula Lantz	paula_lantz@ci.pomona.ca.us
Penny Alexander-Kelley	Palexander-kelley@cc.sbcounty.gov
Pete Hall	pete.hall@cdcr.ca.gov
Pete Hall	rpetehall@gmail.com
Pete Vicario	PVicario@cityofchino.org
Peter Hettinga	peterhettinga@yahoo.com
Peter Kavounas	PKavounas@cbwm.org
Peter Rogers	progers@chinohills.org
Peter Thyberg	Peter.Thyberg@cdcr.ca.gov
Rachel Avila	R.Avila@MPGLAW.com
Rachel Ortiz	rortiz@nossaman.com
Ramsey Haddad	ramsey.haddad@californiasteel.com
Randall McAlister	randall.mcalister@ge.com
Raul Garibay	raul_garibay@ci.pomona.ca.us
Ray Wilkings	rwilkins@autoclubspeedway.com
Rene Salas	Rene_Salas@ci.pomona.ca.us
Richard Zuniga	richard.zuniga@nov.com
Rick Darnell	Richard.Darnell@nrenergy.com

Rick Hansen	rhansen@tvmwd.com
Rick Rees	Richard.Rees@amec.com
Rick Zapien	rzapien@cbwm.org
Rita Pro	rpro@cityofchino.org
Robert C. Hawkins	RHawkins@earthlink.net
Robert DeLoach	robertadeloach1@gmail.com
Robert Neufeld	robneu1@yahoo.com
Robert Stockton	bstockton@wmwd.com
Robert Tock	rtock@jcsd.us
Robert Wagner	rwagner@wbecorp.com
Rogelio Matta	rmatta@fontana.org
Roger Florio	roger.florio@ge.com
Ron Craig	ronc@mbakerintl.com
Ron LaBrucherie, Jr.	ronLaBrucherie@gmail.com
Ronald C. Pietersma	rcpietersma@aol.com
Rosemary Hoerning	rhoerning@ci.upland.ca.us
Ryan Shaw	RShaw@wmwd.com
Sandra S. Rose	directorrose@mvwd.org
Sarah Schneider	sarah.schneider@amec.com
Scott Burton	sburton@ci.ontario.ca.us
Scott Runyan	srunyan@cc.sbcounty.gov
Scott Slater	sslater@bhfs.com
Seth J. Zielke	sjzielke@fontanawater.com
Shaun Stone	sstone@ieua.org
Sheri Rojo	smrojo@aol.com
Sonya Barber	sbarber@ci.upland.ca.us
Sonya Bloodworth	sbloodworth@wmwd.com
Sophie Akins	Sophie.Akins@cc.sbcounty.gov
Steve Riboli	steve.riboli@sanantoniowinery.com
Steve Smith	ssmith@ieua.org
Steven J. Elie	selie@ieua.org
Steven J. Elie	s.elie@mpglaw.com
Susan Collet	scollett@jcsd.us
Sylvie Lee	slee@ieua.org
Taya Victorino	tayav@cvwdwater.com
Teri Layton	tlayton@sawaterco.com
Terry Catlin	tlcatlin@wfajpa.org
Tim Barr	tbarr@wmwd.com
Todd Corbin	tcorbin@jcsd.us
Todd Minten	tminten@chinodesalter.org
Tom Cruikshank	tcruikshank@spacecenterinc.com
Tom Harder	tharder@thomashardercompany.com
Tom Haughey	tom@haugheyinsurance.com
Tom O'Neill	toneill@ci.ontario.ca.us
Toni Medel	mmedel@rbf.com
Van Jew	vjew@mvwd.org
Veva Weamer	vweamer@weewater.com
Vicki Hahn	vhahn@tvmwd.com
Vicky Rodriguez	vrodrigu@ci.ontario.ca.us
Vivian Castro	VCastro@cbwcd.org
W. C. "Bill" Kruger	citycouncil@chinohills.org
William Urena	wurena@angelica.com

Members:

Allen W. Hubsch	ahubsch@loeb.com
Andrew Gagen	agagen@kidmanlaw.com
Arthur Kidman	akidman@kidmanlaw.com
Catharine Irvine	cirvine@DowneyBrand.com
Dan McKinney	dmckinney@douglascountylaw.com
David Aladjem	daladjem@downeybrand.com
Eddy Beltran	ebeltran@kidmanlaw.com
Fred Fudacz	ffudacz@nossaman.com
Fred Galante	fgalante@awattorneys.com
Jean Cihigoyenette	Jean@thejclawfirm.com
Jim Markman	jmarkman@rwglaw.com
Jimmy Gutierrez - Law Offices of Jimmy Gutierrez (jimmylaredo@gmail.com)	jimmylaredo@gmail.com
jimmy@city-attorney.com	jimmy@city-attorney.com
Joel Kuperberg	jkuperberg@rutan.com
John Harper	jrharper@harperburns.com
John Schatz	jschatz13@cox.net
Mark D. Hensley	mhensley@hensleylawgroup.com
Martin Cihigoyenette	marty@thejclawfirm.com
Michelle Staples	mstaples@jdtplaw.com
Nick Jacobs	njacobs@somachlaw.com
Paeter E. Garcia	paeter.garcia@bbklaw.com
Randy Visser	RVisser@sheppardmullin.com
Robert E. Donlan	red@eslawfirm.com
Rodney Baker	rodbaker03@yahoo.com
Steve Kennedy	skennedy@bmklawplc.com
Timothy Ryan	tjryan@sgvwater.com
Tom Bunn	TomBunn@Lagerlof.com
Tom McPeters	THMcP@aol.com
Tracy J. Egoscue	tracy@egoscuelaw.com
Trish Geren	tgeren@sheppardmullin.com
William J Brunick	bbrunick@bmbllawoffice.com