

FEE EXEMPT

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10 (AGRICULTURAL) POOL

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

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 v.

17 CITY OF CHINO et al.,

18 Defendants.

Case No. RCV RS51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

AG POOL'S OPPOSITION TO MOTION TO
APPROVE AMENDMENTS TO
APPROPRIATIVE POOL POOLING PLAN
AND COURT-APPROVED MANAGEMENT
AGREEMENTS; AND DECLARATION OF
TRACY J. EGOSCUE IN SUPPORT
THEREOF

Date: March 15, 2019
Time: 1:30 p.m.
Dept. S-35

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21 The Chino Basin Overlying (Agricultural) Pool Committee (Ag Pool), whose members
22 include parties to the Judgment previously entered in this matter, hereby opposes the Cucamonga
23 Valley Water District, Monte Vista Water District, City of Pomona, City of Chino, Jurupa
24 Community Services District, and City of Ontario's (Appeal Parties) Motion to Approve
25 Amendments to Appropriative Pool Pooling Plan and Court-Approved Management Agreements
26 (Motion). The Motion requests Court approval of certain amendments to the Appropriative Pool
27 Pooling Plan and Court-Approved Management Agreements (CAMA), which include the Peace
28 Agreement and the Peace II Agreement. The Motion should be denied because it does not ensure

1 that the proposed amendments do not prevent or obstruct the Watermaster’s implementation of
2 the Chino Basin’s safe yield reset in compliance with the order of this Court and misrepresents
3 the support for the Motion and its proposed amendments.

4 I. INTRODUCTION

5
6 On April 28, 2017, this Court ordered, inter alia, the reset of the Chino Basin’s safe yield¹
7 (Safe Yield) from 140,000 to 135,000 acre-feet per year and denied the motion to institute the
8 proposed Safe Storage Management Measures (Safe Yield Reset Order). Cucamonga Valley
9 Water District, Monte Vista Water District and City of Pomona, filed an appeal of the Safe Yield
10 Reset Order in June of 2017, which is currently pending in the 4th Appellate District, Division 2,
11 as Case No. E068640 (Appeal). The Court of Appeal issued a temporary stay of the Appeal to
12 allow settlement negotiations to be conducted. (See Court of Appeal orders dated January 3, 2018
13 and April 17, 2018.) On July 16, 2018, the Appeal Parties submitted a Joint Stipulation and
14 Application for Limited Remand to the Superior Court (Joint Stipulation) requesting that the
15 Court of Appeal temporarily remand the matter to this Court for the purpose of considering a
16 motion as to certain proposed amendments to the Restated Judgment and CAMA. (Declaration of
17 Tracy J. Egoscue (Egoscue Decl.), at ¶ 3.) In response to the Joint Stipulation, the Court of
18 Appeal issued a November 6, 2018 order temporarily remanding to this Court for the purpose of
19 the consideration and decision of a motion to approve the “2018 Amendments.” (*Id.* at ¶ 6.) On
20 December 5, 2018, this Court held a hearing on an ex parte application from the Appeal Parties to
21 set a hearing and briefing schedule on their planned motion regarding proposed amendments to
22 the Restated Judgment and CAMA. (*Id.* at ¶ 7.) At the December 5, 2019 hearing this Court also
23 heard argument for postponing the Overlying (Non-Agricultural) Pool’s (Non-Ag Pool) Motion to
24 Amend Pooling Plan, Appellants’ Motion to Confirm Stay Pending Appeal, and the Ag Pool’s

25
26 _____
27 ¹ The Chino Basin Restated Judgment defines “Safe Yield” as “[t]he long-term average annual
28 quantity of ground water (excluding replenishment or stored water but including return flow to
the Basin from use of replenishment or stored water) which can be produced from the Basin
under cultural conditions of a particular year without causing an undesirable result.” (Judgment, ¶
4(x).)

1 Petition for Writ of Mandate. (*Ibid.*)

2 On January 15, 2019, the Cucamonga Valley Water District, Monte Vista Water District,
3 City of Pomona, City of Chino, Jurupa Community Services District, and City of Ontario (Appeal
4 Parties) filed a Motion to Approve Amendments to Appropriative Pool Pooling Plan and Court-
5 Approved Management Agreements (Motion). (Egoscue Decl., at ¶ 12.) Also, on January 15,
6 2019, the Watermaster filed a Motion Regarding Amendments to Restated Judgment, Peace
7 Agreement, Peace II Agreement, and Re-Operation Schedule (Watermaster Motion). (*Id.* at ¶ 13.)
8 On January 30, 2019, Monte Vista Water District filed an Ex Parte Application for an Order to
9 Take Watermaster’s Motion Off Calendar or, in the Alternative, Stay the Briefing Schedule and
10 Hearing on Appeal Parties’ Motion (Ex Parte Application). (*Id.* at ¶ 15.) On February 20, 2019,
11 this Court held a hearing and issued a ruling and order denying the Ex Parte Application and
12 setting the briefing schedules for the Motion Regarding Amendment of Pooling Plan for the Non-
13 Agricultural Pool, the Motion, and the Watermaster Motion (February 20, 2019 Order). (*Id.* at ¶
14 16.)

15 **II. THE MOTION SHOULD BE DENIED**

16 The Motion requests the Court approval of certain amendments to the Appropriative Pool
17 Pooling Plan and CAMA, which include the Peace Agreement and the Peace II Agreement.
18 (Motion at 6:5-10.) The Motion should be denied because it does not ensure that the proposed
19 amendments do not prevent or obstruct the Watermaster’s implementation of this Court’s order
20 resetting the Safe Yield and misrepresents the support for the Motion and its proposed
21 amendments.

22 **A. The Motion’s Proposed Amendments Do Not Address the Watermaster’s** 23 **Implementation of This Court’s Safe Yield Reset Order**

24 Although the Appeal Parties present the Motion as an extensively negotiated settlement
25 “among parties to the Restated Judgment” that provides a “stipulated plan for implementing this
26 Court’s April 28, 2017 Order regarding Watermaster’s 2015 Motion Regarding 2015 Safe Yield
27 Reset Agreement” (Motion at 6:10-16; see also *id.* at 12:26-13:2), the Motion’s proposed
28 amendments do not include language that addresses or even identifies the Safe Yield Reset Order

1 or Safe Yield reset methodology process. The Appeal Parties have ignored or refused to accept
2 the Ag Pool’s repeated request to include language that identifies the Safe Yield reset and the
3 process outlined in the Safe Yield Reset Order to set the new Safe Yield. Consequently, the
4 Motion does not provide a stipulated plan for implementing this Court’s Safe Yield Reset Order;
5 nor does it ensure that the proposed amendments do not prevent or obstruct the Watermaster’s
6 implementation of the Safe Yield reset and initiation of the next reset process, which would result
7 in noncompliance with this Court’s Safe Yield Reset Order—even once the appeal is dismissed.

8 The Ag Pool has repeatedly requested the Appeal Parties to include language in their
9 settlement that identifies and incorporates the Safe Yield reset and Safe Yield reset methodology
10 process. (Egoscue Decl. at ¶ 9.) Specifically, on July 19, 2018, the Ag Pool approved the then-
11 current version of the 2018 proposed settlement agreement and amendments on the condition that
12 they be merged and include suggested edits to incorporate the Safe Yield Reset Order’s Safe
13 Yield reset and Safe Yield reset methodology process. (*Id.* at ¶4.) However, due to revisions to
14 the Appeal Parties’ proposed settlement agreement documents and the apparent rejection of the
15 Ag Pool’s requested edits, the Ag Pool moved to moot and nullify its prior conditional approval
16 of the 2018 proposed settlement agreement and amendments on August 9, 2018. (*Id.* at ¶ 5.)
17 Subsequently, at a special meeting on December 13, 2018, the Ag Pool moved to withhold its
18 approval of the proposed amendments unless modifications were made that would add the
19 language ordering the Safe Yield reset and include language regarding the Safe Yield reset
20 methodology process, stating:

21 Therefore, the Ag Pool hereby withholds its approval of the final version of the
22 2018 Proposed Agreement to Appropriative Pool Pooling Plan and CAMA
23 Amendments as transmitted by Tom Bunn on November 21, 2018. We propose
24 the following modifications to the 2018 Proposed Agreement are made in total:
25 (1) add the language ordering the Safe Yield Reset; and (2) include the
26 language regarding the Safe Yield reset methodology process. The relevant
27 language from the Reset Order is set forth below for ease of reference and
28 clarity and must be included in the 2018 Proposed Agreement before the Ag
Pool will consider approval of the 2018 Proposed Agreement.

4.1 Safe Yield Reset. Consistent with the prior orders of the Court pursuant to
its continuing jurisdiction, effective July 1, 2010 and continuing until June 30,
2020, the Safe Yield for the Basin is reset at 135,000 AFY. For all purposes
arising under the Judgment, the Peace Agreements and the OBMP
Implementation Plan, the Safe Yield shall be 135,000 AFY, without exception,

1 unless and until Safe Yield is reset in accordance with the procedures set forth
2 in this order, and determined by the Court pursuant to its retained continuing
jurisdiction.

3 4.2 Scheduled Reset. Watermaster will initiate a process to evaluate and reset
4 the Safe Yield by July 1, 2020 as further provided in this order. Subject to the
5 provisions of Paragraph 4.3 below, the Safe Yield, as it is reset effective July 1,
6 2020 will continue until June 30, 2030. Watermaster will initiate the reset
7 process no later than January 1, 2019, in order to ensure that the Safe Yield, as
8 reset, may be approved by the court no later than June 30, 2020. Consistent
with the provisions of the OBMP Implementation Plan, thereafter Watermaster
will conduct a Safe Yield evaluation and reset process no less frequently than
every ten years. This Paragraph is deemed to satisfy Watermaster's obligation,
under Paragraph 3(b) of Exhibit "I" to the Restated Judgment, to provide notice
of a potential change in Operating Safe Yield.

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
11 recommendation and advice of the Pools and Advisory Committee and in the
12 exercise of prudent management discretion described in Paragraph 4.5(c),
below, Watermaster recommends to the court that the Safe Yield must be
changed by an amount greater (more or less) than 2.5% of the then-effective
Safe Yield.

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

22 4.5 Annual Data Collection and Evaluation. In support of its obligations to
23 undertake the reset in accordance with the Reset Technical Memorandum and
24 this order, Watermaster shall annually undertake the following actions: (a)
25 Ensure that, unless a Party to the Judgment is excluded from reporting, all
26 production by all Parties to the Judgment is metered, reported, and reflected in
27 Watermaster's approved Assessment Packages; (b) Collect data concerning
28 cultural conditions annually with cultural conditions including, but not limited
to, land use, water use practices, production, and facilities for the production,
generation, storage, recharge, treatment, or transmission of water; (c) Evaluate
the potential need for prudent management discretion to avoid or mitigate
undesirable results including, but not limited to, subsidence, water quality
degradation, and unreasonable pump lifts. Where the evaluation of available
data suggests that there has been or will be a material change from existing and

1 projected conditions or threatened undesirable results, then a more significant
2 evaluation, including modeling, as described in the Reset Technical
3 Memorandum, will be undertaken; and, (d) As part of its regular budgeting
4 process, develop a budget for the annual data collection, data evaluation, and
any scheduled modeling efforts, including the methodology for the allocation of
expenses among the Parties to the Judgment. Such budget development shall be
consistent with section 5.4(a) of the Peace Agreement.

5 4.6 Modeling. Watermaster shall cause the Basin Model to be updated and a
6 model evaluation of Safe Yield, in a manner consistent with the Reset
7 Technical Memorandum, to be initiated no later than January 1, 2024, in order
8 to ensure that the same may be completed by June 30, 2025.

9 4.7 Peer Review. The Pools shall be provided with reasonable opportunity, no
10 less frequently than annually, for peer review of the collection of data and the
11 application of the data collected in regard to the activities described in
12 Paragraphs 4.4, 4.5, and 4.6 above.

13 4.8 No Retroactive Accounting. Notwithstanding that the initial Safe Yield
14 reset, described in Paragraph 4.1 above, shall be effective as of July 1, 2010,
15 Watermaster will not, in any manner, including through the approval of its
16 Assessment Packages, seek to change prior accounting of the prior allocation of
17 Safe Yield and Operating Safe Yield among the Parties to the Judgment for
18 production years prior to July 1, 2014. ([Safe Yield] Reset Order at 15:18 –
19 18:15.)

20 (Egoscue Decl. at ¶ 8.) The Ag Pool specified that the “requested language must be included in
21 the [agreement] *before the Ag Pool will consider approval* of the [agreement].” (*Ibid.*, italics
22 added.) When the Appeal Parties declined to make the Ag Pool’s requested modifications and/or
23 edits, they effectively rejected the Ag Pool’s concerns and requests. (*Id.* at ¶ 10.) Consequently,
24 the Ag Pool has *not* approved the Appeal Parties’ proposed amendments to the Appropriative
25 Pool Pooling Plan and CAMA, including the Peace and Peace II Agreements, and hereby opposes
26 the Motion.

27 **B. The Motion Misrepresents the Proposed Amendments as a “Stipulated Plan” for**
28 **Implementing the Safe Yield Reset Order**

As this Court has noted, the Appeal Parties chose a settlement to dispose of the appeal
which requires amendments to the Restated Judgment and existing CAMA, all of which affect the
rights of all parties to the Judgment. (February 20, 2019 Order at 4:6-10.) The Motion states,
“[t]he Appropriative Pool Pooling Plan and CAMA Amendments are the result of over a year’s
worth of settlement negotiations among parties to the Restated Judgment and, if approved, will

1 (1) *provide a stipulated plan* for implementing this Court’s [Safe Yield Reset Order]; (2) resolve
2 certain outstanding disputes regarding the interpretation of that [Safe Yield Reset Order]; and (3)
3 result in the dismissal of the pending appeal of the [Safe Yield Reset Order]. (Motion at 6:10-16,
4 italics added.) The Appeal Parties also assert that the amendments clarify the “confusion”
5 addressed in the Safe Yield Reset Order regarding the interpretation of the Appropriative Pool
6 Pooling Plan and CAMA, and “provide a *stipulated plan* for implementing the [Safe Yield Reset
7 Order] in conformance with the Article X, section 2, the Restated Judgment, and the CAMA.”
8 (Motion at 12:26-13:2, italics added.) The Motion erroneously states, “[n]o party has *opposed* the
9 Agreement Settling Appeal, the 2018 Agreement, or to the Appropriative Pool Pooling Plan and
10 CAMA Amendments contained therein” and that the development of the amendments have
11 included the “participation and *support or non-opposition*” of the parties to the Judgment.”²
12 (Motion at 14:9-18, italics added.)

13 The contentions that no party has opposed the Agreement Settling Appeal, and that the
14 Motion’s proposed amendments to the Appropriative Pool Pooling Plan, Peace Agreement and
15 Peace II Agreement provide a “stipulated plan,” are clear misrepresentations of the facts. The
16 Motion indicates that the Appropriative Pool has approved the amendments, the Non-Ag Pool has
17 adopted a resolution of non-opposition to the amendments and that the Ag Pool “is currently
18 withholding express *approval* of [the amendments] but has not expressly *opposed* the
19 [amendments].” (Motion at 6:18-28, italics in original.) In fact, the Ag Pool has specifically
20 represented that it will not consider approval of the proposed amendments without modifications
21 that include language identifying the Safe Yield reset and the Safe Yield reset methodology
22 process. (Egoscue Decl. at ¶ 11.) As was stated above, the Ag Pool has repeatedly made these
23 requests. Therefore, the Motion does not provide a “stipulated plan.”

24 1. Amendments to the Peace Agreement Must Be Made in Writing

25 _____
26 ² While the Appeal Parties’ continue to characterize the Ag Pool’s refusal to approve the
27 proposed settlement agreement and amendments as “non-opposition,” it is clear that the Ag Pool
28 opposes the proposed settlement agreement and amendments in the forms presented to it and in
this Motion. Contrastingly, the Motion references minutes of the Non-Ag Pool reflecting its
“adoption of a *resolution not to oppose*” the proposed amendments or the Motion. (Motion at
14:9-16, italics added.)

1 **and Signed by All Parties to the Peace Agreement**

2 Among the changes proposed in the Motion are amendments to the Peace Agreements.
3 This Court’s February 20, 2019 Order correctly noted that the purpose of the Court of Appeal’s
4 limited remand is for all the parties to the Judgment to participate in the process of amending the
5 Restated Judgment and CAMA because the proposed amendments affect all the parties to the
6 Judgment and “amendment of the provisions of [the Peace Agreement] is subject to the
7 unanimous agreement of the parties thereto (Peace I agreement § 10.14.)” (February 20, 2019
8 Order at 2:28-3:2 and 4:12-14.) As contracts between the parties, amendments and/or changes to
9 the Peace Agreements cannot be made without the express written approval of each party to the
10 Peace Agreements. (*See* Peace Agreement, § 10.14 [amendments require express written approval
11 of each party]; and Peace II Agreement, § 7.2(e)(ii) [re-operation schedule may only be amended
12 through approval of Watermaster].) The Ag Pool signed the Peace Agreements on behalf of its
13 members and is therefore a party to the Agreements. As a party to the Peace Agreements, the Ag
14 Pool has not provided express written approval of the Motion’s proposed amendments to the
15 Peace Agreements. Additionally, the Watermaster has only provided qualified support of the
16 Peace II Amendments.³ Without the Ag Pool’s express written approval and further action by the
17 Watermaster, the Appeal Parties Motion’s proposed CAMA Amendments cannot be implemented
18 even if this Court were to approve them.

19 **C. The Motion Misrepresents the Watermaster’s Support of the Motion**

20 The Motion states that the Watermaster has expressed its support of the proposed
21 amendments through a Resolution of the Watermaster Board, Resolution No. 2019-03, dated
22 January 11, 2019, and that “*Watermaster will file its own motion of support of the Appropriative*
23 *Pool Pooling Plan and CAMA Amendments, along with the [Appeal Parties’] present [Motion].*
24 (Motion at 8:7-12, italics added.) This assertion misrepresents the Watermaster’s motion.

25 On January 15, 2019, the Watermaster filed a separate motion. (Egoscue Decl. at ¶ 13.)

26 _____
27 ³ As discussed further below, the Watermaster has determined that the proposed amendments are
28 implementable “*provided that the Watermaster proceed to recalculate Safe Yield in the manner*
expressly approved by the Court on pages 15-18 of the Court’s April 28, 2017 Order.” (*See*
Watermaster Resolution No. 2019-03 at ¶ 2, italics added.)

1 The Watermaster Motion is not a joinder to the Motion and while it includes the same proposed
2 amendments included in the Motion, it is not a “motion of support” of the Motion. Instead,
3 Watermaster has drafted and filed its own separate motion, which includes the proposed
4 amendments along with the edits/references the Ag Pool has requested since July 2018. (Egoscue
5 Decl. at ¶ 14.) The Watermaster Motion’s inclusion of the specified references to the Safe Yield
6 Reset Order is markedly different from the Motion as this inclusion ensures that the proposed
7 amendments incorporate and do not prevent or obstruct the Watermaster’s implementation of the
8 Safe Yield reset methodology in compliance with the Safe Yield Reset Order.

9 While the Motion acknowledges Watermaster Resolution No. 2019-03, it overlooks the
10 language of the resolution, which states that the Appeal Parties’ proposed amendments are
11 implementable if they incorporate the Safe Yield Reset Order’s language establishing the Safe
12 Yield reset methodology. (*See* Watermaster Resolution No. 2019-03.) Accordingly, the Motion’s
13 misrepresentation of the Watermaster’s support suggests a refusal to acknowledge that the
14 Watermaster—which serves as an important source of information for the court (February 20,
15 2019 Order at 3:7-9)—has determined that the proposed amendments are implementable
16 “*provided that* the Watermaster proceed to recalculate Safe Yield in the manner expressly
17 approved by the Court on pages 15-18 of the Court’s April 28, 2017 Order.” (Watermaster
18 Resolution No. 2019-03 at ¶ 2, italics added.) Therefore, the Motion’s claims of Watermaster
19 support are misrepresentations that could result in noncompliance with this Court’s orders.

20 21 **III. CONCLUSION**

22 As a party to the Judgment in this matter and for the aforementioned reasons, the
23 Overlying (Agricultural) Pool Committee opposes the motion of Cucamonga Valley Water
24 District, Monte Vista Water District, City of Pomona, City of Chino, Jurupa Community Services
25 District, and City of Ontario to Approve Amendments to Appropriative Pool Pooling Plan and
26 Court-Approved Management Agreements.

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Dated: February 28, 2019

Respectfully submitted,
EGOSCUE LAW GROUP, INC.

By: Tracy J. Egoscue
TRACY J. EGOSCUE
Attorneys for
OVERLYING (AGRICULTURAL) POOL

FEE EXEMPT

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10 (AGRICULTURAL) POOL

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

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 v.

17 CITY OF CHINO et al.,

18 Defendants.

Case No. RCV 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

DECLARATION OF TRACY J. EGOSCUE IN
SUPPORT OF AG POOL'S OPPOSITION TO
MOTION TO APPROVE AMENDMENTS TO
APPROPRIATIVE POOL POOLING PLAN AND
COURT-APPROVED MANAGEMENT
AGREEMENTS

19 1. I, Tracy J. Egoscue, am an attorney licensed to practice in the State of California. Based
20 upon my own knowledge and experience, I can competently attest to the following facts.

21 2. I am counsel for the Overlying (Agricultural) Pool Committee (hereafter Ag Pool) and
22 this Declaration is made in support of the Ag Pool's Opposition to Cucamonga Valley Water
23 District, Monte Vista Water District, City of Pomona, City of Chino, Jurupa Community Services
24 District, and City of Ontario's (Appeal Parties) Motion to Approve Amendments to Appropriative
25 Pool Pooling Plan and Court-Approved Management Agreements (Amendment Motion).

26 3. On July 16, 2018, the Appeal Parties requested that the Court of Appeal temporarily
27 remand the matter to this Court for the purpose of considering a motion as to certain proposed

1 amendments to the Restated Judgment and Court-Approved Management Agreements (CAMA).

2 4. On July 19, 2018, the Ag Pool approved the then-current version of the 2018 proposed
3 settlement agreement and amendments on the condition that they be merged and include
4 suggested edits to incorporate the Safe Yield Reset Order's Safe Yield reset and Safe Yield reset
5 methodology process.

6 5. Due to revisions to the Appeal Parties' proposed settlement agreement documents and
7 the apparent rejection of the Ag Pool's requested edits, the Ag Pool moved to moot and nullify its
8 prior conditional approval of the 2018 proposed settlement agreement and amendments on
9 August 9, 2018.

10 6. On November 6, 2018, the Court of Appeal issued an order temporarily remanding the
11 matter to this Court for the limited purpose of reviewing a motion regarding proposed Restated
12 Judgment and CAMA amendments.

13 7. On December 5, 2018, the Appeal Parties appeared ex parte before this Court to set a
14 hearing and briefing schedule on their planned motion regarding proposed amendments to the
15 Restated Judgment and CAMA, and heard argument for postponing the Overlying (Non-
16 Agricultural) Pool's Motion to Amend Pooling Plan, Appellants' Motion to Confirm Stay
17 Pending Appeal, and the Ag Pool's Petition for Writ of Mandate.

18 8. At a special meeting on December 13, 2018, the Ag Pool moved to withhold its
19 approval of the Appeal Parties' proposed amendments unless modifications were made that
20 would add the language ordering the Safe Yield reset and include language regarding the Safe
21 Yield reset methodology process. The Ag Pool motion specified that the "requested language
22 must be included in the [agreement] *before the Ag Pool will consider approval* of the
23 [agreement]." A true and correct copy of which is attached hereto as Exhibit A.

24 9. The Ag Pool has repeatedly made the request that the Appeal Parties' proposed
25 amendments and settlement agreement include language that identifies the Safe Yield reset and
26 the process outlined in the Safe Yield Reset Order to set the new Safe Yield.

27 10. The Appeal Parties did not make modifications or edits to its proposed amendments or
28

1 settlement agreements to address this concern and request by the Ag Pool.

2 11. The Ag Pool has not provided express written approval of the Appeal Parties'
3 proposed amendments to the Peace Agreement.

4 12. On January 15, 2019, the Appeal Parties filed a Motion to Approve Amendments to
5 Appropriative Pool Pooling Plan and Court-Approved Management Agreements.

6 13. On January 15, 2019, the Watermaster filed a Motion Regarding Amendments to
7 Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule
8 (Watermaster Motion).

9 14. The Watermaster Motion includes proposed amendments along with the edits to
10 reference Safe Yield Reset Order, which the Ag Pool has continued to formally request since July
11 2018.

12 15. On January 30, 2019, Monte Vista filed an Ex Parte Application for an Order to Take
13 Watermaster's Motion Off Calendar or, in the Alternative, Stay the Briefing Schedule and
14 Hearing on Appeal Parties' Motion.

15 16. On February 20, 2019, this Court held a hearing on the Ex Parte Application and
16 issued a ruling and order denying the Ex Parte Application and setting the briefing schedules for
17 the Motion Regarding Amendment of Pooling Plan for the Non-Agricultural Pool, the
18 Amendment Motion, and the Watermaster Motion.

19 I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th
20 day of February 2019 in the City of Long Beach and County of Los Angeles, State of California.

21
22 By: Tracy J. Egoscue
TRACY J. EGOSCUE

Exhibit A

Motion from Ag Pool Regarding 2018 Proposed Agreement to Appropriative Pool Pooling Plan and CAMA Amendments – December 13, 2018 Pool Meeting

***Motion by: Pietersma
Second by: LaBrucherie
Passed Unanimously***

Tom Bunn, on behalf of the parties to the appeal, *Chino Basin Municipal Water District v. City of Chino* Court of Appeal Case No. E068640, (Appeal), sent an email to the attorney for the Ag Pool on November 21, 2018, containing the final version of the 2018 Proposed Agreement to Appropriative Pool Pooling Plan and CAMA Amendments with exhibits (2018 Proposed Agreement). Having received and reviewed the email and attachments, the Ag Pool now makes the following motion reiterating and further clarifying previous requests regarding the 2018 Proposed Agreement:

The Safe Yield Reset and related methodology is an integral part of the Court's April 28, 2017 Order resetting the Chino Basin Safe Yield at 135,000 acre-feet per year (Reset Order). The Ag Pool has made repeated requests for the parties to the Appeal to acknowledge the Court's Safe Yield Reset and Order regarding the related methodology process because the 2018 Proposed Agreement is allegedly an agreement to resolve the Appeal of the Reset Order. The Safe Yield Reset and the related methodology were the result of lengthy, arduous, and resource intensive negotiations between the Pools and the parties to the Judgment.

At its July 19, 2018 meeting, the Ag Pool voted unanimously to conditionally approve the process and the following documents provided in advance of the meeting by Watermaster staff: (1) 2018 Acknowledgment and Consent to CAMA Amendments; (2) Physical Solution Transfers; and (3) Chino Basin Watermaster Memorandum of Understanding Regarding Contributions of Safe Yield for Desalter Replenishment. As reflected in the meeting minutes, the Ag Pool's approval was made contingent upon the following modifications to the above documents: (1) *all three documents should be merged into one inclusive document*; (2) *on page 2, paragraph 2 please add the effective date of the Safe Yield reset*; (3) *on page 2, paragraph 2 please clarify that the Safe Yield process that was part of the Judge's Reset Order including peer review and the reset process remains in effect*; (4) *page 4, (iv) please clarify what is meant by the term "particular year;"* and (5) *page 8, the State requests that they be removed as a signatory.*

At its September 13, 2018 meeting, the Ag Pool revoked its July 19 conditional approval of the proposed Safe Yield Reset-Related Agreements as presented, and respectfully requested that the parties address the Ag Pool comments made on July 19, 2018, as follows: (1) *please add the effective date of the Safe Yield Reset*; (2) *please include the Safe Yield process that was part of the Judge's April 28, 2017 Order*; and (3) *the Ag Pool respectfully requests that the final version of the Safe Yield Reset-Related Agreements be brought back to the October 2018 Pool meeting for the Ag Pool's reconsideration.*

Again, these requests were made by the Ag Pool because the Proposed Agreement was allegedly provided in order to resolve the Appeal. Despite this, the relevant requested language is not yet incorporated into the final 2018 Proposed Agreement.

Therefore, the Ag Pool hereby withholds its approval of the final version of the 2018 Proposed Agreement to Appropriative Pool Pooling Plan and CAMA Amendments as transmitted by Tom Bunn on November 21, 2018. We propose the following modifications to the 2018 Proposed Agreement are made in total: (1) add the language ordering the Safe Yield Reset; and (2) include the

language regarding the Safe Yield reset methodology process. The relevant language from the Reset Order is set forth below for ease of reference and clarity and must be included in the 2018 Proposed Agreement before the Ag Pool will consider approval of the 2018 Proposed Agreement.

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

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

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

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

management practices and hydrologic science as they evolve over the term of this order.

4.5 Annual Data Collection and Evaluation. In support of its obligations to undertake the reset in accordance with the Reset Technical Memorandum and this order, Watermaster shall annually undertake the following actions: (a) Ensure that, unless a Party to the Judgment is excluded from reporting, all production by all Parties to the Judgment is metered, reported, and reflected in Watermaster's approved Assessment Packages; (b) Collect data concerning cultural conditions annually with cultural conditions including, but not limited to, land use, water use practices, production, and facilities for the production, generation, storage, recharge, treatment, or transmission of water; (c) Evaluate the potential need for prudent management discretion to avoid or mitigate undesirable results including, but not limited to, subsidence, water quality degradation, and unreasonable pump lifts. Where the evaluation of available data suggests that there has been or will be a material change from existing and projected conditions or threatened undesirable results, then a more significant evaluation, including modeling, as described in the Reset Technical Memorandum, will be undertaken; and, (d) As part of its regular budgeting process, develop a budget for the annual data collection, data evaluation, and any scheduled modeling efforts, including the methodology for the allocation of expenses among the Parties to the Judgment. Such budget development shall be consistent with section 5.4(a) of the Peace Agreement.

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

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

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

(Reset Order at 15:18 – 18:15.)

CHINO BASIN WATERMASTER

Case No. RCVRS 51010

Chino Basin Municipal Water District v. City of Chino, et al.

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On February 28, 2019 served the following:

1. AG POOL'S OPPOSITION TO MOTION TO APPROVE AMENDMENTS TO APPROPRIATIVE POOL POOLING PLAN AND COURT-APPROVED MANAGEMENT AGREEMENTS; AND DECLARATION OF TRACY J. EGOSCUE IN SUPPORT THEREOF

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

See attached service list: Mailing List 1

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

/ BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

/X/ BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 28, 2019 in Rancho Cucamonga, California.



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Chino Basin Watermaster

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