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

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

v.

CITY OF CHINO et al,

Defendants,

Case No. RCVRS 51010

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

**APPROPRIATIVE POOL REPLY TO  
AGRICULTURAL POOL'S OPPOSITION  
TO WATERMASTER MOTION  
REGARDING 2020 SAFE YIELD RESET,  
AMENDMENT OF RESTATED  
JUDGMENT, PARAGRAPH 6**

Date: June 26, 2020

Time: 1:30 p.m.

Dept. S-35

Filed concurrently herewith: Declaration of  
Thomas E. Harder in support of Appropriative  
Pool Reply To Agricultural Pool's Opposition  
To Watermaster Motion Regarding 2020 Safe  
Yield Reset, Amendment of Restated Judgment,  
Paragraph 6

The Appropriative Pool Committee (Appropriative Pool), whose members include parties to  
the Judgment previously entered in this matter, files this Reply To Agricultural Pool's Opposition

1 To Watermaster's Motion Regarding 2020 Safe Yield Reset, Amendment of Restated Judgment,  
2 Paragraph 6. The reason for the Appropriative Pool's Reply regarding Watermaster's 2020 Safe  
3 Yield Reset Motion (2020 SYR Motion) is because the Agricultural Pool's Opposition To  
4 Watermaster Motion Regarding 2020 Safe Yield Reset, Amendment Of Restated Judgment,  
5 Paragraph 6 (Opposition) seeks to re-open this Court's April 28, 2017 Safe Yield  
6 Reset/Recalculation Order (2017 SYR Order) and reclaim 100,000 acre-feet of Chino Basin water  
7 from Appropriative Pool members.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. ARGUMENT**

10 A little over a year ago in connection with this Court's March 15, 2019 hearing concluding the  
11 2017 SYR appeal, the Ag Pool provided its express written approval of the 2015 Safe Yield  
12 Reset/Recalculation methodology set forth in the 2017 SYR Order<sup>1</sup>. As part of its express written  
13 approval, the Ag Pool did not mention or advocate that the Court adjust the methodology to  
14 address the claim it is now making in its Opposition that 100,000 acre-feet of water was  
15 overallocated to the Safe Yield during the 2011-2020 reset period addressed in the 2017 SYR  
16 Order. Instead, the Ag Pool gave its express written approval to the 2015 SYR methodology in  
17 2019 while it had been incongruously arguing against that methodology via a series of yet-  
18 unresolved contests filed with Watermaster challenging Appropriative Pool storage transactions  
19 starting only five days after the April 28, 2017 SYR Order. Since the Ag Pool references and links  
20 the contests to the 2020 SYR Motion in its Opposition (Opposition at 4:27-28), the Appropriative  
21 Pool is providing responsive context to demonstrate the Ag Pool's Opposition is part of a broader  
22 effort dating to 2014 (Opposition at 4: 19-23 to 5:1) that reneges on its express written approval of  
23 the 2017 SYR Order methodology. Thus, the Ag Pool's Opposition is rooted in the prior reset  
24 period that it signed-off on via its express written approval of the prescribed methodology from  
25

26 <sup>1</sup> "Ag Pool's Joinder to Watermaster's Motion Regarding Amendments To Restated Judgment,  
27 Peace Agreement, Peace II Agreement, And Re-Operation Schedule"; March 15, 2019 Hearing.

1 the 2017 SYR Order and not based on revelatory data from the 2020 SYR Motion. The Ag Pool's  
2 Opposition challenging the 2017 SYR Order methodology via the 2020 SYR Motion is too late.  
3 This Court exhaustively and comprehensively addressed the Safe Yield and precise methodology  
4 to be followed in its 2017 SYR Order that was part of a lengthy process completed barely over a  
5 year ago. As part of the 2020 SYR process, Watermaster has made it abundantly clear that its  
6 engineer, WEI, confirmed there are no undesirable results or Material Physical Injury in  
7 connection with the 2015 Safe Yield Reset/Recalculation or 2020 SYR. In reliance on this Court's  
8 2017 SYR Order, Appropriative Pool members have structured their operations and planning  
9 processes, and expended substantial ratepayer money based on the availability and associated cost  
10 to use Chino Basin water. The Ag Pool is advocating a change in the interpretation of the 2017  
11 SYR Order methodology that disregards the long-term hydrology of the basin in favor of the most  
12 recent 10-year period in contravention to this Court's clear methodology directive. There is no  
13 provision in the 2015 Safe Yield Rest Methodology that requires adjustments to account for  
14 alleged overestimated Safe Yield in the prior 10 years. In accordance with Element 5 of the 2015  
15 Safe Yield Methodology, no adjustments were necessary because no Material Physical Injury was  
16 evident from the forward projection.

17 **II. THE APPROPRIATIVE POOL'S TECHNICAL EXPERT REJECTS THE**  
18 **TECHNICAL ASSERTIONS IN THE AG POOL OPPOSITION**

19 Thomas E. Harder has been engaged for several years as the Appropriative Pool's technical expert  
20 in connection with Watermaster matters, including the 2020 SYR. Mr. Harder's duties include  
21 advising the Appropriative Pool with respect to long-term basin management and impacts  
22 associated with, among other things, Safe Yield because the integrity of the basin is of paramount  
23 importance to the Appropriative Pool. Mr. Harder's professional opinion regarding the  
24 Agricultural Pool Opposition is informed by his extensive participation in the 2020 SYR process  
25 and in other basin matters. As set forth in his attached Declaration, Mr. Harder rejects the  
26 technical assertions made in the Opposition regarding any alleged undesirable results or Material  
27 Physical Injury.

III. CONCLUSION

The Appropriative Pool has the greatest incentive and most at risk of all Watermaster parties and basin stakeholders to protect the integrity of the basin, including Safe Yield. The stability of the Safe Yield Reset/Recalculation methodology and Safe Yield process is foundational to this protection and basin management. This Court's 2017 SYR Order regarding methodology was finally settled a little over a year ago. Ag Pool's endeavor to re-open the methodology via its Opposition to Watermaster's 2020 SYR Motion is in direct contravention and disregard of the 2017 SYR Order. It should not operate to re-open the methodology and its application to the 2020 SYR, particularly absent any evidence of undesirable results or Material Physical Injury.

Dated: June 19, 2020

Respectfully,

JOHN J. SCHATZ  
ATTORNEY AT LAW

By:



JOHN J. SCHATZ  
Attorney for  
Chino Basin Appropriative Pool

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 June 19, 2020 I served the following:

1. APPROPRIATIVE POOL REPLY TO AGRICULTURAL POOL'S OPPOSITION TO WATERMASTER MOTION REGARDING 2020 SAFE YIELD RESET, AMENDMENT OF RESTATED JUDGMENT, PARAGRAPH 6

/ 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 June 19, 2020 in Rancho Cucamonga, California.



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