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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT NO. S-35

HON. STANFORD E. REICHERT, JUDGE

CHINO BASIN MUNICIPAL WATER)	
DISTRICT,)	
)	
Plaintiff,)	CASE NO. RCV51010
)	
-vs-)	
)	
CITY OF CHINO, et al.,)	
)	
Defendant.)	
-----)	

REPORTER'S TRANSCRIPT OF HEARING

Friday, July 10, 2020

APPEARANCES:

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF SAN BERNARDINO

3 DEPARTMENT NO. S-35

HON. STANFORD E. REICHERT, JUDGE

4 APPEARANCES:

5 FOR THE PLAINTIFF: TRACY EGOSCUE, APPEARING
6 FOR CHINO BASIN MUNICIPAL WATER DISTRICT, ATTORNEY AT
7 LAW. COUNSEL, ALLEN HUBSCH, APPEARING FOR CHINO
8 BASIN MUNICIPAL WATER DISTRICT VIA COURT CALL,
9 ATTORNEY AT LAW. BRIAN GEYE, APPEARING FOR CHINO
10 BASIN MUNICIPAL WATER DISTRICT VIA COURT CALL,
11 ATTORNEY AT LAW; CAROL Z. BOYD, APPEARING FOR CHINO
12 BASIN MUNICIPAL WATER DISTRICT VIA COURT CALL,
13 ATTORNEY AT LAW. MARILYN LEVIN, APPEARING FOR CHINO
14 BASIN MUNICIPAL WATER DISTRICT VIA COURT CALL,
15 ATTORNEY AT LAW. BOB KUHN, APPEARING FOR CHINO BASIN
16 MUNICIPAL WATER DISTRICT VIA COURT CALL, ATTORNEY AT
17 LAW. DON GALLEANO, APPEARING FOR CHINO BASIN
18 MUNICIPAL WATER DISTRICT VIA COURT CALL, ATTORNEY AT
19 LAW. JEFF PIERSON, APPEARING FOR CHINO BASIN
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21 LAW. JOSEPH S. JOSWIAK, APPEARING FOR CHINO BASIN
22 MUNICIPAL WATER DISTRICT VIA COURT CALL, ATTORNEY AT
23 LAW. PAUL HOFER, APPEARING FOR CHINO BASIN MUNICIPAL
24 WATER DISTRICT VIA COURT CALL, ATTORNEY AT LAW.
25 SCOTT SLATER, APPEARING FOR THE CHINO BASIN MUNICIPAL
26 WATER DISTRICT, PRESENT, ATTORNEY AT LAW. BRADLEY

VIVIAN TRISTAN C.S.R. 14244

1 HERREMA, APPEARING FOR THE CHINO BASIN MUNICIPAL WATER
2 DISTRICT. JAMES CURALALO, APPEARING FOR THE CHINO
3 BASIN MUNICIPAL WATER DISTRICT VIA COURT CALL, BOARD
4 MEMBER OF WATERMASTER.

5 FOR THE DEFENDENT: JIMMY GUTIERREZ, APPEARING
6 FOR CITY OF CHINO, ATTORNEY AT LAW. ANDREW GAGEN,
7 APPEARING FOR THE CITY OF CHINO, ATTORNEY AT LAW.
8 PETER KAVOUNAS, APPEARING FOR CITY OF CHINO, ATTORNEY
9 AT LAW. FREDERIC FUDACZ, APPEARING FOR CITY OF CHINO
10 VIA COURT CALL, ATTORNEY AT LAW. COURTNEY JONES,
11 APPEARING FOR CITY OF CHINO VIA COURT CALL, ATTORNEY
12 AT LAW. SCOTT BURTON, APPEARING FOR CITY OF CHINO VIA
13 COURT CALL, ATTORNEY AT LAW. THOMAS S. BUNN,
14 APPEARING FOR CITY OF CHINO VIA COURT CALL, ATTORNEY
15 AT LAW. RON CRAIG, APPEARING FOR CITY OF CHINO VIA
16 COURT CALL, ATTORNEY AT LAW. JUSTIN SCOTT-COE,
17 APPEARING FOR CITY OF CHINO VIA COURT CALL, ATTORNEY
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19 CHINO VIA COURT CALL, ATTORNEY AT LAW. JOHN BOSLER,
20 APPEARING FOR CITY OF CHINO VIA COURT CALL, ATTORNEY
21 AT LAW. MANNY MARTINEZ, APPEARING FOR CITY OF CHINO
22 VIA COURT CALL, ATTORNEY AT LAW. JEAN CIHIGOYENETCHE,
23 APPEARING FOR CITY OF CHINO VIA COURT CALL, ATTORNEY
24 AT LAW. SHAWNDA GRADY, APPEARING FOR CITY OF CHINO
25 VIA COURT CALL, ATTORNEY AT LAW. GENE TANAKA,
26 APPEARING FOR CITY OF CHINO VIA COURT CALL, ATTORNEY

1 AT LAW. STEVE M. ANDERSON, APPEARING FOR CITY OF
2 CHINO VIA COURT CALL, ATTORNEY AT LAW. EDUARDO
3 ESPINOZA, FOR CITY OF CHINO VIA COURT CALL, IN
4 PROPRIA PERSONA.

5 (REPORTED BY: VIVIAN TRISTAN, C.S.R.,
6 PRO TEMPORE REPORTER C-14244.)

7 --o0o--

8
9 THE COURT: This is Judge Reichert speaking. I'm
10 not going to call the case officially yet, or take
11 everyone's appearances yet because what I've done is, as
12 usual, handed out the proposed tentative order.

13 For those people here, it's about 15 pages. Those
14 counsel here in the courtroom are reading it. I'm going to
15 take the bench at 2:00 o'clock. Give a chance for everyone
16 to read the order and then make phone calls, if necessary.
17 I'll come back at 2:00. If you need some more time, I can
18 of course grant it at that time, but I thought the best way
19 to handle this would be to give everyone a chance to read
20 the order, then pick it up from there.

21 Yes, I have a question. Can I get your name
22 please, sir?

23 MR. GAGEN: Andrew Gagen on behalf the Monte Vista
24 Water District. Just to be clear, there's no tentative
25 regarding the Agriculture motion to judgment.

26 THE COURT: Actually, there is. It's to deny.

1 I'll explain it more later.

2 MR. GAGEN: Thank you, your Honor.

3 THE COURT: You're welcome.

4 MS. LEVIN: Your Honor, can we have it emailed to
5 us for those on the phone?

6 THE COURT: Oh, that's a good question.

7 THE JUDICIAL ASSISTANT: We can email it to one
8 and they can send it out to all.

9 MR. SLATER: Your Honor?

10 THE COURT: Yes, do I have another suggestion?

11 MR. SLATER: Yes, I do. If you would email it to
12 our office, Watermaster's office, we can email it to
13 everyone.

14 THE COURT: Okay. To Janine?

15 MR. SLATER: Janine is actually in the middle of
16 vacation, but if you email it to Vanessa or Anna.

17 THE COURT: All right. I'll email it right now
18 to my judicial assistant. That's you, Erin. While I do
19 that, give Erin the email address that she can send it out
20 to. We'll handle it that way. I'll email it down to
21 Ms. Mueller, my judicial assistant, right now. It'll take
22 me a few minutes to get back up to the 10th floor where my
23 chambers is and the documents are on my computer. Keep an
24 eye out for it, everyone. To modify the old saying, your
25 tentative is in the mail. Email.

26 MR. BUNN: Your Honor?

1 THE COURT: Yes, I'm back.

2 MR. BUNN: This is Tom Bunn for Pomona. Would you
3 prefer that we stay on the line for CourtCall, or call back
4 in?

5 THE COURT: Oh no, stay on the line, please. It
6 would take about a day and a half to take everyone's phone
7 calls again. Please, stay on the line. We'll be back.
8 Thank you, everyone.

9 MR. TANAKA: Judge Reichert, this is Gene Tanaka.
10 I assume your assistants have all of our emails?

11 THE COURT: What we're doing is emailing it to the
12 Watermaster. We just got the right address at Watermaster
13 to email it to. It's a two-step process. I'm going to send
14 it straight to my judicial assistant, who will send it
15 straight to Watermaster, who will send it straight out to
16 all of you. I'll check back in a few minutes and make sure
17 that's accomplished.

18 Give me a few minutes because I'm down on the
19 second floor, in a larger courtroom to accommodate the
20 social distancing instead of my usual courtroom which is up
21 on the 10th floor. I've got to run up to the 10th floor.
22 We have two staff elevators and one of them is not working
23 today. Just the usual snafus. It might take me some extra
24 time, but if I have to run up the stairs, I'll do that too.
25 It's in the works everybody. Thanks.

26 **(A recess was taken.)**

1 THE COURT: Hi to everyone in the courtroom and on
2 the phone again. This is Judge Reichert. My judicial
3 assistant tells me that she has emailed the tentative ruling
4 over to Watermaster. I guess Watermaster is emailing it to
5 everyone, even as I speak. The little electrons are on
6 their way.

7 What I propose doing now is recessing for 30
8 minutes until 2:20. That should give everyone who's just
9 opening their emails a chance to read it and think about it.
10 Counsel, if they need to make phone calls, to do so. I'll
11 check back with you then at 2:20 to see what's going on.
12 Unless someone has a better suggestion to which I'm open?
13 Going once? Going twice? Sold.

14 Okay. That'll be the plan. I'll be back on the
15 bench at 2:20 then. Thanks very much.

16 **(A recess was taken.)**

17 THE COURT: Okay. This is Judge Reichert again.
18 It looks like we have everyone here reassembled in the
19 courtroom. Let me, before I go further, ask if anyone in
20 the courtroom needs additional time to review the tentative?
21 Contact clients or anything else before we proceed? Any
22 hands? No hands.

23 Okay. Then on the phone, does anyone need more
24 time before I proceed? Please speak up. Going once? Going
25 twice? Sold. Okay.

26 I'm going to proceed and formally call the matter.

1 This is the Chino Basin -- oh, I heard somebody on the
2 phone? No? Okay. Chino Basin Watermaster case. RCV51010.
3 Let me get our appearances here in the courtroom starting --
4 well, let me start with you, Mr. Gutierrez.

5 MR. GUTIERREZ: Yes. Good afternoon.

6 Jimmy Gutierrez appearing for the City of Chino.

7 MR. GAGEN: Andrew Gagen on behalf the Monte Vista
8 Water District. Opposing party to the Ag Pool motion to
9 amend the judgment.

10 THE COURT: Ms. Egoscue?

11 MS. EGOSCUE: Good afternoon, your Honor.

12 Tracy Egoscue on behalf of the Agricultural Pool.

13 THE COURT: Good afternoon. Okay. Mr. Herrema?

14 MR. HERREMA: Good afternoon, your Honor.

15 Brad Herrema on behalf of Chino Basin Watermaster

16 MR. SLATER: Good afternoon, your Honor.

17 Scott Slater, S-L-A-T-E-R on behalf of Watermaster

18 THE COURT: In the back there? Is that Mr.

19 Kavounas?

20 MR. KAVOUNAS: Good afternoon, your Honor. Peter

21 Kavounas. Chino Basin Watermaster.

22 THE COURT: To my far right, over here?

23 MR. KENNEDY: Good afternoon, your Honor.

24 Steve Kennedy on behalf of the Cucamonga Valley Water
25 District.

26 THE COURT: Moving to the gallery there, please?

1 MR. SCHATZ: John Schatz. Attorney for the
2 Appropriative Pool.

3 THE COURT: Okay. And then?

4 MR. WILDERMUTH: Good afternoon. Mark Wildermuth.
5 I'm here for Watermaster

6 THE COURT: Mr. Wildermuth, thank you. Okay.
7 Then in the back?

8 MR. CROSLEY: Good afternoon, your Honor.
9 David Crosley. City of Chino. Watermaster.

10 THE COURT: Okay. Thank you. Then give me just a
11 moment. Let me go through the list I have here on the
12 phone. I'm going to use the list and just call off names to
13 get appearances. This is the list I've been presented.
14 It's in no particular order that I can tell. Actually, it
15 might be alphabetical by client, but here we go.

16 Carol Boyd?

17 MS. BOYD: Here, your Honor.

18 THE COURT: Thank you. California Department of
19 Justice. Marilyn Levin?

20 MS. LEVIN: Yes. Here, your Honor. Representing
21 the State of California and member of the Agricultural Pool.

22 THE COURT: Okay. Federic Fudacz?

23 MR. FUDACZ: Good morning, your Honor.
24 Fred Fudacz here. Counsel for the City of Ontario. We're
25 in opposition due to the Ag Pool motion to amend.

26 THE COURT: Got it. Okay. Mr. Bowcock?

1 Bob Bowcock? Not present. Okay. Mr. Bob Kuhn?

2 MR. KUHN: Here, your Honor.

3 THE COURT: Thank you. Don Galleano?

4 MR. GALLEANO: Yes. I'm present, your Honor.

5 Thank you.

6 THE COURT: Thank you. Jeff Pierson?

7 MR. PIERSON: Yes, your Honor. Present.

8 THE COURT: James Curalalo?

9 MR. CURALALO: Yes, your Honor. Present.

10 THE COURT: Joe Joswiak?

11 MR. JOSWIAK: Present, your Honor.

12 THE COURT: Thank you. Paul Hofer?

13 MR. HOFER: Here, your Honor. Board member

14 representing the Agricultural Pool.

15 THE COURT: Thank you. Allen Hubsch?

16 MR. HUBSCH: Good afternoon, your Honor.

17 Allen Hubsch representing the Non Agricultural Pool

18 Committee.

19 THE COURT: Okay. Brian Geye? G-E-Y-E.

20 MR. GEYE: Good afternoon, your Honor. I'm on the

21 phone.

22 THE COURT: Thank you. Courtney Jones?

23 MS. JONES: Present, your Honor.

24 THE COURT: Thank you. Scott Burton? Mr. Burton?

25 All right. Not present.

26 Robert Feenstra? From your firm, Ms. Egoscue?

1 MR. FEENSTRA: Present, your Honor.

2 THE COURT: Got it. Okay. Thank you,

3 Mr. Feenstra.

4 MS. EGOSCUE: Yes. Thank you, your Honor.

5 THE COURT: Let's see. Thomas Bunn the third?

6 MR. BUNN: Good afternoon, your Honor.

7 THE COURT: Thank you. Ron Craig?

8 MR. CRAIG: Here, your Honor.

9 THE COURT: Thank you. Elizabeth Calciano?

10 Ms. Calciano? All right. Justin Scott-Coe?

11 MR. SCOTT-COE: Present, your Honor.

12 THE COURT: Thank you. Kristina Robb?

13 MS. ROBB: Here, your Honor.

14 THE COURT: Thank you. John Bosler?

15 MR. BOSLER: Here, your Honor.

16 THE COURT: Thank you. Eduardo Espinoza?

17 MR. ESPINOZA: Present, your Honor.

18 THE COURT: Thank you. Manny Martinez?

19 MR. MARTINEZ: Present, your Honor.

20 THE COURT: Thank you. Jean Cihigoyenetché?

21 MR. CIHIGOYENETCHE: Good afternoon, your Honor.

22 On behalf the Inland Empire Utility Agency.

23 THE COURT: Thank you. Chris Berch? Not present.

24 Okay. Robert Donlan?

25 MR. DONLAN: Here, your Honor.

26 THE COURT: Thank you. Shawnda Grady?

1 MS. GRADY: Here, your Honor.

2 THE COURT: Thank you. Gene Tanaka?

3 MR. TANAKA: Yes, your Honor. For the
4 Cucamonga Valley Water District.

5 THE COURT: Thank you. Steven Anderson?

6 MR. ANDERSON: Present, your Honor. Thank you.

7 THE COURT: Thank you. Well, that runs through my
8 list. Is there anyone on the phone or in the courtroom --
9 let me start with on the phone. Anyone on the phone whose
10 name I did not call out? Going once? Going twice? No one
11 else. Okay. We have everyone identified for the record.

12 Okay. Now, turning to the motion regarding the
13 2020 Safe Yield Reset. I did hand out the tentative ruling
14 to the people here in the courtroom as well as emailed it to
15 everyone through the Watermaster. I'm ready to entertain
16 oral argument of course. I just make my usual request that
17 you not repeat what was in the paperwork because I read it,
18 and considered it thoroughly at length. If you'd like to
19 address that, you're more than welcome to.

20 Perhaps Ms. Egoscue would like to speak first?

21 MS. EGOSCUE: Thank you, your Honor. I appreciate
22 the opportunity to address the Court. I apologize I have to
23 lean forward here so that I can be heard.

24 THE COURT: Thank you.

25 MS. EGOSCUE: Thank you, your Honor.

26 I appreciate your Honor's careful consideration of

1 all of the papers very much. I also appreciate on behalf of
2 the Ag Pool the time that you have given us today to review
3 it. It's a pretty extensive order. Fifteen pages.

4 I'm going to start with page ten because I think
5 it's a pivot that your Honor perhaps used to reflect the
6 rest of his proposed order.

7 The specific languages at the bottom of page ten
8 when your Honor says that the implication of the Ag Pool's
9 opposition that the Court should set the Safe Yield at 125
10 in an attempt to catch up.

11 THE COURT: Yes.

12 MS. EGOSCUE: The Ag Pool specifically did not
13 make that request for relief in the opposition, your Honor.
14 There is a very important reason for that. We would like to
15 have the opportunity to address the Court regarding what's
16 been going on at Watermaster. I want to start by saying
17 that the Ag Pool's specific focus is on the overallocation.

18 We recognize that your Honor read the reply brief
19 of Watermaster very carefully where they made arguments that
20 the Ag Pool was attempting to revisit the Safe Yield order,
21 and that is not the case.

22 In fact, the Ag Pool specifically does not make
23 that argument in their opposition. The Ag Pool specifically
24 does not request you Honor to revisit or amend your order on
25 Safe Yield. Pursuant to the judgment, this Court has
26 continuing jurisdiction. You can modify an order or issue

1 any decision that your Honor so chooses. You are not
2 required to defer to Watermaster, Watermaster counsel, or
3 Watermaster's engineer.

4 Why is that important? Because the 2020
5 Safe Yield Reset actually presents an opportunity and a
6 factual scenario for you to assert your continuing
7 jurisdiction and authority. I'm going to be brief because I
8 recognize there is a lot of us in here, but it is an
9 undisputed fact contrary to your proposed order that there
10 was an overallocation.

11 The response to the fact of an overallocation by
12 Watermaster is that it's okay, we'll catch up, and they read
13 your order to require them to somewhat ignore the fact that
14 there was an overallocation. That's contrary and false to
15 your order.

16 Again to reiterate, the Ag Pool is not requesting
17 you to put the Safe Yield down any further, or to amend your
18 order on the Safe Yield. What the Ag pool is requesting you
19 to recognize, consider, and provide relief regarding is the
20 overallocation of the Safe Yield.

21 Now, 100,000-acre feet of water is a lot of money.
22 It has great value. It's about \$70 million, give or take,
23 on the open market. It's also almost one year of the Safe
24 Yield in this basin. If you think about it from that
25 perspective, it's a pretty significant overallocation of the
26 last ten years.

1 In your proposed order, although you reference it
2 in response to Chino, the Watermaster reply also references
3 in response to Ag Pool's opposition and concerns, "Hey,
4 don't worry about it. We're going to fix it in the OBMP
5 coming up."

6 The Ag Pool concerns cannot be fixed or addressed
7 in a process that requires negotiation. I would pose it to
8 you, your Honor, that your proposed order actually speaks to
9 this. You actually say, on page 11, "The storage might be
10 interlinked with Safe Yield." See at the top there?

11 THE COURT: Yes.

12 MS. EGOSCUE: You actually say that intertwining
13 storage and Safe Yield resulted in too many objections, and
14 the motion failed. What the Ag Pool would like to argue,
15 and ask you to consider, your Honor, is that it doesn't
16 matter how many objections you receive. The fact is you
17 retain continuing jurisdiction. You can overrule what has
18 been recommended by the Watermaster.

19 Moving on, the Ag Pool is asking this Court to
20 ensure that the overallocation is addressed. The Ag Pool is
21 asking you to order that the overallocation is addressed.
22 We are deferring insofar as not telling either the judge or
23 Watermaster how to do that, but we would like to have an
24 order that requires it. In other words, preserve your order
25 as you interpret it moving forward, but specifically add to
26 it that you expect to see parties back in short order

1 addressing the overallocation through the OBMP.

2 Your order specifically says that we can rely upon
3 that, but as I think you will see coming up here on the
4 Pooling plan amendment, having to negotiate something that's
5 a benefit for the basin when you're outnumbered is very
6 difficult for the Ag Pool, which is why believing in justice
7 and your continuing jurisdiction authority, the Ag Pool
8 filed this opposition.

9 My last comment is relatively straightforward.
10 The Watermaster updated its model. Created a process which
11 you go to great pains to discuss where everyone could talk
12 to the engineer. There was a peer review. You note that,
13 but magically, your Honor, the Watermaster found a lot more
14 water.

15 In fact, right before we came to see you two weeks
16 ago, I pulled up on the Watermaster website that they were
17 saying there was 5 million-acre feet in the basin as
18 recently as June 20th. Here's the screenshot. I know due
19 to COVID, we probably don't want to share a lot of paper
20 right now, but I have gave this to your clerk and hand a
21 copy to Watermaster counsel as courtesy.

22 You'll note in your proposed order that now,
23 there's 12 million-acre feet. This is on page 12.

24 THE COURT: Yes.

25 MS. EGOSCUE: It's magic. On June 20th there was
26 5 million. Now, there's 12 million. As far as the

1 Agricultural Pool is concerned, the implication is not that
2 we would like you to revisit your Safe Yield order,
3 your Honor. The implication is that when there is an issue
4 of overallocation in this basin and the basin Safe Yield
5 continues to decline, magically, we find more water.

6 We would like this judge to order the Watermaster,
7 and all those involved to remedy or otherwise address the
8 overallocation in the OBMP. Thank you, your Honor. I
9 appreciate very much your time.

10 THE COURT: Thank you, Ms. Egoscue.
11 Mr. Gutierrez?

12 MR. GUTIERREZ: Yes. Your Honor, do you mind if I
13 use the microphone at the witness stand?

14 THE COURT: Not a bit. Please do.

15 MR. GUTIERREZ: Thank you. Your Honor, for the
16 record, I'm Jimmy Gutierrez on behalf of the City of Chino.
17 I would like to make a comment with respect to Tracy Egoscue
18 for Ag Pool.

19 First of all, she stated incorrectly that the idea
20 of overallocation is not disputed. It is disputed. The
21 City of Chino specifically disputed it. In fact, the idea
22 of allocation or this overallocation cannot exist unless
23 there's a determination that the Safe Yield, for the last
24 ten-year period, was other than the 135,000-acre feet that
25 the Court found in its order of 2017.

26 They're asking for that to be readjudicated.

1 There's no basis for that at all, given the fact that,
2 number one, the Court has ruled on it. The ruling is final.
3 The Ag Pool has consented to it. To do otherwise would
4 violate the concept of collateral estoppel that is based for
5 the assurance of the finality of judgments.

6 Finally, your Honor, the implication of going
7 forward on this overallocation is that somebody has to pay
8 back that 100,000-acre feet of water which is called the
9 overallocation. Clearly, the implication here is the
10 appropriators should pay it back. That's absolutely
11 unthinkable to even consider doing.

12 The appropriators has taken the water that's been
13 allocated by Watermaster under the Safe Yield determination
14 that this Court made in 2017. They have relied on it. They
15 made economic decisions on it. Including storing water, or
16 selling water. All of those prior negotiations would be
17 unraveled if we provide any kind of relief based upon this
18 concept of overallocation. I submit, your Honor.

19 THE COURT: Thank you, Mr. Gutierrez. Who would
20 like -- Mr. Slater's hand is up. Mr. Slater would you like
21 to speak next, please?

22 MR. SLATER: Yes, I would, your Honor.

23 I would start with just a basic notion of fairness
24 in points of view here. We do have a wide variety of
25 parties that appear in front of Watermaster, and represent a
26 number of different interests. All views are respected. We

1 made an effort to listen to everybody. Listening is not
2 necessarily doing exactly what they want, but it's important
3 that we listen to points of view.

4 As a result of the substantial commenting that
5 went on in this process, the final submittal to the Court is
6 reflected and made better of those comments.

7 The Ag Pool, to begin with, was involved in this
8 process going back to 2015, your Honor. A couple of points.
9 They were supportive, in fact. When we were here in 2019,
10 you'll recall that in order for us to find consent to the
11 settlement agreement, that, your Honor, and the parties
12 stipulated ultimately to the inclusion of language that said
13 we would follow this express methodology.

14 I think in three separate instances the Court has
15 found that this methodology is appropriate. Relying on the
16 party, the person, who is employed by Watermaster, who wrote
17 the methodology and testified it a multiple occasions in
18 terms of adequacy, and used in this Court on one occasion in
19 setting the Safe Yield in 2017.

20 Going to the grounds for the Ag Pool's objection I
21 would start with we're really using a term -- Ms. Egoscue
22 uses the term "overallocation" to describe the discrepancy
23 that exists between Net Recharge and what an allocation of
24 Safe Yield is.

25 If your Honor will indulge me as a question of
26 judgment and policy, the judgment sets out a requirement

1 that we use a long-term record per purposes of establishing
2 Safe Yield.

3 Indeed, something similar to what Ms. Egoscue has
4 included in the OBMP as a notion for -- as adopted in
5 2000 for using a hindcast of only ten years. A lot of that
6 rationale had to do with the fact that maybe our current
7 land uses weren't the same as they were in 1921.

8 Your Honor's, familiarity about the Inland Empire, you know
9 there was substantially different landscape and land uses
10 out there.

11 The change that led to the 2015 Safe Yield Reset
12 and your Honor's orders in 2015, 2016, 2019, and presented
13 for you today was a stepping away from that ten-year
14 hindcast to account for what? The notion that we wanted to
15 use an extraordinarily long as possible hydrology so we can
16 examine precipitation, and understand the cycles in which
17 history repeats itself. Mr. Wildermuth is known to say,
18 "There are no average years in the Chino Basin. We're
19 either wet or dry. Feast or famine."

20 That's not how we allocate water. The Safe Yield
21 has not now nor has it ever been intended to be equated to
22 Net Recharge in any specific period. It is to take into
23 account the benefit of that long-term hydrology, and then to
24 adjust it for the benefit of current knowledge about how
25 much of the Inland Empire has been paved over. In what the
26 actual recharge is associated with the precipitation

1 patterns and applied water.

2 The Safe Yield, undertakes the responsibility of
3 looking at that long-term hydrology. Adjusting it for real,
4 real planned expected land uses over the next ten-year
5 period. Not more than ten years because at some point, we
6 see those as speculative and in a world where COVID can
7 change everything we do upside down, beyond ten years is
8 speculative.

9 And so, the order that your Honor approved in '17
10 and again in '19, and the methodology says "Long-term
11 hydrology. Long-term precipitation patterns." Let's look
12 at real land use changes. Guess what? It will be dry in
13 some ten-year segments and it will be wet in some ten-year
14 segments. The fact that there's a discrepancy for any one-,
15 two-, five-, or ten-year period is not relevant for purposes
16 of making the allocation.

17 Mr. Gutierrez was saying if the allocation under
18 the Safe Yield is appropriated and Watermaster is allocated
19 the quantity pursuant to that, you have a large basin, and
20 whether Ms. Egoscue has correctly identified all
21 discrepancies and the vast number of Watermaster website
22 publications, five and a half million-acre feet is a lot of
23 water. Six million-acre feet is a lot of water and the
24 present available information which ultimately will be
25 updated through the fully integrated Watermaster website is
26 a reflection that it is 12 million.

1 No, we haven't got to every page in the
2 10,000 pages or more of material in the website. We'll get
3 there. The key point is we'll expect excursions above and
4 below the line of the allocated number over the fullness of
5 time, it will equilibrate, to use Mr. Wildermuth's words,
6 and if doesn't, we have you, your Honor. We have you, your
7 Honor, to keep us to the task of making sure what? That our
8 taking of water does not result in undesirable results or
9 material physical injury.

10 We file annual reports with your Honor. We come
11 before you, we give you our projections, and if there are
12 problems we have a duty to identify those problems to you.
13 There is no evidence in the record that the water table has
14 moved at all.

15 The alleged phantom water or the concern to the
16 basin is not physically manifested. The issue really,
17 your Honor, is that water has been allocated, and the water
18 that is not pumped is moved into storage so we have water in
19 storage. The color of the water may have changed, but the
20 basin is agnostic to what color it is. The water table is
21 the water table. The place in which the water table is
22 moved is, guess what, just as it was expected to do in
23 support of hydraulic control. The model has been get in
24 predicting what the consequence would be, and there is no
25 evidence, none, of material physical injury or undesirable
26 results of the.

1 That is not to say that what Ms. Egoscue was
2 referencing is unsubstantiated in terms of there being a
3 long-term management perspective that needs to be addressed.
4 And so, on a forward basis if we had 50 years of drought,
5 you could see the possibility that some of the water
6 allocated to storage, presuming that we just continued on
7 the way we were, that some of the water that we characterize
8 as being in storage may not really be there.

9 On the other hand, if we run as expected in
10 intermittent cycles of wet and dry years, it will cheer up.
11 We're going to be back here, your Honor, in September.
12 We're going to be talking about the progress of the OBMP.
13 The ultimate remedy that the Court has, consistent with its
14 continuing jurisdiction is to keep an eye on the excursions
15 above and below the line over a period of time which will
16 find itself ultimately. If they're not corrected by wet
17 seasons, your Honor has the power. The Watermaster has the
18 authority to ensure that when water is extracted from
19 storage that it doesn't cause material physical injury.

20 The last point I would make on this, your Honor,
21 is all of those projections that have been done by
22 Mr. Wildermuth suggest this is not a decade or two-decade
23 issue. It's way out is there. Nonetheless, that doesn't
24 mean Watermaster should avoid that responsibility of
25 addressing potential withdrawals from storage in the future.
26 The parties are trying to do storage management plan. It's

1 not in front of your Honor now. We'll get it there as soon
2 as we can.

3 In the meantime, you should have confidence that
4 the peace agreement which this Court has ordered, and the
5 judgment prevent Watermaster from permitting storage and
6 recovery activities which are harmful for the basin.

7 With that, I'm happy to answer any questions.
8 Again, we respect the concerns of the Ag Pool. They're not
9 being ignored. They are proffered in good faith. We
10 understand that, but it is not a subject that is pertinent
11 to Safe Yield. Thank you.

12 THE COURT: Thank you. Ms. Egoscue? Then I'll
13 turn to the telephone. Would you like to reply at this
14 time?

15 MS. EGOSCUE: Yes, please, your Honor.

16 THE COURT: Wait, I see one hand. Do you want to
17 speak now? Go ahead. I saw you, Ms. Egoscue. Go ahead,
18 please.

19 MS. EGOSCUE: Thank you very much, your Honor.
20 Tracy Egoscue on behalf of the Agricultural Pool.

21 I would like to address something that
22 Mr. Gutierrez said first on behalf of Chino. His
23 insinuation or his clear statement, I should say, that
24 someone has to pay back the overallocation, and his
25 statement that clearly it's the Appropriative Pool that has
26 to pay it back, and that the Appropriative Pool has relied

1 upon this water and this planning.

2 The Ag Pool does not state in their opposition
3 that the Appropriative Pool has to pay anything back. The
4 Ag Pool specifically says that there has been an
5 overallocation that has not been addressed and makes the
6 argument that the Safe Yield order does not foreclose or
7 prevent your Honor or Watermaster for that matter from
8 addressing it.

9 In fact, as your Honor recollects when there is a
10 decline in Safe Yield, it is unpumped Ag water that is used
11 to replenish or pay back. In fact, that is the basis for
12 why the Agricultural Pool is before you today. The
13 Agricultural Pool has plenty of water. They can pump. They
14 have never come close to their Safe Yield. All of their
15 extra water is used by the Appropriative Pool every year.

16 In fact, when we get to the motion on the pooling
17 plan which I wish we had already taken up, your Honor, you
18 will see that the Agricultural Pool is filing this
19 opposition as Mr. Slater says, "in good faith," because of
20 their concerns about the basin. This is not about their
21 water, their access to their water, whether it infringes on
22 their pocketbook. This is the Agricultural Pool ringing the
23 bell and telling your Honor that there is a persistent
24 decline in the Safe Yield. We just here five years ago. We
25 had decline then. We have another decline now. If you look
26 at Wildermuth's study, his actual study, he shows you that

1 the Safe Yield is in the 120s. It's in the record.

2 What he ends up saying is it'll true up over time.
3 You're right, in your order, your Honor, you say, "Hey, the
4 Ag Pool is thinking this is a worst-case scenario." Right?
5 You actually comment on that.

6 THE COURT: Yes.

7 MS. EGOSCUE: What if it isn't a worst-case
8 scenario? That's really why the Ag Pool is spending time
9 and resources. I'd like to repeat. The Agricultural Pool
10 is not trying to relitigate the Safe Yield order. The
11 Agricultural Pool is not asking the Court to tell the
12 Appropriative Pool to pay anything back.

13 In fact, when the Appropriative Pool needs to pay
14 something back when there's a decline in Safe Yield, they
15 used the unpumped Ag water. What the Agricultural Pool is
16 asking, your Honor, is to take note that there has been a
17 decline in the Safe Yield and overallocation over the
18 previous Safe Yield Reset period. We would like, your
19 Honor, to order all of us to address it moving forward.

20 We do not have faith, as a pool. I'm representing
21 to your Honor, we do not have faith that it is going to be a
22 straightforward process. In fact, two weeks ago Mr. Slater
23 stood up here, and repeated over and over that we don't have
24 consensus yet on anything regarding the OBMP. I have the
25 transcript right here. I understand why he was careful
26 about it because it is a consensus-based approach, but when

1 it comes to the Safe Yield, you have continuing
2 jurisdiction. There is nothing that prevents you from
3 saying, "Okay. Guess what? You need to address this. You
4 can't ignore it."

5 One last point, and I appreciate what Mr. Slater
6 is saying about the website. Perhaps that was a low blow,
7 but it is the front page of the Watermaster website. It's
8 not buried on the FTP visintine site. When we talk about
9 how storage is interrelated, and even Mr. Slater went there
10 just now in his comments to you, your Honor. Just to
11 repeat, the Ag Pool does not have confidence that the OBMP
12 will appropriately address these issues. Thank you.

13 THE COURT: You're welcome. Counsel? Come on up
14 to a microphone, please. Thank you, Mr. Slater.

15 MR. SCHATZ: Good afternoon, your Honor.
16 John Schatz, counsel for the Appropriative Pool.

17 THE COURT: Thank you, Mr. Schatz. Go ahead,
18 please.

19 MR. SCHATZ: Ms. Egoscue mentions overallocation,
20 and then says let's kick the OBMP. We can't start a process
21 including the OBMP that includes storage, among other
22 things, with a question mark whether it's referencing the
23 Safe Yield or otherwise of a hole in the basin of
24 100,000-acre feet.

25 You can't evade the question well it's not in Safe
26 Yield, but we like it addressed somewhere else. It's the

1 same question which reverts, again, to the 2017 methodology
2 in a court order from '19 which is, the water is there or
3 it's not there. Full request, this idea of deferring us to
4 the OBMP which includes storage, by the way. It should be
5 straight forward. Let's deal with it now. Thank you.

6 THE COURT: Thank you, Mr. Schatz. Mr. Gutierrez,
7 I see you in the courtroom raising your hand. Go ahead.
8 Please, if you will come back up to the microphone on the
9 witness stand.

10 MR. GUTIERREZ: Yes, your Honor. I want to
11 correct the misconception articulated by Ms. Egoscue about
12 what the Ag Pool water rights are. This is absolutely not
13 correct that the Ag Pool retains rights to all of the water
14 allocated to it in any year. It loses what it does not
15 have, and the judgment transfers it to the appropriators.
16 There's a reason for that, your Honor.

17 The reason goes back to the common-law water
18 rights in the State of California before the judgment was
19 entered. That reason is that an overlying property owner
20 can only use so much water as necessary for the land. If it
21 doesn't use it, it loses it. That's what the judgment
22 recognized, and part of the settlement of the judgment was
23 that that water would transfer to the appropriators and
24 belong to the appropriators. That has been practiced since
25 1975 and all of the allocations that have been made of the
26 unused Ag water. The only difference was in the Peace

1 Agreement, we decided to adjust it on a yearly basis rather
2 than a five-year basis. Thank you.

3 THE COURT: Thank you. Anyone else? I'm going to
4 turn to the phones, but I see another counsel raising his
5 hand.

6 MR. GAGEN: Thank you, your Honor. Andrew Gagen
7 on behalf of the Monte Vista Water District. Your Honor, if
8 the Court's tentative ruling becomes the final, there's a
9 sentence in the Court's order that causes great concern to
10 at least Monte Vista Water District and perhaps other
11 appropriators.

12 THE COURT: Okay.

13 MR. GAGEN: It's on page six. Line 15 where the
14 Court -- and I'll read the sentence in its entirety. "The
15 CVM is Wildermuth proprietary model."

16 The reason why that's so concerning is that the
17 Appropriative Pool -- now when I say the Appropriative Pool,
18 the public, through their payment of rates to the
19 appropriators, to the municipalities pays 97 percent of
20 every dollar spent by Watermaster. That would include
21 Mr. Wildermuth and his firm, and the money that went into
22 the CVM.

23 The idea that the CVM is somehow proprietary and
24 the public, e.i., the appropriator couldn't see it, can't
25 touch it, can't get into it is inconsistent with the idea
26 that this is a public process, and that we as the

1 appropriators represent the public and should have access to
2 that model. I understand that the Court has denied the City
3 of Chino's request to do so, in this instance. However, I
4 would be concerned in asking the Court to not make that a
5 permanent part of the record and simply by striking that one
6 sentence. Again, line 15. Page six.

7 THE COURT: Okay. Thank you.

8 MR. GAGEN: Thank you your Honor.

9 MR. SLATER: Your Honor, may I respond?

10 THE COURT: Yes, please, Mr. Slater.

11 MR. SLATER: I think the origin of this language
12 comes from a response to the State of California request for
13 access to the model.

14 THE COURT: Yes.

15 MR. SLATER: Inclusion in the order is in that
16 context. We would offer that it is not Mr. Wildermuth's
17 model. Pursuant to a contract that is not in the record,
18 your Honor. The proprietary rights of that model are
19 assigned to Watermaster.

20 I do think that if it will facilitate the closure
21 of this matter that we can strike that sentence, but I would
22 also say to your Honor that there is quite a bit of concern
23 that the Court should have with making such a model
24 generally available. In our opinion, this is the Court's
25 model. This is not parties to the judgment's model. The
26 fact that somebody pays for it is not licensed to take it

1 out to use it to take it for a test drive, to manipulate
2 data, to create confusion to the public. Advocates for
3 positions should not have access to this model.

4 If the Court wants to order supervision, openness,
5 transparency, we're completely amenable to that, but we can
6 see only mischief occurring by turning over the keys to a
7 multi-million-dollar model that has taken decades to
8 construct and to use for the benefit of the Court, and
9 making it into an advocacy piece or tools.

10 If it's not necessary to the Court's order, we
11 appreciate the contract is not in the record. It is
12 referenced in our response to the State of California
13 comments. I can give you the cite to the page if you'd
14 like, but if it'll move it along, we would stipulate to the
15 removal of this sentence.

16 THE COURT: Okay. Mr. Gutierrez?

17 MR. GUTIERREZ: I'll approach the witness stand
18 again.

19 THE COURT: Thank you.

20 MR. GUTIERREZ: Your Honor, I agree with
21 Mr. Slater that that reference to the ownership of a model
22 should be stricken. It should be stricken because it's not
23 an issue in this matter. There was no evidence around it.
24 There was no opportunity for anybody else to submit evidence
25 on it.

26 Secondly, I want to take issue with Mr. Slater's

1 characterization of how it might be used by the other
2 parties. It is frankly offensive to hear that statement
3 said in open court. The parties to the judgment that are
4 participating in this process have an ownership interest in
5 the water and the judgment, and pay for all the costs as
6 Mr. Gagen has indicated.

7 Our only interest in using the model was to look
8 to see what other results would come about by utilizing
9 other reasonable input data, and other reasonable
10 parameters. That was the only reason because as I've stated
11 in our opposition, we wanted to get a better assurance of
12 what the true Net Recharge of the basin. The Court by its
13 ruling has denied that, but that was the only reason I think
14 I can speak for all the other appropriators that they had no
15 intent to commit mischief. I just had to say that,
16 your Honor. Thank you.

17 THE COURT: Thank you. Ms. Egoscue?

18 MS. EGOSCUE: Your Honor, I just want to briefly
19 say that Mr. Gutierrez' comment about how the Ag Pool
20 somehow loses their rights, their fully adjudicated rights,
21 when they don't use them is evidence of why we need an
22 order. Thank you.

23 THE COURT: Thank you. Okay. We need to take a
24 recess because the staff has been here since 1:30. I'm
25 going to take a 15-minute recess and I'll go to the phones
26 and try to finish this up. My watch says precisely five

1 past 3:00. When my watch says precisely 3:20 we'll be back
2 on the bench. We'll take a recess then. Thank you.

3 **(The afternoon recess was taken.)**

4 THE COURT: Okay. Back on the record here in the
5 Watermaster case. As I mentioned, let me turn to the
6 phones. It's a little hard because people speak over each
7 other on the phones, but we'll try to do the best we can.
8 Is there anyone on the phone who would like to address the
9 court?

10 MR. BUNN: Yes, your Honor.

11 THE COURT: Go ahead, please.

12 MR. BUNN: This is Tom Bunn for the City of
13 Pomona. I won't repeat any of the arguments that have been
14 made so far, but I wanted to add something specifically from
15 the standpoint of Pomona.

16 Pomona was a party to the Peace Agreement. It's a
17 party to the 2015 Safe Yield Reset agreement, and it was a
18 party to the 2019 settlement of the appeal. Each of those
19 was extensively negotiated. The last two concerned the
20 methodology for the determining Safe Yield, and determined
21 that should be done according to the technical memorandum.

22 As Mr. Slater said earlier, the issue there was
23 whether the determination of Safe Yield should be
24 prospective or retrospective using foresight or hindsight.
25 It was determined that it should be prospective. The Court
26 agreed that that was appropriate for the basin, and it's in

1 both the 2017 and 2019 orders.

2 Now, Mr. Gutierrez said that the parties relied on
3 the Court's determination in Safe Yield in 2017. I would
4 add that the parties also rely on the Court's 2019 order
5 establishing the process for Safe Yield. That's what I
6 wanted to add. Thank you, your Honor.

7 THE COURT: Thank you Mr. Bunn. Anyone else on
8 the phone? Going once? Going twice. That's it. Anybody
9 else here in the courtroom?

10 MR. SLATER: Your Honor, we're prepared to submit.

11 THE COURT: I'm sorry. Who's talking?

12 MR. SLATER: Sorry. This is Scott Slater, your
13 Honor.

14 THE COURT: With the mask on, I can't tell.

15 MR. SLATER: It's confusing to me, too.

16 THE COURT: Thank you, Mr. Slater.

17 MR. SLATER: Nothing like looking at yourself in
18 the mirror and wondering who you are.

19 THE COURT: Yeah.

20 MR. SLATER: We're prepared to submit on the
21 tentative, your Honor, with the first change that was
22 suggested by Mr. Gagen, and joined in by Mr. Gutierrez.

23 I want to come to something that Mr. Gutierrez
24 also suggested that we can also agree with, but before do I
25 do, that your Honor is notorious for his hard work in depth
26 in going through and reading all the materials, and then

1 coming up with an elaborate order which is dedicated
2 demonstration of responsiveness. We appreciate that.

3 In protecting the Court, your Honor, in the
4 record, we did notice a few typos.

5 THE COURT: Not surprised.

6 MR. SLATER: Not surprising. In a volume of that
7 amount, you'd expect to find it. What we'd like to do
8 during the break, we talked with the counsel here and rather
9 than avoid, or take a lot of the Court's time to correct
10 those, we would propose to correct those typographical
11 typically initial caps, syntax, things in the Court's order,
12 and then to serve that notice of the final ruling for
13 your Honor.

14 If the Court is so inclined, there are a couple of
15 things that are more than typos. I'd be happy to walk those
16 through with you. They're more than just initial caps, and
17 to cover those couple of items.

18 THE COURT: Sure.

19 MR. SLATER: If you would, your Honor, on page
20 two. Line one.

21 THE COURT: Okay.

22 MR. SLATER: Page two. Line one. I believe the
23 number should be 140,000. Not 145.

24 THE COURT: It should. Thank you.

25 MR. SLATER: Then again, your Honor, on the bottom
26 of page -- I need my glasses. Age will do that to you.

1 THE COURT: Yes.

2 MR. SLATER: Page four, line 27, 28, and over on
3 page five, lines one through three. Those items have
4 nothing to do with the Safe Yield Reset motion, your Honor.
5 They're pertinent to other matters and this is a ruling on
6 Safe Yield Reset. We think those probably ought to find
7 their home somewhere else.

8 THE COURT: This is essentially section five
9 labeled "miscellaneous"; correct?

10 MR. SLATER: Correct.

11 THE COURT: That was just informational. I'm more
12 than happy to delete those. Okay.

13 MR. SLATER: Okay. Then of course, the suggestion
14 made by Mr. Gagen was found on page six. Line 14 or line
15 15. We would propose to strike the sentences beginning with
16 "CVM" and beginning with model.

17 THE COURT: Yes. That should be stricken. I'll
18 talk about that in a moment.

19 MR. SLATER: Then I think everything else, the
20 world would agree are typographical. Except for all the way
21 to page 15.

22 THE COURT: Oh, okay.

23 MR. SLATER: I suspect that this was the dictation
24 machine picking this up, your Honor. On page ten, we have,
25 "If the California State Water Resources Control Board," and
26 then we have the words "of elders."

1 THE COURT: Oh heavens. Okay.

2 MR. SLATER: We are suspicious that might have
3 meant "develops" instead of "elders."

4 THE COURT: Yes. I'll tell you that when I did
5 this, I had to use a new speech recognition program that the
6 court requires me to use that did not work as well as my old
7 one. And so, there might have been some stray words
8 floating in. For as many as times as I read through this,
9 my eye skips over it occasionally.

10 MR. SLATER: It happens to me every day,
11 your Honor. In fact, Mr. Kavounas is suggesting that a
12 better word is "order" as opposed to "develops." I'll see
13 to his recommendation since it doesn't change the meaning.

14 THE COURT: Okay.

15 MR. SLATER: With that, what we'll do is represent
16 to counsel on the phone is we'll make the typographical
17 corrections, and then serve the corrected version.

18 THE COURT: Yes. Well, I'll need to sign it.
19 Bring it in and I'll sign it with those corrections.

20 MR. SLATER: Of course.

21 THE COURT: Let me address some issues.

22 MR. SLATER: Your Honor, I had one other
23 suggestion that Mr. Gutierrez has made to calendar for which
24 we do not have a problem. It has to do with the start time
25 and review time associated with the next Safe Yield Reset.

26 THE COURT: Got it.

1 MR. SLATER: Mr. Gutierrez is recommending that we
2 build in a six-month review process for the parties. That
3 is acceptable if we start six months earlier.

4 THE COURT: Okay. The Watermaster -- this is on
5 page 15.

6 MR. SLATER: Page 15, beginning on line six.

7 THE COURT: Watermaster shall commence the next
8 Safe Yield Reset process by July 1, 20 --

9 MR. SLATER: 2028, your Honor.

10 THE COURT: 2028. There we go. By 7/1/28. Yes.
11 That would work. Okay. Then let me make one other
12 correction to meet -- I would like to suggest for
13 Ms. Egoscue's argument. That is on page ten, line 24.

14 Instead of "the implication," I'd like to correct
15 to say, "and implication of the Ag Pool opposition not
16 sought by the Ag Pool." I believe that would be consistent
17 with what Ms. Egoscue argued should be the Safe Yield Reset.

18 It would read, "And implication of the Ag Pool
19 opposition, not sought by the Ag Pool is that the Court
20 should set a Safe Yield, et cetera." I think that would be
21 consistent with the argument and more accurate.

22 Let me point out a couple of other things then
23 with respect to how the Court would like to proceed. The
24 Court is finding that the current Safe Yield resulting in no
25 material physical injury, and no undesirable results is, in
26 fact, the 131,000-acre feet per year starting July 1 of this

1 year, and ending June 30 of 2030.

2 That is the basis for the Court's determination,
3 as well as the compliance that the Court found with respect
4 to the Watermaster and Mr. Wildermuth's approach using the
5 Reset technical memorandum which is attached to Exhibit A to
6 the motion.

7 Also, the Court is not going to make any orders
8 with respect to Ms. Egoscue's request that the Court make
9 any orders regarding storage plans or anything with respect
10 to the OBMP. That's not before the Court today. The issue
11 for the Court was the Safe Yield reset. For the reasons the
12 Court stated in the order, and the ones I've just stated
13 here again in court, the Court finds that the Safe Yield is
14 131,000-acre feet per year for the period commencing July 1,
15 2020, and ending on June 30, 2030.

16 With respect to the proprietary interest, or the
17 proprietary model, the Court is not pursuing that anymore,
18 but the Court is aware of the problems that exist if
19 advocates start presenting to the Court that the input that
20 they use would make the Safe Yield, for example,
21 130,000-acre feet per year or 132,000-acre feet per year
22 which is what I was trying to address in the court order
23 that the Court is looking at the conclusions of
24 Mr. Wildermuth. Mr. Wildermuth's conclusions have
25 credibility with the Court.

26 There was an extensive analysis attached to the

1 motion which was about three inches thick. The diagrams
2 that the Court recalls seeing that Mr. Wildermuth prepared
3 showing land use, extending back to the '20s up to the
4 present was very informative to the Court on how a prospect
5 of evaluation should be made rather than a retrospective
6 evaluation because of the way things are changing in the
7 valley.

8 With that additional insight, I believe that will
9 conclude the hearing on this particular motion unless
10 someone wants to add something, have a question for the
11 Court, or something else. Mr. Gutierrez?

12 MR. GUTIERREZ: I want to clarify. Hopefully
13 Mr. Slater can hear me that when I had requested, or what I
14 think he said, but wasn't included in the language is that
15 the parties be given the last six months in the next, your
16 Honor --

17 MS. LEVIN: Your Honor, we can't hear on the phone
18 what Mr. Gutierrez is saying. This is Marilyn Levin with
19 the State of California.

20 THE COURT: Mr. Gutierrez, come on back up to the
21 microphone, please. Please begin again.

22 MR. GUTIERREZ: Jimmy Gutierrez for the City of
23 Chino. I apologize to you all.

24 What I was saying is I want to clarify that there
25 will be language in the last page of the order, and I see
26 Mr. Slater is nodding his head, that the parties will have

1 the last six months in the process to review the data and
2 the recommendations of the next report prepared for the
3 Safe Yield reset, and that of course Watermaster would have
4 from June of 2028 through January of 2030 to do their work.
5 I just want to make sure that was included. Thank you.

6 MR. SLATER: Your Honor, that was understood.
7 Again, we're moving up the process six months. As
8 Mr. Gutierrez is suggesting, if we're going to move, we can
9 accommodate that by moving our start date up six months.
10 Six months before we final, we're going to give them six
11 months to review.

12 What we would do is we would focus on the
13 January 1 date because we're starting now in July 1; right?
14 So on January 1, 2030, we would start a peer review or party
15 stakeholder review.

16 THE COURT: That's a year late. I'm sorry.
17 January 2031?

18 MR. SLATER: 2030.

19 THE COURT: 2030. All right. Thank you. Got it.
20 That would be correct. Okay. Anything further? Any other
21 questions or comments with respect to the order or the
22 Court's comments here today?

23 MR. SLATER: Your Honor, we have no questions, I
24 just want --

25 THE COURT: I'm sorry. On the phone. Go ahead,
26 please. Who's speaking?

1 MS. LEVIN: Yes, this is Marilyn Levin the
2 attorney general's office representing the State of
3 California in the Agricultural Pool. Just a few comments,
4 and I guess a question, your Honor.

5 One, I note that this is a very detailed decision
6 as all parties have indicated, but we only have a very short
7 time to read it. I know you said we should use more time.
8 We can't see what Mr. Slater is suggesting and adding, so
9 I'm wondering, one, if you can hold off on saying that this
10 is the final until you hear the next argument which is the
11 pooling plan which is somewhat related to this. I think we
12 were hoping Agricultural Pool was thinking you take that
13 first to give you some background on what's going on.
14 That's my first question. I know that Mr. Slater is making
15 changes and will hopefully circulate whatever he's proposing
16 to all the parties before he presents it for your signature,
17 and we get a notice. I guess there's two things I will
18 mention right there which is, can you hold off on finalizing
19 this, or saying that there is nothing further on this until
20 you hear the pooling plan argument. That's my first
21 question.

22 Secondly, is this idea of how this tentative is
23 circulated. You know, this is a very important ruling and
24 it would be really helpful if we all get to see it. If we
25 have any other additional corrections, or changes that you
26 might want to make, that would be helpful.

1 Also, I wanted to add that I know there's a lot in
2 here about Mr. Wildermuth and his expertise over 40 years.
3 I hate to say that I've been involved in the basin for
4 almost as long as he has. What I was going to say is that
5 there was a lot of giving deference to this idea that there
6 was a peer review by various entities including the State of
7 California expert, and someone "hired by the Watermaster."

8 I just want to note, your Honor, that the review
9 by the person who was hired by the Watermaster, there was a
10 very limited question. He was asked whether or not the
11 review or the model by Mr. Wildermuth met the standard in
12 the industry. He said yes. The review that we all were
13 given was very limited. It was short. We weren't able to
14 see the model. We weren't able to see the background
15 information in the model.

16 Surprisingly, I'm agreeing with Mr. Gutierrez.
17 It's offensive to think that we would be trying to use the
18 model in some untoward way. It is standard practice
19 actually, your Honor, for folks to be able to see the data
20 that goes into the model. I'm not asking you necessarily to
21 change anything in your decision. I'm just saying that the
22 idea of this peer review was given to us in a very short
23 period of time. Excuse me. It was very disappointing, and
24 though Mr. Wildermuth and Watermaster took a lot of time in
25 answering our questions. We sent questions in. They
26 answered them, but it wasn't, you know, this amazing peer

1 review that we all had hoped for.

2 What Ms. Egoscue was saying was that you have the
3 final say in what kind of technical memorandum would be
4 appropriate going forward. Standard practice is not
5 necessarily only prospective. There is a prospective. You
6 mentioned something about prospective that the asking for
7 the basin, but there are two ways. Prospective and trueing
8 up. That's what some of the arguments that the experts have
9 made to Mr. Wildermuth. There has to be more information on
10 the ground, trueing up as to what's actually happening. Not
11 softening as you go forward, but actually dealing with the
12 facts, and then addressing them.

13 And so on a going-forward basis, your Honor, we
14 really have trust in you as the neutral party. Not
15 necessarily a person who has to compromise, you know, among
16 all the parties. In the past you used the referee.
17 Actually, Judge Gunn did. I was part of that. This may be
18 the kind of situation going forward that you might need a
19 referee, and a technical expert.

20 I just want to say it's very complicated. I
21 applaud your ability to read all the documents and
22 understand this, and so I would like you to wait to rule on
23 this. Possibly you might reconsider what you just said
24 about adding something to this order to have the parties
25 come to you sooner, and address the issue that Ms. Egoscue
26 mentioned about the problems. That's what I'm asking.

1 I'm so glad I didn't sound like James Joyce here,
2 but, you know, I wasn't going to say anything, but I just
3 felt it was really important to have you wait until you hear
4 the pooling plan argument.

5 THE COURT: Okay. I see Mr. Slater's hand going
6 on. Go ahead please, Mr. Slater.

7 MR. SLATER: Yes, your Honor I want to correct
8 something that Ms. Levin just said. It's an abject. It's
9 completely utterly false that any party was refused access
10 to information regarding inputs. Control of the model was
11 denied. There had been multiple in-person meetings over two
12 years in which people were invited in to understand the
13 methodology, its application before the model was run during
14 the process, and did involve direct input from
15 representatives from the party and the consultant who was
16 selected because they came from the same firm that
17 Mr. Scalmanini was in before his passing.

18 So unequivocally, we did not deny input
19 information. We represent to the Court that that is
20 openness and transparency. We are willing to provide that
21 type of information to experts continually. It is turning
22 over the model to advocates regardless of their intention.
23 That is the concern.

24 The Court can prescribe safeguards if it wants to.
25 We'll be responsive to the Court and its direction and
26 desire for openness and transparency. We do not deny

1 information and inputs to the parties. That's the first
2 thing.

3 Second thing, in terms of the process being
4 suggested, we're happy to circulate a form of the final
5 tentative to accommodate the Court's suggestions. What
6 Mr. Gutierrez suggested, and to offer that to circulate
7 among the parties if that is something the Court would like.

8 THE COURT: Okay. Thank you. Did I see another
9 hand? No. Okay. Well, right now, I'm not ready to change
10 my tentative except as already stated, but I'm ready to move
11 on to Ms. Egoscue's motion to amend the judgment with
12 respect to the pooling plan.

13 MR. SLATER: Thank you, your Honor.

14 THE COURT: Who would like to speak first on that?

15 MS. EGOSCUE: Your Honor, Tracy Egoscue on behalf
16 the Ag Pool. You indicated at the beginning of today that
17 you were tentatively denying the motion?

18 THE COURT: Yes.

19 MS. EGOSCUE: I think it would help us create the
20 most effective and efficient argument if you could explain
21 your thoughts at the outset?

22 THE COURT: Yes. The basis for the Court's ruling
23 is really set forth in the response that Mr. Schatz filed on
24 behalf of the Appropriative Pool as well as the Court's
25 conclusion that the Court doesn't find a basis on which it
26 should exercise its discretion to amend the judgment. The

1 contractual arrangements between the parties no longer, no
2 matter how long or short standing, should remain between
3 those parties and not be institutionalized into the
4 judgment. That's really what the basis of the ruling is.

5 MS. EGOSCUE: I appreciate that, your Honor. Hold
6 on just one moment, please.

7 THE COURT: Sure. Of course.

8 MS. EGOSCUE: I will not address anything that I
9 have had in my papers. I'm going to go to something that
10 goes directly to your tentative which I believe is
11 influenced by comments and arguments that were made two
12 weeks ago.

13 THE COURT: Okay.

14 MS. EGOSCUE: I believe that Mr. Gagen first
15 started the argument which was that you can't hardwire or
16 elevate provisions of the Peace Agreement into the judgment,
17 and the Ag Pool was somehow doing that with this motion to
18 amend.

19 What I would offer for the Court beyond what was
20 already in the papers about how the process came about,
21 meaning that there is no change to the Peace Agreement.
22 This is just reflecting the standard in practice. I'd like
23 to offer for the Court's consideration evidence of what the
24 Court has already ruled on in March of last year.

25 In March of last year, as you recall, the parties
26 came before you. It was a limited subset of the parties

1 that had appealed the Safe Yield. They appealed it,
2 although they never filed anything in the Court of Appeal in
3 terms of a brief on the merits. However, there was a very
4 lengthy delay in the Safe Yield Reset as a result of their
5 appeal. In this instance, I'll say the appeal was somewhat
6 in quotes.

7 After a couple of years which I will add
8 contributed to a delay in the Safe Yield reset process
9 because the Watermaster Counsel deferred and instituted a
10 self-imposed stay on their actions. A few parties from the
11 Appropriative Pool presented a settlement agreement that
12 included an amendment to the judgment. It amended the
13 pooling plan of the Appropriative Pool to reflect the terms
14 of the Peace Agreement.

15 And so, I would provide for your Honor, and I have
16 a copy of that order right here for your reference if you
17 would like to look at it.

18 THE COURT: Actually, I've got one. Just a
19 moment. Yes, it is the March 15, 2019 order.

20 MS. EGOSCUE: That's correct, your Honor.

21 THE COURT: I've got it.

22 MS. EGOSCUE: What had happened is I went back and
23 I read the transcript so that I can make sure that I inform
24 your Honor without any misrepresentation. What had happened
25 was members of the Appropriative Pool had brought forward
26 this settlement agreement through the pools, and said this

1 was their settlement of their appeal. The Ag Pool objected
2 to it, and did not take a position because they wanted the
3 Safe Yield reset reflected in the ultimate order. As you
4 recall, your Honor, during the hearing you actually answered
5 the Ag Pool's concerns and put the Safe Yield methodology
6 requirements in the order.

7 THE COURT: Mm-hmm.

8 MS. EGOSCUE: You also elevated, or hardwired to
9 use language from the Appropriative Pool lawyers,
10 themselves, an amendment to the judgment. In particular,
11 the introductory sentence to Exhibit H, paragraph ten of the
12 judgment which is the Appropriative Pool's pooling plan.

13 I would argue, your Honor, that what the Ag Pool
14 is requesting is equivalent. In fact, it is even more
15 benign in my view because it does not represent any
16 amendment to the Peace Agreement itself. It actually
17 reflects the terms of the peace agreement without any
18 amendment. I will also offer for your consideration,
19 your Honor, that I was noting when I was reviewing and
20 preparing for this hearing that this amendment to the
21 judgment isn't even as protective as what the Ag Pool is
22 suggesting in their amendment to their pooling plan.

23 If you remember, the Ag Pool is suggesting that
24 their amendment is only for the term of the Peace Agreement.
25 I will offer that this amendment does not even have that
26 kind of limitation. I do not believe that your Honor is

1 prevented from entering into, as you said, you don't have --
2 hold on just one moment.

3 THE COURT: Sure.

4 MS. EGOSCUE: Let me find my notes. I think you
5 said that you are not able to enter into what is a
6 contractual relationship between the parties and vis-a-vis
7 the judgment, but I will argue that you have done that, your
8 Honor, in as recently as March 2019. What the Ag Pool is
9 requesting is actually more benign than what the
10 Appropriative Pool already received.

11 To put it bluntly, your Honor, the Appropriative
12 Pool got their water and early transfer modification, and
13 their judgment. That comes directly from the Peace
14 Agreement. The Ag Pool would like to have the same. The
15 Ag Pool is not requesting any modification to the
16 Peace Agreement or to the course of conduct in practice for
17 at least ten years.

18 I would add as a final note, I've only been the
19 Ag Pool's attorney for nine years. I wasn't here during the
20 Peace Agreement, but to the extent that any of those issues
21 have to come up, and have to be before your Honor we can
22 brief that and bring you that evidence, but in terms of
23 today, the Agricultural Pool is requesting that your Honor
24 grant the motion so that the standard practice of the
25 Ag Pool can be reflected appropriately in the pooling plan
26 and the rules and regulations as required by the judgment.

1 Thank you.

2 THE COURT: Thank you, Ms. Egoscue. Mr. Gagen?

3 MR. GAGEN: Andrew Gagen on behalf the Monte Vista
4 Water District and opposing Ag Pool. I think what counsel
5 for Ag Pool is arguing is an apples-to-apples argument and
6 they're not. It's an apples to oranges. The Peace
7 Agreement has Section 4.4 in it. The analogy that the
8 Ag Pool is trying to make is, I believe, to settlement
9 agreement that occurred in 2019 which does not have
10 Section 4.4 in it. Just to remind the Court, Section 4.4 in
11 the Peace Agreement provides for three particular amendments
12 to the judgment and three only.

13 What the Ag Pool is trying to do here is a
14 unilateral attempt to add a fourth item to Section 4.4. A
15 fourth amendment to the judgment without mutual intent of
16 the parties, or written consent of the parties to the
17 Peace Agreement which violates Section 10.14 in the
18 Peace Agreement. The analogy does not hold, your Honor.
19 There is only one Section 4.4, and that's in the Peace
20 Agreement.

21 THE COURT: Got it. Thank you. Ms. Egoscue, you
22 get the last word.

23 MS. EGOSCUE: Your Honor, that is a blatant
24 misrepresentation of the paragraph 4.4 in the entirety of
25 Peace Agreement. I'll add before I address it specifically
26 that if the judge is not inclined to grant our motion to

1 amend our pooling plan, just as an aside, your Honor, the
2 Agricultural Pool was moving to do this at the express
3 request of the general manager of the Watermaster, but
4 setting that aside, the Peace Agreement -- although
5 Section 4.4 specifically outlines the parties consenting to
6 these modifications and the judgment per the Peace
7 Agreement, if you don't have a copy, I think you do, but I
8 have one right here if you'd like it. It does not anywhere
9 in the document does it prevent your Honor from modifying
10 the judgment.

11 In fact, the modification of the judgment done in
12 March of 2019 by your Honor is not listed in paragraph 4.4
13 of the Peace Agreement.

14 I'd also point you to paragraph 10.8 which is in
15 the Peace Agreement. It indicates that the agreement shall
16 be binding upon and shall endure to the benefit of each of
17 the parties, and it goes on to specifically saying that the
18 Ag Pool shall be able to rely upon the provisions of the
19 Peace Agreement, and I will repeat, the motion to approve
20 the pooling plan does not modify the Peace Agreement.
21 Therefore, there is no requirement to get signatures and
22 approval. It is essentially the exact language. It's
23 limited to the terms of the Peace Agreement itself.

24 If your Honor does not want to approve our motion,
25 we ask that you revisit your March 2019 motion and order --
26 sorry. Strike that. Order. And require modifications to

1 the order for parody purposes, your Honor, to reflect that
2 the hardwiring of the early transfer one-year rule is only
3 for the duration of the Peace Agreement itself. What's good
4 for the goose is good for the gander, your Honor, and you
5 can achieve that under your own authority. Thank you.

6 THE COURT: Thank you. Anybody else in the
7 courtroom? No hands? Anybody else on the phone?

8 MR. FUDACZ: Yes, your Honor. This is Fred
9 Fudacz. Counsel for City of Ontario.

10 THE COURT: Go ahead, please.

11 MR. FUDACZ: I'm somewhat dismayed at the argument
12 coming up without any written articulation. After we have
13 some argument last time around. It really is an apples and
14 oranges comparison. We're talking about a straight line
15 contractual interpretation argument here. Your Honor,
16 correctly identifies it as such.

17 There's no basis. We're talking about the
18 Appropriate Pool picking up assessments charged to the
19 Ag Pool, and it's no secret there's a dispute about what
20 that entails. There's no basis for charging the
21 Appropriative Pool for those expenses except for the
22 contract.

23 Then the question is why would you need to extract
24 one provision out of this conference? You know, your Honor,
25 the elaborate contrast with many entered provisions. why
26 would you extract it from the Peace Agreement into the

1 judgment? The basis, to be clear that the intent here is to
2 elevate that provision separately out of the Peace Agreement
3 in a way that would divorce it from the contractual
4 concepts. All the interdependent obligations of the parties
5 in the agreement.

6 That violates the notion of each obligation that
7 supports the contract that was very heavily negotiated, as
8 you are aware. Importantly, as Mr. Gagen points out, the
9 agreement itself addresses this issue in 4.4. Thou shall
10 not elevate the provisions into the judgment except for very
11 specific items that didn't get elevated at the time of the
12 Peace Agreement, which again, was entered into two decades
13 ago. This isn't just some theoretical dispute.

14 What's happening now is the Appropriative Pool is
15 being asked to pay hundreds of thousands of dollars in legal
16 fees it shouldn't have to pay for. It's clear under the
17 other provisions of the Peace Agreement particularly
18 Section 10.4 that it's not obligated to do so. The notion
19 of trying to divorce this one reimbursement section 5.4 from
20 the contractual context of the whole Peace Agreement totally
21 violates a very basic notion of the contract law, and
22 violates the specific provision in the Peace Agreement
23 Section 4.4.

24 THE COURT: Thank you. Anyone else on the phone?
25 Going once.

26 MS. BOYD: Yes, your Honor. This is Deputy

1 Attorney General, Carol Boyd, for the State of California as
2 member of the Agricultural Pool. May I be heard, your
3 Honor?

4 THE COURT: Go ahead, please.

5 MS. BOYD: Thank you. The state objects to the
6 extent that any party is arguing for an interpretation of
7 the Peace Agreement. That's not before the Court. It's not
8 been briefed. It's not an issue for this Court to decide
9 today. Thank you, your Honor.

10 THE COURT: Thank you, Ms. Boyd. Anyone else on
11 the phone?

12 MS. LEVIN: Yes, your Honor. Marilyn Levin. I
13 wanted to add, and I'm sure your Honor is looking at the
14 correct March 15th order. There were two March 15 orders
15 that your Honor issued.

16 One was the larger order, findings and order
17 regarding amendment to Peace Two and reoperation schedule.
18 The other was an order re: notice of motion and motion to
19 approve amendment to Appropriative Pooling plan and court
20 approved management agreement.

21 THE COURT: Yes.

22 MS. LEVIN: They switch back and forth, but the
23 one that I'm looking at is the latter one that I mentioned.
24 While there are arguments circling around that the
25 Peace Agreement wasn't hardwired into the judgment, in
26 effect, it was by the Appropriative Pool because the

1 language is the introductory sentence to Exhibit H,
2 paragraph ten of the judgments is amended to read as
3 follows. What follows is what's in the Peace Agreement to
4 the extent that in any year, not five years, any one year.
5 Any portion of the share of Safe Yield allocated to the
6 overlying Agricultural Pool is not produced, such water
7 shall be available for reallocation to members of the
8 Appropriative Pool as follows. Then it goes through the
9 early transfer, and the other amendments to the Peace
10 Agreement that were agreed to.

11 This is, and I'm sorry to say, a slight-of-hand
12 where the Peace Agreement allows the Appropriative Pool to
13 get the water early in exchange for something else. The
14 Appropriative Pool put this in as an amendment to the
15 judgment, but it was a reflection of the Peace Agreement.

16 This is exactly what Ms. Egoscue said. I know she
17 said what's good for the goose is good for the gander, but
18 if the benefit of getting water early every year accrues to
19 the Appropriative Pool as a result of them amending their
20 own pooling plan with the language that was in the
21 Peace Agreement, then the Agricultural Pool should be
22 allowed to do the same.

23 As Ms. Egoscue said, we were clear that it was
24 only for the term of the Peace Agreement. The Appropriative
25 Pool didn't do that for you, your Honor. They didn't say
26 that this was for the term of the Peace Agreement. They

1 have somehow taken the Peace Agreement language, and put it
2 into the judgment, and get their water every year. Their
3 unpumped Ag water every year, but they got it as a condition
4 of what was in the Peace Agreement.

5 As Ms. Boyd said, we're not here to argue the
6 interpretation of what the Peace Agreement meant or said,
7 but the fact is the Appropriative Pool did get the Court to
8 amend its pooling plan and hardwire it into the judgment.
9 Either we could make a motion, nunc pro tunc, to remove that
10 from this order, or add language that says it's only
11 effective during the term of the Peace Agreement. Also,
12 grant the Ag Pool's motion.

13 I would encourage your Honor to take a look at the
14 second March 15th order, and to reserve ruling on this, and
15 not deny the Ag Pool motion because all we're doing is
16 taking the language of the pooling plan, and changing it to
17 reflect what's in the Peace Agreement. Thank you so much,
18 your Honor.

19 THE COURT: Thank you. Mr. Gagen?

20 MR. GAGEN: Thank you, your Honor. Two thoughts.

21 One, if the Ag Pool has an issue with the prior
22 order of the Court, they can certainly bring that to the
23 Court's attention at a properly noticed motion. Then two,
24 in regards to a prior argument made by Ms. Egoscue. The
25 Latin phrase "expressio unius est exclusio alterius."

26 THE COURT: Yes. I remember that from law school.

1 MR. GAGEN: The Court clearly recalls its Latin
2 which is the expression of silence to the exclusion of all
3 others. That would apply here to Section 4.4, your Honor.

4 THE COURT: All right. Thank you.

5 MS. EGOSCUE: Your Honor?

6 THE COURT: Yes. Go ahead, Ms. Egoscue.

7 MS. EGOSCUE: Thank you, your Honor.

8 The simplification of my argument today is that
9 your Honor did exactly what the Ag Pool is requesting in an
10 earlier order in March of 2019.

11 When the counsel for the Appropriative Pool,
12 Mr. Fudacz and Mr. Gagen, assert today that this can be
13 somehow properly noticed and argued, I would bring up that
14 two weeks ago, your Honor, this was the first time that they
15 started arguing that you did not have the authority to amend
16 the pooling plan with the Peace Agreement.

17 As you recall, I started my argument by saying
18 that I was going to limit it to what I had not already
19 briefed. And so, in answering from two weeks ago -- and
20 I'll acknowledge that two weeks ago, these COVID times seems
21 like ten years ago, but two weeks ago when we were arguing
22 this without a complete record which thankfully we have it
23 now. Counsel for the Appropriative Pool certain members,
24 Mr. Gagen and Mr. Fudacz said, "Your Honor, you cannot do
25 what the Ag Pool is requesting." Today I showed up, and I'm
26 telling you that you've already done it because they have

1 asked you to.

2 My point is, just to simplify it, I'm not asking
3 for you to change the Peace Agreement. I'm asking for you
4 to do what you've already done pursuant to their own request
5 so that the Ag Pool has a clear set of rules and
6 regulations, and a pooling plan that they can comply with
7 and abide by. That's it.

8 What I would also add is that during the
9 March 2019 hearing, and I'll note this is a bit of a culture
10 change because up until this point when a pool wanted to
11 amend its pooling plan, typically the other pools would
12 allow it because it was seen as their own pooling plan.
13 Their own controlling document so to speak. The culture
14 change that has happened with the opposition to this motion
15 is such that moving forward, obviously the Ag Pool has to
16 take a lot more consideration in reviewing their other
17 pool's pooling plan which is an unfortunate culture shift,
18 but it is what it is.

19 In my argument today, in direct response to new
20 arguments made two weeks ago, I'm essentially saying,
21 your Honor, you have the authority to do this. You have
22 continuing jurisdiction. You've done it before. You did it
23 in March of 2019. You can do it here today. The other
24 issues that they're bringing up regarding the fees and the
25 dispute, will probably be back to you on that soon, as I
26 mention the last week, but to the extent that you believe

1 you don't have the authority to amend the pooling plan, then
2 you must revisit your prior order because we are relying
3 upon that authority when we request this amendment. It's
4 obvious that you just did this a little over a year ago.

5 THE COURT: Okay. Is that it?

6 MS. EGOSCUE: Yes. Thank you, your Honor.

7 THE COURT: You're welcome. Anybody else? Going
8 once.

9 MR. FUDACZ: Your Honor, this is Mr. Fudacz. I'm
10 up here seeking input from the gallery on the phone at this
11 point.

12 THE COURT: Actually anyone. Go ahead, please.

13 MR. FUDACZ: Sure. I would just mention at the
14 close of our hearing last time, I think there was an
15 agreement that there would be the floor for the briefing.
16 These arguments Ms. Egoscue has communicated today were not
17 in the briefs. This is the first time we've heard them. I
18 don't think they should be considered.

19 As Mr. Gagen points out, they have a concern about
20 something that happened a year or so ago that the Court
21 ordered, certainly they have the means of bringing it to the
22 Court's attention.

23 THE COURT: Thank you. I think there was someone
24 else on the phone?

25 MS. GRADY: Yes, your Honor. Shawnda Grady on
26 behalf the GCFD.

1 THE COURT: Thank you.

2 MS. GRADY: I just wanted to raise a couple
3 points.

4 First, in response to I believe Ms. Egoscue said,
5 and I apologize if I misheard, but it was stated that the
6 representation that this proposed amendment file date
7 Section 4.4 was something new at the argument. I would
8 disagree in point, your Honor, to the opposition filed by
9 Ontario and Monte Vista. They did highlight this as Ag Pool
10 proposed judgment violating Section 4.4, 5.4, 8.3, and
11 10.14. That was on page two of their brief.

12 The second thing, I believe was in response to one
13 of the comments made by counsel for the state. In our sur
14 reply, we did raise the issue of concerns about the overlap
15 between this motion and the anticipated motion regarding
16 issue responsibility for fees which I highlighted on that
17 brief is not before the Court, but I think it's relevant to
18 the Court's analysis of this issue.

19 Like Ms. Egoscue, I have not been here the entire
20 40 years, but I find myself saying something that I said at
21 our oral argument a couple years ago which is one of my
22 frustrations is that everything seemed to be broken into
23 pieces. What is being asked of the Court to do here is to
24 elevate a portion of 5.4A. Not the entirety of any
25 provision, but selected language, and to move it into
26 another document. That's being done at a point in time

1 where we are anticipating a motion to address what is the
2 meaning of that. I would submit, your Honor, that I think
3 some of the ways that this has played out over the years
4 with documents being amended, but not reconciled has created
5 fissures that have allowed the parties to have ongoing
6 disputes, or new disputes down the line that could have been
7 avoided with a little bit more caution with how we limit the
8 number of documents, or the way documents are broken up or
9 repeated only in portion in other documents without clear
10 indication of the preference of why that needs to be done.

11 Finally, I would have to think on behalf of our
12 representative of one of the parties that did bring the
13 motion asking the Court to approve certain elements of what
14 was the settlement agreement of the appeal. I would just
15 reiterate what has been stated. That's not before the Court
16 right now. If the Ag Pool would like to bring that at a
17 separate motion, we would prefer to fully address that in
18 briefing, your Honor. Thank you.

19 THE COURT: Thank you. Anyone else? Here in the
20 courtroom or on the phone? Going once? Ms. Egoscue, go
21 ahead, please.

22 MS. EGOSCUE: Your Honor, I would just note that
23 to assume the Ag Pool should not be responsive to an
24 argument made two weeks ago is not appropriate. You'll note
25 that the members of the Appropriative Pool are not
26 addressing the fact that your Honor has already done what

1 the Ag Pool is requesting in a prior order, and is actually
2 done it to an extent that is more potentially invasive to
3 the contractual agreements. Thank you.

4 THE COURT: Thank you. Anybody else? Here in the
5 courtroom or on the phone? Going once? Going twice?
6 Argument closed.

7 MS. GRADY: Your Honor, sorry. This is
8 Shawnda Grady one more time. I just wanted to state,
9 your Honor, although I support your Honor's proposed
10 decision tentative on this order, I would just ask that if
11 your Honor is intending to revisit it, and come to a
12 different conclusion knowing the dispute regarding fees was
13 coming. An alternative resolution, if not to deny this
14 motion which we certainly suggested the correct outcome
15 would be to continue this motion until after such time as
16 the dispute on basis is resolved.

17 THE COURT: I'm not going to do that. Any further
18 arguments? Any further inputs or arguments here in the
19 courtroom or on the phone?

20 MR. FEENSTRA: Your Honor, this is Bob Feenstra.
21 Chairman of Ag Pool. I'm just going to make a comment. I'm
22 not a lawyer. However, I'm one of the old guys. I've been
23 here 40 years --

24 MR. GUTIERREZ: Your Honor, I object to
25 Mr. Feenstra making any arguments. He's not an attorney.
26 He's got counsel. His statement is improper. I object.

1 THE COURT: Yes. I'm afraid sir, you do have
2 counsel, and it's only appropriate for counsel to address
3 the Court.

4 MR. FEENSTRA: Thank you for that clarification.

5 THE COURT: You're welcome. Any other attorneys?
6 Going once? Going twice? Argument closed.

7 Okay. The Court denies the motion for the reasons
8 stated here in the paperwork, and also, Mr. Fudacz'
9 argument, and Mr. Gagen's argument. Thank you very much.
10 Mr. Gagen, can you prepare an order to the Court for that
11 effect.

12 MR. GAGEN: Yes, I will, your Honor. Thank you.

13 THE COURT: Lastly, we still have to figure out
14 what to do with the finality of the order on the reset. I
15 would suggest, Mr. Slater, that you circulate an order no
16 later than a week from today. Send it out no later than a
17 week from today. 2:00 p.m. because that's when our clerk's
18 office closes here, and that would be the 17th. Today's the
19 10th. That would be the 17th.

20 Any comments or suggestions for the order, not
21 argument. That's closed. It would have to be highly
22 technical. It needs to be received by the Court one week
23 later, by 2:00 p.m., the 24th. Then the Court, having
24 considered any comments that come in, will issue its order
25 by the 31st.

26 MR. SLATER: Your Honor, I think that schedule

1 works. I was going to call it to your attention that we're
2 likely -- you asked us to pick a date between the last two
3 Fridays of September to come back to you.

4 THE COURT: Yes.

5 MR. SLATER: Our proposal would be that we rejoin
6 on the 25th of September. Perhaps we could be in a position
7 to present you with a final order for you to execute on that
8 day, but your time is fine.

9 THE COURT: Thank you. I'd rather do it sooner
10 than later.

11 MR. SLATER: We'll shoot for that date.

12 THE COURT: All right. Thank you. Thank you,
13 counsel. Thank you everyone for your excellent arguments.
14 I wish all of you were in my courtroom every day. The
15 arguments have been on point. It's superbly stated. I just
16 can't compliment you enough. All of you. Thank you so much
17 for your assistance to the Court in resolving these very
18 difficult issues. The briefing was excellent. The argument
19 was excellent. As I said, I wish I had you every day in my
20 courtroom, on every motion and every hearing. Thank you
21 again everyone. That'll complete the hearing for today.

22 MS. EGOSCUE: Thank you, your Honor.

23 MR. GAGEN: Thank you, your Honor.

24 MR. SLATER: Thank you, your Honor.

25 THE COURT: The court is in recess.

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(The foregoing proceedings were concluded
for the day.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT NO. S-35

HON. STANFORD E. REICHERT, JUDGE

CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
)
Plaintiff,)
)
-vs-)
)
)
CITY OF CHINO, et al.)
)
Defendant.)
-----)

Case No. RCV51010

Reporter's Certificate

STATE OF CALIFORNIA)
) §
COUNTY OF SAN BERNARDINO)

I, Vivian Tristan, Pro Tempore Reporter of the Superior Court of the State of California, for the County of San Bernardino, to the best of my knowledge do hereby certify that the foregoing pages, 1 through 62, comprise a full, true and correct computer-aided transcript of the proceedings held in the above-entitled matter on July 10th, 2020.

Dated this 15th day of July, 2020.

Vivian Tristan

PRO TEM REPORTER, C-14244