

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

MAR 15 2019

BY 
AARON LAWLESS, DEPUTY

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.,

Defendant.

Case No. RCV RS51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

~~PROPOSED~~ FINDINGS AND ORDER
REGARDING AMENDMENTS TO
RESTATE JUDGMENT, PEACE
AGREEMENT, PEACE II AGREEMENT,
AND RE-OPERATION SCHEDULE

The Court having read, reviewed, and considered all pleadings, declarations, and exhibits presented for the March 15, 2019 hearing, and the arguments of counsel, if any, the Court finds as follows:

(1) Watermaster is in substantial compliance with the approved Recharge Master Plan as required by Restated Judgment Exhibit "I", paragraph 2(b)(6), and the amended schedule set forth in Exhibit "B" to Watermaster's Resolution 2019-03 providing the quantities of Re-Operation Water that may be accessed by the Parties will not cause material physical injury to the Basin.

(2) The signatories to the Peace Agreement and the Peace II Agreement have been notified of Watermaster's Motion Regarding Amendments to Restated Judgment, Peace Agreement, Peace II agreement, and Re-Operation Schedule and have consented to the proposed

1 amendments to the Peace Agreement and Peace II Agreement set forth in Watermaster's
2 Resolution 2019-03;

3 (3) The proposed amendments to the Court Approved Management Agreements are
4 implementable by Watermaster provided that it can proceed to redetermine Safe Yield on a timely
5 basis as provided on pages 15-18 of this Court's April 28, 2017 Order.

6 SUBJECT TO THE CONTINUING JURISDICTION OF THE COURT, the Court hereby
7 makes the following Orders:

8 (1) Watermaster's adoption of its Resolution 2019-03 is approved and Watermaster
9 shall proceed in accordance with the Resolution and the documents attached thereto;

10 (2) Watermaster shall proceed to redetermine Safe Yield as set forth on pages 15-18 of
11 the Court's April 28, 2017 Order;

12 (3) The amendment to Paragraph 10 of Exhibit "H" to the Restated Judgment as
13 shown in Attachment A hereto is approved;

14 (4) The amended schedule for access to Re-Operation water shown in Attachment B
15 hereto is approved;

16 (5) The amendments to Paragraphs 6, 9, and 10 of Exhibit "G" to the Restated
17 Judgment as shown in Attachment C hereto are approved; and

18 (6) Watermaster shall implement the Restated Judgment and continue to comply with
19 all commitments made in the Court Approved Management Agreements, as amended by this
20 Order.

21
22 IT IS SO ORDERED.

23 Dated: 3.15.19



Stanford E. Reichert
24 **STANFORD E. REICHERT**
25 JUDGE OF THE SUPERIOR COURT
26

27 18540473

ATTACHMENT A
[PROPOSED] ORDER

Exhibit A

Proposed Changes to Appropriative Pool Pooling Plan and CAMA

1. **Appropriative Pool Pooling Plan.** The introductory sentence to Exhibit H, ¶10 of the Judgment is amended to read as follows:

10. Unallocated Safe Yield Water. To the extent that, in any ~~year~~ **five years**, any portion of the share of Safe Yield allocated to the Overlying (Agricultural) Pool is not produced, such water shall be available for reallocation to members of the Appropriative Pool, as follows:

2. Early Transfer

- A. Section 1.1(o) of the Peace Agreement is amended to read as follows:

(o) "Early Transfer" means the reallocation of Safe Yield not Produced by the Agricultural Pool to the Appropriative Pool on an annual basis ***after the allocations in subdivisions (a)(1) and (a)(2) of*** ~~rather than according to the five year increment described in Paragraph 10 of Exhibit "H" of the Judgment;~~

- B. Section 5.3(g) of the Peace Agreement is amended to read as follows:

(g) Watermaster shall approve an "Early Transfer" of water to the Appropriative Pool ~~in an amount not less than 32,800 acre-feet per year that is the expected approximate quantity of water not Produced by the Agricultural Pool~~ ***on an annual basis*** ~~The quantity of water subject to Early Transfer under this paragraph shall be the greater of (i) 32,800 acre-feet of (ii) 32,800 acre-feet plus the actual quantity of water not Produced by the Agricultural Pool for that Fiscal Year that is remaining after all the land use conversions are satisfied pursuant to 5.3(h) below.~~

- (i) The Early Transfer water shall be annually allocated among the members of the Appropriative Pool in accordance with their pro-rata share of the initial Safe Yield.
- (ii) The Transfer shall not limit the Production right of the Agricultural Pool under the Judgment to Produce up to 82,800 acre-feet of water in any year or 414,000 acre-feet in any five years as provided in the Judgment.
- (iii) The combined Production of all parties to the Judgment shall not cause a Replenishment assessment on the members of the Agricultural Pool. The Agricultural Pool shall be responsible for any Replenishment obligation created by the Agricultural Pool Producing more than 414,000 acre-feet in any five-year period.
- (iv) The parties to the Judgment and Watermaster shall Produce water in accordance with the Operating Safe Yield and shall procure sufficient quantities of Replenishment Water to satisfy over-Production requirements, whatever they may be, and avoid Material Physical Injury to any party to the Judgment or the Basin;

(v) Nothing herein shall be construed as modifying the procedures or voting rights within or by the members of the Agricultural Pool.

3. **Conversion Claims.** Subparagraph (b)(3)(i) of Exhibit H, ¶ 10 of the Judgment is amended to read as follows:

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

4. **Controlled Overdraft.** Pursuant to section 7.2(e)(ii) of the Peace II Agreement, 175,000 acre-feet of controlled overdraft (Re-Operation water) will be allocated to Desalter replenishment over a 17-year period, beginning in 2013-14 and ending in 2029-30, according to the schedule attached as Exhibit A.
5. **New Yield.** Section 7.1 of the Peace II Agreement, entitled "New Yield Attributable to Desalters," is deleted. It is replaced by new section 6.2(b)(ii) as set forth in section 6 below.

6. **Desalter Replenishment.** Section 6.2(b) of the Peace II Agreement is amended to read as follows:

(b) To the extent available credits are insufficient to fully offset the quantity of groundwater production attributable to the Desalters, Watermaster will use water or revenue obtained by levying the following assessments among the members of the Overlying (Non-Agricultural) Pool and the Appropriative Pool to meet any remaining replenishment obligation as follows.

(i) A Special OBMP Assessment against the Overlying (Non-Agricultural) Pool as more specifically authorized and described in amendment to Exhibit "G" paragraph ~~8(e)~~ 5(c) to the Judgment will be dedicated by Watermaster to further off-set replenishment of the Desalters. However, to the extent there is no remaining replenishment obligation attributable to the Desalters in any year after applying the off-sets set forth in 6.2(a), the OBMP Special Assessment levied by Watermaster will be distributed as provided in section 9.2 below. The Special OBMP Assessment will be assessed pro-rata on each member's share of Safe Yield, followed by

(ii) *The members of the Appropriative Pool will contribute a total of 10,000 afy toward Desalter replenishment, allocated among Appropriative Pool members as follows:*

- (1) *85% of the total (8,500 afy) will be allocated according to the Operating Safe Yield percentage of each Appropriative Pool member; and*
- (2) *15% of the total (1,500 afy) will be allocated according to each land use conversion agency's percentage of the total land use conversion claims, based on the actual land use conversion allocations of the year.*

The annual desalter replenishment obligation contribution of each Appropriative Pool member will be calculated using the following formula:

*Desalter replenishment obligation contribution = (8,500 * % Appropriator's share of total initial 49,834 afy Operating Safe Yield) + (1,500 * % Appropriator's proportional share of that year's total conversion claims)*

A sample calculation of the desalter replenishment obligation contribution for each Appropriative Pool member is shown on Exhibit __ to this Peace II Agreement, as amended.

- (iii) (ii) A Replenishment Assessment against the Appropriative Pool for any remaining Desalter replenishment obligation after applying both 6(b)(i) and 6(b)(ii), allocated pro-rata to each Appropriative Pool member according to the combined total of the member's share of Operating Safe Yield and the member's Adjusted Physical Production, as defined below. pro-rata based on each Producer's combined total share of Operating Safe Yield and the previous year's actual production. Desalter Production is excluded from this calculation. A sample calculation of the allocation of the remaining desalter obligation is shown in Exhibit __ to this Peace II Agreement. However, if there is a material reduction in the net cost of Desalter product water to the purchasers of product water, Watermaster may re-evaluate whether to continue the exclusion of Desalter Production but only after giving due regard to the contractual commitment of the parties.*
- (iv) Adjusted Physical Production is the Appropriative Pool member's total combined physical production (i.e., all groundwater pumped or produced by the Appropriative Pool member's groundwater wells in the Chino Basin, including water transferred from the Non-Agricultural Pool under Exhibit G, ¶9 of the Judgment), with the following adjustments:*
- (1) In the case of assignments among Appropriative Pool members, or between Appropriative Pool members and Non-Agricultural Pool members under Exhibit G, ¶6 of the Judgment, resulting in pumping or production by one party to the Judgment for use by another party to the Judgment, the production for purposes of Adjusted Physical Production shall be assigned to the party making beneficial use of the water, not the actual producer.*
 - (2) Production offset credits pursuant to voluntary agreements under section 5.3(l) of the Peace Agreement are calculated at 50% of the total voluntary agreement credit in the determination of Adjusted Physical Production for an Appropriative Pool member participating in a voluntary agreement for that year. In the determination of Adjusted Physical Production, the voluntary agreement credit is subtracted from physical production. Reduction of the voluntary agreement credit from 100% to 50% is applicable only to the calculation of the Adjusted Physical Production hereunder; but in all other applications, the voluntary agreement credit shall remain unchanged (i.e. remain at 100%).*

(3) *Production associated with approved storage and recovery programs (e.g., Dry Year Yield recovery program with MWD) is not counted in Adjusted Physical Production, except for in-lieu participation in such programs: in-lieu put quantities shall be added to physical production, and in-lieu take quantities shall be subtracted from physical production.*

(4) *Metered pump-to-waste Production that is determined by Watermaster to be subsequently recharged to the groundwater basin is deducted from physical production; unmetered pump-to-waste production that is determined by Watermaster not to be subsequently recharged to the groundwater basin is added to physical production.*

(5) *The Appropriative Pool may approve, by unanimous vote, the inclusion of other items in the determination of Adjusted Physical Production, with the exception of Non-Agricultural Pool water assigned or transferred under Exhibit G, ¶6 or ¶10 of the Judgment.*

(v) *Any member of the Non-Agricultural Pool that is also a member of the Appropriative Pool may elect to transfer (a) some or all of the annual share of Operating Safe Yield of the transferor in and for the year in which the transfer occurs (except that such transfer shall exclude any dedication to the Watermaster required by section 6.2(b)(1)), and (b) any quantity of water held in storage by the transferor (including without limitation carryover and excess carryover) to any member of the Appropriative Pool, in either case at any price that the transferor and transferee may deem appropriate and for the purpose of satisfying the transferee's desalter replenishment obligation. The transferee's desalter replenishment obligation shall be credited by the number of acre-feet so transferred.*

(vi) ~~(iii)~~ *The quantification of any Party's share of Operating Safe Yield does not include either land use conversions or Early Transfers.*

7. **Allocation of Non-Agricultural Pool OBMP Special Assessment.** The introductory sentence of section 9.2(a) of the Peace II Agreement is amended to read as follows:

a. For a period of ten years from the effective date of the Peace II Measures, any water (or financial equivalent) that may be contributed from the Overlying (Non-Agricultural) Pool in accordance with paragraph 8(e)-5(c) of Exhibit G to the Judgment (as amended) will be apportioned among the members of the Appropriative Pool in each year as follows:

Attachment: Peace Agreement, Section 7.2 (e)(ii)

Schedule for Use of Re-Operation Water**, and

Calculation of Remaining Desalter Replenishment Obligation (DRO)

Production from 2017-18 through 2029-30 is estimated

Production Year	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Peace I Desalter Production	29,227.997	29,541.300	27,008.810	26,275.588	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000
Peace II Desalter Production	14.555	448.690	1,154.052	1,527.215	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000
Appropriative Pool DRO Contribution	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)
Re-Operation Water**	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)
Non-Agricultural Pool Assessment	0.000	0.000	0.000	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)
Remaining DRO	6,742.552	7,489.990	5,662.862	4,567.803	16,765.000	16,765.000	16,765.000	16,765.000	16,765.000

Production Year	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30
Peace I Desalter Production	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000
Peace II Desalter Production	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000
Appropriative Pool "DRO Contribution	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)
Re-Operation Water**	(12,500.000)	(12,500.000)	(12,500.000)	(5,000.000)	(5,000.000)	(5,000.000)	(5,000.000)	(5,000.000)
Non-Agricultural Pool Assessment	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)
Remaining DRO	16,765.000	16,765.000	16,765.000	24,265.000	24,265.000	24,265.000	24,265.000	24,265.000

Attachment: Peace II Agreement, Section 6.2(b)(ii)

Allocation of Appropriative Pool Desalter Replenishment Obligation (DRO) Contributions (by agency)

Production Year 2013-14 Desalter Replenishment Obligation (DRO) Contribution:

10,000.000 AF

Appropriative Pool Party	Production Year 2013/14 Common Data (Headings from Approved 2014/2015 Assessment Package)			Methodology for 85/15 split between shares of Operating Safe Yield and % of Land Use Conversions		
	a	b	c = %b	d = (DRO Contrib*.85)*a	e = (DRO Contrib*.15)*c	f = d + e
	Percent of Operating Safe Yield (Column 2A)	Land Use Conversions (Page 12A)*	Percent of Land Use Conversions	85% DRO Contribution Based on Percent of Operating Safe Yield	15% DRO Contribution Based on Percent of Land Use Conversions	Desalter Replenishment Obligation Contribution
Arrowhead Mtn Spring Water Co	0.000%	0.000	0.000%	0.000	0.000	0.000
Chino Hills, City of	3.851%	1,133.906	4.334%	327.335	65.013	392.348
Chino, City of	7.357%	7,623.064	29.138%	625.345	437.074	1,062.419
Cucamonga Valley Water District	6.601%	598.364	2.287%	561.085	34.308	595.393
Fontana Union Water Company	11.657%	0.000	0.000%	990.845	0.000	990.845
Fontana Water Company	0.002%	834.000	3.188%	0.170	47.818	47.988
Fontana, City of	0.000%	0.000	0.000%	0.000	0.000	0.000
Golden State Water Company	0.750%	0.000	0.000%	63.750	0.000	63.750
Jurupa Community Services District	3.759%	13,876.196	53.040%	319.515	795.602	1,115.117
Marygold Mutual Water Company	1.195%	0.000	0.000%	101.575	0.000	101.575
Monte Vista Irrigation Company	1.234%	0.000	0.000%	104.890	0.000	104.890
Monte Vista Water District	8.797%	55.075	0.211%	747.745	3.158	750.903
Niagara Bottling, LLC	0.000%	0.000	0.000%	0.000	0.000	0.000
Nicholson Trust	0.007%	0.000	0.000%	0.595	0.000	0.595
Norco, City of	0.368%	0.000	0.000%	31.280	0.000	31.280
Ontario, City of	20.742%	2,041.095	7.802%	1,763.070	117.028	1,880.098
Pomona, City of	20.454%	0.000	0.000%	1,738.590	0.000	1,738.590
San Antonio Water Company	2.748%	0.000	0.000%	233.580	0.000	233.580
San Bernardino, County of (Shooting Park)	0.000%	0.000	0.000%	0.000	0.000	0.000
Santa Ana River Water Company	2.373%	0.000	0.000%	201.705	0.000	201.705
Upland, City of	5.202%	0.000	0.000%	442.170	0.000	442.170
West End Consolidated Water Co	1.728%	0.000	0.000%	146.880	0.000	146.880
West Valley Water District	1.175%	0.000	0.000%	99.875	0.000	99.875
	100.000%	26,161.700	100.000%	8,500.000	1,500.000	10,000.000

Attachment: Peace II Agreement, Section 6.2 (b)(iii)
Allocation of Appropriative Pool Remaining Desalter Replenishment Obligation (RDRO)

Production Year 2013-14:	acre-feet
CDA Production - Peace I Allocation	29,227.997
CDA Production - Peace II Allocation	14.555
Total Desalter Replenishment Obligation (Total DRO):	29,242.552
Desalter Replenishment Obligation Contribution (DROC)	(10,000.000)
Re-Operation Water	(12,500.000)
RDRO	6,742.552

Appropriative Pool Party	Operating Safe Yield	Production Year 2013/14 Common Data (From Approved 2014/2015 Assessment Package - Appendix A)						Methodology for Calculation of Adjusted Physical Production (APP)	Methodology for Calculation of "RDRO"
	a	b	c	d	e	f		APP = [b+(c*50%)+d+e+f]	Individual Party RDRO = ((a+APP)/(Total a + Total APP)) * RDRO
	Assessment Package Page 2A: Column 2D	Physical Production	Voluntary Agreements (w/Ag)	Assignments (w/Non-Ag)	Storage and Recovery Programs	Other Adjustments	*Note: APP for City of Chino does not include "Other Adjustments" for this period		
Arrowhead Mtn Spring Water Co	0.000	379.111	0.000	0.000	0.000	0.000		379.111	15.905
Chino Hills, City of	2,111.422	2,150.925	(286.221)	0.000	0.000	5,359.300		7,367.115	397.669
Chino, City of	4,033.857	6,725.430	(6,686.440)	(104.278)	0.000	65.288		3,277.932	306.764
Cucamonga Valley Water District	3,619.454	16,121.550	0.000	0.000	0.000	0.000		16,121.550	828.227
Fontana Union Water Company	6,391.736	0.000	0.000	0.000	0.000	0.000		0.000	268.163
Fontana Water Company	1.000	15,377.579	0.000	0.000	0.000	0.000		15,377.579	645.203
Fontana, City of	0.000	0.000	0.000	0.000	0.000	0.000		0.000	0.000
Golden State Water Company	411.476	736.362	0.000	0.000	0.000	0.000		736.362	48.157
Jurupa Community Services District	2,061.118	18,406.630	0.000	(379.499)	0.000	(8.784)		18,018.347	842.427
Marygold Mutual Water Company	655.317	1,314.734	0.000	0.000	0.000	0.000		1,314.734	82.653
Monte Vista Irrigation Company	676.759	0.000	0.000	0.000	0.000	0.000		0.000	28.393
Monte Vista Water District	4,823.954	12,521.892	(151.480)	0.000	0.000	(5,371.667)		7,074.485	499.195
Niagara Bottling, LLC	0.000	1,342.588	0.000	0.000	0.000	0.000		1,342.588	56.328
Nicholson Trust	4.000	0.000	0.000	0.000	0.000	0.000		0.000	0.168
Norco, City of	201.545	0.000	0.000	0.000	0.000	0.000		0.000	8.456
Ontario, City of	11,373.816	21,980.342	(4,428.101)	(1,855.196)	0.000	0.000		17,911.096	1,228.639
Pomona, City of	11,215.852	12,909.293	0.000	0.000	0.000	0.000		12,909.293	1,012.163
San Antonio Water Company	1,506.888	1,159.242	0.000	0.000	0.000	0.000		1,159.242	111.857
San Bernardino, County of (Shooting Park)	0.000	16.390	0.000	0.000	0.000	0.000		16.390	0.688
Santa Ana River Water Company	1,301.374	0.000	0.000	0.000	0.000	48.515		48.515	56.634
Upland, City of	2,852.401	2,822.046	0.000	0.000	0.000	0.000		2,822.046	238.070
West End Consolidated Water Co	947.714	0.000	0.000	0.000	0.000	0.000		0.000	39.761
West Valley Water District	644.317	0.000	0.000	0.000	0.000	0.000		0.000	27.032
	54,834.000	113,964.114	(11,552.242)	(2,338.973)	0.000	92.652		105,876.384	6,742.552

ATTACHMENT B
[PROPOSED] ORDER

EXHIBIT B

Attachment: Peace Agreement, Section 7.2 (e)(ii)

Schedule for Use of Re-Operation Water**, and

Calculation of Remaining Desalter Replenishment Obligation (DRO)

Production from 2017-18 through 2029-30 is estimated

Production Year	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Peace I Desalter Production	29,227.997	29,541.300	27,008.810	26,275.588	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000
Peace II Desalter Production	14.555	448.690	1,154.052	1,527.215	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000
Appropriative Pool DRO Contribution	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)
Re-Operation Water**	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)
Non-Agricultural Pool Assessment	0.000	0.000	0.000	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)
Remaining DRO	6,742.552	7,489.990	5,662.862	4,567.803	16,765.000	16,765.000	16,765.000	16,765.000	16,765.000

Production Year	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30
Peace I Desalter Production	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000
Peace II Desalter Production	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000
Appropriative Pool "DRO Contribution	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)
Re-Operation Water**	(12,500.000)	(12,500.000)	(12,500.000)	(5,000.000)	(5,000.000)	(5,000.000)	(5,000.000)	(5,000.000)
Non-Agricultural Pool Assessment	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)
Remaining DRO	16,765.000	16,765.000	16,765.000	24,265.000	24,265.000	24,265.000	24,265.000	24,265.000

ATTACHMENT C
[PROPOSED] ORDER

EXHIBIT A

PROPOSED AMENDMENT TO THE NON-AGRICULTURAL POOL POOLING PLAN

1. Section 6 of Exhibit G to the Judgment (the NAP Pooling Plan) is hereby amended and restated as follows:

6. Assignment. Rights herein decreed are appurtenant to that land and are only assignable with the land for overlying use thereon; provided, however (a) that any appropriator who may, directly or indirectly, undertake to provide water service to such overlying lands may, by an appropriate agency agreement on a form approved by Watermaster, exercise said overlying right to the extent, but only to the extent necessary to provide water service to said overlying lands, and (b) the members of the pool shall have the right to Transfer or lease their quantified production rights within the pool or to Watermaster in conformance with the procedures described in the Peace Agreement between the parties therein, dated June 29, 2000 for the term of the Peace Agreement. Any production pursuant to any such agency agreement (1) shall not constitute production in the Appropriative Pool for the purpose of calculating any assessments imposed on members of the Appropriative Pool, including without limitation replenishment assessments; and (2) shall constitute production in the Non-Agricultural Pool by the assignor for the purpose of calculating any assessments imposed on members of the Non-Agricultural Pool, with the continuing dedications by members of the Non-Agricultural Pool of 10% of their annual share of Operating Safe Yield to desalter replenishment pursuant to Section 5(c) being the sole and exclusive method by which such members shall be required to contribute at any time to desalter production or desalter replenishment.

2. Section 9 of Exhibit G to the Judgment (the NAP Pooling Plan) is hereby amended and restated as follows:

9. Physical Solution Transfers. All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom except that for the term of the Peace Agreement the members of the Overlying (Non-Agricultural) Pool shall have the discretionary right to Transfer or lease their quantified Production rights and carry-over water held in storage accounts in quantities that each member may from time to time individually determine as Transfers in furtherance of the Physical Solution: (i) within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000; (iii) in conformance with the procedures described in Paragraph I of the Purchase and Sale Agreement for the Purchase of Water by Watermaster from Overlying (Non-Agricultural Pool dated June 30, 2007; or (iv) to Watermaster and thence to members of the Appropriative Pool in accordance with the following guidelines and those procedures Watermaster may further provide in Watermaster's Rules and Regulations:

(a) By December 31 of each year, the members of the Overlying (Non-Agricultural) Pool shall notify Watermaster of the amount of water each member

shall make available in their individual discretion for purchase by the Appropriators. The Pool Committee of the Overlying (Non-Agricultural) Pool may, by affirmative action of its members from time to time, establish a price for such water or a method pursuant to which such price will be established. By January 31 of each year, Watermaster shall provide a Notice of Availability of each Appropriator's pro-rata share of such water;

(b) Except as they may be limited by paragraph 9(e) below, each member of the Appropriative Pool will have, in their discretion, a right to purchase its pro-rata share of the supply made available from the Overlying (Non-Agricultural) Pool at the price at which the water is being offered. Each Appropriative Pool member's pro-rata share of the available supply will be based on each Producer's combined total share of Operating Safe Yield and the previous year's actual Production by each party;

(c) If any member of the Appropriative Pool fails to irrevocably commit to their allocated share by March 1 of each year, its share of the Overlying (Non-Agricultural) Pool water will be made available to all other members of the Appropriative Pool according to the same proportions as described in 9(b) above and at the price at which the water is being offered. Each member of the Appropriative Pool shall complete its payment for its share of water made available by June 30 of each year.

(d) Commensurate with the cumulative commitments by members of the Appropriative Pool pursuant to (b) and (c) above, Watermaster will purchase the surplus water made available by the Overlying (Non-Agricultural) Pool water on behalf of the members of the Appropriative Pool on an annual basis at the price at which the water is being offered and each member of the Appropriative Pool shall complete its payment for its determined share of water made available by June 30 of each year.

(e) Any surplus water cumulatively made available by all members of the Overlying (Non-Agricultural) Pool that is not purchased by Watermaster after completion of the process set forth herein will be pro-rated among the members of the Pool in proportion to the total quantity offered for transfer in accordance with this provision and may be retained by the Overlying (Non-Agricultural) Pool member without prejudice to the rights of the members of the Pool to make further beneficial use or transfer of the available surplus.

(f) Each Appropriator shall only be eligible to purchase their pro-rata share under this procedure if the party is: (i) current on all their assessments; and (ii) in compliance with the OBMP.

(g) The right of any member of the Overlying (Non-Agricultural) Pool to transfer water in accordance with this Paragraph 9(a)-(c) in any year is dependent upon Watermaster making a finding that the member of the Overlying (Non-Agricultural) Pool is using recycled water where it is both physically available and appropriate for the designated end use in lieu of pumping groundwater.

(h) Nothing herein shall be construed to affect or limit the rights of any Party to offer or accept an assignment as authorized by the Judgment Exhibit "G" paragraph 6 above, or to affect the rights of any Party under a valid assignment.

3. A new Section 10 of Exhibit G to the Judgment (the NAP Pooling Plan) is inserted as follows:

10. Elective Transfers for Desalter Replenishment. Any member of the Non-Agricultural Pool (including without limitation any member of the Non-Agricultural Pool that is also a member of the Appropriative Pool) may elect to transfer (a) some or all of the annual share of Operating Safe Yield of the transferor in and for the year in which the transfer occurs (except that such transfer shall exclude any dedication to Watermaster required by Section 5(c) hereof), and (b) any quantity of water held in storage by the transferor (including without limitation carryover and excess carryover) to any member of the Appropriative Pool, in either case at any price that the transferor and transferee may deem appropriate and for the purpose of satisfying the transferee's desalter replenishment obligation. Any such transfer shall be effective upon delivery by the transferor or transferee to Watermaster staff of written notice of such transfer in the form attached hereto as Form A. The transferee's desalter replenishment obligation shall be credited by the number of acre feet so transferred.

4. Existing Section 10 of Exhibit G to the Judgment (the NAP Pooling Plan) is renumbered as Section 11 as follows:

11. Rules. The Pool Committee shall adopt rules for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

FORM A

NOTICE OF ELECTIVE TRANSFER FOR DESALTER REPLENISHMENT

QUANTITY:

_____ Acre-Feet of Annual Share of Operating Safe Yield for Current Year

_____ Acre-Feet of Carryover

_____ Acre-Feet of Excess Carryover

Transferor and Transferee hereby provide written notice to Watermaster staff of a transfer by the Transferor, in its capacity as a member of the Non-Agricultural Pool, to Transferee, in its capacity as a member of the Appropriative Pool, of water in the quantity and of the type set forth above pursuant to Section 10 of Exhibit G to the Judgment.

TRANSFEROR NAME: _____ By: _____ Name: _____ Its: _____ Dated: _____	TRANSFeree NAME: _____ By: _____ Name: _____ Its: _____ Dated: _____
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3.15.19

IT IS SO ORDERED

Judge

Stanford E. Reichert
STANFORD E. REICHERT