



CHINO BASIN WATERMASTER

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PETER KAVOUNAS, P.E.
General Manager

STAFF REPORT (REVISED ON 8/7/2018)

DATE: August 9, 2018
TO: Pool Committee Members
SUBJECT: Advisory Committee Request For Continued Watermaster Assistance
(Business Item II.D.)

SUMMARY

Issue: During its July 26, 2018 meeting, the Advisory Committee, by unanimous vote, requested continued assistance from Watermaster toward creating a document that could be considered to resolve all pending matters related to the Safe Yield Reset appeal.

Recommendation: Discuss and possibly take action.

Financial Impact: Legal expenses for these activities are included in the overall legal services budget for FY 2018/19.

Future Consideration

Appropriative Pool - August 9, 2018: Discussion and possible action
Non-Agricultural Pool - August 9, 2018: Discussion and possible action
Agricultural Pool - August 9, 2018: Discussion and possible action
Advisory Committee - August 16, 2018: Discussion and possible action
Watermaster Board - August 23, 2018: Discussion and possible action

ACTIONS:

Appropriative Pool - August 9, 2018:
Non-Agricultural Pool - August 9, 2018:
Agricultural Pool - August 9, 2018:
Advisory Committee - August 16, 2018:
Watermaster Board - August 23, 2018:

BACKGROUND

The July 26, 2018 staff report on this matter is attached (Attachment 1) to provide background.

DISCUSSION

The Advisory Committee's request on July 26, 2018 was to continue developing a document that would reflect comments received by all Pools on the three documents presented in July which (i) contain the necessary changes to the Judgment and Court-ordered agreements that accomplish the objectives of the Term Sheet distributed by the six parties to the Appeal, (ii) clarify the interpretation of paragraph 5.3(e) of the Peace Agreement, and (iii) describe edits to Paragraph 9 of Exhibit "G" of the Judgment.

As of the preparation of this report, Watermaster has received comments from the Overlying (Agricultural) Pool (Attachment 2), the Overlying (Non-Agricultural) Pool (Attachment 3), and some individual comments from Appropriators (Attachment 4). In response to these comments, Watermaster has prepared two alternatives which contain the same substance, and yet present a different process.

The first document (Attachment 5) presents a consolidated document for consideration by all three Pool Committees, as suggested by the Overlying Pools' comments. The second (Attachment 6) presents an agreement that would incorporate all language changes to governing documents, and a separate Memorandum of Understanding capturing the interpretation of Peace 5.3(e). The second attachment is offered by Watermaster in furthering its effort to respond to the Advisory Committee, as an alternative process for consideration by the Pools.

A presentation may be made by Watermaster staff as to the status of this effort.

ATTACHMENTS

1. July 26, 2018 Staff Report with attachments
2. July 19, 2018 Agricultural Pool motion on Business Item II.B.
3. July 20, 2018 email describing the Non-Agricultural Pool comments
4. Comments by individual Appropriators received as of 9:00AM on Friday August 3, 2018
5. Watermaster response to Advisory Committee request for continued assistance
6. Watermaster response to Advisory Committee request for continued assistance - Alternative



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PETER KAVOUNAS, P.E.
General Manager

STAFF REPORT

DATE: July 26, 2018

TO: Advisory Committee Members
Board Members

SUBJECT: Advisory Committee Request for Watermaster Assistance: 1. Exhibit "G" Transfer Rate Amendment; 2. Peace Agreement Paragraph 5.3(e) Interpretation 3. Amendments to Judgment and CAMA to Implement Settlement Agreement Regarding Appeal From April 28, 2017 Order (Business Item II.B.)

SUMMARY

Issue: During its June 21, 2018 meeting, the Advisory Committee, by unanimous vote, requested assistance from Watermaster in drafting a document containing potential changes to the Judgment, Peace and Peace II Agreements. At its June 28, 2018 meeting, the Board instructed legal counsel to prepare a draft agreement in response to the Advisory Committee's request.

Recommendation: Discuss and possibly take action.

Financial Impact: Legal expenses for these activities are included in the overall legal services budget for FY 2018/19.

Future Consideration

ACTIONS:

Appropriative Pool – July 19, 2018: Discussion only, no action

Non-Agricultural Pool – July 19, 2018: Discussion only, no action

Agricultural Pool – July 19, 2018: Unanimously voted to approve the process and the documents contingent on some modifications

Advisory Committee – July 26, 2018: Unanimously voted to request continued Watermaster assistance with the feedback received from the Agricultural, Non-Agricultural, and Appropriative Pools on the document prepared by Watermaster in response to the June 21, 2018 Advisory Committee request; and to develop a revised version of a document and bring back to the Pools for their consideration in August. The Advisory Committee also requested that a document titled "Agreement Settling Appeal" and its associated Appendix A delivered at the meeting by the City of Pomona be distributed to all parties and be added to the Pool agendas for discussion in August.

Watermaster Board – July 26, 2018: No action taken

BACKGROUND AND DISCUSSION

The June 2018 agendas for Pools and Advisory Committee meetings included three items that have been discussed in the recent months. The three items are Exhibit "G" Transfer Rate Amendment, Peace Agreement Paragraph 5.3(e) Interpretation, and Amendments to the Judgment and Court Approved Management Agreements (CAMA) to Implement Settlement Agreement Regarding Appeal from April 28, 2017 Order.

The first item titled "Exhibit "G" Transfer Rate Amendment" offered potential language to remedy the problem that was created when MWD eliminated its Replenishment Rate. Since the transfer mechanism contemplated in Paragraph 9 of Exhibit "G" depended on MWD's Replenishment Rate, the mechanism was rendered moot, and the Non-Agricultural and Appropriative Pools began an annual negotiation of a transfer rate, with the requisite Court approval. Potential language to remedy this inefficient approach was offered and considered by the Pools during their June 14, 2018 meetings.

The item titled "Peace Agreement Paragraph 5.3(e) Interpretation" presented a potential interpretation of Peace Agreement language pertaining to the ability of Non-Agricultural Pool parties to transfer water to Watermaster for Desalter Replenishment Obligation. The question had been previously (2015) raised by the City of Ontario, and was also included in the Term Sheet presented by the six parties to the Appeal from the April 28, 2017 Order. A potential interpretation of the language was offered for the Pools' consideration.

Finally, the item titled "Amendments to the Judgment and Court Approved Management Agreements (CAMA) to Implement Settlement Agreement Regarding Appeal from April 28, 2017 Order" was presented for consideration by the Pools at the request of the six parties to the Appeal. The proposed Amendments represent the changes to the mentioned documents necessary to implement the Term Sheet distributed earlier in 2018 by the six parties.

During the June 21, 2018 Advisory Committee consideration, it was recognized that all three items relate to the settlement of the ongoing Appeal from the April 28, 2017 Court Order and could be combined into a single document to be considered by the Pools and Advisory Committee during a future meeting.

A motion was made by the City of Chino Hills for Watermaster assistance in drafting a master document and was seconded by City of Pomona, one of the appellants. In seconding the motion the City's representative expressed his appreciation for the understanding by the Agricultural and Non-Agricultural Pools and the other parties in the Appropriative Pool, and that Watermaster assistance would be a helpful step in moving toward resolving the appeal. The motion requested that a document be prepared that could be openly considered by the Pools. During its June 28, 2018 meeting the Watermaster Board authorized staff and Counsel to proceed with the requested effort.

During the July 19, 2018 Pool meetings, under Business Item II.B., Watermaster staff and Counsel presented three documents (Attachments 4, 5, and 6) that are responsive to the Advisory Committee's request for assistance to the three Pools; these documents constitute a response to the Advisory Committee's request for assistance and do not represent endorsement or support by the Watermaster Board. The documents contain the necessary changes to the Judgment and Court-ordered agreements that accomplish the objectives of the Term Sheet distributed by the six parties to the Appeal; clarify the interpretation of paragraph 5.3(e) of the Peace Agreement; and describe edits to Paragraph 9 of Exhibit "G" of the Judgment. The first document also describes a process that would lead to a resolution of the ongoing appeal.

The three Pools considered the matter during the July 19, 2018 meetings. The Appropriative and Non-Agricultural Pools took no action. The Agricultural Pool voted unanimously to approve the process and the documents contingent on some modifications. The full text of the Agricultural Pool motion is shown in Attachment 7.

ATTACHMENTS

1. June 21, 2018 Staff Report titled "Exhibit "G" Transfer Rate Amendment"
2. June 21, 2018 Staff Report titled "Peace Agreement Paragraph 5.3(e) Interpretation"
3. June 21, 2018 Staff Report titled "Amendments to the Judgment and Court Approved Management Agreements (CAMA) to Implement Settlement Agreement Regarding Appeal from April 28, 2017 Order"
4. Document titled "2018 Acknowledgment and Consent to CAMA Amendments"
5. Document titled "Memorandum of Understanding Regarding Contributions of Safe Yield For Desalter Replenishment"
6. Amendments to subparagraphs (a) – (d) of Paragraph 9 of Exhibit "G"
7. July 19, 2018 Agricultural Pool motion on Business Item II.B.



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PETER KAVOUNAS, P.E.
General Manager

STAFF REPORT

DATE: June 21, 2018
TO: Advisory Committee Members
SUBJECT: Exhibit "G" Transfer Rate Amendment (Business Item II.C.)

SUMMARY

Issue: Section 9(d) of Exhibit "G" to the Restated Judgment, the Overlying (Non-Agricultural) Pool Pooling Plan, defines the price at which Watermaster will purchase water from the Non-Agricultural Pool on an annual basis relative to "...the then-prevailing "MWD Replenishment Rate"...". Since the MWD rate structure has changed and there is no Replenishment Rate, a new transfer rate needs to be identified.

Recommendation: Offer advice and assistance on amending Section 9(d) of Exhibit "G" regarding the transfer rate.

Financial Impact: There is no financial impact as a result of this recommendation.

ACTIONS:

Appropriative Pool – June 14, 2018: Gave permission to its Legal Counsel to work with Watermaster's Legal Counsel to work as to the process of bringing the item forward.

Non-Agricultural Pool – June 14, 2018: Supports an Exhibit "G" transfer rate amendment allowing the Non-Agricultural Pool to solely decide the price at which to offer water for sale; the Non-Agricultural Pool directs Pool Counsel and Pool Chair to work with the Appropriative Pool and Counsel, and Watermaster to determine the final language to amend Exhibit "G" and file the necessary paperwork with the Court.

Agricultural Pool – June 15, 2018: Offered no advice

Advisory Committee – June 21, 2018: Voted unanimously to request Watermaster assistance in drafting a document that would include all proposed changes to the Restated Judgment, Peace and Peace II Agreements to advance further Pool and Advisory Committee discussion on settlement of the Appeal from the April 28, 2017 Court Order.

BACKGROUND

Since the unexpected MWD rate structure change eliminated the Replenishment Rate, the transfer rate identified in Exhibit "G" has become the subject of annual negotiations between the Appropriative and Non-Agricultural Pools. The negotiations, when successful, have resulted in a Court filing requesting that the Court allow a deviation from the Judgment and the use of the negotiated rate for one year. This has happened on several occasions in the last few years.

During Fiscal Year 2017/18 the two Pools were unable to reach agreement on a transfer rate and the process did not function as intended. An agreed upon transfer rate is essential to facilitate the Exhibit "G" process and allow it to function predictably and smoothly each year.

DISCUSSION

The language in Attachment 1 was developed through several discussions among a number of Non-Agricultural and Appropriative parties.

While Section 9(d) of Exhibit "G" to the Restated Judgment provides that available water will be purchased at "...92% of the then-prevailing "MWD Replenishment Rate"..." there is no requirement to develop a new transfer rate using any formula. In light of future uncertainty in rate structures, available supplies, and many other factors, using a formula would be an invitation to future renegotiations and uncertainty. The potential language in Attachment 1 would allow Non-Agricultural Pool parties, collectively, to annually set the asking price for any transfers, without using a formula and could lead to a more lasting solution to the need for a rate for these transfers.

Since no party is required to either buy or sell water through Exhibit "G" annual transfers, allowing the members of the Non-Agricultural Pool to determine their own asking price would be an incentive to be reasonable and set a transfer rate that reflects the market and will induce Appropriators to purchase water.

Ultimately a functional Exhibit "G" transfer process preserves a process for Non-Agricultural Pool parties whose production is less than their water rights to transfer their surplus water and make it available to Appropriators.

An amendment to the Exhibit "G" transfer rate would require Court approval. The Pools are being asked to offer their advice and assistance on developing language, such as that in Attachment 1, that would be acceptable to all parties and could be filed with the Court for its approval.

ATTACHMENTS

1. Potential Modification to Exhibit "G" Transfer Rate language

ATTACHMENT 1 TO 8/9/18 STAFF REPORT

ATTACHMENT 1 TO 6/21/18 STAFF REPORT

EXHIBIT "G" TRANSFER RATE AMENDMENT

Potential Modification to Exhibit "G" Transfer Rate language

(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, **and the price at which all the water made available is being offered to Appropriative Pool parties.** 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 established in 9(d) below.** 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 established in Paragraph 9(d) below.** 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 92% of the then-prevailing "MWD Replenishment Rate"** 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.

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PETER KAVOUNAS, P.E.
General Manager

STAFF REPORT

DATE: June 21, 2018
TO: Advisory Committee Members
SUBJECT: Peace Agreement Paragraph 5.3(e) Interpretation (Business Item II.D.)

SUMMARY

Issue: The practical meaning of Peace Agreement Paragraph 5.3(e) needs to be clarified by the parties for Watermaster to enforce.

Recommendation: Offer advice and assistance on the interpretation of the language.

Financial Impact: There is no financial impact as a result of the recommendation.

ACTIONS:

Appropriative Pool – June 14, 2018: Gave permission to its Legal Counsel to work with Watermaster's Legal Counsel to work as to the process of bringing the item forward.

Non-Agricultural Pool – June 14, 2018: Supports the interpretation that any individual Non-Agricultural Pool party can make direct arrangements with any individual Appropriative Pool party, and pursuant to those arrangements transfer their water to Watermaster toward the Desalter Replenishment Obligation of that individual Appropriative Pool party; the Non-Agricultural Pool directs Pool Counsel and Pool Chair to work with the Appropriative Pool Chair and Pool Counsel, and Watermaster to determine final language and implement the procedure allowing such transactions.

Agricultural Pool – June 15, 2018: Offered no advice

Advisory Committee – June 21, 2018: Voted unanimously to request Watermaster assistance in drafting a document that would include all proposed changes to the Restated Judgment, Peace and Peace II Agreements to advance further Pool and Advisory Committee discussion on settlement of the Appeal from the April 28, 2017 Court Order.

BACKGROUND

Peace Agreement Paragraph 5.3(e) states:

Watermaster shall approve the Transfer or lease of the quantified Production rights of Non-Agricultural Producers within the Non-Agricultural Pool subject to the provisions of paragraph (b) above. The right to Transfer within the pool includes the right to lease water to other members of the Non-Agricultural Overlying Pool. In addition, the parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program.

The practical application of the last sentence needs to be clarified for Watermaster to be able to administer this term of the Peace Agreement.

During 2015 the City of Ontario proposed an agreement with Watermaster that, if approved, would have provided clarity on the application of the language in question. The item was set aside at the time, though Watermaster provided background information to assist the parties in coming to a conclusion. The May 14, 2015 staff report is shown as Attachment 1 to this staff letter.

DISCUSSION

The language of Peace Agreement 5.3(e) "...parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter..." makes clear that a transfer from a Non-Agricultural Pool party to Watermaster to offset Desalter replenishment obligation is permissible. As, other than the Non-Agricultural Pool "haircut", Watermaster has not yet assessed for Desalter Replenishment Obligations, what remains to be clarified is which parties' Desalter replenishment obligations could be offset by such transfers.

As discussed in the May 14, 2015 Watermaster staff report, a permissible interpretation is that a Non-Agricultural Pool party could transfer water to Watermaster to meet the Desalter replenishment obligation of a specific Appropriative Pool party.

Watermaster is seeking the advice and assistance of the parties and the Advisory Committee in making correct interpretations of such transfers. Once clarification is received Watermaster will develop any necessary process and forms to facilitate the transactions, and if necessary, will adopt an appropriate clarification in its Rules and Regulations.

ATTACHMENTS

1. May 14, 2015 Staff Report Titled "City of Ontario Agreement for the Conditional Contribution of Safe Yield to Offset Future Desalter Replenishment" (including 2 attachments)

ATTACHMENT 1 TO 8/9/18 STAFF REPORT
ATTACHMENT 1 TO 6/21/18 STAFF REPORT
PEACE AGMT PARA 5.3(e) INTERPRETATION



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PETER KAVOUNAS, P.E.
General Manager

STAFF REPORT

DATE: May 14, 2015
TO: Pool Committees
SUBJECT: City of Ontario Agreement for the Conditional Contribution of Safe Yield to Offset Future Desalter Replenishment

SUMMARY

Issue: The City of Ontario holds both appropriative and overlying water rights and is a member of both the Appropriative and Overlying (Non-Agricultural) Pools. It has indicated that a prospective purchase of water within the Overlying (Non-Agricultural) Pool is dependent upon learning whether it may dedicate a portion of water acquired to off-set a future Desalter replenishment obligation. It anticipates a future obligation to offset or replenish Desalter pumping and seeks confirmation, through an Agreement for the Conditional Contribution of Safe Yield to Offset Future Desalter Replenishment, that it may satisfy its obligation through dedication of Safe Yield arising under its overlying water rights.

Recommendation: Review and recommend Board action as to the proposed Agreement for the Conditional Contribution of Safe Yield to Offset Future Desalter Replenishment with the City of Ontario.

Financial Impact: None

Future Consideration

Non-Agricultural Pool: May 14, 2015; Review and recommend

Agricultural Pool: May 14, 2015; Review and recommend

Appropriative Pool: May 14, 2015; Review and recommend

Advisory Committee: May 21, 2015; Consideration of action

Watermaster Board: May 28, 2015; Consideration of action [Advisory Committee approval required]

ACTIONS:

May 14, 2015 -Appropriative Pool -

May 14, 2015 - Non-Agricultural Pool -

May 14, 2015 - Agricultural Pool –

May 21, 2015 -Advisory Committee –

May 28, 2015 – Watermaster Board –

BACKGROUND

The City of Ontario ("City") is a party to the Judgment and the owner of appropriative and overlying rights, and is a member of the Appropriative and Overlying (Non-Agricultural) Pools. The City has a prospective replenishment obligation attributable to the Desalters as a member of the Appropriative Pool. The City has indicated that it may wish to offset its Desalter Replenishment obligation through contribution of Safe Yield under its overlying water rights. The City has prepared an Agreement for the Conditional Contribution of Safe Yield to Offset Future Desalter Replenishment ("Agreement") to confirm its ability to offset its Desalter Replenishment obligation in this manner.

DISCUSSION

The City

The City is an original party to the 1978 Judgment, pursuant to which it was made a member of the Appropriative Pool, with a 20.742% share of the Operating Safe Yield. The City intervened into the Judgment as an Overlying (Non-Agricultural) Party in September 2008. As a result of its original purchase subsequent transfers, as of May 1, 2015, it has 2,627.807 acre-feet of Safe Yield in the Overlying (Non-Agricultural) Pool ("Non-Ag Pool"), and has requested approval of the permanent transfer of an additional 282.981 acre-feet of Safe Yield in the Non-Ag Pool to be effective in FY15-16.

Desalter Replenishment

A. The Development of the Desalter Replenishment Obligation

1. The Peace Agreement

The obligation for Desalter Replenishment initially arises out of paragraph 7.5 of the Peace Agreement, which provides for replenishment for the Desalters from specified sources in a designated order of priority. Specifically, paragraph 7.5 provides for replenishment first from a Watermaster Desalter Replenishment account composed of 25,000 AF of water abandoned to the Basin by Kaiser¹ and other water previously dedicated for the same purpose, then New Yield of the Basin, Safe Yield of the Basin, and finally "Additional Replenishment Water purchased by Watermaster², the costs of which shall be levied as an Assessment by Watermaster." (Peace Agreement, ¶ 7.5.)

2. First Amendment to Peace Agreement

In 2004, based on changes implemented through the Regional Water Quality Control Board's Basin Plan Amendment for the Chino Basin and the resultant lack of development of previously anticipated "Salt Credits", some Parties to the Peace Agreement contended that they should be relieved of their obligation to provide a share of storm flow recharge New Yield for Desalter Replenishment (First Amendment to Peace Agreement, Recital B.) As a result, the Stormwater component of New Yield was dedicated to the members of the Appropriative Pool according to their percentages of Safe Yield, and was excepted from Desalter Replenishment under Peace Agreement § 7.5(b). (First Amendment to Peace Agreement, ¶ 2.)

¹ This water was abandoned by Kaiser for this purpose pursuant to what Peace Agreement Section 7.2(a)(ii) refers to as "an agreement with the Watermaster, all Pools of Producers from the Chino Basin, Kaiser Ventures, Inc., formerly known as Kaiser Resources, Inc. (Kaiser) and the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), regarding provision of certain water with which to satisfy the Replenishment obligation for operating the Desalter."

² Peace Agreement Section 5.3(e), describing the newly created mechanism through which members of the Overlying (Non-Agricultural) Pool could transfer water held in storage or pursuant to their annual production rights, provides that "the parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter..."

3. Peace II Agreement

The Peace II Agreement, which contemplated expansion of the Desalters, further expressed the hierarchy through which water could be dedicated to offset Desalter Production, designating that the Section 6.2 controls the process. (Peace II, § 6.1.) Section 6.2 of the Peace II Agreement ("Peace II Desalter Production Offsets") provides that the Replenishment obligation attributable to Desalter production in any year will be determined by Watermaster by first applying a credit against the total quantity of Desalter Production from:

- (i) the Kaiser account (Peace Agreement Section 7.5(a).);
- (ii) dedication of water from the Overlying (Non-Agricultural) Pool Storage Account;
- (iii) New Yield (other than Stormwater (Peace Agreement Section 7.5(b)));
- (iv) any declared losses from storage in excess of actual losses enforced as a "Leave Behind";
- (v) Safe Yield that may be contributed by the parties (Peace Agreement Section 7.5(c));
- (vi) Any Production of groundwater attributable to the controlled overdraft authorized pursuant to amended Exhibit I to the Judgment.

To the extent available credits applied pursuant to the hierarchy above are insufficient to fully offset the quantity of groundwater production attributable to the Desalters, Peace II Section 6.2(b) directs Watermaster to "use water or revenue obtained by levying... assessments among the members of the Overlying (Non-Agricultural) Pool and the Appropriative Pool to meet any remaining replenishment obligation." (Peace II, § 6.2(b).)

Section 6.2(b) provides Watermaster shall first levy the Special OBMP Assessment against the Overlying (Non-Agricultural) Pool described in Exhibit "G" to the Judgment³, with water obtained through the assessment being dedicated by Watermaster to further off-set replenishment of the Desalters. (Peace II Agreement, § 6.2(b)(i).)

If, after application of the credits and water obtained pursuant to the Overlying (Non-Agricultural) Pool Special OBMP Assessment described above, a replenishment obligation remains, Watermaster is to levy a Replenishment Assessment against the Appropriative Pool, to be assessed pro-rata based on each Producer's combined total share of Operating Safe Yield and the previous year's actual production⁴, excluding Desalter Production.

4. Resolution 2010-04

In October 2010, after approval by the Pools and Advisory Committee, the Watermaster Board adopted Resolution 2010-04 in order to confirm the factual and legal assumptions of the Parties as they initiated the final required phase of the Desalter project. The resolution contains commitments by Watermaster and described commitments made by members of the Chino Desalter Authority (CDA) that facilitate the initiation of the final phase of the project.

³ Section 5(c) of the Overlying (Non-Agricultural) Pool Pooling Plan provides, "Special Project OBMP Assessment. Each year, every member of this Pool will dedicate ten (10) percent of their annual share of Operating Safe Yield to Watermaster or in lieu thereof Watermaster will levy a Special Project OBMP Assessment in an amount equal to ten percent of the Pool member's respective share of Safe Yield times the then-prevailing MWD Replenishment Rate."

⁴ Exhibit "D" to Resolution 2010-04 stated that the intended allocation of the residual Replenishment obligation among the members of the Appropriative Pool would be on the basis of 50% Base Annual Production Right and 50% actual Production. It further stated that the formula is used elsewhere in the Peace II Agreement and it is commonly understood by the Parties to the Judgment and Watermaster to apply in this manner. Watermaster staff understands this allocation mechanism to be on the basis of 50% Operating Safe Yield and 50% assessable production, which is the same as that used for the allocation of stored water in the settlement agreements regarding the Overlying (Non-Agricultural) Pool Purchase and Sale Agreements and that provided for allocation of water available through Physical Solution Transfers pursuant to Paragraph 9(b) of Restated Judgment, Exhibit "G".

Because the cost of Desalter Replenishment was anticipated to be significant⁵, as part of their agreement to move forward with the final portion of the Desalter project, the CDA members required certainty as to the manner in which Watermaster would implement Section 6.2 of the Peace II Agreement. The Parties' understanding of that implementation mechanism was included as Exhibit "D" to Resolution 2010-04, titled "Desalter Replenishment Post-Peace II Measures." (See Resolution 2010-04, Whereas Statement 72.) Exhibit "D" describes, by way of example, the manner in which a replenishment obligation might remain after the application of the credits described in the Peace II Section 6.2 hierarchy, described above,

Exhibit "D" further provides that it was the Parties' understanding that any individual member of the Appropriative Pool reserved its discretion to meet its Desalter Replenishment Obligation in any manner that it might choose that is otherwise consistent with the Judgment. By way of example, Exhibit "D" states that a party might "pursue water transfers, remove water from a stored water account or assign a share of Operating Safe Yield⁶" to offset its individual Replenishment Assessment. In this manner, Desalter Replenishment is treated no differently than replenishment for pumping in excess of a party's annual production right: "Nothing contained with[in] Peace II and its treatment of Replenishment for the Desalters limited the pre-existing rights of the parties with respect to Replenishment."

The understanding of the Parties regarding their Desalter Replenishment obligations, as documented in Exhibit "D", was approved by the Court as part of its October 28, 2011 Order after Hearing on Motion for Approval of Watermaster Resolution 2010-04, which ordered,

17. Agreements among the Parties, whatever they may be, for Replenishment, operations, conditions and corresponding consideration without limitations, are unaffected by this determination. However, for the avoidance of doubt, Watermaster Resolution 2010-04, Exhibit "D" accurately summarizes and restates these obligations.

(October 28, 2011 Order after Hearing on Motion for Approval of Watermaster Resolution 2010-04.)

B. Appropriative Pool Parties may meet their Desalter Replenishment Obligations through Either Monetary or Water Contributions

As described above, the obligation for Desalter Replenishment, for existing Desalters is apportioned among the Parties to the Judgment in accordance with the hierarchy set forth in Peace II Section 6.2. Assuming that in a particular year that Desalter Production exceeded water made available through the application of the hierarchy, the remaining obligation would be assumed by the members of the Appropriative Pool in accordance with the melded Annual Production Right and Production formula.

As described above, in the creation of the Peace II Section 6.2 requirements, it was the Parties' understanding, endorsed by the Court in its approval of Resolution 2010-04, that the Members of the Appropriative Pool may meet their Desalter Replenishment Obligations in any manner they choose, including through contribution of water – through the acquisition of water by way of allowed water transfers, through the removal of water from a stored water account or through the assignment of a portion of an annual production right – or may contribute financially toward the necessary cost of offsetting their individual Replenishment Assessments.

⁵ The applicable replenishment obligation arises in regard to the Production of the existing Desalters, as the Production that would occur as a result of the expansion of the Desalters was completely offset through the apportionment of a portion of the 400,000 acre-feet of Re-Operation water, approved by the Court pursuant to Condition Subsequent No. 7.

⁶ Watermaster has previously discussed mechanisms through which these contributions might be made – similar to preemptive replenishment, but there is no standard mechanism for the same. To date, no party has utilized this provision to dedicate Safe Yield for the purpose of offsetting Desalter obligations.

The City's Proposed Agreement

The Agreement states that the City has acquired and may, in the future, acquire Overlying (Non-Agricultural) Pool water rights in Safe Yield, and hold this water in storage "with the intention of subsequently contributing this Safe Yield to Watermaster." (Agreement, ¶ 1.) The Agreement provides that if a Replenishment Obligation arises that is attributable to Desalter Production, as provided in Section 6.2 of the Peace II Agreement, the City may contribute Safe Yield attributable to its overlying rights in the Non-Agricultural Pool to Watermaster for the purpose of offsetting its individual Replenishment Obligation as a member of the Appropriative Pool. (Agreement, ¶ 2.) Upon such a contribution, Watermaster would make a corresponding adjustment to the City's assessment and thereby reduce the City's Replenishment obligation in an amount equal to the number of acre-feet contributed by the City in that year. (Agreement, ¶ 2.)

The City seeks the Agreement to confirm its reading of the Peace and Peace II Agreements that it might utilize Safe Yield from its Non-Ag overlying rights to satisfy its Desalter production offset obligations. Confirmation is sought as this mechanism – dedication of Safe Yield arising from an overlying right to satisfy a specific Appropriator's offset obligation – is not explicitly enumerated in the Peace or Peace II Agreements. Although this mechanism not explicitly enumerated in the Peace or Peace II Agreements, staff's interpretation is that the City's reading is permissible.

A question has arisen as to whether the allowance of such a dedication would be contrary to other provisions of the Watermaster guidance documents, particularly in regard to other provisions of the Non-Ag Pool's Pooling Plan (Exhibit "G" to the Restated Judgment). Section 9 of Exhibit "G" describes the manner in which water may be transferred from the Safe Yield rights of a member of the Overlying (Non-Agricultural) Pool, providing that, during the term of the Peace Agreement, members of the Non-Ag Pool may transfer their quantified Production rights and carry-over water held in storage accounts to other members of the Non-Ag Pool, and to Watermaster and thence to members of the Appropriative Pool in accordance with the clearinghouse process outlined therein, which provides all members of the Appropriative Pool the opportunity to purchase a pro rata share of water made available for transfer. (Restated Judgment, Exhibit "G", 9.)

Consistent with Section 5.3(e) of the Peace Agreement ("...parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment of a Desalter") Section 9 of Exhibit "G" additionally provides that such water may be directly transferred to Watermaster for replenishment purposes. Although this section does not expressly indicate that such a transfer may be earmarked to offset the obligation of a particular member of the Appropriative Pool, the language within Peace and Peace II Agreements is susceptible to a common sense interpretation that such dedication is permissible, and the mechanism is not expressly or impliedly limited under the Judgment, Peace I or Peace II, or Watermaster Rules and Regulations.

The Physical Solution Transfers authorized by the Peace Agreement and its progeny have always been construed as collective rights. To date, no party has articulated a good reason for requiring a gross dedication of Safe Yield for the benefit of all members of the Appropriative Pool where only one (or less than all) have provided the consideration for acquiring the underlying rights. Watermaster is seeking review and recommendation as to Watermaster's potential action to confirm that the City may satisfy its Replenishment obligation by dedicating Safe Yield arising under its overlying water rights, and enter into the draft Agreement, subject to obtaining Court approval.

ATTACHMENTS

1. Agreement for the Conditional Contribution of Safe Yield to Offset Future Desalter Replenishment
2. Exhibit "D" to Watermaster Resolution 2010-04

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**AGREEMENT FOR THE CONDITIONAL CONTRIBUTION
OF SAFE YIELD TO OFFSET FUTURE DESALTER REPLENISHMENT**

WHEREAS, Watermaster is charged with responsibility to administer the Judgment and the Optimum Basin Management Program ("OBMP");

WHEREAS, a substantial Replenishment Obligation for the Chino Basin Desalters is projected to arise starting as soon as next fiscal year;

WHEREAS, the City of Ontario ("City") is a party to the Judgment and the owner of appropriative and overlying rights and is a member of the Appropriative and Overlying (Non-Agricultural) Pools;

WHEREAS, the Judgment allocates the Basin's Safe Yield among the Appropriative, Overlying (Agricultural) and Overlying (Non-Agricultural) Pools;

WHEREAS, the City has acquired, and intends to acquire rights to a portion of the Safe Yield allocated among the members of the Overlying (Non-Agricultural) Pool;

WHEREAS, Section 9 of the Overlying (Non-Agricultural) Pooling Plan, Exhibit G to the Judgment, provides that members of the Pool may transfer their quantified Production rights "to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000." Said Peace Agreement at Section 5.3 (e) provides that "parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter....";

WHEREAS, Section 7.5(c) of the Peace Agreement provides that "Safe Yield" may be utilized for replenishment of Desalter production;

WHEREAS, pursuant to Peace Agreement II Section 6.2(a), which cites Section 7.5(c) of the Peace Agreement, Watermaster will determine the Replenishment Obligation attributable to the Desalters after taking into account Safe Yield "contributed by the parties";

WHEREAS, Exhibit D to Watermaster Resolution 2010-04, states that a party might pursue water transfers, remove water from a stored water account or assign a share of Operating Safe Yield to offset its individual Replenishment Assessment attributable to the Desalters.

WHEREAS, the City has a prospective Replenishment Obligation attributable to the Desalters as an individual member of the Appropriative Pool, which it may desire to offset through contribution of Safe Yield;

WHEREAS, Watermaster has previously acquired Safe Yield from other Parties to offset subsequent Desalter Replenishment obligations;

WHEREAS, the City intends to conditionally contribute Safe Yield acquired from the Overlying (Non-Agricultural) Pool to Watermaster in accordance with the provisions of

**ATTACHMENT 1 TO 8/9/18 STAFF REPORT
ATTACHMENT 1**

the Peace and Peace II Agreements;

NOW THEREFORE, the parties agree as follows:

AGREEMENT

1. City Acquisition of Safe Yield. The City has acquired and may, in the future, validly acquire Overlying (Non-Agricultural) Pool water rights in Safe Yield from Parties to the Judgment and hold this water in Local Storage with the intention of subsequently contributing this Safe Yield to Watermaster, provided that it complies with all Watermaster rules and regulations concerning the beneficial use and storage of Basin Water, including but not limited to the application of an annual loss from storage until a contribution occurs or the City otherwise elects to use the Safe Yield for another permissible purpose.
2. Contribution. At any time after the date of execution of this Agreement, if a Replenishment Obligation arises that is attributable to Desalter Production, the City may contribute Safe Yield, attributable to its overlying rights in the Non-Agricultural Pool, to Watermaster for the purpose of offsetting its individual Replenishment Obligation as a member of the Appropriative Pool or otherwise. Upon a City contribution, Watermaster will make a corresponding adjustment to the City's assessment and thereby reduce the City's Replenishment obligation in an amount equal to the number of acre-feet contributed by the City in that year.
3. No Prejudice. The execution of this Agreement will be without prejudice to the City's right to use the acquired Safe Yield for permissible purposes under the Judgment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CHINO BASIN WATERMASTER

By:

Name:
Title:

CITY OF ONTARIO

By:

Name:
Title:

EXHIBIT "D"

DESALTER REPLENISHMENT POST-PEACE II MEASURES

Summary

Desalter Replenishment is controlled by Peace II Section 6.2, attached hereto. As a result of the methodology referenced below, Western Municipal Water District (WMWD) will not incur any replenishment obligation for the 9 mgd expansion. This follows from the fact that WMWD is not a member of the Appropriative Pool and it was not required to become one as a precondition to the approval of the Peace II Measures, although it may elect in its discretion to do so.

WMWD has no share of Operating Safe Yield. Because the formula for apportioning the cost of Replenishment set forth in Section 6.2 attributable to the Desalters expressly excluded Production from the Desalters from the calculation of responsibility, even WMWD's intervention into the Appropriative Pool would not trigger a Replenishment obligation for WMWD. Specifically, without a share of Operating Safe Yield or any eligible groundwater production, there would be no basis to assess WMWD for a Replenishment Assessment.

It is also true that to the extent WMWD shared a portion of its rights to the 9 mgd expansion with Jurupa Community Services District and the City of Ontario as contemplated by Article VI, there would be no impact on the net Replenishment obligation of any other Party to the Judgment because all of the projected groundwater production planned for the proposed 9 mgd expansion was to be offset by the apportionment of 175,000 acre-feet for this purpose; both in the Court proceeding and in the filing in compliance with Condition Subsequent Number 7 (attached hereto as Exhibit "B").¹ (See below.) Replenishment attributable to the Chino I and Chino II Desalters is also addressed by formula in Peace Agreement II Section 6.2(b)(ii).

Replenishment Example

The obligation for Desalter Replenishment, for existing Desalters (as the Expansion was fully offset) was apportioned among the Parties to the Judgment in accordance with the hierarchy set forth in Peace Agreement II Section 6.2. Thus, assuming in Year X, there was 35,000 acre-feet of Desalter Production, the stated hierarchy of sources would be applied to satisfy the cumulative demand.

(1) Kaiser: (Peace Agreement II Section 6.2(a)(i))

¹ Subject to an adjustment in the schedule to reflect actual operations.

- (2) No Ag Dedication (Peace Agreement II Section 6.2(a)(ii))
- (3) New Yield other than Storm Water (Peace Agreement II Section 6.2(a)(iii))
- (4) Losses from Storage and Recovery Agreements enforced as a Leave Behind (Peace Agreement II Section 6.2(a)(iv)).
- (5) Contributed safe yield (Peace Agreement II Section 6.2(a)(v))
- (6) Controlled Overdraft as authorized (175 / 225). (Judgment Exhibit I.

Assuming for purposes of this example that the sum of (1)-(5) referenced above in Year X was 10,000 acre-feet, there would be a total Replenishment Requirement of 25,000 acre-feet. That quantity apportioned to the Expansion would be apportioned 10,000 acre-feet to offset that production (assuming the schedule is adhered to) and the balance would be assumed by the Appropriative Pool in accordance with the formula set forth in Section 6.2(b)(ii). In summary, that formula divides the residual Replenishment obligation among the members of the Appropriative Pool on the basis of 50% Base Annual Production Right and 50% actual Production. The actual language of Section 6.2(b)(ii) reads slightly different, but it is not inconsistent. This formula is used elsewhere in the Peace II Agreement and it is commonly understood by the Parties to the Judgment and Watermaster to apply in the manner described in this paragraph and this Exhibit.

The formula expressly, albeit provisionally, excludes Desalter Production from the calculation. This means that the 25,000 acre-feet of production in this example attributed to the Desalters would not form a basis to assess any member of CDA a larger assessment simply because they received desalted water. However, if there is a material reduction in the cost of desalted water, this provision was subject to a re-opener. (See below)

This structure preserves the intention of the parties, the Court and Watermaster to remove the Replenishment obligation from the cost consideration of the Expansion Project. The Replenishment obligation attributed to the Chino I and Chino II Desalters was a pre-existing and known obligation prior to Peace II. The use of water made available by the Peace II Measures substantially reduced the projected Replenishment obligation by 225,000 acre-feet.

It is true that there is a provision in Peace Agreement Section 6.2(b)(ii) that reflects that the exclusion of the Desalter production from the calculation might be revisited if the costs of water from the Desalters were to be materially reduced. However, as of October 28, 2010, Watermaster has no present information and thus no good cause that would suggest that the cost of product water from the Desalters is going to be substantially less than the negotiated price cap. Consequently it would appear that there is no present basis to reconsider this element although Watermaster and the Court would be authorized to revisit this provision if good cause were subsequently presented.

The treatment of Replenishment in any Renewal Term (Post-Peace Agreement 2030) is the subject of negotiation. (Peace Agreement II, Section 6.2(c)). This means that the inter-se allocation of the 400,000 acre-feet is fully addressed during the term of the Peace Agreement. The Parties to the Judgment are free to extend the Peace Agreement for the Renewal Term or to renegotiate any provision as a condition of extension.

Any individual member of the Appropriative Pool reserves discretion to meet their Replenishment Obligation in any manner that they may choose that is otherwise consistent with the Judgment. For example, a party may pursue water transfers, remove water from a stored water account or assign a share of Operating Safe Yield to offset their individual Replenishment Assessment. Nothing contained with Peace II and its treatment of Replenishment for the Desalters limited the pre-existing rights of the parties with respect to Replenishment.

Allocation of 400,000 Acre-Feet

As far as the inter-se apportionment of the allocation, Section 7 of the Peace II Agreement contemplated a fair process to arrive at an apportionment. An initial schedule was transmitted to the Court in response to the Court Order. The schedule was the subject of testimony and further reporting and ultimately a requirement for a schedule to be filed in connection with Condition Subsequent Number 7.

Watermaster filed its apportionment in response to Condition Subsequent Number 7, allocating 175,000 acre-feet to the expansion and 225,000 to the existing Desalters.

Peace Agreement II Section 7.2(e)(ii) authorizes Watermaster to propose revisions to the proposed schedule where good cause exists – supported by a technical explanation. A potential cause to revise the schedule might include the Expansion Project's failure to extract the allocated quantities as a result of delays in construction and operation. It is possible that there may be other public policy reasons that support other potential causes that would support a revision of the schedule, but no such reason has been presented to Watermaster.

In general, modest corrections are fairly likely to be acceptable. Material deviations may suggest a failure in one or more purposes of the OBMP Implementation Plan, and Watermaster is unable to predict how it may respond to the failure of the Expansion Project to proceed as planned.

Legal Effect of WMWD Intervention in the Appropriative Pool

As noted above, there is no requirement in the Peace II Measures that WMWD intervene into the Appropriative Pool. There is a requirement that

WMWD make the Appropriative Pool whole for historic contributions under Peace Agreement II Section 5.5(e). The requirements set forth in Section 5.5(e) of the Peace II Agreement have been satisfied by WMWD's assumption of project risk, out-of-pocket costs presently in excess of \$5 million (\$15 million for the Expansion Parties) and the further assumption of capital and operations and maintenance costs in excess of expectations (the cost-cap as for WMWD's portion of expenses. However, this finding is made only with regard to WMWD's obligation under Section 5.5 to complete final binding agreement(s) regarding Future Desalters. This finding is not intended to have any bearing or impact on the sufficiency of WMWD's assumption of risk and costs for any other purpose, including the availability of a reduced uniform loss percentage under Peace II Agreement Section 7.4. This finding also does not affect WMWD's rights or obligations to intervene into the Appropriative Pool on the terms and conditions that may be fairly agreed among the Appropriative Pool and WMWD.

Transferability of 400,000 Acre-Feet

There is no allocation of any portion of the 400,000 acre-feet to any individual party. The water is made available for the express purpose of offsetting Desalter production in furtherance of obtaining Hydraulic Control through Re-Operation. The water is apportioned as provided in Watermaster's Response to Condition Subsequent Number 7 to the December 21, 2007 Order of the Court.

EXHIBIT D-1

**PEACE II AGREEMENT:
PARTY SUPPORT FOR WATERMASTER'S OBMP
IMPLEMENTATION PLAN, –
SETTLEMENT AND RELEASE OF CLAIMS
REGARDING FUTURE DESALTERS**

6.2 Peace II Desalter Production Offsets. To facilitate Hydraulic Control through Basin Re-Operation, in accordance with the 2007 Supplement to the OBMP Implementation Plan and the amended Exhibits G and I to the Judgment, additional sources of water will be made available for purposes of Desalter Production and thereby some or all of a Replenishment obligation. With these available sources, the Replenishment obligation attributable to Desalter production in any year will be determined by Watermaster as follows:

- (a) Watermaster will calculate the total Desalter Production for the preceding year and then apply a credit against the total quantity from:
 - (i) the Kaiser account (Peace Agreement Section 7.5(a).);
 - (ii) dedication of water from the Overlying (Non-Agricultural) Pool Storage Account;
 - (iii) New Yield (other than Stormwater (Peace Agreement Section 7.5(b)));
 - (iv) any declared losses from storage in excess of actual losses enforced as a "Leave Behind";
 - (v) Safe Yield that may be contributed by the parties (Peace Agreement Section 7.5(c));
 - (vi) any Production of groundwater attributable to the controlled overdraft authorized pursuant to amended Exhibit I to the Judgment.
- (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(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) A Replenishment Assessment against the Appropriative Pool, 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. 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.
 - (iii) The quantification of any Party's share of Operating Safe Yield does not include the result of any land use conversions.
- (c) The rights and obligations of the parties, whatever they may be, regarding Replenishment Assessments attributable to all Desalters and Future Desalters in any renewal term of the Peace Agreement are expressly reserved and not altered by this Agreement.



CHINO BASIN WATERMASTER

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PETER KAVOUNAS, P.E.
General Manager

STAFF REPORT

DATE: June 21, 2018
TO: Advisory Committee Members
SUBJECT: Amendments to Judgment and CAMA to Implement Settlement Agreement Regarding Appeal from April 28, 2017 Order (Business Item II.E.)

SUMMARY

Issue: The parties to the appeal from the April 28, 2017 Order are proposing amendments to the Judgment and CAMA. These are being presented to the Pools for consideration.

Recommendation: Discuss and offer advice.

Financial Impact: There is no financial impact associated with the above recommendation.

ACTIONS:

Appropriative Pool – June 14, 2018: Gave permission to its Legal Counsel to work with Watermaster's Legal Counsel to work as to the process of bringing the item forward.

Non-Agricultural Pool – June 14, 2018: Directed Pool Counsel to review the proposed changes to the Judgment and specifically request that Paragraph 5.3(e) interpretation be included in a revised settlement agreement draft.

Agricultural Pool – June 15, 2018: Offered no comments at this time.

Advisory Committee – June 21, 2018: Voted unanimously to request Watermaster assistance in drafting a document that would include all proposed changes to the Restated Judgment, Peace and Peace II Agreements to advance further Pool and Advisory Committee discussion on settlement of the Appeal from the April 28, 2017 Court Order.

BACKGROUND

The parties to the Appeal from the April 28, 2017 Order are proposing changes to the Judgment, Peace Agreement and Peace II Agreement, as a means of implementing a settlement agreement to dispose of the pending appeal.

The parties to the appeal also suggest there may be an erroneous reference in Peace II, which could be corrected as part of the same process. In sections 6.2(b)(i) and 9.2(a), "paragraph 8(c)" should be "paragraph 5(c)".

DISCUSSION

The proposed amendments including exhibits were transmitted electronically to the Watermaster distribution list on Friday June 8, 2018 and are shown as Attachment 1. The Pools are requested to discuss these and offer advice.

ATTACHMENTS

1. Work product of parties to the Appeal from April 28, 2017 Order titled "Proposed Changes to Judgment and CAMA"

DRAFT LSGK 6/6/2018

Proposed Changes to Judgment and CAMA

1. As provided in the 2017 Order, paragraph 6 of the Judgment is amended to read as follows:

6. Safe Yield. The Safe Yield of Chino Basin is ~~135,000~~ 140,000 acre-feet per year.

2. 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:

3. 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 all land use conversion claims are satisfied*** rather than according to the five-year increment described in Paragraph 10 of Exhibit "H" of the Judgment;

4. 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.

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5. 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.

6. 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.

7. 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 below.

8. 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(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) After all unproduced Overlying (Agricultural) Pool water is allocated pursuant to Exhibit H, paragraph 10 of the Judgment, 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 in a particular year. The formula is to be adjusted annually 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:

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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, 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 for a particular year 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), with the following adjustments:*
- (1) *In the case of assignments among Appropriative Pool members, or between Appropriative Pool members and Non-Agricultural Pool members, 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 beneficiary, not the actual producer.*
 - (2) *Production offset credits pursuant to voluntary agreements under section 5.3(i) 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 that in-lieu participation in such programs shall be added to Adjusted Physical Production.*

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- (4) Production that is subsequently recharged to the groundwater basin within the same Year is not counted in Adjusted Physical Production.*
- (5) The Appropriative Pool may approve, by unanimous vote, the inclusion of other items in the determination of Adjusted Physical Production.*
- (v) Any member of the Appropriative Pool that holds Non-Agricultural-Pool water rights as a member of the Non-Agricultural Pool may, in its sole discretion, use them to satisfy its desalter replenishment obligation under this section 6.2(b). Eligible Non-Agricultural-Pool rights are limited to water held in storage as of June, 2017, and annually recurring Non-Agricultural-Pool water rights held as a member of the Non-Agricultural Pool. Eligible Non-Agricultural-Pool rights exclude rights already dedicated to the Special Project OBMP Assessment (10% haircut) under section 6.2(b)(i), and any stored water purchased or water rights leased or temporarily transferred directly from a member of the Non-Agricultural Pool pursuant to Exhibit G, ¶9(i) of the Judgment after June, 2017.*
- (vi) (iii)-The quantification of any Party's share of Operating Safe Yield does not include either land use conversions or Early Transfers.*

ATTACHMENT 1 TO 8/9/18 STAFF REPORT

COMPROMISE AND SETTLEMENT DOCUMENT
 Schedule for Use of ReOperation Water
 5/16/2018

NEW PROPOSAL

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
AP "DRO Contribution"	(10,000.000)								
ReOp Water	(12,500.000)								
NonAg 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
AP "DRO Contribution"	(10,000.000)							
ReOp 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)
NonAg Assessment	(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

Appropriative Pool Desalter Replenishment Obligation Contributions - Production Year 2013-14

Production Year 2013/2014 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)	Use Land Conversions (Page 12A)*	Land Percent of 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

Appropriative Pool Desalter Replenishment Obligation Contributions - Production Year 2014/15

Production Year 2014/15 Desalter Replenishment Obligation (DRO) Contribution:

10,000.000 AF

Appropriative Pool Party	Production Year 2014/15 Common Data (Headings from Approved 2015/2016 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)	Use	Land Conversions (Page 12A)*	Land	Percent of Conversions	Use	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%		1,222.774		4.568%		327.335	68.522	395.857
Chino, City of	7.357%		7,860.248		29.365%		625.345	440.472	1,065.817
Cucamonga Valley Water District	6.601%		598.364		2.235%		561.085	33.531	594.616
Fontana Union Water Company	11.657%		0.000		0.000%		990.845	0.000	990.845
Fontana Water Company	0.002%		834.000		3.116%		0.170	46.736	46.906
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%		14,060.392		52.528%		319.515	787.915	1,107.430
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		0.206%		747.745	3.086	750.831
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%		2,136.725		7.983%		1,763.070	119.738	1,882.808
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%		26,767.578		100.000%		8,500.000	1,500.000	10,000.000

Appropriative Pool Desalter Replenishment Obligation Contributions - Production Year 2015/16

Production Year 2015/16 Desalter Replenishment Obligation (DRO) Contribution:

10,000.000 AF

Appropriative Pool Party	Production Year 2015/16 Common Data (Headings from Approved 2016/2017 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)	Use Land Conversions (Page 12A)*	Percent of Land Conversions Use	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%	1,222.774	4.455%	327.335	66.818	394.153
Chino, City of	7.357%	8,309.518	30.271%	625.345	454.069	1,079.414
Cucamonga Valley Water District	6.601%	598.364	2.180%	561.085	32.697	593.782
Fontana Union Water Company	11.657%	0.000	0.000%	990.845	0.000	990.845
Fontana Water Company	0.002%	834.000	3.038%	0.170	45.573	45.743
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%	14,201.712	51.736%	319.515	776.045	1,095.560
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%	67.615	0.246%	747.745	3.695	751.440
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%	2,216.205	8.074%	1,763.070	121.103	1,884.173
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%	27,450.188	100.000%	8,500.000	1,500.000	10,000.000

Appropriative Pool Desalter Replenishment Obligation Contributions - Production Year 2016/17

Production Year 2016/17 Desalter Replenishment Obligation (DRO) Contribution:

10,000.000 AF

Appropriative Pool Party	Production Year 2016/17 Common Data (Headings from Approved 2017/2018 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)	Use	Land Conversions (Page 12A)*	Land	Percent of 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%		1,222.774		4.321%	327.335	64.821	392.156
Chino, City of	7.357%		8,455.798		29.884%	625.345	448.257	1,073.602
Cucamonga Valley Water District	6.601%		598.364		2.115%	561.085	31.720	592.805
Fontana Union Water Company	11.657%		0.000		0.000%	990.845	0.000	990.845
Fontana Water Company	0.002%		834.000		2.947%	0.170	44.212	44.382
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%		14,605.072		51.616%	319.515	774.240	1,093.755
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%		67.615		0.239%	747.745	3.584	751.329
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%		2,511.989		8.878%	1,763.070	133.165	1,896.235
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%		28,295.612		100.000%	8,500.000	1,500.000	10,000.000

Appropriative Pool Desalter Replenishment Obligation Contributions - Production Year 2013/14 - 2016/17

Appropriative Pool Party	Production Years				
	2013/14	2014/15	2015/16	2016/17	TOTAL
	Arrowhead Mtn Spring Water Co	-	-	-	-
Chino Hills, City of	392.35	395.86	394.15	392.16	1,574.514
Chino, City of	1,062.42	1,065.82	1,079.41	1,073.60	4,281.252
Cucamonga Valley Water District	595.39	594.62	593.78	592.81	2,376.596
Fontana Union Water Company	990.85	990.85	990.85	990.85	3,963.380
Fontana Water Company	47.99	46.91	45.74	44.38	185.019
Fontana, City of	-	-	-	-	0.000
Golden State Water Company	63.75	63.75	63.75	63.75	255.000
Jurupa Community Services District	1,115.12	1,107.43	1,095.56	1,093.76	4,411.862
Marygold Mutual Water Company	101.58	101.58	101.58	101.58	406.300
Monte Vista Irrigation Company	104.89	104.89	104.89	104.89	419.560
Monte Vista Water District	750.90	750.83	751.44	751.33	3,004.503
Niagara Bottling, LLC	-	-	-	-	0.000
Nicholson Trust	0.60	0.60	0.60	0.60	2.380
Norco, City of	31.28	31.28	31.28	31.28	125.120
Ontario, City of	1,880.10	1,882.81	1,884.17	1,896.23	7,543.314
Pomona, City of	1,738.59	1,738.59	1,738.59	1,738.59	6,954.360
San Antonio Water Company	233.58	233.58	233.58	233.58	934.320
San Bernardino, County of (Shooting Park)	-	-	-	-	0.000
Santa Ana River Water Company	201.71	201.71	201.71	201.71	806.820
Upland, City of	442.17	442.17	442.17	442.17	1,768.680
West End Consolidated Water Co	146.88	146.88	146.88	146.88	587.520
West Valley Water District	99.88	99.88	99.88	99.88	399.500
	10,000.00	10,000.00	10,000.00	10,000.00	40,000.000

Appropriative Pool: Remaining Desalter Replenishment Obligation (RDRO) - Production Year 2013-14

Remaining Desalter Replenishment Obligation (RDRO):

CDA Production - Peace I Allocation	29,227.997
CDA Production - Peace II Allocation	14.555
Total Desalter Replenishment Obligation (Total DRO):	<u>29,242.552</u>
Desalter Replenishment Obligation Contribution (DROC)	(10,000.000)
Reoperation Water (approved in Peace II)	(12,500.000)
RDRO	<u>6,742.552</u>

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	Individual Party RDRO = ((a+APP)/(Total a + Total APP)) * RDRO	
	Assessment Paackage 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

Appropriative Pool: Remaining Desalter Replenishment Obligation - Production Year 2013/14 2014/15

Remaining Desalter Replenishment Obligation (RDRO):	acre-feet
CDA Production - Peace I Allocation	29,541.000
CDA Production - Peace II Allocation	449.000
Total Desalter Replenishment Obligation (Total DRO):	29,990.000
Desalter Replenishment Obligation Contribution (DROC)	(10,000.000)
Reoperation Water (approved in Peace II)	(12,500.000)
RDRO	7,490.000

Appropriative Pool Party	Operating Safe Yield	Production Year 2014/15 Common Data (From Approved 2015/2016 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 Paackage 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	426.139	0.000	0.000	0.000	0.000	426.139	22.092
Chino Hills, City of	2,111.422	3,757.338	(96.029)	0.000	0.000	0.000	3,709.324	301.763
Chino, City of	4,033.857	6,546.044	(5,460.660)	(90.247)	0.000	4.863	3,225.467	376.343
Cucamonga Valley Water District	3,619.454	14,639.960	0.000	0.000	0.000	0.000	14,639.960	946.618
Fontana Union Water Company	6,391.736	0.000	0.000	0.000	0.000	0.000	0.000	331.365
Fontana Water Company	1.000	13,344.225	0.000	0.000	0.000	0.000	13,344.225	691.853
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	720.259	0.000	0.000	0.000	0.000	720.259	58.672
Jurupa Community Services District	2,061.118	12,805.464	0.000	(370.990)	0.000	32.103	12,466.577	753.156
Marygold Mutual Water Company	655.317	1,250.349	0.000	0.000	0.000	0.000	1,250.349	98.795
Monte Vista Irrigation Company	676.759	0.000	0.000	0.000	0.000	0.000	0.000	35.085
Monte Vista Water District	4,823.954	7,401.629	(132.454)	0.000	0.000	(387.636)	6,947.766	610.278
Niagara Bottling, LLC	0.000	1,859.765	0.000	0.000	0.000	0.000	1,859.765	96.415
Nicholson Trust	4.000	0.000	0.000	0.000	0.000	0.000	0.000	0.207
Norco, City of	201.545	0.000	0.000	0.000	0.000	0.000	0.000	10.449
Ontario, City of	11,373.816	17,675.687	(4,388.312)	(1,856.735)	0.000	0.000	13,624.796	1,295.997
Pomona, City of	11,215.852	12,520.382	0.000	0.000	0.000	0.000	12,520.382	1,230.551
San Antonio Water Company	1,506.888	1,479.087	0.000	0.000	0.000	0.000	1,479.087	154.801
San Bernardino, County of (Shooting Park)	0.000	10.868	0.000	0.000	0.000	0.000	10.868	0.563
Santa Ana River Water Company	1,301.374	0.000	0.000	0.000	0.000	0.000	0.000	67.467
Upland, City of	2,852.401	3,416.416	0.000	0.000	0.000	0.000	3,416.416	324.993
West End Consolidated Water Co	947.714	0.000	0.000	0.000	0.000	0.000	0.000	49.132
West Valley Water District	644.317	0.000	0.000	0.000	0.000	0.000	0.000	33.403
	54,834.000	97,853.612	(11,077.455)	(2,317.972)	0.000	(350.670)	89,641.380	7,490.000

Appropriative Pool: Remaining Desalter Replenishment Obligation - Production Year 2013/14

2015/16

Remaining Desalter Replenishment Obligation (RDRO):

	acre-feet
CDA Production - Peace I Allocation	27,009.000
CDA Production - Peace II Allocation	1,154.000
Total Desalter Replenishment Obligation (Total DRO):	28,163.000
Desalter Replenishment Obligation Contribution (DROC)	(10,000.000)
Reoperation Water (approved in Peace II)	(12,500.000)
Non-Ag Pool Contribution	0.000
RDRO	5,663.000

Appropriative Pool Party	Operating Safe Yield	Production Year 2015/16 Common Data (From Approved 2016/17 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 Paackage 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	356.162	0.000	0.000	0.000	0.000	356.162	13.551
Chino Hills, City of	2,111.422	1,633.459	(85.178)	0.000	0.000	0.000	1,590.870	140.859
Chino, City of	4,033.857	5,009.976	(5,488.140)	(43.133)	0.000	521.297	2,222.773	238.043
Cucamonga Valley Water District	3,619.454	20,537.150	0.000	0.000	0.000	(2.410)	20,534.740	918.984
Fontana Union Water Company	6,391.736	0.000	0.000	0.000	0.000	0.000	0.000	243.183
Fontana Water Company	1.000	15,317.165	0.000	0.000	0.000	0.000	15,317.165	582.803
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	807.419	0.000	0.000	0.000	0.000	807.419	46.375
Jurupa Community Services District	2,061.118	9,283.627	0.000	(358.622)	0.000	27.748	8,952.753	419.040
Marygold Mutual Water Company	655.317	752.723	0.000	0.000	0.000	0.000	752.723	53.571
Monte Vista Irrigation Company	676.759	0.000	0.000	0.000	0.000	0.000	0.000	25.748
Monte Vista Water District	4,823.954	8,358.319	(117.688)	0.000	0.000	(36.910)	8,262.565	497.897
Niagara Bottling, LLC	0.000	1,774.574	0.000	0.000	0.000	0.000	1,774.574	67.516
Nicholson Trust	4.000	0.000	0.000	0.000	0.000	0.000	0.000	0.152
Norco, City of	201.545	0.000	0.000	0.000	0.000	0.000	0.000	7.668
Ontario, City of	11,373.816	22,849.257	(3,559.596)	(1,235.830)	0.000	0.000	19,833.629	1,187.335
Pomona, City of	11,215.852	9,963.663	0.000	0.000	0.000	0.000	9,963.663	805.807
San Antonio Water Company	1,506.888	1,030.847	0.000	0.000	0.000	0.000	1,030.847	96.552
San Bernardino, County of (Shooting Park)	0.000	9.396	0.000	0.000	0.000	0.000	9.396	0.357
Santa Ana River Water Company	1,301.374	0.000	0.000	0.000	0.000	0.000	0.000	49.513
Upland, City of	2,852.401	2,600.725	0.000	0.000	0.000	0.000	2,600.725	207.473
West End Consolidated Water Co	947.714	0.000	0.000	0.000	0.000	0.000	0.000	36.057
West Valley Water District	644.317	0.000	0.000	0.000	0.000	0.000	0.000	24.514
	54,834.000	100,284.462	(9,250.602)	(1,637.585)	0.000	509.725	94,010.004	5,663.000

Appropriative Pool: Remaining Desalter Replenishment Obligation - Production Year 2013/14

2016/17

Remaining Desalter Replenishment Obligation (RDRO):

	acre-feet
CDA Production - Peace I Allocation	26,726.000
CDA Production - Peace II Allocation	1,527.000
Total Desalter Replenishment Obligation (Total DRO):	28,253.000
Desalter Replenishment Obligation Contribution (DROC)	(10,000.000)
Reoperation Water (approved in Peace II)	(12,500.000)
Non-Ag Pool Contribution	(735.000)
RDRO	5,018.000

Appropriative Pool Party	Operating Safe Yield	Production Year 2015/16 Common Data (From Approved 2016/17 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 Paackage 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	367.348	0.000	0.000	0.000	0.000	367.348	13.019
Chino Hills, City of	2,111.422	2,246.284	(94.257)	0.000	0.000	0.000	2,199.156	152.769
Chino, City of	4,033.857	4,971.503	(4,531.420)	(51.143)	0.000	0.000	2,654.650	237.044
Cucamonga Valley Water District	3,619.454	16,561.990	0.000	0.000	0.000	0.000	16,561.990	715.239
Fontana Union Water Company	6,391.736	0.000	0.000	0.000	0.000	0.000	0.000	226.526
Fontana Water Company	1.000	13,250.493	0.000	0.000	0.000	0.000	13,250.493	469.639
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	850.347	0.000	0.000	0.000	0.000	850.347	44.720
Jurupa Community Services District	2,061.118	11,497.599	0.000	(505.790)	0.000	31.408	11,023.217	463.715
Marygold Mutual Water Company	655.317	618.563	0.000	0.000	0.000	0.000	618.563	45.147
Monte Vista Irrigation Company	676.759	0.000	0.000	0.000	0.000	0.000	0.000	23.985
Monte Vista Water District	4,823.954	7,086.159	(125.309)	(17.784)	0.000	(78.112)	6,927.609	416.481
Niagara Bottling, LLC	0.000	1,531.557	0.000	0.000	0.000	0.000	1,531.557	54.279
Nicholson Trust	4.000	0.000	0.000	0.000	0.000	0.000	0.000	0.142
Norco, City of	201.545	0.000	0.000	0.000	0.000	0.000	0.000	7.143
Ontario, City of	11,373.816	24,839.724	(4,222.013)	(1,647.489)	0.000	0.000	21,081.229	1,150.221
Pomona, City of	11,215.852	8,066.802	0.000	0.000	0.000	0.000	8,066.802	683.386
San Antonio Water Company	1,506.888	537.746	0.000	0.000	0.000	0.000	537.746	72.463
San Bernardino, County of (Shooting Park)	0.000	13.037	0.000	0.000	0.000	0.000	13.037	0.462
Santa Ana River Water Company	1,301.374	0.000	0.000	0.000	0.000	0.000	0.000	46.121
Upland, City of	2,852.401	1,259.776	0.000	0.000	0.000	(187.860)	1,071.916	139.080
West End Consolidated Water Co	947.714	0.000	0.000	0.000	0.000	0.000	0.000	33.587
West Valley Water District	644.317	0.000	0.000	0.000	0.000	0.000	0.000	22.835
	54,834.000	93,698.928	(8,972.999)	(2,222.206)	0.000	(234.564)	86,755.659	5,018.000

Appropriative Pool: Remaining Desalter Replenishment Obligation

Production Year 2013-17

Appropriative Pool Party	RDRO				Total
	PY 13-14	PY 14-15	PY 15-16	PY 16-17	
Arrowhead Mtn Spring Water Co	15.905	22.092	13.551	13.019	64.567
Chino Hills, City of	397.669	301.763	140.859	152.769	993.061
Chino, City of	306.764	376.343	238.043	237.044	1,158.194
Cucamonga Valley Water District	828.227	946.618	918.984	715.239	3,409.068
Fontana Union Water Company	268.163	331.365	243.183	226.526	1,069.238
Fontana Water Company	645.203	691.853	582.803	469.639	2,389.498
Fontana, City of	0.000	0.000	0.000	0.000	0.000
Golden State Water Company	48.157	58.672	46.375	44.720	197.924
Jurupa Community Services District	842.427	753.156	419.040	463.715	2,478.337
Marygold Mutual Water Company	82.653	98.795	53.571	45.147	280.166
Monte Vista Irrigation Company	28.393	35.085	25.748	23.985	113.211
Monte Vista Water District	499.195	610.278	497.897	416.481	2,023.851
Niagara Bottling, LLC	56.328	96.415	67.516	54.279	274.539
Nicholson Trust	0.168	0.207	0.152	0.142	0.669
Norco, City of	8.456	10.449	7.668	7.143	33.715
Ontario, City of	1,228.639	1,295.997	1,187.335	1,150.221	4,862.192
Pomona, City of	1,012.163	1,230.551	805.807	683.386	3,731.907
San Antonio Water Company	111.857	154.801	96.552	72.463	435.673
San Bernardino, County of (Shooting Park)	0.688	0.563	0.357	0.462	2.071
Santa Ana River Water Company	56.634	67.467	49.513	46.121	219.735
Upland, City of	238.070	324.993	207.473	139.080	909.614
West End Consolidated Water Co	39.761	49.132	36.057	33.587	158.538
West Valley Water District	27.032	33.403	24.514	22.835	107.784
	6,742.552	7,490.000	5,663.000	5,018.000	24,913.552

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2018 Acknowledgement and Consent to CAMA Amendments

THIS Acknowledgement and Consent dated _____, of July 2018 regarding the Chino Basin provides for the consensual and unopposed amendment of the Judgment, the Peace Agreement, and the Peace II Agreement (Court Approved Management Agreements “CAMAs”).

WHEREAS, the parties to the appeal from Judge Reichert’s April 28, 2017 Order have petitioned the Court of Appeal for a limited remand to allow the trial court to approve proposed amendments;

WHEREAS, the proposed amendments set forth in paragraphs 2-7 of this Acknowledgement and Consent (“Amendments”) are intended to provide a grounds for the dismissal of the pending appeal and to provide further direction to Watermaster and the parties to the Judgment;

WHEREAS, the Overlying (Agricultural) Pool, Overlying (Non-Agricultural) Pool, Appropriative Pool and Watermaster have agreed to the Memorandum of Understanding Regarding Contributions of Safe Yield for Desalter Replenishment (“MOU”) dated _____ July 2018 and the amendments to subparagraphs (a)-(d) of Paragraph 9 of Exhibit “G” regarding the price at which water is made available for transfer to Appropriative Pool parties;

NOW THEREFORE, in consideration for the mutual promises specified herein and by conditioning their performance upon the express conditions precedent set forth herein, and for other good and valuable consideration the Parties agree as follows:

1. Conditions Precedent. Each Party’s obligations under this Instrument are subject to the satisfaction of the following conditions on or before December 31, 2018, unless the satisfaction of the conditions are waived in writing by all other Parties:

- (a) Approval and execution by each of the signatories set forth below;
- (b) Approval of the proposed amendments set forth in paragraphs 2-7 by the Advisory Committee;
- (c) Approval of Watermaster Board Resolution whereby it commits to the administration of the decree in accordance with the Amendments set forth in paragraphs 2-7 herein;
- (d) A final order by the trial court approving the Amendments set forth and ordering that Watermaster proceed to implement the Judgment in accordance with these proposed amendments as set forth herein.
- (e) Dismissal of the pending Appeal from the trial court order dated April 27, 2017 in *Chino Basin Municipal Water District v. City of Chino* Court of Appeal Case No. E068640 (Superior Court, Case No. RCVRS 510100).

2. Safe Yield

(a) Judgment paragraph 6 shall be amended to read as follows:

“The Safe Yield of Chino Basin is ~~140,000~~ **135,000** acre-feet per year.”

(b) Exhibit H, ¶10 of the Judgment is amended to read as follows:

“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:

3. 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 is not Produced by the Agricultural Pool to the Appropriative Pool on an annual basis ***after all land use conversion claims are satisfied*** ~~rather than according to the five year increment described in Paragraph 10 of Exhibit “H” of the Judgment.~~”

(b) 4. 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~~ ***on an annual basis*** quantity of water not Produced by the Agricultural Pool ~~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(hi) 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.

4. **Agricultural Conversion.** 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.”

5. **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.” □

6. **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 7 below below. □

7. **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(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) After all unproduced Overlying (Agricultural) Pool water is allocated pursuant to Exhibit H, paragraph 10 of the Judgment, 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 in a particular year. The formula is to be adjusted annually based on the actual land use conversion allocations of the year. □

(iii) 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, 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 for a particular year 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), with the following adjustments:

- (1) In the case of assignments among Appropriative Pool members, or between Appropriative Pool members and Non-Agricultural Pool members, 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 beneficiary, not the actual producer. □*
- (2) Production offset credits pursuant to voluntary agreements under section 5.3(i) 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 that in-lieu participation in such programs shall be added to Adjusted Physical Production.*
- (4) Production that is subsequently recharged to the groundwater basin within the same Year is not counted in Adjusted Physical Production.*
- (5) The Appropriative Pool may approve, by unanimous vote, the inclusion of other items in the determination of Adjusted Physical Production.*
- (v) Any member of the Appropriative Pool that holds Non-Agricultural-Pool water rights as a member of the Non-Agricultural Pool may, in its sole discretion, use them to satisfy its desalter replenishment obligation under this section 6.2(b). Eligible Non-Agricultural-Pool rights are limited to water held in storage as of June, 2017, and annually recurring Non-Agricultural-Pool water rights held as a member of the Non-Agricultural Pool. Eligible Non-Agricultural-Pool rights exclude rights already dedicated to the Special Project OBMP Assessment (10% haircut) under section 6.2(b)(i), and any stored water purchased or water rights leased or temporarily transferred directly from a member of*

the Non- Agricultural Pool pursuant to Exhibit G, ¶9(i) of the Judgment after June, 2017.¹

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

¹ Should amendments to paragraph 9 of Exhibit "G" to the Restated Judgment regarding "Physical Solution Transfers" and the Memorandum of Understanding Regarding Contributions of Safe Yield for Desalter Replenishment be accepted, this new subparagraph 6.2(b)(v) may be eliminated.

8. **Authority.** The signatories represent that they have the authority to bind the respective Parties identified below to the terms of this Acknowledgement and Consent.

9. **Counterparts Permissible.** This Acknowledgement and Consent may be executed in counterparts, each of which shall be deemed an original against the Party whose signature is provided, and all of which shall be considered an original and together shall constitute one agreement binding on all Parties. Facsimile and email copies, are treated as original signatures and have the same binding effect.

10. **Amendment.** The Amendments set forth in paragraphs 2-7 may not be modified, altered, or changed except in writing and signed by all Parties wherein specific reference is made to this Acknowledgement and Consent.

11. **Advice of Counsel.** In executing into this Acknowledgement and Consent, Parties agree that they have relied upon the legal advice of their respective attorneys, who are their attorneys of their own choice, and that the terms of this Acknowledgement and Consent have been completely read and explained by the respective attorneys, and that those terms are fully understood and voluntarily accepted by the parties hereto. The Parties hereby further represent that neither Party relies, nor has relied upon any representation or statement by any Party or any other person with regard to the subject matter, basis or effect of this Acknowledgement and Consent, other than the express provisions contained herein.

12. **Non-Severability.** Each of the provisions of this Acknowledgment and Consent is integrated with and integral to the whole and shall not be severable from the remainder of the Acknowledgment and Consent.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

CITY OF ONTARIO

By: _____

[Signatures continued on following pages]

ATTACHMENT 1 TO 8/9/18 STAFF REPORT

DATED: CITY OF POMONA

By: _____

DATED: CITY OF UPLAND

By: _____

DATED: STATE OF CALIFORNIA D

By: _____

DATED: CITY OF CHINO

By: _____

DATED: CUCAMONGA VALLEY
WATER DISTRICT

By: _____

DATED: MONTE VISTA WATER
DISTRICT

By: _____

DATED: FONTANA UNION WATER
COMPANY

By: _____

[Signatures continued on following pages]

ATTACHMENT 1 TO 8/9/18 STAFF REPORT

DATED:

CITY OF CHINO HILLS

By: _____

DATED:

JURUPA COMMUNITY SERVICES DISTRICT

By: _____

DATED:

AGRICULTURAL POOL

By: _____

DATED:

APPROPRIATIVE POOL

By: _____

DATED:

NON-AGRICULTURAL POOL

By: _____

DATED:

INLAND EMPIRE UTILITIES AGENCY

By: _____

DATED:

THREE VALLEYS MUNICIPAL WATER DISTRICT

By: _____

[Signatures continued on following pages]

DATED:

**WESTERN MUNICIPAL
WATER DISTRICT**

By: _____

DATED:

**SAN ANTONIO WATER
COMPANY**

By: _____

DATED:

**CHINO BASIN WATER
CONSERVATION DISTRICT**

By: _____

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CHINO BASIN WATERMASTER

**MEMORANDUM OF UNDERSTANDING REGARDING CONTRIBUTIONS OF SAFE YIELD
FOR DESALTER REPLENISHMENT**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this ___ day of July, 2018, by and between Chino Basin Watermaster, (herein "Watermaster"), the Overlying (Agricultural) Pool, the Overlying (Non-Agricultural) Pool ("Non-Ag Pool"), and the Appropriative Pool pursuant to the Judgment entered January 27, 1978.

WHEREAS, Watermaster is charged with responsibility to administer the Judgment and the Optimum Basin Management Program Implementation Plan;

WHEREAS, pursuant to Peace II Agreement section 9.2., the members of the Non-Ag Pool have annually contributed a portion of their Save Yield rights to off-set Production by the Desalters;

WHEREAS, Watermaster has delayed assessing Appropriative Pool members in order to replenish for Desalter Production until the initial reset of the Basin's Safe Yield has been completed. The Watermaster Court's April 28, 2017 order regarding the reset of the Safe Yield is presently on appeal before the Fourth Appellate District as Case No. E068640. Following resolution of the appeal, Watermaster anticipates the assessment of a substantial Replenishment Obligation for the Chino Basin Desalters as soon as the current fiscal year;

WHEREAS, the Judgment acknowledged the need for flexibility so that Watermaster would be free to take advantage of technological, social, institutional, and economic options to implement the Physical Solution (Restated Judgment, ¶ 40);

WHEREAS, Section 9 of the Overlying (Non-Agricultural) Pooling Plan, Exhibit "G" to the Judgment, provides that members of the Pool may transfer their quantified Production rights "to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000." Section 5.3 (e) of the Peace Agreement provides that "parties to the Judgment with rights within the Non- Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter....";

WHEREAS, Section 7.5(c) of the Peace Agreement provides that "Safe Yield" may be utilized for replenishment of Desalter production;

WHEREAS, Exhibit D to Watermaster Resolution 2010-04, states that a party might pursue water transfers, remove water from a stored water account or assign a share of Operating Safe Yield to offset its individual Replenishment Assessment attributable to the Desalters.

WHEREAS, each member of the Appropriative Pool has a prospective Replenishment Obligation attributable to the Desalters, which it may desire to offset through the contribution of Safe Yield;

WHEREAS, Watermaster has previously acquired Safe Yield from other Parties to offset prospective Desalter Replenishment obligations; and

WHEREAS, for the avoidance of doubt, Watermaster, the members of the Non-Ag Pool, and the members of the Appropriative Pool wish to acknowledge and announce their common interpretation of the Peace Agreement as to the contribution of Safe Yield by members of the Non-Ag Pool to off-set the replenishment obligations for Desalter Production of members of the Appropriative Pool.

NOW THEREFORE, in consideration of the mutual promises specified herein and for other good and valuable consideration, Watermaster, the Non-Ag Pool, and the Appropriative Pool agree as follows:

1. Contributions. At any time after the date of execution of this Agreement, if a Replenishment Obligation arises that is attributable to Desalter Production, a member of the Non-Ag Pool may contribute Safe Yield, attributable to its overlying rights in the Non-Agricultural Pool, to Watermaster for the purpose of offsetting the individual Replenishment Obligation of a member of the Appropriative Pool. Upon such contribution by a member of the Non-Ag Pool, Watermaster will make a corresponding adjustment to the designated member of Appropriative Pool's assessment and thereby reduce the Replenishment obligation of the member of Appropriative Pool in an amount equal to the number of acre-feet contributed by the member of the Non-Ag Pool in that year.

2. No Prejudice. The execution of this Agreement will be without prejudice to or limitation upon a member of the Non Ag Pool's right to use water pursuant to its Safe Yield rights for any other permissible purpose under the Judgment.

3.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers.

WATERMASTER

OVERLYING (AGRICULTURAL) POOL

Dated: _____

Dated: _____

OVERLYING (NON-AGRICULTURAL) POOL

APPROPRIATIVE POOL

Dated: _____

Dated: _____

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Physical Solution Transfers. Subparagraphs (a), (b), (c), and (d) of Paragraph 9 of Exhibit "G" to the Restated Judgment are amended to read as follows: □

(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, **and the price at which all the water made available is being offered to Appropriative Pool parties.** 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** ~~established in 9(d) below.~~ 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** ~~established in Paragraph 9(d) below.~~ 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** ~~92% of the then prevailing "MWD Replenishment Rate"~~ 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.

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Ag Pool Report from Closed Session 071918

Regarding Business Item B.

“ADVISORY COMMITTEE REQUEST FOR WATERMASTER ASSISTANCE”

By a motion made by Pietersma with a second by LaBrucherie,

The Ag Pool voted unanimously to approve the process and the following documents provided in advance of the meeting by Watermaster staff:

1. 2018 Acknowledgment and Consent to CAMA Amendments
2. Physical Solution Transfers
3. Chino Basin Watermaster Memorandum of Understanding Regarding Contributions of Safe Yield for Desalter Replenishment

The Ag Pool approval is contingent upon the following modifications to the above documents:

1. All three documents should be merged into one inclusive document.
2. On page 2, paragraph 2 please add the effective date of the Safe Yield reset.
3. On page 2, paragraph 2 please clarify that the safe yield process that was part of the Judge’s order including peer review and the reset process remains in effect.
4. Page 4, (iv) please clarify what is meant by the term “particular year.”
5. Page 8, the State requests that they be removed as a signatory.

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Ag Pool Report from Closed Session 071918

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Non-Ag Pool Comments 072018

Fri 7/20/2018 2:04 PM

BG Geye, Brian <BGeye@autoclubspeedway.com >
Moving forward...

To Peter Kavounas

Cc Bob Bowcock (bbowcock@firmwater.com)

Peter -

While the Non-Ag pool did not take specific action at yesterday's meeting, based on the direction provided at our June meeting for pool chair and pool counsel to work with Watermaster, the Appropriative Pool, and counsel to facilitate the Exhibit G transfer rate amendment and implement procedures for individual desalter replenishment transfers between NAP and AP parties, I support the process moving forward contingent on the following:

1. All three documents (CAMA amendments, Exhibit G amendments, & MOU) should be merged into one inclusive document
2. On page 5, paragraph 7 of the CAMA amendments– revised Section 6.2(b)(v) should be reflective of the MOU agreement on individual desalter replenishment transfers between Non-Ag Pool parties and Appropriative Pool parties
3. For clarity in the Exhibit G amendment, include language outlining that the price may be established annually by either affirmative action of the Non-Ag Pool, or by the Non-Ag Pool determining a method by which the price per acre foot of Exhibit G water will be established.

Regards,
Brian



Brian Geye
Senior Director, Operations | Auto Club Speedway
9300 Cherry Avenue | Fontana, CA 92335
w | (909) 429-5651 f | (909) 429-5590
www.autoclubspeedway.com |    

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Comments by Individual Parties on documents circulated by Watermaster on
07/19/18

City of Upland; submitted via email dated 08/02/2018

Gentleman-

I reached out to CBWM and Peter referred me to you all for a clarification on the intent of the following provision. I spoke briefly to Todd about this a couple of weeks ago. I would recommend some additional language to make sure it is clear what is intended for this amendment to the CAMA. I have included Peter, so he knows I have requested you to look at a few items in the document.

Here are my comments and questions re: the CBWM Prepared Document:

There appears to be a Typo 3 (g) at the end of the sentence "...5.3(hi)below."

Under 7(iv)(2) as presented, I think there are some numbering issues? It looks like (i), (ii), (iii), (iii), (iv), (v), (vi)

Concern.

Under 7(iv)(4) as presented, again I think there are some numbering issues.

"(4) Production that is subsequently recharged to the groundwater basin within the same year in not counted in the Adjusted Physical Production."

I spoke with Todd Corbin and he said, the intent is "MVWD's Pump to Waste is not counted"

It is not clear to me by the language presented what this is. I would propose some additional language to reflect Todd's expressed intent for the provision, as follows for your discussion today..

"(4) Production that is *itself* subsequently recharged to the groundwater basin within the same year in not counted in the Adjusted Physical Production."

Thanks, Rosemary

County of San Bernardino; submitted verbally

Regarding document titled "2018 Acknowledgement and Consent to CAMA Amendments" 7(iv)(1)

the term "beneficiary" should be clarified. Suggest "the party making beneficial use of the water" instead

City of Ontario; submitted verbally

Regarding document titled "2018 Acknowledgement and Consent to CAMA Amendments" 7(v)

In case this provision is removed because of separate adoption of language interpreting Peace Agreement Paragraph 5.3(e), then language should be inserted in the document clearly indicating that the interpretation language was adopted as part of an overall settlement agreement and is non-severable from the agreement.

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2018 Acknowledgement and Consent to CAMA Amendments

THIS Acknowledgement and Consent dated _____, of July 2018 regarding the Chino Basin provides for the consensual and unopposed amendment of the Judgment, the Peace Agreement, and the Peace II Agreement (Court Approved Management Agreements “CAMAs”).

WHEREAS, the parties to the appeal from Judge Reichert’s April 28, 2017 Order have petitioned the Court of Appeal for a limited remand to allow the trial court to approve proposed amendments;

WHEREAS, the proposed amendments set forth in paragraphs 2-7-8 of this Acknowledgement and Consent (“Amendments”) are intended to provide a grounds for the dismissal of the pending appeal and to provide further direction to Watermaster and the parties to the Judgment;

WHEREAS, the Overlying (Agricultural) Pool, Overlying (Non-Agricultural) Pool, Appropriative Pool and Watermaster have agreed to the Memorandum of Understanding Regarding Contributions of Safe Yield for Desalter Replenishment (“MOU”) dated _____ July 2018 and the amendments to subparagraphs (a)-(d) of Paragraph 9 of Exhibit “G” regarding the price at which water is made available for transfer to Appropriative Pool parties;

WHEREAS, Watermaster is charged with responsibility to administer the Judgment and the Optimum Basin Management Program Implementation Plan;

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WHEREAS, pursuant to Peace II Agreement section 9.2., the members of the Non-Ag Pool have annually contributed a portion of their Save Yield rights to off-set Production by the Desalters;

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WHEREAS, Watermaster has delayed assessing Appropriative Pool members in order to replenish for Desalter Production until the initial reset of the Basin’s Safe Yield has been completed. The Watermaster Court’s April 28, 2017 order regarding the reset of the Safe Yield is presently on appeal before the Fourth Appellate District as Case No. E068640. Following resolution of the appeal, Watermaster anticipates the assessment of a substantial Replenishment Obligation for the Chino Basin Desalters as soon as the current fiscal year;

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WHEREAS, the Judgment acknowledged the need for flexibility so that Watermaster would be free to take advantage of technological, social, institutional, and economic options to implement the Physical Solution (Restated Judgment, ¶ 40);

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WHEREAS, Section 9 of the Overlying (Non-Agricultural) Pooling Plan, Exhibit “G” to the Judgment, provides that members of the Pool may transfer their quantified Production

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rights "to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000." Section 5.3 (e) of the Peace Agreement provides that "parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter....":

WHEREAS, Section 7.5(c) of the Peace Agreement provides that "Safe Yield" may be utilized for replenishment of Desalter production:

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WHEREAS, Exhibit D to Watermaster Resolution 2010-04, states that a party might pursue water transfers, remove water from a stored water account or assign a share of Operating Safe Yield to offset its individual Replenishment Assessment attributable to the Desalters.

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WHEREAS, each member of the Appropriative Pool has a prospective Replenishment Obligation attributable to the Desalters, which it may desire to offset through the contribution of Safe Yield:

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WHEREAS, Watermaster has previously acquired Safe Yield from other Parties to offset prospective Desalter Replenishment obligations; and

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WHEREAS, for the avoidance of doubt, the Parties wish to acknowledge and announce their common interpretation of the Peace Agreement as to the contribution of Safe Yield by members of the Non-Ag Pool to off-set the replenishment obligations for Desalter Production of members of the Appropriative Pool.

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NOW THEREFORE, in consideration for the mutual promises specified herein and by conditioning their performance upon the express conditions precedent set forth herein, and for other good and valuable consideration the Parties agree as follows:

1. Conditions Precedent. Each Party's obligations under this Instrument are subject to the satisfaction of the following conditions on or before December 31, 2018, unless the satisfaction of the conditions are waived in writing by all other Parties:

- (a) Approval and execution by each of the signatories set forth below;
- (b) A final order by the trial court approving the Amendments set forth and ordering that Watermaster proceed to implement the Judgment in accordance with these proposed amendments as set forth herein.
- (c) Dismissal of the pending Appeal from the trial court order dated April 28⁷, 2017 in *Chino Basin Municipal Water District v. City of Chino* Court of Appeal Case No. E068640 (Superior Court, Case No. RCVRS 510100).

Commented The Ag Pool has asked that it be clarified that the reset of the Safe Yield includes the Court approval of the entirety of Article IV of the Safe Yield Reset Agreement. See subsection 2.(b) which is consistent with the January 11, 2018 Chino Basin Safe Yield Reset and Accounting Compromise Term Sheet

2. Safe Yield

- (a) Judgment paragraph 6 shall be amended to read as follows:

Commented The Ag Pool has asked that the effective date of the reset be added. If the reference in 2(b) is included, this not be added as it is so provided in the Order.

“The Safe Yield of Chino Basin is ~~135,000~~ 140,000 acre-feet per year.”

(b) Safe Yield will be set pursuant to Court Order dated April 28, 2017, including the Reset Technical Memorandum.

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(b)(c) Exhibit H, ¶10 of the Judgment is amended to read as follows:

“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:

3. 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 is not Produced by the Agricultural Pool to the Appropriative Pool on an annual basis ~~after all land use conversion claims are satisfied rather than according to the five year increment described in Paragraph 10 of Exhibit “H” of the Judgment.~~”

(b) 4. 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.~~

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(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.

4. **Agricultural Conversion.** 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.”

5. **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.” □

6. **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 7 below-below. □

7. **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(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) After all unproduced Overlying (Agricultural) Pool water is allocated pursuant to Exhibit H, paragraph 10 of the Judgment, 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 in a particular year. The formula is to be adjusted annually based on the actual land use conversion allocations of the year. □

(iii) 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, 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 for a particular year 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), with the following adjustments:

Commented The Ag Pool has requested clarification as to the term "particular year" and the request clarifies but does not change the meaning of the sentence. Watermaster could suggest clarifying language if requested to do so.

*(1) In the case of assignments among Appropriative Pool members, or between Appropriative Pool members and Non-Agricultural Pool members, 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 **beneficiary**, not the actual producer. □*

Commented A comment has been received that "beneficiary" should be clarified. Watermaster could suggest clarifying language if requested to do so.

(2) Production offset credits pursuant to voluntary agreements under section 5.3(i) 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 that in-lieu participation in such programs shall be added to Adjusted Physical Production.

(4) Production that is subsequently recharged to the groundwater basin within the same Year is not counted in Adjusted Physical Production.

Commented The City of Upland has requested that the word "itself" be inserted here.

(5) The Appropriative Pool may approve, by unanimous vote, the inclusion of other items in the determination of Adjusted Physical Production.

(v) Any member of the Appropriative Pool that holds Non-Agricultural-Pool water rights as a member of the Non-Agricultural Pool may, in its sole discretion, use them to satisfy its desalter replenishment obligation under this section 6.2(b). Eligible Non-Agricultural-Pool rights are limited to water held in storage as of June, 2017, and annually recurring Non-Agricultural-Pool water rights held as a member of the Non-Agricultural Pool. Eligible Non-Agricultural-Pool rights exclude rights already dedicated to the Special Project OBMP Assessment (10% haircut) under section 6.2(b)(i), and any stored water purchased or water rights leased or temporarily transferred directly from a member of

Commented The Non-Ag Pool has commented that this section should be reflective of the MOU agreement on individual desalter replenishment transfers. Section 9 of this document addresses this issue and it is possible that this section (6.2.(b)(v)) may be removed.

the Non- Agricultural Pool pursuant to Exhibit G, ¶9(i) of the Judgment after June, 2017.⁴

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

DRAFT

⁴Should amendments to paragraph 9 of Exhibit "G" to the Restated Judgment regarding "Physical Solution Transfers" and the Memorandum of Understanding Regarding Contributions of Safe Yield for Desalter Replenishment be accepted, this new subparagraph 6.2(b)(v) may be eliminated.

8. Physical Solution Transfers. Subparagraphs (a), (b), (c), and (d) of Paragraph 9 of Exhibit "G" to the Restated Judgment are amended to read as follows: □

Commented This has been included in response to the Overlying Pools' request that the three documents be consolidated into a single document.

Commented The Overlying (Non-Agricultural) Pool has indicated that it may have additional language suggestions for this section. Watermaster is happy to assist if requested to do so.

(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, *and the price at which all the water made available is being offered to Appropriative Pool parties.* 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 established in 9(d) below.* 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 established in Paragraph 9(d) below.* 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 92% of the then prevailing "MWD Replenishment Rate"* 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.

9. Contributions of Safe Yield for Desalter Replenishment.

Commented This has been included in response to the Overlying Pools' request that the three documents be consolidated into a single document.

(a) **Contributions.** At any time after the date of execution of this Acknowledgement and Consent, if a Replenishment Obligation arises that is attributable to Desalter Production, a member of the Non-Ag Pool may contribute Safe Yield, attributable to its overlying rights in the Non-

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Agricultural Pool, to Watermaster for the purpose of offsetting the individual Replenishment Obligation of a member of the Appropriative Pool. Upon such contribution by a member of the Non-Ag Pool, Watermaster will make a corresponding adjustment to the designated member of Appropriative Pool's assessment and thereby reduce the Replenishment obligation of the member of Appropriative Pool in an amount equal to the number of acre-feet contributed by the member of the Non-Ag Pool in that year.

(b) No Prejudice. The execution of this Acknowledgement and Consent will be without prejudice to or limitation upon a member of the Non Ag Pool's right to use water pursuant to its Safe Yield rights for any other permissible purpose under the Judgment.

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10. **Authority.** The signatories represent that they have the authority to bind the respective Parties identified below to the terms of this Acknowledgement and Consent.

910. **Counterparts Permissible.** This Acknowledgement and Consent may be executed in counterparts, each of which shall be deemed an original against the Party whose signature is provided, and all of which shall be considered an original and together shall constitute one agreement binding on all Parties. Facsimile and email copies, are treated as original signatures and have the same binding effect.

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1011. **Amendment.** The Amendments set forth in paragraphs 2-7 may not be modified, altered, or changed except in writing and signed by all Parties wherein specific reference is made to this Acknowledgement and Consent.

1112. **Advice of Counsel.** In executing into this Acknowledgement and Consent, Parties agree that they have relied upon the legal advice of their respective attorneys, who are their attorneys of their own choice, and that the terms of this Acknowledgement and Consent have been completely read and explained by the respective attorneys, and that those terms are fully understood and voluntarily accepted by the parties hereto. The Parties hereby further represent that neither Party relies, nor has relied upon any representation or statement by any Party or any other person with regard to the subject matter, basis or effect of this Acknowledgement and Consent, other than the express provisions contained herein.

1213. **Non-Severability.** Each of the provisions of this Acknowledgment and Consent is integrated with and integral to the whole and shall not be severable from the remainder of the Acknowledgment and Consent.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED: **CITY OF ONTARIO**

By: _____

[Signatures continued on following pages]

DATED: **CITY OF POMONA**

By: _____

DATED: **CITY OF UPLAND**

By: _____

DATED: _____ ~~**STATE OF CALIFORNIA**~~

By: _____

Commented . The State has asked that it be removed as a signatory as it desires to sign through the Ag Pool. The State has asked that it be removed as a signatory as it desires to sign through the Ag Pool. This could be done provided that the State makes this assurance and representation.

DATED: **CITY OF CHINO**

By: _____

DATED: **CUCAMONGA VALLEY WATER DISTRICT**

By: _____

DATED: **MONTE VISTA WATER DISTRICT**

By: _____

DATED:

**FONTANA UNION WATER
COMPANY**

By: _____

[Signatures continued on following pages]

DATED:

CITY OF CHINO HILLS

By: _____

DATED:

**JURUPA COMMUNITY
SERVICES DISTRICT**

By: _____

DATED:

AGRICULTURAL POOL

By: _____

DATED:

APPROPRIATIVE POOL

By: _____

DATED:

NON-AGRICULTURAL POOL

By: _____

DATED:

**INLAND EMPIRE UTILITIES
AGENCY**

By: _____

DATED:

**THREE VALLEYS MUNICIPAL
WATER DISTRICT**

By: _____

[Signatures continued on following pages]

DATED:

**WESTERN MUNICIPAL
WATER DISTRICT**

By: _____

DATED:

**SAN ANTONIO WATER
COMPANY**

By: _____

DATED:

**CHINO BASIN WATER
CONSERVATION DISTRICT**

By: _____

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2018 Acknowledgement and Consent to CAMA Amendments

THIS Acknowledgement and Consent dated _____, of July 2018 regarding the Chino Basin provides for the consensual and unopposed amendment of the Judgment, the Peace Agreement, and the Peace II Agreement (Court Approved Management Agreements “CAMAs”).

WHEREAS, the parties to the appeal from Judge Reichert’s April 28, 2017 Order have petitioned the Court of Appeal for a limited remand to allow the trial court to approve proposed amendments;

WHEREAS, the proposed amendments set forth in paragraphs 2-7-8 of this Acknowledgement and Consent (“Amendments”) are intended to provide a grounds for the dismissal of the pending appeal and to provide further direction to Watermaster and the parties to the Judgment;

WHEREAS, the Overlying (Agricultural) Pool, Overlying (Non-Agricultural) Pool, Appropriative Pool and Watermaster have agreed to the Memorandum of Understanding Regarding Contributions of Safe Yield for Desalter Replenishment (“MOU”) dated ~~July-August 2018 and the amendments to subparagraphs (a)-(d) of Paragraph 9 of Exhibit “G” regarding the price at which water is made available for transfer to Appropriative Pool parties;~~

NOW THEREFORE, in consideration for the mutual promises specified herein and by conditioning their performance upon the express conditions precedent set forth herein, and for other good and valuable consideration the Parties agree as follows:

1. **Conditions Precedent.** Each Party’s obligations under this Instrument are subject to the satisfaction of the following conditions on or before December 31, 2018, unless the satisfaction of the conditions are waived in writing by all other Parties:

- (a) Approval and execution by each of the signatories set forth below;
- (b) A final order by the trial court approving the Amendments set forth and ordering that Watermaster proceed to implement the Judgment in accordance with these proposed amendments as set forth herein.
- (c) Dismissal of the pending Appeal from the trial court order dated April 27~~28~~, 2017 in *Chino Basin Municipal Water District v. City of Chino* Court of Appeal Case No. E068640 (Superior Court, Case No. RCVRS 510100).

2. **Safe Yield**

- (a) Judgment paragraph 6 shall be amended to read as follows:

Commented : The Ag Pool has asked that it be clarified that the reset of the Safe Yield includes the Court approval of the entirety of Article IV of the Safe Yield Reset Agreement. See subsection 2.(b) which is consistent with the January 11, 2018 Chino Basin Safe Yield Reset and Accounting Compromise Term Sheet

Commented : The Ag Pool has asked that the effective date of the reset be added. If the reference in 2(b) is included, this not be added as it is so provided in the Order.

“The Safe Yield of Chino Basin is ~~135,000~~ 140,000 acre-feet per year.”

(b) Safe Yield will be set pursuant to Court Order dated April 28, 2017, including the Reset Technical Memorandum.

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(b)(c) Exhibit H, ¶10 of the Judgment is amended to read as follows:

“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:

3. 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 is not Produced by the Agricultural Pool to the Appropriative Pool on an annual basis ~~after all land use conversion claims are satisfied rather than according to the five year increment described in Paragraph 10 of Exhibit “H” of the Judgment.~~”

(b) 4. 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.

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(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.

4. **Agricultural Conversion.** 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.”

5. **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.” □

6. **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 7 below-below. □

7. **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(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) After all unproduced Overlying (Agricultural) Pool water is allocated pursuant to Exhibit H, paragraph 10 of the Judgment, 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 in a particular year. The formula is to be adjusted annually based on the actual land use conversion allocations of the year. □

~~(iii)~~ 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, 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 for a particular year 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), with the following adjustments:

Commented : The Ag Pool has requested clarification as to the term "particular year" and the request clarifies but does not change the meaning of the sentence. Watermaster could suggest clarifying language if requested to do so.

(1) *In the case of assignments among Appropriative Pool members, or between Appropriative Pool members and Non-Agricultural Pool members, 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 **beneficiary**, not the actual producer.* □

Commented [redacted] A comment has been received that "beneficiary" should be clarified. Watermaster could suggest clarifying language if requested to do so.

(2) *Production offset credits pursuant to voluntary agreements under section 5.3(i) 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 that in-lieu participation in such programs shall be added to Adjusted Physical Production.*

(4) *Production that is subsequently recharged to the groundwater basin within the same Year is not counted in Adjusted Physical Production.*

Commented [redacted] : The City of Upland has requested that the word "itself" be inserted here.

(5) *The Appropriative Pool may approve, by unanimous vote, the inclusion of other items in the determination of Adjusted Physical Production.*

(v) *Any member of the Appropriative Pool that holds Non-Agricultural-Pool water rights as a member of the Non-Agricultural Pool may, in its sole discretion, use them to satisfy its desalter replenishment obligation under this section 6.2(b). Eligible Non-Agricultural-Pool rights are limited to water held in storage as of June, 2017, and annually recurring Non-Agricultural-Pool water rights held as a member of the Non-Agricultural Pool. Eligible Non-Agricultural-Pool rights exclude rights already dedicated to the Special Project OBMP Assessment (10% haircut) under section 6.2(b)(i), and any stored water purchased or water rights leased or temporarily transferred directly from a member of*

Commented [redacted] The Non-Ag Pool has commented that this section should be reflective of the MOU agreement on individual desalter replenishment transfers between Non-Ag Pool parties and Appropriative Pool parties.

The City of Ontario has commented "In case this provision is removed because of separate adoption of language interpreting Peace Agreement Paragraph 5.3(e), then language should be inserted in the document clearly indicating that the interpretation language was adopted as part of an overall settlement agreement and is non-severable from the agreement."

the Non- Agricultural Pool pursuant to Exhibit G, ¶9(i) of the Judgment after June, 2017.¹

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

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¹ Should amendments to paragraph 9 of Exhibit "G" to the Restated Judgment regarding "Physical Solution Transfers" and the Memorandum of Understanding Regarding Contributions of Safe Yield for Desalter Replenishment be accepted, this new subparagraph 6.2(b)(v) may be eliminated.

8. Physical Solution Transfers. Subparagraphs (a), (b), (c), and (d) of Paragraph 9 of Exhibit "G" to the Restated Judgment are amended to read as follows:

Commented : This has been included in response to the Overlying Pools' request that the three documents be consolidated into a single document.

Commented : The Overlying (Non-Agricultural) Pool has indicated that it may have additional language suggestions for this section. Watermaster is happy to assist if requested to do so.

(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, ***and the price at which all the water made available is being offered to Appropriative Pool parties.*** 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 established in 9(d) below.*** 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 established in Paragraph 9(d) below.*** 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 92% of the then prevailing "MWD Replenishment Rate"*** 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.

9. **Authority.** The signatories represent that they have the authority to bind the respective Parties identified below to the terms of this Acknowledgement and Consent.

910. **Counterparts Permissible.** This Acknowledgement and Consent may be executed in counterparts, each of which shall be deemed an original against the Party whose signature is provided, and all of which shall be considered an original

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and together shall constitute one agreement binding on all Parties. Facsimile and email copies, are treated as original signatures and have the same binding effect.

~~10~~11. **Amendment.** The Amendments set forth in paragraphs 2-7 may not be modified, altered, or changed except in writing and signed by all Parties wherein specific reference is made to this Acknowledgement and Consent.

~~11~~12. **Advice of Counsel.** In executing into this Acknowledgement and Consent, Parties agree that they have relied upon the legal advice of their respective attorneys, who are their attorneys of their own choice, and that the terms of this Acknowledgement and Consent have been completely read and explained by the respective attorneys, and that those terms are fully understood and voluntarily accepted by the parties hereto. The Parties hereby further represent that neither Party relies, nor has relied upon any representation or statement by any Party or any other person with regard to the subject matter, basis or effect of this Acknowledgement and Consent, other than the express provisions contained herein.

~~12~~13. **Non-Severability.** Each of the provisions of this Acknowledgment and Consent is integrated with and integral to the whole and shall not be severable from the remainder of the Acknowledgment and Consent.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED: **CITY OF ONTARIO**

By: _____

[Signatures continued on following pages]

DATED: **CITY OF POMONA**

By: _____

DATED: **CITY OF UPLAND**

By: _____

DATED: _____ ~~STATE OF CALIFORNIA D~~

Commented | The State has asked that it be removed as a signatory as it desires to sign through the Ag Pool. This could be done provided that the State makes this assurance and representation.

By: _____

DATED: **CITY OF CHINO**

By: _____

DATED: **CUCAMONGA VALLEY WATER DISTRICT**

By: _____

DATED: **MONTE VISTA WATER DISTRICT**

By: _____

DATED: **FONTANA UNION WATER COMPANY**

By: _____

[Signatures continued on following pages]

DATED: **CITY OF CHINO HILLS**

By: _____

DATED: **JURUPA COMMUNITY SERVICES DISTRICT**

By: _____

DATED: **AGRICULTURAL POOL**

By: _____

DATED: **APPROPRIATIVE POOL**

By: _____

DATED: **NON-AGRICULTURAL POOL**

By: _____

DATED: **INLAND EMPIRE UTILITIES
AGENCY**

By: _____

DATED: **THREE VALLEYS MUNICIPAL
WATER DISTRICT**

By: _____

[Signatures continued on following pages]

DATED: **WESTERN MUNICIPAL
WATER DISTRICT**

By: _____

DATED:

**SAN ANTONIO WATER
COMPANY**

By: _____

DATED:

**CHINO BASIN WATER
CONSERVATION DISTRICT**

By: _____

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CHINO BASIN WATERMASTER

MEMORANDUM OF UNDERSTANDING REGARDING CONTRIBUTIONS OF SAFE YIELD FOR DESALTER REPLENISHMENT

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this ____ day of July, 2018, by and between Chino Basin Watermaster, (herein "Watermaster"), the Overlying (Agricultural) Pool, the Overlying (Non-Agricultural) Pool ("Non-Ag Pool"), and the Appropriative Pool pursuant to the Judgment entered January 27, 1978.

WHEREAS, Watermaster is charged with responsibility to administer the Judgment and the Optimum Basin Management Program Implementation Plan;

WHEREAS, pursuant to Peace II Agreement section 9.2., the members of the Non-Ag Pool have annually contributed a portion of their Save Yield rights to off-set Production by the Desalters;

WHEREAS, Watermaster has delayed assessing Appropriative Pool members in order to replenish for Desalter Production until the initial reset of the Basin's Safe Yield has been completed. The Watermaster Court's April 28, 2017 order regarding the reset of the Safe Yield is presently on appeal before the Fourth Appellate District as Case No. E068640. Following resolution of the appeal, Watermaster anticipates the assessment of a substantial Replenishment Obligation for the Chino Basin Desalters as soon as the current fiscal year;

WHEREAS, the Judgment acknowledged the need for flexibility so that Watermaster would be free to take advantage of technological, social, institutional, and economic options to implement the Physical Solution (Restated Judgment, ¶ 40);

WHEREAS, Section 9 of the Overlying (Non-Agricultural) Pooling Plan, Exhibit "G" to the Judgment, provides that members of the Pool may transfer their quantified Production rights "to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000." Section 5.3 (e) of the Peace Agreement provides that "parties to the Judgment with rights within the Non- Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter....";

WHEREAS, Section 7.5(c) of the Peace Agreement provides that "Safe Yield" may be utilized for replenishment of Desalter production;

WHEREAS, Exhibit D to Watermaster Resolution 2010-04, states that a party might pursue water transfers, remove water from a stored water account or assign a share of Operating Safe Yield to offset its individual Replenishment Assessment attributable to the Desalters.

WHEREAS, each member of the Appropriative Pool has a prospective Replenishment Obligation attributable to the Desalters, which it may desire to offset through the contribution of Safe Yield;

WHEREAS, Watermaster has previously acquired Safe Yield from other Parties to offset prospective Desalter Replenishment obligations; and

WHEREAS, for the avoidance of doubt, Watermaster, the members of the Non-Ag Pool, and the members of the Appropriative Pool wish to acknowledge and announce their common interpretation of the Peace Agreement as to the contribution of Safe Yield by members of the Non-Ag Pool to off-set the replenishment obligations for Desalter Production of members of the Appropriative Pool.

NOW THEREFORE, in consideration of the mutual promises specified herein and for other good and valuable consideration, Watermaster, the Non-Ag Pool, and the Appropriative Pool agree as follows:

1. Contributions. At any time after the date of execution of this Agreement, if a Replenishment Obligation arises that is attributable to Desalter Production, a member of the Non-Ag Pool may contribute Safe Yield, attributable to its overlying rights in the Non-Agricultural Pool, to Watermaster for the purpose of offsetting the individual Replenishment Obligation of a member of the Appropriative Pool. Upon such contribution by a member of the Non-Ag Pool, Watermaster will make a corresponding adjustment to the designated member of Appropriative Pool's assessment and thereby reduce the Replenishment obligation of the member of Appropriative Pool in an amount equal to the number of acre-feet contributed by the member of the Non-Ag Pool in that year.

2. No Prejudice. The execution of this Agreement will be without prejudice to or limitation upon a member of the Non Ag Pool's right to use water pursuant to its Safe Yield rights for any other permissible purpose under the Judgment.

3.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers.

WATERMASTER

OVERLYING (AGRICULTURAL) POOL

Dated: _____

Dated: _____

OVERLYING (NON-AGRICULTURAL) POOL

APPROPRIATIVE POOL

Dated: _____

Dated: _____

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