



CHINO BASIN WATERMASTER

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General Manager

STAFF REPORT

DATE: August 9, 2018
TO: Appropriative Pool Committee Members
SUBJECT: MOU Regarding Contributions Of Safe Yield For Desalter Replenishment (Business Item II.E)

SUMMARY

Issue: Some parties have requested the opportunity to describe to the Pool their proposal that this item not be included in the Settlement Agreement between the parties and the proposed CAMA amendment documents.

Recommendation: Discuss and possibly take action.

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

Future Consideration

Appropriative Pool – August 9, 2018: Discussion and possible action

Non-Agricultural Pool – Date: TBD

Agricultural Pool – Date: TBD

Advisory Committee – Date: TBD

Watermaster Board – Date: TBD

ACTIONS:

Appropriative Pool – August 9, 2018:

Non-Agricultural Pool – Date:

Agricultural Pool – Date:

Advisory Committee – Date:

Watermaster Board – Date:

BACKGROUND

During the June 21, 2018 Advisory Committee meeting Watermaster was requested to assist by bringing forward a document that would resolve all matters related to the Safe Yield Reset appeal. Watermaster presented three documents and distributed those during the July 19, 2018 Pool meetings.

The three documents were:

- Document titled “2018 Acknowledgment and Consent to CAMA Amendments”
- Document titled “Memorandum of Understanding Regarding Contributions of Safe Yield For Desalter Replenishment”
- Amendments to subparagraphs (a) – (d) of Paragraph 9 of Exhibit “G”

The attached Memorandum of Understanding (Attachment 1) was one of the three documents presented during the July Pool meetings as a potential vehicle for clarifying the intent of the Peace Agreement as to the contribution of Safe Yield by members of the Non-Agricultural Pool to off-set the replenishment obligations of Desalter production of members of the Appropriative Pool.

DISCUSSION

During the review of the documents prepared at the Advisory Committee’s June 21, 2018 request, it has been suggested that all three documents should be merged and combined into one.

Some members of the Appropriative Pool have requested the opportunity to present their proposal to move the MOU forward as a stand-alone agreement.

ATTACHMENTS

1. Memorandum of Understanding Regarding Contributions Of Safe Yield For Desalter Replenishment

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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