

RESOLUTION

WHEREAS the NAP Committee has provided comments to Watermaster staff and Watermaster Board Counsel from time to time stating that the Safe Yield Reset Agreement should provide for development on an expedited basis of a storage plan for the Chino Basin. The most recent comments given by Pool Counsel, at the direction of representatives of the NAP Committee, are attached hereto.

WHEREAS the Safe Yield Reset Agreement (the "Agreement") circulated by Watermaster staff for consideration by the NAP Committee does not reflect progress on storage, but instead appears to impose additional restrictions on storage.

NOW THEREFORE, for the foregoing reasons, the NAP Committee will support the Safe Yield Reset Agreement only if the Agreement provides as follows in new Sections 6.5 and 6.6, inserted immediately after existing Section 6.4:

6.5 NAP Storage. Neither this Agreement nor implementation hereof (including without limitation the Storage Management Plan referenced in Section 6.3 of this Agreement) shall adversely affect rights of members of the Non-Agricultural Pool existing as of the date hereof, including transfer rights and storage rights existing as of the date hereof (it being acknowledged that members of the Non-Agricultural Pool may continue to store any quantity of carryover and excess carryover water, and produce the same for any use, without deduction or diminution other than uniform storage losses applicable to all parties provided in Section 7.4 of the Peace II Agreement).

6.6 Supplemental Water. At any time, and from time to time, during the period after this Agreement is approved by the Court and prior to finalization, approval and implementation of the Storage Management Plan referenced in Section 6.3 of this Agreement, any party to the Judgment may acquire, receive, recharge and store supplemental water in the Basin in any amount, subject only to the filing, after the date this Agreement is approved by the Court, of a recharge application in standard form, and material physical injury review thereof. Any restriction imposed on or otherwise affecting storage of supplemental storage shall not apply to such recharge, including without limitation any restriction imposed prior the date this Agreement is approved by the Court. Unless the Watermaster Board makes a determination, after the filing of such application and prior to the date which is 45 days after the filing of such application, that, at the time of recharge of such amount by such party, a material physical injury to the Basin will result from recharge of such amount by such party, such application shall be deemed approved. Priority of the right to store any amount of supplemental water pursuant to this Section shall be based upon time of actual storage of such amount rather than on time of any application therefor (including for this purpose any application filed prior to the date hereof). Any party may store such water without deduction or diminution other than uniform storage losses provided in Section 7.4 of the Peace II Agreement. Any party may sell, transfer, produce and otherwise use

such water in any manner and for any use that any party is now permitted or has previously been allowed to sell, transfer, produce or otherwise use supplemental water prior to the date hereof, subject only to the filing of a transfer application in standard form for any sale or transfer of such water, and material physical injury review thereof, and provided that such water may not be produced for any purpose prior to the date which is 24 months after this Agreement is approved by the Court. The Storage Management Plan referenced in Section 6.3, when adopted, shall not adversely affect, or purport to affect, any water recharged pursuant to this Section, or any right thereto.

Hubsch, Allen W.

From: Hubsch, Allen W.
Sent: Wednesday, September 02, 2015 4:30 PM
To: Peter Kavounas (PKavounas@cbwm.org)
Cc: 'Herrema, Brad'; Brian Geye (bgeye@autoclubspeedway.com); Bob Bowcock (BBowcock@irmwater.com); Ken Jeske (KJeske1@gmail.com)
Subject: NAP/CBWM - Storage

Peter,

Representatives of the NAP Committee have asked me to express concern about the lack of progress regarding storage in the Safe Yield reset discussions. As you may recall, the NAP Committee's resolution supporting the Safe Yield reset discussions several months ago was expressly made subject to a more robust timetable for developing a storage plan. During the Safe Yield reset discussions, I and other representatives of the NAP Committee have reiterated the NAP Committee's interest in developing a storage plan, and have asked for more focus and energy in that regard. The NAP Committee's comments have not been reflected in the drafts. In fact, the current draft Safe Yield Agreement and technical memorandum focus on storage restrictions. They do not address storage development and usage. The NAP Committee has asked and asks again that the draft agreement provide for positive development of storage resources in the basin in the near future, to allow members of the NAP and others to use the storage capacity to assist with water supply for the Chino Basin.

The technical memorandum developed in connection with the Safe Yield reset makes clear that due largely or entirely to storage drawdown over the years there is significant unused storage capacity in the basin, which could be used without affecting hydraulic control. In this period of drought, it is irresponsible that basin storage capacity remains significantly under-utilized. The representatives of the NAP Committee contemplate applying in the near future for use of 100,000 AF of storage in the basin, with such storage to be managed and administered by the NAP Committee, pursuant to a plan to be developed by the NAP Committee. The NAP Committee will seek input on the plan from other stakeholders. The NAP Committee anticipates that the plan would be subject to applicable material physical injury review, and Watermaster accounting practices. The plan would allow the members of the NAP to move forward with recharge and storage, including with respect to supplemental water, without adversely affecting other parties.

Progress on the NAP Committee's storage should not be further delayed because of issues within the Appropriative Pool about the Appropriative Pool's storage. On behalf of the NAP Committee, I am asking staff to provide a timely response to this proposal for the NAP Committee's consideration at the next regular meeting of the NAP Committee, as the Committee discusses potential action on the draft Safe Yield Agreement.

Allen

Allen Hubsch

Hogan Lovells US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

Tel: +1 310 785 4600
Direct: +1 310 785 4741
Fax: +1 866 266 3155
Email: allen.hubsch@hoganlovells.com
www.hoganlovells.com
