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**CHINO BASIN WATERMASTER**

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 CHINO BASIN MUNICIPAL WATER  
11 DISTRICT

12 Plaintiff,

13 vs.

14 CITY OF CHINO, ET AL.

15 Defendant.

**Case No. RCV 51010**

[Assigned for All Purposes to the  
Honorable MICHAEL GUNN]

**MOTION FOR APPROVAL OF PEACE II  
DOCUMENTS**

**Hearing Date: November 29, 2007**  
**Time: 1:30 pm**  
**Dept: R8**

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18 **I. Introduction**

19 On September 27, 2007, the Watermaster Board adopted Resolution 07-05. A true and  
20 correct copy of this Resolution is attached here as Exhibit "A." As more fully explained below, this  
21 Resolution incorporates a variety of documents that have come to be known as the "Peace II  
22 Documents." Collectively, these documents constitute a suite of coordinated actions ("Peace II  
23 Measures") and Watermaster's promise to further implement a truly remarkable effort to optimally  
24 manage the Chino Basin for the benefit of businesses, residents and the region.

25 Through the Peace II Measures, Watermaster will curtail the discharge of poorer quality  
26 water to the Santa Ana River, preserve material quantities of Basin yield against projected declines,  
27 and provide planning and economic stability for the construction and operation of significant new  
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1 desalting capacity. These actions will further pledge the physical and economic resources of the  
2 region to complete hundreds of millions of dollars in Basin-wide improvements.

3 Consistent with spirit of consensus building and collaboration that has dominated the  
4 Watermaster process for the past seven plus years, the Peace II Documents are supported by each of  
5 the Pools, the Advisory Committee and the Watermaster Board. Coming just seven years after the  
6 local commitment of over \$400 million to implement the Peace Agreement and the implementation  
7 of the OBMP, Watermaster again reasonably expects that each of the overlying city and public entity  
8 districts that import or spread supplemental water or produce or manage groundwater will  
9 individually approve these Peace II Documents. The broad and unwavering support of the Peace II  
10 Measures by so many publicly elected officials and divergent interests on a matter as traditionally  
11 contentious as groundwater is both a strong indication of the success of the Watermaster process as it  
12 is the technical merit and fairness of the approach.

13 This Motion is filed in order to request Court authorization for certain of the Peace II  
14 Measures described in these documents and to request that the Court order Watermaster to proceed  
15 in accordance with the commitments made therein by the parties as the consensus building process,  
16 the expectation of the parties and equity requires their coordinated implementation.

17 **II. Background**

18 **A. Peace Agreement Background**

19 On June 29, 2000, Watermaster passed Resolution 00-05 committing Watermaster to act in  
20 accordance with the variety of commitments made by the parties in the Peace Agreement. In the  
21 broadest terms, the Peace Agreement consisted of a set of agreements through which the parties  
22 agreed to proceed with implementation of the Optimum Basin Management Program ("OBMP").

23 Watermaster itself was not a signatory to the Peace Agreement, and its commitment to act in  
24 accordance with the Peace Agreement was solely a function of the adoption of the Resolution.  
25 Watermaster brought a motion under Paragraph 31 of the Judgment for review of this Resolution,  
26 and asked the Court for an Order directing Watermaster to proceed in accordance with the terms of  
27 the Peace Agreement. By way of a separate motion under Paragraph 15 of the Judgment,  
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1 Watermaster requested the Court to approve Judgment amendments necessitated by the terms of the  
2 Peace Agreement.

3 In its Order of July 13, 2000, the Court reviewed the Peace Agreement and found that it was  
4 consistent with the OBMP, was in furtherance of the Physical Solution as set forth in the Judgment  
5 and was in furtherance of Article X, Section 2 of the California Constitution. (July 13, 2000 Order,  
6 p.4.) On that basis, the Court ordered Watermaster to proceed in a manner consistent with the Peace  
7 Agreement and the OBMP Implementation Plan. On September 28, 2000, the Court similarly  
8 granted Watermaster's Paragraph 15 Motion to amend the Judgment, which action was confirmed by  
9 Order dated April 19, 2001.

10 At the time of Court approval, not all of the parties had executed the Peace Agreement. In  
11 addition, CEQA analysis of the OBMP had not yet been concluded. The Court's July 13, 2000 Order  
12 was thus made conditional upon execution of the Peace Agreement by all of the parties, and upon  
13 completion of the CEQA process.

14 **B. Peace II Background**

15 **1. Peace Agreement Re-Openers**

16 In 2004 the parties began the process of conducting the five-year review of the Peace  
17 Agreement and OBMP Implementation. This review followed the completion of the first State of the  
18 Basin Report and the Modeling Report for the Metropolitan Dry Year Yield Program. The review  
19 began by addressing a limited set of items that were left for further determination in the Peace  
20 Agreement.

21 At the time the Peace Agreement was negotiated there were several OBMP implementation  
22 elements that were not yet ripe for discussion. Chief amongst these was the question of Future  
23 Desalters. Since the Desalter II and Desalter I Expansion were in the planning stages, it was  
24 impractical in 2000 for the parties to concretely discuss the implementation of the next increment of  
25 Desalting capacity. This element was therefore deferred.

26 Other items were similarly deferred. One such item was the question of whether additional  
27 regulation of the use of local storage was needed. The question of whether the recharge of 6,500  
28 acre-feet of Supplemental Water per year in Management Zone 1 would continue beyond the term

1 originally specified in the Peace Agreement was similarly held until such time as that recharge was  
2 actually completed.

3 A further element that was deferred was the interplay between the allocation of the Early  
4 Transfer water under the Peace Agreement and the ability to satisfy all Land Use Conversion claims.  
5 The Watermaster Rules and Regulations section 6.3(c) specified a manner of responding to a  
6 shortfall in the amount of water needed to satisfy both of these allocation elements, but this  
7 resolution was temporary in nature and intended to be revised upon the occurrence of certain  
8 conditions, which had occurred as of 2004.

9 In addition to these issues, there were also issues before Watermaster that were consequences  
10 of Peace Agreement implementation and that required the further negotiation by the attorney-  
11 manager group to resolve. These included the issue of Form 7 Credits, corrections to historical errors  
12 in Watermaster accounting, the role of Watermaster in water quality issues, and the impact of the  
13 recently approved Basin Plan Amendments on the Peace Agreement issue of Salt Credits.

14 **2. Broad description of monitoring and management success under OBMP**  
15 **and opportunity to become more aggressive in management of Basin.**

16 Since the time of the Peace Agreement, Watermaster has continued to monitor the Basin and  
17 improve its understanding of how the Basin works and the management opportunities that exist in  
18 the Basin. Over the years, as this base of knowledge has increased, Watermaster's computer model  
19 of the Basin has also continued to evolve.

20 Based on this advanced understanding of the conditions in the Basin Watermaster and the  
21 Inland Empire Utilities Agency ("IEUA") were able to propose to the Regional Water Quality  
22 Control Board ("RWQCB") that the Basin Plan for the Santa Ana Region be amended to permit the  
23 Chino Basin to operate under "Maximum Benefit Standards" that will allow for the expanded use of  
24 all water supplies available to the Basin, most particularly recycled water.

25 Based on Watermaster's ability to credibly represent to the RWQCB its ability to manage the  
26 water quality of the Basin despite the use of sources of water such as recycled water, the RWQCB  
27 supported the adoption of the Maximum Benefit Standards. As a result of this and the subsequent  
28 RWQCB (and California Department of Public Health) approvals to permit recharge of recycled

1 water, IEUA has funded a \$200 million capital improvement program to develop ultimately 100,000  
2 acre-feet of recycled water use in the Chino Basin.

3           These revised water quality standards allow for the increased use of recycled water in the  
4 Basin and so, as their name implies, have been determined to further the goals of Article X, section 2  
5 of the California Constitution because they allow the parties in the Basin to make maximum  
6 beneficial use of the waters available to the Basin. In return, the parties have committed to a variety  
7 of Basin management techniques that will protect both the water quality in the Basin and other  
8 downstream parties. These commitments include Watermaster's ability to achieve Hydraulic Control  
9 over the discharge of groundwater from the Chino Basin in to the Santa Ana River.

10           At the time the Peace Agreement was negotiated, it was not possible to predict how the  
11 enhanced ability of Watermaster to optimize the management of the Basin for the good of the entire  
12 Basin community would develop.

### 13                           **3.       Peace II Process**

14           In response to all of these factors, at its meeting on March 25, 2004, the Watermaster Board  
15 authorized General Counsel to convene the attorney-manager group and to facilitate the development  
16 of an update to the Peace Agreement. The first meeting was held on April 7, 2004 at the  
17 Watermaster offices. The parties began by formulating a list of the issues that needed to be  
18 addressed and formed committees to address each of the issues. Each committee analyzed its  
19 assigned issue and provided recommendations for a resolution.

20           The parties worked through the summer to develop a comprehensive resolution of these  
21 issues, but over the course of these discussions, the parties discovered that additional technical  
22 review was required for informed decision-making. During the course of this review, Watermaster  
23 staff and Wildermuth Environmental staff articulated for the parties a management strategy that had  
24 been suggested by the model which had been recently updated as part of the Metropolitan Dry Year  
25 Yield Program. This management strategy involved the controlled lowering of water levels  
26 throughout the Basin in order to create an optimal operating level for the Basin, thereby allowing for  
27 the achievement of Hydraulic Control.

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1           “Hydraulic Control” is a term used to describe the condition whereby outflow from the Basin  
2 is reduced to negligible levels, or even, ideally, eliminated. By reducing or eliminating the outflow  
3 from the Basin in to the Santa Ana River, water quality of the Santa Ana River can be better  
4 protected. At the time the attorney-manager process was reconvened, the Basin Plan Amendment  
5 had been negotiated with the RWQCB, but it had not yet been approved (the RWQCB adopted the  
6 Basin Plan Amendments in December 2004). The Basin Plan Amendments require that Hydraulic  
7 Control be achieved. The newly updated model indicated that the best way to achieve Hydraulic  
8 Control is to implement the strategy to re-operate the Basin with lower water levels. This strategy  
9 therefore came to be known as Basin Re-operation.

10           The Basin Re-operation strategy has far reaching implications, and upon its full articulation  
11 by Wildermuth Environmental, the attorney-manager process slowed considerably to allow the  
12 parties to study the suggested strategy and to allow Wildermuth Environmental additional time to  
13 conduct further research regarding Basin Re-operation. In September 2004, the parties decided to  
14 adjourn the meetings of the attorney-manager group while this technical work was completed.

15           The group also decided, however, that the Salt Credit issue was ready for a final resolution.  
16 The parties thus stipulated to an amendment to the Peace Agreement that resolved this issue. This  
17 amendment was ultimately approved by the Court in an Order dated December 2, 2004.

18           Meanwhile, technical workshops were held to present the results of the completed technical  
19 analysis, and on March 31, 2005, the attorney-manager group meetings resumed. Again, the parties  
20 met through the Spring and Summer on the terms of an agreement, and conducted extensive further  
21 technical analysis on the various components of the agreement as they developed.

22           In October of 2005, the Board was presented with a draft of the agreement. Concerns were  
23 expressed by some parties however, that the agreement as drafted did not properly consider the long-  
24 term best interests of the Basin. In order to address these concerns, public workshops were held on  
25 November 17, 2005 and December 7, 2005. Following these workshops further open meetings were  
26 conducted and a new round of input was received from which emerged the Stakeholder’s Non-  
27 Binding Term Sheet. The process for negotiation of the Term Sheet formally concluded on March  
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1 18, 2006, and at the direction of the Board, staff presented the Term Sheet to each of the Pools, the  
2 Advisory Committee and finally to the Board for approval.

3 The development and consideration by the parties of the measures included in the Term  
4 Sheet, and particularly the Basin Re-operation strategy, was thus a lengthy public process that  
5 involved considerable technical analysis and extensive discussion and debate between the parties to  
6 the Judgment. The development of the policy aspects of Basin Re-operation were guided at every  
7 step by the highest level of technical analysis, but were also forged in the crucible of open public  
8 debate, resulting in an approach that no party contests. Further, this approach allowed the many  
9 different interests in the Basin to be considered at length, as well as the interests (as best they can be  
10 divined) of future generations.

11 Despite this lengthy and involved process, following the adoption of the Term Sheet, and in  
12 accordance with its terms, validation of the technical methodology being relied upon by the parties  
13 and Watermaster was designated for further scrutiny. For example, one item required under the  
14 Term Sheet was the initiation of a peer review of the newly updated model. A strategy of the  
15 magnitude of Basin Re-operation takes many years to complete, and the groundwater model is the  
16 best tool available for the task of predicting the ways in which the strategy will unfold. Policy  
17 makers are understandably cautious of making decisions with far-reaching consequences based  
18 primarily on model results; thus, the parties wanted to be certain that the newly updated model was  
19 reliable. In order to provide this assurance, Mr. Scalmanini was asked to provide a peer review of the  
20 model, which he did.<sup>1</sup>

21 Since then Mr. Wildermuth has remained in communication with Mr. Scalmanini to keep  
22 him informed of his progress and to verify that the recommendations for model improvements were  
23 carried forward into the latest revisions to the model. (See Declaration of Mark Wildermuth attached  
24 hereto as Exhibit "C.")

25 Once the peer review of the model was complete, Watermaster also commissioned a macro-  
26 economic review (Attachment "B" to Resolution 07-05) and then a micro-economic review  
27 (Attachment "C" to Resolution 07-05) of what by then had become known as the Peace II measures.

28 <sup>1</sup> The Special Referee submitted the Scalmanini report to the Court in May 2007.

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2 **III. Nature of the Request with Respect to Peace II Documents**

3 **A. Judgment Amendments**

4 The Peace II Documents include three documents that propose amendments to the Judgment.  
5 These documents are attached to Resolution 07-05 as Attachments “H,” “I,” and “J.” The subject  
6 matters of Attachments “H” and “I” concern efforts to address the problem of continued  
7 underutilization of Non-Agricultural Pool rights by allowing additional transferability options.  
8 Attachment “J” is a proposed Judgment amendment that will authorize Watermaster to initiate the  
9 Basin Re-operation strategy.

10 Review of these proposed Judgment amendments is brought under Paragraph 15 of the  
11 Judgment.

12 **B. Peace Agreement Amendments**

13 The Peace II Documents include one document that proposes amendments to the Peace  
14 Agreement. This document is attached to Resolution 07-05 as Attachment “L.” These Peace  
15 Agreement amendments propose to (1) increase the 50,000 acre-foot Peace Agreement cap on local  
16 supplemental water storage to 100,000 acre-feet, and (2) to limit the availability of OBMP credits  
17 available through Rules and Regulations Form 7 to activities whose purpose is to address subsidence  
18 issues.  
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20 Review of these proposed Peace Agreement amendments is brought under Paragraph 31 of  
21 the Judgment, though the essential issue with regard to these amendments is whether they have the  
22 consent of all parties to the Peace Agreement.  
23

24 **C. Other Miscellaneous Peace II Documents**

25 The Peace II Documents include a number of other documents that propose a variety of  
26 miscellaneous actions that are in furtherance of the package of agreements. They constitute a third  
27 category of documents because while, like the Peace Agreement amendments, they are to be  
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1 reviewed under Paragraph 31 of the Judgment, unlike the Peace Agreement amendments, their  
2 effectiveness does not depend on unanimous consent of the parties to the Peace Agreement. The  
3 approval by the Watermaster Board of Resolution 07-05 is sufficient to establish a Watermaster  
4 commitment to proceed with implementation of the measures described in these documents.  
5

6 These documents include the Purchase and Sale Agreement for water from the Non-  
7 Agricultural Pool which implements the transfer proposed to be authorized by the Judgment  
8 amendments described above. This document is attached to Resolution 07-05 as Attachment "G."  
9 Also included in this category of documents is the Supplement to the OBMP Implementation Plan,  
10 which describes the activities that will be undertaken pursuant to the Basin Re-operation strategy  
11 authorized by the Judgment amendment described above. This document is attached to Resolution  
12 07-05 at Attachment "D." Also included is the Peace II Agreement, which describes a number of  
13 items of agreement between the parties which will facilitate the overall completion of the Peace  
14 Agreement update. The Peace II Agreement is attached to Resolution 07-05 as Attachment "K."  
15 Finally, this category of documents includes the proposed amendments to Watermaster's Rules and  
16 Regulations which are attached to Resolution 07-05 as Attachment "F."  
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19 **D. Non-Review Items Submitted as Supporting Documents**

20 A number of other documents have been submitted with this filing in order to assist the Court  
21 in its review. Three of these are included as attachments to Resolution 07-05. These include the  
22 Project Description, which describes the actions to be taken pursuant to the Basin Re-operation  
23 strategy in order to form the basis for the model review and CEQA analysis of the Project. This  
24 document is included as Attachment "A" to Resolution 07-05. Also submitted are two reports from  
25 Dr. David Sunding analyzing the economic consequences of the Peace II measures. These are  
26 included as Attachments "B" and "C" to Resolution 07-05.  
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1 Perhaps the most important document that has been submitted to assist the Court is the  
2 technical review of the Basin Re-operation strategy that has been prepared by Wildermuth  
3 Environmental. This document will be described in greater detail below, and is attached to this  
4 pleading as Exhibit "B."

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6 **IV. Questions Presented for Court Approval of Peace II Documents**

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8 The Peace II Documents articulate a comprehensive suite of measures to be completed by  
9 Watermaster and the parties, some of which are more complicated than others. Some of these actions  
10 require amendments to the Judgment and so are brought under Paragraph 15 of the Judgment, and  
11 some are subject to the broader review provision of Paragraph 31.

12 The Judgment does not provide a detailed explanation of the standard of review for such  
13 matters. Under paragraph 31, the only standard stated is that the review is de novo. Paragraph 15  
14 also provides little guidance except in the case of a proposed modification to the assessment formula  
15 described in Paragraph 7 of Exhibit "H" to the Judgment. If certain voting thresholds are met, then  
16 under this standard the Court shall allow the change unless there are, "compelling reasons to the  
17 contrary." (Judgment Para 15.) This test is also articulated in a different context in Paragraph 16 of  
18 the Judgment.

19 While this test is only specified for two purposes under the Judgment, it is a test that is  
20 consistent with the nature of a stipulated judgment as a contract between identified parties. That test  
21 is that if a great majority of the parties to the contract are in agreement about a change, then the  
22 Court would need a compelling reason not to allow it. In other words, the ability to challenge a  
23 Watermaster action defines the issues under the Judgment, and when there are no challenges it is a  
24 means of identifying a lack of issues.

25 Beyond this standard, the Judgment does not specify the standards that should be used by the  
26 Court in evaluating proposed Judgment amendments under Paragraph 15, or Watermaster  
27 discretionary actions under Paragraph 31. In its review of the original Peace Agreement, the Court  
28



1 analyzed whether the measures were consistent with and promoted the physical solution under the  
2 Judgment, and whether they were consistent with Article X, section 2 of the California Constitution.

3 **A. Basin Re-operation**

4 Basin Re-operation is the centerpiece of the Peace II measures. It is broadly defined as a  
5 strategy for managing the Basin that will achieve Hydraulic Control and optimize the interaction  
6 between the Santa Ana River and the Basin. The goal of the strategy is to lower water levels in the  
7 vicinity of the Santa Ana River so that inflow from the River will be maximized and outflow from  
8 the Basin will be minimized or even eliminated altogether. Initial management goals in this regard  
9 focused primarily on the Southern end of the Basin. The updated model, however, showed that the  
10 focus on the Southern end of the Basin, while important, was not enough to achieve the OBMP goals  
11 of yield enhancement and protection. Rather, in order to achieve the goals of maximized inflow and  
12 Hydraulic Control, it is necessary to change the entire gradient of the Basin by reducing water levels  
13 Basin-wide. Accordingly, the Basin Re-operation strategy involves the gradual lowering of water  
14 levels throughout the Basin.

15 The Peace II document that is most relevant to the issue of Basin Re-operation is the  
16 proposed amendment to Exhibit "I" of the Judgment. This document is Attachment "J" to Resolution  
17 07-05, and is the central document for which Watermaster seeks Court approval. Additional Peace II  
18 documents are relevant to the issue of Basin Re-operation however, and are relevant to the Court's  
19 analysis. One of these is the Supplement to the OBMP (Resolution 07-05 Attachment "D"), which  
20 incorporates the activities associated with Basin Re-operation and Hydraulic Control into the  
21 umbrella of the physical solution under the Judgment. Also directly relevant are Articles VII and  
22 VIII of the Peace II Agreement (Resolution 07-05 Attachment "K"). These sections describe how the  
23 controlled overdraft water will be allocated to accomplish the goals of the OBMP and also describe  
24 the measures that Watermaster will take to continue to develop the recharge capacity of the Basin in  
25 preparation for the time when the controlled overdraft period is complete.

26 In addition, directly relevant to the issue of Basin Re-operation is the proposed plan for  
27 moving forward with the construction of the next increment of desalter capacity. While this issue is  
28 not an item requiring further Court approval, it must be addressed as an element of the Basin Re-

1 operation strategy. This issue is addressed in the Peace II documents in Articles V and VI of the  
2 Peace II Agreement.

3 **1. Technical Analysis**

4 The Basin Re-operation strategy was developed using the results of the Chino Basin  
5 groundwater flow model. The computer model of the Chino Basin has been under development for  
6 many years and has evolved into a sophisticated computer representation of the Basin. Over the  
7 years its results have been ground-truthed against actual monitoring data.

8 The Basin Re-operation strategy is a very large project with significant consequences that  
9 will have impacts for future generations. The initiation of a project of this magnitude necessitates a  
10 high degree of caution. Policy makers are thus faced with two central questions:

- 11 (1) Will the strategy produce the intended results; and  
12 (2) Will the strategy produce any harmful results?

13 Policymakers must therefore have confidence that the model can answer these questions  
14 reliably.

15 In order to increase confidence in the model, the Stakeholder Non-Binding Term Sheet  
16 required Watermaster to contract for a peer review of the adequacy of the model to answer the  
17 questions above. Mr. Joe Scalmanini, the Special Referee's technical assistant, was asked to perform  
18 this task as part of the Court's oversight over the process. Over a several month period, Mr.  
19 Wildermuth shared the technical background of the model with Mr. Scalmanini to facilitate Mr.  
20 Scalmanini's review. (See Declaration of Mark Wildermuth attached hereto as Exhibit "C.") In  
21 March of 2007, Mr. Scalmanini issued his report which found, in summary, that:

22 "For planning level analysis, the existing model is a useful and applicable tool  
23 to simulate approximate basin response to management actions that involve  
24 the quantities and distribution of pumping and recharge in the basin. For  
25 example, for the most notable of its applications to date, which has been to  
26 conduct a planning level analysis of intended future hydraulic control, the  
27 model can be confidently utilized to examine whether groundwater conditions  
28 (levels) will form in such a way that hydraulic control will be achieved as  
result of basin re-operation and, if not, what other changes in basin operation  
are logically needed to achieve it." (Report at p. 37)

1 Based on his collaboration with Mr. Scalmanini and upon the recommendations contained in  
2 the Scalmanini model review report, Mr. Wildermuth performed additional refinements to the model  
3 in order to improve its predictive power and the overall confidence in the model results.

4  
5 Once these refinements were complete, Mr. Wildermuth and his staff initiated an analysis of  
6 the Project Description (Attachment "A" to Resolution 07-05) for the Basin Re-operation strategy  
7 that incorporated the anticipated construction of the next phase of Desalter construction and  
8 expansion. The results of this analysis were made available to the parties on October 8, 2007, and  
9 workshops were held on October 9, 2007 and October 24, 2007 in order to allow Mr. Wildermuth to  
10 explain the results to the parties and answer any questions.

11 A true and correct copy of this analysis is attached to this pleading as Exhibit "B." Based on  
12 this report, Watermaster has determined that the Basin Re-operation strategy as described in the  
13 Project Description is a beneficial strategy to the Basin that will advance the OBMP goals of yield  
14 enhancement and protection, and that Basin Re-operation is necessary in order to achieve Hydraulic  
15 Control. (See Declaration of Mark Wildermuth attached here as Exhibit "C.") Furthermore, the  
16 implementation of the Basin Re-operation strategy will not result in Material Physical Injury. (Id.)

17  
18 **2. Yield Accounting (Peace II Agreement Article VII and amended**  
19 **Judgment Exhibit "I")**

20 The Basin Re-operation strategy contemplates the controlled overdrafting of the Basin by  
21 400,000 acre-feet of water, and will result in New Yield to the Basin through inducement of water  
22 from the Santa Ana River. In order to ensure that the strategy proceeds in a manner that is fully  
23 supportive of the physical solution under the Judgment, it was important that agreement be reached  
24 on the allocation of this water.  
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1 Of foremost importance for the Court’s analysis, the proposed amended Exhibit “I” specifies  
2 that the additional 400,000 acre-feet of controlled overdraft will be dedicated exclusively for the  
3 purpose of Desalter replenishment. (Proposed Amended Judgment Exhibit “I” section 2.(b)[3].)

4 Under Article VII of the Peace II Agreement, Watermaster, Western Municipal Water  
5 District and the members of the Appropriative Pool will determine how to allocate the controlled  
6 overdraft among the Desalters, and according to what schedule it will be used. To the extent that the  
7 groundwater wells for the new Desalters (aka “Future Desalters”) pump at least 50% of their water  
8 from the “Southern End” of the Basin as defined graphically on Exhibit “3” to the Peace II  
9 Agreement, the Future Desalters will have first priority to the controlled overdraft water.  
10

11 In this way, and as described further below, the allocation of the controlled overdraft water  
12 made available through Basin Re-operation directly facilitates the ability of the parties to implement  
13 the final, and perhaps most difficult, increment of desalting capacity for the Basin. Facilitation of  
14 Desalter construction is thus another way in which Basin Re-operation fulfills the purposes of the  
15 physical solution under the Judgment.  
16

17 **3. Desalters**

18 **a. Future Desalters Construction and Funding (Peace II Agreement**  
19 **Article V)**

20 One of the key elements that motivated the re-initiation of the attorney-manager process in  
21 2004 was the need to begin planning for the next increment of desalting capacity. This element was  
22 left for further negotiation at the time of the original Peace Agreement, and the Court was clear that  
23 the parties’ continued commitment to this element of the OBMP was of major concern to the Court.  
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25 The parties considered a variety of options with regard to future desalters, and the most  
26 viable proposal to emerge was one involving Western Municipal Water District (“Western”), which  
27 seeks to develop a reliable supply of water in the Basin.  
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**b. Desalter Production and Replenishment (Peace II Agreement**

**Article VI)**

The ability to forgive the replenishment obligation associated with the Desalters is a significant benefit to the parties and will greatly facilitate the construction of the next increment of Desalting capacity. The Peace II Agreement thus describes with some specificity how the Basin Re-operation water will be utilized for Desalter replenishment, and how additional Desalter replenishment obligations will be met.

**c. Satisfaction of OBMP Desalter Requirement (Peace II Agreement**

**Section 10.4)**

Under the Peace Agreement, WMWD and IEUA committed to secure funding and to design and construct the Future Desalters. Under section 10.4 of the Peace II Agreement, once WMWD has completed the planned 10,000 acre-foot expansion of desalter groundwater production, it and IEUA will be released from their commitments under the Peace Agreement.

**4. Recharge (Peace II Agreement Article VIII)**

The parties recognize that at the end of the period of Basin Re-operation, a replenishment obligation relative to the desalters will need to be satisfied. During the period of Re-operation demands on the Basin will continue to grow, and at the end of the Re-operation period Watermaster's recharge capabilities may not be sufficient to meet the desalter replenishment obligation unless this recharge capacity continues to develop throughout the Re-operation period. The proposed Judgment amendment regarding Re-operation describes measures that will be taken in order to continually update and implement the Recharge Master Plan in order to ensure that sufficient recharge capacity exists in the future, and these commitments are further mirrored in the Peace II Agreement Article VIII.

**5. Court Review**

1 The Court has a dual role to (1) resolve disputes between the parties, and if there are none to  
2 allow the parties to adapt their stipulated judgment to fit ongoing changing circumstances, and (2) to  
3 be protective of the Basin itself consistent with Art. X, sec. 2.

4 No party has objected to the initiation of the Basin Re-operation strategy. As described above  
5 in section II.B.3., the development of the Basin Re-operation strategy took place over a long period  
6 of time through an open and active public process that was open to all the parties to the Judgment  
7 and that actually included broad participation by such parties. The strategy itself, and the terms and  
8 conditions under which it will be pursued, have been negotiated in a way that has achieved broad  
9 consensus among all parties to the Judgment.  
10

11 The Basin Re-operation strategy is consistent with the OBMP because it accomplishes the  
12 goal of yield protection and yield maximization. Furthermore, it makes possible the achievement of  
13 Hydraulic Control which is a prerequisite to continued utilization of the Maximum Benefit Standards  
14 under the Basin Plan Amendments, which allow for the increased use of recycled water in the Basin.  
15 Continued utilization of the Maximum Benefit Standards is of paramount importance because, as  
16 their name implies, their adoption was authorized by the RWCQB to allow for maximum beneficial  
17 use of Basin water, consistent with Article X, section 2 of the California Constitution.  
18

19 **B. Non-Agricultural Pool Water**

20 There are two different transfers at issue – the one time transfer of the water held in  
21 storage, and the ongoing transfer to the Appropriative Pool. The former requires a Judgment  
22 Amendment, and the latter is done under the Peace Agreement, though the latter also requires a  
23 Judgment amendment in this instance because it is contemplated that the transferred water may be  
24 distributed to the Appropriative Pool members.  
25

26 The Peace II documents relevant to this issue include the proposed amendments to Paragraph  
27 8 of the Judgment and to Exhibit “G” of the Judgment (Resolution 07-05 Attachments “H” and “I”  
28

1 respectively). Also directly relevant is the Purchase and Sale Agreement which will serve as the  
2 implementation of the Judgment Amendments. This document is attached to Resolution 07-05 as  
3 Attachment "G."

4  
5 In addition to the water currently held in storage by the Non-Agricultural Pool, there is  
6 currently a yearly surplus of water from this Pool that could be put to beneficial use rather than  
7 allowed to accumulate in storage. Consistent with the goal of making maximum use of the water  
8 available to the Basin, the documents describe a program by which Watermaster will offer to  
9 purchase any surplus water from the Pool. Participation in this program is voluntary for the members  
10 of the Pool, but exists as a guaranteed option if they wish to take advantage of it.

11  
12 This proposed Judgment amendment must be read in the context of the interpretation given to  
13 the appurtenancy requirement in the Peace Agreement. Under the Peace Agreement, the members of  
14 the Non-Agricultural Pool were given the right to transfer their water rights off the adjudicated  
15 overlying land to other members of the Pool or to Watermaster for use as Desalter replenishment or  
16 for use in a Storage and Recovery Program. (Peace Agreement section 5.3(e).) This interpretation  
17 recognized the limitations on transferability of the Non-Agricultural Pool water, but as a matter of  
18 policy also recognized that the Judgment did not intend that this water simply accumulate in storage  
19 and never be available for use. Since the time of the Peace Agreement, the ability of the Non-  
20 Agricultural Pool members to transfer amongst themselves has not proven sufficient to allow this  
21 water to be put to maximum beneficial use pursuant to Article X, section 2 of the Constitution. The  
22 parties have thus deemed it necessary to relax further the transferability limitations in order to  
23 accomplish this policy objective.

24  
25 The proposed amendment is thus consistent with Article X, section 2, and is consistent with  
26 the intent of the Judgment to limit the movement of this water away from its appurtenant land and  
27 yet still allow maximum beneficial use of the available water resources of the Basin.  
28

1           **C.     Peace II Agreement Amendment Regarding OBMP Credits (Attachment “L” to**  
2 **Resolution 07-05, Section 1)**

3           Under section 5.4(d) of the Peace Agreement parties were given the opportunity to submit an  
4 Application using Form 7 (found as an Appendix to Watermaster’s Rules and Regulations) for a  
5 credit against future OBMP Assessments for a project constructed by the applicant that advanced the  
6 purposes of the OBMP. The parties have agreed to modify this credit provision so that it is limited  
7 specifically to Applications that address the issue of subsidence.  
8

9           Ultimately this amendment concerns only an internal financing mechanism for paying for  
10 measures that advance the purposes of the OBMP. In the absence of any opposition to this Peace  
11 Agreement amendment, the Court should respect the desires of the parties and approve it.  
12

13           **D.     Peace II Agreement Amendment Regarding Increase in Storage Cap**  
14 **(Attachment “L” to Resolution 07-05, Section 2)**

15           The question to be addressed by the Court here is whether there is any reason not to allow  
16 this amendment. The storage space is recognized as an asset of the Basin as a whole. Watermaster is  
17 given discretionary power to manage the use of the space for the purpose of conferring broad mutual  
18 benefit. In the Peace Agreement a certain scheme was presented, now the parties wish to make a  
19 modest modification to that. If it is uncontested, the Court should demand that a compelling reason  
20 would need to be shown for the Court not to respect the unanimous wishes of the parties.  
21

22           **E.     Other Peace Agreement II Issues**

23           **1.     Non-Ag Pool Intervention (Peace II Agreement section 4.4)**

24           There are members of the Appropriative Pool that own overlying land and may use water on  
25 that land for overlying purposes. There is nothing in the Judgment which requires that a member of  
26 one Pool cannot at the same time be a member of another Pool, and there is nothing in the Judgment  
27 that says all water usage by an Appropriative Pool member must be considered an appropriative use  
28



1 of water. Section 4.4 of the Peace II Agreement clarifies that any Party to the Judgment may  
2 intervene into the Non-Agricultural Pool without modifying the requirement that all Non-  
3 Agricultural Pool rights are currently allocated and can only be obtained through purchase or  
4 otherwise from an existing right holder, and that any exercise of those right must be for overlying  
5 purposes on overlying land.  
6

7 This provision does not alter anything in the Judgment or the Peace Agreement and merely  
8 clarifies that overlying landowners who wish to pump water for overlying non-agricultural uses may  
9 intervene into the Judgment for such purposes. The provision is thus consistent with the Judgment,  
10 and no party has opposed it.

11 **2. Recharge (Peace II Agreement Article VIII)**

12 The parties have decided that the specific program as described in the Peace Agreement,  
13 where 6500 AFY of Supplemental Water was purchased for recharge in MZ1, is no longer  
14 necessary. The water purchased under this program was separate from replenishment water. There is  
15 no longer a need to specifically continue the purchase of 6,500 AFY of Supplemental Water, though  
16 there is reason to make sure that water is physically recharged in MZ1. Thus, the Peace II  
17 Agreement specifies that Watermaster will continue to physically recharge at least 6500 AFY in  
18 MZ1, but it does not need to purchase water separate from, and in addition to, replenishment water  
19 in order to accomplish this. There may be conditions under which Watermaster wants or needs to  
20 purchase Supplemental Water for this purpose, but if there is enough replenishment water available,  
21 it can meet the obligation to MZ1 with this water.  
22  
23

24 This commitment is consistent with the OBMP goal of maintaining hydrologic balance in the  
25 Basin and no party has opposed it.

26 **3. Three Valleys Municipal Water District Issues (Peace II Agreement**  
27 **sections 9.1 and 10.3)**  
28

1 Under section 9.1 of the Peace II Agreement, Three Valleys Municipal Water District  
2 (“TVMWD”) has committed to assisting in the management of the Basin through a financial  
3 contribution of \$300,000 to study the feasibility of developing a water supply program within MZ1  
4 of the Basin or in connection with the evaluation of Future Desalters. The study will emphasize  
5 assisting Watermaster in meeting its OBMP Implementation Plan objectives of concurrently  
6 securing Hydraulic Control through Re-operation while attaining MZ1 subsidence management  
7 goals. Further, TVMWD has expressed an interest in participating in future projects in the Basin  
8 that benefit TVMWD. If TVMWD wishes to construct or participate in such future projects,  
9 TVMWD will negotiate with Watermaster in good faith concerning a possible “buy-in” payment.  
10

11 In addition, under section 10.3 of the Peace II Agreement, TVMWD will assume the  
12 financial obligation associated with the Pomona Credit arising under section 5.4(b) of the Peace  
13 Agreement.  
14

15 This provision will facilitate the development of OBMP programs and is not opposed by any  
16 party.

17 **F. Rules and Regulations Amendments (Attachment “F” to Resolution 07-05)**

18 **1. Agricultural Pool Reallocation (Attachment “F” Part I)**

19 The Judgment creates a process through which parties can file Land Use Conversion claims  
20 with Watermaster whose purpose is to reduce the Replenishment Obligation of such applicants to  
21 account for rising municipal demand based on the conversion of agricultural land. The Peace  
22 Agreement also created an “Early Transfer” of 38,000 AFY, based on the expected surplus of  
23 Agricultural Pool water expected to be otherwise transferred to the Appropriative Pool every five  
24 years. The specification of an acre-foot quantity of the Early Transfer created the possibility that the  
25 sum total of the Land Use Conversion Claims, the Early Transfer, and the actual Agricultural Pool  
26 production in any given year would total more than the rights available to the Agricultural Pool.  
27  
28

1 The Watermaster Rules and Regulations Section 6.3(c) anticipated this shortfall and specified  
2 a formula by which such a shortfall would be covered. This solution however, was set by Rule to  
3 sunset after five years. The Term Sheet describes a new method for covering any shortfall.

4 This provision is a matter of internal Watermaster accounting and is in no way inconsistent  
5 with the Judgment or the Peace Agreement and is not opposed by any party.

6  
7 **2. Storage Losses (Attachment "F" Part II.B.)**

8 One of the five-year milestones under the Peace Agreement involved providing Watermaster  
9 with the discretion to further regulate the accrual and maintenance of water held in local storage.  
10 Watermaster was also required by the Peace Agreement to begin assessing losses from storage.

11 The Peace II Agreement section 7.4 acknowledges the interplay between the concepts of  
12 losses from storage and Hydraulic Control by specifying a two-tiered loss factor. According to the  
13 technical analysis developed by Watermaster, were it not for the substantial monetary investment  
14 made by the parties in the OBMP and in the attainment of Hydraulic Control, a significant amount of  
15 water would be lost from the Basin. Were it not for the OBMP, Watermaster's analysis indicated that  
16 losses from storage would be on the order of 6% per year. Because of the achievement of Hydraulic  
17 Control, however, these losses will be reduced to a de minimus level of less than 1%. It is not  
18 equitable, however, for third party storing entities who have made no contribution to the OBMP to  
19 receive the benefits of the local parties' investments.

20  
21 Thus, the Peace II Agreement specifies that parties who have made no contribution to the  
22 OBMP but who wish to store water in the Basin, will pay an annual 6% loss on such stored water.  
23 Parties who have contributed to the OBMP, on the other hand, will be assigned a loss factor of less  
24 than 1%. Parties who have made no contribution to the OBMP can reduce their loss factor by paying  
25 a "financial equivalent" special assessment to off-set the cost of past performance.

26  
27 This provision rewards the parties for their support for the OBMP.  
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**3. Continuation of Storage Regulation (Attachment “F” Part II.C. and D.)**

The Peace II Agreement extends Watermaster’s current Local Storage rules for another five years. These rules were appropriate when adopted and remain so today.

**4. Error Corrections (Attachment “F” Part III)**

Watermaster staff has been engaged in an ongoing effort to modernize and simplify its recordkeeping and the presentation of the assessment package. In the course of doing so, staff is discovering errors in various aspects of Watermaster’s records. As this effort continues, it is likely that more such errors will be discovered in the future. While not a central issue to the Peace II process, the issue of error corrections is a timely issue and so was addressed by the parties in the Peace II Agreement. The Peace II Agreement specifies a statute of limitations of four years on the correction of errors.

**V. Conclusion and Prayer**

After literally years of debate and technical analysis, the parties have arrived at a consensus approach to the continuation of the basic set of principles that have guided the management of the Basin since 2000, with one important difference. Now, rather than merely responding to problems in the Basin such as subsidence, or water quality problems, the parties have developed the technical expertise and management acumen to be able to truly achieve the goals of the physical solution under the Judgment – to develop a management strategy that *optimizes* the Basin. That is, to develop a strategy that makes the Basin work better, for all of the parties to the Judgment and for the future generations that will depend on the Basin.

Based on all of the foregoing, Watermaster respectfully requests that the Court:


1. Approve the amendment to Exhibit “F” of the Judgment as presented.
2. Approve the amendments to Judgment Paragraph 8 and Exhibit “G” of the Judgment

as presented.

1           3.       Approve the second amendments to the Peace Agreement as presented and direct  
2 Watermaster to proceed in accordance with the Peace Agreement as amended.

3  
4           4.       Approve Watermaster's adoption of Resolution 07-05 and direct Watermaster to  
5 proceed in accordance with the terms of the Resolution and documents attached thereto.

6  
7 Dated: October 25, 2007

8 By:   
9 HATCH & PARENT  
10 Scott S. Slater  
11 Michael T. Fife  
12 Attorneys for Chino Basin Watermaster

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HATCH AND PARENT  
21 East Carrillo Street  
Santa Barbara, CA 93101

# EXHIBIT A

Watermaster Resolution 07-05 and all Peace II Documents can be found on our ftp site:

[www.cbwm.org/ftp](http://www.cbwm.org/ftp)

Look in the 2007 Peace II Folder.

## EXHIBIT B

The Wildermuth Modeling Report can be found  
on our ftp site:

[www.cbwm.org/ftp](http://www.cbwm.org/ftp)

Look in the Wildermuth Groundwater Model  
Documentation folder.

# EXHIBIT C



1 SCOTT S. SLATER (State Bar No. 117317)  
2 MICHAEL T. FIFE (State Bar No. 203025)  
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8  
9 **Attorneys For**  
10 **CHINO BASIN WATERMASTER**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN BERNARDINO**

CHINO BASIN MUNICIPAL WATER  
DISTRICT

Plaintiff,

vs.

CITY OF CHINO, ET AL.

Defendant.

**Case No. RCV 51010**

[Assigned for All Purposes to the  
Honorable MICHAEL GUNN]

**DECLARATION OF MARK  
WILDERMUTH**

DECLARATION OF MARK WILDERMUTH

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I, Mark Wildermuth declare as follows:

1. I am a hydrologist and a registered civil engineer and have been involved in the Chino Basin as such for over 25 years.
2. The original 2003 Chino Basin Groundwater Model was developed by me and under my direction, as have been all of the updates to that model, including the most recent set of 2007 updates.
3. The 2003 Chino Basin Watermaster Groundwater Model was significantly updated in 2006 and 2007. The resulting new model is referred to as the 2007 Chino Basin Watermaster Groundwater Model or 2007 Model. The construction of new model, its calibration and application to evaluate the Peace II project description is described in a draft report entitled Draft – 2007 CBWM Groundwater Model Documentation and Evaluation of the Peace II Project Description dated October 2007 (hereafter, the Report). As of date of this declaration, additional work is being done to refine the model projections and this additional work will be included in a final report. The 2007 Model incorporates all the lithologic and monitoring data collected by Watermaster including information from Watermaster’s expanded monitoring programs that resulted from the implementation of the OBMP. The model has been calibrated against historical groundwater levels over the period 1961 through 2005. In my professional opinion the quality of the calibration is excellent. The building and calibration of the 2007 Model is described in Sections 2 through 6 of the Report.
4. Since late June 2007, I have shared the technical background of the 2007 Model with Mr. Scalmanini to facilitate Mr. Scalmanini’s review. I have remained in communication with Mr. Scalmanini to keep him informed of the progress of the model update and to verify that the recommendations for model improvements contained in Mr. Scalamnini’s review of the 2003 Model were carried forward as appropriate into the 2007Model.
5. I analyzed three planning alternatives in the evaluation of the Peace II project description that included:

- 1
- 2 • Baseline Alternative – Expansion of the Desalter Capacity and the 100,000 acre-ft Dry-Year
- 3 Yield Program (DYYP). Desalter groundwater production would increase from the current level
- 4 of about 28,000 acre-ft year (2006/07) to the full capacity of the existing desalters at about
- 5 40,000 acre-ft/yr. This corresponds to an expansion of the product water capacity of about 24.2
- 6 mgd to about 33.2 mgd. This alternative includes the existing 100,000 acre-ft DYYP. This
- 7 alternative will serve as the baseline as it currently authorized and would occur without the
- 8 adoption of the Peace II Instruments. This alternative is representative of what would occur
- 9 without Peace II.
- 10
- 11 • Alternative 1A – Expansion of the Desalters, Re-Operation, and the 100,000 acre-ft DYYP.
- 12 Desalter groundwater production would increase from the current level of about 28,000 acre-ft
- 13 year (2006/07) to the full capacity of the existing desalters at about 40,000 acre-ft/yr. This
- 14 corresponds to an expansion of the product water capacity of about 29.2 mgd to about 33.2
- 15 mgd. Up to 400,000 acre-ft of the desalter replenishment obligation would be met by reductions
- 16 in groundwater storage using the Re-operation schedule shown in Table 7-6a fo the Report and
- 17 referred to as Desalter Replenishment with Most Rapid Depletion of the Re-Operation Account
- 18 This alternative includes the existing 100,000 acre-ft DYYP.
- 19
- 20 • Alternative 1B – Expansion of the Desalters, Re-Operation, and the 100,000 acre-ft DYYP.
- 21 Desalter groundwater production would increase from the current level of about 28,000 acre-ft
- 22 year (2006/07) to the full capacity of the existing desalters at about 40,000 acre-ft/yr. This
- 23 corresponds to an expansion of the product water capacity of about 29.2 mgd to about 33.2
- 24 mgd. Up to 400,000 acre-ft of the desalter replenishment obligation would be met by reductions
- 25 in groundwater storage using the Re-operation schedule shown in Table 7-6a fo the Report and
- 26 referred to as Desalter Replenishment with Proportional Depletion of the Re-Operation
- 27 Account. This alternative includes the existing 100,000 acre-ft DYYP.
- 28

Alternative 1A or 1B is what is being asked for with Peace II.. These alternatives were evaluated with the 2007 Model. They have been implemented in the model through groundwater production and replenishment projections.

6. Fourteen baseline simulations were required to obtain a Baseline Alternative that was consistent with Chino Basin Judgment and the recharge capacity available to the Watermaster for replenishment operations. The hydrology incorporated in the new model and the production projection resulted in a reduction in the future operating yield in the Baseline Alternative. The groundwater production projection for the appropriator parties was reduced so that the resulting projected replenishment obligation would not exceed the replenishment capacity available to the Watermaster. It was also necessary to reduce the net groundwater production by the Cucamonga Valley Water District (“CVWD”) and the City of Ontario to reduce the magnitude of a large

1 pumping depression that was projected by the model to occur in the north central part of the Basin.  
2 It was outside the scope of my investigation to optimize the groundwater production patterns and  
3 associated replenishment. The modified groundwater production and replenishment projections that  
4 were developed for the Baseline serve as the basis for Alternatives 1A and 1B. The replenishment  
5 obligation for the desalters were modified to reflect the Re-operation scenarios associated with  
6 Alternatives 1A and 1B.

7         7. Each planning alternative was evaluated to determine changes in groundwater level,  
8 changes in Santa Ana River discharge, changes in basin balance, hydraulic control effectiveness,  
9 changes in safe yield, and potential subsidence. This was accomplished using the updated 2007  
10 Watermaster Model to estimate the groundwater and surface water response to the planning  
11 alternatives. The impacts of Alternatives 1A and 1B were assessed by comparing the results of these  
12 simulations to the Baseline Alternative. Information was extracted from the model results to  
13 produce:

- 14         • Groundwater level projections to determine the change in groundwater levels throughout the  
15 basin, to assess hydraulic control and potential new subsidence. Maps were produced, showing  
16 the areal distribution of groundwater elevations and the change in elevations across the entire  
17 basin. Local maps were prepared in the southern end of the basin to assess hydraulic control.
- 18         • Surface water discharge projections of the Santa Ana River at Prado Dam to determine change in  
19 safe yield.
- 20         • Water balance tables to determine outflow from the Chino North Management Zone to the  
21 Prado Basin Management Zone and the Santa Ana River, new recharge from the Santa Ana  
22 River into the Chino South and Prado Basin Management Zones, the change in storage, and the  
23 change in safe yield.

24 The safe yield of the basin was estimated with the Hill method, as was used by William Carroll in  
25 the original estimate of the safe yield for the Chino Basin Judgment, with modifications to account  
26 for the artificial recharge that was not present in the base period used by Carroll.

27         8. Change in Santa Ana River discharge at Prado Dam. The Santa Ana River discharge  
28 that corresponds to the Baseline Alternative was assumed to be the threshold to measure future  
changes in basin outflow and new yield due to Re-operation. Differences between the discharge for

1 the Baseline Alternative and Alternatives 1A and 1B is the new recharge caused by Re-operation and  
2 approximates the new yield generated by Re-operation; that is, if an alternative results in a decrease  
3 in Santa Ana River discharge compared to the Baseline Alternative, the decrease in discharge would  
4 approximate the increase in yield in the Chino Basin. The new Santa Ana River recharge achieved  
5 by Re-operation is about 10,100 acre-ft/yr for Alternative 1A and 10,700 acre-ft/yr for Alternative  
6 1B; the difference between these two projections is not significant given the uncertainty of the water  
7 supply and replenishment plans in the out years. These values represent the average change in  
8 discharge from 2034/35 through 2059/60. During the period 2005/06 and 2034/35, the new Santa  
9 Ana River recharge grows rapidly from zero to 10,000 acre-ft/yr. That said it never reaches the  
10 assumed constant recharge of about 11,820 acre-ft/yr assumed in Re-operation schedules (see Table  
11 7-6a and Table 7-6b in the Report). The result of this shortfall in Santa Ana River recharge is a  
12 reduction in storage in excess of the 400,000 acre-ft provided for in the Re-operation schedules.  
13 This shortfall would have to be mitigated by increased replenishment preferably after 2030 to allow  
14 hydraulic control to be achieved.

15 9. Groundwater Level Changes. Figure 7-8 in the Report is a map that shows the  
16 location of selected wells that have groundwater level time projections for the planning alternatives  
17 which are shown in Figures 7-9a through 7-9l of the Report. The projected groundwater levels in  
18 2022/23 for each planning alternative and the difference between the 2022/23 groundwater level  
19 projection and the 2005/06 initial condition were mapped for each planning scenario for model  
20 layers 1, 2 and 3. Appendix E in the Report contains these groundwater level contour maps and  
21 change in groundwater levels. The groundwater level maps were prepared from simulations without  
22 the DYYP so that the transients introduced by the DYYP would not be confused with the change  
23 in groundwater levels caused by Re-operation. The groundwater level projections at wells were  
24 prepared from the simulations with the DYYP to illustrate the compound impacts of Re-Operation  
25 and the DYYP. The groundwater elevation changes are not uniform across the basin, and therefore  
26 some water agencies will experience greater lift and related energy expenses from Re-operation.  
27 The model results suggest that there could be some challenges in maintaining production at some  
28 wells. With some modifications to pumping and replenishment patterns, groundwater production can

1 be maintained in Alternatives 1A and 1B. From a production perspective, no material physical  
2 injury is projected to occur from the decline in groundwater levels caused by Alternatives 1A and  
3 1B.

4 10. Hydraulic Control. Hydraulic control refers to the elimination or reduction of  
5 groundwater discharge from the Chino North Management Zone to the Santa Ana River to negligible  
6 levels. It is a requirement of Watermaster and IEUA's recycled water recharge permit and a  
7 condition to gaining access to the assimilative capacity for TDS and nitrogen afforded by the  
8 Maximum Benefit based TDS and nitrogen objectives. Hydraulic control was assessed from detailed  
9 groundwater elevation contour maps prepared for layer 1 of the model for the fall of 2023 and 2053,  
10 respectively, which correspond to 10 and 40 years after the completion of the desalter system. The  
11 water level contour maps for the Baseline Alternative (see Figures 7-10a, 7-10b from the Report)  
12 generally suggest that groundwater flows away from the Santa Ana River upstream of the Prado  
13 Reservoir, south of the Desalter II well field, and south of the eastern part of the Desalter I well field.  
14 There is some indication that hydraulic control is achieved in the Baseline Alternative with about a  
15 maximum 2 to 5-foot groundwater level depression in the center of the CCWF (relative to the  
16 apparent stagnation point down gradient from the CCWF (assumed to be the 505 groundwater  
17 elevation contour), by the fall of 2023; and holding at about 2-to 5 feet through the fall of 2053. The  
18 groundwater depression achieved by the fall of 2023 contracts slightly by the fall of 2053.  
19 Hydraulic control cannot be assured with this marginal depression in the center of the CCWF and the  
20 indication that this marginal depression will contract afterwards. The general shape of the  
21 groundwater elevation contours (see Figures 7-11a, 7-11b from the Report) for Alternative 1A is  
22 similar to the Baseline except that state of hydraulic control is demonstrably more certain. The  
23 groundwater level depression in the center of the CCWF is about 13 feet by the fall of 2023 and  
24 reaches about 17 feet by the fall of 2053 or about three times that of the Baseline; and the shape of  
25 the groundwater level contours around the eastern half of the Desalter I well field demonstrates a  
26 much stronger flow pattern to the wells from the north and the south than exhibited in the Baseline  
27 Alternative. Most of this drawdown occurs by 2030, the end of the Re-operation period. The shape  
28 and locations of the groundwater elevation contours (see Figures 7-12a, 7-12b from the Report) for

1 Alternative 1B are almost identical to Alternative 1A. The groundwater level depression in the  
2 center of the CCWF reaches about 10 feet by the fall of 2023 and reaches about 15 feet by the fall of  
3 2053 or more about double that of the Baseline; and the shape of the groundwater level contours  
4 around the eastern half of the Desalter I well field demonstrates a much stronger flow pattern to the  
5 wells from the north and the south than exhibited in the Baseline Alternative. Alternative 1A is  
6 superior to 1B in the near term and comparable to 1B after 2030.

7  
8 One of the assumptions in the Baseline Alternative is that the basin is operated in balance pursuant  
9 to the Judgment with the desalters offsetting the decline in agricultural production. That balance has  
10 historically included a significant discharge from the Basin to the Santa Ana River. Managing the  
11 net production from the basin to the operating yield and the dependence on the sustained production  
12 by others will produce a marginal state of hydraulic control at best; a state of hydraulic control that  
13 cannot be assured. The model projections for Alternative 1A and 1B demonstrate achievement of  
14 hydraulic control. Re-operation is required to rapidly achieve and maintain hydraulic control. My  
15 analysis found that it may be possible to achieve a weak state of Hydraulic Control under the  
16 Baseline Alternative where the state of hydraulic control is not robust and could be lost at any time  
17 due to a variety of changes in Basin conditions such as changes in groundwater pumping,  
18 replenishment, and groundwater storage. A weak state of hydraulic control or non-attainment of  
19 hydraulic control could result in the loss of the maximum benefit objectives and subsequently either  
20 the loss of the use of recycled water in the basin or cause the cost of recycled water use to be  
21 increased substantially to levels that would prohibit its use relative to imported water. The Baseline  
22 Alternative would result in material physical injury to the parties. Alternatives 1A and 1B result in  
23 significantly greater reductions in groundwater levels in the Chino Creek Well Field and a reliable  
24 state of hydraulic control. Under this evaluation criterion no material physical injury would occur  
25 with Alternatives 1A or 1B.

26 11. Safe Yield. The safe yield in the Chino Basin is projected to decrease for the  
27 Baseline Alternative and Alternatives 1A and 1B. The safe yield decreases at a slower rate in  
28 Alternatives 1A and 1B than the Baseline Alternative. Alternatives 1A and 1B result in an increase

1 in safe yield relative to the Baseline Alternative. For the period 2005/06 through 2016/17, the  
2 operating safe yield for the Baseline Alternative declines from about 140,000 to about 135,000 acre-  
3 ft/yr. For the period after 2016/17 the safe yield for the Baseline Alternative declines gradually from  
4 about 135,000 acre-ft/yr to about 116,000 acre-ft/yr by the end of 2059/60. The safe yield declines  
5 due to the change in land use and associated water use patterns from the conversion of agricultural  
6 and vacant land uses to urban uses through 2025. For the period 2005/06 through 2016/17, the safe  
7 yield increase relative to the Baseline Alternative is projected to reach about 1,100 to 1,300 acre-  
8 ft/yr 2016/17, and to steadily increase to about 7,200 to 8,100 acre-ft/yr by 2040 and to 11,000 to  
9 11,300 acre-ft/yr by 2060. Note that the post 2034/35 estimates of safe yield are consistent with the  
10 increase in Santa Ana River recharge discussed above. There are no reductions in yield projected for  
11 Alternatives 1A and 1B relative to the Baseline Alternative; thus, there is no material injury related  
12 to safe yield changes. The safe yield changes associated with Alternatives 1A and 1B are consistent  
13 with the goal of the OBMP to protect and enhance the safe yield of the Basin.

14 12. Since we published the Report and distributed it for comment, we have received some  
15 comments regarding some of our observations and data in the report, particularly as it relates to the  
16 Baseline Alternative. Concern has been expressed about certain conditions in the Basin that will  
17 prevail regardless of whether Watermaster pursues Re-operation. The most prominent subject for  
18 discussion is the 2007 Model's prediction that operating safe yield will be reduced from the present  
19 assumed levels. Recharge to the Basin is being impacted by urbanization and the armoring of the  
20 Basin. The potential reduction in operating safe yield is worse without Re-operation. With Re-  
21 operation, the 2007 Model predicts that operating safe yield will be approximately 10,000 acre-feet  
22 per year higher.

23 13. Subsidence. My analysis found that there will no new inelastic subsidence in the  
24 managed area of Management Zone 1 in the Baseline Alternative and Alternatives 1A and 1B East  
25 of managed area of Management Zone 1 there will likely be some broad-scale, small subsidence  
26 caused by the regional lowering of groundwater levels that should not pose challenges to either  
27 surface structures or underground utilities. There should be no material physical injury due to  
28 subsidence from the change in groundwater levels caused by Alternatives 1A or 1B.



1           14.     The model analysis has shown that to reliably achieve Hydraulic Control, at least  
2 400,000 acre-feet of controlled overdraft will be necessary. This amount is a minimum amount that  
3 will be needed. It is possible that in the future we may determine that additional controlled overdraft  
4 is necessary.

5           15.     Based on my knowledge of the Chino Basin and the analysis obtained from the use of  
6 the 2007 Model, it is my professional opinion that the Basin Re-operation strategy as described in  
7 the Project Description will advance the OBMP goals of yield enhancement and preservation.

8           16.     Based on my knowledge of the Chino Basin and the analysis obtained from the use of  
9 the 2007 Model, it is my professional opinion that the Basin Re-operation strategy as described in  
10 the Project Description is a necessary measure in order to achieve and maintain Hydraulic Control.

11          17.     Based on my knowledge of the Chino Basin and the analysis obtained from the use of  
12 the 2007 Model , it is my professional opinion that the Basin Re-operation strategy as described in  
13 the Project Description will not cause Material Physical Injury.

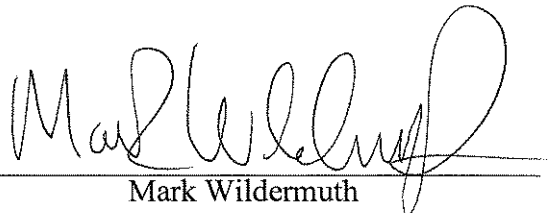
14          18.     All of the conclusions described above are contained in the 2007 CBWM  
15 Groundwater Model Documentation and Evaluation of the Peace II Project Description report or this  
16 Declaration. This Report is labeled a draft report, because we intend to continue to refine and  
17 develop our analysis as we move forward over the next few months. However, the conclusions  
18 contained in the report and described in this Declaration are complete and satisfactory for decision  
19 making. Any further refinements to the planning information used in the model are not anticipated to  
20 change the conclusions reached in the report and this Declaration.

21          19.     I have also received several questions regarding some collateral subjects that were  
22 included within the report but were in large part, beyond the scope of the study. For example,  
23 questions have been raised as to several assumptions such as my decision to limit certain  
24 groundwater production by some of the producers. I never contemplated actually limiting the  
25 production of any specific party. To the contrary, I simply made what I believe to be a reasonable  
26 assumption that given the presently planned for recharge capacity and expected availability of water  
27 for recharge, there would be physical limitations on how much water could be produced by  
28 individual agencies. I began with the production expectations of the parties that are reflecting within

1 their published urban water management plans. I then adjusted those projections by what I  
2 understand the physical limitations on actual production will be unless and until expanded recharge  
3 capability is provided. This expanded recharge capability might be provided through more efficient  
4 use of existing facilities, new recharge basins, and more expansive use of recycled water. However,  
5 it is more likely that the most efficient and cost-effective approach to expand recharge will be the  
6 use of aquifer storage and recovery ("ASR"). The Report utilizes an assumption that replenishment  
7 water will be available from the Metropolitan Water District ("MWD") which is a reasonable  
8 assumption based upon published estimates from the MWD. In any event, how Watermaster will  
9 address the planning, design, permitting and construction of expanded recharge facilities was beyond  
10 the scope of the present study and will be comprehensively addressed in the recharge master  
11 planning effort that is contemplated by the Peace II Measures.

12  
13 The foregoing is true and correct to the best of my knowledge.

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15  
16 Dated: October 25, 2007

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28  
By:   
Mark Wildermuth

**CHINO BASIN WATERMASTER**  
**Case No. RCV 51010**  
**Chino Basin Municipal Water District v. The City of Chino**

**PROOF OF SERVICE**

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On October 25, 2007, I served the following:

**1) MOTION FOR APPROVAL OF PEACE II DOCUMENTS**

BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

**See attached service list: Mailing List 1**

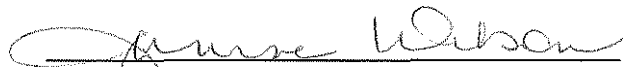
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 25, 2007 in Rancho Cucamonga, California.

  
\_\_\_\_\_  
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