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4 SPECIAL REFEREE
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION**

10
11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

12 Plaintiff,

13 v.
14

15 THE CITY OF CHINO, et al.

16 Defendants.
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CASE NO. RCV 51010

Judge: Honorable J. Michael Gumm

SPECIAL REFEREE'S FINAL
REPORT AND RECOMMENDA-
TIONS ON MOTION FOR
APPROVAL OF PEACE II
DOCUMENTS

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1 I. PROCEDURAL CONTEXT

2 On October 25, 2007, Watermaster filed its *Motion for Approval of Peace II Documents*
3 (“Motion”) with the court, and requested that a hearing on the Motion be set for November 29,
4 2007. Watermaster filed with its Motion a draft of its Technical report and the Peace II
5 documents. On November 15, 2007, the court issued an *Order to Show Cause Why Court*
6 *Should Not Continue the Hearing on Motion for Approval of Peace II Documents* (“OSC”). The
7 OSC stated that the court intended to continue the hearing on Watermaster’s Motion “. . . absent
8 sufficient cause being shown by, among other things, testimony of Mark Wildermuth elicited on
9 November 29, 2007.”¹ (OSC p. 4, lns. 24-25) The Chino Basin Water Conservation District
10 filed a *Response* to the OSC on November 19, 2006, and Watermaster filed a *Response to Order*
11 *to Show Cause and Conservation District* on November 26, 2007.

12 The Special Referee’s *Preliminary Comments and Recommendations on Motion for*
13 *Approval of Peace II Documents* (“Preliminary Report”) was filed on November 27, 2007. On
14 November 29, 2007, Watermaster and the Chino Basin Water Conservation District entered into
15 and filed a stipulation stating the Conservation District’s support for the Court’s approval of the
16 Peace II Measures in consideration for certain clarifications.² On December 13, 2007,

17
18 ¹ The Order stated in full:

19 The Court anticipates that a significant investment of time will be necessary to carefully review the
20 documents. The Court also is most interested in receiving the Special Referee’s Report. Finally,
21 the Court has not yet received Wildermuth Environmental’s final technical analysis and report.
22 For these reasons and because of the importance of the decision, the Court *motu proprio* intends to
continue the hearing on Watermaster’s motion, absent sufficient cause being shown by, among
other things, testimony of Mark Wildermuth elicited on November 29, 2007. To aid the Court in
its preparation for the November 29, 2007 hearing, a declaration by Mark Wildermuth, showing all
of the changes made in the final Technical Report or a red-lined version of the report, would be
helpful.

23 (OSC p. 4, lns. 19-28)

24 ² These included that:

25 Watermaster will not request the Court’s final approval of the Peace II Documents until the Court
26 has received a report from the Special Referee regarding Watermaster’s Motion. . . Watermaster’s
27 Motion shall not be construed as a present request for Court approval of the right to produce more
28 than 400,000 acre-feet of additional controlled overdraft. . . [T]he availability of the 400,000 acre-
feet of controlled overdraft is expressly conditioned upon Watermaster’s continuing obligation to
develop and update the Recharge Master Plan. . . Watermaster will address any issues concerning
the reliability of imported water through the Recharge Master Plan effort. . . Watermaster will
address any issues concerning reduction in Safe Yield in accordance with the Judgment and pro-
rate the shortages among the members of the Appropriative Pool in accordance with their
respective shares of Operating Safe Yield.

1 Watermaster filed its Second Transmittal of Supplemental Documents, which included the
2 stipulation as Exhibit "A".³ The Referee's report was filed as a preliminary report due to the
3 exceedingly compressed time available between receipt of Watermaster's Motion on October 27,
4 2007, and the November 29, 2007 hearing. As noted in the Preliminary Report, it was
5 anticipated that testimony at the hearing could resolve or explain many of the issues and
6 questions raised in the Preliminary Report and that legal questions could be addressed through
7 Watermaster filing a Memorandum of Points and Authorities.

8 The court held a hearing on November 29, 2007, with testimony from Mr. Manning and
9 Mr. Wildermuth. The Reporter's Transcript was available December 11, 2007, and Watermaster
10 filed its *Response to Special Referee's Preliminary Comments and Recommendations on Motion*
11 *for Approval of Peace II Documents* ("Response") on December 14, 2007. The Watermaster
12 Response noted that: "The technical issues raised by the Referee are addressed in a separate
13 document that is being prepared by Mark Wildermuth, which will be filed at a later date."
14 (Watermaster Response p. 2, fn. 2) Mr. Wildermuth's Letter Report to Watermaster on the
15 subject "Evaluation of Alternative 1C and Declining Safe Yield" (December 18, 2007)
16 ("Wildermuth Letter Report") was filed with the court December 19, 2007.

17 **II. REQUEST FOR COURT GUIDANCE AS TO SPECIAL REFEREE'S ROLE**

18 **A. Special Referee and Watermaster Relationship and Roles**

19 Research has been conducted in the past on the appropriate time that should be allowed
20 for parties and Watermaster to respond to a Special Referee Report, and it was concluded that a
21 Special Referee report should be filed 30 days in advance of the court's hearing, with responses
22 in 20 days and an opportunity for any Special Referee response 5 days before a hearing on the
23 matter at hand. In this case, that has not been possible. Because of Watermaster's and the
24 parties' urgent desire to have the court rule by the end of 2007, every effort has been made to
25 provide the Preliminary Report before the November 29 hearing, and to provide this Final Report
26 and Recommendations as soon as humanly possible.

27 ³ Exhibit "B" was a Declaration from Ronald Craig on behalf of the City of Chino Hills, and Exhibit "C" was a
28 Declaration from Eldon Horst for Jurupa Community Services District, both in support of approval of the Peace II
Measures.

1 But this is not the issue raised by Watermaster's Response. Watermaster asks the court
2 for guidance as to how it, as an arm or extension of the court, and the Special Referee, as an
3 extension of the court, are to work together, and what the respective roles of Watermaster and the
4 Special Referee are. The role of the Special Referee is to (1) provide the court with as full and
5 complete explanations as possible of what the Watermaster requests or of issues that have been
6 brought to the court; and (2) to make recommendations to the court as appropriate.

7 Watermaster's role under the Judgment is to operate as an extension of the court and "to meet the
8 needs of the court in carrying out its obligations under the Judgment and Article X, Section 2 of
9 the California Constitution." (Response p. 3, Ins. 2-3)

10 Watermaster suggests that the respective roles of the Watermaster and Special Referee
11 are particularly difficult or markedly different where there is an unopposed motion supported by
12 all the parties. Whether a motion is unopposed or opposed, Watermaster and the Special Referee
13 each has a role to be carried out. The Special Referee may be less constrained than Watermaster
14 in raising questions and voicing concerns with the goal of clarifying and completing the record
15 for the court, because Watermaster has facilitated the years of intense negotiations that have
16 culminated in the unopposed Motion.⁴

17 A calm reading of the Preliminary Report will reveal that the Special Referee is not a
18 "quasi-adversary" or an adversary of any kind. The report does four things: (1) it raises
19 questions that have not been addressed by Watermaster's Motion; (2) it raises questions
20 concerning the Technical Report⁵ and the Technical Report's support for the Peace II measures;
21 (3) it lists the fundamental questions to be addressed in order for the court to be reassured that
22 Watermaster has fully evaluated the risks and consequences of Basin reoperation; and (4) it sets
23 out issues for Watermaster to respond to, with the goal of obtaining as complete a record as
24 possible for the court before the court rules on Watermaster's Motion. With the testimony

25 ⁴ Watermaster expresses the concern that, where the parties have reached unanimous agreement, ". . . The Referee's
26 criticism or suggestion, however well-intended, can serve to instigate new rounds of negotiations and undermine the
27 ability of the Watermaster and the parties to move forward now and in the future." (Response p. 4, In. 26 to p. 5, In.
28 2)

⁵ 2007 CBWM Groundwater Model Documentation and Evaluation of the Peace II Project Description, Final
Report, dated November 2007 ("Technical Report"), transmitted to the court on November 15, 2007, as Exhibit "A"
of Watermaster's Transmittal of Supplemental Documents.

1 offered at the hearing, and with Watermaster's Response, the record is far more substantive and
2 complete, and now provides a foundation for recommendations to the court, and for the court to
3 rule on Watermaster's Motion. This process, although almost impossibly compressed, has been
4 productive.⁶

5 **B. Burdens of Producing Evidence and Burden of Proof and Standard of Review**

6 Watermaster asks for court guidance regarding the respective roles of the Watermaster
7 and Special Referee with regard to Watermaster's burden of providing evidence and the burden
8 of proof "where consensus and non-opposition is put to the test by the Referee's Preliminary
9 Report."⁷ (Response p. 5, ln. 12) Watermaster asks the court to set:

10 procedural ground rules for those instances where a report by the Referee will be
11 required and to provide appropriate notice where the Referee acts as an extension
12 of the court and as a quasi-adversary to Watermaster, also as extension of the
13 court.

13 (*Id.* lns. 13-16)

14 Where Watermaster moves the court for approval of Judgment amendments and other
15 Peace II documents, Watermaster's view is that it should be able to make "a *prima facie* showing
16 on a stipulation", and that:

17 . . . consent of the parties represents compelling, un rebutted evidence that the

18 ⁶ Watermaster was in a similar position in 2000, with regard to the court's approval of the Peace Agreement. In that
19 proceeding, Watermaster also had obtained the unanimous consent of the parties, and proposed Judgment
20 amendments were unopposed. Watermaster noted the Special Referee's recommendation that:

21 . . . Watermaster provide clarification and invited the Parties to submit a post-order memorandum
22 to the court. This memorandum would then serve to create a historical record concerning the
23 rationale and justification for the changes to assist in future interpretation and construction of the
24 Judgment and the OBMP. Watermaster agreed to provide such a memorandum and the court so
25 ordered.

26 (Watermaster Post-Order Memorandum (10/26/2000) p. 2, lns. 15-18) Watermaster acknowledged that: "The
27 Special Referee's reports raise several subject areas that would benefit from the development of further clarification
28 and an appropriate record to aid in future judicial construction." (*Id.* p. 3, lns. 6-7)

⁷ Watermaster complains to the court:

25 Parties will be discouraged from making compromises in favor of taking their chances in an
26 adversarial process if announcing a previously unformulated and undisclosed position of the
27 Referee converts hearings for approval from a *prima facie* showing on a stipulation to an
28 adversarial hearing in which a portion of negotiated benefits are denied a stakeholder group. In a
world of water chaos and water conflict, Watermaster's view is that consent of the parties
represents compelling, un rebutted evidence that the Peace II Measures are both consistent with the
Judgment and in the public interest.

(p. 5, lns. 4-10)

1 Peace II Measures are both consistent with the Judgment and in the public
2 interest.

3 (Watermaster Response p. 5, lns. 6-9) Watermaster does not indicate whether this argument is
4 intended to apply both to the approvals it is seeking under Judgment Paragraph 15 and those it is
5 seeking under Judgment Paragraph 31.

6 The Preliminary Report discussed Watermaster's argument that the "compelling
7 evidence" standard of Judgment Paragraph 15(d) should apply to the Watermaster's proposed
8 Judgment amendments, and explained that application of the Paragraph 15(d) standard is limited
9 to issues not raised in Watermaster's Motion. (Preliminary Report pp. 28-29) For Paragraph 15
10 motions, the court's inquiry is whether a proposed amendment is in the public interest, protects
11 the rights of the parties under the Judgment, is consistent with and promotes the Judgment's
12 Physical Solution, and is consistent with California Constitution Article X, section 2.

13 For elements of Watermaster's Motion brought under Judgment Paragraph 31, that
14 paragraph itself sets out the standard of review. As noted in the Preliminary Report, the court
15 must weigh the evidence⁸ and must analyze whether the action or decision is consistent with and
16 promotes the Physical Solution, is in the public interest, and is not contrary to California
17 Constitution Article X, section 2.⁹ (*Id.* p. 29, lns. 16-25)

18 Watermaster "'concedes' that these factors should be considered by the Court."
19 (Response p. 16, ln. 12) Its Response addresses all of these standard of review issues.

20 ////

21 ////

22 ⁸ Watermaster complains that:

23 Unfortunately . . . the Referee Report treats the unanimous support for the Peace II measures as
24 largely irrelevant and generally gives little or no weight to the recommendations of Watermaster –
25 the entity appointed by the Court to administer the Judgment. For purposes of evaluating
26 Watermaster's Motion to approve the Peace II Measures, we ask that due consideration be given to
the Court's prior decision to appoint Watermaster as the entity responsible for administration of
the Judgment and that great weight be given to unopposed Watermaster proposals. Surely the
history of the past seven years suggests this deference is warranted and it is not inconsistent with
the Court's desire to have further information and the need to make a record for posterity.

(Response p. 6, lns. 16-24) It should be noted that it is the court who is charged with weighing the evidence.

27 ⁹ Judgment Paragraph 31 only allows Watermaster to bring a Paragraph 31 motion "in the case of a mandated
28 action." This is why the Preliminary Report pointed out that Watermaster's Motion had not established that the
Paragraph 31 aspects of its Motion were "mandated actions". (Preliminary Report pp. 26-27)

1 **III. LEGAL QUESTIONS RELATED TO PEACE II DOCUMENTS**

2 **A. Proposed Amendment to Judgment Exhibit “I”**

3 **1. Issues Raised in Preliminary Report**

4 An initial issue raised in the Preliminary Report concerned Watermaster’s Technical
5 Report and whether it supported the proposed amendment to allow a maximum of 400,000 acre-
6 feet of unreplenished desalter production. This issue is discussed in Section IV.A, below.

7 Watermaster presented evidence at the November 29, 2007 hearing that Watermaster would
8 further analyze a project with only 400,000 acre-feet of unreplenished desalter production.

9 Watermaster filed the Wildermuth Letter Report on December 19, 2007, to further address what
10 it refers to as “Alternative 1C”.¹⁰

11 The Preliminary Report discussed Watermaster’s concern that Basin reoperation must
12 proceed hand-in-hand with recharge planning and implementation. It will be necessary to “. . .
13 continually update and implement the Recharge Master Plan in order to ensure that sufficient
14 recharge capacity exists in the future. . .” (Watermaster Motion p. 15, lns. 24-25) Well before
15 the end of the “period of Basin Re-operation”,¹¹ a replenishment obligation for the desalters will
16 have to be satisfied.¹² Demands on the Basin will continue to grow:

17 . . . and at the end of the Re-operation period Watermaster’s recharge capabilities
18 may not be sufficient to meet the desalter replenishment obligation unless this
recharge capacity continues to develop throughout the Re-operation period.

19 (*Id.* p. 15, lns. 19-22) Recharge capabilities will have to meet all Watermaster recharge
20 obligations, not just recharge needs for desalter replenishment.¹³

21 The proposed Judgment Exhibit “I” amendment requires Watermaster to update and
22 obtain court approval of its Recharge Master Plan with the purpose of addressing

23 . . . how the Basin will be contemporaneously managed to secure and maintain

24 _____
25 ¹⁰ As noted in Section IV.A, it is recommended that further technical analysis and a new full report focused on
400,000 acre-feet be prepared and submitted to the court for approval.

26 ¹¹ The “period of Basin Re-operation” is defined as the period until December 31, 2030. (Proposed Judgment
Exhibit “I”, ¶ 2(b)(3))

27 ¹² This is shown clearly on all versions of the Exhibit “E” tables as the “Residual Replenishment Obligation”.

28 ¹³ Watermaster agrees that “recharge water planning must take into account all necessary future recharge needs, not
just recharge for desalter pumping . . . , and that the amendment to Exhibit “I”, Paragraph 2(b)(5) “. . . requires that
the cumulative pumping be considered when calculating all recharge needs.” (Response p. 32, lns. 15-18)

1 Hydraulic Control and [be] operated at a new equilibrium at the conclusion of the
2 period of Re-Operation.

3 (Motion Exh. A, Attachment “J” ¶ 2(b)(5))

4 The amendment also requires Watermaster to prepare, adopt, and obtain court approval of
5 a “contingency plan” and to be in “substantial compliance” with a court-approved Recharge
6 Master Plan. (*Id.* ¶ 2(b)(6)) The Preliminary Report asked questions about these provisions,
7 including the meaning of “new equilibrium”, “contingency plan”, and “substantial compliance”.
8 The concept of “new equilibrium” was particularly troublesome and the Preliminary Report
9 recommended that a technical and legal evaluation of the issue should be made available to the
10 court.¹⁴

11 Finally, the Preliminary Report urged that Watermaster’s proposed amendment to
12 Judgment Exhibit “I” must be consistent with the Judgment and its Physical Solution, must
13 promote the general public interest and not interfere with the rights of the parties, and must be
14 consistent with Article X, section 2 of the California Constitution.

15 2. Watermaster Response

16 Watermaster makes it clear that it is seeking only 400,000 acre-feet of “controlled
17 overdraft” notwithstanding its Technical Report’s analysis of 600,000 acre-feet of unreplenished
18 desalter production based on substantially overstated New Yield projections.¹⁵ (*See, e.g.,*
19 *Response pp. 27-28*)

20 Watermaster addresses the specific questions raised in the Preliminary Report. At the
21 November 29, 2007 hearing, Mr. Manning described a “contingency plan” as “including
22 strategies that would be used if there was a problem getting water”, as opposed to the Recharge
23 Master Plan, which “encompasses all strategies necessary to get water in the ground.”¹⁶
24 (Response p. 31, lns. 4-6) The specific examples given by Mr. Manning were “conservation
25

26 ¹⁴ Preliminary Report pp. 61-63. “New equilibrium” is again discussed in Section VIII, below.

27 ¹⁵ *See* discussion in Section IV, below, of the 400,000 acre-foot technical analysis and issues related to the Exhibit
28 “E” Initial Schedule.

¹⁶ Mr. Slater added the explanation that a contingency plan would “cover the future eventuality of a Whoops . . .”
(Reporter’s Transcript p. 47, lns. 22-24)

1 measures” and recharge or pumping strategies to “shift demand from one location where there
2 may be additional sources of water to other places where there may not be.” (Reporter’s
3 Transcript p. 67, Ins. 23-25) Watermaster has not described the “contingency plan” as a
4 “mitigation plan”.¹⁷ Watermaster has not indicated when it will prepare a “contingency plan”.

5 Updating the Recharge Master Plan is a key Watermaster obligation, and Watermaster
6 must be in “substantial compliance” with the updated plan.¹⁸ Watermaster clarifies that
7 Watermaster will decide whether it is in “substantial compliance in moving toward its court
8 approved Recharge Master Plan goals. . .” (Response p. 32, Ins. 6-7) If a party contests the
9 Watermaster’s finding, appeal under Judgment Paragraph 31 is available: “In this way, the Court
10 maintains control over the development of the Plan itself and Watermaster’s ongoing process.”¹⁹
11 (*Id.* p. 32, Ins. 8-9)

12 After the “period of reoperation”, the Peace II documents state that there will be a “new
13 equilibrium”. Watermaster has not defined the term, but states that its plain meaning is “state of
14 balance”, “an end to the preceding phase of overdraft and a return to balance, or safe-yield
15 management”. (Response p, 32, Ins. 12-13)

16 On the overarching questions of whether the proposed amendment to Judgment Exhibit
17 “I” should be approved, Watermaster provided detailed argument that the amendment would be
18 consistent with the Judgment’s Physical Solution, would promote the public interest and protect
19 the rights of the parties, and would be consistent with California Constitution Article X, section
20 2. (Response pp. 16-23) Key points include:

21
22 ¹⁷ Proposed Exhibit “I” Paragraph 2(b)(6) provides that a “contingency plan” will establish “conditions and
23 protective measures that will avoid unreasonable and unmitigated material physical harm to a party or to the Basin
and that equitably distributes the cost of any mitigation attributable to the identified contingencies. . .” It is still not
clear what this language means.

24 ¹⁸ Peace II Agreement Section 8.3 sets out this obligation clearly:

25 Continuing Covenant. To ameliorate any long-term risks attributable to reliance upon un-
26 replenished groundwater production by the Desalters, the annual availability of any portion of the
400,000 acre-feet set aside as controlled overdraft as a component of the Physical Solution, is
27 expressly subject to Watermaster making an annual finding about whether it is in substantial
compliance with the revised Watermaster Recharge Master Plan pursuant to Paragraphs 7.3 and
8.1 above.

28 ¹⁹ Under Judgment Paragraph 31, the court on its own motion can review all Watermaster actions, decisions, or
rules.

- 1 • No party “has claimed that the Peace II Measures will cause them unmitigated harm”.
2 (*Id.* p. 18, lns. 12-13) There can be no better evidence that there is no harm to the private
rights in the Basin than the unanimous consent of the Basin parties. (*Id.* p. 20, lns. 26-27)
- 3 • “The unanimity of . . . public entities is the best evidence there is that the measures
4 proposed for approval are in the public interest.” (*Id.* p. 20, lns. 9-11)
- 5 • “The Peace II measures will promote the construction of the final increment of desalter
6 capability. . . (*Id.* p. 19, lns. 10-11)
- 7 • “Basin Reoperation will halt the outflow of water from the Basin which will preserve
8 yield. . .”²⁰ (*Id.* lns. 12-13)
- 9 • “Basin Reoperation will also have the effect of inducing water into the Basin which will
10 help to mitigate for the anticipated reduction in Safe Yield.” (*Id.* lns. 18-19)
- 11 • “[T]he central purpose to pursuing the Basin Reoperation strategy is to achieve Hydraulic
12 Control, which is a requirement in order to gain access to the Maximum Benefit
Standards under the Basin Plan for the Santa Ana Region.” (*Id.* p. 21, lns. 3-5)
- 13 • Maximum Benefit Standards are in accordance with the Constitutional mandate of Article
14 X, section 2. (*Id.* lns. 9-12)
- 15 • “. . . [A]chieving Hydraulic Control facilitates the use of recycled water in the Chino
16 Basin. . . With the regulatory approval from the RWQCB [Regional Water Quality
17 Control Board], based upon the promise of the Basin to achieve Hydraulic Control, this
source of supply is now available to the Basin.” (*Id.* lns. 18-19, 23-25)
- 18 • Consistency with and promotion of the Physical Solution “. . . follows from the fact that
19 the change in the management strategy from the replenishment of all production to one
20 that temporarily authorizes controlled overdraft for a defined period is consistent with the
party objectives to reduce reliance on the purchase of imported water for replenishment
21 through the substantial increase in the use of recycled water.” (*Id.* p. 18, lns. 16-19)
- 22 • “[W]hile there may be economic benefits, the primary reasons for pursuing the strategy
23 all relate to enhancing opportunities for beneficial use. The economic benefits are
24 actually earmarked for the desalting of groundwater and thus operate as a partial subsidy
to off-set a portion of the significant capital and operating costs.” (*Id.* p. 8, lns. 12-15)
- 25 • “In the end, the Basin will remain subject to Safe Yield Operation. The temporary
26 excursion while the Watermaster will pursue Hydraulic Control will last no more than 22
27 years and substantially less if the rate of depletion is as projected by the Final [Technical]
28 Report, given the substantial controls that Watermaster and the Court retain.”²¹ (*Id.* p.
19, ln. 22 to p. 20, ln. 2)

²⁰ This is overstated, as explained in Mr. Wildermuth’s testimony. (Reporter’s Transcript pp. 118-120)

²¹ It is not clear whether Watermaster is also arguing that mining the Basin is good public policy because it “discourages locking up supplies in ‘cold storage’ for future speculative uses.” (*See, e.g.,* Response p. 8, ln. 9.) This is a slippery slope; California Constitution Article X, section 2 certainly cannot be held up as promoting the mining of groundwater basins. Further, it is not clear how the “temporary surplus” allowed by the court in *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, is analogous to the instant case, where the intention is to achieve and maintain hydraulic control, which would be frustrated by recharging the storage space that will be vacated through Basin reoperation.

1 **3. November 29, 2007 Hearing**

2 Mr. Wildermuth

3 In his testimony, Mr. Wildermuth discussed the benefits of reoperating the Basin for
4 hydraulic control in terms of what would occur if Watermaster did not maintain hydraulic
5 control:

6 [W]e would have to demineralize the waste water. . . That's just a cost. We'd
7 have periods where we would have difficulty replenishing state project water. . .
8 [W]e would have to start demineralizing our waste water and dumping it into the
9 river to mitigate the [water quality] of the outflow from the Basin. . .²²

9 (Reporter's Transcript p. 90, lns. 4-7, 11-13)

10 Mr. Wildermuth provided an explanation of "new equilibrium":

11 . . . I think when we use the word equilibrium, what we are referring to is we are
12 operating in balance. No places are crashing. The levels aren't crashing
13 anywhere. And they aren't rising anywhere. And when we stop the Re-operating
14 scheme at end of 2030 we're going back to replenishment, we may have some
15 issues locally in balance because we can't get exactly you know, recharge in the
16 areas where levels might be going down. But over enough time, we would be.
17 Volumetrically, in the broad sense, we are in balance. There may be, from time
18 to time, some local places where we are out of balance a little bit. But
19 equilibrium in my mind is we are operating pursuant to the Judgment. We
20 recognize what the yield is. There is no overdraft, over some period of time. By
21 period of time, it's just we have periods of time where we don't have enough
22 replenishment water. We use the storage in the basin storage a while, and then
23 we backfill it when it's available, and we catch up.

18 (Reporter's Transcript p. 120, ln. 21 to p. 121, ln. 15; emphasis added)

19 **4. Recommendations**

20 The proposed amendments to Judgment Exhibit "I" would allow 400,000 acre-feet of
21 unreplenished desalter pumping. The risks of developing a reliance on mining of the Basin are
22 substantial. Watermaster recognizes the risks, and commits to recharge master planning and
23 implementation over time which is intended to assure that Watermaster will be able to enjoy a
24 "new equilibrium" when the period of Basin reoperation ends in 2030, or sooner, when it again
25 will be "operating pursuant to the Judgment".

26 Watermaster and the parties to the Judgment are all urging the court to approve the Peace
27 II Measures, including the Judgment Exhibit "I" amendment. Watermaster has presented a

28 ²² RWQCB requirements related to hydraulic control are discussed in Section V.A, below.

1 weighty list of factors that support Watermaster being allowed to proceed with Basin
2 reoperation. Because of the significant risks and outstanding questions, the court should only
3 approve the Peace II Measures subject to Watermaster submitting for court approval the
4 technical reports, recharge master plan updates and assurances, contingency plan, hydraulic
5 control evaluation standard, safe yield analysis, and new equilibrium assurances, as set forth in
6 the recommendations contained in this Special Referee Final Report and Recommendations .

7 **B. Proposed Amendments to Judgment Paragraph 8 and Exhibit “G”**

8 **1. Issues Raised in the Preliminary Report**

9 The Preliminary Report raised three basic sets of issues regarding Watermaster’s
10 proposed amendments. First, no explanation was offered as to why these amendments are
11 needed, given the fact that these Judgment provisions were just amended in 2001. Second, as
12 drafted, the proposed amendments raised legal questions for which Watermaster should provide
13 explanation and clarification. Third, the proposed amendments would remove the appurtenancy
14 requirement, which is a fundamental aspect of overlying groundwater rights for the Peace
15 Agreement period, and it should be made clear to the court that these amendments will
16 essentially complete a transformation of the Overlying (Non-Agricultural) Pool rights from
17 overlying to transferable rights.

18 **2. Watermaster Response**

19 Watermaster argues that these Judgment amendments address the problem that “. . . under
20 current rules, water continues to accumulate in the storage account for the Non-Agricultural Pool
21 with no apparent way to free this stranded resource.” (Response p. 33, lns. 17-19) This
22 accumulation is “potentially in violation of Article X, section 2 of the California Constitution.
23 Water should not be held indefinitely in cold storage.”²³ (*Id.* lns. 22-24) Watermaster declares
24 that the Judgment provides “. . . no administrative way for the water to be used . . .” (*Id.* ln. 22)

25 These points do not address the issue raised in the Preliminary Report. The question was
26 why the 2001 amendments to these Judgment provisions, which did provide an “administrative

27 _____
28 ²³ This Constitutional argument makes sense in the context of the accumulated Overlying (Non-Agricultural) Pool storage account, where it does not in the context of mining to achieve and maintain hydraulic control.

1 way for the water to be used”, are insufficient. The 2001 amendments allowed the Overlying
2 (Non-Agricultural) Pool to transfer or lease their quantified production rights, and carryover
3 water held in storage accounts, within the pool or to Watermaster for storage and recovery
4 programs or to offset desalter production. The question was why those amendments have not
5 been sufficient. Watermaster’s answer appears to be that Watermaster does not need the storage
6 account water for desalter replenishment at this time:

7 The Referee suggests that Watermaster should not give up discretion to purchase
8 the one time transfer for Desalter replenishment. However, Watermaster prefers
9 the holistic management approach presented by the suite of actions contemplated
 in the Peace II Measures. Watermaster has adequate tools to address Desalter
 replenishment in the near future.

10 (Response p. 43, ln. 26 to p. 44, ln. 2)

11 Watermaster addresses most of the specific questions related to the proposed Judgment
12 amendments. The volume of water in storage is approximately 52,000 acre-feet as of July 2007.
13 (Reporter’s Transcript p. 70, lns. 6-7) Water available in the future will range from 3,000 to
14 4,000 acre-feet annually. (*Id.* lns. 11-12) This information provides a sense of magnitude for the
15 court.

16 As to the mechanics of the proposed amendments, Watermaster explains that: (1) the
17 annual transfer is “intended primarily to distribute the water to the members of the Appropriative
18 Pool” (*id.* p. 39, lns. 6-7); and (2) the one-time transfer is still intended to be a transfer to
19 Watermaster for storage and recovery programs or for desalter replenishment, and “. . . it is only
20 in the situation where Watermaster is unable to use the one-time transfer water for [those
21 purposes] . . . that the water will be distributed to the members of the Appropriative Pool.” (*Id.*
22 lns. 9-11) It is clear, however, that the one-time transfer of the 52,000 acre-feet will be to the
23 Appropriative Pool, given Watermaster’s statement, quoted above, that Watermaster “. . . has
24 adequate tools to address Desalter replenishment in the near future.”

25 Watermaster discusses in detail the issue of appurtenancy and the consequences of
26 completely removing that requirement from overlying rights. (Response pp. 34-38) The fact
27 that the appurtenancy requirement will be further relaxed is a fact that the court should be made
28 aware of. Although the 2001 amendments already largely removed the appurtenancy

1 requirement for Overlying (Non-Agricultural) Pool rights, Watermaster argues that it “seeks to
2 relax the inflexible appurtenancy requirement to further the beneficial use of water within the
3 Basin.” (*Id.* p. 38, lns. 8-9) The change is that Watermaster will be able to transfer the water to
4 the Appropriators, which is a further (and arguably complete) removal of the appurtenancy
5 requirement.²⁴

6 3. November 29, 2007 Hearing

7 Mr. Manning

8 In response to the question of whether there is a problem with Overlying (Non-
9 Agricultural) Pool water accumulating in storage, Mr. Manning testified that:

10 . . . it is a very serious problem. I think water that is stranded in the Basin
11 presents a real problem to the future generation of this valley. Water just sitting
and not being used for beneficial use in this basin, it should not occur.

12 (Reporter’s Transcript p. 69, lns. 2-6) As noted, above, Mr. Manning testified that 52,000 acre-
13 feet was in pool storage as of June 2007, and 3,000 to 4,000 acre-feet of water would be
14 available for transfer from the pool each year. (*Id.* lns. 6-13)

15 4. Recommendations

16 The proposed amendments to Judgment Paragraph 8 and Exhibit “G” primarily allow the
17 transfer of 52,000 acre-feet of stored water and 3,000 to 4,000 acre-feet annually of water from
18 the Overlying (Non-Agricultural) Pool to Appropriators. Watermaster has drafted the proposed
19 amendments together with the “Purchase and Sale Agreement for the Purchase of Water by
20 Watermaster from Overlying (Non-Agricultural) Pool” dated June 30, 2007.²⁵ (Motion Exhibit
21 “A”, Attachment “G”) The proposed Judgment Exhibit “G” amendment references Paragraph I
22 of the Purchase and Sale Agreement, which provides for a one-time transfer of 8,530 acre-feet to

23 ²⁴ Watermaster consistently refers to the Overlying (Non-Agricultural) Pool as the “Non-Agricultural Pool”. Given
24 the 2001 and proposed amendments, that appears to be appropriate.

²⁵ Watermaster notes:

25 There are two different transfers [of water from the Overlying (Non-Agricultural) Pool] at issue --
26 the one time transfer of the water held in storage, and the ongoing transfer to the Appropriative
27 Pool. The former requires a Judgment Amendment, and the latter is done under the Peace
Agreement [Resolution 07-05 Attachment “G” Purchase and Sale Agreement], though the latter
also requires a Judgment Amendment in this instance because it is contemplated that the
transferred water may be distributed to the Appropriative Pool members.

28 (Motion p. 16, lns. 20-25)

1 Santa Ana Water Company and Vulcan Materials, which is labeled "Special Transfer Quantity".
2 The court is being asked to approve the "Special Transfer Quantity" without any explanation of
3 that transfer. It appears that the 52,000 acre-feet one-time transfer is decreased by the 8,530
4 acre-feet.

5 Given that more than 52,000 acre-feet of water is being held in storage by the members
6 of the Non-Agricultural Pool, it is clear that previous efforts to encourage and facilitate transfers
7 to Watermaster from the Overlying (Non-Agricultural) Pool have not worked to alleviate the
8 build-up in storage. However, if a dispute were to arise as to the meaning of these proposed
9 Judgment amendments, the record does not contain sufficient explanation for the court to resolve
10 questions of interpretation. Watermaster should, by February 1, 2008, prepare and submit to the
11 court a post-hearing brief to explain fully these proposed Judgment amendments.

12 **IV. TECHNICAL ISSUES RELATED TO BASIN REOPERATION**

13 **A. Technical Analysis of 400,000 Acre-Feet of Additional Overdraft**

14 **1. Issues Raised in Preliminary Report**

15 The Preliminary Report raised the concern that:

16 There is no technical or modeling analysis . . . that shows that mining 400,000
17 acre-feet without reducing groundwater in storage by 198,000 to 212,000
18 additional acre-feet would achieve the "robust" Hydraulic Control which Mr.
Wildermuth has declared to be necessary.

19 (Preliminary Report p. 13, Ins. 16-19) The Preliminary Report suggested that Watermaster
20 should provide technical analysis of its proposed project, which is limited to 400,000 acre-feet of
21 unreplenished desalter production.²⁶ (*Id.* p. 60, Ins. 21-22) It also suggested that Watermaster

22 ²⁶ This was not the first time this issue was raised. Mr. Scalmanini's Report (Review of Chino Basin Numerical
23 Groundwater Flow Model (Updated 2003 Model) (March 2007)) ("Scalmanini Model Review Report") pointed out
this concern with respect to earlier analyses:

24 Interestingly, there has not yet been a model application to simulate a basin reoperation alternative
25 comprised of forgiveness of 400,000 acre-feet of the replenishment obligation associated with
desalter pumping over the Peace Agreement term. There are thus no model simulation results that
26 show expected hydraulic control resulting from such a potential basin reoperation alternative. . .
Thus, as regards model application and interpretation to date, there has been an analysis to show
27 the formation of hydraulic control with forgiveness of half the total West Desalter pumping
(535,000 af), but there has been no analysis to show whether hydraulic control might be achieved
with forgiveness of 400,000 af of replenishment obligation (37 percent of the total West Desalter
28 pumping).

(Scalmanini Model Review Report pp. 30-31)

1 could revise the initial Attachment “E” schedules (to reflect corrected New Yield numbers) (*id.*
2 p. 12, lns. 8-9), but that technical analysis of a revised schedule would be necessary to determine
3 whether mining only 400,000 acre-feet of groundwater would be enough to achieve hydraulic
4 control.

5 2. **Watermaster’s Response**

6 Watermaster acknowledges that the Technical Report “. . . analyzed the withdrawal of up
7 to 600,000 acre-feet” (Watermaster Response p. 17, ln. 27 to p. 28, ln. 1), but that Mr.
8 Wildermuth, in his testimony at the November 29, 2007 hearing, provided an initial analysis of
9 only 400,000 acre-feet. Watermaster summarizes Mr. Wildermuth’s testimony, stating that:

10 . . . it is possible to achieve Hydraulic Control at the 400,000 acre-foot level, and
11 if withdrawing 600,000 acre-feet does not cause Material Physical Injury, then
 neither will withdrawal of 400,000 acre-feet.²⁷

12 (*Id.* p. 28, lns. 6-8)

13 Watermaster categorically rejects any suggestion that the

14 mere filing of the Initial Schedule combined with the Wildermuth Final Model
15 modified the Project Description or impliedly authorized the taking of more than
 400,000 acre-feet for the purpose of Hydraulic Control.

16 (*Id.* p. 27, lns. 8-10)

17 3. **November 29, 2007 Hearing**

18 Mr. Slater

19 Mr. Slater explained that Watermaster does not at this time intend to ask the court to
20 approve more than 400,000 acre-feet of “controlled overdraft”:

21 So the fact that the initial schedule or subsequent iterations do not ultimately
22 match what [New Yield] shows up, the [400,000 acre-feet] bank account is called,
23 until there’s nothing left in the bank; and at which point if there’s nothing left in
24 the bank, we either have to come back to Your Honor, or your son or daughter,
25 and make the argument that we should be able to go further. But we have no
 basis or evidence to suggest that we are going to be required to do that. And more
 importantly, there is no public policy. Sorry. There is no will on the part of our
 stakeholders to do that. They want, with all due respect to the model, they want
 facts. They want real operation, and then we’ll come back and look.

26 (*Reporter’s Transcript* p. 38, lns. 6-18)

27 ²⁷ Watermaster concludes that the Special Referee’s “. . . apparent confusion likely follows from the failure to
28 appreciate that the Initial Schedule was only provisional . . .”, and that “[a]ll changes in the schedule would require
updated technical data and court approval.” (Watermaster Response p. 27, lns. 15-16 and 23-24)

1 Mr. Wildermuth

2 Mr. Wildermuth testified that his technical analysis focused on expansion of the desalter
3 program, evaluation of “material physical impacts” of the Watermaster’s proposed project, and
4 determination of whether 400,000 acre-feet “was the appropriate value”. (Reporter’s Transcript
5 p. 94, lns. 2-13) Much of his testimony reflected the analysis in the Technical Report of the
6 rapid depletion schedule with overstated New Yield that resulted in 600,000 acre-feet – rather
7 than 400,000 acre-feet – of unreplenished desalter production. (Reporter’s Transcript p. 100, lns.
8 23-24; p. 112, ln. 23 to p. 111, lns. 4-5) However, Mr. Wildermuth stated that:

9 . . . my basic conjecture is if there’s no material physical injury at 600,000, there’s
10 no material physical injury at 400,000.

11 (Reporter’s Transcript p. 115, lns. 5-8)

12 As to the effect of Basin reoperation on water levels and storage, Mr. Wildermuth
13 testified that the projected changes are all “survivable”:

14 These water level changes are survivable. You know, there’s a slight energy
15 increase some people will face with these. You know part of the Peace II
16 Agreement and the economic benefit is such that the increase in energy is spent
17 from pumping at a slightly lower level are more than offset by the economic
18 benefits.

17 The definition of material physical injury as it has been used in the OBMP says
18 that change in water levels is a material physical injury. Well, I think that can’t
19 be a bright line.²⁸

19 (Reporter’s Transcript p. 104, lns. 13-22)

20 Mr. Wildermuth testified that safe yield may approach 120,000 acre-feet in the future, but
21 that the safe yield decline “. . . is big in terms of yield perhaps, but in terms of the overall water
22 management picture, it’s not that big.” (Reporter’s Transcript p. 107, lns. 18-20) Safe yield
23 declines both because of Basin hydrology and because of development “booms” since the
24 1970’s, which have changed recharge; “. . . depending on where you were in the basin, that could

25 ²⁸ The effect of Basin reoperation on water levels seems not to be clear. The Technical Report reported pumping
26 depressions as large as 110 to 120 feet by fall 2053 (see, e.g., Technical Report p. 7-16), but Mr. Wildermuth’s
27 testimony was that between 20 and 50 feet of groundwater level changes will occur, and he appeared to be referring
28 to the same timeframe and rapid depletion alternative. (Reporter’s Transcript p. 102, lns. 1-5) In response to the
court’s question, Mr. Wildermuth offered that “. . . the change in water level maps between the baseline or/and the
alternatives as separate maps would probably be useful. Because I think the other maps are misinterpreted. . .”
(Reporter’s Transcript p. 117, lns. 20-23)

1 be a ten to thirty-year lag when the recharge changes and you see the change at the water table.”

2 (Reporter’s Transcript p. 108, lns. 1-10) In Mr. Wildermuth’s opinion, it is “. . . sort of
3 laughable to talk about a material physical injury. We are actually making it better.”²⁹

4 (Reporter’s Transcript p. 108, ln. 25 to p. 109, ln. 1)

5 Regarding subsidence impacts, Mr. Wildermuth concluded that MZ-1 water levels will be
6 “well above what we call the subsidence threshold.” (Reporter’s Transcript p. 111, ln. 2) In
7 other parts of the Basin, there will be “some large scale, broad scale but very small subsidence”
8 which will not create a problem for infrastructure or above-ground structures, and that is “just the
9 way it is.” (Reporter’s Transcript p. 111, lns. 14-20)

10 A key question was whether just 400,000 acre-feet of unreplenished groundwater
11 production would be sufficient to achieve and maintain hydraulic control. Although Mr.
12 Wildermuth said he had not “fully exhausted or mined the information, . . . we did mine the
13 information out of the model to get [the] hydraulic control answer. . .” (Reporter’s Transcript p.
14 113, lns. 16-18) Mr. Wildermuth did not actually say that “robust” hydraulic control will be
15 achieved and maintained with 400,000 acre-feet of unreplenished desalter production, but his
16 testimony implies that is the case, and that conclusion appears to be supported by the final two
17 groundwater contour maps in Watermaster Exhibit “I”.³⁰

18 4. Recommendations

19 Mr. Scalmanini prepared recommendations regarding formal documentation of the
20 400,000 acre-feet only project discussed by Mr. Wildermuth at the November 29, 2007 hearing.
21 His recommendations largely stem from the fact that Mr. Wildermuth’s testimony and
22 Watermaster Hearing Exhibit 1 reflect the only simulation of what is actually proposed for Basin
23 reoperation – unreplenished desalter production limited to a total of 400,000 acre-feet. That

24 _____
25 ²⁹ The Wildermuth Letter Report expands on this discussion slightly.

26 ³⁰ Mr. Wildermuth responded affirmatively when asked if model results, the Technical Report, and the “. . .
27 testimony here today reconfirm your earlier opinion that 400,000 acre feet needs to be withdrawn from the basin in
28 order to secure hydraulic control?” (Reporter’s Transcript p. 115, lns. 10-15) This is not the same as affirmatively
stating that 400,000 acre-feet of unreplenished desalter production will achieve and maintain hydraulic control. The
Wildermuth Letter Report states that: “The model predictions for Alternative 1C demonstrate a more robust state of
hydraulic control [as compared to the Baseline], although not quite as robust as Alternatives 1A and 1B.”
(Wildermuth Letter Report p. 6)

1 project requires complete, separate documentation.

2 The previous Technical Report provides documentation of the development and
3 calibration of the 2007 Watermaster Model. A new complete report should include a full
4 analysis of projected Basin yield and hydraulic control in support of the Judgment Exhibit “T”
5 amendment. The new report should essentially be a stand-alone version of Technical Report
6 Section 7, plus appropriate appendices, to completely document what Watermaster has analyzed
7 as the expected Basin response to its proposed reoperation strategy, including whether hydraulic
8 control is projected to occur, when it is projected to be achieved, whether hydraulic control will
9 be “robust” (and what that means in quantitative terms), and what the projected Basin yield
10 resulting from Basin reoperation will be over time. Tables equivalent to Table 4-4 of the April
11 2006 Watermaster Model Report and Table 3-3 of the December 2006 Watermaster Model
12 Report should be included.³¹

13 Mr. Scalmanini also recommends that the new report discuss and tabulate how
14 replenishment determinations will be made on a year-to-year basis. For example, the new report
15 should illustrate how replenishment obligations will be calculated given a declining safe yield,
16 and how credit for new yield will be based on model projections. The report should describe in
17 detail how Watermaster will be monitoring and interpreting actual Basin response to reoperation.
18 In addition to noting the measurement of water levels as part of the Hydraulic Control
19 Management Program plus any other monitoring, the new report should describe fully how to
20 quantify the two key factors: actual change in groundwater storage, and actual new yield.³²

21 The new report should discuss, in the context of the 400,000 acre-foot reoperation
22 project, constraints related to the availability of recharge capacity and water for recharge. The
23 report should include, for example, discussion of what quantity of recharge capacity and water
24 availability would be needed to overcome the potential imposition of pumping limits (“caps” on
25 production) discussed at length in Technical Report Section 7. Overall, the purpose of the new

26 ³¹ Those tables plot storage versus time through 2030; they should be extended through 2060. Change in
27 groundwater storage is a measure which can provide significant information, as well as historical context, for
Watermaster decision-making.

28 ³² This raises a question, discussed below in Section V, that a standard is needed against which Watermaster will be
able to demonstrate that it has achieved and is maintaining hydraulic control.

1 report would be to add to the record technical documentation in support of the actual proposed
2 Basin Reoperation Strategy (unreplenished desalter production limited to 400,000 acre-feet) at a
3 level of detail equivalent to Technical Report Section 7.

4 In addition to Mr. Scalmanini's suggestions, the new technical report should fully
5 evaluate whatever actions or strategies might increase the likelihood that hydraulic control will
6 be achieved and maintained with only 400,000 acre-feet of unreplenished desalter production.
7 There may be measures that Watermaster can adopt proactively to optimize the success of its
8 proposed project. One measure is the Peace II Agreement provision that future desalters will be
9 entitled to first priority to the new controlled overdraft only "[t]o the extent the groundwater
10 wells for the future Desalters pump at least fifty (50) percent groundwater from the southern end
11 of the Basin . . ."³³ (Peace II Agreement ¶ 7.2(a); *see also* ¶ 5.8(a))

12 Watermaster should prepare and submit to the court for approval a new technical report
13 which includes all of these issues by March 1, 2008. The Wildermuth Letter Report filed
14 December 19, 2007, referring to Mr. Scalmanini's recommendation, described above, notes:

15 We have also received an email from Joe Scalmanini, assistant to the Special
16 Referee, suggesting that a more detail report regarding Alternative 1C and other
17 related issues be prepared. Per your direction we will prepare the report requested
18 by Mr. Scalmanini in the first two months of 2008.

18 **B. Initial Schedule and Changes to the Schedule**

19 **1. Issues Raised in the Preliminary Report**

20 Watermaster's Motion provided no discussion of the two tables filed with its Motion as
21 Attachment "E" to Resolution No. 07-05. (Preliminary Report p. 35, ln. 21 to p. 36, ln. 12) The
22 Preliminary Report noted that the New Yield quantities shown on the tables were substantially
23 overstated, based on Watermaster's Technical Report.³⁴ (*Id.* p. 11, ln. 10 to p. 13, ln. 6) It was
24 suggested that Watermaster could revise the Attachment "E" tables to reduce New Yield
25 quantities to be consistent with the Technical Report.³⁵ (*Id.* p. 13, lns. 15-16) Either the

26 ³³ Watermaster has not explained why only 50 percent of new desalter wells will be required to be in the southern
27 end of the Basin, or provided supporting technical analysis.

28 ³⁴ The Attachment "E" tables are identical to Technical Report Tables 7-6(a) and 7-6(b).

³⁵ As discussed, above, the recommendation was also made that Watermaster provide technical analysis of only
400,000 acre-feet of unreplenished desalter production (which would be based on New Yield quantities consistent

1 Attachment "E" tables would have to be revised to reflect corrected New Yield numbers, or
2 Watermaster would have to revise its proposed amendment to Judgment Exhibit "T".

3 The Preliminary Report also pointed out that Watermaster should account for credit
4 which it has taken during 2000/01 through 2006/07 for New Yield (and stormwater) which the
5 Technical Report indicates is overstated. (*Id.* p. 12, fn. 10; p. 36, fn. 43)

6 2. Watermaster's Response

7 Watermaster clarified that its Initial Schedule is the rapid depletion schedule
8 (Watermaster Response p. 42, lns. 14-15), which is the first Attachment "E" table, and Technical
9 Report Table 7-6(a).

10 Watermaster states:

11 . . . it is a legal impossibility for the Initial Schedule to be followed because the
12 parties are expressly and unequivocally limited to the withdrawal of 400,000 acre-
feet.

13 (*Id.* p. 28, lns. 14-15) The Initial Schedule ". . . was only provisional and a basis to allow Mr.
14 Wildermuth to run an analysis regarding whether there would be material physical injury."³⁶ (*Id.*
15 p. 27, lns. 15-17) Watermaster further explains that the Initial Schedule will be revised:

16 . . . The Peace II Measures contemplate that the Initial Schedule will be replaced
17 within one year of the approval following a negotiation between WMWD
18 [Western Municipal Water District] and the members of the Appropriative
19 Pool. . . Watermaster has retained discretion to then adopt the recommended
resolution or present its own to the Court. . . All changes in the schedule would
require updated technical data and Court approval.³⁷

20 (*Id.* p. 27, lns. 19-24) Watermaster's Response does not discuss the corrected table presented by
21 Mr. Wildermuth at the November 29, 2007 hearing.³⁸

22
23 with the Technical Report) to show that Hydraulic Control would be achieved without the additional 200,000 acre-
feet of unreplenished production that was the result of overstating New Yield numbers in the tables.

24 ³⁶ No explanation is given for why Mr. Wildermuth was directed to use New Yield numbers that were inconsistent
with his own modeling results and analysis.

25 ³⁷ Even though referred to in Peace II Section 7.2(e)(i) as an "initial schedule", the Peace II Agreement does not
26 mention replacement of the initial schedule in one year. It states only that Watermaster ". . . may approve and
27 request court approval of revisions to the initial schedule if Watermaster's approval and request are supported by a
technical report demonstrating the continued need for access to controlled overdraft. . ." (Peace Agreement §
7.2(e)(ii))

28 ³⁸ The corrected table, discussed below, was included in Watermaster Hearing Exhibit 1. A further revised
Alternative 1C table is included in the Wildermuth Letter Report, and is attached to this Report as Attachment 2.

1 As to the need to account for credit already taken by Watermaster for New Yield that the
2 Technical Report shows does not exist, Watermaster's view is as follows:

3 The Referee says that Watermaster accounting should be corrected back to 2000
4 to account for shortfalls in storm water new yield and induced inflow. Notably,
5 there is no recommendation to correct for Mr. Wildermuth's opinion that Safe
6 Yield has historically been greater than 140,000 acre-feet. Watermaster
7 appreciates the suggestion that corrections should be made where material – but
8 not only if they penalize the parties.³⁹

9 (*Id.* p. 42, ins. 18-22)

10 3. November 29, 2007 Hearing

11 Mr. Slater

12 Mr. Slater explained at the November 29, 2007 hearing that the Initial Schedule reflects
13 the initial allocation of "controlled overdraft" as between existing and future desalter operations:

14 . . . There were rules that were established that would allow a first priority, if you
15 will, for that controlled overdraft to be dedicated to the party who was strong
16 enough to step up and assume the capital burden and responsibility for
17 constructing the desalters. And that party thus far is the Western Municipal
18 Water District. . . So that 400, how it's used is subject to further negotiation . . .
19 the parties recognized that there would need to be a negotiation over the use of
20 that 400. And the agreement calls for the preparation today so the Court could
21 see what was called an initial schedule, and that it would be filed with the
22 Resolution.

23 (Reporter's Transcript p. 32, ln. 16 to p. 33, ln. 22) The negotiations Mr. Slater refers to will
24 affect the allocation of the 400,000 acre-feet between existing and future desalter operations.

25 As to the overstatement of New Yield in the Initial Schedule, Mr. Slater explained:

26 There's only 400. There is no more. So it is whatever we get out of new yield,
27 we get. But if we don't achieve new yield, what's the next thing in line? Our
28 bank account, our 400. So whatever we don't achieve in the form of enough
29 yield, it doesn't go missing. It's not a shortfall. These people suffer. If the new
30 yield doesn't show up, they have to hit the bank account. Or if there is no water
31 in the bank account, what do they have to do? Replenish.

32 (Reporter's Transcript p. 37, ln. 22 to p. 38, ln. 5) The Peace II Documents uniformly limit
33 unreplenished desalter production to 400,000 acre-feet. As a result:

34 ³⁹ Watermaster and the parties have decided not to recalculate Safe Yield until 2011. It is not clear how recalculated
35 Safe Yield would be accounted for retroactively. At least with respect to stormwater and New Yield credits since
36 2000, corrections can be made; the Peace Agreement defines New Yield as "proven increases in yield in quantities
37 greater than historical amounts. . ." (Peace Agreement ¶ 1.1(aa); emphasis added) How Watermaster will address
38 recalculated Safe Yield is an issue for 2011.

1 . . . the initial schedule cannot violate that provision. [¶] So when the agreements
2 were executed, no one had any idea that the initial schedule would bump up to the
3 cap. But now that it has, under the runs, the initial schedule obviously cannot be
4 followed.

(Reporter's Transcript p. 36, Ins. 3-8)

5 Mr. Manning

6 When asked if Watermaster will be revising the table to reflect Mr. Wildermuth's New
7 Yield estimates, Mr. Manning replied that Watermaster will do so. (Reporter's Transcript p. 71,
8 Ins. 1-6)

9 Mr. Wildermuth

10 Mr. Wildermuth testified that, because new yield did not "materialize" as assumed in
11 Watermaster's project description, ". . . an unintentional extra pull down of storage of about
12 200,000 . . ." was created and "so we redesigned that schedule." (Reporter's Transcript p. 113,
13 Ins. 1-3). Mr. Wildermuth described a revised Initial Schedule table ("Alternative 1A* Desalter
14 Replenishment with Most Rapid Depletion of the Re-Operation Account") which was included
15 in Watermaster's Hearing Exhibit 1 (attached as Attachment 1 to this report).

16 Watermaster counsel agreed to file a supplemental technical analysis by Mr. Wildermuth.
17 Watermaster filed the Wildermuth Letter Report with the court on December 19, 2007.⁴⁰

18 **4. Recommendation**

19 The initial schedule has been described as a "legal impossibility" that "obviously cannot
20 be followed". Watermaster should submit a corrected schedule to the court for approval which is
21 consistent with the revised table presented by Mr. Wildermuth at the hearing, or in his Letter
22 Report (Attachments 1 and 2 to this Report). This should be done by February 1, 2008. The
23 corrected schedule would not have to address the allocation of the 400,000 acre-feet between
24 existing and new desalter operations; the parties have committed to finalizing that allocation in a
25 revised schedule to be filed by the end of 2008. Watermaster should file a revised schedule with

26 ⁴⁰ Mr. Wildermuth indicated that his preliminary review of the 400,000 acre-feet only project with Alternative 1A*
27 assumptions had not taken into account that Watermaster may decide to deduct from the 400,000 acre-feet the
28 quantity of overstated new yield (and storm water) credited during the period 2000/01 through 2006/07. In response
to the question of whether hydraulic control would be retained if the 400,000 acre-feet were reduced by the amount
of the previous overstatement of new yield, Mr. Wildermuth replied: "No, it's really small."

1 the court by the end of 2008 for court approval.

2 Watermaster should be required to include with its revised schedule a reconciliation of its
3 overestimate of New Yield (including stormwater) and any other proposed revisions the
4 Watermaster may have arising from the comparison of earlier estimates of physical conditions
5 and actual experience. As noted in the Preliminary Report, it appears from Table 7-3 and Figure
6 7-7 of the Technical Report that, for the period 2000/01 through 2006/07, New Yield induced
7 from the Santa Ana River has been overstated by 37,043 acre-feet and stormwater by 24,000
8 acre-feet, for a total of 61,043 acre-feet. Watermaster should be directed to reconcile the New
9 Yield and stormwater estimates it used during the period 2000/01 through 2006/07, with actual
10 conditions as reflected in the Technical Report, or demonstrate good cause why this should not
11 be done.⁴¹ Watermaster's reconciliation should be based on a thorough analysis of actual
12 production and replenishment during the period in question. Watermaster should provide a
13 report to the court and obtain court approval by December 31, 2008, as to whether it will account
14 for this unreplenished overproduction as part of the 400,000 acre-feet of "controlled overdraft"
15 or actually replenish for that overproduction. If the former, the revised schedule should reflect
16 that approach; if the latter, Watermaster's report should include a schedule for replenishment or
17 indicate what water will be used to offset the overproduction.⁴² In summary, the reconciliation
18 should be holistic and "true-up" earlier estimates with data obtained from actual experience and
19 observed conditions.

20 Finally, because New Yield quantities will vary from year to year, Watermaster should be
21 required to update the schedule by December 31 of each year, and provide the court with
22 supporting technical analysis.⁴³ An annual updated schedule will provide Watermaster with

23 _____
24 ⁴¹ This reconciliation will be complicated, given the September 2, 2004 First Amendment to Peace Agreement
which amended Peace Agreement Section 7.5(b). Before that amendment, stormwater was included in New Yield
and dedicated to desalter replenishment. Thereafter:

25 The 12,000 acre-feet of storm flow Recharge determined by Watermaster to be part of New Yield
26 shall be allocated to the Appropriators according to their percentage of Safe Yield under the
Judgment. . .

27 There may be other complications that will factor into Watermaster's reconciliation.

28 ⁴² If Watermaster decides to use part of the 400,000 acre-feet to offset overestimated New Yield since 2000/01, that
would have to be taken into account in technical analysis of "Alternative 1C".

⁴³ As noted in Section IV.A, above, with regard to additional technical work to be done to support the 400,000 acre-

1 information that is essential for its operations.

2 V. STANDARD FOR EVALUATION OF HYDRAULIC CONTROL

3 A. Technical Assessment of Hydraulic Control

4 The Technical Report, the Wildermuth Letter Report, and Mr. Wildermuth's declarations
5 and testimony evaluate whether the various alternatives analyzed will achieve and maintain
6 hydraulic control. In order to obtain the benefits of the RWQCB's Basin Plan Amendment, and
7 to comply with the permit issued by the RWQCB, hydraulic control has to be demonstrated. Mr.
8 Wildermuth has evaluated whether various Basin reoperation alternatives achieve "robust" or
9 only "weak" hydraulic control. He testified that:

10 . . . We want to have . . . a robust hole. You don't want a shallow hole. You want
11 a deep hole. Reason is things change. . . You've got to have some strength to
12 this well field, to this depression. You also have to be able to monitor and
13 measure it. Difficult to monitor if it is shallow. But a more pronounced
14 depression is easier to measure.

13 (Reporter's Transcript p. 114, ln. 16 to p. 115, ln. 2)

14 The RWQCB 2004 Basin Plan amendment recognized that Watermaster and IEUA:

15 . . . have made clear commitments to the implementation of projects and
16 management strategies to achieve the "maximum benefit" objectives. . .
17 Watermaster and IEUA have indicated that the supervision of the Watermaster
18 program by the San Bernardino County Superior Court will insure that the
19 Watermaster and IEUA commitments are met.⁴⁴

18 (Attachment to RWQCB Resolution No. R8-2004-001, p. 61) One of the clear commitments as
19 of 2004 was to maintain and achieve hydraulic control.⁴⁵ Watermaster must obtain the court's
20 approval of the Peace II measures in order to meet the commitments it made in 2004, and to meet

21 feet only project, Watermaster's new technical report should address how it will quantify actual new yield in the
22 future.

23 ⁴⁴ The Attachment to Resolution No. R8-2004-001 also states at p. 53 that the OBMP: "includes the implementation
24 of management activities that would result in the hydraulic isolation of Chino Basin groundwater from the Orange
25 County Management Zone. . ." The OBMP, adopted well before 2004, addressed the pre-amendment Basin Plan.
(See Peace Agreement Exhibit "B" OBMP Implementation Plan, p. 25)

25 ⁴⁵ The Attachment to Resolution No. R8-2004-001 defines "Hydraulic Control" as ". . . eliminating groundwater
26 discharge from the Chino Basin to the Santa Ana River, or controlling discharge to *de minimus* levels." (P. 52) Mr.
27 Wildermuth testified that this definition

26 . . . was negotiated very carefully with the Regional Board. And what we have to do is make sure
27 that everything that we call Chino North does not make it into the Santa Ana River. Chino North
28 is, butts up against the 566 elevation line of Prado Reservoir. So we have to stop. That's the line
of demarcation. We stop there.

28 (Reporter's Transcript p. 119, lns. 4-10)

1 permit requirements imposed six months ago.

2 On June 29, 2007, the RWQCB adopted an order requiring Watermaster and IEUA to
3 implement “Chino Basin Maximum Benefit Commitments”, one of which is to “. . . implement
4 measures necessary to maintain hydraulic control, i.e., eliminating, or controlling to *de minimus*
5 levels, the discharge of groundwater from the Chino Basin to the Santa Ana River.” (Water
6 Recycling Requirements, RWQCB Order No. R8-2007-0039, p. 26) Watermaster and IEUA
7 must have plans to mitigate water quality effects “. . . from temporary failure to achieve or
8 maintain hydraulic control” and to “. . . correct loss of hydraulic control.” (*Id.*) The RWQCB
9 determines whether hydraulic control is achieved or maintained. There appear to be no standards
10 or criteria that apply to that determination.

11 **B. Recommendations**

12 Mr. Wildermuth’s “robust” criterion should be formalized and the concurrence of the
13 RWQCB should be obtained. This may require that the RWQCB’s definition of “Hydraulic
14 Control” be restated with greater specificity. Watermaster should report to the court by July 1,
15 2008, on the development of standards or criteria which will be applied in the future to
16 demonstrate the achievement and maintenance of Hydraulic Control. That report should inform
17 the court of Watermaster’s plans for mitigation of temporary failure to achieve or maintain
18 hydraulic control and to correct the loss of hydraulic control.

19 **VI. ASSURANCES REGARDING RECHARGE**

20 **A. Peace II Measures**

21 A key element of the proposed Peace II Measures is that Watermaster must develop
22 recharge capability throughout the Basin Reoperation period, to ensure that sufficient recharge
23 capability exists at the end of that period. There will have to be sufficient recharge capability to
24 meet desalter replenishment obligations and all other future recharge needs.

25 Watermaster and the parties have committed to prepare an updated Recharge Master Plan
26 by July 1, 2010. Mr. Slater firmly stated to the court:

27 . . . We have a mandatory commitment to do the recharge master plan. Then that
28 is buttressed by a penalty of depriving us of the 400 if we don’t stay in your good

1 graces.⁴⁶

2 (Reporter's Transcript p. 52, lns. 1-4) This is a clear and enforceable obligation, and "mandatory
3 duty":

4 If Watermaster and the parties are not in compliance with this requirement, then
5 the controlled overdraft of the Basin must cease. Mr. Wildermuth testified that it
6 is possible for there to be an immediate course correction if Material Physical
7 Injury were to develop. . . The method to stop the controlled overdraft of the
8 Basin would be through the resumption of replenishment. The Court will be able
9 to determine that the controlled overdraft has been stopped simply through the
10 reporting of the resumption of replenishment in an amount sufficient to account
11 for desalter production.

12 (Response p. 31, lns. 20-27)

13 **B. Recommendations**

14 Watermaster has committed to submitting an updated Recharge Master Plan to the court
15 for approval by July 1, 2010. A first recommendation is that Watermaster should submit a
16 detailed outline of the scope and content of its first Recharge Master Plan update to the court for
17 approval by July 1, 2008, and report its progress to the court again by January 1, 2009, and July
18 1, 2009.

19 The updated Recharge Master Plan and every subsequent update should be required to
20 include at least the following elements:

- 21 1. Baseline conditions must be clearly defined and supported by technical analysis.
22 As demonstrated by the Technical Report, the baseline definition encompasses
23 such factors as pumping demand, recharge capacity, total Basin water demand,
24 and availability of replenishment water.
- 25 2. Safe yield, although not to be formally recalculated until 2011, should be
26 estimated annually. Watermaster should develop a technically defensible
27 approach to estimating safe yield annually, since replenishment obligations
28 increase with declining safe yield.
3. Watermaster should evaluate measures that can be taken to lessen or stop the
 projected Safe Yield decline. All practicable measures should be evaluated in
 terms of their potential benefits and feasibility.

29 ⁴⁶ Mr. Manning testified, in response to the question of what measures Watermaster will be implementing to ensure
30 that various interests in the Basin are protected as Basin reoperation proceeds, that: (1) Monitoring is key. (2) "In
31 the short term, we can look at pumping patterns. We can look at conservation. We can look at recharge strategies in
32 terms of where we recharge water. . ." (3) "In the long run, if we had to, worst case scenario, you could just do
33 additional replenishment." (Reporter's Transcript p. 59, ln. 4 to p. 60, ln. 4) Watermaster should explain the last
34 point in Mr. Manning's testimony.

- 1 4. Basin Reoperation will affect groundwater storage and water levels. The
2 Recharge Master Plan should provide for annual evaluations and reporting of
these variables.
- 3 5. Total demand for groundwater should be forecast for 2015, 2020, 2025, and 2030.
4 Availability of imported water for supply and replenishment, and availability of
5 recycled water should be forecast on the same schedule. The schedules should be
refined in each update. Projections should be supported by thorough technical
analysis.
- 6 6. Watermaster's Technical Report raised the issue that the Basin is a finite water
7 supply source. Because parties are enjoined from pumping more than their shares
8 of Safe Yield or Operating Safe Yield, unless Watermaster is able to replenish for
9 overproduction, Watermaster's success in planning and implementing a recharge
10 and replenishment program dictates how much groundwater will be allowed to be
11 pumped in the future. The Recharge Master Plan must include a detailed
12 technical comparison of current and projected groundwater recharge capability
13 and current and projected demand for groundwater. If, at any time,
Watermaster's recharge capacity either cannot meet or is projected not to be able
to meet replenishment needs, Watermaster should alert all parties of that fact.
The Recharge Master Plan should at that point guide Watermaster's efforts to
either provide sufficient recharge capability or undertake alternative measures.
The end result is that Watermaster must be able to resume Basin operation in
accordance with the Judgment and its Physical Solution at any time.

14 VII. DECLINING SAFE YIELD ISSUES

15 A. Technical Analysis Indicates Safe Yield is Declining

16 Watermaster's Technical Report indicated – for the first time – that safe yield would
17 decline, from 140,000 acre-feet per year to slightly less than 120,000 acre-feet per year by
18 2059/60. (Technical Report p. 8-2) Watermaster addressed this new information in its
19 Response:

20 More importantly, the Referee expressed surprise and concern over the downward
21 trends in Safe Yield predicted by the Final Report. Watermaster shares this
22 concern. Indeed it would be a travesty if the Safe Yield of the Basin was
23 materially diminished over the next several decades. Watermaster and the parties
24 have already invested heavily in measures to retard erosion of safe yield and to
increase yield through physical improvements, it would be both uncharacteristic
and wholly without precedent for Watermaster to ignore information suggesting
that its earlier investments will be undermined.

25 The Court must appreciate that information is very new and further evaluation
26 and better understanding of the causes and whether they can be reversed or
27 mitigated by methods other than expanded recharge is warranted. That said,
Watermaster must point out that the gravity of the predicted condition in the Final
Report actually grows worse if the Peace II Measures are not implemented.
(November 15, 2007 Declaration of Mark Wildermuth, ¶ 17.)
28 There can be no better place to address the subject of declining yield than in the
proposed Recharge Master Plan process.

1 (Response p. 32, ln. 20 to p. 33, ln. 7)

2 As discussed in Section IV.A. 3, above, Mr. Wildermuth has outlined the likely causes of
3 the projected decline in safe yield. The Wildermuth Letter Report includes a brief discussion of
4 the causes of declining safe yield, including why the decline was not predicted in prior
5 investigations.

6 **B. Recommendations**

7 The projected reduction in Safe Yield should be included in technical analysis in the
8 expanded Hydraulic Control report and the updated Recharge Master Plan.

9 **VIII. NEW EQUILIBRIUM**

10 **A. Technical Analysis of New Equilibrium**

11 Watermaster characterizes Basin Reoperation as a “temporary excursion” which will last
12 no longer than 22 years or substantially less. (Response p. 19, ln. 23 to p. 20, ln. 2) Reaching a
13 “new equilibrium” may not be as clear cut as this characterization suggests, however. Mr.
14 Scalmanini expressed concern in his Model Review Report that reaching a “new equilibrium” at
15 the end of Basin reoperation will not necessarily be straightforward:

16 Ultimately, it is beyond the scope of this review to comment on the technical or
17 other viability of basin reoperation schemes. However, in light of the long-term
18 fundamental basis for the Judgment in the Chino Basin, that groundwater not be
19 chronically depleted, the observation of model output . . . clearly illustrates the
20 need for model application to examine projected basin conditions through
21 whatever is proposed for the balance of the Peace Agreement term and also,
22 assuming that some form of purposeful storage depletion is proposed, to examine
23 projected basin conditions beyond that term. The intent of such a simulation
24 would be to identify a subsequent basin reoperation scheme that would assure the
25 maintenance of hydraulic control but also assure that storage depletion is curtailed
26 and long-term sustainability is achieved. In other words, the Updated 2003
27 Model shows that reoperation to achieve hydraulic control will result in
28 continuous removal of groundwater from storage through and beyond the
achievement of hydraulic control. Logically, full replenishment of desalter
pumping and achievement of hydraulic control could undermine hydraulic control
by contributing to the recovery of purposely-depressed groundwater levels.
Further logic would suggest that sustainable reoperation after achievement of
hydraulic control might involve continued desalter pumping with more than half,
but not full, replenishment. After resolution of the boundary and other issues
delineated in this review, the model (presumably the 2007 Watermaster Model)
should be used to define the anticipated rates of desalter and other pumping, and
the associated replenishment of desalter pumping that will achieve long-term
groundwater sustainability. The results of that analysis would inform a
redetermination of safe yield at the end of the Peace Agreement term.

1 (Scalmanini Model Review Report pp. 35-36)

2 **B. Recommendations**

3 The return to “operating pursuant to the Judgment”, with full replenishment of
4 overproduction, must be accomplished. How that will be accomplished, and a “new
5 equilibrium” created, should also be included in technical analysis in the expanded Hydraulic
6 Control report and the updated Recharge Master Plan.

7 **IX. CEQA**

8 **A. Scope of CEQA Review**

9 As noted in the Preliminary Report, Watermaster does not address the scope of CEQA
10 review; the Peace II Agreement only notes that IEUA will be lead agency. (Preliminary Report
11 p. 30, Ins. 5-9) The concern expressed was that there is no assurance that there will be an
12 evaluation under CEQA of alternatives to, implications and effects of, and potential mitigation
13 for Basin reoperation without a full environmental impact report (“EIR”) being prepared. The
14 cumulative effects of pursuing Basin reoperation – and what have been referred to as “trade-offs”
15 – will apparently not be analyzed if no new EIR is prepared.⁴⁷

16 Compliance with CEQA is an important part of the Peace II Agreement. The Peace II
17 Agreement states:

18 2.1 Project Description. The proposed project description regarding the
19 design, permitting, construction and operation of Future Desalter, securing
20 Hydraulic Control through Basin Re-Operation is set forth in Attachment “A” to
Watermaster Resolution 07-05 attached hereto as Exhibit “1.”

21 2.3 Commitments are Consistent with CEQA. The Parties agree and
22 acknowledge that no commitment will be made to carry out any “project” under
the amendments to the OBMP and within the meaning of CEQA unless and until
the environmental review and assessment that may be required by CEQA for that

23 _____
24 ⁴⁷ The Preliminary Report suggested that:

25 If there are practical alternatives for recycled water use that do not result in basin overdraft and do
26 not change the entire gradient of the basin, and possibly maintain safe yield and allow additional
storage and recovery programs, those alternative should be identified and evaluated. The
economics of recycled water use and recharge arguably should not be of *paramount* importance to
Watermaster. . .

27 (Preliminary Report p. 70, Ins. 22-26) Watermaster responded: “This recommendation appears to be based on
28 assumptions not supported by the evidence.” (Response p. 49, ln. 15) This was exactly the point; there is no
evidence in the record of alternatives to Basin reoperation, or “trade-offs” that may be the result of Basin
reoperation.

1 defined "project" have been completed.
2 (Peace II Agreement, Article II)

3 **B. Recommendation**

4 Watermaster should report to the court by April 1, 2008, on the status of existing
5 environmental documentation that might be used to support environmental review of desalter
6 expansion, and to provide the court with Watermaster's views as to the sufficiency of existing
7 environmental documentation, and the need for and scope of additional environmental
8 documentation for Basin reoperation. Watermaster should assure the court that its review,
9 approval, and participation in any project that is a "project" for CEQA purposes has been the
10 subject of all appropriate CEQA review.

11 **X. CONCLUSION**

12 Watermaster is an arm or extension of the court, and must carry out the Judgment's
13 Physical Solution, develop and provide for the implementation of the OBMP, and manage the
14 Basin accordingly. It is most successful when it works with the parties to achieve consensus.
15 The court has consistently urged Watermaster to proceed in this way. In carrying out its role,
16 Watermaster owes the court the duty to fully explain and discuss the actions for which it must
17 seek court approval, particularly as they pertain to proposed Judgment amendments. The Special
18 Referee, also serves the court to review and comment on motions to the court, and to make
19 recommendations for further explanation, discussion, or context where those are necessary in
20 order for the court fully to understand what the court is being asked to approve.

21 The majority of the questions and concerns raised in the Preliminary Report have been
22 addressed either through testimony at the November 29, 2007 court hearing or by Watermaster's
23 Response. Legal and technical questions remain, however, and this Report recommends that
24 Watermaster be required to submit to the court for approval the responses, Hydraulic Control
25 technical reports, Recharge Master Plan update and assurances, hydraulic control evaluation
26 standard, safe yield analysis, and new equilibrium assurances by specified dates, as
27 recommended in this Report. The court should approve Watermaster's Motion for Approval of

28 ////

1 Peace II Documents subject to Watermaster's timely compliance with the recommended
2 requirements set forth in this Report.

3
4 Dated: December 20, 2007

5 
6

Anne J. Schneider, Special Referee

ATTACHMENT 1

Alternative 1A*
Desalter Replenishment with Most Rapid Depletion of the Re-Operation Account
(acc-6/yr)

Fiscal Year	Desalter Pumping	New Yield	Re-Operation			Residual Replenishment Obligation
			Replenishment Allocation for Desalter III	Replenishment Allocation to CDA	Balance	
2006 / 2007	28,700	0	0	28,700	400,000	0
2007 / 2008	28,700	0	0	28,700	371,300	0
2008 / 2009	28,700	0	0	28,700	342,600	0
2009 / 2010	28,700	0	0	28,700	313,900	0
2010 / 2011	28,700	0	0	28,700	285,200	0
2011 / 2012	28,700	0	0	28,700	256,500	0
2012 / 2013	34,050	0	5,000	29,050	227,800	0
2013 / 2014	39,400	75	10,000	23,750	193,750	0
2014 / 2015	39,400	318	10,000		160,000	5,575
2015 / 2016	39,400	679	10,000		150,000	29,082
2016 / 2017	39,400	1,119	10,000		140,000	28,721
2017 / 2018	39,400	1,690	10,000		130,000	28,281
2018 / 2019	39,400	2,336	10,000		120,000	27,720
2019 / 2020	39,400	3,011	10,000		110,000	27,064
2020 / 2021	39,400	3,699	10,000		100,000	26,369
2021 / 2022	39,400	4,450	10,000		90,000	25,701
2022 / 2023	39,400	5,154	10,000		80,000	24,950
2023 / 2024	39,400	5,779	10,000		70,000	24,246
2024 / 2025	39,400	6,364	10,000		60,000	23,621
2025 / 2026	39,400	6,924	10,000		50,000	23,046
2026 / 2027	39,400	7,402	10,000		40,000	22,476
2027 / 2028	39,400	7,827	10,000		30,000	21,998
2028 / 2029	39,400	8,191	10,000		20,000	21,573
2029 / 2030	39,400	8,440	10,000		10,000	21,209
					0	20,960
Totals	876,050	73,439	175,000	225,000		402,611

Source: Watermaster Hearing Exhibit "1" (November 29, 2007 Hearing)

ATTACHMENT 2

Table 1

**Alternative 1C - Desalter Replenishment with the
Most Rapid Depletion of the Re-Operation Account
(acre-ft/yr)**

Fiscal Year	Desalter Pumping	New Yield	Re-Operation			Residual Replenishment Obligation
			Replenishment Allocation for Desalter III	Replenishment Allocation to CDA	Balance	
2006 / 2007	26,350	0	0	26,350	400,000	0
2007 / 2008	26,350	0	0	26,350	373,650	0
2008 / 2009	26,356	0	0	26,356	347,300	0
2009 / 2010	26,356	0	0	26,356	320,944	0
2010 / 2011	28,965	0	0	28,965	294,588	0
2011 / 2012	31,574	75	0	31,500	265,622	0
2012 / 2013	34,182	442	5,000	28,740	234,123	0
2013 / 2014	36,791	962	10,000	25,829	200,383	0
2014 / 2015	39,320	1,629	10,000	4,554	164,554	23,137
2015 / 2016	39,320	2,255	10,000		150,000	27,065
2016 / 2017	39,320	2,771	10,000		140,000	26,549
2017 / 2018	39,320	3,275	10,000		130,000	26,045
2018 / 2019	39,320	3,767	10,000		120,000	25,553
2019 / 2020	39,320	4,283	10,000		110,000	25,037
2020 / 2021	39,320	4,764	10,000		100,000	24,556
2021 / 2022	39,320	5,198	10,000		90,000	24,122
2022 / 2023	39,320	5,570	10,000		80,000	23,750
2023 / 2024	39,320	5,854	10,000		70,000	23,466
2024 / 2025	39,320	5,959	10,000		60,000	23,361
2025 / 2026	39,320	5,834	10,000		50,000	23,486
2026 / 2027	39,320	5,698	10,000		40,000	23,622
2027 / 2028	39,320	5,546	10,000		30,000	23,774
2028 / 2029	39,320	5,479	10,000		20,000	23,841
2029 / 2030	39,320	5,594	10,000		10,000	23,726
Totals	866,045	74,953	175,000	225,000	0	391,091

Source: Wildermuth Letter Report (December 19, 2007)

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 December 20, 2007 I served the following:

1) **SPECIAL REFEREE'S FINAL REPORT AND RECOMMENDATIONS ON 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 December 20, 2007 in Rancho Cucamonga, California.



Janine Wilson
Chino Basin Watermaster

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