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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCVRS 51010

[Assigned for All Purposes to the Honorable STANFORD E. REICHERT]

CITY OF FONTANA'S REPLY BRIEF IN SUPPORT OF MOTION TO REVISE SECTION 5 OF THE 2013 RECHARGE MASTER PLAN UPDATE AND RESTATED JUDGMENT

Date: April 25, 2014
Time: 1:30 p.m.
Dept.: R6

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I. INTRODUCTION

Watermaster adopted the 2013 Recharge Master Plan Update (2013 RMPU) without key language from the 2010 RMPU that allocated groundwater credits to the owners of stormwater recharge projects.[1] In its opposition brief, Watermaster takes the position that Fontana cannot seek review of Watermaster's decision to change the important groundwater credit policy because this claim is unripe. This specious argument ignores the plain language of the Restated Judgment regarding the right of any party to seek review of "all actions, decisions or rules of Watermaster." (Restated Judgment, § 31, p. 14.) Moreover, Watermaster concedes that Fontana has filed a pending application for recharge credit associated with a stormwater recharge project, and all parties are well aware that Fontana intends to imminently file recharge/storage applications associated with the Vulcan Pit Project. (Watermaster Opposition Brief, p. 8, fn. 6.) Fontana's motion is both ripe and important, and the Court should order revision of Section 5 of the 2013 RMPU and the Restated Judgment to confirm that those entities responsible for implementing stormwater recharge projects get credit for recharged water. Doing so comports with the policies of the Restated Judgment, the Peace Agreement, article X, section 2 of the California constitution, the law of salvaged water, and the prohibition on allocating the storage space of a groundwater basin to only those parties with groundwater rights.

II. ARGUMENT

A. FONTANA'S MOTION IS NEITHER UNRIPE NOR PREMATURE

In order to be justiciable a controversy must be ripe. (*California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.3d 16, 22.) The ripeness doctrine is based "on the recognition that judicial decision making is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy." (*Pacific Legal Foundation v. California Coastal Comm'n* (1982) 33 Cal.3d 158, 170 ("*Pacific Legal Foundation*").) The doctrine prevents courts from

[1] Sections 3.6.2 and 7.1 of 2010 RMPU, excerpts of which are attached as Exhibit E to the Declaration of Charles Hays in Support of City of Fontana's Motion to Revise Section 5 of the 2013 Recharge Master Plan Update and Restated Judgment (hereafter "Hays Decl.").

issuing "purely advisory opinions" on what the law would be based upon a hypothetical set of facts. *Id.* at 171. Courts employ a two-pronged test for ripeness. *Pacific Legal Foundation*, at 171-173. First, the court determines whether the dispute is sufficiently concrete to make the relief requested appropriate. (*Farm Sanctuary, Inc. v. Department of Food & Agriculture* (1998) 63 Cal.App.4th 495, 502.) Second, the court determines whether the withholding of judicial consideration will result in hardship to the parties. *Id.*

The notion that Fontana's motion is premature or seeks an "advisory opinion" is absurd. Under the first prong of the ripeness test, it is clear that a concrete dispute exists regarding Watermaster's approval of a 2013 RMPU that omits certain language from the 2010 RMPU. As described in the briefs of Fontana and Watermaster, Section 5 of the 2013 RMPU was considered and approved over the written and oral objections of Fontana. (See Fontana's Points and Authorities, pp. 5-6; Watermaster Opposition, pp. 6-7.) Thus, the 2013 RMPU process before Watermaster has been exhausted, and Watermaster has issued its final decision on the language for Section 5 of the 2013 RMPU.

As explained in Fontana's memorandum of points and authorities, a clear Watermaster policy to award groundwater credits to the owners of stormwater recharge projects is necessary to incentivize those projects. Thus, it is important to have that policy established – both in the 2013 RMPU and the Restated Judgment – before municipalities engage in MS4 and other stormwater recharge project-planning processes. Watermaster claims that removing such a policy from Section 5 of the RMPU has no significance, as any party can still file a recharge application and test its luck in that process.[2] But clearly Watermaster's act of removing that key language from Section 5 effects a change in policy that is significant and concrete, and properly the subject of Fontana's motion.

The second prong of the ripeness test looks at hardship to the parties. Again, the hardship to the parties comes in the form of planning for MS4 and other stormwater recharge projects.

[2] In fact, Fontana has filed a pending application for recharge credit associated with a stormwater recharge project, and all parties are well aware that Fontana intends to imminently file recharge/storage applications associated with the Vulcan Pit Project. (Watermaster Opposition Brief, p. 8, fn. 6.)

Watermaster suggests the credit for recharge issue should be decided in the context of a recharge application – essentially on a case-by-case basis. Fontana asserts that the rule set forth in the 2010 RMPU must apply as a general rule of application throughout the Chino Basin, and for the purpose of providing an incentive to pursue projects that will capture stormwater that is currently leaving the Chino Basin in enormous quantities. In this regard, Watermaster's partner in opposing Fontana's motion, the Inland Empire Utilities Agency (IEUA), recently calculated that over 40,000 acre-feet of stormwater is leaving the Chino Basin annually! (See Exhibit C to the Declaration of Michael Thornton in Support of City of Fontana's Reply Brief (hereafter "Thornton Decl.").) MS4 projects and other stormwater recharge projects, such as the proposed Vulcan Pit Project, could capture and recharge a portion of this 40,000 acre-feet of water for use in the Chino Basin. When done correctly, these projects provide low to reasonable-cost water supplies for the region. As discussed in Fontana's memorandum of points and authorities and below, California law and sound policy supports incentivizing these local stormwater recharge projects.

B. REVISING THE 2013 RMPU AND JUDGMENT IS NECESSARY TO PROMOTE: THE POLICIES SET FORTH IN THE PEACE AGREEMENT; THE RESTATED JUDGMENT; ARTICLE X, § 2 OF THE CALIFORNIA CONSTITUTION; THE LAW OF SALVAGED/DEVELOPED WATER; AND THE PROHIBITION ON ALLOCATING THE STORAGE SPACE OF A GROUNDWATER BASIN TO ONLY THOSE PARTIES WITH EXISTING WATER RIGHTS

The omission of language from the 2013 RMPU regarding allocation of groundwater credits to the entities responsible for MS4 and other stormwater recharge projects has the de facto effect of allocating all storage resources of the Chino Basin to the Appropriative Pool. (See Fontana's Points and Authorities, pp. 9-12.) Doing so removes the incentive for robust MS4 recharge projects and other stormwater recharge projects. Fontana's memorandum of points and authorities explains why the Court should order revision of Section 5 of the RMPU and the Restated Judgment to clearly allocate groundwater credits for recharged stormwater to the owners of those projects in harmony with the policies set forth in: the Peace Agreement; the Restated Judgment; article X, § 2 of the California Constitution; and the prohibition on allocating the storage space of a groundwater basin to only those parties with existing water rights.

In addition to those arguments, the California law of salvaged/developed water also supports a Chino Basin policy that gives groundwater credit to the party responsible for projects that recharge stormwater into the basin. The law of salvaged/developed water provides that a party is entitled to the quantity of water that, through its efforts, is saved from loss. (See *Wiggins v. Muscupiabe Land & Water Co.* (1896) 113 Cal.182, 196; *Pomona Land & Water Co. v. San Antonio Water Co.* (1908) 152 Cal.618, 622-624.) Normally, this doctrine applies in the context of surface water rights where, for instance, a party lines or pipes a canal and creates additional surface water supply by preventing seepage losses. In the context of the Chino Basin, MS4 and other stormwater projects are capturing and recharging waters that, but for these recharge projects, would leave the basin. The law of salvaged/developed waters accords use of the recharged stormwater to the party responsible for developing the recharge project.

To be clear, credit for stormwater recharge would be only for those amounts in excess of natural recharge that would occur without the project. Currently, there are approximately 40,000 acre-feet of stormwater that leave the Chino Basin annually. (See Exhibit C to Thornton Decl.) Policies that award credit for recharged stormwater in excess of naturally occurring recharge will incentivize the capture of those significant flows leaving the basin. As such, no Chino Basin water right holder can claim trespass or "poaching" (in the words of Monte Vista Water District) to the naturally occurring stormwater recharge.

C. WATERMASTER'S NUANCED EXPLANATION FOR WHY GROUNDWATER LEVELS IN MZ3 DECLINED 60 FEET BETWEEN 2000 AND 2012 IS LARGELY IRRELEVANT – WHAT IS RELEVANT IS THAT A POLICY TO GIVE WATER CREDITS TO THE ENTITIES RESPONSIBLE FOR MS4 OR OTHER STORMWATER RECHARGE PROJECTS WILL INCENTIVIZE SUCH PROJECTS AND RESULT IN ADDITIONAL RECHARGE TO THE MZ3 AREA

Watermaster goes to some lengths to distinguish the reasons why there has been such a significant lowering of groundwater levels in Monitoring Zone 3 (MZ3) over the past decade. Regardless of the reasons, the fact remains that groundwater levels in MZ3 are significantly lowered. Importantly, Watermaster does not, and cannot, refute the simple notion that incentivizing stormwater recharge projects will result in more recharge to the Chino Basin – a beneficial practice. As well, neither Watermaster nor any of the parties opposing Fontana's

motion can refute the benefit to the residents of Fontana if Fontana is able to provide reasonably priced water to the Fontana Water Company by developing new water supplies via stormwater recharge projects.

D. MOST MS4 AND OTHER STORMWATER RECHARGE PROJECTS WILL NOT REQUIRE SURFACE WATER RIGHTS BUT, IF THEY DO, WATERMASTER MUST ACCOMMODATE THESE PROJECTS UNDER ITS EXISTING WATER RIGHTS PERMITS

The discussion of surface water rights in Monte Vista Water District's (Monte Vista) opposition brief is legally and factually inaccurate. As discussed below, most MS4 projects and other stormwater recharge projects lawfully divert surface water pursuant to the state and federal clean water statutes, or for flood control purposes – and no surface water right permit is required for these diversions. To the extent a surface water right is required, however, Watermaster must accommodate these projects under its existing water right permits, which are held by Watermaster in trust for the benefit of *all parties to the adjudication* – not just for the "water-producing members of the Appropriative Pool" as alleged in Monte Vista's opposition brief. (Monte Vista Opposition, p. 8.)

1. Neither Fontana Nor Any Other Party Needs A State Water Resources Control Board (SWRCB) Permitted Surface Water Right In Order To Construct MS4 Stormwater Retention Basins

MS4 stormwater retention basins are ponds constructed at the time land is developed, and for the primary purpose of reducing the impacts of non-point source pollution to the waters of the United States. Often referred to as "retention ponds," these basins are mandated by the municipal separate sewer system (MS4) permit imposed on land use jurisdictions within San Bernardino County pursuant to the federal and state clean water statutes. (See Exhibit A to Declaration of Nicholas Jacobs in support of Fontana's Reply Brief.) The San Bernardino MS4 Permit explicitly requires that retention basins be designed "to infiltrate, harvest and use, filter, or treat" stormwater. (Exhibit A to Jacobs Decl., p. 81 [page numbers on top right corner].) Diversions of stormwater into MS4 retention basins are, therefore, clearly authorized by the operative MS4 permit for the San Bernardino Region. Fontana is unaware of any entity that has been required to obtain a water right entitlement to construct an MS4 stormwater retention pond.

2. Fontana Doesn't Need a Surface Water Right Entitlement to Divert Water Into the Vulcan Pit

Monte Vista's opposition brief devotes significant attention to Fontana's proposed Vulcan Pit Project (referred to as "Fontana's Flood Protection Project" in Monte Vista's brief). This proposed project, which is described in the attached Declaration of Michael Thornton, would route Fontana's stormwater drains into an historic quarry called the "Vulcan Pit." (Thornton Decl., ¶¶ 3-7.) The project offers "triple benefits," in that it serves a valuable flood control function, while also allowing recharge of stormwater and recycled water to the Chino Basin.

Monte Vista has kindly pointed out that the California State Water Resources Control Board (SWRCB), which is the state agency that regulates certain surface water rights, has repeatedly ruled that flood control projects do not need to acquire surface water right permits in order to operate. (Monte Vista Opposition, pp. 11-12, citing SWRCB Decisions 100, 130, and 858.) Monte Vista fails to acknowledge, however, that once the captured waters have percolated into the ground, the SWRCB lacks permitting jurisdiction. (See Water Code, § 1200 [limiting SWRCB's groundwater permitting jurisdiction to subterranean streams]; *North Gualala Water Co. v. State Water Resources Control Board* (2006) 139 Cal.App.4th 1577, 1581, and fn. 1 of 1581.) In this regard, the citation to the *City of Santa Maria* case is easily distinguished, as that case involved the Bureau of Reclamation building a surface water reservoir whereas the Vulcan Pit Project operates as a flood control project in an existing quarry (not on any stream or river). (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266.) When the captured stormwaters percolate into the Chino Basin, jurisdiction over the percolating groundwater lies squarely and exclusively with this Court. As such, Fontana does not need a surface water right permit in order to operate the Vulcan Pit Project or receive recharge credit from this Court for the stormwater and recycled water put into the ground.

3. If a Surface Water Right Is Required For Any MS4 or Other Stormwater Recharge Projects, Fontana Can Rely on the Existing Watermaster Permit

If Fontana were required to obtain a surface water right in order to operate the Vulcan Pit Project, Fontana would be able to rely on the existing Watermaster permits. Monte Vista has significantly misrepresented the nature of Watermaster's water right permits. In particular, Monte Vista has inaccurately alleged that the Watermaster permits are only for the benefit of "the water-producing members of the Appropriative Pool." (Monte Vista Opposition, pp. 8 and 13.) Instead, and as plainly stated in the Peace Agreement, Watermaster secured water right permits related to stormwater flowing in certain streams "in trust for the benefit of the parties to the Judgment." (Peace Agreement, section V(h), pp. 22-23.) Watermaster is not allowed to own recharge projects, and so the Peace Agreement further explains that "Watermaster shall arrange, facilitate and provide for Recharge by entering into contracts with appropriate persons, which may provide facilities and operations for physical Recharge of water as required by the Judgment and this Agreement, or pursuant to the [Optimal Basin Management Plan].) (*Ibid.*) Nowhere does the Peace Agreement (or any other agreement/ruling of this Court) declare that Watermaster's water right permits are solely for the benefit of certain members of the Appropriative Pool.

Again, assuming a surface water right is even required for operation of the Vulcan Pit Project (or similar projects), Fontana fully expects the cooperation of Watermaster with taking all steps necessary to bring the project under the umbrella of Watermaster's water right permits. If Watermaster is unwilling to do so, Fontana may need to appeal to this Court, or go to the SWRCB. The SWRCB has a process whereby a party may petition to share in an existing water right permit, where such permit is not being fully used. (See Water Code, §§ 1775 and 1800.) In the context of a Vulcan Pit Project, the fact that over 40,000 AFY of stormwater is leaving the Chino Basin strongly suggests that the Watermaster's permits are not being fully developed.

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III. CONCLUSION

Fontana respectfully requests that the Court issue an order granting the relief set forth in Fontana's Original P&A and proposed order thereon.

SOMACH SIMMONS & DUNN

Dated: March 24, 2014

By: _____
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCVRS 51010

[Assigned for All Purposes to the Honorable STANFORD E. REICHERT]

DECLARATION OF NICHOLAS JACOBS IN SUPPORT OF CITY OF FONTANA'S REPLY BRIEF FOR MOTION TO REVISE SECTION 5 OF THE 2013 RECHARGE MASTER PLAN UPDATE AND RESTATED JUDGMENT

Date: April 25, 2014
Time: 1:30 p.m.
Dept.: R6

I, Nicholas Jacobs, declare:

1. I am an attorney with the law firm Somach Simmons & Dunn. My firm represents the City of Fontana in this case. The following matters are within my personal knowledge and, if called as a witness, I could competently testify to these facts.

2. Attached as Exhibit A hereto are true and correct copies of excerpts from the operative MS4 permit that governs municipal separate stormwater sewers in San Bernardino County, including the City of Fontana.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of March 2014, at Sacramento, California.

Nicholas Jacobs

SOMACH SIMMONS & DUNN
A Professional Corporation

EXHIBIT A

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SANTA ANA REGION

3737 Main St, Suite 500, Riverside, CA 92501-3348
(951) 782-4130 • Fax (951) 781-6288
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ORDER NO. R8-2010-0036
NPDES NO. CAS618036

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT AND WASTE DISCHARGE REQUIREMENTS FOR THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, THE COUNTY OF SAN BERNARDINO, AND THE INCORPORATED CITIES OF SAN BERNARDINO COUNTY WITHIN THE SANTA ANA REGION

AREA-WIDE URBAN STORM WATER RUNOFF MANAGEMENT PROGRAM

The following Dischargers (Table 1) are subject to waste discharge requirements as set forth in this Order:

Table 1. Municipal Permittees

Principal Permittee	San Bernardino County Flood Control District (SBCFCD)	
Co-Permittees	1. County of San Bernardino	9. City of Loma Linda
	2. City of Big Bear Lake	10. City of Montclair
	3. City of Chino	11. City of Ontario
	4. City of Chino Hills	12. City of Rancho Cucamonga
	5. City of Colton	13. City of Redlands
	6. City of Fontana	14. City of Rialto
	7. City of Grand Terrace	15. City of San Bernardino
	8. City of Highland	16. City of Upland
		17. City of Yucaipa

The Principal Permittee and the Co-Permittees are collectively referred to as the Permittees or the Dischargers.

Table 2. Administrative Information

This Order was adopted by the Regional Water Quality Control Board on:	**January 29, 2010**
This Order shall become effective on:	**January 29, 2010**
This Order shall expire on:	**January 29, 2015**
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Board have classified this discharge as a major discharge.	
The Discharger shall file a Report of Waste Discharge in accordance with Title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than 180 days in advance of the Order expiration date.	

IT IS HEREBY ORDERED, that this Order supersedes Order No. R8-2002-012 except for enforcement purposes, and, in order to meet the provisions contained in division 7 of the Water Code (commencing with section 13000) and regulations adopted thereunder, and the provisions of the federal Clean Water Act (CWA) and regulations and guidelines adopted thereunder, the Dischargers shall comply with the requirements in this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on January 29, 2010.

Gerard J. Thibeault, Executive Officer

c. Preserve wetlands, riparian corridors, and buffer zones; establish reasonable limits on the clearing of vegetation from the project site;

d. Use properly designed and well maintained water quality wetlands, biofiltration swales, watershed-scale retrofits, etc., where such measures are likely to be effective and technically and economically feasible;

e. Provide for appropriate permanent measures to reduce storm water pollutant loads in storm water from the development site; and

f. Establish development guidelines for areas particularly susceptible to erosion and sediment loss.

g. Consider pollutants of concern (identified in the risk-based analysis provided in the 2006 ROWD, the annual reports and the list of impaired waterbodies (303(d) list)) and propose appropriate control measures.

4. Within 24 months following the review specified in B.2, above, each Permittee shall incorporate the following information into its LIP and its project approval process:

   a. The Permittees shall identify and map in GIS format the natural channels, wetlands, riparian corridors and buffer zones and identify conservation and maintenance measures for these features. The Watershed Action Plan should include information needed for this effort. This requirement will be most effective if met through development of areawide HCOC maps or other joint efforts.

   b. Each Permittee shall include in the LIP the applicable tools (such as ordinances, design standards, and procedures) used to implement green infrastructure/low impact development principles for public and private development projects.

   c. For hillside development projects, each Permittee shall consider and facilitate application of landform grading techniques[72] and revegetation as an alternative to traditional approaches, particularly in areas susceptible to erosion and sediment loss.

5. Each Permittee shall provide Regional Board staff with the draft amendment or revision when a pertinent General Plan element or the General Plan is noticed for comment in accordance with Govt. Code § 65350 et seq.

D. Water Quality Management Plan (WQMP) Requirements[73]:

1. Each Permittee shall continue to require project-specific Water Quality Management Plans (WQMP) for priority projects listed under Section XI.D.4.a to i.
2. Within 18 months of adoption of this Order, the Principal Permittee shall coordinate the revision of the WQMP Guidance and Template to include new elements required under this Order.

[72] http://www.epa.gov/region3/mtntop/pdf/Appendixes/Appendix%20D%20Aquatic/Aquatic%20Ecosystem%20Enhanc.%20Symp/Proceedings/Support%20Info/Schor/Landform.pdf

[73] Priority projects are those listed under Section XI.D.4.a to i.

3. Each Permittee shall require submittal of a preliminary project-specific WQMP as early as possible during the environmental review or planning phase (land use entitlement). No building or grading permit shall be issued prior to approval of the final project–specific WQMP that is developed based on the preliminary project-specific WQMP and any recommended revisions, as appropriate.

4. The combination of site design/LID BMPs (where feasible), source control, and/or treatment control BMPs, including regional treatment systems, in project-specific WQMPS shall address all identified pollutants and hydrologic conditions of concern from new development and/or significant re-development projects for the categories of projects (priority projects) listed below:

   a. All significant re-development projects. Significant re-development is defined as the addition or replacement of 5,000 or more square feet of impervious surface on an already developed site subject to discretionary approval of the Permittee. . Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of the facility, or emergency redevelopment activity required to protect public health and safety. Where redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing developed site, and the existing development was not subject to WQMP requirements, the numeric sizing criteria discussed below applies only to the addition or replacement, and not to the entire developed site. Where redevelopment results in an increase of fifty percent or more of the impervious surfaces of a previously existing developed site, the numeric sizing criteria applies to the entire development.

   b. New development projects that create 10,000 square feet or more of impervious surface (collectively over the entire project site) including commercial, industrial, residential housing subdivisions (i.e., detached single family home subdivisions, multi-family attached subdivisions or townhomes, condominiums, apartments, etc.), mixed-use, and public projects. This category includes development projects on public and private land, which fall under the planning and building authority of the Permittees.

   c. Automotive repair shops (with SIC codes 5013, 5014, 5541, 7532-7534, 7536-7539).

   d. Restaurants (with SIC code 5812) where the land area of development is 5,000 square feet or more.

   e. All hillside developments of 5,000 square feet or more which are located on areas with known erosive[74] soil conditions or where the natural slope is twenty-five percent or more.

   f. Developments of 2,500 square feet of impervious surface or more adjacent to (within 200 feet) or discharging directly[75] into environmentally sensitive areas (ESAs) such as areas designated in the Ocean Plan as areas of special biological significance or waterbodies listed on the CWA Section 303(d) list of

[74] See General Construction Permit Order No. 2009-0009-DWQ. .

[75] Discharging directly means a drainage or conveyance which carries flows entirely from the subject development and not commingled with any other flows.

impaired waters.

g. Parking lots of 5,000 square feet or more exposed to storm water. Parking lot is defined as land area or facility for the temporary parking or storage of motor vehicles.

h. Retail Gasoline Outlets (RGOs) that are either 5,000 sq feet or more, or have a projected average daily traffic of 100 or more vehicles per day.

i. Emergency public safety projects in any of the above-listed categories shall be excluded if the delay caused due the requirement for a WQMP compromises public safety, public health and/or environmental protection.

5. WQMPs shall include BMPs for source control, pollution prevention, site design, LID implementation, where feasible, (see Section E, below) and structural treatment control BMPs. WQMPs shall include control measures for any listed pollutant[76] to an impaired waterbody on the 303(d) list such that the discharge shall not cause or contribute to an exceedance of receiving water quality objectives. The Permittees shall require the following source control BMPs for each priority development project, unless formally substantiated as unwarranted in a written submittal to the Permittees:

   a. Minimize contaminated runoff, including irrigation runoff, from entering the MS4s;

   b. Provide appropriate secondary containment and/or proper covers or lids for materials storage, trash bins, and outdoor processing and work areas;

   c. Minimize storm water contact with pollutant sources;

   d. Provide community car wash and equipment wash areas that discharge to sanitary sewers;

   e. Minimize trash and debris in storm water runoff through regular street sweeping and through litter control ordinances.

   f. The pollutants in post-development runoff shall be reduced using controls that utilize best management practices, as described in the California Storm Water Quality Handbooks, Caltrans Storm Water Quality Handbook or other reliable sources.

6. Treatment control BMPs shall be in accordance with the approved model WQMP and must be sized to comply with one of the following numeric sizing criteria:

   a. VOLUME

   Volume-based BMP design applies to BMPs where the primary mode of pollutant removal depends upon the volumetric capacity, such as detention, retention, and infiltration basins. These criteria specify the capture and infiltration or treatment of a percentile of the average annual rainfall volume (also referred to as percent capture ratio).

[76]For a waterbody listed under Section 303(d) of the Clean Water Act, the pollutant that is causing the impairment is the "listed pollutant".

Volume–based BMPs shall be designed to infiltrate, harvest and use, filter, or treat either:

i. The volume of runoff produced from a 24-hour, 85th percentile storm event, as determined from the County of San Bernardino's 85th Percentile Precipitation Isopluvial Map; or,

ii. The volume of annual runoff produced by the 85th percentile, 24-hour rainfall event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87 (1998); or,

iii. The volume of annual runoff based on unit basin storage volume, to achieve 80 (or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/Commercial (1993); or,

iv. The volume of runoff, as determined from the local historical rainfall record, that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile, 24-hour runoff event;

OR

b. FLOW

Flow-based BMP design applies to BMPs where the primary mode of pollutant removal depends upon the rate of flow thru the BMP, such as swales, sand filters, screening devices, and proprietary devices such as storm drain inserts.

Flow–based BMPs shall be designed to infiltrate, harvest and use, filter, or treat either:

i. The maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch of rainfall per hour; or,

ii. The maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity, as determined from the local historical rainfall record, multiplied by a factor of two; or,

iii. The maximum flow rate of runoff, as determined from the local historical rainfall record that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile hourly rainfall intensity multiplied by a factor of two.

7. The obligation to install structural BMPs at a new development is met if, for a common plan of development, BMPs are constructed with the requisite capacity to serve the entire common project, even if certain phases of the common project may not have BMP capacity located on that phase in accordance with the requirements specified above. All treatment control BMPs should be located as close as possible to the pollutant sources, should not be located within Waters of the U.S., and pollutant removal should be accomplished prior to discharge to Waters of the U.S. Regional treatment control BMPs shall be completed and operational prior to occupation of any of the priority project sites tributary to the regional treatment BMP.

8. **Groundwater Protection:**

Treatment Control BMPs utilizing infiltration [exclusive of incidental infiltration and BMPs not designed to primarily function as infiltration devices (such as grassy swales, detention basins, vegetated buffer strips, constructed wetlands, etc.) must comply with the following minimum requirements to protect groundwater:

a. Use of structural infiltration treatment BMPs shall not cause or contribute to an exceedance of groundwater water quality objectives.

b. Source control and pollution prevention control BMPs shall be implemented to protect groundwater quality. The need for pre-treatment BMPs such as sedimentation or filtration should be evaluated prior to infiltration.

c. Adequate pretreatment of runoff prior to infiltration shall be required in gas stations and large commercial parking lots.

d. Unless adequate pre-treatment of runoff is provided prior to infiltration structural infiltration treatment BMPs must not be used for areas of industrial or light industrial activity[77], areas subject to high vehicular traffic (25,000 or more daily traffic); car washes; fleet storage areas; nurseries; or any other high threat to water quality land uses or activities.

e. Class V injection wells or dry wells must not be placed in areas subject to vehicular[78] repair or maintenance activities[79], such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop) or any facility that does any vehicular repair work.

f. Structural infiltration BMP treatment shall not be used at sites that are known to have soil and groundwater contamination.

g. Structural infiltration treatment BMPs shall be located at least 100 feet horizontally from any water supply wells.

h. The vertical distance from the bottom of any infiltration structural treatment BMP to the historic high groundwater mark shall be at least 10 feet. Where the groundwater basins do not support beneficial uses, this vertical distance criteria may be reduced, provided groundwater quality is maintained.

i. Structural infiltration treatment BMPs shall not cause a nuisance or pollution as defined in Water Code Section 13050.

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[77] Unless a site assessment pursuant to criteria developed in Section XI.E.3 shows that site operations do not pose a threat to ground water.

[78] Vehicles include automobiles; motor vehicles include trucks, trains, boats, motor cycles, farm machineries, airplanes and recreation vehicles such as snow mobiles, all terrain vehicles, and jet skis.

[79] United States Environmental Protection Agency, Office of Water, EPA 816-R-00-008, September 2000 State Implementation Guidance – (Revisions to the UIC Regulations for the Underground Injection Control Regulations for Class V Injection Wells, 64 FR 68546) indicate that these activities are prohibited from Class V Injection wells.

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCVRS 51010

[Assigned for All Purposes to the Honorable STANFORD E. REICHERT]

DECLARATION OF MICHAEL THORNTON IN SUPPORT OF CITY OF FONTANA'S REPLY BRIEF FOR MOTION TO REVISE SECTION 5 OF THE 2013 RECHARGE MASTER PLAN UPDATE AND RESTATED JUDGMENT

Date: April 25, 2014
Time: 1:30 p.m.
Dept.: R6

I, Michael Thornton, declare:

1. I am a principal engineer and president of TKE Engineering, Inc. (TKE). TKE provides contract water engineering services to the City of Fontana (Fontana), among other clients. I am a registered professional engineer in the state of California and I hold both bachelors and masters degrees in civil engineering with emphasis on water resources. The following matters are within my personal knowledge and, if called as a witness, I could competently testify to these facts.

2. The City generally drains to the southwest, but more predominately south than west. Runoff flows from private properties to public right-of-way. Thereafter, streets and underground drainage systems convey runoff to larger systems that ultimately convey all City runoff to the San Sevaine Channel. Exhibit A to my declaration illustrates Fontana's drainage system.

3. To meet the ever-increasing regional flood control needs, and the water supply needs of the City, the City developed the Vulcan Pit Flood Control and Aquifer Recharge Project (Project). The Project includes construction of a 2,000 acre-foot water retention/detention basin together with storm drain and recycled water conveyance facilities. Project components are shown on Exhibit B. The project will capture and recharge supplemental water currently lost to the Chino Basin, beginning to address overdraft in Management Zone 3 (MZ3). This higher quality water will blend with impaired groundwater improving overall basin conditions. It is estimated that the Project will recharge approximately 6,000 acre-feet annually (AFA) of both storm (3,000 AFY) and recycled (3,000 AFY) water to the Chino Groundwater Basin.

4. As shown on Exhibit B, the project will capture, convey, and recharge storm water from two tributary areas: 2,454 acres between the Atchison Topeka & Santa Fe rail corridor and Baseline Avenue; and another 2,159 acres north of Baseline Avenue. Currently, flows from the area south of Baseline drain to the West Fontana Channel, a low capacity earth channel that directs runoff to the west flowing through two small regional recharge facilities (Banana and Hickory), thereafter outlets to the San Sevaine Channel. The north tributary area is captured by the Baseline Drainage System (a reinforced concrete box conveyance channel) that conveys storm water from Mango Avenue to the San Sevaine Channel. The San Sevaine Channel conveys flows to the Santa Ana River. According to the Inland Empire Utilities Agency (IEUA), as presented during its Water Managers Meeting presentation of February 20, 2014, approximately 12,000 AFY of storm water is conveyed out of the Chino Basin by way of the San Sevaine Channel. This fact is documented in a page from IEUA's presentation, which is attached as Exhibit C to

my declaration. Exhibit C shows that, cumulatively, more than 40,000 AFY of stormwater runoff is leaving the Chino Basin.

5. The Project will redirect storm water from the aforementioned tributary areas recharging storm water locally. The Project includes storm drain systems (inlets, pipelines, and outlets) that will capture drainage from both drainage tributaries so that storm water will be conserved locally, storm water that currently is conveyed out of the Chino Basin as described above.

6. The Project will not impact current regional recharge operations. Existing local recharge facilities include the Banana (23 AF volume) and Hickory (50 AF volume) basins. The Project will preserve a drainage tributary to the Banana Basin of approximately 1,235 acres that will continue to deliver greater volumes of storm water than the basin is able to recharge without overflow. Regarding the Hickory Basin, a drainage tributary of 403 acres will continue to drain to the basin. It, together with an existing diversion structure in the San Sevaine Channel will continue to deliver storm water to the Hickory Basin. Therefore, neither Banana nor Hickory Basins will be impacted by the Project related to storm water recharge. Again, the project will capture approximately 3,000 AFY of the 40,000 AFY of storm water currently lost to the Chino Groundwater Aquifer.

7. The Project also includes a recycled water recharge component. Recycled water will be acquired from IEUA. Currently, IEUA's recycled water conveyance system extends into Fontana along Baseline Avenue. The Project will include an extension of the system to Baseline Road and Cherry Avenue intersection, as shown on Exhibit B. Drainage systems will convey the recycled water to the basin for recharge. Recycled water recharge amounts will be contingent upon amount of storm water recharged, with each source of recharge estimated at 3,000 AFY.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of March 2014, at Riverside, California.

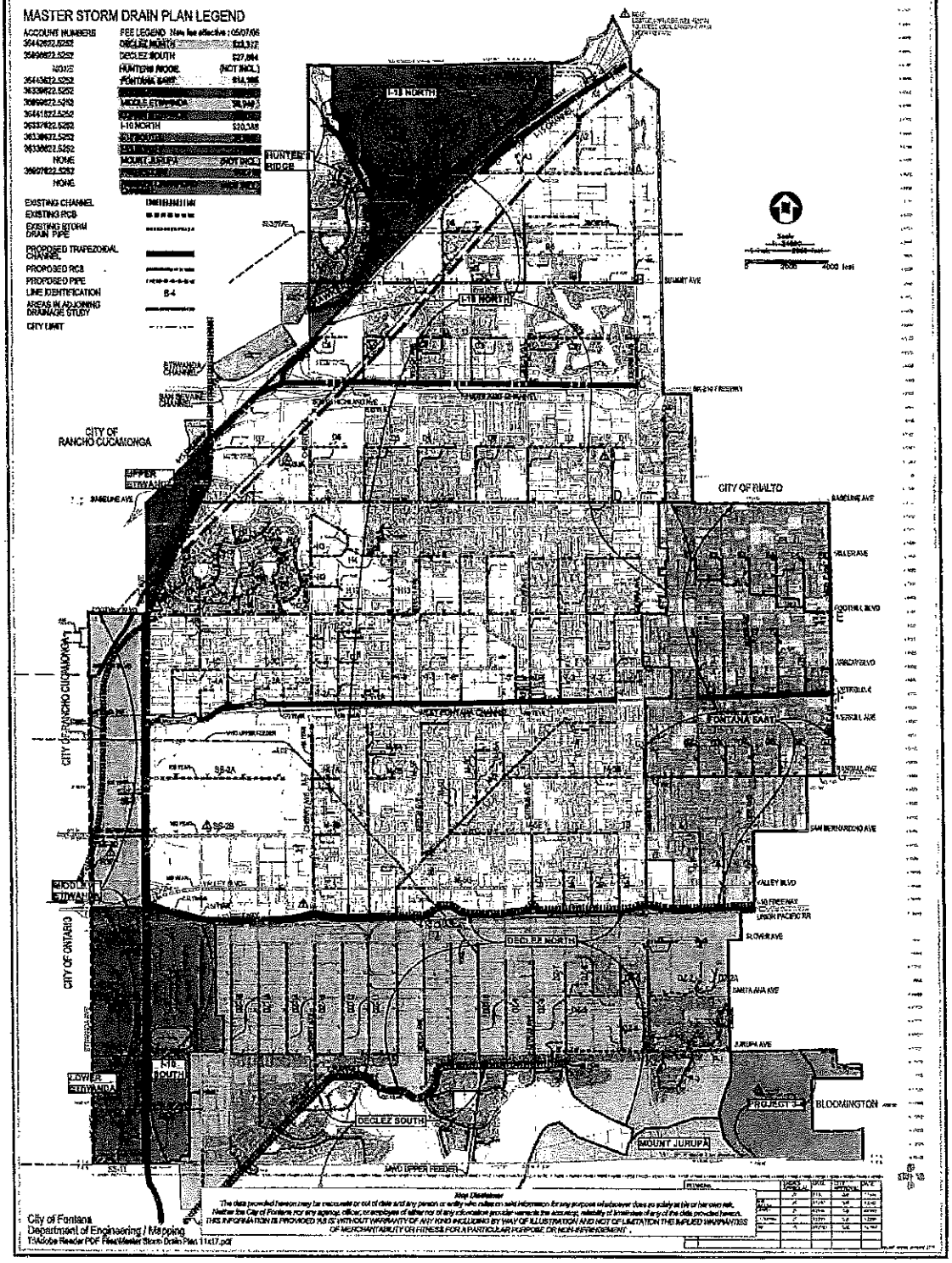
Michael Thornton

Exhibit A

City of Fontana, State of California

MASTER STORM DRAIN PLAN AND MASTER STORM DRAINAGE BENEFIT AREAS MAP

REVISED MAY 07, 2008



Map Disclaimer

The data provided hereon may be inaccurate or out of date and any person or entity who relies on said information for any purpose whatsoever does so solely at his or her own risk. Neither the City of Fontana nor any agency, officer, or employee of either nor of any information provider warrants the accuracy, reliability or timeliness of any of the data provided hereon. THIS INFORMATION IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING BY WAY OF ILLUSTRATION AND NOT OF LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

City of Fontana
Department of Engineering / Mapping
T:\Adobe Reader PDF Files\Master Storm Drain Plan 11x17.pdf

Exhibit B

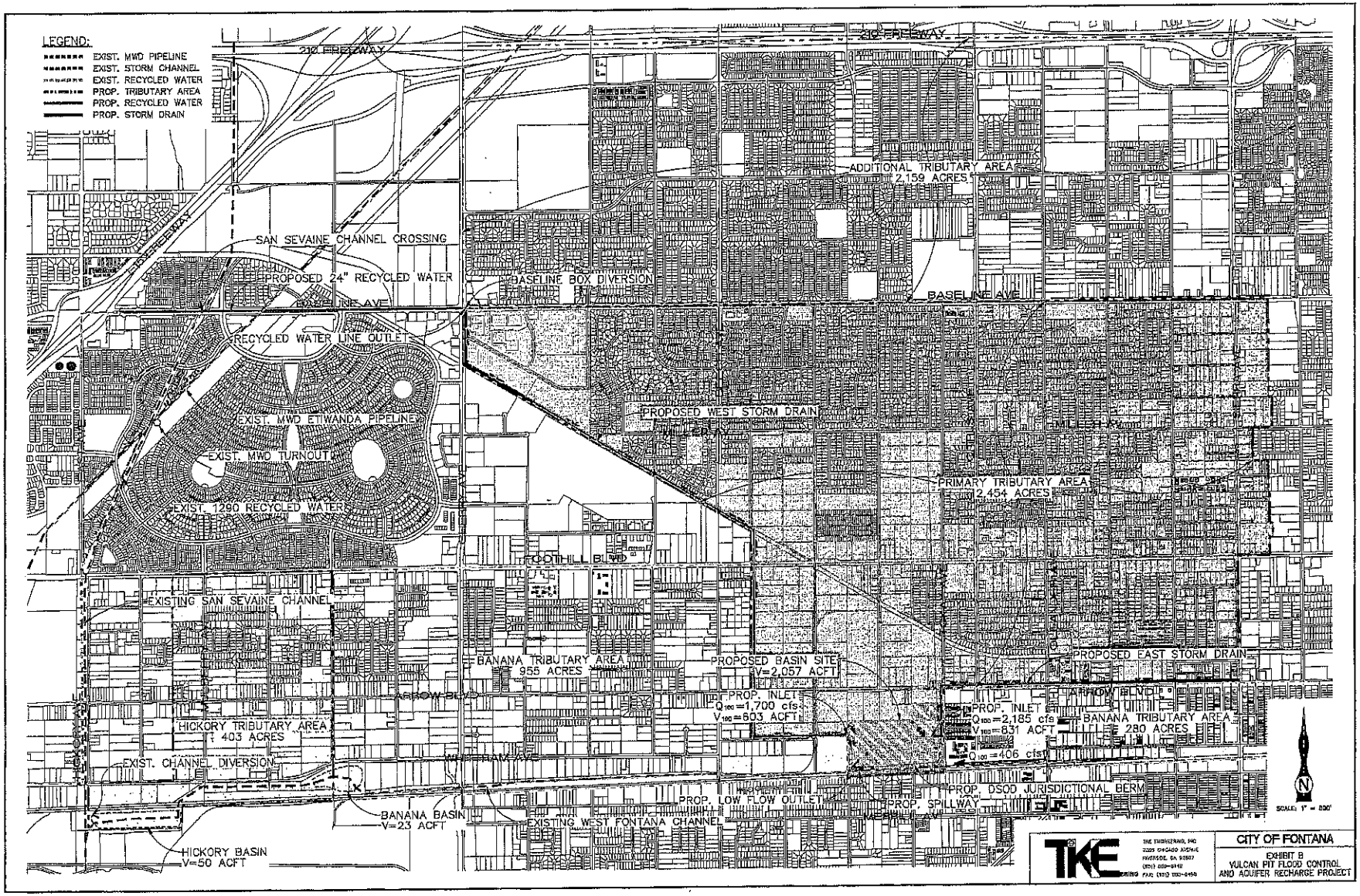

LEGEND:
EXIST. MWD PIPELINE
EXIST. STORM CHANNEL
EXIST. RECYCLED WATER
PROP. TRIBUTARY AREA
PROP. RECYCLED WATER
PROP. STORM DRAIN
210 FREEWAY
ADDITIONAL TRIBUTARY AREA
2,159 ACRES
SAN SEVAINE CHANNEL CROSSING
PROPOSED 24" RECYCLED WATER
BASELINE BOX DIVERSION
BASELINE AVE
RECYCLED WATER LINE OUTLET
EXIST. MWD ETIWANDA PIPELINE
EXIST. MWD TURNOUT
EXIST. 1290 RECYCLED WATER
PROPOSED WEST STORM DRAIN
PRIMARY TRIBUTARY AREA
2,454 ACRES
FOOTHILL BLVD
EXISTING SAN SEVAINE CHANNEL
BANANA TRIBUTARY AREA
955 ACRES
PROPOSED BASIN SITE
V=2,057 ACFT
PROPOSED EAST STORM DRAIN
ARROW BLVD
PROP. INLET
Q100=1,700 cfs
V100=603 ACFT
PROP. INLET
Q100=2,185 cfs
V100=831 ACFT
BANANA TRIBUTARY AREA
280 ACRES
Q100=406 cfs
HICKORY TRIBUTARY AREA
403 ACRES
EXIST. CHANNEL DIVERSION
MERRILL AVE
PROP. DSOD JURISDICTIONAL BERM
PROP. LOW FLOW OUTLET
PROP. SPILLWAY
BANANA BASIN
V=23 ACFT
EXISTING WEST FONTANA CHANNEL
HICKORY BASIN
V=50 ACFT
N
SCALE: 1" = 800'
TKE
CITY OF FONTANA
EXHIBIT B
VULCAN PIT FLOOD CONTROL
AND AQUIFER RECHARGE PROJECT

Exhibit C

Inland Empire Utilities Agency

A MUNICIPAL WATER DISTRICT

Water Managers' Meeting

February 20, 2014

Uncaptured SW from Creeks

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CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCVRS 51010

[Assigned for All Purposes to the Honorable STANFORD E. REICHERT]

PROOF OF DELIVERY TO WATERMASTER

Date: April 25, 2014
Time: 1:30 p.m.
Dept.: R6

SOMACH SIMMONS & DUNN
A Professional Corporation

PROOF OF DELIVERY TO WATERMASTER

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California 95814. I am over the age of 18 years and not a party to the foregoing action.

On March 24, 2014, pursuant to the Court's instructions, I submitted the following documents to Janine Wilson, Watermaster in this matter, in an email addressed to JWilson@cbwm.org:

1. **CITY OF FONTANA'S REPLY BRIEF IN SUPPORT OF MOTION TO REVISE SECTION 5 OF THE 2013 RECHARGE MASTER PLAN UPDATE AND RESTATE JUDGMENT**

2. **DECLARATION OF NICHOLAS A. JACOBS IN SUPPORT OF CITY OF FONTANA'S REPLY BRIEF IN SUPPORT OF MOTION TO REVISE SECTION 5 OF THE 2013 RECHARGE MASTER PLAN UPDATE AND RESTATE JUDGMENT**

3. **DECLARATION OF MICHAEL THORNTON IN SUPPORT OF CITY OF FONTANA'S REPLY BRIEF IN SUPPORT OF MOTION TO REVISE SECTION 5 OF THE 2013 RECHARGE MASTER PLAN UPDATE AND RESTATE JUDGMENT**

The Watermaster has agreed to file the above-referenced pleadings with the Court, and serve said pleadings on all pertinent parties.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on March 24, 2014 at Sacramento, California.

Corene E. Rodder

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 March 24, 2014 I served the following:

1. **CITY OF FONTANA'S REPLY BRIEF IN SUPPORT OF MOTION TO REVISE SECTION 5 OF THE 2013 RECHARGE MASTER PLAN UPDATE AND RESTATED JUDGMENT**
2. **DECLARATION OF NICHOLAS JACOBS IN SUPPORT OF CITY OF FONTANA'S REPLY BRIEF FOR MOTION TO REVISE SECTION 5 OF THE 2013 RECHARGE MASTER PLAN UPDATE AND RESTATED JUDGMENT**
3. **DECLARATION OF MICHAEL THORNTON IN SUPPORT OF CITY OF FONTANA'S REPLY BRIEF FOR MOTION TO REVISE SECTION 5 OF THE 2013 RECHARGE MASTER PLAN UPDATE AND RESTATED JUDGMENT**
4. **PROOF OF DELIVERY TO WATERMASTER**

/X/ 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.

/X/ 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 March 24, 2014 in Rancho Cucamonga, California.

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Chino Basin Watermaster

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