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EXEMPT FROM FILING FEES
PURSUANT TO GOV. CODE, § 6103

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN BERNARDINO

12 CHINO BASIN MUNICIPAL WATER
DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendants.

CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO
HONORABLE STANFORD E. REICHERT

APPENDIX OF EVIDENCE IN SUPPORT
OF CITY OF ONTARIO'S COMBINED
REPLY BRIEF

VOL II: EXHIBITS 7 – 12

RE: APPLICATION FOR AN ORDER TO
EXTEND TIME UNDER JUDGMENT,
PARAGRAPH 31(C) TO CHALLENGE
WATERMASTER ACTION/DECISION
ON NOVEMBER 18, 2021 TO APPROVE
THE FY 2021/2022 ASSESSMENT
PACKAGE. IF SUCH REQUEST IS
DENIED, THIS FILING IS THE
CHALLENGE

Hearing:

Date: June 17, 2022

Time: 1:30 p.m.

Dept.: S35

1 City of Ontario (“Ontario”) submits this appendix of evidence referenced in its Combined
 2 Reply to the Oppositions of Watermaster, Fontana Water Company and Cucamonga Valley Water
 3 District, and Inland Empire Utilities Agency to the Application for an Order to Extend Time Under
 4 Judgment, Paragraph 31(c) to Challenge Watermaster Action/Decision on November 18, 2021 to
 5 Approve the FY 2021/2022 Assessment Package and Request for Judicial Notice, filed
 6 concurrently herewith.

EX. NO.	DESCRIPTION	VOL.
1.	Chino Basin Watermaster Restated Judgment, No. 51010	1
2.	Chino Basin Watermaster Rules and Regulations, updated 2019	1
3.	Report and Recommendation of Special Referee to Court Regarding: (1) Motion for Order That Audit Commissioned By Watermaster is Not a Watermaster Expense, and (2) Motion to Appoint a Nine-Member Watermaster Panel, dated December 12, 1997	1
4.	Court’s Ruling and Order, entered June 18, 2010	1
5.	Opinion of Fourth Appellate District Court of Appeal in Case No. E051653, dated April 10, 2012	1
6.	Order Post Appeal, entered June 29, 2012	1
7.	Watermaster’s Reply to Oppositions to Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, filed February 1, 2016	2
8.	Watermaster’s Further Response to Order for Additional Briefing, filed April 11, 2016	2
9.	Orders for Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restatement Judgment, Paragraph 6, entered on April 28, 2017	2
10.	Order on the Motion to Approve Amendments to Appropriative Pool Pooling Plan, entered March 15, 2019	2
11.	Groundwater Storage Program Funding Agreement, Agreement No. 49960, dated March 1, 2003	2
12.	Order Concerning Groundwater Storage Program Funding Agreement – Agreement No. 49960, entered June 5, 2003	2

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27
28

EX. NO.	DESCRIPTION	VOL.
13.	Local Agency Agreement by and between Inland Empire Utilities Agency (“IEUA”) and Cucamonga County Water District, dated March 11, 2003	3
14.	Local Agency Agreement by and between IEUA and the City of Ontario, dated April 15, 2003	3
15.	Local Agency Agreement by and between IEUA and the City of Ontario and Jurupa Community Services District, dated January 12, 2004	3
16.	Chino Basin Watermaster Staff Report re MWD/IEUA/TVMWD Groundwater Storage Account, dated March 11, 2004	3
17.	Watermaster’s Motion for Approval of Storage and Recovery Program Agreement (with Exhibit A only), filed May 12, 2004	3
18.	Order Approving Storage and Recovery Program Storage Agreement re Implementation of Dry Year Yield Storage Project, entered June 24, 2004	3
19.	Amendment No. 8 to Groundwater Storage Program Funding Agreement No. 49960, dated January 23, 2015	3
20.	Agenda for the Chino Basin Watermaster Appropriative Pool Meeting held October 9, 2014	3
21.	Chino Basin Watermaster Staff Report regarding Amendment No. 8 to MWD Dry Year Yield Agreement, dated October 9, 2014	3
22.	Agenda for the Chino Basin Watermaster Advisory Committee Meeting held on October 16, 2014	3
23.	Chino Basin Watermaster Staff Report regarding Amendment No. 8 to MWD Dry Year Yield Agreement, dated October 16, 2014	4
24.	Agenda for the Chino Basin Watermaster Board Meeting held October 23, 2014	4
25.	Chino Basin Watermaster Staff Report regarding Amendment No. 8 to MWD Dry Year Yield Agreement, dated October 23, 2014	4
26.	City of Chino <i>Ex Parte</i> Application for an Order to Extend Time Under Judgment, Paragraph 31(c) to Challenge Watermaster Action/Decision on August 25, 2020 to Issue Invoices to Pay AG Pool Legal Expenses to Appropriators Including the City of Chino, filed on or around October 15, 2020.	4
27.	Chino Basin Watermaster <i>Ex Parte</i> Application to Continue October 23, 2020 Hearing on Motion of Appropriative Pool Member Agencies Re: Agricultural Pool Legal Expenses, filed on or around October 20, 2020.	4

EX. NO.	DESCRIPTION	VOL.
28.	Order granting the Chino Basin Watermaster <i>Ex Parte</i> Application to Continue October 23, 2020 Hearing on Motion of Appropriative Pool Member Agencies Re: Agricultural Pool Legal Expenses, signed on October 28, 2020.	4
29.	Chino Basin Watermaster Reply to Appropriative Pool Member Agencies' Opposition to Chino Basin Watermaster Ex Parte Application to Continue Hearing on Motion Re Agricultural Pool Legal Expenses, filed October 21, 2020.	4
30.	Peace Agreement Chino Basin, dated June 29, 2000.	4
31.	First Amendment to Peace Agreement, dated September 2, 2004.	4
32.	Second Amendment to Peace Agreement, dated October 25, 2007.	4
33.	Peace II Agreement: Party Support For Watermaster's OBMP Implementation Plan – Settlement and Release of Claims Regarding Future Desalters, dated October 25, 2007.	4
34.	Agenda for the Watermaster's Appropriative Pool Meeting held September 13, 2018.	4
35.	Agenda for the Watermaster's Advisory Committee Meeting held September 20, 2018.	4
36.	Agenda for the Watermaster's Board Meeting held September 27, 2018.	4
37.	Minutes of the Watermaster's Appropriative Pool Meeting held September 13, 2018.	4
38.	Minutes of the Watermaster's Advisory Committee Meeting held September 20, 2018.	4
39.	Minutes of the Watermaster's Board Meeting held September 27, 2018.	4
40.	Minutes of the Watermaster Appropriative Pool – Special Meeting, held November 27, 2018.	4
41.	Letter Agreement entitled "Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology" by and between MWD, IEUA, TVMWD, and Watermaster, dated February 5, 2019.	4
42.	Chino Basin Watermaster Staff Report regarding Dry Year Yield Program – Information Only, dated January 27, 2022.	4

1
2
3
4
5
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8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EX. NO.	DESCRIPTION	VOL.
43.	Presentation given by the Watermaster staff regarding the Dry Year Yield Program at the January 27, 2022 Board meeting.	4
44.	Chino Basin Watermaster 2003/2004 Assessment Package (Production Year 2002/2003), approved November 27, 2003.	5
45.	Chino Basin Watermaster 2004/2005 Assessment Package (Production Year 2003/2004), approved November 18, 2004.	5
46.	Chino Basin Watermaster 2005/2006 Assessment Package (Production Year 2004/2005), approved November 8, 2005.	5
47.	Chino Basin Watermaster 2006/2007 Assessment Package (Production Year 2005/2006), approved February 22, 2007.	5
48.	Chino Basin Watermaster 2007/2008 Assessment Package (Production Year 2006/2007), approved December 20, 2007.	6
49.	Chino Basin Watermaster 2008/2009 Assessment Package (Production Year 2007/2008), approved November 20, 2008.	6
50.	Chino Basin Watermaster 2009/2010 Assessment Package (Production Year 2008/2009), approved October 22, 2009.	6
51.	Chino Basin Watermaster 2010/2011 Assessment Package (Production Year 2009/2010), approved October 28, 2010.	6
52.	Chino Basin Watermaster 2011/2012 Assessment Package (Production Year 2010/2011), approved January 26, 2012.	6
53.	Chino Basin Watermaster 2012/2013 Assessment Package (Production Year 2011/2012), approved November 15, 2012.	6
54.	Chino Basin Watermaster 2017/2018 Assessment Package (Production Year 2016/2017), approved November 16, 2017.	6
55.	Chino Basin Watermaster 2017/2018 Revised Assessment Package (Production Year 2016/2017), approved September 26, 2019.	7
56.	Chino Basin Watermaster 2018/2019 Assessment Package (Production Year 2017/2018), approved November 15, 2018.	7
57.	Chino Basin Watermaster 2018/2019 Revised Assessment Package (Production Year 2017/2018), approved September 26, 2019.	7
58.	Chino Basin Watermaster 2019/2020 Assessment Package (Production Year 2018/2019), approved November 21, 2019.	7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EX. NO.	DESCRIPTION	VOL.
59.	Chino Basin Watermaster 2020/2021 Assessment Package (Production Year 2019/2020), approved November 19, 2020.	7
60.	Chino Basin Watermaster 2021/2022 Assessment Package (Production Year 2020/2021), approved November 18, 2021.	7
61.	Chino Basin Watermaster Staff Report regarding the Fiscal Year 2021/22 Assessment Package, dated November 18, 2021.	7

Dated: May 26, 2022

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EXHIBIT 7

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9 FOR THE COUNTY OF SAN BERNARDINO

10
11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

12 Plaintiff,

13 v.

14 CITY OF CHINO, et al.,

15 Defendant.
16

Case No. RCV 51010

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

**WATERMASTER'S REPLY TO
OPPOSITIONS TO MOTION
REGARDING 2015 SAFE YIELD RESET
AGREEMENT, AMENDMENT OF
RESTATED JUDGMENT, PARAGRAPH 6**

Date: February 26, 2016
Time: 1:30 P.M.
Dept.: R-6

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. INTRODUCTION 2

II. THE PROPOSED RESET TO 135,000 AFY IS RESPONSIVE TO COURT ORDER, PROTECTS THE BASIN, AND CONSISTENT WITH THE JUDGMENT 3

 A. Substantial Evidence Before the Court Supports the Reset of the Safe Yield at 135,000 AFY 3

 B. The Safe Storage Reserve will Ensure the Basin’s Protection while the Effects of the Reset May be Evaluated 7

III. THE 2015 SYRA’S ACCOUNTING PROVISIONS SEEK THE COURT’S CONFIRMATION OF THE EFFECT OF THE COURT APPROVED MANAGEMENT AGREEMENTS IN EVENT OF DECLINE IN SAFE YIELD 10

 A. Watermaster’s Motion is a Paragraph 15 Request for Judgment Amendment and Further Orders..... 10

 B. All Members of the Appropriative Pool Proportionally Share the Effect of the Decline in Safe Yield 14

 C. The Use of Desalter-Induced Recharge to Offset Desalter Production was Agreed to in the Peace II Agreement and Ordered by the Court: There is no Confiscation or Ultra-Vires Allocation of Operating Safe Yield..... 16

 D. The Allocation of Unproduced Agricultural Water Contemplated in the 2015 SYRA is Consistent with Watermaster’s Course of Conduct Pursuant to Court Approved Management Agreements for the Past Nine Years 17

 1. Background on Land Use Conversion and Early Transfer Claims 18

 2. Watermaster has Allocated Unproduced Agricultural Water in the Manner Contemplated in the 2015 SYRA for Nine Years without Objection..... 24

IV. CONCLUSION 25

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Federal Cases

Casitas Mun. Water Dist. v. U.S. (Fed.App. 2013)
 708 F.3d 13409

Casitas Mun. Water Dist. v. United States (2011)
 102 Fed. Cl. 44310

Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson Cty. (1985)
 473 U.S. 172.....9

California Cases

Allen v. Cal. Water & Tel. Co. (1946)
 29 Cal.2d 46612

Cedar Fair v. City of Santa Clara (2011)
 194 Cal.App.4th 115013

*Central and West Basin Replenishment District v. Southern California Water
 Company* (2003)
 109 Cal.App.4th 89112

City of Los Angeles v. City of Glendale (1943)
 23 Cal.2d 6812

City of Pasadena v. City of Alhambra (1949)
 33 Cal.2d 90812

Concerned McCloud Citizens v. McCloud Community Services Dist. (2007)
 147 Cal.App.4th 18113

Dow vs. Lassen Irrigation Co. (2013) 216 Cal.App.4th 76618

Hillside Memorial Park & Mortuary v. Golden State Water Co. (2011)
 205 Cal.App.4th 53413, 14

Jefferson St. Ventures, LLC v. City of Indio (2015)
 236 Cal.App.4th 11759

Save Tara v. City of West Hollywood (2008)
 45 Cal.4th 11613

1	California Statutes	
2	Public Resources Code	
3	§ 21065.....	12
4	Other Authorities	
5	California Constitution	
6	Article I, § 19	9
7	Article X, § 2.....	25
8	CEQA Guidelines	
9	§ 15352(a)	13
10	§ 15378.....	12
11		
12		
13		
14		
15		
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1 Watermaster recommends resetting and reducing the Safe Yield by 5,000 acre-feet per
2 year (AFY) (~3%) and seeks the Court's direction as to the appropriate interpretation of the
3 Court's prior orders. Watermaster's Safe Yield Reset Motion also recommends a suite of yield
4 accounting and management actions for the Court's consideration, which are in the best interests
5 of the Basin, authorized by the Judgment, supported by substantial evidence, and consistent with
6 Watermaster's continuing course of conduct over the past nine years.

7 The City of Chino ("City") is the lone dissenting voice as to the Safe Yield reset,
8 preferring that the Court reject Watermaster's recommendation and, in spite of its technical
9 evaluation, maintain the same level of authorized extractions. However, the City presents no
10 evidence as to why Watermaster's assessment of the Safe Yield is technically flawed or overly
11 conservative.

12 The City's contentions regarding the yield accounting and history of approvals for the
13 Desalters are unsupported and contrary to the plain meaning of existing Court Approved
14 Management Agreements.¹ In addition, the City has taken issue with Watermaster's
15 recommendations to protect the basin from harm attributable to the withdrawal of large quantities
16 of groundwater already in storage, claiming them to be punitive, unfair and as a "taking" of the
17 City's stored water. However, the alleged "taking" arises from the City's mischaracterization of a
18 management plan designed to prevent harm, still subject to a stakeholder process yet to be
19 initiated but pledged to be timely completed, with regulations that must be uniform in their
20 application among all members of the Appropriative Pool, and that does not currently and will not
21 ultimately prevent the withdrawal of stored water by the City and others.

22 _____
23 ¹ The 2015 Safe Yield Reset Agreement defines the Court Approved Management Agreements to
24 comprise: [1] the Chino Basin Peace Agreement, dated June 29, 2000, as subsequently amended
25 in September 2004 and December, 2007; [2] the Peace II Measures (Court approved on Dec. 21,
26 2007; [3] the OBMP Implementation Plan dated June 29, 2000, as supplemented in December
27 2007; [4] the Recharge Master Plan, dated 1998, as updated in 2010 and amended in 2013; [5] the
28 Watermaster Rules and Regulations dated June 2000 as amended; [6] the October 8, 2010 Order
Approving Watermaster's Compliance with Condition Subsequent Number Eight and Approving
Procedures to be used to Allocate Surplus Agricultural Pool Water in the Event of a Decline in
Safe Yield; and [7] Watermaster Resolution 2010-04 ("Resolution of the Chino Basin
Watermaster regarding Implementation of the Peace II Agreement and the Phase III Desalter
Expansion in Accordance with the December 21, 2007 Order of the San Bernardino Superior
Court"). (2015 SYRA, p. 1)

1 Meanwhile, the Jurupa Community Services District (JCSD) opposes the Watermaster’s
2 suite of recommendations in a single regard: JCSD contends that the quantity of groundwater to
3 be reallocated from members within the Agricultural Pool and made available to the urban
4 agencies providing retail service to lands formerly receiving water through Agricultural Pool
5 Production (agricultural conversion) be fixed and undiminished, regardless of competing claims
6 for that supply. Despite nine years of continuous application of earlier Court orders that share the
7 converted water among competing claims, JCSD contends the interpretation is incorrect because,
8 in its opinion, the Court hasn’t previously said so in precisely the correct manner. JCSD’s
9 contrary interpretation will provide no greater level of assurance that the Basin can be optimally
10 managed as required by the Judgment and will in fact, disrupt and unwind nearly a decade of
11 previous water allocations.

12 **I. INTRODUCTION**

13 It has been nearly 15 years since the Court ordered Watermaster to comply with the
14 Optimum Basin Management Program Implementation Plan² (“OBMP Implementation Plan”) and approved Watermaster’s 2001 Rules and Regulations,³ both of which explicitly provide for
15 the redetermination and reset of the Safe Yield. (Watermaster Rules and Regulations, § 6.5
16 [“Recalculation of Safe Yield. The Safe Yield shall be recalculated in year 2010/11 based upon
17 data from the ten-year period 2000/01 to 2009/10.”]; OBMP Implementation Plan, p. 45 [“The
18 following actions will be completed in years four through fifty, commencing in fiscal year
19 2003/04: In year 2010/11 and every ten years thereafter, compute safe yield and storage loss rate
20 for prior ten-year period, and reset safe yield and storage loss rate for the next ten-year period.”])
21 As has been described to the Court in Watermaster’s status reports regarding the Safe Yield reset
22 process,⁴ its Safe Yield Reset Motion,⁵ and its Opposition to the City of Chino’s Motion to Permit
23

24 ² Order Concerning Adoption of OBMP (July 13, 2000), at pp. 4-5.

25 ³ Order Granting Final Approval of Watermaster Rules and Regulations; Approving Intervention of CCG Ontario, LLC; Continuance of Hearing re Status Report; Filing of Motions to Amend Judgment (July 19, 2001).

26 ⁴ See, Status Report on Watermaster’s Safe Yield Recalculation (Apr. 11, 2014), at p. 3:2-18; Status Report on Watermaster’s Safe Yield Redetermination and Reset (July 10, 2015), at p. 3:6-12.

27 ⁵ Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, filed October 23, 2015, at p. 6:14-19.

1 Chino to Conduct Discovery,⁶ Watermaster initiated the process for its compliance with the
2 Court's orders nearly five years ago,⁷ and it has been diligent in its pursuit of the input and
3 assistance of the Parties to the Judgment as part of its compliance with its redetermination and
4 reset obligation.

5 Fundamentally, Watermaster's Safe Yield Reset Motion is responsive to the Court ordered
6 obligation to reset the Safe Yield – the evidence before the Court supports the proposed reset of
7 the Safe Yield to 135,000 acre-feet per year (AFY), and Watermaster requests further orders from
8 the Court, pursuant to its continuing jurisdiction, that confirm the application of the Court's prior
9 orders upon a decline in the Safe Yield. All but one party in the Basin – the City – agrees that it
10 should be reset to 135,000 AFY. The remaining objections of the City and JCSD – excluding the
11 City's characterization of the Safe Storage Reserve – devolve from their proposed alternative and
12 preferred interpretation as to how the Court Approved Management Agreements will function in
13 the event of a reduced Safe Yield and the acknowledgment of Desalter-Induced Recharge.

14 For the reasons previously expressed in its Safe Yield Reset Motion, as well as those set
15 forth below, Watermaster requests that the Court grants its motion, notwithstanding the
16 oppositions of the City and JCSD.

17 **II. THE PROPOSED RESET TO 135,000 AFY IS RESPONSIVE TO COURT**
18 **ORDER, PROTECTS THE BASIN, AND CONSISTENT WITH THE JUDGMENT**

19 **A. Substantial Evidence Before the Court Supports the Reset of the Safe Yield at**
20 **135,000 AFY**

21 For the avoidance of doubt and to provide complete clarity to the Parties and to the Court,
22 Watermaster's hydrologist developed a Reset Technical Memorandum (Exhibit "A" to the 2015

23 ⁶ Filed January 19, 2015.

24 ⁷ The City's claim that Watermaster has not provided adequate notice of the Safe Yield reset
25 (City Opposition, at p. 28:24-27) is contrary to the evidence of the extensive notice that has been
26 provided. In addition to the provisions of the OBMP Implementation Plan and Rules and
27 Regulations, and its participation at virtually every meeting in the present Safe Yield reset process
28 (See, Declaration of Bradley J. Herrema in Support of Watermaster's Opposition to City of
Chino's Motion to Permit Chino to Conduct Discovery, at ¶¶ 2-5), the annual approval of
budgeted expenses for the process and the reports to the Pool Committees, Advisory Committee,
Watermaster Board and this Court, the Watermaster adopted notices of the intent to change the
Safe Yield each year during the period of 2004-2011. (Supplemental Declaration of Danielle
Maurizio in Support of Watermaster's Reply to Opposition to Motion Regarding 2015 Safe Yield
Reset Agreement, Amendment of Restated Judgment, Paragraph 6 ("Maurizio Supp. Decl."), at ¶
15, Exh. 4.)

1 SYRA) articulating the step-by-step methodology for the evaluation of the Safe Yield. The
2 methodology described in the Reset Technical Memorandum integrates the Updated Basin
3 Model, which has incorporated data from the 2000/2001-2009/2010 period, as required by the
4 OBMP Implementation Plan, along with long-term hydrology from 1921 to the date of the reset
5 evaluation. (Reset Technical Memorandum, at p. 2.) Mr. Wildermuth, Watermaster's longtime
6 hydrologic consultant, on whose opinion Watermaster and the Court have relied⁸ over the past 15
7 years, believes the approach to be a prudent and reasonable professional methodology, consistent
8 with professional custom, standard and practice. (Wildermuth Decl., at ¶ 6; Reset Technical
9 Memorandum, at p. 2.)

10 Using the Updated Basin Model and the methodology described in the Reset Technical
11 Memorandum, the Safe Yield for the 2010/2011-2019/2020 time period identified in the OBMP
12 Implementation Plan and Watermaster's Rules and Regulations is 135,000 AFY. (Wildermuth
13 Decl., at ¶ 12.) A long-term hydrology was used, the now prevailing cultural conditions of the
14 Basin were evaluated, and the need to protect against "undesirable results" considered.

15 The City has not provided evidence indicating that the Court Approved Management
16 Agreements would require that the Safe Yield be set at any other quantity.⁹ Instead the City has a
17 list of objections to the Safe Yield Reset Motion's request to reduce the "Historic Basin Safe
18 Yield of 140,000 Acre Feet," as it claims that this would deviate from the Judgment's "expansive
19 Safe Yield standard." (City of Chino's Opposition to Watermaster's Motion Regarding 2015
20 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6 (hereafter "City
21 Opposition"), 15:16-18.) These can be characterized generally as two types of objections: (i)
22 objections to the manner in which the concept of Safe Yield is construed and (ii) objections
23 regarding the manner in which the Updated Basin Model was utilized in the Safe Yield
24 evaluation.

25 _____
26 ⁸ See Wildermuth Decl., at ¶ 4 [noting certain Orders issued by the Court in reliance on the 2003
27 Chino Basin Groundwater Model or updates thereto]; see also, e.g., Order Concerning Motion for
28 Approval of Peace II Documents (Dec. 21, 2007); Order Concerning Adoption of OBMP (July
13, 2000).

⁹ JCSD does not oppose the proposed change in the Safe Yield. (See JCSD Opposition, at p. 1:7-
8).

1 First, as to construing Safe Yield, by definition, the OBMP ensures that the quantity and
2 quality of the Basin's water resources be preserved and the beneficial use of the Basin
3 maximized. (Restated Judgment, ¶ 41.) As described in the Reset Technical Memorandum and
4 the Supplemental Declaration of Mark Wildermuth in Support of Watermaster's Reply to
5 Oppositions to Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated
6 Judgment, Paragraph 6 ("Wildermuth Supp. Decl."), the work done pursuant to the OBMP
7 Implementation Plan allows for maximum beneficial use of the Basin's waters to be made, such
8 that the Safe Yield need not be reduced due to potential undesirable results of pumping at a
9 certain level within the Basin. (Reset Technical Memorandum, at p. 1; Wildermuth Supp. Decl.,
10 ¶ 7.) This is not a talismanic adherence to the "net recharge" of the Basin, but an adaptive
11 management regime that ensures compliance with the Constitutional mandate to maximize the
12 resource. Accordingly, this tension – managing to maximize the beneficial use while avoiding
13 undesirable results – cannot mean that Watermaster should wait for undesirable results to actually
14 occur before revising its course of action. In fact, such "reactive" strategies would be counter to
15 good Basin management practices and the OBMP.

16 While the City has repeatedly discussed the fact that the Basin contains a large quantity of
17 water in storage, this alone is not a justification to set the Safe Yield above the annual average
18 quantity of water that may be produced without an undesirable result. Since the early 1900s, it is
19 estimated that more than 2.1 million AF has been withdrawn from the Basin in excess of recharge
20 during that period. (Wildermuth Decl., ¶ 16; see also Wildermuth Decl., Exh. 1, § 7.3.4
21 [estimating a decline in Basin storage between 1922 and 2015 of approximately 2.1 million acre-
22 feet].) Whatever historical cushion there may have been in the Basin has been substantially
23 reduced by pre-OBMP conduct.

24 Restated Judgment paragraph 13 enjoins each Party to the Judgment from production in
25 excess of the parties rights, other than pursuant to the Physical Solution – which provides for
26 replenishment of water pumped in excess of a Party's right – or pursuant to a stored water
27 agreement. (Restated Judgment, ¶ 13.)¹⁰ Since the entry of the Judgment, groundwater

28 ¹⁰ See Restated Judgment, Exhibit "I" (Engineering Appendix), ¶ 3.(a) [Accumulated Overdraft.

1 extractions in excess of the recharge rate have been reviewed and approved by the Court as
2 “overdraft” and not as Safe Yield of the Basin. (Restated Judgment, ¶ Exhibit “I”, 2.(b), 3.(a).)

3 Second, as for the reliance on the Updated Basin Model, the City does not quarrel with the
4 Updated Basin Model’s ability to simulate the movement of groundwater within the Basin. (City
5 Opposition, 15:19-17:5.) Rather, its comments focus on further improvements. The City argues
6 the Updated Basin Model must not itself determine the Safe Yield (City Opposition 16:15-18
7 [“The 2013 Model does not produce data about the ‘long term average quantity of ground water
8 which can be produced from the Basin.’ It only produces data that estimates the amount of water
9 that has been recharged into the Basin in the past, which is then used to extrapolate a future
10 amount of recharge.”]) Watermaster agrees that the 2013 Model should not be a substitute for
11 decision-making. A fair reading of the Reset Technical Memorandum demonstrates that the
12 model is a technical instrument used *in support of* decision-making, but the Model itself does not
13 make decisions.

14 The City additionally claims that the Updated Basin Model does not produce data that can
15 be used to determine the occurrence of an undesirable result or “connect an undesirable result to
16 any level of production,” meaning, in the City’s opinion, that an “essential element of the Safe
17 Yield definition has been dismissed.” (City Opposition, 16:19-17:2.) This allegation suggests a
18 misunderstanding of the model, its inputs, and its use. Again, as described in the Reset Technical
19 Memorandum, the Updated Basin Model is not used in a vacuum, but is an instrument that
20 supports the exercise of professional analysis and judgment concerning the totality of the
21 conditions that are monitored in the Basin. (Wildermuth Supp. Decl., at ¶¶ 11-13.)

22 Finally, in regard to the concerns raised by the City’s expert, Watermaster’s consultant has
23 considered the effects of climate change on precipitation in the Basin, both over the historical
24 record and those projected to occur, but does not believe that the predictive modeling scenarios
25 that are generally available *at this time* are accurately calibrated to the historical rainfall in the
26 Basin, and accordingly are not reliable as a predictive tool. (Wildermuth Supp. Decl., ¶ 27.)

27 - During the operation of this Judgment and Physical Solution, the overdraft accumulated from
28 and after the effective date of the Physical Solution and resulting from an excess of Operating
Safe Yield over Safe Yield shall not exceed 200,000 acre feet.”])

1 Should the accuracy of the calibration improve, Watermaster has the flexibility to include it in
2 future re-sets. (Wildermuth Supp. Decl., ¶ 28.)

3 **B. The Safe Storage Reserve will Ensure the Basin's Protection while the Effects**
4 **of the Reset May be Evaluated**

5 The Governor has declared that, due to drought conditions, a State of Emergency is
6 prevailing in this State. (Executive Order B-29-15 (Apr. 1, 2015), at ¶ 2.) Stored water may be
7 called upon to alleviate short-term and long-term shortages as well as to off-set new production
8 from Desalters. Coupled with the historical depletion from the Basin and the reduction in Safe
9 Yield, Watermaster seeks to establish uniform rules to manage the safe withdrawal of
10 groundwater from storage.

11 All storage of water within the Basin – both Supplemental Water and Excess Carryover
12 Water – must be done pursuant to agreement with Watermaster. (Restated Judgment, ¶ 11, ¶ 12,
13 Exhibit “H” (Appropriative Pool Pooling Plan), ¶ 12 [“Carry-over. Any appropriator who
14 produces less than his assigned share of Operating Safe Yield may carry such unexercised right
15 forward for exercise in subsequent years....In the event the aggregate carry-over by any
16 appropriator exceeds its share of Operating Safe Yield, such appropriator shall, as a condition of
17 preserving such surplus carry-over, execute a storage agreement with Watermaster.”];
18 Watermaster Rules and Regulations, § 8.1(e).) All storage capacity shall be subject to regulation
19 and control by Watermaster. (Peace Agreement § 5.2(c).)

20 The storage of water within the Basin is expressly made subject to these conditions within
21 the Court Approved Management Agreements (Peace Agreement, § 5.2; OBMP Implementation
22 Plan, Program 8, at subd. (a)(i); Watermaster Rules and Regulations, § 8.1(a)) and withdrawal of
23 water from storage is *already subject to the limitation* that it be done without Material Physical
24 Injury.¹¹ (Watermaster Rules and Regulations, §8.1(j) [“No Material Physical Injury.

25 ¹¹ "Material Physical Injury" means material injury that is attributable to the Recharge, Transfer,
26 storage and recovery, management, movement or Production of water, or implementation of the
27 OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence,
28 increases in pump lift (lower water levels) and adverse impacts associated with rising
groundwater. Material Physical Injury does not include "economic injury" that results from other
than physical causes. Once fully mitigated, physical injury shall no longer be considered to be
material;" (Peace Agreement, ¶1.1(y); see also Watermaster Rules and Regulations, § 1.1(uu).)

1 Watermaster will ensure that any party to the Judgment may Recapture water in a manner
2 consistent with the Peace Agreement, the OBMP, the Judgment and these Rules and Regulations.
3 Watermaster shall not approve a Recapture plan if it is inconsistent with the terms of Peace
4 Agreement or will cause Material Physical Injury to any party to the Judgment or the Basin. Any
5 potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused
6 by the Recapture of water by any person shall be fully and reasonably mitigated as a condition of
7 approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the
8 request for Recapture must be denied.”])

9 The City objects to Watermaster’s recommendation to establish a contingent Safe Storage
10 Reserve – the restrictions of which only arise should it become necessary – on the basis of the
11 quantity of water in storage now. Instead, without explanation, it would prefer an allocation of
12 responsibility based on each member of the Appropriative Pool’s percentage share of the
13 Operating Safe Yield. However, there is no nexus between a Party’s stored water and its share of
14 Operating Safe Yield.

15 The restrictions of the contingent Safe Storage Reserve proposed by Watermaster address
16 the quantity of water held in storage and apportions the responsibility uniformly among all
17 members of the Appropriative Pool and the impacts of Reserve’s restrictions would be
18 proportionate among all Appropriators in relation to their quantity of stored water. (See 2015
19 SYRA, ¶ 6.2(a), Exhibit “C”.) Consequently, the impact of the management program will be
20 spread among the parties in the same manner that the impact of Material Physical Injury from
21 withdrawal of stored water might arise – proportionately based on the quantity of water in
22 storage.

23 It is true that the City has amassed a large reserve of stored water. This is attributable to
24 the fact that it has successfully secured assignments of groundwater from agricultural users
25 supported, in large part, by the distribution of recycled water. (Maurizio Supp. Decl., ¶ 8; Exh.
26 1.) The City does not presently pump any portion of its share of Safe Yield, preferring to store its
27 annual entitlement. (Maurizio Supp. Decl., at ¶¶ 12, 13; Exh. 1; Exh. 2.) No reasonable
28 construction of the 2015 SYRA’s Safe Storage Reserve can remotely suggest a taking of stored

1 water in violation of Article I, Section 19 [of the California Constitution] resulting from the Safe
2 Storage Reserve's restrictions on the excess carry over water.¹²

3 Initially, a takings claim cannot be ripe because the Safe Storage Reserve is contingent
4 and dependent upon the failure to prepare a substitute plan. First, there must be "a final decision
5 regarding the application of the regulations to the property at issue" to support a takings claim.
6 (*Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson Cty.* (1985) 473 U.S. 172,
7 186.) As one California court explained, a court cannot determine a regulation's economic
8 impact until a regulation has actually been applied. (*Jefferson St. Ventures, LLC v. City of Indio*
9 (2015) 236 Cal.App.4th 1175, 1195.) There is substantial uncertainty as to whether the
10 challenged measure will ever be invoked. The process to prepare a plan will begin in earnest this
11 year and be presented to the Court upon completion. If the City, or, for that matter, any Party, is
12 dissatisfied with the final plan and contends that new plan or the Safe Storage Reserve will
13 effectuate a taking, it could bring the claim to the Court's attention at that time.

14 Second, the only compensable right under California water law is a right to beneficial
15 use," and the City has not presented any evidence of a beneficial use of stored water. (*Casitas*
16 *Mun. Water Dist. v. U.S.* (Fed.App. 2013) 708 F.3d 1340, 1353.) The demonstration of a
17 beneficial use cannot be merely hypothetical, and storage of water, in and of itself, is not a
18 beneficial use. (*Casitas*, 708 F.3d at 1356.) Substantial evidence offered by the City
19 demonstrates that it has no present beneficial use of its stored water. The City's failure to
20 Produce water user its annual production rights for the past four years.

21 During the past four production years (Production Years 2011-2012 through 2014-2015),
22 the City had *no assessable groundwater production from the Basin*, and in three of those years
23 more than 12,000 acre-feet of water were transferred into its Excess Carryover stored water
24 account. (Declaration of David Crosley, Exhibit "A", p. 2A; Maurizio Supp. Decl., ¶ 12.) If
25 there are proposed uses or sales of the stored water to third parties that might be impacted by the

26 _____
27 ¹² Non-Supplemental Stored Water is what is referred to as Excess Carryover water, as a producer
28 may carryover up to its annual Safe Yield or Operating Safe Yield right each year without
requiring a storage agreement. (Restated Judgment, Exhibit "G", ¶ 7; Exhibit "H", ¶ 10;
Watermaster Rules and Regulations, at §§ 1.1, subd. (hh), 8.1, subd. (e).)

1 Safe Storage Reserve, the City has offered no evidence to this effect.

2 Moreover, a takings claimant cannot possess a property right that is inconsistent with
3 “background principles of state law.” (*Casitas Mun. Water Dist. v. United States* (2011) 102 Fed.
4 Cl. 443, 446, 474, citing *Lucas v. S. Carolina Coastal Council* (1992) 505 U.S. 1003, 1029.)
5 Here, the City’s alleged right to withdraw from storage, *subject to* Watermaster’s regulatory
6 authority over storage accounts, as embodied in the Court-Approved Management Agreements.
7 That is, the City holds water in storage, subject to Watermaster’s power to regulate withdrawals
8 of water storage to protect against Material Physical Injury. (Restated Judgment, ¶¶ 11, 12, 28;
9 Watermaster Rules and Regulations, §8.1(j); Peace Agreement, § 5.2.) The Safe Storage Reserve
10 is in furtherance of Watermaster’s authority to regulate groundwater storage and the Watermaster
11 Rules and Regulations that govern the recapture of stored water. It is not a new limitation on
12 previously vested rights.

13 **III. THE 2015 SYRA’S ACCOUNTING PROVISIONS SEEK THE COURT’S**
14 **CONFIRMATION OF THE EFFECT OF THE COURT APPROVED**
15 **MANAGEMENT AGREEMENTS IN EVENT OF DECLINE IN SAFE YIELD**

16 **A. Watermaster’s Motion is a Paragraph 15 Request for Judgment Amendment**
17 **and Further Orders**

18 Arising under Paragraph 15 of the Restated Judgment, in fulfillment of an obligation in
19 administering the decree, Watermaster has moved the Court regarding subject matter where it has
20 no power itself to bind any Party or the Court. Court review and approval is required to amend
21 the Restated Judgment and to construe the Court’s prior orders. Watermaster may merely offer
22 its recommendation and request approvals and further Court Orders. As described in
23 Watermaster’s Opposition to the City of Chino’s Motion to Permit Chino to Conduct Discovery,
24 filed January 19, 2016, Watermaster’s Safe Yield Reset Motion is a request, pursuant to
25 Paragraph 15, for amendment of the Restated Judgment and further orders.

26 Contrary to the characterizations of both JCSD and the City, the Safe Yield Reset Motion
27 does not request a change to the provisions of the Court-Approved Management Agreements, but
28 is a request that the Court confirm the 2015 SYRA’s interpretation of the manner in which
Watermaster should comply with the provisions of those agreements. (See, Restated Judgment, ¶

1 15 [“Said continuing jurisdiction is provided for the purpose of enabling the Court, upon
2 application of...the Watermaster...to make such further or supplemental orders or directions as
3 may be necessary or appropriate for interpretation, enforcement or carrying out of this Judgment,
4 and to modify, amend or amplify any of the provisions of this Judgment.”]) Watermaster does
5 not suggest new or different language for any agreement.

6 All but two Parties to the Judgment, either independently or as members of a Pool, have
7 either taken positions of endorsement¹³ or have not opposed Watermaster’s Safe Yield Reset
8 Motion. While indicative of the general lack of disagreement with the Motion, it is also relevant
9 to the Court’s interpretative and enforcing order under the provisions of Section 15¹⁴. The vast
10 majority of Parties subject to the Judgment and the Court Approved Management Agreements
11 concur with Watermaster’s recommendations.

12 Contrary to the City’s extensive arguments (City Opposition, pp. 40:23-54:26), the Court
13 need not withhold approval of the Safe Yield Reset Motion based on the City’s claim that the
14 Parties are unable to approve the 2015 SYRA as it offers an agreed interpretation to facilitate the
15 seamless, efficient administration of the Judgment and the OBMP. Watermaster proposes no new
16 project or program that is being called to the Court’s attention pursuant to Paragraph 31 of the
17 Judgment. It is not requesting an amendment of the any of the Court’s prior orders, or the Court
18 Approved Management Agreements.

19 Paragraph 40 of the Judgment expressly states that the Court’s “retained jurisdiction will
20 be utilized, where appropriate to supplement the discretion herein, granted to Watermaster.”
21 (Restated Judgment, ¶ 40.) It cannot be that the Court is without jurisdiction in the absence of

22 ¹³ As of February 1, 2016, the following Parties are signatory to the 2015 SYRA: (i) the
23 Agricultural Pool, (ii) Three Valleys Municipal Water District, (iii) Cucamonga Valley Water
24 District, (iv) Inland Empire Utilities Agency, (v) the City of Upland, (vi) Monte Vista Water
25 District, (vii) Monte Vista Irrigation Company, (viii) the City of Pomona, (ix) Fontana Water
26 Company, and (x) Fontana Union Water Company. (Supplemental Declaration of Peter
27 Kavounas in Support of Watermaster’s Reply to Oppositions to Motion Regarding 2015 Safe
28 Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, at ¶ 4.) The City has
also brought suit against at least two Parties on the basis of their approvals (see, Notice of Related
Case, *City of Chino v. Monte Vista Water Dist., et al.* (Dec. 31, 2015); Notice of Related Case,
City of Chino v. Cucamonga Valley Water District (Jan. 28, 2016)), which may have had chilling
effect on additional approvals.

¹⁴ While JCSD cites the criteria used by the Court in its prior order amending the Judgment
(JCSD Opposition, at p. 10:3-6, 10:22-25), no such amendment is sought here.

1 unanimous support of the Parties to issue further orders in implementing the Physical Solution.
2 This is the express purpose of exercising continuing jurisdiction. (*City of Pasadena v. City of*
3 *Alhambra* (1949) 33 Cal.2d 908, 937 [“retention of jurisdiction to meet future problems and
4 changing conditions is recognized as an appropriate method of carrying out the policy of the state
5 to utilize all water available”]¹⁵.);

6 Further, the City’s claim that the public agency Parties to the Judgment cannot validly
7 approve the 2015 SYRA because they have failed to comply with the California Environmental
8 Quality Act (CEQA) misconstrues California law and misapplies the law of this case. CEQA
9 compliance is only required when an agency approves a project. A “project” under CEQA is
10 defined as any activity which may cause either a direct physical change in the environment, or a
11 reasonably foreseeable indirect physical change in the environment, and is either (1) undertaken
12 directly by a public agency, (2) supported through public agency contracts, grants, subsidies,
13 loans or other public assistance, or (3) involves the issuance of a lease, permit, license, certificate,
14 or other entitlement for use by a public agency. (Public Resources Code § 21065; CEQA
15 Guidelines § 15378.)

16 The motion before the Court does not seek approval of a project. As described in section
17 I, above, the Watermaster moved the Court to grant the Safe Yield Reset Motion *after years of*
18 *discussions* among the Parties to build consensus for basin management. The 2015 SYRA simply
19 asks the Court to: (i) approve of the reset of the Basin’s Safe Yield pursuant to the Court
20 Approved Management Agreements confirming prior practice and the continuous course of
21 conduct under prior orders; (ii) direct the manner in which Watermaster should account for
22 various components of the recharge to the Basin in implementing the Court-Approved
23 Management Agreements; and (iii) approve the establishment of Safe Storage Management
24 Measures, intended to ensure that withdrawals of groundwater from authorized storage accounts
25 within the Basin are safe, sustainable, and will not cause Material Physical Injury or undesirable
26 results. (See Safe Yield Reset Motion, at 9). None of these Court actions require additional

27 ¹⁵ See also, *Allen v. Cal. Water & Tel. Co.* (1946) 29 Cal.2d 466, 488; *City of Los Angeles v. City*
28 *of Glendale* (1943) 23 Cal.2d 68, 81; *Central and West Basin Replenishment District v. Southern*
California Water Company (2003) 109 Cal.App.4th 891, 902.)

1 CEQA analysis, as the Court is not subject to CEQA.

2 The City also argues that the individual agency approvals of the 2015 SYRA were
3 projects under CEQA because they had the potential for environmental impacts. The City is
4 wrong. First, the City ignores that nothing in the 2015 SYRA commits any of the signatory
5 agencies to a “definite course of action in regard to a project.” (See CEQA Guidelines, §
6 15352(a) [emphasis added]; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139; see
7 *Cedar Fair v. City of Santa Clara* (2011) 194 Cal.App.4th 1150, 1162; *Concerned McCloud*
8 *Citizens v. McCloud Community Services Dist.* (2007) 147 Cal.App.4th 181, 192-93.) To the
9 contrary, the 2015 SYRA expressly provides that “[t]he Parties acknowledge and agree that this
10 Agreement provides for the further administration of the Judgment by Watermaster following the
11 reset of the Safe Yield, pursuant to the Court’s continuing jurisdiction, and that no commitment is
12 being made to carry out any ‘project’ within the meaning of CEQA unless and until the
13 environmental review and assessment that may be required by CEQA for that defined ‘project’
14 have been completed.” (2015 SYRA, ¶ 1.5.)

15 Second, Watermaster has moved the Court for an order, pursuant to its continuing
16 jurisdiction, amending the Judgment and confirming the application of the Court Approved
17 Management Agreements. The Court’s order granting the motion and directing Watermaster’s
18 accounting, does not require environmental review under CEQA. (*Hillside Memorial Park &*
19 *Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534, 550.) As in *Hillside*, the
20 Judgment here sets forth a physical solution and reserves jurisdiction to the Court to amend this
21 physical solution. (Restated Judgment, ¶ 15(a).) The request by Watermaster, consistent with the
22 consensus of the vast majority of the Parties to the Judgment, to alter the Safe Yield is simply that
23 – a request, without an ability to carry out that action.

24 Third, the consensus of the parties as described in the 2015 SYRA does nothing more
25 than describe their intended course of conduct pursuant to the Court Approved Management
26 Agreements, which preceded the 2015 SYRA. Unless and until the Court acts, the SYRA does
27 not commit any agency to do anything. As emphasized above, the 2015 SYRA states “no
28 commitment is being made to carry out any ‘project’ within the meaning of CEQA unless and

1 until the environmental review and assessment that may be required by CEQA for that defined
2 ‘project’ have been completed.” (2015 SYRA, ¶ 1.5.)

3 Simply put, the City misconstrues its quoted language from *Hillside* as providing for
4 CEQA analysis at the time of the Court’s decision, when it provided that, while a groundwater
5 basin adjudication judgment amendment did not require CEQA analysis, the adjudication’s
6 physical solution “will not preclude compliance with CEQA as to future projects to the extent
7 such projects do not conflict with the physical solution.” (*Hillside*, 205 Cal.App.4th at 551.) This
8 cannot be read to refer to the amendment of the Judgment itself as the court had previously found
9 that such amendment was not a CEQA project. (*Id.*, at 550.)

10 Assuming *arguendo* that the action constituted a “project”, the City provides no
11 evidentiary support for possible impacts it raises. Given that any future “project” would be
12 contingent on compliance with CEQA – both pursuant to the 2015 SYRA and the Court’s prior
13 order regarding the OBMP – there is no legal requirement to delay the Court’s consideration of
14 the Safe Yield Reset Motion and Watermaster’s implementation of the Court Approved
15 Management Agreements.

16 **B. All Members of the Appropriative Pool Proportionally Share the Effect of the**
17 **Decline in Safe Yield**

18 The rights of the members of the Appropriative Pool Parties are such that they bear all
19 effects of any change in the Basin’s Safe Yield. (Restated Judgment, ¶ 44. [“The foregoing acre
20 foot allocations to the overlying pools are fixed. Any subsequent change in the Safe Yield shall
21 be debited or credited to the Appropriative Pool. Basin water available to the Appropriative Pool
22 without replenishment obligation may vary from year to year as the Operating Safe Yield is
23 determined by Watermaster pursuant to the criteria set forth in Exhibit “I”.]) The Appropriative
24 Rights decreed by the Restated Judgment are to a share, expressed as a percentage, of the portion
25 of the Safe Yield that remains after the paramount overlying rights of the members of the
26 Overlying (Agricultural) and Overlying (Non-Agricultural) Pools are satisfied. (See Restated
27 Judgment, Exhibit “E”.) Accordingly, all of the members of the Appropriative Pool with rights in
28 the Operating Safe Yield are affected by a decline in the Basin’s Safe Yield.

1 The Judgment foresaw the conversion of land in agricultural production to development
2 that would be under the service of the members of the Appropriative Pool, and provided that
3 water that is unproduced by the members of the Overlying (Agricultural) Pool (“Unproduced
4 Agricultural Water”) could be made available for use by the Appropriators. The manner in which
5 Unproduced Agricultural Water is allocated among the Appropriators follows from the Court
6 Approved Management Agreements. Based on the first priority of Unproduced Agricultural
7 Water to supplement any declines in the Basin’s Safe Yield (Restated Judgment, Exh. H, ¶ 10),
8 and the Peace II Agreement provisions providing that Desalter Induced Recharge will not be
9 included in the Safe Yield for the initial term of the Peace Agreement (Peace II Agreement, ¶
10 7.1), discussed further in section III.C, below, the effects of the Safe Yield reset, as described in
11 the 2015 SYRA, are felt by the Appropriators in the reduction in their allocations of Unproduced
12 Agricultural Water through their Land Use Conversion and Early Transfer Claims.

13 While both the City (City Opposition, at p. 2:14-23) and JCSD (Opposition to
14 Watermaster’s Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated
15 Judgment, Paragraph 6, filed by JCSD on January 19, 2016 (hereafter “JCSD Opposition”), at p.
16 9:4-12) have opposed the Safe Yield Reset Motion and estimated the claimed impacts of the
17 Court’s approval of the 2015 SYRA on the allocations of water to each,¹⁶ each of the
18 Appropriators would be affected by the reduction in available water for Land Use Conversion and
19 Early Transfer Claims, and it is clear that no member of the Appropriative Pool does or could
20 come out better than it was prior to the reduction in the Safe Yield and the implementation of the
21 provisions of the Court-Approved Management Agreements. (See Maurizio Suppl. Decl., ¶¶ 15-
22 21, Exh. 3.) While each Appropriator is affected differently, given its percentage of the
23 Operating Safe Yield and the Early Transfer quantity, and the degree to which land within its
24 service territory was formerly under agricultural irrigation and it had been allocated Unproduced
25 Agricultural Water based on the conversion of that property to service by the Appropriator, these

26 ¹⁶ It should be noted that JCSD’s estimate utilizes its proffered interpretation as to the priority of
27 Land use Conversion claims over Early Transfer claims in the allocation of Unproduced
28 Agricultural Water among the members of the Appropriative Pool. (See Declaration of Todd
Corbin in Support of Opposition to Watermaster’s Motion regarding 2015 Safe Yield Reset
Agreement, Amendment of Restated Judgment, Paragraph 6, ¶ 8.)

1 differing degrees of impacts are the result of evenhanded and uniform application, as the
2 reductions in the Appropriators' Early Transfer and Land Use Conversion claims are done on a
3 pro rata basis across the total claims of each.

4 **C. The Use of Desalter-Induced Recharge to Offset Desalter Production was**
5 **Agreed to in the Peace II Agreement and Ordered by the Court: There is no**
6 **Confiscation or Ultra-Vires Allocation of Operating Safe Yield.**

7 Both Chino and JCSD object to the proposed accounting for Desalter-Induced Recharge
8 that is described in Paragraph 5.2 of the 2015 SYRA – Chino claims that the Peace II Agreement
9 does not authorize the use of such water to offset Desalter Production (Chino Opposition, at pp.
10 11:24-12:26) and both Chino and JCSD object to the effects that allocating the Desalter-Induced
11 Recharge to Desalter production (and not as part of the allocable Safe Yield) have on the quantity
12 of Unproduced Agricultural Water available for reallocation after compensating for a reduction in
13 the Safe Yield and, in turn, their own Land Use Conversion Claims. (JCSD Opposition, at pp.
14 8:20-9:2; Chino Opposition, at pp. 21:15-24:5.)

15 The Court may take judicial notice of its own voluminous files that pertain to the
16 circumstances that gave rise to the construction of the Desalters and the administration of the
17 OBMP. In brief summary, the Court ordered Watermaster to construct and operate 30 MGD of
18 desalter capacity in 2000 and reserved the obligation for Future Desalters pursuant to its
19 continuing jurisdiction.

20 In December of 2007, the Court approved the Peace II Agreement along with amendments
21 to the OBMP Implementation Plan that laid the groundwork for the design, construction and now
22 operation of the last 10 MGD of desalting capacity required by the OBMP. The new water that
23 would be induced into the Basin by the operation of the Desalter and the Basin Re-
24 Operation/Hydraulic Control Strategy was a fundamental underpinning of these commitments.

25 As described in the 2015 SYRA and Watermaster's Safe Yield Reset Motion, Desalter-
26 Induced Recharge is "induced recharge that arises from or is attributable to the Desalters." (2015
27 SYRA, ¶ 5.2.) Such water is explicitly part of the definition of New Yield found in the Peace I
28 Agreement:

"New Yield" means proven increases in yield in quantities greater

1 than historical amounts from sources of supply including, but not
2 limited to, capture of rising water, capture of available storm flow,
3 **operation of the Desalters (including the Chino I Desalter),**
4 **induced Recharge** and other management activities implemented
5 and operational after June 1, 2000.” (Peace Agreement, ¶1.1(aa)
6 (emphasis added.)

7 Pursuant to Section 7.1 of the Peace II Agreement approved by this Court in 2007, this
8 water is not to be considered part of the allocable Safe Yield during the initial term of the Peace
9 Agreement so that it will be available for Desalter Production rather than for use by individual
10 parties to the Judgment, and “neither Watermaster nor the Parties will request that Safe Yield be
11 recalculated in a manner” that does so. (Peace II Agreement, § 7.1.) Paragraph 5.2(b) of the
12 2015 SYRA concisely contains the parties’ agreement as to the methodology for estimation of the
13 quantity of Desalter-Induced Recharge that, pursuant to paragraphs 6.2(a)(iii) and 7.1 of the
14 Peace II Agreement, is allocated to offset Desalter production and is not considered Safe Yield.
15 There is no redistribution of Operating Safe Yield as alleged by the City.

16 Neither the City nor JCSD dispute that the first priority for Unproduced Agricultural
17 Water is to supplement the Operating Safe Yield allocations of the Appropriators should they be
18 reduced as a result of a reduction in the Safe Yield. (Restated Judgment, Exhibit “H”, ¶ 10.(a)(1).
19 Based on the language of Peace II Agreement Section 7.1, it is as though the Safe Yield has
20 declined by 5,000 AFY plus the annual quantity of Desalter-Induced Recharge, and the
21 supplementing of the Appropriators’ Operating Safe Yield rights and the effect of the same on the
22 Appropriators’ allocations of Unproduced Agricultural Water for Land Use Conversion and Early
23 Transfer claims is the result that flows from the Court Approved Management Agreements.

24 **D. The Allocation of Unproduced Agricultural Water Contemplated in the 2015**
25 **SYRA is Consistent with Watermaster’s Course of Conduct Pursuant to**
26 **Court Approved Management Agreements for the Past Nine Years**

27 As described above, the priority system pursuant to which Unproduced Agricultural Water
28 is allocated among the members of the Appropriative Pool originates in Exhibit “H” to the
Restated Judgment – the Appropriative Pool Pooling Plan. (Restated Judgment, Exhibit “H”, ¶
10(a).) As the allocation of Unproduced Agricultural Water contemplated in paragraph 5.2(b) of
the 2015 SYRA is consistent with manner in which Watermaster has conducted such allocation

1 for the past nine years – without objection from any Party (Maurizio Supp. Decl., at ¶ 8) – the
2 central issue raised by JCSD’s opposition is whether, in light of the Court Approved Management
3 Agreements, Watermaster has correctly interpreted that priority system in giving equal priority to
4 claims for reallocated water pursuant to the Land Use Conversion and Early Transfer
5 mechanisms.

6 Pursuant to Paragraph 38(a) of the Restated Judgment, Watermaster implements Pool
7 Committee policy recommendations for administration of the particular Pools. (Restated
8 Judgment, 38(a).) Since the entrance of the Judgment, Watermaster has administered the
9 provisions of the Pooling Plan regarding allocation of Unproduced Agricultural Water, including
10 allocation based on Land Use Conversion Claim, as the allocation framework has evolved over
11 the course of the implementation of the Physical Solution.

12 Pursuant to the provisions of the Court-Approved Management Agreements, Watermaster
13 has administered the allocation of the Unproduced Agricultural Water, including the allocation of
14 production rights based on Land Use Conversion and Early Transfer claims. The rights of the
15 Appropriators subject to the stipulated Restated Judgment are subject to the terms therein, which
16 must be construed as a whole. (See *Dow vs. Lassen Irrigation Co.* (2013) 216 Cal.App.4th 766.)
17 In seeking the Court’s granting of the Safe Yield Reset Motion, Watermaster is not seeking to
18 change to the terms of the Court Approved Management Agreements, but is seeking the Court’s
19 confirmation of the interpretation of the manner in which Watermaster should administer them.

20 1. Background on Land Use Conversion and Early Transfer Claims

21 The 1978 Judgment in this case is unique among such groundwater basin adjudication
22 decrees in that it anticipated the conversion of land in agricultural use at that time, and provided
23 for the transition of the right to use water appurtenant to that property by the Appropriator that
24 would eventually provide municipal water service to that property.¹⁷ Pursuant to paragraph 10(b)

25 ¹⁷ See Plaintiff’s Post-Trial Memorandum, 8:10-21 [“Unallocated Safe Yield Water. It is
26 contemplated that over a long period of years, agricultural production may well fall substantially
27 below the aggregate amount of the Safe Yield right allocated to the pool. That Safe Yield right
28 will remain available for agricultural use, but in a given year or a series of years there may be a
substantial amount of Safe Yield Water which is not pumped by Overlying Agricultural Pool
parties. The Judgment adopts a formula for allocating that unpumped water among the members
of the Appropriative Pool by first,, replacing any reductions in Safe Yield (the full impact of

1 of the Appropriative Pool Pooling Plan (Judgment, Exh. "H"), Appropriators who undertook to
2 permanently provide water service to lands that had been put to use for irrigated agriculture for
3 the immediately preceding five years could submit a land use conversion claim to Watermaster,
4 pursuant to which Watermaster would allocate excess Ag Pool water on a pro rata basis to satisfy
5 such claims. (Judgment, Exh. "H", ¶ 10(b)(2).) Pursuant to the original 1978 Judgment, an
6 appropriator was limited, through the conversion mechanism, to no more than one-half of the
7 average amount of water that was actually used on the land prior to its conversion. (Judgment,
8 Exh. "H", ¶ 10(b)(3).) Any water left over after satisfaction of the conversion claims was to be
9 added to the Operating Safe Yield. (Judgment, Exh. "H", ¶ 10(b)(3).)

10 In 1995, the parties undertook a process pursuant to which the Judgment was amended to
11 include the designation of a defined area in which land use conversion, for purposes of
12 Reallocation of Unproduced Ag Water could occur¹⁸ ("Conversion Area No. 1") and establishing
13 a formula pursuant to which the amount of a conversion claim would be calculated. (November
14 17, 1995 Order Approving Amendments to Judgment; see Restated Judgment, Exh. "H", ¶
15 10(b)(3).) Pursuant to this formula, each acre converted from agricultural use to municipal
16 service would receive an allocation of 2.6 acre-feet, with one-half this amount being allocated to
17 the appropriator undertaking service of the property, and the other 1.3 acre-feet being allocated to
18 the appropriative pool as a whole. Any shortfall of water available for land use conversion was to
19 be spread amongst the parties on a pro rata basis.

20 The Peace Agreement further revised the formula used in the case of Ag Pool land use
21 conversion. (Order Approving Post-Order Memorandum and Confirming Judgment
22 Modifications (Apr. 19, 2001), p. 3.) Pursuant to this revision, the quantity of water allocated to
23 each converted acre was reduced to 2.0 acre-feet, but the entirety of this quantity was to be
24 allocated to the appropriator undertaking service of the converted property. (*Id.*, at p. 3.) This
25 amendment did not alter the procedure for addressing shortfalls in water available to satisfy

26
27 which falls on the Appropriative Pool), and then to recognize the conversion of agricultural land
to municipal and domestic purposes."]

28 ¹⁸ At that time, a list of "conversion-eligible" parcels outside Conversion Area No. 1 was also
developed.

1 conversion claims. The Peace Agreement additionally introduced the “Early Transfer”
2 mechanism, which provides for the reallocation of Unproduced Ag Water to the Appropriative
3 Pool on an annual basis, rather than according to the five year increment that had previously been
4 described in the Appropriative Pool Pooling Plan. Paragraph 5.3(g) of the Peace Agreement
5 required that Watermaster approve an Early Transfer of water to the Appropriative Pool in an
6 amount of not less than 32,800 acre-feet per year, which was the expected approximate quantity
7 of Unproduced Ag Water. The actual quantity of water subject to Early Transfer each year was to
8 be the greater of (i) 32,800 acre-feet or (ii) 32,800 acre-feet plus the actual quantity of
9 Unproduced Ag Water for that Fiscal Year that is remaining after all the land use conversions
10 were satisfied. (Peace Agreement, ¶ 5.3(g).)¹⁹ As described above, while the Peace Agreement’s
11 introduction of the concept of Early Transfer did away with the five year incremental evaluation
12 of the quantity of Unproduced Agricultural Water, in favor of an annual evaluation, Peace
13 Agreement Paragraph 5.3(g) was somewhat ambiguous as to how the Early Transfer relates to the
14

15 _____
16 ¹⁹ Paragraph 5.3(g) further described the mechanism for the Early Transfer as follows:

17 (i) The Early Transfer water shall be annually allocated among the
18 members of the Appropriative Pool in accordance with their pro-
19 rata share of the initial Safe Yield.

20 (ii) The Transfer shall not limit the Production right of the
21 Agricultural Pool under the Judgment to Produce up to 82,800 acre-
22 feet of water in any year or 414,000 acre-feet in any five years as
23 provided in the Judgment.

24 (iii) The combined Production of all parties to the Judgment shall
25 not cause a Replenishment assessment on the members of the
26 Agricultural Pool. The Agricultural Pool shall be responsible for
27 any Replenishment obligation created by the Agricultural Pool
28 Producing more than 414,000 acre-feet in any five-year period.

(iv) The parties to the Judgment and Watermaster shall Produce
water in accordance with the Operating Safe Yield and shall
procure sufficient quantities of Replenishment Water to satisfy
over-Production requirements, whatever they may be, and avoid
Material Physical Injury to any party to the Judgment or the Basin;

(v) Nothing herein shall be construed as modifying the procedures
or voting rights within or by the members of the Agricultural Pool.

1 hierarchy for Reallocation described in the Appropriative Pool Pooling Plan.²⁰ In order to
2 harmonize the concept of Early Transfer with Watermaster's prior procedures in regard to land
3 use conversion and the reallocation of Unproduced Ag Water, section 6.3 of the Rules and
4 Regulations was created to specify the hierarchy as between land use conversion and the Early
5 Transfer. At the time of their approval by the Court in June 2001, section 6.3(a) read:

6 In each year, the 82,800 acre-feet being that portion of the Safe
7 Yield made available to the Agricultural Pool under the Judgment,
shall be made available:

8 To the Agricultural Pool to satisfy all demands for overlying
9 Agricultural Pool lands;

10 To land use conversions that were completed prior to October 1,
2000;

11 To land use conversions that have been completed after October 1,
12 2000; and

13 To the Early Transfer of 32,800 acre-feet from the Agricultural
14 Pool to the Appropriative Pool in accordance with their pro-rata
assigned share of Operating Safe Yield.

15 (Rules and Regulations, § 6.3(a).)

16 ²⁰ Since the 1978 Judgment, Paragraph 10(a) of the Appropriative Pool Pooling Plan
17 (Exhibit "H" to the Restated Judgment) has described the mechanism for reallocation of
18 Unproduced Water as follows:

19 To the extent that, in any five years, any portion of the share of Safe
20 Yield allocated to the Overlying (Agricultural) Pool is not
21 produced, such water shall be available for reallocation to members
of the Appropriative Pool, as follows:

22 (a) Priorities. - Such allocation shall be made in the following
sequence:

23 (1) to supplement, in the particular year, water available from
24 Operating Safe Yield to compensate for any reduction in the Safe
25 Yield by reason of recalculation thereof after the tenth year of
operation hereunder.

26 (2) pursuant to conversion claims as defined in Subparagraph
(b) hereof.

27 (3) as a supplement to Operating Safe Yield, without regard to
28 reductions in Safe Yield.

1 Section 6.3(c) of the Rules and Regulations described the manner in which Unproduced
2 Agricultural Water would be allocated in the event that, though Production by the Overlying
3 (Agricultural) Pool did not exceed its allocation in a single year or over a five year period, that
4 total Production from all of Ag Pool Production, Land Use Conversion claims and Early Transfer
5 exceeded 82,800 AFY. In that case, the members of the Appropriative Pool were required to
6 procure sufficient quantities of Replenishment Water to satisfy over-Production obligations,
7 whatever they may be, with specific provision made for the allocation of the costs of such
8 Replenishment Water. (2001 Rules and Regulations, § 6.3(c).)

9 The Peace Agreement provisions related to Early Transfer were subject to re-opener
10 provisions and were reconsidered in the Peace II process. As part of the Peace II Measures, the
11 parties agreed to a modification of section 6.3(c)²¹ to eliminate the possible incurrence of a
12 Replenishment obligation associated with over-allocation of Unproduced Ag Water, and agreed
13 to a proportional reduction in the reallocation to members of the Appropriative Pool,²² As part of
14 its obligations under the Conditions Subsequent arising out of the Court's approval of the Peace II

15 _____
16 ²¹ While the Peace II Agreement provides for the addition of this section, among others, to
17 Watermaster's Rules and Regulations, the Watermaster has not yet undertaken a restated version
18 of the Rules and Regulations that includes this section. (Peace II Agreement, at ¶ 4.3
19 [acknowledging all Parties' assent to revisions to the Rules and Regulations approved in
20 Watermaster Resolution No. 07-05].)

21 ²² "(c) In the event actual Production from the Agricultural Pool does not exceed 82,800 acre-feet
22 in any one year or 414,000 acre-feet in any five years but total allocation from all the uses set
23 forth in section 6.3(a) above exceeds 82,800 in any year, the amount of water made available to
24 the members of the Appropriative Pool under section 6.3(a) shall be reduced pro rata in
25 proportion to the benefits received by each member of the Appropriative Pool through such
26 allocation. This reduction shall be accomplished according to the following procedure:

- 27 1. All of the amounts to be made available under 6.3(a) shall
28 be added together. This amount shall be the "Potential Acre-Foot
Available" for Reallocation.
2. Each Appropriative Pool member's requested share of the
Potential Acre-Foot Available for Reallocation shall be determined.
This share shall be expressed as a percentage share of the Potential
Acre-Foot Available for Reallocation.
3. Each Appropriative Pool member's share of the Potential
Acre-Foot Available for Reallocation shall be reduced pro rata
according to the percentage determined in 2 above."

1 Measures, in March 2008, Watermaster made a filing with the Court in response to Condition
2 Subsequent Three.²³ In response to Watermaster's filings, Monte Vista Water District ("Monte
3 Vista") submitted comments expressing concern over the procedures that would be used to
4 calculate reallocation of Unproduced Agricultural Pool water in the event of a decline in Safe
5 Yield.

6 By stipulation dated April 25, 2008, Watermaster committed to develop procedures that
7 would be responsive to Monte Vista's concerns and to submit them to the Court for approval as
8 part of the updated Recharge Master Plan and Watermaster's submission in compliance with
9 Condition Subsequent Number Eight. (Watermaster Compliance with Condition Subsequent
10 Eight (June 30, 2010), at p. 12.) Specific to the Unproduced Agricultural Water allocation, the
11 stipulation between Watermaster and Monte Vista required Watermaster to produce certain
12 information regarding an expected future range of Overlying (Agricultural) Pool production.
13 Watermaster produced this information and at the June 26, 2008 Appropriate Pool meeting, the
14 Appropriate Pool decided to convene a subcommittee to discuss the development of a procedure
15 to respond to Watermaster's information provided. (Watermaster Compliance with Condition
16 Subsequent Eight (June 30, 2010), at p. 12.)

17 After the meeting of the subcommittee and review of a proposed policy, on December 18,
18 2008, the Watermaster Board approved the agreed upon procedures and instructed counsel to
19 include a description of these procedures in the filing to be made in compliance with Condition
20 Subsequent Eight. (Watermaster Compliance with Condition Subsequent Eight (June 30, 2010),
21 at p. 12.) This procedure was subsequently approved by the Court pursuant to its October 8, 2010
22 Order Approving Watermaster's Compliance with Condition Subsequent Number Eight and
23 **Approving Procedures to be Used to Allocate Surplus Agricultural Pool Water in the Event**
24 **of a Decline in Safe Yield** (emphasis added).²⁴ The resolution was approved at the December
25 2008 meetings of the three Pools, Advisory Committee, and the Board (Watermaster Compliance

26 ²³ Condition Subsequent Number Three required Watermaster to prepare and submit for approval
27 a new Hydraulic Control technical report addressing factors in the Special Referee's Final Report
and Recommendations, as well as a technical analysis of the projected decline in safe yield and a
definition and analysis of "new equilibrium" issues.

28 ²⁴ The JCSD Opposition omits a discussion of this order.

1 with Condition Subsequent Eight, at p. 12), and no party opposed Watermaster's submittal to the
2 Court requesting its order of the same. (Order Approving Watermaster's Compliance with
3 Condition Subsequent Number Eight and Approving Procedures to be Used to Allocate Surplus
4 Agricultural Pool Water in the Event of a Decline in Safe Yield (Oct. 8, 2010), at p. 3.)

5 The procedure that was agreed upon and approved by the Board, and, subsequently, the
6 Court, is detailed in a December 8, 2008 memorandum from Watermaster General Counsel to the
7 Appropriative Pool. The procedure specifies that, in the event that Operating Safe Yield is
8 reduced because of a reduction in Safe Yield, Watermaster will follow the reallocation hierarchy
9 provided for in the Appropriative Pool Pooling Plan by first applying the unallocated Ag Pool
10 water to compensate the Appropriative Pool members for the reduction in Safe Yield. (Restated
11 Judgment, Exhibit "H", paragraph 10(a).) If, thereafter, there is unallocated water left,
12 Watermaster will then follow the remainder of the hierarchy and reallocate unallocated
13 Agricultural Pool water next to land use conversion claims and Early Transfer, and then to
14 supplement the Operating Safe Yield without regard to reductions in Safe Yield.

15 2. Watermaster has Allocated Unproduced Agricultural Water in the Manner
16 Contemplated in the 2015 SYRA for Nine Years without Objection

17 The crux of the issue raised by JCSD is whether, following a decline in the Basin's Safe
18 Yield, in its administration of the Appropriative Pool Pooling Plan, Watermaster should be
19 directed to allocate Unproduced Agricultural Water among the members of the Appropriative
20 Pool in the manner posited by JCSD – an originalist interpretation of the Pooling Plan, as it has
21 not been formally amended – or in the manner in which Watermaster has done since the Court's
22 approval of the Peace II Agreement (Maurizio Supp. Decl., at ¶ 8), as paragraph 5.2(b) of the
23 2015 SYRA provides. Watermaster has construed the Appropriative Pool Pooling Plan pursuant
24 to the Peace II Measures' amendment to section 6.3(c) of the Rules and Regulations, and would
25 continue to allocate Unproduced Agricultural Pool water to members of the Appropriative Pool in
26 that manner, consistent with the Court's 2010 Order specifically pertaining to how to proceed in
27 the event of a decline in Safe Yield, and as described in paragraph 5.2(b) of the 2015 SYRA.
28 Watermaster requests the Court's confirmation of the appropriateness of its prior accounting and

1 instruction to proceed consistent with its present practices.

2 **IV. CONCLUSION**

3 Paragraphs 39, 40 and 41 represent the cornerstone of the Judgment's Physical Solution.
4 Paragraph 39 commands compliance with Article X, § 2 of the California Constitution and
5 maximizing beneficial use. Paragraph 40 empowers Watermaster and the Court with maximum
6 flexibility to address issues as they may arise in the future within the framework of the Judgment.
7 Paragraph 41 tasks Watermaster with the responsibility to adopt an OBMP.

8 These considerations lead to the conception, design, approval, construction and ongoing
9 implementation of a prolific program that has facilitated expanded use of recycled water, the
10 construction of 40,000 AFY of new desalting capacity, recharge facilities, water transfers and the
11 storage and recovery of large quantities of water in the Basin over the past 15 years. At the same
12 time, these advancements must be undertaken in such a way to avoid harm to the Basin given
13 emerging hydrologic and cultural realities.

14 An intricate set of checks and balances enables this to occur through substantial
15 stakeholder input as a guide to Watermaster decision-making, such as the very process that
16 unfolded here. In the end, the Court is available to consider the wisdom of Watermaster's actions
17 and its recommendations and the Judgment makes it clear its continuing jurisdiction is tailor
18 made for this specific purpose.


19 Watermaster has judiciously recommended that the Safe Yield be reset to 135,000 AFY in
20 light of the best available information to protect the Basin against harm. It also seeks to place a
21 failsafe measure of protections on the withdrawal of water from storage in the event a substitute
22 plan cannot be agreed upon by stakeholders. And, finally it seeks to secure confirmation from the
23 Court on certain existing accounting interpretations that will allow Watermaster to levy
24 assessments for its operations and to allow the Parties to plan the next increment of actions under
25 the OBMP. In rebuttal, the opposing Parties offer unsupported interpretations inconsistent with
26 law, prior agreements, and Watermaster's custom and practice.

27 For all these reasons, Watermaster believes its recommendations are in the best interest of
28 the Basin and are being made in furtherance of its good faith administration of its responsibilities

1 under the Judgment. Upon its fair review of the record, we respectfully request the Court's
2 concurrence.

3 Dated: February 1, 2016

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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 February 1, 2016 I served the following:

1. WATERMASTER'S REPLY TO OPPOSITIONS TO MOTION REGARDING 2015 SAFE YIELD RESET AGREEMENT, AMENDMENT OF RESTATED JUDGMENT, PARAGRAPH 6

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

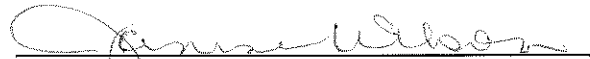
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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 February 1, 2016 in Rancho Cucamonga, California.



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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN BERNARDINO

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 v.

17 CITY OF CHINO, et al.,

18 Defendant.

Case No. RCV 51010

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

**WATERMASTER'S FURTHER
RESPONSE TO ORDER FOR
ADDITIONAL BRIEFING**

Date: May 6, 2016
Time: 1:30 P.M.
Dept.: R-6

19 On March 22, 2016, the Court issued its Order for Additional Briefing and Continuing
20 Hearing for All Matters Currently Scheduled for April 8 to May 6, 2016 ("Order"). On April 1,
21 Watermaster filed its Response to Order for Additional Briefing as to the Court's questions 1-3 as
22 stated on page 2 of its Order ("Watermaster's Response"). Upon review of the City of Chino's
23 and Jurupa Community Services District's ("JCSD") responses, Watermaster provides this
24 supplemental response.

- 25 1) **Does Desalter-induced recharge physically occur? Is it an accounting
26 concept? Is it something more, less, or additional?**

27 In its response to the Court's first question, the City of Chino contends that Watermaster
28 has improperly crafted result-oriented characterizations of New Yield and Desalter-induced
recharge to support its accounting practices. The City contends that induced recharge is not New

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1 Yield but rather “it is a fiction created for SYRA.”¹ The City’s contentions are counterfactual.

2 The City’s argument is based on its assertion that the term induced recharge was “not in
3 the definition of New Yield” and further, that Desalter-induced New Yield was not an intended
4 consequence of the Desalters as initially agreed pursuant to the Peace Agreement. Both these
5 assertions are incorrect.

6 As described in Watermaster’s Response in regard to the Court’s questions 1 and 2,
7 Desalter-induced recharge unequivocally meets the definition of New Yield. Indeed, this was the
8 subject of significant Watermaster briefing in response to questions raised by the Court’s Special
9 Referee at the time the Court considered and approved the Peace Agreement and the OBMP
10 Implementation Plan.² This fact is also recited in the 2002 Court approved Watermaster Rules
11 and Regulations to implement Peace Agreement:

12 New Yield is *expected* to result from a variety of conditions,
13 including but not limited to enhanced Basin management, increased
14 stormwater Recharge, *induced Recharge from operation of the
Desalters*, injection, and changes in land use patterns.³

15 Moreover, the Peace II Agreement expressly identified Desalter-induced recharge as a
16 specific form of New Yield for unique treatment, (as distinguished from all other forms of New
17 Yield). Section 7.1 of the Peace II Agreement is actually entitled “*New Yield Attributable to the
18 Desalters*” and unambiguously declares how it is to be handled in the event of a redetermination
19 of Safe Yield.

20 In the Project Description presented to the Court in connection with the evaluation of the
21 Peace II Measures, it states that “New Yield is expected to come from...new induced recharge of
22 the Santa Ana River upstream of Prado Dam.”⁴ This New Yield is calculated based on the
23 amount of recharge induced by the Desalters and not, as the City suggests, on “a comparison
24 between the *total amount of water recharging the Basin* at the time of Peace I and thereafter...”
25 The availability of this New Yield for the ascribed purposes was not conditioned on an increased
26 Safe Yield. The City cites no authority for its proposed interpretation, and it is inconsistent with
27 the record of approval for the Peace Agreement, the Peace II Measures and Watermaster’s
28 subsequent accounting for individual sources of new supply on a source by source basis; e.g.

1 stormwater, Desalter-induced recharge.

- 2 **2.) How did the parties arrive at the figure of 50% of the total Desalter**
3 **production (up to a maximum of 20,000 AFY of recharge) to be deemed**
4 **induced recharge? Why should Watermaster reduce Safe Yield by that**
5 **amount each year?**

6 The projection of 50% of Desalter production as the quantity of the Desalter-Induced
7 Recharge (as a form of New Yield) was the product of technical analysis undertaken by
8 Watermaster's hydrologic consultant utilizing the 2013 updated groundwater model. The
9 analysis was presented in technical review sessions and described in the draft model update
10 reports that were made available to all stakeholders. All stakeholders were provided the
11 opportunity to review and comment on this analysis. Watermaster is not aware of any concern or
12 objection previously expressed by any person concerning the manner in which this projection was
13 done.

- 14 **3) How does a reduction in Safe Yield affect Operating Safe Yield?**

15 Both responses provided by the City of Chino and JCSD omit a key fact: Section 6.3(c) of
16 the Watermaster Rules and Regulations, as amended pursuant to the Peace II Measures provides
17 that water unused by members of the Agricultural Pool shall be divided equally between Land
18 Use Conversions and Early Transfers. The Court's October 8, 2010 Order⁵ provides that this
19 shall be done even if the Safe Yield declines. For the first time, approximately five years
20 following this Order, the City and JCSD would set it aside and thereby unwind accounting, Court
21 approvals and agreements impliedly if not expressly made in reliance thereon.

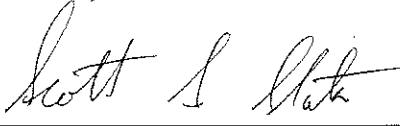
22 **4) To Jurupa Community Services District (JCSD) and Watermaster: In its reply,**
23 **Watermaster points out that JCSD in its opposition did not address the Court's October 8,**
24 **23, 2010 Order Approving Watermaster's Compliance with Condition Subsequent Number**
25 **Eight and Approving Procedures to be used to Allocate Surplus Agricultural Pool Water in**
26 **the Event of a Decline in Safe Yield. To JCSD: please do so by additional briefing date set**
27 **forth below: April 1, 2016. To Watermaster: please file any additional reply by the briefing**
28 **date set forth below: April 11, 2016.**

1 The Chino Basin is one of the largest groundwater basins in Southern California,
2 representing a water source for more than 1 million residents of the Inland Empire in support of a
3 billion dollar economy. As the Court is completely aware, the Court Approved Management
4 Agreements were the subject of exhaustive consideration and deliberation by the Parties with
5 continuing oversight by this Court. While the agreements and subject matter are admittedly
6 complex, they are commensurate with the important issues that must be addressed in the
7 management of the Basin.

8 It has been nearly nine years since this Court approved the Peace II Measures ordering
9 Watermaster to proceed with the Desalter expansion, and more than five years after this Court
10 issued a further order confirming the methodology for distributing water among appropriators to
11 satisfy Land Use Conversions and as an Early Transfer in the event of a decline in Safe Yield.
12 JCSD's objection at this time is inconsistent with the manner in which the Parties – including
13 JCSD – have agreed and the Court has previously ordered⁶ that the Basin be managed.

14 Dated: April 11, 2016

BROWNSTEIN HYATT FARBER
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15
16
17 By: 

18 SCOTT S. SLATER
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20 ATTORNEYS FOR
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26 ¹ City of Chino's Responses at p. 4 line 20.

27 ² See, e.g., Post Order Memorandum, October 26, 2000 at p. 12 "[I]t is possible if not probable
that the Desalters will serve to induce some new or additional Recharge beyond the quantities
achieved in the present historical record."

28 ³ Watermaster Rules and Regulations, § 6.2(e) (emphasis added).

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⁴ Peace II Measures, Attachment "A" Project Description for the 2007 Amendment to the Chino Basin Optimum Basin Management Program. at p. 5.

⁵ Section III(6) of the October 8, 2010 Order Approving Watermaster's Compliance with Condition Subsequent Number Eight and Approving Procedures to be Used to Allocate Surplus Agricultural Pool Water in the Event of a Decline in Safe Yield.

⁶ The issue having been submitted previously for express ruling by the Court in its October 8, 2010 Order is subject to issue preclusion while the delay in raising the matter post-completion of the Desalters themselves is prejudicial and subject to waiver by laches.

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 April 11, 2016 I served the following:

1. WATERMASTER'S FURTHER RESPONSE TO ORDER FOR ADDITIONAL BRIEFING

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 April 11, 2016 in Rancho Cucamonga, California.



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EXHIBIT 9

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 28 2017

BY *Tiffany Kretzmeier*
TAFANY KRETZMEIER, DEPUTY

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

CHINO BASIN MUNICIPAL WATER) Case No. RCV 51010
DISTRICT,)
Plaintiff,)
vs.)
CITY OF CHINO, et al.,)
Defendants)

ORDERS for Watermaster's Motion
Regarding 2015 Safe Yield Reset
Agreement, Amendment of Restated
Judgement, Paragraph 6
Date: April 28, 2017
Time: 1:30 PM
Department: S35

Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement,
Amendment of Restated Judgment, Paragraph 6, joined by The Chino Basin
Overlying (Agricultural) Pool Committee and The Inland Empire Utilities Agency
("IEUA") and opposed by Jurupa Community Services District ("JCSD") and the
City of Chino ("Chino") is granted in part and denied in part for the reasons set forth
herein. The court grants the motion with respect to amending the restated judgment
to reset the Safe Yield of the basin to 135,000 AFY.

However, the court denies all other parts of SYRA including the motions to
amend the schedule for access to Re-Operation Water and. The court denies the
motion to institute Safe Storage Management Measures. The court makes additional
orders regarding priorities and with respect to access for Re-Operation Desalter

1 water as set forth herein.

2 Additionally, the court orders that the Safe Yield reset to 135,000 AFY is an
3 event that requires a “recalculation” with the definition of Judgment, Exhibit “H”
4 ¶10.

5
6 **REQUEST FOR JUDICIAL NOTICE**

7 The court grants requests for judicial notice of JCSD as follows:

- 8 1. Restated Judgment (“Judgment”) in case number RCV 51010.
- 9 2. Implementation Plan Optimum Basin Management Program for the Chino Basin
10 (“OBMP Implementation Plan”).
- 11 3. Chino Basin Watermaster Rules and Regulations (“Rules and Regulations”).
- 12 4. 2015 Safe Yield Reset Agreement (“SYRA”).
- 13 5. Order Concerning Motion for Approval of Peace II Documents (“2007 Order”)
14 in case number RCV 51010.
- 15 6. 2000 Peace Agreement Chino Basin (“Peace I Agreement” or “Peace I”).
- 16 7. Watermaster Compliance with Condition Subsequent Number Eight: Proposed
17 Order Submitted Concurrently.
- 18 8. Peace II Agreement: party support for Watermaster’s OBMP Implementation
19 Plan, Settlement and Release of Claims Regarding Future Desalters (“Peace II
20 Agreement” or “Peace II”).

21
22 **JOINDERS AND FILINGS**

23 A. Watermaster's motion regarding 2015 Safe Yield Reset Agreement,
24 amendment of restated Judgement, Paragraph 6.

25 1. City of Chino’s objections to declaration of Kavounas submitted with
26 Watermaster’s Motion regarding 2015 Safe Yield Reset Agreement, Amendment of
27 Restated Judgment, Paragraph 6

28 Rulings in separate document.

1 2. City of Chino's objections to declaration of Wildermuth submitted with
2 Watermaster's Motion regarding 2015 Safe Yield Reset Agreement, Amendment of
3 Restated Judgment, Paragraph 6
4 Rulings in separate document.

5 B. The following parties joined in Watermaster's motion:

- 6 1. Overlying (Agricultural) Pool
- 7 2. Inland Empire Utilities Agency

8 C. Oppositions to Watermaster's motion

- 9 1. City of Chino with supporting documents
 - 10 a) Declaration of Robert Shibatani, physical hydrologist
 - 11 b) Declaration of David Crosley, civil engineer, water and environmental
12 manager for City of Chino
- 13 2. Jurupa Community Services District (JCSD) with supporting documents
 - 14 a) Request for judicial notice identified above
 - 15 b) Declaration of Todd Corbin, general manager of JCSD
 - 16 c) Declaration of Robert Donlan, attorney

17 D. Watermaster's reply to oppositions to motion regarding 2015 Safe Yield Reset
18 Agreement, amendment of Restate Judgement, Paragraph 6

- 19 1. Supplemental declaration of Kavounas
 - 20 a) City of Chino's objections Kavounas supplemental declaration in
21 support of Watermaster's reply the Chino opposition
 - 22 b) Watermaster's Response to City of Chino's objections to supplemental
23 declaration of Peter Kavounas in support of Watermaster's reply to
24 Chino's Opposition to Motion regarding 2015 Safe Yield Reset
25 Agreement, Amendment of Restated Judgment, Paragraph 6
- 26 I) Motion to strike denied. The court finds that the declaration did not
27 raise new issues.
- 28 II) All objections overruled.

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Basin

- 2. Supplemental declaration of Wildermuth
 - a) City of Chino's objections to Wildermuth supplemental declaration in support of Watermaster's reply to Chino opposition.
 - b) Watermaster's Response to City of Chino's objections to supplemental declaration of Mark Wildermuth in support of Watermaster's reply to Chino's Opposition to Motion regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6.
 - I) Motion to strike denied. The court finds that the declaration did not raise new issues.
 - II) All objections overruled.
- 3. Declaration of Danielle Maurizio, assistant general manager of Chino Basin
 - a) City of Chino's objections to supplemental declaration of Danielle D. Maurizio in support of Watermaster's reply to chino opposition
 - b) Watermaster's Response to City of Chino's objections to supplemental declaration of Danielle E. Maurizio in support of Watermaster's reply to Chino's Opposition to Motion regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6
 - I) Motion to strike denied. The court finds that the declaration did not raise new issues.
 - II) All objections overruled.
- 4. Joinders in Watermaster's reply to oppositions
 - a) Overlying (Agricultural) Pool
 - b) City of Pomona and (in one pleading document)
 - I) City of Upland
 - II) Monte Vista Water District
 - III) Cucamonga Valley Water District
 - IV) Fontana Union Water Company

1 E. In an order Dated March 22, 2016, the court served the parties with questions
2 and a request for further briefing in response to the questions. The responses were
3 as follows:

- 4 1. Jurupa Community Services District response to Judge Reichert's
5 request for clarification filed April 1, 2016.
- 6 2. City of Chino's responses to Judge Reichert's questions, filed April 1,
7 2016.
- 8 3. Watermaster's response to order for additional briefing filed April 1,
9 2016.
- 10 a) Chino's reply to Watermaster's response to order for additional briefing,
11 filed April 11, 2016.
- 12 b) Jurupa Community Services District's additional response to Judge
13 Reichert's request for clarification, filed April 11, 2016
- 14 4. Watermaster's further response to order for additional briefing, filed
15 April 11, 2016

16 F. At the hearing on February 22, 2017, the court ordered that the parties may
17 file questions regarding the court's tentative draft order, and the court set a briefing
18 schedule. In response, the court received the following:

- 19 1. Filed March 10, 2017-Chino Basin Watermaster response to February
20 22, 2017 order
- 21 2. Filed March 10, 2017-City of Chino's response to issue in section II of
22 Judge Reichert's revised proposed order re SYRA
- 23 3. Filed March 10, 2017-Responding AP members (Monte Vista Water
24 District, Cucamonga Valley Water District, City of Pomona, and City of Upland)
25 filed March 10, 2017
- 26 4. Filed March 24, 2017-Chino Basin Watermaster further response to
27 February 22, 2017 order
- 28 5. Filed March 24, 2017-City of Chino's response to court authorized

1 further briefing re revised tentative order re Watermaster's motion re 2015 Safe Yield
2 reset Agreement

3 6. Filed March 24, 2017-City of Chino's response to Chino Basin
4 Watermaster's response to February 22, 2017 order

5 7. Filed March 24, 2017-City of Ontario's response regarding issue for
6 further briefing

7 8. Filed March 24, 2017-Jurupa Community Services District opposition
8 to Monte Vista Water District's response to court's February 22, 2017 order re SYRA
9 and response to questions [joins in the opposition filed by the City of Ontario]

10 9. Filed March 24, 2017-Responding AP members response to both
11 Watermaster and City of Chino's further briefing re revised tentative order re
12 Watermaster's motion re 2015 Safe Yield Reset Agreement

13 10. Filed April 4, 2017-errata to City of Chino's response to Chino Basin
14 Watermaster's response to February 22, 2017 order

15 11. Filed April 7, 2017-Chino Basin Watermaster further response to
16 February 22, 2017 order

17 12. Filed April 7, 2017-City of Chino's reply to responses of Watermaster,
18 4AP Members, Ontario and Jurupa

19 13. Filed April 7, 2017-Jurupa Community Services District's limited reply
20 to City of Chino's response to Chino Basin Watermaster's response to February 22,
21 2017 order, dated March 24, 2017

22 14. Filed April 7, 2017-Responding AP Members reply to opposition briefs
23 re revised tentative order re Watermaster's motion re 2015 Safe Yield Reset
24 Agreement

25 15. Filed April 27, 2017, request by Chino basin desalter authority member
26 agencies regarding desalter pumping

1 **SEPTEMBER 23, 2016, HEARING AND ADDITIONAL BRIEFING**

2 After extensive briefing and consideration, on September 23, 2016, the court
3 held a hearing on the 2015 SYRA and related motions. Before the hearing, the court
4 had issued a lengthy (over 60 pages) proposed order. At the hearing on September
5 23, there was extensive oral argument, and the court concluded that some aspects of
6 the court’s proposed order were confusing or erroneous. Therefore, the ordered that
7 there be even further briefing, and the court ordered additional briefing through
8 questions by the parties about the proposed order. In its order entitled “Revised
9 Proposed Order Re SYRA in Response to Questions: Issues for Further Briefing,”
10 and the current order, the court addressed the parties’ questions.

11
12
13 **I. INTRODUCTION, DEFINITIONS, BACKGROUND**

14 A. The 1978 judgment in *Chino Basin Municipal Water District v. City of Chino* (San
15 Bernardino Superior Court Case No. 51010) set the Safe Yield of the Chino Basin at
16 140,000 acre-feet per year (AFY), but reserved continuing jurisdiction to the court to
17 amend the Judgment, inter alia, to redetermine the Safe Yield after the first 10 years
18 of operation of the Physical Solution established under the Judgment. The Physical
19 Solution identified three groups of parties (Pools) with water interests in the Chino
20 Basin, and set forth their allocations as follows:

21

Pool	Allocation	Acre-feet Yearly Allocation
22 23 24 25 26 27 28 Overlying (Agricultural) Pool*	414,000 acre-feet in any five (5) consecutive years [note: 414,000 ÷ 5 = 82,800 per year]	82,800
Overlying (Non-agricultural)	7,366 acre-feet	7,366

1	Pool**		
2	Appropriative	49,834 acre-feet	49,834
3	Pool***		
4		Yearly total allocation	140,000

5 *The members of this pool included dairy farms.

6 **The members of this pool include businesses which use water in their production
7 processes.

8 ***The members of this pool include cities and water companies. They
9 “appropriate” the water by pumping and selling it.

10 Over the course of the Court-Approved Management Agreements (set forth in
11 the next section), the court allowed up to 600,000 AF of water to be
12 produced/pumped out of the Chino Basin without any replenishment obligation.
13 “While the parties are not limited in the quantities of water they may produce, the
14 Judgment requires that beyond the permitted Controlled Overdraft comprising an
15 initial 200,000 AF and an additional 400,000 AF of Re-operation water (Restated
16 Judgment, Exhibit “I”, ¶¶ 2.(b), 3.(a)), there must be a bucket for bucket
17 replenishment [and associated cost to the producer/pumper] to offset production in
18 excess of the Basin’s Safe Yield. (Restated Judgment, ¶¶ 13, 42).” (Watermaster’s
19 Response to Questions for Clarification in Final Orders for Watermaster’s Motion
20 Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
21 Paragraph 6, page 2, line 23 to page 3, line 4, filed October 28, 2016.)

22 The court notes that this total “controlled overdraft” i.e., pumping without
23 replenishment cost, (aka “Re-Operation Water”) of 600,000 AF has just about been
24 exhausted.

25 This motion is the first time the court has redetermined the Safe Yield since
26 the Judgment was entered in 1978.

27
28 B. Since the entry of the judgment, the court has previously approved agreements to

1 implement the Physical Solution (“Court Approved Management Agreements” aka
2 “CAMA”). There is no dispute that the court has the authority and duty to
3 independently review the evidence de novo and determine whether proposals by
4 Watermaster or any party comply with the Judgment and the Court Approved
5 Management Agreements. (Restated Judgment ¶131(d).) The Court Approved
6 Management Agreements are:

7 1. The Chino Basin Peace Agreement (Peace I Agreement), dated June 29,
8 2000, as subsequently amended in September 2004 and December 2007.

9 a. In 2000 the parties executed Peace Agreement Chino Basin (Peace I
10 Agreement) and agreed to Watermaster’s adoption of the Optimum
11 Basin Management Plan (OBMP) Implementation Plan. At about the
12 same time, the court ordered Watermaster to proceed in a manner
13 consistent with Peace I and the OBMP, including Program Element 8
14 (Develop and Implement Groundwater Storage Management Program)
15 and Program Element 9 (Develop and Implement Storage and
16 Recovery Programs). The implementation plan acknowledged the need
17 to obtain better production data through the metering of non-exempt
18 production within the Basin. Program Elements 8 and 9 provided for
19 Watermaster to redetermine and reset the Basin’s Safe Yield in the year
20 2010/11. The basis of the redetermination and reset would be
21 production data derived from the collection of additional data regarding
22 the parties’ production (i.e., parties who pumped water out of the Basin)
23 within the basin during the 10-year period 2000/01 through 2009/10.
24 The study for redetermination and reset was not completed until 2015,
25 and the motion regarding determination and reset was not filed until
26 October 2015.

27 b. The Peace I Agreement introduced the installation of Desalters in the
28 southwest portion of the Basin. The Desalters pump ground water

1 from the aquifer and supply that water to water companies and other
2 users. By pumping water out of the aquifer, the Desalters also lowered
3 the ground water table to help obtain Hydrologic Control, i.e.,
4 preventing Chino Basin ground water from reaching the Santa Ana
5 River south of the Basin. The Santa Ana River is a major source of
6 water for Orange County, and water impurities and contaminants, some
7 of which came from the Chino Basin dairy farms (“salts”) were in the
8 groundwater flowing from the Basin into the Santa Ana River. The
9 Desalter capacity has now expanded to 40 MGD (40 million gallons per
10 day) as provided in the OBMP Implementation Plan to protect against a
11 decline in Safe Yield and for water quality benefits, but the court
12 reserved the question of how “Future Desalter” capacity would be
13 addressed. The Chino Basin Desalter Authority (CDA), which includes
14 the City of Chino, participated in the construction of the Desalters
15 which represented a substantial engineering and financial undertaking.
16 These Desalters were completed and fully operational in 2006.

- 17 2. The Peace II Measures (court approved on December 21, 2007).
- 18 a. In 2007, the parties entered into the Peace II Agreement. The objective
19 was to increase the Desalter capacity to 40 MGD to achieve the OBMP
20 Implementation Plan objectives. In order to do this, the parties
21 designed and financed an additional 10 million gallons per day (MGD)
22 of expanded Desalter capacity. The expansion of the Desalters to the
23 full plant capacity will be completed in 2017. With the completion of
24 this construction, Hydraulic Control will be achieved. Hydraulic
25 Control now means only a de minimus amount of groundwater will
26 flow from the Chino Basin south into the Santa Ana River. In fact, the
27 Desalters now have lowered the water table in the south end of the
28 Basin so that ground water is now flowing from the Santa Ana River

1 north into the Chino Basin. ~~This is called Re-Operation water.~~

2 3. The Optimum Basin Management Plan (OBMP) Implementation Plan
3 dated June 29, 2000, was supplemented in December 2007.

4 4. The Recharge Master Plan, dated 1998, was updated in 2010 and
5 amended in 2013.

6 5. The Watermaster Rules and Regulations dated June 2000, as amended.

7 6. The October 8, 2010 Order Approving Watermaster's Compliance with
8 Condition Subsequent Number Eight and Approving Procedures to be used to
9 Allocate Surplus Agricultural Pool Water in the Event of a Decline in Safe Yield.

10 7. Watermaster Resolution 2010-04 ("Resolution of the Chino Basin
11 Watermaster regarding Implementation of the Peace II Agreement and the Phase III
12 Desalter Expansion in Accordance with the December 21, 2007 Order of the San
13 Bernardino Superior Court").

14
15 C. Additional background for motion

16 1. At the September 24, 2015 Watermaster Board Meeting, the board
17 adopted Resolution 2015-06: Resolution of the Chino Basin Watermaster regarding
18 the 2015 Safe Yield Reset Agreement (SYRA).

19 2. Through a Facilitation and Non-Disclosure Agreement (FANDA),
20 Watermaster attempted to obtain agreement as to all issues regarding Safe Yield
21 redetermination and reset allocation. Those issues included not only a reset of the
22 Safe Yield from 140,000 acre-feet per year to 135,000 acre-feet per year, but also
23 Watermaster's accounting for reallocations related to Court Approved Management
24 Agreements, and a method of allocations for water storage called the Safe Storage
25 Management Agreements.

26 a) The FANDA process took place starting in November 2014, and
27 through at least 30 meetings, by May 27, 2015, all but one of the then-
28 active parties to the FANDA reached a non-binding agreement among

1 their negotiating representatives on certain key principles (apparently
2 also called the “term sheet”) embodied in the Safe Yield Summary of
3 Non-Binding Key Principles Derived from the Facilitated Process.

- 4 b) The parties continued to negotiate, with a goal of reducing the Key
5 Principles into a binding instrument for execution by September 1,
6 2015. That agreement is identified as the 2015 Safe Yield Reset
7 Agreement (SYRA). The Appropriative Pool, the Overlying
8 (Agricultural) Pool, and the Three Valleys Municipal Water District
9 approved the 22-page agreement, as did many other parties. The City
10 of Chino refused to sign the agreement.
- 11 c) On September 24, 2015, the board at its regular meeting adopted
12 resolution 2015-06, and previously – on September 17, 2015 – the
13 advisory committee approved resolution 2015-06: “Resolution of Chino
14 Basin Watermaster regarding 2015 Safe Yield Reset Agreement
15 (SYRA).”
- 16 d) Watermaster’s instant motion asks the court to address the issues
17 covered in the SYRA as follows:
- 18 I) The reset of the Basin Safe Yield from 140,000 acre-fee per year (AFY)
19 to 135,000 AFY pursuant to the Restated Judgment, the OBMP
20 Implementation Plan, and Watermaster’s Rules and Regulations;
- 21 II) The manner in which Watermaster should account for various
22 components of the recharge to the Basin implementing the Court-
23 Approved Management Agreements; and
- 24 III) Establishment of Safe Storage Management Measures (SSMM)
25 intended to ensure that withdrawals of groundwater from authorized
26 storage accounts within the Basin are safe, sustainable, and will not
27 cause Material Physical Injury or undesirable results.
- 28

1 D. SUMMARY RULINGS:

2 In its motion, Watermaster requests an order acknowledging the 2015 Safe
3 Yield Reset Agreement and ordering Watermaster to proceed in accordance with its
4 terms with respect to amending the restated judgment to reset the Safe Yield of the
5 Basin from 135,000 AFY to 135,000 AFY and amending the schedule for access to
6 Re-Operation water. For the reasons set forth herein, the court grants the motion
7 with respect to amending the restated judgment to reset the Safe Yield of the basin to
8 135,000 AFY. However, the court denies the rest of the motions including the motions
9 to amend the schedule for access to Re-operation water and the motion to institute
10 Safe Storage Management Measures. The court makes additional orders with respect
11 to Desalter water as set forth herein.

12
13 **II. Severability of SYRA**

14 Watermaster has questioned whether the court can sever SYRA and enforce
15 certain sections and not others. For the following reasons, except for the Safe Yield
16 reset itself, the court has concluded that it cannot enforce some of sections and not
17 others:

18 A. Watermaster itself has argued that SYRA is an integrated document which
19 cannot be divided.

20 1. Watermaster's "Response to Questions for Clarification, etc." filed
21 October 28, 2016, states: "the SYRA is the product of the Facilitation and Non-
22 Disclosure Agreement (FANDA) process, during which the parties to that agreement
23 comprehensively settled and compromised their disagreements, so as to enable
24 Watermaster to implement the CAMA's through and following the reset of Safe
25 Yield."

26 a) The court does not find a basis for this characterization. *Most* of the
27 parties settled and compromised their disagreements, but not all,
28 notably the city of Chino and Jurupa Community Services District.

1 2. Watermaster further argues that approving “some, but not all, of
2 SYRA’s provisions can materially advantage one party over another, in that the full
3 benefit of the parties intended settlement and compromise is not achieved, as one or
4 more parties may be denied the consideration for which it bargained.”

5 a) For the reasons set forth below, the court refuses to adopt SYRA in
6 whole. Following Watermaster’s own all-or-nothing argument, the
7 court must conclude that not only is there no legal basis to enforce part
8 of SYRA, but also that it is fundamentally unfair to the parties to
9 enforce portions of SYRA for which the parties did not bargain.

10 3. However, the court concludes there is a qualitative difference between
11 the safe yield reset and the balance of SYRA.

12 a) The request to reduce the Safe Yield to 135,000 AFY is a legal
13 determination for the court.

14 b) The request to reduce Safe Yield is based on the Reset Technical
15 Memorandum report and model. That memorandum has nothing to do
16 with interactions, bargaining, or allocations among the parties.

17 I) There ample technical and scientific support for the reset in the
18 Technical Memorandum and the 2013 Chino Basin Groundwater
19 Model Update and Recalculation of Safe Yield Pursant to the Peace
20 Agreement prepared by Wildermuth Environmental, Inc. dated
21 October 2015.

22 c) The request to reduce Safe Yield is in response to the court order itself
23 to evaluate the yield every 10 years

24 I) Although the study should have been done in 2010, at least it was
25 completed in 2015.

26 II) None of the other aspects of SYRA were pursuant to a court order.

27 III) The safe yield reset is a legal determination for the court. There
28 is no “bargained-for exchange” for the court to consider.

1 d) Therefore for these reasons and those set forth in section III below ~~HH~~
2 the court adopts the following provisions of Article 4-SAFE YIELD
3 RESET TO 135,000 AFY of the SYRA AND ORDERS AS
4 FOLLOWS:

5 4.1 Safe Yield Reset. Consistent with the prior orders of the Court pursuant to its
6 continuing jurisdiction, effective July 1, 2010 and continuing until June 30, 2020, the
7 Safe Yield for the Basin is reset at 135,000 AFY. For all purposes arising under the
8 Judgment, the Peace Agreements and the OBMP Implementation Plan, the Safe
9 Yield shall be 135,000 AFY, without exception, unless and until Safe Yield is reset in
10 accordance with the procedures set forth in this order, and determined by the Court
11 pursuant to its retained continuing jurisdiction.

12
13 4.2 Scheduled Reset. Watermaster will initiate a process to evaluate and reset the
14 Safe Yield by July 1, 2020 as further provided in this order. Subject to the provisions
15 of Paragraph 4.3 below, the Safe Yield, as it is reset effective July 1, 2020 will
16 continue until June 30, 2030. Watermaster will initiate the reset process no later than
17 January 1, 2019, in order to ensure that the Safe Yield, as reset, may be approved by
18 the court no later than June 30, 2020. Consistent with the provisions of the OBMP
19 Implementation Plan, thereafter Watermaster will conduct a Safe Yield evaluation
20 and reset process no less frequently than every ten years. This Paragraph is deemed
21 to satisfy Watermaster's obligation, under Paragraph 3.(b) of Exhibit "I" to the
22 Restated Judgment, to provide notice of a potential change in Operating Safe Yield.

23
24 4.3 Interim Correction. In addition to the scheduled reset set forth in Paragraph
25 4.2 above, the Safe Yield may be reset in the event that, with the recommendation
26 and advice of the Pools and Advisory Committee and in the exercise of prudent
27 management discretion described in Paragraph 4.5(c), below, Watermaster
28 recommends to the court that the Safe Yield must be changed by an amount greater

1 (more or less) than 2.5% of the then-effective Safe Yield.

2
3 4.4 Safe Yield Reset Methodology. The Safe Yield has been reset effective July 1,
4 2010 and shall be subsequently evaluated pursuant to the methodology set forth in
5 the Reset Technical Memorandum. The reset will rely upon long-term hydrology and
6 will include data from 1921 to the date of the reset evaluation. The long-term
7 hydrology will be continuously expanded to account for new data from each year,
8 through July 2030, as it becomes available. This methodology will thereby account
9 for short-term climatic variations, wet and dry. Based on the best information
10 practicably available to Watermaster, the Reset Technical Memorandum sets forth a
11 prudent and reasonable professional methodology to evaluate the then prevailing
12 Safe Yield in a manner consistent with the Judgment, the Peace Agreements, and the
13 OBMP Implementation Plan. In furtherance of the goal of maximizing the
14 beneficial use of the waters of the Chino Basin, Watermaster, with the
15 recommendation and advice of the Pools and Advisory Committee, may supplement
16 the Reset Technical Memorandum's methodology to incorporate future advances in
17 best management practices and hydrologic science as they evolve over the term of
18 this order.

19
20 4.5 Annual Data Collection and Evaluation. In support of its obligations to
21 undertake the reset in accordance with the Reset Technical Memorandum and this
22 order, Watermaster shall annually undertake the following actions:

23 (a) Ensure that, unless a Party to the Judgment is excluded from reporting,
24 all production by all Parties to the Judgment is metered, reported, and reflected in
25 Watermaster's approved Assessment Packages;

26 (b) Collect data concerning cultural conditions annually with cultural
27 conditions including, but not limited to, land use, water use practices, production,
28 and facilities for the production, generation, storage, recharge, treatment, or

1 transmission of water;

2 (c) Evaluate the potential need for prudent management discretion to avoid
3 or mitigate undesirable results including, but not limited to, subsidence, water quality
4 degradation, and unreasonable pump lifts. Where the evaluation of available data
5 suggests that there has been or will be a material change from existing and projected
6 conditions or threatened undesirable results, then a more significant evaluation,
7 including modeling, as described in the Reset Technical Memorandum, will be
8 undertaken; and,

9 (d) As part of its regular budgeting process, develop a budget for the
10 annual data collection, data evaluation, and any scheduled modeling efforts, including
11 the methodology for the allocation of expenses among the Parties to the Judgment.
12 Such budget development shall be consistent with section 5.4(a) of the Peace
13 Agreement.

14
15 4.6 Modeling. Watermaster shall cause the Basin Model to be updated and a
16 model evaluation of Safe Yield, in a manner consistent with the Reset Technical
17 Memorandum, to be initiated no later than January 1, 2024, in order to ensure that
18 the same may be completed by June 30, 2025.

19
20 4.7 Peer Review. The Pools shall be provided with reasonable opportunity, no
21 less frequently than annually, for peer review of the collection of data and the
22 application of the data collected in regard to the activities described in Paragraphs
23 4.4, 4.5, and 4.6 above.

24
25 4.8 No Retroactive Accounting. Notwithstanding that the initial Safe Yield reset,
26 described in Paragraph 4.1 above, shall be effective as of July 1, 2010, Watermaster
27 will not, in any manner, including through the approval of its Assessment Packages,
28 seek to change prior accounting of the prior allocation of Safe Yield and Operating

1 Safe Yield among the Parties to the Judgment for production years prior to July 1,
2 2014.

3
4
5 **III. THE COURT FURTHER ORDERS AS FOLLOWS:**

6 A. The court amends the restated judgment ¶6 and sets the safe yield to 135,000
7 AFY for the following reasons:

8 1. The court accepts the findings and conclusions of Wildermuth for the
9 following reasons. Those conclusions are set forth in the reset Technical
10 Memorandum.

- 11 a) Wildermuth has been the authoritative resource for the parties and the
12 court during the pendency of the case for the last 15 years.
- 13 b) Wildermuth has performed a detailed analysis with substantiated facts
14 and findings in the reset technical memorandum, the supplemental
15 declaration of Mark Wildermuth in support of Watermaster's reply to
16 oppositions to the motion regarding 2015 Safe Yield Reset Agreement,
17 and the memo to restated judgment, paragraph 6 aka Wildermuth
18 supplemental declaration.
- 19 c) The court accepts the net recharge approach and calculations set forth
20 in the Wildermuth report.
- 21 d) The Wildermuth report gives the most comprehensive analysis and
22 credible evaluation of the historic condition of the Basin.
- 23 e) The court does not accept the conclusions of Robert Shibatani for the
24 following reasons:
- 25 I) Shibatani recognizes that the net recharge calculation is a legitimate
26 approach to a determination of Safe Yield.
- 27 II) The Shibatani approach is unnecessarily quantitative. The Wildermuth
28 analysis allows for the definitions required for the analysis of the Chino

1 Basin, including cultural conditions and undesirable results.

2 III) Wildermuth has considered the effects of climate change of
3 Basin precipitation. The court accepts Wildermuth's conclusion that
4 there are not any better predictive modeling scenarios generally available
5 at this time accurately calibrated to the historical rainfall and are
6 therefore not reliable as a predictive tool.

7 2. The Restated Judgment's definition of Safe Yield includes the
8 consideration of the evolutionary land-use conditions the need to protect the Basin
9 against undesirable results.

10 3. No party has objected to the reduction in Safe Yield, except the city of
11 Chino. Chino's objections were discussed and rejected/overruled for the reasons set
12 forth in Joinders and Filings, Section A.2 above.

13 4. The reduction safe yield is consistent with the Court-Approved
14 Management Agreements.

15 5. The court finds that the provisions of SYRA set for in Section II above
16 set forth an approach to a determination of future Safe Yield determinations in a
17 manner consistent with the Court Approved Management Agreements.

18 a) The declaration of Peter Wildermuth and the supporting
19 documentation, analysis supports the court's conclusion.

20 b) Wildermuth declaration, paragraph 14, states his opinion that the Basin
21 protection measures to which the parties have agreed and the 2015 Safe
22 Yield Reset Agreement will ensure that the Basin is not harmed by
23 extraction of 135,000 AFY through fiscal 2020. However, again the
24 court emphasizes that its ruling is not based on the agreement of the
25 parties. The court's ruling is based upon the Restated Judgment, the
26 Court Approved Management Agreements, and its legal conclusions
27 supported by the technical analyses identified in the court's order.

28 I) Although the court concludes the Safe Storage Management Measures

1 are useful and advisable, the court concludes there is no specific factual
2 basis requiring the Safe Yield reset to include Safe Storage Management
3 Measures. Therefore the court concludes that even without the Safe
4 Storage Management Measures, reduction of Safe Yield to 135,000 AFY
5 will not harm the Basin.

6 II) The 2013 Chino Basin Groundwater Model Update and Recalculation
7 of Safe Yield Pursuant to the Peace Agreement is sufficiently
8 documented and the court finds the data reliable.

9 c) Wildermuth declaration, paragraph 15, states that the Basin protection
10 measures to which the parties have agreed and the 2015 Safe Yield
11 Reset Agreement, including the Safe Storage Management Measures,
12 will ensure that the Basin is not harmed by extractions of the 20,000 AF
13 that was allocated in the past 4 years and would have been allocated if
14 the Safe Yield have been reset to 135,000 AFY in 2011.

15 I) However, again Wildermuth does not specifically address the necessity
16 of the Safe Storage Measures with respect to complying with the Court
17 Approved Management Agreements. Therefore, the court again
18 concludes that even without the Safe Storage Management Measures,
19 reduction of Safe Yield to 135,000 AFY will not harm the Basin.

20 II) Again, the 2013 Chino Basin Groundwater Model Update and
21 Recalculation of Safe Yield Pursuant to the Peace Agreement is
22 sufficiently documented and the court finds the data reliable.

23 d) Therefore, the court concludes that the extraction of 135,000 AFY is
24 consistent with the Court Approved Management Agreements and does
25 not create any undesirable result or Material Physical Injury to the Basin.
26

27 B. The measures set forth in Article 4 are consistent with the Physical Solution
28 under the judgment and Article X, section 2 of the California Constitution.

1
2 C. Paragraph 6 of the Restated Judgment is hereby amended to read as follows:

3 “Safe Yield. The Safe Yield of the Basin is 135,000 acre feet per year.”

4 1. The effective date of this amendment of Paragraph 6 of the Restated
5 Judgement is July 1, 2010.
6
7

8 **IV. SAFE YIELD RESET AGREEMENT (SYRA): WATERMASTER**
9 **ALLOCATION HISTORY, EARLY TRANSFERS, AND THE**
10 **DESALTERS**

11 A. The 1978 Judgment as amended

12 1. The 1978 Judgment ¶44 made the following allocation of rights to Safe
13 Yield in the Chino Basin (“the physical solution”):

Pool	Allocation
Overlying (Agricultural) Pool	414,000 acre-feet in any 5 consecutive years (82,800 acre-feet per year)* **
Overlying (Non-agricultural) Pool	7366 acre-feet per year**
Appropriative Pool	49,834 acre-feet per year
Total	140,000 acre-feet per year

14
15
16
17
18
19
20
21 *Note: $414,000 \div 5 = 82,800$. 82,800 acre-feet per year has been the basis of
22 calculations for the Appropriative Pool going forward from the judgment.

23 **Note: the rights of the members of the Overlying (Agricultural) Pool and
24 the Overlying (Non-Agricultural) Pool are fixed (Restated Judgment ¶8, ¶44, see also
25 Exhibits “C” and “D” to the Restated Judgment). **Therefore the effect of a**
26 **decline of the safe yield is borne entirely by the members of the Appropriative**
27 **Pool (Restated Judgment ¶9).**

28 2. The Judgment ¶1(x) defines Safe Yield as “the long-term average annual

1 quantity of groundwater (excluding replenishment or stored water but including
2 return flow to the basin from use of replenishment or stored water) which can be
3 produced [*i.e.*, pumped] from the basin under cultural conditions of the particular
4 year without causing an undesirable result.”

5 3. The judgment fixed the amount of water production (pumping) that
6 could be allocated to the Overlying (Agricultural) Pool and the Overlying (Non-
7 agricultural) Pool. However, the Appropriative Pool allocation could be changed.

8 a) The court concludes that the disputes in the oppositions concern
9 relationship between unproduced (*i.e.*, unpumped) Overlying
10 Agricultural Pool water (aka Ag Pool water) and the water available to
11 the Appropriative Pool.

12 4. Exhibit “I” to the judgment is the Engineering Appendix. It discusses
13 Hydraulic Control and Re-Operation, which are described in more detail below.
14 Section 3 defines Operating Safe Yield as consisting in any “year of the
15 Appropriative Pool’s share of Safe Yield of the Basin, plus any controlled overdraft
16 of the Basin which Watermaster may authorize.”

17 a) Section 3(b) states that “in no event shall Operating Safe Yield in any
18 year be less than the Appropriative Pool’s share of Safe Yield, nor shall
19 it exceed such share of Safe Yield by more than 10,000 acre feet. The
20 initial Operating Safe Yield is hereby set at 54,834 acre feet per year.”

21 I) The figure of 54,834 acre feet per year is the initial 1978 Judgment
22 allocation of 49,834 acre-feet per year plus 5,000 acre feet per year. The
23 additional 5,000 AFY comes from 200,000 acre-feet of overdraft (water
24 pumped without a replenishment obligation) allocated by the Judgment
25 to the Appropriative Pool. This overdraft total was later increased by
26 400,000 AF to a total of 600,000 AF. The overdraft will be exhausted
27 in 2016/2017. (Watermaster Motion Regarding 2015 Safe Yield Reset
28 Agreement, Amendment of Restated Judgement, Paragraph 6, page 3,

1 line 27.)

2 b) Operating Safe Yield has also come to mean water that the
3 Appropriative Pool could produce/pump without having to purchase
4 replenishment water. (Exhibit “H” ¶5.)

5 5. Exhibit “H” to the judgment described the Appropriative Pool Pooling
6 Plan, paragraph 10 described “Unallocated Safe Yield Water” as follows: “to the
7 extent that, in any 5 years, any portion of the share of Safe Yield allocated to the
8 Overlying (Agricultural) Pool is not produced, such water shall be available for
9 reallocation to members of the Appropriative Pool as follows:

10 (a) Priorities. Such allocation shall be made in the following sequence:

11 (1) to supplement, in the particular year, water available from Operating Safe
12 Yield to compensate for any reduction in the Safe Yield by reason of
13 recalculation thereof after the tenth year of operation hereunder. [This
14 Exhibit H ¶10(a)(1) priority is sometimes called ‘unproduced Agricultural Pool
15 water’ or ‘unproduced Ag Pool water.’ The current credited production
16 (pumping) for agricultural groundwater is about 33,600 AFY, but that includes
17 agricultural land irrigated with reclaimed water. The actual groundwater
18 production for agricultural purposes is about 22,000 AFY. (Jurupa Services
19 District’s response to Judge Reichert’s Request for Clarification, March 22,
20 2016, page 2, lines 8–10.)]

21 (2) pursuant to conversion claims as defined in Subparagraph (b) hereof.

22 (3) as a supplement to Operating Safe Yield, without regard to reductions in
23 Safe Yield.”

24 6. In an order dated November 17, 1995, Conversion Claims were defined
25 in Exhibit “H” ¶10(b) [this is the Subparagraph (b) to which the preceding
26 paragraph--page 23, line 21--refers]. Peace I modified this definition in Exhibit “H”
27 ¶10(b) to state as follows:

28 (b) Conversion Claims. The following procedures may be utilized by any

1 appropriator:

2 1) Record of Unconverted Agricultural Acreage. Watermaster shall maintain
3 on an ongoing basis a record with appropriate related maps of all agricultural
4 acreage within the Chino Basin subject to being converted to appropriative
5 water use pursuant to the provisions of this paragraph. An initial
6 identification of such acreage as of June 30, 1995 is attached hereto as
7 Appendix 1.

8 (2) Record of Water Service Conversion. Any appropriator who undertakes
9 to permanently provide water service to lands subject to conversion may
10 report such intent to change water service to Watermaster. Watermaster
11 should thereupon verify such change in water service and shall maintain a
12 record and account for each appropriator of the total acreage involved.
13 Should, at any time, converted acreage return to water service from the
14 Overlying (Agricultural) Pool, Watermaster shall return such acreage to
15 unconverted status and correspondingly reduce or eliminate any allocation
16 accorded to the appropriator involved.

17 (3) Allocation of Safe Yield Rights

18 (i) For the term of the Peace Agreement in any year in which sufficient
19 unallocated Safe Yield from the Overlying (Agricultural) Pool is available for
20 such conversion claims, Watermaster shall allocate to each appropriator with
21 the conversion claim 2.0 acre-feet of unallocated Safe Yield water for each
22 converted acre for which conversion has been approved and recorded by
23 Watermaster.

24 (ii) In any year in which the unallocated Safe Yield water from the Overlying
25 (Agricultural) Pool is not sufficient to satisfy all outstanding conversion claims
26 pursuant to subparagraph (i) herein above, Watermaster shall establish
27 allocation percentages for each appropriator with conversion claims. The
28 percentages shall be based upon the ratio of the total of such converted

1 acreage approved and recorded for each appropriators's [sic] account in
2 comparison to the total of converted acreage approved and recorded for all
3 appropriators. Watermaster shall apply such allocation percentage for each
4 appropriator to the total unallocated Safe Yield water available for conversion
5 claims to derive the amount allocable to each appropriator.

6 7. CONCLUSION: With the 1995 amendments, the Judgment set a
7 prioritized list of claims upon unproduced Ag Pool water.

8 Ag Pool water--1995 Judgment amendment

9 82,800 AFY of the Ag Pool's water available to the Appropriative Pool with
10 Appropriative Pool claims prioritized as follows:

11 (1) to supplement, in the particular year, water available from Operating Safe
12 Yield to compensate for any reduction in the Safe Yield by reason of recalculation
13 thereof after the tenth year of operation as required by the Judgment;

14 (2) pursuant to conversion claims as defined in Subparagraph (b of Exhibit "H"
15 ¶10(b);

16 (3) as a supplement to Operating Safe Yield, without regard to reductions in Safe
17 Yield.

18 The court notes that there is currently more than 49,000 AFY of unproduced
19 Agricultural Pool water available. (Jurupa Services District's response to Judge
20 Reichert's Request for Clarification, March 22, 2016, page 2, lines 10-14.)

21
22 B. The 2000 Peace Agreement aka Peace I

23 1. With the agreements made in Peace I, the elements of Desalters and of
24 water transfers entered the water allocations to the parties.

25 2. Peace I Section V-Watermaster Performance defined how Watermaster
26 was to perform regarding procedures for Recharge and Replenishment. In paragraph
27 ¶5.3(g), Watermaster was ordered to approve an "Early Transfer" from the
28 Agricultural Pool to the Appropriative Pool of not less than 32,800 acre-feet per year

1 which was the expected approximate quantity of water not produced by the
2 Agricultural Pool. ¶5.3(g)(i) further stated that “the quantity of water subject to Early
3 Transfer under this paragraph shall be the greater of (i) 32,800 acre-feet or (ii) 32,800
4 acre-feet plus the actual quantity of water not produced by the Agricultural Pool for
5 that Fiscal Year that is remaining after all the land use conversions are satisfied
6 pursuant to” the following provision: “the Early Transfer water shall be annually
7 allocated among members of the Appropriative Pool in accordance with their pro-
8 rata share of the initial Safe Yield.” The court notes that after this deduction, the
9 Safe Yield water available to the Agricultural Pool became 50,000 acre-feet per year.

10 3. Peace I also introduced the construction and operation of Desalters in
11 Section VII. ¶7.5 described replenishment for the Desalters provided from the
12 following sources in the following order:

13 a) Watermaster Desalter replenishment account composed of 25,000 acre-feet
14 of water abandoned by Kaiser and other water previously dedicated by the
15 Appropriative Pool;

16 (b) New Yield of the Basin, unless the water Produced and treated by the
17 Desalters is dedicated by purchaser of the Desalter water to offset the price of
18 Desalter water to the extent of the dedication;

19 (c) Safe Yield of the Basin, unless the water Produced and treated by the
20 Desalters is dedicated by a purchaser of the desalted water to offset the price of
21 Desalter water to the extent of the dedication; [and then]

22 d) Additional Replenishment Water purchased by Watermaster, the cost of
23 which shall be levied as an Assessment by Watermaster.

24 4. The court also concludes that the conversion claims have priority over
25 the Early Transfers because the conversion claims pre-existed the Early Transfer
26 allocations. The conversion claims came into existence with the 1995 Judgment
27 amendment. The Early Transfers came into existence with Peace I in 2000. The
28 Early Transfers must be interpreted in the context of the pre-existing 1995 Judgment

1 amendment.

2 5. CONCLUSION: With Peace I, there were major changes regarding the
3 allocation of water among the parties as set forth in the following table.

4 Ag Pool water	5 Status and/or change 6 result	7 Comments
8 1995 Judgment 9 amendment	10 82,800 AFY of the Ag 11 Pool's water available to 12 the Appropriate Pool with 13 Appropriative Pool claims 14 prioritized as follows: 15 (1) to supplement, in the 16 particular year, water 17 available from Operating 18 Safe Yield to compensate 19 for any reduction in the 20 Safe Yield by reason of 21 recalculation thereof after 22 the tenth year of 23 operation hereunder. 24 (2) pursuant to conversion 25 claims as defined in 26 Subparagraph (b) hereof. 27 (3) as a supplement to 28 Operating Safe Yield, without regard to reductions in Safe Yield.	
27 2000 Peace I-Desalters 28 start construction and	Early Transfers of 32,800 AFY of Ag Pool water	New Yield (with conditions) is source of

<p>1 pumping water</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p>	<p>going straight to the</p> <p>Appropriative Pool</p> <p>(leaving 50,000 AFY to</p> <p>Ag Pool). The remaining</p> <p>Ag Pool water is subject</p> <p>to Appropriative Pool's</p> <p>prioritized claims.</p>	<p>water to replenish water</p> <p>pumped by the</p> <p>Desalters. Under Peace</p> <p>I therefore Desalters do</p> <p>not affect Safe Yield or</p> <p>Operating Safe Yield.</p> <p>Water</p> <p>produced/pumped by</p> <p>the Desalters is not</p> <p>added to or subtracted</p> <p>from Safe Yield of the</p> <p>Basin.</p>
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13 The court concludes that Peace I interrelated Early Transfers and conversion
14 claims in the following way. The Appropriative Pool received unproduced Ag Pool
15 water in at least the amount of 32,800 AFY, but the Appropriative Pool could receive
16 more unproduced Ag Pool water if 1) the Ag Pool did not produce/pump its leftover
17 50,000 AFY and 2) also after subtracting from the 50,000 AFY the Appropriative
18 Pool's conversion claims at the rate of 2 acre-feet per year per converted acre.

19 However, the court also concludes that Peace I did not rearrange the priority
20 of allocation claims on unproduced/unpumped water. The priorities of the
21 judgment remain. Specifically, the priority set forth in Judgment, Exhibit "H,"
22 Paragraph 10.

23 EXAMPLE 1: So, for example in a particular year,

- 24 1. If one Appropriative Pool producer/pumper (e.g., municipality, such as the City of
- 25 Chino) had 1000 acres of converted land resulting in 2000 acre-feet of conversion
- 26 claims (1000 acres x 2.0 acre feet of water/one acre converted), and assuming those
- 27 were the only conversion claims; and
- 28 2. If the Ag Pool produced/pumped only 33,600 AFY leaving 49,200 AFY available

1 for further allocation (82,800 AFY– 33,600 AFY= 49,200 AFY; the court notes that
 2 33,600 AFY is the approximate Ag Pool credited production [Jurupa response to
 3 court’s clarification request, page 2, lines 9-10], but the court is using this figure only
 4 for illustration); then,

5 3. The Ag Pool water that would be available to the Appropriative Pool would be
 6 based on the following calculation

Example 1-A	Explanation	Comments
Initial Ag Pool allocation	82,800 AFY	
Ag Pool production/pumping	- 33,600 AFY	Assumption
Initial balance after production	49,200 AFY	(82,800 acre-feet – 33,600 acre-feet = 49,200 acre-feet per year)
Conversion claims	- 2000 acre-feet	1000 acres x 2.0 acre feet of water/one acre converted = 2000 acre-feet per year. The subtraction for satisfying conversion claims comes before any reallocation. The conversion claims are applied first because they are set forth in the 1995 Amendment to the Judgment
Ag Pool balance after reduction for conversion claims	47,200 AFY	(49,200 acre-feet - 2000 acre-feet = 47,200 acre-feet per year) Balance: Ag Pool water available to Appropriative Pool after conversion priority claims pursuant to Judgment Exhibit

1			"H" Paragraph 10.
2	Reduction for Early	- 32,800 AFY	The Early Transfer is now applied because Early Transfers were instituted in Peace I in 2000. The Early Transfer from 82,800 AFY allocation leaving 50,000 AFY for the Ag Pool itself to produce/pump and for additional claims by the Appropriative Pool pursuant to Peace I and Peace II.*
3	Transfers		
4			
5			
6			
7			
8			
9			
10			
11	Balance: Ag Pool	14,400 AFY	(47,200 acre-feet -32,800 acre-feet = 14,400 acre-feet per year.) This is the total Ag Pool water available for reallocation to Appropriative Pool for production/pumping after subtraction of conversion priority claims of 2,000 acre-feet per year from and the 32,800 Early Transfer from the allotment of Ag Pool water.**
12	water available to the		
13	Appropriative Pool		
14	after conversion		
15	priority claims and		
16	Early Transfers		
17			
18			
19			
20			
21			
22			

23 *It appears to the court that for convenience, many parties first simply take the
24 reduction of the 32,800 acre-feet for Early Transfers and start these calculations with
25 50,000 acre-feet of Ag Pool water.

- 26 1. That calculation is simply to start with the 50,000 acre-feet of
27 unproduced/unpumped Ag Pool water and then subtract the amount 33,600
28 acre-feet that was actually pumped in this example. The result is 16,400 acre-

1 feet available for conversion claims.

2 2. Then subtract the 2,000 acre-feet for conversion claims to get the 14,400 acre-
3 feet of Ag Pool water available for allocation to the Appropriative Pool.

4 3. However, this procedure is inconsistent with the judgment and Peace
5 Agreements as interpreted by the court for the reasons stated above.

6 **The also court notes that the particular producer who serviced the converted acres
7 would actually be able to pump the additional conversion claim water as an
8 allocation.

9
10 EXAMPLE 2: The following example demonstrates complications arising
11 from a decrease in the amount of Ag Pool water available to the Appropriative Pool.
12 If the Ag Pool produced/pumped more than 48,000 AFY there would be no
13 available water for the Appropriative Pool.

Example 2		Comment
Initial Ag Pool allocation	82,800 AFY	
Ag Pool production/pumping	48,000 AFY	Assumption
Initial balance after production	34,800 AFY	82,800 acre-feet – 48,000 acre-feet = 34,800 acre-feet per year
Conversion claims	- 2000 acre- feet	The subtraction for satisfying conversion claims before any reallocation. (1000 acres x 2.0 acre feet of water/one acre converted = 2000 acre-feet).
Balance:	32,800 AFY	34,800 acre-feet – 2,000 acre-feet = 32,800 acre-feet per year. Ag Pool Water Available after conversion

1			priority claims pursuant to Judgment
2			Exhibit "H" Paragraph
3	Reduction for Early	- 32,800 AFY	Early Transfer of 32,800 AFY from
4	Transfers		82,800 AFY allocation leaving 50,000
5			AFY for the Ag Pool itself to
6			produce/pump. Any water which the
7			Ag Pool did not produce/pump water
8			up to the 50,000 AFY would be
9			available for allocation to the
10			Appropriative Pool pursuant to Peace
11			I and Peace II.
12	Balance: Ag Pool	0 AFY	32,800 acre-feet -32,800 acre-feet = 0
13	water available after		acre-feet per year. There would be no
14	conversion priority		Ag Pool water available for
15	claims and Early		reallocation to Appropriative Pool
16	Transfers		after subtraction of conversion
17			priority claims of 2,000 acre-feet and
18			the 32,800 Early Transfer of
19			unproduced/unpumped from the
20			allotment of Ag Pool water.
21	Conclusion:		
22	Under this scenario, the Appropriative Pool would not get any additional		
23	allocation from Ag Pool water		

24 6. Regarding replenishment for the Desalters, Peace I ¶7.5 sets forth the
25 hierarchy of sources of replenishment water for the Desalters as follows:

26 Replenishment Water. Replenishment for the Desalters shall be
27 provided from the following sources in the following order of priority.

28 (a) Watermaster Desalter Replenishment account composed of 25,000

1 acre-feet of water abandoned by Kaiser pursuant to the "Salt Offset
2 Agreement" dated October 21, 1993, between Kaiser and the RWQB, and
3 other water previously dedicated by the Appropriative Pool.

4 (b) New Yield of the Basin, unless the water Produced and treated by
5 the Desalters is dedicated by a purchaser of the desalters water to offset the
6 price of the salted water to the extent of the dedication;

7 (c) Safe Yield of the Basin, unless the water Produced and treated by
8 the Desalters is dedicated by a purchaser of the the salted water to offset the
9 price of the salted water to the extent of the dedication;

10 (d) Additional Replenishment Water purchased by Watermaster, the
11 cost of which shall be levied as an Assessment by Watermaster.

12
13 C. The 2007 Peace II Agreement (Peace II)

14 1. Peace II Agreement Article VI-Groundwater Production by and
15 Replenishment for Desalters and Article VII-Yield Accounting further defined the
16 accounting for the Desalters and Desalter Production Offsets.

17 2. Peace II Paragraph 6.2(a)(iii) states as follows in pertinent part:

18 Peace II Desalter Production Offsets. To facilitate Hydraulic Control through
19 Basin Re-Operation, [court note: that is, water pumped as part of the 600,000
20 AF controlled overdraft] in accordance with the 2007 Supplement to the
21 OBMP Implementation Plan and the amended Exhibits G and I to the
22 Judgment, additional sources of water will be made available for purposes of
23 Desalter Production and thereby some or all of a Replenishment obligation.
24 With these available sources, the Replenishment obligation attributable to
25 Desalter production in any year will be determined by Watermaster as follows:

26 (a) Watermaster will calculate the total Desalter Production for the
27 preceding year and then apply a credit against the total quantity from: . . .

28 (iii) New Yield (other than Stormwater (Peace Agreement Section

1 7.5(b)); . . .

2 v) Safe Yield that may be contributed by the parties (Peace
3 Agreement Section 7.5(c));

4 (vi) any Production of groundwater attributable to the controlled
5 overdraft authorized pursuant to amended Exhibit I to the Judgment.
6 [The Judgment allowed for a temporary controlled overdraft, *i.e.*,
7 initially 200,000 AF and then an additional 400,000 AF total
8 production/pumping starting in 2007 and ending in 2026 without
9 replenishment, in order to achieve Hydraulic Control. (Safe Yield Reset
10 Implementation Desalter Replenishment Accounting Illustration (per
11 Peace II Agreement, Section 6.2 (PIIA, 6.2) and June 11, 2015 Key
12 Principles)–Exhibit C to Attachment 1, Watermaster’s Motion regarding
13 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
14 Paragraph 6.]

15 Paragraph 7.1 provides as follows:

16 New Yield Attributable to the Desalters. Watermaster will make an annual
17 finding as to the quantity of New Yield that is made available by Basin Re-
18 Operation including that portion that is specifically attributable to the Existing
19 and Future Desalters. Any subsequent recalculation of New Yield as Safe
20 Yield by Watermaster will not change the priority set forth above for
21 offsetting Desalter production as set forth in Article VII, Section 7.5 of the
22 Peace Agreement. For the initial term of the Peace Agreement, neither
23 Watermaster nor the Parties will request that Safe Yield be recalculated in a
24 manner that incorporates New Yield *attributable to the Desalters* [emphasis in
25 original] into a determination of Safe Yield so that this source of supply will be
26 available for Desalter Production rather than for use by individual parties to
27 the Judgment.

28 2. Additionally, in 2007 Peace II ¶1.1(d) defined Re-Operation as “the

1 controlled overdraft [pumping without replenishment] of the Basin by the managed
2 withdrawal of groundwater Production for the Desalters and the potential increase in
3 the cumulative un-replenished Production from 200,000 [acre-feet] authorized by
4 paragraph 3 Engineering Appendix Exhibit I to the Judgment, to 600,000 acre-feet
5 for the express purpose of securing and maintaining Hydraulic Control as a
6 component of the Physical Solution.” The Peace II agreement amended the Restated
7 Judgment’s Engineering Appendix to specify the additional 400,000 acre-feet that
8 would be dedicated exclusively to the purpose of Desalter replenishment (Restated
9 Judgement Exhibit “I” §2(b)(3)).

10 3. Peace II, Paragraph 6.2(a)(iii) gives Watermaster a basis to calculate the
11 total Desalter production from the preceding year and then apply against that
12 production/pumping a “credit” (*i.e.*, a reduction) which included a number of
13 factors, including New Yield referencing Peace I, paragraph 7.5(b). This credit
14 procedure is an important issue going forward for the administration of water
15 allocations:

- 16 a) Peace I, paragraph 1.1(aa) defines New Yield as “proven increases in
17 yield in quantities greater than historical amounts from sources of
18 supply including, but not limited to, operation of the Desalters
19 (including the Chino I Desalter), induced Recharge and other
20 management activities implemented in operational after June 1, 2000.”
- 21 I) The court concludes that New Yield in the above paragraph means
22 water produced/pumped by the Desalters, because that is how yield is
23 always used, e.g., Safe Yield, Operating Safe Yield, etc., and the source
24 of supply is the Desalters as identified in the definition.
- 25 II) So, New Yield includes water produced/pumped by the Desalters.
- 26 b) Peace I, paragraph 1.1(nn) defines “Recharge and Recharge Water as
27 “introduction of water to the Basin, directly or indirectly,” Recharge
28 references the physical act of introducing water to the Basin.”

- 1 c) The conclusion of the court is that after Peace II, the definition New
2 Yield now includes both Desalter operation, *i.e.*, production/pumping
3 from the Desalters, and induced Recharge (*i.e.*, groundwater flowing
4 back into the Basin from the Santa Ana River as the result of Desalter
5 operation).
- 6 d) Peace II was consistent with Peace I. Peace II provided that the parties
7 would avoid some or all or a replenishment obligation for Desalter
8 production by getting credit/reduction against that production from
9 sources such as New Yield which includes induced Recharge.
- 10 I) Peace I defined New Yield to include “operation of the Desalters” and
11 “induced Recharge.”
- 12 II) The court concludes that the Peace I and Peace II when read together
13 recognized that some of the water which the Desalters
14 produced/pumped came from induced recharge form the Santa Ana
15 River.
- 16 III) Peace II was not explicit it stating that the Desalter production
17 offset should follow the priorities of Peace I ¶7.5, but the court
18 concludes that the replenishment water, *i.e.*, Desalter-induced recharge,
19 must follow the priorities of Peace I.
- 20 (a) The agreements must be read together and interpreted together
21 because they form a context for each other.
- 22 e) In its response to Judge Reichert’s questions, Chino argued that SYRA’s
23 failure to give a specific definition to “Desalter-induced recharge” was
24 purposeful because the failure allowed SYRA to use “Desalter-induced
25 recharge” synonymously with New Yield. The court does not find
26 “Desalter-induced recharge” to be synonymous with New Yield. The
27 court finds that “Desalter-induced recharge” is only synonymous with
28 “induced Recharge.” Therefore Desalter-Inducted Recharge is included

1 in the definition of New Yield, as set forth in Peace I ¶1(aa): “induced
2 Recharge and other management activities implemented in operational
3 after June 1, 2000” includes Desalter-induced recharge.

4 I) . The court further finds that “Desalter-induced recharge” and
5 “induced Recharge” mean water flowing back into the Basin from the
6 Santa Ana River due to production/pumping by the Desalters lowering
7 the ground water table in the Basin. Finally, the court notes that New
8 Yield includes Desalter production and Desalter-induced recharge.

9 (a) This result is exactly what the Desalters were designed to
10 accomplish. They have achieved Hydraulic Control, meaning they
11 have lowered the water table at the south end of the Basin, so that
12 only a de minimus amount of Basin water is flows into the Santa
13 Ana River.

14 (b) In fact the Desalters have accomplished their design objective so
15 well that now some water flows from the Santa Ana River into the
16 Chino Basin. The court finds that his water is New Yield as set
17 forth above.

18 II) The court further finds that “Desalter-induced recharge” aka “induced
19 Recharge” is measureable, part of which comes from the Santa Ana
20 River, and is set forth in Watermaster’s response to the court’s
21 questions. This water is also known as Santa Ana River Underflow or
22 SARU.

23 4. Peace II specified Desalter production/pumping replenishment to
24 include induced Recharge, controlled overdraft, and other sources set forth in Peace
25 II ¶6.2(a). The Peace I and Peace II agreements did not specify any additional
26 sources of Desalter replenishment, such as Ag Pool water or Safe Yield.

27 5. CONCLUSION:

28 Now, after Peace II, there were additional sources of water for the Basin, the

1 Desalter operation/Desalter-induced recharge, as well as the historical overdraft, as
 2 summarized below.

Ag Pool water		Comments
4 1995 Judgment 5 amendment 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	82,800 AFY of the Ag Pool's water available to the Appropriate Pool with Appropriative Pool claims prioritized as follows: (1) to supplement, and the particular year, water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof after the tenth year of operation hereunder. (2) pursuant to conversion claims as defined in Subparagraph (b) hereof. (3) as a supplement to Operating Safe Yield, without regard to reductions in Safe Yield.	
25 2000 Peace I-Desalters 26 start construction and 27 pumping water 28	Early Transfers of 32,800 AFY of Ag Pool water now go to the Appropriative Pool	New Yield (with conditions) is source of water to replenish water pumped by the

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	<p>(leaving 50,000 AFY to Ag Pool). The remaining Ag Pool water is subject to Appropriative Pool's prioritized claims. Peace I §1.1(aa) defines New Yield to include water produced/pumped from the Desalters.</p>	<p>Desalters. Water produced/pumped by the Desalters is New Yield and sourced by induced recharge and overdraft. As New Yield, water pumped by the Desalters is not Safe Yield or Safe Operating Yield. That water is "yield" attributable to specific sources of supply not included in Safe Yield. (Watermaster's Response to Order for Additional Briefing, page 5, line 22-23.) Therefore at the time of Peace I Desalter operations did not affect Safe Yield or Operating Safe Yield. Water produced/pumped by the Desalters was not added to or subtracted from yield of the Basin. Water</p>
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		produced/pumped by the Desalters had a separate allocation.
2007 Peace II-overdraft increased	Additional 400,000 AF above the 200,000 AF provided in the Judgment for a total of 600,000 AF.	This is a diminishing pumping allocation as the overdraft goes to 0 in 2017. Its purpose was to help establish Hydraulic Control.
Peace II Desalters	Peace II ¶7.1 requires Desalter production (defined as New Yield) excluded from the definition of Safe Yield. However, Peace II Article VI identifies offsets for Desalter production, which includes New Yield the meaning of which includes induced Recharge. (Peace I, ¶1.1(aa).)	Desalter production reaches above 20,000 AFY. Watermaster's Response to Order for Additional Briefing, Exhibit 1.

The court concludes that Peace II did not change any of the priorities for claims on actual water production. Peace II addressed Desalter replenishment and production/pumping but did not affect the priorities for allocations of unproduced Ag Pool water.

1 **V. SYRA ARTICLE 5-STORMWATER RECHARGE PLAN AND**
2 **WATERMASTER ACCOUNTING ANALYSIS**

3 In the instant motion, Watermaster asks the court to approve 1) a stormwater
4 recharge plan, and 2) an accounting for allocation transfers as set forth in the Safe
5 Yield and Reset Agreement (SYRA). The court will address these proposals
6 separately.

7 A. Stormwater Recharge–SYRA ¶5.1

8 1. Although there have been no objections to this aspect of SYRA, the
9 court denies its enforcement because the court finds that SYRA’s provisions
10 regarding anything other than they Safe Yield reset cannot be severed for the reasons
11 set forth in Section II above.

12
13 B. Desalter-Induced Recharge Allocations, Early Transfers, Land Use
14 Conversion–SYRA ¶5.2 and SYRA ¶5.3.

15 1. Because these provisions are major sources of contention among the
16 parties, the court will set them forth in their entirety.

17 SYRA ¶5.2 sets forth the following provisions regarding Desalter Induced
18 Recharge, and SYRA ¶5.3 sets forth the following provisions regarding Post 2030
19 Land Use Conversions and Early Transfers.

20 5.2 Desalter-Induced Recharge. After the Effective Date and until
21 termination of this Agreement, the parties expressly consent to Watermaster’s
22 accounting for Basin recharge arising from or attributable the Desalters as
23 follows:

24 (a) 2001-2014 Desalter-Induced Recharge. Induced recharge that
25 arises from or is attributable to the Desalters for the period of production
26 years 2001-2014 shall be accounted for as Safe Yield, in the manner it has been
27 distributed through approved Watermaster Assessment Packages, shall not be
28 considered New Yield, and shall not be considered to have been available for

1 production by the Desalters.

2 (b) 2015-2030 Desalter-Induced Recharge. For the production years
3 of 2015- 2030, Watermaster shall account for induced recharge that arises
4 from or is attributable to the Desalters as equal to fifty (50) percent of the total
5 Desalter Production during each applicable production year up to a maximum
6 of twenty-thousand (20,000) AFY of recharge. Consistent with Paragraph
7 6.2(a)(iii) of the Peace II Agreement, Watermaster shall deem the induced
8 recharge as having been produced by the Desalters. During each applicable
9 production year, Watermaster shall reduce Safe Yield by an amount equal to
10 fifty (50) percent of the total Desalter Production, up to a maximum of
11 twenty-thousand (20,000) AFY, and require a corresponding supplementation
12 by the reallocation of available unproduced Agricultural Pool's share of the
13 Basin's Safe Yield.

14
15 Claims for reallocation of the remaining unproduced quantity of the
16 Agricultural Pool's share of Safe Yield shall be satisfied consistent with section
17 6.3(c) of Watermaster's Rules and Regulations, as amended as part of the
18 Peace II Measures, and the October 8, 2010 Order Approving Watermaster's
19 Compliance with Condition Subsequent Number Eight and Approving
20 Procedures to be used to Allocated Surplus Agricultural Pool Water in the
21 Event of a Decline in Safe Yield.

22 (c) 2031-2060 Desalter-Induced Recharge. Should the term of the
23 Peace Agreement be extended pursuant to Paragraph 8.4 thereof, the
24 treatment of Desalter-Induced Recharge shall be subject to the negotiation of
25 a new and separate agreement among the Parties to the Judgment. The
26 accounting provided for in Section 5.2(b), above, shall be without prejudice to
27 the negotiation of such a new and separate agreement among the Parties to the
28 Judgment. Unless otherwise agreed by the Parties or ordered by the court,

1 during the extension term, Watermaster shall not consider such recharge to
 2 require supplementation by the reallocation of a portion of the unproduced
 3 Agricultural Pool's share of Safe Yield.

4
 5 5.3 Post-2030 Priority among Land Use Conversion and Early Transfer
 6 Claims. At the expiration of the Peace II Agreement, the Peace II provisions
 7 relating to the distribution of surplus water by the Agricultural Pool requiring
 8 that claims for the Early Transfer of 32,800 AFY and for Land Use
 9 Conversion be treated equally are expressly repealed including (i) the
 10 amendment to Section 6.3(c) of Watermaster's Rules and Regulations,
 11 pursuant to the Peace II measures, and (ii) Section III.(6) of the October 8,
 12 2010 Order Approving Watermaster's Compliance with Condition Subsequent
 13 Number Eight and Approving Procedures to be used to Allocate Surplus
 14 Agricultural Pool Water in the Event of a Decline in Safe Yield. In any Peace
 15 Agreement extension term, the previous changes to Restated Judgment,
 16 Exhibit "H", Paragraph 10(b)(3)(i) effectuated by Paragraph 4.4(c) of the
 17 Peace Agreement, which, to the extent sufficient unallocated Safe Yield from
 18 the Agricultural Pool is available for conversion claims, allocate 2.0 acre-feet
 19 of unallocated Safe Yield water for each converted acre, shall remain in effect.
 20

21 C. The court summarizes the effect of these SYRA proposals ¶5.2 and ¶5.3 as
 22 follows:

Ag Pool water		Comments
1995 Judgment amendment	82,800 AFY of the Ag Pool's water available to the Appropriate Pool with Appropriative Pool claims prioritized as follows:	

	<p>(1) to supplement, and the particular year, water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof after the tenth year of operation hereunder.</p> <p>(2) pursuant to conversion claims as defined in Subparagraph (b) hereof.</p> <p>(3) as a supplement to Operating Safe Yield, without regard to reductions in Safe Yield.</p>	
<p>2000 Peace I– Desalters start construction and pumping water</p>	<p>Early Transfers of 32,800 AFY of Ag Pool water now goes to the Appropriative Pool (leaving 50,000 AFY to Ag Pool). The remaining Ag Pool water is subject to Appropriative Pool’s prioritized claims.</p>	<p>New Yield (with conditions) is source of water to replenish water pumped by the Desalters. Therefore Desalters do not affect Safe Yield or Operating Safe Yield. Water produced/pumped by the Desalters is not added to or subtracted from Safe Yield or</p>

1			Operating Safe Yield of the Basin.
2			
3	2007 Peace II-	Additional 400,000 AF	This is a diminishing
4	overdraft increased	above the 200,000 AF	pumping allocation as
5		provided in the Judgment	the overdraft goes to 0
6		for a total of 600,000 AF.	in 2017.
7	SYRA proposal:	SYRA proposal <i>Step 1</i> : The	
8	(see column to right	Desalter	
9	for <i>Steps 1-3</i>):	production/pumping up to	
10	<i>Step 4</i> : SYRA ¶5.2(b)	20,000 AFY is allocated to	
11	subtracts 50% of total	the Desalters, not as Safe	
12	Desalter production	Yield or Safe Operating	
13	up to 20,000 AFY	Yield [or New Yield].	
14	from Ag Pool Water	<i>Step 2</i> : Under SYRA ¶5.2(b)	
15	and then adds that	one-half of the source of	
16	50% of total Desalter	Desalter production up to	
17	production up to	20,000 AFY is attributed to	
18	20,000 AFY to Safe	“Desalter-induced	
19	Yield (to make up for	recharge.” Desalter-induced	
20	the subtraction in	Recharge means water	
21	<i>Step 3</i>).*	flowing back into the Basin	
22		from the Santa Ana River.	
23		<i>Step 3</i> : SYRA then subtracts	
24		the other half of Desalter	
25		production up to 20,000	
26		AFY from Safe Yield.	
27	Additional SYRA Effects: <i>Step 5</i> (see above for <i>Steps 1-4</i>)		
28	The Ag Pool water allocation is reduced by up to 20,000 AFY for the Desalters.		

1 SYRA is unclear where the priority lies with respect to priority of allocation as
 2 required by Judgment Exhibit "H" Paragraph 10. The court orders that those
 3 priorities must be followed. Because the court has ordered that those priorities be
 4 followed, court concludes that it cannot order these provisions of SYRA in
 5 addition to SYRA's not being severable. At best SYRA is ambiguous with respect
 6 to following the priorities set by the Judgment and the Court Approved
 7 Management Agreements. At worst, SYRA contradicts them.

8 *So, the court concludes that previous to SYRA, the Desalter water
 9 production/pumping could be offset from a prioritized list of sources including New
 10 Yield (induced recharge). Now under SYRA:

11 1) All of the induced recharge gets allocated to water produced/pumped by
 12 the Desalters.

13 2) Watermaster reduces Safe Yield by 50% of the Desalter production up to
 14 20,000 AFY.

15 3) Then, Watermaster adds to Safe Yield 50% of the Desalter production up
 16 to 20,000 AFY, from water allocated to the Ag Pool, to make up for (aka backfill) the
 17 reduction in Safe Yield allocated to Desalter production.

18 4) This means that the availability of Ag Pool water goes down and thereby the
 19 availability of unproduced Ag Pool water for the priorities set forth in the Judgment
 20 and the Court Approved Management Agreements. The priorities are also set forth in
 21 Watermaster Rules and Regulations ¶6.3(a).

22 5) Elaborating on Example 1-A from Section IV.B.5 of this order above, the
 23 court's analysis is as follows

Example 1-B	Explanation	Comment
Initial Ag Pool allocation	82,800 AFY	Judgment
Ag Pool production/pumping	- 33,600 AFY	Assumption based the current credited production (pumping)

1			for agricultural groundwater is
2			about 33,600 AFY, but that
3			includes agricultural land irrigated
4			with reclaimed water. [The
5			actual groundwater production
6			for agricultural purposes is about
7			22,000 AFY. Jurupa Services
8			District's response to Judge
9			Reichert's Request for
10			Clarification, March 22, 2016
11			page 2, lines 8-10.]
12	Initial balance after	49,200 AFY	82,800 acre-feet – 33,600 acre-
13	production		feet = 49,200 acre-feet
14	Conversion claims	- 2000 acre-feet	Assumption: The subtraction for
15			satisfying conversion claims
16			before any reallocation. (1000
17			acres x 2.0 acre feet of water/one
18			acre converted = 2000 acre-feet).
19	Balance:	47,200 AFY	49,200 acre-feet - 2000 acre-feet
20			= 47,200 acre-feet. Ag Pool
21			Water available after conversion
22			priority claims pursuant to
23			Judgment Exhibit "H" Paragraph
24			10
25	Reduction for Early	- 32,800 AFY	Basic Early Transfer from 82,800
26	Transfers		AFY allocation leaving 50,000
27			AFY for the Ag Pool itself to
28			produce/pump and for

1			additional claims by the
2			Appropriative Pool pursuant to
3			Peace I and Peace II.*
4	Balance	14,400 AFY	(47,200 acre-feet - 32,800 acre-
5			feet = 14,400 acre-feet. This is
6			the Ag Pool water available for
7			reallocation to Appropriative
8			Pool after subtraction of
9			conversion priority claims of
10			2,000 acre-feet from and the
11			32,800 Early Transfer of
12			unproduced/unpumped from the
13			allotment of Ag Pool water.

14
15 Now, to examine the effect of SYRA on the Appropriative Pool:

16	Starting balance	14,400 AFY	Total Ag Pool water available for
17	available Ag Pool		production/pumping from the
18	water		example above
19	Desalter reallocation	- 20,000 AFY	SYRA Desalter reallocation:
20			20,000 AFY of Desalter
21			production is allocated from Ag
22			Pool water to Safe Yield.
23	Balance:	- 5,600 AFY	A negative amount. This
24			plausible scenario assumes 2,000
25			AFY of conversion claims. The
26			negative balance shows that this
27			scenario under SYRA would not
28			leave sufficient Ag Pool water for

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		that amount of conversion claims. In order to meet conversion claims and Early Transfer allocations, the Ag Pool would only be able to produce/pump 26,000 AFY, well below their current credited pumping. Calculation follows: 82,800/initial allocation - 26,000/pumped = 56,800 56,800 - 2,000/conversion claims = 54,800 54,800 - 32,800/Early Transfer = 20,000 20,000 - 20,000/Desalter reduction from Ag Pool Allocation = 0
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The court concludes that there is no basis in the Judgement or any of the Court Approved Management Agreements for the post SYRA result identified in the plausible scenario above.

D. Further Analysis and orders:

1. In addition to SYRA's not being severable, the court denies Watermaster's motion with respect to the implementation of ¶5.2 and ¶5.3 of SYRA for the following reason:

- a) The court concludes that SYRA paragraphs 5.2 and 5.3 fundamentally change the allocations of Appropriative Pool and of Ag Pool water. Those fundamental changes are inconsistent with the Judgment and the

1 Court Approved Management Agreements

2 b) Peace I and Peace II both define Desalter production as within the
3 definition of New Yield and therefore outside of the definition of Safe
4 Yield. Through a several step re-allocation reassignment described
5 above and summarized in this section of the court's order, SYRA now
6 moves Desalter production into Safe Yield. The parties have not
7 demonstrated any legal ~~or practical requirement~~ basis which allows this.
8 Peace I and Peace II prohibit this.

9 c) The court concludes that Peace II Agreement Paragraphs 6.2(a)(iii) and
10 7.1 provide that through 2030 (the initial term of Peace I Agreement as
11 set forth in ¶8.2) recharge attributable to the Desalters is allocated for
12 Desalter Production and not allocated as Safe Yield producible (*i.e.*,
13 water available to be pumped without a replenishment obligation by
14 purchase or otherwise).

15 I) Peace II ¶7.1 excluded New Yield attributable to the Desalters from
16 a determination of Safe Yield, at least for the 30 year term of Peace
17 Agreement.

18 II) Peace I ¶1.1(aa) defines New Yield to include induced recharge.

19 (a) The court finds that induced recharge includes Desalter-
20 induced recharge.

21 III) The court finds that Peace I ¶7.5 defines replenishment water for
22 the Desalters includes New Yield, but not Safe Yield.

23 IV) The court finds that Peace II ¶7.1 states that no party can
24 incorporate New Yield attributable to the Desalters into Safe Yield.

25 (a) In contradiction to Peace I and Peace II, SYRA ¶5.2(a)
26 explicitly defines Desalter-induced recharge as Safe Yield, in
27 contradiction to Peace I and Peace II.

28 V) In contradiction to the Peace I and Peace II, the court finds that

1 SYRA attempts to incorporate New Yield from the Desalters into
2 Safe Yield through the accounting method of 1) taking Desalter
3 induced yield water coming from Desalter-induced recharge, then 2)
4 moving that water into Safe Yield, then 3) backfilling Safe Yield
5 from unproduced Ag Pool water.

6 (a) This is an unacceptable circumvention of the court's orders
7 based on Peace I and Peace II.

8 d) The analysis above shows that these SYRA provisions are contrary to
9 the Judgment and the Court Approved Management Agreements,
10 specifically Peace I and Peace II. These SRYA provisions can prevent
11 the application of the Judgment provisions regarding conversion claims.
12 They are invalid.

13 e) There is no basis in the Judgment or the Court Approved Management
14 Agreements for the attribution of water production from Desalters into
15 the definition of Safe Yield.

16 f) There is no basis in the Judgment or any of the Court Approved
17 Management Agreements for the splitting and reallocation of Desalter
18 production/pumping to one-half to Desalter-induced recharge and one-
19 half to Safe Yield.

20 g) There is no basis in the Judgment or any of the Court Approved
21 Management Agreements to reallocate Ag Pool water to Safe Yield to
22 make up for the Safe Yield reallocated to the Desalters.

23 h) Due to the Desalters, there is now recharge coming from the Santa Ana
24 River back into the Chino Basin. SYRA Paragraph 5.2(b) takes the
25 Peace I and Peace II agreements one step—wrongfully—farther by
26 identifying how this recharge quantity will be estimated, *i.e.*, 50% of
27 Desalter Production, and then further specifies that amount of recharge
28 will be allocated to Desalter production and not to the parties as part of

1 their allocation of the Safe Yield. There is no legal basis in the
2 Judgment or the Court Approved Management Agreements for this
3 redefinition of Safe Yield to include of 50% of Desalter Production up
4 to 20,000 AFY through a mechanism of passing the amounts through
5 the Appropriative Pool allocation.

6 i) SYRA attempts now to remove the special exception for New Yield
7 from Desalter induced recharge and production and incorporate it into
8 Safe Yield. The mechanism by which SYRA attempts to do this is by 1)
9 taking half of the Desalter production and sourcing that
10 production/pumping from Desalter induced recharge from the Santa
11 Ana River and 2) sourcing the other half from the Appropriative Pool
12 through unproduced Ag Pool water. The court concludes and finds
13 that this attempt is not justified because it can interfere with the priority
14 of claims on unproduced Ag Pool water set forth in the judgment and
15 the Court-Approved Management Agreements.

16 I) The court notes that Peace II, Article VII-Yield Accounting, ¶7.2(d)
17 discusses a contingency if Western Municipal Water District
18 (WMWD) and the Appropriative Pool “do not reach agreement on
19 apportionment of controlled overdraft of Future Desalters, then no
20 later than August 31, 2009, the members of the Appropriative Pool
21 will submit a plan to Watermaster that achieves the identified goals
22 of increasing the physical capacity of the Desalters and potable water
23 use of approximately 40,000 acre-feet of groundwater production
24 from the Desalters from the Basin no later than 2012.”

25 II) The court concludes that the Desalter production of 40,000 acre-feet
26 has been under discussion since Peace II in 2007.

27 III) However, the court cannot accept the resolution set forth in
28 SYRA for the reasons stated in this order.

- 1 j) SYRA ¶5.2 and ¶5.3 contradict and conflict with Peace I and Peace II.
- 2 I) Peace II ¶7.1 requires neither Watermaster nor the parties to request
- 3 that safe yield be recalculated in a manner that incorporates New
- 4 Yield *attributable to the Desalters* into the determination of Safe Yield
- 5 so that this source of supply will be available for Desalter
- 6 Production rather than for use by individual parties to the judgment.
- 7 (Emphasis in original.)
- 8 II) SYRA now includes New Yield in the determination of Safe Yield in
- 9 two ways.
- 10 (a) First, SYRA takes up to 20,000 AFY away from Safe Yield
- 11 through Desalter Production.
- 12 (b) Second, SYRA adds back up to 20,000 AFY to Safe Yield
- 13 from unproduced Ag Pool water.
- 14 (c) The net change to Safe Yield is 0, but available Ag Pool water
- 15 for allocation is reduced up to 20,000 AFY. This re-allocation
- 16 and re-accounting, is not justified or supported in the Peace I,
- 17 Peace II, Watermaster Rules and Regulations, or the court's
- 18 orders of implementation, the Judgment, or the CAMAs.
- 19 (d) The following chain shows SYRA's violations of the previous
- 20 orders:
- 21 (i) Desalter-induced recharge is New Yield. (Peace
- 22 ¶1(aa).)
- 23 (ii) Peace II ¶7.1 prevents New Yield from being
- 24 incorporated within Safe Yield.
- 25 (iii) SYRA moves 20,000 AFY of Desalter-induced
- 26 recharge to the Ag Pool.
- 27 (iv) Then SYRA moves the 20,000 of Desalter-induced
- 28 recharge (now characterized as Ag Pool Water) into

1 Safe Yield.

2 (v) Therefore, SRYA recalculates Safe Yield to incorporate
3 New Yield in violation of Peace II ¶7.1

4 (vi) Moving the 20,000 AFY of Desalter-induced Recharge
5 through the portal of the Ag Pool water does not
6 change its definition of New Yield.

7 k) The court does not find a legal ~~or factual basis~~ for determining a post-
8 2030 priority among land use conversion and early transfer claims. The
9 priority is set forth in the judgment and as specified in this order

10 l) In addition to SYRA's not being severable, the court's 2010 order does
11 not require the implementation of ¶5.2 or ¶5.3.

12 Section III.(6) of the October 8, 2010 order states:

13 Watermaster is ordered to utilize the procedures regarding the re-
14 allocation of surplus Agricultural Pool water the event of a
15 decline in Safe Yield as described in the December 2008 staff
16 report and the December 4, 2008 memorandum from legal
17 counsel. Specifically, in the event that Operating Safe Yield is
18 reduced because of a reduction in Safe Yield, Watermaster will
19 follow the hierarchy provided for in the Judgment, exhibit "H,"
20 by first applying the unproduced Agricultural Pool water to
21 compensate Appropriative Pool members for the reduction in
22 Safe Yield. (Judgment, Exhibit "H," paragraph 10 (a).) If there
23 is unallocated water left, Watermaster will then follow the
24 remainder of the hierarchy and reallocate unallocated Agricultural
25 Pool water next to conversion claims then to supplement the
26 Operating Safe Yield without regard to reductions in Safe Yield
27 according to the guidance provided by Peace Agreement I & II
28 and Watermaster's rules and regulations as amended. If, after

1 applying the unallocated Agricultural Pool water to compensate
2 the Appropriate Pool members for the reduction in Safe Yield,
3 the actual combined production from the Safe Yield made
4 available to the Agricultural Pool, which includes overlying
5 Agricultural Pool uses combined with land use conversions and
6 the Early Transfer, exceeds 82,800 in any year, the amount of
7 water available to members of the Appropriative Pool shall be
8 reduced pro rata in proportion to the benefits received according
9 to the procedures outlined in Watermaster Rules and
10 Regulations.

11 I) In considering the reference to Watermaster Rules and
12 Regulations in the preceding paragraph, if the order is vague, the court
13 now clarifies it. In the instant order, the court has clarified that
14 Watermaster must follow the priorities set forth in the Judgment for
15 allocations of unproduced Ag Pool water.

16 II) The court has the continuing jurisdiction to interpret and apply
17 its previous orders in light of changing circumstances. In light of the
18 instant motion, the court is doing so.

19 III) JCSD correctly points out that pursuant to the Judgment
20 ¶15 the court is authorized “to make such further or supplemental
21 orders or directions as may be necessary or appropriate for
22 interpretation, enforcement or tearing out of this judgment”

23 IV) Because there has not been a reset in Safe Yield, the court
24 does not find that there has been a detrimental reliance on the court’s
25 October 8, 2010 Order. This would not be the first time that the
26 court’s orders and interpretations thereof have the subject of further
27 litigation.

28 V) Watermaster’s further response to order for additional briefing,

1 filed April 11, page 3, lines 15-19 states:

2 Both responses provided by the City of Chino and JCSD omit
3 the key fact: Section 6.3(c) Watermaster Rules and Regulations,
4 as amended pursuant to Peace II measures provides that water
5 unused by members of the Agricultural Pool shall be divided
6 equally between Land Use Conversions and Early Transfers. The
7 Court's October 8, 2010 Order provides that this shall be done
8 even if the safe yield declines. For the first time, approximately
9 five years following this Order, the City and JCSD would set it
10 aside and thereby unwind accounting, court approvals, and
11 agreements impliedly if not expressly made in reliance thereon.

12 m) No party has offered any specific detriment that would occur from the
13 court's instant orders regarding the priorities.

14 n) Watermaster is relying on its own interpretation of its own rules and
15 regulations which the court does not accept for the reasons set forth
16 herein. The court has clarified its October 8, 2010 Order.

17 I) Watermaster cannot use its own interpretations of the court's
18 orders to contradict the court's interpretation. The final decision is the
19 court's, not Watermaster's.

20 II) If there is any ambiguity that Watermaster finds the current
21 circumstances for the application of that Order III.(6) the court clarifies
22 it now. SYRA's reference to that order's provision does not help in its
23 clarification or application.

24 III) Watermaster argues that "in the event that Operating Safe
25 Yield is reduced because of a reduction in Safe Yield, Watermaster will
26 follow the reallocation hierarchy provided for in the Appropriative Pool
27 Pooling Plan by first applying the unallocated Ag Pool water to
28 compensate the Appropriate Pool members for the reduction in safe

1 yield. (Restated Judgment, exhibit “H), paragraph 10 (a).) If, thereafter,
2 there is unallocated water left, Watermaster then followed the
3 remainder of the hierarchy and reallocate unallocated agricultural Pool
4 water next to land use conversion claims and Early Transfer, and then
5 to supplement the Operating Safe Yield without regard reductions in
6 safe yield.” (Watermaster’s Reply to Oppositions to Motion regarding
7 2015 Safe Yield Recent Agreement, Amendment Restated Judgment,
8 Paragraph 6, page 24, lines 7-14.)

9 IV) This argument equates land use conversion claims and
10 Early transfer claims. This argument is incorrect for the reasons stated
11 herein. Additionally:

12 (a) The court’s order filed October 8, 2010, paragraph III.(6)
13 is quoted in full in section “I” above:

14 (b) This paragraph III.(6) provides no basis to equate land use
15 conversions and Early Transfers. The specific language of the
16 order requires Watermaster to follow the hierarchy in Judgment,
17 Exhibit “H” which does not include, or even mention, Early
18 Transfers. Early transfers were an aspect of Peace I, and the
19 court has interpreted and ordered the hierarchy to require
20 conversion claims to have priority over Early Transfer claims.

- 21 o) Additionally, the court rejects and denies the implementation of SYRA
22 ¶5.3 specifically because, as with SYRA ¶5.2, this provision has the
23 same problems of interpretation of the court’s 2010 Order Approving
24 Watermaster’s Compliance with Condition Subsequent Number Eight
25 and Approving Procedures to be used to Allocate Surplus Agricultural
26 Pool Water in the Event of a Decline in Safe Yield.
- 27 p) Watermaster’s erroneous interpretation of the order of priorities is not a
28 basis to continue that erroneous interpretation. If Watermaster has to

1 make a reallocation, then it must do so in order to follow the court's
2 order. A wrong practice can be long-standing, and still be wrong. A
3 wrong practice cannot be a basis of prejudice.

4 q) The court rejects any argument that this issue is subject to issue
5 preclusion. The specific issues raised by the oppositions to the motion
6 have not been specifically addressed by the court. They are not barred
7 by laches. The issues have been timely raised within the context of the
8 instant motion, and the court always retains jurisdiction to modify its
9 orders as those orders are drawn to the attention of the court, and the
10 court determines they require modification for the reasons set forth in
11 this order.

12
13 E. Dispute re priority of claims

14 A dispute has arisen concerning the priority of claims. The dispute concerns
15 the priority of allocation claims to unproduced/unpumped Ag Pool water. The 1978
16 Judgment, Exhibit "H," Paragraph 10 was very specific as set forth in section A of
17 this ruling above. For convenience, it is repeated here.

18 Paragraph 10 described "Unallocated Safe Yield Water" as follows:

19 To the extent that, in any 5 years, any portion of the share of Safe Yield
20 allocated to the Overlying (Agricultural) Pool is not produced, such
21 water shall be available for reallocation to members of the
22 Appropriative Pool as follows:

23 (a) Priorities. Such allocation shall be made in the following sequence:

24 (1) to supplement, and the particular year, water available from
25 Operating Safe Yield to compensate for any reduction in the Safe Yield
26 by reason of recalculation thereof after the tenth year of operation
27 hereunder.

28 (2) pursuant to conversion claims as defined in Subparagraph (b)

1 hereof.

2 (3) as a supplement to Operating Safe Yield, without regard to
3 reductions in Safe Yield.”

4 Confusion has arisen with respect to the relationship between the Judgment,
5 Exhibit “H,” Paragraph 10 on the one hand, and Watermaster Rules and Regulations
6 ¶6.3(a) on the other. Watermaster Rules and Regulations ¶6.3(a) states as follows:

7 Accounting of Unallocated Agricultural Portion of Safe Yield. In each
8 year, the 82,800 acre-feet being that portion of the Safe Yield Made
9 available to the Agricultural Pool under the Judgment, shall be made
10 available:

- 11 (i) To the Agricultural Pool to satisfy all demands for overlying
12 Agricultural Pool lands;
- 13 (ii) To land-use conversions were completed prior to October 1,
14 2000;
- 15 (iii) To land use conversions that have been completed after October
16 1, 2000; and
- 17 (iv) To the Early Transfer of 32,800 acre-feet from the Agricultural
18 Pool to the Appropriative Pool in accordance with their pro-rather
19 assigned share of Operating State Yield.

20 The confusion arises because Watermaster Rules and Regulation ¶6.3(a) does
21 not explicitly confirm the priority of allegations set forth in the Judgment and as
22 ordered by the court.

23 Chino has argued that

24 [T]he members of the Appropriative Pool have received the right to
25 participate in annual allocations of the Unproduced Agricultural Pool
26 Water instead of every five years called “Early Transfers” (Paragraph
27 5.3(f-g), Peace Agreement) and the right to an equal priority of Early
28 Transfers with Land Use Conversion Claims, which have a higher

1 priority under the Judgment, in order to maximize the amount of their
2 Early Transfer water to the appropriators do not have Land Use
3 Conversion Claims. (Paragraph 3.1(a)(i) and Attachment "F", Peace II
4 Agreement). City of Chino's Opposition Watermaster Motion
5 regarding 2015 Safe Yield Reset Agreement, Amendment of Restated
6 Judgment, Paragraph 6, page 13, lines 19-25.

7 Attachment "F" refers to the Watermaster Rules and Regulations 6.3(c). As
8 stated above, the court finds Watermaster Rules and Regulations 6.3(c) ambiguous.

9 The court finds that the Judgment must govern and take priority and
10 precedent for the interpretation of any Watermaster rule or regulation, including
11 Watermaster Rules and Regulations 6.3(c).

12
13 **At this time, the court additionally orders as follows:**

14 A. The order of priorities set forth in the Judgment, Exhibit "H," Paragraph
15 10 must be followed; and

16 B. Watermaster Rules and Regulations ¶ 6.3, and particularly ¶¶6.3(a) and (c),
17 are to be interpreted to follow the priorities set forth in Judgment, Exhibit "H,"
18 Paragraph 10. In particular, the court orders conversion claims are to receive a
19 higher priority than Early Transfer claims for the following reasons:

20 (1) The conversion claims are set forth in the judgment;

21 (2) Early Transfer claims were a creation of Peace I;

22 (3) Early Transfer claims did not affect the priority of claims set forth in
23 the judgment;

24 (4) Early Transfer claims were ordered after the judgment and so must
25 be considered subordinate to the original terms of the judgment.

26 (5) The parties to Peace I made their agreement in the context of the
27 judgment and therefore used the Judgment priorities as a basis for additional
28 allocations of Ag Pool water.

1
2
3 **VI. SAFE STORAGE MANAGEMENT MEASURES**

4 A. Through the facilitation and nondisclosure agreement (FANDA) Watermaster
5 attempted to facilitate an agreement among all parties avoid an accelerated
6 cumulative draw on Excess Carry Over stored water in order to avoid undue risks.
7 SYRA had provisions to establish a mechanism for a safe storage reserve of 130,000
8 AF of water in the non-Supplemental Water storage accounts of the members of the
9 Appropriative Pool as a reserve sufficient to protect the Basin. However, the
10 concern for basin protection was balanced with temporary needs in the event of an
11 emergency or to support Desalter Replenishment. Up to 100,000 AF could be
12 accessed in the event of an emergency subject to conditions

- 13 a) The plan which Watermaster attempted to facilitate is identified in
14 SYRA as “the safe storage reserve and safe storage management plan”
15 or the safe storage management measures (SSMM).
16 b) The City of Chino (Chino) has the largest component of Excess Carry-
17 Over water and was the most significantly affected party.
18 c) Chino refused to agree to SSMM.

19
20 B. The court rejects the adoption of the Safe Storage Management Measures set
21 forth in the SYRA Article 6. The court is not going to set forth the provisions of
22 SYRA Article 6 because the court is rejects the article as a whole.

23
24 C. The court rejects Article 6 of SYRA for the following reasons:

- 25 1. SYRA is not severable as set forth above.
26 2. Watermaster states that access to safe storage in the short term is
27 extremely remote.
28 3. The volume in stored water accounts of Appropriative Pool members is

1 about 357,000 AF as of June 30, 2014.

2 4. The Judgment Parties presently lack the infrastructure capability (wells
3 and pipelines) that would produce the quantity of water from storage that would
4 trigger production from the safe storage reserve that is identified in SYRA.

5 5. Article 6 is essentially a statement of intent without specificity of
6 implementation. The court refuses to consider or authorize an inchoate plan.

7 a) Although Watermaster argues that the Safe Storage Management
8 Agreement provisions are still subject to “stakeholder process get to be
9 initiated” (Watermaster’s Reply to Oppositions to Motion regarding
10 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,
11 Paragraph 6, page 1, line 18), the court does not approve policy
12 statements and therefore rejects any implementation.

13 6. The Safe Storage Technical Memorandum (Exhibit E to the motion)
14 does not set forth a factual basis for the court to order the parties to proceed with
15 the provisions of Article 6. While the memorandum states that the SSMM will not
16 cause Material Physical Injury or undesirable results, the memorandum does not
17 include that the SSMM are essential to the OBMP.

18 7. The court notes that from 2000 to 2014, the short-term actual measured
19 net recharge was less total rights allocated to the judgment Parties by as much as
20 130,000 AF.

21 a) From this the court concludes that during this period from 2000 to
22 2014, after offsets for production, there was recharge to the basin in
23 excess of what water was actually produced by as much as 130,000 AF.

24 b) This recharge was accounted for in the storage of Excess Carry-Over
25 water.

26 8. The court does not reach the arguments of Chino that the SSMM
27 constitutes a “taking”.

28 9. The safe storage measures are not required by the physical solution of

1 the Judgment, Peace I, Peace II, the court approved management agreements, the
2 OBMP, the court orders of implementation, or Article X, section 2 of the California
3 Constitution.

4
5
6 **VII. The Safe Yield Reset and Ag Pool Water: Recalculation**

7 A. The court finds that the Safe Yield reset to 135,000 AFY is a “recalculation”
8 within the definition of Judgment, Exhibit “H” ¶10.

9 1. SYRA used the term “reset” to describe lowering the Safe Yield to
10 135,000 AFY.

11 a) Now that the court has rejected all of SYRA except the lowering of Safe
12 Yield to 135,000 AFY, the court finds that “reset” is a legally unjustified
13 and legally incorrect term for describing the lowering the Safe Yield to
14 135,000 AFY. For the reasons stated herein, the court finds that
15 lowering the Safe Yield to 135,000 is a recalculation within the
16 definition of Judgment, Exhibit “H” ¶10(a)(1). For the rest of this
17 order, the court will correctly use the term recalculation for lowering the
18 Safe Yield from 140,000 AFY to 135,000 AFY.

19 b) Wildermuth himself calls it a recalculation. Exhibit 1 to his declaration
20 is entitled Declaration of Mark Wildermuth-2013 Chino Basin
21 Groundwater Model Update and *Recalculation* of Safe Yield Pursuant to
22 all the Peace Agreements. [Emphasis added.]

23 c) The recalculation to 135,000 is pursuant to the “tenth year” of
24 operation evaluation required by the Judgment.

25 d) Watermaster and the City of Ontario argue to the contrary, but the
26 “reset” lowering of Safe Yield fits any ordinary definition of the word
27 “recalculation.”

28 l) The whole point of the SYRA motion, related motions, and series of

1 hearings has been for the court to determine how to integrate the
 2 reduction of the Safe Yield from 140,000 AFY to 135,000 AFY.
 3 The court finds this reduction to be a recalculation of the Safe Yield
 4 into the current reality of the Chino Basin.

5 (a) In the context of SYRA, the use of the term “reset” might have
 6 made some legal sense. However, now that the court has
 7 rejected everything but the reduction, the label “reset” has no
 8 basis in fact or law.

9 II) The court cannot find any other way to reconcile these provisions and
 10 their interpretations while keeping the ruling consistent with reality.
 11 The reduction in Safe Yield is a recalculation, no matter how subtle the
 12 attorneys’ arguments are.

13 2. Therefore, the court finds and orders that the first 5,000 AFY of any
 14 unproduced Ag Pool water now has a top priority over any other claims, such as
 15 conversion claims and early transfers, and that 5,000 AFY of Ag Pool water be
 16 allocated to Operating Safe Yield pursuant to Judgment Exhibit H ¶10(a).

- 17 a) This 5,000 AFY has top priority because it is part of the Judgment.
- 18 b) To further illustrate the court’s orders, based on the tables in sections
 19 IV.B.5 and V.C.5 above

Example 1-B	Explanation	Comment
Initial Ag Pool allocation	82,800 AFY	Judgment
Subtract 5,000 AFY	- 5,000	Safe Yield recalculation reduction pursuant to Judgment Exhibit H ¶10
Ag Pool production/pumping	- 33,600 AFY	Assumption based the current credited production (pumping) for agricultural groundwater is

1			about 33,600 AFY, but that
2			includes agricultural land irrigated
3			with reclaimed water. The actual
4			groundwater production for
5			agricultural purposes is about
6			22,000 AFY. Jurupa Services
7			District's response to Judge
8			Reichert's Request for
9			Clarification, March 22, 2016
10			page 2, lines 8-10.]
11	Initial balance after	44,200 AFY	82,800 acre-feet - 5,000 - 33,600
12	production and reset		acre-feet = 44,200 acre-feet
13	Conversion claims	- 2000 acre-feet	Assumption: The subtraction for
14			satisfying conversion claims
15			before any reallocation. (1000
16			acres x 2.0 acre feet of water/one
17			acre converted = 2000 acre-feet).
18	Balance:	42,200 AFY	44,200 acre-feet - 2000 acre-feet
19			= 42,200 acre-feet. Ag Pool
20			Water available after conversion
21			priority claims pursuant to
22			Judgment Exhibit "H" Paragraph
23			10
24	Reduction for Early	- 32,800 AFY	Basic Early Transfer from 82,800
25	Transfers		AFY allocation leaving 50,000
26			AFY for the Ag Pool itself to
27			produce/pump and for
28			additional claims by the

		Appropriative Pool pursuant to Peace I and Peace II.
Balance	9,400 AFY	(42,200 acre-feet - 32,800 acre-feet = 14,400 acre-feet. This is the Ag Pool water available for reallocation to Appropriative Pool after subtraction of the recalculation reallocation, the conversion priority claims of 2,000 acre-feet from and the 32,800 Early Transfer of unproduced/unpumped from the allotment of Ag Pool water.

VIII. Safe Yield Reset and Desalter-Induced Recharge

The court concludes and orders that Desalter-Induced Recharge is only to be applied to offset Desalter production. The court’s analysis involves going back to the basics of the judgment and the Peace Agreements.

A. The Revised Judgment

1. The Judgment ¶I.4.(x) defines “Safe Yield” as “the long-term average annual quantity of groundwater . . . which can be produced from the Basin under cultural conditions of a particular year without causing an undesirable result.”

2. The Judgment ¶I.4.(l) defines “Operating Safe Yield” as “the annual amount of water which Watermaster shall determine, pursuant to the criteria specified in Exhibit “T”, can be produced from Chino Basin by the Appropriative Pool parties free of replenishment obligation under the Physical Solution herein.

a) Exhibit “T” is the Engineering Appendix which has come to include the

1 definitions of Hydraulic Control, Re-Operation water, and Desalter
2 production.

3 3. Judgment Exhibit "H" ¶10 Unallocated Safe Yield Water states:

4 "to the extent that, in any five years, any portion of the share of
5 Safe Yield allocated to the Overlying (Agricultural) pool is not
6 produced, such water shall be available for reallocation to members of
7 the appropriate pool, as follows:

8 (a) Priorities. -Such allocation shall be made in the following sequence:

9 (1) to supplement, in the particular year, water available from
10 Operating Safe Yield to compensate for any reduction in the Safe Yield
11 by reason of recalculation thereof after the tenth year of operation
12 hereunder.

13 (2) pursuant to conversion claims as defined in Subparagraph (b)
14 hereof.

15 (3) as a supplement to Operating Safe Yield, without regard to
16 reductions in Safe Yield.

17
18 B. The 2000 Peace Agreement I

19 1. Peace I Section I(ee) defines "Operating Safe Yield" as the "annual
20 amount of groundwater which Watermaster shall determine, pursuant to criteria
21 specified in Exhibit "I" to the judgment, can be produced from Chino Basin by the
22 Appropriate Pool free of Replenishment obligation under the Physical Solution.
23 Watermaster shall include any New Yield in determining Operating Safe Yield."

24 a) This is a modification of the definition of "Operating Safe Yield" from
25 the Judgment. In fact, the court notes "IV-Mutual Covenants, ¶ 4.5
26 Construction of "Operating Yield" Under the Judgment. Exhibit I to
27 the Judgment shall be construed to authorize Watermaster to include
28 New Yield as a component of Operating Safe Yield."

1
2 C. The 2007 Peace Agreement II

3 1. Article VII Yield Accounting, ¶7.1 New Yield Attributable to the
4 Desalters states “for the initial term of the Peace Agreement, neither Watermaster
5 nor the Parties will request that Safe Yield be recalculated in a manner that
6 incorporates New Yield *attributable to the Desalters* into the determination of Safe Yield
7 so that this source of supply will be available for Desalter Production rather than for
8 use by individual parties to the Judgment.” (Emphasis in original.)
9

10 D. The Safe Yield Recalculation and Desalter-Induced Recharge

11 1. Watermaster correctly states that that desalter induced recharge can
12 only be used to offset desalter production. From this Watermaster concludes that
13 Safe Yield of 135,000 acre-feet per year must include Desalter-induced recharge.
14 This conclusion is wrong.

- 15 a) Through many avenues, Watermaster has attempted to include
16 Desalter-Induced Recharge (with the new abbreviation of “DIR”)
17 within the definition of Safe Yield.
18 b) Watermaster has never explicitly offered an explanation of why
19 Watermaster has attempted so diligently to convince the court to
20 include Desalter-Induced Recharge within the definition of Safe Yield.
21 I) The court considers that Watermaster’s explanation might include an
22 argument that if Desalter-Induced Recharge is not included within the
23 definition of Safe Yield, the parties could produce/pump water from
24 Desalters without limit, with the result that water could be drained from
25 the Santa Ana River without limit. That result would be not only
26 detrimental to the hydrology of the entire region, but also legally
27 unjustified.
28 c) In its latest argument, Watermaster has offered to “sequester” the

1 portion of Safe Yield attributable to Desalter-Induced Recharge.

2 I) The court does not accept this characterization of Desalter
3 production/pumping allocation because it is simply a characterization
4 of an accounting.

5 II) The “sequestration” has no basis in the CAMA’s and adds a new, vague,
6 undefined term to an already complicated structure of accounting.

7 III) Watermaster argues “that Desalter-Induced Recharge is an inflow
8 to the Basin and therefore a component of Safe Yield.”

9 (a) The court rejects this argument because it contradicts the
10 requirement of Peace II that for the initial term of the Peace
11 Agreement, Safe Yield will not be recalculated to include New Yield
12 attributable to the Desalters.

13 (b) Desalter-Induced Recharge is the source of (and offset to) New
14 Yield attributable to the Desalters. That New Yield cannot be
15 included in Safe Yield. So, so under Peace II, Safe Yield also does
16 not include Desalter-Induced Recharge. (Peace I ¶ 1.1(aa)-definition
17 of New Yield; Peace I ¶7.5-Replenishment Water; Peace II ¶6.2-
18 Peace II Desalter Production Offsets.)

19 IV) The Responding AP Members argue that the court can only be
20 consistent in its orders if the court resets the Safe Yield to 115,000
21 AFY. The court also rejects this argument for the following reasons.

22 (a) Using Watermaster's own proposal, the court recognizes that there is
23 some logic to the position of the Responding AP Members because
24 1) if the 20,000 AFY is “sequestered” that it is not available for
25 production/pumping without a replenishment obligation and 2)
26 then the reality is the safe yield should be 135,000 AFY - 20,000
27 AFY for a net of 115,000 AFY.

28 (b) However, the court concludes that the structure set up by the

1 Judgment, Peace I, and Peace II require that there be separate
2 analyses for Safe Yield and New Yield attributable to the Desalters.

3 (i) The analysis for Safe Yield is illustrated in this order Sec. VII.5.a
4 above.

5 (ii) The analysis for Desalter-Induced Recharge and New Yield
6 attributable to the Desalters is described in Peace I and Peace II
7 and the further order as set forth herein.

8 (iii) Watermaster has been accounting for these analyses since 2007,
9 so it should not be a problem for Watermaster to to continue to
10 do so.

11 (c) The Responding AP Members also argues that the technical
12 reports show that the basin can safely only sustain 135,000 AFY.

13 (d) However, in Exhibit 1 to the Declaration of Mark Wildermuth -
14 2013 Chino Basin Groundwater Model Update and Recalculation of
15 Safe Yield Pursuant to Peace Agreements, section 1.2.3, “the
16 updated Watermaster Model was used to estimate Santa Ana River
17 Underflow New Yield (SARUNY) from the desalters and
18 reoperation from both the calibration and planning periods.
19 SARUNY means the same thing as that term *Desalter Induced Recharge*
20 as used in the 2015 Safe Yield Reset Agreement.” This definition is
21 repeated in section 7.3.7.

22 (e) The Wildermuth declaration filed March 10, 2017, with the Chino
23 Basin Watermaster Response to February 22, 2017 Order section
24 7.3.7 which states:

25 (i) “The net Santa Ana River recharge in the fiscal year spending
26 July 1999 through June 2000 [one year] is the baseline from
27 which to measure SARUNY, which was estimated to be
28 -2,153 acre-ft/yr, indicating that the Chino Basin discharged to

1 the Santa Ana River more water than was recharged by the River
2 into the Basin. . . . Table 7-10 compares Chino Desalter
3 production and SARUNY over the period of July 2000 through
4 July 2030. . . . The effect of 's the Chino Desalters and
5 reoperation becomes clear in 2005 when SARUNY reaches about
6 50 percent of CDA production. The New Yield results from the
7 implementation of the Chino Desalters is consistent with the
8 planning estimates that were assumed during the development of
9 the Peace Agreements.⁵

- 10 (f) Table 7-10 shows that starting in 2017, the ratio of new yield to
11 CDA production is about an average of 45 percent, meaning that
12 New Yield Desalter-Induced Recharge those years is about 45% of
13 the Desalter production.
- 14 (g) From these facts the court concludes that the Wildermuth Safe Yield
15 reset/recalculation has taken into account the Desalter-Induced
16 Recharge and production, so there is no need to reduce the Safe
17 Yield ~~to~~ 115,000 AFY as argued by the Responding AP Members.
- 18 (h) The Peace Agreement offsets for new yield production attributable
19 to the Desalters are an accounting requirement process, not a feature
20 of determination of Safe Yield.
- 21 (i) The court also concludes that the reset/recalculation has included
22 the contractual features of the Peace Agreements, and one of those
23 features is that Safe Yield not be recalculated to incorporate New
24 Yield attributable to the Desalters. Wildermuth has considered this
25 feature.
- 26 (j) Again, therefore the safe yield of 135,000 AFY does not include
27 New Yield attributable to the Desalters.

28 2. The court still concludes for the term of Peace I (*i.e.*, until 2030), Safe

1 Yield not be recalculated in a manner that incorporates New Yield attributable to the
2 Desalters into the determination of Safe Yield.

3 a) The 20,000 AFY of Desalter-Induced Recharge is not included with the
4 definition of Safe Yield for the term of the Peace Agreements. To rule
5 otherwise would contradict the Peace Agreements.

6 b) The court analogizes its ruling to the controlled overdraft allowed to
7 achieve hydraulic control. That aspect of production/pumping was not
8 allocated to Safe Yield. The court orders that Desalter-Induced
9 Recharge New Yield remain unallocated to Safe Yield.

10 c) The court does not address the City of Chino's briefing regarding the
11 Safe Yield Implementation Replenishment Accounting Illustration (Per
12 Peace II agreement, Section 6.2 (PIIA, 6.2) and June 11, 2015 Key
13 Principles) Watermaster motion filed October 23, 2015, Exhibit "F"
14 Attachment 2 for the following reasons:

15 I) Chino asks if the Column G – Desalter-Induced Recharge
16 replenishment water was coming from Desalter production.

17 II) Footnote 4 for this Column G states that "the desalter-induced
18 recharge projection in the table is now shown at 50% of the annual total
19 desalter production for years 2015 through 2030. Desalter -induced
20 recharge from 2001 to 2014 (187,000 acre-feet) will be deemed Safe
21 Yield and not available to offset Desalter production."

22 III) As part of its order that SYRA cannot be implemented, the court
23 rejects the Safe Yield Reset Implementation Desalter Replenishment
24 Accounting Illustration.

25 IV) The City of Ontario has argued that Desalter Induced Recharge
26 to offset Desalter production should be "backfilled" from Safe Yield.
27 The court rejects this argument for the following reasons:

28 (a) This is merely a characterization of what SYRA proposed to do, and,

1 for the reasons already stated, the court has rejected SYRA except
2 for the Safe Yield recalculation.

3 (b) The Judgment, the Peace Agreements, and the CAMA's do not
4 support this accounting, again for the reasons already stated.

5 (c) Again, for the reasons stated herein, the court rejects that Ontario's
6 argument that a Safe Yield recalculation to 135,000 AFY is not a
7 "Safe Yield recalculation." The argument has no merit and is
8 completely unpersuasive.

9 (d) The court finds that the definitions of Safe Yield and New Yield are
10 sufficiently set forth in the Judgment, Peace I and Peace II.

11 (i) Watermaster does not point to any specific conflict between the
12 court's current/instant order and the court's order implementing
13 Watermaster Resolution 07-05, and the court finds none.

14 (ii) The court reaffirms the definitions of Peace II which have been
15 in effect for 10 years, and of course the definitions of the
16 Judgement and Peace I.

17 (iii) The court finds no basis for Watermaster's attempt to define
18 Desalter-Induced Recharge into directly, indirectly, Safe Yield or
19 by a "sequester."

20 (iv) In reaffirming the definitions of the Judgment, Peace I, and
21 Peace II, the court of course also notes the definition of "Safe
22 Yield" in the Judgment ¶I.1(x) inclusive of "undesirable result,"
23 and the "Material Physical Injury" of Peace I ¶I.1 (y).

24 V) The court finds and orders that Desalter production is not Safe Yield
25 and Desalter production is to be offset only as provided in Peace II.
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28 **IX. Additional Bases for Rulings**

1 A. The court has refused to implement the sections of SYRA identified above for
2 the reasons set forth above. In the court's view, those reasons are sufficient under
3 the law. Therefore, the court has not addressed other objections raised by the
4 parties, such as those of the City of Chino, that Watermaster has failed to prove a
5 change in circumstances, that Watermaster has improperly advocated for certain
6 parties, that the parties are collaterally estopped from re-litigating the parties' rights,
7 that the parties are equitably estopped from reducing their replenishment obligations,
8 that SYRA fails to comply with CEQA, that SYRA provisions resulted in an unlawful
9 taking of Chino's property.

10
11 B. Although the court understands the necessity of accounting for Desalter
12 induced recharge from the Santa Ana River, the court does not find a basis in the
13 law, the Judgment, or the Court Approved Management Agreements for
14 simultaneously reducing Safe Yield and adding unproduced/unpumped Ag Pool
15 water to account for Desalter induced recharge.

16 1. Watermaster argues that the court should approve SYRA because it is
17 only a confirmation of "interpretation of the manner in which Watermaster should
18 comply with the provisions of the Court Approved Management Agreements.
19 (Watermaster's Reply to Oppositions to Motion regarding 2015 Safe Yield Reset
20 Agreement, Amendment of Restated Judgment, Paragraph 6, page 10, line 26.)

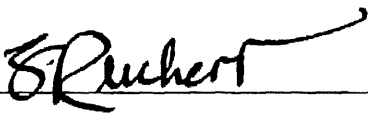
21 a) The court does not accept this argument. The court interprets SYRA as
22 an attempt for a major qualitative revision of the Court Approved
23 Management Agreements, but the Court Approved Management
24 Agreements do not support the SYRA revision for the reasons stated
25 herein.

26 2. The court finds that the rulings herein will not cause material physical
27 injury or an undesirable result.

28 a) Although many parties have approved SYRA, parties' approval or

1 disapproval of SYRA is not a legal basis for the court to enforce SYRA.
2 The court must look to the previous agreements of the parties, the
3 previous court orders, the Court Approved Management Agreements,
4 the Judgement, and the California Constitution.

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6 Date: 4-28-17

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10 Judge Stanford E. Reichert
11 San Bernardino County Superior Court
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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 28 2017

BY *Tiffany Pretzmer*
TIFFANY PRETZMER, DEPUTY

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

CHINO BASIN MUNICIPAL WATER DISTRICT, Plaintiff,)	CASE NOS. RCV 51010
)	CIVDS 1518945
vs.)	Additional/Final Further Revised
)	Proposed Order Re SYRA and
)	Additional/Final Rulings and Order for
)	Oral Argument
CITY OF CHINO, et al., Defendants)	Date: April 28, 2017
)	Time: 1:30 PM
)	Department: S35
CITY OF CHINO, Plaintiff,)	
vs.)	
Cucamonga Water District, et al. Defendants)	

PLEASE TAKE NOTICE that the additional/final further revised proposed order for the SYRA reset motion in case RCV 51010 is attached. A hearing is set for the additional/further revised proposed order for April 28, 2017, 1:30 PM, Dept. S35

1 of the above-entitled court.

2 NOTES RE FURTHER REVISED PROPOSED ORDER

3 A. Attached are two versions of the additional further revised proposed order.

4 1. One version, for the convenience of the parties, has parts of the order
5 which the court has added in the following **font**. From the previous proposed order,
6 filed April 18, 2017, the court has ~~stricken~~ anything that relates to limiting production
7 /pumping of the Desalters. Court has not made any other substantive changes in the
8 additional/further revised proposed orders from those orders filed April 18, 2017.

9 a) The court has received and considered the request by Chino Basin Desalter
10 Authority Member Agencies regarding desalter pumping.

11 b) The court concludes that the court should not have made any orders
12 whatsoever with respect to limiting production/pumping of the desalters in
13 its previous orders for the following reasons:

14 I) Such orders were outside of the scope of any briefing regarding SYRA
15 and the motions, requests, and disputes concerning SYRA.

16 II) Any limitation on Desalter production/pumping would require
17 additional briefing and unreasonably postpone the resolution of SYRA
18 motion, requests, and disputes.

19 III) In further review of the court's tentative rulings, the court further
20 concludes that there were no legal or factual reasons set forth in the
21 briefing for the court to make such an order.

22 (a) Therefore, from the previous proposed rulings, the parties are not to
23 derive any conclusions on how the court might rule with respect to a
24 request to limit Desalter production/pumping. This was only
25 tentative ruling without sufficient briefing by the parties and
26 sufficient analysis by the court. In the court's current view, it is
27 erroneous.

28 (b) Specifically, to help the parties, the court has ordered stricken from

1 the additional safe yield reset agreement motion and additional
2 further revised proposed rulings and orders, the court has stricken:

3 (i) page 2 of 84: lines 5-6,

4 (ii) page 75 of 84: line 7-8, and

5 (iii) page 77 of 84: lines 8-10.

6 (a) The court has also deleted these lines from the additional safe yield
7 reset agreement motion additional final rulings and order

8 2. The other version of the additional/further revised proposed order has
9 all the changes incorporated into a final, "clean" proposed order as of 4/28/17.

10 B. Therefore the court's conclusion is the only remaining issue for oral argument
11 is whether the Safe Yield reset to 135,000 AFY is an event that requires a
12 recalculation within the definition of the Judgment, Exhibit "H" ¶10 for the reasons
13 set forth in the additional/further revised proposed order.

14
15 Dated: 4-28-17

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18 
19 Stanford E. Reichert, Judge

EXHIBIT 10

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CUCAMONGA VALLEY WATER DISTRICT

13 [Other Attorneys on Next Page]

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN BERNARDINO

17 CHINO BASIN MUNICIPAL WATER
18 DISTRICT,

19 Petitioner,

20 v.

21 CITY OF CHINO, et al.,

22 Defendants.

Exempt from Filing Fees
Per Gov't Code § 6103

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

MAR 15 2019

BY 
ASHLEY LAWLESS, DEPUTY

Case No. RCVRS 51010
Judge: Stanford E. Reichert

~~[Proposed]~~ ORDER

[filed with Notice of Mot. and Mot. to
Approve Amendments to Appropriative
Pool Pooling Plan and Ct.-Approved
Management Agreements; and Decl. of
Sarah Christopher Foley]

Date: March 15, 2019
Time: 1:30 p.m.
Dept.: S35

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~~PROPOSED~~ ORDER

On March 15, 2019, in Department S35 of the above-entitled Court, the Motion to Approve Amendments to Appropriative Pool Pooling Plan and Court-Approved Management Agreements by Defendants and Appellants Cucamonga Valley Water District, Monte Vista Water District, and City of Pomona and Defendants and Respondents City of Chino, Jurupa Community Services District, and City of Ontario ("Motion to Approve") came on for hearing, the Honorable Stanford E. Reichert, Judge presiding. The parties stated their appearances on the record.

After consideration of the papers filed in connection with the Motion to Approve and arguments of counsel, the Court hereby:

(1) Approves amendments to the Appropriative Pool Pooling Plan, ~~the Peace Agreement, and the Peace II Agreement~~ ("Appropriative Pool Pooling Plan" and CAMA Amendments") that are attached hereto, ~~and~~ *the amendments attached hereto.*

2. Watermaster shall proceed in accordance with Resolution 2017-03 and the documents attached thereto.

~~(2) Orders Watermaster to implement the Judgment in accordance with the Appropriative Pool Pooling Plan and CAMA Amendments that are attached hereto.~~

3. Directing Watermaster to proceed to redetermine Safe Yield as set forth on pages 15-18 of the Court's April 28, 2017, order.
IT IS SO ORDERED.

Dated: _____, ___, 2019

Honorable Stanford E. Reichert
Judge of the Superior Court

4. Except as explicitly set forth above the motion is denied.

Date: 3-15-19



IT IS SO ORDERED
Stanford E. Reichert

JUDGE
STANFORD E. REICHERT

ATTACHMENT

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- 4 -

~~Proposed~~ Order

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Exhibit A

Proposed Changes to Appropriative Pool Pooling Plan and CAMA

1. Appropriative Pool Pooling Plan. The introductory sentence to Exhibit H, ¶10 of the Judgment is amended to read as follows:

10. Unallocated Safe Yield Water. To the extent that, in any ~~year~~ *five years*, any portion of the share of Safe Yield allocated to the Overlying (Agricultural) Pool is not produced, such water shall be available for reallocation to members of the Appropriative Pool, as follows:

2. Early Transfer

A. Section 1.1(o) of the Peace Agreement is amended to read as follows:

(o) "Early Transfer" means the reallocation of Safe Yield not Produced by the Agricultural Pool to the Appropriative Pool on an annual basis *after the allocations in subdivisions (a)(1) and (a)(2) of* ~~rather than according to the five year increment described in Paragraph 10 of Exhibit "H" of the Judgment;~~

B. Section 5.3(g) of the Peace Agreement is amended to read as follows:

(g) Watermaster shall approve an "Early Transfer" of water to the Appropriative Pool ~~in an amount not less than 32,800 acre-feet per year that is the expected approximate quantity of water not Produced by the Agricultural Pool~~ *on an annual basis* ~~The quantity of water subject to Early Transfer under this paragraph shall be the greater of (i) 32,800 acre feet of (ii) 32,800 acre feet plus the actual quantity of water not Produced by the Agricultural Pool for that Fiscal Year that is remaining after all the land use conversions are satisfied pursuant to 5.3(h) below.~~

- (i) The Early Transfer water shall be annually allocated among the members of the Appropriative Pool in accordance with their pro-rata share of the initial Safe Yield.
- (ii) The Transfer shall not limit the Production right of the Agricultural Pool under the Judgment to Produce up to 82,800 acre-feet of water in any year or 414,000 acre-feet in any five years as provided in the Judgment.
- (iii) The combined Production of all parties to the Judgment shall not cause a Replenishment assessment on the members of the Agricultural Pool. The Agricultural Pool shall be responsible for any Replenishment obligation created by the Agricultural Pool Producing more than 414,000 acre-feet in any five-year period.
- (iv) The parties to the Judgment and Watermaster shall Produce water in accordance with the Operating Safe Yield and shall procure sufficient quantities of Replenishment Water to satisfy over-Production requirements, whatever they may be, and avoid Material Physical Injury to any party to the Judgment or the Basin;

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(v) Nothing herein shall be construed as modifying the procedures or voting rights within or by the members of the Agricultural Pool.

3. **Conversion Claims.** Subparagraph (b)(3)(i) of Exhibit H, ¶ 10 of the Judgment is amended to read as follows:

(i) For the term of the Peace Agreement *and any extension thereof*, in any year in which sufficient unallocated Safe Yield from the Overlying (Agricultural) Pool is available for such conversion claims, Watermaster shall allocate to each appropriator with a conversion claim 2.0 acre-feet of unallocated Safe Yield water for each converted acre for which conversion has been approved and recorded by the Watermaster.

4. **Controlled Overdraft.** Pursuant to section 7.2(e)(ii) of the Peace II Agreement, 175,000 acre-feet of controlled overdraft (Re-Operation water) will be allocated to Desalter replenishment over a 17-year period, beginning in 2013-14 and ending in 2029-30, according to the schedule attached as Exhibit A.

5. **New Yield.** Section 7.1 of the Peace II Agreement, entitled "New Yield Attributable to Desalters," is deleted. It is replaced by new section 6.2(b)(ii) as set forth in section 6 below.

6. **Desalter Replenishment.** Section 6.2(b) of the Peace II Agreement is amended to read as follows:

(b) To the extent available credits are insufficient to fully offset the quantity of groundwater production attributable to the Desalters, Watermaster will use water or revenue obtained by levying the following assessments among the members of the Overlying (Non-Agricultural) Pool and the Appropriative Pool to meet any remaining replenishment obligation as follows.

(i) A Special OBMP Assessment against the Overlying (Non-Agricultural) Pool as more specifically authorized and described in amendment to Exhibit "G" paragraph 8(e) 5(c) to the Judgment will be dedicated by Watermaster to further off-set replenishment of the Desalters. However, to the extent there is no remaining replenishment obligation attributable to the Desalters in any year after applying the off-sets set forth in 6.2(a), the OBMP Special Assessment levied by Watermaster will be distributed as provided in section 9.2 below. The Special OBMP Assessment will be assessed pro-rata on each member's share of Safe Yield, followed by

(ii) *The members of the Appropriative Pool will contribute a total of 10,000 afy toward Desalter replenishment, allocated among Appropriative Pool members as follows:*

(1) *85% of the total (8,500 afy) will be allocated according to the Operating Safe Yield percentage of each Appropriative Pool member; and*

(2) *15% of the total (1,500 afy) will be allocated according to each land use conversion agency's percentage of the total land use conversion claims, based on the actual land use conversion allocations of the year.*

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The annual desalter replenishment obligation contribution of each Appropriative Pool member will be calculated using the following formula:

*Desalter replenishment obligation contribution = (8,500 * % Appropriator's share of total initial 49,834 afy Operating Safe Yield) + (1,500 * % Appropriator's proportional share of that year's total conversion claims)*

A sample calculation of the desalter replenishment obligation contribution for each Appropriative Pool member is shown on Exhibit __ to this Peace II Agreement, as amended.

(iii) (ii)-A Replenishment Assessment against the Appropriative Pool for any remaining Desalter replenishment obligation after applying both 6(b)(i) and 6(b)(ii), allocated pro-rata to each Appropriative Pool member according to the combined total of the member's share of Operating Safe Yield and the member's Adjusted Physical Production, as defined below. pro-rata based on each Producer's combined total share of Operating Safe Yield and the previous year's actual production. Desalter Production is excluded from this calculation. A sample calculation of the allocation of the remaining desalter obligation is shown in Exhibit __ to this Peace II Agreement. However, if there is a material reduction in the net cost of Desalter product water to the purchasers of product water, Watermaster may re-evaluate whether to continue the exclusion of Desalter Production but only after giving due regard to the contractual commitment of the parties.

(iv) Adjusted Physical Production is the Appropriative Pool member's total combined physical production (i.e., all groundwater pumped or produced by the Appropriative Pool member's groundwater wells in the Chino Basin, including water transferred from the Non-Agricultural Pool under Exhibit G, ¶9 of the Judgment), with the following adjustments:

(1) In the case of assignments among Appropriative Pool members, or between Appropriative Pool members and Non-Agricultural Pool members under Exhibit G, ¶6 of the Judgment, resulting in pumping or production by one party to the Judgment for use by another party to the Judgment, the production for purposes of Adjusted Physical Production shall be assigned to the party making beneficial use of the water, not the actual producer.

(2) Production offset credits pursuant to voluntary agreements under section 5.3(i) of the Peace Agreement are calculated at 50% of the total voluntary agreement credit in the determination of Adjusted Physical Production for an Appropriative Pool member participating in a voluntary agreement for that year. In the determination of Adjusted Physical Production, the voluntary agreement credit is subtracted from physical production. Reduction of the voluntary agreement credit from 100% to 50% is applicable only to the calculation of the Adjusted Physical Production hereunder; but in all other applications, the voluntary agreement credit shall remain unchanged (i.e. remain at 100%).

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(3) *Production associated with approved storage and recovery programs (e.g., Dry Year Yield recovery program with MWD) is not counted in Adjusted Physical Production, except for in-lieu participation in such programs: in-lieu put quantities shall be added to physical production, and in-lieu take quantities shall be subtracted from physical production.*

(4) *Metered pump-to-waste Production that is determined by Watermaster to be subsequently recharged to the groundwater basin is deducted from physical production; unmetered pump-to-waste production that is determined by Watermaster not to be subsequently recharged to the groundwater basin is added to physical production.*

(5) *The Appropriative Pool may approve, by unanimous vote, the inclusion of other items in the determination of Adjusted Physical Production, with the exception of Non-Agricultural Pool water assigned or transferred under Exhibit G, ¶6 or ¶10 of the Judgment.*

(v) *Any member of the Non-Agricultural Pool that is also a member of the Appropriative Pool may elect to transfer (a) some or all of the annual share of Operating Safe Yield of the transferor in and for the year in which the transfer occurs (except that such transfer shall exclude any dedication to the Watermaster required by section 6.2(b)(1)), and (b) any quantity of water held in storage by the transferor (including without limitation carryover and excess carryover) to any member of the Appropriative Pool, in either case at any price that the transferor and transferee may deem appropriate and for the purpose of satisfying the transferee's desalter replenishment obligation. The transferee's desalter replenishment obligation shall be credited by the number of acre-feet so transferred.*

(vi) ~~(iii)~~ *The quantification of any Party's share of Operating Safe Yield does not include either land use conversions or Early Transfers.*

7. **Allocation of Non-Agricultural Pool OBMP Special Assessment.** The introductory sentence of section 9.2(a) of the Peace II Agreement is amended to read as follows:

a. For a period of ten years from the effective date of the Peace II Measures, any water (or financial equivalent) that may be contributed from the Overlying (Non-Agricultural) Pool in accordance with paragraph 8(e)-5(c) of Exhibit G to the Judgment (as amended) will be apportioned among the members of the Appropriative Pool in each year as follows:

LAW OFFICES OF
 BEST BEST & KRIEGER LLP
 3390 UNIVERSITY AVENUE, 5TH FLOOR
 P.O. BOX 1028
 RIVERSIDE, CALIFORNIA 92502

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Attachment: Peace Agreement, Section 7.2 (e)(ii)
 Schedule for Use of Re-Operation Water**, and
 Calculation of Remaining Desalter Replenishment Obligation (DRO)
 Production from 2017-18 through 2029-30 is estimated

Production Year	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Peace I Desalter Production	29,227.997	29,541.300	27,008.810	26,275.588	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000
Peace II Desalter Production	14.555	448.690	1,154.052	1,527.215	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000
Appropriative Pool DRO Contribution	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)
Re-Operation Water** Non-Agricultural Pool Assessment	0.000	0.000	0.000	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)
Remaining DRO	6,742.552	7,489.990	5,662.862	4,567.803	16,765.000	16,765.000	16,765.000	16,765.000	16,765.000

Production Year	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30
Peace I Desalter Production	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000
Peace II Desalter Production	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000
Appropriative Pool "DRO Contribution	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)
Re-Operation Water** Non-Agricultural Pool Assessment	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)
Remaining DRO	16,765.000	16,765.000	16,765.000	24,265.000	24,265.000	24,265.000	24,265.000	24,265.000

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Attachment: Peace II Agreement, Section 6.2(b)(ii)
Allocation of Appropriative Pool Desalter Replenishment Obligation (DRO) Contributions (by agency)

Production Year 2013-14 Desalter Replenishment Obligation (DRO) Contribution: **10,000,000 AF**

Appropriative Pool Party	Production Year 2013/14 Common Data (Headings from Approved 2014/2015 Assessment Package)			Methodology for 85/15 split between shares of Operating Safe Yield and % of Land Use Conversions		
	a	b	c = %b	d = (DRO Contrib*.85)*a	e = (DRO Contrib*.15)*c	f = d + e
	Percent of Operating Safe Yield (Column 2A)	Land Use Conversions (Page 12A)*	Percent of Land Use Conversions	85% DRO Contribution Based on Percent of Operating Safe Yield	15% DRO Contribution Based on Percent of Land Use Conversions	Desalter Replenishment Obligation Contribution
Arrowhead Mtn Spring Water Co	0.000%	0.000	0.000%	0.000	0.000	0.000
Chino Hills, City of	3.851%	1,133.906	4.334%	327.335	65.013	392.348
Chino, City of	7.357%	7,623.064	29.138%	625.345	437.074	1,062.419
Cucamonga Valley Water District	6.601%	598.364	2.287%	561.085	34.308	595.393
Fontana Union Water Company	11.657%	0.000	0.000%	990.845	0.000	990.845
Fontana Water Company	0.002%	834.000	3.188%	0.170	47.818	47.988
Fontana, City of	0.000%	0.000	0.000%	0.000	0.000	0.000
Golden State Water Company	0.750%	0.000	0.000%	63.750	0.000	63.750
Jurupa Community Services District	3.759%	13,876.196	53.040%	319.515	795.602	1,115.117
Marygold Mutual Water Company	1.195%	0.000	0.000%	101.575	0.000	101.575
Monte Vista Irrigation Company	1.234%	0.000	0.000%	104.890	0.000	104.890
Monte Vista Water District	8.797%	55.075	0.211%	747.745	3.158	750.903
Niagara Bottling, LLC	0.000%	0.000	0.000%	0.000	0.000	0.000
Nicholson Trust	0.007%	0.000	0.000%	0.595	0.000	0.595
Norco, City of	0.368%	0.000	0.000%	31.280	0.000	31.280
Ontario, City of	20.742%	2,041.095	7.802%	1,763.070	117.028	1,880.098
Pomona, City of	20.454%	0.000	0.000%	1,738.590	0.000	1,738.590
San Antonio Water Company	2.748%	0.000	0.000%	233.580	0.000	233.580
San Bernardino, County of (Shooting Park)	0.000%	0.000	0.000%	0.000	0.000	0.000
Santa Ana River Water Company	2.373%	0.000	0.000%	201.705	0.000	201.705
Upland, City of	5.202%	0.000	0.000%	442.170	0.000	442.170
West End Consolidated Water Co	1.728%	0.000	0.000%	146.880	0.000	146.880
West Valley Water District	1.175%	0.000	0.000%	99.875	0.000	99.875
	100.000%	26,161.700	100.000%	8,500.000	1,500.000	10,000.000

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Attachment: Peace II Agreement, Section 6.2 (b)(iii)
Allocation of Appropriative Pool Remaining Desalter Replenishment Obligation (RDRO)

Production Year 2013-14:	acre-feet
CDA Production - Peace I Allocation	29,227.997
CDA Production - Peace II Allocation	14.555
Total Desalter Replenishment Obligation (Total DRD):	29,242.552
Desalter Replenishment Obligation Contribution (DROC)	(10,000.000)
Re-Operation Water	(12,500.000)
RDRO	6,742.552

Appropriative Pool Party	Operating Safe Yield	Production Year 2013/14 Common Data (From Approved 2014/2015 Assessment Package - Appendix A)					Methodology for Calculation of Adjusted Physical Production (APP)	Methodology for Calculation of "RDRO"
	a	b	c	d	e	f	APP = [b+(c*50%)+d+e+f]	Individual Party RDRO = ((a+APP)/(Total a + Total APP)) * RDRO
	Assessment Package Page 2A: Column 2D	Physical Production	Voluntary Agreements (w/Ag)	Assignments (w/Non-Ag)	Storage and Recovery Programs	Other Adjustments	*Note: APP for City of Chino does not include "Other Adjustments" for this period	
Arrowhead Mtn Spring Water Co	0.000	379.111	0.000	0.000	0.000	0.000	379.111	15.905
Chino Hills, City of	2,111.422	2,150.925	(286.221)	0.000	0.000	5,359.300	7,367.115	397.669
Chino, City of	4,033.857	6,725.430	(6,686.440)	(104.278)	0.000	65.288	3,277.932	306.764
Cucamonga Valley Water District	3,619.454	16,121.550	0.000	0.000	0.000	0.000	16,121.550	828.227
Fontana Union Water Company	6,391.736	0.000	0.000	0.000	0.000	0.000	0.000	268.163
Fontana Water Company	1.000	15,377.579	0.000	0.000	0.000	0.000	15,377.579	645.203
Fontana, City of	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Golden State Water Company	411.476	736.362	0.000	0.000	0.000	0.000	736.362	48.157
Jurupa Community Services District	2,061.118	18,406.630	0.000	(799.499)	0.000	(8.764)	18,018.347	842.427
Manlyold Mutual Water Company	655.317	1,314.734	0.000	0.000	0.000	0.000	1,314.734	82.653
Monte Vista Irrigation Company	676.759	0.000	0.000	0.000	0.000	0.000	0.000	28.393
Monte Vista Water District	4,823.954	12,521.892	(131.480)	0.000	0.000	(5,771.667)	7,074.485	499.195
Niagara Bottling, LLC	0.000	1,342.588	0.000	0.000	0.000	0.000	1,342.588	56.328
Nicholson Trust	4.000	0.000	0.000	0.000	0.000	0.000	0.000	0.168
Norco, City of	201.545	0.000	0.000	0.000	0.000	0.000	0.000	8.456
Ontario, City of	11,373.816	21,980.342	(6,428.101)	(1,859.193)	0.000	0.000	17,911.096	1,228.639
Pomona, City of	11,215.852	12,909.293	0.000	0.000	0.000	0.000	12,909.293	1,012.163
San Antonio Water Company	1,506.888	1,159.242	0.000	0.000	0.000	0.000	1,159.242	111.857
San Bernardino, County of (Shooting Park)	0.000	16.390	0.000	0.000	0.000	0.000	16.390	0.688
Santa Ana River Water Company	1,301.374	0.000	0.000	0.000	0.000	48.515	48.515	56.634
Upland, City of	2,852.401	2,822.046	0.000	0.000	0.000	0.000	2,822.046	238.070
West End Consolidated Water Co	947.714	0.000	0.000	0.000	0.000	0.000	0.000	39.761
West Valley Water District	644.317	0.000	0.000	0.000	0.000	0.000	0.000	27.032
	54,834.000	113,964.114	(11,552.242)	(1,338.973)	0.000	92.652	105,876.384	6,742.552

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EXHIBIT 11

AGREEMENT NO. 49960
GROUNDWATER STORAGE PROGRAM
FUNDING AGREEMENT

BY AND AMONG

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

AND

INLAND EMPIRE UTILITIES AGENCY

AND

THREE VALLEYS MUNICIPAL WATER DISTRICT

AND

CHINO BASIN WATERMASTER

DATED AS OF _____, 2003

TABLE OF CONTENTS

	<u>Page</u>
I. RECITALS	1
II. EFFECTIVE DATE AND TERM	4
A. Effective Date	4
B. Termination Date	4
III. CONDITIONS PRECEDENT TO FUNDING OBLIGATION AND PROGRAM IMPLEMENTATION.....	4
A. CEQA.....	4
B. DWR Commitment.....	5
C. Permits and Approvals.....	5
D. No Litigation.....	5
IV. PROGRAM PLANNING AND CONSTRUCTION.....	6
A. Planning	6
1. General Description of Program	6
2. Operational Capacity Thresholds.....	6
3. Submission of Plans, Schedule and Budget.....	7
4. Review and Approval of Schedule and Budget.....	7
B. Construction.....	8
1. Contracting.....	8
2. Construction Supervision and Responsibility.....	9
3. Inspection Right.....	9
4. Completion of Construction.....	9
5. Ownership of Project.....	10
V. PROJECT CONSTRUCTION FUNDING (NOT INCLUDING OPERATION AND MAINTENANCE/ENERGY COST FUNDING)	10
A. Metropolitan Funding Obligation	10
B. Cost Overruns	10

TABLE OF CONTENTS
(continued)

	<u>Page</u>
C. Disbursement Protocol.....	11
1. Invoice Payment.....	11
2. Certification of Expenditures.....	12
3. Disbursement of Program Funds.....	12
VI. OPERATING COMMITTEE.....	12
A. Operating Committee.....	12
1. Composition of Committee.....	12
2. Meeting of Operating Committee.....	12
3. Annual Operating Plan.....	13
4. Specific Duties.....	14
B. IEUA and TVMWD Obligations.....	15
C. Watermaster Obligations.....	15
D. Metropolitan Obligations.....	16
E. Payment of Operation and Maintenance Costs and Electrical Costs.....	17
F. Annual Reconciliation.....	17
VII. GROUNDWATER STORAGE AND EXTRACTION.....	18
A. Metropolitan's Storage Account Rights.....	18
B. Certification of Deliveries to Metropolitan Water Account.....	19
C. Extraction of Stored Water.....	19
D. Payment for Extraction of Stored Water.....	20
VIII. OTHER USES OF FACILITIES.....	20
A. Allowed Use.....	20
IX. REPRESENTATIONS, WARRANTIES AND AFFIRMATIVE COVENANTS OF PARTIES.....	21
A. Of IEUA and TVMWD.....	21
1. Power and Authority.....	21

TABLE OF CONTENTS
(continued)

	<u>Page</u>
2. Authorization; Valid Obligation	21
3. No Litigation.....	21
4. Compliance with Laws	21
5. Compliance with DWR Requirements.....	22
6. No Construction.....	23
7. Capacity	23
8. Oversight and Supervision of Construction.....	23
9. Maintain Ownership of Program Property.....	23
10. Protection of Others' Rights	23
B. Of Watermaster.....	23
1. Power and Authority.....	23
2. Authorization; Valid Obligation	24
3. No Litigation.....	24
4. Compliance with Laws	24
5. Compliance with DWR Funding Letter.....	25
6. Capacity	25
C. Of Metropolitan	25
1. Power and Authority.....	25
2. Authorization; Valid Obligation	26
3. No Litigation.....	26
X. RECORD KEEPING, REPORTING, INSPECTION AND AUDIT	26
A. Record Keeping	26
B. Reporting.....	27
1. Construction Progress Reports.....	27

TABLE OF CONTENTS
(continued)

	<u>Page</u>
2. O&M Reports.....	27
C. Inspection.....	27
D. Audit Rights and Obligations.....	27
XI. INDEMNITY.....	28
A. General Indemnity.....	28
B. IEUA Specific Indemnity.....	28
C. TVMWD Specific Indemnity.....	28
D. Watermaster Specific Indemnity.....	28
E. Metropolitan Specific Indemnity.....	29
XII. INSURANCE.....	29
A. General Required Coverages.....	29
B. Specific Policy Requirements.....	30
C. Deductibles/Self-Insurance.....	30
1. Insurance Certificates.....	30
2. Acceptability of Insurers.....	30
D. Environmental Liability Insurance.....	31
XIII. DISPUTE RESOLUTION; DEFAULTS AND REMEDIES.....	31
A. Dispute Resolution.....	31
B. Defaults and Remedies.....	32
C. Termination.....	33
D. Remedies Are Cumulative.....	33
XIV. FORCE MAJEURE EVENTS.....	33
A. Excuse to Performance.....	33
B. Responding to Force Majeure Events.....	34
XV. MISCELLANEOUS.....	34
A. Entire Agreement.....	34
B. Interpretation.....	34

TABLE OF CONTENTS
(continued)

	<u>Page</u>
C. Further Assurances.....	34
D. Counterparts	35
E. Assignment	35
F. Venue	35
G. Governing Law; Attorneys Fees and Costs	35
H. Notice	36
I. Successors	36
J. Severability	36
K. Time is of the Essence	37
L. Amendment.....	37

GROUNDWATER STORAGE PROGRAM FUNDING AGREEMENT

THIS GROUNDWATER STORAGE PROGRAM FUNDING AGREEMENT (this "Agreement"), dated as of March 1, 2003, is entered into by and among THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ("Metropolitan"), a public entity of the State of California, INLAND EMPIRE UTILITIES AGENCY, a municipal water district of the State of California ("IEUA"), THREE VALLEYS MUNICIPAL WATER DISTRICT, a municipal water district of the State of California ("TVMWD") and CHINO BASIN WATERMASTER, an entity established by the Superior Court of the State of California as described in Recital F below ("Watermaster").

I. RECITALS

- A. In March 2000, California voters approved Proposition 13 ("Prop. 13") authorizing the State of California to sell \$1.97 billion in general obligation bonds for water related projects throughout the State. The Governor's Budget Act for 2000, Chapter 52, Statutes of 2000, appropriated to the California Department of Water Resources ("DWR") local assistance grants for groundwater storage and supply reliability projects in the amount of \$161,544,000 by budget item 3860-01-6027, payable from the Interim Reliable Water Supply and Water Quality Infrastructure and Managed Subaccount.
- B. Metropolitan subsequently was selected by DWR as a grant recipient for \$45 million (the "Prop. 13 Funds") to be used for groundwater storage projects within its service area. In a letter dated October 13, 2000 (the "DWR Funding Letter") (see Exhibit A attached hereto), DWR set forth the specific terms and conditions of the grant to Metropolitan.
- C. On September 20, 2000, Metropolitan sent a letter to its twenty-six member public agencies (consisting of cities, municipal water districts and a county water authority within its 5,155 square-mile service area covering portions of Los Angeles, Orange, San Diego, Riverside, San Bernardino and Ventura Counties), requesting a list of groundwater storage projects to be considered for Prop. 13 Funding. On November 1, 2000, Metropolitan delivered to those member public agencies that indicated an interest in the Prop. 13 groundwater storage programs the Request for Proposals for Participation in Groundwater Storage Programs Using Proposition 13 Funds, RFP No. WRM-2 (the "RFP") (see Exhibit B attached hereto). Metropolitan subsequently conducted a Pre-Submittal Workshop, open to the public, on November 8, 2000, to address any concerns or questions regarding the RFP.
- D. Metropolitan anticipated that programs funded by the Prop. 13 Funds would store water (by various methods) that Metropolitan imports from the State Water Project and the Colorado River. This stored water would be pumped by the member agency (or a sub-agency) with a corresponding reduction in surface water

deliveries from Metropolitan. As a result, Metropolitan would have a greater amount of water to distribute within its service area. In addition, such groundwater storage programs are part of a larger effort to meet water supply demands in Southern California, as specifically set forth in the Integrated Water Resources Plan ("IRP") approved by Metropolitan's Board of Directors in 1996, and the Groundwater Storage Principles (see Appendix A of Exhibit B attached hereto) adopted in connection therewith by Metropolitan's Board of Directors in January 2000.

- E. IEUA and TVMWD are both municipal water districts formed in 1950 and have been member agencies of Metropolitan since their formation. IEUA was formerly known as Chino Basin Municipal Water District. IEUA serves a portion of San Bernardino County and has one or more designated representatives on Metropolitan's Board of Directors. TVMWD was formerly known as Pomona Valley Municipal Water District. TVMWD serves a portion of Los Angeles County and has one or more designated representatives on Metropolitan's Board of Directors.
- F. The Watermaster was established under the Judgment in the Superior Court of California for County of San Bernardino, entitled, "Chino Basin Municipal Water District v. City of Chino, et al.," entered into on January 27, 1978 ("**Judgment**"). The Watermaster is responsible for managing the Chino Groundwater Basin ("Chino Basin") in the most beneficial manner and for equitably administering and enforcing the provisions of the Judgment.
- G. Metropolitan has the following storage agreements with IEUA and Chino Basin Watermaster beginning in 1979:
 - 1. Cyclic Storage Agreement approved by the Court in January 1979.
 - 2. The MWD Trust Storage Agreement approved by the Court in August 1986.
 - 3. The Short-Term Conjunctive Use Agreement (CB-5) approved in September 1993.
- H. On January 19, 2001, the Proposal for Chino Basin Groundwater Storage Project (the "**Proposal**") was submitted by IEUA for Metropolitan's consideration (see Exhibit C attached hereto). On April 10, 2001, Metropolitan notified IEUA that the program described in its Proposal had been selected for further consideration (see Exhibit D attached hereto) and that it was eligible for up to \$9 million of the Prop. 13 Funds. The Program is also eligible for disbursement of up to \$ 18.5 million of other funds administered by Metropolitan. The Prop. 13 Funds plus the Metropolitan funds specifically allocated to the proposed Program are referred to herein as the "**Program Funds.**"
- I. During further development of the Program, the City of Pomona was identified as a participating retail agency (Operating Party) for implementation of the Program. The City of Pomona is a sub-agency of TVMWD, and TVMWD has therefore joined this Agreement.

- J. Accordingly, the parties hereto (each a "Party" and, collectively, the "Parties") desire to enter into a mutually beneficial agreement for a groundwater storage program funded by Program Funds that will achieve reasonable and beneficial conjunctive use of Metropolitan's water supply to provide 33,000 acre-feet of additional pumping capacity in the Chino Basin in accordance with this Agreement and the Groundwater Storage Principles referenced above. This Agreement describes the terms of the Program agreed to among Metropolitan, the Watermaster, IEUA, and TVMWD which includes the terms for the storage and delivery of stored water from Metropolitan, the construction of groundwater production facilities, and the funding of such facilities. All of the elements together as described in this Agreement shall constitute the "Program".
- K. Pursuant to the provisions of California Environmental Quality Act (CEQA) and the State CEQA Guidelines, IEUA, acting as lead agency, prepared and processed a Final Program Environmental Impact Report (Final PEIR) for the Chino Basin Watermaster Optimum Basin Management Program (OBMP) which included conjunctive use Storage and Recovery Program of 500,000 acre-feet (the "Storage and Recovery Program"). Among other things, the Final PEIR evaluated the environmental effects associated with the construction activities that are tied to and funded by this Agreement. On July 12, 2000, IEUA certified the Final PEIR and approved the OBMP.
- L. Subsequent to certification of the Final PEIR, IEUA found that it needed to make minor modifications to the proposed construction activities. IEUA determined that these modifications would not result in any significant new environmental effects, substantially increase the severity of previously identified effects, or require any new mitigation measures beyond those examined by and proposed in the Final PEIR. IEUA prepared a Finding of Consistency (i.e., Addendum) documenting this determination, which it certified on December 18, 2002.
- M. TVMWD and Metropolitan, acting as responsible agencies, have reviewed the information contained in the Final PEIR and Finding of Consistency, and have adopted IEUA's findings concerning the environmental effects associated with the construction activities that are tied to and funded by this Agreement.
- N. As of the date of this Agreement, no legal action has been filed challenging the Final PEIR, the Finding of Consistency, or any determination and approvals issued by IEUA, TVMWD or Metropolitan that relate to the Program or this Agreement.
- O. IEUA and Watermaster are funding a \$45 million Recharge Master Plan capital improvement program, separate and apart from this agreement, that will increase significantly the ability for Metropolitan to store water through direct replenishment into Metropolitan's storage account. Under the OBMP the parties to the Judgment have agreed to expand the existing Chino I Desalter from 8 mgd

to 14 mgd and build the Chino II Desalter at a capacity of 10 mgd to produce and treat approximately 25,000 AF per year of poor quality water to minimize downstream water quality impacts on the Orange County Water District (OCWD) consistent with the OBMP Program Environmental Impact Report and Chino I expansion/Chino II Desalter Environmental Impact Report and the Memorandum of Understanding with OCWD.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

II. EFFECTIVE DATE AND TERM

A. Effective Date

Upon execution by all Parties, this Agreement shall be deemed effective as of March 1, 2003 (the "Effective Date").

B. Termination Date

This Agreement shall initially terminate on the date which is twenty-five years after the Effective Date, unless sooner terminated in accordance herewith (the "Initial Termination Date"). Notwithstanding the foregoing, this Agreement will renew for a five-year period commencing on the Initial Termination Date, and each fifth anniversary thereof (each, a "Renewal Date"), if written consent of all parties is filed with Metropolitan at least 90 days prior to each termination date. This Agreement shall absolutely terminate and be of no further force or effect on the date that is fifty years after the Effective Date (the "Final Termination Date").

III. CONDITIONS PRECEDENT TO FUNDING OBLIGATION AND PROGRAM IMPLEMENTATION

Metropolitan's funding obligations with respect to construction of the Facilities (as set forth in Article V below) are subject to the satisfaction of the following conditions precedent, or waiver of the condition(s) precedent, by Metropolitan:

A. CEQA.

Any and all environmental reviews and supporting documentation ("CEQA Documents") required to implement the Program and/or this Agreement shall have been completed, certified and approved by the Parties in accordance with CEQA and its guidelines. Further, the time period for commencing a legal action challenging any of these CEQA Documents, or challenging any certifications, findings, determinations, approvals or authorizations that are related to or based

upon such CEQA Documents, shall have lapsed with no such legal action having been filed.

B. DWR Commitment

The conditions necessary to receive Prop. 13 Funds under the DWR Funding Letter shall have been satisfied, and DWR shall be committed to disbursing the Prop. 13 Funds to Metropolitan in accordance with the DWR Funding Letter, the Schedule and the Budget.

C. Permits and Approvals

Any authorizations, consents, licenses, permits and approvals from any Governmental Authority (as defined hereafter) or person as may be required by applicable law to construct and operate the Program (including, without limitation, the approvals or consents from other groundwater users in the Chino Basin, or parties whose approval is required by any judgment in an adjudicated basin, and approval and recognition of this Agreement by the San Bernardino Superior Court with continuing jurisdiction over the Judgment (collectively, the “**Required Approvals**”) shall have been obtained. IEUA shall have delivered reasonably satisfactory evidence of such Required Approvals to Metropolitan. None of the Required Approvals shall impose any condition to such approval that a Party finds unacceptable, and any acceptable conditions to the Required Approvals shall have been satisfied or waived by the person imposing such condition or will be satisfied by the Program as then contemplated.

“**Governmental Authority**” means any federal, state, local or other governmental, regulatory or administrative agency, governmental commission, department, board, subdivision, court, tribunal, or other governmental arbitrator, arbitral body or other authority.

D. No Litigation

IEUA, TVMWD, and Watermaster shall have certified that, except as disclosed in writing to Metropolitan and accepted by Metropolitan in its reasonable discretion, there is no litigation, including any arbitration, investigation or other proceeding, pending before any court, arbitrator or Governmental Authority, nor any such litigation threatened, nor any decree, order or injunction issued by any court, arbitrator or Governmental Authority and remaining in effect, which relates to Program Funds or the Program or which prevents or hinders (or seeks to prevent or hinder) implementation of the Program, or which raises a question as to the validity of this Agreement, or any of the other Program agreements.

The date upon which each of the foregoing conditions has been satisfied or waived by Metropolitan, as set forth in a written notice from Metropolitan to IEUA, shall be the “**Funding Obligation Date.**”

IV. PROGRAM PLANNING AND CONSTRUCTION

A. Planning

1. General Description of Program

The Program includes the following components:

- a. Metropolitan shall have the right to: (1) deliver and store imported water supplies in the Chino Basin at up to a rate of 25,000 acre-feet per year and up to 100,000 AF in storage at any time (“**Maximum Storage Amount**”), subject to higher amounts if approved in advance by the Chino Basin Watermaster, and (2) cause Chino Basin stored water to be produced at a rate of 33,000 AF per year, pursuant to the Exhibit G “Performance Criteria” of this Agreement, the Chino Basin Judgment and the Watermaster Rules and Regulations. Watermaster will provide for rights to store and extract water from the Chino Basin.
- b. The proposed groundwater storage Program consists of the facilities described in Exhibit H (the “**Facilities**”). The agencies within the service areas of IEUA and TVMWD responsible for operating the respective Facilities (“**Operating Parties**”) are also listed in Exhibit H. IEUA and TVMWD will enter into agreements with the **Operating Parties** within their respective service areas that will require such **Operating Parties** to operate and maintain the Facilities.
- c. Water provided for storage by Metropolitan hereunder (“**Program Water**”) will be untreated water, as defined in Section 4104 of Metropolitan’s Administrative Code. Water stored by spreading or injection in the Chino Basin must meet the applicable water quality requirements as required by the Watermaster and any other regulatory agency with jurisdiction over the Chino Basin.
- d. Metropolitan will fund the construction of the Facilities in accordance with this Agreement.

2. Operational Capacity Thresholds

The Program “**Operational Capacity Thresholds**” are:

- a. *Storage.* Water can be stored in the following ways: (1) spreading, (2) injection, (3) in-lieu deliveries (pursuant to the administration procedures described in Exhibit F) and transfer from existing Metropolitan storage accounts consistent with the Chino Basin

Judgment. Metropolitan can store water in the Chino Basin at a rate of 25,000 AF per year, unless a greater amount is approved by the Watermaster.

- b. *Extraction.* At a minimum, the Facilities, when combined with the existing groundwater production capacity of the Operating Parties as defined in Exhibit H, if necessary, shall be designed to have the capacity to extract water from the Chino Basin at a rate of 33,000 AF per year. Prior to the completion of all Facilities, the minimum extraction capacity shall be a pro rata portion of the extraction capacity based on the Facilities then completed.

3. Submission of Plans, Schedule and Budget

On or before September 1, 2004, IEUA shall deliver to Metropolitan the engineering and construction plans and specifications (the “Plans”), a construction schedule (the “Schedule”) and a construction budget (the “Budget”) for the Facilities . At a minimum:

- a. The Plans shall describe in reasonable detail the construction and design of the Facilities, and shall conform to any requirements of DWR;
- b. The Schedule shall state the date of construction commencement, the anticipated completion date (which shall occur no later than March 8, 2008,), key milestone dates in the interim (each a “Milestone Date”) including timing of discrete program elements (“Discrete Program Elements”) and major tasks (“Tasks”) within them; and
- c. The Budget shall contain an itemized summary of Program costs including costs of the contractors, consultants, and other service providers, and all materials anticipated to be purchased in connection with the Program. For the purpose of Metropolitan’s payment of invoices from Program Funds (“Invoice”) pursuant to Section V(D), the Budget shall be divided into phases corresponding to the Milestone Dates, Discrete Program Elements and Tasks set forth in the Schedule.

4. Review and Approval of Schedule and Budget

- a. Metropolitan shall review and approve or disapprove, by written notice to IEUA, the Schedule and Budget for the Facilities within ten (10) business days after Metropolitan’s receipt thereof (once so approved, the “Approved Budget” and the “Approved Schedule”). If Metropolitan has not acted on the schedule or budget within ten (10)

business days after Metropolitan's receipt, the schedule or budget shall be deemed approved.

- b. For all Facilities funded in whole or part with Prop. 13 funds, all Metropolitan approvals shall be conditional upon DWR approvals. IEUA acknowledges and agrees that Metropolitan intends to submit the Schedule and Budget to the DWR for its review and approval, and Metropolitan shall disapprove the Schedule and/or Budget upon DWR's disapproval of the Schedule and/or Budget.
- c. If Metropolitan (or DWR, if applicable) disapproves of the Schedule and/or Budget, Metropolitan shall specify the reasons for the disapproval in its disapproval notice to IEUA. Metropolitan shall thereafter promptly meet with IEUA to correct any deficiencies to the Schedule and/or Budget such that the Schedule and Budget are reasonably acceptable to Metropolitan, DWR (if applicable) and IEUA.
- d. Notwithstanding any requirements of DWR as noted in clause (b) above, or any other terms or conditions set forth herein, neither DWR nor Metropolitan shall have any responsibility for reviewing or approving the Plans, and IEUA assumes all responsibility for the proper design, planning, and specifications of the Facilities.
- e. IEUA, may, as warranted, update the Approved Schedule and Approved Budget for the Facilities to reflect changes as necessary. However, under no condition may the Completion Date exceed March 8, 2008, or the total budget exceed the specified amount allocated as Program Funds unless such overages shall be the responsibility of IEUA. Review and approval of the proposed update shall follow the above procedure.

B. Construction

1. Contracting

IEUA shall retain, or cause to be retained through agreements with the Operating Parties, qualified contractor(s) and consultants to design and construct the Facilities. All contracts let for project construction shall be let by competitive bid procedures that assure award of the contract to the lowest responsible bidder, except as may be otherwise authorized under the enabling authority for IEUA and/or the California Public Contract Code.

2. Construction Supervision and Responsibility

- a. *Diligent Prosecution of Facility Construction.* IEUA agrees to faithfully and diligently complete, or cause to be completed, the construction of the Facilities in accordance with the Plans, Approved Budget and Approved Schedule.
- b. *Supervision.* As among Metropolitan, IEUA, TVMWD, and the Watermaster, IEUA shall be responsible for all work in connection with the construction of the Facilities and for persons engaged in the performance of such work.
- c. *Compliance with Laws.* IEUA shall ensure that all construction in connection with the Program complies with any applicable federal, state and local laws, rules and regulations, including, without limitation, environmental, procurement and safety laws, rules, regulations and ordinance.
- d. *Contracting Disputes.* IEUA shall be responsible for any and all disputes arising out of its contracts for work on the Program, including, without limitation, any bid disputes and payment disputes with contractors or subcontractors. Metropolitan will not mediate disputes between IEUA, TVMWD, their Operating Parties and any other entity in connection herewith.

3. Inspection Right

During reasonable business hours, Metropolitan and/or the DWR, with respect to Facilities funded with Prop. 13 Funds (and any of their designated representatives or agents), may enter upon the Program site and inspect the on-going and/or completed construction activities. Metropolitan agrees to exercise commercially reasonable efforts to deliver advance written notice to IEUA of any such visit to the Program site (it being acknowledged, however, by IEUA that the DWR may inspect the Program site at any and all reasonable times without prior notice pursuant to the terms of the DWR Funding Letter).

4. Completion of Construction

- a. *Completion Date.* IEUA shall assure that Completion of the Facilities occurs not later than March 8, 2008. "**Completion**" means (x) performance of the construction in a good and workmanlike manner, free and clear of mechanics', materialmens' and other liens or security interests, claims or encumbrances relating to such construction, subject only to completion of punch list items which do not materially interfere with the use or

functionality of the Facilities, and (y) the payment of all costs to the persons entitled thereto less retainage or reserves for punch list items.

- b. *Completion Notification and Certification.* IEUA shall notify Metropolitan within ten business days after Completion of Facilities by each Operating Party. Such notification shall include a certification from the IEUA, the general contractor (if applicable) and a California Registered Civil Engineer affirming Completion and that the Facilities: (i) are as described in Exhibit H; (ii) have been constructed substantially in accordance with the Plans; (iii) have been adequately tested and meet the Operational Capacity Thresholds; and (iv) are otherwise sufficient to achieve the goals of the Program (as stated in Exhibit H).

5. Ownership of Project

Metropolitan will have no ownership interest in the Facilities. The Operating Parties shall have sole ownership and control of the Facilities, and the real property interests in connection therewith, subject to the rights and obligations of the Parties under this Agreement.

V. PROJECT CONSTRUCTION FUNDING (NOT INCLUDING OPERATION AND MAINTENANCE/ENERGY COST FUNDING)

A. Metropolitan Funding Obligation

1. After the Funding Obligation Date, subject to and in accordance with the terms and conditions of Section V(C) below, Metropolitan hereby agrees to fund the payment of eligible costs for constructing the Facilities in accordance with the Approved Budget (the "**Program Construction Costs**") in an amount not to exceed \$27.5 million, inclusive of design and construction of Facilities and the costs to comply with CEQA. Of these Program Construction Costs, \$9 million is being funded by Prop 13 Funds.

B. Cost Overruns

1. IEUA agrees to pay, and Metropolitan shall have no liability for, any costs of constructing the Facilities in excess of the amounts set forth in the applicable Approved Budget (on line-item and aggregate bases); provided, however, that upon written request from IEUA, Metropolitan shall approve, conditional upon DWR approval, reallocation of any demonstrated costs savings from one line-item of the Approved Budget to

another line item in order to cover any cost overruns for the \$9 million funded by Prop. 13 Funds for specific Program facilities.

2. Should bids for construction of the Program Facilities exceed the Approved Budget by more than 5%, IEUA may review such cost increase with Metropolitan to determine the appropriate way to proceed with the Program. Metropolitan and IEUA may mutually agree to a cost share, a change in scope of the Program, or to discontinue the Program.
3. IEUA agrees to reimburse Metropolitan for any of its costs intended to be reimbursed with Prop. 13 Funds that are disapproved by DWR, within thirty (30) days of receipt of invoice from Metropolitan for such reimbursement. IEUA agrees to pay interest computed at an annual rate equal to that earned by Surplus Money Investment Fund (SMIF) rate as provided for in Government Code Sections 16480 *et seq.*, calculated monthly, on any outstanding amounts so invoiced by Metropolitan, beginning thirty days after the date such invoice is received until paid.*

C. Disbursement Protocol

1. Invoice Payment.

Commencing on the Funding Obligation Date, and continuing not more often than monthly thereafter, IEUA may submit for Metropolitan's consideration and payment from the Program Funds an Invoice for costs incurred. Each Invoice shall set forth in reasonable detail those Program Construction Costs that have been incurred since submittal of the prior Invoice and shall reference Discrete Program Elements and Tasks as outlined in the Approved Budget and Schedule. Each Invoice shall be accompanied by a Progress Report pursuant to Section X (B)(1). Work accomplished on each Discrete Program Element shall be briefly described, and the percent complete shall be presented with the percent and actual amounts expended to date on each Discrete Program Element. Metropolitan shall review and approve or disapprove (in part or whole) the Invoice and provide payment of Program Funds to IEUA for all approved portions of the Invoice within 30 days of receipt. If Metropolitan disapproves any portion of an Invoice, it shall state its reasons for such disapproval in writing and cooperate in good faith with IEUA, to promptly achieve a mutually acceptable revision to the disallowed portion of the Invoice. Metropolitan agrees to pay interest at the rate and in the manner specified in Section V(B)(2) on approved portions of invoices paid more than thirty (30) days after receipt of such invoice by Metropolitan.

2. Certification of Expenditures

With each Invoice submitted for Program Construction Costs, IEUA shall also provide its written certification and a written certification from the general contractor, if any, affirming that invoiced amounts were utilized exclusively for construction of the Facilities in accordance with the Plans and Approved Budget. Such certification shall be accompanied by evidence of payment for services and/or materials delivered in connection with the construction of the Facilities.

3. Disbursement of Program Funds

Upon Metropolitan's payment of Program Funds pursuant to an Invoice, Metropolitan shall have fulfilled its obligation with respect to such payment, and shall have no obligations to ensure disbursement to the appropriate Party(ies) entitled thereto.

VI. OPERATING COMMITTEE

A. Operating Committee

1. Composition of Committee.

A committee (the "Operating Committee") shall be established for the specific purposes specified herein. The Operating Committee shall have five members, two representatives from Metropolitan and three representatives chosen by IEUA, TVMWD, and Watermaster in any manner determined by IEUA, TVMWD, and Watermaster. The local agencies listed in Exhibit H may also attend meetings of the Operating Committee. With respect to any matter on which the Operating Committee cannot reach unanimous agreement, the Operating Committee shall submit such matter for determination by a consultant and/or arbitration panel in accordance with Section XIII(A).

2. Meeting of Operating Committee

The Operating Committee shall meet:

- a. as reasonably often as necessary to implement operations and take other needed action pursuant to this Agreement. Such tasks will include preparation of Operating Committee's certification to Watermaster regarding monthly storage achieved utilizing methodology specified in Exhibit F (Accounting Methodology).
- b. within thirty days after the execution of this Agreement; and thereafter at least sixty days prior to the end of each fiscal year

(which fiscal year shall run from July 1 through June 30) to develop Program Annual Operating Plan for the subsequent year and to review need for adjustments to Electrical Costs and Operation and Maintenance Costs; and

- c. by August 31 of each year review prior fiscal year performance for storage and/or extraction in conformance with the Annual Operating Plan and Exhibit G, Performance Criteria; and for assessment of per-acre-foot Electrical Costs and Operation and Maintenance Costs to be paid by Metropolitan.

3. Annual Operating Plan

- a. The Annual Operating Plan shall provide an estimated schedule and location for all storage and extraction under this Agreement and in conformance with Exhibit G (Performance Criteria) on a monthly basis for the upcoming fiscal year and documentation of adequate available capacity with respect to the Program Facilities capacity to accommodate Metropolitan's rights pursuant to Section VII hereof. Initial operation of the Metropolitan Storage Account prior to completion of Facilities funded under this Agreement shall be accomplished under the Annual Operating Plan. Until all Facilities are completed, partial performance shall be pro rata according to the proportion of Facilities listed in Exhibit H which are then complete.
- b. The Annual Operating Plan shall provide sufficient information to allow the Operating Committee and Watermaster to assess potential impacts from the Program on the Chino Basin and the Judgment Parties, such as : (1) current and projected water levels in the basin; and (2) short-term and long-term projections of Chino Basin water supply and water quality. The Operating Committee and the Watermaster may request additional information from the Operating Parties.
- c. Consistent with Section VIII(A) below, the Annual Operating Plan shall not limit Metropolitan's ability to modify its call for extraction or storage of water upon fifteen (15) days advance notice as provided in Sections VII(A) and VII(C). Watermaster reserves the right to approve the location and amount of storage and extraction pursuant to this Agreement, in accordance with the Judgment, OBMP and its policies applicable to the Judgment Parties.
- d. Storage and extraction operations under this Agreement shall be in accordance with the provisions of the Annual Operating Plan as

adopted or as amended to accommodate changed circumstances or new information. The Annual Operating Plan may be amended: (1) at the request of a member of the Operating Committee and with the concurrence of the Operating Committee and approval of the Watermaster (2) as a requirement of the Watermaster in the implementation of the Judgment and OBMP with specific adjustments proposed by consensus of the Operating Committee and approved by the Watermaster.

4. Specific Duties

Without limiting the foregoing, the Operating Committee shall:

- a. Properly account for the amounts of all water stored and extracted and submit a report of these amounts achieved for the Metropolitan Storage Account to Watermaster and Metropolitan on a monthly basis but not more than two months in arrears. At the end of the fiscal year, an annual reconciliation shall be performed of storage and extraction, and any adjustments to the monthly submittals shall be submitted to the Watermaster and to Metropolitan in a timely manner for consideration in the preparation of the Watermaster's annual assessment package.
- b. Within two months following formal issuance of Watermaster's annual report, perform an annual reconciliation of Metropolitan and IEUA's and TVMWD's records with Watermaster's annual report and Metropolitan's water billing inclusive of credits for the Operation and Maintenance Costs and Electrical Costs, and prepare any needed paperwork for adjustments to the billing.
- c. Consistent with Section VIII(A) below, confirm that sufficient excess operable production capacity was maintained for the conjunctive use Program during the prior year, unless different criteria are agreed upon by the Operating Committee.
- d. Prepare and deliver to the Parties, on or before September 1 of each year, a written annual report outlining the Program Annual Operating Plan for the subsequent year, and the Operating Committee's actions during the prior year (the "**Operating Committee Annual Report**").
- e. Every five years, commencing upon the Completion Date, the Operating Committee shall review the maintenance charge set forth in Section VI(D)(1) of this Agreement. To such end, the Operating Committee shall conduct a survey of operation and maintenance costs with respect to facilities within the Program

Basin and which are comparable to the Facilities. Based on such survey and other information the Operating Committee deems relevant, the Operating Committee shall approve a new Operation and Maintenance Cost for the next five-year period.

- f. Every year commencing upon Completion Date, determine the electrical power unit rates(s) (dollars per AF of Stored Water Deliveries) for the respective Operating Party(ies) to extract water. The electrical power cost to extract Program Water (the "Electrical Costs") shall be equal to Stored Water Deliveries (as defined in Section VII(C) below) for the applicable period multiplied by the applicable electrical power unit rate(s) for the Operating Party(ies) that extracted the water. The Operating Committee shall ensure that the electrical power unit rate per acre-foot of extracted water calculated for each Operating Party is reflective of actual energy costs.

B. IEUA and TVMWD Obligations

Subject to Section VI(C), IEUA and TVMWD hereby agree to do, or to cause through agreements with the Operating Parties in their respective service areas, the following:

1. Cause the Facilities to be operated and maintained in as good and efficient condition as upon their construction, ordinary and reasonable wear and depreciation excepted, and otherwise in accordance with industry standards (and DWR standards and requirements, if any);
2. Provide for all repairs, renewals, and replacements necessary to the efficient operation of the Facilities;
3. To the extent existing facilities are utilized for the Program, provide for all repairs, renewals, and replacements necessary to the efficient operation of such existing facilities;
4. Certify the amount of water in the Metropolitan Storage Account pursuant to the Operating Committee accounting; and
5. Upon call by Metropolitan for Stored Water Delivery, operate Facilities, combined with the existing infrastructure, at Operational Capacity Thresholds necessary to meet performance targets as outlined in Exhibit G.

C. Watermaster Obligations

Watermaster hereby agrees to:

1. Maintain records of the amounts of all water stored in and extracted from the Chino Basin pursuant to this Agreement and consistent with the Judgment and Rules and Regulations, and provide to Metropolitan an amount specified in an account to be designated as the **Metropolitan Storage Account**. Watermaster will maintain a monthly statement regarding the account as information becomes available and will document in its annual report all water stored in and withdrawn from the Metropolitan Storage Account. Watermaster shall account for Metropolitan stored water as follows:
 - a. The amount of any water stored in the Chino Basin on behalf of Metropolitan prior to the Effective Date of this Agreement shall be credited to the Metropolitan Storage Account on the Effective Date pursuant to the procedure set forth in Exhibit E.
 - b. Watermaster shall credit water which Metropolitan delivers for storage to the Metropolitan Storage Account on an acre-foot for acre-foot basis, less any losses assessed.
 - c. Losses assessed by Watermaster against the Metropolitan Storage Account will be equivalent to losses assessed Judgment parties for participation in the Storage and Recovery Program.
 - d. Watermaster shall debit the Metropolitan Storage Account one acre-foot for each acre-foot of water produced from the account. Watermaster accounting for water produced from the Metropolitan Storage Account shall specify quantities produced by each Operating Party.
 - e. Watermaster shall obtain from Operating Committee on a monthly basis its report of the amount of storage achieved using the methodology specified in Section VII(B) and Exhibit F of this Agreement.
2. Report the total active and inactive annual extraction capacity of the Operating Parties in the Watermaster's annual report.

D. Metropolitan Obligations

In accordance with the procedures set forth in clause (E) below, Metropolitan hereby agrees to:

1. Pay costs of operating and maintaining the Facilities at the unit rate (dollars per AF of Stored Water Deliveries) determined by the Operating Committee for the Operating Party(ies) that extracted water as adjusted when and as required by Section VI(A)(4)(e) (the "**Operation and**

Maintenance Costs”). Operation and Maintenance Costs will include a dollar per AF amount for each AF produced by an Operating Party from Metropolitan’s Storage Account through the funded ion exchange facilities equal to the Operating Party’s variable costs of treating Metropolitan’s State Water Project surface deliveries (expressed as dollar per AF of treating such water). Such variable costs shall exclude capital, debt service, or replacement costs and include only variable operating and maintenance costs at the Water Facilities Authority Treatment Plant, CCWD Lloyd Michael Filtration Plant, or the Miramar Treatment Plant. The dollar per AF cost shall be calculated by dividing the variable costs by the quantity of water produced by the treatment plants. The dollar per acre-foot shall be determined by the Operating Committee pursuant to Section VI(A)(4)(e);

2. Pay the Electrical Costs as determined in Section VI(A)(4)(f) to extract water from the basin, if any, equal to **Stored Water Deliveries** (as defined in Section VII(C) below) for the applicable period for the Operating Party(ies) that extracted the water; and
3. From and after the first full year in which water is stored in the Program Basin on Metropolitan’s behalf, and on or prior to July 1 of each subsequent year, pay an administrative fee in an annual amount of \$132,000 to the Watermaster (as such amount is adjusted on each anniversary of the execution of this Agreement by the lesser of 2.5% or the Retail Consumer Price Index for the City of Los Angeles published by the Engineering News Record), for the incremental costs and expenses of administering the Program during such year. Such administrative fee is subject to adjustment from time to time as approved by the Operating Committee.

E. Payment of Operation and Maintenance Costs and Electrical Costs

1. Amounts owing by Metropolitan pursuant to Section VI(D) for Operation and Maintenance Costs and Electrical Costs shall be paid through a credit to Metropolitan’s monthly invoice for the Stored Water Delivery to TVMWD or IEUA, as applicable, pursuant to Section VII(D). Upon the credit to Metropolitan’s invoice for the Operation and Maintenance Costs and Electrical Costs, Metropolitan will have satisfied its funding obligations with respect thereto.

F. Annual Reconciliation

1. Reconciliation of Metropolitan Storage Account and Costs.

As noted in Section VI(A)(4)(a) above, the Operating Committee will conduct an annual reconciliation of the prior year’s credits and debits to

the Metropolitan Storage Account. If such reconciliation reveals that the actual amount of water delivered by Metropolitan for storage pursuant to Section VII(A)(1), or the actual amount of Stored Water Deliveries, as defined in Section VII(C) below, during the prior year were not accurately accounted for, then the Operating Committee shall reflect this in its year-end assessment of storage and extraction provided to the Watermaster. The Watermaster shall determine the manner in which any credits or debits to the Metropolitan Storage Account shall be made.

The Operating Committee shall complete its reporting and processing of any prior year adjustments to the Metropolitan water invoice within two months of the formal issuance of the Watermaster's annual report, as provided in Section VI(A)(4)(b).

VII. GROUNDWATER STORAGE AND EXTRACTION

A. Metropolitan's Storage Account Rights

1. During any fiscal year of the term of this Agreement, Metropolitan may deliver up to 25,000 AF of Program Water for storage in the Program Basin with an equivalent amount to be accounted for in the Metropolitan Storage Account pursuant hereto; provided, however, that total Program Water stored on behalf of Metropolitan in the Program Basin, pursuant to this Agreement, shall never exceed the Maximum Storage Amount unless approved by the Watermaster. Deliveries shall be subject to the prior approval of the Watermaster pursuant to the policies described in subsection 5 below. Metropolitan shall not be obligated to pay any fees associated with basin utilization.
2. Metropolitan may make such deliveries to IEUA or TVMWD on fifteen (15) days advance notice to such Party and Watermaster. Watermaster will credit the Metropolitan Storage Account by the amount of Program Water delivered to IEUA or TVMWD.
3. Upon notification by Metropolitan pursuant to Section VII(A)(2), IEUA or TVMWD and Watermaster may either: (a) directly store the amount of any such delivery of Program Water in the Chino Basin (e.g., by injection or spreading); or (b) store the amount of any such delivery of Program Water in the Chino Basin by in lieu storage, i.e., by reducing pumping from the Chino Basin by the amount of such delivery.
4. The quantity of Program Water delivered to the Metropolitan Storage Account in any given month shall be determined in accordance with the accounting methodology set forth in Exhibit F.

5. The Watermaster's Storage and Recovery Policies shall be applied to Program Water stored under this Agreement in a non-discriminatory manner consistent with the application of such policies to any other participant in the Storage and Recovery Program, including all parties to the Judgment. Furthermore, the Watermaster shall not impose any policies upon the Program Water, whether or not imposed on other parties, that would materially alter the benefits provided to or the obligations imposed upon Metropolitan under this Agreement. Without limiting the foregoing, the Watermaster shall not impose any policies that would create any significant discrepancies between the amount of Program Water delivered by Metropolitan for storage in the Program Basin and the amount of Program Water that Metropolitan is entitled to extract from such basin pursuant to this Agreement.

B. Certification of Deliveries to Metropolitan Water Account

1. Metropolitan shall deliver available Program Water to IEUA or TVMWD at the appropriate service connection for storage in the Metropolitan Storage Account consistent with the Annual Operating Plan. In any month where imported water is delivered to the Chino Basin through a Metropolitan service connection, the Party receiving Program Water shall certify the facts concerning the quantities of such deliveries to Metropolitan and Watermaster in writing or electronically in a format satisfactory to Metropolitan by a responsible officer of such Party.
2. Metropolitan will credit the appropriate IEUA or TVMWD invoice at the applicable rate for each acre-foot of water certified by such Party for that service connection.
3. Certifications of Program Water for a given billing period must be received by Metropolitan before 3:30 p.m. on the third working day after the end of the month to receive credit on the bill for that billing period or any preceding billing period.
4. No certification received after six months following the end of any month in which a credit for Program Water is claimed will be accepted.

C. Extraction of Stored Water

1. In lieu of providing all or some of its regular surface water deliveries to IEUA or TVMWD, Metropolitan may, on fifteen (15) days advance notice, deliver water to such Party on the first of the following month by requesting such Party to debit the Metropolitan Water Account (each such delivery being a "Stored Water Delivery"); provided, however, that unless permitted by Watermaster, such Stored Water Deliveries shall not, in any fiscal year exceed the lesser of (a) 33% of the Maximum Storage

Amount or (b) the amount then remaining in the Metropolitan Storage Account. Metropolitan's regular surface water deliveries to IEUA and TVMWD will be reduced by the amount of such Stored Water Delivery. During an emergency or unforeseen operational condition, IEUA and TVMWD will use their best efforts in responding to Metropolitan's request for a Stored Water Delivery.

2. IEUA and TVMWD, as applicable, shall pump the amount of the Stored Water Delivery from the Chino Basin in lieu of receiving its regular surface water deliveries in accordance with specific direction from the Watermaster.
3. IEUA and TVMWD shall have twelve months to comply with Metropolitan's extraction request in accordance with the performance criteria described in Exhibit "G" to this Agreement.

D. Payment for Extraction of Stored Water

Upon call by Metropolitan for Stored Water Delivery, Metropolitan shall invoice IEUA or TVMWD for the amount reported as extracted by the Operating Committee pursuant to Section VI(A)(4)(a), and such Party shall pay to Metropolitan the then applicable full-service rate (or its equivalent, as determined by Metropolitan in its reasonable discretion) as if such Stored Water Deliveries were surface water deliveries through its service connection. The invoice from Metropolitan shall include credits for the Operation and Maintenance Costs and the Electrical Costs associated with the Stored Water Delivery. Where prior storage accounts are credited to the Metropolitan Water Account pursuant to Section VI(C)(1)(a), this water shall constitute the Stored Water Delivery prior to any water credited to the Metropolitan Water Account after the Effective Date, and shall be paid for at the appropriate rate indicated in Exhibit E.

VIII. OTHER USES OF FACILITIES

A. Allowed Use

IEUA and TVMWD may use Program Facilities for purposes unrelated to the Program so long as such use does not interfere with the Program and the excess operable production capacity is maintained as necessary for performance under this Program, unless monthly operable production capacity on other than a monthly basis is agreed to by the Operating Committee.

- B. IEUA and Watermaster shall certify to the Operating Committee that there will exist at all times excess operable production capacity in the Chino Basin of at least an annual extraction of 33,000AF or 33% of Maximum Storage Amount for performance under this conjunctive use Program.

IX. REPRESENTATIONS, WARRANTIES AND AFFIRMATIVE COVENANTS OF PARTIES

A. Of IEUA and TVMWD

IEUA and TVMWD respectively represent, warrant and covenant as follows:

1. Power and Authority

That it is a municipal water district, duly organized and validly existing under the laws of the State of California; that it has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement, and that the execution and delivery hereof by it and the performance of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which it is a party or by which it is bound.

2. Authorization; Valid Obligation

That all proceedings required to be taken by or on behalf of such Party to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken, and that this Agreement is its valid and binding obligation enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

3. No Litigation

To the best of its knowledge, there is no litigation, proceeding or investigation pending or threatened, to which it is or would be a party, or which does or would bind or relate to the Program Basin, directly or indirectly, which, individually or in the aggregate, if adversely determined, might materially and adversely affect its ability to perform its obligations under this Agreement, or which raises a question as to the validity of this Agreement, or any action to be taken hereunder.

4. Compliance with Laws

In the performance of its obligations hereunder, such Party and its contractors and subcontractors will comply with all applicable laws, regulations and ordinances, including, without limitation:

- a. the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.);
- b. Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by the DWR relating thereto;
- c. the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103;
- d. Section 3700 of the California Labor Code, requiring every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and such Party affirms that it will comply with such provisions before commencing the construction of the Facilities and will exercise best efforts to make the its contractors and subcontractors aware of this provision;
- e. the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace; and
- f. the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant thereto.

Such party and its contractors and subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Such Party and its contractors will include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts let for the construction of the Facilities.

5. Compliance with DWR Requirements

The Plans comply with any DWR requirements, including any requirements set forth in the DWR Funding Letter. During the performance of its obligations herein, such Party will comply with any DWR requirements, including any requirements set forth in the DWR Funding Letter.

6. No Construction

That construction of the Facilities and related work (including planning activities) did not commence prior to the Effective Date.

7. Capacity

Such Party and its contractors, subcontractors and their respective agents will at all times act in an independent capacity and not purport to act as, or represent to others that they are, officers, employees, representatives or agents of Metropolitan, DWR or the State of California.

8. Oversight and Supervision of Construction

Such Party will oversee and supervise all contractors and keep control of all work and provisions of services and materials in connection with the Program.

9. Maintain Ownership of Program Property

Such Party will not sell, abandon, lease, transfer, exchange, mortgage, hypothecate or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Program.

10. Protection of Others' Rights

Such Party will fully protect and preserve the rights of overlying landowners, other groundwater users or water rights holders, parties whose approval is required by any judgment in an adjudicated basin, and all groundwater management agencies or other applicable regulatory agencies, and will take the necessary actions (including groundwater monitoring and mitigation and/or limiting extraction of groundwater) to protect such rights.

B. Of Watermaster

Watermaster and its contractors, subcontractors and their respective agents will at all times act in an independent capacity and not purport to act as, or represent to others that they are, officers, employees, representatives or agents of Metropolitan, DWR or the State of California. Watermaster represents, warrants and covenants as follows:

1. Power and Authority

That Watermaster is a court-appointed entity created through the Judgement, duly organized and validly existing under the laws of the State

of California; that it has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement, and that the execution and delivery hereof by Watermaster and the performance by Watermaster of Watermaster's obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which Watermaster is a party or by which Watermaster is bound.

2. Authorization; Valid Obligation

That all proceedings required to be taken by or on behalf of Watermaster to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken, and that this Agreement is a valid and binding obligation of Watermaster enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

3. No Litigation

To the best of Watermaster's knowledge, there is no litigation, proceeding or investigation pending or threatened, to which Watermaster is or would be a party, or which does or would bind or relate to the Chino Basin, directly or indirectly, which, individually or in the aggregate, if adversely determined, might materially and adversely affect the ability of Watermaster to perform its obligations under this Agreement, or which raises a question as to the validity of this Agreement, or any action to be taken hereunder.

4. Compliance with Laws

In the performance of its obligations hereunder, Watermaster will comply with all applicable laws, regulations and ordinances, including, without limitation:

- a. the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.);
- b. Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by the DWR relating thereto;

- c. the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103;
- d. Section 3700 of the California Labor Code, requiring every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and Watermaster affirms that it will comply with such provisions before commencing the construction of the Facilities and will exercise best efforts to make the its contractors and subcontractors aware of this provision;
- e. the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace; and
- f. the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant thereto.

Watermaster will give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement.

5. Compliance with DWR Funding Letter

During the performance of its obligations herein, Watermaster will comply with the terms and provisions of the DWR Funding Letter (Exhibit A), as applicable.

6. Capacity

Watermaster and its contractors, subcontractors and their respective agents will at all times act in an independent capacity and not purport to act as, or represent to others that they are, officers, employees, representatives or agents of Metropolitan, DWR or the State of California.

C. Of Metropolitan

Metropolitan represents, warrants and covenants as follows:

1. Power and Authority

That Metropolitan is a public agency and quasi-municipal corporation, duly organized and validly existing under the laws of the State of California; that it has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth

in this Agreement, and that the execution and delivery hereof by Metropolitan and the performance by Metropolitan of Metropolitan's obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which Metropolitan is a party or by which Metropolitan is bound.

2. Authorization; Valid Obligation

That all proceedings required to be taken by or on behalf of Metropolitan to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken, and that this Agreement is a valid and binding obligation of Metropolitan enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

3. No Litigation

To the best of Metropolitan's knowledge, there is no litigation, proceeding or investigation pending or threatened, to which Metropolitan is or would be a party, directly or indirectly, which, individually or in the aggregate, if adversely determined, might materially and adversely affect the ability of Metropolitan to perform its obligations under this Agreement, or which raises a question as to the validity of this Agreement, or any action to be taken hereunder.

X. RECORD KEEPING, REPORTING, INSPECTION AND AUDIT

A. Record Keeping

1. IEUA shall maintain audit and accounting procedures and written accounts with respect to the Program that are in accordance with generally accepted accounting principles and practices, consistently applied. IEUA shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of Program Funds.
2. IEUA and its respective contractors and subcontractors shall maintain copies of all contracts, agreements, and other documents relating to the Program for a minimum of three years following Program completion.
3. IEUA and TVMWD shall keep on file, for the useful life of the Facilities, as-built plans and the specifications of the Facilities. Such documents shall be made available for inspection by the State, Metropolitan, and upon reasonable notice.

4. IEUA shall require its contractors and subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices, consistently applied.

B. Reporting

1. Construction Progress Reports

During construction of the Facilities, a monthly progress report shall accompany each Invoice submitted by IEUA to Metropolitan (each a "**Progress Report**"), certified by a designated official of such Party, providing in reasonable detail, a description of (a) the work accomplished during the invoice period and the percent complete on each Discrete Program Element (b) and the amount of Program Construction Funds expended on each Discrete Program Element and Tasks, the purposes of those expenditures, the total amount expended and remaining of the budget for that Discrete Program Element. In the absence of a monthly Invoice, IEUA shall deliver the Progress Report detailing progress and expenditures for the month, and reporting on status of construction activities within 30-days after the month.

2. O&M Reports

Commencing on the first day of the month which is ninety days following the Completion Date, and unless otherwise determined by the Operating Committee, on a semi-annual basis thereafter throughout the term of this Agreement, IEUA and TVMWD shall deliver to Metropolitan and the Operating Committee a report (an "**O&M Report**") summarizing the operational and maintenance activities conducted in connection with the Program during the prior period.

C. Inspection

Metropolitan and the DWR may inspect the aforementioned books, records and any other Program-related information at any time, upon reasonable advance notice to IEUA or TVMWD, as applicable.

D. Audit Rights and Obligations

1. Pursuant to California Government Code Section 8546.7, IEUA and its contractors and subcontractors shall be subject to the examination and audit by the State Auditor for a period of three years after Program completion. IEUA agrees that, IEUA and its contractors and subcontractors shall be subject to examination and audit by Metropolitan and DWR for such period.

2. Within thirty days after the Completion of a Program Facility, IEUA shall, at its expense, cause an audit of all Program Construction Costs and expenses with respect to such Facility to be conducted by an independent certified public accountant and deliver to Metropolitan a report prepared by such accountant in connection therewith.

XI. INDEMNITY

A. General Indemnity

Each Party hereto shall indemnify, defend and hold harmless the other Party and its elected officials, officers and employees from and against any and all lawsuits, actions, causes of action, claims and damages and any and all court costs and attorneys' fees related thereto ("**Claims**"), in any way arising out of or connected with the performance or nonperformance of the indemnifying Party's duties or the discharge of or failure to discharge that Party's obligations hereunder to the maximum extent permitted by law.

B. IEUA Specific Indemnity

Without limiting the foregoing indemnity, IEUA hereby agrees to indemnify, defend and hold harmless TVMWD, Metropolitan and Watermaster, their elected officials, officers and employees from and against any and all Claims, in any way arising out of or connected with the Program, including any Claims by DWR or any other branch, agency or department of the State of California in connection with the Program (except for a breach of the DWR Funding Letter attributable to Metropolitan) or breach of its obligations hereunder, or otherwise to the extent of such Party's responsibility hereunder or to the extent that such Party caused or exacerbated such or other Claim(s).

C. TVMWD Specific Indemnity

Without limiting the foregoing indemnity, TVMWD hereby agrees to indemnify, defend and hold harmless IEUA, Metropolitan and Watermaster, their elected officials, officers and employees from and against any and all Claims, in any way arising out of or connected with the Program, including any Claims by DWR or any other branch, agency or department of the State of California in connection with the Program (except for a breach of the DWR Funding Letter attributable to Metropolitan) or breach of its obligations hereunder, or otherwise to the extent of such Party's responsibility hereunder or to the extent that such Party caused or exacerbated such or other Claim(s).

D. Watermaster Specific Indemnity

Without limiting the indemnity in clause(A) above, Watermaster hereby agrees to indemnify, defend and hold harmless Metropolitan and IEUA and TVMWD, and

their elected officials, officers and employees from and against any and all Claims, in any way arising out of or connected with the Program, including any Claims by DWR or any other branch, agency or department of the State of California in connection with the Program (except for a breach of the DWR Funding Letter attributable to Metropolitan or IEUA's and TVMWD's breach of its obligations hereunder), or otherwise to the extent of Watermaster's responsibility hereunder or to the extent that it caused or exacerbated such Claim(s).

E. Metropolitan Specific Indemnity

Without limiting the indemnity in clause (A) above, Metropolitan hereby agrees to indemnify, defend and hold harmless IEUA and TVMWD and Watermaster, their elected officials, officers and employees from and against any and all Claims arising out of or connected with a failure under or breach of the DWR Funding Letter by Metropolitan, or otherwise to the extent of Metropolitan's responsibility hereunder or to the extent that it caused or exacerbated such or other Claim(s).

XII. INSURANCE

A. General Required Coverages

IEUA and TVMWD through agreement with their respective Operating Parties shall procure, pay for and keep in full force and effect, at all times during the term of this Agreement the following insurance (to the extent not already maintained by IEUA and TVMWD or their respective Operating Parties):

1. Commercial general liability insurance insuring IEUA and TVMWD against liability for personal injury, bodily injury, death and damage to property (including the Facilities) arising from IEUA's and TVMWD's performance under this Agreement. Said insurance shall include coverage in an amount equal to at least Five Million Dollars (\$5,000,000), and shall contain "blanket contractual liability" and "broad form property damage" endorsements insuring IEUA's and TVMWD's performance of its obligations to indemnify Metropolitan as set forth herein (the "**CGL Insurance**"); and
2. Pursuant to Section 3700 of the California Labor Code, workers' compensation insurance with employer's liability in the amounts required by any applicable laws (the "**Workers' Compensation Insurance**").
3. IEUA and TVMWD will provide proof of automobile liability insurance as required by the State of California Department of Motor Vehicles.

B. Specific Policy Requirements

Each policy of insurance required to be carried pursuant to this Agreement: (1) shall, except with respect to Worker's Compensation Insurance, name Metropolitan as an additional insured; (2) shall be in a form reasonably satisfactory to Metropolitan; (3) shall be carried with companies reasonably acceptable to Metropolitan; (4) shall provide that such policy shall not be subject to cancellation, lapse or change except after at least thirty (30) days prior written notice to Metropolitan, and (5) shall, except with respect to the Environmental Liability Insurance required under clause (D) below, be on an "occurrence" basis and not on a "claims-made" basis.

C. Deductibles/Self-Insurance.

The insurance required by this Section XII may contain deductibles or self-insured retentions. IEUA and TVMWD through agreement with their respective Operating Parties shall be solely responsible for any such deductibles and/or self-insured retentions applicable to the coverages specified in Section XII(A). Metropolitan, at its option, may require IEUA and TVMWD to secure a surety bond or an irrevocable and unconditional letter of credit in order to ensure payment of such deductibles or self-insured retention. Insurance policies that contain deductibles or self-insured retentions in excess of \$25,000 per occurrence shall not be acceptable without the prior approval of Metropolitan.

1. Insurance Certificates.

Metropolitan reserves the right to require certified complete copies of any insurance certificates required by this Agreement but the receipt of such certificates shall not confer responsibility upon Metropolitan as to sufficiency of coverage.

2. Acceptability of Insurers

All insurance required by this Agreement shall be placed with insurers admitted to transact business in the State of California for the applicable class of insurance, as required by §700 of the California Insurance Code. Each insurer shall have a current Best Insurance Guide rating of not less than AVII, unless a lower rating is approved in writing by Metropolitan. Similarly, each self-insurer (including, if applicable, IEUA, TVMWD and/or its Operating Parties) shall have a self-insured liability program that is based upon excess liability policies rated at AVII or higher, unless otherwise approved in writing by Metropolitan.

D. Environmental Liability Insurance

1. If IEUA, TVMWD and Metropolitan agree to procure environmental liability insurance, IEUA and TVMWD shall obtain and Metropolitan shall pay 50% of the cost of the policy of environmental liability insurance that, at a minimum, shall cover: (1) the costs of on-site and off-site clean-up of pollution conditions relating to or arising from the Program (including natural resource damages, changes in water quality regulatory requirements and/or changes in the quality of water in the basin below original water quality readings); and (2) losses resulting from tort claims for bodily injury and property damage resulting from pollution conditions relating to or arising from the Program. Such insurance shall have limits of liability and terms and conditions (including premiums) reasonably approved by Metropolitan. Notwithstanding the foregoing, if Metropolitan reasonably agrees that, despite IEUA's and TVMWD's good faith and diligent efforts to obtain such environmental liability insurance, the coverage required herein is not available on commercially reasonable terms, IEUA and TVMWD shall obtain the coverage that most closely approximates the coverage required herein that is available on commercially reasonable terms or consider other risk financing alternatives. Metropolitan shall pay 50% of the cost of any such alternative coverage or risk financing alternative selected by IEUA and TVMWD, provided that the terms and conditions (including premiums) have been reasonably approved by Metropolitan.
2. For purposes of this Section XII(B), the "costs" of environmental liability insurance, alternative coverage or risk financing alternatives to be shared by the parties as provided in the prior paragraph shall include (1) insurance premiums and other up-front or periodic costs of coverage; (2) deductibles payable in connection with claims; and (3) any out-of-pocket costs (including court costs, attorneys' fees and other litigation expenses) incurred in connection with enforcement or collection under the policy, alternative coverage or other risk financing alternative.

XIII. DISPUTE RESOLUTION; DEFAULTS AND REMEDIES

A. Dispute Resolution

If any dispute arises between or among the Parties regarding interpretation or implementation of this Agreement (or the Operating Committee is unable to reach agreement on a matter being considered by it), the Parties will endeavor to resolve the dispute by using the services of a mutually acceptable consultant. The fees and expenses of the consultant shall be shared equally by the Parties. Except for disputes relating to exercises of Metropolitan discretion pursuant to Sections V(C); VII(A); VII(C); VII(D); XII(A) and XIII(B), if a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to all

Parties (or, in the case of the Operating Committee, to the members thereof), and unless the Parties (or members of the Operating Committee) otherwise agree, such dispute shall be settled by arbitration in accordance with the Rules of the American Arbitration Association in the County of Los Angeles, California. The arbitration panel acting pursuant to said rules may order any legal or equitable relief permitted by California law, including, without limitation, (1) declaratory and injunctive relief, (2) **SPECIFIC PERFORMANCE OF THE TERMS, CONDITIONS AND OBLIGATIONS OF THIS AGREEMENT**, (3) monetary liability, or (4) any other relief (including, without limitation, termination of this Agreement, as set forth in Section XIII(B) below) consistent with the purposes of this Agreement and applicable to the matter. The arbitration panel shall also be empowered to make final and binding determinations with respect to matters before the Operating Committee, where the members of the Committee were unable to reach agreement. Judgment upon the award rendered by the arbitration panel may be entered and enforced by any court having jurisdiction thereof.

B. Defaults and Remedies

1. Should IEUA or TVMWD, each acting through agreement with its respective Operating Parties, fail to fully perform in the extraction of Program Water from the Metropolitan Water Storage Account in accordance with Exhibit G in response to a call from Metropolitan that has been approved by the Watermaster, and upon a determination by the Operating Committee that full performance could and should have occurred, then Metropolitan shall invoice to IEUA or to TVMWD, as appropriate, water delivered equal to the quantity in acre-feet of non-performance at two times the Tier 2 full service water rate (or its equivalent, as determined by Metropolitan in its reasonable discretion) currently then in effect ("**Nonperformance Penalty**").
2. Should the Operating Committee in its review of incomplete performance, as specified in paragraph B (1) above, determine that unanticipated operational or water quality considerations precluded full performance, the Operating Committee shall not recommend to Metropolitan that the Nonperformance Penalty be assessed. In such case, IEUA or TVMWD, whichever is the responsible Member Agency, shall work with the nonperforming Operating Party to promptly set out a mutually agreeable course of action and schedule to correct the deficiency and present such to the Operating Committee for its concurrence. Future nonperformance outside of the agreed-upon schedule (provided that the Operating Committee has concurred with such schedule) would be subject to the Nonperformance Penalty.

C. Termination

1. Notwithstanding anything to the contrary herein, upon a breach of any provision of this Agreement by IEUA, TVMWD or Watermaster or any of them, Metropolitan may terminate this Agreement as to the breaching Party, by written notice to IEUA, TVMWD and Watermaster. Upon such termination, the breaching Party shall be required to reimburse Metropolitan for all Program Funds advanced to such Party by Metropolitan pursuant to this Agreement. Further, Metropolitan may require the breaching Party to purchase in equal installments over a 5-year period, at Metropolitan's then applicable full-service rate (or its equivalent, as determined by Metropolitan in its reasonable discretion), the balance of any water then identified in the Metropolitan Water Account. Upon full reimbursement and payment of the amounts required pursuant to this Section XIII(C), this Agreement shall be fully terminated as to the breaching Party.
2. Notwithstanding anything to the contrary herein, upon a breach of any provision of this Agreement by Metropolitan, IEUA and TVMWD may terminate its participation in this Agreement by written notice to Metropolitan. Upon such termination, the terminating Party shall be responsible to purchase in equal installments over a 5 year period, at Metropolitan's then applicable full-service rate (or its equivalent as determined by Metropolitan in its reasonable discretion), the balance of any water then identified in the Metropolitan Storage Account.

D. Remedies Are Cumulative

The rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same breach or any other breach by the other Party.

XIV. FORCE MAJEURE EVENTS

A. Excuse to Performance

In addition to specific provisions of the Agreement, lack of performance by any Party shall not be deemed to be a breach of this Agreement, where delays or defaults are due to acts of God, or the elements, accident, casualty, labor disturbances, unavailability or delays in delivery of any product, labor, fuel, service or materials, failure or breakdown of equipment, strikes, lockouts, or other labor disturbances, acts of the public enemy, orders or inaction of any kind from the government of the United States, the State of California, or any other governmental, military or civil authority (other than Metropolitan, IEUA, TVMWD or Watermaster), war, insurrections, riots, epidemics, landslides,

lightning, droughts, floods, fires, earthquakes, arrests, civil disturbances, explosions, freight embargoes, lack of transportation, breakage or accidents to vehicles, or any other inability of any Party, whether similar or dissimilar to those enumerated or otherwise, which are not within the control of the Party claiming such inability or disability, which such Party could not have avoided by exercising due diligence and care and with respect to which such Party shall use all reasonable efforts that are practically available to it in order to correct such condition (such conditions being herein referred to as "Force Majeure Events").

B. Responding to Force Majeure Events

The Parties agree that in the event of a Force Majeure Event which substantially interferes with the implementation of this Agreement, the Parties will use their best efforts to negotiate an interim or permanent modification to this Agreement which responds to the Force Majeure Event and maintains the principles pursuant to which this Agreement was executed.

XV. MISCELLANEOUS

A. Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the matters provided for herein and, except as herein provided, supersedes all prior and/or contemporaneous agreements and understanding, whether written or oral, between the Parties relating to the matters provided for herein.

B. Interpretation

The Parties have participated in the drafting of this Agreement and the Agreement shall not be construed for or against any Party. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties hereto and Section 1654 of the Civil Code has no application to interpretation of this Agreement. In addition, this Agreement shall be construed to the maximum extent possible in conformance with Prop. 13, the DWR Funding Letter, the IRP, the Groundwater Storage Principles, the RFP, and the Proposal. Notwithstanding anything to the contrary herein, to the extent this Agreement conflicts with the RFP and/or Proposal, this Agreement shall control.

C. Further Assurances

Each Party, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

D. Counterparts

This Agreement, and any document or instrument entered into, given or made pursuant to this Agreement or authorized hereby, and any amendment or supplement thereto may be executed in two or more counterparts, and by each party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document. Any signature page of this Agreement or of such an amendment, supplement, document or instrument may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart identical in form thereto but having attached to it one or more additional signature pages. In proving this Agreement or any such amendment, supplement, document or instrument, it shall not be necessary to produce or account for more than one counterpart thereof signed by the Party against whom enforcement is sought.

E. Assignment

No Party shall transfer this Agreement, in whole or in part, or any of its interests hereunder, to any other person or entity, without the prior written consent of the other Parties. Any attempt to transfer or assign this Agreement, or any privilege hereunder, without such written consent shall be void and confer no right on any person or entity that is not a Party to this Agreement. Nothing contained herein shall prevent the Parties from subcontracting for the performance of obligations hereunder, provided, however, no such subcontracting shall relieve the Parties from the performance of their respective obligations hereunder.

F. Venue

Any legal actions initiated pursuant to this Agreement or otherwise with respect to its subject matter must be instituted in the Superior Court of the County of Los Angeles, State of California, or in the Federal District Court in the Central District of California.

G. Governing Law; Attorneys Fees and Costs

The laws of the State of California shall govern the interpretation and enforcement of this Agreement. The non-prevailing party in any claim, suit or other action, including use of the dispute resolution as provided for in Section XIII(A), brought by such party shall pay to the prevailing party the costs of such prevailing party's attorneys fees and expenses and all other costs and expenses incurred by the prevailing party in defense of such action.

H. Notice

Formal written notices, demands, correspondence and communications between the Parties authorized by this Agreement shall be sufficiently given if personally served or dispatched by registered or certified mail, first-class, postage prepaid, return receipt requested, to the Parties as follows:

- To IEUA: Inland Empire Utilities Agency
General Manager
P.O. Box 697
Rancho Cucamonga, CA 91729
- To TVMWD: Three Valleys Municipal Water District
General Manager
1021 E. Miramar Avenue
Claremont, CA 91711
- To Watermaster: Chino Basin Watermaster
Chief Executive Officer
8632 Archibald Avenue, Suite 109
Rancho Cucamonga, CA 91730
- To Metropolitan: The Metropolitan Water District
of Southern California
Chief Executive Officer
700 No. Alameda Street
Los Angeles, California 90012

Such written notices, demands, correspondence and communications may be sent in the same manner to such other persons and addresses as either Party may, from time to time, reasonably designate by mail as provided in this Section. Notice shall be deemed given when received by mail or when personally served.

I. Successors

This Agreement shall bind and inure to the benefit of the Parties, and their respective successors and assigns.

J. Severability

Should any provisions of this Agreement prove to be invalid or illegal, such invalidity or illegality shall in no way affect, impair or invalidate any other provisions hereof, and such remaining provisions shall remain in full force and effect; provided, however, if the illegality or invalidity of any provision

undermines the intent of the Parties, then the Parties shall attempt in good faith to amend the agreement in order to fulfill the intent of the Parties. If the Parties are unable to so amend the Agreement, then the Agreement shall terminate and be of no further force or effect.

K. Time is of the Essence

Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.


L. Amendment

This Agreement may be amended only in writing duly executed by the Parties hereto. Notwithstanding the foregoing, individual items listed in Exhibit H are subject to adjustment pursuant to the procedure set forth in Exhibit H.

[Remainder of Page Intentionally Blank – Signature Pages Follow]


IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first set forth above.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By: 
Ronald R. Gastelum
Chief Executive Officer

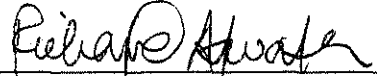
Date: 6-12-03

APPROVED AS TO FORM:
Jeffrey Kightlinger
General Counsel

By: 
Sydney Bennion
Assistant General Counsel

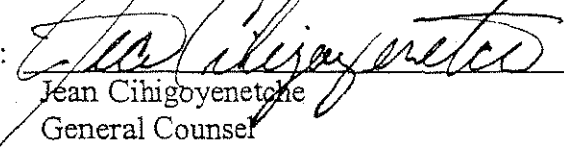
Date: 6/6/03

INLAND EMPIRE UTILITIES AGENCY

By: 
Richard Atwater
General Manager


Date: JUNE 19, 2003

APPROVED AS TO FORM:

By: 
Jean Cihigoyenetché
General Counsel

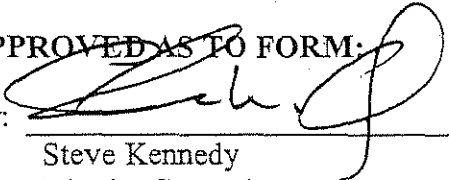
Date: 5-21-03

THREE VALLEYS MUNICIPAL WATER
DISTRICT

By: 
Richard W. Hansen
General Manager/Chief Engineer


Date: 6/19/03

APPROVED AS TO FORM:

By: 
Steve Kennedy
District Counsel

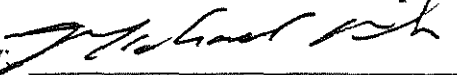
Date: 6/4/03

CHINO BASIN WATERMASTER

By: 
John V. Rossi
Chief Executive Officer

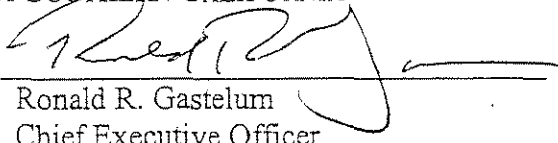
Date: 6/19/03

APPROVED AS TO FORM:

By: 
Michael Fife
General Counsel

Date: 6-3-03

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By: 

Ronald R. Gastelum
Chief Executive Officer

Date: 6/19/03

EXHIBIT A

DWR FUNDING LETTER

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 227-5791



OCT 13 2000

Mr. Phillip J. Pace, Chairman
Board of Directors
Metropolitan Water District of
Southern California
Post Office Box 54153
Los Angeles, California 90054-0153

Interim Water Supply Construction Grant Commitment Safe Drinking Water, Clean Water,
Watershed Protection and Flood Protection Act (Proposition 13, Chapter 9, Article 4)

Dear Mr. Pace:

The Governor's Budget Act for 2000, Chapter 52, Statutes of 2000, appropriated to the Department of Water Resources local assistance grant funds in the amount of \$161,544,000 by budget item 3860-01-6027, payable from the Interim Reliable Water Supply and Water Quality Infrastructure and Management Subaccount. The Metropolitan Water District's Southern California Water Supply Reliability Projects Program has been selected for funding from this appropriation. This letter agreement serves as our commitment of \$45 million for these projects.

This letter sets forth the terms and conditions under which the transfer of funds will be made from DWR to MWD. Before the funds can be transferred your agency must complete the following:

- Submit to DWR a formally adopted resolution of your governing body, accepting the grant, designating a representative to sign this letter agreement, and designating a project director to be your agency's representative for the administration of the project and liaison with DWR for submission of required documents.
- Sign and date both originals of this agreement and return one signed original to:

Division of Planning and Local Assistance
Department of Water Resources
Post Office Box 942836
Sacramento, California 94236-0001
Attention: Linda Buchanan Herzberg

- Provide to DWR a copy of all memoranda of understanding or other cooperative agreements between your agency and all other participating agencies for the program.



Mr. Phillip J. Pace, Chairman

OCT 13 2000
Page 2

- Provide to DWR an itemized budget projection of project costs and an invoice, on your letterhead, stating the purpose of the funds as outlined in this letter agreement. In addition, please provide a summary of the sources and amounts of other funding for the program in addition to the grant provided by this letter agreement.
- Provide to DWR a detailed description of the proposed projects, including a narrative description that details the purpose and defines the scope of each project. Include with your description a detailed list of project components to be funded by this grant and a time line for completion with major benchmarks noted. In addition, attach a map indicating the locations of the projects.

By signature of this letter agreement the Metropolitan Water District of Southern California agrees to comply with the following terms and conditions for completion of your project:

1. Your agency agrees to faithfully and expeditiously perform or cause to be performed all project work, to apply State funds received only to eligible project costs and to expeditiously commence and to continue efficient and economical operation of the projects in accordance with applicable law. You further agree to provide for all repairs, renewals, and replacements necessary to the efficient operation of the projects; and to maintain them in as good and efficient condition as upon their construction, ordinary and reasonable wear and depreciation excepted.
2. Your agency, its contractors, subcontractors, and their respective agents and employees required for performing any work in connection with the projects shall act in an independent capacity and not as officers, employees or agents of the State.
3. Your agency is solely responsible for design, construction, operation and maintenance of the projects.
4. Your agency shall be responsible for obtaining any and all permits, licenses and approvals required for the design, construction or operation of the projects. You shall also be responsible for observing and complying with any applicable federal, State and local laws, rules or regulations affecting such work, specifically including, but not limited to, environmental, procurement and safety laws, rules, regulations and ordinances.

5. Your agency must comply with all applicable requirements of the California Environmental Quality Act and the National Environmental Policy Act and complete appropriate environmental documentation including, but not limited to, any required environmental impact reports, environmental impact statements, negative declarations, mitigation agreements and environmental permits, prior to beginning construction.
6. Your agency, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by the awarding State Agency to implement such article. Your agency, its contractors and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Your agency shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts let for the construction of the project.
7. Your agency agrees, unless exempted, to comply with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103.
8. Your agency shall comply with the provisions of Section 3700 of the California Labor Code, requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and you affirm that the agency will comply with such provisions before commencing the construction of the projects and will make the agency's contractors and subcontractors aware of this provision.
9. Your agency, its contractors or subcontractors agree to comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace.
10. Your agency agrees to comply with the Americans with Disabilities Act of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

OCT 13 2000

11. Your agency shall be responsible for work and for persons or entities engaged in work, including, but not limited to, subcontractors, suppliers and providers of services. You shall give personal supervision to any work required for the projects or employ a competent representative with the authority to act for your agency. Your agency shall give attention to completion of the projects, and shall keep work under control.
12. Your agency shall be responsible for any and all disputes arising out of its contracts for work on the projects, including but not limited to bid disputes and payment disputes with your contractors and subcontractors. The State will not mediate disputes between your agency and any other entity concerning responsibility for performance of work.
13. All contracts let for project construction shall be let by competitive bid procedures that assure award of the contract to the lowest responsible bidder, except as may be otherwise authorized under your agency's enabling authority.
14. Procurement of necessary supplies or equipment shall be undertaken in such a manner as to encourage fair and competitive treatment of potential suppliers.
15. During project planning and construction, your agency shall provide semiannual progress reports detailing the activities completed for the reporting period, the amount of funds expended and the purpose of those expenditures. The first report shall be due six months from the date of your agency's signature on this letter agreement. Subsequent reports shall be due every six months thereafter.
16. The Southern California Water Supply Reliability Projects Program shall be completed not later than March 8, 2009.
17. Upon completion of each project your agency shall provide for a final inspection and a written certification by a California Registered Civil Engineer that the project has been completed in accordance with final plans and specifications and any modifications thereto. Such certification shall be submitted to the State with a copy of the final report of project expenditures required in Item 18 below. You shall keep on file, for the useful life of the projects, As Built plans and specifications for each project. Such documents shall be made available for inspection by the State upon reasonable notice.
18. Upon program completion your agency shall furnish to the State, within 60 days, a final statement of incurred eligible costs.

OCT 13 2000

19. Within a period of 60 days from program completion, your agency shall remit to the State any unexpended funds that were disbursed that were not needed to pay eligible project costs.
20. Your agency shall account for the money disbursed separately from all other agency funds. You shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices consistently applied. You shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. Your agency shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by the State at any and all reasonable times, upon reasonable notice.
21. All money disbursed for your program shall be deposited, administered, and accounted for pursuant to the provisions of law applicable to your agency.
22. During regular office hours, each of the parties to this letter agreement and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to the projects. Each of the parties shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to these projects.
23. Pursuant to Government Code Section 8546.7, your agency and its subcontractors shall be subject to the examination and audit of the State for a period of three years after program completion. All of your records or those of your subcontractors shall be preserved for this purpose for at least three years after program completion.
24. The State reserves the right to conduct an audit at any time between the execution of this letter agreement and the completion of the program, with the costs of such audit borne by the State. Within 60 days of program completion, the State shall require your agency to conduct, at your agency's expense, a final financial and compliance audit of revenue and expenditures. Such audit shall be conducted and a report prepared by an independent Certified Public Accountant in compliance with generally accepted auditing standards and California government auditing standards. Upon its completion, said report shall be submitted to the State for review and acceptance.
25. The State shall withhold 10 percent of the total program funding until the audit report, required in Item 24 above, is received and accepted by the State.

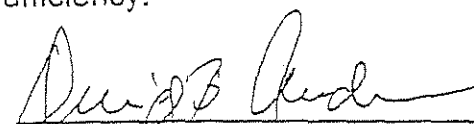
OCT 13 2000

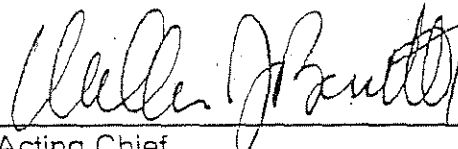
- 26. The State shall have the right to inspect the work being performed at any and all reasonable times during project construction. This right shall extend to any subcontracts, and your agency shall include provisions ensuring such access in all its contracts or subcontracts entered into for completion of the projects.
- 27. Your agency shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with any of the projects, or with your agency's service of water, without prior approval of the State.
- 28. Your agency agrees to indemnify the State and its officers, agents, and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due or incident to, either in whole or in part, and whether directly or indirectly, arising out of the program.

Your expeditious handling of this letter agreement is appreciated. If you have any questions, please contact Linda Buchanan Herzberg at (916) 327-1663.


Sincerely,

Approved as to Legal Form
and Sufficiency:

By: 
 Chief Counsel
 Department of Water Resources

 for Bateni
 Acting Chief
 Division of Planning and Local Assistance

Metropolitan Water District of Southern California

By:  Date: 11/14/2000
 Title: Gerald Manager

Enclosure

cc: (See attached list.)

Ms. Linda Adams
Chief Deputy Assembly Relations
Governor's Office, First Floor
Sacramento, California 95814

Honorable Richard G. Polanco
Member of the Senate
State Capitol, Room 313
Sacramento, California 95814

Honorable Jim Costa
Member of the Senate
State Capitol, Room 5100
Sacramento, California 95814

Honorable Robert M. Hertzberg
Speaker of the Assembly
State Capitol, Room 320
Sacramento, California 95814

Honorable Thomas Calderone
Member of the Assembly
State Capitol, Room 2148
Sacramento, California 95814

Honorable Antonio Villaraigosa
Member of the Assembly
State Capitol, Room 219
Sacramento, California 95814

Mr. Robert Harding
Senior Engineer
Water Resource Management
Metropolitan Water District of
Southern California
700 North Alameda Street
Los Angeles, California 90012

Mr. Ronald R. Gastelum
General Manager
Metropolitan Water District of
Southern California
Post Office Box 54153
Los Angeles, California 90054-0153

REQUEST FOR PROPOSAL

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

REQUEST FOR PROPOSALS FOR
PARTICIPATION IN GROUNDWATER
STORAGE PROGRAMS USING
PROPOSITION 13 FUNDS

RFP No. WRM-2

NOTICE:

Public Pre-Submittal Workshop
November 8, 2000
1:00 p.m. to 3:00 p.m.
700 North Alameda Street
Room US1-102
Los Angeles, California 90012
All potential applicants are encouraged to attend

Proposals will be received until 2:00 p.m. on January 5, 2001,
at the Metropolitan Water District of Southern California,
700 North Alameda Street, Room 3-132
Los Angeles, California, 90012

LOS ANGELES, CALIFORNIA
November 1, 2000

**PARTICIPATION IN GROUNDWATER
STORAGE PROGRAMS USING
PROPOSITION 13 FUNDS**

REQUEST FOR PROPOSALS

- A. Background
- B. Need for Groundwater Storage Programs
- C. Process Overview
- D. Who Can Submit?
- E. Selection Process
- F. Scoring Criteria
- G. Schedule
- H. Performance Targets and Adjustments
- I. Proposal Guidelines

Figure 1 Groundwater Storage Program Implementation Process

Table 1 Performance Provisions

Exhibit 1 Economic Analysis Worksheet

Appendix A Metropolitan's Groundwater Storage Principles

Water Resources Management Groundwater Storage

In March 2000, 65 percent of California voters approved Proposition 13 (Prop 13) authorizing the state of California to sell \$1.97 billion in general obligation bonds for water-related projects throughout the state. The Governor's Annual Budget Revision document in May 2000, included \$763.3 million in expenditures from Prop 13. In June 2000, the State Senate and Assembly approved a budget bill for fiscal year 2000-01, which earmarked \$69 million to fund water supply reliability programs within Metropolitan's service area. The Governor's office designated Metropolitan as the recipient of those Prop 13 funds. Of that \$69 million, \$45 million is specified to finance groundwater storage projects within the Metropolitan Water District of Southern California's (Metropolitan) service area.

This RFP is designed to promote an objective process for distributing this \$45 million. Metropolitan invites your agency to submit a proposal for the development of groundwater storage projects that contribute to the overall water supply for its six-county service area. Selected projects will be eligible for financial assistance from funds received by Metropolitan through the passage of Prop 13. Contained within is information requested for analyzing proposals. All selected projects must conform to state of California and Metropolitan audit requirements.

Questions

Questions regarding the Request for Proposals (RFP) may be presented at the public pre-submittal workshop on November 8, 2000. Written questions regarding this RFP also may be submitted prior to the meeting. Responses to questions will be provided during or after the workshop and posted on Metropolitan's web site, www.mwd.dst.ca.us, under "Breaking News." Address written questions to:

Robert Harding
Metropolitan Water District of Southern California
Post Office Box 54153
Los Angeles, California 90054-0153
FAX (213) 217-6119

Inquiries regarding the schedule, location or mailing address should be directed to Robert Harding at rharding@mwd.dst.ca.us or (213) 217-6582

Public Pre-Submittal Workshop Notice

Purpose: Discuss the Prop 13 Groundwater Storage RFP and answer questions
Date: November 8, 2000
Time: 1:00 p.m. – 3:00 p.m.
Address: 700 North Alameda St., Rm. US1-102
Los Angeles, California 90012

While attendance is not mandatory, all interested parties and prospective applicants are encouraged to attend. Following the workshop, responses to questions, information updates and clarifications will be posted on Metropolitan's web site, www.mwd.dst.ca.us, under "Breaking News."

Due Date

Proposals will be accepted at The Metropolitan Water District of Southern California, 700 North Alameda St. – Room 3-132, Los Angeles, California, 90012 until **2:00 p.m. on January 5, 2001**. Six copies of each proposal must be submitted. Proposals received after the due date and time will be returned unopened.

A. BACKGROUND

Metropolitan is a California public agency. Metropolitan imports water from the Colorado River and the State Water Project (SWP) to supply its 27 Member Agencies that serve 17 million people living within a 5,200-square-mile service area. Existing Metropolitan facilities include the 242-mile-long Colorado River Aqueduct with five pumping plants, a distribution system featuring seven functional reservoirs, five water filtration plants, 43 pressure control structures, 16 power plants, and about 775 miles of pipelines. Metropolitan also participates in groundwater storage projects outside of its service area and develops local water resources to maintain regional supply reliability.

Metropolitan is one of 29 agencies that contracts with the California State Department of Water Resources (DWR) for SWP supplies. It is anticipated that programs submitted under this RFP would store water imported from the SWP and the Colorado River Aqueduct. Facilities funded under this RFP will pump previously stored water for delivery to overlying demand in the respective basin. There will be a corresponding reduction in surface deliveries to the agency. This will increase the amount of water available within Metropolitan's service area.

B. NEED FOR GROUNDWATER STORAGE

In January 1996, Metropolitan's Board of Directors approved the Integrated Water Resources Plan (IRP) that forms the framework for meeting demands within the service area out to the year 2020. Included within the IRP is a groundwater storage component of 450,000 acre-feet of total storage and 150,000 acre-feet per year of yield. The IRP identifies groundwater storage as a cost-effective way to meet projected dry-year demands, and Metropolitan is committed to

developing groundwater storage programs within its service area. In January 2000, to further and expand the use of groundwater storage as part of a regional, integrated resource reliability program, Metropolitan's Board approved principles (Appendix A) to guide the development of groundwater storage within the District's service area.

C. PROCESS OVERVIEW

Selected projects will be eligible to receive funding assistance only if an agreement for a groundwater storage program with Metropolitan is executed. A review committee (Section E) will evaluate project proposals. After the review committee's recommended project list is reported to Metropolitan's Board for information, MWD staff will meet with each project sponsor and respective member agency to negotiate agreement terms. Upon completion and approval of environmental documentation by the project sponsor's governing body, per the California Environmental Quality Act (CEQA), each project and the terms of the agreement will be forwarded to Metropolitan's Board for consideration. If approved by Metropolitan's Board, the agreement would be finalized and executed. Metropolitan will execute the agreement only after all other parties have signed. Program funds will be disbursed to the projects on a reimbursable basis. MWD retains the right to reject any and all proposals and revise the terms of this RFP.

D. WHO CAN SUBMIT?

The RFP is open to agencies that responded to Metropolitan's September 20, 2000 letter requesting a preliminary list of groundwater storage projects. Applications for Prop 13 funds for groundwater storage consideration must be made through the project sponsor's respective Metropolitan Member Agency.

E. SELECTION PROCESS

The review committee is expected to be comprised of five people, including three water resource professionals (consultants) selected by Metropolitan staff, and two members of Metropolitan's staff. The committee will provide an objective evaluation of project proposals and will identify the mix of project proposals that best meets the region's needs, consistent with Metropolitan's Board-adopted principles (Appendix A).

F. SCORING CRITERIA

Please refer to the Format/Content Requirements for a detailed description of the required proposal information.

The review committee will use the scoring criteria provided below to rank project proposals. The scoring categories are based on Metropolitan's Board-adopted principles for groundwater storage programs. In addition, based on regional water supply practices, the review committee will identify and weigh each proposal's significant strengths, weaknesses and miscellaneous

issues. Recommendations will reflect the collective findings of the committee. Interviews of project sponsors may be requested by the review committee. Projects that score zero in any of the categories listed below will be disqualified

1. Regional Benefit	(0-20 points)
2. Partnership (Local Support)	(0-15 points)
3. Address Local Needs	(0-15 points)
4. Water Quality or Supply Impacts	(0-15 points)
5. Protect Metropolitan's Financial Integrity	(0-15 points)
6. Meets Overlying Demand	(0- 5 points)
7. Shared Risk	(0-15 points)
Maximum Score:	100 points

G. SCHEDULE

Information on the recommended list of projects for inclusion in the Groundwater Storage Programs is expected to be reported to Metropolitan's Board in March 2001. Thereafter, Metropolitan staff will finalize agreement terms. Upon completion and approval of environmental documentation by the project sponsor's governing body, each project will be presented to Metropolitan's Board for consideration. The schedule is included as Figure 1. If approved by Metropolitan's Board, agencies will have until July 1, 2001 to finalize agreements. If an agreement is not finalized, another project may be selected for funding.

H. PERFORMANCE TARGETS AND ADJUSTMENTS

All groundwater storage agreements will include performance targets. Targets allow Metropolitan to adjust or withdraw financial commitments to projects that fail to meet proposed development and production commitments. Failure to meet performance provisions will result in Metropolitan adjusting its financial commitment to the project. The schedule for performance targets is included as Table 1.

I. PROPOSAL GUIDELINES

To ensure these projects are developed within Metropolitan's service area, a Metropolitan Member Agency must sponsor project proposals. Projects selected through this process will be subject to all state of California and Metropolitan audit guidelines. The proposal shall include a signed statement from the sponsoring MWD Member Agency's water manager to Metropolitan's General Manager supporting the project and requesting Prop 13 funding. Proposals shall include a transmittal letter signed by the project sponsor's manager. The letter must include the following language:

"I am informed and believe and do certify under penalty of perjury that the information contained in this proposal is true and that the supporting data is accurate and complete."

The following format and content requirements shall be adhered to for project proposals to be considered responsive. Applicants should use the numbering and lettering system outlined in

these guidelines. Concise, informative proposals within the page limitations are encouraged. Ambiguous proposals will result in lower scores.

Limitations for each section of the proposal follow and must not be exceeded. The proposal must be on 8 1/2 x 11-inch paper, with black and white text (with font no smaller than 12-point, and table/graphics with text no smaller than 10 point). The proposals must be stapled on the left side or upper left hand corner; no other type of binding will be accepted. **Proposals that are not in conformance with the following format/content requirements will be considered non-responsive and shall be rejected.**

FORMAT/CONTENT REQUIREMENTS

For the purposes of these proposals, "project sponsor" shall mean the agency that is contractually responsible for project implementation.

1. Minimum Requirements (4 pages maximum)

Explain how the project complies with each of the following minimum requirements for Groundwater Storage Program participation.

- 1A. The project must meet Metropolitan's Board-approved principles described in No. 3 below.
- 1B. The project must include construction of substantive new facilities. New facilities are those that increase the ability of the entity to pump, store, treat or transport water to be conjunctively used to increase dry-year yield for Metropolitan's service area.
- 1C. The project must comply with the Metropolitan Water District Act and all other applicable laws, specifically any required state and Metropolitan audit requirements.
- 1D. Proposals shall include the anticipated date of environmental certification. The project shall comply with the provisions of the California Environmental Quality Act (CEQA) before Metropolitan's Board considers its approval. Metropolitan anticipates functioning as a Responsible Agency. Metropolitan may reject participation in a project solely on failure to comply with CEQA.
- 1E. The project shall not be existing or under construction prior to agreement execution. Projects that have entered Design-Build contracts are considered under construction.

2. Project Description (8 pages maximum plus maps and/or figures)

Provide a thorough description of the project including:

- 2A. Project title and lead sponsoring agency, and information related to the management of the basin, including AB 3030 plans, management entities, or the adjudication.
 - 2B. Project participants/cooperating agencies;
 - 2C. Project schedule including design, environmental documentation, construction, operation, production and major milestones;
 - 2D. Project cost factors including grants, capital, O&M and financing. Use the Economic Analysis Worksheet attached as Exhibit 1 to show the estimated cost in dollars per acre-foot. Exhibit 1 is enclosed on a computer disk as an Excel worksheet.
 - 2E. Provide project map(s) showing location of proposed project, primary facilities and proposed user sites including interties and points of connection;
 - 2F. Describe existing water supply/distribution facilities and user sites related to the project service area, and discuss existing water quality issues within the basin.
3. Detailed Information for Scoring (4 pages maximum per scoring item)

3A. Regional Benefit (scoring range 0-20 points)

Describe the regional benefit of the facilities constructed.

- 3A(i) Describe how the project will produce a dry-year yield for regional benefit.
- 3A(ii) Describe the seasonal nature, if any, of project production.
- 3A(iii) Describe the institutional arrangements for curtailing imported firm water deliveries during a three-year shortage.
- 3A(iv) Discuss the project's and groundwater basin's ability to sustain production during a three-year shortage.
- 3A(v) Explain how the change in basin operations will be incorporated into the basin management plan or adjudication.

3B. Project Partnership (scoring range 0-15 points)

- 3B(i) Describe the level of local and regional support for the program and how the entities involved or potentially affected are supporting the project.
- 3B(ii) Provide status of CEQA documentation and schedule.
- 3B(iii) Discuss uncertainties, if any, in project planning.
- 3B(v) Describe the governing body endorsements needed for approval of the project.

- 3B(viii) Describe any positive or negative community reaction to the proposed project.
- 3B(ix) Describe any Metropolitan actions required by the project in addition to the requested financial assistance.
- 3B(x) Provide the status of any feasibility or engineering studies needed for the project.

3C. Local Needs Addressed (scoring range 0-15 points)

- 3C(i) Show how the project will address the needs of the local proponents.
- 3C(ii) Show how the project will protect the interests of local entities that are not participating in the program.

3D. Water Supply or Water Quality Impacts (scoring range 0-15 points)

- 3D(i) Describe how the proposed project would impact water supply or water quality within the basin.
- 3D(ii) Describe how any negative impacts would be mitigated. Unmitigated impacts will result in a score of zero (0) in this section 3D.
- 3D(iii) Describe anticipated regulatory requirements for the project.
- 3D(iv) Address status and schedule for acquiring regulatory approvals and permits.

3E. Address Potential Impacts to Metropolitan's Financial Integrity (scoring range 0-15 points)

- 3E(i) Address whether the project would affect purchase of imported surface water supplies from Metropolitan.
- 3E(ii) Describe how any negative impacts would be mitigated. Unmitigated impacts will result in a score of zero (0) in this section 3E.
- 3E(iii) Discuss status and strategy for project financing.
- 3E(iv) Show the cost per acre-foot of dry-year yield as determined by the methodology shown in Exhibit 1.

3F. Describe How Project will meet overlying demand (scoring range 0-5 points)

- 3F(i) Show how the total amount of program storage can be stored within a four-year period.
- 3F(ii) Show how the program meets the IRP goal of a 3:1 ratio of total storage capacity to annual yield.

3G. Describe how participating entities will share the project risk (scoring range 0-15 points)

- 3G(i) Describe the project risks.
- 3G(ii) Describe how these will be managed.
- 3G(iii) Describe any indemnification necessary to implement the project.

Figure 1
Groundwater Storage Program
Implementation Process
And Schedule

Initial Timeline

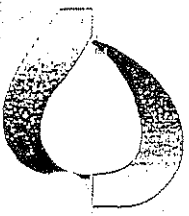
January 2000	Adopted Principles for Groundwater Storage
October 2000	Board Resolution for Proposition 13 Funds
November 1, 2000	Issue Request for Proposals
November 8, 2000	Pre-submittal Meeting
January 5, 2001	Proposals Received
January 2001	Review Proposals
January 2001	Interviews (If necessary)
February 2001	Select Projects
March 2001	Information Letter to Metropolitan Board
By July1, 2001	Finalize Agreements
September 2002	Metropolitan Board Approval Execute Agreements

Table 1
Performance Targets

<u>Date</u>	<u>Target</u>	<u>Consequence if Target Not Achieved</u>
January 5, 2001	Receive Proposals	Proposal will be rejected
July 1, 2001	Finalize Agreements	Proposal will be rejected
September 1, 2002	Completion and certification of all environmental documents necessary to comply with CEQA.	Proposal will be rejected
September 2003	Construction Initiated	Agreements Terminated

EXHIBIT 1 - ECONOMIC ANALYSIS WORKSHEET
(See Excel Spreadsheet: RFP Cost Template.xls)

THE PROPOSAL



Inland Empire

UTILITIES AGENCY

9400 Cherry Ave., Bldg. A • Fontana, CA 92335
P.O. Box 697 • Rancho Cucamonga, CA 91729
TEL (909) 357-0241 • FAX (909) 357-3884
www.ieua.org
A Municipal Water District

Richard W. Atwater
Chief Executive Officer
General Manager

January 18, 2001

Board of Directors

John L. Anderson
President

Mr. Ronald R. Gastelum, General Manager
The Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, California 90012

Terry Catlin
Vice President

Subject: Proposal for Groundwater Storage Programs Using Proposition 13 Funds
(MWD) (RFP No. WRM-2)

Anne W. Dunihue
Secretary/Treasurer

Dear Mr. Gastelum:

Wyatt L. Troxel
Director

On behalf of the Chino Basin Watermaster (and the stakeholders to the Chino Basin Optimum Basin Management Program (OBMP)), and in cooperation with Western Municipal Water District and Three Valleys Municipal Water District, Inland Empire Utilities Agency is pleased to submit this proposal for participation in MWD's Groundwater Storage Programs (utilizing Prop.13 funds). This proposal is consistent with the OBMP "Peace Agreement" and the Programmatic EIR (certified by IEUA in July, 2000).

Greg Koopman
Director

The key benefits of the approach presented in this proposal are summarized below:

- ◆ Provides a potential dry year yield of more than 149,000 acre-feet per year (AFY).
- ◆ Reduces summertime peaking on MWD's Rialto Pipeline, which allows additional low TDS SWP supplies to be blended at the Weymouth and Diemer filtration plants.
- ◆ Delivers SWP supplies to Chino Basin area via East Branch/Rialto Pipeline to meet SARWQCB Basin Plan salinity objectives.
- ◆ Improves the water quality of the Chino Basin through well-head treatment facilities.
- ◆ Minimizes (or eliminates) MWD surface water deliveries during future drought/emergencies, the goal is to have sufficient local production to meet peak summer retail water demands.
- ◆ Allows MWD to export stored water into Upper Feeder (or Rialto Pipeline) for delivery to other member agencies.
- ◆ Provides peaking benefits, which allow MWD both short-term and long-term operation flexibility, including the ability to load shed SWP pumping during periods when energy is limited.

Mr. Ronald R. Gastelum, General Manager
The Metropolitan Water District of Southern California
January 18, 2001
Page Two

- ◆ Provides significant regional economic benefits to the entire Metropolitan service area/avoids \$250 million MWD capital expenditures and allows potential salinity benefits/energy savings of over \$7 million per year.

IEUA's current MWD purchases (fiscal year 2000-2001) exceed 60,000 AF. The adopted IEUA Urban Water Management Plan (December, 2000) forecasts MWD deliveries to the IEUA service area will increase to over 100,000 AFY by 2020. Therefore, the proposed Chino Basin Groundwater Conjunctive Use Program would enhance Metropolitan's "Financial Integrity."

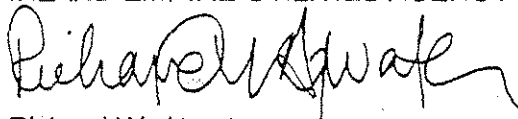
Lastly, a conjunctive use storage program with the Chino Basin has multiple benefits to MWD. Attached is a table which illustrates the type of benefits for the current MWD groundwater storage projects. We believe these multiple water supply/water quality benefits make Chino Basin storage unique in meeting the regional needs identified in MWD's adopted Integrated Water Resources Plan.

As requested on Page 6 of Metropolitan's Request for Proposal (RFP), I am informed and believe and do certify under penalty of perjury that the information contained in this proposal is true and that the supporting data is accurate and complete.

On behalf of IEUA, the Watermaster, and the Chino Basin stakeholders, I wish to express our excitement about the opportunity to work with Metropolitan. We look forward to your review of the proposal and would be pleased to meet to discuss the individual projects described in the Chino Basin proposal.

Sincerely,

INLAND EMPIRE UTILITIES AGENCY



Richard W. Atwater
Chief Executive Officer
General Manager

Enclosure

cc: Traci Stewart, Chief of Watermaster Services, CBWM
Rick Hansen, Three Valleys MWD
Don Harriger, Western MWD

MWD GROUNDWATER STORAGE PROGRAM BENEFITS

TYPE OF BENEFITS

	Drought/Dry Year Carryover	Emergency and Operational Shutdown	Seasonal Winter Storage	MWD System Peaking	Water Quality
SAN JOAQUIN VALLEY					
Semitropic	X				
Arvin/Edison	X				X
Others	X				X
COLORADO RIVER AQUEDUCT					
Desert-Coachella	X				
Cadiz	X				X
Hayfield	X				X
Lower Coachella	X				
MWD SERVICE AREA					
North Las Posas	X	X	X	X	
Raymond Basin	X	X	X	X	X
Chino Basin	X	X	X	X	X



PROPOSAL TO

METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

FOR

PARTICIPATION IN GROUNDWATER
STORAGE PROGRAMS USING
PROPOSITION 13 FUNDING

PREPARED BY

INLAND EMPIRE UTILITY AGENCY

ON BEHALF OF THE

CHINO BASIN WATERMASTER

January 19, 2001



SECTION 1.0
MINIMUM REQUIREMENTS



This section of our proposal presents Inland Empire Utility Agency's (IEUA's) program concept for requested Proposition 13 project funding and addresses the five issues (1A through 1E) identified in Metropolitan's Request for Proposal (RFP).

IEUA - in cooperation with the Chino Basin Watermaster and the stakeholders in the Chino Basin Optimum Basin Management Plan (OBMP) - proposes a program concept for project selection and implementation. This proposal describes 38 projects, each of which will meet one or more of Metropolitan's project principles. (See Table 1-1.) The projects are divided into three categories, summarized in Table 1-2 and depicted geographically on Figure 1-1.

From this menu of projects, we will work with Metropolitan to achieve the optimum combination of "firming projects" to provide dry year supplies when not available from Metropolitan and to increase Metropolitan's operational flexibility. We will give Metropolitan a performance contract, guaranteeing a specified amount of water "on demand." These projects will set the framework for ultimate conjunctive use throughout the Basin with the eventual development of supplies that could be exported to other parts of Metropolitan's service area.

1A. COMPLIANCE WITH METROPOLITAN'S PRINCIPLES

Metropolitan's Board of Directors has approved seven principles with which candidate projects must comply. As shown in Table 1-1, the projects we propose match well with the Board-approved principles.

TABLE 1-1
 Summary of Compliance with Metropolitan's Principles

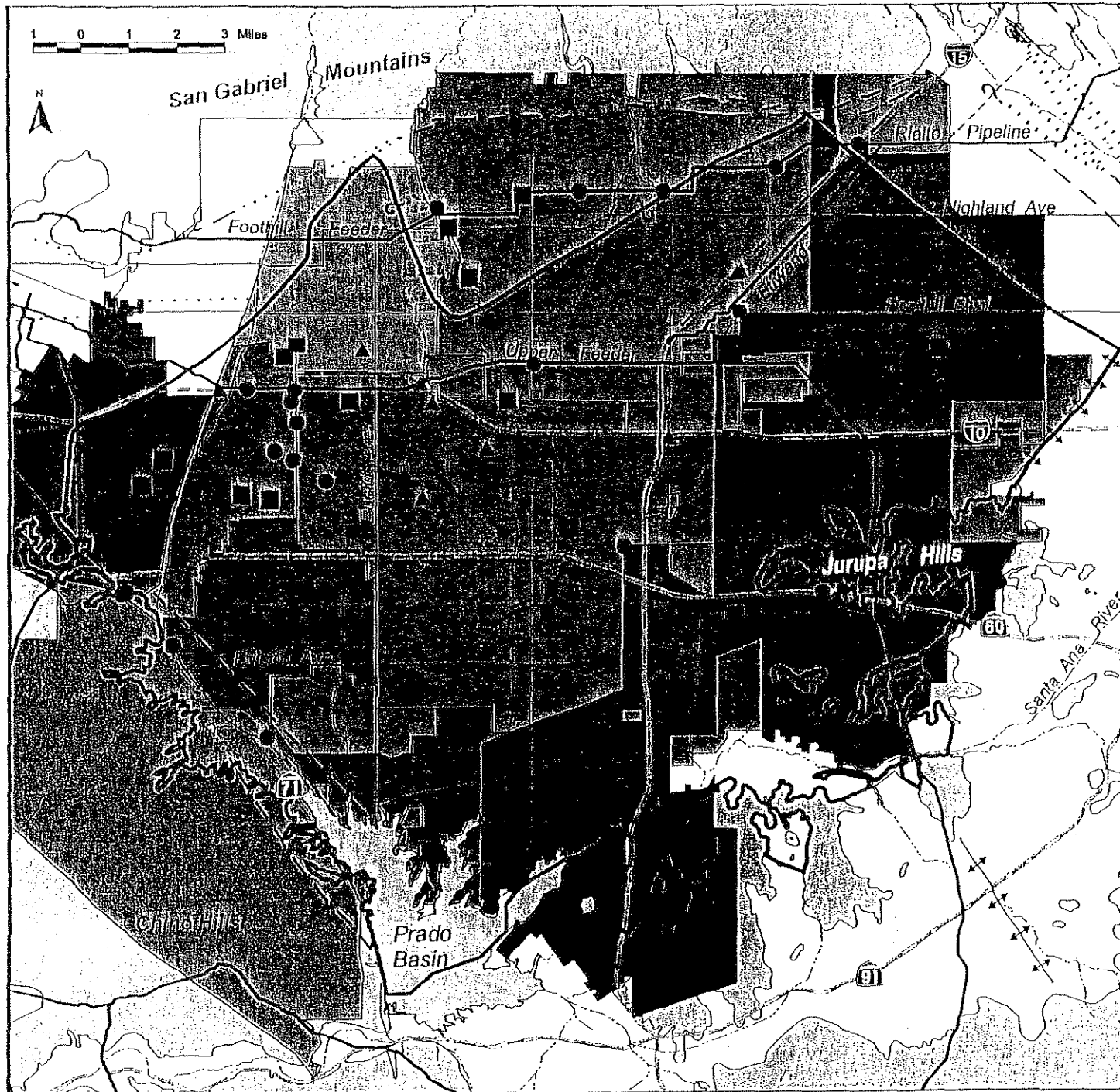
PRINCIPLE	PROJECT BENEFITS
Regional Benefits	37 of the projects will produce a dry-year yield, achieving more than 149,000 AFY at full implementation.
Project Partnerships	The proposed projects represent the consensus of the OBMP stakeholders.
Local Needs	Collectively, the projects will provide seasonal peaking benefits, dry-year yield, and improved water quality and will help balance recharge of the Basin.
Water Supply/Water Quality	36 of the projects will produce improved water quality within the Basin, and 37 of the projects will provide opportunities for Metropolitan to enhance blending of State Water Project and Colorado River water.
Metropolitan's Financial Integrity	Project implementation will not decrease Metropolitan sales to IEUA. Sales will actually increase by more than 25,000 AFY in future normal and wet years.
Overlying Demand	The regional conjunctive use program will effectively meet overlying demands via in-lieu deliveries. The complete program can actually exceed IRP goals of a 3:1 ratio.
Risk Management	By providing diversification and allowing Metropolitan to avoid the risk of stored water losses, our proposed program is virtually "risk-free."



TABLE 1-2
Summary of Projects

ITEM	CATEGORY 1	CATEGORY 2	CATEGORY 3	TOTAL
No. of Projects	13	18	7	38
Project Type	Wellhead treatment with IX	Assorted production facilities	New wells	
On-line Date ¹ Range	March 2002- November 2003	March 2002- June 2003	March 2002- June 2003	
Range of Dry Year Yield Increase Per Project (AFY)	1,450 AFY to 13,441 AFY	1,600 AFY to 11,000 AFY	2,900 AFY to 5,000 AFY	
Total Dry Year Yield Increase (AFY)	73,491	52,925	22,900	149,316
Water Quality Improvement Projects	13	16	7	36
Metropolitan's Benefits				
Blending	\$38,160,000	\$28,170,000	\$12,670,000	\$79,000,000
Deferral of R.P. Expansion	\$100,000,000	\$100,000,000	\$100,000,000	\$100,000,000
Peaking Capacity	\$6,614,000	\$4,763,000	\$2,061,000	\$13,438,000
Estimated Cost	\$48,744,000	\$23,839,000	\$7,500,000	\$80,083,000
Grant Request (50%)	\$24,372,000	\$11,920,000	\$7,500,000	\$40,042,000
MWD Unit Cost of Water ²	\$159	\$110	\$194	-
MWD Benefit (\$/AF) ³	\$1,163	\$1,222	\$1,459	-

- 1 Reflects schedule if Metropolitan can fund prior to August 2001.
- 2 Calculated using Metropolitan's preferred methodology. More details are provided in Section 3E.
- 3 Includes value of water at \$435/AF.



Legend

- Proposed Projects by Category**
- Category 1
 - Category 2
 - ▲ Category 3
- Water Service Areas**
- City of Chino
 - ▨ City of Chino Hills
 - City of Claremont
 - City of Norco
 - ▨ City of Ontario
 - ▨ City of Pomona
 - ▨ City of Upland
 - ▨ Cucamonga County Water District
 - ▨ Fontana Water Company
 - ▨ Jurupa Community Services District
 - ▨ Monte Vista Water District
 - San Antonio Water Company
 - ▨ West San Bernardino County Water District
 - ▨ Other WSA
- Chino Basin Hydrologic Boundary
- Imported Water Pipeline
- Fault
(dashed where approximate, dotted where concealed, queried where uncertain, large dots where groundwater barrier)
- ↔ Groundwater Divide
- Waterways & Reservoirs
- Consolidated Bedrock

Figure 1-1
Proposed Project Locations
and Water Service Areas
in the Chino Basin



Date: January 2001



1B. CONSTRUCTION OF SUBSTANTIVE NEW FACILITIES

All of the proposed projects include construction of substantive new facilities that will provide local redundancy to Metropolitan's supplies during times of drought or emergency and will allow Metropolitan increased flexibility to meet the needs of other parts of its service area. All projects will be configured so that new capacity can be used in lieu of taking water from the Rialto Pipeline. The projects will also provide peaking benefits and possible deferral of major new delivery facilities, such as double-barreling of the Rialto Pipeline. In addition, the projects provide a quantifiable benefit to Metropolitan in terms of enhanced blending capability at the Weymouth and Diemer Water Treatment Plants.

1C. METROPOLITAN REQUIREMENTS

All of the proposed projects will comply with the Metropolitan Water District Act and all other applicable laws, specifically any required state financial accounting standards and Metropolitan audit requirements.

1D. ENVIRONMENTAL CERTIFICATION

Tables 2-1, 2-2, and 2-3 in Section 2 include environmental certification information. All 38 proposed projects fall under the Program Environmental Impact Report (EIR) prepared for the OBMP. As specific projects move forward, additional review will be required. It is anticipated that most of the projects will qualify for a negative Declaration or a Categorical Exemption. All projects are expected to meet California Environmental Quality Act (CEQA) requirements.

1E. AGREEMENT EXECUTION

We understand that projects shall not be existing or under construction prior to agreement execution. We also understand that Metropolitan considers that projects that have entered Design-Build contracts are considered under construction.



SECTION 2.0
PROJECT DESCRIPTIONS



This section of our proposal presents more detailed information on the 38 projects introduced in Section 1. For each project, we address the requirements listed on Page 8 of Metropolitan's RFP. Following introductory text, we present detailed tables for the Category 1, Category 2, and Category 3 Projects (Tables 2-1, 2-2, and 2-3, respectively). These categories represent a menu of options by project type and do not represent priority.

We also present an overview map showing how the projects are configured with respect to Metropolitan's Rialto Pipeline. Following the overview map, we present 11 project location maps tied to participating agencies: City of Chino, City of Chino Hills, Cucamonga County Water District, Fontana Water Company, IEUA, Jurupa Community Services District, Monte Vista Water District, City of Ontario, City of Pomona, San Antonio Water Company, and the City of Upland.

2A MANAGEMENT INFORMATION

IEUA is the sponsoring agency in conjunction with the Watermaster stakeholders. Because the proposed projects comply with the OBMP, they will meet AB 3030 and other requirements for groundwater management plans.

2B PROJECT PARTICIPANTS/PARTICIPATING AGENCIES

The 11 participating agencies are identified in the second paragraph above.

2C PROJECT SCHEDULE

As shown in Table 2-1, 2-2, and 2-3, the on-line date for the 38 projects ranges from November 2001 to November 2003. This assumes funding available in August of this year. If funding could be made available sooner, the on-line dates would range from August 2001 through July 2003 (see Table 1-2).

2D COST FACTORS

The three tables also present cost information. This information, discussed in more detail in Sections 3E(iii) and 3E(iv), was developed using Metropolitan's Economic Analysis Worksheet. Costs assume a 50 percent capital contribution from Metropolitan. Operation costs were averaged for the range of projects based on "typical" costs for treatment, pumping, and replenishment. Treatment costs (for Category 1 projects only) were assumed at \$85/AF. Well pumping (all categories) was assumed at \$60/AF. Replenishment (all categories) was assumed at \$90/AF. Replenishment costs assume Metropolitan would be responsible for the replenishment obligation and that \$90/AF reflects the cost of pumping SWP water through



the East Branch. All other costs associated with the projects were assumed to be borne by the local agencies.

2E MAPS

As stated above, project maps are provided at the end of this section showing locations of proposed projects, primary facilities and proposed user sites, and other requested information.

2F WATER SUPPLY/DISTRIBUTION AND WATER QUALITY ISSUES

IEUA's strategic location relative to Metropolitan's service area enables the Program Concept presented in this proposal to offer you unusual flexibility and exciting conjunctive use opportunities.

The Chino Basin is one of the largest groundwater basins in Southern California with about 5 million acre-feet (MAF) of water in the Basin and an unused storage capacity of about 1 MAF. Through the cooperative program envisioned by IEUA, the Watermaster, and the OBMP stakeholders, these twin resources - groundwater and unused storage capacity - can be put to beneficial use.

Figure 2-1 on the following page shows the mix of resources needed to meet the 2020 demand with and without the projects identified in this proposal. The figure also shows the current resources mix to meet existing demand, based on IEUA's Urban Water Management Plan 2000 (adopted December 7, 2000). Figure 2-1 also shows additional water that could be available within the Upper and Lower Feeder service area during dry years. By 2020, up to an additional 100,000 acre-feet of water could be available for potential export to Metropolitan. During wet years, the projects would be utilized and the Basin would take additional deliveries of water to offset any excess pumping that occurred during dry periods.

An additional benefit to Metropolitan – as California grapples with a serious energy crises – would be the ability to shed electrical load by reducing State Water Project pumping during critical periods when energy supplies are limited.

Figure 2-1
Chino Basin Water Resource Mix

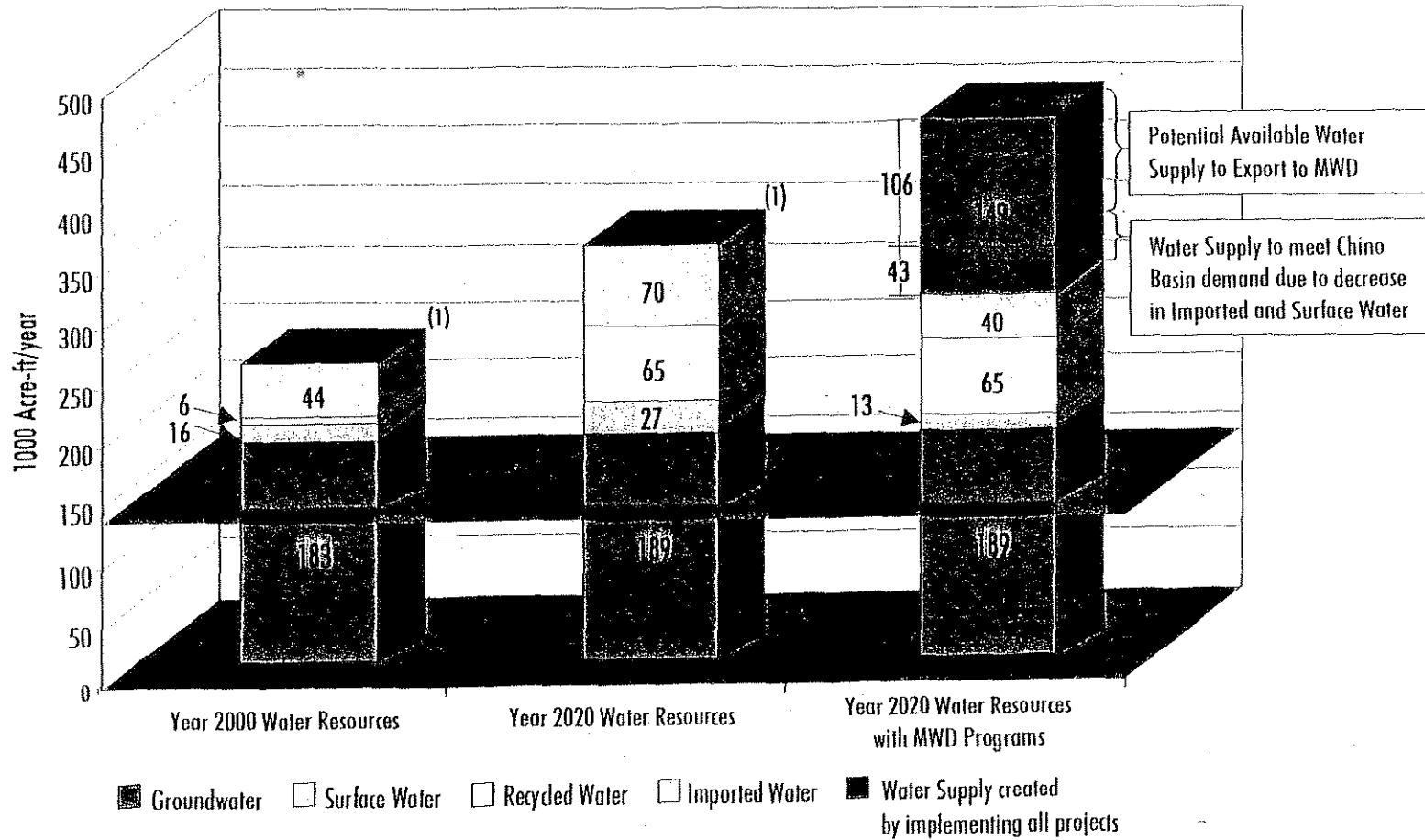




TABLE 2-1
Summary of Category I Projects

Project No.	Project Title/Lead Agency/ Part. Agency	Dry Year Yield (AFY)	Schedule Milestones	Cost Factors
1	Nitrate Removal Water Treatment Plant City of Chino (preservation of existing well capacity)	13,441	Design (mo.) 3 CEQA Ongoing Construction (mo.) 18 Online Date ¹ 05/03	Grant (50%) \$2,156,500 Capital \$4,313,000 O&M (\$/AF) ² Financing ³
2	Reservoir 2A Wellhead Treatment Facility Cucamonga County Water District	6,300	Design (mo.) 9 CEQA ND-1 ⁴ Construction (mo.) 12 Online Date ¹ 05/03	Grant (50%) \$3,561,000 Capital \$7,122,000 O&M (\$/AF) ² Financing ³
3	Reservoir 3 Wellhead Treatment Facility Cucamonga County Water District	9,700	Design (mo.) 9 CEQA ND-1 ⁴ Construction (mo.) 12 Online Date ¹ 05/03	Grant (50%) \$3,397,000 Capital \$6,794,000 O&M (\$/AF) ² Financing ³
4	Reservoir 3A Wellhead Treatment Facility Cucamonga County Water District	3,500	Design (mo.) 6 CEQA ND-1 ⁴ Construction (mo.) 10 Online Date ¹ 12/02	Grant (50%) \$925,000 Capital \$1,850,000 O&M (\$/AF) ² Financing ³
5	Wellhead Ion-Exchange Treatment #1 Fontana Water Company	3,700	Design (mo.) 4 CEQA ND-1 ⁴ Construction (mo.) 8 Online Date ¹ 08/02	Grant (50%) \$2,000,000 Capital \$4,000,000 O&M (\$/AF) ² Financing ³
6	Wellhead Ion-Exchange Treatment #2 Fontana Water Company	6,000	Design (mo.) 4 CEQA ND-1 ⁴ Construction (mo.) 8 Online Date ¹ 08/02	Grant (50%) \$3,200,000 Capital \$6,400,000 O&M (\$/AF) ² Financing ³
7	Wellhead Ion-Exchange Treatment Jurupa Community Service District	4,000	Design (mo.) 4 CEQA (mo.) 3 Construction (mo.) 12 Online Date ¹ 08/02	Grant (50%) \$2,500,000 Capital \$5,000,000 O&M (\$/AF) ² Financing ³
8	Wellhead Ion-Exchange for 2 Wells at Plant 4 Monte Vista Water District	4,700	Design (mo.) 6 CEQA (mo.) 7 Construction (mo.) 9 Online Date ¹ 11/02	Grant (50%) \$1,075,000 Capital \$2,150,000 O&M (\$/AF) ² Financing ³
9	Wellhead Ion-Exchange Treatment at Well 2 Monte Vista Water District	1,450	Design (mo.) 3 CEQA (mo.) 7 Construction (mo.) 6 Online Date ¹ 05/02	Grant (50%) \$437,500 Capital \$875,000 O&M (\$/AF) ² Financing ³
10	Wellhead Ion-Exchange & Transmission Line City of Ontario	5,000	Design (mo.) 12 CEQA ND-1 ⁴ Construction (mo.) 15 Online Date ¹ 11/03	Grant (50%) \$1,750,000 Capital \$3,500,000 O&M (\$/AF) ² Financing ³



Project No.	Project Title/Lead Agency/ Part. Agency	Dry Year Yield (AFY)	Schedule Milestones		Cost Factors	
11	Anion Exchange Plant Expansion & Upgrade City of Pomona	10,000	Design (mo.) CEQA Construction (mo.) Online Date ¹	6 NR ⁵ 12 01/03	Grant (50%) Capital O&M (\$/AF) ² Financing ³	\$850,000 \$1,700,000
12	Retrofit well and Wellhead Ion-Exchange Treatment San Antonio Water Company Ontario, Upland, MWD	3,000	Design (mo.) CEQA (mo.) Construction (mo.) Online Date ¹	4 5 6 03/02	Grant (50%) Capital O&M (\$/AF) ² Financing ³	\$1,020,000 \$2,040,000
13	Wellhead Ion-Exchange Treatment City of Upland	2,700	Design (mo.) CEQA Construction (mo.) Online Date ¹	4 ND-1 ⁴ 8 08/02	Grant (50%) Capital O&M (\$/AF) ² Financing ³	\$1,500,000 \$3,000,000

¹ Based on fund availability August, 2001

² As described in Section 2-D

³ Remaining capital will be paid by each local agency

⁴ Negative Declaration

⁵ Not Required



TABLE 2-2
Summary of Category 2 Projects

Project No.	Project Title/Lead Agency/ Part. Agency	Dry Year Yield (AFY)	Schedule Milestones	Cost Factors
1	Benson/Palo Verde ASR City of Chino/MVWD (New production)	5,040	Design (mo.) 3 CEQA (mo.) 7 Construction (mo.) 18 Online Date ¹ 05/03	Grant (50%) \$719,000 Capital \$1,438,000 O&M (\$/AF) ² Financing ³
2	State/Benson ASR City of Chino (Preservation of existing GW)	4,480	Design (mo.) 3 CEQA (mo.) 7 Construction (mo.) 18 Online Date ¹ 05/03	Grant (50%) \$238,000 Capital \$476,000 O&M (\$/AF) ² Financing ³
3	Phillips/ Central ASR City of Chino (Preservation of existing GW)	6,160	Design (mo.) 3 CEQA (mo.) 7 Construction (mo.) 18 Online Date ¹ 05/03	Grant (50%) \$1,001,000 Capital \$2,002,000 O&M (\$/AF) ² Financing ³
4	Interagency Connection & Distribution City of Chino Chino Hills, MWD, Ontario	5,377	Design (mo.) 9 CEQA (mo.) 6 Construction (mo.) 9 Online Date ¹ 02/03	Grant (50%) \$2,630,500 Capital \$5,261,000 O&M (\$/AF) ² Financing ³
5	Well 13 Blending station City of Chino Hills (Enables more desalted water to Chino & Ontario)	2,100	Design (mo.) 1 CEQA ND-1 Construction (mo.) 1 Online Date ¹ 11/01	Grant (50%) \$45,000 Capital \$90,000 O&M (\$/AF) ² Financing ³
6	Well No. 36 Cucamonga County Water District	2,500	Design (mo.) 2 CEQA ND-1 Construction (mo.) 4 Online Date ¹ 03/02	Grant (50%) \$425,000 Capital \$850,000 O&M (\$/AF) ² Financing ³
7	CCWD/MWD Chino Basin Groundwater Use Project Cucamonga County Water District	11,000	Design (mo.) 6 CEQA ND-2 Construction (mo.) 12 Online Date ¹ 02/03	Grant (50%) \$1,973,500 Capital \$3,947,000 O&M (\$/AF) ² Financing ³
8	Cucamonga Basin Recharge Project Cucamonga County Water District	4,000	Design (mo.) 6 CEQA MND-6 Construction (mo.) 18 Online Date ¹ 05/03	Grant (50%) \$1,300,000 Capital \$2,600,000 O&M (\$/AF) ² Financing ³
9	Reactivate MWD Connections Inland Empire Utility Agency	-	Design (mo.) N/A CEQA NR Construction (mo.) N/A Online Date ¹ 07/02	Grant (50%) \$275,000 Capital \$550,000 O&M (\$/AF) ² Financing ³
10	Rehabilitate or New Well (ASR) - Plant I Monte Vista Water District	2,167	Design (mo.) 6 CEQA (mo.) 6 Construction (mo.) 12 Online Date ¹ 03/03	Grant (50%) \$500,000 Capital \$1,000,000 O&M (\$/AF) ² Financing ³

Groundwater Storage Programs



Project No.	Project Title/Lead Agency/ Part. Agency	Dry Year Yield (AFY)	Schedule Milestones	Cost Factors
11	Rehabilitate or New Well (ASR) - Plant 9 Monte Vista Water District	2,167	Design (mo.) 6 CEQA (mo.) 6 Construction (mo.) 12 Online Date ¹ 03/03	Grant (50%) \$500,000 Capital \$1,000,000 O&M (\$/AF) ² Financing ³
12	Rehabilitate or New Well (ASR) - Plant 12 Monte Vista Water District	2,167	Design (mo.) 6 CEQA (mo.) 6 Construction (mo.) 12 Online Date ¹ 03/03	Grant (50%) \$500,000 Capital \$1,000,000 O&M (\$/AF) ² Financing ³
13	Rehabilitate or New Well (ASR) - Plant 17 Monte Vista Water District	2,167	Design (mo.) 6 CEQA (mo.) 6 Construction (mo.) 12 Online Date ¹ 03/03	Grant (50%) \$500,000 Capital \$1,000,000 O&M (\$/AF) ² Financing ³
14	Well 15 Blending Station City of Ontario	2,000	Design (mo.) 6 CEQA ND-1 ⁴ Construction (mo.) 9 Online Date ¹ 12/02	Grant (50%) \$100,000 Capital \$200,000 O&M (\$/AF) ² Financing ³
15	Jurupa Connection City of Ontario JCSD, SAWPA	-	Design (mo.) 6 CEQA ND-1 ⁴ Construction (mo.) 6 Online Date ¹ 09/02	Grant (50%) \$37,500 Capital \$75,000 O&M (\$/AF) ² Financing ³
16	Chino II Desalter Transmission Facilities City of Ontario JCSD, SAWPA	-	Design (mo.) N/A CEQA N/A Construction (mo.) 6 Online Date ¹ 12/02	Grant (50%) \$425,000 Capital \$850,000 O&M (\$/AF) ² Financing ³
17	Well No. 36 City of Pomona	1,600	Design (mo.) 6 CEQA ND ⁴ Construction (mo.) 12 Online Date ¹ 02/03	Grant (50%) \$200,000 Capital \$400,000 O&M (\$/AF) ² Financing ³
18	Booster 16A&B & Pipeline City of Pomona	-	Design (mo.) 6 CEQA ND ⁴ Construction (mo.) 4 Online Date ¹ 07/02	Grant (50%) \$550,000 Capital \$1,100,000 O&M (\$/AF) ² Financing ³

¹ Based on Fund Availability August, 2001

² As described in Section 2-D

³ Remaining capital will be paid by each local agency

⁴ Negative Declaration

⁵ Mitigated Negative Declaration



TABLE 2-3
Summary of Category 3 Projects

Project No.	Project Title/Lead Agency/Part. Agency	Dry Year Yield (AFY)	Schedule Milestones	Cost Factors
1	2 New Wells Cucamonga County Water District	5,000	Design (mo.) CEQA Construction (mo.) Online Date ²	3 Grant (50%) ND-1 ¹ Capital 8 O&M (\$/AF) ³ 08/02 Financing ⁴
2	New Well - Plant 28 Monte Vista Water District	2,900	Design (mo.) CEQA Construction (mo.) Online Date ²	2 Grant (50%) Approved Capital 12 O&M (\$/AF) ³ 11/02 Financing ⁴
3	New Well #1 City of Ontario	3,000	Design (mo.) CEQA Construction (mo.) Online Date ²	Complete Grant (50%) ND-1 ¹ Capital 12 O&M (\$/AF) ³ 09/02 Financing ⁴
4	New Well #2 City of Ontario	3,000	Design (mo.) CEQA Construction (mo.) Online Date ²	9 Grant (50%) ND-1 ¹ Capital 12 O&M (\$/AF) ³ 06/03 Financing ⁴
5	New Well #3 City of Ontario	3,000	Design (mo.) CEQA Construction (mo.) Online Date ²	9 Grant (50%) ND-1 ¹ Capital 12 O&M (\$/AF) ³ 06/03 Financing ⁴
6	New Well #4 City of Ontario	3,000	Design (mo.) CEQA Construction (mo.) Online Date ²	9 Grant (50%) ND-1 ¹ Capital 12 O&M (\$/AF) ³ 06/03 Financing ⁴
7	New Well San Antonio Water Company Ontario, Upland, MWD	3,000	Design (mo.) CEQA (mo.) Construction (mo.) Online Date ²	6 Grant (50%) 4 Capital 6 O&M (\$/AF) ³ 03/02 Financing ⁴

¹ Negative Declaration

² Based on fund availability August, 2001

³ As described in Section 2-D

⁴ Remaining capital will be paid by each local agency



DRAWINGS/MAPS

Groundwater Storage Programs

INLAND EMPIRE UTILITY AGENCY



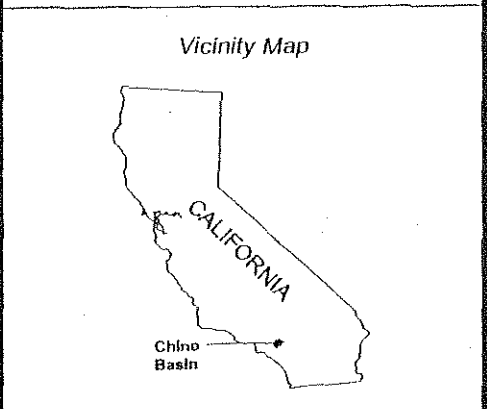
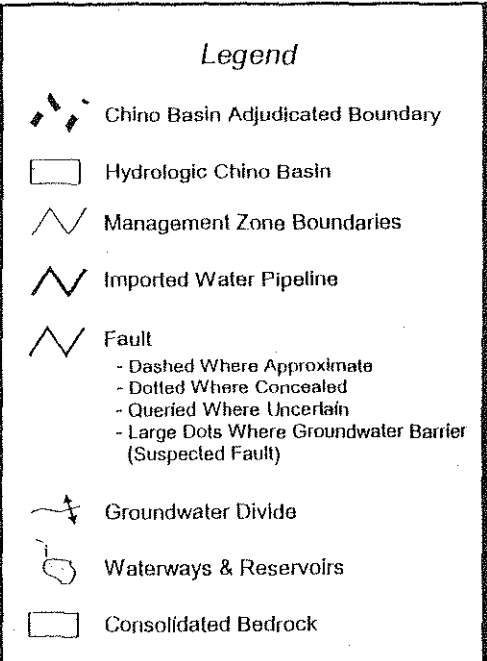
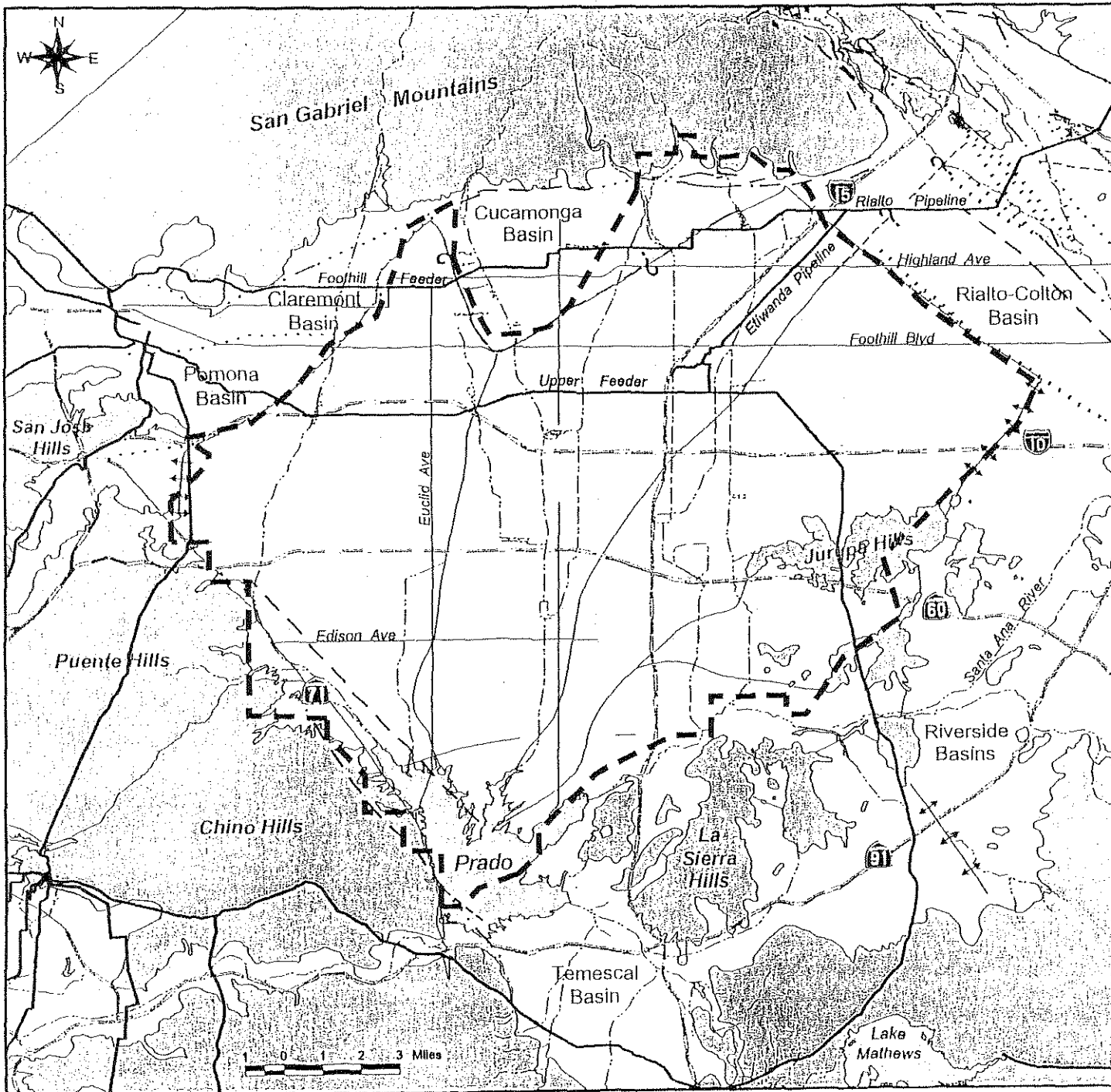
PROJECT DRAWING LIST

The first drawing shows Metropolitan's Rialto/Etiwanda/Upper Feeder Service Area. The subsequent drawings show the location of proposed projects, primary facilities, and proposed user sites including interties and points of connection. Most of the major purveyors in the Chino Basin Area have existing interconnections to Metropolitan's water system and, by overproducing in dry years, can provide immediate dry year yield to Metropolitan. Agencies in the Chino Basin that do not have a direct connection to Metropolitan's system also can provide water through an exchange. Fontana Water Company would use existing interconnections through Cucamonga County Water District for water supply. Jurupa Community Service District would use an existing or new intertie with the City of Ontario, and San Antonio Water Company would use an existing or a new point of connection with the City of Upland water distribution system. The drawings are presented in the following order:

CATEGORIES

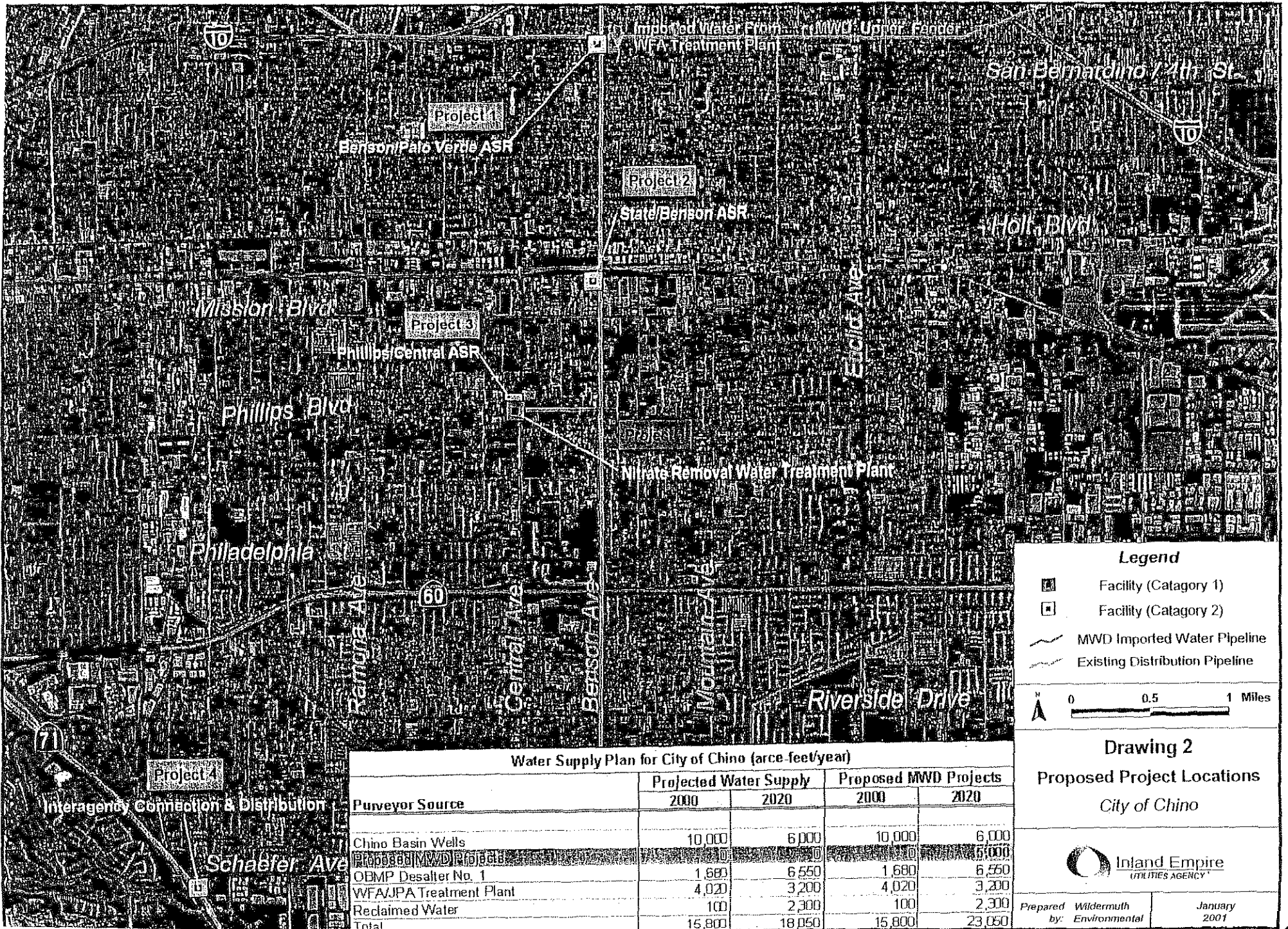
	1	2	3
1. MWD/Rialto/Etiwanda/Upper Feeder Service Area	N/A	N/A	N/A
2. City of Chino Projects	1	4	-
3. City of Chino Hills Project	-	1	-
4. Cucamonga County Water District Projects	3	3	1
5. Fontana Water Company Projects	2	-	-
6. IEUA Project	-	1	-
7. Jurupa Community Service District Project	1	-	-
8. Monte Vista Water District Projects	2	4	1
9. City of Ontario Projects	1	3	4
10. City of Pomona Projects	1	2	-
11. San Antonio Water Company Projects	1	-	1
12. City of Upland Project	1	-	-

N/A – Not Applicable



Drawing 1
Chino Basin
and MWD Pipelines

Date: January 2001



Water Supply Plan for City of Chino (arce-feet/year)

Punveyor Source	Projected Water Supply		Proposed MWD Projects	
	2000	2020	2000	2020
Chino Basin Wells	10,000	6,000	10,000	6,000
Proposed MWD Projects	1,800	6,550	1,800	6,550
OBMP Desalter No. 1	4,020	3,200	4,020	3,200
WFA/JPA Treatment Plant	100	2,300	100	2,300
Reclaimed Water	15,800	18,050	15,800	23,050
Total				

Legend

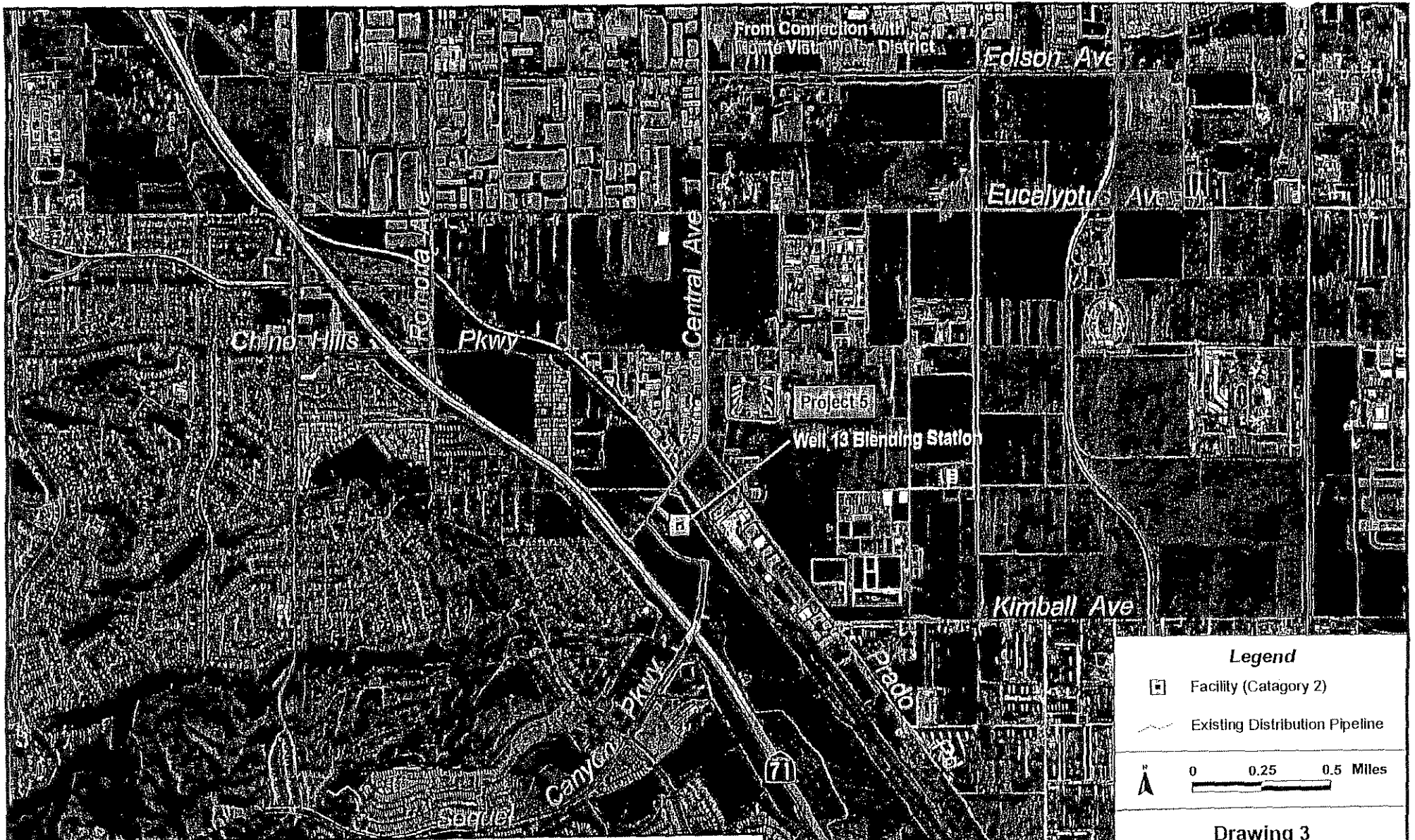
- Facility (Category 1)
- Facility (Category 2)
- MWD Imported Water Pipeline
- Existing Distribution Pipeline

0 0.5 1 Miles

Drawing 2
Proposed Project Locations
 City of Chino

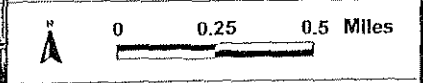
Inland Empire
 UTILITIES AGENCY

Prepared by: Wildermuth Environmental
 January 2001



Legend

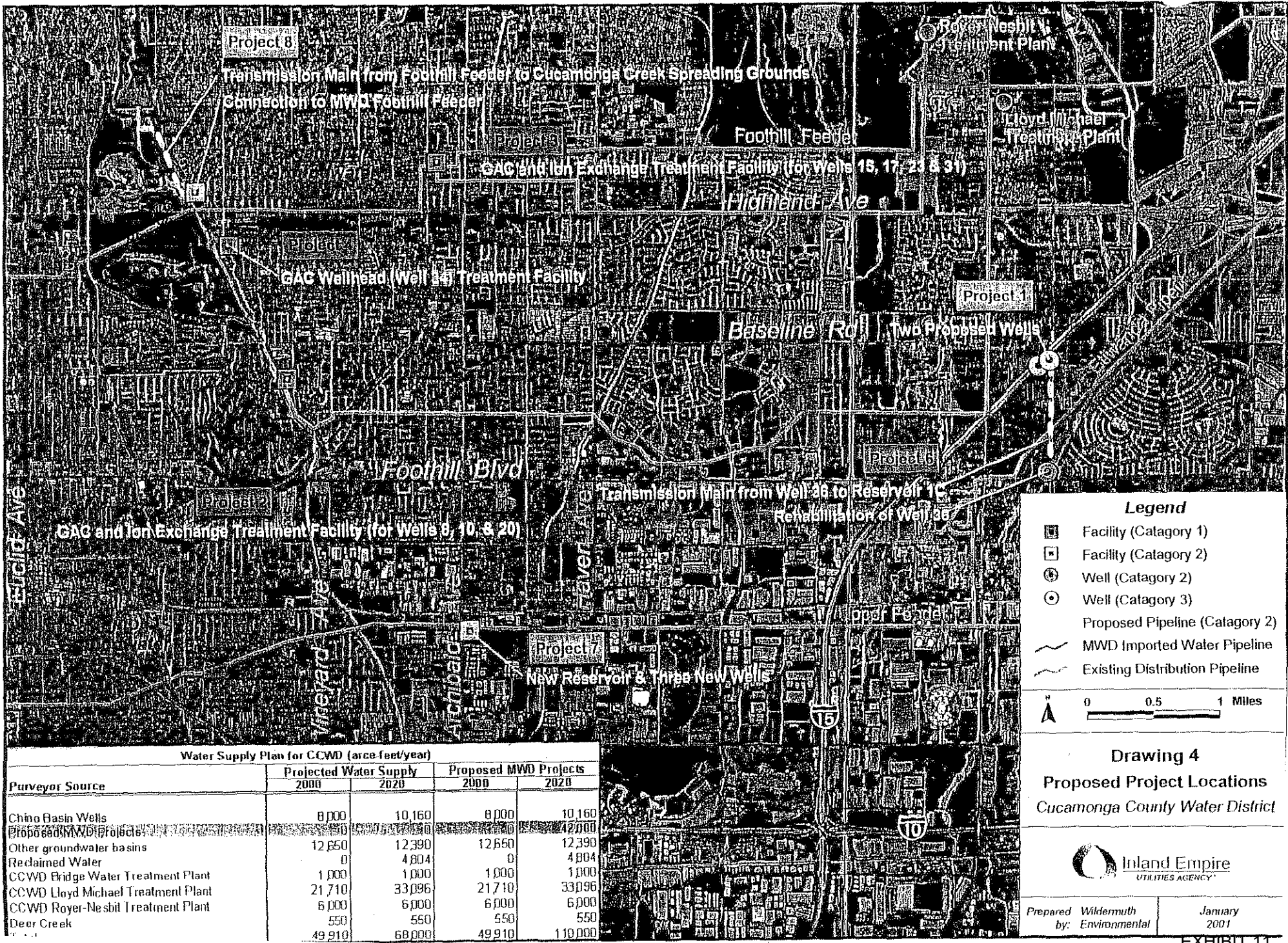
- Facility (Category 2)
- Existing Distribution Pipeline



Drawing 3
Proposed Project Locations
 City of Chino Hills



Water Supply Plan for City of Chino Hills (arce-feet/year)				
Purveyor Source	Projected Water Supply		Proposed MWD Projects	
	2000	2020	2000	2020
Chino Basin Wells	3,610	3,610	3,610	3,610
Proposed MWD Projects	3,610	7,540	3,610	21,000
OBMP Desalter No. 1	1,120	7,540	1,120	7,540
Reclaimed Water	400	2,610	400	2,610
MWWD Supply (Chino GW)	12,510	9,480	12,510	9,480
	17,640	23,240	17,640	25,340

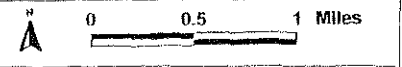


Water Supply Plan for CCWD (acres-feet/year)

Purveyor Source	Projected Water Supply		Proposed MWD Projects	
	2000	2020	2000	2020
Chino Basin Wells	8,000	10,160	8,000	10,160
Proposed MWD Projects	4,250	4,250	4,250	4,250
Other groundwater basins	12,650	12,390	12,650	12,390
Reclaimed Water	0	4,804	0	4,804
CCWD Bridge Water Treatment Plant	1,000	1,000	1,000	1,000
CCWD Lloyd Michael Treatment Plant	21,710	33,096	21,710	33,096
CCWD Royer-Nesbit Treatment Plant	6,000	6,000	6,000	6,000
Deer Creek	550	550	550	550
	49,910	68,000	49,910	110,000

Legend

- Facility (Category 1)
- Facility (Category 2)
- Well (Category 2)
- Well (Category 3)
- Proposed Pipeline (Category 2)
- MWD Imported Water Pipeline
- Existing Distribution Pipeline



Drawing 4
Proposed Project Locations
 Cucamonga County Water District



Prepared by: Wildermuth Environmental
 January 2001



Water Supply Plan for FWC (arce feet/year)				
Purveyor Source	Projected Water Supply		Proposed MWD Projects	
	2000	2020	2000	2020
Chino Basin Wells	16,700	24,800	16,700	24,800
Proposed MWD Projects	0	0	0	9,700
Other Groundwater Basins	12,700	12,700	12,700	12,700
Reclaimed Water	0	3,370	0	3,370
Supply from CCWD - Purchased Water	10,000	5,000	10,000	0
Fontana Water Treatment Plant	0	15,230	0	15,230
Sandhill Treatment Plant	7,400	0	7,400	0
Total	46,800	61,100	46,800	65,800

Legend

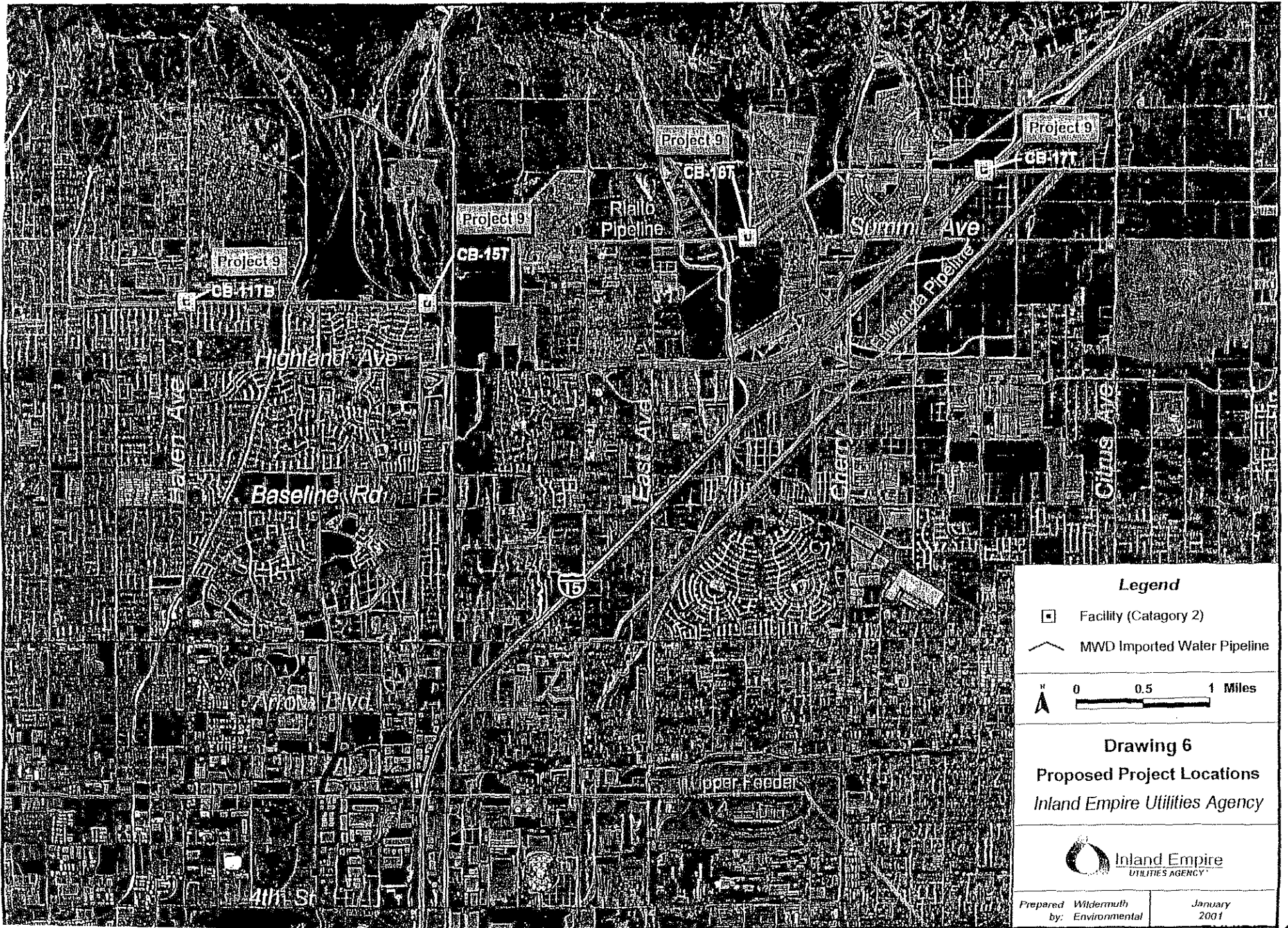
- Facility (Category 1)
- MWD Imported Water Pipeline
- Existing Distribution Pipeline

N



0 0.25 0.5 Miles

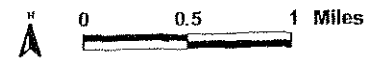
Drawing 5
Proposed Project Locations
Fontana Water Company

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 January 2001



Legend

-  Facility (Category 2)
-  MWD Imported Water Pipeline

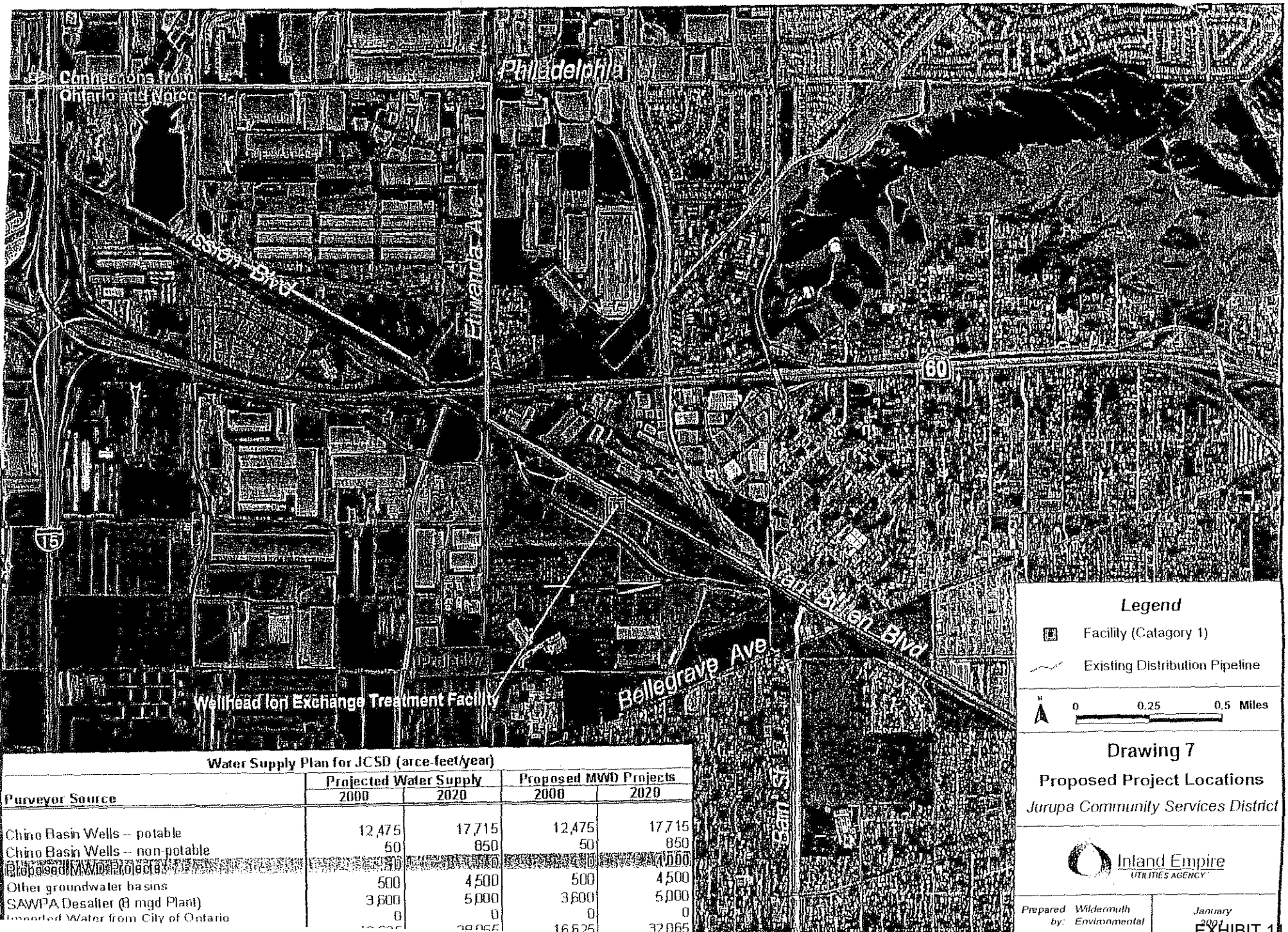


Drawing 6
Proposed Project Locations
Inland Empire Utilities Agency



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 Environmental



January
 2001

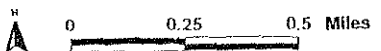


Water Supply Plan for JCSD (arcs-feet/year)

Purveyor Source	Projected Water Supply		Proposed MWD Projects	
	2000	2020	2000	2020
Chino Basin Wells – potable	12,475	17,715	12,475	17,715
Chino Basin Wells – non-potable	50	850	50	850
Proposed MWD Projects	30	30	30	1,000
Other groundwater basins	500	4,500	500	4,500
SAWPA Desalter (8 mgd Plant)	3,600	5,000	3,600	5,000
Imported Water from City of Ontario	0	0	0	0
	16,625	28,065	16,625	32,065


Legend

-  Facility (Category 1)
-  Existing Distribution Pipeline


 0 0.25 0.5 Miles

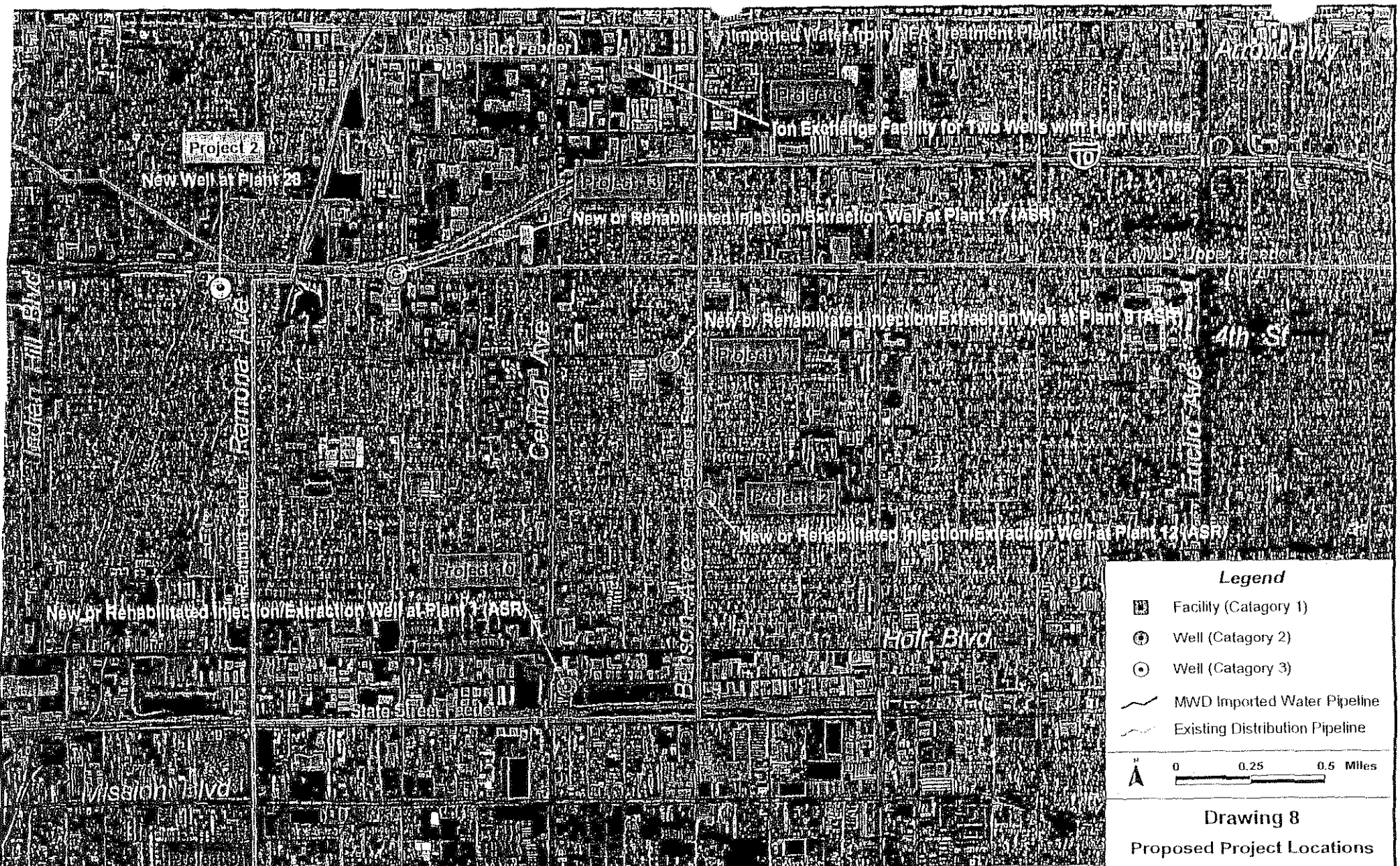
Drawing 7

Proposed Project Locations
Jurupa Community Services District


Inland Empire
UTILITIES AGENCY

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EXHIBIT 4



Legend

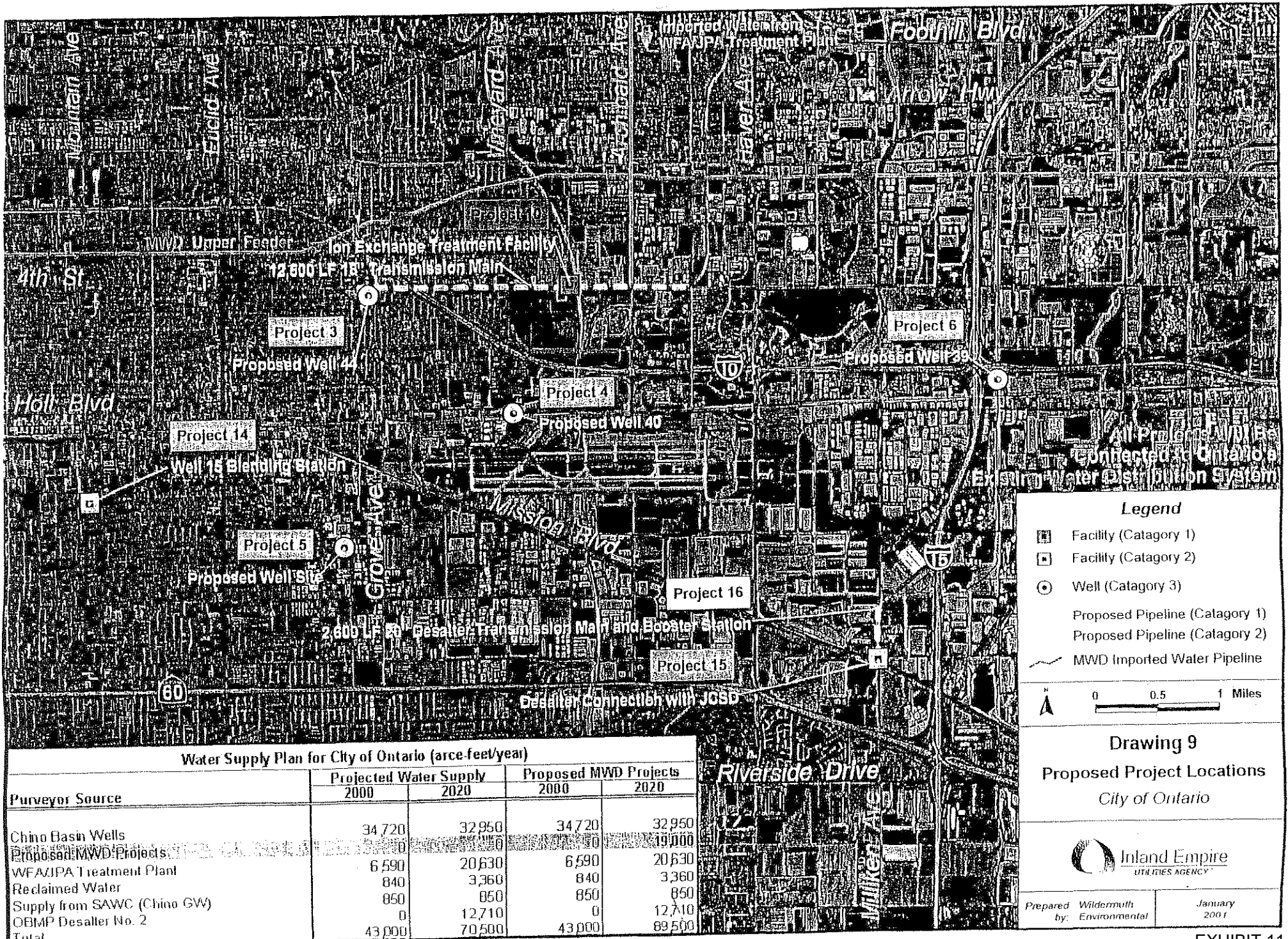
- Facility (Category 1)
- Well (Category 2)
- Well (Category 3)
- MWD Imported Water Pipeline
- Existing Distribution Pipeline

0 0.25 0.5 Miles

Drawing 8
Proposed Project Locations
 Monte Vista Water District

Water Supply Plan for MWD (acre-feet/year)				
Purveyor Source	Projected Water Supply		Proposed MWD Projects	
	2000	2020	2000	2020
Chino Basin Wells	9,980	23,160	9,980	5,442
Proposed MWD Projects	14,087	8,890	14,087	8,890
WFA/JPA Treatment Plant	24,067	32,050	24,067	32,050
Total				

Prepared by: Wildermuth Environmental January 2001



Water Supply Plan for City of Ontario (acre-feet/year)

Purveyor Source	Projected Water Supply		Proposed MWD Projects	
	2000	2020	2000	2020
Chino Basin Wells	34,720	32,950	34,720	32,950
Proposed MWD Projects	6,590	20,630	6,590	20,630
WFA/JPA Treatment Plant	840	3,360	840	3,360
Reclaimed Water	850	850	850	850
Supply from SAWC (Chino GW)	0	12,710	0	12,710
OBMP Desalter No. 2	43,000	70,500	43,000	89,500
Total				

Legend

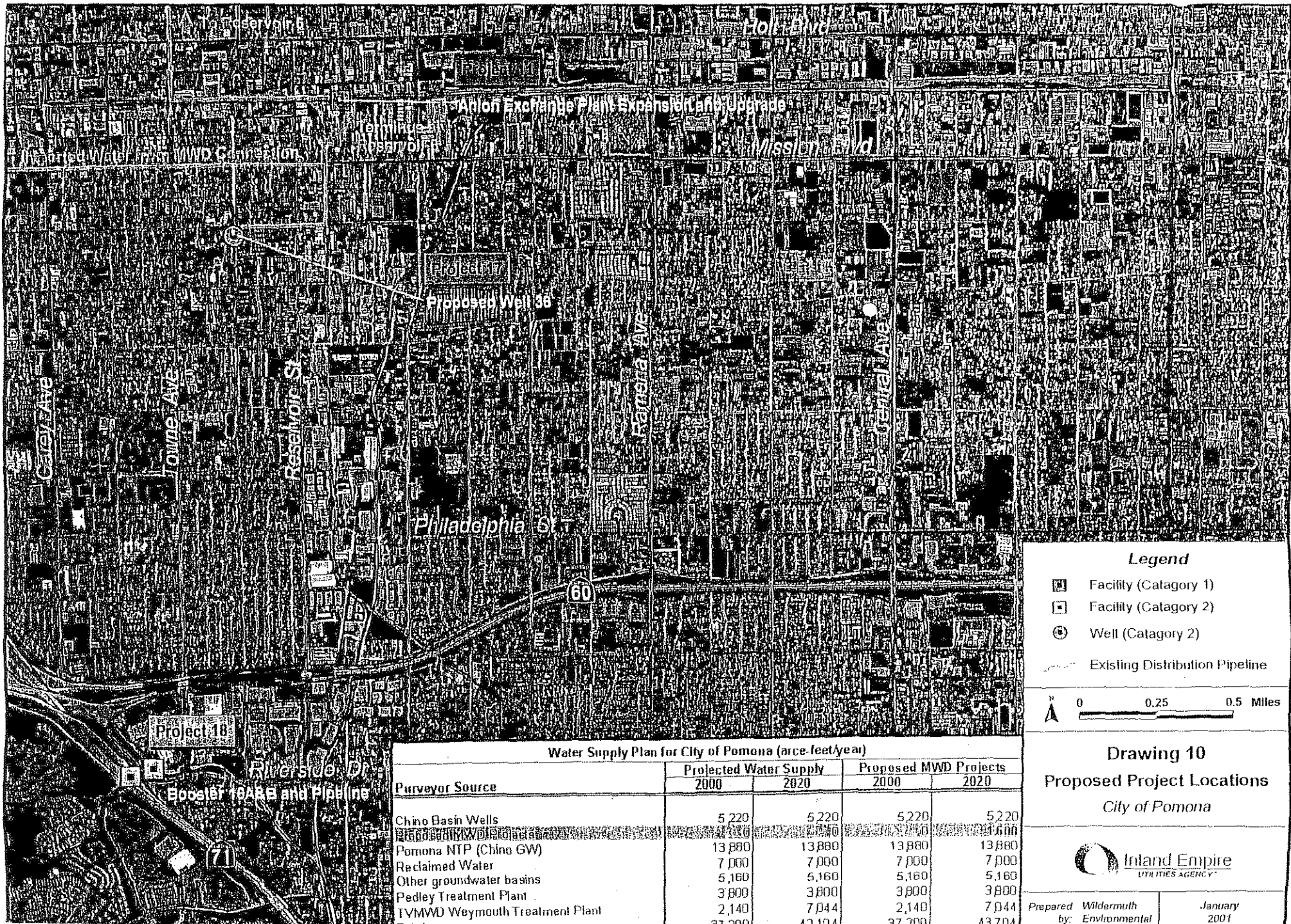
- Facility (Category 1)
- Facility (Category 2)
- Well (Category 3)
- Proposed Pipeline (Category 1)
- Proposed Pipeline (Category 2)
- MWD Imported Water Pipeline

0 0.5 1 Miles

Drawing 9
Proposed Project Locations
City of Ontario

Inland Empire UTILITIES AGENCY

Prepared by: Wildcrumth Environmental January 2001



Legend

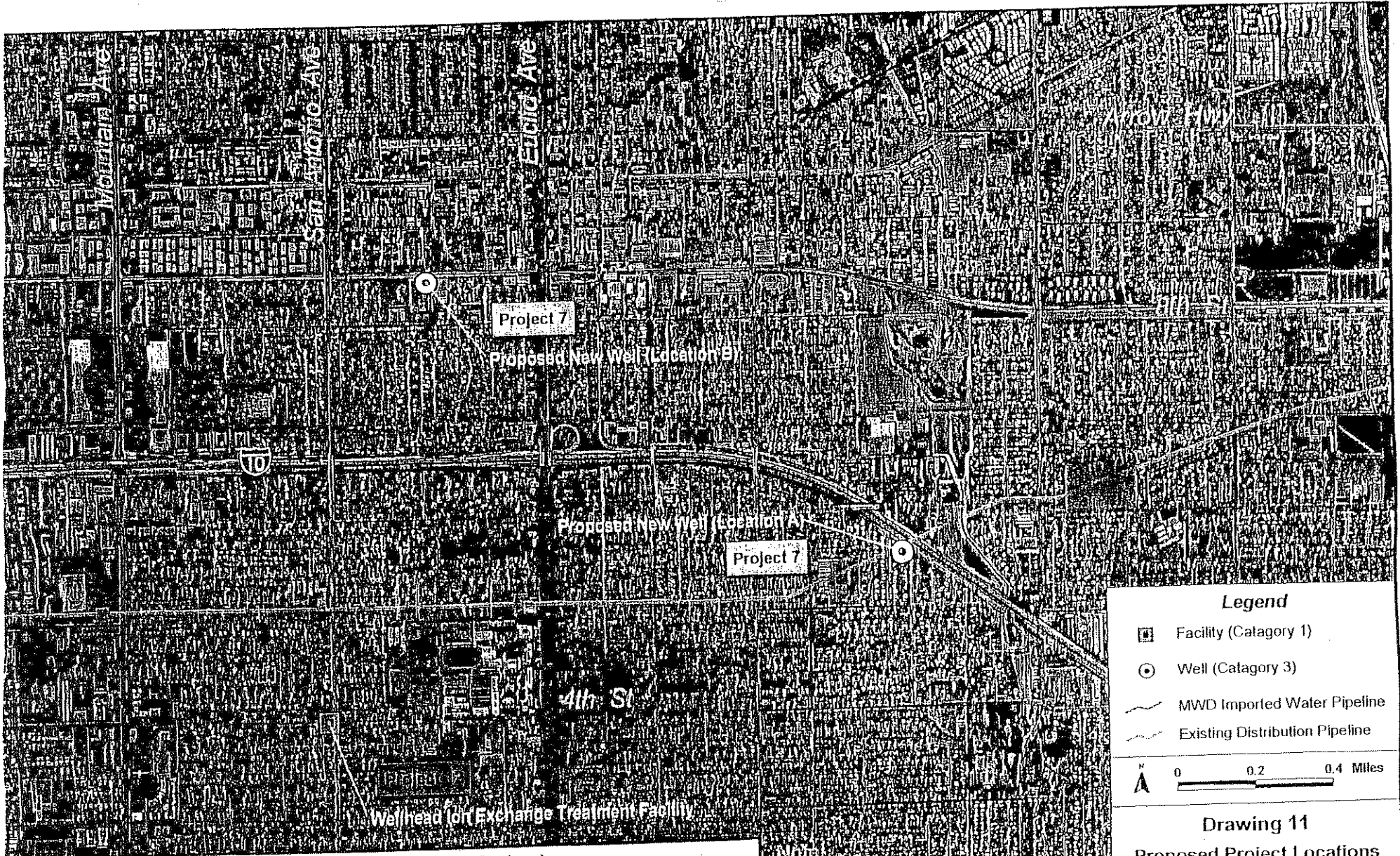
- Facility (Category 1)
- Facility (Category 2)
- Well (Category 2)
- Existing Distribution Pipeline

Water Supply Plan for City of Pomona (acre-feet/year)

Purveyor Source	Projected Water Supply		Proposed MWD Projects	
	2000	2020	2000	2020
Chino Basin Wells	5,220	5,220	5,220	5,220
Orange Basin MWD Project	5,160	5,160	5,160	5,160
Pomona NTP (Chino GW)	13,880	13,880	13,880	13,880
Reclaimed Water	7,000	7,000	7,000	7,000
Other groundwater basins	5,160	5,160	5,160	5,160
Pedley Treatment Plant	3,800	3,800	3,800	3,800
IVMWD Weymouth Treatment Plant	2,140	7,044	2,140	7,044
Total	37,200	42,104	37,200	43,704

Drawing 10
Proposed Project Locations
City of Pomona

Prepared by: Wildermuth Environmental January 2001



Water Supply Plan for SAWC (acre-feet/year)

Purveyor Source	Projected Water Supply		Proposed MWD Projects	
	2000	2020	2000	2020
Chino Basin	70	1,110	70	1,110
Proposed MWD Projects	400	400	400	400
Other groundwater basins	0	0	0	0
San Antonio Canyon	1,020	1,020	1,020	1,020
San Antonio Tunnel				

Note:
Due to the proximity of MWD's Upper Feather pipeline, the facility and new well could be jointly equipped to serve as a utility water location for community use storage and recovery.

Legend

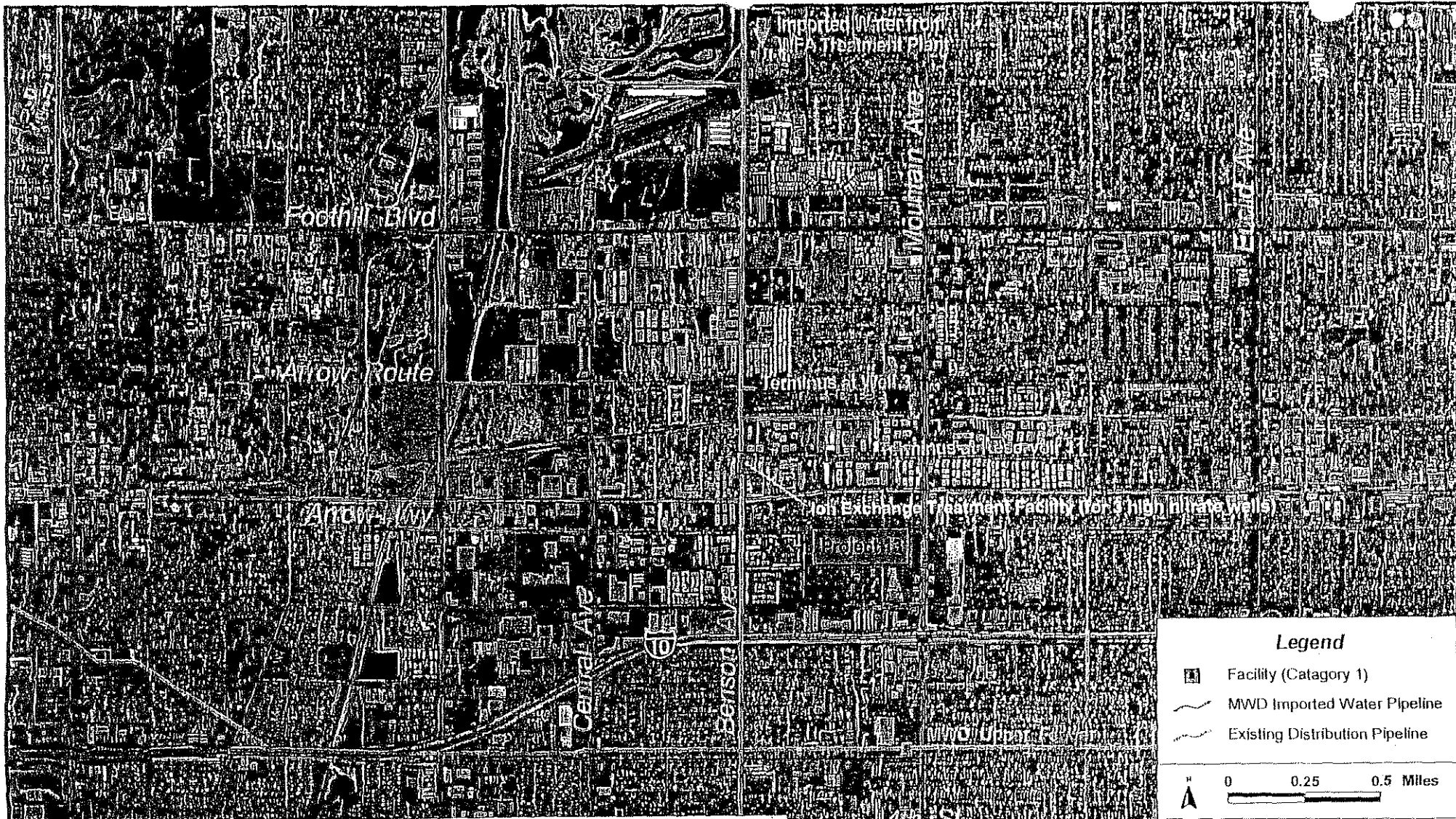
- Facility (Category 1)
- Well (Category 3)
- MWD Imported Water Pipeline
- Existing Distribution Pipeline

0 0.2 0.4 Miles

Drawing 11
Proposed Project Locations
San Antonio Water Company



Prepared by: Wildermuth Environmental
January 2001



Water Supply Plan for City of Upland (acres-feet/year)

Purveyor Source	Projected Water Supply		Proposed MWD Projects	
	2000	2020	2000	2020
Chino Basin Wells	2,429	3,050	2,429	3,050
Proposed WFA Treatment Plant	0	0	0	2,700
Supply from SAWC (non-Chino GW)	4,920	4,520	4,920	4,520
Supply from SAWC (San Antonio Canyon TP)	2,411	2,690	2,411	2,690
Supply from WECWC (Chino GW)	0	1,500	0	1,500
Supply from WECWC (other GW basins)	4,650	4,650	4,650	4,650
WFA Treatment Plant	7,590	7,590	7,590	7,590
Total	22,000	24,000	22,000	26,700

Legend

- Facility (Category 1)
- MWD Imported Water Pipeline
- Existing Distribution Pipeline

0 0.25 0.5 Miles

Drawing 12
Proposed Project Locations
City of Upland



Prepared by: Wildermuth Environmental
 January 2001



SECTION 3.0
DETAILED INFORMATION
FOR SCORING



3A. REGIONAL BENEFIT

Since February 1998, the Chino Basin stakeholders have met twice per month to develop the Optimum Basin Management Program (OBMP). Development of the OBMP required three parallel processes: institutional, engineering, and financial. The institutional process defined the management agenda, directed the engineering and financial processes, and built institutional support for OBMP implementation. The engineering process developed planning data and management elements, and evaluated the technical and economic financing plans for the management elements. The financial process developed alternative financing plans for the OBMP through its evolution.

In June 1998, the stakeholders began the process of developing management goals for the OBMP that address the issues, needs, and interests of the Chino Basin producers. The four management goals of the OBMP are as follows:

- Enhance Basin Water Supplies
- Protect and Enhance Water Quality
- Enhance Management of the Basin
- Equitably Finance the OBMP

3A(i) Dry-Year Yield for Regional Benefit

The proposed projects will enhance Metropolitan's dry-year yield while providing a regional benefit for Chino Basin agencies. This additional dry-year yield is realized through increased groundwater production capacity, expanded ASR (Aquifer Storage and Recovery) capabilities, increased wellhead treatment capacity, and enhanced water-wheeling potential. Each of the 38 proposed projects provides Metropolitan with increased dry year yield capacity while providing the facilities necessary to implement a regional conjunctive use program. Such a program would provide Chino Basin agencies with increased water supply reliability, redundancy and future drought protection.

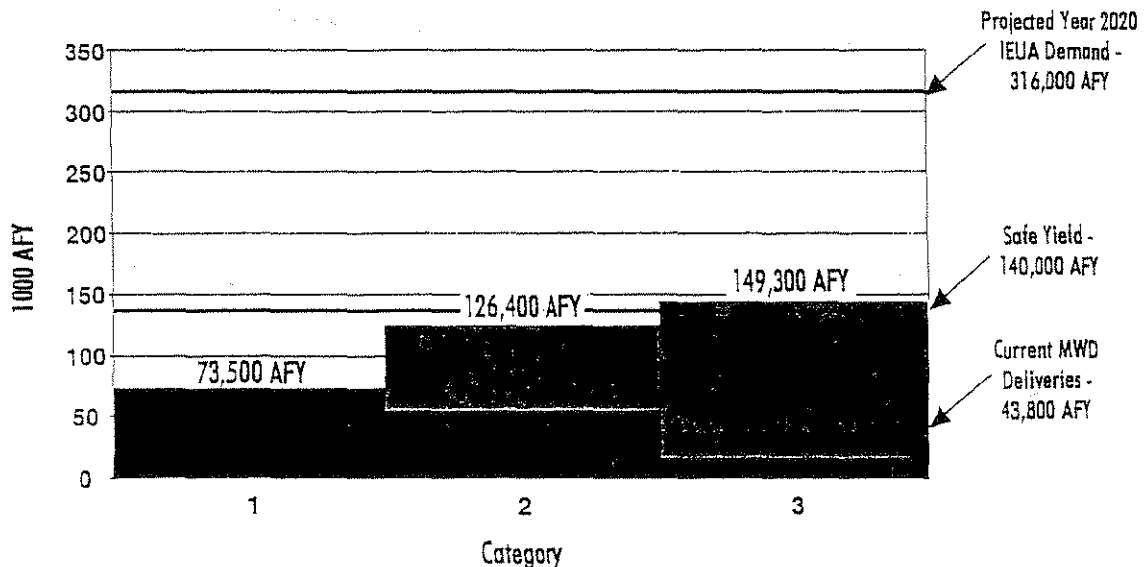
The dry year yield potential of the proposed projects can be summarized via four types of projects. These project types include groundwater production facilities, ASR facilities, wellhead treatment facilities, and transmission and interconnection improvements. The groundwater production projects include the construction of new wells and appurtenant facilities. The construction of new wells will provide an increase in groundwater production capacity necessary to meet demands during periods of reduced Metropolitan supply. New ASR facilities, including new injection wells and modifications to existing ones, will enhance replenishment capabilities and the ability to implement a regional conjunctive use program. ASR facilities also provide a water quality benefit.



The construction of new wellhead treatment facilities will enable the use of previously inactive wells taken off-line due to poor groundwater quality, thus providing increased basin production capacity. The proposed wellhead treatment facilities include new ion-exchange (IX) facilities, modifications to existing IX facilities, and blending stations. Finally, improvements to existing agency interconnections and construction of new transmission capacity will enhance the ability to wheel water between agencies, thus increasing the water supply reliability and water system redundancy necessary to increase Metropolitan's dry year yield.

Currently, Metropolitan deliveries to the IEUA service area have exceeded 50,000 AFY during the past several years and are projected to increase to approximately 100,000 AFY in 2020. The projected year 2020 IEUA total water demand is approximately 316,000 AFY, which constitutes an increase in approximately 74,000 AFY from current demands. This 30 percent increase in water demand will to a large extent be met through an increase in interruptible imported water deliveries and recycled water. Implementing the proposed projects will enable Metropolitan to meet this increase in imported water demand during dry periods, thereby providing Metropolitan with an increase in dry year yield. Figure 3A-1 summarizes the dry-year yield benefit provided to Metropolitan through the implementation of Category 1, 2, and 3 projects.

FIGURE 3A-1
Dry Year Yield Benefits





Implementation of all of these projects, when combined with the safe yield, will provide dry year reliability. Because prolonged use of these local supplies would exceed the Basin's safe yield, Metropolitan can be assured that these projects would only be used during dry years and that Metropolitan's deliveries would not be reduced in normal and wet years.

3A(ii) Seasonal Nature of Project Production

The proposed projects will be constructed with the flexibility of operating year-round. The facilities and provisions necessary to achieve year-round production will be constructed, which will reduce the impact of not being able to produce during periods of reduced imported water deliveries. The facilities have been sized for operation during critical peak dry year periods. This ensures that the projects can reliably reduce imported water deliveries, even during peak or critical dry periods.

3A(iii) Institutional Arrangements for Curtailing Firm Deliveries

In order for any regional project to be successfully implemented, coherence between participating agencies must be formed and maintained. The agencies identifying the proposed projects have previously worked together under the guidance of the Chino Basin Watermaster to develop the historic Peace Agreement. The Peace Agreement provides the framework for the collaborative effort of Chino Basin agencies to implement the proposed projects.

The specific institutional arrangements required for those projects involving transmission and interconnection improvements are covered by the intent of the Peace Agreement. Final institutional arrangements among the participating agencies, the Watermaster, and Metropolitan would be required to define an appropriate delivery schedule to efficiently distribute both in-lieu or direct Metropolitan deliveries.

3A(iv) Ability To Sustain Production During a Three-year Shortage

The Chino Basin is the largest basin available for conjunctive use in Southern California (5 million AF of storage). Members of the Chino Basin appropriate pool already conduct interagency storage account transfers and the construction of the proposed facilities would enhance this capability. At the end of the 1999/2000 fiscal year, the total volume of groundwater in the storage accounts was approximately 170,000 AF. Assuming a worst-case scenario, the total volume of groundwater available in the Chino Basin is more than adequate to supplement approximately three years of imported supply. Implementation of all of the projects presented in this proposal, would make available approximately 149,000 AF — more than what Metropolitan would provide over a three-year period (approximately 129,000 AF).



The construction of the proposed facilities would also enhance the recharge capability of the Chino Basin agencies. During periods of surplus imported supply (wet years), the Chino Basin storage account could be replenished via direct or in-lieu deliveries and/or recharged via direct or in-lieu spreading facilities or injection wells (e.g., ASR), such as those proposed. Also, the Chino Basin Watermaster is currently developing a recharge master plan intended to further the recharge capacity of the Chino Basin and in turn, increase the Basin's ability to sustain production during a three-year shortage of imported supply.

3A(v) Incorporation of Change in Basin Operations into Management Plan

Any changes in Basin operations would be documented accordingly. The projects being submitted under this proposal are consistent with the goals of the OBMP. As previously stated, the basin management plan submitted under the OBMP provides the basis for future projects to ensure regional support and enhancement of Chino Basin resources. Any project and subsequent policy issues have already been addressed in the OBMP and the Programmatic EIR (certified by IEUA in July 2000). Changes to the existing adjudication are not necessary. It is inherent that the proposed projects benefit the members of the Chino Basin while providing Metropolitan with increased dry year yield.



3B. PROJECT PARTNERSHIPS

Many agencies are involved in water management within the Chino Basin. IEUA is working in cooperation with each of these agencies to achieve water supply reliability, water quality, and watershed management goals for the Santa Ana River Watershed and the Southern California region. We present our Program Concept to Metropolitan with confidence because our proposed projects represent a high level of interagency cooperation and support.

3B(i) Local and Regional Support

IEUA serves the Cities of Chino, Chino Hills, Montclair, Ontario, and Upland, as well as Monte Vista Water District, Cucamonga County Water District, and Fontana Water Company. Approximately 700,000 people reside in the Agency's 242 square-mile service area. These agencies and the people they represent support wise water management, as exemplified by the 38 projects named in this proposal.

IEUA also has a representative on the Chino Basin Watermaster Board. The Watermaster was established in 1978 in a Judgment entered in the Superior Court of California. The Watermaster has the responsibility for developing and implementing the Chino Basin OBMP. In July 2000, the Watermaster's planning process culminated in the adoption of a "Peace Agreement." The Peace Agreement outlines the schedule and actions for implementing the OBMP. The Watermaster and the OBMP stakeholders are in concurrence with the concepts and projects presented herein.

The proposed projects will benefit all Chino Basin agencies. They will be implemented to meet the goals of the OBMP and to confirm the Basin's ability and desire to participate in a regional conjunctive use project. Committees in the Chino Basin met to develop a list of projects to be submitted under this proposal. These 38 projects are part of a collective effort to enhance the management of the Chino Basin and provide a regional conjunctive use benefit. The projects are supported by the historic Peace Agreement to collectively manage the Basin. Our proposal is being submitted from all of the agencies in the Chino Basin through IEUA as a representative agency.

3B(ii) CEQA Status

Tables 2-1, 2-2, and 2-3 in Section 2 include environmental certification information. All 38 proposed projects fall under the Program Environmental Impact Report (EIR) prepared for the OBMP. As specific projects move forward, additional review will be required. It is anticipated that most of the projects will qualify for a negative Declaration or a Categorical Exemption. All projects are expected to meet California Environmental Quality Act (CEQA) requirements.



3B(iii) Potential Planning Uncertainties

The projects presented in this proposal have an unusually low degree of planning uncertainties. These projects were developed as part of a regional program to collectively and efficiently manage the resources of the Chino Basin. The Peace Agreement confirms the Basin's interest in providing such a regional benefit. The development of the OBMP and the effort behind implementing the Peace Agreement are the bases for the planning effort of the proposed projects.

3B(iv) Endorsements Needed for Project Approval

The 1978 Judgment requires that the Watermaster develop a management plan for the Chino Groundwater Basin that meets water quality and water quantity objectives for the region, and approval of the projects identified in this proposal would be through the Watermaster. As already stated, the Watermaster and the OBMP stakeholders concur with the concepts presented in this proposal.

3B(v) Community Reaction

Community reaction should be positive. Any attempt to improve the quality and availability of good-quality drinking water would be perceived as favorable.

Flows that otherwise would be lost will remain within the Basin, contributing to yield maintenance. In addition, the projects will help keep the poor quality rising groundwater from creating adverse environmental impacts associated with prolonged inundation of sensitive wetland habitats in the Prado Basin.

The projects will also help recover poor quality groundwater. When poor quality groundwater is withdrawn, treated, and reused, the water returning to the groundwater table will be of higher quality. This should have an immediate positive impact on downstream sources (the Santa Ana River) and ultimately have a beneficial water quality impact within the Basin itself.

3B(vi) Metropolitan Actions

As described in Section 2C, the schedule for the proposed projects could be accelerated. We are ready to go! Since the Programmatic EIR has been completed per the OBMP, it is hoped that Metropolitan would be able to accelerate the funding schedule.



3B(vii) Project Status

The 38 projects listed in this proposal have evolved from the OBMP Phase 1 Report (August 1999) and the Program EIR (May 2000). A recharge master plan is now underway. In addition, the OBMP stakeholders have met to identify the range of Category 1, Category 2, and Category 3 projects to increase dry year yield, improve water quality, and accomplish the other objectives described in this proposal.

As stated in Section 1, all of the proposed projects include construction of substantive new facilities that will provide local redundancy to Metropolitan's supplies during times of drought or emergency and will allow Metropolitan increased flexibility to meet the needs of other parts of its service area. All projects will be configured so that new capacity can be used in lieu of taking water from the Rialto Pipeline. This not only provides Metropolitan with water supply benefits, but has a quantifiable benefit in terms of enhanced blending capability at the Weymouth and Diemer Water Treatment Plants.

The projects are also available to provide flow to local agencies during periods of high demand when the hydraulic capacity of the Rialto Pipeline is exceeded. This supply redundancy will allow Metropolitan to possibly defer costly expansion of the Rialto Pipeline.

The schedules for the various projects are summarized in Tables 2-1, 2-2, and 2-3 in Section 2. As shown in the tables, the on-line date for the 38 projects ranges from November 2001 to November 2003. This assumes funding available in August of this year. If funding could be made available sooner, the on-line dates would be accelerated by approximately four months (see Table 1-2).



3C. LOCAL NEEDS ADDRESSED

3C(i) Addressing the Needs of Local Proponents

The proposed projects meet the interests and needs of the Chino Basin agencies, as defined in the OBMP. As previously stated, the OBMP presents the foundation for future water resources development and recommends facilities that would optimize the Chino Basin's water resources and conjunctive use potential. The following section summarizes how the local needs of the project proponents are addressed through the implementation of the proposed projects.

The needs of the local proponents are addressed through a regional management approach of the Chino Basin service area. Implementation of the proposed projects will be coordinated with the OBMP effort to ensure efficient water resources management. The projects will enable local agencies to maximize the beneficial use of local groundwater supplies, providing the region with new local water sources and a "drought-proofing" strategy.

Figure 3C-1 summarize the benefits realized through the implementation of the proposed projects shown in Table 3C-1. The local benefits include improved water quality, balanced recharge capabilities, enhanced storage capabilities, increased seasonal peaking abilities, and

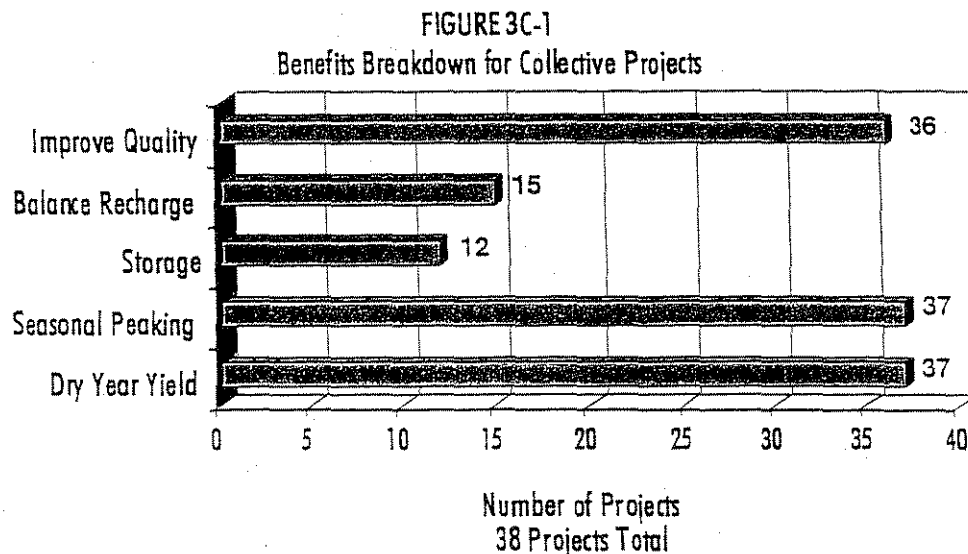




TABLE 3C-1
Summary of Projects

Project Name	Description	Quantity New Yield (AFY)	Project Cost
Category 1			
Nitrate Removal Water Treatment Plant / City of Chino (Chino)	Reclaim poor water quality GW for beneficial use	13,441	\$4,313,000
Reservoir 2A Wellhead Treatment Facility / Cucamonga County Water District (CCWD)	Construct GAC treatment facility for 3 wells	6,300	\$7,122,000
Reservoir 3 Wellhead Treatment Facility / CCWD	Construct GAC treatment facility for 4 wells	9,700	\$6,794,000
Reservoir 3A Wellhead Treatment Facility / CCWD	Construct GAC treatment facility	3,500	\$1,850,000
Wellhead Ion-Exchange (IX) #1 / Fontana Water Company (FWC)	Facilities for high nitrate and TDS and distribution	3,700	\$4,000,000
Wellhead IX #2 / FWC	Wellhead treatment facilities for high nitrate and TDS and distribution	6,000	\$6,400,000
Wellhead IX / Jurupa Community Service District	Treat 3,500 gpm well water with nitrates and connection to Ontario	4,000	\$5,000,000
Wellhead IX for 2 Wells at Plant 4 / Monte Vista Water District (MVWD)	Nitrate removal and new production of 4,700 AFY	4,700	\$2,150,000
Wellhead IX at Well 2 / MVWD	Nitrate removal and new production of 1,450 AFY	1,450	\$875,000
Wellhead IX & Transmission Line / City of Ontario (Ontario)	Construct approx. 12,500 LF of 18" main and an ion-exchange treatment facility	5,000	\$3,500,000
Anion Exchange Plant Expansion & Upgrade / City of Pomona (Pomona)	Modify existing 15 MGD plant to treat nitrate	10,000	\$1,700,000
Retrofit Well & Wellhead IX / San Antonio Water Company (SAWC)	Facilities for high nitrates w/ future connection to Ontario, Upland or other MWD user agency	3,000	\$2,040,000
Wellhead IX / City of Upland	Construct treatment facilities for 3 high nitrate wells	2,700	\$3,000,000
TOTAL		73,491	\$48,744,000
Category 2			
Benson/Palo Verde ASR / Chino & MVWD	Construct high volume well - convey WFA water to site for injection and production (new production)	5,040	\$1,438,000
State/Benson ASR / Chino	Modifications to existing GW production facilities (preservation of existing GW)	4,480	\$476,000
Phillips/Central ASR / Chino	Modifications to existing GW production facilities	6,160	\$2,002,000
West Chino Basin Interagency Connection & Distribution / Chino	Enable regional distribution of Chino Basin Groundwater. Interconnections between water systems	5,377	\$5,261,000



SECTION 3 DETAILED INFORMATION FOR SCORING
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Project Name	Description	Quantity New Yield (AFY)	Project Cost
Well 13 Blending Station / City of Chino Hills	Well 13 Nitrate Blending Station	2,100	\$90,000
Well No. 36 / CCWD	Rehabilitate existing well and install new pumping & discharge line to Reservoir 1C.	2,500	\$850,000
CCWD/MWD Chino Basin Groundwater Use / CCWD	Expansion of existing facilities at Res. #1 to deliver ground water into MWD system	11,000	\$3,947,000
Cucamonga Basin Recharge Project / CCWD	Increase water production capabilities from new gw sources w/in Chino Basin to deliver gw to MWD	4,000	\$2,600,000
Reactivate MWD Connect. / IEUA	Facilities to reactivate dismantled MWD connections	n/a	\$550,000
Rehabilitate or Build New Well (ASR) - Plant 1 / MVWD	Construct an injection/extraction well near Benson Feeder where GW nitrate levels are high	2,167	\$1,000,000
Rehabilitate or Build New Well (ASR) - Plant 9 / MVWD	Construct an injection/extraction well near Benson Feeder where GW nitrate levels are high	2,167	\$1,000,000
Rehabilitate or Build New Well (ASR) - Plant 12 / MVWD	Construct an injection/extraction well near Benson Feeder where GW nitrate levels are high	2,167	\$1,000,000
Rehabilitate or Build New Well (ASR) - Plant 17 / MVWD	Construct an injection/extraction well near Ramona Feeder where GW nitrate levels are high	2,167	\$1,000,000
Well 15 Blending Station / City of Ontario (Ontario)	Blend 34 mg/l nitrate water with water from well (1660 gpm) prior to entering distribution system	2,000	\$200,000
Jurupa Desalter II Connection / Ontario	Construct 18" interconnection between Ontario and JCSD dist. System (participating agencies: JCSD and SAWPA)	n/a	\$75,000
Chino II Desalter Transmission Facilities / Ontario	Construct approx. 2,600 LF of 20" pipeline (participating agencies: JCSD and SAWPA)	n/a	\$850,000
Well No. 36 / Pomona	High nitrate well that will connect anion's exchange plant	1,600	\$400,000
Booster 16A&B and Pipeline / Pomona	Provide backup to existing booster No. 12	n/a	\$1,100,000
TOTAL		52,925	\$23,839,000
Category 3			
2 New Wells / CCWD)	Construct 2 wells at District's Res. 1C site	5,000	\$1,500,000
New Well - Plant 28 / MVWD	Construct new well - water to be used at a nitrate blending station	2,900	\$1,000,000
New Well #1 / Ontario	Construct & equip well	3,000	\$1,000,000
New Well #2 / Ontario	Construct & equip well	3,000	\$1,000,000
New Well #3 / Ontario	Construct & equip well	3,000	\$1,000,000
New Well #4 / Ontario	Construct & equip well	3,000	\$1,000,000
New Well / SAWC	Construct and equip new well with future connection to Ontario, Upland or other MWD user agency	3,000	\$1,000,000
TOTAL		22,900	\$7,500,000
GRAND TOTAL		149,316	\$80,083,000

Groundwater Storage Programs



3C(ii) Protecting the Interests of Non-Participating Entities

As part of the OBMP development, the Chino Basin stakeholders adopted several core values as a guide for future basin management. Each of the 38 projects submitted under this proposal addresses the following core values: water quality, long view, increased local supplies, groundwater storage/conjunctive use, and cost of groundwater supplies. As described below, the proposed projects address these core values, while balancing the use of imported/local supplies to increase water reliability.

- *Water quality.* All producers in the Chino Basin desire to produce water of a quality that is safe and suitable for the intended beneficial use. Increased wellhead treatment capacity as well as blending facilities will ensure compliance with this core value.
- *Long view.* Each of the Chino Basin producers desires a long-term and stable planning environment to develop local water resources management projects. The producers, independently and through the Chino Basin Watermaster, strive to take the long view in their planning assumptions and decisions to ensure a stable and robust management program. The proposed projects were identified with this core value in mind and represent the forward thinking necessary to implement a regional conjunctive use program.
- *Increased local supplies.* All producers are dependent on high-quality imported water for direct uses and for groundwater replenishment. Because imported supplies may be less available during dry periods, the producers will strive to minimize their dependency on imported water and to increase use of local supplies during drought. The proposed projects address this core value by adding additional groundwater production capacity, thereby reducing dependency on imported supplies and increasing local water system redundancy, thus providing Metropolitan with an increase in dry-year yield.
- *Groundwater storage/conjunctive use.* Unused groundwater storage capacity in the Chino Basin is a precious natural resource. The producers will manage the unused storage capacity to maximize the water quality and reliability and minimize the cost of water supply for all producers. The groundwater storage core value was administered to encourage the development of a regional conjunctive use program. The proposed projects will enable such a project to be implemented.
- *Cost of groundwater supplies.* The producers are committed to finding ways to subsidize the cost of using poor quality groundwater in a cost-effective and efficient manner. Increased groundwater production and wellhead treatment capacity will increase Metropolitan's dry-year yield and with Metropolitan's assistance, will provide an affordable and additional reliable water resource during periods of drought.



3D. WATER SUPPLY OR WATER QUALITY IMPACTS

As discussed throughout this proposal, the water supply and water quality impacts of the proposed projects would be positive.

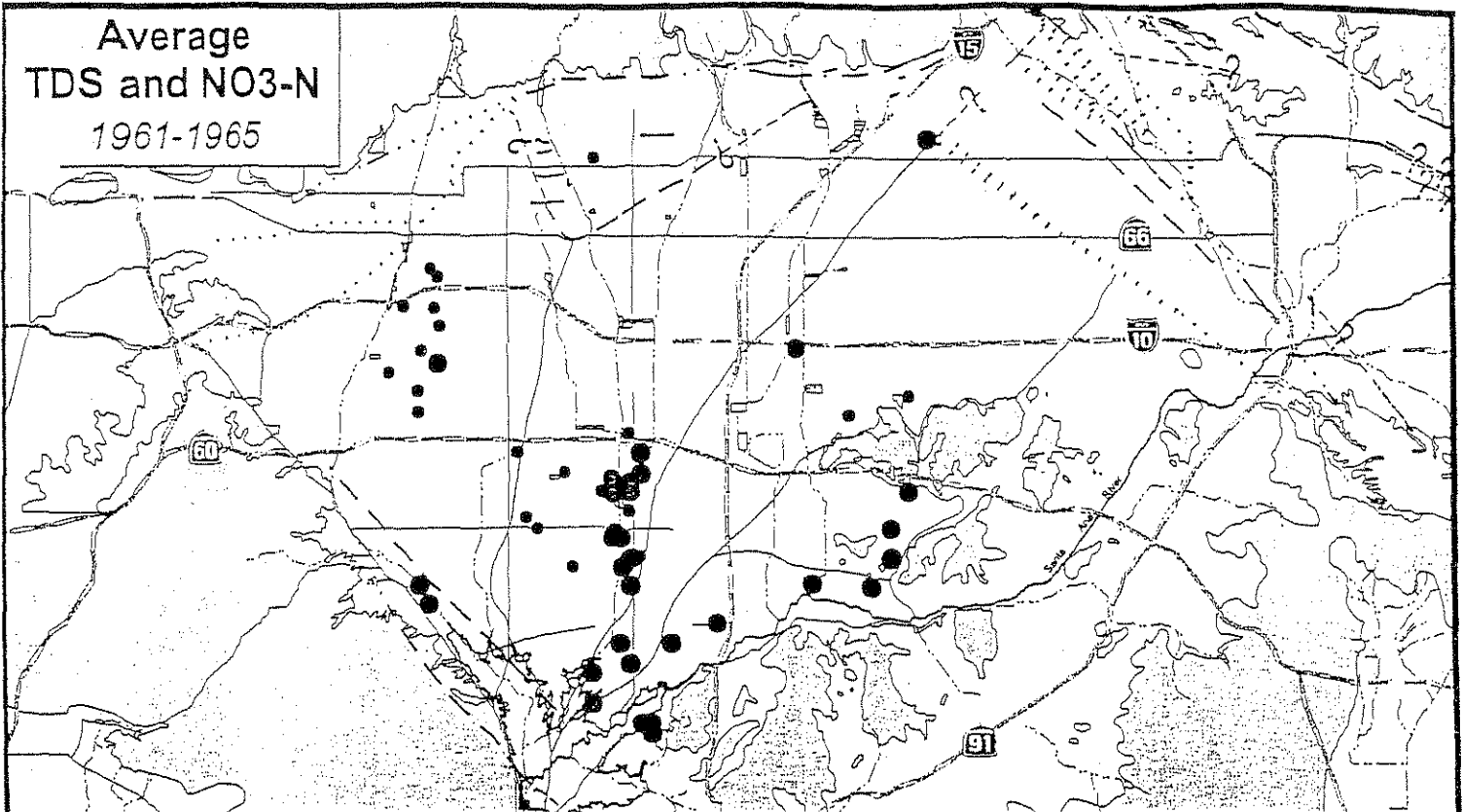
3D(i) Water Supply/Quality Impacts within the Basin

OBMP related water quality studies show that high concentrations of Total Dissolved Solids (TDS) and nitrates exists in the southern portion of the Basin. Figure 3D-1 shows the past and most recent water quality data throughout the Basin. It is apparent that groundwater quality has been deteriorating greatly with time. As shown on Figure 3C-1, 36 of the 38 projects presented in this proposal would have a water quality benefit to the Basin. These projects involve pumping and treating groundwater from various locations throughout the Basin to achieve drinking water standards. Groundwater pumped from the Basin, treated, reused and returned to the Basin will ultimately have a beneficial impact on water quality by lowering TDS and nitrate levels before returning water to the Basin. Although not all of these projects are exactly similar to other Metropolitan storage programs, they still provide Metropolitan with the same end results: a dry year supply. They also provide other regional benefits.

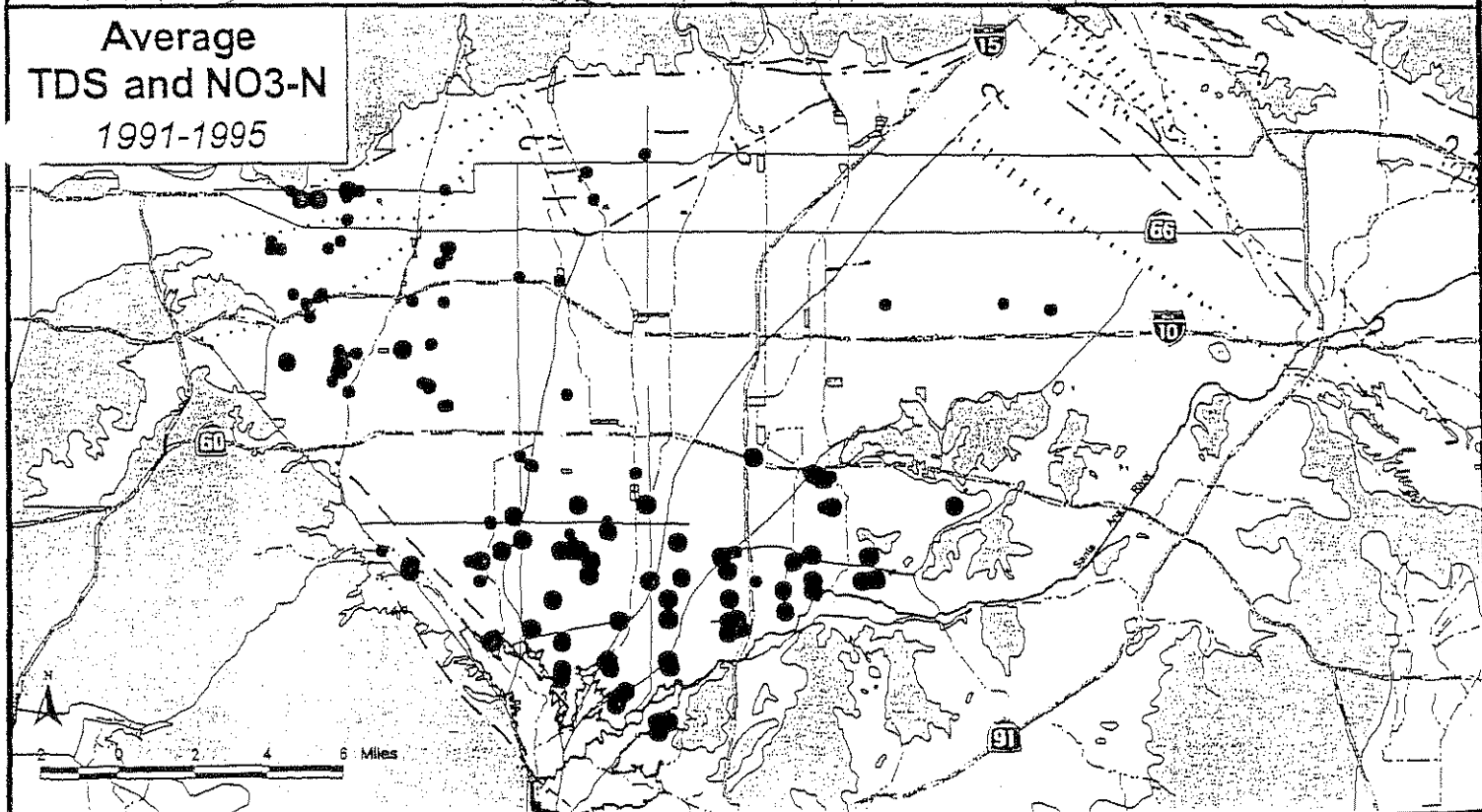
From a perspective of water supply, our approach provides Metropolitan dry year supply in advance of placing any water in storage. Depending on the total amount of financing from Metropolitan, we can make available more than 149,000 AF. Metropolitan can use these supplies not only for long-term dry-year yield, but on a short-term basis when there is a high demand for water, and/or energy is limited.

Given the State's current energy crisis, it may become necessary for Metropolitan to stop pumping. Chino Basin supply availability could allow Metropolitan to reduce pumping of State Water Project supplies by more than 149,000 AF. By the ability to shed electrical load at critical periods when energy supplies are limited, Metropolitan could save millions of dollars in energy costs and help prevent rolling blackouts.

Average
TDS and NO3-N
1961-1965



Average
TDS and NO3-N
1991-1995



Legend

- Well with Average NO3-N > 10 m/L
- Well with Average TDS > 500 m/L
- Hydrologic Chino Basin
- Management Zone Boundary

Figure 3D-1
Impaired Groundwater
in the Chino Basin
TDS and NO3-N

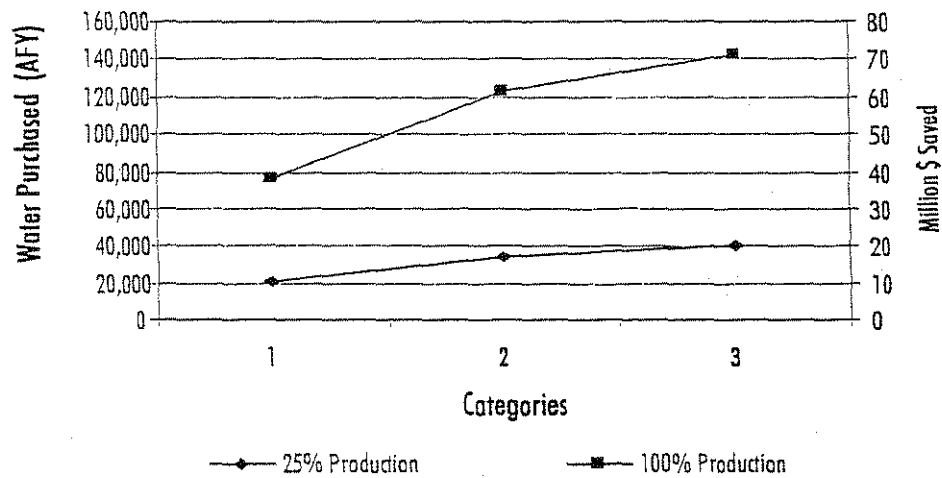


Date: January 2001



Implementation of the proposed projects could provide Metropolitan an additional water quality benefit. The recently-completed Salinity Management Study Final Report (June 1999) indicated a benefit of \$95 million for every 100 mg/L of TDS reduction in Metropolitan's water supply. Thus, if the proposed projects are implemented, additional State Project water would be available for blending at the Weymouth and Diemer Water Filtration Plants. Figure 3D-2 quantifies the water quality savings benefit for the Category 1, 2, and 3 projects at 100 percent and 25 percent production levels.

FIGURE 3D-2
Water Quality Benefits



The cumulative projected dry-year yield for the 38 projects is more than 149,000 AFY, which exceeds the amount of imported water currently used within the Basin. This assumes that all of the projects are completed and reach 100 percent of their projected production. It may be more accurate to assume that not all of the projects will be in full production all of the time. However, even if only 25 percent of production is achieved, Metropolitan would realize substantial water quality benefits.

3D(ii) Potential Negative Impacts

No negative impacts are anticipated. Construction of the proposed projects will improve water quality and increase water supply availability for the Chino Basin.



3D(iii) Anticipated Regulatory Requirements

The Department of Health Services (DOHS) requires permits for all water sources. The local agencies will obtain the required new water supply permits from DOHS.

The Final Program EIR for the OBMP shows that it is necessary to maintain the production capacity of the Basin to prevent a loss in safe yield. Without implementing measures to maintain the safe yield, approximately 40,000 AFY would flow out of the Basin and into the Santa Ana River. A number of these projects achieve the goals of the OBMP and are therefore included in the Draft EIR. However, further environmental regulatory requirements will be necessary for each separate project.

3D(iv) Status and Schedule

It is estimated to take approximately two to four months for a new water source permit to be approved by the DOHS. The status and schedule for acquiring other regulatory approvals varies for each independent project and will be addressed as the projects proceed.



3E. POTENTIAL IMPACT TO METROPOLITAN'S FINANCIAL INTEGRITY

This section discusses a potential implementation and financial plan for the Chino Basin groundwater storage projects that contribute within Metropolitan's service area.

3E(i) Effects on Purchase of Imported Surface Water

Funding of the submitted projects will reduce Metropolitan's imported water more than 149,000 AF in dry years. These "firming" projects for the Chino Basin would provide flexibility and reliability for Metropolitan's system by allowing the Basin to be self-sufficient when imported supplies are unavailable (drought or emergency periods).

Participating agencies would commit to the purchase of fixed amounts of imported water supply from Metropolitan and would not affect purchase of imported surface water supplies. Depending on the level of supplies available, Metropolitan would have the flexibility to determine water delivery to the Chino Basin. During dry or drought years, Metropolitan would request the agencies to produce water within the Basin to meet overlying demand in-lieu of surface delivery. Following the end of the drought periods, the resultant Chino Basin replenishment obligation would be handled at least in part in the same manner.

The Chino Basin, with an unused storage capacity of about 1 MAF, is located in a strategic position for the Metropolitan distribution system. Construction of the project facilities would meet the demand in the Chino Basin and also have the ability to export extra pumping capacity into Metropolitan's system. Aside from reducing imported water demand within the Chino Basin to provide Metropolitan dry year yield, Metropolitan would be able to utilize the facilities beyond the internal needs of the Basin. In the future, Metropolitan would have the ability to pump portions of this water back into the system, to increase water deliveries and improve water quality. The projects submitted for funding would make available increased groundwater pumping in the Basin and allow future development of these supplies for other Metropolitan service areas.

The proposed projects would provide the needed redundancy and flexibility to Metropolitan's system. The local dry year projects would provide regional savings and increase reliability resulting from the development of local resources.

The facilities would provide short term "firming" supply for dry year yield. As future water demands increase in the Chino Basin, the demand for direct delivery of imported water for the Chino Basin is projected to increase from about 50,000 acre-feet in 2000 to 100,000 acre-feet by 2020, as indicated in IEUA's Urban Water Management Plan Year 2000 Update. This increase in demand will require more imported water from Metropolitan to meet the region's needs.



If funded, these projects would sustain water production during shortage and enhance recharge capability and allow the Basin to be managed conjunctively. The following list shows the benefits from implementing Chino Basin projects:

- (1) Provide more than 149,000 AFY dry year supply.
- (2) Reduce summertime peaking on Metropolitan's Rialto Pipeline.
- (3) Deliver more State Water Project supplies to the Weymouth and Diemer plants via the East Branch/Rialto Pipeline to meet Basin Plan Salinity Objectives.
- (4) Minimize (or eliminate) Metropolitan's surface water deliveries during future droughts/emergencies.
- (5) Allow Metropolitan to possibly export water into the Upper and Lower Feeder service areas for other Member Agencies.

3E(ii) Mitigation of Negative Impacts

No negative impacts are anticipated to result from construction of the proposed projects. The conjunctive use programs would not result in adverse water quality impact on the Chino Basin nor to Metropolitan. Development of these local resources reduces the demand on Metropolitan's system and therefore reduces the need for additional investment in regional infrastructure. The development of the local projects would defer the time when Metropolitan would need to expand the Rialto Pipeline. Metropolitan will have the flexibility to dictate the amount of imported water to service the Basin through the transmission line during crucial periods such as droughts or in cases of emergency.

3E(iii) Project Financing

This proposal present 38 projects for funding consideration. These projects have been categorized into three groups: Category 1, Category 2, and Category 3. This subsection discusses a potential implementation and financing plan for the proposed projects. A 6 percent interest rate and an amortization period of 20 years with an inflation rate on costs of 3 percent is presented along with a discussion of Proposition 13 funding needed to prioritize and equitably finance the facilities discussed in this proposal.

The Chino Basin stakeholders and applicants have agreed and are submitting 38 projects for 50 percent Proposition 13 funding. The remaining funding would be developed by the respective project sponsoring agency through local financing payment using various local resources.



3E(iv) Cost Per Acre-Foot Dry-Year Yield

Modifications to the economic analysis methodology provided in Metropolitan's RFP were done to accurately reflect the cost and funding required on the proposed projects. The modifications provide a financial approach using an overall menu of projects on a category basis. Financial analyses were done for Categories 1, 2, and 3, rather than per each of the 38 projects. This approach was taken to meet the format and page requirement of Metropolitan's RFP. Economic analysis worksheets have been developed for each Category 1, 2, and 3 project, and are available upon request.

These programs provide flexibility and redundancy in Metropolitan's system. This would give Metropolitan the ability to provide water services in a more efficient and reliable way to its service area. For example, if, during a dry year, Chino Basin overpumps an extra 20,000 AFY above the allotted safe yield (140,000 AFY), or 160,000 AFY, the overproduction would need to be replenished. Therefore, during wet years and normal years, an additional 20,000 AFY of imported water would need to be provided by Metropolitan to meet this replenishment obligation. The Chino Basin agencies will have the ability to take extra water "in-lieu" of pumping the groundwater. The economic analysis methodology spreadsheet has been modified to reflect these types of operating conditions.

The economic analyses assume takes from Chino Basin at five-year interval starting in year 2005. Puts to storage would occur the following year for the same total annual take capacity. Category 1 economic analyses assume Metropolitan would provide 50 percent capital funding from Proposition 13, an \$85/AF O&M cost for wellhead treatment, \$60/AF pumping cost associated with takes from storage, and a \$90/AF replenishment cost, which corresponds to put to storage. Categories 2 and 3 assume that Metropolitan would provide 50 percent capital funding as well as pumping and replenishment costs.

Table 3E-1 summarizes the project cost per acre-foot of dry year yield for the three categories.

TABLE 3E-1
 Project Cost per Acre-Foot Dry-Year Yield

PROJECT DESCRIPTION	COST PER ARCE-FOOT OF DRY YEAR YIELD
Category 1	\$159
Category 2	\$110
Category 3	\$194



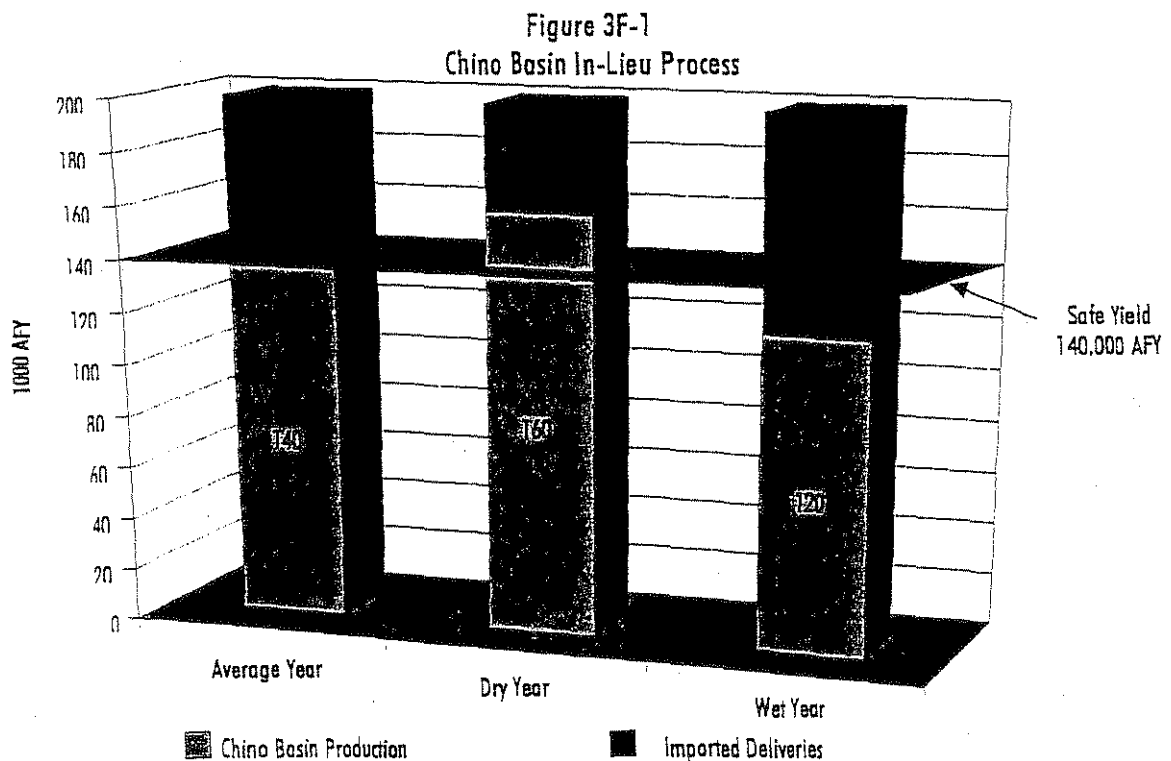
3F. DESCRIBE HOW PROJECTS WILL MEET OVERLYING DEMAND

3F(i) Storage Within a Four-year Period

The Chino Basin is the largest basin available for conjunctive use in Southern California. The Basin has 5 MAF of storage of which 1 MAF is unused. Currently, water agencies have approximately 170,000 AF of storage in excess of the Basin's safe yield. The OBMP Peace Agreement has approved 500,000 AF for additional dry year storage. This storage capacity would be sufficient to accommodate several years of imported deliveries. The proposed projects would enable the basin to be recharged during periods of surplus imported supply via direct deliveries in-lieu of groundwater production.

Figure 3F-1 illustrates how the existing Chino Basin groundwater resources can be utilized in-lieu of direct imported deliveries.

This example on the figure shows that an additional 20,000 AF of groundwater could be extracted during a dry year to meet demand. Implementation of these projects would allow Chino Basin pumpers to significantly increase their dry year pumping ability. The magnitude of the Basin allows overproduction for considerably more than four years.





The Chino Basin is in a unique position to develop a regional conjunctive use program that will efficiently meet overlying demands via in-lieu deliveries. Several of the proposed projects, including injection wells and other ASR facilities, will increase the Chino Basin's "put and take" capacity, while new wells and wellhead treatment projects primarily will increase the "take" capacity of the Basin.

3F(ii) Meeting the IRP 3:1 Goal

As shown in the discussion above, the complete program presented in this proposal could actually exceed RIP goals of a 3:1 ratio.



3G RISK MANAGEMENT

The projects described in this proposal are virtually "risk free."

3G(i) Description of Project Risks

Metropolitan can be assured that high quality water supplies would be available as needed, without threat of loss of or contamination of stored supplies. Several of the proposed projects provide treatment to ensure the water produced meets all regulatory standards. Furthermore, since these projects do not require Metropolitan to prestore water in the Chino Basin, concerns over loss of or contamination of stored water would be eliminated.

3G(ii) Approach to Risk Management

Our Program Concept approach provides a menu of alternatives in-lieu of a single project. This diversification minimizes Metropolitan's risks by not putting "all of Metropolitan's eggs into one basket."

The Chino Basin stakeholders through the Peace Agreement have reached accord on the OBMP, which outlines ("requires") management of the available groundwater resource to optimize not only the local area resources, but also our regional resources.

The variety of projects we have developed accomplishes these goals both locally and regionally. Assisting the local agencies with project implementation provides Metropolitan the flexibility to utilize groundwater resources when imported supplies are short. Under the Peace Agreement, the Chino Basin agencies need Metropolitan's help to finance projects that provide the redundancy to allow them to work with Metropolitan or over produce the groundwater basin when imported supplies are not readily available.

The Chino Basin agencies look forward to entering into a cooperative agreement with Metropolitan to start the implementation of these projects that will ultimately lead to being able to produce more than 149,000 AF of water. The agencies are ready to enter into a contract with and to guarantee these supplies to Metropolitan.

3G(iii) Indemnification

The OBMP is mandated by the Court. Metropolitan is thus assured that, with the implementation of these projects, the contract supplies would be available when needed.

Exhibit D

METROPOLITAN AWARD LETTER



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Office of the General Manager

April 10, 2001

Mr. Richard W. Atwater
Chief Executive Officer/General Manager
Inland Empire Utilities Agency
P.O. Box 697
Rancho Cucamonga, CA 91729-0697

Chino Basin Programs
Participation in Groundwater Storage Programs Using Proposition 13 Funding

Thank you for your submittal to the Request for Proposal for Participation in Groundwater Storage Programs Using Proposition 13 Funding (RFP No. WRM-2). We are pleased to inform you that the Selection Committee has identified your proposal to be included in the shortlist to receive Prop 13 funding.

In April 2001, the Metropolitan Board of Directors directed staff to finalize agreement terms for conjunctive-use program included in the shortlist. Several milestone targets are identified in the RFP as requirements for continued consideration for funding (Table 1 - Performance Targets from RFP WRM-2). Each proposal is required to meet the targets and deadlines to receive funding. If a shortlisted proposal does not meet all of the requirements specified in the RFP, Metropolitan will have the option to disqualify such proposal and finalize agreement terms with a proposal in the waitlist.

We anticipate sending a draft agreement in the near future. As noted in the enclosed schedule, the RFP requires program agreement terms to be finalized by August 2001.

Please contact Robert Harding at (213) 217-6582 if you have any questions.

Very truly yours,

Ronald R. Gastelum
General Manager

EF:cl
o:\cluster10\shared\corres\prop 13 shortlist-ltr.doc

Enclosure

REQUEST FOR PROPOSALS FOR PARTICIPATION IN GROUNDWATER
STORAGE PROJECTS USING PROPOSITION 13 FUNDS (RFP No. WRM-2)

TABLE 1
PERFORMANCE TARGETS

Date	Target	Consequence if Target is Not Achieved
January 19, 2001	Receive Proposals	Proposal will be rejected
August 1, 2001	Finalize Agreement Terms	Proposal will be rejected
September 1, 2002	Completion and certification of all environmental documents necessary to comply with CEQA	Proposal will be rejected
September 2003	Construction Initiated	Agreements Terminated

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PROCEDURE FOR INITIAL CALCULATION OF
METROPOLITAN STORAGE ACCOUNT

Exhibit E is to itemize a pre-existing storage account to be rolled over into Metropolitan's Storage Account. This rollover water is to be called and sold to IEUA on a first in/first out basis. The applicable water rate to be paid for each rolled over account is specified in this exhibit, as is the responsibility for extraction costs, facility maintenance fees, etc.

Water Account	Quantity of Water Transferred (Acre-feet)	Water Rate to be Paid when called under this Agreement for firm delivery	Responsibility for Costs: Electrical and Operation & Maintenance Costs	Losses
Trust Storage Account	4,739	Untreated replenishment rate at the time the water is called under this Agreement	IEUA	None
Trust Storage Account (2003 Interim Conjunctive Use Program)	X ¹	Untreated replenishment rate at the time the water is called under this Agreement	IEUA	None

¹ Acre-feet of water stored by Metropolitan in the Chino Basin with the authorization of the Watermaster since March 1, 2003 under the 2003 Interim Conjunctive Use Program letter agreement dated April 4, 2003.

ACCOUNTING METHODOLOGY

Annual Operating Plan

Commencing upon the Effective Date of this Agreement and thereafter prior to the beginning of each fiscal year, the Operating Committee will develop an Annual Operating Plan to forecast IEUA's and TVMWD's operations for the coming year in terms of groundwater production and imported water delivery absent the Program, as well as intended storage through in-lieu deliveries, injection and direct spreading, and extraction. Deliveries to the Metropolitan Storage Account through in-lieu deliveries, injection, or direct spreading will be determined using methodologies detailed in this Exhibit F.

The Annual Operating Plan must reflect IEUA's and TVMWD's monthly operations in terms of groundwater production and imported water deliveries absent the Program. If water is to be stored through direct injection or spreading or in-lieu deliveries, the Annual Operating Plan must indicate the months when the deliveries to the Chino Basin are expected to occur. If water is to be extracted, the operating schedule must reflect the amount of imported water that will be delivered from the Metropolitan Storage Account each month.

Upon call by Metropolitan for storage or extraction, the Operating Committee shall prepare a revision to the Annual Operating Plan for submission to Metropolitan, IEUA, TVMWD, and Watermaster, which would indicate the revised monthly storage or extraction amounts for the Metropolitan Storage Account. Metropolitan shall invoice for extracted Stored Water Delivery on a monthly basis at the firm water rate minus pumping and Operations and Maintenance Costs, according to the revised Annual Operating Plan. Any adjustments to the quantities billed shall be made during the year-end reconciliation.

Calculation of Storage and Extraction

IEUA and TVMWD shall account for all water stored and extracted in the Chino Basin by their respective subagencies and each submit its certification of these total amounts and the subset of these amounts achieved for the Metropolitan Storage Account. IEUA and TVMWD shall each submit this certification to Metropolitan and the Watermaster on a monthly basis. At the end of each fiscal year, IEUA and TVMWD shall perform an annual assessment of total storage and extraction and the subset achieved for the Metropolitan Storage Account. Any adjustments to the monthly submittals shall be provided by IEUA to Metropolitan and to the Watermaster in a timely manner for consideration in the preparation of the Watermaster's annual report.

All accounting for the Metropolitan Storage Account shall conform to the following unless otherwise agreed by Metropolitan, IEUA, TVMWD, and Watermaster:

a. Initial storage balance upon execution of this Agreement shall be consistent with Exhibit E "Procedure for Initial Calculation of Metropolitan Storage Account". This initial storage balance is firm water to be billed at the rate designated in Exhibit E upon its extraction. This water, when extracted, shall be part of IEUA's firm water allocation pursuant to the rate structure. This water shall be first in, and first out of the Metropolitan Storage Account.

b. All other water delivered to the Metropolitan Storage Account shall be "new wet-water storage" to the Chino Basin, and not accomplished through an accounting transfer of pre-existing storage. New storage is achieved through demonstrated in-lieu delivery spreading, or injection of imported water supplied by Metropolitan.

c. Monthly amounts certified by IEUA or TVMWD as in-lieu storage cannot exceed:

1. extraction capacity available within IEUA's or TVMWD's service area in the month certified, and
2. amount of firm water purchased by IEUA or TVMWD from Metropolitan in the month certified.

In-lieu storage amount will be equal to the difference between the amount pumped during the year and the sum of the pumping rights, but in no case shall be larger than the quantity of water purchased from Metropolitan or the pumping capacity.

Within two months following the formal issuance of Watermaster's annual report, the Operating Committee shall perform an annual reconciliation of Metropolitan and IEUA's and TVMWD's records with the Watermaster report with respect to total storage and/or extraction from the Metropolitan Storage Account and Metropolitan's water billing inclusive of credits for the Operation and Maintenance Costs and Electrical Costs, and prepare any needed paperwork for adjustments to the billing.

Chino Basin Conjunctive Use "Dry Year" Storage Project Performance Criteria

Metropolitan may, on fifteen (15) days notice, require Program Agency to meet the objectives of the project as follows:

- 1) IEUA and TVMWD agree to reduce imported water deliveries by approximately 33,000 AF from the preceding 12 month period during the next 12 month period; and
- 2) IEUA, TVMWD and Chino Basin Watermaster through their agreements with Operating Parties will cause to be pumped during the next 12 months 33,000 AF from the Metropolitan Storage Account; and
- 3) Chino Basin pumping by the Operating Parties in the Dry Year program within the Chino Basin appropriative pool will increase over the previous year by 33,000 AF.

All three performance targets do not need to be met precisely (+ or - 10 percent.) As an example, IEUA and TVMWD would meet the objectives of the program if all three of the following occurred:

- | | |
|-----------|--|
| 30,000 AF | Reduced imported full service deliveries when compared to the preceding 12 months. |
| 31,000 AF | Pump from Metropolitan Storage Account. |
| 34,000 AF | Increase pumping by Operating Parties, when compared to the preceding year. |

However, the Operating Committee may mutually agree that performance targets are met even though a performance target is not met (a scenario when retail conservation were to exceed 15 - 25 percent or if other local supplies were developed, e.g., dramatic increase in recycled water use, may reduce the opportunity for the retail agencies to pump 33,000 AF from the Metropolitan Storage Account.) In this case, the Operating Committee would need to agree on the variance procedures for accepting a modified performance target after the episode. It should be generally agreed that additional use and production of all local supplies native to the Chino Basin area should not be restricted or cause IEUA, TVMWD or Chino Basin Watermaster (or the Operating Parties) to be out of compliance of the performance target. It should also be agreed that if IEUA and TVMWD retailers demand firm water from Metropolitan over the twelve month period, the pumped water would come from the Metropolitan Storage Account up to 33,000AF.

The objective of the program is to provide 33,000 acre-feet of additional pumping capacity in the Chino Basin for dry year use, to allow Metropolitan, IEUA and TVMWD the flexibility to utilize the Facilities in the most efficient manner possible (including normal year and wet years) and to ensure that upon a call of Metropolitan's stored water, Facilities will be used to provide an additional supply of water to meet IEUA's and TVMWD's needs. A partial call will be addressed through a pro rata performance of all three objectives .

Exhibit H

DESCRIPTION OF PROGRAM FACILITIES & OPERATING PARTIES

Ion Exchange Nitrate Removal Facility	Capacity	Funding Allocation	Location
Pomona	2,000 AFY	\$1,700,000	First & San Lorenzo
Monte Vista County Water District	1,544 AFY	\$1,428,200	Palo Verde & Benson
City of Chino	1,159 AFY	\$1,072,043	Palo Verde & Benson
City of Upland	3,001 AFY	\$2,776,064	Ninth & Mountain
City of Chino Hills	1,448 AFY	\$1,338,938	Chino Hills Pkwy & Ramona
Cucamonga County Water District	3,088 AFY	\$2,856,400 ⁽¹⁾	Amethyst & Apricot
City of Ontario	1,544 AFY	\$1,428,200 ⁽¹⁾	Cucamonga & 4 th
Fontana Water Company	1,733 AFY	\$1,293,065	San Bernardino & Cherry; Juniper & Ceres
Jurupa Community Services District	2,000 AFY	\$1,494,000	Etiwanda & 60-fwy
Total Treatment Facilities Capacity :	17,517 AFY	\$15,386,910	—
Well Facilities	Capacity	Funding Allocation	Location
Monte Vista County Water District	2,419 AFY	\$1,572,581	Monte Vista & Richton
Cucamonga County Water District	6,532 AFY	\$4,245,968 ⁽¹⁾	East Avenue & I-15; ? Cleveland & 7 th
City of Ontario	6,532 AFY	\$4,245,968 ⁽¹⁾	3 of 5 potential sites around City of Ontario
Total Well Capacity:	15,483 AFY	\$10,064,517	—
Total Extraction Capacity (Treatment + Well Capacity):	33,000 AFY	\$25,451,427 ⁽²⁾	

1). Some of the facilities constructed by the City of Ontario and Cucamonga County Water District will be funded by Proposition 13 Funds.

2). The Total Program Costs is \$27.5 million. This exhibit estimates that \$2 million will be spent on CEQA, pre-design, and modeling plus \$48,573 in unallocated reserve funds.

The foregoing list is a preliminary list of the Parties as of the Effective Date. Individual items on this Exhibit H may be adjusted from time to time by written notice from IEUA or TVMWD, as applicable, and Watermaster to Metropolitan. Each such notice shall specify the items to be adjusted and the amount of adjustment and shall certify to Metropolitan that after making such adjustment the Operational Capacity Thresholds continue to be met. Each notice which meets the requirements of this paragraph shall modify this Exhibit H to the extent provided in the notice.

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INDEX OF TERMS

A

AF 7
Agreement..... 1
Approved Budget 7
Approved Schedule..... 7

B

Budget 7

C

CEQA..... 4
Claims..... 28
Completion..... 9

D

Discrete Program Elements 7
DWR..... 1

E

Effective Date 4

F

Facilities 6
Force Majeure Events..... 34
Funding Obligation Date 5

G

Governmental Authority 5

I

IEUA..... 1
Invoice Payment 11
IRP..... 2

J

Judgment 2

M

Maintenance Costs 17
Metropolitan..... 1
Milestone Date..... 7

O

Operating Committee 12
Operating Committee Annual Report 14

Operating Parties	6
<i>P</i>	
Parties.....	3
Party.....	3
Plans	7
Program Construction Costs	10
Program Funds.....	2
Progress Report.....	27
Prop. 13'.....	1
Prop. 13 Funds	1
Proposal	2
<i>R</i>	
Required Approvals.....	5
RFP.....	1
<i>S</i>	
Schedule.....	7
Stored Water Delivery	19
<i>T</i>	
Tasks.....	7
Termination Date	4
TVMWD	1
<i>W</i>	
Watermaster	1

EXHIBIT 12

JUN 05 2003

By Wanda L. Downing Deputy

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010

ORDER CONCERNING
GROUNDWATER STORAGE
PROGRAM FUNDING AGREEMENT--
AGREEMENT NO. 49960.

Date: June 5, 2003
Dept: 8
Time: 1:30 p.m.

Background

Program Element 9 of the court-approved Implementation Plan for the Chino Basin Optimum Basin Management Program ("OBMP") calls for the development and implementation of storage and recovery programs to ensure that Chino Basin water and storage capacity are put to maximum beneficial use. The initial target for the cumulative quantity of water to be held in storage is an additional 500,000 acre-feet. (Implementation Plan, Program Element 9, subdivision (c)(iv)(a).) In developing storage and recovery programs, Watermaster is to give first priority to storage and

1 recovery programs that provide broad mutual benefits to the parties to the Judgment.
2 (*Id.* at subdivision (c)(iv)(b).)

3 Watermaster has taken the first step in developing storage and recovery
4 programs, by negotiating a Dry Year Yield ("DYY") Program for the Basin.
5 Watermaster seeks review, under paragraph 31 of the Judgment, of its approval on
6 March 27, 2003, of the Groundwater Storage Program Funding Agreement No. 49960
7 ("Funding Agreement"). The Funding Agreement contains the financial terms for a new
8 100,000 acre-foot storage account for Metropolitan Water District of Southern
9 California ("MWD").¹

10 Watermaster requests an order from this Court "declaring that the [Funding]
11 Agreement is consistent with its responsibilities under the Peace Agreement."² (Motion,
12 p. 2, lines 2-3.) Watermaster asserts that the question to be decided by the Court is
13 whether or not the Funding Agreement satisfies Watermaster's commitments under
14 section 5.2 (c) of the Peace Agreement. Consistent with the Implementation Plan, the
15 Peace Agreement provides, at section 5.2(c)(iv)(b), that Watermaster is to give first
16 priority to storage and recovery programs that provide broad mutual benefits to the
17 parties to the Judgment.

18 Discussion

19 A. Funding Agreement is not a "Storage Agreement" as that term is used in the 20 Judgment.

21 The Judgment provides, at paragraph 28, that groundwater storage agreements
22 are to contain terms that will preclude operations having a substantial adverse impact
23 on other producers. The Judgment further provides, at Exhibit "I," that groundwater
24 storage agreements are to contain specified information related to storage.
25

26
27
28 ¹ MWD has three existing storage accounts.

² All references to "Peace Agreement" are to the Chino Basin Peace Agreement, dated June 29, 2000.

1 Watermaster takes the position that the Funding Agreement itself is not a
2 "Storage Agreement," as that term is used in the Judgment. "[W]hile the [Funding]
3 Agreement commits the parties to allocate 100,000 AF of the 500,000 AF Storage and
4 Recovery Program to Metropolitan, the specific location and operation of the facilities
5 necessary to accomplish this commitment must still be analyzed by Watermaster
6 under the Material Physical Injury standard of the Peace Agreement and Rules and
7 Regulations. This approval will take the form of Watermaster approval of the Local
8 Agency Agreements by way of a Storage and Recovery Application filed under Article
9 X of Watermaster's Rules and Regulations.

10 "The [Funding] Agreement itself contemplates the necessity of such further
11 Watermaster approval. The Agreement contains the provisions that: 'Watermaster
12 reserves the right to approve the location and amount of storage and extraction
13 pursuant to this Agreement, in accordance with the Judgment, OBMP and its policies
14 applicable to the Judgment Parties.' [Citation.]" (Motion, p. 8, lines 11-22.) The Court
15 is concerned that the quoted language does not clearly state that a Storage
16 Agreement allowing use of the 100,000 acre-foot storage account contemplated by the
17 Funding Agreement has not yet been completed and must still be approved by both
18 Watermaster and this Court. As noted, Watermaster indicates that approval of a
19 Storage Agreement will be in "the form of Watermaster approval of the Local Agency
20 Agreements by way of a Storage and Recovery Application filed under Article X of
21 Watermaster's Rules and Regulations." It is not clear to the Court how or in what form
22 this approval process will be conducted. However, it is clear that until Watermaster
23 and this Court approve the Local Agency Agreements and Storage and Recovery
24 Application, or some equivalent approval process is completed, the storage and
25 recovery program cannot be undertaken. The Judgment mandates that the Funding
26 Agreement be reviewed in this context.

27 ///

28 ///

1 B. The Court's review of the evidence is "de novo."

2 Under paragraph 31 of the Judgment the Court's review of any Watermaster
3 action or decision is "de novo." Watermaster's findings, if any, may be received in
4 evidence at the hearing but shall not constitute presumptive or prima facie proof of any
5 fact in issue. Of course, this does not mean that Watermaster's decision is entitled to
6 no weight at all. (Cf. *Fukuda v. City of Angels* (1999) 20 Cal. 4th 805, 817.) The key is
7 that the Court looks at the evidence anew.

8
9 C. The weight of the evidence supports the finding of "broad mutual benefit."

10 As noted in the introduction, both the Implementation Plan for the OBMP and the
11 Peace Agreement, which facilitates implementation of the OBMP, provide criteria to
12 guide Watermaster in evaluating a storage and recovery program. "Watermaster shall
13 prioritize its efforts to regulate and condition the storage and recovery of water
14 developed in a Storage and Recovery Program for the mutual benefit of the parties to
15 the Judgment and give first priority to Storage and Recovery Programs that provide
16 broad mutual benefits..." (Implementation Plan, Program Element 9, subdivision
17 (c)(iv)(b); Peace Agreement, section 5.2 (c)(iv)(b).)

18 In support of its motion, Watermaster offers a copy of the Funding Agreement
19 itself (Exhibit 1), copies of the two Watermaster staff reports, upon which the Advisory
20 Committee and Board's decisions were based (Exhibits 2 & 3), and copies of previous
21 storage agreements with MWD (Exhibits 4-6). The Court has received no objections to
22 the evidence, nor any opposition to the motion. The evidence submitted establishes
23 the following.

24 In November 2000, MWD issued a request for proposals for groundwater
25 storage programs using funds from Proposition 13. In January 2001, Watermaster and
26 IEUA jointly submitted a proposal to MWD for a groundwater conjunctive use storage
27 program. In April 2001, MWD approved the proposal, which includes funding in the
28 amount of \$27.5 million to be used for new production facilities--wells and wellhead

1 treatment facilities. The new facilities will provide new pumping capacity for
2 participating parties. Of the \$27.5 million, \$9 million will come from the California
3 Department of Water Resources ("DWR"), using Proposition 13 funds, and \$19.5
4 million will come from MWD. MWD will advance \$1.6 million to IEUA for costs
5 associated with CEQA compliance and preliminary engineering studies, including
6 modeling of the Basin. CEQA approvals were completed in December 2002.

7 The term of the storage program is 25 years, with optional five-year renewal
8 terms, up to a maximum term of 50 years. The storage target for the program is
9 100,000 acre-feet per year, which is to be stored by MWD in wet years. The annual
10 yield target is 33,000 acre-feet per year, which is to be produced from the Basin in
11 times of imported water shortages, using the new facilities. A key point in the program
12 is that MWD will allow local control and use of the facilities to be constructed. Hence,
13 the new facilities will provide infrastructure that will be of general benefit to Basin
14 pumpers.

15 Several Appropriative Pool members will be participating in the Program: Cities
16 of Chino, Chino Hills, Ontario, Pomona³, Upland, and the Cucamonga County and
17 Monte Vista Water Districts. San Antonio Water Company, Fontana Water Company
18 and Jurupa Community Services District have also initiated negotiations concerning
19 their participation. When MWD delivers in-lieu water into the new storage account, that
20 water is to be provided to the participating entity at no cost, resulting in a deferred
21 water cost. When MWD calls for extraction of the water, it will pay the operation and
22 maintenance costs of the extraction facilities attributed to its use of the facilities, and
23 also will pay the unit electrical cost for pumping the stored water. Further, MWD will
24 pay an administrative fee of \$132,000 to offset the Watermaster staff time necessary to
25 administer the program, which will require detailed record keeping. The administrative
26 fee will be escalated using the lesser of 2.5% or the consumer price index.

27
28 ³ Three Valley Municipal Water District is a party to the Funding Agreement to facilitate the City of
Pomona's participation.

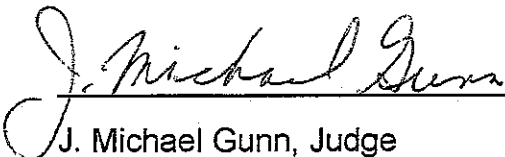
1 The benefits, costs and obligations of the Funding Agreement will be passed on
2 to the participating entities. Further, the DYY Program will have general benefits for
3 Basin Pumpers. The DYY Program benefits were addressed in Watermaster's Dry
4 Year Yield Project Memorandum ("DYY Memorandum"), dated February 13, 2003
5 (Exhibit 2); they are listed on page 6 of the DYY Memorandum. Black and Veatch
6 estimated cash flows for benefits and costs over the life of the program, and prepared a
7 financial analysis (Attachment III to the DYY Memorandum), which quantifies program
8 benefits. Black and Veatch also prepared a conceptual facilities report related to the
9 DYY Program (Attachment XII to the DYY Memorandum). Black and Veatch concludes
10 the DYY Program "will effectively meet overlying demands via in-lieu water deliveries.
11 Furthermore, the program meets the goals of the Basin's ... (OBMP), which are:
12 Enhance basin water supplies [¶] Protect and enhance water quality [¶] Enhance
13 management of the basin [¶] Equitably finance the OBMP" (Attachment XII, p. 5.)

14 Ruling

15 The Court finds that the weight of the evidence supports Watermaster's finding
16 that the DYY Program, as described in the Funding Agreement, will provide broad
17 mutual benefits to the parties to the Judgment.

18 The Court further finds that Watermaster's approval of the Funding Agreement
19 is consistent with its responsibilities under the Peace Agreement, which, in turn,
20 facilitates implementation of the court-approved OBMP.

21
22
23 Dated: June 5, 2003


J. Michael Gunn, Judge

Watermaster Files

FILED-Rancho Cucamonga District
SAN BERNARDINO COUNTY
SUPERIOR COURT

CHINO BASIN WATERMASTER

Case No. RCV 51010

Chino Basin Municipal Water District v. The City of Chino

JUN 12 2003

By *Wanda DeWine* Deputy
Q Jensen

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, 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On June 11, 2003 I served the following that were heard on:

June 5, 2003, 1:30 p.m., Dept. R8

- A. **Order Concerning Groundwater Storage Program Funding Agreement – Agreement No. 49960**
- B. **Order Receiving Watermaster's 25th Annual Report and Status Reports Nos. 5 & 6; Order Confirming Intervention of Niagara Bottling Company**

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:
Attorney 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 June 11, 2003 in Rancho Cucamonga, California.

Mary Staula
Mary Staula
Chino Basin Watermaster

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Updated 6/11/03

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